

Rùnaire a' Chaibineit airson Cùisean Dùthchail, Biadh agus an Àrainneachd
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Rob Gibson MSP
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Rural Affairs, Climate Change and Environment Committee
C/O Clerk to the Committee
Room T3.40
The Scottish Parliament
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17 November 2015

Dear Rob

Thank you for your email of the 4 November 2015 seeking further information on the areas identified below.

The intention and operation of the clawback provisions in Part 10, Chapter 3

The Committee has asked for further information about the intention of the clawback provisions and how it is proposed these will operate.

The clawback provisions, inserted by section 81 of the Bill as a new section 38N in the Agricultural Holdings (Scotland) Act 2003, are intended to prevent the tenant or third party purchaser from making significant windfall profits as a result of forcing the sale of the holding and then subsequently selling it on within ten years. The provisions require that if the tenant (or third party purchaser) subsequently sells the holding within 10 years they must pay the former owner a proportion of the difference between the price at which the land is subsequently sold and the price paid by the original seller to the buyer. In accordance with section 38N(1)(b)(ii) only uplifts in value are capable of being clawed back. These provisions ensure fairness to both parties.

The exclusion of tenant's improvements is not included within the clawback provisions within the Bill but we are actively considering this issue following the evidence gathered at Stage 1.



The issue of surplus accommodation in the rent review process in Part 10, chapter 4

The Bill provides in paragraph 7(4)(b) of new schedule 1A of the Agricultural Holdings (Scotland) Act 1991 (inserted by section 82) that in determining a fair rent for the holding, the Scottish Land Court must have regard to the open market rent of any surplus residential accommodation on the holding provided by the landlord.

As part of the Land Court's determination of whether residential accommodation is surplus, the Land Court must have regard to the standard labour requirements of the holding. The accommodation occupied by the tenant must be disregarded from the rent assessment along with accommodation that the tenant is prohibited from sub-letting (paragraph 9(2)(b) of new schedule 1A). The Court must also take into account all of the circumstances where accommodation is occupied by retired agricultural workers.

While we want the new provisions to encourage the renting of surplus accommodation in rural areas, we do not want a situation where the tenant may be forced to leave their home because of an unaffordable increase in rent, arising from the new provisions. Officials are working closely with stakeholders on the details of productive capacity and we will explore surplus accommodation as part of this work.

The succession and assignation position of someone who has worked on a farm over a long period of time but is not covered by the classes of person in Part 10, chapter 5

Prior to introduction of the Bill, we considered a range of policy options and at present the Bill provisions set out the persons we feel are appropriate to be entitled to succeed or be assigned a tenancy.

Our overall aim underpinning the Bill provisions on succession and assignation, is to encourage tenants to retire or move on from tenancies with dignity and confidence and release land to younger tenants to ensure land continues in productive agricultural use.

One major challenge identified for the tenant farming sector in Scotland, is the difficulty faced by new entrants and others who want to farm, from gaining a foothold in the industry. Amongst these difficulties, is the reluctance of some older tenant farmers to retire. Removing that reluctance to retire should encourage older tenant farmers to transfer their tenancy to new entrants who are vital to provide the innovation and energy required by the industry as a whole.

How families pass on their property, and the protections given to spouses, civil partners and children are fundamental issues in terms of protecting families and more widely about how we design policies aimed at addressing a wide range of social justice issues faced by the people of Scotland. In the past, when agricultural holding legislation on succession and assignation was brought forward it was much more unlikely, than now, that a landlord could expect to get the tenancy back in-hand

i.e. in the past families were larger and there would have been a close relative to take on the tenancy. In effect, changes in society have resulted in an unintended improvement in landlords' prospects of regaining possession, at the expense of continuing tenancies. The provisions on widening succession, in part, are intended to re-dress this balance.

This approach is supported by the Agricultural Holding Legislation Review Group considerations. The Group received many submissions proposing that current legislative provisions on succession and assignation for agricultural tenancies should be modernised. The submissions highlighted that changing social norms were in effect preventing family farms from passing to a close relative who might otherwise wish to take up the tenancy.

At present the Bill does not provide for any other persons, other than those listed, regardless if they have worked on the farm over a long period of time to succeed or have a tenancy assigned to them. Prior to 1949, tenants had a general right to bequeath their tenancy to whoever they wanted; however, we consider that the current provisions are a proportionate solution to ensuring tenancies continue and modern family units are respected while balancing the impact on all parties concerned.

The issue of the poor condition of some farm accommodation for tenants, compared to private sector law on this

The 'tolerable standard' is the minimum standard for all living accommodation in buildings in Scotland; including farmhouses, farm cottages and crofts let under agricultural tenancies, small landholdings and crofts.

The 'repairing standard' for housing applies to most tenancies in Scotland, except houses that are not sublet through agricultural holdings. Farmhouses are excluded from the majority of housing legislation as they are part of the agricultural tenancy. I'm sure you are aware that farmhouses can also create dispute between parties when the repair and/or replacement of fixtures are not adequately undertaken by either party; leads to farmhouses falling in to poor condition and state of repair.

Which is why, my officials will be working with housing colleagues to consider how best to assess the state of repair of houses that are part of an agricultural tenancy, small landholdings and crofts to enable us to develop a fully joined up approach to ensure houses in Scotland are suitable for those people who live in them.

The issue of the provision of affordable quality rural housing more generally and the Government's plans for tackling this

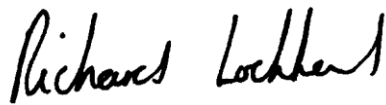
My colleagues in housing will respond separately to this point and provide further information on the work they are progressing in this area.

If there is a role for Government in the encouragement of local authority planners to prioritise the development and erection of eco-friendly pre-fabricated rural housing where appropriate

We will be exploring this idea with colleagues in housing and planning to consider its merits, along with Mr Gibson's other suggestion that it may be helpful for the Scottish Government to provide design models for eco-friendly housing.

I trust this information will be of assistance to the Committee.

Yours sincerely,



RICHARD LOCHHEAD