

## Written submission from Roxburghe Estates

### PROPOSED AMENDMENT TO INTRODUCE RIGHT OF ASSIGNATION FOR 1991 ACT TENANTS

#### 1. INTRODUCTION

- 1.1 The Roxburghe Estates has significant interests in the agricultural let sector in Scotland. The Estate hosted a visit by the RACCE Committee on 28th September 2015 and this provided an opportunity for the Committee to understand the nature and extent of the different occupational arrangements in place, the opportunities provided for new entrants and others progressing up the farming ladder and the investment being made on let farms and houses. The visit also allowed an opportunity to discuss the Land Reform Bill and the particular concerns in relation to some of the proposals on agricultural holdings.
- 1.2 The Committee is inviting further responses on the Scottish Government's proposal to introduce a new assignation process to replace Section 79 of the Land Reform (Scotland) Bill. Accordingly, the Roxburghe Estates is submitting its response to the proposed amendment.

#### 2. OBJECTIVES

- 2.1 The stated objectives are to allow existing 1991 Act tenants to exit the industry with dignity and security and to increase opportunities for new tenants.
- 2.2 The Roxburghe Estates supports initiatives aimed at encouraging retirement and creating new opportunities for farm tenants. It has created a large number of opportunities for new entrants to get a foothold in farming and for existing farmers to expand or progress. It has actively encouraged the next generation of farmers to become tenants themselves through joint tenancies in 1991 Act leases, during the retiring tenants lifetime, so enabling smooth transition and security. The Committee were able to meet five new farm tenants on the Estate during the visit on 28th September.
- 2.3 It is regrettable that, in considering how to increase opportunities for new tenants, the Scottish Government has focused on the preservation of 1991 Act tenancies. Far from increasing the supply of let land, and therefore the opportunities for new tenants, the Roxburghe Estates believes that assignation will reduce the supply significantly.

#### 3. EFFECT OF ASSIGNATION FOR VALUE

- 3.1 The measures as proposed provide a right for a 1991 Act tenant to assign a lease for value after first giving the landlord the opportunity to acquire the tenant's interest at a value representing 50% of the difference between the value subject to the tenancy and the value with vacant possession. The Roxburghe Estates considers that the majority of landlords will exercise the option to acquire the tenant's interest.

- 3.2 The cost of acquiring the tenant's interest may be more or less than the value the retiring tenant would derive by assigning the lease, but it would introduce an additional cost nonetheless. Returns from letting land are already low so a further cost would drive investment returns lower still. The prospect of lower returns from letting land, the heightened risk of political intervention to contractual arrangements, loss of confidence and loss of control would lead to the Roxburghe Estates, and most other landlords, choosing to farm land in-hand, to sell with vacant possession, to seek to change the use (particularly forestry in upland areas) or to enter into very short-term occupational arrangements. The availability of land to let on any long term basis would be reduced significantly. Those opportunities which historically the Roxburghe Estates has provided for new entrants, and for those farmers wishing to expand their farming business, would be denied to the detriment of the farming industry and the agricultural community. The Scottish Government would fail in its objective of increasing opportunities for new tenants.
- 3.3 In the very limited cases in which assignation were to proceed where a landlord chose not to exercise the pre-emptive right, the process can be expected to create considerable problems and tensions. A fundamental principle of any landlord/tenant relationship is "willing landlord/willing tenant". This principle would be destroyed. The retiring tenant would have no enduring interest and clearly would seek only to secure the highest value possible for their tenancy in the marketplace. By contrast the landlord would be interested in the long term future of the holding not the sum of money being tendered for the lease. It would also impose an additional cost on new entrants trying to get a start in farming and existing farmers seeking to expand. Such a divisive and ill-judged process is completely contrary to the Government's objective of creating a vibrant tenanted sector.
- 3.4 In light of the foregoing concerns, the Roxburghe Estates would urge the RACCE Committee to challenge the Scottish Government on the assignation for value proposal and to reject it comprehensively. The AHRG concluded that assignation would be self-defeating and not in the public interest and, rightly in the Roxburghe Estates view, rejected it.

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Roxburghe Estates

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