Written submission from Luss Estates Company

Land Reform (Scotland) Bill 2015

Further to the introduction of the Land Reform (Scotland) Bill on 23rd June 2015, I write to offer our written evidence with regard to Stage 1 of the Bill.

PART 1 – Land Rights & Responsibilities Statement

Without any further details, it is difficult to comment upon presently. However we would hope that in setting out their objectives for Land Reform, that the Scottish Government will respect the rights of property owners and give due regard to land use issues, rather than just focussing on land ownership. We would hope that such a statement will provide a progressive framework for the Scottish Government to assist and encourage all landowners in providing tangible community and public benefits from private land and recognise that a great many Scottish landowners, including Luss Estates, have been actively ‘reforming’ their landholdings, in order to provide significant local social and economic benefits, in particular the creation of employment.

PART 2 – The Scottish Land Commission

In principle we support the establishment of a Scottish Land Commission, however we would strongly suggest that the appointed Commissioners are well represented by persons with significant land management experience and understanding.

With regards to the establishment of a Tenant Farming Commissioner (TFC), we welcome this, again on the basis that the appointed person has relevant industry experience and acts impartially. We are however unsure how the TFC will operate within the parameters of the existing legislative framework and welcome further clarity in this regard.

PART 3 – Information about Control of Land etc

We have no particular issue with this and consider that the provisions of the Land Registration (Scotland) Act 2012 will in time vastly improve the information available on land ownership, which is to be welcomed. We are not sure what benefits are to be derived from ‘affected’ individuals accessing information about land and question the relevance of this.

PART 4 – Engaging Communities in decisions relating to land

Luss Estates is actively involved with and indeed represented on local Community Councils, Development Trusts, Access Trusts and various other community interest groups. We would hope that the Scottish Ministers will share our view that this kind of community engagement is sufficient to allow communities the opportunity to become involved in strategic land management decisions where there is relevance to the community and a more formal approach is not required. However, we believe that much of the current Land Reform proposals have unnecessarily stemmed from those few landowners who do not take proactive steps with regards community engagement and we welcome any steps that can be made to ensure better engagement, where and when required.
PART 5 – Right to Buy Land to further sustainable development

The Bill does not offer a definition of ‘sustainable development’ and it is therefore difficult to consider a context in which a community might apply to acquire land under this method. We would point out that there are many barriers to what we would consider to be ‘sustainable development’, which principally relate to planning regulations and having to deal with overly bureaucratic publicly funded bodies and the cost of attending thereto. Once a definition of ‘sustainable development’ is determined, adequate measures should be in place to ensure that any community acquisition of land on this basis, is only permitted where there is a well presented business case for the community to do so and not just a land grab for the sake of Government targets.

Whilst ECHR considerations have apparently been fully considered, we understand that Scottish Land & Estates have received legal opinion from Counsel to the contrary and we consider that clarity should be sought on this matter first and foremost.

PART 6 – Sporting Rates

We understand that the exemption from sporting rates was introduced, as the cost of administration was far greater than the amount of the tax raised. We have grave concerns about sporting rates being re-introduced for a number of reasons, principally in relation to the valuation method and the impact on fragile rural communities, business and employment. We understand that the valuation method is likely to be on sporting ‘potential’, however there seems to be little information available on what this entails, who (if anyone) will be afforded rates relief and on what basis the rateable value is calculated. There is a great deal of uncertainty which in turn will severely limit inward investment in sporting business activities between now and April 2017, which will have significant impacts on many rural communities, who rely on such inward investment. Estates and landholdings that focus on deer management and control for reasons other than primarily sporting, such as woodland and habitat re-generation, could be severely impacted upon and prejudiced.

The imposition of yet another fixed cost on ‘sporting’ business and activities, many of which are of marginal profitability and weather dependent, will ultimately render many of these businesses economically unviable and lead to loss of economic activity and employment. Sporting activities in Scotland are a significant generator of economic activity, from hotels to services, in many cases in remote rural locations.

The re-introduction of sporting rates will in effect become a tax on tourism and nature conservation! With the availability and relatively cheap cost of air travel these days, Scotland will lose out to competitor venue Countries.

PART 7 – Common Good

We have no comments to make in this regard.

PART 8 – Deer Management
The powers which are being introduced largely exist anyway and we have no comment to make on this.

**PART 9 – Access Rights**

We welcome this part of the Bill, especially in relation to the requirement for landowner consultation.

**PART 10 – Agricultural Holdings**

**Modern Limited Duration Tenancies (MLDT)**

It is disappointing that the new MLDT does not include for a provision for letting agricultural holdings for a period of between 5 and 10 years, which in our experience would have been a very useful letting vehicle for both landowner and prospective tenant. We consider that this, along with the retention of the complicated notice to quit procedure and automatic 10-year renewal period will result in a continued reluctance to let land.

We welcome the decision to retain Short Limited Duration Tenancies.

**Conversion of 1991 Act Tenancies into MLDTs**

We understand that this measure is being introduced to try and stimulate growth in the letting of agricultural holdings and as a means of allowing secure tenants, without successors, the opportunity to ‘get out’, whilst ensuring that the holding remains tenanted. We would again question if there is an ECHR angle, which has not been fully considered in relation thereto and as there is so much unknown about the detail of the proposals, it is difficult to fully consider. Notwithstanding the foregoing, we would however comment that conversion to a 35 year MLDT is too long and consideration should be given to a MLDT of up to 15 year’s term.

**Tenants Right to Buy**

We welcome the sensible decision not to introduce an absolute right to buy for secure 1991 Act agricultural tenants. There is no question that the prospect of right to buy has been a significant deterrent to landowners, large and small to letting agricultural land. With regards to an automatic right of pre-emption for secure 1991 Act tenants, we have no issue with this, however we would suggest that an appropriate procedure is in place to ensure that tenants are entitled to buy only what is contained in the agricultural lease and not necessarily what is contained in an IACS plan. Other examples might include sporting, timber or mineral rights often reserved from agricultural leases.

**Sale where a Landlord in breach**

If a landlord has been acting so negligently with regards his obligations in terms of the lease and agricultural holdings law, then we welcome this provision, as so often it
is those few landlords, who tarnish the entire industry with negativity. However there should be a ‘quid pro quo’ where an agricultural tenant has acted likewise or in a similar vein.

**Rent Review**

We welcome the clarity with regards to the ‘ish’ dates, when serving rent review notices. We have concerns about the undefined term ‘productive capacity’ as this will no doubt lead to dispute and thus reliance on Land Court cases to actually determine what the definition might be. We will be no further forward. If the Land Court was to determine a ‘Fair Rent’ based on productive capacity, we have concerns that, due to the scale of many holdings, that rents may in fact regress, leading to less investment by landlords into let holdings, which will have a negative knock on effect in terms of land becoming available for let. The open market rent for any additional residential accommodation is a welcome addition, as is the open market rent provision for diversified enterprises.

**Assignation and succession to agricultural tenancies**

We are opposed to the provisions for widening the definition as to who an agricultural tenant can assign or bequeath their tenancy as this represents a significant infringement and indeed devaluation of the landlord’s rights. In terms of the landlord’s right of objection, we are unsure if the there is a definition of ‘reasonable grounds’ in relation to a non-near relative and would welcome clarity in this regard.

**Compensation for Tenants Improvements**

We support this measure and hope that it will give some tenants the confidence to retire from agriculture and provide opportunities for new entrants, although would caution that this system is entirely open to abuse.

**Improvements by Landlord**

We support these proposals.

Farming and agriculture in general is facing many challenges, from the increasing age profile of farmers to reducing subsidies, increasing costs and over regulation.
The availability of land for let on terms acceptable to both landowners and prospective tenants is the only route available to prospective, invariably young, tenants, who do not inherit a farm or farming business or the wealth to acquire a farm. The obsession with Land Reform and regulation will continue to contribute negatively on the availability of agricultural land for let in Scotland unlike its neighbouring ‘Competitor’ Countries such as England, Ireland and Wales, to the detriment of Scottish agriculture and opportunity for its young prospective farmers.

I would be obliged if you would acknowledge receipt of our submission.