



Law Society
of Scotland

Consultation Response

Delivering our Vision for Scottish Agriculture:
Proposals for a new Agriculture Bill

November 2022



Introduction

The Law Society of Scotland is the professional body for over 12,000 Scottish solicitors.

We are a regulator that sets and enforces standards for the solicitor profession which helps people in need and supports business in Scotland, the UK and overseas. We support solicitors and drive change to ensure Scotland has a strong, successful and diverse legal profession. We represent our members and wider society when speaking out on human rights and the rule of law. We also seek to influence changes to legislation and the operation of our justice system as part of our work towards a fairer and more just society.

Our Rural Affairs sub-committee welcomes the opportunity to consider and respond to the Scottish Government's consultation on *Delivering our Vision for Scottish Agriculture: Proposals for a new Agriculture Bill*¹. We have the following comments to put forward for consideration.

General remarks

We note that at this consultation stage, there is limited detail as to the proposed measures and how they will operate in practice. This means that it is difficult to fully understand and assess the proposals and their likely impacts, particularly on those operating in the sector.

The consultation suggests that the legislation to be brought forward will consist of a framework Bill, with a number of powers to be afforded to Scottish Ministers to bring forward regulations to implement the regime. While we recognise the potential benefits in terms of flexibility that this provides, it is important that there is robust consultation undertaken, especially with industry, as well as sufficient Parliamentary scrutiny of the regulations. Consultation will provide an opportunity for scrutiny and critical comment from stakeholders on the details of the measures.

It is crucial to upholding the rule of law that the law is clear, comprehensible and transparent so that requirements can be understood by those whom they will affect. Individuals and organisations must be able to guide their conduct based on clear and understandable legal standards. In addition, a framework made up of primary and significant volumes of secondary legislation can be challenging for those directly affected by the law to access and fully understand. It is important that there is accessible, clear and comprehensible information about the law so that those affected can understand the impacts.

There should be certainty and clarity for those operating in the sector. At this stage, the proposals do not appear to provide a great deal of detail or certainty for the sector, and we anticipate that this could cause

¹ <https://consult.gov.scot/agriculture-and-rural-economy/proposals-for-a-new-agriculture-bill/>

difficulties for those affected in terms of planning and developing their business. This uncertainty may act to discourage participation in the sector and we note that greater certainty and stability for agricultural producers and businesses will likely assist in providing stability for consumers.

We are supportive of the greater focus on the environment throughout the proposals which recognises the climate emergency as well as Scottish Government's climate and nature ambitions. However, it is important that is balanced at an appropriate level with other factors relevant to the sector, such as the production of high-quality food and food security issues. In addition, levels and types of funding provided to those in the agriculture sector are likely have an impact upon food affordability for consumers and businesses, a particularly pertinent matter given the current 'cost of living crisis'.

Consultation response

A. Future Payment Framework

a) Do you agree with the proposal set out in the consultation paper, in relation to the Agriculture Bill including a mechanism to enable payments to be made under a 4 tiered approach?

Don't know

Please give reasons for your answer.

Our comments on the detail of the payment mechanisms and tiers proposed are limited, however, we consider that it appears sensible to have differing bases for payment. We note that it is proposed that all payments under the tiers will be conditional.

As highlighted above, it is crucial that there is certainty for those operating in the agriculture sector about the funding available, and in sufficient time to enable them to plan and develop their business accordingly. It is important that those operating in the sector can have a clear understanding of what is expected of them so that they may guide their conduct accordingly.

We consider that the proposed approach is consistent with environmental aims. However, it will be important to ensure that those in the sector are not constrained for cross-compliance purposes by conditions in their lease that prevents them taking certain actions. For example, in relation to woodland, leases are generally fairly limited as to what actions tenants can take in their own right. There may need to be changes to enable a 'greener' approach to be taken. How the proposals will fit with the terms of leases and agricultural holdings legislation is key to implementation. Tenants must be given the opportunity to make the new policies work, in line with the Scottish Government's commitment to a just transition.

More generally, we are of the view that there is a need to consider issues around who may be entitled to the benefit of emerging income streams and how responsibility for costs and benefits may be divided between parties and over time, both to encourage the meeting of climate and biodiversity aims, and avoid disputes in the future. While we appreciate that is difficult to resolve all of these issues now for the future, obstacles should be considered and removed where possible.

As highlighted in our answers at section B below, there are particular challenges to ensure that those who have previously made improvements to support climate mitigation and adaptation are not now penalised by being unable to benefit from funding if a scheme is based on making changes, rather than on achieving certain outputs. The potential challenges in this area are particularly evident in relation to peatland restoration.

b) Do you agree that Tier 1 should be a ‘Base Level Direct Payment’ to support farmers and crofters engaged in food production and land management?

Don't know

Please give reasons for your answer.

We have no comment.

c) Do you agree that Tier 2 should be an ‘Enhanced Level Direct Payment’ to deliver outcomes relating to efficiencies, reducing greenhouse gas emissions and nature restoration and enhancement?

Don't know

Please give reasons for your answer.

We have no comment.

d) Do you agree that Tier 3 should be an Elective Payment to focus on targeted measures for nature restoration, innovation support and supply chain support?

Don't know

Please give reasons for your answer.

We have no comment.

e) Do you agree that Tier 4 should be complementary support as the proposal outlines in the consultation paper? If so what sort of Complementary Support do you think would be best to deliver the Vision?

Don't know

Please give reasons for your answer.

We have no comment.

f) Do you agree that a 'Whole Farm Plan' should be used as eligibility criteria for the 'Base Level Direct Payment' in addition to Cross Compliance Regulations and Greening measures?

Don't know

Please give reasons for your answer.

We have no comment.

g) Do you agree that the new Agriculture Bill should include a mechanism to ensure a Just Transition?

Don't know

Please give reasons for your answer.

While we are supportive of this in principle, we question how this will be legislated for effectively.

h) Do you agree that the new Agriculture Bill should include mechanisms to enable the payment framework to be adaptable and flexible over time depending on emerging best practice, improvements in technology and scientific evidence on climate impacts?

Yes

Please give reasons for your answer.

We are supportive of flexibility within the payment framework to allow the system to adapt over time and potentially enable more people to qualify to receive payment.

However, there is also a need for certainty for the agriculture sector around the funding available, and in sufficient time to enable those in the sector to meet the relevant criteria and to plan and develop their business. In addition, it is important that sufficient parliamentary scrutiny of secondary legislation can be undertaken, and consultation undertaken with those in the sector.

i) Do you agree that the new Agriculture Bill should include mechanisms to enable payments to support the agricultural industry when there are exceptional or unforeseen conditions or a major crises affecting agricultural production or distribution?

Yes

Please give reasons for your answer.

We are supportive of mechanisms to enable payments in exceptional or unforeseen conditions, or a major crisis, however, we consider it important that there is consistency in application of the funding across the sector.

B. Delivery of Key Outcomes

Climate Change Adaptation and Mitigation

a) Do you agree with the proposal set out in the consultation paper, in relation to the new Agriculture Bill including measures to allow future payments to support climate change mitigation objectives? Do you have any views on specific powers and/or mechanisms that could support such alignment?

Yes

Please give reasons for your answer.

We consider that this is appropriate in light of the climate crisis and Scottish Government's climate change ambitions.

b) Do you agree with the proposal set out in the consultation paper, in relation to the new Agriculture Bill including measures to allow future payments to support climate change adaptation objectives? Do you have any views on specific powers and/or mechanisms that could support such alignment?

Yes

Please give reasons for your answer.

We consider that this is appropriate in light of the climate crisis and Scottish Government's climate change ambitions.

c) Do you agree with the proposal, in relation to the new Agriculture Bill including a mechanism to enable payments to be made that are conditional on outcomes that support climate mitigation and adaptation measures, along with targeted elective payments?

Yes

Please give reasons for your answer.

We consider that this is appropriate in light of the climate crisis and Scottish Government's climate change ambitions. However, it is important that those who have previously made improvements to achieve outcomes to support climate mitigation and adaptation are not now penalised by being unable to access funding - if a scheme is based on making changes, rather than on outputs, then 'early adopters' who have made beneficial changes when it was most costly to do so may end up getting no benefit from funding.

d) Do you agree with the proposal set out in the consultation paper, in relation to the new Agriculture Bill including measures that support integrated land management, such as peatland and woodland outcomes on farms and crofts, in recognition of the environmental, economic and social benefits that it can bring?

Yes

Please give reasons for your answer.

We consider that this is appropriate in light of the climate crisis and Scottish Government's climate change ambitions. However, we reiterate our comments at (c) above in relation to improvements previously made. We understand that a current concern for farmers and crofters is that by embarking on carbon sequestration projects such as peatland restoration at the present time, they may lose the opportunity to 'credit' the carbon sequestered against their business in later years.

Nature Protection and Restoration

a) Do you believe the new Agriculture Bill should include a mechanism to protect and restore biodiversity, support clean and healthy air, water and soils, contribute to reducing flood risk locally and downstream and create thriving, resilient nature?

Don't know

Please give reasons for your answer.

In principle, we consider that this is appropriate in light of the climate crisis and Scottish Government's climate change ambitions. Indeed, current funding schemes are frequently meeting this aims. However, we

consider that the details of the proposed measures are unclear and careful consideration is required as to how this will be effectively implemented in the law.

It is important to recognise that in some cases, the stated aims (and wider aims within the land management and agriculture spheres) may not be in sync with each other, and indeed, may give rise to conflicts. For example, balancing the need for food production against environmental aims can be challenging; and the re-introduction of beavers against flood prevention works can be conflicting.

In addition, it is important to ensure that those in the sector are not penalised by differing/conflicting approaches within the wider land management context. For example, for upland framers, gorse and scrub have had to be cleared off the land in the past in order to qualify for subsidy payments, however, now flood management and Riverwoods projects are looking at the provision of gorse and scrub.

b) Do you believe the new Agriculture Bill should include a mechanism to enable payments that are conditional on outcomes that support nature maintenance and restoration, along with targeted elective payments?

Yes

Please give reasons for your answer.

We consider that this is appropriate, however, as per our comments above, it is important that those who have previously made improvements to achieve outcomes to support nature maintenance and restoration are not now penalised by being unable to access funding.

c) Do you believe the new Agriculture Bill should include a mechanism to enable landscape/catchment scale payments to support nature maintenance and restoration?

Yes

Please give reasons for your answer.

We are supportive of such a mechanism as many activities can only successfully be undertaken at landscape/catchment scale, such as voluntary deer management which benefits from landowners acting collaboratively.

We note that there are limitations on tenants in agricultural holdings in this regard, for example, tenants can put a shelter belt in place but for most other activities, unless these can fall within the scope of permitted diversifications under Agricultural Holdings (Scotland) Act 2003 sections 39 - 42, tenants require to seek approval from their landlord for improvements.

High Quality Food Production

a) Do you agree that the powers in the Agriculture and Retained EU Law and Data (Scotland) Act 2020 should be extended to ensure Scottish Ministers have flexibility to better respond to current, post exit, circumstances in common market organisation and easily make changes to rules on food?

Yes

Please give reasons for your answer.

We consider that this is appropriate. However, any changes should be subject to appropriate consultation and scrutiny of secondary legislation. We therefore suggest that Regulations should be subject to the affirmative procedure.

b) Do you agree that Scottish Ministers should have powers to begin, conclude, or modify schemes or other support relevant to the agricultural markets?

Yes

Please give reasons for your answer.

We are supportive of this, however, we again note the need for certainty for the sector, as well as the importance of appropriate consultation and scrutiny of any secondary legislation enacted to make use of these powers.

c) Do you believe the new Agriculture Bill should include a mechanism to enable payments that support high quality food production?

Yes

Please give reasons for your answer.

We have no comments.

d) Do you believe the new Agriculture Bill should include a mechanism to provide grants to support industry in the agri-food supply chain to encourage sustainability, efficiency, co-operation, industry development, education, processing and marketing in the agri-food sector?

Yes

Please give reasons for your answer.

We consider this appropriate, although again note that those who have already made improvements in outcomes should not be penalised by being unable to access funding. We are of the view that it is important to support the wider food chain, particularly to address issues around food security and deliver on the ambitions under the Good Food Nation (Scotland) Act 2022.

e) Do you believe the new Agriculture Bill should include powers for Scottish Ministers to declare when there are exceptional or unforeseen conditions affecting food production or distribution?

Yes

Please give reasons for your answer.

We have no comments.

f) Do you believe the new Agriculture Bill should include powers for Scottish Ministers to provide financial assistance to the agri-food sector and related bodies whose incomes are being, or are likely to be, adversely affected by the exceptional or unforeseen conditions described in the declaration referred to in the consultation paper?

Yes

Please give reasons for your answer.

We have no comments.

g) Do you agree that the new Agriculture Bill should include the powers to process and share information with the agri-food sector and supply chains to enable them to improve business efficiency?

Yes

Please give reasons for your answer.

We are supportive of this, subject to compliance with data protection laws and consideration of commercial sensitivity.

Wider Rural Development

a) Do you agree that the proposals outlined in the consultation paper should be included in the new Agriculture Bill?

No

Please give reasons for your answer.

While we are supportive of funding being available for these matters generally, we do not consider that these matters should be included in the Agriculture Bill. We are of the view that this activity is beyond the bounds of agriculture and may be better suited to other legislation, for example, the planned Land Reform Bill. We consider that the Agriculture Bill should focus on agricultural practices, albeit with engagement with environmental issues as they arise in the context of agriculture.

Funding for activities in these areas concerns wider rural development issues and has the potential to have social, economic and other impacts for the rural sector. Issues such as flood management and transportation changes may also be of wider relevance.

We also note that we would have concerns if funding were made available for wider rural development activities under the Agriculture Bill drawing on the funding which is allocated to agriculture, as this could restrict the funding which is available for farming and related activities.

b) Are there other areas relating to non-agricultural land management such as forestry that you would like considered for support under the Agriculture Bill to help deliver integrated land management and the products produced from it?

Don't know

Please give reasons for your answer.

We have no comment.

c) What other powers may be required to enable rural development in Scotland's rural and island communities?

Don't know

Please give reasons for your answer.

We have no comment.

d) What potential social, economic or other impacts, either positive or negative, would such powers have on Scotland's rural and island communities?

Don't know

Please give reasons for your answer.

We have no comment.

Animal Health and Welfare

a) Do you agree that the new Agriculture Bill should include powers to establish minimum standards for animal health, welfare as a condition of receiving payments?

Yes

Please give reasons for your answer.

We support the provision of minimum stands for animal health and welfare as a condition of receiving payments.

b) Do you agree that the new Agriculture Bill should include powers to make payments to support improvements in animal health, welfare and biosecurity beyond legal minimum standards?

Yes

Please give reasons for your answer.

We support this provision.

c) Do you agree that the new Agriculture Bill should include powers to collect and share livestock health, welfare and biosecurity data?

Yes

Please give reasons for your answer.

We are supportive of this, subject to compliance with data protection laws and consideration of commercial sensitivity. We question with whom the data is expected to be shared.

Plant Genetic Resources and Plant Health

a) Do you agree that Scottish Ministers should have powers to provide support for the conservation of Plant Genetic Resources, including plants developed and grown for agricultural, horticultural or forestry purposes and their wild relatives?

Don't know

Please give reasons for your answer.

We consider that the proposals in this regard lack clarity. While we agree with support being available for the conservation of Plant Genetic Resources generally, we do not consider that these matters should be included in the Agriculture Bill. As per our comments in relation to the Wider Rural Development proposals, we are of the view that this activity is beyond the bounds of agriculture and may be better suited to other legislation.

We also note that we would have concerns if funding were made available for conservation of Plant Genetic Resources under the Agriculture Bill drawing on the funding which is allocated to agriculture.

b) Do you agree that Scottish Minister should have the power to provide support to protect and improve plant health?

Don't know

Please give reasons for your answer.

We refer to our comments at (a).

C. Skills, Knowledge Transfer and Innovation

a) Do you agree that support should continue to be provided in this area?

Yes

Please give reasons for your answer.

We agree with this in principle, however, suggest that support should be separate to agricultural funding, as per our comments above in relation to Plant Genetic Resources and Plant Health.

b) Is there any particular gaps in delivery that you can identify?

Don't know

Please give reasons for your answer.

We have no comments.

c) Are there any alternative approaches that might deliver better results?

Don't know

Please give reasons for your answer.

We have no comments.

d) Do you have any ideas as to how engagement/participation in advisory services, knowledge transfer or skills development might be improved?

Don't know

Please give reasons for your answer.

We have no comments.

e) Do you agree that Scottish Ministers should have the power to establish a national reserve and regional reserve if/when required to ensure the equal treatment of farmers and to avoid distortions of the market and of competition?

Yes

Please give reasons for your answer.

We consider this appropriate.

D. Administration, Control, and Transparency of Payment Framework Data

a) Do you agree that Scottish Ministers should have the power to create a system that provides for an integrated database, to collect information in relation to applications, declarations and commitments made by beneficiaries of rural support?

Yes

Please give reasons for your answer.

We have no comments.

b) Do you agree that Scottish Ministers should have the power to create a system that collects and shares information for the purposes of carrying out management, control, audit and monitoring and evaluation obligations and for statistical purposes, subject to General Data Protection Regulation (GDPR) requirements?

Yes

Please give reasons for your answer.

We have no comments.

c) Do you agree that Scottish Ministers should have the power to share information where there is a public interest in doing so, and subject to complying with the General Data Protection Regulation GDPR?

Yes

Please give reasons for your answer.

We have no comments.

d) Do you agree that Scottish Ministers should have the power to create a system that provides a mechanism that aligns with the principles of the Scottish Public Finance Manual (SPFM) that ensures proper handling, reporting, and recovery, where proportionate, of public funds, the need for economy, efficiency and effectiveness, and promote good practice and high standards of propriety?

Yes

Please give reasons for your answer.

We have no comments.

e) Do you agree that Scottish Ministers should have the power to create a system that provides the data required to undertake administrative checks on applications / claims made by beneficiaries for rural support?

Yes

Please give reasons for your answer.

We have no comments.

f) Do you agree that Scottish Ministers should have the power to create a system whereby on-the-spot-checks should be undertaken to further verify applications / claims made by beneficiaries for rural support?

Yes

Please give reasons for your answer.

We have no comments.

g) Do you agree that Scottish Ministers should have the power to create a system that would provide for cross compliance, conditionality that covers essential standards in relation to sustainable environment, climate, Good Agricultural and Environmental Condition (GAEC), land, public and animal health, plant health and animal welfare, Soil health, carbon capture and maintenance?

Yes

Please give reasons for your answer.

We have no comments.

h) Do you agree that Scottish Ministers should have the power to create a system that provides a mechanism to support the delivery of practices aligned to receipt of elective payments, for targeted outcomes?

Yes

Please give reasons for your answer.

We have no comments.

i) Do you believe that Scottish Ministers should have the power to monitor and evaluate outcomes to ensure they meet the agreed purpose and help better inform future policy?

Yes

Please give reasons for your answer.

We have no comments.

j) Do you believe that Scottish Ministers should have the power to seek independent assurance that outcomes are delivered appropriately?

Yes

Please give reasons for your answer.

We consider this appropriate but question who might undertake this assessment. We anticipate that there may be a role for Audit Scotland.

k) Do you agree that Scottish Ministers should have the power to enable the publication of details pertaining to recipients who receive payments including under the future payment model (outlined in the consultation paper) and set a level above which payment details will be published?

Don't know

Please give reasons for your answer.

We consider that if there is to be publication of recipients of funding, this should be in place for all.

l) Do you agree that technical fixes should be made to the Agriculture and Retained EU Law and Data (Scotland) Act 2020 to ensure Scottish Ministers have all requisite powers to allow CAP legacy schemes and retained EU law to continue to operate and be monitored and regulated and also to ensure Scottish Ministers have flexibility to better respond to current, post exit, circumstances?

Yes

Please give reasons for your answer.

We consider that this is appropriate. However, as highlighted above, any changes should be subject to appropriate consultation and scrutiny of secondary legislation. We therefore suggest that Regulations should be subject to the affirmative procedure.

E. Modernising Agricultural Tenancies

Agreement to diversification

a) Do you agree that Scottish Ministers should have a power to be able to determine what is an acceptable diversification?

No

Please give reasons for your answer.

We consider that the proposals in this regard are unclear and therefore we are not in a position to answer the question fully. However, we do not favour the Scottish Ministers having such a power.

There is no single list of acceptable diversifications at present (for example, under sections 39 – 42 of the Agricultural Holdings (Scotland) Act 2003) and we caution against the creation of a list which may serve to restrict diversifications that can be undertaken. In principle, any ‘non-agricultural purpose’ may be approved, so this approach is perhaps superfluous.

Approval of diversifications is a matter currently reserved to the Land Court. While recognising that the process is not necessarily ideal, our members consider that this works well from a legal point of view and the Land Court is an appropriate, independent assessor of relevant cases. We do not consider that it would be appropriate for the Scottish Ministers to assume this role.

b) Do you think that if this power is given to Scottish Ministers that the Tenant Farming Commissioner should have the ability to issue guidance to assist tenant farmers and landlords understand this.

Yes

Please give reasons for your answer.

As referred to above, we are not in favour of this power being given to Scottish Ministers, however if this is done, we consider it appropriate that the Tenant Farming Commissioner be given the ability to issue guidance.

Waygo and Schedule 5 of the Agricultural Holdings (Scotland) Act 1991

a) Do you agree that Scottish Ministers should add new activities and items onto Schedule 5 of the Agricultural Holdings (Scotland) Act 1991; to enable tenant farmers to support biodiversity and undertake climate change mitigation and adaption activity on their tenant farms?

Yes

Please give reasons for your answer.

In principle, we consider this appropriate, however, we do recognise that there may be practical challenges in doing so. For example, how do you value such activities for future tenants? In many cases, there is likely to be little or no value for a future tenant. In addition, there is the potential that an outgoing tenant farmer may benefit from receiving payment on two occasions – potentially a subsidy payment for the activity and then a further compensation payment.

We note that Schedule 5 contains three groupings of improvements – consideration would be required as to where such matters would be included within these groupings, as well as wider questions for consideration such as what appropriately falls within the scope of agriculture, what might be appropriately classed as a diversification, and what might be appropriately classed as an improvement?

A number of matters are already included within scope of Schedule 5 and we cannot identify any other immediate matters which we consider should be included.

b) Do you agree that Scottish Ministers should have a power to amend Schedule 5 of the Agricultural Holdings (Scotland) Act 1991 by secondary legislation to enable Schedule 5 to be changed to meet the future challenges?

Yes

Please give reasons for your answer.

We agree that Scottish Minister should have this power, which should be subject to consultation requirements and sufficient Parliamentary scrutiny as referred to in our general remarks above. There is already a power in this regard under section 73 of the 1991 Act.

c) If you do not agree that Scottish Ministers should have the ability to vary the activities and associated items listed on Schedule 5 of the Agricultural Holdings (Scotland) Act 1991 please explain why, including any alternative approach you have to address this issue.

Please give reasons for your answer.

Not applicable.

d) Do you agree that when an agricultural tenancy comes to an end a tenant farmer should have certainty about the timescale by when they will receive any money due to them, and their landlord should also have a similar certainty?

Don't know

Please give reasons for your answer.

While we are supportive of this in theory, in practice we consider that such provisions may present challenges, for example, what happens if the timescale is reached and payment has not been received? Parties can already raise a court action for payment.

In addition, no timescale is currently provided for payments relating to short limited duration tenancies, limited duration tenancies or a modern limited duration tenancies under section 45 of the Agricultural Holdings (Scotland) Act 2003.

Amendment to rules of good husbandry and good estate management

a) Do you agree that the Scottish Ministers should be able to amend the rules of good husbandry and good estate management defined in the Agricultural Holdings (Scotland) Act 1948 to enable tenant farmers and their landlords to be able meet future global challenges?

Yes

Please give reasons for your answer.

In principle, we consider this appropriate. However, we note that the relevant legal test is strict and difficult to overcome and the rules are rarely used in practice. Any changes therefore are unlikely to have a significant impact.

Any such amendment to the rules should be subject to consultation and suitable scrutiny.

Rent Reviews

a) Do you agree that adaptability and negotiation in rent calculations are required to meet the global challenges of the future? Please explain why.

Yes

Please give reasons for your answer.

We broadly agree that adaptability and negotiation may be required to meet future challenges. However, this approach has little meaning without clear examples of what is proposed. A tenant generally has a free hand, in most respects, to manage a farm, and he should normally be charged rent on what he makes out of doing so, subject to the usual disregards where the tenant has provided the equipment etc to carry out the work.

There is the potential that this approach might bring wider environmental benefits. For example, a greater environmental/climate focus by a tenant may result in lower productivity on the land which in turn, could impact rent calculations if this environmental focus is not taken into account. There may be the potential to discount payments to the tenant for certain things, for example, enhancing biodiversity.

b) Are there any other relevant considerations that should be included in part of a rent review? Please explain why including any practical examples.

Don't know

Please give reasons for your answer.

We note that considerable work has been undertaken in recent years to clarify and simplify the law and practice in relation to rent reviews. We consider that there is a risk of adding further complexity if additional considerations are to be included.

That said, if other considerations are to be included, we suggest that the following matters may be considered:

- Environmental measures undertaken and any constraints in productivity as a result,
- Economic pressure on tenants including external factors, such as inflation and input costs.

Resumption

a) Do you consider that Scottish Ministers should amend the resumption provisions on compensation for disturbance to include a new valuation formula? And if you agree with this proposal, what do consider to be the appropriate method of valuation?

Don't know

Please give reasons for your answer.

We do not consider this part of the consultation and the associated question to be clear. It appears to conflate different ways of terminating an agricultural lease and/or using resumption.

Resumption under a 1991 Act lease is a purely contractual arrangement exercised by the landlord if the lease contains a specific right of resumption. The landlord is entitled to exercise a contractual right of resumption provided the land is being resumed for a purpose other than agriculture **and** the resumption will not be a fraud on the lease. In practice, this may be used where the landlord has plans for the resumed land or the resumption of a cottage which is not being used and is surplus to the tenant's requirements. There is no obligation to have planning permission for the alternative use, or to apply for permission or apparently even to carry out any alternative use. A contractual resumption cannot be used to terminate the whole tenancy as that would be a fraud on the lease by using the contractual resumption as a 'backdoor' route to terminate the tenancy.

This is different from the right to serve an incontestable notice to quit where planning consent has been granted for a change of use of land let under a 1991 Act tenancy using section 22(2)(b) of the 1991 Act. In the experience of our members, it is uncommon for this to be used as notice to quit of the whole holding.

In practice, if there is a real prospect of development on a farm tenanted under a 1991 Act tenancy, parties usually negotiate a suitable outcome, for example, for a landlord to buy out the tenant, offer a new tenancy, or offer a share in the development. Landlords often do not rely only on a contractual resumption. It is likely therefore that any further legislation would serve as guidelines for a negotiation.

We consider that there are differences between a relinquishment, where a price is being set, and a resumption where compensation is being calculated.

It is not clear from the consultation what Scottish Government considers needs to be addressed by a change to the law which is not already dealt with by the existing law or by agreement between parties.

If the proposals are intended to capture a share of development value under contractual resumptions of part, we consider it appropriate that a tenant is protected against contractual resumptions being used oppressively. However, consideration is required as to whether a tenant should always share in all and every element of development potential, for example, in circumstances where the resumption has no detrimental economic effect on the tenant, or the economic viability of the holding and the tenant has done nothing to facilitate or promote the development.

F. Scottish Agricultural Wages (Fair Work)

a) Do you agree that Fair Work conditions, including the real Living Wage, should be applied to all Scottish agricultural workers?

Don't know

Please give reasons for your answer.

We have no comment.

b) What do you consider the implications would be on individual businesses and the Agricultural sector more broadly, if the minimum wage for agricultural workers was to align with the real Living Wage?

Don't know

Please give reasons for your answer.

We have no comment.

Assessing the Impact

a) Are you aware of any potential costs and burdens that you think may arise as a result of the proposals within this consultation?

We have no comment.

b) Are you aware of any examples of potential impacts, either positive or negative, that you consider that any of the proposals in this consultation may have on the environment?

We have no comment.

c) Are you aware of any examples of particular current or future impacts, positive or negative, on young people, of any aspect of the proposals in this consultation? Could any improvements be made?

We have no comment.

d) Are you aware of any impacts, positive or negative, of the proposals in this consultation on data protection or privacy?

We have no comment.

e) Are you aware of any examples of how the proposals in this consultation may impact, either positively or negatively, on those with protected characteristics (age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation)?

We have no comment.

f) Are you aware of any examples of how the proposals in this consultation might have particular positive or negative impacts on groups or areas experiencing socioeconomic disadvantage? These could be households with low incomes or few resources; families struggling to make ends meet; people who experienced poverty while growing up; or areas with few resources or opportunities compared with others.

We have no comment.

g) Are you aware of any examples of how the proposals in this consultation might impact, positively or negatively, on island communities in a way that is different from the impact on mainland areas?

We have no comment.



For further information, please contact:

Alison McNab

Policy Team

Law Society of Scotland

DD: 0131 476 8109

alisonmcnab@lawscot.org.uk