NFU Scotland (NFUS) is pleased to respond to this call for views. Comments made in this submission pertain only to the Agricultural Holdings (Scotland) Act 2003 (‘the 2003 Act’).

By their nature, any adjustments made in land letting takes considerable time to settle down. Often, judgement is on too short a period, appreciation of this should be built in at the time. In the development of legislation, there is always a danger in looking to the past and applying a solution to that point, rather than looking forward and addressing future needs. This is a view of NFUS that was expressed at the time of the most recent iteration of the Land Reform (2016) Act.

In retrospect, NFUS considers that the 2003 Act was fundamentally sound in terms of solutions identified to deal with the issues of the time. However, it suffered due to subsequent alterations, which eroded the confidence of parties who wished to utilise it. It is the view of NFUS that the Act was further undermined by political agendas and statements concerning the ‘absolute right to buy’.

Several positives came from the 2003 Act, for example the Tenant Farming Forum, which was developed to provide a discussion forum for idea-sharing and an attempt to find common ground on issues. This has morphed into the Tenant Farming Advisory Forum, which still uses this purpose to facilitate stakeholder discussions around tenancies. In addition, the new letting framework delivered via the 2003 Act did provide a viable alternative letting vehicle which appeared to balance well the interests of parties concerned.

**Do you consider that the Act has had sufficient time to make a difference?**
NFUS feels that the Act has had sufficient time to make a difference to the agricultural sector. Fundamentally the Act was sound, as discussions around the subsequent 2016 Act demonstrated.

**Does the Act have a measurable outcome or policy objective, and has it fulfilled its intended purpose?**
The main purpose of the Act was to address issues associated with the contraction of the tenanted sector at that time. Landlords were unwilling to let land, due to the security of tenure provisions conferred by the 1991 Act. The alternative of Limited Partnerships was not enough of an incentive on its own merits for many landlords.
The 2003 Act sought to address this by introducing two new term tenancy types, the Short-Limited Duration Tenancy (SLDT) and the Limited Duration Tenancy (LDT). The policy intention was to incentivise letting of land whilst providing landlords with a level of comfort that the land could be returned to them at the expiry of the agreed term.

The 2003 Act also sought to address issues around 1991 Act tenancies. Whilst the rationale behind things such as widening succession and assignation provisions was sound, in retrospect it further widened the divergence of views and behaviours of 1991 Act tenants and those on the new vehicles. In addition, NFUS is of the view that it also impacted the confidence of landlords to let land, which did not assist in the policy objective of increasing the amount of land to let.

Therefore, despite the sound rationale behind the 2003 Act, it did not successfully address the decline in the amount of land let. However, this is not attributable to the legislative framework, but was influenced heavily by the economic and political context of the time. The unhelpful context and discourse of absolute right to buy was undoubtably a significant factor in effectiveness of the legislation.

**Has the Act been subject to, or could it be subject to, significant revision?**
The 2003 Act has been subject to considerable revision, most notably by the Land Reform (Scotland) Act 2016. It is pertinent to note that in discussions around letting vehicles, the SLDT/LDT system was considered by stakeholders to work well in the interests of both parties. This is reflected heavily in the new MLDT introduced in the 2016 Act.

NFUS does not consider that further significant revision would be in the interest of the tenanted sector. Detailed discussions have already taken place to try to address issues which remain within the sector. The depth at which these have been examined is unprecedented, and any further attempt at revision would be unnecessary duplication.

**Has there been a call from relevant stakeholders for the Act to be reviewed?**
NFUS does not consider that there is merit in a review of the Act and is not aware of calls from other relevant stakeholders to this effect.

**Would there really be merit in undertaking post-legislative scrutiny of the Act?**
During the passage of the 2016 Act, a huge amount of discussion was undertaken by both Government and stakeholders on matters relating to the 2003 Act. Some of the issues identified are still a work in progress, and detailed work continues on items left to regulation which are still to be completed.

NFUS therefore considers that stakeholder work with Scottish Government and the new Tenant Farming Commissioner is in the best interests of the industry, and there does not appear to be merit in detailed scrutiny of the previous legislation.

NFU Scotland
April 2018