

### Written submission from Sandy Lewis

By reason of being involved in committees of both Scottish Land and Estates and National Farmers Union of Scotland, I have been briefed as to the intended replacement Section 79 that the Scottish Government intends to introduce to the Land Reform (Scotland) Bill at Stage 2.

Whereas the original Section 79 may have had adverse consequences to landlords who anticipated a 1991 Act tenancy coming in hand shortly by reason of the tenant having no eligible successors, the conversion process to a Modern Limited Duration Tenancy at least would give certainty of the land coming in hand at the end of the prescribed term. This certainty introduced an element of trade-off and it is accepted as being an attempt to make the clause balanced in regards to the expectations of both landlord and tenant.

The proposed replacement Section 79, by allowing the tenant to assign a 1991 Act tenancy for value, effectively makes, in certain circumstances, 1991 Act tenancies capable of being perpetual - something which their creation in the 1948 Act did not grant. There has always been an expectation that secure tenancies will come back in hand at some time and history has proved this is factual. Although under the proposals the landlord can intervene and buy back the tenancy, the price he will have to pay appears to be higher than the market value of the lease. He pays a premium to obtain back in hand his own land whereas prior to the Act it would have come back with no payment other than waygoing valuations.

The proposed changes, particularly when the Scottish Government paper promoting them suggests that only secure tenancies encourage tenants to invest and therefore existing duration tenancies do not deliver an optimum model; will damage confidence to let on any form of long term tenure in future. It appears that neither the Scottish Government nor RACCE fully understand just how important confidence to let is. We are looking at the possibility of existing term duration lets being made secure in future. That appears to be the direction of travel. Let me give a review of just how important confidence to let is.

I have been involved in the management team of Seafield and Strathspey Estates since 1977 and since 1996 until last year as Chief Executive.

Since 1948, when the Estate's 14 year term tenancies were made secure, until I joined in 1977, a good number tenants gave up smaller holdings presumably because they became uneconomic. During that period the Government understood the need to have larger viable holdings and it is my understanding that they made Amalgamation Grants available to assist investment in bigger more efficient units and this involved land going back into letting. Because of threats of land nationalisation from time to time, not all land coming in hand was let back out again but the Estate began the process of building up its own in hand farming operation. Confidence to let, which is critical to decision making, was on the wane.

The Estate wanted to let land and tenants wanted to rent it but only secure tenancies were available until the industry came up with the concept of Limited Partnerships. They worked on the basis of a partnership where the general partner was the farmer, the limited partner was the landlord and it was to this partnership that a secure lease

was granted. This delivered to the sector effectively the equivalent of a duration tenancy with the duration set by the agreed length of the partnership. No long term letting would have been done on the estate other than through a Limited Partnership vehicle.

With Limited Partnerships established as the standard letting arrangement, political threats appeared also to decrease to the extent that prior to the Land Reform agenda emerging with the prospect of devolution towards the end of the 20<sup>th</sup> Century, the Estate actually let some holdings on 1991 Act secure leases.

The threat of an Absolute Right to Buy for 1991 Act tenancies, much debated in the years before the 2003 Act, almost killed off long term letting in Scotland to the extent that in using the new Limited Duration Tenancies, the policy was almost always to let on the shortest period possible or not at all. Land Reform influence is now seen as being the predominant driver of change over the needs of the sector and the industry is being abused.

The historical background shows that confidence to let is vital. Landowners want to let land but they do not need to do so. Even although letting may be a core business operation, low yielding expensive assets cannot take the burden of increased investment risk. Risk management underpins all business decisions.

The proposed changes to Section 79 if enacted, will, at a stroke, remove all confidence to let. With no future ability to merge holdings to achieve economies of scale that are beneficial to both tenant and landlord, there will be no appetite for remaining in the sector and land brought inhand either by tenants giving up or by using Section 79 to bring the secure lease to an end, will either be farmed by using contractors or sold on the open market. This will be a tragedy for existing tenants and owner occupiers who wish to be progressive and to the detriment of operational efficiencies in the sector which produces the nation's food.

CONFIDENCE TO LET IS KING – history proves it and I urge the RACCE Committee and the Scottish Government to wake up to the cross roads they stand at and make the correct decision of rejecting the new Section 79 and working on the previous version which was promoted by the AHLRG. AHLRG was chaired by the Cabinet Secretary and took months of evidence to conclude a conversion model designed to be fair to both tenants and landlords.