Submission from NFU Scotland (NFUS)

1. NFU Scotland (NFUS) represents some 9,000 farmers, crofters and growers across Scotland. This response, from NFUS, comments on the Scottish Parliament’s call for views on the Agriculture Holdings (Amendment) (Scotland) Bill.

2. NFUS welcomes and supports the Agriculture Holdings (Amendment) (Scotland) Bill.

3. As a member of the Tenant Farming Forum (TFF), NFUS welcomed the Public Services Reform (Agricultural Holdings) (Scotland) Order 2011, now enacted, but was disappointed that two elements of the total package for change as sought by the TFF were not included. The omissions included widening the class of beneficiary who may succeed to a tenancy to include a grandchild, and amending the rent review provisions to prohibit ‘upward only’ and ‘landlord only’ initiated reviews.

4. In summary, the view of NFU Scotland is:
   - Extending the definition of ‘near relative’ in the Agricultural Holdings (Scotland) Act 1991 to include grandchildren is welcomed and supported.
   - It is necessary that Clause 4(1) be amended to make it clear what the transitional provisions mean, as the present wording is not clear.
   - Prohibiting the inclusion of rent review clauses in Limited Duration Tenancies that provide for ‘upward only’ or ‘landlord only’ initiated reviews is welcomed and supported.
   - The change clarifying the situation on changes in rent arising from changes in VAT or by the exercise of a landlord of an option to tax is welcomed and supported.

Details

5. NFUS welcomes the introduction of the Agricultural Holdings (Amendment) (Scotland) Bill to the Scottish Parliament. NFUS supports the proposals to extend the definition of “near relative” in the Agricultural Holdings (Scotland) Act 1991 to include grandchildren and amend the rent review provisions in the Agricultural Holdings (Scotland) Act 2003 in order to prohibit the inclusion of rent review clauses in LDTs that provide for upward only or landlord only initiated reviews.

6. NFUS is aware that the Bill includes a further provision relating to VAT and rent reviews, which mirrors a recent amendment to English agricultural holdings legislation. NFUS welcomes the fact that this would clarify the situation on changes in rent arising from changes in VAT or by the exercise of a landlord of an option to tax. Such changes would not constitute a ‘variation of rent’ that would prevent either a landlord or tenant from seeking a determination from the Scottish Land Court on the rent for a period of three years.

7. Clause 4 (1) concerning the transitional provisions around the change in definition of ‘near relative’ does not make it clear whether the provisions of Clause 1 will affect the transfer of leases where the tenant has died before this Bill comes into force. It is important that Clause 4(1) is amended to make it clear what the transitional provisions mean, as the present wording is not clear.

8. NFUS believes that the provisions of Clause 1 should apply to situations where the tenant has died before the Bill comes into force but the legatee or acquirer of the lease has not yet given notice under s11(2) (bequest of a lease) or s12(1) (intestate succession to a lease) of the 1991 Act.