

## **Agricultural Holdings Legislation Review**

### **Executive Summary**

- Scottish Land & Estates welcomes the report but has concerns about the detail of some of the recommendations. If balancing measures could be incorporated into many of the recommendations then there would be a more encouraging outlook for the sector. However, as presented, the package is unbalanced and potentially disproportionately damaging to the interests of landlords.
- The rejection of an absolute right to buy was very welcome.
- Where proposals may interfere with property rights, Scottish Land & Estates would like to see the Scottish Government address the four-part test for legislation in demonstrating: (1) a clear articulation of the legitimate aim, (2) a rational connection between the proposed measures and the legitimate aim, (3) that measure is the least restrictive alternative and (4) a fair balance is achieved for the benefit of the community as a whole. Assuming these tests are met, Scottish Land & Estates would also like to see any legislation adequately address the issue of compensation where property rights are to be breached.
- Scottish Land & Estates urges the Scottish Government to take agricultural holdings reform forward in a stand-alone Bill and to afford these changes the scrutiny and time they deserve.
- The main areas of concern for Scottish Land & Estates are:
  - Rent Review – Described in the report as rent control for a temporary period. We believe some work needs to be undertaken to ascertain the impact of these changes in case study examples so that all parties can more fully understand the implications.
  - Succession – We have very serious concerns about the extension of succession rights to such an extent that the prospect of recovering possession of the holding is greatly reduced. We believe any change to succession should be targeted to cases where genuine hardship may result rather than perpetuate 1991 Act tenancies.
  - Conversion – We understand the arguments put forward during the review, but the proposal, as recommended, for conversion to a statutory LDT of at least 35 years with no balancing controls for the landlord, goes far beyond what is balanced. We do not believe this achieves the stated aims and would result in significant loss in value for a proportion of landlords.
  - Gap between 1 and 10 years – As the proposals stand there would be no available tenancy between 1 and 10 years. If the new LDT is to be a genuinely modern tenancy then parties should be able to choose the duration that suits their respective needs.
  - Loss of Viable Unit Test – We believe this proposal is contrary to the creation of an efficient, successful Scottish agricultural sector and may result in lifestyle units which do nothing to assist new entrants or the sector.
- Some of the remaining recommendations, subject to some tweaks, have merit and could bring positive change: the independent Tenant Farming Commissioner, the amnesty on notices for improvements, simplified process for objecting to diversification and repairing leases (for a shorter duration). Others are problematic such as a power of Ministers to intervene and staged assignment.
- The recommendations provide a starting point but there is much to be done if we are to achieve the stated aims of the Review Group. Scottish Land & Estates is committed to working with the government and industry bodies to develop these recommendations into a balanced, workable and coherent set of policies for legislative change.

## **1. Introduction**

Scottish Land & Estates welcomes the opportunity to provide written evidence to the Rural Affairs Committee on the Review of Agricultural Holdings Legislation. Our members want to see a let farming sector that works well for all parties.

Scottish Land & Estates welcomes the report and acknowledges the work of the Review Group. The review process was open and constructive and we were able to play a full part in the process. Scottish Land & Estates has sought to play a constructive role throughout and the organisation remains committed to finding solutions to the current issues in the let sector. Scottish Land & Estates will continue to work with all other parties to bring forward initiatives that seek to solve immediate problems and to debate the best legislative framework that will secure the long-term future of the sector.

Scottish Land & Estates would wish to clarify that while we represent the interest of our membership as a whole, there are inevitably differences of opinion and approach within the membership on particular issues. Therefore views we express in both written and oral evidence are not intended to be binding in any way on individual members.

## **2. Overview response to the Final Report**

The Review Group has brought forward a package of measures designed to deal with the current problems associated with existing, especially secure 1991 Act tenancies, together with measures for new letting vehicles, that it hopes will provide the basis for a new era of letting. There are some elements of this package that are positive for landlords. The potential for being able to get more commercial rental values for housing or diversified activity, for example, is a good step forward. But there are also elements of the package that clearly represent a further erosion of landlords' interests. Consequently, an important question revolves around whether or not the Group has found the appropriate balance between the interests of tenants and landlords.

After the report was published Scottish Land & Estates conducted a series of meetings around the country to explain the recommendations to members and seek responses, and the predominant feeling amongst members was that the report would not provide them with renewed confidence to let. The feedback we have received from members (including professional advisers) is that the package of measures appears unbalanced in favour of tenants' interests. We therefore have concerns that we will, unfortunately, not see a new period of re-invigorated agricultural letting. This is disappointing.

One of the key issues revolves around 1991 Act tenancies. The Review Group emphasises that there is a need for fundamental change and for modernisation. Notably the group says that while the vast majority of tenanted land is let under 1991 Act tenancies, which provide the tenant with a high level of security, this letting vehicle is not necessarily best suited to a rapidly evolving agricultural economy where greater flexibility is of critical importance. Yet one of the key recommendations (succession) is specifically designed to entrench the very letting vehicle that the Group views as not being fit for contemporary farming. While the group does recommend the creation of a new letting vehicle, which should ideally be seen as a welcome move, it does so at the same time as proposing

other measures that represent another example of the willingness to retrospectively intervene in leases in the tenant's favour, thus undermining hope for growing confidence.

Scottish Land & Estates believes that if the recommendations on succession, conversion and the removal of SLDTs had been put together in a more balanced way, then there would be greater room for optimism, provided that those measures were subsequently coupled with a considerable period of stability. Confidence could return and possibly quite quickly, given the dismissal of an absolute right to buy, but the package requires greater balance.

Therefore there is an opportunity for the Scottish Government to respond to the Group's recommendations in a way which would deliver balance and a more positive outlook for the sector.

### **3. Absolute Right To Buy**

Scottish Land & Estates welcomes the very clear conclusions of the Cabinet Secretary's Review that *"a general or absolute right to buy should be ruled out by the Scottish Government on the basis that it would not be in the long term interest of the tenanted sector"*.

### **4. Property rights, ECHR compatibility and compensation**

The Review Group has acknowledged that changes to agricultural holdings legislation have to be considered in the context of existing property rights especially in the context of the European Convention on Human Rights. As such, the Group has sought to find a balance between the interests of landlords and tenants. However, as the Committee will be aware the degree to which any legislation is compatible with the ECHR is about more than simply attempting to balance the interests of two parties.

As we understand it, the doctrine of proportionality is critical in assessing whether or not legislation is Convention compatible and, in practice, this is a multi-stage objective test in which the onus rests with the Scottish Government to:

- a) Identify a **legitimate aim** i.e. that the measure is sufficiently important to justify limiting a fundamental right
- b) Demonstrate a **rational connection** between the proposed measures and the legitimate aim
- c) Demonstrate that the measure is the **least restrictive alternative** i.e. there is no other alternative lawful measure which is at least as effective in achieving the legitimate aim,
- d) Demonstrate that a **fair balance** is achieved for the benefit of the community as a whole taking into account the importance of the measure and its positive effects against any adverse effects on the rights of individuals.

Each of the above elements has to be established in order for a measure to be found to be proportionate. Unfortunately, we believe that some of the recommendations do not meet these requirements as is highlighted in the relevant sections below on succession and conversion in particular.

Previous instances where the interference of property rights has been examined, the courts have placed great weight on the payment of reasonable compensation as a means of satisfying the fair balance element of the proportionality test. This means that if the Scottish Government were to

bring forward legislation that interfered with landlords' property rights, compensation could be required (assuming that the legislation meets all the other requirements to be competent). Scottish Land & Estates raises this issue now so that all parties are clear of the potential implications of legislative decisions. It is much better to be aware of the possible outcome now than to be stung later, as has been the case following the outcome of the various proceedings with regard to *Salvesen vs Riddell*.

As such, Scottish Land & Estates commissioned Smiths Gore to attempt to calculate the potential loss that landlords would suffer if legislation that would interfere with their rights were brought forward, and therefore the potential amount of compensation for which the government would be liable. We share these figures now to give an indication of the order of magnitude of the potential compensation.

Scottish Land & Estates asked Smiths Gore to attempt to determine the loss in the landlord's financial interest as a consequence of:

- a possible extension of succession rights to include spouses, children and grandchildren of all those who might qualify as an intestate heir in terms of the Succession (Scotland) Act 1964. In other words not just those who would qualify at the point of death, but the full potential class thereby encompassing the wider extended family.
- A possible extension of assignation rights whereby an existing secure 1991 Act agricultural tenant may be able to assign their lease for value to any person, with the same 1991 Act rights continuing with the new tenant (without a landlord right of pre-emption but including suitable tests relating to the assignee).
- A possible extension of assignation rights as above but with a landlord right of pre-emption and including suitable tests relating to the assignee.
- The possible introduction of conversion that would allow an existing secure 1991 Act agricultural tenant to assign their lease for value to any person, where the lease would convert to a limited term of 25 years.
- The possible introduction of conversion as above but with the converted tenancy limited term related to the pensionable age of the acquirer.

These reflect some of the potential recommendations that were flagged publicly when the Review Group undertook a series of public meetings in October 2014 and it should be noted that these vary from the final recommendations.

The figures that Smiths Gore produced are at the national level i.e. the losses that would apply to the total landlords' interest, or in other words the maximum potential compensation liability. The highest losses occur with regard to measures that would significantly infringe landlords' rights, such as a proposal that would see perpetual secure tenancies, with the result that the landlord would never be able to regain possession of their property. Smaller losses are experienced in scenarios where the relations between landlords and tenants are altered in a less drastic way, such as through conversion to an LDT, which would allow landlords to regain vacant possession at a future date (although the size of the loss will be dependent of the length of time and the actual proposal on conversion proposes a minimum of 35 yrs and no maximum, thus implying that the total loss figure for conversion below could be much higher when the actual proposals are considered).

Smiths Gore calculated that landlords' losses that may be expected would amount to:

<b>MEASURE</b>	<b>LOSS £ (MILLIONS)</b>
SUCCESSION EXTENDED	285
UNLIMITED ASSIGNATION	1780
ASSIGNATION WITH PREEMPTION	1664
ASSIGNATION TO LDT	297
ASSIGNATION TO RETIREMENT INTEREST	297

The Summary of the Smiths Gore report is attached to this Written Evidence and we would be happy to circulate the full report which we have shared with the Scottish Government.

## **5. Need for Agricultural Holdings to be dealt with as a package**

All the main commentators in the debate on agricultural holdings legislation appear to agree that the recommendations need to be dealt with as a package rather than be cherry picked. There are very sound reasons for this because otherwise there is a risk that the specific changes implemented may be totally skewed in favour of one interest at the expense of the other. We are clearly concerned that this would be to the detriment of our members' interests.

As about a third of the recommendations require further consideration to be given to a particular issue or further work to be done, we cannot see how this package can possibly be rushed forward in the Land Reform Bill. This would risk legislation that was not properly considered or scrutinised and can only be storing up problems for the future in terms of unintended consequences, legal challenges and resulting uncertainties for everyone involved.

We would strongly urge the Scottish Government to ensure the resulting legislation is also accorded the priority and time it deserves. This would require a complete package of changes in a stand-alone Agricultural Holdings Bill to be introduced and legislation enacted in the current parliamentary term.

## **6. Specific issues that raise concerns**

### **6.1. Rent reviews**

While Scottish Land & Estates continues to hold the view that the existing Section 13, with some procedural tweaks, could work satisfactorily, we also take the pragmatic view that rent based on productive capacity, if properly formulated, may be no worse. If productive capacity is the direction of travel now from the rest of the industry then we need to ensure that it will work and not create an undue burden for one party or additional tension where none existed before.

The report talks about "rent control" which would lead parties to think it will reduce rents across the board. Parties need to have a clear understanding about what rent based on productive capacity as envisaged by the Review Group actually means. The actual output of the farm (and the farmer's particular farming systems, efficiency etc) will be judged at each rent review against the hypothetical tenant and the influence of the open market is removed. If the recommendations are in fact intended to create a rent control mechanism, and if landlords are expected to bear the burden of this policy by reducing the rental value of their holdings, then detailed advice would be required to ensure this policy does not contravene landlords' property rights.

The report also talks of productive capacity being a temporary measure. For the sake of certainty and confidence, the sector needs to know what this means. For example, would the rent review changes be in secondary legislation that can more easily be amended in a few years' time?

Some of our professional members have raised practical concerns about the procedure as set out in Appendix E of the Review Group's report. We think that evidence from professional valuers should be heard and case studies undertaken urgently to understand how the proposals might work in practice before any draft legislation is considered.

## **6.2. Conversion**

Scottish Land & Estates can appreciate the rationale behind some of the arguments which lead to this recommendation, but has a number of significant concerns about the implications of what has actually been proposed by the Review Group and cannot therefore support it. The report recommends that a tenant should be able to convert his 1991 Act tenancy into a statutory LDT for a minimum duration of 35 years and then sell it on the open market. The landlord would have a very minimal role in this substantial change to the occupation and management of his land.

Some of our concerns are as follows:

- The landlord's position is severely prejudiced by this proposal. The extent of the duration of the LDT, the lack of step in rights for landlords, the inability to withhold consent on reasonable grounds and the lack of any break clause on specified grounds are all concerns which result in an imbalanced policy.
- The tenant could create a new LDT of anything from 35 up to 175 years (which is the current limit on any lease) with no ability for the landlord to have a input in the identity of the assignee with whom he is to have a contractual relationship, other than a limited right to object if the tenant can't show they can efficiently farm the holding or already have a viable unit.
- Where a tenancy is likely to come to an end without a statutory successor (we understand approximately 20-25% of tenancies according to Scottish Government statistics) the landlord currently has a reasonable expectation of vacant possession within a relatively certain timescale (depending on the age of the tenant etc), at which point the value of the land increases significantly. He will have options at that stage to sell or use the land as security to borrow (at vacant possession value), farm the land productively himself or to re-let to another farmer. Those options are removed for at least 35 years with this proposal.
- the proposed conversion mechanism can be viewed as a fundamental breach of the principle of willing landlord/willing tenant. Starting from a position which is one of imposition rather than mutual agreement has the potential to create ill-feeling and lead to dispute.
- The Review Group refers to Section 55 of the 1991 Act. We feel it is worth clarifying that S55 was inserted by the 2003 Act to create an entirely voluntary mechanism whereby landlords and tenants could agree to early termination and bypass statutory termination procedures in return for a negotiated settlement. In fact, S55 is not necessary as parties are free to come to an agreement voluntarily at any point without legislation. By setting out a possible valuation mechanism for a negotiated settlement in particular circumstances, S55 does not in our view create a value for a general property right in all tenancies. It deals with a specific set of circumstances. A landlord who is just about to sell the land with vacant possession is

in a very different position to another who is faced with having to buy tenancies which would otherwise have come to an end.

- The terms of the LDT are to be defined in statute and there is no mention of preserving any important contractual agreements that were reached between the parties in the previous 1991 Act tenancy which may have benefitted both parties (e.g. resumption or reserved rights or access).
- Members tell us that it is rare to choose the highest bidder for a tenancy on the basis that they are not necessarily the best for the farm. However, it is unrealistic to expect that an outgoing tenant in choosing an assignee will have similar concerns, but will rather choose the greatest short-term financial benefit. This is not necessarily in the best interests of the farming sector in Scotland.
- The Report does not address the issue of compensation for landowners which we believe would also need to be incorporated into any legislation due to the resultant loss in value for some landowners of having their 1991 Act tenancies converted in to statutory LDTs.
- There are alternative ways to achieve the same policy objective (*“the timely release of holdings to new and younger tenants”*) without prejudicing the property rights of landlords. The value to the public purse of paying compensation to landlords for the resulting loss in their land value, rather than, for example, funding a retirement scheme is highly questionable.
- There are two separate and very different valuations which would be carried out on a conversion. There is firstly the price the outgoing tenant could charge for the tenancy to give him his retirement fund. Secondly, there is the loss in value to the landlord of having a new tenancy imposed where there was a reasonable expectation of the 1991 Act tenancy otherwise coming to an end (see our comments on the work of Smiths Gore and potential compensation to landlords).
- In relation to the first valuation (the price received by a tenant selling the converted tenancy), Scottish Land & Estates instructed Andersons Farm Business Consultants to carry out some financial modelling work to replicate the valuations that would be carried out by a farmer seeking to acquire a converted tenancy. This work has identified that there is arguably no financial advantage to the outgoing tenant to increase the assignation period beyond 20 years to say 25 or 35 years. . If the policy objective is to facilitate the retirement of existing secure tenants and provide opportunity for new entrants or existing tenants growing their business, the valuation evidence indicates this would be achieved with a much shorter term than 35 years.
- Some may contend that the assignee requires at least 35 years to have sufficient security to invest in the holding. It is difficult to see how that argument stands up when public policy has determined that new tenancies (new LDTs) will have a minimum duration of 10 years. There are many examples of LDTs being granted where landlords and tenants have invested on the holding. In fact, some landlords have been more willing to invest in units let on LDTs on the basis that they perceived them much less at risk of the introduction of a tenant’s right to buy.
- Overall, there appears to be a lack of a rational connection between this measure and the aim. The Review Group say that there is an important public interest objective of encouraging timely release of land to new and young tenants. Yet the mechanism proposed would allow the outgoing tenant to assign the tenancy on the open market; it would be in their interest to secure the highest price, which would inevitably mean that the new and

young tenants would be priced out of the market, with the result that the mechanism would not achieve the stated objective.

### **6.3. Succession**

The Review Group goes to some effort to explain the ECHR consequences of widening succession. They point out that *“any significant widening of the class of persons who can succeed to or be assigned a tenancy may impact negatively on the Landlord’s property right and have ECHR implications”*. However, they go on to make a recommendation which does exactly that.

The proposal is for tenancies to be able to be passed during lifetime or on death to any living parent, or any living descendent of a parent, or spouse or civil partner of any living descendent of a parent of the tenant or the tenant’s spouse or civil partner.

It remains unclear to Scottish Land & Estates as to what the supposed legitimate aim or social policy is being furthered by this recommendation. It is not the social protection of existing tenants (since it gives rights to new tenants) or the protection of dependent family relationships (since there is no need for dependency to be shown to give right to inherit). It is unclear indeed what social assumptions have changed since 1991 that would now require new rights of inheritance of a tenant’s interests beyond the tenant farmer’s immediate family to a new definition of extended family to encompass an existing tenant farmer’s parents, siblings, nieces/nephews and their spouses and their issue, step-children and their spouses and their issue.

By extending the class of those who might inherit the tenancy this proposal significantly reduces the likelihood of a lease coming back in hand and consequently will have inevitable implications for the value of the land. The expectation of vacant possession and the coming to the end of a secure tenancy undoubtedly has an economic value to the landlord.

Scottish Land & Estates has previously argued that there should be a mechanism to deal with specific cases of hardship where a non near relative (niece, nephew or uncle, for example) was actively involved in the farming business at the time of the tenant’s death. We remain of that view and any widening of succession, as suggested, must at the very least be balanced by an eligibility test requiring the successor to have been earning a percentage of his/her income from the farming business in question for a period of time before the tenant’s death.

### **6.4. Gap between 1 and 10 years**

A major concern is the recommendation to remove the possibility of any lease between 1 and 10 years. It proposes that SLDTs are abolished and that leases of up to 1 year may be created for cropping or grazing. It also proposes a modern LDT for at least 10 years but nothing in between. There is provision for a break clause in the LDT only if the tenant is a new entrant. This is a concern because SLDTs are a practical necessity where there is a statutory minimum term for an LDT. How do you deal with cropping arrangements that run for longer than a season? Or the letting of a range of buildings on a basis other than for 10 years? There will be many arable farmers who let out their cattle buildings to a neighbour - but who will not want to commit to doing this for 10 years in case they decide that they want to get back into livestock.

Put simply, we would suggest that if the new “modern LDT” is really to be a modern letting vehicle, then the parties should be able to choose the duration by agreement, without imposing artificial minimum durations which may not suit the needs of the businesses involved.

### **6.5. Loss of viable unit test**

The Review Group proposes removing the right of the landlord, in effect, to object to a tenancy being succeeded to on the grounds that it is not a viable holding. The Review Group says that removing this right of the landlord and, in effect, allowing non-viable holding to be inherited would further the new Government policy of “*retaining a supply of starter or part-time units suitable for new entrants*” rather than its previous policy of “*encouraging amalgamation for improved efficiency*”.

While Scottish Land & Estates can appreciate the need to create a mix of tenancy types and unit sizes in order to create the necessary ladder of progression, we believe this recommendation to be contrary to the interests of the tenanted sector. We are concerned it may simply encourage lifestyle farmers and do little to contribute to a globally competitive Scottish agriculture sector.

This proposed change is also adverse to the landlords’ interests both in postponing any possible reversion of the land to the landlord by extending the possibilities of succession and in requiring the landlord to continue with inefficient non-viable tenancies and therefore presumably receive a lower rental from the holding reflective of the fact of its non-viability, particularly if controlled “fair” rents are to be determined henceforth on the basis of the (non-)productive capacity of the holding.

It is unclear what the justification might be for the landlords’ rights to be further reduced and thereby disproportionately bearing the costs of this new policy.

## **7. Commentary on other recommendations**

- Tenant Farming Commissioner – supportive in principle assuming the role is not too prescriptive and tied up in legislation, nor crossing over into the remit of the courts. It will be very important that the person appointed is independent and has the confidence of the whole sector. We support self-regulation without the cost and bureaucracy involved in a statutory regime. TFF should be used to develop the codes of practice.
- Simplified process for objecting to Diversification – no objection but if tenant’s first notice is defective then this should be a ground to object. Equally a knock on effect on the landlord’s business or that of their other tenants should be a ground for objection.
- Amnesty on Improvements – supportive of principle but three years is too long. There is no reason why parties cannot get their affairs regulated in 1 year.
- Pre-emptive right to buy – members have concerns about the trigger points and reflect that the current registration process was useful in flushing out issues about existence of tenancies and farm boundaries.
- Repairing leases – some of our members will view this as a positive change and it may offer opportunities for new units to be brought onto the letting market, but again imposing a minimum of 35 years is too restrictive and will negate the benefit for many. Parties should be able to agree a duration that offers benefit to both. The disadvantage of repairing leases, for some, is the lack of opportunity for communication and relationship building between the landlord and tenant.

- Power of forced sale – it is our view that if the process is fair and contains appropriate checks and balances then few landlords should ever be forced to sell. There is a case for reviewing the corresponding provisions for certificates of bad husbandry which are rarely used. One of the reasons that landlords are reluctant to rely on bad husbandry to remove tenants is the negative political repercussions. This worry may now be negated if there is a “quid pro quo” provision on the statute books for tenants. Landlords may now feel more empowered to make use of bad husbandry certificates.
- Power of Ministers to intervene - The recommendation is not fully developed and is stated to be for further consideration, but we would wish to set out our objection in principle to a policy of this nature. We find it difficult to see how a member state in the EU can legitimately justify using its powers to favour one section of society (“tenant farming community”) over and against the rights of another (“landowners”) and how that can be reconciled with the requirements of the European Convention on Human Rights which, under Article 14 ECHR, outlaws discrimination in the securing and enjoyment of Convention rights such as A1P1 “on any ground such as property, birth or other status”. Owners of land are potentially a section of society who may seek the protections of Article 14 ECHR against discriminatory treatment. The Scottish courts have already passed comment that as a minority group landlords are as much entitled to the protection of the Convention rights as anyone else.
- Staged Assignment – we are supportive of mechanisms to allow young or new entrants to get a foot on the farming ladder, but partial assignment is complex and messy and we would urge government to take detailed advice from practitioners before implementing this proposal.
- Removing fiscal disincentives to let land
  - **Reliefs:** careful consideration would need to be given to the removal of current reliefs and exemptions for farming simply to penalise in-hand farming by estates with a view to encouraging letting. Removal of reliefs/exemptions would also impact owner-occupied farms and the agricultural sector in general. The predilection to view ‘in-hand’ farming as somehow negative is a great concern. Landowners that let out land but also farm themselves are simply farmers themselves. Putting those landowners in a separate group and treating them differently is nonsensical. Some of these landowners with so-called ‘in-hand’ farming operations are very substantial farmers in their own right and make an important contribution to Scottish agriculture. We fail to understand why ‘in hand’ farming business are referred to or treated any differently to any large farming enterprise.
  - **The treatment of rental income as trading** however would be welcome if it can be achieved. Efficient, successful farming businesses should be encouraged.
- Limited Partnerships – Scottish Land & Estates is supportive of the Group’s recommendation that encouragement should be given to the industry bodies to develop a new Joint Initiative on Limited Partnerships. However we would wish to clarify that LPs were fixed term arrangements in the same way as LDTs or SLDTs were intended to be. General partners are in an even stronger position than an LDT tenant (or any commercial tenant) who has come to the end of the contractual period. Even limited partnerships which are continuing year to year, still have effectively a four year period under the double notice procedure before the arrangements can be brought to an end. We would however, strongly encourage parties to discuss extension of the duration of the original partnership or convert the arrangement to a modern LDT.

- Big is bad, small is beautiful – Although not explicit, an implicit message from the report appears to be that big is bad. Several of the recommendations appear to want to stop farmers getting bigger and to create artificial circumstances whereby small farms are retained. This goes against the economic reality that has existed for decades in which farms have been growing in size in efforts to retain viability and efficiency. The presumption in favour of small farms and holding back economic forces could actually be to the detriment of the farming industry in the long-term.

## **8. Conclusion**

We commend the Review Group on carrying out a thorough and in-depth review of agricultural holdings legislation, and for doing so in an open and inclusive manner. The set of recommendations published provides a starting point but there is still a lot of work to be done if we are to achieve the stated aims of the Review Group. Scottish Land & Estates is fully committed to working with the Scottish Government and other industry bodies to develop these recommendations into a balanced, workable and coherent set of policies for legislative change. We would urge the Government not to rush this work, nor to cherry pick those policies which are seen to be “easy targets”. Also the impact of retrospective legislation on the sector should not be underestimated.

The sector needs any further legislative change to be progressed with care and for a period of stability to follow.