

Written submission from Scottish Tenant Farmers Association

Replacement to Section 79 of the Land Reform Bill at Stage 2

1. Introduction

1.1 The Scottish Tenant Farmers Association welcomes the opportunity to comment on the Scottish Government's amendments to Section 79 of the Land Reform Bill.

1.2 The new amendment to S79 to be introduced at Stage 2 will create a process under which 1991 Act tenants can assign their tenancy to a new entrant or to a progressing farmer, with the landlord having the option to purchase the tenant's interest during the process, as an alternative to the tenancy being assigned. The Bill will still enable 1991 Act tenancies to be converted to MLDTs, with the agreement of the tenant and landlord.

1.3 STFA fully supports this amendment and agrees with the Scottish Government's policy objectives to:

- a) Provide 1991 tenants with a route which would enable them to exit their tenancies with dignity and security, particularly if they did not have an eligible successor, through a process that is transparent and fair to both landlord and tenant.
- b) Increase opportunities for new and progressing tenant farmers to establish their business under a secure tenancy.

STFA would add a third objective:

- c) Maintain the area of land let under secure 1991 tenancies which provides greater incentive for tenants to grow their businesses, modernise and invest.

2. The Process

2.1 **Valuation:** It is understood that the cost of the valuation will be borne by the tenant, and the tenant will be entitled to object to the valuer appointed by the TFC, particularly if a conflict of interest arises which the TFC may not be aware of. The valuer is to have 8 weeks to carry out the valuation, followed by a 21 day window to appeal the valuation by either party.

2.2 **Exercise of buyout by landlord:** It has been proposed that the landlord should have a period of 6 months to exercise his right to buy out the tenant and settle the acquisition. STFA would suggest that if the landlord elects to exercise his right to resume, the actual end of tenancy and waygo should take place at the next "ish" date following the decision to acquire the tenancy being made.

2.3 **Assignment of the lease by the tenant:** It has been proposed that the tenant may only assign to a new entrant or a tenant farmer progressing in the industry (in practice, not someone who has already held a 1991 Act tenancy). However, one of the most deserving and suitable classes of tenant farmer to receive an assignation will be the General partners in Limited Partnership (1991) tenancies whose leases have either come to an end or have been terminated. STFA considers that these

tenants should be eligible as assignees to the tenancy of a retiring tenant. In addition, secure tenants of smaller units who wish to progress to a larger unit and are prepared to relinquish their current holding should be considered as a progressing farmer.

2.4 Although it is probable that a potential assignee will have been identified before the tenant initiated the process, consideration should be given to the consequences of an eligible assignee not being found. STFA would recommend that the valuations carried out at the expense of the tenant by an independent valuer should still be considered as eligible for the usual waygo process which may take place at a later date.

2.5 Notification to landlord detailing proposed assignee: In the case that the landlord decides not to exercise his right to buy out the tenant, he should notify the tenant of his decision, from which point the tenant should have at least a 6 month period in which to notify the landlord with the details of the proposed assignee. In practice a potential assignee may already have been identified, but if not, then 6 months would be a reasonable time period in which to identify a suitable assignee. In the event of a successful landlord objection, a new 6 month period should be permitted in order to find a new potential assignee. Assuming no successful landlord objection to the proposed assignee, the assignee should be permitted a 6 month period to arrange any necessary finance with the assignation taking place at the following 'ish' date.

2.6 Landlord's objection: Landlord's objections should be open to appeal particularly in the event of vexatious objections. There should be a limit to the number of objections.

Policy Objectives

3. Retirement:

3.1 The proposed new measure should provide an attractive exit route to encourage older farmers nearing retirement age to make way for the next generation. Agriculture suffers from an aging population of farmers, many of whom have no natural successors, who would benefit from an opportunity to exit their tenanted farm having received proper compensation for the investment they and their families have made over the course of the tenancy.

3.2 The current subsidy regime acts as a disincentive for an elderly tenant farmer to retire. Providing the farmer can demonstrate sufficient activity on the farm to satisfy the regulations, he can draw down an income from the BPS and continue to occupy the farmhouse and enjoy the benefits of a farming business. The assignation proposal will help break what is now being seen as a logjam which is denying the next generation of farmers access to tenanted land.

3.3 STFA is aware of a number of tenants who have identified a suitable non-family successor and are hoping to take advantage of the new provision once the new act commences. Typically, these potential successors are employees or distant relatives who have been involved in the business or neighbouring young farmers looking for a start in farming.

3.4 Waygo compensation: STFA has proposed a two stage waygo procedure to ensure that a retiring tenant is not required to serve an irreversible notice to quit the holding without knowing the value of his end of tenancy compensation, as is the case at present. We believe that a two stage notice process should be available to all tenants in 1991 or LDT leases, but the Scottish Government have indicated that there will not be time to amend the bill accordingly. As a consequence, the proposed assignation/retirement process becomes a vital ingredient in the package of tenancy reforms providing the tenants with a range of end of tenancy options.

4. New farmers:

4.1 Under the current situation it is likely that the area of land and numbers of tenants in secure tenure will continue to decline. However, instead of creating opportunities for the next generation of farmers land becoming vacant is generally either: a) re-let to a neighbour, with the consequent loss of houses and steadings; b) taken back in hand to be subject to contact farming, seasonal grazings; or c) amalgamated with the in-hand farming operation. Vacant land is seldom released to be relet on the open market and any land that is, will attract a rent from an established farmer far in excess of what would be sensible or affordable to a new farmer. In effect this closes the door on new entrants or developing farming businesses seeking to move up the farming ladder. This current trend will inevitably lead to ever increasing size of farms and fewer opportunities for small to medium sized farming operations and this problem will only become exacerbated in the future.

4.2 A farming ladder exists in most farming systems allowing new farmers to progress through the industry from farm worker to small rented farms and eventually to larger viable units. In New Zealand, for instance, a farmer will often move farms several times in the course of his career. In contrast, the typical Scottish farmer will remain in the same unit throughout his working life and new entrants to the industry will invariably come from established farming families. The high capital value of land and the capital intensive nature of agriculture has proved to be a major barrier to new entrants. Rented land is scarce and existing farmers will invariably outbid new entrants on farms let on the open market.

4.3 Although some landlords will opt to buyout a tenant prepared to relinquish his tenancy, many prefer to allow the assignation to take place creating an opportunity for a new farmer. Statistics show that about 120 secure 1991 tenancies are lost to the rented sector annually, if only a quarter are assigned, that will create an opening for 30 new tenants.

4.4 There are a number of Forestry Commission and a few private starter farms on SLDTs or LDTs. These young farmers will be looking for the next step in farming in a few short years. There are an estimated 700 or so LDT tenancies on 10 or 15 year leases, many of these tenants will be looking for another tenancy at the end of the present lease. Most of these farmers will be well capitalised, experienced and ready to take on a sizeable tenanted unit. Many will also have sons to carry on the farming business.

4.5 The Land Reform Bill provides little comfort to Limited Partnership tenants who will either be coming to the end of their tenancies or will be farming on tacit

relocation (year to year). This proposed assignation measure will provide them with opportunities to move to secure tenancies where they will be able to invest in and grow their businesses to the benefit of the local economy and Scottish agriculture. Scores of such farming businesses have been lost to the sector over the last few years and the assignation proposal opens the prospect of halting this decline and retaining much needed talent in the farming industry.

4.6 The potential to assign a 1991 tenancy will also create scope for share farming arrangements where a retiring farmer can take a new entrant into the business with a view to assigning the lease at a later stage once he/she has accumulated sufficient capital. Share farming is a common route into agriculture in many countries but rarely used in Scotland. The ability to assign tenancies has the potential to open up a new avenue into agriculture.

5. Preservation of the secure tenanted sector:

5.1 It is widely recognised that farming is a long-term business requiring continual capital investment in the land, fixed equipment, machinery and livestock. The long-term nature of farming and the need for security underpinned the thinking of the 1948 Act which granted tenants the security of tenure which stimulated the massive post-war improvements to agriculture in Britain.

5.2 Today's picture is very different with land being increasingly let on a short-term basis, driven by the maximisation of publicly funded subsidies rather than by agricultural production, the needs of rural communities and environmental management. As a consequence, the infrastructure of many farms on short-term lets or contract farming arrangements is suffering from chronic lack of investment. An investment impasse has developed where the tenant will not invest in a farm which he may only have for a short period and the landlord has little incentive to invest when he knows there is a buoyant market where demand outstrips supply. The consequences of this investment impasse is evident in England where short-term lets predominate and there is widespread evidence of soil depletion on the land, drainage and fencing neglected and farm buildings in decline or sold for development and farmhouses sold.

5.3 STFA considers that it must be in the interest of Scottish agriculture and rural communities to maintain the area of land let under secure long-term tenure and to provide an entry route for new farmers into fully secure holdings in which they can have the confidence to invest and grow their businesses.

6. Property Rights:

6.1 STFA believes that the steps proposed by the government to implement the new end of tenancy package are practical, considered and will balance the interests of both parties. We also agree with the government's rationale in choosing this approach.

6.2 STFA believes that within the industry there is considerable misunderstanding around the proposed S79 replacement, in that the valuation of the tenant's interest in his lease will not disadvantage those landlords who have the expectation of gaining vacant possession of a tenanted holding where the tenant has no eligible

successors. The proposed valuation method takes into account when the landlord would otherwise have been likely to recover vacant possession from the tenant. If the tenant is nearing retirement without any successors, the value of the land with the sitting tenant will be close to the vacant value, and the cost to the landlord in addition to the normal waygo compensation will be minimal.

6.3 This method of valuation allows both the landlord's and the tenant's property interests to be recognised, and ensures fairness to both parties.

7. Conclusion:

STFA has long advocated the introduction of assignation of 1991 tenancies to non-family members and welcomes the government's decision to include it in the bill. We believe that this new provision carefully balances the rights of landlords and tenants and in many ways provides the missing piece in the tenancy jigsaw and makes the bill a more complete package. Not only will this measure open up opportunities for tenants to retire with a realistic waygo valuation but it will also provide new entrants and progressing or developing farmers access to secure tenancies and help to re-instate the missing rungs in the farming ladder.