

LAND REFORM (SCOTLAND) BILL

POLICY MEMORANDUM

INTRODUCTION

1. This document relates to the Land Reform (Scotland) Bill introduced in the Scottish Parliament on 22 June 2015. It has been prepared by the Scottish Government to satisfy Rule 9.3.3 of the Parliament's Standing Orders. The contents are entirely the responsibility of the Scottish Government and have not been endorsed by the Parliament. Explanatory Notes and other accompanying documents are published separately as SP Bill 76–EN.

POLICY OBJECTIVES OF THE BILL

2. The core purpose of the Scottish Government is to focus government and public services on creating a more successful country, with opportunities for all of Scotland to flourish, through increasing sustainable economic growth. This will only be achieved by making the most of all the resources available in Scotland.

3. Land, both rural and urban, is one of Scotland's most fundamental and finite assets and is intimately linked to ideas of well-being, social justice, opportunity and identity and is key to both the success and development of its people and communities alike.

4. Scotland's land, and many of those that own and manage land in Scotland, are already delivering significant benefits. The Scottish Government's vision is for a stronger relationship between the people of Scotland and the land of Scotland, where ownership and use of the land delivers greater public benefits through a democratically accountable and transparent system of land rights.

5. The Scottish Government believes that on-going, ambitious land reform will help to increase the contribution of Scotland's land to sustainable economic growth, which is at the heart of the Scottish Government's purpose. Land reform also has the potential to empower greater numbers of people and, over time, to change patterns of ownership in Scotland to ensure a greater diversity of ownership, greater diversity of investment and greater sustainable development.

6. Scotland has a long and varied history of land reform. These reforms have reflected the public interest of the time, and have shaped changes in how Scotland's land is owned, used and managed.

7. In 2015, post Scotland's referendum on independence, there is a heightened understanding that, while historic reforms have been beneficial, Scotland as a modern nation needs the ability to frame the governance of its land for the 21st century, and to ensure the on-going and progressive consideration of how land and rights over land are owned, used and managed.

8. This Bill is the next step in this Government's programme of ambitious land reform and contains provisions that aim to:

- ensure the development of an effective system of land governance and on-going commitment to land reform in Scotland;
- address barriers to furthering sustainable development in relation to land and improve the transparency and accountability of land ownership; and
- demonstrate commitment to effectively manage land and rights in land for the common good, through modernising and improving specific aspects of land ownership and rights over land.

BACKGROUND

9. Since devolution, land reform has been central to achieving a number of outcomes around fairness, equality, and social justice for the people of Scotland. The Land Reform Bill is a key component of the Programme for Government for 2014-2015 and the Scottish Government's stated desire to pass power to our communities and people.

History of land reform in Scotland

10. The system and structure of land ownership and rights in land, is a defining factor in the relationship between Scotland's people and communities and Scotland's land. It can facilitate and promote development, but it can also act as a barrier.

11. Land reform has been the subject of discussion in Scotland for generations. A broad-ranging review by the Land Reform Policy Group, carried out in the late 1990s and chaired by Lord Sewel, examined the policies and other measures needed to remove land-based barriers to the sustainable development of Scottish rural communities.

12. Two main outcomes for land reform were identified. First, to achieve more diverse ownership and a reduction in the concentration of ownership and management arrangements, at local level, to promote sustainable development.¹ Second, to ensure increased community involvement in the way that land was owned and used so that local people were not excluded from decisions which affect them as individuals and as communities.

13. The Group's Report *A Vision for the Future*² was published in 1999 and set out a series of aspirations for change, including:

¹ Diversity was taken to mean greater diversity in private, public, partnership, community and third sector ownership.

² Land Reform Policy Group, *A Vision for the Future*, Scottish Executive; Edinburgh, 1999.

- more local involvement, greater commitment and accountability by private landowners;
- more scope for community ownership and management of local land where sustainable;
- more scope for releasing land for housing and local development where sustainable and secures the retention and, if possible, the expansion of fragile rural communities;
- about the same level of ownership by public bodies, but with more local involvement and accountability and more employment of local people;
- more local involvement and accountability and more employment of local people by non-Governmental organisations who own land in rural Scotland;
- outdated and unfair feudal arrangements swept away;
- conditionality of land ownership where appropriate to reflect modern circumstances;
- a more constructive approach to problem cases, including those relating to the foreshore and the seabed;
- more definitive and broad-brush information readily available about land ownership;
- more information readily available about beneficial owners and about public support relating to land;
- better integration of policy for rural land use at national and local level;
- more public access on a responsible basis;
- better arrangements for agricultural tenancies; and
- more sustainable crofting communities.

14. Since the report, there have been various and wide-ranging legislative and other measures put in place to deliver land reform across the Parliamentary terms to date. Many of these measures required the Scottish Parliament to pass new legislation such as the:

- Abolition of Feudal Tenure etc. (Scotland) Act 2000
- Land Reform (Scotland) Act 2003
- Agricultural Holdings (Scotland) Act 2003
- Title Conditions (Scotland) Act 2003
- Tenements (Scotland) Act 2004
- Nature Conservation (Scotland) Act 2004
- Crofting Reform etc. (Scotland) Act 2007
- Land Registration etc. (Scotland) Act 2012
- Long Leases (Scotland) Act 2012
- High Hedges (Scotland) Act 2013

15. These Acts of the Scottish Parliament have improved the laws governing the rights of ownership and other rights in land in Scotland such as: the abolition of feudal land tenure; the introduction of community rights to buy land; and the modernisation of land registration.

The Land Reform Review Group

16. The recent independent report of the Land Reform Review Group (“the LRRG”), chaired by Alison Elliot, *The Land of Scotland and the Common Good*³ (the LRRG Report) extended to a 240 page report with 62 recommendations that has placed land reform in its broadest context yet.

17. The LRRG was announced on 24 July 2012 and started its enquiry in September 2012. A call for evidence was issued on 4 October 2012. By 18 January 2013, 484 submissions had been received. The LRRG also undertook a programme of meetings and visits to gather evidence and views of people and communities across Scotland.

18. A thorough analysis of responses was carried out and considered by the LRRG. The LRRG also called for further evidence and met with experts as they developed their recommendations.

19. The final report, published in May 2014, clearly identified the land reform debate in a modern context, relevant to the whole of Scotland, urban and rural, with a clear focus on the public interest and the common good.

20. The LRRG Report moved considerations of land reform – in the past often focused on addressing concerns over historic injustices – to a debate firmly focused on looking forward at how best to ensure the public interest in the governance of land. The Report looks at how the “common good” can best be served through the exercise of a range of policies that impact on access, use, ownership and rights in land. In this context, land reform can only be delivered through a series of careful changes across a whole range of policy areas.

21. The LRRG Report discusses the pattern of ownership of land throughout Scotland. In doing so, it refers to the claim that currently 432 private land owners own 50% of the private rural land in Scotland. The Report argues that the existing balance of policies is not meeting demands for a fairer society and that patterns of land ownership should change. Overall, the Report highlights that land reform needs to be an on-going process, continuously updating Scotland’s system of land ownership and rights in land to ensure that Scotland’s land delivers for the people of Scotland.

The Scottish Government’s response to the report of the Land Reform Review Group

22. The Scottish Government has welcomed the overall message and direction of the LRRG’s report, *The Land of Scotland and the Common Good*, published in May this year. As part of the Scottish Government’s on-going commitment to land reform and as part of their response to the LRRG report, the Scottish Government are taking forward commitments to:

³ <http://www.scotland.gov.uk/Publications/2014/05/2852>

- **improve the transparency of land ownership in Scotland** by working towards a target to complete the Land Register for the whole of Scotland by 2024, with registration of all public sector land by 2019;
- **promote and support community ownership of land** by extending the Scottish Land Fund over the 2016-2020 spending period and developing a strategy to achieve the Scottish Government's target to have 1 million acres in community ownership by 2020, setting the blueprint for a dedicated resource for community ownership within the Scottish Government in line with recommendations for a Community Land Agency;
- carry out further consultation on the LRRG's recommendations on **land assembly housing and regeneration** over summer 2015;
- consult on the Scottish Law Commission's proposals for **changes to succession law** in Scotland in autumn 2015, including the removal of the distinction between moveable and heritable assets;
- consider how best to take forward suggested changes to **crofting legislation**, made to the Scottish Government, following further consultation with crofting stakeholders on the evidence given to the Scottish Parliament's Rural Affairs and Climate Change Committee after the passage of the Crofting Amendment (Scotland) Bill 2013; and
- reform of the wild fisheries management system, as set out in our response to the independent review **of wild fisheries**, of 15 May 2015, which sets out the fundamental principles upon which a new system will be built. A further consultation on a draft Wild Fisheries Bill will take place before the end of this parliamentary session.

CONSULTATION

23. As part of the on-going programme of land reform and in response to the recommendations of the LRRG, the Scottish Government also committed in the Programme for Government 2014-2015 to introduce a Land Reform Bill within the 2011-2015 Parliamentary term, to take forward the next steps in land reform and ensure Scotland's land reform debate focusses on how Scotland's land can be best managed in the public interest to ensure it is of benefit to all of the people of Scotland.

24. On 02 December 2014 the Scottish Government published a consultation paper *The Future of Land Reform in Scotland*⁴ ("the Consultation") seeking views on a proposed Land Rights and Responsibilities Policy Statement and a wide range of other proposed legislative measures to further land reform in Scotland. The Consultation closed on 10 February, although agreed late responses were received up until 25 February.

25. The Consultation received a total of 1269 responses, including 214 responses from organisations, 951 responses from individual members of the public and a further 104 campaign responses.

⁴ <http://www.gov.scot/Publications/2014/12/9659>

26. All non-confidential responses were published on the Scottish Government website on 2 April 2015⁵ and an independent external contractor, The Research Shop, was commissioned to analyse and report on the responses. A summary and full analysis of the consultation responses were published on the research pages of the Scottish Government website on 15 May 2015⁶.

27. The analysis indicated a high level of public interest and support for land reform and how land works for the people of Scotland. Most proposals received over 70 per cent support with respondents giving a wide range of helpful detail on their reasoning for support or opposition.

28. The Consultation asked for views on the merits of having a land rights and responsibilities statement as well as on a range of broad proposals for inclusion in a land reform Bill. Following consideration of the responses to the Consultation, the Scottish Government is proposing the following steps for each of the proposals highlighted in the consultation paper:

- 1. Land Rights and Responsibilities Policy Statement:** following significant support for the proposal that the Scottish Government produce a statement on “land rights and responsibilities”, and to ensure there is a more proactive approach to land governance in Scotland, this Bill includes provisions to place a legal requirement on the Scottish Government to publish a statement on land rights and responsibilities and to update that statement every 5 years. More detail can be found in Part 1.
- 2. A Scottish Land Reform Commission:** due to significant level of support from respondents to the Consultation and the importance of the Agricultural Holdings Legislation Review Group’s recommendations to help improve landlord and tenant relationships, this Bill contains provision for the establishment of a Scottish Land Commission that will support the work of five Land Commissioners and a Tenant Farming Commissioner. More detail can be found in Part 2.
- 3. Limiting the legal entities that can own land in Scotland & Information on land, its value and ownership:** The LRRG recommendation of limiting EU ownership to EU based legal entities was also consulted upon, as a way of improving transparency of ownership of land in Scotland. While there was widespread support for the intention of this recommendation, that is to increase transparency of land ownership, the Scottish Government now considers that this measure would not achieve the policy objective as it would still allow the use of complex corporate structures and trusts to obscure the way land is owned and controlled in Scotland. Efforts are being made in a EU context, through the 4th Anti Money Laundering Directive, and in the UK, to improve the transparency of companies and trusts for other purposes, including through new requirements in the recent Small Business, Enterprise and Employment Act 2015 for registers of persons with significant control over certain UK companies. However, it is not certain the degree of transparency this will deliver for the purposes transparency of land ownership in Scotland. After careful consideration, the Scottish Government’s intention is to bring forward regulation-making powers to require the disclosure of certain information on a proprietor or tenant of land in Scotland, on a case by case basis where the lack of the information can be shown to be having an adverse effect. Due to the

⁵ The Scottish Government – Land Reform Consultation published responses - <http://www.gov.scot/Topics/Environment/land-reform/consultation>

⁶ The Scottish Government - <http://www.gov.scot/Publications/2015/05/5787>

support for better information on the ownership of land in Scotland shown by respondents to the Consultation, the Scottish Ministers also propose to bring forward regulation-making powers to allow the Keeper of the Registers of Scotland to request disclosure of certain types of information relating to proprietors and tenants of land, including information on individuals with a controlling interest. More detail can be found in Part 3.

- 4. Powers for Ministers to intervene where the scale or decisions of landowners are acting as a barrier to the sustainable development of communities:** Following consideration of the responses to the consultation and further engagement with stakeholders, in order to help achieve both the aims of overcoming barriers to sustainable development of land and encouraging greater engagement between landowners and communities. This Bill proposes measures to place a duty on Scottish Ministers to publish guidance directed at owners and tenants of land about engaging with communities on decisions relating to land that may affect those communities; and a power for Scottish Ministers to consent to the transfer of land to a community body or a nominated person, where the transfer is likely to deliver significant benefit to a community, prevent significant harm to a community and further sustainable development. More detail can be found in Part 5.
- 5. A more proactive role for public sector land management:** While the majority of responses supported public sector bodies, such as Forestry Commission Scotland, being able to engage in a wider range of management activities in order to promote a more integrated range of social, economic and environmental outcomes, the context in Scotland has changed since the consultation was published and the intention is not to bring forward any specific measures in this Bill but to review the role of the Forestry Commission in Scotland, in the context both of the management of public land in Scotland and of the discussions about the devolution of further powers to Scotland.
- 6. Duty of community engagement on charitable trustees when taking decisions on land management:** As a result of the consultation process the Scottish Government proposes taking this forward in the following way. As part of the proposals set out above to help achieve both the aims of overcoming barriers to sustainable development of land and encouraging greater engagement between landowners and communities, a duty will be placed on Scottish Ministers to publish guidance directed at owners and tenants of land on engaging with communities about decisions that may affect those communities. This guidance will apply to all land owners, but it will also provide guidance that the Office of the Scottish Charities Regulator (“OSCR”), can take into consideration in relation to charities that own land, when carrying out their regulatory and oversight functions under the 2005 Act. More detail can be found in Part 4.
- 7. Removal of the exemption from business rates for shooting and deerstalking:** 72% of respondents to the Consultation supported taking this proposal forward and detail on how this is being taken forward is set out in Part 6.
- 8. Common Good:** Due to the further changes being made on common good in the Community Empowerment (Scotland) Bill, and a significant body of opinion in the responses to the Consultation that there be further consideration of the future of common good in Scotland, the Scottish Government have decided to focus on addressing the issue

identified in the Portobello Park case by applying the same processes to proposed change of use of inalienable common good land as currently apply for proposed disposals. This is in line with the view expressed by most responses to the Consultation that the current process for disposals should be retained. Part 7 sets out how this is being taken forward.

9. Agricultural Holdings: The 18 month long Agricultural Holdings Legislation Review (“the AHLRG”), which included extensive stakeholder consultation, produced a set of recommendations for reforming agricultural holdings legislation, published in January 2015⁷. The Consultation focused on whether these should be brought forward in the Land Reform Bill. While for some there was a preference for this to be brought forward in a separate bill, the overriding desire was for the changes to be brought forward quickly to reduce any uncertainty within the tenanted sector. The intention is to bring as many elements of the package of recommendations forward as possible, however, it is not possible to include all of the AHLRG’s recommendations requiring legislative change at this time. Further detail is set out in Part 10.

10. Wild Deer: Following consideration of the responses to the Consultation, the Scottish Government intends to take forward a number of measures highlighted in the consultation paper as interim measures to be used following the intended review of deer management at the end of 2016, prior to the development of the new statutory scheme. Part 8 sets out how the measures are being taken forward.

11. Public Access: clarifying core paths planning process: There was broad support for the changes proposed in the Consultation. Part 9 sets out how these are being taken forward.

29. Further detail on the responses to individual sections of the consultation is provided, where relevant, under each Part of the Bill below.

LAND GOVERNANCE (PARTS 1 AND 2 OF THE BILL)

Introduction

30. Both the 1999 Land Reform Policy Group and the recent Land Reform Review Group were clear that land reform is not an event but a process. The Scottish Government is committed to land reform in the long term. Land reform is a complex matter and it would be impossible for one Bill to provide all the solutions to ensure that Scotland’s land is owned and managed for the benefit for all in Scotland.

31. In responses to the Consultation a recurring theme was the desire for land reform to be understood and seen as a continuing process. This was evident in the responses received in relation to both the proposals for a Scottish Land Reform Commission and the Land Rights and Responsibilities Statement.

32. Parts 1 and 2 of the Bill aim to set up a framework and process that ensure on-going consideration of the balance of rights and responsibilities over land in Scotland, which will in turn ensure a continuing and effective modern model of land governance.

⁷ <http://www.gov.scot/Publications/2015/01/5605>

Part 1: Land rights and responsibilities statement

Introduction

33. Scotland, like all countries, is perpetually reforming public policies relating to or impacting upon land, outwith specific land reform bills. One of the most significant examples of land reform, which would not normally be viewed through a land reform lens, was the 1948 Town and Country Planning (Scotland) Act. The 1948 Act took the right to develop land, which up until that point in time a private right, and put it under a system of public governance to create the planning system.

34. At its heart, the planning system aims to ensure that development happens in a way that benefits society as a whole. In essence all land reform measures follow a similar pattern, of ensuring that public interest in relation to rights and responsibilities around land are balanced with private interests. Most land reform measures are less fundamental, but no less important for the people they affect. Some more recent examples include:

- Title Conditions (Scotland) Act 2003
- Land Registration etc. (Scotland) Act 2012
- Long Leases (Scotland) Act 2012.
- High Hedges (Scotland) Act 2013

35. In recent years there has been growing international understanding of the importance of all nations to exhibit good land governance. Every country's circumstances are different, but there are common challenges. Scotland's desire is to lead by example to address its complex and often emotive history. In this, the Scottish Government's desire is to move from a reactive place of addressing historic issues to a proactive position where governance of land is consistent with the aspirations and outcomes desired in Scotland.

Consultation

36. The question on whether the Scottish Government should have a Land Rights and Responsibilities Statement ("LRRS") attracted the highest volume of response of all questions in the consultation. 1018 respondents answered this question, with 87% agreeing that the Scottish Government should have a LRRS.

37. The two main concerns over the proposals to have such a statement, rather than the contents of any such statement were, from 31 of 1018 respondents, was that there is no evidence that land reform is required and therefore there is no need for such a statement. There was some concern that such a statement represented too much control by the Scottish Government and could be perceived as centralisation of powers, creating potential for future misuse, and unwanted interference with landowners' rights to utilise their land as they deem most appropriate for both environmental and business interests.

38. A draft of a potential Land Rights and Responsibilities Statement was provided in the *Consultation* paper and can be found here:

<http://www.gov.scot/Resource/0046/00464887.pdf>

39. Respondents from a range of different respondent categories expressed their general support for the draft LRRS as a whole. The most common statements were that the proposal constituted a “good start” and “a step in the right direction”, with many respondents considering this to be long overdue. A recurring theme across a few sectors was that the draft provided a robust framework upon which new policy could be constructed. The draft was viewed by some supporters as future-focused and comprehensive, with the potential to reduce inequalities and promote transparency. 17 respondents provided their view that the draft was not ambitious enough.

40. The main concerns over the draft were that phrases and words within the proposed draft were not sufficiently clearly defined within the context of the proposal leaving them open to various interpretations and that the proposed draft failed to recognise the contribution currently being made by landowners.

Bill proposals

41. The Bill, therefore, proposes that the Scottish Government should be required to publish a LRRS and to renew it every 5 year.

42. This will mean the Scottish Government will, through the LRRS, set its objectives for land reform in Scotland, which will inform future land reform in a consistent and holistic manner.

43. The Scottish Ministers’ intention would be to consult further on a draft LRRS, ahead of publishing the final statement and laying it before Parliament as required by section 1(3) of the Bill. Similar consultation would be undertaken before publishing and laying any revised LRRS in future.

44. Not only will the LRRS provide a key reference point for the Scottish Ministers, it will also provide reference for the planned Scottish Land Commission, public agencies and the Scottish Parliament and provide communities and the private sector with a clearer understanding of the Scottish Government’s ambitions and aims for the future of land reform in Scotland.

Alternative approaches

45. Due to the strong message from the Land Reform Review Group that land reform needs to be an on-going process, and the significant support in responses to the Consultation on the proposal for a land rights and responsibilities policy statement, the Scottish Ministers considered there would be no benefits to not proceeding with proposals for such a statement. Although alternatives that do not require legislative provision were also considered, the Scottish Ministers have proposed a statutory requirement to publish a land rights and responsibilities statement, and to review the statement every 5 years, to ensure that this government and future governments are required to clearly set out their objectives for land reform. As the Land Commissioners to be appointed under the provisions in Part 2 will be required to consider the land rights and

responsibilities statement in the exercise of their functions, it was also considered more appropriate to have a statutory duty to publish and review the statement.

Part 2: The Scottish Land Commission

Introduction

46. As noted above, in the last 15 years there have been 2 significant reviews of land reform. Both these reviews pointed to the fact that land reform was not an event but a process. The final recommendation in the LRRG's report states:

“The Review Group considers that there is a need for a single body with responsibility for understanding and monitoring the system governing the ownership and management of Scotland's land, and recommending changes in the public interest. The Group recommends that the Scottish Government should establish a Scottish Land and Property Commission.”

47. The Scottish Government takes these recommendations on board and, with the backdrop of the statement on land rights and responsibilities, believes that the establishment of a Scottish Land Commission (“the Land Commission”) will provide a valuable level of oversight to ensure Scotland continues to make progress to address current and emergent issues of land reform.

Consultation

48. In total 959 respondents (82% of all respondents) addressed the question in the Consultation on the proposal for a Scottish land reform commission, with the majority (79%) agreeing that a such a body **would help ensure Scotland continues to make progress on land reform and has the ability to respond to emergent issues**. 225 respondents across a wide range of sectors envisaged such a commission to be a vehicle to sustaining the pace of reform, providing a focus and profile for land related issues and ensuring progress and action continue to be driven as a process over the longer term, irrespective of changes in government. Comments included:

“It would ensure that land reform is not subject to the whims of political parties, but instead becomes an on-going, comprehensive and enduring concern that is firmly located at the heart of the work of policy development in the Scottish Government” (Development Trusts Association Scotland).

“It would signal that land reform was to be an on-going, long-term process, not limited to the current bill” (Reforestation Scotland).

“Provide a higher profile and stronger government commitment to issues associated with land reform” (South Lanarkshire Council).

“One advantage of having such a Commission would be that the stated aim of making land reform a process rather than an event could be realised” (Comhairle nan Eilean Siar).

49. A number of respondents outlined potential risks rather than clear disadvantages, including concerns over potential high establishment and running costs. Some respondents did, however, comment that additional costs are inevitable and may not necessarily be a significant disadvantage. Some concern was also expressed over ensuring the membership of any new body would be seen to represent all parties and interests fairly.

50. On the remit of a Scottish land reform commission many respondents expressed their agreement with the general suggestions outlined in the consultation paper that the remit should include; promoting land reform; collecting evidence and carrying out studies; and monitoring the impact and effect of law, policies and practices on land ownership in Scotland. The broad theme of openness and accessibility continued in relation to remit, with calls made for transparency in working, for example publishing all meeting documents and minutes. There was much support for the remit of such a commission to encompass land reform promotion and oversight, including issues of land ownership and use, and related environmental, social and economic topics.

51. In answer to the question on the structure, type or remit of any Scottish land reform commission a dominant theme that emerged was that it should be independent in thinking. Respondents emphasised that any commission should be seen to be at “arm’s-length” from Government and also separate from the influence of vested interests. One recurring suggestion was for membership to be time limited, so participants remained on any commission for a set length of time, before being replaced. This was seen as a means to refresh any such commission with new ideas and energy and was also a way of increasing accountability and openness.

Bill proposals

Chapter 1: Sections 2 to 19 – The Commission

52. This Bill, contains provision for a Scottish Land Commission (“the Land Commission”), consisting of 5 Land Commissioners (“Land Commissioners”), and a Tenant Farming Commissioner (“TFC”) who will have distinct functions. The functions of the Land Commission itself will be to provide the accommodation, staff and services that will need to be in place to support the functions of the Land Commissioners and the TFC.

Chapter 2: Sections 20 and 21 – The Land Commissioners

53. The Land Commissioners will be appointed through an open and fair public appointments process for a period of up to 5 years. In appointing Land Commissioners, Scottish Ministers are, under section 9(1), to have regard to the desirability of the Commission having expertise or experience in land reform, law, finance, economic issues, planning and development and environmental issues. It is, therefore, intended the individuals appointed will have experience and expertise in a wide range of areas relating to land governance. Someone who is or was a Commissioner can also be reappointed. Their specific functions will be:

- to review the impact and effectiveness of any law or policy in relation to land;
- to recommend changes to law or policy;
- to gather evidence;
- to conduct research;

- to prepare reports and
- to provide information and guidance.

54. In carrying out these functions, the Land Commissioners will be required to have regard to the published LRRS that Scottish Ministers will be required to prepare under section 1 of the Bill, as well as have regard to the strategic plan for the Land Commission and the Land Commissioners' programme of work.

55. The Scottish Government considers that the Land Commissioners should have the discretion to set their own programme of work in accordance with emerging priorities in relation to land reform. Scottish Ministers will be able to refer matters to the Land Commissioners, and will have the opportunity to comment on the proposed programme of work, but the Land Commissioners will have sufficient independence from Scottish Ministers to determine their own programme of work.

56. The Scottish Parliament will have the opportunity to scrutinise the strategic plan for the Land Commission. The Parliament will also have the opportunity to scrutinise the appointment of the Land Commissioners.

Chapter 3: Sections 22 to 34 – The Tenant Farming Commissioner

57. The establishment of a Tenant Farming Commissioner is being taken forward as part of the Scottish Government's response to recommendations 1 and 2 of the final report of the Agricultural Holdings Legislation Review Group (AHLRG)⁸:

The Scottish Government should facilitate, support and strongly encourage the efforts of industry leaders to improve landlord/tenant relationships through effective self-regulation and other industry led initiatives, Recommendation 1 of the AHLRG

A new office of Tenant Farming Commissioner should be established to promote and secure effective landlord/tenant relationships and behaviours across the agricultural tenanted sector underpinned by robust codes of practice, Recommendation 2 of the AHLRG

58. Throughout AHLRG's evidence-gathering, poor landlord and tenant farmer relationships emerged as a recurrent issue. While there were many examples of good relationships between parties, some extreme examples were presented demonstrating unhealthy working relationships. Good relationships are essential for a vibrant tenanted sector and to ensure that the most effective use is made of agricultural land. In circumstances where relationships have broken down this is not only detrimental to the individuals but also to Scottish agriculture.

"A successful tenant farming sector has to be rooted in strong and constructive relationships between tenants and landlords", Final Report of the AHLRG⁹

⁸ Review of Agricultural Holdings Legislation Final Report, January 2015; <http://www.gov.scot/Publications/2015/01/5605>

59. There are various forms of dispute resolution available to landlords and tenants to resolve disputes over rights, as set out in Annex C of the AHLRG's Final Report. However, while these are dispute resolution options such as mediation, arbitration and while the Scottish Land Court has wide remit to settle legal disputes in relation to agricultural tenancies, it appears these are rarely used, largely due to concerns of landlords and tenants over the potential costs involved and the time it takes to reach a judgement.

60. There have been continuous calls from landlords, tenant farmers, and stakeholders organisations for the creation of a neutral body to help resolve disagreements within the sector. In recognition of this, the Bill introduces new provisions for the establishment of the Tenant Farming Commissioner ("the TFC") within the Land Commission. The aim of the TFC is to improve relationships between landlords and tenant farmers.

61. The TFC will work with the main stakeholder organisations within the industry and be responsible for establishing codes of practice providing practical guidance to landlords and tenants of agricultural holdings in conjunction with key stakeholders, promoting the use of those codes and keeping the codes under regular review. The Bill also includes a requirement for the TFC to lay the codes before the Parliament.

62. Tenant farmers and landlords will be able to refer alleged breaches of the codes to the TFC who will inquire into the matter and publish a report on whether the TFC considers there to have been a breach of the codes of practice. As part of the inquiry, the TFC will have the power to request information from relevant persons, and to impose a fine if that information is not provided. The TFC will also have the power to refer any questions of law to the Scottish Land Court for an opinion.

63. A report published by the TFC is admissible as evidence in any proceedings before an arbitrator or the Land Court under the Agricultural Holdings Acts, and if the report appears to the Land Court to be relevant to any question arising in proceedings before the Land Court, the Land Court must take that report into account in reaching its decision.

Alternative approaches

Alternative approaches to setting up the Scottish Land Commission

64. There has been a long history of land reform in Scotland but this has in some respects been carried out in a piecemeal fashion over time. From the measures and reviews that have been undertaken over the years, it is evident that land reform is an on-going process and there is a strong need for there to be a continual examination and overview of the issue.

65. Currently, the Scottish Government seeks to minimise the establishment of new public bodies as far as possible. This is to ensure efficiencies and reduce costs overall. The independent analysis of the consultation highlights that the most common drawback identified was the "anticipated high cost" of establishing and operating any land reform commission, and the Scottish Government is mindful of the need to minimise the running costs of the proposed Land Commission.

⁹ Para 12, Exec Summary

66. Consideration was given to not establishing a commission on a statutory footing, as it would be possible to set up a comprehensive programme of work in relation to land reform within the Scottish Government, and to appoint land commissioners on a non-statutory basis. An alternative option would not be to set up a commission but to continue with the current approach, that is carry out reviews on land reforms on a cyclical basis, such as the Sewel review and the LRRG review.

67. However, the Scottish Government's view is that there is clear understanding that land reform is an on-going process and there needs to be continual development of policies and monitoring of land ownership patterns and land use to address this issue. The responses to the consultation indicate overwhelming support for the establishment of a form of commission to do further work in relation to land reform, and the independence and impartiality of such a body's remit was highlighted as one of the key advantages.

68. Not to set up a Land Commission at this time would represent a missed opportunity, and the Scottish Government wishes to ensure that land reform remains a priority not only for the current administration but for future administrations too.

Alternative approaches to the functions of the Land Commissioners

69. Consideration was given to providing the Land Commissioners with a specific function to promote land reform. However, on balance it was considered that it is imperative that the Land Commissioners are not charged with the promotion of land reform as such, but that their function is to be impartial in reviewing existing law and policy in relation to land and that their work takes an evidenced based approach.

70. It is anticipated that the recommendations of the Land Commission will seek to ensure that the underlying principles in the land rights and responsibilities statement are recognised in Scotland, and that future land reform measures are in the public interest, and are balanced and proportionate.

Alternative approaches on the functions of the Tenant Farming Commissioner

71. There is strong support from stakeholders for the TFC to "have some teeth" and be able to impose substantial and proportionate penalties as a measure of last resort. However, the role of the TFC focuses on adherence to the code of practice, primarily through consideration of the processes and practices followed, rather than the consideration of parties' rights under the tenancy and other legal issues. Although the Scottish Government accepts that of course there may at times be overlap, it is envisaged that any dispute involving legal issues will be referred by the parties to the Land Court for resolution.

72. However, as part of its remit, the TFC will have the ability to issue sanctions to either party for non-compliance with the investigatory process.

Alternative approaches considered for structure of the Scottish Land Commission

73. The Scottish Government considers that it is necessary to establish the Land Commission to ensure that land reform remains a priority for the Scottish Government of the day. However,

within the current public finances, and the current public bodies framework, it is vital to ensure that the Land Commission is as cost effective as possible and that there is adequate governance and oversight of the body to ensure that public resources are used efficiently. The Scottish Government also recognises that it is important that the Land Commissioners and the TFC can fulfil their respective functions free from Ministerial influence.

74. In seeking to balance issues of cost, accountability and impartiality the Scottish Government considers the establishment of the Land Commission, incorporating the Land Commissioners and the TFC, as an NDPB as the best option and has considered, and discounted the following:

- i. Establishing a separate Scottish Land Commission and Office of the Tenant Farming Commissioner;
- ii. Establishing the Land Commission with the same mix of functions but on different footing, either as a Non-Ministerial Department of the Scottish Administration or as an Independent Commission directly accountable to the Scottish Parliament.

i. Establishing a separate Scottish Land Commission and Office of the Tenant Farming Commissioner.

75. Consideration was given to establishing two new public bodies, a Scottish land commission, and a separate tenant farming commissioner. However, this would be costly, and given that the current Scottish Government policy is to minimise the creation of public bodies the better approach is to constitute only one public body, so that efficiencies can be realised by having core staff who are flexible and can support the corporate and operational functions of the Land Commissioners and the TFC whilst minimising wasteful duplication of resource.

76. There are also likely to be a number of policy areas and issues that are of interest and relevance to both the Land Commissioners and the Tenant Farming Commissioner and the provisions in the Bill specifically provide for both to be able to seek and provide advice to each other, where this would be relevant in helping to carry out their respective functions.

ii. Establishing the Land Commission as a Non-Ministerial Department of the Scottish Administration or as an Independent Commission directly accountable to the Scottish Parliament.

77. The Scottish Government considers that the best approach is to establish the Land Commission as an executive Non-Departmental Public Body (NDPB). The Land Commission is accountable to Scottish Ministers, but the Scottish Parliament has the opportunity to scrutinise the appointment of the Land Commissioners, the programme of work, and will also be able to call Scottish Ministers to account for the implementation, or indeed non-implementation, of the recommendations of the Land Commissioners.

78. Establishing the body as a Non-Ministerial Department (NMD) of the Scottish administration would ensure that the body was directly accountable to Parliament, but the body would be staffed by civil servants and so would not be able to recruit any staff outwith the Scottish Administration at the present time. Constituting the body as an NDPB will allow for

recruitment of staff outwith the civil service, but will have the advantage of being able to have civil servants working for the Land Commission on secondment.

79. The other difference with an NMD would have been that the Chief Executive would have been directly accountable to Parliament, however, given that the Parliament will be free to call the Chief Executive, Commissioners and Scottish Ministers to give evidence on the work of the Land Commission, this was not considered necessary.

80. The Scottish Government has discounted establishing the Land Commission as an independent commission directly accountable to Parliament. Parliamentary commissioners are typically responsible for safeguarding the rights of individuals, monitoring and reporting on the handling of complaints about public bodies, providing an adjudicatory role in disputes and reporting on the activities and conduct of public boards and their members. None of these are akin to the functions of the Land Commission, so it is not considered appropriate to establish a Parliamentary commission.

Effects on equal opportunities, human rights, island communities, local government, sustainable development etc.

Equal opportunities

81. An Equality Impact Assessment (EQIA) for the Bill has been carried out and will be published shortly on the Scottish Government website.

82. The Scottish Ministers have concluded that the provisions in Part 1 and 2 are neither directly or indirectly discriminatory on the basis of age, disability, race, religion or belief, sex, sexual orientation or gender reassignment.

83. In taking forward their duty to publish a LRRS the Scottish Ministers will carry out further assessment on equalities impacts. Scottish Ministers hope that such a statement will provide a valuable tool in taking positive measures to tackle inequality in Scotland.

84. Specific provision has also been made in section 9(1)(b) of the Bill to ensure that when appointing members to the Land Commission, the Scottish Ministers must consider how best to encourage equal opportunities and in particular how best to observe the equal opportunity requirements.

Human rights

85. The Scottish Government is satisfied that the provisions in Parts 1 and 2 are compatible with the European Convention on Human Rights.

86. As part of the wider programme of land reform, and in taking forward the duty to publish a land rights and responsibilities statement under Part 1 of this Bill, Scottish Ministers are committed to giving effect to the terms of the International Covenant on Economic, Social and Cultural Rights. This Covenant requires appropriate steps to be taken towards achieving certain

rights to adequate standards of living including adequate food and adequate housing as well as certain rights to work.

Island communities

87. The provisions in Parts 1 and 2 will apply to all communities across Scotland, including island communities. No differential impact on island communities is anticipated.

88. Some responses to the consultation suggested that there can be specific difficulties faced by island communities on accessing land necessary for furthering sustainable development. In consulting upon a land rights and responsibilities statement, the Scottish Government will continue to consider the potential impacts and benefits of land reform on island communities. It is also hoped that in exercising their functions, the Land Commissioners, to be appointed under the provisions in Part 2, would also consider the potential impacts on island communities as part of their wider programme of work.

Local government

89. It is not anticipated that there will be any specific impacts on local government for Parts 1 and 2. The Scottish Ministers would seek to engage with local authorities on taking forward proposals under this Bill and in preparing any land rights and responsibilities statement under Part 1.

Sustainable development

90. In terms of environmental impact, a pre-screening report on the environmental impact of the Bill has been completed. This confirmed that the Bill will have minimal or no impact on the environment and, as such, is exempt for the purposes of section 7 of the Environmental Assessment (Scotland) Act 2005.

91. In setting up a process under Part 1 and 2 that seeks to ensure on-going consideration of the framework of rights and responsibilities over land in Scotland, Scottish Ministers' objective is for policies relating to the use, management, ownership and transfer of land to be designed to promote the sustainable development of Scotland's land and communities.

TRANSPARENCY OF LANDOWNERSHIP IN SCOTLAND (PART 3)

Introduction

92. Land is a valuable asset that is key to delivering a range of land-based economic and community activities that contribute to sustainable economic growth. The policy context in Scotland is demanding a shift in the governance of land, so that it is better aligned with our aspirations for a fairer, more successful Scotland.

93. Better information on control, interest and ownership of land in Scotland will be a key factor in designing and monitoring on-going policies relating to land, to ensure we get the most from our land and achieve the aims set out in the Programme for Government.

94. An explanation is provided below to explain why greater transparency of landownership contributes towards the three key themes of the current Programme for Government:

- Better information on ownership, control and interest over land will enable better engagement between those that own and control land and communities, will help communities have more influence over land related decisions affecting them, and provide communities with greater ability to promote their own sustainable development (*Passing Power to People and Communities*).
- A clear understanding of patterns of land ownership in Scotland, will enable a better understanding of issues of wealth inequality in relation to land and promote fair and equal access to land for those wishing to engage in land-based activities (*Building a Fairer Scotland and Tackling Inequality*).
- A better understanding of the influences on the use, ownership, transfer and control of land will help design policies aimed at getting the most from our land, to help improve economic outcomes by promoting more sustainable, land-related businesses and employment (*Creating More, Better Paid Jobs in a Strong, Sustainable Economy*).

Background

95. In Scotland there has been a long held tradition that information about the ownership of land should be in the public domain. This dates back to the founding of the General Register of Sasines in 1617, which is recognised as the world's first publicly accessible national property register. Since 1617 it has been possible to establish who the legal owners of land are by consulting the Register of Sasines, and, since 1981, the Land Register of Scotland. As a matter of public policy it is of fundamental importance to know who owns land, who has the power to make decisions on how the land is managed and who is benefitting from the land.

96. There are practical reasons for being able to easily establish who owns land and who is making decisions on how land is used, managed and transferred. To purchase or lease land you need to know who the owner is and who to contact. If there are issues with the land that are impacting on neighboring properties you need to establish who to contact in order to address these issues. In most cases the ownership of the land can be determined from consulting the Land Register or the General Register of Sasines.

97. The right of ownership in land can be held by what are termed natural persons (individuals) and non-natural persons (companies, statutory bodies etc.). When the owner is an individual it is clear who is the owner and who should be contacted, it will be the name of the person(s) entered in the proprietorship section of title sheet. It can be more difficult to establish who is making the decisions about the land when the legal right of ownership is held in the name of a company, or in some instances a trust.

98. Most company ownership structures are simple, but there are examples where ownership structures are far more complex, with examples where the shares in companies are owned by companies or trusts, that are sometimes registered off-shore. In these instances establishing if there is an individual that has a controlling interest in the company, and therefore most often in decisions relating to the land owned by the company, can be difficult, if not impossible. While

the legal ownership of land may be clear, there is evidence to suggest that the ultimate ownership of land is being deliberately obscured by using complex company structures.

99. Where land is owned by a trust, the right of ownership cannot be recorded or registered in the name of the trust, as it does not have the legal capacity that allows it to have a real right in land. Instead, the right in property will be registered (or recorded) in the name of individual trustees. Although the legal title is held by the trustees, depending on the trust purposes there may be another individual such as the truster or a beneficiary that may make decisions in regards to running of trust, and therefore have an element of control over the land the trust owns. The name of the truster and the beneficiary may not be known and would not be identifiable from examination of the Land Register (or Register of Sasines).

Consultation

100. The original recommendation to limit land ownership to legal entities registered in the EU was made by the LRRG. The LRRG started its enquiry in September 2012 and undertook a public consultation as the first phase of its work. The LRRG issued a call for evidence to which it received 484 submissions. The LRRG also undertook a programme of meetings and visits to gather views from a wide range of interest. The recommendations made by LRRG were influenced by this consultation.

101. The Consultation asked for views on this recommendation of LRRG, while recognising that further consideration was required to determine whether this was the best way to achieve the LRRG's aims of greater transparency and accountability, and that there were a number of legal issues relating to EU law and rights under the ECHR that required further consideration.

102. In relation to transparency and accountability the following question was asked: *Do you agree that restricting the type of legal entities that can, in future, take ownership or a long lease over land in Scotland would help improve the transparency and accountability of land ownership in Scotland?*

103. In total 944 respondents (81% of all respondents) addressed this question with the majority (79%) agreeing that restricting the type of legal entities, that can, in future, take ownership or a long lease over land in Scotland would help improve the transparency and accountability of land ownership in Scotland.

104. The Consultation also asked: *Do you agree that in future land should only be owned (or a long lease taken over land) by individuals or by a legal entity formed in accordance with the law of a Member State of the EU?* In total 827 respondents (71% of all respondents) addressed this question with the majority (82%) agreeing that in future land should only be owned (or a long lease taken over land) by individuals or by a legal entity formed in accordance with the law of a Member State of the EU.

105. The following additional question was asked: *What do you think the advantages or disadvantages of any restriction would be?* The main advantages that were identified by respondents were:

- transparency of ownership: knowing who owns what; owners becoming more responsible due to their identities being known; greater accountability;
- addressing tax avoidance: ensuring those receiving grants and incentives are paying appropriate tax; reducing loopholes which use foreign ownership of land as a vehicle for tax relief; and
- promotion of wider ownership of land in Scotland: reducing cost of land ownership; making more land available for purchase; increasing diversity of ownership.

106. The main disadvantages identified by respondents were:

- potential loss of inward investment: reduced GDP and restricted income generation or capital investment in a global market place. It could reduce flows of external funds into local economies;
- loopholes will be sought and exploited by those intent on owning land: the restriction will not be watertight; could result in reducing transparency rather than increasing it; and
- unfair: discourages a free market; possibly illegal.

107. The responses indicate that the clear public desire for greater transparency of landownership in Scotland, but that there were a range of issues requiring further consideration in order to decide on the best way to achieve this aim.

Bill proposals

Section 35: Right of access to information on persons in control of land

108. There is anecdotal evidence to suggest that there are examples where the decisions and actions of certain individuals, who are not named as the legal owners, are exerting considerable influence over land that results in practical difficulties for the owners of adjoining or related land, people trying to access the land (either through a right to roam or a legal right of access) or affecting the sustainable development of local communities.

109. Therefore, following detailed consideration of a range of issues, Scottish Ministers have, in this Bill, proposed taking a power to make regulations that will provide affected parties, e.g. individuals or groups, with the right to request information about individuals that have control of land but who are not the legal owners.

110. It is intended that the regulations will provide that an interested party can apply to obtain information about individuals that have a controlling interest, or are in some other way involved in the making decisions about the management of the land.

111. The key consideration will be that the interested party must have some justifiable reason for needing this information and that must be related to the land in the question. For example there may be environmental issues, such as the neglect of a river on the land that is resulting in flooding on adjoining land or a local community may be trying to engage with the land owner in order to lease or purchase land to meet a local development need.

Intended scope and content of the regulations

112. The regulations will set out the process for making an application to the request authority. The request authority will be defined in the regulations. For example the regulations may require an application to provide information about the legal owner or tenant that the person wants information about. In most cases identifying the legal owner will be possible from a search of the Land Register or the General Register of Sasines.

113. It is intended that the regulations will set out the tests that the interested parties must meet for their application to be accepted. If the request authority is not satisfied that the reasons provided meet the test, the application would be rejected.

114. It is intended that the regulations will set out what is meant by an individual having control of the land. This could mean for example an individual that has a significant shareholding in a company or the beneficiary of a trust. The regulations will also set out what is meant by a person affected by land. For example, if a right of access that the person has over land is being denied or the fences around a piece of land are not being maintained allowing stock to stray on to adjoining land the person owns.

115. When the application is accepted, it is anticipated that the request authority will contact the owner or tenant, using the details provided by the applicant, asking them to provide the name and contact details of any individuals to which the request relates. This will provide the interested party with the name and contact details of a person they can approach to have the issues affecting them addressed.

116. It is the intention for the regulations to provide that where there is a legitimate privacy reason then the owner or tenant does not have to supply this information, for example where the individual would be at risk of harm if their details were released.

117. It is intended that a person about whom information is to be disclosed would have the opportunity to set out reasons why the information should not be disclosed. If there is no individual with control of land the proprietor or tenant should notify the request authority accordingly.

118. The regulation making power would allow provision to be made for specifying a fee for processing an application requesting information. Any fee charged would be set on a cost recovery basis. The power also allows regulations to impose civil and criminal penalties for failure to comply with the regulations, for example failing to comply with a request for information without good reason.

119. It is not intended that a request could be made for information that is in the public domain or readily available to an applicant, such as names of the names of proprietors entered in the land register or the director of companies available through Companies House. This information should be obtained through the appropriate sources.

120. The regulations to be made under section 35 will make it possible for people to find out information about the individuals that are making decisions in relation to land, where this

information is needed to address particular issues. It may help identify where there are issues connected to the traceability and accountability of landownership in Scotland which may highlight that further measures may be required in the future.

Section 36: Power of the Keeper to request information relating to proprietors of land

121. It is recognised that the Land Register provides a useful resource for information about land and the persons that own land. To reflect this, the land register discloses some additional information other than the information that is required to establish who has a right in land, for example the register includes information about the consideration that was paid for a property.

122. Section 36 provides a power for the Scottish Ministers to make regulations enabling the Keeper to request additional information from proprietors and potential proprietors and enabling the Keeper to include this information in the Land Register. The power can be used to allow the Keeper to request information about the category of the land owner, for example, community bodies and whether the legal entity has charitable status.

123. The power will also enable the Scottish Ministers to make regulations enabling the Keeper to request further information about the individuals that have a controlling interest in the legal owners of land. It is recognised that where the proprietor is a company, trust, or similar entity there may be individual that may have a controlling interest in that body

Intended scope and content of regulations

124. In most cases, it is likely that the Keeper would request information to be provided by the applicant on the application form. Where information is provided then the regulations could set out that the Keeper would enter this information in the land register. The regulations can specify where this information should be entered, for example in the proprietorship section. Having this information will allow statistical analysis to be carried out that will allow better information on patterns of land ownership to be established, as well as allow individuals and communities to have a better understanding of patterns of landownership in their local areas.

125. It is likely that the regulations will allow the Keeper to request that an application include certain information about individuals having a controlling interest in the proprietor. The regulations could provide for this information to be entered on the title sheet. Consideration will be given to ensure that the regulations provide appropriate restrictions regarding disclosure of information about individuals.

Alternative approaches

126. The LRRG report raised the issue of the traceability and accountability of land owners. The report recommended; “that the Scottish Government should make it incompetent for any entity not registered in a member state of the European Union to register title to land in Land Register of Scotland, to improve traceability and accountability in the public interest”.

127. This proposal was consulted upon by the Scottish Government in the consultation on the future of land reform. The review group rationale for recommending this proposal was that

*“although it would not necessarily reveal the final beneficial owner of the EU entity, it would ensure the entity is governed by EU law and that there was named director legally responsible and accountable for the affairs of the company”.*¹⁰

128. The Scottish Government has considered this measure further and has formed the view that it would not have significantly increased the accountability and traceability of land owners in Scotland. This proposal would still have allowed trusts to own land. When land is held in trust the beneficiaries of the trust or a person that may have control of the trust may not be known. This policy may have encouraged more land to be held by trusts. This may have had the effect of reducing the accountability and traceability of land owners. It also would not have prevented the use of complex company structures, where companies are owned by companies, which results in land ownership being obscured. In these structures nominee directors are sometimes used which also hinders traceability and accountability.

129. The Scottish Government could also adopt the “do nothing” option. Many responses to the Consultation reflected a strongly held belief that greater transparency of land ownership is in the public interest and that there is a strong desire for it to be possible for those with control over decisions made on land use, management and transfer to be accountable for the decisions that are made, particularly when these impact on third parties. Therefore, the Scottish Government do not consider that doing nothing is a desirable option.

Effects on equal opportunities, human rights, island communities, local government and sustainable development etc.

Equal opportunities

130. The purpose of the regulations that may be made under this Part of the Act is to provide that further information about individuals that may have a controlling interest in, or drive benefit from, a legal entity that owns land is disclosed to the request authority. The regulations will provide that further information can be obtained on case by case basis.

131. The requirement to provide this information will apply equally to all individuals that may have an interest. In developing the regulations, the Scottish Ministers will continue to consider potential equalities impacts and whether specific provision may be needed to address any potential disproportionate impact on equalities groups.

Human rights

132. The Scottish Government is satisfied that the provisions of Part 3 of the Bill are compatible with the European Convention on Human Rights.

133. Part 3 contains regulation-making powers and so the provisions in Part 3 do not of themselves determine any person’s human rights. The regulation-making powers are capable of being exercised in a way that is compatible with a person’s right to respect for private and family life under Article 8 and rights to protection of property under Article 1 of Protocol 1.

¹⁰ Para 10, Section 5, The Land of Scotland and the Common Good, May 2014; <http://www.gov.scot/Publications/2014/05/2852/298126>

Island communities

134. Some responses to the consultation suggest that the scale and decisions of landowners can have a proportionally greater impact on island communities. On islands, it can be more likely that the ownership of the land is limited to a smaller number of land owners and, due to limited supply, there is likely to be greater difficulty in accessing land for land based activities.

135. In cases where owners are legal entities and it is difficult to establish who is responsible for making the decision about how the land is managed, this may result in greater practical difficulties for island communities, as on the mainland it may be more likely that alternative land could be found.

136. These provisions should help island communities to obtain better information on ownership and control of land on their island, and in turn, to better understand influences on landowners and better engage on issues of the use, ownership and transfer of land on the island.

Local government

137. There is no anticipated direct effect although it is anticipated that local authorities may be able to make applications for the disclosure of information, where they can meet the conditions to set out in regulations, which may help with the local authorities plans and objectives for land use in their area.

138. Local Authorities may be required or requested to provide information under the regulations to be developed under the sections in Part 3, in the same manner as any other landowner.

Sustainable development

139. These proposals will complement the overall package of measures in the Bill to promote and remove barriers to sustainable development. Having information about who owns, controls and manages land is essential in developing the policies and strategies required to ensure we get the best from our land and to further sustainable development.

FURTHERING THE SUSTAINABLE DEVELOPMENT OF LAND (PARTS 4 AND 5)

Introduction

Land and the sustainable development of communities

140. Communities in Scotland – both rural and urban – are making considerable efforts to determine their own futures and to take forward their own local sustainable development. Groups including community development trusts, community right to buy groups, community companies, community councils, local action groups, Climate Challenge Fund and Lottery fund recipients have all identified and expressed their aspirations for the development of their local area, considering their economic, social and environmental assets, opportunities, challenges and needs.

141. Sustainable development for communities often requires the use of physical assets including land, buildings or other property, which lie in private or other ownership. Availability of physical assets for sustainable development is determined by the willingness or ability of land and property owners to allow communities access to them.

142. There are many examples of land owners who have positively engaged with communities wishing to develop, and have supported their local communities by allowing sale, lease or use of land or buildings. Examples include land for housing, allotments, cycle paths, renewable energy generation, or buildings for community businesses such as community shops and social enterprises.

143. It is in the public interest that communities across Scotland, wherever they may be, have a sustainable future and that patterns of land ownership and the decisions of landowners, should help and not hinder this process. The best way for this to be achieved is for communities and land owners to work together to identify mutually beneficial solutions to local barriers to sustainable development. Dialogue between communities, in view of their needs and aspirations, and landowners, in view of their needs and business plans, can prove effective and result in partnerships which are positive and productive for both parties.

Sustainable development of communities

Sustainable development is defined as development that is planned with appropriate regard for its longer term consequences, and is geared towards assisting social and economic advancement that can lead to further opportunities and a higher quality of life for people whilst protecting the environment. Sustainable development requires an integrated approach to social, economic and environmental outcomes.

Sustainable communities are more self-reliant, with increasing economic independence and a better quality of life, while conserving or enhancing their environment. Contrasted with unsustainable communities, where populations are declining, local economic and social activity is inhibited and the natural heritage is damaged.

Derived from work of the Land Reform Policy Group, Sewel et al, 1998

Equality, social justice and sustainability

144. Social justice is about fairness and about ensuring that people can access the resources they need to provide their families with secure places to live, to engage in meaningful work and to contribute to society. Access to land plays a significant part in enabling that.

145. The distribution of household wealth in Scotland, and land assets as a significant part of that wealth, is of great concern for a country seeking to address inequality. Figures published recently¹¹ by the Scottish Government show that the wealthiest 10 per cent of households owned 44 per cent of all wealth in 2010/12. The wealthiest 2 per cent of households alone owned 17 per cent of all personal wealth. In contrast, the least wealthy half of households in Scotland owned 9 per cent of total wealth in 2010/12.

¹¹ <http://www.gov.scot/Topics/Statistics/Browse/Social-Welfare/IncomePoverty>

146. Discussion on human rights dimensions of land reform are growing in intensity across the world and Scottish Ministers are determined to ensure the approach Scotland is taking is seen as progressive, taking important steps to modernising our approach to how land is owned, governed and used.

147. While of course the European Convention on Human Rights is a fundamental component of our constitutional framework, the Scottish Government is also committed to giving effect to the terms of the International Covenant on Economic, Social and Cultural Rights. This Covenant requires appropriate steps to be taken towards achieving certain rights to adequate standards of living including adequate food and adequate housing as well as certain rights to work.

148. The Scottish Ministers, therefore, aim to ensure that, where possible, the framework of rights and responsibilities over land in Scotland are designed to help ensure all members of society have access to the resources required to meet their needs.

Consultation

149. The consultation paper included a proposal for powers for Scottish Ministers, or another public body, to intervene where the scale or decisions of landowners are acting as a barrier to the sustainable development of communities.

150. Consultation on the proposal indicated broad support for such powers, provided that these were proportionate and that sustainable development was adequately described for the purposes.

151. In responding to the consultation, 72% of those who provided a view agreed that there should be powers given to Scottish Ministers or to another public body to direct private landowners to take action to overcome barriers to sustainable development in an area. However, whilst most (75%) individual respondents supported this proposal, 93% of the 41 private landowner organisations who addressed the issue disagreed, as did over half (57%) of private sector and professional bodies.

152. Commonly identified benefits of the proposal were: greater sustainability of land due to more diverse and improved land use; benefits for local communities such as greater feeling of empowerment as well as greater access to opportunities for employment, housing, energy production etc.; and priority of public good over private interests of landowners.

153. Commonly identified concerns were that legislation such as compulsory purchase provision already existed; that giving powers to Scottish Ministers was overly centralised and open to political influence; and that it would be difficult to resolve tensions between different aspects of sustainable development (social, economic, environmental) or local and national priorities. Legal challenges by landowners were predicted with the potential for delays and expensive court actions.

154. The consultation also included a duty of community engagement on charitable trustees when taking decisions on land management. Most (76%) of those who addressed the issue agreed that a trustee of a charity should be required to engage with the local community before

taking a decision on the management, use or transfer of land under the charity's control. All, or the majority of respondents in all categories, favoured the proposal, except for private landowner organisations and private sector and professional bodies, the majority of whom opposed the proposal.

155. The main benefits identified were improved community engagement; awareness of land management issues; and the opportunity for the community to have a say in the management, use or transfer of land under the charity's control. Other key advantages were identified as: greater community empowerment; more informed decision-making by charities; promotion of harmonious relationships between charities and local people; greater transparency and openness in decision-making; and increased accountability.

156. The main concern was that the proposal had the potential to become overly cumbersome, resulting in delay, costs and bureaucracy. Another common concern was that the duty on charities and trusts to abide by their respective organisation's constitution should not be compromised by the proposal. A recurring view was that there was no guarantee that by engaging with a community, an overarching community-representative view would emerge. Questions were raised over meanings of terms and words such as "engage with" and "community".

157. Should a trustee of a charity fail to engage appropriately with the local community a recurring view was that the organisation's charitable status should be removed. Other commonly identified remedies for such breach included: blocking progress until engagement has taken place; fining the charity; removal of the trustee from office; mediation; and confiscation of the charity's land. In contrast, many respondents were of the view that rather than impose punitive action on the charity, it should be supported in its duty to engage.

Bill proposals

158. The objective of Scottish Ministers is to influence the way that all land owners, both public and private, plan for, invest in the use and management of land in order to contribute to building a fairer and more prosperous Scotland. Scottish Ministers aim to promote more local and community involvement in land, help ensure greater accountability by land owners towards communities where their decisions can affect communities, and provide the appropriate tools to make changes where this is necessary to address the needs of local communities and overcome barriers to sustainable development.

159. Such aims are specifically relevant to situations where decisions made by land owners are not currently subject to any public scrutiny or public interest test, and which could have an impact on communities.

Part 4: Section 37 – Engaging communities in decisions relating to land

Working together

160. Fundamentally, the Scottish Government wants to see better collaboration and engagement between land owners and communities. There is recognition now amongst

landowners that there are considerable benefits from working with their local communities and there are many productive partnerships springing up around Scotland.

161. In order for landowners to take communities' needs into account, it will be important for communities to be clear on what their needs are. Communities are all different and have their own needs and priorities. Many communities are well on the way to defining their needs for their own sustainable development and working to secure the assets that will help address these needs.

162. Landowners have to recognise that they have a responsibility to the communities that live and work in and around their land – and there is a strong argument that the larger a land holding, the greater that responsibility

163. The Bill will introduce a requirement on Scottish Ministers to produce guidance for landowners and tenants on engaging with communities on land-based decisions. The intention is that all land owners and those with a controlling interest in land, who have substantial land holdings or land close to communities, where their decisions in relation to land could affect communities should engage and/or consult with those communities over decisions.

164. The exact nature of the types of decisions, the form of engagement and consultation, what land owners are expected to do following such engagement will be set out in the guidance and the aims sought to be achieved will be set out in this guidance. The Scottish Government intend to develop this guidance collaboratively, seeking the views of communities and landowners across Scotland about what works and what doesn't and there is specific provision for Scottish Ministers to consult with stakeholders in producing the guidance.

Consequences where guidance is not considered or followed

165. Where landowners do not engage with communities on land based decisions, then this can result in poorer outcomes for both landowners and communities, and in poorer relationships.

166. For all landowners, including private landowners, a lack of consideration of the guidance and lack of engagement could be a factor that Scottish Ministers would consider as part of the evidence provided by a community body to support an application for the right to buy land to further sustainable development as it may assist in evidencing why the transfer of the land to the community body, or nominated third party, is the only way of achieving the desired benefit to the community.

167. Scottish Ministers are also exploring the ways in which a failure to engage with communities on land-based decisions might be taken into account in future decisions on the award of discretionary grants in relation to land.

168. For public sector landowners there are already a number of complementary requirements on engaging with communities and asset management, including the public sector asset transfer provisions being brought forward in the Community Empowerment (Scotland) Bill. However, where a public sector body was considered not to be considering the guidance or adequately engaging with communities then this could be challenged under existing mechanisms.

169. For landowners with charitable status there may be further consequences, and these are explained in more detail below.

Charities

170. While charities which hold land require to ensure that they act in accordance with the purposes of the charity and the Charities and Trustee Investment (Scotland) Act 2005, (“the 2005 Act”) they may not, in all circumstances, be required to consider the views of communities living on the land or those affected by their use of the land. It may also be the case that such charities are not required to manage the land in a way that takes into account local communities or the sustainable development of that land.

171. Within the current arrangements a charity may buy land purely as an asset, on which it is seeking as large a rental return as possible. The purpose of the charity may mean this money is indeed spent furthering a charitable purpose and therefore of public benefit, however it may be at an unnecessary cost or dis-benefit to the local community.

172. It is intended that the provisions in the Land Reform Bill requiring Ministers to provide guidance for land owners to consult with communities will apply to charities that own, lease or manage land. It will be most applicable to those charities with significant land holdings where the land based decisions of the charity could affect communities. The guidance will set out the exact nature of the types of decisions, the form of engagement and consultation and what land owners are expected to do following such engagement.

173. The Office of the Scottish Charity Regulator (OSCR) has an overarching function in the management of charities. The route for OSCR to take action in relation to charities is through the duties that apply to charity trustees under sections 66(1) and (2) of the 2005 Act. Section 66(1) states that charity trustees must in exercising functions in that capacity, “act in the interests of the charity” and must, in particular “act with the care and diligence that it is reasonable to expect of a person who is managing the affairs of another person”.

174. Section 66(2) provides that charity trustees must ensure that the charity complies with directions, requirements, notices or duties imposed by the 2005 Act. Adherence to guidance is one factor of potentially many that OSCR can take into account when assessing the conduct of a charity trustee in this regard.

175. If OSCR received a complaint from a community that a charitable landlord had not engaged appropriately with them and they determined that there was substance to the complaint to the extent that the charity trustees’ performance of their section 66(1) duties was in question, then it would be open to OSCR to issue a recommendation to the charity trustees to ensure that they engaged with the community paying appropriate regard to the guidance issued by Ministers under the Land Reform Bill provisions. If it subsequently appeared that they had not done so, then it would be open to OSCR to take action for misconduct under section 66(2) depending on the facts in the case. For example, if the breaches were part of a picture of wider breaches of s66(1) duties.

Part 5: Sections 38 to 65 – Right to buy land to further sustainable development

176. How land is used in a local area can have significant impacts on local communities. Where communities have been unable to influence development decisions and cannot access land for their own development, this can have detrimental impacts. Examples show that this can result in:

- a lack of affordable housing or secure tenancies;
- a lack of land for agricultural businesses;
- a lack of community business space or access to property for business opportunities;
- blight caused by declining appearance of buildings or land, or poor performance of local village/town centres; and
- a lack of land for local food growing, recreation and access developments, or other amenities such as parks or cemeteries.

177. Although there are a number of constraints and directives on landowners from the land use planning system, environmental regulation etc., these tend to enforce minimum standards and leave wide margins of discretion to landowners as to how they manage and invest in their land. Communities often therefore have very little opportunity to influence land owners' decisions. This lack of dialogue or influence results in missed opportunities at best, but at its worst can also result in long term declines in communities – socially, economically and environmentally.

178. The kinds of problems communities experience are varied, and can be physical/environmental, social or financial. Not all of these problems necessarily flow directly from specific decisions or actions of land owners. However, the ability or inability of communities to address these problems may be impacted upon by decisions and actions (or inaction) of land owners. This leaves some communities feeling disadvantaged and unable to realise their aspirations or potential. Current legislation and the proposed extension of the community right to buy to abandoned or neglected land will help many communities; but there may be circumstances where further mechanisms are required.

179. This Bill, therefore, proposes a right to buy land to further sustainable development. Fundamental to this is the identification of significant harm which is likely to affect the community if the land is not transferred together with a likely significant benefit to the community if land is transferred, and where only the transfer of the land will resolve those issues.

180. The Bill sets out the circumstances and process by which communities can apply to Scottish Ministers to exercise a right to buy land to further sustainable development. This right to buy can be exercised by the community body alone or in conjunction with a third party partner. The community body would need to be able to evidence that the transfer of the land to the community or third party was necessary to provide a significant benefit and prevent or remove a significant harm and further sustainable development, as well as being the only practicable way of achieving the desired benefit.

181. There are a number of crucial distinctions between the existing rights to buy and that proposed in this Bill. Firstly, the community can nominate a third party purchase partner, who could be, for example, a housing association or local business partner etc. to help deliver the benefits to the community. The benefit of this arrangement is that third parties may have access to resources unavailable to communities.

182. Scottish Ministers, in considering the application, will want to be satisfied that the tests would be met in full and the benefits delivered would be long lasting. They may, therefore, expect community and third party partners to agree legal agreements setting out, for example, delivery timescales, rights, liabilities, maintenance arrangements etc.

183. Secondly, while protection is given to homes, the exception is where homes are tenanted. An application can relate to land which is occupied by an individual as a home and is occupied under a tenancy. An application can also be made to purchase a tenant's interest in land in certain circumstances. The implications are that a community could become the new landlord or a tenant may become the new owner. In any event the residency in the home is not affected.

184. In making their decision about the community's application to exercise the right to buy to further sustainable development, Scottish Ministers must address a set of key tests which are:

- the transfer of land is likely to further the achievement of sustainable development in relation to the land;
- the transfer of land is in the public interest;
- the transfer of land is likely to result in significant benefit to the community; and is the only practicable way of achieving that significant benefit; and
- not granting consent to the transfer of land would result in significant harm to the community.

185. Landowners' rights would be protected in that: landowners have the right to make representations at various points in the process; there are strict tests that have to be met before Scottish Ministers can consent to the application; if an application is consented to by Scottish Ministers, then the landowner would receive market value for their land; recourse is provided to landowners to apply for compensation for costs associated with the transfer; and they have a right of appeal against both the Scottish Ministers' decision and the valuation.

186. The principle of encouraging collaboration runs through the right to buy to further sustainable development and, to aid this, provision is made for mediation between parties in relation to the proposed exercise of the right to buy.

Alternative approaches

187. A range of ideas were considered in order to meet the policy objectives.

188. On the guidance to land owners, the consultation included a duty on charitable trustees to consult with communities. This option was considered; however, in developing the proposals for the right to buy to further sustainable development, a key initial consideration was how to promote better engagement between land owners and communities. Feedback from a wide range of stakeholders indicated that there are considerable benefits of placing an expectation to engage with communities on all land owners. The decision was, therefore, made to bring these provisions together.

189. In continuing the strong theme of encouraging and supporting engagement between communities and land owners, and in focusing on voluntary measures, the Bill also includes provisions for Scottish Government to support mediation between the parties in relation to the right to buy.

190. Early consideration was given to a range of wider powers to enforce changes in control over land, such as through enforced leasing. However, a key consideration was to minimise Government intervention to what was necessary to achieve the overall aims. It was anticipated that by encouraging better engagement and having the possibility of transfer, should no voluntary routes succeed, communities and landowners would be encouraged to agree leasing options where these would be sufficient to achieve the desired aims. The provisions on mediation in relation to the right to buy were also included, in part, to help support such discussions and agreements between landowners and communities.

191. In terms of process, the current provisions mirror many of the steps for the existing rights to buy from the 2003 Act (as it will be amended by the Community Empowerment (Scotland) Bill). It is intended that this is helpful to communities in that the process is already familiar to many communities and has been tested. Given Scottish Ministers' experience to date with community and crofting right to buy applications, and the benefits of all similar applications being considered and advised upon by the same team, it was decided that Scottish Ministers would be best placed to consider and consent to applications under the provisions proposed for this Bill.

Effects on equal opportunities, human rights, island communities, local government, and sustainable development etc.

Equal opportunities, island communities and sustainable development

192. The policy intention of these provisions is that it helps ensure that land delivers benefits for all in Scotland. The objective is to provide communities with another mechanism to address their social, economic and environmental needs, to secure benefits and prevent harm.

193. This is intended to be underpinned by better relationships between those who own land or have a controlling interest in land and the communities who live, work and play on that land. It is therefore anticipated that the Bill provisions will further the empowerment of communities and help communities address the causes and consequences of inequality.

194. While there may be some modest costs to land owners etc. associated with engaging with communities, evidence suggests that landowners themselves see this as a good thing in principle.

For example, Scottish Land and Estates have started to develop their own tool kit for landowners in working with their local communities.

195. Experience from the local pilots of the Land Use Strategy indicates that better understanding between those who use and manage land and those who benefit can be fruitful.

196. The proposal was screened for strategic environmental assessment and the advice from consultation authorities was that the proposal would not result in significant environmental effects. A full determination will be carried out before the Bill is introduced to Parliament.

197. The financial memorandum considers the costs of the proposals in detail.

Human rights

198. The Scottish Government is satisfied that the provisions of Parts 4 and 5 of the Bill are compatible with the European Convention on Human Rights.

199. The Scottish Government acknowledges that the ability of a community body, or person nominated by a community body, to purchase land or a tenant's interest without the agreement of the owner of the land or tenant, as the case may be, provided by Part 5 will engage Article 1 of Protocol 1 as this will constitute a deprivation of property. The rights under Article 1 of Protocol 1 are not absolute and may be interfered with if the interference can be justified as being in accordance with the law, for a legitimate aim and in the public interest.

200. Part 5 provides a process whereby Ministers may consent to an application by a community body which would result in an owner of land being required to transfer land to a community body or person nominated by a third party or a tenant being required to assign their tenancy to a community body or person nominated by a third party or a tenant. The rights of an owner of land or a tenant under Article 1 of Protocol 1 will only be interfered with when Ministers consent to the application so to this extent it is the exercise of Part 5 that will interfere with a person's Article 1 of Protocol 1 rights.

201. Part 5 makes provisions pursuing the legitimate aim of the transfer of land, including assignation of a tenant's interest, where this will bring about a significant benefit to a community which otherwise would suffer some form of significant harm and, in doing so, furthering the achievement of sustainable development in relation to the land. The process for the right to buy in Part 5 pursues this aim in a way that is proportionate and strikes a fair balance between the general community interest and the protection of the rights of owners of land and tenants. Therefore Part 5 is compatible with Article 1 of Protocol 1 and capable of being exercised in a manner that is compatible with those rights.

202. Article 6 concerns the right to a fair hearing. This provides that in the determination of a person's civil rights and obligations, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Part 5 provides for adequate and appropriate rights of appeal and reference in relation to the right to buy land to further sustainable development.

Local government

203. There will be some impacts on local authorities in consulting with Scottish Ministers on preparing guidance under Part 4, and on local authorities as landowners when engaging with communities on land-based decisions.

204. It is anticipated that where a community wishes to request the transfer of land owned by a local authority that the asset transfer provisions proposed in the Community Empowerment (Scotland) Bill would be used. However, there may be circumstances where a community body applies for the right to buy land owned by the local authority under the provisions in Part 5 of this Bill.

205. Any additional costs are expected to fit within or sit alongside local authorities existing responsibilities. The financial memorandum considers the costs of the proposals in detail.

RIGHTS AND RESPONSIBILITIES OVER LAND (PARTS 6 TO 10)

Introduction

206. In addition to setting processes to help ensure the development of an effective system of land governance in Scotland, and taking measures to improve the overall transparency and accountability of landownership, this Bill contains provisions to address specific issues relating to the balance of rights and responsibilities over land including:

Part 6: Entry in valuation roll of shootings and deer forests

Part 7: Common good land

Part 8: Deer

Part 9: Access rights; and

Part 10: Agricultural holdings

207. Each Part is addressed in turn below.

Part 6: Sections 66 and 67 – Entry in valuation roll of shootings and deer forests

Introduction

Non-domestic rates

208. Under the Lands Valuation Acts, including the valuation provisions of the Local Government (Scotland) Act 1975, the Assessors (who are statutorily appointed by local authorities to undertake valuation of properties, including for the purposes of levying non-domestic rates) are required to include in the valuation rolls certain lands and heritages (the legal description of properties for entry in the valuation rolls).

209. Subject to any exemptions from assessment (i.e. those specifically excluded from rating by law), properties on the valuation rolls are currently liable to non-domestic rates (a tax on non-domestic property to help pay for local authority services, often referred to as business rates),

provided for by section 7 of the Local Government (Scotland) Act 1975, and subject to eligibility for any rates relief, such as that under the Small Business Bonus Scheme, provided for in various primary and secondary legislation.

Shootings and deer forests

210. “Shootings” and “deer forests” are each specified as lands and heritages in section 42 of the Lands Valuation (Scotland) Act 1854. Shootings and deer forests – which are not defined in statute, but have been variously commented upon in case law – relate to shooting rights and to land used for deerstalking respectively. Section 151 of the Local Government etc. (Scotland) Act 1994 excluded shootings and deer forests from the valuation rolls – albeit they have remained as lands and heritages (under the 1854 Act).

211. Shootings and deer forests have, therefore, been exempt from non-domestic rates since 1 April 1995, prior to which their occupiers had been liable to rates since the nineteenth century. These rates, along with historic rates for fishings, were colloquially referred to as sporting rates (fishings are not addressed by this Bill proposal).

212. Ending the non-domestic rates exemption for shootings and deer forests will introduce a rating liability for their rateable occupiers, and thus bring them back into line with other ratepayers. The measure will also raise additional revenue to support Scottish Government budgets.

Bill proposals

213. The Bill proposes to end the current exclusion from valuation rolls of shootings and deer forests, and to require the Assessors to make separate entries in valuation rolls for any shootings and any deer forests relating to the respective valuation areas; i.e. valuations of shootings and deer forests would be considered to be separate occupations and not be incorporated into wider, consolidated (“unum quid”) entries.

214. Shootings and deer forests are not defined in statute, nor does the Scottish Government propose to do so. Interpretation of the terms would be for the Assessors, subject to the valuation appeal framework, as it was pre 1995. In arriving at respective values, Assessors would consider all aspects of the use made of the lands and heritages, considering all pertinent information.

215. These provisions would be commenced by regulations in the usual way. The Scottish Government’s intention is for the proposed change to take effect at the next revaluation on 1 April 2017 (when properties are valued as at 1 April 2015, the “tone date”), from which time the shootings and deer forests would be liable to non-domestic rates, subject to eligibility for any rates relief (many small-scale shootings would be expected to be eligible for rates relief under the existing Small Business Bonus Scheme).

Consultation

216. The proposal to end the shootings and deer forests exemption was consulted on as part of the Scottish Government's wider land reform consultation. Scottish Government officials also discussed the developing proposal with a number of stakeholders.

217. The majority (71%) of consultation respondents who provided a view considered that the current exemptions should end. However, of the 51 private landowning organisations that responded to the consultation and expressed a view on this issue, all but one opposed the proposal.

218. The main advantages to the proposal were perceived to be ensuring parity and fairness with other rural businesses in terms of paying tax; increased tax revenue for local and national government; and better use of land with opportunities for diversification as land values become lower.

219. The key disadvantages envisaged included potential loss of local jobs, tourism and inward investment; reduced land maintenance with a rise in the deer population; and the possibility of local estates and related businesses failing. The Scottish Government has not seen compelling evidence that removing the rates exemption would have such effects and feels that doing so would be fair and sustainable.

Alternative approaches

220. The "do nothing" option would mean that shootings and deer forests continued to be excluded from the valuation roll, and therefore from non-domestic rates liability, beyond March 2017. There is not a clear policy basis for continuing this exemption; the preference is that non-domestic rates liability is reintroduced.

221. Alternative approaches to mitigate any policy conflict with the Scottish Government's existing deer management policy were considered, namely a possible new rates relief based on positive deer management, or maintaining the deer forests exemption and only ending the shootings one.

222. Reasons for discounting the rates relief option included the difficulty in establishing practicable criteria and the operational complexity that would have been introduced for practitioners and ratepayers. In any case, the Scottish Government has not been persuaded of the case, in principle, for rates relief based on deer management.

223. Maintaining the deer forests exemption would be practicable, but would forego the parity that the Scottish Government is seeking, for occupiers to be subject to rates as are rateable occupiers of other types of property. The Scottish Government is therefore content to end the deer forests exemption.

Effects on equal opportunities, human rights, island communities, local government, sustainable development etc.

224. The proposal will affect local authorities which, as rating authorities, would be subject to additional administrative burden, including billing, collection, enforcement and administration of rates relief for the newly rateable occupiers.

225. The Scottish Government does not have any data on the characteristics of occupiers of shootings and deer forests to provide any analysis of the impact on equalities groups.

226. There has been no objection raised to the proposals from any group on the basis of an inequitable burden being placed on equalities groups, island communities or local government, or any suggestion that the provisions are contrary to human rights legislation or incompatible with sustainable development.

227. The Scottish Government is satisfied that the provisions of Part 6 of the Bill are compatible with the European Convention on Human Rights.

228. As the policy has the intention of raising revenue to help fund public services, it will support sustainable development.

Part 7: Section 68 – Common good land

Introduction

229. Section 75 of the Local Government (Scotland) Act 1973 provides that where a local authority wants to dispose of “land forming part of the common good with respect to which a question arises as to the right of the authority to alienate”, the local authority may ask the sheriff or the Court of Session to authorise the proposed disposal.

230. However, there is no equivalent provision for proposed changes of use of such property where the property would remain in the ownership of the local authority. The question as to how changes of use of inalienable common good property could be effected arose when the City of Edinburgh Council announced its intention to build a new school on common good land in Portobello Park in 2006. There was widespread agreement that the existing school was not fit for purpose and should be replaced.

231. However, a group of residents challenged the proposal. After lengthy legal proceedings, the Inner House of the Court of Session upheld that challenge by holding that the Council had no statutory power to change the use of the land. The only route open to the Council was to secure the passage by the Scottish Parliament of a Private Bill authorising the Council to change the use of the land. The Council brought forward such a Bill, which was passed by the Parliament and received Royal Assent in August 2014.

232. The *Final Report of the LRRG* cited the Portobello Park case as an example of the difficulties caused by the complexity and uncertainty of the existing legal framework around common good. The Report recommended (Section 14, pars 15 and 21) that a new statutory

framework should be developed to modernise the arrangements governing common good property.

233. The provision would fill the gap in councils' powers identified by the Portobello Park case by giving local authorities the power to appropriate for other uses land that forms part of the common good and with respect to which a question arises as to the right of the authority to alienate ("inalienable common good land"). It would thus remove the need for local authorities to secure passage by the Scottish Parliament of a Private Bill to authorise changes of use of such land. Instead, it would apply to such proposed changes of use the same legal process as currently applies to disposals of such common good land, namely a requirement to obtain the authority of a court.

234. The provision would contribute to the wider aims of the Bill, since by reducing the time needed to secure authority for proposed changes of use of inalienable common good land it should help achieve the objective of getting the most from our land.

Consultation

235. The Scottish Government's consultation on the future of land reform included a question as to whether the requirement for court approval of proposed disposals, where this currently exists, should be removed and if so, replaced by some other mechanism.

236. Amongst those who answered this question (54% of all respondents to the consultation), 65% said that the requirement for court approval should be retained. The Bill provision reflects that view as it would keep that requirement in place where it currently applies as well as extending it to proposed changes of use of inalienable common good land.

Alternative approaches

237. An alternative to the provision would be to take no action. This would mean local authorities that wished to change the use of inalienable common good land would only be able to do so by promoting and securing the passage by the Scottish Parliament of a Private Bill empowering it to do so. The Scottish Government's view is that this is disproportionate in terms of the time and effort required, and could as in the case of Portobello Park substantially delay changes of use that have substantial public support.

238. In addition, there is no reason of principle or substance to justify maintaining such a requirement for changes of use while not applying it to disposals of such land. As is currently the case with proposed disposals of such land, interested parties such as community groups would be able to make representations to the court before decisions are taken.

239. The Scottish Government's consultation on wider land reform included a question as to whether there should be a new legal definition of "common good". The majority (71%) of those who answered this question did so in the affirmative. However there was no consensus as to what a new definition would look like, or what the practical benefits of any new definition would be. There was a significant body of opinion, for instance from Common Weal respondents, in favour of there being a further consultation on the issue.

240. Many respondents focused on a perceived need to improve the protection of communities' interests in common good property. The Scottish Government's Community Empowerment (Scotland) Bill includes provisions that would require local authorities to establish registers of their common good property, to publish details of any proposed disposals or changes of use of such property, to invite representations from the area's community councils and other community bodies that have an interest, and to have regard to any such representations before taking a final decision.

Effects on equal opportunities, human rights, island communities, local government, sustainable development etc.

Equal opportunities

241. The provision on common good will have no impact on equal opportunities as it will have no effect on individuals.

Human rights

242. It is not considered that the provision on common good engages Convention rights. The Scottish Government is satisfied that the provisions of Part 7 of the Bill are compatible with the European Convention on Human Rights.

Island communities

243. The provision on common good has no differentiating effect on island communities, as it will apply equally to all areas in Scotland where common good property exists.

Local government

244. The provision on common good is expected to benefit local government as it should be capable of delivering savings in opportunity costs for councils, since the time needed to pursue an application to a court is likely to be less than that for securing passage by the Parliament of a Private Bill as is required at present. It is not expected to mean any increased costs for councils, on the basis that the cost of applying to a court for approval of a proposed appropriation should not be significantly greater (and indeed may be less) than the cost of preparing and taking to its conclusion a Private Bill.

Sustainable development

245. The provision on common good will not have any adverse impact on sustainable development.

Part 8: Sections 69 to 71 – Deer

Introduction

246. The deer provisions will provide for an additional use of existing deer panels to promote community involvement in local deer management. There will also be a power for Scottish Natural Heritage ("SNH") to require the production of a deer management plan where, in the

view of SNH, the public interest in deer management is not being delivered in a particular area. Finally, the level of fine for failing to comply with a deer control scheme imposed under section 8 of the Deer (Scotland) Act 1996 is to be substantially increased.

Background

247. Deer management is regulated under the Deer (Scotland) Act 1996, and was amended by the Wildlife & Natural Environment (Scotland) Act 2011. The voluntary principle in deer management was retained and deer managers were supported through the introduction of a Code of Practice on Deer Management. The Code was approved by Parliament in January 2012.

248. In 2011 the overall population of deer in Scotland was estimated by SNH to be over 750,000 – (very) approximately 400,000 red deer, 350,000 roe deer, 25,000 sika deer, and 2,000 fallow deer. The populations of all these species are increasing in number and expanding in range. Deer have no natural predators and the populations are usually “managed” by culling, with around 100,000 deer being culled each year at present. The current level of culling is not considered to be adequate in certain areas. Whilst deer are of significant value to the Scottish economy in some respects, it is recognised that – at current population levels – they are also causing damage to the natural environment (including to designated sites), agricultural crops and forestry, and they are a road safety hazard.

249. At present, deer management in Scotland is carried out on a largely voluntary basis. The Code of Practice on Deer Management states: “At the heart of the voluntary approach to deer management is that with this right to shoot or take deer on land goes a responsibility to safeguard their welfare and manage them sustainably” (page 7). There is no statutory requirement upon owners and occupiers to control deer numbers, other than where a control scheme has been put in place under section 8 of the Deer (Scotland) Act 1996. Since the 1950s, deer management groups have been formed in some areas with the intention of promoting co-operation between land owners and improving the standards of local deer management. In 2013 SNH advised that there were forty two deer management groups in upland areas, and a further seven in lowland areas, although the number of deer management groups, and the categorisation of sub-groups, has varied over time.

250. In 2013 the RACCE Committee took evidence on deer management arrangements. The RACCE Committee concluded that the voluntary deer management system should be retained but that a review of progress towards appropriate protection of the public interest in deer management should be carried out at the end of 2016 and this was agreed to by Ministers.

251. Not all of these groups have deer management plans, and a large proportion of plans that are in existence are in need of updating (although there has been progress on that front over the last year). There is apparently a considerable degree of variation in the level of formality of these plans. There is no statutory basis for either deer management groups or deer management plans.

252. SNH have powers to intervene in the circumstances set out in section 7(1) of the 1996 Act, and may enter into a control agreement with relevant owners and occupiers of land under that section. Where it is not possible to secure a control agreement, or where that control agreement is not being carried out, under section 8 SNH are to make a control scheme for the

purposes of carrying out such measures as it considers necessary for these purposes. Where owners and occupiers fail to carry out these measures, SNH is to carry out the relevant requirements (section 8(8)), and may recover the expenses of doing so (section 9).

253. The LRRG Report recommended that the RACCE Committee conducted a short inquiry into deer management last year. It was recognised that progress as regards the development and implementation of deer management plans has been too slow, and the RACCE Committee set a target that each deer management group should have a deer management plan for the area that it covers by the end of 2016. The Scottish Government agreed that the end of 2016 would be a suitable juncture to consider progress and to look to take action if the current voluntary system has not produced a step change in the delivery of effective deer management.

254. What is being proposed at present are essentially interim measures which could be brought into effect quickly following upon the conclusion of the review that is to take place at the end of 2016, if it is decided that more stringent measures are required at that point. The intention is that these interim measures would be in force throughout the period during which the new statutory scheme was being developed.

Deer panels

255. Section 4 of the 1996 Act provides for the appointment of deer panels by SNH, intended as a source of considered advice. The proposal is that they could be used to engender community engagement and so aid transparency. SNH have the power to set up deer panels and make appointments to them. There would be no requirement to have universal coverage, SNH could set up a panel where they wished to see one operate or where there was demand for one.

Requirement to produce a deer management plan

256. SNH are to be provided with the power to require owners/occupiers to develop, agree and implement a deer management plan (DMP). This would be required of relevant owners/occupiers in an area identified where SNH judge the public interest is not being protected. SNH would approve or reject the plan and failure to develop a DMP would be grounds for SNH to move to the development of a deer control agreement under section 7 of the 1996 Act. SNH already have the power, where a section 7 agreement fails, or where it is not possible to reach agreement, to proceed to a deer control scheme under section 8 of the 1996 Act.

Increase in maximum fine

257. At present the maximum fine for failing to comply with a deer control scheme imposed under section 8 of the Deer (Scotland) Act 1996 is set at level 4 of the standard scale (currently equal to £2,500). The Scottish Government propose to increase the maximum fine for this offence to £40,000.

258. The proposed new maximum fine better reflects the damage that may be done to the environment where failure to comply with a deer control scheme leads to over-grazing and trampling by deer. There is also at present a maximum penalty of up to three months imprisonment. The Scottish Government do not propose to amend this penalty.

Consultation

259. The provisions on deer management were included in the Consultation. Engagement also took place through an established deer sector forum and other engagement through regular meetings with stakeholders.

260. The Consultation received the following responses to the question that were asked on deer management. In response to the question “*Do you agree that further deer management regulation measures should be introduced to be available in the event that the present arrangements are assessed as not protecting the public interest?*”, 883 respondents (76% of all respondents) addressed this question, with the majority (69%) agreeing that further deer management regulation measures should be available in the event that the present arrangements are assessed as not protecting the public interest.

261. However, the proportion of respondents in agreement was very much weighted by individual views (72% in favour), as a slight majority of organisations (52%) opposed the proposal. Opposition was the strongest amongst private landowner organisations and private sector and professional bodies, with 93% and 64% in opposition respectively.

262. Respondents were also asked to state the advantages and disadvantages of further deer management measures being introduced. The advantage to the proposal most commonly highlighted (302 respondents) was that it would ensure greater protection of the environment and a return to more natural local ecosystems due to a reduction in over-grazing by deer populations which some considered were kept at artificially high numbers. Another benefit of the proposal which was identified repeatedly (159 respondents) was that deer management would become cohesive and organised, with measures part of a strategic, coherent framework, contributing to consistency and transparency of approach with all working towards the same goals.

263. In relation to the disadvantages, one theme running through many responses was to question the meaning of “protecting the public interest” in relation to wild deer. Many respondents felt that there was no need to introduce further deer management regulation measures without a demonstrated need for such action. A common view (110 respondents) was that the current system works well. A recurring view (48 respondents) was that any decision to introduce further measures was tantamount to pre-empting the review planned for 2016.

Alternative approaches

Do nothing

264. The option to make no legislative changes prior to the planned review of the effectiveness of deer management groups after 2016 was considered. However, bearing in mind the 2020 Biodiversity targets relating to the regeneration of designated sites, it was considered desirable to have additional powers available which could be deployed quickly depending on the outcome of the review.

Statutory deer management system

265. Another alternative would have been to develop some form of statutory deer management system. This would be complex, involve additional costs to the public purse and would take time to develop.

Effects on equal opportunities, human rights, island communities, local government, sustainable development etc.

Equal opportunities

266. The provisions on deer management plans will have no effect on equal opportunities. The provisions relating to deer panels will have a minor but positive effect in that it will promote engagement of local people in deer management issue where this is of concern.

Human rights

267. The provisions relating to deer panels and deer management plans do not engage Convention rights. It is not considered that the amendment to increase the maximum fine for failure to comply with a deer control scheme could itself be incompatible with the ECHR. The level of fine to be imposed will be decided by the court in each case. The Scottish Government is satisfied that the provisions of Part 8 of the Bill are compatible with the European Convention on Human Rights.

Island communities

268. Deer are not present on all Scottish islands. Where they are present the collaborative deer management process can be simpler due to the lower number of owner-occupiers required to collaborate and because the deer population is generally a closed one without emigration and immigration issues to consider. The existing legislation and the advice and guidance contained within the SNH Code of Practice on Deer Management applies equally to those who manage land where deer are present regardless of location. The deer provisions enhance SNH powers of intervention and support local communities through amendments in relation to deer panels, and have no differentiating effect on island communities, as they will apply equally to all areas in Scotland where wild deer are present.

Local government

269. There will be no impact on local government from Part 8 of this Bill.

Sustainable development

270. The requirement to produce a deer management plan is linked to SNH concern about the delivery of the public interest in deer management, including environmental protection. These provisions are intended to support sustainable deer management in the public interest and so, in the long term, the environmental, social and economic benefits which accrue from this.

Part 9: Sections 72 and 73 – Core paths

Introduction

Core path plans and judicial determination of access rights

271. The Bill sets out the circumstances in which the access authority should review a core paths plan and makes the distinction between review procedures and the procedures needed for a minor, ad hoc core path amendment. It sets out, in the interests of transparency, the requirement for limited consultation on proposed modifications to core paths following objections and clarifies notification requirements.

272. The Bill also expands on current service requirements, where an application to the sheriff court is made seeking a declaration as to whether a person has exercised access rights responsibly or not.

Background

273. Part 1 of the Land Reform (Scotland) Act 2003 established statutory public rights of access to land. Local authorities and national park authorities (“access authorities”) are charged to draw up a plan for a system of paths (“core paths”) sufficient for the purpose of giving the public reasonable access throughout their area. Where appropriate it is anticipated that core paths will link up with other path networks to improve access. The core paths network will facilitate members of the public in exercising their rights to access land. Core paths networks should as far as possible provide for the needs of all types of user, including walking, cycling, horse-riding and water sports. Core paths are also an important means of managing access and of promoting access to a broader public.

274. The LRRG examined a range of national issues linked to access rights and found that the Land Reform (Scotland) Act 2003 has delivered a progressive statutory framework for improved public access, significant public benefits and is “generally working well on the ground”. The main challenges remaining involve improvements in implementation, rather than with the terms of the legislation.

275. The National Access Forum, a voluntary association of different interest groups who provide advice on national access issues, identified these in their submission to the Review Group.

276. All access authorities have adopted core paths plans. Periodically, access authorities will undertake reviews of their core paths plan to ensure that it is sufficient for the purpose of giving the public reasonable access throughout the authority’s area.

277. Prior to the adoption of a core paths plan, procedures exist for referring objections to a draft core paths plan to a local inquiry by reporters in the Directorate for Planning and Environmental Appeals (DPEA). Currently, there is no legal basis for submitting anything other than this draft core path plan placed on deposit for consultation, to the DPEA inquiry.

Review of core paths plan

278. The Bill clarifies that the access authority may review the core paths plan when they consider it appropriate to do so, or when Ministers require a core paths plan review. These are two alternative circumstances that may activate a review, and are not required simultaneously. Although this is made clear in the statutory guidance¹², clarification is desirable as some have challenged this interpretation.

279. The Bill sets out the full procedure to be taken by the access authority when reviewing a core paths plan.

Consultation on amendments to adopted core path plans

280. The access authority is required to undertake a time-limited consultation on all proposed amendments to the adopted core paths plan, not on the existing core paths for which no change is proposed. The access authority is required to conduct a limited consultation when resolving objections to changes in the core paths plan, prior to submission of all unresolved objections to the DPEA, in the interests of transparency.

Notification

281. The Bill provides for the service of a notice upon the owners and occupiers of any land which is to be included in the core path plan for the first time.

Minor amendments to a core path

282. The Bill also simplifies the process for path amendments, so that the same process applies to path removal, diversion and addition of a new path. Further, single amendments may be made in between core paths plan reviews. The procedures are less onerous than those required for a full plan review. The access authority must serve a notice upon the owners and occupiers of any land which is to be included in the core paths plan for the first time. Otherwise, the access authority must carry out consultation and notification on the proposal as it thinks appropriate in the circumstances.

Notification process in judicial determination

283. Finally, section 28 is being amended in respect of applications made to the sheriff for a declaration under section 28(1)(b)(i) of the 2003 Act, namely a declaration as to whether a person who has exercised or purported to exercise access rights has exercised those rights responsibly for the purposes of section 2 of the 2003 Act.

284. The person seeking the declaration must serve the application on the person whose exercise of access rights (or purported exercise of access rights) is in question. Section 28 already provides that the application is to be served on the local authority and the landowner.

¹² LRSA Guidance for Local Authorities and National Park Authorities

Consultation

285. The Bill addresses technical aspects of the core path planning process arising from examination by the LRRG and responses to the *Consultation on the Future of Land Reform in Scotland*.

286. Analysis of consultation responses indicated a majority view that access authorities should be required, in the interests of transparency, to conduct a further limited consultation about proposed changes to core paths arising from objections. There was broad agreement about the need to clarify procedures so that Ministerial direction is not required when an access authority initiates a core path plan review; and that the process for a minor amendment to a core paths plan (as set out in section 20 of the 2003 Act) should be simplified to make it less onerous than that for a full review of a core path plan.

Effects on equal opportunities, human rights, island communities, local government, sustainable development etc.

Equal opportunities

287. The provisions on access in the Bill are not considered to have any effect on equal opportunities, either positive or negative. While some statistics are available on general patterns of outdoor access relating to age and disability, there are no statistics available on the number and characteristics of people using core paths.

288. As a whole, the core paths system is intended to cater for all types of user (e.g. walkers, cyclists, horse-riders and people with disabilities) but not all core paths are designed or managed for every type of user. This may simply be impracticable for paths which go over steep or rocky terrain.

289. The provisions in this Bill are intended to make minor changes to an existing policy area. Any changes to this policy area or exercise of powers under the provision of the act by local authorities will require consideration of equalities duties.

Human rights

290. It is considered that Convention rights will be engaged in some circumstances when land is included in an amendment to a core paths plan, but the Scottish Government considers the Bill provisions to be compatible with those rights.

Island communities

291. The Bill has no differentiating effect on island communities. The provisions of the Bill apply equally to all communities in Scotland.

Local government

292. The provisions of the Bill do not anticipate any impact on local government. If there are any effects, these should be to enable core path planning through clearer procedures and notification.

Sustainable development

293. The Bill will have no negative impact on sustainable development. The provisions in this Bill should improve core path planning and consultation, thereby ensuring the better effectiveness of Part 1 of the Land Reform (Scotland) Act 2003. This is expected to lead to largely positive environmental, economic and societal benefits and complement existing plans, strategies and measures.

Part 10: Agricultural holdings

Introduction

Background

294. Agricultural tenancies are a critical part of Scottish agriculture and account for 23% of agricultural land, providing a route into farming and an opportunity for those who don't own land to get a start in farming. Landlords and tenant farmers also play an important role in the wider rural community.

295. The tenanted sector also makes an invaluable contribution to ensuring Scotland's place as a good food nation, with wholly rented farms generating an estimated £340 million of food production in Scotland, with mixed tenure farms producing an estimated £450 million. It is important that the framework governing these relationships are right to ensure these businesses continue to contribute over £790 million of food production in Scotland.

296. The Scottish Government believe there continues to be a strong need for a tenanted agricultural sector, both as a route into farming, and in order to provide security for farms businesses and to provide greater flexibility for businesses to expand and grow through the sector through the let-in and out of land.

297. The Scottish Government further believes that a vibrant agriculture tenanted sector is key to ensuring that Scotland gets the most from the land and the people farming it. However, since 1982 there has been a 44% decrease in the area of let land, resulting in Scotland now having one of the lowest proportions of rented land anywhere in Europe.

The Agricultural Holdings Legislation Review

298. Despite previous agricultural holding tenancy reforms, there is still an apparent lack of confidence in the sector and so the 2011 SNP manifesto committed to undertaking a legislative

review within 18 months of the Agricultural Holdings (Amendment) (Scotland) 2012 Act coming into force.¹³

299. The Agricultural Holdings Legislation Review Group (AHLRG) was established in 2014 to undertake the review, under the chair of Richard Lochhead, Cabinet Secretary for Rural Affairs, Food and the Environment. The aim of the AHLRG was to deliver a comprehensive package of recommendations for legislative change to achieve Scottish Government's vision for a vibrant and sustainable tenant farming sector.¹⁴ The AHLRG began work in January 2014. The first six months comprised an information gathering and research phase, and ensured that the Review was soundly based and informed by the experiences and insights of countless individuals from around the country. Care was taken to balance anecdotal evidence with robust data gathering and analysis.¹⁵

300. This phase culminated in the publication of the Interim Report in June 2014¹⁶. This summarised the work undertaken and the Review Group's initial conclusions, highlighting key weaknesses in the current system and outlining policy development work to be undertaken in the second half of the Review.

301. In the Interim Report, the AHLRG clearly set out their 8 aspirations for tenant farming that they believed should be the focus of their final recommendations:

- the underlying culture will be forward looking and based on shared endeavour, mutual respect and partnership between owners and tenants.
- a range of flexible tenancy options will be available to suit diverse business needs and evolving economic circumstances.
- people, and especially new entrants to the industry, will be able to move into, through and out of the tenanted sector as their business develops.
- business investment in the tenanted sector will be subject to equivalent flexibilities and constraints to those that characterise the owner occupied sector.
- barriers to entry (including those arising from the CAP) will be low so that people, including new entrants, able to farm successfully can establish and develop a business regardless of their background circumstances.
- rent levels will reflect commercial returns from a well-managed farming business using the tenanted land and associated assets in a manner that accords with the Land Use Strategy.
- the supply of tenanted land will be broadly compatible with demand at these rent levels.

¹³ *A Scottish Government Working for Scotland*, Scottish National Party Manifesto, 2011, http://votesnp.com/campaigns/SNP_Manifesto_2011_lowRes.pdf

¹⁴ To find out more about the remit and members of the Review Group, see <http://www.gov.scot/Topics/farmingrural/Agriculture/agricultural-holdings/review-of-legislation>

¹⁵ See Annex A, The Final Report of the Agricultural Holdings Legislation Review,

¹⁶ <http://www.gov.scot/Publications/2014/07/5054>

- risk will be shared between tenant and owner in a manner that encourages innovation and provides inbuilt resilience to unpredictable changes (in markets, fiscal support, etc).

302. Alongside these, the Review Group also agreed three high level principles that it believed should underpin government policy in relation to the tenanted sector in the years ahead, and which, therefore, guided the AHLRG's deliberations:

- enabling – in that the fundamental purpose of policy will be to facilitate innovation and business development in farming, including through encouraging new entrants.
- balanced – in that the fundamental characteristic of policy will be to provide for an appropriate mutuality of rights and obligations between those who own land and those who wish to farm it.
- resilient – in that the fundamental consequence of policy will be the long term underpinning of diverse, vibrant and flexible land use and rural communities.

303. For the second half of the review, the AHLRG built on the findings set out in the Interim Report and devised potential solutions to the challenges that have been identified. This part of the process included further dialogue with stakeholders as policy recommendations began to take shape, ensuring as much “sense testing” as possible.

304. The Final Report was published in January 2015 and contained 43 specific recommendations. Most of these were directed at the Scottish Government, but some were for consideration by industry-led organisations and professional bodies that the AHLRG believe have important roles to play.

305. The outcome of the AHLRG process was a package of recommendations designed to work as a whole. The cumulative effect of their recommendations were considered by the AHLRG in detail, as set out in their Final Report. For the package of recommendations to work the majority of the recommendations for legislative change require to be implemented together to enable the outcomes of their assessment of cumulative impact to be met, providing balance and fairness to both tenants and landlords.

Consultation

The Land Reform Review

306. The role and situation of the agricultural tenanted sector was also considered by the Land Reform Review Group. As noted above, the LRRG undertook extensive engagement and evidence gathering during the initial stages of the Review.

307. The conclusions of the LRRG on agricultural tenancies can be found in section 28 of their final report¹⁷, which contains two specific recommendations on agricultural tenancies, for the removal of the requirement for 1991 Act tenants to register an interest as a precursor to exercising their right to buy under the 2003 Act, and that that the Scottish Government should

¹⁷ <http://www.gov.scot/Publications/2014/05/2852/298180#fig35>

take full account of social and local community factors in determining whether the introduction of a conditional right to buy for tenants with secure tenancies under the Agricultural Holdings (Scotland) Act 1991 would be warranted in the public interest.

The Agricultural Holdings Legislation Review

308. During 2014, the AHLRG undertook an extensive programme of stakeholder engagement and evidence gathering. They held 78 meetings with stakeholder organisations, tenant farmers, landlords and agents in private and public meetings across Scotland. During Summer/Autumn 2014, they tested their emerging proposals in 12 meetings held with stakeholder organisations and well attended public meetings in Kelso, Inverurie, Bridge of Allan and Dumfries.¹⁸

309. In addition, the AHLRG received and considered 100 written submissions, 27 from the key stakeholder organisations and 73 from individual tenant farmers, landowners and land agents. The AHLRG also considered the conclusions of the LRRG in relation to agricultural tenancies.

Evidence

310. Farming is an area already subject to a large amount of statistical data gathering, usually specified in European regulation and relating to the farm business:

- The June Agricultural Census of agricultural holdings (annual)
- The December Agricultural survey (annual)
- The European Farm Structure Survey (which occurs every three to four years), and
- The Farm Accounts Survey (an annual sample of around 500 farm businesses).

311. In addition to considering this survey work, the Scottish Government contracted out a research programme on agricultural holdings in 2014, to develop the evidence base to support future policy development. In total, five surveys and an evidence review were undertaken:

- Survey of Agricultural Tenant Farmers: <http://www.scotland.gov.uk/Resource/0045/00454514.pdf>
- Renting-Out Agricultural Land in Scotland Survey: <http://www.scotland.gov.uk/Resource/0045/00454570.pdf>
- Scottish Agricultural Tenure Evidence Review: <http://www.scotland.gov.uk/Resource/0045/00454210.pdf>
- Survey of the Views of Owner Occupier Farmers on Current Issues for Tenant Farmers: <http://www.scotland.gov.uk/Resource/0046/00462658.pdf>
- Views of Tenant Farmers and Agricultural Landlords on Aspects of the Agricultural Tenancy System: <http://www.scotland.gov.uk/Resource/0046/00462696.pdf>

¹⁸ A list of all meetings undertaken by the AHLRG is contained in Annex B, The Final Report of the Agricultural Holdings Legislation Review

312. Further information on all the evidence sources used is available here:

<http://www.gov.scot/Topics/farmingrural/Agriculture/agricultural-holdings/statistics>

Consultation on the Future of Land Reform in Scotland

313. The Consultation sought views on the proposal for the Scottish Government to take forward some of the recommendations of the Agricultural Holdings Legislation Review Group within the Land Reform Bill.

314. The majority (64%) of respondents to the question, agreed that the Government should take forward some of the recommendations of the AHLRG within the Bill. However, 88% of private landowner organisations disagreed¹⁹.

315. Those supporting the proposal considered that the Land Reform Bill provided a vehicle for early establishment into statute of very important recommendations, and that including changes to agricultural holdings with other land reform measures would result in a more coherent, comprehensive and integrated package of land reform legislation that will foster greater public awareness of land reform issues.

316. Those against were concerned that taking the recommendations through in the Land Reform Bill could mean potentially rushing what was likely to be complex legislation, risking insufficient scrutiny and poor legislation. There were also some respondents who considered agricultural holdings to be a distinct issue from other land reform measures and some concern that provisions would be scattered across different legislative vehicles rather than part of a cohesive framework.

Bill proposals

317. The AHLRG aimed to enable parties to move their relationship forward onto a more business-like footing while encouraging a reduction in conflict and halting further reductions in the loss of tenancies in Scotland. The Scottish Government has carefully considered the range of recommendations in detail and identified the key recommendations that seek to improve relationships, re-dress imbalances, and provide the tools to help the industry begin to move forward.

318. The Scottish Government is simultaneously working on taking forward those recommendations that do not require legislative change and proactively considering options to take forward those further recommendations requiring legislative change in the future. The provisions within Part 10 of this Bill, therefore, seek to amend current agricultural holdings legislation and introduce a number of new legislative provisions:

- **Chapter 1: Modern limited duration tenancies** – to provide a modern limited duration tenancy as an option for future agricultural tenancies to replace the existing limited duration tenancy option set out in the Agricultural Holdings (Scotland) Act 2003.

¹⁹ Paras 8.31-8.40, analysis

- **Chapter 2: Tenant’s right to buy** – remove the requirement for a tenant to register their interest in purchasing their holding under the existing right to buy provisions in the Agricultural Holdings (Scotland) Act 2003.
- **Chapter 3: Sale where landlord in breach** – introduce new provision to the 2003 Act to enable a tenant of a 1991 Act tenancy to apply to the Scottish Land Court to order the sale of the land comprising the holding, where the landlord is persistently failing to meet their obligations under the tenancy and where this is affecting the tenants ability to maintain the efficient agricultural productivity of the holding.
- **Chapter 4: Rent review** – make amendments to simplify and improve the process for triggering and carrying out a rent review for certain agricultural tenancies and change the way the Scottish Land Court is required, on application, to determine rent for those tenancies.
- **Chapter 5: Assignment and succession to agricultural tenancies** – to widen the class of people to whom a tenant farmer can assign their tenancy and to whom they can leave their tenancy upon death; to simplify the ways in which a landlord can object to a potential assignee or successor to the tenancy; to change the grounds upon which a landlord can object to a successor or assignee in certain circumstances; to take powers to allow for new provision for the conversion of a 1991 Act tenancy into a “modern limited duration tenancy” which can be assigned on the open market.
- **Chapter 6: Compensation for tenant’s improvements** – new provisions to provide for an amnesty period during which a 1991 Act tenant may serve formal notice on the landlord of their intention that specific items, not currently agreed as tenants improvements, are to be considered tenants improvements for the purposes of establishing the tenant’s right to compensation at eventual waygo.
- **Chapter 7: Improvements by landlord** – new provision to provide a right for tenants to object to certain improvements proposed by the landlord if the tenant feels that it is not necessary for the agricultural productivity of the holding.

Alternative approaches

319. The options available to the Scottish Government are to take forward:

- i. The key recommendations of the AHLRG in a proposed Land Reform Bill.*
- ii. All of the AHLRG recommendations requiring legislative change within the Land Reform Bill.*
- iii. All of the recommendations in a separate legislative vehicle.*

320. To help inform this decision a specific question was included in the Consultation on the Future of Land Reform in Scotland.

321. The Scottish Government has carefully considered a number of representations and the consultation responses on this issue. As indicated above, the Scottish Ministers concluded that there were a number of key recommendations of importance to the industry that should be taken forward in this Bill.

ii. To take forward all of the AHLRG recommendation requiring legislative change in the Land Reform Bill

322. The final report of the AHLRG was published in January 2015 and following careful consideration it was decided that due to the complex nature of agricultural holdings legislation it was not possible to take forward all recommendations requiring legislative change within the timetable available for the Land Reform Bill. The reasoning behind decisions not to proceed at this time with two main areas of the AHLRG's recommendations, relating to modern letting vehicles, is set out below:

1. Replacing Short Limited Duration Tenancies ("SLDTs")

A new "modern LDT" with a minimum 10 year term should be developed to enable landlords and tenants greater freedom in agreeing terms relevant to the type, duration and purpose of the holding and lease. An optional break at 5 years should be available where the tenant is a new entrant. – Recommendation 24 of the AHLRG

Provision should be made to enable land to be let for a period of up to one year, which will end without notice, for the purpose of grazing, mowing or cropping. Such leases should include a requirement for a declaration to be made to the incoming seasonal tenant to the effect that defined minimum soil nutrient and organic matter status are met, and by the outgoing seasonal tenant confirming that this has been maintained. – Recommendation 32 of the AHLRG

323. Recommendation 24 of the AHLRG was to replace both SLDTs and LDTs with the MLDT for a minimum term of 10 years. This would have left no agricultural letting vehicle available for a term of between 1 and 10 years. The rationale was that the current SLDT lease terms of 5 years and under was not long enough to support long term business planning and investment.

324. The 10 year minimum term of the current LDT and new MLDTs is considered to be the minimum time necessary to support long term business planning and investment by a tenant and to enable agricultural production where the crop cultivation period exceeds a year. However, there is also a significant part of the farming sector which relies on short term lets to grow particular crops.

325. Recommendation 32 of the AHLRG was to create a short term cropping lease, which would work in a way similar to the existing grazing and mowing let under section 3 of the 2003 Act. Scottish Ministers have considered the potential impacts for agriculture of removing SLDTs and creating cropping lets at this time. In evidence taken by the RACCE Committee on the final report of the AHLRG and in representations to the Scottish Ministers by stakeholder organisations, there was concern amongst stakeholders that a cropping let of under 1 year (as recommended by the Review) would not provide adequate flexibility or protection for tenants and landlords who need to let land for between 1 and 5 years for the purpose of growing crops.

326. There has been shown to be significant stakeholder support for retention of SLDTs, until a sufficiently effective alternative letting vehicle can be developed to cover the wide range of produce which takes over a year to cultivate. At this time, therefore, it is not considered

advantageous to Scottish agriculture or tenant farming to remove the SLDT as an agricultural letting option. Retention of the SLDT will ensure that landlords and tenants can still agree short term tenancies of between 1 and 5 years and that, when doing so, both parties will continue to benefit from the protections provided for SLDTs under the 2003 Act.

327. Further work will be undertaken to confirm how cropping lets are currently being managed within the industry in order to inform and build on the recommendations of the AHLRG and develop new proposals for short term cropping leases, that ensure the correct outcomes for Scottish agriculture and ensure sufficient protection is provided to parties who require this type of lease. It is not, therefore, intended that provision on cropping leases will be included in this Bill.

2. “Full-repairing” LDTs and conservation leases

Provision should be made to allow for a modern “full repairing” LDT, where a tenant takes full responsibility for all repair, renewal and replacement of fixed equipment on the holding in return for a minimum term of 35 years and mandatory application of the new rent review provisions recommended in Section 5 of this Report. – Recommendation 25 of the AHLRG

Further consideration should be given to allowing an approved environmental charity to let land under the modern LDT arrangements which include reasonable environmental conditions as to the management of the land. – Recommendation 33 of the AHLRG

328. While supportive of the AHLRG’s recommendations for two entirely new types of letting vehicle, and the potential additional solutions these offer to the industry, there is still some further consideration required in order to develop the detail of these sufficiently in order to take forward in legislation.

329. Scottish Ministers will continue to work on developing detail required in order to take these recommendations forward, but to a longer timescale than is possible for this Bill.

iii. To take forward all of the AHLRG’s recommendations requiring legislative change in another legislative vehicle

330. The AHLRG has built a high level of engagement and confidence amongst the sector and there is a strong desire amongst many in the industry that the AHLRG’s recommendations are taken forward quickly. The Scottish Ministers, therefore, believe it is important to take forward key changes identified by the AHLRG within this Parliamentary term.

331. Land reform is about ensuring the correct balance of rights and responsibilities over land. The provisions in the Agricultural Holdings Act, in the most part, define the balance of rights and responsibilities between tenants and landlords that are party to agricultural tenancies. It is, therefore, appropriate that the key provisions identified above are taken forward in this Bill.

332. The Scottish Ministers will continue to work on taking the wider package of AHLRG recommendations forward.

Alternatives to the recommendations of the AHLRG

333. The AHLRG process was a robust investigation and consideration of all the issues facing the tenanted sector in Scotland. The recommendations were developed following intensive engagement and consultation with the industry. The position of the Scottish Ministers is to take forward the recommendations of the AHLRG as set out in the final report. The AHLRG's interim and final report clearly set out a range of potential alternative solutions that were considered in reaching the recommendations, and it is not considered necessary to revisit those considerations in this policy memorandum.

334. However, in developing the detail required for translating these recommendations into legislative provisions, and ensuring those provisions are within the competence of the Scottish Parliament, there may be some addition and adjustments to the AHLRG's recommendations. Where this has been necessary this is explained in this policy memorandum.

Bill proposals

Chapter 1: Sections 74 to 78 – Modern limited duration tenancies

A new “modern LDT” with a minimum 10 year term should be developed to enable landlords and tenants greater freedom in agreeing terms relevant to the type, duration and purpose of the holding and lease. An optional break at 5 years should be available where the tenant is a new entrant. – Recommendation 24 of the AHLRG

335. As noted in section 9 of the AHLRG's final report, secure 1991 Act tenancies have served the industry well. However, in recent years there has been a recognised need for more modern and flexible tenancy vehicles in addition to 1991 Act tenancies and so the 2003 Act introduced two new letting vehicles, the Limited Duration Tenancy and Short Limited Duration Tenancy.

336. The AHLRG identified an on-going need for modern letting vehicles, suitable for the 21st century, which are of a sufficient term to encourage tenant farmers to invest in the agricultural holding and develop their agricultural business, while at the same time being short enough not to deter landlords from letting out their farmland.

337. Submissions to the Review were, in general, relatively supportive of the current LDT model, but there were a number of suggestions of improvements and further changes that could be made in order to ensure a vehicle that meets the needs of modern agriculture.

338. This Bill therefore makes provision to maintain the LDT's already in existence and to provide a new model “modern limited duration tenancy” (“MLDT”), with some limited differences aimed at offering increased flexibility to landlords and tenants to negotiate lease provisions in relation to fixed equipment, rent and purposes of the lease which meet their needs, and encouraging landlords to let to new entrants and encouraging new entrants to take up farming by offering MLDTs with 5 year break clauses.

339. Going forward, any new agricultural tenancy entered into for a term of not less than 10 years, other than a lease constituted as a 1991 Act Tenancy, will be a MLDT and any lease purporting to be for a term of more than 5 but less than 10 years will be considered to be an MLDT with a duration of 10 years. In addition, see section 5(4) of the 2003 Act for a model.

340. Where a tenant remains in occupation on expiry of the original term of an existing LDT, the existing LDT should convert to a MLDT with a term of 10 years instead of continuing as an LDT as at present. Similarly, existing SLDTs that would under the current provisions convert to an LDT, will now convert to an MLDT.

Chapter 1: Section 79 – Conversion of 1991 Act tenancies into MLDTs

341. In addition, section 79 of the Bill introduces a regulation-making power to enable the Scottish Ministers to take forward the AHLRG’s recommendation for new provision that will enable a tenant farmer to convert their 1991 Act tenancy into a new modern limited duration tenancy with a minimum term, that the tenant will then be able to assign to anyone on the open market for value.

342. These new proposals will provide an alternative route out for those tenants that wish or need to leave their holdings, helping to eradicate some of the difficulties that occur at waygo regarding adequate compensation claims. The new proposals could potentially help to address most of the factors that are currently inhibiting secure 1991 Act tenant farmers from retiring or leaving the holding and provide new opportunities and routes into farming for new entrants.

343. The proposals to allow conversion of a 1991 Act tenancy into a minimum term MLDT are intended to work together with the provisions set out in Chapter 5 on widening succession and assignation rights, to address the underlying issues facing the sector and to achieve the desired outcomes of enabling a tenant to retire, or leave the tenancy, with dignity, while: allowing family farming businesses to continue; providing the tenant with a fair return on their investment; and encouraging the continuation of land within both productive agricultural use and within the tenanted sector.

344. There is further work required to develop the detail on these provisions and as such the Scottish Ministers propose taking a regulation making power to allow them to work further on the detail and to introduce these at a later date.

Chapter 2: Section 80 – Tenant’s right to buy

...the requirement for registration is an unwarranted constraint on the right of pre-emption of secure 1991 tenants under the Agricultural Holdings (Scotland) Act 2003. The [Land Reform Review Group] recommends that the legislation should be amended to remove this requirement and to provide that all these tenants have first option on buying any part of their tenanted holding which their landlord decides to sell. – Recommendation of the LRRG²⁰

²⁰ Recommendation of the LRRG, The Land of Scotland and the Common Good, section 28.3

Existing provisions on the pre-emptive right to buy for 1991 Act tenants should be amended to remove the need to register a notice of interest so that all 1991 Act tenants have an automatic statutory pre-emptive right to buy their agricultural holding, should it come up for sale. – Recommendation 17 of the AHLRG

345. Currently in Part 2 of the 2003 Act, under a traditional secure 1991 Act tenancy, a tenant farmer has the pre-emptive right to buy their holding, if the holding is sold by the landlord, where the tenant farmer has registered their interest in acquiring their holding in the Register of Community Interests in Land held by the Keeper of the Registers of Scotland. As part of the process the landlord has ability to challenge the registration which is then considered by the Keeper.

346. Although this has been in place since 2003, the number of registrations is low in comparison to the number of 1991 Act holdings and both the LRRG and the AHLRG report anecdotal evidence that some tenants may be reluctant to register as it may impact negatively on relationships with their landlords. Other criticisms of the registration process have included complexity and claims that variations in the quality of data in the register are significant, and that there was a need to renew registration every 5 years.

347. Both the LRRG and the AHLRG have recommended that the requirement on a 1991 Act tenant to register an interest in land, necessary to trigger the tenants' pre-emptive right to buy under Part 2 of the 2003 Act should be removed.

348. Section 80 of this Bill removes that requirement. It is intended that this should result in an increase in the number of tenant farmers given the opportunity to purchase the land under their holding, should that land be put up for sale.

Chapter 3: Section 81 – Sale where landlord in breach

Provision should be made to enable a 1991 Act tenant to request the Scottish Land Court to order the sale of a holding where the landlord has persistently failed to fulfil their obligations under the tenancy, triggering the tenant's right to buy. The Scottish Land Court will have discretion to order the sale, taking into consideration the respective rights and interests of both parties. – Recommendation 21 of the AHLRG

349. In their final report, the AHLRG notes that under current legislation a landlord, having served a demand to remedy a breach of a term of the lease that has not been complied with, may serve an incontestable notice to quit on the tenant. No such reciprocal provision exists that would enable a tenant to “dispossess” a landlord.

350. A number of submissions to the AHLRG alleged that failures by landlords to fulfil lease obligations are relatively common. Particular reference was made to renewal and replacement obligations relating to fixed equipment, and to inappropriate game management that conflicts unreasonably with the purpose of the lease.

351. Recommendation 21 of the AHLRG's report is, therefore, for provision to be made to enable a 1991 Act tenant to request the Scottish Land Court to order the sale of the holding

where the landlord has persistently failed to fulfil their obligations under the tenancy, triggering the tenant's right to buy.

352. While under section 15A of the 1991 Act a tenant farmer may apply to the Land Court to withhold rent where a landlord is failing to meet their obligations, in many circumstances this is not an effective remedy as the value of the rent paid can be substantially less than the replacement costs of the defective fixed equipment required to farm efficiently on the holding. It may also be that the tenant faces the choice of paying potential costs of litigation or having the funds to remedy the landlord's failing, necessary for the holding.

353. The Scottish Government consider that in order to help ensure the most productive use of our agricultural land that the tenant should have further, more effective remedy in situations where a landlord's failure to fulfil their obligations is adversely affecting the tenant's ability to fulfil their obligations and to farm the holding in accordance with rules of good husbandry.

354. Chapter 3, therefore, contains a new provision to enable a tenant farmer to apply to the Land Court to order the sale of an agricultural holding where the landlord has failed to comply with obligations under a 1991 Act tenancy, has subsequently failed to comply with an order of the Land Court, or arbiter appointed under provisions of the 1991 Act, to fulfil the obligations and the failure is adversely affecting the tenant's ability to farm the holding in accordance with the rules of good husbandry.

355. In these circumstances, the Land Court will have the discretion to order the sale of the agricultural holding where greater hardship would be caused by not making the order than by making it, and in all the circumstances it is appropriate. In the first instance the order for sale means an order that the tenant has the right to buy the land comprised in the holding. If the tenant does not choose to exercise the right to buy, the tenant can apply to the Land Court to order the sale of the land comprised in the holding to a third party.

356. The Scottish Ministers will, through regulations, set out the process to be followed where the Land Court orders sale of the land comprised of a holding to a third party, including setting out that certain people, namely the tenant farmer and the landlord's immediate family will be prevented from purchasing the property. Other conditions are attached to the sale whether it is sold to the tenant or to a third party, including clawback provisions to protect the original landlord's interests.

357. There is a limited supply of good agricultural land in Scotland. Where an enforced sale order is granted, it could enable important agricultural land to be released from a damaging landlord/tenant relationship in which the failures of the landlord were undermining agricultural productivity.

358. While there may be examples of absentee landlords or landlords with little interest in the welfare of their tenants or the productivity of the land, there will also be cases where landlords simply are not able or cannot afford to undertake the work required under the lease.

359. The aim is not, therefore, to punish landlords but to ensure the land is brought back into productive use either through release into owner-occupation (if the tenant exercised a right to buy) or by transfer to a new landlord, who would take on the land with the sitting tenant (if the tenant applied for the land to be sold to a third party). Research indicates that both forms of tenure can be equally productive.

Chapter 4: Sections 82 and 83 – Rent review

Legislative provisions on rents for secure 1991 Act agricultural tenancies should be amended so that rents are determined on the basis of the productive capacity of the holding, farmed by a hypothetical tenant (who is an efficient and experienced farmer of adequate resources who will make best use of the land) using the fixed equipment provided by the landlord, taking account of the budget for the holding, and including the contribution from non-agricultural diversified activity. – Recommendation 3 of the AHLRG

Legislative provisions for regulating rent reviews and determinations of rent for agricultural holdings should enable rent to be paid for non-agricultural activity on a holding that reflect a fair market rate for the landlord's assets being used for the activity. – Recommendation 4 of the AHLRG

In considering the appropriate rent for an agricultural holding, provision should be made for any housing provided on a holding in excess of that reasonably required for the labour requirements associated with that holding. – Recommendation 6 of the AHLRG

360. At present, the majority of tenanted land, around 80%, is under secure 1991 Act tenancies that are already subject to a legislative rent system. The requirement for a form of statutory control over tenancy arrangements reflects the fact that agricultural farm land is a finite resource of national importance, and one where demand for access to land and secure 1991 Act tenancies far exceed supply.

361. If there was an absence of rent controls in these circumstances, this would tend to push up rents above levels that would be obtained in a more balanced market where supply more closely matched demand. It is in the public interest to ensure that rents are controlled where this market imbalance prevails.

362. The AHLRG concluded in their Final Report, that for the present, it is reasonable to continue to control rents for secure 1991 Act tenancies, but there was evidence of a need to change the manner in which rent reviews are undertaken, and the way in which the Scottish Land Court is required to determine rent on application by the tenant or landlord.

363. The current statutory formula that the Scottish Land Court is required to follow in order to determine rent for a secure 1991 Act tenancy, is primarily based on “open market rent” and is not directly related to agricultural productivity. Although the underlying proposition that a rent should be fixed on an open market rent may be considered simple in principle, in practice it is difficult to apply accurately and fairly as there is in fact no open market in secure 1991 Act tenancies.

364. This necessitates rent being calculated on various comparators, such as rents obtained for Limited Duration Tenancies (LDTs) and this creates difficulties when adjusting for distortion. This complex method of calculating rent has on occasion led to some large rent increases in a short period of time. The AHLRG also heard evidence that there is a lack of clarity and transparency with the current model, and this can often lead to disputes between parties during the rent review process.

365. Recommendations 3, 4 and 6 of the AHLRG's report, therefore, set out an alternative approach to calculating rent for agricultural tenancies. The proposals in this chapter will, therefore, amend the current statutory formula for calculating rents and will move away from open market calculations to one based on a "fair rent", taking into account the agricultural productivity of the holding.

366. Under the new test the Land Court in assessing fair rent must, among other things, have regard to: (1) the productive capacity of the holding (which is the income that can be generated from that particular holding with the landlord's fixed equipment by a hypothetical tenant); (2) a proportion of the open market rent for any residential accommodation which exceeds the standard labour requirement of that particular holding (excluding the tenant's primary accommodation); and (3) the open market rent for any land or fixed equipment or the holding which is used for a non-agricultural purpose.

367. This will enable both parties to undertake a more structured, transparent and objective rent review, relevant to the agricultural purpose of the tenancy and narrow the scope for areas of dispute.

Chapter 5: Sections 84 to 89 – Assignment of and succession to agricultural tenancies

Current legislation should be amended to allow secure 1991 Act tenancies and LDTs to be: assigned by the tenant farmer in their lifetime; bequeathed where this is permitted in the lease; or transferred by a tenant's executors on death, to any living parent, or any living descendant of a parent, or spouse or civil partner of any living descendant of a parent of the tenant or of the tenant's spouse or civil partner – Recommendation 13 of the AHLRG

368. The overall aim behind the AHLRG's recommendations on changes to the assignment of and succession to tenancies is to encourage tenants to retire or move on from tenancies with dignity and confidence in order to release land to younger tenants and ensure land continues in productive agricultural use.

369. Part of this aim also requires encouraging and facilitating within-lifetime planning for succession of family farming businesses. At section 7.2 of the Final Report the AHLRG stated that on consideration of all the issues relating to retirement, succession and assignment the focus had to be on "*modernising succession arrangements to encourage timely retirement through efficient transfer of the tenancy through the family to younger more active members*".

370. The AHLRG also noted that "current legislation has different classes of relatives entitled to succeed by bequest or transfer by the executors and there are also different provisions for

lifetime transfers”. The Review Group concluded that “these provisions should be brought into line and provide for the same rights of succession by bequest, transfer or assignation”.

Succession

371. There has been a trend in recent years towards less of those currently afforded the right to succeed, being interested in taking up the option of entering into tenant farming as they are pursuing alternative careers. The AHLRG reported having received many submissions proposing that current legislative provisions on succession and assignation for agricultural tenancies should be modernised. The submissions highlighted that changing social norms were in effect preventing family farms from passing to a close relative who might otherwise wish to take up the tenancy. A number of submissions also noted that current arrangements can have discriminatory consequences, and proposed that spouses should always have equal rights to their partner.

372. The AHLRG also identified the lack of an eligible successor as one of the key factors that inhibit retirement amongst tenant farmers. A recent survey of tenant farmers identified that a large proportion of current tenants do not intend to retire, if at all, until 70 and a quarter could not say when they were going to retire. Around 20% of respondents to the tenant farmer survey said that they knew of a family member who wanted to succeed to their tenancy but who fell outwith the current class of eligible successor and, of those, half identified that person as a sibling and a third said it was a niece or nephew.

373. Some older tenants may have insufficient pension provision, having invested their spare cash directly into the holding. Many also have a deep sense of personal commitment to the farm and to the local community. For many tenants, giving up the tenancy has both financial and emotional implications that may discourage retirement and work against the wider interests of a sector in need of more land released to newcomers. In circumstances of significant under supply of tenanted land, it is in the public interest as well as that of older tenants, that they should be encouraged to retire with dignity and confidence so as to release land to younger tenant farmers.

374. Current legislation in practice restricts succession to a “near relative” of the tenant farmer; preventing succession in most cases to other members of the tenant farmer’s wider family, including siblings, cousins, nieces, nephews etc.

375. Scottish Ministers wish to modernise the classes of successor to reflect modern family structures, and in turn, make it easier for tenant farmers to retire while removing obstacles to those wishing to take up tenancies. Sections 87 and 88, therefore, extend the class of person to whom a tenancy can be bequeathed.

Assignation

376. Widening the class of assignee has also been identified as a way to get more new entrants into tenant farming, help tenanted businesses with succession planning and help side-step some of the issues around waygo compensation when a tenancy comes to an end.

377. Section 10A of the Agricultural Holdings (Scotland) Act 2003 enables a traditional secure tenant to assign their tenancy to any person entitled to succeed on their death, subject to

the landlord's consent, which can only be withheld on reasonable grounds. As a result of the new provisions in section 84, a narrower class of grounds of objection will be brought in for "near relatives", providing more ability for the tenant to be able to assign and bringing the grounds for objection for assignation into line with those for succession. For any potential assignee who is not a near relative, the landlord will still have the ability to object on any reasonable ground.

378. This change should encourage better understanding amongst parties, encourage better lifetime planning, and encourage tenancies to be passed onto the next generation at an earlier stage, enabling older tenants to start to scale back with confidence and providing better opportunities for the next generation to make their mark. In short the policy intention is to bring forward into the tenant's lifetime what would happen anyway on the tenant's death, in order to encourage and facilitate within-lifetime planning.

Procedure for succession and assignation and grounds for objection

379. The provisions also simplify the process and notification and objection procedures, associated with succession and assignation of 1991 Act tenancies.

380. Chapter 5 amends the current agricultural holdings statutory succession provisions for a secure 1991 Act tenancy or a Limited Duration Tenancy (LDT), by removing a landlord's ability to object to the succession or the lifetime assignation of a tenancy on the grounds that that the agricultural holding is not a "viable unit".

381. Currently under the legislation, the landlord is entitled to object to the assignation under any reasonable ground. Sections 84 and 85 amends this by bringing in the concept of near relatives and grounds for objection previously only found in succession. The amendments will mean that the landlord can object to a non-near relative on any reasonable grounds, but can only object to a near-relative on the grounds of: good character; lack of sufficient resources to enable the person to farm the holding with reasonable efficiency; and where the person has neither sufficient training nor experience.

382. An exception is provided in connection to the last ground for assignation and succession to ensure additional protection for someone who has started, or is in the next 6 months about to start a course of relevant training in agriculture. In cases where such a person has made arrangements for the holding to be farmed with reasonable efficiency until the person finished the course, then the person's lack of training or experience cannot be a ground for objection.

Chapter 6: Sections 90 to 95 – Compensation for tenant's improvements

383. Section 6 of the final report of the AHLRG, considered recent moves in the sector away from the traditional partnership model between landlord and tenant.

384. Traditionally the partnership between a landlord and tenant was one where the former contributes the fixed capital and the latter provides the working capital, management and labour. The development of capital intensity of farming over many decades has increased the proportion

of working capital in the overall capital employed (excluding land value), and in addition a trend among landlords to limit their investment in fixed equipment, often as a response to low rents.

385. As a result many 1991 Act tenants now provide a significant fixed capital element. If a tenant carries out certain improvements during the course of their tenancy then they should be able to do so in the comfort that the landlord must compensate them for such improvements on termination of the tenancy (compensation at waygo).

386. This is the underlying rationale of current provisions in the 1991 Act and is to encourage tenants to invest in the holding and keep the holding in good condition, knowing that they will be adequately compensated.

387. However, before some improvements can qualify for compensation at waygo, (1) written consent is required from the landlord before the improvement is carried out or (2) a notice is required to be served on the landlord before the improvement is carried out. This means that effective recording of, and agreement on, a tenant's investment in improvements is central to fair compensation at waygo.

388. Effective recording of, and agreement to, a tenant farmer's improvement is, therefore, central to providing fair and predictable compensation at waygo, enabling tenant farmers to leave their tenancy. Yet, from evidence provided to the AHLRG, it is apparent that many secure 1991 Act tenant farmers do not have an agreed and up to date record of improvements which will attract compensation at waygo. Many tenants and landlords are unclear or unable to evidence what agreements were made or if notice was given. Historically tenants have also undertaken improvements on the holding without the tenant and landlord respecting the formal requirements in relation to consent and notice in advance of the tenant carrying out the improvement. As a result, the tenant farmer is unable to claim compensation for these improvements, despite potential significant costs and investment made which may have been necessary to maintain efficient agricultural production on the holding.

389. The Review Group has examined the available evidence in relation to inadequate compensation at waygo for improvements carried out by tenants and has recommended that there is a time-limited amnesty period whereby tenants may serve notice in writing on the landlord that specific items are to be treated as if prior consent or notice had been given and, therefore, the improvement is treated a tenant's improvement capable of being compensated for at waygo.

390. Chapter 6 amends the current provisions for compensation at waygo for secure 1991 Act tenancies, providing a two year amnesty period during which a tenant farmer may serve formal notice on the landlord of their intention that, in certain circumstances, specific items may be treated as a tenant farmer's improvement at waygo.

391. The effect of the provisions will be that a tenant can serve a notice on the landlord that an improvement previously carried out by the tenant is to be an improvement which will attract compensation at waygo where: (a) a tenant met the requirements of the 1991 Act or the 2003 Act, which would enable the tenant to receive compensation at waygo, but does not possess a record that these requirements were met; or where (b) where consent was not sought; or (c) where no notice was given. The amount of compensation itself is calculated at the future event

of waygo as set out in section 91(1) (this is the value of the improvement to the incoming tenant as provided for in section 34 of the 1991 Act or section 45 of the 2003 Act).

392. A tenant will not be able to serve a valid notice where: (a) consent was sought and there has been active or passive refusal of consent from the landlord; (b) if the landlord has previously objected to a notice (or the manner in which the improvement is carried out); (c) if the improvement is carried out in a different manner from any consent, notice, or decision of the Land Court; or (d) if the Land Court has opined on the matter.

393. A landlord may serve an objection notice; and the tenant may then refer the matter to the Land Court. The Land Court will take into account all of the circumstances, in order to determine if it is just and equitable for the landlord to be liable to pay compensation at waygo to the tenant for that improvement. The Land Court must also be satisfied that the landlord receives a benefit from the improvement. It is anticipated that consideration of what is “fair and equitable” will depend on, among other things:

- a) the reasons why the relevant requirement was not met;
- b) the impact on the landlord;
- c) the impact on the tenant;
- d) if the landlord contributed in whole or in part to the cost of the improvement or gave consideration to the tenant in some other way; and
- e) if the landlord carried out the improvement in whole or in part.

Chapter 7: Sections 96 and 97 – Improvements by landlord

Provision should be made to require a landlord to notify a tenant farmer of any proposed improvement to the holding and the tenant should be able to object, if the improvement is not necessary for the maintenance of efficient agricultural production on the holding. – Recommendation 11 of the AHLRG

394. Currently within the legislation, a landlord can enter onto a holding with a secure 1991 Act agricultural tenancy and make improvements to the unit without the agreement of the tenant farmer. This could potentially result in the tenant farmer paying an increased rent if the improvement enhances the rental value of the agricultural holding, regardless of whether it is desirable or necessary on agricultural grounds for the efficient management of the holding.

395. Within the same relationship, the landlord has the right to object to an improvement notice from their tenant farmer and the ability to refuse to consent to the proposed improvement.

396. The new provision in Chapter 7 of Part 10 provides fairness to the tenant farmer by enabling them to object or refuse consent to an improvement by the landlord if the improvement is not necessary on agricultural grounds in order to farm the holding in accordance with the rules of good husbandry.

397. Section 96 makes provision to require that a landlord proposing to carry out an improvement on the holding (except for emergency works to services etc.) gives their tenant written notice in advance specifying their proposals and to demonstrate that the improvement is necessary for the maintenance of efficient agricultural production of the holding. The new provision enables a tenant farmer to object to the improvement if it is not necessary on agricultural grounds in order to farm the holding in accordance with the rules of good husbandry. This is accompanied by an appeals process to the Land Court. If the landlord carries out the improvement without notifying, contrary to a decision by the Land Court or in the face of an objection by the tenant without approval by the Land Court, then the improvement is not taken into account at the next rent review. Section 95 also provides that the landlord give the tenant advance notice of the period in which the work is intended to be carried out. This is to enable the tenant farmer to organize their business accordingly.

Effects on equal opportunities, human rights, island communities, local government, sustainable development etc.

Equal opportunities

398. A number of the agricultural holdings provisions will have a positive outcome on the protected characteristic of age and, to a lesser degree, gender. Two of the most significant age-related issues are barriers to retirement for older farmers and barriers to entry for young farmers. Provisions on succession and assignation are also likely to have positive outcomes on the protected characteristic of gender.

Retirement

399. The reluctance to retire amongst some farmers is one of the contributing factors to an ageing demographic profile within the farming community. There are a number of provisions that will potentially encourage retirement amongst older farmers, allowing them to end their working career with dignity, and encourage new entrants into farming.

400. Evidence suggests that while there are many reasons why tenant farmers are reluctant to retire, two considerations are the lack of eligible successors and lack of confidence about receiving a fair waygo compensation for improvements at the end of the tenancy.

Modern limited duration tenancy and conversion of 1991 Act tenancies

401. The Bill provides for a regulation-making power to enable a tenant farmer of a 1991 Act tenancy to convert their tenancy to a minimum duration modern limited duration tenancy (MLDT) and assign for value on the open market. This will have the potential to facilitate retirement amongst older farmers.

402. The Bill also makes provision for a new letting vehicle, modern limited duration tenancy (MLDT). This provides for a five year break for new entrants so both parties can assess the arrangement to ensure it is working well. This will provide an incentive to landowners to let land to young farmers.

Assignment and succession to agricultural tenancies

403. There has been a trend in recent years towards less of those currently afforded the right to succeed, being interested in taking it up. This has arisen because of changes in modern family structures and more farmers' children pursuing alternative careers. This has created a disincentive for affected tenants to retire at an appropriate age.

404. The Bill extends the class of person to whom a tenant farmer can bequeath their tenancy to, and to those who can succeed to a tenancy, and extends the definition of "near relative" to now include, for example, siblings and nieces and nephews of the tenant. By affording a greater number of people within the tenant's family succession rights, a tenant is more likely to be able to retire without the concerns over the "family farm" being unable to continue.

405. As traditionally in tenant farming businesses, tenancies tend to be held in the name of the male head of the family, the widening of succession and assignation rights has the potential to impact positively on gender, by enabling more women in the tenant's family to inherit a tenancy.

Compensation for tenant's improvements

406. Sections 90 to 95 provide for an amnesty on tenant's improvements at waygo. This provision means that many tenants will get adequately compensated at waygo for improvements at the end of the tenancy where it is just and equitable for the improvement to attract compensation at waygo notwithstanding that parties may have lost paperwork confirming proof of notices/consent or where they, in certain circumstances, have not followed the correct procedures in giving notice or seeking the landlord's consent. Clarity on which improvements will attract compensation at waygo not only affects landlords' and tenants' decisions on quitting a holding but is also relevant to business and succession planning. The issue of regularising compensation at waygo bears on a number of aspects of the industry and the systemic issues in the management of tenant farming. For instance, clarity on waygo compensation allows parties to discuss retirement and vacating holdings from a shared view of what the liabilities due are and can resolve long-standing disagreements or resentment which result in dysfunctional landlord and tenant relationships. The amnesty provisions therefore perform a key role in trying to deliver a more functional sector.

407. The reluctance to retire amongst some farmers and the barriers to new entrants are strongly interlinked as the reluctance on the behalf of some farmers to retire means that there are fewer tenancies becoming available for new entrants to farm. Therefore, the provisions facilitating retirement will also help new entrants.

Human rights

408. The Scottish Government considers it in the general interest that agricultural leases continue to be subject to regulation. In considering any changes to the regulatory framework for agricultural tenancies, it is necessary to consider any potential impact on rights set out in the ECHR, specifically under Article 1 Protocol 1 – right to peaceful enjoyment of possessions, and Article 8 – right to respect for private and family life.

409. The Scottish Government is satisfied that the provisions of this part of the Bill are compatible with the European Convention on Human Rights.

Modern limited duration tenancies

410. The MLDT is intended to replace limited duration tenancies (“LDTs”) with a more appropriate balance of obligations and discretions on the parties than the current LDT provided for in the 2003 Act provides.

411. Prospective landlords and tenants will continue to have a choice between the 1991 Act tenancy and an MLDT for longer length tenancies. As a new type of lease, the MLDT will be used by parties in the future. Existing LDT leases continue unaffected. As there are a number of LDTs currently active, the 2003 Act will continue to make provision about them.

Conversion of 1991 Act Tenancies to a minimum duration MLDT

412. There is a general agreement and understanding that it is in the interests of all parties and of the agricultural sector as a whole that where tenants wish or need to leave their tenancies, often in cases where elderly 1991 Act tenants wish or need to retire, they should be able to do this with confidence, with dignity, and with a fair return on their investment. The AHLRG identified the main barriers to this as an inability to secure sufficient substantial return from the tenancy, particularly for the tenant’s property right under the tenancy.

413. The AHLRG considered a wide range of options to try and meet these aims, from open assignation of 1991 Act tenancies, through to conversion to shorter term MLDTs, both with and without a pre-emptive right for the landlord to buy out the tenant’s interests and take the holdings back “in hand”. These options were discussed at length with the industry, before the AHLRG recommended the approach intended to be taken forward by the regulation making power in this Bill on conversion and assignation, that is intended to work in conjunction with other key measures on the widening and simplification of the ability to assign and succeed to tenancies and the introduction of the order for sale where a landlord is in breach.

414. Both the rights of the tenant and the landlord have the potential to be affected, however, Scottish Ministers consider the proposal to allow for the conversion of 1991 Act tenancies into a minimum duration MLDT to be the most practical, proportionate and least intrusive option of achieving the aim sought. In developing the regulations we will further consider the AHLRG’s recommendations on the most appropriate minimum period.

Tenant’s right to buy

415. The AHLRG recommended the removal of the requirement to pre-register following evidence that some tenants are not registering with the Register of Community Interest in Land because they feel pressurised not to by their landlord, that some tenants have suffered a breakdown in relationship with their landlord where they have registered, and that others do not register to avoid souring the relationship with the landlord which registering can provoke.

416. Removing the requirement to register is only a narrow extension of the current provisions on the tenant’s right to buy contained in the 2003 Act, in that it removes the administrative

requirement for the tenant to pre-register. The Scottish Government considers that the law will still be sufficiently certain and precise in setting out that all 1991 Act tenants have a pre-emptive right to buy and allow parties to act accordingly.

Sale where landlord in breach

417. The power for the Scottish Land Court to order the sale of land comprising a holding, where the landlord is in breach, is seen as a remedy of last resort. It would only be available to tenants with 1991 Act tenancies with landlords who persistently fail to comply with their obligations.

418. Tenants in such cases can often find that their financial position and their social and familial ties to the agricultural holding and to the local community make it very difficult for them to leave even where the landlord's behaviour makes life very difficult.

419. The provisions are intended to offer an effective remedy for the tenant and to ensure agricultural productivity rather than to punish landlords. The landlord will, in any event, be paid reasonable market value for the holding, following independent valuation.

Rent review

420. Rents of 1991 Act tenancies are currently subject to statutory provisions, reflecting the fact that agricultural land is a finite resource of national importance, and one where public policy priorities in relation to the agricultural economy are of significance.

421. The demand for tenancies far exceeds supply so, in the absence of rent controls, this would push rents to levels well above those in a more balanced market. The Scottish Government, therefore, considers it necessary for there to continue to be statutory provisions regarding rents of agricultural holdings.

422. The Scottish Government proposes to implement the recommendation of the AHLRG to amend how rent is to be calculated if a referral is made to the Land Court. The AHLRG recommended a departure from the current test based on an open market test, which causes a number of issues as there is, in reality, no open market in the tenancies.

423. The provisions seek to require a fair rent to be payable for the holding in a more transparent manner. Under the new test the Land Court in assessing fair rent must, among other things, have regard to the productive capacity of the holding which reflects the underlying public interest in the productive use of agricultural land.

Assignment of and succession to agricultural tenancies

424. Security of tenure and the ability adequately to plan for business succession are key to encouraging investment, forward planning and growth. The Scottish Government's aim is to take forward the recommendations of the AHLRG to widen the class of "near relative" successor and assignee and to bring uniformity to the classes of person who may succeed to a 1991 Act tenancy and those to whom it may be assigned.

425. The proposals are aimed at: re-dressing the weakening in tenant's ability to assign and succeed occurring from external changes in social and family demographics; ensuring tenants are able to plan adequately for succession and assignation within the wider family unit that is more often, in modern agricultural practice, involved in the family business; to enable older tenants greater ability to retire and/ or step back at an earlier stage; to provide younger tenants the ability to take over family business at an earlier stage; and to encourage movement in the sector to open up opportunities for new entrants.

426. Scottish Ministers believe it is in the general interest that these steps are taken to allow pre-existing tenancies to be transferred to new entrants and to remove barriers to tenancies continuing, as well as barriers to adequate business planning and investment, by allowing for willing successors to take on tenancies. This will help ensure people, and especially new entrants to the industry, will be able to move into, through and out of the tenanted sector as their business develops and can have the confidence to continue to invest in their business, and in the land throughout this journey.

Amnesty for tenant's improvements

427. Following proposals from the industry and the recommendations of the AHLRG, Scottish Ministers have included provision in this Bill for a time limited amnesty period to provide tenants with a last chance to regularise the state of improvements on the holding where the landlord has not previously objected or refused consent.

428. Many tenants and landlords are unclear or unable to evidence what agreements have historically been made or if notices have previously been given. Historically tenants have also been undertaking improvements without parties respecting the requirements of the 1991 Act in relation to consent and notice in advance of the tenant carrying out the improvement. The consequence is that, under the 1991 and 2003 Act provisions on compensation at waygo, a tenant may have incurred significant expense but may not receive compensation at waygo.

429. The provisions provide an amnesty to remedy historical failings to reduce disputes and uncertainty and for certain improvements to be held to be capable of attracting compensation at waygo in certain circumstances notwithstanding historic failings where it is just and equitable for the improvement to attract compensation. The improvement must benefit the landlord before an improvement is capable of being held to attract compensation.

430. Clarity on which improvements will attract compensation at waygo not only affects landlords' and tenants' decisions on quitting a holding but is also relevant to business and succession planning. The issue of regularising compensation at waygo bears on a number of aspects of the industry and the systemic issues in the management of tenant farming. For instance, clarity on waygo compensation allows parties to discuss retirement and vacating holdings from a shared view of what the liabilities due are (which may lead to agricultural land being freed up to a new tenant); can encourage the tenant to invest further in the holding (which can increase the agricultural productivity of the holding); and can resolve long-standing disagreements or resentment which result in dysfunctional landlord and tenant relationships. The amnesty policy, therefore, performs a key role in trying to deliver a more functional sector.

Improvements by landlords

431. The provisions are intended to implement recommendation 11 of the final report of the AHLRG. The aim is to enable tenants the opportunity to object to an improvement to be carried out by the landlord on the holding if the improvement is not necessary to enable the tenant to fulfil the tenant's responsibilities to farm the holding in accordance with the rules of good husbandry, before the improvement is added to their rental calculation/their maintenance obligations.

432. This proposal, therefore, offers increase protection of the tenant's position, while placing only a small additional burden in the requirement to issue a notice on the landlord. Both parties are protected further by the ability to refer the matter to the Scottish Land Court for determination.

Island communities

433. The provisions in this Part will apply to agricultural tenancies across Scotland, including island communities. No differential impact on island communities is anticipated for the majority of the provisions.

434. Some responses to the consultation suggested that there can be specific difficulties faced by tenant farmers on island communities, or those wishing to access land on islands for agricultural purposes. It is hoped that a range of provisions in this Bill, and in this Part, will be able to help address some of these issues.

Local government

435. It is not anticipated that there will be any specific impact on local government under this Part. A number of local authorities may lease out land under agricultural tenancies and so may be affected in the same way as other landlords. The financial memorandum sets out the potential costs and impact for this Part in more detail.

Sustainable development

436. The proposals reflect the recommendations of the AHLRG, made with the aim of ensuring a vibrant future for the tenanted sector. This vision is one of dynamism, vibrancy and sustainability, and it is firmly based on wider Scottish Government economic and land use strategies. The vision is also one that recognises the significant role that tenants and landlords play in the cultural and social well-being of our rural communities.

437. The Scottish Ministers, therefore, believe the changes in Part 10 will help contribute to, and promote, the sustainable development of our rural communities.

This document relates to the Land Reform (Scotland) Bill (SP Bill 76) as introduced in the Scottish Parliament on 22 June 2015

LAND REFORM (SCOTLAND) BILL

POLICY MEMORANDUM

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