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Rural Affairs, Climate Change and Environment Committee

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## Land Reform (Scotland) Bill: Stage 2 amendments: introduction of repairing tenancies

Dear Nick

As we stated in the Scottish Government's response to the RACCE Committee's Stage 1 report, we are bringing forward Stage 2 amendments to introduce a modern repairing tenancy. This was a recommendation of the Agricultural Holdings Legislation Review Group (AHLRG), and was supported both by the Committee and by our key stakeholders.

These amendments are being lodged today and the Committee will be able to see the full detail of the provisions, but I thought it might also be helpful to briefly set out the main features of the repairing tenancy:

- As recommended by the AHLRG, a repairing lease will have a duration of at least 35 years. It will begin with a 'repairing period', which is the period of at least 5 years from the commencement of the tenancy. (The length of the repairing period is agreed between the parties.) The intention is that the tenant use the repairing period to bring the holding up to a standard that enables it to be farmed effectively.
- During the repairing period the tenant is not liable to maintain the land in accordance with the rules of good husbandry. This reflects the fact the holding may not be capable of being farmed in accordance with them. They are however, expected to improve the holding so that it can be maintained *after* the repairing period in accordance with the rules of good husbandry.
- During the repairing period the tenant is (unless the tenant and the landlord agree otherwise) responsible for providing and maintaining all the fixed equipment the tenant will need to be able to farm the holding efficiently.
- After the repairing period the tenant is still responsible for maintenance of fixed equipment, but the landlord is responsible for any renewal or replacement. The tenant



and landlord can agree to apportion responsibility differently if they prefer. This is consistent with the provisions for MLDTs.

- The lease may include a break clause, which allows the tenant to terminate the lease at any time up to the end of the repairing period. This is to provide the tenant with a way out if they decide that continuing with the full lease length would not be manageable (for example, if the condition of the holding turns out to be worse than the tenant feels is feasible for them to bring up to standard). The landlord, by contrast, may only terminate the lease under a break clause at the end of the repairing period. The grounds on which the landlord can terminate under the break clause are the same as those for an MLDT break clause, except that they will not be able to terminate on the grounds that the tenant has not been farming in accordance with the rules of good husbandry (because good husbandry requirements are disapplied during the repairing period).
- The rent for a repairing tenancy must be set using the rent review process in Chapter 4 of the Bill, in line with the AHLRG's recommendation that repairing leases be required to apply the new rent provisions.
- The tenant may assign the lease during the repairing period, if the landlord consents. The landlord may withhold consent if there are reasonable grounds for doing so. These grounds are comparable to those for MLDTs (adjusted slightly to reflect the specific nature of repairing leases), with an exception: the landlord may not object on the ground that the proposed new tenant lacks the necessary skills or experience if the tenant is undertaking (or about to start) relevant training, and has made arrangements to make sure the land is farmed appropriately in the meantime. This exception is made in recognition of the fact that repairing leases may present a particularly good opportunity for newer farmers to establish themselves in the sector. After the repairing period, the same assignation rules apply to repairing leases as to MLDTs.
- When a repairing lease expires, unless the parties terminate the lease it will continue on tacit relocation for a period of 7 years. This is in line with the proposed continuation term for MLDTs. (As the Bill currently stands, the continuation period for MLDTs is 10 years. However, following calls from stakeholders for it to be reduced we are bringing forward an amendment to change it to 7 years.)

I hope that the Committee finds this summary helpful.

*Steve Sadler*

**STEVE SADLER**

Head of Land Reform and Tenancy Unit