

Written submission from Moray Estates

Response to Government Amendment Section 79

Moray Estates wishes to express its grave concerns about the impact of the proposed amendment to S79 of the Land Reform (Scotland) Bill. In previous submissions we have expressed concern that the inclusion of the agricultural holdings sections of the Bill was premature and likely to be open to political positioning. These concerns are exemplified by the S79 amendment. The purpose of the policy change is unclear, the policy proposal seems very likely to be less effective than the current proposed measure (conversion), has little or inconsistent detail as to its operation and looks much more like a political response to media calls for greater radicalism than a serious policy measure to reinvigorate the tenanted sector.

It is in no way clear to us why, having been rejected as a policy proposal by the AHRG this measure has reappeared at a relatively late stage of the parliamentary process. This has provided little or no serious opportunity for the sector to consider the impacts and frankly shows a worrying contempt for the entire consultation process. What is the point of setting up groups such as the AHRG and then putting stakeholders through months of engagement and hard work if the intention is to make late, and major, amendments to the Bill to meet political rather than industry objectives? Regrettably this approach will further undermine confidence of property owners in the good faith of the Scottish Government as far as the let sector is concerned and is likely to lead to further disengagement from it. Perhaps that's the intention?

The Bill contained a potentially workable solution to the stated policy objective of encouraging tenants to retire to free up opportunity for others. Setting aside the fact that the Scottish Government has provided no evidence of research into why tenants, in some cases, are slow to retire [one would have thought a pre-requisite to policy development] the policy of allowing conversion of a 1991 Act tenancy to a fixed term MLDT, which could then be assigned for value, had some potential. Although some property owners were likely to be significantly damaged – where there was a reasonable expectation of the tenancy ending shortly anyway – it did look likely that the fact the new tenancy would be for a fixed term would provide some certainty as to future events and likely mitigate against potential legal challenge to the policy in the courts. Some owners may well have considered the position beneficial with the shift away from secure tenancy to fixed term agreement which allows more opportunity to plan.

The conversion proposal seemed a broadly proportional response to the policy objective and took some consideration of the property rights of the owner.

Regrettably we are now faced with a very different proposition and one previously rejected by the AHRG of which the Cabinet Secretary was Chair.

The policy objective appears to remain providing opportunities for tenants to leave and new entrants to come in. However whilst the policy may well encourage the retirement of tenants it will singularly fail in the objective of creating opportunity. This

is because the number of opportunities will fall significantly as property owners respond to the effects of the proposed policy.

The use of conversion and a fixed term tenancy may well have meant that fewer owners decided to intervene and acquire the tenants interest in the lease because they would have the benefit of a fixed term agreement. The conversion route also, importantly, looked like a clear endorsement and recognition of the importance of fixed term agreements and government support for them.

Assignment of 1991 Act tenancies couldn't send a more different message. Property owners are now faced with perpetual secure tenancies – when one considers the interlinked succession changes – and they will respond where they can accordingly. Those that can afford to do so will acquire the tenants interest in the lease. Having done so, at considerable cost, are extremely unlikely to make that property available under an AHA lease of any time. This company would look to acquire and is highly unlikely to offer those farms to let thereafter. The message this amendment sends – the protectionism of 1991 Act tenancies; the disregard for the interests of the owner and the dismissive way fixed term agreements are referred to in the policy justification [too short to establish a business] – will convince those owners not already of the view to have nothing to do with farming arrangements involving a lease.

It also seems likely that the rate of sales to sitting tenants will increase as some owners respond to the prospect of in perpetuity tenancies or seek to recover the cost of acquiring the lease. This and the decrease in confidence in letting will hasten the decline of the let sector not revive it.

It seems remarkable that having presided over the decline we've seen in the last 15 years that the Scottish body politic still fails to understand that you will not succeed in making people do what they do not feel is in their best interests. You cannot bully or force owners to let property. If you fail to provide a workable and fair letting environment and legal framework then the law will be ignored and other avenues pursued.

Given that an apparently workable and broadly proportionate policy had been identified (conversion) it is extremely disappointing that a disproportionate alternative idea (previously rejected) has been introduced. This can only increase the chances of ECHR challenge given the deprivation of any real opportunity to manage the property and the failure to compensate. Having barely tidied up the mess which Salveson-Riddell produced one might have expected the government to be more circumspect. Even having created such a policy idea the mechanism for implementation contains further discrimination. There is no justification whatsoever for requiring the landlord to pay one sum for the tenant's interest in the lease and the assignee another. The methodology required for the landlord looks very likely to produce a higher sum than that paid by the assignee. Ironically for a policy designed to support continued letting this will incentivise the outgoing tenant to do a deal with the landlord not the assignee.

If implemented it seems highly likely that the policy will either land the sector in legal limbo whilst the first case/s are resolved and/or hasten the decline of the let sector in

Scotland. The policy is so misguided that one can only assume that that is the intention.

We urge the parliament to reject this amendment and revert to the AHRG proposal of assignation following conversion to an MLDT.