EXECUTIVE NOTE

DRAFT : THE PUBLIC SERVICES REFORM (AGRICULTURAL HOLDINGS) (SCOTLAND) ORDER 2011

Introduction

1. This statutory instrument ("the Order") will, if approved, be made by Scottish Ministers in exercise of the powers conferred by section 17 of the Public Services Reform (Scotland) Act 2010 ("the 2010 Act"). It is subject to the two-stage "super-affirmative" parliamentary procedure set out in sections 25 to 27 of that Act. During the first stage, Scottish Ministers are required to lay before the Scottish Parliament a proposed draft of the Order and a proposed Explanatory Document for a period of 60 days for the purposes of consultation. Following that consultation, a draft Order must be laid for approval by resolution of the Parliament, accompanied by a copy of the Explanatory Document. This Executive Note relates to the second stage of the parliamentary process.

Policy Objectives

2. In June 2007, the Tenant Farming Forum TFF was asked by the Cabinet Secretary for Rural Affairs to consider what aspects of the legislation were restricting the availability of agricultural land coming onto the market and to provide recommendations for change. In response, the TFF recommended a package of measures to the Scottish Ministers which included reducing the minimum term of limited duration tenancies to 10 years and allowing for the conversion of short limited duration tenancies to limited duration tenancies at any time. Changes were also proposed to the law in relation to fixed equipment and post-lease agreements.

3. The Cabinet Secretary considered the package and agreed to act on the changes suggested by revising the existing legislation. In order to make the changes recommended by the TFF and agreed by the Cabinet Secretary, various sections of the Agricultural Holdings (Scotland) Acts 1991 and 2003 require to be amended.

4. The Order makes amendments to the Agricultural Holdings (Scotland) Acts of 1991 ("the 1991 Act") and 2003 ("the 2003 Act"). There are 6 proposed amendments, namely: -

Amendments to the 2003 Act

- amendment to section 5 to allow for conversion of a Short Limited Duration Tenancy to a Limited Duration Tenancy;
- amendment to section 5 to reduce the minimum term of a Limited Duration Tenancy from 15 years to 10 years;
- amendment to section 16 on fixed equipment.

Amendments to the 1991 Act

- changes to the requirements for the annulment of "post-lease agreements" under section 5(4B);
- minor amendment to section 13, for the purposes of clarification;
- replacement of the definition of "two-man unit" in Schedule 2.

5. The overarching policy objective is to remove or reduce burdens which are currently borne by landlords and tenants of agricultural tenancies and which result directly or indirectly from the aforementioned Acts. The main changes to the legislation concern the two types of agricultural tenancies introduced by the 2003 Act and are aimed at removing restrictions on the availability of the letting of land with a view to encouraging the release of more agricultural land onto the agricultural lettings market and encouraging new entrants into the farming sector. The other amendments seek to remove ambiguity from the legislation with a view to reducing the potential for dispute.

Consultation

6. The proposed changes to the length of tenancy arrangements and other related provisions contained in the current agricultural tenancy legislation were the subject of a wide-ranging consultation by the TFF in July 2007 entitled "Helping New Entrants into Agriculture", the results of which were published in March 2008 in the paper "Assisting New Entrants into Scottish Farming - Recommendations to the Cabinet Secretary".

7. A proposed draft of the Order and a proposed Explanatory Document were subject to a formal 60-day consultation period, in accordance with section 26(1) of the 2010 Act. The list of consultees is annexed.

8. Section 26(4) of the 2010 Act provides that, if, as a result of the any consultation required by section 26(1) it appears to the Scottish Ministers that is appropriate to change the whole or any part of their proposals, they must such further consultation with respect to the changes as they consider appropriate. In light of the responses received to the initial consultation, drafting changes were made to articles 9 and 10, and a further supplementary consultation on those changes between 18 and 25 January 2011.

Business Regulatory Impact Assessment

9. A Business Regulatory Impact Assessment has not been prepared for this instrument as no adverse impact on business, charities or voluntary bodies is foreseen.

Agricultural Holdings
Land Tenure Branch
Agriculture and Rural Development Division
February 2010

ANNEX: LIST OF CONSULTEES

This consultation has been issued to a wide range of groups and individuals with an interest in this area. The organisations and groups of individuals consulted include:

- MSPs
- Scottish MEPs
- Scottish Estates Business Group (SEBG)
- Scottish Rural Property and Business Association (SRPBA)
- Scottish Tenant Farmers Association (STFA)
- National Farmers Union Scotland (NFUS)
- Royal Institute of Chartered Surveyors (RICS Scotland)
- Scottish Agricultural Arbiters and Valuers Association (SAAVA)
- Institute of Auctioneers and Appraisers in Scotland
- All Scottish Government Rural Payments and Inspectorate Directorate Local Area Offices
- COSLA and all Scottish Local Authorities
- Historic Scotland
- The Crown Estate
- Scottish Land Court
- Scottish Law Commission
- The Law Society of Scotland
- Scottish Natural Heritage (SNH)
- Scottish Wildlife Trust
- Scottish Gamekeepers Association
- Scottish Agricultural Colleges (SCA)
- MacAulay Institute
- Equality and Human Rights Commission