

## Written submission from North East Landowners & Tenants Forum

### Introduction

The Forum was established in 2014 out of a mutual concern among a group of tenants, owner occupiers and landlords in the North East of Scotland that the review process then being undertaken by the Agricultural Holdings Legislative Review Group (AHLRG) could be heavily influenced by a land reform agenda with the potential to seriously damage the farming industry. The Forum is of the view that while important improvements can be made on a number of levels, fundamentally, the existing let agricultural sector works well. The composition of the Forum ensures that our comments are balanced and they are intended to be positive in supporting the declared objectives of AHLRG and Scottish Government.

### Our 2014 Submission to AHLRG

We commented in 2014 on a number of matters but, in particular, we dealt with two issues that have now emerged as huge threats to our industry as we approach Stage 2 of the Land Reform (Scotland) Bill – the prospect of an Absolute Right to Buy (ARTB) for 1991 Act tenants in certain circumstances and the announcement of an alternative Section 79 allowing 1991 Act leases to be sold for value. The text of our previous comments is still pertinent and is given below:

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

*The Forum could see no rational reason for the promotion of ARTB but could clearly identify the damage already caused to the sector by the potential threat of it over the past 12 years or so. All Members are strongly opposed to the ARTB. ARTB reduces the Landlord and Owner Occupiers' confidence in letting land. ARTB does not improve relationships and can increase mistrust between the parties. Lack of investment on land and in buildings by each party is compounded by present threat of ARTB.*

*The Forum is of the view that confidence to let land is a key requirement of the review process encouraging long term tenancy agreements that benefit both landlords and tenants and encourages investment by both.*

#### *Assignment of 1991 Act tenancies*

*The Forum was clear that any general right to assign would be seen by landlords as a significant reduction in property rights and potentially damaging to confidence to let in future through a term tenancy. That being the case, the Forum concluded that the ring fencing of 1991 Act tenancies to preserve them by general assignment rights is something they strongly rejected.*

*Should AHLRG be minded to grant a system of converting 1991 Act tenancies to LDTs the Forum was concerned of a value being attributed to the lease as this could disadvantage new entrants. Complete freedom to convert, would probably mean larger units would get larger. It would also be important that the landlord confirmed that the new tenant was acceptable.*

*The Forum also considered that in extreme hardship situations the landlord could appeal the assignation (e.g. if land is surrounding family home etc.). With sensible controls, a scheme allowing 1991 Act tenancies to be converted to 25 year LTD may get general support as it would see a gradual decline of 1991 Act tenancies and prevent pressure for ARTB emerging in future.*

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

The AHLRG considered this matter fully and in their report formed the view that ARTB would be very damaging to the industry. It is important to remember that this review group was chaired by the Cabinet Secretary. However RACCE has in its Stage 1 Report to the Parliament suggested that it should be looked at again and should be available in certain circumstances.

The action of RACCE has again brought the issue centre stage and allowed MSPs to voice support in the Stage 1 Debate. We repeat again how this brings a lack of confidence to let land and we trust that the Cabinet Secretary as chair of the AHLRG will ensure that the Scottish Government does not allow this vexed subject to appear anywhere in the Bill as it progresses.

### **Section 79 reviewed by Stage 1 Process**

Based on the guidance provided by AHLRG after extensive regional consultation and long deliberation, the Section 79 in the Draft Bill considered by RACCE during the Stage 1 process may not be ideal for landowners but it has been acknowledged that there is an obvious attempt to balance the rights and expectations of both tenants and landlords. The clause as initially drafted proposed a conversion process from a 1991 Act tenancy to a Modern Limited Duration (MLDT) which could be assigned by the tenant for value as part of his business assets. There would be certainty of a termination date in the future. One of the important points acknowledged by many commentators is that it is the existence of 1991 Act secure tenancies that fuels the ARTB debate and the suggested process could enable that type of lease to 'wither on the vine' and encourage confidence to let in the industry using modern letting vehicles. While both RACCE and the Delegated Powers Law Reform (DPLR) Committee consider that more detail is required in this section, there is the basis of a workable conversion process. Suddenly, without the depth of consultation afforded by the prescribed consultation process, there has been the announcement of a replacement Section 79 of a completely different character.

### **Proposed Section 79 to be introduced at Stage 2**

The new proposals move away from any form of conversion to a process designed to enable 1991 Act tenancies to be assigned for value to a limited class of future tenant – new entrant or progressing farmer. While a tenant to tenant sale is at the value of the lease, there is to be an opportunity for the landlord to buy back the tenancy. This is not a pre-emption right but the value to be based on a formula relating to capital land values not the lease value.

The proposals will seriously impact on the industry for the following reasons:

### **Conflicts with Scottish Government stated objectives of the legislation**

- Hinders new entrants to farming who will find it difficult to purchase a lease at a time when financial stresses are at their highest level.
- Ensures that any landowner who buys a lease back will never let the land again thus land will be taken out of the rental sector.
- Encourages needless increased borrowing by the sector and works against a vibrant tenant sector. The new tenant is burdened with debt servicing costs and exposed to interest rate increases.

### **Valuation issues**

- The value of the lease sold to the new tenant is related to the potential of the holding to produce profits. It is effectively the discounted value of future net revenue streams.
- The suggested formula for agreeing the value the landowner would require to pay to buy out the tenancy is related to the capital value of the holding. These values relate to the heritable asset itself and the tenant has no right or interest in them.
- Notwithstanding the comment made above, the general change to the succession arrangements to widen the potential pool of successors to the tenancy has an impact on the formula in that it keeps the tenanted value of the lease lower than it may have been otherwise depending on the tenant's age and absence of family successors. What the landowner would require to pay to buy the tenancy back is in excess of what the tenant can receive from a direct sale of the lease to an incoming tenant. Why the discrimination?
- The valuation formula also means that the waygoing valuations paid by the landowner are effectively included in the Open Market Value of the holding and so the landowner who decides to buy out the tenancy pays more than once for the value of the waygoing valuations.
- The formula tries to replicate the position of a deal between a willing buyer and a willing seller but this will be a statutory provision where such a balance does not exist. A dangerous precedent would be created.

### **Detrimental impacts on landowners and tenants**

- Reduces the value of the let land portfolio of a landowner where there has always been an expectation that land on 1991 Act leases would come back inhand at some time. This could have a collateral consequence on existing borrowings against the portfolio and an impact on other businesses and employment.
- It signals that long secure tenancies are favoured by the Scottish Government and must be preserved. This suggests that any form of lease other than a secure lease is suboptimal thus implying that existing or future Limited Duration Tenancies could be made secure in a further round of land reform legislation. Confidence to let is therefore seriously compromised.

- Existing tenants and owner occupiers will find it difficult to expand their holdings in future other than through purchasing land. This will in the long term stagnate the sector and restrict opportunities.

## **Conclusion**

The original Section 79 text included principles which could be supported by both tenants and landlords in the main. This is evident as the style was recommended by the AHLRG and supported by the National Farmers Union of Scotland. From the details available to date, the version of Section 79 to be introduced at Stage 2 is not only unbalanced but will inflict serious collateral damage on confidence to let using limited duration tenancies and the long term vibrancy of the tenanted sector generally.