Submission from Phil Thomas, Chair of the Tenant Farming Forum (TFF), on behalf of the members of the TFF

Background

The Tenant Farming Forum (TFF) is an industry-led body comprising of representatives of: NFU Scotland, Royal Institution of Chartered Surveyors in Scotland, Scottish Land and Estates, Scottish Tenant Farmers Association, Scottish Association of Young Farmers. It has an independent Chairman and its work is assisted by a representative of Law Society of Scotland.

The TFF was established following the Agricultural Holdings (Scotland) Act 2003 to facilitate debate about matters of common interest to landowners and tenants and about the operation of the landowner/tenant interrelationship. The primary purpose of the TFF is to help to promote a healthy farm tenanted sector in Scotland.

Early in its existence, the Cabinet Secretary for Rural Affairs and the Environment asked the TFF to look into what further changes were needed to agricultural holdings legislation to free up land to rent. The TFF subsequently put forward a list of agreed changes, most of which were implemented through secondary legislation (The Public Services Reform (Agricultural Holdings) (Scotland) Order 2011).

The Agricultural Holdings (Amendment) (Scotland) Bill aims to introduce the two TFF-proposed changes which, apparently for legal reasons, were not included in the Services Reform Order and to add a third, technical, change proposed by the Scottish Government.

TFF's Overview

The TFF welcomed The Public Services Reform (Agricultural Holdings) (Scotland) Order 2011, but was disappointed that two elements of the total package for change that had been sought were not included. The Forum therefore welcomes the Agricultural Holdings (Amendment) (Scotland) Bill which seeks to extend the definition of “near relative” in the Agricultural Holdings (Scotland) Act 1991 to include grandchildren and to 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. These amendments, if adopted, would result in all the original measures recommended to the Cabinet Secretary by the TFF being enacted.

Additionally, the Bill includes a further provision relating to VAT and rent reviews, which has been debated, agreed and is approved of by the TFF. It mirrors a recent corresponding amendment to English agricultural holdings legislation.

The Forum considers the clarification of the situation on changes in rent arising from changes in VAT or by the exercise of an option to tax is necessary and helpful. Such changes would not constitute a “variation of rent” such as would prevent either a landlord or tenant from seeking a determination from the Land Court on the rent for a period of three years.

The TFF therefore accepts and welcomes the Agricultural Holdings (Amendment) (Scotland) Bill as a further improvement in agricultural holdings legislation.

Points of TFF Discussion

During the consultation on the proposals for the Bill the TFF raised a number of technical points on the initial draft. These were as follows:

1. There was discussion of whether the long title of the Bill was sufficiently specific, because the TFF felt it important that the Bill was limited to the three specific points that it was intended to address. It was suggested the title might be modified to read: “An Act of the Scottish Parliament to amend the law governing succession of near relatives to agricultural tenancies and the upward or landlord initiated only review or variation of rent and effect of VAT changes on determination of rent under such tenancies” However, it appears that the parliamentary draftsmen
considered this change was not necessary to maintain the Bill’s specificity to the three points being addressed.

2. There was discussion that, for consistency with the wording of the 1991 Act, Clause 1 should be reworded “as near relative in relation to a deceased tenant of an agricultural holding means a surviving spouse, surviving civil partner, child or grandchild of that tenant”. This amendment has been included in the wording of the Bill as presented.

3. There was discussion of Clause 4 (1) – Transitional provisions, where the TFF considered the original draft did not make clear whether the provisions of Clause 1 would only apply to situations where the tenant died after the Bill became law or apply to situations where the tenant had died before the Bill becomes law 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. This need for clarity has now been addressed in the Bill as presented.

4. When the TFF discussed this issue, the majority of members believed 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. However, other members were of the view that it was legally clearer if the provision only applied after the Bill came into force. It is this second view that has been preferred in the Bill as presented.

5. It is not clear how many individuals would be advantaged or disadvantaged by the decision by the different options for the transitional provisions. However, the consensus is that the number of people affected will be small.