Submission from Scottish Agricultural Arbiters and Valuers Association

Agricultural Holdings (Amendment)(Scotland) Bill – Call for Views

We write in response to your call for views on the above Bill.

We welcome the agreement within the Tenant Farming Forum which allowed the practical proposals contained in the Bill to go forward on the basis of a consensus.

We take this opportunity to urge that advantage be taken of the Arbitration (Scotland) Act 2010 to develop arbitration as a credible form of ADR for resolving disputes arising from agricultural tenancies, particularly rent reviews.

We recently held an Arbitration Conference and are engaged in discussion with the TFF relative to development of an arbitration procedure suited to disputes arising from agricultural tenancies, particularly rent reviews.

In that regard we make the following observations.

Section 79 of the Agricultural Holdings (Scotland) Act 2003 outlines “Arbitration: procedure etc” relative to SLDTs and LDTs. Mirror provision for 1991 Act Tenancies is contained in Section 61A of the Agricultural Holdings (Scotland) Act 1991. Both sections were enacted before the Arbitration (Scotland) act 2010. With reference to the subsections of both sections we suggest:

(4) It would be beneficial to specify that arbitrations under both sections are governed by the Scottish Arbitration Rules in Schedule 1 of the Arbitration (Scotland) Act 2010. Some interpret Section 16 of the Arbitration (Scotland) Act 2010 [Statutory arbitration:special provisions] and this subsection as meaning the Scottish Arbitration Rules do not apply.

(6) Parties should have the right to agree to disapply the right of appeal to the Land Court in both sections. That would be consistent with the fact that the right of appeal to the Outer House contained in Rule 69 of the Scottish Arbitration Rules is a default rule.

At the most general level our observation is that the procedure provided by the Arbitration (Scotland) Act 2010 should so far as possible apply to arbitration under the Agricultural Holdings (Scotland) Acts.

We hope the above comments are helpful.

Yours faithfully

John A Mitchell
Secretary