Anonymous submission B

Agriculture Holdings (Amendment) (Scotland) Bill – call for views

With reference to the above -

1. We would support the Bill in as far as the change to include grandchildren as near relative successors but would suggest that it does not go far enough in that nieces and/or nephews should also be included.

2. The proposed changes to the rent review provisions in Limited Duration Tenancies (LDTs) – the fact that this legislation needs to be brought in outlawing upward only or landlord only rent reviews clearly shows yet again that Short Limited Duration Tenancies (SLDTs) and LDTs are not achieving the outcomes that we were assured they would. SLDTs and LDTs would appear to go to people with huge resources. Certain Land Agents freely admit this is the only reason they rent farms to these people as they are able to pay the uneconomic rents for the period of the lease regardless of whether the farm is viable or not.

3. The main reason that landlords let farms is monetary. In most cases they have tried farming themselves and been unable to make a profit equal to the rent they expect their tenant to pay. Whilst landowners and their agents pay lip service to the idea of new entrants and the Government has suggested various incentives for successful new entrants, most new entrants do not have the resources to rent, stock and crop a farm and therefore landlords and their agents tend to view them as a poor risk. The definition “new entrant” on many Government schemes is far too rigid as many aspiring new entrants will not fall into any of the Government guidelines.

Although these are the only 3 issues that are being addressed by the Bill, the following items are also worthy of the Committee’s attention:- increasing frustration of both established tenants and hopeful new entrants have been recently highlighted in the press - the huge lack of investment by landlords in their tenanted farms even although they are in breach of their obligations clearly laid down in the lease, the huge cost of taking a landlord to court is beyond the reach of many tenant farmers.

Tenant farmers are, in many cases, afraid to invest in their holdings even although this puts them at a huge disadvantage to the better equipped owner occupiers as the difficulties in getting the value of their investments either at the end of the tenancy or at waygoing are huge.

In a situation where the landlord is clearly in breach of his obligations and has consistently refused to rectify the position then the tenant should have the absolute Right to Buy enshrined in law. This would go some way to redress the balance in favour of the tenant as the current position favours the party with the deepest pockets which in 99% of the cases is the landlord. The other huge stumbling block for the tenant is that even if he successfully takes his landlord to court he will still be out of pocket as legal costs are only at best 50% recoverable. Whilst there are other “voluntary” methods of dispute settlement i.e. mutual consent, arbitration mediation etc., none of these have an enforceable outcome; i.e.- if one party does not agree then - no result. A simple legal framework laying down procedural steps which only looks at relevant issues, - i.e. in the case of farm rents, which are most of the causes of dispute, the productive capacity of the holding, bearing in mind the condition and quantity of fixed equipment provided by the landlord and discounting any tenants fixtures or improvements, would be much fairer to both parties.

In order to avoid many of their obligations some landlords are now only renting out bare land as this removes any question of fixed equipment. This obviously precludes any new entrant from getting a start as they cannot farm without buildings.
While many of the landlords organisations and, unfortunately, some farmer organisations who perhaps should know better, are suggesting that freedom of contract – such as Farm Business Tenancies in England – should be allowed. This would be a disaster for the tenanted sector as by its nature, farming is a long term business and nobody is going to invest in long term improvements – i.e. drainage, fencing, liming etc., if they only occupy the land for 364 days. Surely a better way of encouraging landlords to let land on a long term basis – i.e. 1991 Act tenancies – would be by offering them tax incentives on let land, provided it was on a long term let, equivalent to the reliefs available if he farmed the land himself. Short term lets – i.e. where the landlord could reasonably expect to have vacant possession of the holding at least once within his lifetime should be taxed at the highest rate possible.

Section 5 of the Agricultural Holding (Scotland) Act (2) (a) states that the replacement responsibility of the landlord is that he will effect such replacement or renewal of the buildings or other fixed equipment as may be rendered necessary by natural or by fair wear and tear. It does not mention storm damage; sub section (2)(b) states that the liability of the tenant shall extend only to a liability to maintain the fixed equipment on the holding in as good a state of repair (natural decay and fair wear and tear excepted) as it was in at the commencement of the tenancy or if it has been improved, replaced or renewed by the landlord during the tenancy.

Some agricultural lawyers take the view that the landlord is responsible for storm damage and some agricultural lawyers take the opposite view. Clarification of this point should be treated as a matter of urgency.