Submission of the Scottish Tenant Farmers Association

The Scottish Tenant Farmers Association (STFA) welcomes this opportunity to submit its views on Land Reform at Stage One. STFA is the only organisation dedicated to serving the tenanted sector in Scotland and represents tenant farmers from all parts of Scotland engaged in a wide range of agricultural production.

STFA is in broad agreement with the objectives of the Bill and supports the general thrust of the proposed measures but considers that the Scottish Government has been too cautious in tackling some of the more difficult areas of land reform such as greater transparency and accountability in landownership in relation to the use of tax havens for offshore companies and trusts.

STFA has been lobbying for substantial changes to tenancy legislation since the 2003 Act came into force and is pleased to see many of these reforms in the Bill. However, there are a number of areas in the legislation which STFA hopes will be taken into consideration at Stage Two. In particular STFA would like to measures included ensuring fairer statutory end of tenancy compensation, provisions to expand security of tenure to non-family members of existing tenants and enhanced regulatory powers for the Tenant Farming Commissioner to monitor the performance of the tenanted sector.

Part 1 LAND RIGHTS AND RESPONSIBILITIES STATEMENT

STFA welcomes the Government’s intention to publish and update an ongoing land Rights and Responsibilities Statement, and believes it should evolve towards a National Land Policy as proposed by the LRRG

Part 2 SCOTTISH LAND COMMISSION

Land reform should be viewed as an ongoing process and the establishment of a Lands commission should assist in forming a national land policy by keeping an overview on how land policy is working, recommending change and gathering evidence. The Land Commissioners should be independent of government and free of any sectoral interests.

TENANT FARMING COMMISSIONER

The establishment of a TFC will be welcomed by the agricultural industry. The role should be geared towards improving relationships between landlords and tenants, developing codes of practice and guidance and assisting in the resolution of disputes will be part of this role. The TFC should fulfil the role of an industry ombudsman.
STFA believes that some codes of practice must have a statutory basis and the TFC should be granted the power to enforce these codes and impose penalties where necessary. The proposed non-compliance penalty to a maximum of £1000 is little deterrence and the inability of the TFC to impose penalties for breaches of statutory codes will make enforcement difficult, consideration should be given to providing the TFC with powers to impose a financial penalty, as in the case of a statutory ombudsman procedure.

The TFC should monitor the operation of the tenanted sector and the effectiveness of legislation in achieving the expected outcomes of the bill. STFA welcomes Ministers regulatory powers to amend, remove or give new powers to the TFC and would like to see regulatory powers developing towards a role similar to the “SAFER” in France which would oversee land transactions to ensure that they are being carried out in the public interest.

Part 3 INFORMATION ABOUT CONTROL OF LAND

This part represents a move towards greater transparency and accountability in land ownership, however, the power granted to the keeper is simply to request information about the actual beneficial owners behind foreign domiciled corporations, the Bill is silent on a sanction for non-compliance. Moreover Part 3 does nothing to propose solutions to the use of offshore companies and trusts thus providing continuing scope for hiding assets in tax havens. The Scottish Government had signalled its intention to take steps to deal with the issue of land and assets held in offshore accounts, but the Bill makes no mention of this.

Recent exposés have highlighted the extent of Scottish assets held in tax havens such as the Virgin or Cayman Islands and, indeed many tenant farmers pay their rent cheques to offshore bank accounts which give no indication of the identity of the landlord. This is clearly an unacceptable situation and the Scottish parliament should investigate reasons behind the decision to omit proposals which could ensure that the Land Register restricts the ability of companies and trusts to hide financial assets in offshore tax havens.

Part 4 ENGAGING COMMUNITIES IN DECISIONS RELATING TO LAND

STFA supports the issuing of Guidance to foster greater collaboration and engagement between landowners and communities.
Part 5 RIGHT TO BUY LAND TO FURTHER SUSTAINABLE DEVELOPMENT

Whilst STFA recognises the rationale behind this measure and the need to ensure the sustainable economic development of communities where the actions of a landowner and/or the scale of landownership is inhibiting that development, there are concerns as to how the right to buy land will impact on agricultural tenancies. For example, it is not clear that if a community exercises this option, is the tenant to be deprived of all or part on his tenancy, or does he continue as the tenant of the community?

The intention behind the exclusion in section 38 (1) (b) is not clear. This would appear to exclude a subsidiary lease interest or shooting rights. If that is the case, a landowner might be able to frustrate a purchase by granting a long lease over the land for shooting rights, or any other purpose, to a connected party.

STFA would like to see a more precise definition of “sustainable economic development”.

In many situations where the tenant farming community is an integral part of the wider community there will be a sharing of common interests and in the case of landlord neglect there will be a common aim in compulsory purchasing the land. Moreover, the rigorous tests to be satisfied and the complex procedure required to trigger the right to buy should ensure that the measure is only used in extremis, but STFA would like assurance that agricultural tenants are given the same protection as crofters unless the actions of the tenant farmers are proved to be a barrier to sustainable development.

The AHLRG recommended that the Right to Buy land for Sustainable Development could present a community of tenant farmers with an opportunity to buy the land where there is a landlord whose actions are inhibiting the sustainable economic development of the community of tenant farmers, this option should be re-examined.

Part 6 ENTRY IN VALUATION ROLL OF SHOOTINGS AND DEER FORESTS

STFA does not oppose the reinstatement of sporting rates on to shooting estates and deer forests, but, without further examination would not agree with the imposition of agricultural rates at this time.

Part 7 COMMON GOOD LAND

STFA has no comments to make
Part 8 DEER MANAGEMENT

No comment

Part 9 ACCESS RIGHTS

No comment

Part 10 AGRICULTURAL HOLDINGS

Legislative history
Agricultural tenancy law, alongside crofting law, has evolved over the last 130 years since the first agricultural holdings bill was passed in 1883. During that period there have been a myriad of bills (over 20) and statutory instruments making various changes to the law, generally reflecting the policy intentions and the political colour of the government of the time.

The 1948 Act by the post war Labour government conferred security of tenure on to agricultural tenants, improved waygo compensation and established rent review provisions. In the post war era, food production was a priority and the government realised that farming was a long term business and that tenant farmers (65% of the farming population) required the confidence of security of tenure to encourage them to carry out the post-war ambition of making two blades of grass grow where one grew before. This policy was extremely successful and almost all long-term tenants and most owner-occupiers today owe their farms to the 1949 Act.

However, since 1948 successive government acts have eroded tenant farmers' property rights. In 1958 the Tory government introduced legislation restricting succession and providing for the concept of open market comparables for assessing rent. 1983 saw changes to rent reviews and further restrictions to succession to secure tenancies. The 1991 Act consolidated all these changes and it was not until 2003 that the Lab/Lib coalition began the process of addressing the balance of rights in favour of the tenant. The new Land Reform Bill now presents an opportunity to continue the process of balancing the property rights on landlords and tenants in the public interest.

Chap 1 MODERN LIMITED DURATION TENANCIES

STFA recognises the intention to introduce greater flexibility to Limited Duration Tenancies in order to make them a more attractive letting vehicle for landlords, but in essence there are few tangible changes.

Sub Section 5B introduces a voluntary provision allowing a 5 year break clause to be agreed where the incoming tenant is a new entrant. The AHLRG originally proposed that 5 year SLDTs should be removed and recommended
a 5 year break clause as an alternative for new entrants. STFA would now question the relevance of this option.

Sub Section 8B retains the principle of double notice to quit and repeals the cycle of continuations in favour of a statutory extension of 10 years. This introduces an element of inflexibility for both parties and a more practical solution would be to allow the tenancy to continue on tacit relocation until notice to quit procedure is initiated or a continuation period agreed. This approach may also assist in Land and Business Transaction Tax considerations.

Sub Section 8C addresses the relative responsibilities and obligations regarding fixed equipment, but allows parties to contract out. However, STFA considers that the ability to contract out of fixed equipment responsibilities may discourage either party from maintaining and renewing fixed equipment, leading to the dilapidation of fixed equipment which will cannot be in the long term interest of Scottish Agriculture. Lessons should be learnt from evidence of the degradation of farm infrastructure on land let in England under the freedom of contract of Farm Business Tenancies which is now of serious concern to the industry.

Sub section 8D deals with termination of MLDTs subject to 5 year break clauses, as above, STFA questions the relevance of break clauses and, in any case, the new 8D (4) and (6) appear superfluous as the landlord would presumably be entitled to irritate the lease for breach at any time, regardless of any break option

**S79 Conversion of 1991 tenancies into MLDTs**

It is difficult to make much comment on this section as the Bill is silent on these provisions, reserving regulatory powers at this stage on the detail on the mechanism of the conversion, the length of tenancy and so on.

The conversion policy is intended to address factors which are currently inhibiting 1991 tenant farmers from retiring or leaving the holding with the aim of freeing up holdings to create new opportunities and routes for new entrants. It is also hoped that the ability to assign the MLDT on the open market will provide adequate compensation at waygo where a landlord is unable or reluctant to do so.

The outcome of the conversion policy will depend on a number of issues:

a) The minimum term of the tenancy. Any term less that the 35 years proposed by the AHLRG will severely reduce the value of the assignation on the open market and the assignee's ability to realise value from his investment in the lease. Furthermore, it is highly unlikely that a term of less than 35 years could be used as security against the borrowing necessary to finance the new farming business, this is particularly relevant in the case of new entrants.

b) The Conversion route to assignation for value will not provide an asset against which a 1991 tenant can access borrowings. One of the reasons behind the AHLRG's original proposal to allow open
assignation of 1991 tenancies was to create an asset in the shape of a tradeable lease which could be used by the tenant as collateral.

c) Lease terms of the converted MLDT must be similar to those of the 1991 tenancy, especially regarding rent, which should be assessed according to the productive capacity of the unit disregarding improvements which will have been taken over by the incoming tenant.

d) If landlords have the right to withhold consent to a conversion or pre-empt an assignation on the open market, the value of the assignation should not be lower than a fair valuation for waygo compensation to prevent the tenant receiving less that he would be due if consent to the assignation had not been withheld. The landlord can, of course, make the tenant a waygo offer at any time.

As explained below, STFA believes that open assignation of 1991 tenancies would address most of the current problems in the sector and create a more dynamic tenancy system creating opportunities for new entrants and encouraging retiring tenants to make way for the next generation in good time.

Chap 2 TENANT’S RIGHT TO BUY LAND

STFA supports the measures in Section 80 of the Bill that remove the requirement for a tenant with a 1991 Act tenancy to register their interest in buying their holdings with the Registers of Scotland.

This measure was recommended by both the LRRG and the AHLRG. The current requirement for tenants to register can sour relationships with their landlords and is a deterrent to tenants considering registering their interest in land. Section 80 should result in a greater number of tenants being given the opportunity to purchase the land under their holding.

STFA supports no change to the point at which the tenant’s pre-emptive right to buy (PRTB) is triggered.

STFA is disappointed that Recommendations 19 and 20 of the AHLRG Final Report tackling avoidance measures to the PRTB have been dropped. Recommendation 19 advocates consideration of the impact of the transfer of an interest in land through then transfer of shares within a company rather than the sale of land.

Recommendation 20 proposed an amendment of the 2003 Act to allow a 1991 tenant under an interposed lease to exercise his pre-emptive right to buy. STFA believes that there are a large number of interposed leases in existence and these tenants may continue to be disadvantaged should their landlord decide to sell the holding.

The purchase price for the purposes of the tenant’s PRTB is currently determined by a statutory valuation process carried out by a valuer. It is possible that the valuation may result in a purchase price which is in excess of the market price, in which case the tenant may choose not to exercise his pre-
emptive right and the holding is then placed on the open market. Under the current legislation, the tenant only has a pre-emptive right in the case of the statutory valuation, and his pre-emptive right is lost if the holding is placed on the open market. STFA propose that that a tenant should retain his pre-emptive right when the holding is placed on the open market and the tenant has declined the statutory valuation. This would allow a greater number of tenants the opportunity to purchase their holdings.

**CHAP 3 SALE WHERE LANDLORD IN BREACH**

This is an extension to the right to withhold rent and STFA views it very much as a method of last resort with few tenants prepared to run the gauntlet of a lengthy and complex Land Court procedure to enforce the sale of a holding.

In the new section 38F (2) (b) under section 81, the tenant could be committed to going ahead with the purchase before he knows what the final price is. If this default mechanism is used, the tenant should have an option to withdraw from the process within, say, 28 days after the price has been determined.

Section 38N allows a former landlord to clawback some of the increase in value of the land if it is sold on at a profit within 10 years. STFA believes that further thought is required to ensure that any clawback does not apply to any increase in the value of the holding that related to parts of the tenancy belonging to the tenant while he was in occupation of the holding such as his interest in the lease (usually 30-40% of open market value) and his improvements. In effect the original landlord should only be able to clawback any increase in value of his original interest in the lease and the land.

Section 38N as it stands would significantly impact on the tenant’s ability to borrow in order to facilitate the purchase of the holding due to concerns regarding the size of the possible clawback.

STFA viewed the AHLRG Recommendation 22, a right for Ministers to intervene, as having more practical value to the tenanted sector, given that the recommendation did not require a Land Court procedure.

**Chap 4 RENT REVIEWS**

The dysfunctional rent system has been the root cause of much of the dissatisfaction and poor relationships within the tenanted sector. STFA therefore welcomes the move from an open market system of determining
rents to one based on the productive capacity of the holding. Much of the
detail of rent setting is to be delivered through regulatory powers and STFA is
working along with other stakeholders and the Scottish Government to agree
the new method of calculating rents.

The new rent review notice procedure is welcome, particularly the
requirement that the notice must include the rent being demanded and the
basis on which the rent has been calculated. This should create much
needed transparency in the rent process and put an end to the last minute
pressure which is a too common feature of current rent reviews.

Sub section 1(4)(b) There have been a number of new leases for 1991
tenancies which have been entered into since 1995 for IHT purposes, the
new provisions should obviously apply to them but this should be specified in
this section.

Sub section 5(c). There is no reason why there should be an extra 14 day
window following the agreement date for referral to the Land Court. This
should be removed.

Sub section 7. A statutory definition of what constitutes a “fair rent” would be
helpful and avoid dispute and disagreement. This is important in calculating
the proportion of the profit before rent to be allocated to both parties.

The basic premise on which rent has always been set should be defined in
statute, that is, that rental value is assessed on the basis of the hypothetical
(average) tenant offering rent, using only the landlord’s provision of fixed
equipment and land. This assumption is frequently, and conveniently ignored
in rental negotiations.

Notice to Quit for non-payment of rent should be declared invalid if rent
invoices have not been issued. It has become common practice to neglect to
issue invoices for payment of rent. This can often lead to rent remaining
unpaid after the rent payment date. Some leases permit an incontestable
notice to quit, without an opportunity to remedy, being served for non-payment
of rent and frequent late payment of rent can also trigger notice to quit.

For the avoidance of doubt, it should be stated that farmhouses and farm
cottages necessary for the operation of the farm business should be regarded
as fixed equipment of the farm and improvements to these houses should be
treated in the same manner as improvements to other items of fixed
equipment on the holding.

Sub section 9. Surplus accommodation. It should also be made clear that
rent to be attributed to surplus farm cottages should be assessed according to
the unimproved condition of the cottages, taking into account new housing
conditions and regulations; landlord registration, Energy Performance
Certificates and so on. There are many cottages where any rental value can
be entirely attributed to improvements made by the tenant.
It is not clear, but presumed, that cottages necessary for the standard labour requirement of the holding, but not used currently for that purpose, should not be subject to rent. This should be clarified.

Codes of Practice relating to rent reviews should have a statutory basis and, as specified above, should be subject to enforcement by the Tenant Farming Commissioner.

Chap 5 ASSIGNATION AND SUCCESSION TO AGRICULTURAL TENANCIES.

Background
Succession provisions for agricultural tenancies have been gradually narrowed since 1948 by successive parliamentary acts. The 1948 Agricultural Holdings Act brought forward by the post war Labour government created security of tenure for tenant farmers, guaranteeing fair rents and compensation for tenants' improvements. Leases could be bequeathed to any person subject to reasonable grounds of objection by the landlord.

Acts under Conservative Governments in 1958, 1965 (Succession Act), 1983 and 1991 Acts, continually eroded the tenant’s succession rights to family, then "near relative". The 1983 Act introduced the “Two Man Rule” which allowed landlords to dispossess new successors to smaller farms if they planned to amalgamate the holding, or to object to tenants of larger farms from inheriting a family farm.

The 2003 Agricultural Holdings Act under the Lib./Lab Scottish Executive began to reverse the erosion of tenants' property rights and the current Land Reform Bill seeks to take the process further.

ASSIGNATION.

The widening and clarification of the class of people who would be eligible to receive the assignation of a tenancy is most welcome. However, the position of joint tenancies, where the interest in the lease is divided between family members is not addressed.

The tenant should also be permitted to assign the tenancy to a first cousin providing ha/she has had an involvement in the holding. Most tenant families have been farming the land for several generations and the involvement of cousins in the farming business is commonplace.

Sub section 3B makes provision for the proposed tenant to engage in a course of relevant training in agriculture where there is or may be an objection on the grounds of a lack of training or experience within 6 months of serving a notice of intention to assign the lease. The landlord has 30 days in which to intimate whether he is to withhold consent or not and experience has shown that the assignation process can take many months to complete, particularly if
the landlord has lodged an objection to the assignation. STFA considers that the period within which the proposed assignee must engage in the relevant training course should be 12 months after confirmation of the assignation. This will allow the assignee to forward plan and fit in with the annual calendar of training courses.

SUCCESSION

Section 87 - Bequest of 1991 Act tenancies
The widening of succession provisions and the simplification of the process is also most welcome. As above, STFA believes the inclusion of first cousins as near relatives as being in the public interest.

Section 89. Objection to landlord to legatee or acquirer on intestacy
This section removes the risk to successor tenants in accepting a bequest of lease in favour of transfer on the lease on intestacy and streamlines the succession process. Again, as above, the acquirer of the lease should be given 12 months from the actual transfer of the tenancy to engage in a relevant training course.

Sub section (5) repealing Section 25 of the 1991 Act is also most welcome.

NON-FAMILY ASSIGNATION

Open non-family assignation of 1991 tenancies was an initial flagship proposal of the AHLRG which would potentially address a range of issues creating multiple benefits; stimulating investment in farms, encouraging older tenants with no successors to retire and creating opportunities for new entrants and others progressing from smaller or less secure units. In essence assignation would create a bridge between short-term tenancies and secure tenancies.

Scottish government statistics show an annual loss of around 120 secure tenancies to the sector. Most of this land, if re-let will be let out on short term arrangements usually to established farmers. If only a quarter of these farms were available for assignation to new entrants the demand for land by new entrants and those progressing up the farming ladder would soon be satisfied. There will be continuing need for progression through the industry with tenants looking for the next step and others whose tenancies will have come to an end. It must be in the public interest that this land is retained in secure tenure and is available for re-letting. STFA is aware of a number of small farms without family successors which would be suitable as assignable tenancies to new entrants. Furthermore, assignable tenancies will also create scope for share farming arrangements where a retiring farmer can take a new entrant into the business with a view to assigning the lease at a later stage.
As noted above, tenant’s property rights have been steadily eroded over the last 60 years as security of tenure becomes whittled away. Land is increasingly being let on a short-term basis, driven by the maximisation of public funding rather than by agricultural production, the needs of rural communities and environmental management. It must be in the public interest to maintain the area of land let under long-term arrangements and provide an entry route for non-secure tenants into fully secure holdings in which they can have the confidence to invest and grow their businesses. STFA note that the RACCE Committee has indicated its interest in re-examining open assignation of 1991 tenancies and would propose that this is an important opportunity which should not be missed to revitalise the tenanted sector, maintain the area let under secure tenure and extend access to that land to tenants who have no family connection with existing secure tenants.

CHAP 6 COMPENSATION FOR TENANT’S IMPROVEMENTS

Amnesty on tenant’s improvements

STFA welcomes the provision for an amnesty on tenant’s improvements. This will give tenants an opportunity to serve notice for approval of tenants’ improvements attracting end of tenancy compensation, providing they are appropriate for the holding.

Section 90 Subsection (3) defines the “amnesty period” as 2 years. In light of the number of potential notices that may be served, STFA considers that an amnesty period of 3 years would be more practical and would coincide with the 3 year rent cycle.

Section 90 Subsection (5) prevents a tenant giving notice under the amnesty for a number of reasons, including where the landlord withheld consent or objected to an improvement in the past. It is quite common for a tenant to have carried out an improvement appropriate to the holding despite an objection from the landlord. At the time the only option available to contest the objection would have been to apply to the Land Court, and given the costs involved the tenant has taken the pragmatic approach to carry out the improvement. This improvement should now be eligible to be considered as a tenant’s improvement according to S93 (3)

Amnesty and dispute resolution

If consent is not granted for an improvement under the amnesty, Section 94 makes provision for referral to the Land Court failing negotiation. Arbitration is currently not an option for disputes over improvements under s39 of the 1991 Act. This will clearly deter tenants from contesting landlords’ objections and may even deter them from taking advantage of the amnesty. This will be particularly pertinent for those on Limited Partnership tenancies, hoping to extend their leases where landlords will be bound to try and minimise their way-go compensation, especially if it is imminent.
STFA would recommend amendment to s 39 of the 1991 Act to allow disputes over tenants' improvements to be resolved by arbitration and would also recommend that the Tenant Farming Commission set up a statutory arbitration or expert determination service to assess and adjudicate over landlords' refusal of consent or objection to notices.

THE PRINCIPLE OF FAIR COMPENSATION FOR TENANT’S IMPROVEMENTS AT WAYGO.

In its reports, the AHLRG has made much of the need to stimulate investment in tenanted holdings by giving tenants the confidence to invest. This confidence requires proper end of tenancy compensation for the tenant’s investment in the holding during the course of the tenancy. It is surprising, however that both the report and the Bill have neglected to address this and the Bill contains no measures to change procedures or valuations at waygo, both of which currently create uncertainty for tenants at the end of their tenancy.

There are two important barriers preventing tenants from receiving adequate compensation at the end of their tenancy:

a) Negotiations for end of tenancy compensation are carried out during the final days of the tenancy, once the tenant is committed to quit. Valuations are usually not concluded until the tenancy has terminated and the tenant has left the farm. Final settlements can take many months. This puts the tenant in a very weak position.

b) Tenants improvements are valued according to the value to the (hypothetical) incoming tenant, defined as the contribution the improvement would make to the productive capacity of the holding – this ignores the value of modernised housing, amenity improvements, environmental benefits and so on.

The AHLRG Final Report recognised that with the increased requirement for modern fixed equipment in agriculture, tenants now provide a significant element of fixed capital. The traditional model of farm tenancies was one where the landlord contributed the fixed capital, and the tenant provided the working capital, management and labour. That is no longer the case, and many tenants will have provided the majority if not all of the investment in modern improvements since the start of their leases. Given that the majority of secure 1991 Act leases are over 50 years old, a large proportion of modern improvements in the tenanted sector will have been provided by the tenant, including dwelling houses, land improvements, and environmental improvements.

Waygo and the two stage notice procedure

Tenants frequently experience difficulty in realising fair way-go compensation. At present the tenant will have been given or will have been served an irreversible notice to quit the holding before the landlord is obliged to make
any agreements over eligible items for way-go compensation or what the value will be. Where fair compensation cannot be reached by agreement, the only option currently available to the tenant is to apply to the Land Court, which due to associated time and expense is not a practical option in most cases.

STFA proposes a two stage notice procedure:

1. Notice of Intention to Quit served by tenant one year in advance subject to agreement on way-go compensation being reached six months before end of tenancy.

   Where Notice to Quit has been served by the landlord, it should not take effect until waygo compensation has been agreed and finalised.

2. Confirmation of Notice to Quit from tenant following agreement of way-go valuations. Vacation of holding following payment of valuations.

The two stage notice procedure means that the tenant is not required to serve an irreversible notice to quit without knowing the value of his compensation at waygo. It also allows for balancing measures to be introduced between the two stages. STFA proposes that if, in the opinion of an independent expert valuer, in the first stage the tenant has not been offered fair compensation, then the tenant should be allowed to withdraw from his notice to quit or assign his secure 1991 Act lease for value on the open market.

**Waygo valuations for tenant's improvements including houses and cottage**

The valuation of tenant’s improvements should take into account the increase in the capital value of the holding that they make as well as their value to an incoming tenant.

Tenants are required to invest in types of improvements which do not necessarily add to the productive capacity of the holding, for example improvements to dwelling houses and cottages, and improvements for the purposes of animal welfare, working environments, health and safety requirements, and the natural environment and amenity. At present these can all be excluded by the “value to the incoming tenant” principle.

Lord Gill states: “In assessing the improvement the valuer must first determine whether it is such that the hypothetical tenant would find it of value at all. The hypothetical tenant is interested in the improvement only to the extent it increases the productive capacity of the holding.”

This principle is plainly a recipe for an argument excluding compensation for all sorts of improvements from double-glazing and central heating to ponds, hedges and rural access paths.

The current valuation principle of value to incoming tenant, determined by the extent it increases the productive capacity of the holding, leads to uncertainty
at the way-go valuation for the many modern improvements which, though not leading directly to increased productivity, do result in adding to the capital value of the holding. STFA considers that waygo valuation should also take into account the increase in the capital value of the holding made by the improvement.

**Balancing measure - assignation of a 1991 tenancy where the landlord is in breach of waygo obligations**

At the end of the lease there is a legal obligation on the landlord to pay fair compensation to the tenant for his improvements. However, the present legislation makes it difficult for an outgoing tenant to secure fair compensation at the end of the tenancy, due to both the waygo procedure and valuations, as noted above.

STFA believe there needs to be a balancing measure available to tenants where a landlord is, in the opinion of an independent expert valuer, found to have breached his obligation to offer fair compensation for tenant’s improvements at waygo, or is unable to financially meet his obligations. Chapter 3 of the Bill provides for the sale of the holding where the landlord is in breach of his obligations during the lease. For most secure 1991 Act tenancies, waygo compensation will be the most significant obligation for the landlord relating to the lease, and the principles behind Chapter 3, that is a balancing measure available to the tenant where the landlord is in breach of his obligations, should apply to waygo compensation. In such an instance it will be in the public interest to offer the assignation of the 1991 tenancy on the open market in order to obtain fair compensation and value for the lease and improvements, and allowing the continuation of the tenancy under a new tenant.

**Schedule 5 list of improvements eligible for compensation**

Current legislation specifies improvements that can be eligible for compensation in Schedule 5 of the 1991 Act, drafted in the 1940’s. The AHLRG final report recommends that the Schedule be updated to reflect modern circumstances (Recommendation 12) but this is omitted from the Bill. STFA recommends that Ministers should be granted a regulatory power to update Schedule 5 following consultation with industry bodies

**CHAP 7 IMPROVEMENTS BY LANDLORD**

STFA supports the measures in Chapter 7

**CONCLUSIONS**

The Agricultural Holdings section of the Bill contains most of the main recommendations of the AHLRG although many would have appeared to have been watered down from the original intention.
Disappointingly, there little in the Bill which will improve the prospects for new entrants – full repairing long term leases have been dropped as have plan to create share farming opportunities. Open assignation of 1991 tenancies has the potential to address many of the problems of the sector such as investment, retirement and new entrants, and STFA would recommend that the RACCE Committee takes a second look at this option.

One area not covered by the Bill is resumption of land by the landlord from a tenancy, and the statutory compensation due to the tenant. Recommendation 5 of the AHLRG had the aim of enabling greater diversification on tenanted holdings, but has been dropped from the Bill due to conflict with landlords’ resumption rights. STFA believe that the topic of resumption requires further thought. Furthermore, the level of compensation due to the tenant resulting from resumption under S43 of the 1991 Act, in particular where the whole farm is resumed, is so low that it cannot represent balanced compensation to the tenant for the loss of his lease.

The issue of fair waygo compensation has already been raised with government officials and it is crucial that this is dealt with at Stage Two of the Bill.

The establishment of a Land Commission, including a Tenant farming Commissioner is a big step forward and represents a commitment to a long-term programme of land and tenancy reform as Scotland’s land tenure structure evolves. STFA looks forward to assisting and advising the RACCE Committee as the Bill passes through the Scottish Parliament and also to continuing involvement in the process of reform.