

Written submission from NFUS on s79

Land reform bill section 79 amendment

Since the release of Scottish Government's proposed amendment to s.79 of the Land Reform Bill, NFU Scotland has consulted extensively with its membership during December and January. Consultation within the NFU Scotland regional structures and relevant committees has provided an excellent level of debate, with strong views being voiced. On Friday, the NFU Scotland Board of Directors was able to review the results of these democratic discussions, and come to a view based on what it considered to be in the best interests of Scottish farming.

NFU Scotland believes strongly that a healthy and vibrant tenanted sector is vital for the future of Scottish agriculture, and will judge the success of the Land Reform Bill on the basis of more land becoming available for rent, and that land being made available on a longer term basis. It is a long held belief of the industry that whilst short term lets have their place, the current situation where they are the default option is something which is not beneficial for the industry or for either of the letting parties involved. This Bill must strive to ensure that the right conditions exist to support long term letting and that confidence within the sector is restored to ensure that short term lets are no longer the default letting option.

Currently, the Land Reform Bill would enable 1991 Act agricultural tenancies to be converted to modern limited duration tenancies (MLDTs), for a period to be determined and then assigned for value to another person. NFU Scotland was pleased to see this in principle on the face of the Bill, as this concept was originally suggested and developed by the Union as a mechanism to allow tenants who wished to retire to do so with dignity, and to increase opportunities for the establishment of newer tenant farmers within the industry.

There is strong support within the industry for secure tenancies, and the Union recognises the contribution that these tenancies make to the fabric of Scottish agriculture. The vast majority of land which is let for longer than a year is currently leased through what are termed secure tenancies. These tenancies provide a high level of security and have been important in helping to sustain a tenanted sector in Scotland. With the ability to be passed down the family line the level of security offered by these tenancies is very high.

Proposals within the Land Reform Bill to widen the traditional mechanisms for transfer of secure tenancies (succession and current method of assignation) will mean that options for passing on secure tenancies will be available to an increased number of secure tenants. NFU Scotland understands that as a result of this extension, less than 4% of secure tenants will not be able to utilise one of these established traditional routes when seeking to pass on their tenancy. It is important to consider the wider effects of the proposed amendment in the context of this 4% figure when considering any ramifications it may have.

The modernisation of legislation to enable tenants in secure tenancies to pass the farm down the family line is welcomed. Succession to a deceased tenant's interest in a lease has been an area of contention within the industry. From a landlord's perspective we can understand that this offered a legitimate opportunity to bring the

lease to an end and re-organise letting arrangements. The Bill proposes broadening the succession class and is welcomed by NFUS as this will help retain secure tenancies that would otherwise have ended.

While changes to succession will help to retain secure tenancies it will not stop them gradually declining in number. There are concerns that the number of secure tenancies are declining, and NFU Scotland feels it would be beneficial to have a greater understanding of the pattern of methods by which land previously held under these arrangements is now held.

NFU Scotland does not believe that the proposed amendment, that the tenancy now remains a 1991 Act tenancy rather than being converted to an MLDT, will halt the decline in the number of secure tenancies over time, however it is possible that the amendment will slow that rate of decline.

It is important to consider that in the amendment proposed, landlords will have the ability to purchase back the tenancy in question. There is general agreement that this appears to be a basic fairness. Some will be unable or unwilling to complete such a transaction, however it appears clear that many landlords who can afford to do so will choose to purchase in order to obtain vacant possession and review their letting options.

NFU Scotland fully agrees that it is imperative that for any secure tenant exiting a tenancy there must be full and fair compensation at waygo for investments made during the lifetime of a tenancy. Only by ensuring that this is possible will it give tenants the confidence to make appropriate levels of investment in their holding. A system facilitating a notice of intention to quit, followed by a valuation of waygo and subsequently followed by a final notice on receipt of this information would go a long way to achieving this. NFU Scotland also believes that this system should apply to any tenancy agreement over 5 years duration, to ensure that modern tenants are provided with the same level of confidence to invest as is now being proposed for secure tenants.

The valuation method proposed by this amendment has generated much discussion. For the 4% of tenants without a successor as noted above, the value of their tenancy would be lowest under the proposed amendment, that the tenancy now remains a 1991 Act tenancy rather than being converted to an MLDT. This is because the value attached to the tenancy is related to the age of the tenant, and the ability to pass that tenancy to a third party. For such tenants, it appears that the ability to generate the largest capital sum would actually be via the route originally proposed by the Agricultural Holdings Review Group, which provided for a secure tenancy converted to a 35 year MLDT to be sold on the open market. Under the proposed amendment as drafted, elderly tenants with no successors are likely to realise less value for their tenancy through the proposed amendment, that the tenancy now remains a 1991 Act tenancy rather than being converted to an MLDT.

In addition, a technical point has become apparent with regards to the valuation process. There is a danger of double counting of tenants improvements in the valuation process, which would mean a landlord would have to pay twice for improvements made by the tenant. This is because open market valuation will often include consideration of improvements made by a tenant. Should this amendment

proceed, it is imperative that the correct instruction and guidance is given to valuers to ensure that this is recognised.

NFU Scotland is of the view that from the meetings we have held with our members that secure tenants are largely in favour of the proposal. That is not to say that all secure tenants support the proposed amendment, that the tenancy now remains a 1991 Act tenancy rather than being converted to an MLDT, but we do believe that the majority are largely in favour of the proposal.

For new entrants into the industry, there are a number of barriers to overcome. The requirement for capital investment in stock and machinery plus sufficient working capital to operate the business provides a heavy burden. Under this proposal, new entrants would also have to pay a capital sum for a tenancy. NFU Scotland considers that as a result of this, they are unlikely to be the beneficiaries of this proposal with the most likely beneficiaries instead being developing businesses.

It is possible to foresee that it will be developing businesses who could benefit from this option. For such businesses, the potential for purchase of a secure tenancy will be welcome, as this will provide a route of expansion and secure which is currently not available to them at this time.

Despite the fact that this proposal will only be extended to secure tenancies the impact that this amendment will have on general letting arrangements has raised concerns and these should be taken into account.

It is clear that should the proposed amendment, that the tenancy now remains a 1991 Act tenancy rather than being converted to an MLDT, be accepted that this will do nothing to improve confidence in the letting of land and instead undermine people's confidence in letting land on terms that we would consider provide the necessary security and length of term that most in the industry would like to see.

As a result, NFU Scotland is not able to support the amendment proposed by Scottish Government, and agrees with the Agricultural Holdings Legislation Review Group that in balancing the interests of maintaining the supply of tenanted land, all secure 91 act tenancies should be able to be converted to an MLDT with the ability to be sold on the open market for a 35 year term. This will provide the tenant with or without a successor to realise a capital payment for their lease, could create a new number of long term leases and help to restore the confidence in letting land on a more secure long term basis.

Whatever the intention of this amendment, there is a concern within the industry that its enactment will impact those on fixed term tenancies. This relates to those currently in such arrangements, and also those who may look to utilise these in the future. There is also a feeling that it will not improve confidence to let land, it will modify landlord behaviour to increasingly defensive, and undermine any existing confidence which remains.