

**DRAFT AGRICULTURAL HOLDINGS (SCOTLAND)
BILL CONSULTATION**

SCOTTISH ESTATES BUSINESS GROUP

SUBMISSION TO SEERAD

11 JULY 2002

1. INTRODUCTION

- 1.1 The Scottish Estates Business Group (SEBG) is an information network representing a number of progressive Scottish Estates. Some of our group members such as Buccleuch, Dunecht, Roxburghe and Seafield play a key role in the tenanted farming sector providing hundreds of farms let on secure and other tenancy arrangements. The SEBG estates enjoy a constructive and stable relationship with the overwhelming majority of its tenant farmers and have done for generations. Members of the Group subscribe to a Code of Good Practice (Appendix A) and have an established track record of working with the tenanted sector to help diversify farm businesses and maintain a vibrant tenanted sector. A healthy, vibrant tenanted farming sector, built around clear, transparent landlord/tenant relationships will help to underpin the Minister's objectives in his Forward Strategy for Scottish Agriculture.
- 1.2 SEBG share the vision of a rural economy supported by a diversity of businesses including tenanted farms with their own elements of diversification. We support the principle of maintaining a healthy tenanted agricultural sector because:
- ◆ It provides choice of tenure
 - ◆ Allows choice over how farm capital is invested
 - ◆ Facilitates phased enlargement of operation which allows economies of scale (present difficulties enhance the need for this)
 - ◆ Allows new blood to come into sector which can invigorate
 - ◆ Offers risk management advantages with less exposure to increased interest rates
 - ◆ Allows strengths of integrated land management policy within estates with social, economic and conservation advantages
- 1.3 SEBG supports the aims and ambitions of legislation that will help revitalise the tenanted sector. There are many provisions in the draft Bill that we support and we are pleased they reflect a consensus within the industry for improvement. The vast majority of the provisions set out in parts one, two and three of the draft bill are supported by SEBG. There are issues in these sections of the Bill that we address in this document. However, our comments are put forward as constructive suggestions that we believe would enhance the legislation.
- 1.4 That said, SEBG is very concerned about the provisions for a pre-emptive right to buy set out in part four of the draft Bill. We believe that there is a real danger of the stated objective of the Bill – to stimulate the tenanted sector – being jeopardised by these provisions for reasons we set out in greater detail in this document.
- 1.5 Furthermore, SEBG genuinely fears that the entire Bill as proposed will be overshadowed and hijacked by radical reformers seeking an absolute right to buy for all farm tenancies. We believe the extension of the right in this way, or even the prospect of it being introduced at some later date would fundamentally undermine confidence in Scottish agriculture and irreparably damage the industry by decimating the tenanted sector.

- 1.6 As in most industries, the ability to rent rather than buy is an important facility that brings flexibility to the market and allows farming businesses to be run without the need to find capital to finance ownership of the land. The system brings operational efficiencies in the use of labour and machinery, which in turn helps maintain stable, sustainable farming in the fragile rural economy.
- 1.7 The Minister has previously talked about the need for landowners to let land ‘with assurance’. The proposed ‘right to buy’ will affect small estate landowners more than the larger estates, but far from providing landowners with reassurance the pre-emptive right to buy is regarded by most landowners as the first step towards an absolute right to buy and as such is undermining their confidence in the letting market and creating unnecessary uncertainty.
- 1.8 In regard to the pre-emptive right to buy, SEBG proposes in this submission an alternative Farm Purchase Scheme which we believe would address the concerns of tenant farmers and landlords and assist the Scottish Executive in producing a Bill that would be met with industry approval.
- 1.9 SEBG is also recommending the establishment of a Scottish Tenant Farming Commission to carefully address many of the issues affecting tenants and landlords, some of which arise from and go beyond the scope of the draft Bill.

2. PROPOSAL FOR A SCOTTISH TENANT FARMING COMMISSION

- 2.1 SEBG members have been listening with great interest to the arguments being put forward on the Draft Agricultural Holdings (Scotland) Bill, and, in particular, the provisions for tenants to purchase their holdings. There is a perception that in certain areas the landowner has power over the tenant or may not fulfil his contractual obligations. While this may only be a perception rather than a reality, it is important for the good of the agricultural sector that neither the landowner nor the tenant is thought to have power. The relationship should be balanced and operate for the mutual good of both parties. The call for any form of right to buy only polarises the debate further, and destroys the confidence of landowners to let land.
- 2.2 SEBG recognises that the Executive consulted the Landlord and Tenant Consultative Panel before drafting its White Paper. However, it is clear from the consultation process that there are issues which still require detailed thought and action if necessary to modernise and revitalise the landlord/tenant system in the 21st century.
- 2.3 We propose therefore that a Scottish Tenant Farming Commission be set up to carefully look at all aspects of the relationship between tenant and landlord. The Commission would bring forward proposals to ensure that other areas out with the scope of the current Bill or arising from it, be looked into. Codes of good practice, new entrance schemes and retiral schemes would all be subjects where the new body could bring original thinking. A continual review of the legislative framework could look at the basis for rent reviews and any other areas of potential friction to restore confidence and trust to the sector and enable the Ministers objectives to be realised.

2.4 The inclusion of a commitment to a tenant farming commission within the Draft Agricultural Holdings (Scotland) Bill would be of benefit to all organisations and individuals in the industry and the SEBG believes such a commission would resolve many of the issues that affect and will continue to affect tenants and landlords.

3. COMMENTS ON PARTS ONE, TWO THREE AND FOUR OF THE DRAFT AGRICULTURAL HOLDINGS (SCOTLAND) BILL.

3.1 PART ONE: AGRICULTURAL TENANCIES

3.1.1 New tenancy arrangements

3.1.1.1 SEBG fully endorses the Scottish Executives drive to introduce new and flexible tenancy arrangements.

3.1.1.2 SEBG believes wholeheartedly and acknowledges that tenants require security of tenure in order to be confident that they will obtain the benefits from any investment that they have made in the land. Security of tenure provisions have been in place in the agricultural sector now for many years but SEBG believes that security must be balanced with the opportunity for review to account for changes in the industry and between the parties.

3.1.1.3 SEBG supports the Scottish Executive's objectives in modernising the tenanted sector and freeing up additional land for letting. However, we have genuine concerns that the proposed introduction of SLDTs and LDTs will not help the Scottish Executive achieve its objectives. The measures proposed lack flexibility and could have a stifling rather than a stimulating effect on the sector. SEBG believes that instead of introducing 5 year SLDTs or 15 year minimum periods for LDTs the duration of tenancy should be agreed on the basis of the business interests of landlord and tenant and should be appropriate to the nature of the undertaking or land use proposed.

3.1.1.4 The default mechanism proposed for SLDTs whereby they can become LDTs is likely to deter interest in the use of the SLDT.

3.1.1.5 The industry does need measures that allow flexible short-term agreements to be negotiated allowing holdings to grow and businesses to expand whilst providing opportunities to spread business costs.

3.1.1.6 SEBG believes that there should be freedom of contract to enter into a tenancy agreement for a duration to be mutually agreed by both parties as exists in other business tenant sectors.

3.1.1.7 SEBG strongly supports retaining the provision to allow a notice to quit for non-agricultural use where planning permission has been granted.

3.1.2 Conversion, termination and other LDT issues

3.1.2.1 The SLDT should be included in the term where the lease is being converted to an LDT. This could be achieved by the legislation allowing the combined period of any SLDT's to be deducted from the minimum LDT term if the LDT is following SLDT's to the same tenant.

- 3.1.2.2 SEBG consider the LDT notice to quit provisions to be over complicated, and that there should be no notice to quit required for SLDTs. We think that the notice to quit in the case of LDTs should be served no earlier than 24 months and no later than 12 months before the end of the tenancy.
- 3.1.2.3 SEBG would support measures that allowed both parties to extend a LDT by a duration to be agreed by negotiation which best fits the circumstances.
- 3.1.2.4 SEBG understands Ministers concerns that anti-avoidance measures might be necessary. However, SEBG strongly supports the need to retain the use of Limited Partnerships that are an important element in maintaining a diverse tenanted sector. How they may be used would be decided by the particular circumstances.

3.2 PART TWO: DIVERSIFICATION

- 3.2.1 SEBG strongly supports the diversification of rural businesses to sustain healthy rural economies. However, non-agricultural activities should not be carried out within the terms of an agricultural tenancy. There is a risk that agricultural tenure may be converted “by the back door” to a commercial lease but subject to all the protections of an agricultural lease.
- 3.2.2 Where a non-agricultural use becomes the primary use of the holding then the affected parts should be resumed and made subject to a separate agreement resulting in an ordinary commercial tenancy.
- 3.2.3 Consent to diversify should not unreasonably be withheld. However, grounds for objection should include consideration of the impacts of the proposed activity on the whole of the landowner’s estate or interests. There is an issue of potential devaluation of an estate.
- 3.2.4 Tenants should have an obligation to demonstrate that an activity will have no negative impact and is a viable undertaking supported by a robust business plan and evidence that they are sufficiently funded and experienced to undertake it.
- 3.2.5 We welcome the provisions in the draft Bill regarding tree planting except where they relate to compensation on waygo. The compensation issue is a matter for agreement between the parties either in the lease or when the landlord consents to planting. This is because the personal circumstances and business plans of both the tenant and the landlord require to be considered and coordinated.

3.3 PART THREE: DISPUTE RESOLUTION

- 3.3.1 SEBG supports measures that offer a simple and cost effective route to dispute resolution and welcome the proposed roles of both the Scottish Land Court and of arbitration as a route to dispute resolution. We believe that the choice of route should reflect the preference of both parties.

3.4 PART FOUR: PROPOSALS FOR A PRE-EMPTIVE RIGHT FOR SECURE AGRICULTURAL TENANTS TO PURCHASE THEIR HOLDINGS

3.4.1 Comments on the Ministers proposals

3.4.1.1 SEBG members are fundamentally opposed to the pre-emptive right to buy measures as proposed in the consultation paper for the following reasons: -

- ◆ The farming industry needs to maintain a diversity of tenure for a healthy rural economy and there is already evidence that confidence in the letting market is being undermined by concern over the right to buy
- ◆ Any reduction in confidence in the letting market will mean a reduction of opportunity for those who wish to rent rather than buy and for those who cannot afford to buy but can afford to rent. Losing tenancies reduces choice and does nothing to encourage new blood into the industry
- ◆ Undermining the confidence amongst landlords who are genuinely concerned that a pre-emptive right to buy for secure tenancies will inevitably lead to the provision being extended in the future to other forms of tenancies and ultimately result in an absolute right to buy
- ◆ Landlord Tenant relations are being put under extreme pressure and as a result the two parties, despite considerable efforts over many years to foster and grow the partnership/joint-venture ethos, are now being encouraged to stand back to back rather than shoulder to shoulder.
- ◆ The measures apply retrospectively to agreements reached by prior mutual consent
- ◆ Subject to the valuation formula, are likely to transfer an element of the value from the landlord to the tenant
- ◆ They are not required on the assumption that under current arrangements tenants are unable to invest in and manage the land they work. Tenants can invest and have a process whereby any investment can be compensated for if the tenancy comes to an end.
- ◆ The procedure requiring a tenant to register his interest in purchasing his farm is not required and could affect the landlord/tenant relationship

3.4.1.2 However, SEBG recognises that arrangements in relation to the sale of holdings can and should be improved. As an organisation, we support the Minister in his view that it should not be possible to sell a farm over a tenant's head by statutory provision. Most landowners are responsible in their dealings with their tenants but their good practice should not be undermined by a reaction against the few who do not act reasonably.

3.4.2 SEBG proposals for a Farm Purchase Scheme

- ◆ SEBG supports and recommends a statutory provision requiring landowners to notify tenants if a farm is to be sold.
- ◆ SEBG believes that the bringing to the open market a farm or farms should trigger this notification. This should apply to all forms of tenancy as a matter of good practice.

- ◆ Intra company transfers, between members of families or between family trusts should not trigger notification.
- ◆ SEBG believes that there should be a freedom for a willing seller (landlord) and a willing buyer (tenant) to reach a price by agreement and in the first instance without valuers being involved.

3.4.3 Where sales between landowners and secure tenants are currently taking place in the market, the parties acknowledge that the tenant is purchasing the vacant possession value of the subjects and is therefore a special purchaser. The normal arrangement is that the marriage value between the investment value of the holding and the vacant possession value of the holding is divided in an equitable basis between the buyer and seller. The actual split of the marriage value depends on the circumstances of the parties involved and the valuation process will take into account any reduction in the value to the remainder of the estate which may occur by the subjects of sale being taken out of a larger whole.

3.4.4 If the seller and buyer cannot agree a value for the sale then we propose that the normal market arrangements set out above be replicated by the following procedure for valuing the holding and concluding the sale:

- ◆ A valuer for each party should be appointed and a value agreed
- ◆ If agreement cannot be reached then a thirdsman be appointed to determine the value
- ◆ If the tenant will not accept the value reached by this process, then the owner can withdraw the property from the market or sell to another party on the open market.

3.4.5 As already explained, the value shall be broadly determined as the investment value plus an equitable share of the marriage value plus any other interests which form part of the land on which the tenant has an agricultural tenancy.

3.4.6 When a landowner is selling his property, in all but a very few cases, tenant farms are sold to the tenant. That is the reality of the situation and the Minister has made clear in his proposals that he respects the right of ownership by his stipulation that the valuation should be as between a willing seller and a willing buyer.

3.4.7 SEBG believes that its own proposals as set out above addresses the issues that concern the vast majority of tenant farmers while, at the same time, ensuring that there is no loss of confidence in the letting market. Most importantly, were the proposals to be enshrined in legislation, it would provide every secure tenant with the opportunity to buy his or her holding and it could only be sold over their head if they refused to agree a price or accept the proposed valuation procedure.

4. SUMMARY

4.1 SEBG is concerned that the opportunity afforded by the Bill to develop the agricultural sector is in danger of being lost by reason of the proposals to allow tenants to purchase their secure holdings. Our own proposals for a Scottish Tenant Farming Commission and an alternative Farm Purchase Scheme we believe shows a positive commitment to resolve difficulties, perceived or real for the benefit of both tenants and landowners.

APPENDIX A

Scottish Estates Business Group Code of Practice

Working together

SEBG members believe that Estates are an important rural development resource and can demonstrate a good model of an integrated approach to rural resource management and have a track record of achievement. They have the flexibility to adopt a local approach to the solution of rural development problems.

SEBG members play a full and active part in any partnerships whether comprising local interest groups, government or non-government agencies.

Working with the community

SEBG members believe how large-scale landownership can exert a significant positive impact on the sustainable development of rural communities.

SEBG members have a stake in their local communities.

SEBG members are clearly identifiable and have accessible local representation.

SEBG members in their objectives for land use support the key themes of sustainable rural development - social, economic, and environmental, and believe that land use should foster the sustainable development of rural communities.

SEBG members see themselves as a key part of their local communities.

SEBG members actively make provision for recreational access, contribute to the development of local access strategies and play a part in local access forums.

SEBG members are committed to informing and where appropriate consulting with communities in relation to land use decisions.

SEBG members aim to support local jobs when possible.

Working with our staff

SEBG members consider their staff of immense value and promote employee welfare, protection and long-term benefits.

Working for the environment

SEBG members in their land management exercise good environmental stewardship.

SEBG members recognise the value of natural and built heritage, sustainable development and biodiversity on their estates and are committed to working with others to enhance these.

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