

## **Written submission from Seafield and Strathspey Estates**

### **Introduction**

The generic title 'Seafield and Strathspey Estates', covers the business interests of The Earl of Seafield and his family operating on around 35,000 hectares of Scotland. The land is owned by a number of separate businesses with different owners and ownership types. All owners aim to be responsible land managers and acknowledge they are part of the local community. The family have been engaged for generations in letting agricultural land. This has been seen to date as a core business function.

The family welcome the opportunity to respond to the proposed replacement Section 79 to be introduced into the Land Reform (Scotland) Bill at Stage 2. We believe that this section will now work against the Bill's objectives for the sector as it is not balanced. Together with the RACCE Stage 1 comments on the possibility of an Absolute Right to Buy for 1991 Act tenants in certain circumstances, it will destroy confidence to let agricultural land in Scotland to the detriment of new entrants, existing tenants and the farming sector generally. In the long run, food production will suffer, economic efficiency will deteriorate and the greening opportunities on arable land will be lost.

### **Absolute Right to Buy (ARTB)**

There are a small number of individuals, including some tenants, who promote this idea as a land reform strategy. However, there are a great number of tenants who recognise that this idea is political and damaging to the success and continuation of the tenanted sector. As long as it periodically gets some support it continues as an ambition for some and the uncertainty it generates results in less land being available to let. This is understandable as the risk of letting for low returns in relation to the capital value becomes unacceptable.

The Cabinet Secretary has previously dismissed ARTB as not being in the public interest only to then look to the official Agricultural Holdings Legislation Review Group (AHLRG) to consider the issue. When the AHLRG, chaired by the Cabinet Secretary, reported it also dismissed ARTB as not being appropriate.

Accordingly, your own Stage 1 Report comment crushes hope of confidence to let returning despite that being an objective of the legislation. You cannot eliminate the consequences of collateral damage to the use of the duration tenancies available under the 2003 Act since in 1948 when secure tenancies were brought in, the duration tenancies at that time were made secure. The direction of travel now appears to put existing duration tenancies at risk of becoming secure and then also moving under political pressure to ARTB.

### **Replacement Section 79 to the Land Reform (Scotland) Bill**

We have already responded to Section 79 as reviewed by RACCE, and, notwithstanding our concerns, we accept there was a degree of balance to the proposals. The retiring tenant would have left the farm with waygoing valuations plus an additional sum for the capital value of the new term lease. To some landowners there would have been financial loss without a compensation package,

but to others the opportunity of the conversion from a 1991 Act lease to a fixed duration lease with a guaranteed date when the farm would come back inhand may have been considered an acceptable trade-off. While some landowners could be substantially disadvantaged, those involved in the business of making agricultural land available for let would have an assured date when they could re-organise their land holdings to release maximum productive capacity and engage efficient investment.

The replacement Section 79 is totally unbalanced. It effectively seeks to ring-fence 1991 Act tenancies to remain perpetual despite agreement from all quarters that the arrangements require to be modernised and their continued existence will be used as a base from which to argue for the damaging ARTB.

The Scottish Government's explanation for the change also heavily argues that the security of these 1991 Act tenancies is required for tenants to invest in agriculture. This is not only wrong because there are many tenants investing heavily in term leases but it suggests that existing term leases are inadequate and thus it allows speculation that at a future point it may become a policy of the Scottish Government to make them secure. This damages confidence to let and works against the objectives of the Bill to increase the acreage of agricultural land let in Scotland.

While the proposal would allow the tenant to sell his lease for a value the market would determine on its potential to yield future financial returns, should the landowner take the opportunity to intervene and buy back the lease, that would be according to a prescribed form under the Act which would mean paying possibly around 25% of the capital value of the agricultural holding. The opportunity to bring his own land back inhand is to be at the expense of paying more to the departing tenant than the value of the lease on the market.

The general succession provisions elsewhere in the Bill will have the effect of decreasing the expectation of land let on 1991 Act tenancies coming back inhand. That lowers the let value of holdings where there is currently no obvious successor and, accordingly, with no compensation provisions causes a capital financial loss to the landowner. When coupled to the replacement Section 79 provisions, the tenanted value of the land has decreased and the formula dictates a higher value required from the landowner to intervene and obtain vacant possession of his property.

It is obvious that the proposals are extremely damaging but not possible to accurately predict how landowners will respond. It is certain that if an intervention is taken, the land is very unlikely to be let again – this works against the stated intention of the legislation. Further, considering the already low yield in relation to capital value that let agricultural land gives, some owners may consider they will intervene on the transfer process, buy in the land and sell it on the open market and get out of the sector. Again this works against the objectives of the legislation and will turn Scotland into the same ownership profile as found in Ireland.

With the shadow of the *Salvesen v Riddell* case over us and the opportunity of advancing the cause of letting agricultural land in Scotland before us, we urge the Cabinet Secretary and RACCE to put the interests of Scottish agriculture at the heart

of their decision making and not destroy it for a cause which cannot be supported as being in the public interest.

There is also a question of competence of introducing such a major section at this stage of the parliamentary process. The proposal is radical but has circumvented the AHLRG extensive research study, the general consultation on the Land Reform (Scotland) Bill and the RACCE Stage 1 process. The proposals may prove not to be in the public interest but they certainly cannot claim to have been subject to public consultation.