



The Scottish Parliament
Pàrlamaid na h-Alba

Rural Affairs, Climate Change and Environment Committee

3rd Report, 2012 (Session 4)

Stage 1 Report on the Agricultural Holdings (Amendment) (Scotland) Bill

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The Scottish Parliament
Pàrlamaid na h-Alba

Rural Affairs, Climate Change and Environment Committee

Remit and membership

Remit:

To consider and report on agriculture, fisheries, rural development, climate change, the environment and other matters falling within the responsibility of the Cabinet Secretary for Rural Affairs & the Environment.

Membership:

Claudia Beamish
Graeme Dey
Annabelle Ewing (Deputy Convener)
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The Committee reports to the Parliament as follows—

INTRODUCTION

Parliamentary scrutiny

1. The Agricultural Holdings (Amendment) (Scotland) Bill¹ was introduced in the Scottish Parliament on 31 October 2011 by the Cabinet Secretary for Rural Affairs and the Environment. The Bill was accompanied by Explanatory Notes,² which include a Financial Memorandum, and by a Policy Memorandum,³ as required by the Parliament's *Standing Orders*.⁴
2. Under Rule 9.6 of *Standing Orders*, the Parliamentary Bureau referred the Bill to the Rural Affairs, Climate Change and Environment Committee ("the Committee") to consider and report on the general principles.
3. No secondary committee was appointed to scrutinise the Bill. However, the Finance Committee did seek views on the Financial Memorandum to the Bill, and subsequently wrote to the Committee, appending the responses. The Committee notes and comments on the evidence taken by the Finance Committee later in this report.
4. The Committee issued a call for views on the Bill's general principles on 10 November 2011 and 13 written submissions were received (including supplementary submissions).

¹ Agricultural Holdings (Amendment) (Scotland) Bill. Available at: [http://www.scottish.parliament.uk/S4_Bills/Agricultural%20Holdings%20\(Amendment\)%20\(Scotland\)%20Bill/Bill_as_introduced.pdf](http://www.scottish.parliament.uk/S4_Bills/Agricultural%20Holdings%20(Amendment)%20(Scotland)%20Bill/Bill_as_introduced.pdf)

² Agricultural Holdings (Amendment) (Scotland) Bill. Explanatory Notes. Available at: [http://www.scottish.parliament.uk/S4_Bills/Agricultural%20Holdings%20\(Amendment\)%20\(Scotland\)%20Bill/Ex_Notes_and_FM.pdf](http://www.scottish.parliament.uk/S4_Bills/Agricultural%20Holdings%20(Amendment)%20(Scotland)%20Bill/Ex_Notes_and_FM.pdf)

³ Agricultural Holdings (Amendment) (Scotland) Bill. Policy Memorandum. Available at: [http://www.scottish.parliament.uk/S4_Bills/Agricultural%20Holdings%20\(Amendment\)%20\(Scotland\)%20Bill/Policy_Memo.pdf](http://www.scottish.parliament.uk/S4_Bills/Agricultural%20Holdings%20(Amendment)%20(Scotland)%20Bill/Policy_Memo.pdf)

⁴ Scottish Parliament (2011). *Standing Orders*, 4th Edition (1st Revision). Available at: <http://www.scottish.parliament.uk/Parliamentaryprocedureandguidance/StandingOrdersv4.1.pdf>

5. In publishing its call for views, the Committee acknowledged that there was an on-going related debate about wider land reform and agricultural tenancy issues which are not addressed by the Bill. The Committee agreed to focus its Stage 1 scrutiny on the specific provisions in the Bill, but also agreed to accept written evidence on the wider issues, which it would return to following completion of the passage of the Bill.
6. The Committee took evidence in public session at meetings on 11, 18 and 25 January 2012.
7. Extracts from the minutes of all the meetings at which the Bill was considered are attached at Annexe A. Where written submissions were made in support of evidence given at meetings, these are reproduced, together with the extracts of the *Official Report* of the relevant meetings, at Annexe B. All other written submissions, including supplementary written evidence, can be found in Annexe C. In addition, the Committee received a number of private and anonymous submissions relating to wider land reform and agricultural tenancy issues.
8. The Committee thanks all those who have assisted with its scrutiny of the Bill and is grateful to all those who made private and anonymous submissions, often of a personal and sensitive nature.

BACKGROUND TO AND PURPOSE OF THE BILL

Contents of the Bill

9. The Policy Memorandum which accompanies the Bill states that the policy objective of the Bill is to—

“[...] amend legislative provisions relating to succession and rent review in order to create a better environment for the letting of farmland to the tenant farming sector of the agricultural industry and to encourage new entrants into tenant farming.”

10. Specifically, the Bill makes three changes to the current law on agricultural holdings. It—

- amends the definition of “near relative” (being the class of successors who are entitled to serve a counter notice to a notice to quit) who may succeed to a secure agricultural tenancy to include grandchildren;
- prevents certain restrictions for rent reviews in limited duration tenancies; and
- disapplies VAT rate changes and options to tax from being variations in rent which prevent rent reviews.

Background

11. The Bill is a piece of amending legislation which proposes changes to two Acts which regulate agricultural tenancies in Scotland: the Agricultural Holdings

(Scotland) Act 1991⁵ (“the 1991 Act”), and the Agricultural Holdings (Scotland) Act 2003⁶ (“the 2003 Act”).

12. The Public Services Reform (Agricultural Holdings) Scotland Order 2011⁷ (“the 2011 Order”), which came into force in March 2011, made further amendments to these two Acts.

13. There are three types of tenancy agreement commonly found in Scotland, those under the 1991 Act (which are the most common and offer the most security), and those created by the 2003 Act: Short Limited Duration Tenancies (SLDTs) (lasting for no more than five years), and Limited Duration Tenancies (LDTs) (originally lasting for a minimum of 15 years, but amended by the 2011 Order to last a minimum of ten years). Land is also let through short term (less than one year) grazing or mowing lets.

14. The Bill contains two amendments to the existing legislation which were originally part of a package of recommendations intended for inclusion in the 2011 Order, put forward by the Tenant Farming Forum (TFF)⁸, an industry-led body established to facilitate debate between landowners and tenants.

15. However, for legal reasons, these two recommendations were not included in the 2011 Order, to the disappointment of the TFF and the then Rural Affairs and Environment Committee.⁹ These two measures were the change to the definition of near relative as the class of people who could issue a counter-notice to a notice to quit served when a tenant dies, and the prohibition of upward-only and landlord-only initiated rent reviews. These measures are two of the three amendments included in this Bill.

16. The third change included in the Bill (the VAT measure) was not included in the original package of recommendations from the TFF, but is a precautionary change supported by the Scottish Government and the TFF following a legal ruling in England which suggested that changes in VAT would be considered a variation in rent.

17. The TFF has stated that these three measures have agreement amongst all of its members, which represent both landlords and tenants, and the TFF and Scottish Government are keen for the changes to become law as quickly as possible. There are a number of other outstanding issues surrounding agricultural tenancy law which still require attention. The TFF and the Scottish Government are of the view that consideration of these issues is not currently at a stage where they could be included in this Bill. However, the Committee understands that these

⁵ Agricultural Holdings (Scotland) Act 1991. Available at: <http://www.legislation.gov.uk/ukpga/1991/55/contents>

⁶ Agricultural Holdings (Scotland) Act 2003. Available at: <http://www.legislation.gov.uk/asp/2003/11/contents>

⁷ The Public Services Reform (Agricultural Holdings) Scotland Order 2011. Available at: <http://www.legislation.gov.uk/sdsi/2011/9780111012345/contents>

⁸ The TFF is made up of the following members: National Farmers Union Scotland (NFUS); the Royal Institute of Chartered Surveyors Scotland (RICS); Scottish Land and Estates (SLaE); the Scottish Tenant Farmers Association (STFA); and the Scottish Association of Young Farmers.

⁹ See [Rural Affairs and Environment Committee letter to Richard Lochhead](#) Cabinet Secretary for Rural Affairs and the Environment 6 December 2010.

issues will continue to be discussed during, and after, the passage of the Bill. Many of these issues are discussed in detail elsewhere in this report.

Scottish Government consultation

18. The Scottish Government published a consultation on its proposals for a bill on 22 March 2011, with a closing date of 30 June 2011.¹⁰ On 10 August 2011, the Scottish Government published the sixteen responses it had received.¹¹ These consisted of two anonymous submissions, two individual submissions, and twelve submissions from organisations.

19. On 18 August 2011, the Scottish Government published an analysis¹² of those responses. The analysis showed a large majority of support for each of the three proposals.

20. However, the analysis also revealed a difference in opinion on when the succession proposals should take effect, and if and how they should be applied 'retrospectively'. This issue emerged again in the Committee's evidence-taking and is discussed below.

21. The Committee notes the Scottish Government's consultation on the proposed bill and is of the view that it was appropriately conducted. The Committee welcomes the publication of the responses and the analysis of the responses.

Policy Memorandum

22. The Committee found the Policy Memorandum which accompanied the Bill to be helpful in clearly setting out the policy objectives of the Bill, why the approaches taken in the Bill were favoured over possible alternate approaches, and possible effects on various groups and organisations.

Statistics and data

23. On 6 January 2012, the Scottish Government published a document entitled *Trends in Agricultural Tenancy Agreements from 2005 to 2011*.¹³ This showed that the total number of holdings with tenancy agreements has decreased steadily by 727 (almost 10 per cent) from 7,470 in 2005 to 6,743 in 2011. These statistics provided the backdrop for the evidence-taking sessions the Committee had with stakeholders and with the Cabinet Secretary.

¹⁰ Scottish Government (2011). *Consultation On Agricultural Holdings (Amendment) (Scotland) Bill - Consultation Document*. Available at:

<http://www.scotland.gov.uk/Publications/2011/03/18095404/0>

¹¹ Scottish Government (2011). *Consultation On Agricultural Holdings (Amendment) (Scotland) Bill - Consultation Responses*. Available at:

<http://www.scotland.gov.uk/Publications/2011/08/08143730/0>

¹² Scottish Government (2011). *Consultation on Agricultural Holdings (Amendment) (Scotland) Bill Analysis of Consultation Responses*. Available at:

<http://www.scotland.gov.uk/Publications/2011/08/18091324/0>

¹³ Scottish Government (2012). *Trends in Agricultural Tenancy Agreements from 2005 to 2011*. Available at: <http://www.scotland.gov.uk/Publications/2012/01/tenancy0511/Q/pno/0>

24. During the course of its Stage 1 scrutiny of the Bill, it became apparent to the Committee that there were gaps in data and statistics which made it difficult to fully understand how effective the Bill would be in achieving its policy aims, and, perhaps more crucially, what further changes would be required to improve the health of the tenant farming sector in Scotland.

25. Whilst information is available on the number of holdings, information on the area of rented land is not available, and little data exists on contract farming. Scottish Government officials told the Committee, in supplementary written evidence, that the statistics currently collected are derived from the June Agricultural Census and that this does not include questions which would allow the collection of data relating to the number of tenants purchasing land, or the landowner taking back control of the land. The evidence added—

“We are looking into the possibility of estimating this information by linking the June Census data to the corporate register of holding, which contains holding details, and by exploring other data sources such as land sales from the Register of Scotland.”¹⁴

26. The Committee was keen to get behind the latest statistics to try to establish why the fall in the total number of holdings with tenancy agreements had taken place.

27. When the Cabinet Secretary appeared before the Committee, a number of questions were posed to him about available data relating both to the specific provisions in the Bill, and to wider policy issues such as the number of new entrants lacking access to tenancies. In supplementary evidence to the Committee, the Cabinet Secretary confirmed that the Scottish Government did not have the data that the Committee was looking for. Giving oral evidence, the Cabinet Secretary said—

“We are aware of the lack of data on the issue and are working with the industry on ways of capturing a lot more to understand exactly what is happening out there.”¹⁵

28. In terms of the agricultural census, Iain Dewar, the Scottish Government’s Bill team leader, explained what questions the census currently asks, and what could be done to improve the information—

“At the moment, the information that we collect through the agricultural census gives us a high-level picture. It provides us with information about the amount of land that is rented and owner-occupied in Scotland. Since 2005, it has also given us some general information about the number of tenancies. We fully acknowledge that we need to get to the detail underneath that

¹⁴ Scottish Government. Supplementary written evidence.

¹⁵ Scottish Parliament Rural Affairs, Climate Change and Environment Committee. *Official Report*, 25 January 2012, Col 571.

information so that we can better understand the interactions and what happens when a 1991 tenancy comes to an end.”¹⁶

29. **The Committee is concerned about the lack of available data on many of the issues it was examining as part of its scrutiny of the Bill. The Scottish Government agreed that more data needed to be gathered to better understand the tenant farming sector in Scotland. The Committee recommends as a matter of urgency that the Scottish Government work with all relevant parties to ensure that the required data is collected, so that any future changes to agricultural holdings legislation can be based on a more robust evidence base.**

30. **The Committee also recommends that the Scottish Government review the questions asked in the current agricultural census, to ensure that the most appropriate and beneficial questions are being asked with a minimum of bureaucracy.**

GENERAL PRINCIPLES OF THE BILL

31. **The Committee makes specific comment on the three provisions in the Bill, and other issues that were raised during its scrutiny, in the main body of this report below. However, to state at the outset, the Committee broadly welcomes the three proposals contained in the Bill which it believes are overdue, and recommends that the Scottish Parliament support the general principles of the Bill at Stage 1, to allow the Bill to pass to Stage 2.**

PROVISIONS IN THE BILL

Succession by near relatives

Background

32. The Committee notes that the changes being proposed in the Bill make no change to the law of succession itself, which is governed by the Succession (Scotland) Act 1964 (“the 1964 Act”).¹⁷

33. Tenants can currently assign tenancies to anyone who would be entitled to succeed to the intestate estate according to the 1964 Act if the landlord consents to the assignation (consent may only be withheld on reasonable grounds). This is a wider list of individuals than those defined as near relatives, including a spouse, civil partner, children, grandchildren, siblings, nieces and nephews.¹⁸ Those defined as near relatives, are a spouse, civil partner, and children only.

34. Currently, when a tenant farmer dies, a landlord has the right to issue a notice to quit on the successor tenant. This can be an incontestable notice to quit if the successor is not a near relative. This affords near relatives additional

¹⁶ Scottish Parliament Rural Affairs, Climate Change and Environment Committee. *Official Report*, 25 January 2012, Col 576.

¹⁷ Succession (Scotland) Act 1964. Available at: <http://www.legislation.gov.uk/ukpga/1964/41>

¹⁸ Section 2 of the Succession (Scotland) Act 1964 specifies in which order relatives would be eligible to succeed to an estate where there is no will.

protection (in this case, the ability to serve a counter notice which requires attention from the Scottish Land Court) which others do not have.

Definition of near relative

35. The current legal definition of near relative includes a surviving spouse, surviving civil partner and a natural or adopted child of the deceased tenant farmer, but not a grandchild or any other relative. This is widely considered to no longer be acceptable, hence the proposal in the Bill, in section 1, to amend the definition of near relative to include grandchildren.

36. The evidence received by the Committee was unanimous in welcoming a change to the definition of near relative. However, there was some debate about whether the Bill goes far enough in extending the definition. Evidence was received suggesting that the revised definition of near relative should extend beyond the proposed addition of grandchildren, to include other relatives, such as nieces and nephews and cousins.

37. Although the consensus reached within the TFF was for an extension of the definition to include grandchildren only, in oral evidence to the Committee, the Scottish Tenant Farmers Association (STFA) and the National Farmers Union Scotland (NFUS), both TFF members, indicated support for further widening the definition. The NFUS told the Committee—

“It seems a little bit strange that, during your lifetime, you can assign a tenancy to a wider class of people, yet, at the point of your death, it is restricted to certain categories.”¹⁹

38. And the STFA added—

“From a tenant’s perspective, we would encourage the definition of “near relative” to be extended beyond a grandchild to include nephews and nieces.”²⁰

39. Another submission²¹ to the Committee also supported further extending the definition, stating that—

“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.”²²

40. However, another TFF member, Scottish Land and Estates (SLaE), was not in favour of extending the definition, believing that doing so could destabilise the balance of rights between landlords and tenants.

¹⁹ Scottish Parliament Rural Affairs, Climate Change and Environment Committee. *Official Report, 18 January 2012*, Col 522.

²⁰ Scottish Parliament Rural Affairs, Climate Change and Environment Committee. *Official Report, 18 January 2012*, Col 520.

²¹ The individual who made this submission supplied contact details but asked for them to be withheld due to the sensitive nature of the submission.

²² Anonymous submission B. Written submission.

41. This divergence of views within the TFF demonstrates the degree of compromise that has been reached in the provision in the Bill. Phil Thomas, the Chair of the TFF, noted that—

“There has been strong support for the amendment to legislation that is in the Bill. That does not rule out any widening of the approach, but it is important that there is a step-by-step process.”²³

42. Scottish Government officials confirmed that there was no legal impediment which would prevent the definition of near relative being further amended. However, the Scottish Government’s legal adviser did add—

“[...] we must bear in mind that, if we confer new rights on people by extending the definition and the benefits that flow from it to nieces and nephews, there will be an associated disadvantage or disbenefit to a landlord who might be contesting a notice to quit.”²⁴

43. This note of caution was echoed by the Cabinet Secretary when he told the Committee—

“With legislation, we have to be careful about unintended consequences. We have to safeguard the rights of both landlords and tenants. Some would argue for extending the definition of “near relative” to go beyond grandchildren, but others would argue that such a definition might tie down a tenancy and make it so secure that the landlord who signed up for it in the first place would no longer have flexibility and would have their rights and expectations infringed.”²⁵

44. In terms of why the specific decision had been taken by the Scottish Government to only extend the definition to include grandchildren, the Cabinet Secretary told the Committee—

“The “near relative” issue is one of those measures that the tenant farming forum unanimously agreed had to be addressed. We have before us the proposal to extend the definition of “near relative” to include grandchildren as a result of the forum’s consensus view. We could easily ignore that consensus and put an alternative—or extend the definition further—in the legislation. However, we have chosen not to do that, because we agreed with the tenant farming forum that we would take forward its recommendations on a consensual basis, and its recommendation was to extend the definition of “near relative” to grandchildren.

Having said that, I will not sit here today and say that that is the end of the story. It has taken more than 100 years to get the current legislation on the books, and I cannot pretend to bring all the long-term solutions to the

²³ Scottish Parliament Rural Affairs, Climate Change and Environment Committee. *Official Report*, 18 January 2012, Col 522.

²⁴ Scottish Parliament Rural Affairs, Climate Change and Environment Committee. *Official Report*, 11 January 2012, Col 501.

²⁵ Scottish Parliament Rural Affairs, Climate Change and Environment Committee. *Official Report*, 25 January 2012, Col 563.

committee overnight. However, there is much more work to be done, and the succession issues will be part of that.”²⁶

45. **The Committee notes all the supportive evidence it received on the issue of extending the definition of near relative as it relates to the class of people who can serve a counter-notice to a notice to quit, upon the death of a tenant. The Committee supports the principle of the definition being extended.**

46. **The Committee acknowledges that the position reflected in the Bill, to extend the definition to include grandchildren, is consistent with the consensual view established in the Tenant Farming Forum, which advised the Scottish Government on the contents of the Bill. However, the Committee is aware that individual members of the TFF have differing views on the issue and is not unsympathetic to the call made by some for the definition to be further extended to include other relatives. Whilst noting the points made to the Committee that further extending the definition could potentially destabilise the consensus reached in the TFF, and also possibly lead to unintended negative consequences in the balance of rights between landlords and tenants, the Committee recommends that the Scottish Government re-examine this issue and seek further comment from the TFF and its individual members ahead of Stage 2 on whether the definition should be amended to be more similar to the rules on assignation, for example to include nephews and nieces.**

Transitional provisions

47. Section 4 of the Bill states that the new succession provisions will come into force in relation to a notice to quit only when the deceased tenant to whom that notice relates has died on or after the day on which section 1 of the Bill comes into force (which is at the end of the period of 2 months beginning with the day of Royal Assent). This section was drafted in response to the Scottish Government’s consultation, where several respondents noted that the transitional arrangements, as they stood at the time, were not clear. Caroline Mair, rural affairs solicitor in the Scottish Government’s directorate for legal services, explained to the Committee—

“We changed the transitional provision to make it clear that it will affect only cases in which a tenant farmer has died after the act comes into force. We believe that is a nice, clear and unambiguous cut-off point.”²⁷

48. However, the majority of stakeholders within the TFF do not agree with the Scottish Government’s position. The TFF response to the Scottish Government’s consultation stated—

“The majority of TFF members believe 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)

²⁶ Scottish Parliament Rural Affairs, Climate Change and Environment Committee. *Official Report*, 25 January 2012, Col 561.

²⁷ Scottish Parliament Rural Affairs, Climate Change and Environment Committee. *Official Report*, 11 January 2012, Col 507.

(bequest of a lease) or s12(1) (intestate succession to a lease) of the 1991 Act.”²⁸

49. In its written submission to the Committee, the STFA outlined its reasons for wanting to alter the proposal in the Bill—

“Section 1 [the succession provisions] should apply where the tenant has died before the Bill comes into effect and notice has not yet been served to transfer the lease, either as a bequest or by intestate succession. Thus any notices served to transfer a lease after the Bill comes into force will be effective even though the tenant had died before the commencement of the new Act. This is only fair and right considering the unforeseen delays to the bill. STFA would seek an amendment to this effect.”²⁹

50. However, SL&E presented an alternate view, supporting the provisions as outlined in the Bill and detailing its opposition to the sort of changes proposed by other stakeholders—

“Scottish Land & Estates is aware of reports in the media that certain interests may seek to have Section 4(1) amended to be relevant to tenants who have died before the coming into force of that section. In other words, they seek retrospective legislation in this respect. Scottish Land & Estates takes this opportunity strongly to oppose this argument [...].”³⁰

51. The SL&E submission then goes onto make a number of points in relation to this issue, namely that—

- retrospective legislation is not, in principle, a good thing;
- it may set a precedent in terms of future agricultural holdings legislation that established positions could be altered – this may have a negative impact on landowners in terms of confidence etc;
- it is not appropriate to give a deceased individual statutory rights;
- the numbers likely to be affected by the absence of a retrospective provision are likely to be very small;
- as drafted, the effect of section 4(1) is clear and provides certainty to all concerned.

52. The issue was discussed at the evidence-taking session with TFF members. The STFA and NFUS both asserted their view that the Bill should be changed to capture those people in the middle of the process. The STFA noted that this change was originally intended to be made in the 2011 Order, and it would be unfortunate if the delay prevented some people being able to benefit from the

²⁸ TFF (2011). Response to Scottish Government Consultation On Agricultural Holdings (Amendment) (Scotland) Bill. Available at: <http://www.scotland.gov.uk/Resource/Doc/355518/0120099.pdf>

²⁹ Scottish Tenant Farmers Association. Written submission.

³⁰ Scottish Land and Estates. Written submission.

provisions in the Bill. The Committee heard that whilst some anecdotal evidence was available, robust data on how many people would be affected by such a change was not available. Witnesses agreed, however, that the number of people affected would, in all likelihood, be small.

53. When the issue was discussed with the Cabinet Secretary at Committee, he stressed that the Scottish Government wanted to avoid retrospective legislation if at all possible, and that the Government wanted the Bill to have a clear cut-off point to avoid ambiguity. Hence the decision that section 1 would apply once commenced to those tenants who die on or after the day of commencement. The Cabinet Secretary stressed that the number of people who may be negatively affected by this is likely to be very small (“one or two”).³¹ However, the Cabinet Secretary did say that he would “reflect”³² on the issue further.

54. The Committee notes that the issue of when the transitional provisions come into force is the only issue on which the Scottish Government has not adopted the majority view of TFF members. In this regard, the proposal in the Bill stands out from the consensus agreed on the other issues.

55. The Committee notes all the evidence it heard on this issue and is not persuaded that the approach taken in the Bill is the correct one. The Committee agrees that passing legislation which applies retrospectively is not, generally speaking, good practice. However, in this instance, the Committee does not believe that altering the Bill so that section 1, when commenced, applies in circumstances where a tenant has died, but the near relative has not yet served notice to the landlord of acquiring the lease, would be passing retrospective legislation. Rather, it would be altering the point in a specific process at which the section should be able to be enforced.

56. The Committee can see no persuasive case for excluding tenants in such circumstances and is also mindful that there was an expectation that the provision would have been included in the 2011 Order, and therefore come into force at an earlier point. The Committee therefore recommends that the Scottish Government look at this issue again, and consider bringing forward an amendment at Stage 2 which would apply to near relatives of tenants who have died, but who have not yet notified a landlord that a lease has been acquired.

Rent reviews

57. Section 2 of the Bill amends section 9 of the 2003 Act by inserting a new subsection preventing upward-only and landlord-only initiated rent reviews in a limited duration tenancy (LDT).

58. This proposal has received widespread support. The STFA stated that—

³¹ Scottish Parliament Rural Affairs, Climate Change and Environment Committee. *Official Report*, 25 January 2012, Col 569.

³² Scottish Parliament Rural Affairs, Climate Change and Environment Committee. *Official Report*, 25 January 2012, Col 569.

“This proposal will remove the disadvantage felt by tenants finding themselves in a position of weakness when negotiating the terms of a lease in a sellers market and having to agree to such conditions.”³³

59. There is no information available on the number of upward-only or landlord-only initiated rent review clauses that have been included in tenancy agreements. The Scottish Government told the Committee, in supplementary evidence, that—

“[...] the exact terms of a lease are a private matter between a landlord and a tenant and no information is held by the Scottish Government on the number of LDT leases with an upward-only or landlord-only rent review clause.”³⁴

60. TFF members also had no empirical data on the issue, though anecdotally such clauses were known to exist in a small number of cases.

61. The Scottish Government also confirmed that the provision would not apply retrospectively, i.e. any established contracts which contain such provisions will continue to contain them if the Bill is enacted. The Bill will, however, prevent any future contracts from containing such clauses.

62. The NFUS, although supportive of the proposal, brought the Committee’s attention to the fact that some of its members were not in favour of such clauses being banned in future. The NFUS explained to the Committee that—

“Some people objected to the practice whereby, in order to secure a tenancy, someone goes in with what is called key money, which means that they start off paying an unrealistically high rental rate, which they hope to negotiate down in the long term, due to economic circumstances. Many of our members felt that having a provision for upward-only rent reviews would serve those individuals right. It was felt that having such a provision might bring a bit more normality into the bids for the tenancy in the first place, and ensure that those who were bidding did so on a fairer basis, with regard to the economic performance that could be achieved.”³⁵

63. The Committee raised the issue highlighted by the NFUS with the Cabinet Secretary. He told the Committee—

“To be frank, I have not really considered that in my deliberations, and I cannot recall that point being made to me during my discussions with the NFUS. Some farmers may hold that view, but members may rest assured that many more farmers and others who are involved in the debate hold the alternative view that we should tackle that issue and, for the avoidance of doubt, simply make it law that any such clauses that are inserted into leases would be void.”³⁶

³³ Scottish Tenant Farmers Association. Written submission.

³⁴ Scottish Government. Supplementary written submission.

³⁵ Scottish Parliament Rural Affairs, Climate Change and Environment Committee. *Official Report*, 18 January 2012, Cols 523-524.

³⁶ Scottish Parliament Rural Affairs, Climate Change and Environment Committee. *Official Report*, 25 January 2012, Cols 566-567.

64. SLaE also broadly supported the proposal, but noted that it may further restrict freedom of negotiation at the start of a contract, thus stifling, rather than enabling, new tenancies.

65. The Committee questioned witnesses on whether any possible restriction on the ability to contract would make it less likely that landowners would enter into tenancies, or unduly determine the type of tenancies granted, or would limit the supply of land.

66. The view of stakeholders was, broadly, that although any restriction of freedom to contract could contribute to some of the negative impacts listed above, there were other greater contributors to the wider issue of making land available to let.

67. The Cabinet Secretary believed that the proposal in the Bill was an appropriate one, and did not feel that recent statistics which showed an almost 10 per cent drop in agricultural tenancies since 2005 could be explained by any imposed restrictions within contract negotiations.

68. The Committee notes comments made about the proposal possibly further restricting the freedom of negotiating contracts, but does not believe that banning such clauses will have an unwanted negative effect in this regard.

69. The Committee notes the widespread support for the rent review provisions in the Bill and supports the removal of upward-only rent reviews, and landlord-only initiated rent reviews, in a limited duration tenancy. The Committee believes these are positive and welcome measures.

70. The Committee does not believe that the proposal should apply retrospectively, as it would not be prudent to attempt to unpick existing contracts which were legal at the time of establishment.

Effect of VAT changes on determination of rent

71. Section 3 of the Bill disapplies VAT rate changes and options to tax from being variations in rent which prevent rent reviews.

72. This provision received widespread support in evidence given to the Committee. The STFA commented that it—

“[...] has no objection to this additional amendment to agricultural holdings. It is prudent to clarify whether or not changes to VAT will constitute a variation of rent. This will bring Scotland in line with England.”³⁷

73. In oral evidence with stakeholders, no issues were raised with regard to this section of the Bill.

74. The Committee notes the unanimous support for this provision in evidence submitted to it and supports the disapplication of VAT rate

³⁷ Scottish Tenant Farmers Association. Written submission.

changes and options to tax from being variations in rent which prevent rent reviews.

OTHER ISSUES

Wider land reform issues

75. Several other issues which did not specifically relate to the provisions in the Bill were raised with the Committee in both written and oral evidence. These are discussed below.

76. In addition, as mentioned at the start of this report, the Committee also received a number of other submissions (predominantly private and anonymous submissions) on wider land reform issues. The Committee will consider these at a later date, once the passage of the Bill has been completed.

77. In its written submission, the STFA summarised what it believed the current mood in the tenant farming sector to be—

“There is a profound sense of frustration and dissatisfaction within the tenanted sector as illustrated by recent calls in the press for an extension of tenants’ right to buy provisions. STFA recommends that the RACCE Committee examine the root causes of this dissatisfaction within the wider context of its Land Reform review. The Cabinet Secretary has indicated his intention to review the operation of agricultural legislation and STFA and its members welcome the opportunity to submit evidence. It is important that tenancy law be modernised so that the tenanted sector can play its part in an inclusive modern Scotland.”³⁸

78. The STFA concluded its submission by saying—

“It has become apparent over the last few years that significant flaws have developed in the way in which the tenanted sector is operating. The problems articulated above have led to calls for extreme measures to be taken and there is a need to examine the root causes of this sense of dissatisfaction and solutions identified. STFA believes that this can only happen through open debate and therefore welcomes this opportunity to engage with the RACCE Committee to charter a road map to a successful tenancy system in Scotland as part of a wider review of Land Reform.”³⁹

79. The Committee believes that the Bill makes necessary, albeit relatively moderate, changes to agricultural tenancy law in Scotland. However, as the evidence from stakeholders and the Scottish Government has demonstrated, there is much work still to be done to improve the law further, to address the recent trend of a decline in the number of agricultural tenancies, to make more land available for rent, and to encourage a greater number of new, and younger, entrants into farming.

³⁸ Scottish Tenant Farmers Association. Written submission.

³⁹ Scottish Tenant Farmers Association. Written submission.

80. The Committee recommends that, following the completion of this Bill, the Scottish Government continue to work with the TFF and other stakeholders, landowners and tenants across Scotland, to review the operation of agricultural legislation and address the other challenges facing the tenant farming community in Scotland as soon as possible.

New entrants

81. The Policy Memorandum which accompanies the Bill states that—

“The policy objective of the Bill is to amend legislative provisions relating to succession and rent review in order to create a better environment for the letting of farmland to the tenant farming sector of the agricultural industry and to encourage new entrants into tenant farming.”⁴⁰

82. The issue of how to create the best conditions to attract new entrants into tenant farming was discussed by the Committee during its Stage 1 scrutiny. The recent statistics which showed a 10 per cent drop in agricultural tenancies suggest that there is still much work to be done to attract new entrants.

83. TFF members discussed with the Committee some of the challenges that the sector faces in attracting new entrants. The Committee is aware of barriers, such as access to finance and the availability of land, and it is clear that there is no easy or quick solution to the problem.

84. The provision of starter-units (land made available on specific terms for new entrants to gain experience of farming on a smaller scale) was discussed, as was the establishment of a “new entrant enabler”, a mentor tasked specifically with working with potential new entrants to help them establish themselves. The TFF is also going to invite representatives of a new entrant representative body to an upcoming TFF meeting to discuss what can be done to provide greater support for new entrants.

85. The Cabinet Secretary spoke to the Committee about the various methods new entrants can use to attempt to enter the farming industry, of which tenant farming was only one—

“There is a case for establishing a register that aspiring new entrants can put their name on, and I am looking at how we can achieve that. From time to time, I come across individuals who wish to have their own farm [...] In the case of tenancies, it would be good to establish a national register with the co-operation of all the stakeholders. That would allow those who can make land available to know there is a demand and to understand the kind of people who want to get on to the first rung of the ladder, and it would help us to understand how many such people are out there.”⁴¹

⁴⁰ Agricultural Holdings (Amendment) (Scotland) Bill, Policy Memorandum. Available at: [http://www.scottish.parliament.uk/S4_Bills/Agricultural%20Holdings%20\(Amendment\)%20\(Scotland\)%20Bill/Policy_Memo.pdf](http://www.scottish.parliament.uk/S4_Bills/Agricultural%20Holdings%20(Amendment)%20(Scotland)%20Bill/Policy_Memo.pdf)

⁴¹ Scottish Parliament Rural Affairs, Climate Change and Environment Committee. *Official Report*, 25 January 2012, Col 573.

86. **The issue of how to attract more new entrants into farming, and creating the best conditions to allow that to happen, has been a recurring theme for this Committee and its predecessor committees. In terms of attracting more tenant farmers, the Committee believes that this Bill will make a necessary, but modest, contribution to achieving that goal.**

87. **The Committee acknowledges that attempting to reverse the current trend of falling numbers of agricultural tenancies will require long-term policy making, using a range of tools, including legislation. The Committee recommends that the Scottish Government continue to actively engage with the sector as a matter of urgency. The Committee also recommends that the Scottish Government give consideration to consulting on the possible establishment of a new entrants register.**

Conservation tenancies

88. In its written submission, RSPB Scotland urged the Committee to recommend that the Scottish Government, the TFF and others consider the options for establishing “conservation tenancies” “in the next legislative update”.

89. In its written submission, RSPB Scotland explained that—

“[...] our land management options, where a (pre-2003 Act) limited partnership or an existing agricultural tenancy does not exist, excludes the establishment of either new tenancies, SLDTs or LDTs. This is because such arrangements would permit the tenant to carry out management in contradiction to the charitable or grant conditions referred to above. Under these circumstances, our partnership approach to management is restricted to annual grazing lets and/or contract cropping. Nevertheless, there are places and occasions where it would be desirable to enter into longer term agreement with partners. This would reduce overheads, but also provide greater security for both parties – as well as more certainty in delivering conservation (public policy) outcomes.”⁴²

90. The submission goes on to suggest that the creation of “conservation tenancies”, similar to SLDTs/LDTs, but amended to secure the necessary conservation requirements, could solve the current limitations faced by the RSPB in letting land. The RSPB also suggest that such a system could benefit other NGOs and also Scottish Government agencies.

91. RSPB Scotland note that precedent for this exists in two other Acts: The Abolition of Feudal Tenure (Scotland) Act 2000 and the Title Conditions (Scotland) Act 2003, which both allow Ministers to approve “conservation bodies” who may attach “conservation burdens” on land.

92. The RSPB acknowledge that this Bill may not be an appropriate vehicle for bringing forward this change, but draws the proposal to the attention of the Committee in a bid to start a debate which could inform future legislative changes.

⁴² RSPB Scotland. Written submission.

93. The Cabinet Secretary expressed an interest in looking into the RSPB's idea further.⁴³

94. **The Committee notes the RSPB's suggestion for establishing conservation tenancies in Scotland and believes that the idea should be examined in more detail. The Committee also notes the Cabinet Secretary's positive response to the suggestion and recommends that he work closely with the RSPB and other stakeholders over the coming months to try to establish such tenancies in Scotland where appropriate. The Committee would welcome the Scottish Government keeping it up to date on progress on this issue.**

Investment in holdings

95. Another issue raised with the Committee was the lack of clarity surrounding the responsibility for investment in holdings. It appears to the Committee that this is another example of the delicate balance which needs to be achieved and maintained between landlords and tenants. Currently, tenants may be reluctant to make investments in their holdings for a number of reasons, such as a lack of security of tenure; a lack of clarity concerning compensation when they leave a tenancy ("waygo" payments – discussed below); a fear of investments leading to significantly increased rents; and a lack of clarity, despite attempts to address this in the 2003 Act, around what a tenant is responsible for paying for, and what a landlord is responsible for paying for. Similarly, landlords may be reluctant to invest because the cost of any investment may not make economic sense compared to the increased rent which could be secured as a result.

96. An anonymous submission sent to the Committee gave an example of one area of dispute—

"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."⁴⁴

97. It seems to the Committee, from the evidence it received, that a stalemate exists between some landlords and tenants on this matter, which is obviously another key issue in establishing trust between the two parties, and creating a vibrant and healthy tenant farming sector.

98. **The Committee recommends that the Scottish Government and the TFF re-examine the issue of investment in holdings, to—**

- **assess whether proposals could be brought forward to clarify who is responsible for paying for what and in what circumstances; and**
- **set out where the most appropriate balance is for the creation of a vibrant and healthy tenant farming sector.**

⁴³ Scottish Parliament Rural Affairs, Climate Change and Environment Committee. *Official Report*, 25 January 2012, Col 573.

⁴⁴ Anonymous submission B. Written submission.

Waygo compensation

99. In its written submission to the Committee, the STFA highlighted the problem of compensating out-going or retiring tenant farmers for investment made in the holding over the course of a tenancy (often referred to as “waygo” or tenant improvements compensation).

100. In attempting to arrive at a desirable balance between landowners and tenants, which will achieve a healthy tenant farming sector for both parties, the STFA felt that the lack of appropriate waygo compensation had a negative impact on tenants investing in holdings, or even seeking out holdings in the first place.

101. The 2003 Act amended provisions relating to waygo, but the view of the STFA described the issue as remaining a “grey area” which required clarification.⁴⁵

102. The Chair of the TFF, Phil Thomas, told the Committee that the issue of waygo is “on the TFF’s list of things to look at”.⁴⁶ The Cabinet Secretary also told the Committee that the issue was on the Scottish Government’s radar—

“We are aware of on-going concerns in the tenancy sector about waygo compensation and issues surrounding that. We cannot pull a rabbit out of a hat to give landlords enough confidence that it is worth while letting land and at the same time address some of tenants’ concerns about compensation at waygo. However, we are keen for the industry to look at that. Within 18 months of the act coming into force, we will review its impact so far, which is an opportunity for the committee and the industry to have its say. We are aware that there are issues surrounding waygo.”⁴⁷

103. The Committee notes the comments made in evidence about the lack of clarity surrounding compensation paid to out-going or retiring tenants for any investment made to the holding during the course of a tenancy. The Committee welcomes the commitment of the TFF and the Scottish Government to examine this issue in more detail and believes that clarity in relation to waygo compensation needs to be established as a matter of urgency.

Land agents

104. An anonymous submission made to the Committee suggested that there was an issue with the behaviour of some land agents—

“The recent tactics of some agents have left tenants in shock and can only be described as bullying behaviour which has had a very negative effect on landlord/tenant relations [...] The actions of a few land agents who operate nationwide (and are gradually replacing resident factors), combined with the actions of some legal advisors over the last decade, have damaged landlord

⁴⁵ STFA. Written submission.

⁴⁶ Scottish Parliament Rural Affairs, Climate Change and Environment Committee. *Official Report*, 18 January 2012, Col 530.

⁴⁷ Scottish Parliament Rural Affairs, Climate Change and Environment Committee. *Official Report*, 25 January 2012, Col 567.

and tenant relations to such an extent that it is difficult to see good relationships ever being restored.”⁴⁸

105. The NFUS told the Committee that the way in which land agents act on behalf of some landlords in discussions with tenants can give rise to tension and conflict within negotiations. It went on to recommend that a code of practice should be established and enforced to govern better the role of land agents in the process.

106. The Royal Institute of Chartered Surveyors Scotland (RICS) responded to this point, confirming that RICS and its members have “rigorous guidance” on how agents should behave and conduct themselves, but added that this did not apply to all land agents, as not all agents were members of RICS. RICS confirmed that it had produced a guidance note on a code of conduct and that this would be revisited within the TFF.

107. The Cabinet Secretary told the Committee that he did not feel the development of a code of practice in this area was the responsibility of Government, but was supportive of the industry itself developing a code—

“A code of practice to address some of the issues with land agents would be a good thing, as long as there is a way in which the professional organisations of which the agents are members can enforce it internally.”⁴⁹

108. The Committee supports the development of a code of practice which would ensure a greater consistency of practice and behaviour amongst those providing land agent services. However, it is essential that any such code be applicable to all land agents operating in Scotland, whether acting on behalf of landlords or tenants, and irrespective of their membership of RICS, and that the code had some “teeth” to ensure it could be appropriately enforced.

109. The Committee recommends that the Scottish Government closely monitor the development of a code within the industry, via the TFF, to ensure that any code is fit for purpose.

Dispute resolution

110. The issue of how to resolve disputes between landlords and tenants as appropriately, quickly and cost effectively as possible is a difficult one to deal with. Until 2003, arbitration was a statutory requirement, but was abolished in the 2003 Act, with wide spread support, because it was thought by a majority of stakeholders to be too costly and overly bureaucratic.

111. However, that change has led to the Land Court being the only body able to rule on issues of dispute, and evidence given to the Committee suggests that that has not proven to be a practical option for many people, particularly tenants.

⁴⁸ Anonymous submission A. Written submission.

⁴⁹ Scottish Parliament Rural Affairs, Climate Change and Environment Committee. *Official Report*, 25 January 2012, Col 574.

112. The Land Court has made an order setting the rent for only one rent review case since the 2003 Act came into force.⁵⁰ Most cases have been put on hold or settled out of court. Rather than improve the situation, the 2003 Act seems to have continued to ensure that the process of dispute resolution is expensive and not fit for purpose.

113. In oral evidence to the Committee, Scott Walker of the NFUS told the Committee—

“The TFF wants to work long and hard to see how we can provide some dispute resolution, solve the problems that bring people into conflict with one another and avoid the costly process that has unfortunately evolved in the Scottish Land Court, with both sides feeling the need to employ a Queen’s counsel and all the associated costs of that. We are looking long and hard at arbitration as a means of solving such disputes. In addition, NFU Scotland is considering other alternatives, which we still have to work through.”⁵¹

114. This view was reinforced by the STFA who agreed that alternative, cheaper methods of dispute resolution, other than recourse to the Land Court, needed to be available.

115. Phil Thomas, Chair of the TFF, told the Committee that the TFF does not have a role in administering dispute resolution, but said that the TFF could provide a platform to try to improve the current situation—

“[...] in our past few meetings we have considered the opportunities that the Arbitration (Scotland) Act 2010 presents. Many people do not want to end up in the Land Court, because it is costly, time-consuming and difficult. Therefore there must be greater focus on alternative possibilities, and arbitration is clearly one strand. There may also be opportunities in facilitated dispute resolution, but we have not teased out what mechanisms might be best for that. However, we are signed up to getting better relationships between tenants and landlords.”⁵²

116. The Cabinet Secretary told the Committee that the Scottish Government had asked the TFF to address this issue—

“Clearly, we encourage arbitration. We are very much in favour of going down a route that is more cost-effective than ending up in the Land Court [...] that is expensive, emotionally and financially draining, and can lead to difficulties, particularly for those who do not have much money or wealth in the first place. It is worth bearing it in mind that arbitration was statutory until the 2003 act but, because that provision was seen as too bureaucratic and expensive, it was removed. We have come round in a bit of a circle because

⁵⁰ On 9 February 2012, the Court of Session ruled on the appeal of this case, and asked the Land Court to reconsider its decision. One consequence of this may be that there will be a further delay in other outstanding cases that are currently on hold.

⁵¹ Scottish Parliament Rural Affairs, Climate Change and Environment Committee. *Official Report*, 18 January 2012, Col 538.

⁵² Scottish Parliament Rural Affairs, Climate Change and Environment Committee. *Official Report*, 18 January 2012, Col 534-535.

the Land Court is equally expensive and bureaucratic in some cases. We are now looking at using arbitration again, and I wrote to the tenant farming forum just over a year ago, urging it to consider the issue [...] I am not ruling anything out at this point. I am waiting to hear back from the tenant farming forum about how it sees a better way forward. We need a better way forward. We should not have long drawn-out court cases if we can avoid it.”⁵³

117. In addition, written evidence from the Scottish Agricultural Arbiters and Valuers Association, suggested that the Arbitration (Scotland) Act 2010 could provide opportunities for the tenant farming sector—

“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 [...] 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.”⁵⁴

118. The Committee supports the calls for the issue of dispute resolution to be looked at again as a matter of urgency, and recommends that the Scottish Government work with the TFF to bring forward proposals for improving dispute resolution as soon as possible. The Committee also recommends that the TFF continue to work with the Scottish Agricultural Arbiters and Valuers Association with regard to the possible opportunities afforded by the Arbitration (Scotland) Act 2010.

Land Registration etc. (Scotland) Bill

119. Richard Blake, from SLaE, raised two issues with the Committee, both relating to the Land Registration etc. (Scotland) Bill,⁵⁵ which is a piece of Scottish Government legislation currently being scrutinised at Stage 1 by the Economy, Energy and Tourism Committee.

120. The first issue he raised was that under the Land Registration etc. (Scotland) Bill, limited duration tenancies greater than 20 years will be required to be registered. The second issue, which he said was potentially of greater concern, was that the Bill states that all paperwork relevant to such tenancies would need to be registered in the land register. His fear was that these two proposals could lead to increased costs for landlords and tenants, as well as cluttering up the land register with unnecessary paperwork.

121. The Committee raised this issue with the Cabinet Secretary, who confirmed that he had recently met with SLaE to discuss the matter.

⁵³ Scottish Parliament Rural Affairs, Climate Change and Environment Committee. *Official Report*, 25 January 2012, Col 576.

⁵⁴ Scottish Agricultural Arbiters and Valuers Association. Written submission.

⁵⁵ Land Registration etc. (Scotland) Bill (2011). Available at: <http://www.scottish.parliament.uk/parliamentarybusiness/Bills/44469.aspx>

122. In supplementary evidence to the Committee, the Scottish Government explained why it did not consider that the Land Registration etc. (Scotland) Bill presented any issues of concern for the tenant farming industry—

“Registration of Limited Duration Tenancies is only possible for those leases in excess of 20 years. Registration of such leases is in favour of the tenant and is voluntary. The general benefit of registration to the tenant in a registrable lease is that registration vests in them a real right. This has two main elements. Firstly it will give them certainty that they will be able to enforce the terms of the lease against any successor landlord. Secondly, it will make it possible for a Standard Security to be registered over the lease giving them a possible source of funding. This is the current law and will remain the law under the Bill.

The change in the Bill is that registration of a lease in excess of 20 years will also result in registration of the landlord's ownership interest. Any additional cost as a result of this change is likely to be marginal as, in registering the lease, the Keeper is required to examine the landlord's title anyway. The Minister for Energy, Enterprise and Tourism, Fergus Ewing, who has responsibility for the Bill, and the Keeper, will consider whether it would be appropriate to waive any additional fee that would otherwise be payable by tenant farmers because of the sector-specific interests.”⁵⁶

123. The Committee notes the concerns raised by Scottish Land and Estates regarding possible negative consequences of provisions in the Land Registration etc. (Scotland) Bill on landlords and tenants entering into limited duration tenancies of longer than 20 years. The Committee also notes the Cabinet Secretary's written response, which explains why he does not consider the provisions to be of concern.

124. The Committee recommends that the Scottish Government ensure that there is regular communication between officials working on both Bills to ensure that, as both bills progress through Parliament, and possible amending stages, there are no unintended consequences on either Bill.

Future legislation

125. Another theme which emerged in evidence-taking, was this Bill is not, and should not be seen as, the end of the reform of agricultural tenancy law. Rather, this Bill is another stage in an on-going process of improving conditions for renting and letting land, ensuring an appropriate balance is achieved between the needs of landlords, existing tenants and new entrants, which will lead to a healthy tenanted farming sector in Scotland.

126. The TFF has noted that since working on the provisions in the Bill, it has turned its attention to other outstanding issues, such as dispute resolution, waygo and new entrants, in a bid to achieve similar levels of consensus between all of its members as it managed to achieve with the three proposals in the Bill.

⁵⁶ Scottish Government. Supplementary written evidence.

127. One suggestion made to the Committee was that it may be beneficial in the future to consolidate the law relating to agricultural tenancies, in order to make the law clearer to locate and understand. Richard Blake told the Committee—

“We might have to consider a consolidation act at some stage because we are beginning to get fragmented legislation, which does not help. We might be back here at the committee in a few years’ time.”⁵⁷

128. Whilst the Cabinet Secretary did not specifically comment on whether the Scottish Government would consider a consolidation act in the future, he did state that the current Bill, if enacted, and other relevant legislation, would be reviewed after an 18 month period to assess how well the law was working, and whether the policy objectives were being adequately achieved.

129. The Committee is of the view that future legislation on the issue of agricultural tenancy should not be ruled out. Indeed, it is a consequence of the approach of encouraging the TFF to achieve a consensus amongst all of its members, and then providing advice to the Scottish Government, that issues need to be progressed on a step-by-step basis. Therefore future amending or consolidation Bills may be required.

130. Whilst consolidating legislation can often be time consuming and complicated it may be beneficial to those trying to make sense of the law. The Committee asks the Scottish Government to consider the need for such legislation.

FINANCIAL ISSUES

131. The Finance Committee considered its approach to the Financial Memorandum (FM) of the Bill at its meeting on 16 November and agreed to adopt a level 1 scrutiny. This level of scrutiny is applied where there appears to be minimal additional costs as a result of the legislation. Applying this level of scrutiny means that the Committee will not take oral evidence, nor will it produce a report. The Committee’s approach was to seek written comments from relevant organizations through its agreed questionnaire and then pass these comments to the lead committee.

132. Three responses were received, from the NFUS, Scottish Legal Aid Board and the Law Society for Scotland, and no comments of substance were made. The Finance Committee therefore gave no further consideration to the FM.

133. The only comment of note was made by the Scottish Legal Aid Board—

“The Board does not believe that this legislation will result in notable costs for the legal aid fund. There have only been 13 cases involving grants of legal aid for cases in the Scottish Land Court and the Lands Tribunal for Scotland in the previous 5 years.”⁵⁸

⁵⁷ Scottish Parliament Rural Affairs, Climate Change and Environment Committee. *Official Report, 18 January 2012*, Col 530.

⁵⁸ Scottish Legal Aid Board. Written submission to the Finance Committee.

134. The Committee notes the comment made by the Scottish Legal Aid Board that the Bill, if enacted, would not result in notable costs for the legal aid fund.

135. The Committee thanks the Finance Committee for the scrutiny it conducted and, given the small number of responses, and lack of comment in evidence, has no further issues to raise with regard to the Financial Memorandum.

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