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Rural Affairs, Climate Change and Environment Committee

Stage 1 Report on the Land Reform (Scotland) Bill



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Rural Affairs, Climate Change and Environment Committee

This Committee's work focuses on agriculture, fisheries, rural development, climate change, the environment and other matters falling within the responsibility of the Cabinet Secretary for Rural Affairs, Food and the Environment.



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Executive summary

1. The Rural Affairs, Climate Change and Environment Committee has been considering many of the issues featured in the Land Reform (Scotland) Bill throughout this session of Parliament. One of its first pieces of work was to look at the post-legislative scrutiny commissioned by its predecessor committee in Session 3 on the Land Reform (Scotland) Act 2003. In this session the Committee has scrutinised the Scottish Government commissioned reviews of both land reform and agricultural holdings every step of the way; and has also scrutinised Bills on agricultural holdings; crofting; community empowerment and right to buy changes; and long leases. Before scrutiny of this Bill began the Committee had already heard a wide range of views on issues such as land reform, land management, community empowerment, agricultural holdings, and deer management, both formally at the Parliament in Edinburgh and informally during visits across the country. The Committee therefore began its scrutiny of the Bill with extensive background knowledge of many of the issues involved and a well-informed understanding of the problems that need to be resolved.
2. In scrutinising the Bill the Committee has continued to hear from, and engage with, as many people as possible across the country, and embarked on an extensive evidence-gathering and engagement exercise. Indeed, before the Bill had even been formally introduced the Committee travelled to Kirkwall in Orkney to listen to views on the Scottish Government's consultation proposals. The Committee issued a call for written submissions; held public evidence sessions, including two formal meetings outside Edinburgh (in Skye and Dumfries); and visited Islay; Jura; Fife, and the Scottish Borders to meet people with direct experience of the issues dealt with in the Bill. In Jura and Dumfries the Committee held public meetings where people came along and put questions about the Bill and its potential consequences directly to members of the Committee. The Committee also engaged via social media (Twitter, YouTube and Facebook), publishing videos, photographs and other information, to maximise its engagement. This Bill will affect many people and communities across Scotland and it was therefore vital that the Committee's scrutiny was informed by as many people as possible.

3. The Committee has listened to all opinions on the Bill very carefully and gives detailed views in this report. The Committee believes that the Bill should be bold in its ambition and clear in its purpose, in order that many of the issues which have undermined the confidence and trust that people in Scotland have in the ownership, and use of land, can be settled for a long time to come. Whilst acknowledging that the Bill is part of an on-going land reform journey, it needs to deliver a rebalancing of the rights of people and property, and to tackle the current unhealthy balance of power, so that everyone in Scotland can have an improved relationship with, and connection to, the land on which they live and work.
4. The Bill could result in real progress in delivering equalities and health inequalities benefits, particularly through the parts of the Bill relating to: the establishment of a Scottish Land Commission; access to information about those in control of land; community engagement and right to buy, and agricultural holdings (in terms of both age and gender issues). The Bill should be able to create an environment where land in Scotland can be owned, managed, tenanted and enjoyed by every part of society and to the benefit of all its people.
5. Whilst the Committee supports many of the general principles of the Bill and many of the measures within it, it is clear that some parts of it are unlikely to fully deliver the ambitions of the consultation and review processes which informed it. The Committee is concerned that a number of the important provisions are to be taken forward via secondary legislation and are therefore lacking in detail at this stage. This has made scrutinising some aspects of the Bill very difficult and the Committee therefore believes that it is essential that the Scottish Government publishes more details about the likely/intended content of planned regulations before the end of Stage 2.
6. The Committee broadly supports (subject to recommended improvements) the parts of the Bill relating to: the establishment of a land rights and responsibilities statement and Scottish Land Commission (Parts 1 and 2); establishing a right to buy to further sustainable development (Part 5); the minor revisions to common good land and access rights legislation (Parts 7 and 9); and, subject to the statement made by Alex Fergusson MSP at the start of Part 10, some of the agricultural holdings provisions in Part 10 (Chapter 2: removing the need for 1991 Act tenants to register a right to buy interest; Chapter 3: forcing sale where a landlord is in breach of their lease; Chapter 6: introducing an amnesty for tenant's improvements; and Chapter 7: tightening the rules where landlords wish to make improvements).

7. The Committee also supports the broad principles of other policy issues in the Bill, such as the need to make land ownership and control in Scotland much more transparent and accessible (Part 3); improving engagement with communities in relation to land decision-making (Part 4); and other parts of the agricultural holdings provisions in Part 10 (making the rent review process fairer and more transparent; improving confidence in the sector; creating a better environment for investment in holdings by both landlords and tenants; providing better opportunities for new entrants and younger farmers; and helping older tenants to retire more easily). However, the Committee believes that the details of the parts of the Bill which relate to these policy areas will require amendment at Stage 2 to make certain that they will deliver the radical changes needed on the ground.
8. The Committee regrets that as presently drafted Part 3 is unlikely to deliver the improved transparency about those who not only own land, but control or benefit from land, that the Scottish Government is seeking, and that the Committee and many people in Scotland want, and have a right, to see. The provisions in the Bill must be enhanced and strengthened if it is to achieve its aims and the Committee sets out several options for doing so in its report.
9. The Committee welcomes the principle of Part 4 of encouraging much improved engagement between landowners and communities. However, the Bill needs to be strengthened, preferably by using some of the detail and language contained within the Policy Memorandum, to make it clear why such engagement is being required, the circumstances and issues on which it would be reasonable to engage, and what the consequences could be for not following the guidance. It is essential that the guidance provided for in the Bill can make a real difference.
10. The Committee has significant concerns regarding Part 6 of the Bill, relating to the reintroduction of non-domestic business rates for shootings and deer forests. Whilst supporting the principle of examining taxation to ensure it is fairly applied and transparent, the Committee calls on the Scottish Government to provide a thorough, robust and evidence-based analysis of the potential economic, social and environmental impacts of ending the sporting rates exemption as soon as possible, and certainly before the start of Stage 2, if the Committee is to be in a position to support Part 6 of the Bill.
11. The Committee is not convinced that sufficient progress has been made to date in addressing the lack of sustainable deer management in Scotland in the public interest. The Committee believes it is therefore imperative that the Scottish Government and SNH undertake and publish a full review during 2016, and within timescales which enable the Scottish Government to be positioned to take action by the end of that year. The Committee also calls on the Scottish Government to consider amending Part 8 of the Bill to add further statutory measures that could be enacted quickly, if needed, following the conclusion of the review in 2016.

12. Although the majority of the Committee (subject to the statement made by Alex Fergusson MSP at the start of the section of this report on Part 10 of the Bill) supports many of the specific agricultural holdings measures set out in Part 10 of the Bill, and indeed many of the principles behind the measures, it questions whether the Bill can deliver all of its stated objectives of maintaining or increasing the amount of land available to let; strengthening the rights of tenants and making it easier for them to invest in their tenancies; protecting the rights of landlords; and ensuring that there is continued confidence in the sector for land to be let. The Committee also has concerns about some of the specific proposals in Part 10, such as the process of being able to convert secure 1991 Act tenancies into the new form of tenancy in Chapter 1. Whilst supporting the principle of the proposed new rent review process (set out in Chapter 4) of using the productive capacity of a holding as a factor in determining the rent, the Committee remains concerned at the lack of detail on this in the Bill despite some recent progress having been made. There is also further thought required to be given to the proposals on assignation and succession in Chapter 5 before the Committee can be satisfied that the provisions in the Bill are appropriately balanced and will achieve the stated policy intentions.
13. The majority of the Committee also acknowledges that the call for 1991 Act tenants to be given a right to buy remains live and contentious issue and therefore calls on the Scottish Government to consider options for resolving this issue, which include giving 1991 Act Tenants a right to buy in certain circumstances.
14. The Committee recognises that the Bill must be robustly scrutinised from a European Convention on Human Rights (ECHR) perspective, so that both the Scottish Government and the Scottish Parliament are as confident as possible that the whole Bill is compatible with ECHR and as protected from potential legal challenge. The Committee acknowledges that the Bill raises a number of issues connected to human rights and, in particular, to ECHR. As the Committee is still dealing with the serious consequences of the UK Supreme Court's ruling in 2013 that one section of the Agricultural Holdings (Scotland) Act 2003 was not compatible with Article 1, Protocol 1, to the ECHR, and the subsequent steps taken by the Scottish Government to remedy that defect, the Committee spent a great deal of time at Stage 1 examining the human rights aspects of the Bill, taking a large amount of evidence on these issues.

15. The Committee is determined to ensure that a) the policy intentions of all parts of the Bill are clear; b) the Bill is compatible with ECHR and protected from challenge; and c) that measures in the Bill which may cause interference with rights protected by the ECHR pursue legitimate public interest aims, and do so in a proportionate manner, striking a fair balance between the rights of all affected parties, including communities, tenants and landowners. The Scottish Government must also ensure that Policy Memoranda accompanying bills contain as much information as possible with regards to human rights issues.
16. Finally, the Committee believes that it is essential that the Bill clearly states, in Part 1, that land is a national asset for the benefit of all the people of Scotland, and that, alongside the ECHR considerations, the Bill is firmly and explicitly set within the context of other international human rights obligations, such as the International Covenant on Economic, Social and Cultural Rights and the United Nations' Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security.

Introduction

17. The Land Reform (Scotland) Bill¹ was introduced in the Scottish Parliament on 22 June 2015. The Bill was accompanied by Explanatory Notes², which include a Financial Memorandum (FM); a Policy Memorandum³ (PM); and a Delegated Powers Memorandum⁴ (DPM).
18. Subsequently, the Scottish Government published an Equality Impact Assessment⁵ (EIA) and a Business and Regulatory Impact Assessment⁶ (BRIA) of the Bill.
19. Under Rule 9.6 of the Parliament's Standing Orders, the Parliamentary Bureau referred the Bill to the Rural Affairs, Climate Change and Environment (RACCE) Committee to consider and report on its general principles.
20. No secondary committee was appointed to scrutinise the Bill. However, the Finance Committee considered the FM, and the Delegated Powers and Law Reform (DPLR) Committee considered the DPM, and both committees subsequently published reports. The RACCE Committee notes and comments on the views of the Finance and DPLR committees reports later in this report. Links to the reports by those committees can be found at Annexe C.

Rural Affairs, Climate Change and Environment Committee scrutiny

21. The Committee agreed its approach to consideration of the Bill at Stage 1 at its meetings on 17 and 24 June 2015. A call for views was subsequently issued and closed on Friday 14 August 2015. The Committee publicised its call for views via its webpage⁷ and Twitter account,⁸ and also in a video⁹ which was hosted on YouTube and which has been viewed over 600 times.
22. The Committee received 200 written responses¹⁰ (including supplementary submissions) to its call for views (by far the biggest response to any consultation the Committee has held in this session) and a link to these can be found at Annexe B. The link also provides access to several letters from the Scottish Government sent after officials, the Minister for Environment, Climate Change and Land Reform and the Cabinet Secretary for Rural Affairs, Food and Environment gave evidence on the Bill. The extracts of the minutes of meetings at which the Bill was considered can be found at Annexe A.



Figure 1 Scottish Government Ministers giving evidence on the Land Reform (Scotland) Bill

23. The Scottish Parliament Information Centre (SPICe) published a briefing¹¹ on the Bill which proved very helpful to the Committee throughout its scrutiny and which the Committee recommends to anyone looking for further briefing on the background to, and content of, the Bill.
24. The Committee took oral evidence on the Bill from a wide range of people between September and November 2015 (including at formal meetings held in Skye and Dumfries) and details can be found in the extracts of the Committee minutes at Annexe A.

Engagement

25. The Committee was keen to ensure that its Stage 1 scrutiny engaged with as many people across Scotland as possible, and to help achieve that the Committee—
- held a pre-scrutiny formal meeting in Kirkwall, Orkney, to gather views on the Scottish Government’s consultation;



Figure 2 Committee and witnesses at meeting in Orkney 8 June 2015

- held pre-scrutiny fact-finding visits (including a session with Modern Studies pupils at Kirkwall Grammar School) in Orkney to gather views on what should be in the Bill, and what its focus should be;
- issued a public call for views which lasted for 7 weeks (an unprecedented 200 responses were received);
- published a video to publicise the call for views (watched over 600 times);

- gave frequent updates of its activities online and via social media channels such as Twitter, Facebook and You Tube;



Figure 3 The Committee's video on YouTube and a Tweet highlighting publication of evidence

- held two formal meetings of the Committee outside the Parliament in Edinburgh (one in Skye and one in Dumfries, both extremely well attended);
- went on fact-finding visits to Fife; Islay; Jura (which included a public meeting); the Scottish Borders; and the Register of Scotland offices in Edinburgh; to meet a wide variety of stakeholders; and
- held a public meeting in the centre of Dumfries, ahead of the public evidence-session with the Minister later the same day, which involved a question and answer session between members of the public and the Committee.



Figure 4 Questions from the audience at public engagement meeting in Dumfries

26. The Committee was delighted to see so many people at its meeting at the Aros Centre in Portree, Skye, and the Committee enjoyed meeting many members of the audience and reading the large number of comments on social media generated by the meeting. A similarly impressive turnout was seen in Dumfries, where over 100 people took part in a public debate on the Bill and an oral-evidence session with the Minister.



Figure 5 Audiences at Committee meetings (L-R Skye, Orkney, Dumfries)

27. The Committee's fact-finding tour across Scotland was extremely valuable in helping it to better understand the realities and challenges being faced by people on a day-to-day basis. Having already visited places such as Gigha, Bute, the Highlands, Angus, Dumfries and Galloway, Perthshire, Orkney and Aberdeenshire over the course of this session, the Committee went to Islay, Jura, Fife, the Scottish Borders, and Edinburgh to listen to views on the Bill.



Figure 6 Meeting people around Scotland

28. The Committee's visit to Fife saw Members meet with Ninian Stuart and his colleagues at the Falkland Centre for Stewardship; the National Trust for Scotland at Falkland Palace and Falkland Town Hall; and Richard Brewster and colleagues at the Kinghorn Community Land Association, and the Ecology Centre, in Kinghorn. The visit provided a fascinating insight into issues such as the stewardship and ownership of a large estate and how the community can become part of the ownership arrangement and also more involved in the decision-making and sustainable use of the land on the estate; how an organisation such as the National Trust for Scotland can involve local communities in the management of its properties and its work; and the challenges involved in a community group seeking to buy land using the currently available right to buy provisions in the 2003 Act.
29. The Committee's visit to Jura and Islay focussed predominantly on the agricultural holdings parts of the Bill, although views were also heard on deer management, sporting rates, the Scottish Land Commission (SLC), and engaging communities in decisions taken about land. The Committee held a public meeting on Jura which saw 40 people come along to question the Committee and give their views on the Bill. One theme which emerged from that meeting concerned an issue not currently covered by the Bill, that of the necessity for affordable and/or local authority housing on islands such as Jura and Islay, and the need for younger people to stay in communities if they are going to be sustainable in the future. The issue of the poor quality of many farm houses was also raised. The Committee met with local tenant farmers and then with the owners and managers of Islay Estates and discussed the role of the Tenant Farming Commissioner (TFC) and the provisions in Part 10 of the Bill, together with sporting rates and deer management issues.
30. The Committee's visit to the Scottish Borders again saw it meeting first with local tenants from various estates, and then with the owners and managers of Roxburghe Estates. Again agricultural holdings matters dominated discussions, with sporting rates, deer management and community engagement and the role of the potential new SLC also to the fore. The Committee also met with the Lowland Deer Network Scotland to learn more about deer management outside of the Highlands.



Figure 7 Members visiting the Scottish Borders

31. At the visits to Islay, Jura and the Scottish Borders the Committee heard strong and competing views from both landlords and tenants about the extent of current difficulties in the tenant farming sector and the solutions that are required to fix those problems. Both agreed on one thing; that the Bill as it stands requires significant amendment if it is to achieve the desired changes. The challenge for the Committee was apparent however, as there was a great deal of disagreement between landlords and tenants on what some of those problems are, and what the solutions should be.



Figure 8
Committee meets with tenant farmers and land managers in Islay

32. During its visit to the offices of the Keeper and the Registers of Scotland in Edinburgh, the Committee discussed relevant provisions in the Bill and learned more about what information is held on the General Register of Sasines; the Land Register; and the Register of Community Interests in Land, and how, and what, information can currently be accessed. The Committee also heard about the effects of changes made by two recent Acts: the Land Registration etc. (Scotland) Act 2012¹²; and the Community Empowerment (Scotland) Act 2015¹³; discussed progress in completing the land register; and heard about the digital transformation process and what that means for the public and the legal profession.

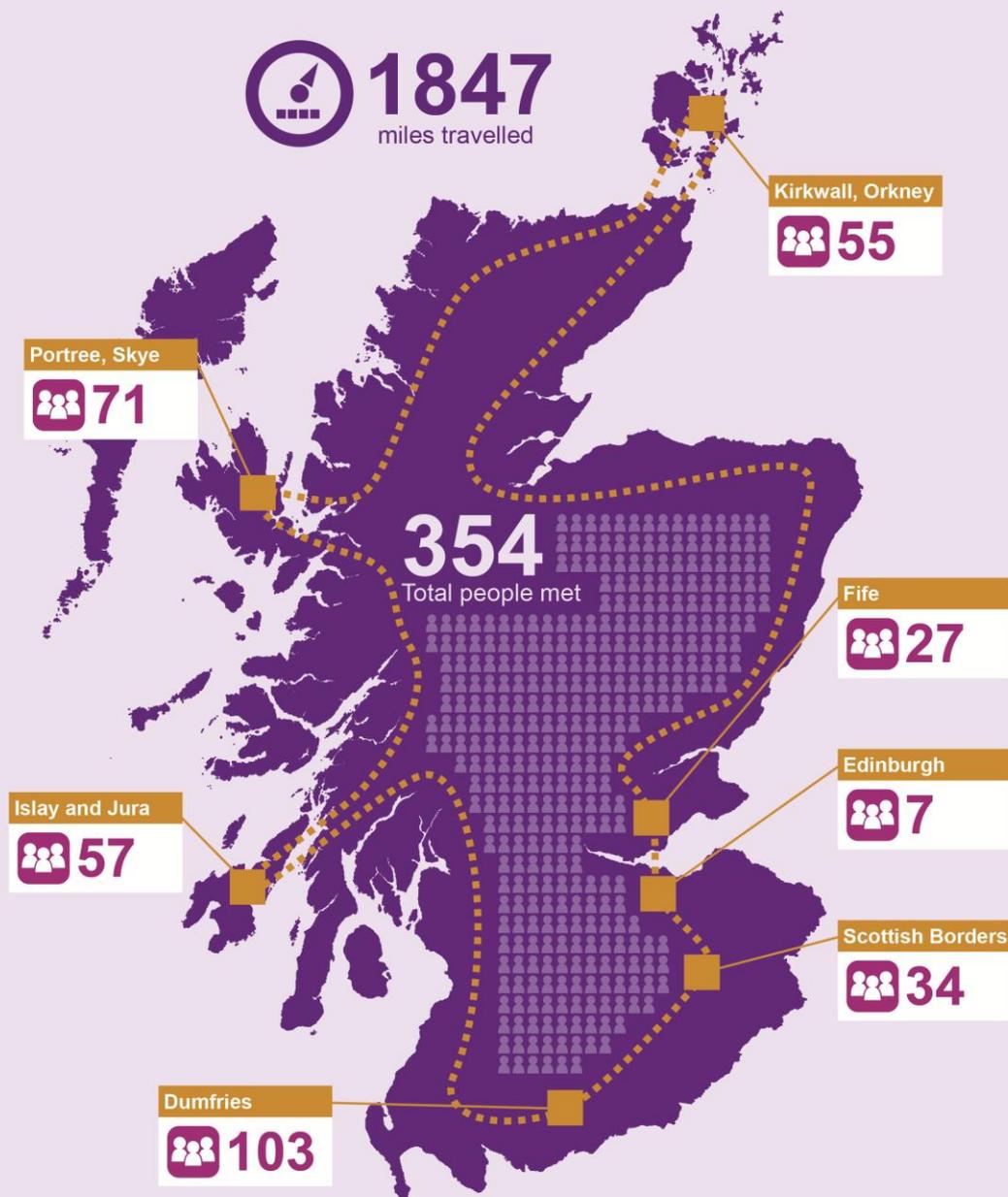
33. The Committee thanks all those people who submitted views; engaged with the Committee at one of its external meetings; or met with the Committee on one of its fact-finding visits. The Committee's scrutiny of the Bill was made more effective by the extent of its public engagement, and believes that this report, having been informed by those experiences, is all the better as a result.

Land Reform (Scotland) Bill



 People directly engaged

 **1847**
miles travelled



Call for Evidence



views of video

Evidence Received

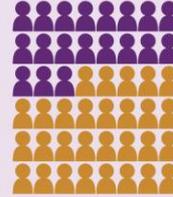
Written Evidence



Written evidence received

82 from individuals

Oral Evidence



48

Number of people who gave evidence

—Representing 29 organisations



Time spent taking oral evidence at meetings

Social Media Engagement



Background to and purpose of the Bill

34. On 2 December 2014 the Scottish Government published its document - *A Consultation on the Future of Land Reform in Scotland*¹⁴ and the consultation closed on 10 February 2015.
35. The consultation was predominantly a result of the work of the Land Reform Review Group (LRRG), which was established by the Scottish Government in 2012 and chaired by Dr Alison Elliot, with a remit to review the need for land reform in Scotland and to report to the Scottish Government. The final report¹⁵ of the LRRG was published on 23 May 2014 and contained 62 recommendations. These recommendations were included as an annexe to the land reform consultation, and were updated to state what action the Scottish Government was taking on each of them.
36. However, the consultation also sought views on the recommendations made by the Scottish Government's Agricultural Holdings Legislation Review Group (AHLRG), which had been running concurrently with the review of land reform issues throughout this session of Parliament. The AHLRG, which was chaired by the Cabinet Secretary, published its final report¹⁶ on 27 January 2015.
37. The RACCE Committee has taken extensive evidence throughout this session on both the land reform and agricultural holdings reviews respectively, and has reported to the Scottish Government with its views on the final reports of both reviews.¹⁷
38. The consultation made 11 main proposals for issues to include in a land reform bill, which were—
 - establishing a Scottish Land Reform Commission;
 - limiting the legal entities that can own land in Scotland;
 - improving information on land, its value and ownership;
 - introducing a sustainable development test for land governance;
 - establishing a more proactive role for public sector land management;
 - introducing a duty of community engagement on charitable trustees when taking decisions on land management;
 - removing the exemption from business rates for shooting and deerstalking;
 - providing a new legal definition of common good land and addressing other common good issues;

- implementing some of the recommendations of the Scottish Government's Agricultural Holdings Legislation Review;
 - introducing further deer management measures; and
 - clarifying the core paths planning process in relation to public access.
39. The Scottish Government received 1269 responses in total, of which permission was given to publish 1076¹⁸. On 15 May 2015 the Scottish Government published an analysis¹⁹ of the consultation responses.
40. Amongst various issues raised in evidence regarding the recommendations made by the LRRG, the Committee received evidence from a member of the LRRG (Ian Cooke) and four advisers to it (Professor David Adams, Richard Heggie, Bob Reid and Dr Madhu Satsangi) which noted that—

” ... the case for all the LRRG recommendations on urban land reform remains strong and worthy of serious consideration by Scottish Ministers. Indeed, we believe that if the Scottish Government is serious in its desire to tackle the land problems of Scotland, both urban and rural, it should now proceed towards their implementation, whether through statute or by other appropriate means.

And concluded that—

” The publication of the Land Reform Review Group report in 2014 has provided Scotland with a rare opportunity to address significant problems of land ownership, management and development across the country. The Land Reform (Scotland) Bill, as currently drafted, represents only a partial response to those problems. Further action on land reform is now urgently needed ...²⁰

41. The Committee believes it would be helpful if the Scottish Government responded to the paper submitted by the former member of, and four advisers to, the Land Reform Review Group, which outlines their view of the need for further urgent action to be taken to address significant problems of land ownership, management and development across Scotland, and particularly in urban areas.

Contents of the Bill

42. The Bill takes forward many (but not all) of the proposals in the consultation, together with several recommendations made by the AHLRG. The main issues contained in the consultation but not taken forward as suggested are—
- establishing a more proactive role for public sector land management;

- introducing a duty of community engagement on charitable trustees when taking decisions on land management;
 - limiting the legal entities that can own land in Scotland; and
 - providing a new legal definition of common good land.
43. The PM states that the policy objective of the Bill is 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.²¹
44. The Bill is presented in 11 parts (104 sections in total) and a schedule as follows—
- **Part 1** requires the Scottish Ministers to publish a statement of their objectives for land reform;
 - **Part 2** establishes the SLC, and the Land Commissioners are intended to have a role in helping Ministers to shape those objectives by gathering evidence, by reviewing the effectiveness of law and policies on land and by making recommendations. One of the members of the SLC, the TFC, is to have a particular role in relation to agricultural holdings, which includes collaborating with the Land Commissioners in the exercise of their functions;
 - **Part 3** contains two regulation-making powers aimed at obtaining information about proprietors of land and about persons who, while not technically proprietors, have effective control over land;
 - **Part 4** places a duty on the Scottish Ministers to publish guidance to landowners and others (whilst having regard to the desire to further sustainable development) on engaging with communities affected by decisions taken in relation to land;
 - **Part 5** proposes a right to buy land to further sustainable development for certain community bodies or a nominated third party purchaser (if significant harm/benefit can be identified which would be resolved by the transfer of ownership), and is modelled closely on the community right to buy in the Land Reform (Scotland) Act 2003²² (Land Reform Act 2003) (as well as the similar provisions in the Community Empowerment (Scotland) Act 2015);

- **Part 6** would remove the current exemption from non-domestic rates for shootings and deer forests;
- **Part 7** clarifies that where a local authority wants to appropriate common good land for a different use to the use originally intended, and it is unclear that the authority has power to do so, the authority may seek court approval;
- **Part 8** would expand the functions of existing deer panels to include engagement with local communities; introduce a power for Scottish Natural Heritage (SNH) to require the production of a deer management plans if appropriate deer management is not taking place in an area; and increase the penalties for failure to comply with an order under Section 8 of the Deer (Scotland) Act 1996;
- **Part 9** makes minor changes to the provisions in the Land Reform Act 2003 on core paths plans around reviewing and amending such plans, and on service of court applications;
- **Part 10** reforms the law on agricultural holdings and is divided into a number of chapters—
 - **Chapter 1** - sets up a new form of agricultural tenancy (the Modern Limited Duration Tenancy (MLDT));
 - **Chapter 2** - removes the requirement for a tenant to register an interest in acquiring the holding under Part 2 of the Agricultural Holdings (Scotland) Act 2003 (Agricultural Holdings Act 2003);
 - **Chapter 3** - introduces a new power for the Scottish Land Court (Land Court) to order the sale of the holding to the tenant or on the open market where the landlord repeatedly breaches his obligations;
 - **Chapter 4** - changes the procedure for rent reviews and the test to be applied in determining the rent of an agricultural holding so it is based on the productive capacity of a holding;
 - **Chapter 5** - expands the class of persons to whom leases of agricultural holdings can be assigned or bequeathed or transferred to on intestacy (where no valid will is present), as well as streamlining the processes around the landlord's objection to a new successor tenant;
 - **Chapter 6** - provides for a two year amnesty period for tenants to seek approval of certain improvements to agricultural holdings so that compensation can be claimed in relation to them at the end of the tenancy; and,
 - **Chapter 7** - introduces a new procedure for tenants to object to any improvement proposed by the landlords if the tenant feels it is not reasonable for the productivity of the holding.

- **Part 11** contains final general and miscellaneous provisions such as—
 - general interpretations;
 - details of subordinate legislation (and whether by affirmative or negative procedure);
 - ancillary provision;
 - Crown application;
 - minor and consequential modifications;
 - commencement; and
 - the short title.
- The **Schedule** contains minor and consequential amendments to other agricultural holdings legislation.

Policy Memorandum

45. The PM sets out the policy objectives of the Bill; details the background to the proposals; summarises the views expressed in the Scottish Government's consultation; outlines alternative approaches which were considered or which could have been pursued; and outlines any effects (in the Scottish Government's view) on equal opportunities, human rights, island communities, local government, and sustainable development.
 46. The Scottish Government wrote²⁴ to the Committee, on request, and provided additional detail on the human rights aspects of Part 10 of the Bill (agricultural holdings).
 47. The Committee received many views on the PM, particularly regarding human rights issues, which are reflected in the relevant sections of this report. Further comments on equal opportunities, human rights and sustainable development issues are also made elsewhere in this report. The Committee also heard from several people that the Bill would be strengthened by using some of the language used in the PM.
48. The Policy Memorandum is broadly helpful in setting out the background to, and explaining the policy intentions behind, each part of the Bill. Sections on alternative approaches and possible impacts on equal opportunities, human rights, island communities, local government, and sustainable development, also helped to understand the thinking behind the Bill and the reasons why certain decisions were taken.

49. However, the Committee had to request further information relating to the human rights aspects of Part 10 of the Bill, which contains some of the most notable provisions in terms of European Convention on Human Rights consideration. The Committee recommends that the Scottish Government ensures that future Policy Memoranda contain all available information on such matters in order to better facilitate the work of parliamentary committees.
50. There also could have been clearer detail provided on some of the policy rationale behind the Bill in terms of the desired outcomes being sought, particularly in highlighting potentially conflicting policy objectives (for example in Part 10) and how, in the Scottish Government's view, these can be reconciled or prioritised.
51. Having visited Skye, Islay and Jura during its evidence-gathering at Stage 1, and also having previously visited Orkney, Bute and Gigha during this session of Parliament, the Committee is mindful of the potential impacts of policies on island communities and recommends that any changes that are made to the Bill are carefully considered from that perspective.
52. Some of the strengthening of the Bill which is required could be achieved by reference to those sections of the Policy Memorandum which contain clear language and policy explanations. Further comment on this is made in specific sections of this Report.
53. However, the Policy Memorandum itself may also require clarification and strengthening in some places.

Business and Regulatory Impact Assessment

54. A Business and Regulatory Impact Assessment²⁵ (BRIA) of the Bill was published by the Scottish Government.
55. While the Committee did not receive a great deal of evidence on the Business and Regulatory Impact Assessment, the section relating to Part 6 of the Bill, concerning the entry in the valuation roll of shootings and deer forests, was unconvincing. Further comment on this is made later in this report.

Financial Memorandum

56. The Finance Committee scrutinised the FM and reported²⁶ to the RACCE Committee. The Finance Committee issued a call for views²⁷ on the FM and received 12 responses, one of which (from SNH) confirmed that it had no comments to make. Of the remaining 11 submissions, over half were made by local government.
57. The Finance Committee's conclusions and recommendations include—
- that best estimate figures for costs, particularly those falling on other bodies, individuals or businesses, be provided before the Parliament is asked to vote on the Bill at Stage 1;
 - in order to comply with Standing Orders the best estimate figures setting out the possible costs to a local authority to add a new core path to its core path plan should have been provided; and that
 - the lead committee may wish to give further consideration to the economic impact of entry into the valuation roll of shootings and deer forests on local communities.
58. The RACCE Committee endorses the Finance Committee's report on the Financial Memorandum, particularly in relation to the economic impact of entry into the valuation roll of shootings and deer forests on local communities, and addresses some of the issues raised by the Finance Committee elsewhere in this report.

Drafting and delegated powers

Drafting

59. Evidence was received stating that the Bill is not sufficiently accessible and easy to understand, especially given the fact that it will need to be used by communities, landlords and tenant farmers in practical situations.
60. In response to these concerns, Scottish Government officials stressed that the Bill's supporting documents, such as the Explanatory Notes and PM should help people to understand the Bill and explain the policy intentions behind its provisions. Officials added that they will consider any specific recommendations on how the drafting of the Bill could be improved, and stated that they have provided clarification, on request, to several stakeholders since the Bill has been published and later sent a list of these clarifications to the Committee.²⁸

61. Dr Jill Robbie from Glasgow University provided particularly interesting written evidence²⁹ to the Committee on this issue, and the Committee invited her to give evidence at its meeting in Skye to expand on the points she raised. Dr Robbie confirmed that, in her view, the Bill is not suitably clear and accessible for communities to follow and understand, and that it would be hard for lawyers to interpret, let alone community groups and individuals not familiar with legalese. She added that the result of this could be that community groups with limited resources would face barriers to using the legislation, or incur costs employing legal experts to help them understand it.³⁰ This message was reinforced during the Committee's fact finding visit to the Kinghorn Community Land Association.



Figure 9 Committee visits Kinghorn Community Land Association

62. The Minister told the Committee that, should the Bill be passed by Parliament, supplementary guidance would be prepared regarding its implementation.³¹

63. It is important that legislation intended to clarify processes for community groups, land owners, land managers, and farming tenants is as clear and easy to understand and use as possible. Guidance will be vital in translating the legalese of the Bill into plain English that is practical and easy to understand.

64. However, as the Bill is dealing with complex issues, many of which require amendments to previous Acts, simplifying the legislation across all of these subject areas will be challenging to achieve via this Bill alone.

65. Whilst the Bill's supporting documents are broadly helpful in explaining the background, context and policy intentions of the Bill's provisions, the Scottish Government needs to ensure that these are better promoted amongst potential users of the legislation if they are expected to play a fundamental role in explaining the Bill in plain English.

66. Every effort should be made to ensure the final Bill that emerges from this process is as user-friendly as possible and the Committee therefore recommends that the Scottish Government refers to the written and oral evidence received by the Committee on this issue, and in particular the examples given in evidence by Dr Jill Robbie and others, relating to structural and presentational issues which could be resolved in a future re-drafting of the Bill.

67. The consolidation and codification of the law in areas such as land reform, agricultural holdings and crofting has been on the agenda of the Scottish Parliament since its inception but no progress has been made and this is now long overdue. The Scottish Government should therefore give serious consideration to ensuring that this work begins in the next session of Parliament.

Delegated powers

68. The DPLR Committee scrutinised the DPM and reported on 7 October 2015.³² Some of the notable conclusions in that report are as follows—

” The reasons advanced in the Delegated Powers Memorandum (DPM) for taking many of the powers in the Bill were not sufficiently detailed so as to enable the Committee to reach a view on whether those powers were acceptable in principle. With regard to a number of powers, the necessary information was only obtained following receipt of both written and oral evidence from the Scottish Government.

The content of some of the written answers provided by the Scottish Government in response to the Committee's questions was inadequate. As an example, three of the answers given in response to the Committee's questions on the power in section 79 (concerning conversion of 1991 Act tenancies) stated simply that the policy underpinning this power is still under development and is subject to on-going consultation between the Scottish Government and stakeholders. When the Committee explored some of these issues further with Scottish Government officials in oral evidence, the answers given by the officials failed to provide the information sought by the Committee.

In relation to the powers in sections 35 (concerning a right of access to information) and 79 of the Bill, the Committee remains in a position, having considered both written and oral evidence, whereby it is unable to form a view as to how the powers are intended to be used. In relation to section 79 in particular, the Committee finds it concerning that the thinking behind a power of such significance appears still to be in the early stages of development.

The Committee observes in particular that the powers in sections 35 and 79 are both likely to interact with the European Convention of Human Rights (ECHR) rights of parties. In the absence of information regarding their intended use, however, the Committee is unable to confirm to Parliament whether these powers are to be exercised in a manner that is compatible with ECHR. That assessment must instead be deferred to the point at which the powers are exercised and the regulations laid before Parliament. This is a matter of concern to the Committee.

The Committee considers that policies which may interact significantly with individuals' ECHR rights should be developed in full on the face of the Bill rather than deferred to regulations.

69. The RACCE Committee also received a large amount of evidence expressing dissatisfaction at the number of regulation-making powers created by the Bill, and the significant provisions which are left to regulations rather than being set out in the Bill. These include some particularly notable parts of the Bill, such as provisions relating to access to information on persons in control of land; many aspects of the right to buy provisions in Part 5; the conversion of Agricultural Holdings (Scotland) Act 1991³³ tenancies into MLDTs in Part 10; and the determination of how productive capacity will be defined and worked out with regards to agricultural rent reviews.
70. Kate Thomson-McDermott, Head of the Land Reform Policy Team in the Scottish Government, described the regulation-making powers in the Bill as "largely administrative"³⁴ and noted that it was not unusual for bills/acts to contain a significant number of regulation-making powers. She also noted that approximately 50% of the powers are in Part 10 on agricultural holdings, and that

the delegated powers in Part 5 mirror existing legislation on community right to buy provisions.

71. The Scottish Government subsequently confirmed³⁵ that the Bill contains 45 delegated powers, compared to 27 in the Land Reform Act 2003 and 14 in the Agricultural Holdings Act 2003 (a total of 41). The Scottish Government also noted that the Land Reform Act 2003, as amended by the Community Empowerment (Scotland) Act 2015, now contains 70 delegated powers.
72. The Minister told the Committee that there were benefits in certain parts of the Bill being taken forward in secondary legislation, such as regulations being more flexible than primary legislation, and easier to update to reflect changing circumstances, and stressed that she believes that the Bill strikes an appropriate balance between primary and secondary legislation.³⁶
73. Further comment on specific delegated powers contained in Parts of the Bill can be found elsewhere in this report.

74. Most bills of this size and complexity that cover such a wide range of different policy areas would be likely to contain a significant number of regulation-making powers. However, it is not so much the number of powers in the Bill per se which gives cause for concern, as the subsequent lack of detail regarding a number of important provisions which have been left to secondary legislation. This lack of clarity is unhelpful in sustaining confidence in the agricultural tenancy sector, or reassuring communities and individuals wanting to see improvements in the transparency of land ownership and better engagement with land owners.
75. The Committee understands the desire of the Scottish Government to bring a swift resolution to many of these matters for stakeholders. However, effective scrutiny of some fundamental parts of the Bill was difficult given that the detail of several key provisions is being left to regulations. This also raises ECHR concerns, as noted by the Delegated Powers and Law Reform Committee in its report on the Bill (the Committee considers this further later in this report). It was clear that one cause of this was that the Scottish Government considered that there was not sufficient time available to it to consider all of the details and possible options in its drafting of the Bill, in terms of ensuring that the Bill could pass through the required scrutiny stages before the dissolution of Parliament in March 2016.
76. The Committee recommends that the Scottish Government gives very careful consideration to the regulation-making powers contained in the Bill, and ensures that as much detail and clarity about such provisions as is possible, including a timetable for their introduction, is provided to Parliament before the end of Stage 2.

77. It will fall to subsequent Parliamentary committees in future sessions to scrutinise the forthcoming secondary legislation. It is therefore important that the Scottish Government carefully considers whether each set of regulations to be made under the Bill should be subject to an enhanced form of the affirmative procedure ('super-affirmative'); the affirmative procedure; or the negative procedure, given that regulations subject to a super-affirmative or affirmative procedures will receive a higher level of scrutiny by a Parliament not intimately familiar with the details and evolution of the primary legislation. There will be an opportunity at Stage 2 to amend any of the regulation-making powers in the Bill to require them to be subject to a specific statutory procedure, which will provide further scope to consider which would be most appropriately suited to a 'super-affirmative' procedure.
78. The Committee endorses the report made by the Delegated Powers and Law Reform Committee, notes the subsequent letter from the Committee to the Cabinet Secretary and looks forward to seeing the information requested in that letter.

Sustainable development and equalities (with health inequalities)

79. As stated above, the PM contains commentary on the perceived impact of each Part of the Bill on equal opportunities, human rights, island communities, local government, and sustainable development. The Bill has particular potential impacts on human rights, sustainable development and equalities groups.

Sustainable development

80. The concept of sustainable development lies at the heart of much of this Bill. Whether it is the establishment of the SLC; improving the engagement with communities in the decisions taken about land; introducing a new right to buy specifically for the purpose of furthering sustainable development; ensuring more appropriate control of wild deer populations across Scotland; or seeking to re-balance the tenant farming sector in a bid to ensure confidence and fairness to both landlords and tenants; the principle of sustainable development underpins it all.
81. The Committee comments on specific sustainable development issues as they relate to Parts of the Bill elsewhere in this report, including the thorny issue of whether a definition of sustainable development should appear in the Bill.

82. For the Bill to successfully achieve many of its aims and ambitions, it is essential that the principle of sustainable development is both understood and supported by people across Scotland, and has an accepted and well-understood basis in law.
83. The Committee is supportive of land development being considered and planned with due regard to longer term consequences, and with the aim of delivering social, economic and environmental enhancements and benefits whilst protecting the natural habitat.

Equalities (including health inequalities)

84. Views were received about issues of equality and inequality as much of the Bill is set in the context of—
 - the concentrated pattern of land ownership in Scotland;
 - the perceived lack of opportunities for communities to own or have a say in the ownership and/or use of land; and
 - the perceived imbalance, in favour of landlords, of rights between landlords and tenant farmers.

85. These issues have been at the heart of land reform and agricultural holdings debates in Scotland over the last decade and more, and many people feel very passionately about them. Changes are clearly required to make Scotland a fairer country with greater equality of opportunity. The entire Bill should be seen as an opportunity to address these issues in a positive way.

86. The PM states that several aspects of the Bill will have a neutral or non-direct effect on equal opportunities. The Part of the Bill which the PM states could have the biggest impact on equal opportunities is Part 10 relating to agricultural holdings.
87. The equal opportunities section of the PM relating to Part 10 of the Bill states that—

” 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.³⁷

88. With regard to health inequalities³⁸, the Committee received helpful evidence from NHS Health Scotland which highlights issues relating to the creation of a new community right to buy to further sustainable development in Part 5—

” There seems to be a presumption in the proposed right for community bodies to buy land that all communities are equally placed to benefit. However, the resources needed to facilitate community purchase and management of land may be distributed unevenly between communities. Affluent communities are likely to have better access to the range of technical, specialist and managerial skills as well as valuable external connections. Thus, there is a possibility that inequalities between communities may be reinforced if disadvantaged communities are not offered training, guidance and support to take advantage of the opportunities to purchase and manage land. Equally, inequalities may be created and/or maintained within a community, if the proposed development of the land benefits and/or excludes a particular population group.³⁹

89. NHS Health Scotland calls for an amendment to the Bill so that consideration would be given as to the likely effects of granting or not granting an application to exercise the new Part 5 community right to buy on inequalities, including health inequalities.

90. It is important that this Bill does not create disadvantages for equalities groups and in terms of health inequalities. The Bill should also strive to achieve positive outcomes for equalities groups and in terms of health inequalities across the country as far as is possible.

91. The Act could result in real progress being made in delivering equalities and health inequalities benefits, particularly through the parts of the Bill relating to: the establishment of a Scottish Land Commission; access to information about those in control of land; the community engagement and right to buy aspects; and agricultural holdings (in terms of both age and gender issues). The Bill should be able to create an environment where land in Scotland can be owned, managed and enjoyed by every part of society, and to the benefit of all its people. The Committee therefore recommends that the Scottish Government, via both the Scottish Land Commission and the land rights and responsibilities statement makes it a priority to realise this ambition.

92. The Committee recommends that the Scottish Government considers the evidence submitted by NHS Health Scotland regarding health inequalities and in particular the merits of its suggestion that the likely effects on inequalities is considered as part of the decision-making process in the new Part 5 community right to buy to further sustainable development.

93. The Committee also recommends that any amendments lodged take full account of the need for the Bill to deliver improved outcomes for equalities groups and for health inequalities across Scotland.

Human rights

Introduction and background

94. Throughout the Stage 1 scrutiny process, particular attention was paid to human rights and the compatibility of the Bill with the European Convention on Human Rights (ECHR) and with other internationally agreed human rights documents, such as the International Bill of Human Rights, which includes the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, and the Universal Declaration of Human Rights and the United Nations' Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security.
95. Section 29(2)(d) of the Scotland Act 1998⁴⁰ states that a provision in an Act of the Scottish Parliament is not law if it is incompatible with any of the Convention rights, namely the rights and fundamental freedoms set out in the ECHR. Compatibility with the ECHR accordingly forms one of the restrictions on the Parliament's legislative competence.
96. The Scotland Act 1998 also empowers Scottish Ministers to observe and implement the UK's other international human rights obligations. The Committee therefore not only considered which parts of the Bill may engage ECHR rights for the purposes of ensuring that the Bill is compatible with those rights, but also how the Bill could be effectively underpinned by other international obligations, such as the International Bill of Human Rights (and all its relevant constituent parts) and the Voluntary Guidelines.

European Convention on Human Rights

97. The ECHR rights most relevant to the Bill are those protected by Article 1, Protocol 1 (A1P1 – right to peaceful enjoyment of possessions) and Article 8 (right to respect for private and family life)—

” **Article 1, Protocol 1 – Right to peaceful enjoyment of possessions**

Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.

Article 8 - Right to respect for private and family life

Everyone has the right to respect for his private and family life, his home and his correspondence.

There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic wellbeing of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

98. It is significant, however, that the rights protected by A1P1 and Article 8 are not absolute rights, and states may interfere with them in order to pursue public interest objectives, provided that—
- **such interferences pursue a legitimate aim in the public interest; and**
 - **do so in a proportionate manner.**
99. The essence of proportionality is whether the measure chosen to achieve the policy objective or legitimate aim in question has a greater or more intrusive impact on the protected rights of particular parties than is justified by reference to the stated policy aim; and whether the measure goes no further than is necessary to achieve that aim.
100. Some witnesses emphasised the importance of proportionality. Mungo Bovey QC, from the Faculty of Advocates, said—
- ” If you want to open a nut you can use a nutcracker or you can use a sledgehammer, but if you could use a nutcracker it would be disproportionate to use a sledgehammer, which would probably destroy the nut and so defeat the purpose.⁴¹
101. This was supported by Charles Livingstone, a partner at Brodies, who also stressed the need to consider, as part of the proportionality assessment, whether any alternative measure would deliver the same outcome by a more reasonable means. In written evidence, Brodies stated—
- ” A large number of the policies set out in the Bill (or which could be introduced in secondary legislation under one of the many regulation-making powers) are certain or very likely to interfere with the property rights protected under Article 1 of Protocol 1 to the European Convention on

Human Rights. For some of those policies, it is not at all clear that the interference can be justified as lawful. In particular, some of the key restrictions appear to go further than is likely to be necessary to achieve the relevant aim.⁴²

102. Another concern shared by many was the number of provisions in the Bill which will be taken forward via secondary legislation. Witnesses said it was hard to consider the ECHR implications of provisions which lack detail at present, and also expressed concern that the resulting secondary legislation would not be subject to the same rigorous scrutiny as is afforded to primary legislation.

103. Having scrutinised both the Agricultural Holdings (Scotland) Act 2003 Remedial Order 2014 and witnessed the aftermath, including legal cases involving landlords, tenants and potential compensation the Committee is aware of the vital importance of ensuring that legislation passed by the Scottish Parliament is robust and fully compliant with the European Convention on Human Rights (ECHR).

104. Given that ECHR compatibility forms one of the tests governing the Parliament's legislative competence, it is important for the Committee and the Parliament to examine rigorously the measures in the Bill which raise ECHR issues closely and to fully test the arguments put forward by the Scottish Government regarding ECHR compatibility thoroughly. Such a process will help to strengthen the legislation and protect it from successful challenge.

105. The Bill must strike an appropriate balance between the rights and interests of tenants, communities and landowners.

106. Concerns regarding the number of provisions in the Bill being taken forward via secondary legislation were also raised in relation to ECHR considerations. It is difficult to assess properly the potential ECHR implications of key provisions of the Bill until the details of what will be contained in regulations is published. The Committee believes that information regarding the scope and use of these powers must be made available before the end of Stage 2 so the Parliament has an opportunity to consider the proposals as part of its scrutiny of the primary legislation. Such scrutiny will strengthen the legislation and protect it from challenge.

107. The Committee therefore restates the recommendation it made above to the Scottish Government that far greater information on the detail of the secondary legislation to be brought forward under the delegated powers in the Bill (particularly those relating to Part 3; the conversion of Modern Limited Duration Tenancies in Part 10, section 79; and with regard to rent reviews in Part 10, Chapter 4) must be made available before the commencement of those sections at Stage 2.

European Convention on Human Rights comment in the Policy Memorandum

108. The PM sets out the Scottish Government's views on the human rights aspects of each Part of the Bill. With regard to parts 1 and 2 of the Bill, establishing a land rights and responsibilities statement and the SLC, the PM states—

” 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.⁴³

109. With regard to Part 3 of the Bill regarding access to information about those who own land, the PM states that as the Bill contains regulation-making powers it does not determine anyone's human rights in itself. However, the PM goes on to state that—

” 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 1.⁴⁴

110. Parts 4 and 5 regarding furthering the sustainable development of land are more significant in terms of human rights as Part 5 contains provisions for the forced sale of land in certain circumstances and potentially against the will of the owner. The PM acknowledges that this would engage A1P1 of the European Convention on Human Rights as it would constitute a deprivation of property. The PM states that—

” 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.⁴⁵

111. The PM also states that Article 6 concerns the right to a fair hearing and that Part 5 provides for adequate and appropriate rights of appeal.

112. The PM notes no significant human rights issues or concerns with Part 6 (sporting rates), Part 7 (common good) or Part 8 (deer management). With regard to Part 9 regarding access issues and core path plans, the PM states that Convention rights are likely to be engaged in some situations where core path land is being amended but adds that the Scottish Government consider the Bill provisions to be ECHR compatible.

113. Part 10 of the Bill regarding agricultural holdings is, along with Part 5, potentially the most significant in terms of human rights issues. The PM introduces the human rights commentary on this part of the Bill by stating—

” 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. The Scottish Government is satisfied that the provisions of this part of the Bill are compatible with the European Convention on Human Rights.⁴⁶

114. However, the commentary on the various chapters of Part 10, whilst explaining the policy intention and background to the provisions, does not actually give any specific comments on human rights aspects, as is done with other parts of the Bill.

115. The Scottish Government subsequently sent the Committee, on request, a more detailed commentary on the human rights aspects relevant to Part 10.⁴⁷ The letter emphasised that these fundamental rights apply to everybody, including landowners, landlords, tenants and communities. The letter also stated that the UK Supreme Court’s four stage process of determining ECHR compatibility where there is an interference with a right protected by the Convention had been applied to the drafting of the Bill. The four stages are set out as—

” (i) whether there is a legitimate aim which could justify a restriction of the relevant protected right,

(ii) whether the measure adopted is rationally connected to that aim,

(iii) whether the aim could have been achieved by a less intrusive measure, and

(iv) whether, on a fair balance, the benefits of achieving the aim by the measure outweigh the disbenefits resulting from the restriction of the relevant protected right.

116. Witnesses agreed that the PM was a vital document in terms of setting out the legitimate aim of the proposals in the Bill, explaining what alternative approaches were considered, and why they were ruled out, and explaining how the Bill is delivering the identified legitimate aims proportionately and appropriately balancing the rights of people involved. Most felt that the PM does this reasonably clearly. However, some suggested that it should have been clearer in setting out the other international obligations that Scotland has, in addition to ECHR, and could also have better demonstrated the proportionality of the provisions in the Bill in some places. The Faculty of Advocates noted that some of the content and language of the PM is not reflected in the Bill itself, citing the example of a definition of sustainable development.

117. Part 10 of the Bill aside, the Policy Memorandum provided a largely adequate commentary on the potential ECHR implications of the Bill. However, both this Committee, and the Delegated Powers and Law Reform Committee, had to request further information on various aspects of the Bill. The Committee reiterates its call on the Scottish Government to ensure that Policy Memoranda contain as much information as possible when published, particularly with regards to human rights issues and the content of proposed regulations.

Other international human rights obligations

118. As mentioned above, many were of the view that the Bill should be set within the context of other international human rights agreements beyond ECHR, such as the International Covenant on Economic, Social and Cultural Rights and the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Forests and Fisheries in the context of National Food Security.

119. Kirsteen Shields, a lecturer at Dundee University, Megan MacInnes, a land advisor with Global Witness, and Eleanor Deeming, a Legal Officer at the Scottish Human Rights Commission, all commented on the fact that the UK is committed to other obligations and that the Scotland Act 1998 states that the observing and implementing of international obligations is devolved to Scotland and within the competence of the Scottish Parliament. Those other obligations see land as a national asset, and a fundamental right from which all other rights then flow. They all agreed that the Bill should be amended to make reference to these obligations at the start, to set the context for, and underpin, the Bill as a whole.

120. Brodies and the Faculty of Advocates both noted that, whilst it was legitimate to consider other international human rights obligations, ECHR has a legal status in terms of the Parliament's legislative competence which the other obligations referred to do not have. However, Global Witness stressed that these other obligations should not be downgraded just because they do not have the same legal status that ECHR has.

121. Compatibility with the ECHR forms one of the tests governing legislative competence which means it needs to be carefully considered when framing legislation. However, the Scotland Act 1998 also makes it clear that the observing and implementing of international obligations is devolved to Scotland and therefore within the competence of the Scottish Parliament. It is therefore important that the other international human rights agreements, which the UK is signed up to and committed to implementing, and which are supported by the Scottish Government, are also recognised in the Committee's consideration of human rights issues in the context of this Bill. It is vital that the Bill gives due prominence to other obligations, such as the International Covenant on Economic, Social and Cultural Rights and the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Forests and Fisheries in the context of National Food Security, and the Committee has made recommendations regarding this later in this report.
122. Underpinning the Bill with these obligations will help to clarify the Parliament's intentions and will hopefully make the Act more robust to successful legal challenge on human rights grounds.

Part 1 – Land rights and responsibilities statement

123. Part 1 of the Bill states that the Scottish Government must prepare a land rights and responsibilities statement (LRRS) setting out its objectives for land reform. The Bill states that the first LRRS must be published within 12 months following the Bill coming into force, and must be reviewed every 5 years. After each review, a revised statement must be laid before Parliament, although the Scottish Government has clarified⁴⁸ that the review could conclude that no changes are necessary, in which case the revised statement would be the same as the previous statement.
124. The PM states that the Scottish Government intends to consult on a draft LRRS (and on all subsequent revised statements) ahead of it being published and laid in Parliament and the Government subsequently confirmed that the draft statement set out in its consultation, and the responses received, will provide the basis for taking forward and consulting on a draft LRRS.
125. The PM also states that in addition to setting out the objectives for land reform which will inform "in a consistent and holistic manner"⁴⁹ the LRRS will provide reference for the proposed SLC, public agencies, and the Scottish Parliament, and provide communities and the private sector with a clearer understanding of the Scottish Government's aims and ambitions for land reform.

126. There was strong support for the LRRS in the evidence submitted to the Committee. However, some were of the view that the statement was unnecessary and would have little or no real value, or feared that it would lead to increased bureaucracy and costs. Others felt that the actual statement should have been prepared before the Bill was introduced and/or should be set out in it.

127. Suggestions were put forward to improve the LRRS and the process for its development, including that it—

- should be debated or endorsed by Parliament;
- should be the first step towards a more formal national land policy;
- should include and/or reflect a range of issues, such as human rights, climate change, biodiversity, sustainable development, the Land Use Strategy, equalities, diversity of ownership, and the effect on business, and;
- should reflect international agreements and perspectives.

128. The LRRS was one of the areas of focus at the Committee's formal meeting in Portree, Skye.⁵⁰ At that meeting there was strong support for the suggestions above and Community Land Scotland (CLS) also said the Scottish Government should report to the Scottish Parliament regarding progress of achieving the statements objectives. Peter Peacock, a Policy Director with CLS, added that—

” We wondered whether there could be an additional set of provisions to allow ministers to establish national priorities in land reform for fixed periods of time so that they could say that, within those broad objectives, they would like to see a lot of progress on certain aspects of land reform over the coming three or four-year period. That would allow them to direct policy in that way.⁵¹

129. Some felt that it was not currently clear what the focus of the LRRS would be, as it is titled a statement of land rights and responsibilities, but then the Bill states that it will be a statement of Ministers objectives for land reform, which many felt was not the same thing. The independent researcher, Andy Wightman, thought that the statement should not be Ministers' land reform objectives but should be as described by its title, a statement of land rights and responsibilities which would apply to everyone in Scotland.⁵² The Minister told the Committee that the intention for the statement was to both outline the Scottish Government's objectives for land reform in Scotland, but also to provide the context for the future development of land, and the land rights and responsibilities of people in Scotland.⁵³

130. Some sectoral organisations wanted to see the statement making specific reference to their particular area of interest, such as food production, crofting, or forestry. Scottish Land and Estates (SLaE) also felt it was important that the statement linked to, or was set within the context of, other documents, such as the Scottish Government's national performance and planning frameworks.⁵⁴

131. When questioned about whether the Bill should be amended to make it clear that the statement must be debated in Parliament, Kate Thomson-McDermott told the Committee that there was nothing to prevent this happening, if that was the will of Parliament, even though the Bill does not specifically provide for it.⁵⁵ The Minister added that she would consider any recommendations from the Committee on this issue.⁵⁶



Figure 10 Minister for Environment, Climate Change and Land Reform, Aileen McLeod and Kate Thomson-McDermott give evidence to the Committee

132. It was suggested that the Bill be amended to require the LRRS to reference, and be set within the context of, not only the legal framework provided by ECHR, but also other international obligations such as International Bill of Human Rights which includes the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, and the Universal Declaration of Human Rights, and the United Nations' Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security.

133. The Minister told the Committee that she would give further consideration to this suggestion, as part of the statement's consultation process.⁵⁷

134. The Committee supports the principle of Scotland adopting a land rights and responsibilities statement. However, the Bill is currently unclear on whether the statement is intended as a statement of land rights and responsibilities (as titled) or as a statement of Ministers' objectives for land reform, which could be quite different. The Committee recommends that the focus of the statement should be on the former, keeping the latter as a matter of policy for the Government of the day (which should be guided by the principles of the statement) and that the Bill is amended to clarify this.

135. Such a statement would be at its most effective if it is widely supported and is a unifying statement around which people can coalesce and feel empowered to work together to achieve.

136. The Committee welcomes the Scottish Government's confirmation that a draft statement will be subject to a full and wide consultation process. Further to this, the Committee recommends that the resulting statement is debated and approved in Parliament and that the Bill be amended at Stage 2 to ensure that such debate and approval is required.
137. In terms of the contents of the statement, the consultation process must be respected and not pre-empted. However, the Committee hopes that the final statement takes account of issues such as the impacts on biodiversity and of climate change, and links to, or is set within the context of, the Scottish Government's National Performance Framework and other relevant high level policy documents, such as the Land Use Strategy. It is essential that there is coherence between all the various policies involved in land reform and management and that the statement sets out the legitimate aims of the land reform process in Scotland.
138. The Committee also recommends that the Bill be amended to require the statement to take account of other international obligations, such as the International Covenant on Economic, Social and Cultural Rights and the Food and Agriculture Organisation of the United Nations' Voluntary Guidelines on Responsible Governance of Tenure, in order to further reflect fundamental human rights considerations and place Scotland's land policies in an international context.

Part 2 – The Scottish Land Commission

139. Part 2 of the Bill establishes a new body, The Scottish Land Commission (SLC), or Coimisean Fearainn na h-Alba. The SLC is to consist of 6 commissioners: 5 Land Commissioners; and a Tenant Farming Commissioner (TFC), all of whom will be appointed by the Scottish Ministers. Appointments require to be approved by the Scottish Parliament. The Bill also allows Scottish Ministers to make regulations changing the number of Land Commissioners.
140. Part 2 is split into 3 chapters: Chapter 1 relates to the Commission itself; Chapter 2 to the land commissioners; and Chapter 3 to the TFC.

The Commission

141. Chapter 1 deals with the establishment, functions, and membership of the SLC, and sets out the framework for setting its strategic plan and programme of work. Chapter 1 also sets out how the SLC should be staffed (including issues such as salaries and pensions); outlines operational matters (such as the establishment of committees); sets out details of accounting and the publishing of an annual report; and ensures that relevant legislation relating to public bodies is amended to apply to it. The Scottish Government has subsequently clarified⁵⁸ that the SLC would

have no role in buying and/or selling land other than for the purpose of acquiring its own premises, and that it can cooperate with, and request advice from, groups as well as individuals.

142. Questions were raised about the status of the SLC and how independent, or not, it should be from the Scottish Government. The Committee heard that it is appropriate that the Bill sets the SLC up at arm's length from Government as it is important for it to be autonomous, and to be able to work to long term timescales and take long term views beyond Parliamentary election periods.⁵⁹
143. There was broad support for the establishment of an SLC but the Committee received many proposals to improve it, such as the view that the Commission be called the Scottish Land **Reform** Commission. Others felt it is right that the word "reform" does not appear in the title of the SLC as it could limit its wider land governance work and, potentially, be divisive. Scottish Government officials told the Committee the word "reform" is not part of the title as the SLC will also include the TFC.
144. Other than those submissions which disagreed with the establishment of such a commission at all, specific concerns were expressed about the cost of the SLC, suggesting that the funds could be better used elsewhere.
145. Another theme which emerged in evidence-taking was to what extent, and how, the SLC would ensure that its work was consistent with other Government policy and strategies, such as the Land Use Strategy. Government officials told the Committee that, ultimately, it would be up to the SLC to determine its own approach to this and its own programme of work.
146. Views were also expressed about the responsibilities and remit the SLC should have, such as reviewing law and policy relating to land; being tasked to produce a national land policy; having the freedom to pursue its own agenda; and being able to raise proactively issues of concern. Many people also thought that, whilst there is a requirement for Ministers to approve the Commission's strategic plan and work programme, there should be a requirement for consultation, and for those documents to be debated and endorsed by the Parliament. Fiona Taylor, the Land Reform Bill Manager in the Scottish Government, said that it was anticipated that the strategic plan would be subject to consultation and that it was not considered necessary to legislate on the issue.⁶⁰ The Minister told the Committee that the Parliament would be able to scrutinise the work of the Commission but that she did not want to impose too many statutory requirements on the body, and to let it get on with organising its own work.⁶¹

147. The Committee supports the establishment of a Scottish Land Commission and is content with the status of the body as established by the Bill. The Committee is also content with that being the title of the body, rather than it being called the Scottish Land **Reform** Commission, as it believes that would better describe a body containing a tenant farming commissioner and tasked with considering all of the aspects involved in maintaining a strategic overview of Scotland's land as a resource for all of its people. The Commission's work can, and should, include land reform issues, without the word "reform" being included in its title.

148. General scepticism at the creation of any new national body is common place, and it is appropriate that people often wish to examine the potential costs and impacts of any new organisation. It is therefore imperative that the purpose of the new Commission is clear, that it is both trusted and respected by all parts of society in Scotland, is as open, transparent and accessible as possible and delivers real value for money.

149. The Bill should be amended at Stage 2 to ensure that both the strategic plan and work programme of the Commission are widely consulted upon and debated in, and endorsed by, the Scottish Parliament.

150. The Committee does not wish to pre-empt any consultation processes to which it is anticipated the Commission's strategic plan and work programme will be subject. However, the Committee is of the view that the Commission's work must be set within the context of other relevant legislation, policy and strategy, and the Scottish Government's Land Use Strategy in particular. It is imperative that the issues of land ownership, land management and land use are not separated but considered together. That synergy must always form a key part of the Commission's Strategic Plan.

The Land Commissioners

151. Chapter 2 establishes the Land Commissioners and details their functions, and arrangements for the delegation of those functions.

Required expertise and/or experience

152. One of the main issues raised in relation to this part of the Bill concerns the expertise and/or experience that the Commissioners should have, collectively and individually. Several people called for the land commissioners to have various specific skills and/or experience, from land management generally, to specific sectoral experience (e.g. farming, forestry or crofting), to wider experience such as in human rights, equalities, community development, ecosystem services, and/or environmental research.

153. This issue was discussed at the Committee's meeting in Portree, Skye, with witnesses either supporting the Bill as drafted and noting that there are so many different land based skills that they couldn't possibly all be represented, or arguing

that other, often sectoral, skills and /or experience be added to the list. Sarah-Jane Laing, Director of Policy and Parliamentary Affairs at SLaE, argued that land management in its broadest sense be added to the list as a requirement (rather than one specified land management skill). Peter Peacock from CLS said—

” We want the commissioners to be people of stature, of independent mind and thought and of integrity, who understand public policy and the public policy objectives that the Government is trying to achieve, who can weigh up the public interest, and who are analytical, questioning and challenging, rather than people who seek to be representative.⁶²

154. There was also a view that at least one commissioner should be a Gaelic speaker. Malcolm Combe, a lecturer in law, at the School of Law at University of Aberdeen, said it may be beneficial to the Gaelic language in general for it to be specified amongst the desired skills and experience and be afforded that level of prominence.⁶³ He added that—

” An analogy might be drawn with the Scottish Land Court Act 1993 and the Crofters (Scotland) Act 1993. The latter requires a crofting commissioner to have knowledge of the Gaelic language. Such knowledge would have benefits for land commissioners’ understanding of what the land is about and their ability to unlock place names and things like that. That may be a less tangible benefit. Requiring commissioners to have a knowledge of Gaelic might have benefits for the language—I know that that is not necessarily what the Scottish land commission is for, but it could be a positive step to have Gaelic involved. Arguably, some of that is built into the Gaelic Language (Scotland) Act 2005 but, to be consistent with the two 1993 acts that I mentioned, it would be good to have Gaelic included in the bill.⁶⁴

155. Dr Jill Robbie supported this, adding that it would demonstrate both a commitment to diversity and that the SLC represents all parts of Scotland.⁶⁵ Others cautioned against the requirement for a Gaelic speaking commissioner as it could alienate other parts of the country, and also open up calls for a specific Scots speaker, or for other languages to be represented. The Minister noted that the staff of the SLC could include Gaelic speakers.⁶⁶

156. The Scottish Government confirmed that the SLC will be able to draw on additional areas of expertise as and when required, and that—

” the list [in the Bill] is non-exhaustive and contains a number of areas that the Scottish Ministers must consider. This does not mean that other areas of expertise or experience will not be considered or that each Land Commissioner must have expertise in one or all of these areas.⁶⁷

157. The Committee listened to all of the views about the expertise and/or experience that the Commissioners as a whole should have and is not persuaded of the merits in ensuring that the Commissioners should have collective specific sectoral land management experience (farming, forestry, crofting etc) nor specifically of community land ownership, although these experiences and skills would be useful to the Commission. What is of utmost importance is that the Commissioners are people of integrity, principle and vision that are respected and trusted by the people of Scotland.
158. There is, however, merit in ensuring that the Commissioners collectively have some general land management experience and/or expertise and that the Commissioners have experience of understanding, working with and empowering communities. The Committee therefore recommends that the Scottish Government gives further consideration as to how best to ensure the Commissioners reflect those areas of interest.
159. The Committee notes the statutory requirement for at least one member of both the Scottish Land Court and the Crofting Commission to be a Gaelic speaker and believes it is essential to ensure that the Gaelic language be given equal status in law. The Committee therefore recommends that the Bill be amended to require at least one member of the Scottish Land Commission to be a Gaelic speaker, as well as having the other relevant skills and qualifications.

Scope of remit

160. CLS noted that there is a potential anomaly between the breadth of issues on which the SLC will be able to make recommendations to Scottish Ministers, and the powers that Ministers have to take forward those recommendations.⁶⁸
161. The Committee followed this issue up with Scottish Government officials in writing, who responded that—

” in response to the question will the Land Commissioners be able to consider any matters relating to land in Scotland if there is no existing law or policy on the matter, it was advised that there is unlikely to be any area where there is not relevant law or policy, and even if this were to be the case it would be open to the Land Commissioners to review the rationale for there being no existing law or policy on an issue.⁶⁹

162. The Committee is content with the scope of the Commission’s remit as set out in the Bill.

The Tenant Farming Commissioner

163. Chapter 3 establishes a Tenant Farming Commissioner (TFC), and sets out details of functions, and arrangements for the delegation of those functions, and also makes provision for an acting TFC; the preparation and promotion of various codes of practice; powers to inquire into alleged breaches of those codes of practice; and powers to refer questions of law to the Land Court.
164. There was a great deal of support for the establishment of a TFC from both tenants and landlords, and the majority of people are content with the TFC being part of the wider SLC, although there was also a minority view that the TFC should not be part of a wider land commission but should be a stand-alone entity and/or widened out to be a full agricultural commission.
165. Other issues raised in evidence included that—
- there should be more than one TFC;
 - the codes of practice must have a statutory basis; and that
 - the TFC be granted powers to enforce the codes and impose penalties where necessary.
166. The Committee heard repeated calls for the TFC to be equipped with sufficient powers, and the ability to enforce those powers, so that it has the required teeth to have real influence within the sector. Many also called for consideration to be given to the TFC leading, or playing a significant role in, overseeing a mediation and/or arbitration service to help avoid the threat or recourse to the Land Court, which many tenants often cannot afford to pursue. There was also disagreement between some landlords and tenants as to the status of the codes referred to in the Bill, with the former content with the Bill as drafted, and the latter wanting to see the codes placed on a statutory footing.
167. The Committee heard evidence, as it has done previously, that a statutory code was required for land agents as the behaviour and attitudes of some agents is not helping, and sometimes is creating or fuelling, some disputes in the sector. The Cabinet Secretary told the Committee that he agreed that a case could be made for this and added that it would be the role of the TFC to consider what new codes are required and then to take those forward.⁷⁰
168. With regards to equipping the TFC with stronger powers, the Scottish Government told the Committee that—
- ” The role is primarily an administrative one as opposed to a legal one and therefore it is not appropriate to give the TFC powers which could be seen to cut across the functions of the Land Court or impact upon the entitlement of all parties to have issues relating to legal rights determined in a court of law. Instead the Bill enables the TFC’s report to be considered as

evidence of the facts of a particular case in any subsequent Land Court proceeding or in any arbitration hearing. The TFC is also provided with a power to issue fines for non-compliance (i.e. non co-operation of requests for information).⁷¹

169. The Cabinet Secretary said that one of the purposes in creating the TFC role is to reduce the number and intensity of disputes and try to prevent cases ending up in the Land Court. However, he added that it was difficult to currently accurately predict what effect the TFC would have in terms of resolving disputes and that the Scottish Government would need to reflect on this after a period of time following the establishment of the TFC.⁷²
170. With regard to the appropriate number of TFC's, Scottish Government officials noted that the Bill allows the TFC to authorise other people to carry out its functions, thus providing flexibility in terms of seeking additional support.⁷³
171. Scottish Government officials also stated that the TFC is intended as a separate commissioner but that it is being housed within the wider SLC largely for reasons of efficiency.⁷⁴

172. The Committee welcomes the establishment of a specific Tenant Farming Commissioner and hopes that the creation of such a role, within the wider Scottish Land Commission, will help the sector to move forward more positively in the future.

173. It is important to ensure that the role, remit and powers the Tenant Farming Commissioner has, and all those it seeks input and support from, are sufficient for the role to make a real difference in the tenant farming sector.

174. It is also essential that the Commissioner has the appropriate powers to enforce the codes which will help to govern and guide the sector. The Committee therefore recommends that the Scottish Government considers widening the current penalties liable in the Bill so they cover non-compliance with codes, rather than failing to provide information relevant to an inquiry into alleged non-compliance. The Scottish Government should also give further consideration to putting the codes on a statutory footing.

175. The Committee heard powerful testimony from tenant farmers in different parts of the country about the stress and difficulties caused by the threat of disagreements ending up in the Land Court. It is essential for the improvement of the tenant farming sector that recourse to the Land Court is replaced, where at all possible, by processes of mediation and/or arbitration. The Committee recommends that the Scottish Government gives further consideration to the role the Tenant Farming Commissioner could play in leading and managing such a process, and further recommends that it liaises with the Scottish Arbitration Service to determine what role it could play to work with, and support, the Commissioner in delivering those aims.

176. It is also vital that, subject to a full consultation, a statutory code of practice for land agents is developed by the TFC and then rigorously enforced. The Committee therefore recommends that the Scottish Government brings forward an amendment to section 25(2) of the Bill which lists codes of practice that may be prepared by the TFC, and includes a land agents' code as a priority.

Part 3 – Information about the control of land

177. Part 3 consists of two sections which are intended to improve the transparency of land ownership which was part of the Scottish Government's consultation. Currently, it is possible for the ownership of land in Scotland to be determined by consulting either the Register of Sasines (which dates back to 1617) or the Land Register of Scotland (established in 1981). The PM states that—

” 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.⁷⁵

178. However, as the PM goes on to outline, there can be instances where trying to determine some of these factors is complicated, either due to complex ownership structures (such as the use of shell companies or trust ownership), and/or by lack of information.

179. It is evident to the Committee that there is strong support for better information being available about land ownership and the Committee has heard strong views that the Bill does not go far enough in this area and has not delivered on the ambitions and intentions of the review and consultation which informed the Bill. The Committee received some very critical evidence on this Part of the Bill, including from Andy Wightman who stated that Part 3 served no useful purpose and should be deleted in its entirety and replaced with provisions implementing the proposal originally outlined and consulted on in relation to requiring legal

entities wishing to own land in Scotland to have a registered place of business within the EU.⁷⁶ CLS also described Part 3 as “the weakest and most disappointing”⁷⁷ part of the Bill. These issues are discussed in more detail below.

180. At its meeting in Skye the Committee heard concerns that the regulation-making powers in Part 3 lacked detail which should be set out in the Bill. Concerns were also expressed regarding the scrutiny processes to which the regulations would be subject, which, even if the affirmative procedure is used, are unlikely to be as thorough as the process for primary legislation.
181. Evidence on the human rights aspects of the Bill was also critical of the lack of detail contained in Part 3 and the difficulty in then attempting to assess any potential human rights implications, and also noted the need to define, in the Bill, terms used in Part 3, such as “controlling interest”.

Right of access to information on persons in control of land

182. Section 35 introduces the right of access to information on persons in control of land, and is aimed at making it easier for people affected by decisions taken about land to obtain information about those making those decisions, which in some cases will not be the owner, but those given control over the land by the owner (often referred to as the controlling and/or beneficial interests).

183. The PM states that—

” 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.⁷⁸

184. It is important to note that section 35 provides Scottish Ministers with the power to make regulations in this area, and sets some of the guiding boundaries of any such regulations, but does not set out any details in the Bill.

185. Section 35 outlines matters in respect of which the regulations may make provision, which include—

- defining people in control of, and affected by, land;
- the circumstances in which affected persons may request information;
- the form, content and cost of making a request;
- who requests should be made to;
- powers of the Request Authority to require information;

- powers of people required to provide information to be able to require information from a third party;
 - the circumstances in which the Request Authority need not provide requested information; and
 - details of an appeals procedure and provisions for offences and penalties.
186. Section 35 also states that any draft regulations must be consulted on before a draft is laid before the Scottish Parliament.
187. The PM states that—
- ” 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 question.⁷⁹
188. The Committee heard that that this part of the Bill should be trying to resolve concerns the control of land (as stated in the title of Part 3), rather than the ownership of land, which can (or will be able to) be accessed through the current land registers (which have no requirement to be updated) which are designed as a means to register title, rather than to provide clarity and transparency about the control of land. Andy Wightman was of the view that this section should be removed from the Bill as, in his view, it serves no useful purpose and will not improve the transparency of land ownership in Scotland. He added that the sections only provide regulation-making powers and include no powers to compel responses. He also said it was “bizarre”⁸⁰ that provisions aimed at improving transparency should limit the people who can request information rather than allowing anyone to have that right, a view broadly supported by CLS who also noted the anomaly, in its view, of seeking to improve transparency, and then putting conditions on the access to that improved transparency.⁸¹
189. SLaE noted, however, that section 35 of the Bill does allow for the regulations to include provisions for sanctions and penalties for failure to comply.⁸²
190. Concerns were also expressed that the process to access information may be complicated and costly and that it was not clear who the Request Authority would be.
191. John King, the Business Development Director at the Registers of Scotland, said that the Keeper does not wish to be the Request Authority as the role of the Keeper is not, and should not become, judicial.⁸³ The Scottish Government confirmed that no decision has yet been taken on who the Request Authority will be.⁸⁴
192. In its report, the DPLR Committee is critical of this section of the Bill for being too widely framed, under-developed and having the potential to interfere with Article 8

ECHR rights. The DPLR Committee recommends that the regulations be subject to an enhanced form of the affirmative procedure.

193. The Committee notes the widely expressed view that Part 3 will not achieve the desired policy objectives. Giving people greater access to information on those who control land is clearly in the public interest and this section could help to deliver the wider policy objective of improving the transparency of land ownership in Scotland, but only as part of a suite of measures. Part 3 of the Bill must support the principle that people in Scotland have the right to know who owns, controls, and benefits from the land.
194. It is disappointing that the details of both Part 3 provisions (in sections 35 and 36) are left to regulations. This was not helpful to the Committee and was not conducive to effective scrutiny. Provisions relating to improving transparency and accessibility should contain greater detail. The Committee recommends that the Scottish Government provides full detail on the regulations before the end of Stage 2.
195. Although the rationale behind limiting those able to access information is understandable on a practical level, it does seem anomalous to seek to improve transparency and then put limits on that transparency. The Committee recommends that the Scottish Government considers amending the parameters of the power set out in Section 35 to allow everybody in Scotland the right to access information about those in control of land, rather than limiting that, as at present, to only those affected by that land.
196. The Committee notes the view of the Keeper that she should not be the Request Authority and recommends that the Scottish Government clarifies who this will be before the start of Stage 2.

Power of the Keeper to request information relating to proprietors of land

197. Section 36 concerns the power of the Keeper to request information relating to the proprietors of land and amends the Land Registration etc. (Scotland) Act 2012⁸⁵ by inserting a new section (48A) into that Act. Again, as with section 35, section 36 gives Scottish Ministers the power to make regulations relevant to this, rather than setting out details of provisions in the Bill.
198. Section 36 sets out matters in respect of which the regulations may make provision, including—
- that the information relates to the category of person or body into which a proprietor falls;
 - that the information consists of a declaration by the proprietor about the category into which they fall;

- that the information relates to those who have a controlling interest in proprietors of plots of land and leases;
- that a definition of “controlling interest” is provided;
- the circumstances in which information obtained may be corrected, updated, provided to others, or published; and
- details of fees relating to the provision, correction or updating of information.

199. It is important that this section is placed in the context of the work being undertaken by the Keeper and the Registers of Scotland to meet the target set of completing registration on the Land Register of all publically owned land by 2019, and of all privately owned land by 2024. During the Committee’s visit to the offices of the Registers of Scotland it received a fascinating insight into the day-to-day work that is being carried out to achieve those targets. The Committee heard that there are around 1.4m deeds registered on the Register of Sasines, which dates back to 1617, and around 1.2m titles on the newer Land Register. The challenge is to add the 1.4m titles on the Sasines register, onto the Land Register, and also then to complete the Land Register by identifying any land not currently recorded, even in the Register of Sasines.



Figure 11 Committee meeting with the Keeper of the Registers of Scotland

200. Aside from those who felt that this section should be deleted in its entirety, the main concern raised related to the powers given to the Keeper, which some felt are weak. Some considered that the Keeper should be able to require, rather than to just request, information. Cawdor Estates suggested that the ultimate sanction of the provisions would be not being able to register title in Scotland⁸⁶, a point which John King agreed with.⁸⁷
201. John King did not agree that Part 3 has no value and said it will help to improve transparency. He added that most people would respond positively to requests from the Keeper and that the Registers of Scotland will inform, educate and encourage people to respond and it is therefore beneficial to have this in statute.⁸⁸

202. The Scottish Government confirmed that the Bill does not include any requirement for people to comply with requests for information, and provides the Keeper with no powers of sanction for non-compliance, stating that—

” Section 36 does not include provision allowing for regulations to impose civil penalties or offences. If the Keeper was able to require information to be disclosed about controlling interests as a condition of registration this would mean that an owner of land would not be able to obtain a real right to ownership of land without disclosing information about any individuals who had a controlling interest in the owner of the land. At present there is not sufficient evidence as to the benefits of requiring disclosure of such information to justify making this a condition of registration.⁸⁹

203. The other main criticism of this section, as stated above, concerned the lack of detail contained in the Bill, and that the provisions will be taken forward via secondary legislation. In its report the DPLR Committee recommends that—

” ... the Scottish Government brings forward amendments at Stage 2 to make exercise of the power in section 36(2) subject to the affirmative procedure on each occasion when the power is used.

204. Notwithstanding the comments made on Part 3 above, if this section is to be retained as part of a suite of enhanced and improved measures to deliver the aim of improved transparency concerning those who own and control land, the Committee recommends that the Scottish Government brings forward amendments to strengthen the powers given to the Keeper so she can require information and impose sanctions for non-compliance.

205. Further information on the detail of the regulations must also be made available by the Scottish Government before the end of Stage 2.

Transparency of land ownership

206. As stated above, the Committee received strong views that Part 3 of the Bill is currently weak and likely to have little effect in achieving the desired policy outcome of greatly improving the transparency of land ownership, and about those in control of land, in Scotland. Many people were of the view that the recommendation originally made by the LRRG to limit land ownership to legal entities with a registered place of business in the EU, which was included in the Scottish Government’s consultation, should have been taken forward in the Bill.

207. The PM summarises the responses to the consultation on this proposal, noting that 79% of 944 responses agreed that restricting the types of legal entity that may own land in Scotland would help improve transparency and accountability, and 82% of 827 responses agreed that ownership should be limited to those individuals or legal entities formed in accordance with the law of a Member State

of the EU. The PM goes on to summarise responses to the consultation that asked for the advantages (transparency of ownership, addressing tax avoidance, promotion of wider ownership of land) and disadvantages (potential loss of inward investment, reduction of transparency as loopholes are found, unfair and possibly illegal) of restricting land ownership in such a way, and then notes that—

” 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.⁹⁰

208. The Committee questioned witnesses on this issue as part of its meeting in Skye. Some people were strongly of the view that there is a considerable problem in Scotland with a lack of transparency around ownership and control of land and that a significant percentage of land in Scotland is owned and controlled by opaque entities (such as in trust, by shell companies, or in tax-havens). Many felt that one possible solution to this, or partial solution, would be to amend the Bill to include provisions implementing the mandatory EU registration proposal.
209. It was also noted that the Bill does not currently match the ambitions of the global direction of travel on this issue; such as the Fourth EU anti-money laundering directive; or the statements made by the UK Government on seeking to publish details of company ownership and establish a register of beneficial ownership, and that Scotland should be leading on this issue.
210. Those of that view also stated that the EU proposal was not about limiting foreign investment in Scotland, or preventing people/organisations outside the EU from buying land in Scotland, but rather was simply a matter of improving transparency. They believed that EU registration should be a relatively straight-forward process that would be unlikely to put off legitimate interests from buying land and investing in Scotland. In respect of the impact of such a proposal on existing titles to land which are held by entities registered outside the EU, Andy Wightman suggested that that such entities could be given a period of, for example, five years, to complete EU registration.
211. Others noted that it was important not to confuse the issue of transparency with that of the value and role of non-EU registered foreign investors, and that there are currently examples of non-EU registered landowners working very well with local communities and providing real benefits to Scotland. Cawdor Estates

stressed that it should not be assumed that non-EU registered entities were likely to be poor landowners, (and that EU registered entities were likely to be positive landowners), and added that if the EU proposal was included in the Bill then there was a danger that non-EU registered entities may not invest and may take their money elsewhere.⁹¹ However, John Glen from Buccleuch Estates added that anyone with a genuine interest in owning land in Scotland would be unlikely to be put off by such a requirement.

212. Questions were also raised in evidence as to whether the EU registration proposal would be compliant with ECHR. The Committee heard it was difficult to make any human rights assessment until actual provisions were brought forward. Megan MacInnes said that, in theory, such a proposal could be compatible with Article 8 of ECHR, adding that, in Global Witness's view, opaque company structures were more of an issue than land held in trust. She said that she understood that the UK Government's plans extend to companies, but not to trusts, and that trust information can only be disclosed to certain law enforcement bodies, but will not be publically available.⁹²
213. The Scottish Government sent the Committee a detailed note⁹³ on this issue following the evidence session with officials, which set out the reasons why the policy is not being pursued. The note concludes—

” The primary reason the Review Group made this recommendation was to increase the transparency and accountability of land owners in Scotland. The Scottish Government have come to the view that the recommendation made by the Review Group would not achieve this aim. The main problems being;

There is no clear evidence to suggest that having land owned by a company or legal entity incorporated in a Member State will increase transparency and accountability of land ownership in Scotland. To illustrate, the Tax Justice Network began publishing in 2013 a Financial Secrecy Index that ranks jurisdictions according to their secrecy and scale of their activities. The results from 2013 show that Luxembourg ranks second on the index, Germany eighth and Austria 18th. It is also worth noting that the United Kingdom ranks 21st (just behind the British Virgin Islands (20th) and somewhat higher than some of countries that are sometime perceived to be tax havens; Liechtenstein 33, Isle of Man 34, Turks and Caicos Islands 63).

Limiting ownership to EU legal entities may encourage more land to be held by trusts or in even more complex corporate structures, for example landowners may form an EU registered company to hold the title to land but behind this company will be the existing ownership structure, that may include non EU companies registered in “off-shore” jurisdictions. This may have had the effect of reducing the accountability and traceability of land owners.

There is no clear evidence base to establish that the fact that land is owned by a company or legal entity that is registered or incorporated outside the EU has caused detriment to an individual or community.

There are many examples of concerns about the actions of landowners where the person or legal entity that owns the land is either a UK citizen or has been incorporated in the UK. There is no evidence to suggest that where a landowner is domiciled has bearing on how the land is managed and whether the land owner is prepared to engage with the community at large when making their land management decisions.

The Scottish Government does not consider that is appropriate to bring forward measures to Parliament that are known to have substantial flaws and would not achieve the desired policy objective.

The challenge is to provide better information about land ownership to inform how the land reform agenda should be taken forward in Scotland in long term. This will partly be achieved by the completion of the Land Register. This will provide a clear picture of the individuals and organisation that own land in Scotland and how much they own. It will also be achieved by providing the public with better access to land ownership information. Both these measures are being taken forward and do not require legislation.

214. Subsequently, Rachel Rayner, a solicitor in the Scottish Government, told the Committee—

” A number of legal issues would need to be considered in order to determine whether limiting land ownership in Scotland to individuals and certain EU legal entities is within the legislative competence of the Scottish Parliament. The legal issues that were raised would include EU law, the ECHR and other international obligations. As the minister said, we would also need to consider whether the proposal related to or modified the law on a matter that is reserved to Westminster.⁹⁴

215. The Minister told the Committee that she would consider carefully any recommendations brought forward by the Committee on this issue but that it was important to be clear on the policy aims and the current problem that any proposal is seeking to address, and then to ensure that the proposal is proportionate.⁹⁵

216. The issue was also addressed by the First Minister when she appeared before the Scottish Parliament’s Convener’s Group on 30 September 2015—

” We have ... looked carefully at the review group’s recommendations on EU incorporated legal entities, but one of the complications is that the rules on corporate transparency are inconsistent across different European countries. As a result, notwithstanding what we try to do in the bill, certain countries will still have complex structures that obscure ownership.⁹⁶

217. A strong theme from the evidence given to the Committee was that Part 3 does not achieve the policy objectives of improving transparency of land ownership, and that the Bill should be amended to include provision implementing the consultation proposal to limit the ownership of land in Scotland to entities with a registered place of business in the EU.

218. The Committee listened very carefully to all the views on this issue, including those from the Scottish Government, which clearly set out, in writing, and in addition to the information in the Policy Memorandum, the reasons why it does not believe that pursuing this policy is the right way forward.

219. Nonetheless, the Committee is of the view that Part 3 of the Bill is not likely to achieve all of its objectives as it stands and requires amendment. The Committee does not recommend deleting sections 35 and 36 in their entirety, which was suggested by some. Rather, as outlined above, the Committee recommends that those sections be strengthened, and become part of a suite of measures.

220. Given that the provisions are not likely to go far enough in delivering the desired increased transparency about those who own, control and benefit from the land, and following all of the evidence heard and considered, the Committee recommends that the Scottish Government gives consideration to the following suggestions for amending the Bill, requiring—

- those who wish to buy land and register title in Scotland to be registered EU entities, and requiring current non-EU registered owners to register within 5 years of the commencement of the provision;
- those who wish to buy land and register title in Scotland to provide a named contact point in Scotland;
- those who wish to buy land and register title in Scotland to clearly identify those who will control the land and those who may benefit from that ownership and control;
- any other appropriate information that could reasonably be needed as part of the registration process and which would improve transparency and accountability.

221. It is essential that any new proposals are both within the competence of the Scottish Parliament, and likely to be effective in providing a remedy to the current situation. The Committee recommends that the Scottish Government considers the proposals set out above and clearly sets out, in its response to the Committee's Stage 1 report, how it intends to ensure that the desired improved transparency is achieved.

Part 4 – Engaging communities in decisions relating to land

222. Part 4 of the Bill, in section 37, introduces guidance on engaging communities in decisions relating to land. The section states that the Scottish Ministers must issue such guidance and that in preparing the guidance Ministers must have regard to the aim of furthering the achievement of the sustainable development of land. The section also states specific information that the guidance must include, which includes—

- outlining the types of land and decisions which should be subject to community engagement;
- the circumstances in which those in control of land should engage with communities; and
- the ways in which community engagement should be carried out.

223. The section also states that before any guidance is published it should be consulted upon. As with previous parts of the Bill, the detail will be contained in the subsequent guidance and is not in the Bill.

224. The PM sets out the possible consequences in instances where the guidance is not considered or followed, suggesting that a lack of such consideration could be a factor that Scottish Ministers would take into account when considering a right to buy to further sustainable development (see Part 5), and that it also could affect future decisions on the award of discretionary grants in relation to land.

225. The PM also details the potential consequences for landowners with charitable status in not adhering to the guidance. This is in response to the consultation question about including in the Bill a duty of community engagement on charitable trustees when taking decisions on land management, which 76% of those who responded were in favour of. Whilst the proposal does not appear in the Bill, the PM sets out how the provisions in Part 4 would apply to charities—

 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.⁹⁷

226. The PM also highlights the powers that the Office of the Scottish Charity Regulator (OSCR) has under the Charities and Trustee Investment (Scotland) Act 2005⁹⁸ which could be used, in conjunction with the new guidance set out in section 37 of the Bill, to hold charitable landlords to account.

227. The PM highlights that Part 4 is fundamentally aimed at improving better collaboration and engagement between land owners and communities and stresses that there are responsibilities on both sides: for communities to be clear on what their needs are, and then for landowners to take those needs into account in decision making.

228. There was strong support for this in principle. The main issues which emerged in evidence included that—

- the provisions do not go far enough, and should be strengthened to ensure a requirement for meaningful consultation (including possible sanctions for not following the guidance);
- terms used in this section, such as "land", "engaging", "communities", "decisions" and "sustainable development", need to be defined in terms of how they would be interpreted for this Part of the Bill;
- it is hard to scrutinise this issue properly as the detail would be in the subsequent guidance (which is subject to further consultation) and not on in the Bill;
- the guidance should be debated and endorsed by the Scottish Parliament; and that
- clarification is required as to what “decisions relating to land which may affect communities” will mean in practice.

229. Others, albeit a minority, were of the view that there did not need to be legislation in this area at all as landowners are already engaging well with communities across Scotland, whilst CLS said it is “lukewarm”⁹⁹ to the proposals as they are concerned with land management rather than land reform.

230. The Committee asked further questions about these views at its meeting in Skye. Andy Wightman said that he was relaxed¹⁰⁰ about the fact that the Bill creates guidance, rather than containing detail in the Bill itself, as he was confident that the guidance would be fully consulted upon and well informed, and that effective guidance would result from the process. He also felt, as did Malcolm Combe, that introducing sanctions to the process at this stage could be counter-productive and

that the guidance needed to help build trust between landowners and communities. The Royal Institute for Chartered Surveyors (RICS) said if sanctions were introduced they would need to be very clear¹⁰¹, and SLaE stressed that any consideration of sanctions must take account of situations where communities do not engage.¹⁰² The National Farmers Union Scotland (NFUS) said it was important that the guidance set out what would constitute a failure to engage.¹⁰³

231. Scotland's Rural College (SRUC) cautioned that guidance does not always empower people and that the guidance in this case was likely to help those communities already engaged in the process, but not necessarily communities not currently engaged.¹⁰⁴

232. Many people stressed that the guidance should clarify that such engagement should not cover day-to-day land management decisions as requiring consultation on such decisions would have a negative impact on many rural businesses.

233. The Scottish Government confirmed that it will develop the guidance "in consultation with stakeholders, organisations, communities and citizens with an interest"¹⁰⁵ and that its intention is that the guidance focuses on establishing an environment of genuine engagement and not just informing communities of decisions, and that the guidance is not intended as a mandate to tell farmers and other land managers what to do, or apply to every land management decision. The Minister told the Committee that—

” No one is proposing that communities should be consulted on each and every day-to-day business decision that a landowner takes, but we must be quite careful about what goes in the text of the bill. For instance, a certain decision about something that is carried out on a regular basis could stand in the way of sustainable development for a local community. That is why proper guidance must be drawn up in consultation with all the relevant stakeholders, and we should not pre-empt that stakeholder input.¹⁰⁶

234. The Scottish Government also confirmed that there is no legal duty to comply with the guidance and no statutory sanctions for non-compliance. However, Kate Thomson-McDermott also told the Committee in oral evidence that—

” Where, despite the guidance, landowners did not wish to or did not engage with communities on land-based decisions, that could result in poorer outcomes for both landowners and communities as well as poorer relationships. The disadvantages of that will also be made clear. For all landowners, including private landowners, a lack of consideration of the guidance and a lack of engagement could be factors that the 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 such things may assist in evidencing why the transfer of land to the community body or nominated third party would be the only way of achieving the desired benefit for the community. Those

would obviously be factors to be taken into consideration. The Scottish ministers are also exploring 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.¹⁰⁷

235. The Minister told the Committee that she was “happy to consider”¹⁰⁸ strengthening this Part of the Bill by using some of the detail contained in the PM, and added that it would be “helpful”¹⁰⁹ if the Committee made recommendations on the issue.



Figure 12 Members of the Committee are shown around the grounds of Falkland Palace, where the National Trust for Scotland discussed engaging with communities in relation to land management

236. The Committee welcomes the principle of this Part of the Bill and firmly believes that it is fundamental to achieving its overall aims and objectives. Trust between landowners and communities will be improved by genuine engagement and collaboration between the two resulting in a rebalancing of power. It is vital that the guidance makes it clear that engagement in this context is not just about telling or informing, but is about meaningful engagement with, and listening to, communities.

237. It is also important that the guidance clarifies the Bill’s intention that such engagement is not relevant or required for every day-to-day business decision that a landowner or manager makes.

238. Given that the importance of ensuring that the guidance is clear and fit for purpose the Committee recommends that the Scottish Government amends the Bill to ensure that the guidance is required to be debated and endorsed by Parliament. The Committee also asks that the Scottish Government provides as much detail as possible on the content of that guidance before the end of Stage 2.

239. It will be essential to take steps in order to ensure that the guidance will not be ignored by those who choose not to observe it (be they landowners, land managers and/or communities) and that it carries weight and has sufficient teeth to make a real difference. The Committee is of the view that the Bill does not currently contain enough detail on the reasons why engagement is required, or the potential penalties for not adhering to the guidance.

240. The Policy Memorandum contains details in paragraphs 160 to 163 of the reasons for and benefits of engagement, some of which should be included in the Bill to clarify the purpose and intention behind the proposal.
241. The Policy Memorandum also contains, in paragraphs 166 to 175, details of the possible consequences for those who do not consider and follow the guidance, including: using it as evidence supporting a right to buy application under Part 5 of the Bill; affecting the award of discretionary land grants; using existing statutory mechanisms to deal with public sector landowners failing to engage with communities; and options available to the Office of the Scottish Charity Regulator to take action against charities not considering and following the guidance.
242. The Committee therefore recommends that the Scottish Government brings forward amendments to strengthen this Part of the Bill by using some of the language and detail contained in the Policy Memorandum, and highlighted in this report, regarding the reasons and requirement for collaboration between landowners and communities, and stating the potential consequences for not doing so.

Part 5 – Right to buy land to further sustainable development

Background and policy intentions

243. Sections 38 to 65 of the Bill introduce a new right to buy land to further sustainable development. The provisions are in addition to the community right to buy andcrofting community right to buy provisions which are already in place (and which were recently amended by the Community Empowerment (Scotland) Act) 2015, and the new provisions in the Community Empowerment (Scotland) Act 2015 relating to extending the community right to buy to abandoned or neglected land.
244. The PM explains that, despite the various right to buy provisions already in place and available, there may still be circumstances where further mechanisms are required, hence the provisions in the Bill.
245. The proposals in the Bill are based around a fundamental identification of significant harm which is likely to affect a community if the land in question is not transferred, coupled with a significant benefit to the community if the land is transferred, and where only the transfer of that land will resolve those issues.
246. There was considerable support for the principle of this proposal. However, there was also a considerable level of opposition, with some feeling that creating another right to buy, on top of the ones currently in place (one of which is, at

present, untested), was unnecessary. Several people said that there is a misconception that land owners are holding back land which could be developed, which, in their view, is not the case, and that such a step would create uncertainty in land management and investment and prove detrimental to rural Scotland. Another view expressed was that such acquisitions could undermine existing estate management which already provides sustainable development, and that the provisions are inappropriately weighted in favour of communities at present and not fairly balanced. There was also the view that many communities do not want to own land, they want to use it (perhaps through leasing arrangements), but there is no provision for that.

247. From the community side, some felt that this new right to buy would be of limited practical use as the conditions to be met by community groups are too onerous. There were also questions about how all of the various rights to buy that will exist will relate to each other and how communities will be able to determine which one is likely to be the most appropriate for their circumstances and what support would be available to them.
248. A number of people commented that previous rights to buy have not been well promoted to communities and that this must change to help people better understand their rights and the options and support open to them. This was supported by Peter Peacock who noted that the Scottish Government has established a short-life working group about achieving the target of having 1 million acres of land in Scotland in community ownership by 2020, which will report to the Government with recommendations, and that the issue of better support and promotion of right to buy processes are likely to form part of that work.¹¹⁰ The Minister added that the working group would be reporting to the Government shortly.¹¹¹
249. SLaE said that landowners are looking to the Bill to provide them with certainty and that this provision does not do that. It noted that, as currently drafted, a situation could develop where land, which is currently being well/sustainably managed (e.g. for agricultural purposes), could be transferred to a community if a case could be proven that not transferring it would cause significant harm to that community, and that transferring it would lead to their significant benefit. SLaE believes this is at odds with statements made by the Scottish Government that good landowners have nothing to fear from the Bill.¹¹²
250. The Committee also heard views that where an application was evenly balanced, the presumption should be in favour of the community. This point, and the issue about the possibility of well managed land being transferred to the community, were pressed with the Minister, who conceded that, whilst applications would be assessed on a case by case basis, in certain circumstances, well managed land could be subject to the new right to buy provision, providing that all the tests set out in the Bill had been met.¹¹³

251. Concerns were also raised about the options that would be available where there was no longer a community in a particular area to potentially take advantage of the provisions. It was suggested that Scottish Ministers be given the power to acquire land to further sustainable development in such circumstances. Fiona Mandeville, Chair of the Scottish Crofting Federation, said—

” One of the most basic definitions or interpretations of “sustainable development” is the restoration of communities to land that they once lived on and were cleared from; I am thinking of the straths of Sutherland, for example. It would be a good aim of the bill to provide a way to help communities to come back and to have people living in those glens again. That would strengthen communities; it would open up more schools and local infrastructure. The Scottish Crofting Federation argues that any new holdings in those glens should be under crofting tenure. Crofting is held to be the role model for small-scale communities and developments throughout Scotland and well beyond.¹¹⁴

252. Responding to this point, the Minister told the Committee that the Part 5 provisions are designed for use by communities, and issues of resettlement of previous communities would require further consideration.¹¹⁵

253. As was noted in the section above on human rights, concerns were raised regarding how consideration will be given to the impact on the landowner and whether this is compliant with A1P1 of ECHR, as is asserted by the PM. At the evidence session on human rights issues, some felt that the threshold to trigger the provisions in Part 5 was set appropriately, which offered protection in terms of potential legal challenge. However, Charles Livingstone noted that Part 5 provided Ministers with no options other than to grant, or not grant, an application, and that other options (such as leasing the land rather than transferring ownership) may deliver the policy intention of ensuring that land is sustainably developed.¹¹⁶ He added that—

” On the bill being robust to legal challenge, the focus should be on the ECHR rather than other instruments, because the ECHR is domestically enforceable. On that basis, the questions for the committee to ask and the Government to consider are these: is there sufficient legal certainty; will people whose property rights will be infringed be able to know exactly what they can and cannot do; and will those people be able to know what they should do to avoid, for example, having their property compulsorily purchased under part 5 of the bill?¹¹⁷

254. Kirsteen Shields questioned whether the threshold has actually been set too high, and may result in the provisions acting as a deterrent rather than being a radical means of community empowerment.¹¹⁸

255. The Committee supports the enabling and empowering of communities across Scotland to have the confidence, opportunity and resources to own land for the benefit of that community, and supports the broad policy of making it possible for communities to buy land specifically to further sustainable development, in situations where that land is not currently being well managed in that regard.
256. The Committee is satisfied that the Part 5 provisions are modelled on other right to buy provisions in existence, and do not offer options other than the potential transfer of ownership. It is a legitimate aim to seek to transfer ownership of land to further sustainable development where it can be demonstrated that significant harm is being done presently, and significant benefit can result from a transfer of owner.
257. However, there are a number of issues that have been raised in evidence which need to be addressed by the Scottish Government in order to improve the provisions to ensure they are robust and more likely to deliver the desired policy objectives.
258. It is essential that an appropriate balance of rights and proportionality of the tests involved in triggering the new right to buy is achieved. Currently the threshold of those tests is set at a very high level, which may have the benefit of protecting the provisions from ECHR challenge, but, conversely, may also mean that they will be rarely used and are unlikely to deliver meaningful empowerment and ownership opportunities to communities. The Committee therefore recommends that the Scottish Government clarifies whether it is the intention of Part 5 to act as a deterrent to any landowners currently causing significant harm and not developing land sustainably, or rather is to empower communities by providing realistic ownership opportunities.
259. Despite all of its evidence-taking, there remains a lack of clarity regarding the possibility of productively managed agricultural land being subject to a successful Part 5 right to buy application. The Committee believes that this is not, and should not be, the intention of the Bill and therefore recommends that the Scottish Government clarifies the policy intention behind the proposal and considers whether the Bill requires any amendment to reflect that. The Committee also recommends that the Scottish Government considers whether the Bill should be amended to include a further test to the 4 set out in section 47(2) of the Bill to ensure that the potential impact on the viability of smaller scale rural businesses (and perhaps on issues such as the impact on food production) is also taken into account before determining if the sustainable development conditions have been met.

260. There may be clearly defined situations when it would be more appropriate for purchasers other than communities, to buy land, such as in circumstances where there is no longer a community present to take advantage of the new right to buy, and/or where such land could be used for other purposes in the public interest (such as for tenant farming). The Committee therefore recommends that the Scottish Government considers the benefits of local authorities, other public bodies, and/or Scottish Ministers being able to buy land for present or future community use, or as a buyer of last resort, and considers whether the Bill could be amended in this regard at Stage 2. The issue of land being subject to a buyer of last resort is discussed again later in this report, in the section on Chapter 3 of Part 10, sale of agricultural land where a landlord is in breach of a lease.ⁱ

261. It is also essential that the Scottish Government ensures that the right to buy provisions are well promoted across the country and supported by clear, concise and easy to apply guidance.

Key terms and definitions

262. Sections 38 to 43 set out relevant key terms, defining and explaining land; eligible land; eligible salmon and mineral rights; eligible tenant's interests; and a Part 5 community body.

263. The Bill does not define other keys terms in this Part of the Bill, such as sustainable development, significant harm or significant benefit (although the Bill does list factors which the Scottish Government must take into account when considering what constitutes significant benefit or harm).

264. Many submissions believe that these terms should be defined in the Bill to avoid any dubiety of interpretation by different people and organisations, and by the Land Court and other legal bodies.

265. The PM addresses the issue of defining sustainable development—

” 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

ⁱ Alex Fergusson MSP dissents from this paragraph.

their environment. Contrasted with unsustainable communities, where populations are declining, local economic and social activity is inhibited and the natural heritage is damaged.¹¹⁹

266. The claim that sustainable development is not well enough defined formed part of Pairc Crofters Limited and Pairc Renewables Limited's challenge to Scottish Ministers' decision to grant Pairc Trust the Crofting Community Right to Buy. In the case Lord President Gill ruled that—

” the expression sustainable development is in common parlance [...]. It is an expression that would be readily understood by the legislators, the Ministers and the Land Court.¹²⁰

267. However, there remains a disagreement between those who feel the term is well enough established in other legislation and well enough understood, and those who feel the term is still too ambiguous and open to different interpretations and should be clearly defined in the Bill.

268. Similar issues were raised concerning the terms significant harm and significant benefit, with some feeling the Bill was clear enough, or that further information could be contained in guidance, and others calling for clear definitions to be set out in the Bill. Andy Wightman called for the significant harm aspect of the provision to be deleted as, in his view, its inclusion renders the provisions “virtually meaningless”.¹²¹ CLS also stated that the significant harm provision should be either removed or modified.¹²²

269. Concern was also raised around how a community would be defined. In this part of the Bill communities are defined by reference to a post code unit, or units, or a type of area as the Scottish Ministers may define by regulations. However, the Scottish Environment Protection Agency (SEPA) stated that the definition should not be limited by geographic area and should allow for communities of interest.¹²³ Others suggested that defining communities based on postcode is old fashioned and that virtual communities of people may wish to buy land for a common purpose. Also, some felt that the definition should be flexible enough to allow companies, as well as community groups, to have the option to apply for the right to buy land to further sustainable development.

270. Scottish Government officials confirmed that the Government is satisfied that terms such as sustainable development, significant harm and significant benefit did not need to be defined in the Bill as they are either well understood and detailed in law already (in the case of sustainable development), or are qualified by tests set out on in the Bill already and in common parlance.¹²⁴

271. The Committee is satisfied that there is a clearly understood definition of the term sustainable development, both as set out in other legislation, and in the Policy Memorandum to the Bill.

272. The Committee notes concerns raised by stakeholders regarding the definitions of the terms significant harm and significant benefit. Given that the right to buy to further sustainable development provisions depend upon the understanding and application of these terms it is vital that every effort is made to avoid confusion or ambiguity. The Committee therefore recommends that the Scottish Government ensures that it provides further guidance on the definition of these terms within this context before the end of Stage 2 and that clear and concise guidance is made available.

273. The Committee also notes comments made regarding the definition of a Part 5 community body and supports views that this should be flexible enough to go beyond a geographic or postcode based definition, and include communities of interest. The Committee recommends that the Scottish Government reconsiders whether the provisions in the Bill are flexible enough to allow for this, and if not, amends the Bill at Stage 2 to rectify this.ⁱⁱ

Register of Land for Sustainable Development

274. Section 44 establishes a new Register of Land for Sustainable Development (RLSD) to be set up and kept by the Keeper.

275. The Committee heard that as well there being a variety of different community right to buy provisions being established, that there were also now a significant number of different registers. Andy Wightman told the Committee that—

” we potentially have a complex legal environment, not least because we would have a register of land for sustainable development, a register of community interests in land, a register of crofting communities, a register of abandoned or neglected land and so on. Incidentally, none of those registers is integrated with the land register, and someone who is searching the land register will get no hint that there are statutory restrictions. For example, the register of community interests in land is simply a register of scanned pdf documents—there is no digital mapping.¹²⁵

276. The Committee visited the offices of the Registers of Scotland offices in Edinburgh and discussed the establishment of the RLSD with the Keeper and her staff. It was noted during that visit that the provisions in the Bill do not actually create a land register, rather they create a register of information regarding community interest in buying land, and that the provisions largely replicate the Register of Community Interests in Abandoned, Neglected or Detrimental Land, created by the Community Empowerment Act 2015.

ⁱⁱ Alex Fergusson MSP dissents from this paragraph.

277. It was suggested that it may be prudent to seek to amend section 44 of the Bill, along with the relevant sections in the Community Empowerment Act 2015, to ensure that one new register of community interest in land is created, which would contain both interests registers from an abandoned, neglected or detrimental land, perspective, or from a furthering sustainable development perspective. The Minister told the Committee that she is considering taking this forward.¹²⁶

278. Given the large number of different registers relating to land in existence, and being added to by this Bill, the Committee recommends that the Scottish Government sets out how it plans to ensure that these registers are consistent with, and relate to, each other so that people will be able to make the most effective use of the information contained within them.

279. It would seem sensible to ensure that one new register of community interest in land be created, which would contain registrations relating to abandoned, neglected or detrimental land (created under the Community Empowerment (Scotland) Act 2015 and to furthering sustainable development (created under this Bill). The Committee recommends that the Scottish Government seeks to amend both this Bill, and the Community Empowerment (Scotland) Act 2015, to deliver that outcome. This should also help to simplify the processes involved for communities and landowners.

Application and approval procedures

280. Sections 45 to 51 deal with the application and approval procedures, including the application for consent; application procedure; Ministers' decision on applications; ballot procedures; and the notification process.

281. Various issues were raised about these sections of the Bill, including that—

- clarification is required as to how the application procedures set out in section 47 will work in practice;
- there need to be sufficient safeguards introduced to prevent cherry-picking of assets;
- consideration must be given to the wider impact of land acquisition on remaining assets;
- it should be a requirement for a community body to have a viable, costed and funded plan;
- consideration should be given to providing for a direct power of Ministerial intervention to buy land to further sustainable development if there is no community present;

- there should be a requirement in the application process outlined in s47(3) to offer market value for the land, or to engage more constructively with the landowner in the first instance;
- clarification is required as to how the application process set out in s47(3) will work in practice, for example, will it be sufficient for a community body simply to have identified and written to the owner without registering an interest in the land under existing community right to buy provisions; and
- the requirement in section 47(2)(c)(ii) that communities demonstrate that the transfer of the land in question is the only practicable way of achieving the demonstrated significant benefit is too limiting.

282. The Scottish Government confirmed that it would expect community bodies to try and come to a suitable arrangement with a landowner in the first instance, without recourse to Part 5 of the Bill, and also that a landowner will be entitled to market value for the land in question if the Part 5 community body's application is approved by Ministers.¹²⁷

283. Government officials also helpfully set out the operation of the application process in detail, whilst confirming that Part 5 community bodies will not have had to register an interest in buying the land under current right to buy provisions, but confirming that—

” at least six months prior to the application being made, the Part 5 community body must have submitted a written request to the owner of the land to transfer the land to the community body or person named in the application and, that the owner has not responded or agreed to the request.¹²⁸

284. The Bill also allows, in section 45(1)(b), for a Part 5 community body to be able to nominate a third party purchaser to apply to buy the land. The PM states—

” 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.¹²⁹

285. This proposal, which is not a feature of existing right to buy provisions, attracted significant comment. Some, such as the NFUS, were concerned that this opened up the provisions to potential abuse, as a third party could wield undue influence over a community in order to purchase land, whilst others were supportive of the idea as it would enable communities to be supported in their ambitions by people or organisations with greater resources. Others suggested that local authorities and/or the Scottish Government could possibly be nominated as third parties.

286. The Scottish Government told the Committee that the guidance that will be produced regarding the operation of Part 5 will need to be very clear on the issue of potential abuse by nominated third parties, and also noted that Ministers will have a final say on any third party applications, which offers a further layer of protection.

287. Having heard, first hand, the struggles faced by the Kinghorn Community Land Association in trying to find its way through the current right to buy provisions it is clear that improvements are needed in the delivery of appropriate and enabling support to communities. The Committee recommends that the Scottish Government ensures that it produces clear and simple guidance for communities as a matter of urgency, and also establishes a single point of contact for communities seeking advice on all of the various right to buy provisions and is proactive in providing advice and support to communities seeking to use the provisions. The Committee also recommends that the Government gives further consideration to the appropriateness of Scottish Government officials providing advice as well as processing and then deciding upon applications.

288. It may be beneficial, in certain circumstances, for a community to be able to nominate a third party to apply to purchase the land on its behalf. However there is a danger that this may establish an inconsistency with the existing right to buy provisions and the Committee asks the Scottish Government to explain the rationale and justification for this. The Committee also notes the concerns that have been raised regarding the potential for the third party provisions to be exploited or abused and asks the Scottish Government to consider whether the Bill could be strengthened at Stage 2 (rather than for this to be covered in subsequent guidance and advice) to add additional safeguards to ensure the provision is used only as intended.

Procedures following consent

289. Sections 52 to 57 deal with the procedure once consent has been given to a Part 5 right to buy.

290. It was suggested that there should be scope for the land to be sold back to the landowner in the event that the community chooses to make a disposal and on the same basis of valuation at the time of purchase. Another issue raised was whether there would be anything to prevent a community group from selling the acquired land on to a developer or any other party.

291. The Committee recommends that the Scottish Government responds to the issues raised regarding situations where community bodies may seek to dispose of land acquired as a result of the new right to buy provisions before the end of Stage 2.
292. The Committee also recommends that the Bill be amended to require applications to be reconsidered, post approval, where the original purpose is unable to be fulfilled or in situations where there is an apparent divergence from the originally stated and approved purpose.

Part 6 – Entry in valuation roll of shooting and deer forests

Background and policy intention

293. Shootings and deer forests were liable to pay non-domestic rates until 1995, at which point they were exempted from the inclusion on the valuation roll. The Bill ends that exemption so that shootings and deer forests will once again be liable for paying non-domestic rates (often called sporting rates or business rates).
294. Section 66 of the Bill amends section 151(1) of the Local Government etc (Scotland) Act 1994¹³⁰ with the effect that shootings and deer forests will again be included on the valuation roll. Fishings and fish counters remain excluded from the valuation roll. Some other businesses remain exempted from non-domestic rates, such as farms, fish-farms, and certain other rural businesses (such as petrol stations and shops) can qualify for up to 100% rates relief if conditions are met (which are linked to factors such as sparse rural population and the rateable value).
295. Section 67 amends the Local Government Act (Scotland) 1975¹³¹ so that an assessor in each valuation area must separately enter the yearly value of shootings and deer forests.
296. The PM states that there are two main reasons for this policy decision—
- to bring shootings and deer forests in line with other rate payers; and
 - to raise additional finance to support Scottish Government budgets.¹³²
297. This was supported by the Minister who told the Committee that the drivers behind this policy were fairness and to raise revenue.¹³³
298. The PM also states that the intention is for the proposed changes to come into effect at the next revaluation for non-domestic rates, on 1 April 2017.¹³⁴ However, the Scottish Assessors Association (SAA) said that collection could be delayed

until 31 March 2018 and applied retrospectively, if more time is required to complete the valuations and determine who is liable.¹³⁵ It is expected that many small-scale shootings may be eligible for rates reliefs under existing schemes such as the small business bonus scheme.

299. The Scottish Government's consultation revealed a significant divide on this issue amongst stakeholders which was mirrored by the responses received by the Committee. Whilst 71% of those who responded on the issue to the Scottish Government supported the move, 50 out of 51 private landowning organisations were opposed to it, with concerns including—

- a loss of local jobs;
- negative impacts on local economies, businesses and communities;
- reduction in tourism;
- reduction in investment;
- reduction of land maintenance and management; and
- a rise in deer populations.

300. The Scottish Government replied to these concerns in the PM stating that it—

” ... has not seen compelling evidence that removing the rates exemption would have such effects and feels that doing so would be fair and sustainable.¹³⁶

301. The PM also outlines possible alternative approaches, which include continuing to exempt deer forests, and introducing a new form of rates relief for deer forests linked to positive deer management (thus linking this Part of the Bill more directly with Part 8 on deer management). The PM explains that the Scottish Government discounted these because it would be difficult to establish relevant criteria and would introduce significant operational complexities. The PM also states that the Scottish Government has not been persuaded of the case, in principle, for rates relief based on deer management.¹³⁷

302. There was some support for this part of the Bill on the basis that there is no persuasive justification for sporting businesses to continue to be exempted from paying business rates when some other rural business are liable, and that ending the exemption would help restore parity with those rural businesses.

303. However, some of those in opposition to the measure noted that there still would be no parity as there are other rural exemptions, most notably, to agricultural businesses, which remain exempt.

304. Organisations such as SLaE argued that many shootings and deer forests are contributing significantly to the public interest, as agriculture and forestry

businesses do, by carrying out a range of management measures, such as deer management, vermin control, contributing to food production, helping mitigate against wild fires, and creating rural investment and employment, all of which contribute positively to Scottish Government policy and objectives. It was argued that they should continue to be exempted from rates on that basis.

305. Organisations such as the NFUS and the British Association for Shooting and Conservation (BASC) noted that many shootings and deer forests are non-commercial and run on a not-for-profit basis. Re-introducing the rates could have the perverse effect of ensuring that shooting is only carried out on large estates and by wealthier individuals, and that smaller, casual sporting groups will no longer continue to shoot as it would not be financially viable. BASC note that 88% of sporting businesses are run at a loss and that it is unfair to target non-profit making businesses.¹³⁸
306. There was also a great deal of concern expressed about the potential impact on rural jobs, economies, and communities, and fears that the Scottish Government has not conducted sufficient impact assessments or set out sufficient evidence to demonstrate the expected benefits.
307. Other critics of the provisions noted that the present exemption was introduced because the tax was not cost effective and that it had not been demonstrated that this would no longer be the case. RICS is one of several organisations calling for this Part of the Bill to be removed altogether because of insufficient assessment of its impacts.
308. Government officials told the Committee that impacts won't be able to be accurately modelled until more is known about the valuations, which will be after the Bill has passed. Officials also said that the Government was satisfied with the exemption being ended for shootings and deer forests whilst the exemption continued for some rural businesses, such as agriculture, fish farms and forestry. It also noted that the issue regarding fishings would be considered as part of the current review of wild fisheries.¹³⁹

309. This part of the Bill has attracted significant commentary and debate and the Committee sympathises with many of the concerns expressed. As it stands, there is a lack of clarity about the purpose, delivery, impacts and likely outcome of these proposals. The Scottish Government needs to address the serious concerns set out below as soon as possible, and certainly before the start of Stage 2, if the Committee is to be in a position to support Part 6 of the Bill.

310. The Committee seeks a thorough, robust and evidence-based analysis of the potential impacts of ending the sporting rates exemption (including what impact imposing the exemption had in 1995). The Business Regulatory Impact Assessment which accompanies the Bill requires developing and strengthening and it is essential that, either there or elsewhere, there is a clear published assessment and demonstration of the potential economic, social and environmental impacts of reintroducing sporting rates.
311. The Scottish Government must also set out a clear evidence-based rationale for taxing shootings and deer forests whilst continuing to exempt certain other rural businesses and the Committee therefore asks the Government to clarify what analysis it has carried out on this issue, why it believes continuing to exempt some rural businesses and not others is in the public interest and how it accords with the principle of fairness which the Minister stated was a policy intention of the measure.
312. It is also essential that the Scottish Government clarifies a) which areas will be liable for valuation, b) who should be liable to pay and c) the basis for any exemptions and reliefs. These issues are addressed in further detail below.

Definition, valuation and revenue

313. There was a great deal of concern amongst many stakeholders as to how shootings and deer forests will be defined in terms of valuation and liability to pay. As stated above, there were many concerns that applying the tax across Scotland, to every bit of land on which any shootings and/or deer management could potentially take place, could have serious negative impacts on all but the largest and most commercial shoots. BASC said that even taxing larger estates could be problematic as it could make currently profitable shoots unprofitable and thus have negative impacts including intensifying game management.¹⁴⁰
314. The PM states that it does not propose to define shootings and deer forests in statute. It states that—
- ” 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.¹⁴¹
315. The Minister wrote to the Committee on 18 November 2015, clarifying evidence she had given to the Committee in Dumfries on 2 November, stating that—
- ” For the avoidance of doubt, the provisions in Part 6 of the Bill do not propose that farms or plots of ground are to be entered in the valuation roll. It does, however, propose that shootings are entered and, as was the case

prior to the 1995 exemption, these could relate to farms or other holdings.¹⁴²

316. The SAA noted that—

” The Rateable Value is the estimate of the annual rent, under specified conditions, which the Assessor estimates that a hypothetical tenant would pay to a hypothetical landlord for the right to occupy the “lands and heritages”.¹⁴³

317. In terms of how much revenue this will raise, the Scottish Government told the Committee that there was a lack of data while the exemption has been in place which has made it difficult to give accurate predictions of how much revenue the move may raise. Dougie McLaren, the Business Rates Policy Manager in the Scottish Government, explained how the figure of £4m of predicted revenue, as set out in the FM, had been arrived at—

” We know from what UK ministers said 20 years ago that sporting rates generated around £2 million-worth of rates revenue. We have projected that forward in line with the overall rates revenue in Scotland over the period to estimate the future income, which is, of course, subject to rates relief.¹⁴⁴

318. He added that the assessors must be left to get on with the valuation work and that the Scottish Government has not expressed a view on how the assessors should go about the valuation process and that decisions on that were still to be made.

319. Several stakeholder organisations said that the predicted £4m revenue was an unreliable guess given the lack of analysis that has been completed to date and the amount of change that has taken place since 1995. The SAA noted that the 1995 values were based on 1988 levels so actually 27 years has gone by since the £2m base figure was relevant.¹⁴⁵ There was also a view that however much money the rates generated, this would be money being taken away from struggling rural communities.

320. In terms of the SAA’s own resources, Alasdair MacTaggart, the President of the SAA, told the Committee that it could be valuing between 52 and 55 thousand additional businesses, with fewer staff than it had when sporting rates were last collected. He noted that this would be challenging in certain locations and that the SAA was currently discussing this with the Scottish Government.¹⁴⁶

321. Local authorities will be responsible for the billing, collection, enforcement and administration of the rates, and Dougie McLaren told the Committee that—

” Collection will involve extra work for local authorities...We have had no direct evidence from local authorities about what the incremental cost of

collecting the rates in question would be, but we consider it to be sustainable.¹⁴⁷

322. COSLA told the Finance Committee that it—

” agrees that there will be administrative costs for local authorities in these areas [shootings and deer forests] however, more detail is required in order for us to more thoroughly assess the financial implications of the proposals as these are currently unquantifiable.¹⁴⁸

323. The Minister told the Committee that the Government was engaged in dialogue regarding resource requirements with local authorities and assessors but that the new burden of collecting sporting rates would be “relatively low”.¹⁴⁹

324. In terms of funds collected from the move, some submissions thought that these would top-up the Scottish Land Fund, providing funds to support community buy-outs, whilst others thought that such rates, collected locally, should be used to benefit services provided by the local council and not appropriated by central government. Others, such as SLaE, said that any revenue likely to be generated would be negated by rates relief, the administrative costs of collecting the rates, and by negative impacts such as loss of jobs.

325. Andy Wightman commented that—

” ... it is wrong to hypothecate any non-domestic rates for use by central government. Non-domestic rating revenue belongs to local government and it is wrong for it to be retained by central government. In a number of European countries this would be deemed a breach of the constitutional rights of local government. If Scottish Ministers wish to commit funds to a Scottish Land Fund they should do so from the Scottish Consolidated Fund in same way as all other public expenditure is allocated.¹⁵⁰

326. Government officials confirmed that local authorities will collect the rates, and that these will have been budgeted for in terms of allocated funds from the Scottish Government. Additional funding that is generated will come back to the Scottish budget and be directed into the Scottish Land Fund.¹⁵¹ The Minister added, in response to a suggestion from the Committee, that she would be willing to consider using some of the funds to support rural apprenticeships.¹⁵²

327. The Committeeⁱⁱⁱ believes, with one exception, that it may be appropriate to tax larger, profitable, commercial sporting shooting enterprises if a clear case can be made that it would be economically, socially and environmentally appropriate to do so. However, based on the available information, the Committee believes the case for change has not yet been made. If additional evidence supports the need for change then the Committee believes that careful consideration must be given to the thresholds which will apply. The Scottish Government must also clarify that the small bonus business scheme, and any other rates relief that is made available, will be consistently applied across rural businesses.
328. The Committee recommends that the Scottish Government clarifies its policy intentions in this regard and, if the provisions are to remain, ensures that the Bill is appropriately amended so that it will deliver those objectives. The Committee also recommends that the Scottish Government proactively advises the assessors as to the basis for valuations to ensure that they are compatible with the desired policy objectives of the Bill.
329. Further to the recommendations made above regarding a thorough analysis of impacts, the Committee questions the estimate of expected revenue of £4m and recommends that the Scottish Government conducts case-studies and provides estimated calculations based on different sized business models.
330. The Committee is also yet to be convinced that the Scottish Assessors Association and local authorities will have the necessary resources to adequately and accurately value and administer sporting rates in the time available. We recommend that the Scottish Government and such affected organisations more robustly consider the issue of resources once proper impact assessments and analysis has been completed.
331. The Committee also recommends that the Scottish Government reconsiders how any revenue raised by this measure, if it were to proceed, would be used, to ensure that funds which may be taken out of rural communities by the reintroduction of the rates is reinvested, at least in part, in those communities, for example by funding rural skills apprenticeships.

Conservation and deer management

332. Many submissions called for a distinction to be made between commercial shootings for sport, and deer culling for environmental and conservation purposes. The Committee heard concerns that a one-size-fits-all provision amounted to a tax on biodiversity that could have a negative impact on sustainable development and other parts of the Bill, such as the deer management provisions.

ⁱⁱⁱ Alex Fergusson MSP dissents from this sentence.

333. Dougie McLaren said that it would be for the assessors to unpick whether deer have been killed for sport or for land management and conservation reasons.¹⁵³
334. It was stressed that reintroducing the rates could have a serious negative impact on deer management due to the loss of gamekeepers and stalking jobs some thought would result from the imposition of the tax. Many estates, it was claimed, may stop shooting altogether as it would no longer be economically viable. It was also noted that this would not complement wider deer management policy in Scotland (and as set out in the Bill) as this section of the Bill could have a negative impact on the numbers of people employed to manage deer in Scotland.
335. Concerns were also noted regarding the impact on wider habitat management that reintroducing the rates could have. Douglas McAdam of SLaE said that, currently, approximately £35m of funds linked to shooting were invested in conservation measures, which would be under threat should the rates be introduced.¹⁵⁴
336. There was broad support for the suggestion that the Bill be amended to clarify and ensure that those practising deer management in the public interest would not be liable to pay rates if they were meeting agreed culling targets. The Association of Deer Management Groups (ADMG) and the Lowland Deer Network Scotland (LDNS) both agreed that this would be welcomed and could turn what is perceived by many as a penalty, and a negative policy, into a positive incentivising measure.
337. The Minister told the Committee that when the rates were last in place they took account of deer management policies and recognised positive management. However, she added that she was not yet convinced by the proposal for a new form of rates relief directly related to deer management and that there may be better ways to encourage positive management, such as through the Scottish Rural Development Programme. However, the Minister did say she would give consideration to any recommendations on this issue made by the Committee.¹⁵⁵
338. It is essential that this Part of the Bill is not at odds with Part 8 of the Bill and that a consequence of its enforcement is not a further decline in the effective management of deer in Scotland in the public interest.
339. The Committee is concerned that there has not been an adequate analysis of the potential impact of ending the rates exemption on deer management, conservation measures, or on the environment more generally and also has not seen comprehensive evidence of any positive effects the exemption in 1995 had on deer management.
340. The Committee also believes it will be challenging for the assessors to decide whether deer have been killed for sport or for land management and conservation reasons.

341. Should this Part of the Bill remain, the Committee recommends that the Scottish Government amends the Bill at Stage 2 to clarify that the rates will not apply (or that up to 100% rates relief will be available) to those who can demonstrate they are managing deer effectively and in the public interest.

Part 7 – Common Good Land

342. Section 68 of the Bill amends section 75 of the Local Government (Scotland) Act 1973¹⁵⁶ (disposal, etc., of land forming part of the common good). That section currently allows local authorities to ask the Sheriff or Court of Session to authorise disposal of common good land. The changes proposed in the Bill would allow local authorities the access to the same process for seeking to change the use of common good land, as well as disposing of it.

343. The PM states that this proposal is a response to a situation experienced by the City of Edinburgh Council, which recently sought to build a new school on common good land. The decision was challenged and upheld on the grounds that the Council did not have any statutory power to change the use of the common good land, which was being used at the time as a public park. The Council therefore had to pursue its aims via a private bill in the Scottish Parliament, which required the establishment of a specific committee to scrutinise the bill. The proposals in this Bill would remove the need for local authorities to have to seek such a Parliamentary route.

344. As is currently the case with objections to local authority disposal of common good land, objections to a proposed change of use would be able to be made to the court before a decision was taken.

345. There was broad support for this Part of the Bill. Andy Wightman told the Committee that he supported what he described as the “modest”¹⁵⁷ provision, adding that, in his view, it had been included in the Bill as it provided the first legislative opportunity for the Scottish Government to remedy an identified problem with the current legislation.

346. The Scottish Government’s consultation also asked if people thought there should be a new legal definition of common good. Of those who responded, 71% agreed there should be. However, the proposal has not been taken forward in the Bill. In the PM the Scottish Government explained that this decision was taken due to the lack of consensus on what such a definition would be and the significant body of opinion calling for further consultation on the issue. The PM also responds to other points raised in the consultation regarding common good land by noting that the recently passed Community Empowerment Act contains several relevant provisions in this area.¹⁵⁸

347. Some people questioned why the Bill does not contain a more comprehensive reform of common good legislation, which some feel is very muddled. At its public meeting in Dumfries, it was clear that many people feel strongly about common good land issues, and that work still needs to be done to establish the extent of common good land and to ensure that local authorities act as custodians of such land, rather than as owners.
348. RICS said that, in its view, there is no longer a need to differentiate between common good land and other types of land.¹⁵⁹ Many other stakeholders disagreed with this view.
349. The Scottish Government told the Committee that time was needed to allow the new common good provisions in the Community Empowerment Act 2015 to bed in, so that their effect can be properly assessed in advance of consultation on any further proposed changes.¹⁶⁰

350. The Committee supports this section of the Bill and also agrees that this Bill would not have been an appropriate vehicle for any further changes to common good land legislation, as time is needed to assess the effects of the recent changes made by the Community Empowerment (Scotland) Act.

351. The Committee strongly disagrees with the position articulated by RICS that common good land should no longer be recognised. It is very much in the public interest (as the Committee heard strongly in Dumfries), and an important step on the land reform journey, of which this Bill is a part, that the effectiveness of common good land legislation continues to be monitored and assessed, and that full consultation takes place on any future proposed changes.

352. The Committee hopes that the proposed Scottish Land Commission would lead on the long overdue process of clarifying and mapping common good land to improve transparency for people living in all 32 local authorities in Scotland.

Part 8 – Deer management

Background and policy intention

353. Sections 69-71 deal with the management of wild deer populations in Scotland. The Bill provides for potential interim measures which could be used following the planned inquiry into deer management in 2016. The PM states—

” 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.¹⁶¹

354. Scottish Government officials confirmed the chosen method of dealing with deer issues in the Bill had a further advantage, as it would allow for quick changes, if required, to ensure the 2020 biodiversity targets are met. Officials added that it would not be fair or helpful to the current process for the measures to come into force sooner.¹⁶²
355. The interim measures proposed are—
- an additional use of existing deer panels to promote community involvement in local deer management;
 - a new power for SNH to require the production of a deer management plan where, in its view, the public interest in deer management is not being delivered; and
 - an increase in the level of fine for failing to comply with a deer control scheme, imposed under section 8 of the Deer (Scotland) Act 1996.
356. The RACCE Committee held an inquiry in 2013-14 into deer management issues¹⁶³ and produced a report¹⁶⁴ which made recommendations to the Scottish Government and to those involved in managing deer in Scotland. The Committee's work is referenced in the PM, and the Committee's view that the voluntary system should be retained in the short term but that a review of progress should be held at the end of 2016 is set out, together with confirmation that this recommendation was agreed by Scottish Ministers, and is being followed in the Bill.
357. The Committee's inquiry found that, at the time of reporting (early 2014), 40 Deer Management Groups (DMGs) were in existence, of which 16 had Deer Management Plans (DMPs) in place. A further 12 were in the process of developing plans. The Committee's recommendations included that—
- all DMGs should have DMPs in place by the end of 2016;
 - DMPs should be environmentally responsible and demonstrate how they are delivering positive outcomes for deer populations and for the natural heritage;
 - DMG meetings should be held locally and should involve practitioners and wider community representatives; and that
 - DMGs should be held in public where possible and be fully transparent and accessible.
358. Evidence on the provisions in the Bill varied. Some agreed with the approach being taken; some believed that the provisions need to be implemented more quickly (given the urgent need to better manage deer in the public interest and to

meet biodiversity targets), rather than deferred until after the completion of the review at the end of 2016; and there were some who believed that there was no need for further legislation in this area at this stage, even interim legislation, and that existing powers should be used, and the situation reassessed, following the completion of the review.

359. The Committee notes that the position being followed in the Bill is consistent with the conclusions and recommendations made by the Committee in its own deer inquiry in 2013-14. At that time, the Committee expressed its serious concerns regarding the lack of progress in improving the sustainable, transparent and inclusive management of deer in Scotland in the public interest, and set a deadline of the end of 2016 for the sector to make significant improvements.
360. However, the Committee is concerned about the evidence it has received during Stage 1 of the Bill, supplemented by a recently published report by Scottish Natural Heritage¹⁶⁵ which highlights the lack of progress being made by Deer Management Groups as of the end of 2014 and is unconvinced that the changes required are likely to be delivered in the next 12 months.
361. Consideration must therefore be given to strengthening the approach taken in the Bill to ensure that no further time is wasted, and damage caused (including making it less likely that Scotland will achieve its 2020 biodiversity targets), by the lack of, or by ineffective, deer management.

Progress

362. In coming to a view on the approach being followed in the Bill, the Committee sought to ascertain the rate of progress being made following the Committee's inquiry and subsequent recommendations published in 2014. As with other parts of the Bill, the Committee kept the public interest at the heart of its considerations.
363. There was a view from many organisations, such as the ADMG, SLaE, LDNS, SNH, BASC and Scottish Gamekeepers Association (SGA), that progress is being made as a direct result of the Committee's intervention in this issue in 2013-14. Those organisations seemed to agree that the voluntary process should be allowed to continue until the end of 2016, and that a review then takes place to assess progress made.¹⁶⁶ SNH said that a great deal had been done in the two years since the Committee's inquiry and that the measures currently available can work but that more still needs to be done to demonstrate a willingness by all deer managers to work in the public interest.¹⁶⁷ However, a cautionary tone was added by Scottish Environment Link (SE Link), which stated that the current focus is on process issues (such as improving effectiveness and transparency of DMGs and ensuring that meaningful DMPs are put in place etc) and that, post the review in 2016, the focus must be firmly on delivering outcomes.¹⁶⁸

364. As was the case during the Committee's inquiry in 2013-14, stakeholders disagreed about the number of deer in different parts of Scotland, the density of those deer, and the level of impacts being caused which can be specifically attributed to deer rather than other herbivores. Stakeholders also disagreed on what sustainability meant in each of those cases and the rate of progress being made.
365. During its evidence-taking, the Committee became aware of a new report¹⁶⁹ by SNH, dated August 2015 but unfortunately not published on the SNH website until 19 October 2015. Regrettably, although SNH gave oral evidence to the Committee on 30 September 2015, its representative did not specifically refer to the report or its imminent publication. The report highlights a large number of concerns regarding the operation of DMGs in 2014, particularly in relation to progress in managing deer in the public interest.
366. Many of the issues covered in the Committee's inquiry were re-rehearsed in evidence, including issues such as the need to improve the transparency and public interaction of DMGs. SE Link noted surprise that there was no direct link in the Bill between Part 8 on deer management and Part 3 on the information about the control of land.¹⁷⁰
367. Another such issue discussed was the powers SNH currently have to implement deer control schemes (known as section 7 orders) or, where those have failed, to enforce a deer control order (section 8 orders). Section 8 orders have, to date, never been used. Again, the arguments the Committee heard during its 2013-14 inquiry were repeated, with some feeling that the powers act as useful tools and powers of last resort used to stimulate action, whilst others stated that the fact that the section 8 powers have not been used demonstrates their lack of practical use and the need for alternatives.
368. It is clear almost two years after the Committee's report that, whilst some limited progress is being made in certain areas, many significant problems remain in managing wild deer in Scotland in the public interest. The Committee heard an assertion that "the penny has finally dropped"¹⁷¹ within the deer management sector. However, despite this acceptance that urgent action is required such action was not yet evidenced in the recent Scottish Natural Heritage report on Deer Management Groups which covered the 10 month period after the Committee's report was published. Everyone involved must greatly increase their efforts to increase and improve the rate of progress being made in response to the Committee's 2014 recommendations. It is also vital that process issues are resolved as quickly as possible so that the focus can shift onto delivering outcomes in the public interest.

369. The Committee was clear in its 2014 report that if the 2016 review finds that real and sufficient progress has not been made, then the Government must move quickly to replace the failing voluntary system with further statutory measures. Given the evidence the Committee gathered during Stage 1 it is imperative that the Scottish Government and SNH ensures that a full review takes place and is published in 2016, and within timescales which enable the Scottish Government to be able to take action by the end of that year.

370. In addition to the measures proposed in the Bill, the Committee recommends that the Scottish Government gives consideration to amending the Bill to make the following statutory changes as proposed by the Land Reform Review Group, which could also be enacted quickly, following the conclusion of the 2016 review—

- enabling SNH to set cull targets for each Deer Management Group area;
- requiring landowners to apply to SNH for a licence to cull deer;
- enabling SNH to, in certain circumstances, take over culling responsibility, either by carrying out the cull itself or allocating it to the local Deer Management Group or other suitably qualified persons.

Lowland deer issues

371. The Committee heard that it was important to distinguish between the upland red deer issues, which are covered more widely by DMGs, and lowland deer issues. It was noted that apart from both involving deer (albeit of different species), the problems and likely solutions in these two areas are very different and that it was not possible, or desirable, to try and establish a one-size-fits-all deer management system across Scotland. All agreed that deer management in the Highlands and the Lowlands require distinct approaches.

372. A clearer picture of the deer management situation in lowland Scotland was established, largely thanks to a visit with the LDNS in Kelso, and subsequent oral evidence given to the Committee by the Network. The Committee was told that a degree of deer management is happening in Lowland Scotland but that it is often not as structured or focussed as it is in some parts of the uplands, and that meaningful collaboration was proving challenging in many areas. The Committee heard that there are now 10 deer groups in the Lowlands but they do not cover all of the local areas they are seeking to represent. The Committee also heard that deer numbers in many Lowland areas are increasing rapidly but that there was little robust data to demonstrate this. The LDNS said that for many lowland local authorities and farmers, deer management was simply not a priority.

373. Deer management challenges in the Lowlands are clearly often very different from those in the Highlands, however, there are fears that the lowland deer situation could be as bad as that faced in some parts of the Highlands. The significant problems in many parts of Lowland Scotland therefore require specific consideration in the upcoming review.

374. In terms of Lowland deer management, there is an urgent need for better group structures; greatly improved collaboration between land owners and managers; more proactive positive engagement by local authorities and public agencies; and the establishment of deer larders to help with the processing and marketing of venison products. The lack of robust data on deer numbers, densities and impacts in the Lowlands must also be addressed. The Committee recommends that the Scottish Government seeks to address these issues as a matter of urgency, and also ensures that they are taken into account when setting the remit for the 2016 review.

375. The Committee also recommends that the Scottish Government considers what, if any, role the new Scottish Land Commission could have in providing leadership on Lowland deer management issues.

Functions of deer panels

376. Section 69 amends section 4 of the Deer (Scotland) Act 1996¹⁷² (appointment of panels). Currently, section 4 of the 1996 Act gives SNH the power to appoint deer panels to act as a source of considered advice. The new proposals give Scottish Ministers the ability to make regulations to give panels further functions relating to community engagement.

377. Specifically, the Bill states that the these new functions may include—

- encouraging and facilitating local community engagement in deer management;
- looking into and communicating deer management issues to a local community; and
- communicating the views of a local community to those involved in deer management.

378. Stakeholders across the deer management sector were content with these provisions, with SNH noting that, to date, deer panels had not been used as often as they might have been.

379. Scottish Government officials told the Committee that this power could potentially assist with problems currently being experienced in various lowland parts of Scotland where DMGs or similar structures do not exist.¹⁷³

380. The Committee notes that stakeholders are content with this proposed potential power and also supports comments made by Scottish Government officials that this could be another available tool in seeking to improve collaboration and deer management in many Lowland parts of Scotland. The Committee also welcomes the intentions to improve community engagement in deer management matters and believes that this supports other parts of the Bill aimed at improving community involvement in land management.

Deer management plans

381. Section 70 also amends the 1996 Act to give SNH powers to require deer management plans to be produced by adding a new section 6A to that Act.

382. In the provisions as set out, SNH would intervene to require that a plan is developed, agreed and implemented in circumstances where it judges that the public interest is not being protected. SNH would have the role of either approving or rejecting any plan produced (but would not be able to amend a plan, or draw up its own plan), and failure to produce a plan when requested to do so would be grounds for SNH to implement a deer control agreement under section 7 of the 1996 Act. SNH already has the power, under section 8 of the 1996 Act, to implement deer control schemes in situations where agreement cannot be reached or where a section 7 agreement has failed.

383. SNH stressed that the process of agreeing meaningful and effective DMPs was crucial to improving deer management across Scotland, and also noted that these must fit local priorities rather than adhere to a generic, country-wide, set of objectives. SNH stated that it supports DMGs in helping them develop the plans in the context of ecological objectives, such as the 2020 biodiversity targets.

384. SNH welcomed this new power potentially being available to it in the future but noted that, in practice, this is happening already. SE Link also supported this potential power but said it should be implemented immediately rather than deferred until after the completion of the review. SLaE cautioned against the process for developing DMPs becoming too top-down or draconian and said that the balance between public and private interests must be appropriately balanced.

385. The establishment of meaningful, effective and truly collaborative deer management plans, that have the buy-in of all local land owners, managers, and communities, is crucial if deer management across Scotland is to improve. The Committee therefore supports this power being made available. However, Scottish Natural Heritage should have powers to amend plans, and also to lead on drafting a plan where no satisfactory plan has been agreed.

Increase in penalty for failure to comply with a control scheme

386. As explained above, SNH currently has the power to implement deer control schemes, known as section 8 orders, in certain circumstances. Section 71 of the Bill increases the maximum fine for failure to comply with such an order from the current level 4 standard (currently equal to £2,500) to £40,000. The PM notes that there is also currently a maximum custodial sentence possible of up to three months imprisonment, which is not changed by the Bill. To date, SNH have never used the powers in section 8 of the 1996 Act.
387. SNH said that it understood the rationale in increasing the fine to this extent, and that the proposed £40,000 figure was comparable with the maximum possible fine for certain other environmental and wildlife crimes.¹⁷⁴ However, SLaE questioned whether the increase was, in fact, proportionate and comparable with other such fines, and noted that SNH also has the power, in addition to the fine, to recoup all of the costs it has incurred in enforcing a section 8 order.¹⁷⁵ The SGA asked for clarity as to how the fine would be apportioned to the various landholders involved in section 8 orders.¹⁷⁶
388. The Scottish Government set out its rationale for raising the fine to £40,000, stating that—

” We opted for a substantial increase in the maximum fine for refusing or wilfully failing to comply with any requirement of a deer control scheme made under section 8 of the Deer (Scotland) Act 1996. £40,000 is a maximum fine and is comparable with other fines relating to certain wildlife or environmental crime. For example, the introduction of an invasive non-native species carries a financial penalty of up to £40,000 on summary conviction. Compliance with a deer control scheme could potentially bear significant cost and we would wish to avoid the situation where it may be cheaper and easier to pay a fine than to carry out the required deer management measures.¹⁷⁷

389. The Committee discussed, at length, the current powers SNH has to enforce section 7 and section 8 orders in situations where deer management is consistently failing, in its inquiry in 2013-14. It was noted then, and it remains the case, that the section 8 powers have never been used. The Committee remains concerned about whether these orders are usable within appropriate and practical timescales and asks the Scottish Government to consider whether amendment is required to these powers to allow SNH to issue orders on the basis of only one assessment of damage.
390. However, the Committee supports the substantial increase in the level of fines for non-compliance with a section 8 order, and hopes that this may increase the weight carried by either the threat, or use, of a section 8 order.

391. The Committee asks the Scottish Government to clarify how the fine would be appropriately targeted and then apportioned between the liable members of a deer management group subject to a section 8 order, and also who would pay the fine in areas where no deer management group was in existence.

Part 9 – Access rights

Background and policy intention

392. The Land Reform Act 2003 established statutory public rights of access to land and required access authorities (local authorities and national park authorities) to publish a plan for systems of paths (core paths) which would give the public reasonable access throughout their areas of responsibility. It was intended that core paths would facilitate access for various types of uses, such as walking, cycling, horse-riding, and water sports.

393. The LRRG looked into access rights and how well the provisions in the 2003 Act were working in practice and concluded that they were generally working well but issues remain with improving implementation. The Bill proposes changes to the access rights provisions in the 2003 Act.

394. There was general support for this part of the Bill expressed in evidence to the Committee and, as such, the Committee did not hold any specific evidence-sessions on this part of the Bill.

Core path plans

395. All access authorities have adopted core path plans which are periodically reviewed, and provision exists for objections to draft plans to be referred to a local inquiry by reporters in the Directorate for Planning and Environmental Appeals.

396. Section 72 of the Bill amends the Land Reform Act 2003. It clarifies that plans can be reviewed either when an access authority chooses to do so, or if required to do so by Scottish Ministers, and sets out in full the procedures for reviewing a plan. The Bill also requires access authorities to conduct time-limited consultations on all proposed amendments to adopted core path plans, and also to conduct a limited consultation in cases where objections to amendments have been made. The Bill also states that notice must be served on the owners and occupiers of any land which is to be included in a core paths plan for the first time as the result of review and amendment. The Bill also seeks to simplify the process for minor amendments to plans, and sets out the process for single amendments to plans, which can be made outwith reviews, and are less onerous.

Service of court applications

397. Section 73 amends the Land Reform Act 2003 to introduce requirements where an application to the Sheriff Courts is made regarding responsible access. The changes in the Bill would mean that a person seeking a declaration that someone has not used their access rights responsibly must serve the application on the person in question, as well as the relevant local authority and landowner.
398. Malcolm Combe highlighted an issue regarding smaller scale disputes which will not be heard in the courts—

” Currently, the Access Code and the 2003 Act’s statutory scheme does not give a non-landowner access taker who meets another engaging in irresponsible access much of a chance to act, beyond: asking the access taker to modify their behaviour; contacting the police if what they are doing is criminal; and referring the matter to the sheriff.

The Land Reform Review Group suggested that arbitration may assist here, but perhaps another approach would be to promote Local Access Forums into a first instance decision maker. Local access forums already have a statutory role in relation to temporary access suspensions and byelaws, and they had a role in relation to core path planning, so they already have a degree of expertise on access matters, and they will almost certainly know the geographic area and customs of where they operate better than any potential arbitrator or indeed a sheriff. Under s.25, they can already bring that expertise to bear and give offers of assistance on matters relating to the exercise of access rights, so an expanded role may not be too difficult to envisage or indeed incorporate into the statutory scheme.¹⁷⁸

399. The Committee has no objections or concerns regarding this part of the Bill, but recommends that the Scottish Government considers the merits of expanding the role of Local Access Forums to allow them to deal with minor access rights disputes.

Part 10 – Agricultural holdings

400. Alex Fergusson MSP, with agreement of the Committee, dissents from the comments made on this Part of the Bill, and sets out his views as follows—

” The policy aims of Part 10 of the Bill – Agricultural Holdings – are twofold. It aims to reinforce the rights of tenants while creating an environment that will encourage people with land to let to do so, in order to bring about a vibrant tenanted sector. I do not disagree with those aims, but I must dissent from this part of the Bill as I believe strongly that these twin aims

cannot and will not be met through this proposed legislation. Indeed, I believe that the problems referred to in para 413 will be made worse by the passing of this legislation – the exact opposite of the Government’s intentions. I do not believe that my concerns can be addressed through amendments given the Cabinet Secretary’s own admission that he is limited in what further matters he can take forward in this Parliament due to time constraints.

I am clear that there is an increased willingness on behalf of landowner representatives to come to a long term sustainable solution to the problematic issues referred to in the report, and that that desire is shared by tenant farmer representatives also. But the only way to achieve that solution is to allow more time for all parties to work together to bring it about. The ultimate prize is the restoration of trust between all parties on which a truly vibrant tenanted sector is dependent. That trust will only be further eroded by the passing of this section of the Bill, and that can only make it even harder to address in later years.

My view is that, if the Scottish Government is genuine in its desire to enhance tenants’ rights while encouraging owners of land to let more of it, then part 10 of the Bill should be withdrawn and deferred into the next session of Parliament as a separate Bill, allowing adequate time for the serious debate that does need to take place to be held. Only then can a truly reinvigorated and vibrant tenanted sector, with a restoration of trust on all sides, be achieved.

401. The views on Part 10 are therefore those of the remaining 8 members of the Committee.

Background and policy intentions

402. Over half of the Bill relates to changes to agricultural holdings law. Part 10 contains 24 sections (74 – 97) divided into seven chapters. Some of these sections introduce substantial new amending sections into the 1991 and 2003 agricultural holdings acts. The changes are largely proposed as a result of the work of the Agricultural Holdings Legislation Review Group (AHLRG), which was chaired by the Cabinet Secretary, and which reported to the Scottish Government on 27 January 2015.¹⁷⁹ The Scottish Government’s land reform consultation was issued before this date, but asked if people thought recommendations made by the review group (although unknown at that time) should be progressed through the Bill.

403. Scrutiny of agricultural holdings issues has been a central theme of the Committee’s work in this session. The Committee has scrutinised primary and secondary legislation on the issue; held many evidence sessions with stakeholders and the Scottish Government; and carried out a significant number of fact-finding visits to meet tenants and landlords across the country. In that time the

Committee has developed a greater understanding of the views of both tenants and landlords from different parts of the country, and the various challenges facing the tenant farming sector in Scotland.

404. The Committee therefore approached its scrutiny of the provisions in the Bill by assessing them against its fundamental desire to see a healthy, thriving tenant farming sector in Scotland which delivers real public benefits. The key question is: will the provisions in the Bill help to deliver that desired outcome? Developing that question further, the Committee examined the policy intentions that lay behind the provisions in the Bill to see if there were any potentially conflicting objectives. The Bill's intentions are (as confirmed by the Cabinet Secretary¹⁸⁰) to improve the security of current tenants and improve opportunities for secure tenants to invest in their holdings, whilst also creating the right environment for more tenanted land to become available so that younger farmers and new entrants can come into the sector, and so that existing farmers can take on more land. The Committee set out to consider if those intentions can be delivered and, if so, whether the Bill is likely to achieve that aim.
405. The Committee also examined the provisions from the perspective of compatibility with ECHR and other human rights instruments. The fact that the Committee scrutinised this Bill at the same time as it continued to deal with the very unfortunate aftermath of the *Salvesen v Riddell* judgement by the UK Supreme Court¹⁸¹, which found that a specific section of the Agricultural Holdings Act 2003 was not compatible with ECHR and therefore outwith the Parliament's legislative competence, was not lost on the Committee. It would not serve anyone well if provisions were passed in this Bill which went on to be successfully challenged in the courts.
406. It was clear from the discussions the Committee had with agricultural stakeholders that the issue of human rights is being very keenly felt by all sides of the debate and that many stakeholders feel that ECHR issues are overshadowing the process and causing nervousness and tension. Whilst the STFA thinks that the Bill does not go far enough to redress the balance of rights between tenants and landlords (and also noted that it believes some consultation proposals were not progressed due to ECHR difficulties), others, such as SLaE, Law Society Scotland (LSS) and Andrew Howard from Moray Estates, think that some of the Part 10 provisions give cause for concern and are skewed towards tenants at the expense of landlords' rights.¹⁸²
407. Before commenting on the specific chapters in Part 10 below, several general issues were raised in evidence and are addressed.
408. While some were content to see agricultural holdings provisions in the Bill, there was a strong view that the recommendations of the AHLRG should not have been progressed in a land reform bill. Other witnesses felt that the constant review of agricultural holdings legislation was causing considerable frustration and uncertainty within the sector and that the Bill does not present the integrated

package of measures recommended by the AHLRG, and does not provide the stable position which many in the sector hope for. In addition, it now seems likely that more changes will come after the Bill, possibly in the next session of Parliament.

409. As a package of measures, some said that following a steady erosion of tenant farmers' rights since the late 1940s, this Bill presents an opportunity to rebalance the rights between tenants and landlords. Others stated that the Bill will actually further reduce, rather than restore, confidence in the sector, and could also make it less likely that landlords will consider renting land. The Committee heard that this will do nothing to counteract the long-term decline in tenanted land in Scotland, or may even exacerbate it, thus having the opposite effect to one of the Bill's desired outcomes.
410. However, on the issue of whether the Bill would help to restore confidence to the sector, there were clearly still wide divisions between some tenants and landlords. SLaE told the Committee that the changes the Bill proposes to secure 1991 Act tenancies, such as the assignation and succession provisions, undermine confidence amongst landlords as it demonstrates that future changes, which negatively affect landlords, could continue to be made at any point in the future, which in its view sends out the wrong message. However, the STFA is of the view that although the Bill redresses the previous erosion of rights which has undermined tenants' confidence, it still does not go far enough.¹⁸³ Andrew Howard noted that a framework has to be established that makes it attractive for both parties to let/rent and to invest.¹⁸⁴
411. There was consensus amongst stakeholders that the Bill was unlikely to directly lead to more land being let on tenancy arrangements in Scotland, with the STFA stating that while the Bill may help slow the decline of tenancies, it would not lead to more land being made available.¹⁸⁵ There was also some agreement that there were issues not addressed by the Bill which have a bigger effect on the tenant farming sector and the conditions for letting and investment and the amount of land being let, such as taxation and the management and distribution of Common Agricultural Policy funds. These issues were addressed by the AHLRG and the Scottish Government maintained that it is taking forward work to address these issues but that they were outwith the scope of the Bill.
412. In his evidence to the Committee the Cabinet Secretary re-emphasised that the broad aim of Part 10 of the Bill is to ensure there is a vibrant tenant farming sector in Scotland and to achieve this there needs to be both land available to let, and tenants with the skills, resources and confidence to invest and maximise the productivity of those tenanted holdings. He added that within that tenants' rights must be protected. The Cabinet Secretary also stressed that the Bill is only a part of a package of legislative and other measures that will stimulate change in the tenant farming sector in the years ahead and there was a requirement to be more inventive in finding solutions. He also acknowledged that only time would tell whether the provisions in the Bill prove to be successful in delivering its intended

aims and there would be a need to reflect on the impact of the measures after a period of time following enactment.¹⁸⁶

413. Having scrutinised agricultural holdings issues throughout this session, and visited a number of tenants and landlords across the country, it is clear that there are significant problems in the sector that this Bill must address. It is also clear that frequent piecemeal legislative changes brought forward after years of negotiating positions of compromise is not helping to deliver the clear, robust, stable framework of legislation and supporting policy which is urgently needed to allow clarity and a stronger sense of security to be given to tenants and landlords alike for generations to come.
414. The agricultural holdings provisions in the Bill should be bold, clear, designed for the long term and, most importantly, deliver real solutions to the identified issues rather than putting off difficult decisions.
415. The Scottish Government must demonstrate how the Bill can and will deliver improved security and conditions for investment for existing tenants, as well as also delivering the environment to create new tenancies for younger people and new entrants, whilst protecting the rights of landlords.
416. The Committee is also concerned to ensure that the provisions in Part 10 are compatible with the ECHR. Lessons must be learned from the fallout of the *Salvesen v Riddell* judgement. The identification of a defect in the Agricultural Holdings (Scotland) Act 2003 has had serious consequences for many parties, and has led in some cases to tenants losing tenancies they thought were secure, compensation claims being lodged, and court action against the Scottish Government being pursued.
417. Part 10 of the Bill will require significant amendment if it is to realise and deliver the public benefits of establishing a thriving and secure tenant farming sector. It is also vital that the Scottish Government clarifies how, and over what time period, it will measure the impacts of the measures in the Bill, if and when enacted, so that further steps can be taken if the provisions are not proving to be successful.

Chapter 1 - Modern Limited Duration Tenancies

418. Chapter 1 establishes a new type of agricultural holdings tenancy called a Modern Limited Duration Tenancy (MLDT). The PM states that—

- ” 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.¹⁸⁷

419. Section 74 inserts new sections 5A and 5B into the Agricultural Holdings Act 2003. Section 5A provides for new MLDTs with a minimum term of 10 years, and allows existing Short Limited Duration Tenancies (SLDTs) to be converted into MLDTs. Section 5B allows for a 5 year break clause to be included in the lease of a MLDT if the tenant was a new entrant to farming. Scottish Ministers would have a power to make regulations defining who is a new entrant to farming. Section 75 clarifies that subletting of a MLDT can only happen if the lease allows it.
420. Section 76 inserts new sections 8A to 8E into the Agricultural Holdings Act 2003 providing for termination of MLDTs. Under new section 8A they could be terminated by agreement. New section 8B introduces a double notice provision where the tenancy is terminated by the landlord. The landlord must give a notice to quit between 1 and 2 years of the end of the term, and a notice of intention to quit between 2 and 3 years before the end of the term. Where the tenant wishes to terminate the tenancy, new section 8C would allow them to do that by giving notice to the landlord within 1-2 years of the term. Where the tenant is a new entrant and there is a 5 year break clause, either party would be able to end the tenancy after 5 years by giving the other notice within 1-2 years of the date of the break clause.
421. Section 77 inserts new section 16A into the 2003 Act which provides for the maintenance of fixed equipment subject to MLDTs. It would require the landlord to provide sufficient fixed equipment to allow the tenant to maintain efficient farming; and put the fixed equipment into a thorough state of repair within 6 months of the start of the lease. It also requires the landlord and tenant to draw up a schedule of the fixed equipment on the holding; and requires the landlord to replace fixed equipment where necessary due to damage by fair wear and tear, and for the tenant to maintain it.
422. Section 78 inserts a new section into the Agricultural Holdings Act 2003 relating to the irritancy of a MLDT. Irritancy is the legal term given to the ability of a landlord to terminate a tenancy if certain conditions of the lease are breached. This section allows for the landlord and tenant to agree, as part of the lease, what the grounds for irritancy will be, and prevents irritancy being possible solely on the grounds that a tenant is not resident. The section also states that if irritancy takes place on the grounds of a tenant not using the land in accordance with the rule of good husbandry, that the definition of good husbandry is found in schedule 6 of the Agriculture (Scotland) Act 1948¹⁸⁸, and also clarifies additional circumstances which would constitute good husbandry. The section also sets out the process to be followed if a landlord intends to irritate the lease and the conditions by which terminating a lease on the grounds of irritancy will be possible.
423. Following a request from the Committee, the Scottish Government set out the differences between LDTs and MLDTs—



On the difference between the MLDTs and the current LDTs, the review group was looking for a letting system that provided more flexibility than the

current LDTs. The Scottish Government supports the proposed MLDT, which will be a 10-year minimum-term tenancy except for new entrants. There will be a break clause to enable new entrants to end the tenancy, which will give them flexibility. If they feel that their business or their relationship with their landlord is not panning out, they will have the ability to end the tenancy. The landlord will have the ability to end the tenancy at the five-year point, under the break clause, only when a new entrant is failing under the rules of good husbandry. New entrants will therefore be in a much stronger position.

For the rest of the sector, going into an MLDT will provide a tenant farmer with more flexibility in respect of the rental arrangements and the purposes of the lease. There will also be slightly more flexibility in relation to fixed equipment. We made previous legislative changes to get everybody on to the same playing field in relation to schedules of fixed equipment and to get them all operating in the same way at the start of leases. However, that is still not working as well as it could, so the new provisions enable a bit more flex in that regard. If someone wants to enter into an MLDT, we will give them the opportunity to do that through the provisions.¹⁸⁹

424. The Scottish Government also set out the number of different letting vehicles which will be available to landlords and tenants if the Bill is passed.¹⁹⁰ The different letting arrangements are listed as (with the number of holdings with tenancy and rental arrangements in 2014 listed alongside)—

- Grazing/mowing let (no information);
- Smallholding (149);
- SLDT (834)
- LDT (528)
- 1991 Act tenancy (4993); and
- MLDT (none as yet).

425. The Committee notes that the list does not include details of crofts, or of arrangements such as limited partnerships; share farming; and contract farming. It also does not give any indication of the number of grazing and/or mowing lets.

426. During the Committee's visit to the Falkland Centre for Stewardship in Fife it met with some small scale farmers and rural businesses and heard about the Centre's move to seek to let out small plots of land to encourage new entrants into the sector.

427. There was not a great deal of support or enthusiasm for MLDTs from any part of the sector. The STFA and NFUS felt that there was little difference between the current LDTs and the proposed MLDTs and the STFA predicted that they would

be used as a bolt on for existing businesses and not for new entrants, and noted that they would not provide the security of tenure tenants are looking for. Other views expressed included that the changes offered by an MLDT are too limited and are a missed opportunity to develop a truly modern letting vehicle and that they will be too bureaucratic and will do nothing to increase land available for tenancies.¹⁹¹

428. Stakeholders also seemed to share a regret that the Bill does not take forward the modern repairing lease (which relaxes the conditions related to provision of fixed equipment etc by the landlord) proposed by the AHLRG. The STFA and NFUS thought this would be a better vehicle for new entrants and, indeed, some of the tenants and landlords the Committee met on its travels also called for the repairing lease to be added to the Bill.¹⁹²

429. SLaE and other landlords were concerned that a freedom of contract model was not being followed and felt the Bill was a missed opportunity to achieve more flexibility in letting arrangements.¹⁹³ Andrew Howard noted that current lease options do not fit well with diversification projects and that more flexibility would be a better fit for modern farming and would lead to more land being let, which is one of the desired policy objectives.¹⁹⁴



Figure 13
Meeting with
smallholders
at the Falkland
Centre for
Stewardship

430. It was also felt by some that the five year break clause which is a feature of the MLDT, and aimed at making the option more attractive to new entrants, would not be used often because SLDTs will still be available.¹⁹⁵

431. When asked if the Scottish Government had considered moving towards a freedom of contract model for agricultural tenancies, Fiona Buchanan, an Agricultural Holdings Policy Officer in the Scottish Government, stated that such

an arrangement is currently possible but is a private matter between the two parties involved and is not provided for in, or protected by, statute.¹⁹⁶

432. The Committee heard evidence from the Crown Estate that it offers longer term leases where appropriate which would take a tenant, or a successor tenant, up to retirement age. Alan Laidlaw said—

” Where we were looking to engage with the next generation, instead of setting an arbitrary figure of 10, 15 or 20 years, we looked at the business and the family involved and offered longer tenancies to take the next generation up to the age of 65. If the tenant was 40, they were offered a 25-year agreement; if they were 35, they were offered a 30-year agreement. The figure has an element of arbitrariness but, at the time, we thought that it was a useful discipline for families to have succession discussions on that basis, to allow retirement planning and so on. That is probably the main variation following those discussions, and it has meant that there are some very long-term—35-year and 37-plus-year—agreements when the next generation has been ready and able to move forward.¹⁹⁷

433. Having taken extensive evidence, the Committee notes the lukewarm response to the creation of another new letting vehicle, the proposed Modern Limited Duration Tenancy. The Committee also notes views given which included that they would be unlikely to appeal to new entrants or offer sufficient advantages over current letting arrangement possibilities to existing or future tenants, and also that they are unlikely to be an attractive option to landlords, as they will not deliver sufficient flexibility to encourage greater letting of land in the future.

434. Although it is the Scottish Government’s intention that MLDTs will replace LDTs over time it is currently not possible to estimate with any certainty how many MLDTs will be taken up, and how those numbers will compare to the 528 LDTs in place in 2014.

435. The Committee recommends that the Government amends the Bill at Stage 2 to introduce a new modern repairing lease, which would offer more benefits and flexibility to both landlords and tenants, and be likely to help deliver the Bill’s objectives.

436. In terms of the wider issue of the number and types of tenancy available, the Committee heard evidence which suggested that contract and share farming arrangements are in place in parts of Scotland, but that the extent of them is not clear. In order to ensure that the data held on tenant farming in Scotland is as up to date and robust as possible the Committee recommends that the Scottish Government clarifies the amount of agricultural land in Scotland subject to contract and/or share farming arrangements.

437. The Committee was encouraged to hear about the model being followed at the Falkland Centre for Stewardship of seeking to let small plots to new entrants and smaller scale rural businesses and asks the Scottish Government to examine this example with a view to determining the best way of encouraging and enabling such letting arrangements. The Committee also commends the approach being taken by the Crown Estate of offering longer term tenancies. This helps to provide continuity and security of tenancy and secure good and confident relationships between both tenants and the landlord.

Conversion of 1991 Act tenancies into Modern Limited Duration Tenancies

438. Section 79 of the Bill creates a power for Scottish Ministers to make regulations (subject to the affirmative procedure) to provide for the conversion of a 1991 Act tenancy into a MLDT, and specifies what such regulations may cover, such as notice periods and minimum terms of the lease. Once the existing tenant had a MLDT they could assign it, but this would be subject to the agreement of the landlord.

439. The landlord could object to a proposed assignation if there are reasonable grounds, including that the tenant is not able to pay the rent and maintain the holding or that the tenant lacked appropriate skills and experience. Where the incoming tenant was a near relative of the outgoing tenant, the landlord would only be able to object on the grounds that the tenant—

- was not of good character;
- did not have sufficient resources; or
- lacked appropriate training or experience.¹⁹⁸

440. There was some support for this proposal of being able to convert a 1991 Act tenancy into another tenancy arrangement (notwithstanding the general lack of enthusiasm for creating MLDTs) subject to appropriate safeguards being in place. However, others were of the view that the conversion of a 1991 Act tenancy to an MLDT needed the full scrutiny of primary legislation and that it should be kept for a future bill rather than being left to regulations which are, as yet, unpublished. There was also significant comment that it was very hard to come to a view on this proposal with so little detail currently available.

441. The DPLR Committee was particularly critical of this section in its report on the DPM, stating—

” The Committee finds it highly unsatisfactory that Parliament is being asked to consent to the taking of a very wide power to make regulations in circumstances where very little information is available as to the manner in which that power is likely to be exercised given that the Scottish Government has not fully developed the detail of the policy regarding

conversion. The Committee observes that a particular consequence of leaving significant policies to be developed in regulations as opposed to on the face of the Bill is that the Parliament does not have the same opportunity to contribute to the proposals as it would with a Bill, by virtue of the amending Stages 2 and 3. The Committee notes that regulations made in exercise of the power could impact significantly on the rights of both tenants and landlords, notably those protected by Article 1 Protocol 1, European Convention on Human Rights (ECHR).

The Committee considers that policies which may interact significantly with individuals' ECHR rights should be developed in full on the face of the Bill rather than deferred to regulations.

While the Committee recognises that the power in section 79 is capable of being exercised in a manner that is compatible with the ECHR rights of the parties involved, the Committee also recognises that the regulations made in exercise of the power will themselves require close and careful parliamentary scrutiny in order that Parliament can be satisfied that the power is in fact exercised compatibly and that the regulations deliver a fair and proportionate result as between the rights of the affected parties.

In order to address these points, and to ensure that the Parliament has an opportunity to undertake full and detailed scrutiny of the policy regarding conversion, including the opportunity to propose amendments, the Committee accordingly recommends that the Scottish Government amends the Bill at Stage 2 in order that the power in section 79 is subject to an enhanced form of affirmative procedure. The Committee recommends that such a procedure should give the Parliament the opportunity to be fully consulted on the Scottish Government's proposals for conversion once those proposals are developed, and to have an opportunity to take evidence and report on those proposals prior to regulations in exercise of the power in section 79 being formally laid before Parliament for approval in accordance with the affirmative procedure.¹⁹⁹

442. The NFUS stated in its written submission—

” NFUS understands that this option was substantially investigated by the AHLRG, who recommended a term of 35 years was applied. NFUS also understands that there are substantial legal uncertainties over whether this option is possible either in an open or limited version. Therefore, NFUS suggests that at this current time this places the industry in an impossible position with regards to this option. Clarity is required on what is actually possible so that the industry can discuss the issue from an informed position and come to a conclusion that is in the best interest of the tenanted sector. NFUS asks that the Scottish Government as a matter of urgency confirm to the industry definitive guidance over what is possible.²⁰⁰

443. The NFUS went on to tell the Committee that this issue has led to much debate within its membership and that it was important to keep in mind what situations this proposal is seeking to resolve. The NFUS explained that some secure tenants have no-one to pass their tenancy on to so remain in tenancies for longer than is in the public interest (i.e. the land is managed less well and becomes less productive and younger farmers and/or new entrants have limited opportunities) and therefore need a vehicle to allow them to sell that tenancy. The NFUS suggested that this should be for a fixed term of 25 years.²⁰¹
444. There was a lengthy debate about the advantages and disadvantages of this proposal at the specific stakeholder evidence session on this Part of the Bill and it was clear that this was another of the more controversial parts of the Bill as a whole. The STFA said that this issue was a key part of the wider debate on the future of agricultural holdings, and also noted that the original proposals in the review had been watered down to the proposals now in the Bill. Many argued that, as presented, there was a notable omission from the provisions, which was the lack of clarification of how waygo (the term used to describe the process of a tenancy ending, and compensation being negotiated for improvement made during that tenancy) would operate in such circumstances, and that it was difficult to judge the proposal with such little detail.²⁰²
445. SLaE said that the conversion proposal could aid confidence as it was not amending the terms of current 1991 Act tenancies and it was the tenant's decision whether to convert or not. Andrew Howard added that he agreed with the principle of encouraging and enabling retirement but that the Bill lacked the detail needed to properly assess the provisions. He said that a key consideration in getting this right was understanding what would motivate a tenant to opt for this route, such as potential financial, tax, or housing motivations. He also added that the provisions must offer an appropriate balance between landlords' and tenants' rights, and that it must be workable, i.e. that it is affordable for the new tenant and provides the outgoing tenant with a fair settlement, and that the landlord can derive a benefit too (although he accepted that moving from an uncertain end of tenancy date to a defined one would be considered as a benefit for the landlord).²⁰³
446. There was also a debate about the minimum length of a converted tenancy (which is not specified in the Bill but left to the regulations). The AHLRG recommended a term of 35 years, which was supported by some, but others felt that a shorter length of between 10 (as it would match the terms proposed for the new MLDTs) and 25 years would be more appropriate.
447. The STFA stated that any minimum length below 35 years would not be attractive to incoming tenants, and also would not realise fair value for improvements made by the new tenant when leaving the holding. However SLaE argued that a term longer than 15 years would infringe the rights of the landlord and some felt that if the lease term was too long then it would price many prospective tenants out of the market and make it more likely that owners would purchase the tenancy, thus taking land out of tenure. RICS noted that a minimum 10 year term would provide

both parties the opportunity to review the lease after that 10 year period, and to reconsider issues such as investment and the value of the land. Andrew Howard also suggested that the process should allow the incoming tenant to benefit from the improvements made by the outgoing tenant, and this should be reflected in the value.²⁰⁴

448. Billy McKenzie, the EU Rural Development Programme and Agricultural Holdings Team Leader in the Scottish Government, told the Committee that the detail was being left to regulations because there was currently a wide range of views on how to take this forward, and on specific issues such as how long the minimum term of tenancy should be. He noted that it was important to get the provisions right and that the Scottish Government must take all the major stakeholders with them in developing the proposal as that was fundamental for future success and stability. He also confirmed that regulations are currently being developed and will be shared with stakeholders in due course.²⁰⁵

449. Whilst there was a lukewarm response regarding the creation of MLDTs, the issue of whether secure 1991 Act tenants should be able to convert their tenancies to a minimum term MLDT provoked much comment and debate amongst stakeholders.

450. There was a consensus on both sides of the debate that the lack of information currently in the Bill on this issue, and the fact that the detail is left to regulations, is unhelpful and has made it very difficult to properly scrutinise the proposals. The Committee is concerned, especially as there may be ECHR issues that need to be considered, that so little detail was provided on this issue in the Bill, or during the Stage 1 process. The Committee therefore caveats all of its comments on this proposal with the need to see more detail from the Scottish Government before the end of Stage 2, so that a thorough assessment of the proposals – including any ECHR implications to which they may give rise - can be carried out.

451. The Committee endorses the serious concerns raised by the DPLR Committee and supports its calls for the regulations in section 79 to be subject to an enhanced form of affirmative procedure.

452. The Committee agrees that there is currently a problem which requires a solution, which is to develop a mechanism for dealing with situations where a secure 1991 Act tenant has no one to pass their tenancy on to and therefore remains in a tenancy longer than might be appropriate for the tenant or in the public interest. There are merits in giving tenants in that situation the option of being able to convert that lease into another form of tenancy (of a minimum period) in order to assign the tenancy.

453. The details of this proposal need to be very carefully considered as there is potential for many unintended consequences. For example, if the length of the tenancy is too long, and previous investments are factored into the valuation rather than being included in a waygo process, then it may price new tenants out of the market and lead to the land being removed from tenure. New tenants need a reason to follow this route. Equally, outgoing tenants also need to have a reason to be attracted to this option, and need to be convinced that they will realise an appropriate value for their improvements and lease.

454. The Committee was not convinced following its evidence-gathering that this proposal has been suitably evidence-based, researched and developed and therefore cannot support the proposals until more details are made public by the Scottish Government and are debated further by stakeholders.

Chapter 2 - Tenant's right to buy

455. Chapter 2 of Part 10 repeals sections 24 and 25 of the Agricultural Holdings Act 2003 and in so doing removes the requirement for 1991 Act tenants to register for the pre-emptive right to buy. Section 80(4) of the Bill amends section 26 of the 2003 Act so that the owner, or a creditor in a standard security over the land, must notify the tenant if they propose to transfer any part of that land.

456. Written submissions from the STFA, SAAVA and the NFUS all supported the removal of the requirement for tenants to register for the right to buy. However, other submissions thought the requirement to register should be kept, and that removal of the registration could undermine good tenant/landlord relationships and lead to a lack of investment.

457. The LSS thinks this move could cause uncertainty and that the removal of the requirement for the tenant to register creates a number of practical problems in relation to conveyancing—

” At present a clear search in the Register of Community Interests in Land (RCIL) is exhibited and a seller can sell the land without fear of the right to buy applying (although of course if there is a tenancy the issue of the tenancy still has to be dealt with). If all 1991 Act tenants were to have an automatic right to buy, it raises the question of what a landowner would do prior to sale to determine whether any occupier in the neighbourhood is a 1991 Act tenant and what the extent of the area occupied by that tenant is. It also raises the question of how the missives of sale would reflect this: if the right to buy were to be triggered by the missives, do the missives fall? What if only part of the subjects of sale are affected?²⁰⁶

458. The LSS gives two other examples of potential problems. It states that the removal of the requirement to register could affect land sales where either missives were concluded or an option was agreed before the Bill came into force.

It says that there could be a particular problem where land was being sold for development, and the tenant may be able to step in and buy the land at agricultural value. Ultimately it suggests this is likely to result in a series of Land Court cases to determine whether tenancies exist and their extent. While appreciating the policy intent to give tenants' rights due recognition it thinks the practical consequences require more thought.²⁰⁷

459. SLAE understood the policy intention of this provision but thought removing the need to register would lead to difficulties as the registration process helps provide clarity about the kind of lease involved and the area of land at stake, practical advantages which would be lost if registration were ended. As a compromise, it suggested that an initial need to register be retained, but the need to re-register be removed.²⁰⁸ RICS agreed that there were a number of grey area tenancies at present with little, incomplete or no paperwork.²⁰⁹
460. However, the STFA supported the move, and noted that this recommendation was made by both the land reform and agricultural holdings reviews and added that if an estate is well managed then it should have clear records of what kind of tenancies it holds, and which areas they cover. It also stated that the policy intention is for tenants to have the first right to buy a tenancy which is put up for sale, and that the need to register is currently putting tenants off from noting an interest, with a suggestion that some tenants feel they may be penalised as a result of registration.²¹⁰

461. It is important to keep in mind the policy intention behind this proposal, which is that tenants have the first right to buy the subjects of their 1991 Act tenancies when that land is put up for sale. The Committee agrees with seeking to reduce or remove any barriers which are currently preventing tenants from engaging in that process, and is of the view that the need to register is one such barrier.
462. The Committee acknowledges that, unfortunately, in some cases, records of leases and boundaries held by both landlords and tenants are inadequate. However, the Committee received no evidence to show that this is the case with the majority of leases, or that this is a valid reason for continuing the need to register. If there is an issue with the accuracy of tenancy records, and the Committee accepts that this may be the case, then that should be dealt with separately.
463. The Committee therefore supports the removal of the statutory requirement for tenants to register for the pre-emptive right to buy. The issue of establishing an absolute right to buy for 1991 Act tenants is addressed later in this report.

Chapter 3 - Sale where landlord in breach

464. Chapter 3 (section 81) amends the Agricultural Holdings (Scotland) Act 2003 to introduce a process to allow a tenant to apply to the Land Court to order the sale of an agricultural holding if there had been a material breach by the landlord in relation to their obligations to their tenant under a 1991 Act tenancy, and the landlord had subsequently failed to comply with an order of the Land Court or an appointed arbiter to remedy that breach, and where that failure is adversely affecting the tenant's ability to farm the holding in accordance with the rules of good husbandry.

465. The Bill states that the Land Court would have a discretionary power to order the sale in such circumstances and provides powers to prevent transfer of the land or rights in the land after an order had been made. The Bill then outlines a process for the tenant to buy the land, and for the valuation to be determined. If the tenant did not want to buy the land, the Bill allows them to apply to the Land Court to allow sale to a third party. There is also provision for the former landlord to clawback some of the increase in value of the land if the former tenant or third party purchaser sold it on at a profit within ten years. Provision is also made for owners or former owners to be compensated by Scottish Ministers for some of the costs involved in complying with an order for sale. The PM states that—

” 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.²¹¹

466. Written evidence demonstrated broad support for these provisions. Amongst concerns noted were—

- the need for protection for the landowner so far as valuation is concerned;
- the need for transparency as the power vested in the hands of Ministers is very strong;
- the need for parity with tenants sanctions; and that
- the clawback provisions are too onerous.

467. Some evidence also highlighted a potential unintended consequence or loophole of these provisions, as it could lead to a situation where a tenant runs a farm down and blames the landlord, who is then forced to sell an undervalued asset.

468. STFA, SLaE and Andrew Howard all described this power as draconian but also felt that it was necessarily so as it was intended as a power of last resort and there

seemed to be a consensus between landlords and tenants that this provision was sensible.

469. SLaE stressed that the forced sale is not reciprocal to the landlord's right to obtain a certificate of bad husbandry which results in the removal of the tenant because—

” Being forced to give up a tenancy does not equate to being forced to give up ownership. The tenant loses a right of occupation; the landowner would lose a right of ownership.²¹²

470. The STFA noted, in response, that the consideration of balance in this regard needs to recognise that a landlord could lose a holding whereas a tenant could lose their home and that there was therefore no need to strengthen the bad husbandry rules. There was, however, some consensus that the bad husbandry rules require updating (rather than strengthening) as they are no longer fit for purpose.²¹³

471. Andrew Howard asked what would happen if there was no buyer in a forced sale situation. He asked whether the Scottish Government, local authorities, or the Crown Estate would be able to come in as purchasers of last resort for the land. The STFA noted that some local authorities in England own land used for the provision of starter farms.²¹⁴ Responding to this issue, the Cabinet Secretary confirmed that the Bill provides for secondary legislation which will clarify this issue, and that the options suggested to date will be considered in the preparation of those regulations.²¹⁵

472. In relation to the clawback provisions (in new section 38N) the STFA argues that they would significantly impact on a tenant's ability to borrow, in order to facilitate the purchase of the holding, due to concerns regarding the size of the possible clawback. It also states that the clawback should be limited to the original interest of the landlord in the lease, and not include improvements made by the tenant under the tenancy. SLaE, however, supported the clawback provisions.

473. Following his evidence on 4 November 2015, the Cabinet Secretary wrote to the Committee regarding the clawback provisions and stated—

” The exclusion of tenant's improvements is not included within the clawback provisions within the Bill but we are actively considering this issue following the evidence gathered at Stage 1.²¹⁶

474. The Committee is pleased to note the broad consensus on this issue between the main stakeholder groups.

475. The Committee is not convinced the balancing provisions for dealing with situations of tenants in breach of the terms of a lease need to be reconsidered. However, the details of the tenants' bad husbandry provisions require updating to ensure they are fully fit for purpose in the 21st century and the Committee recommends that the Scottish Government ensures that this is addressed by the new Tenant Farming Commissioner.
476. The Committee also recommends that the Scottish Government and/or Tenant Farming Commissioner gives consideration to ensuring that there is a statutory requirement to re-let land on the same basis as the existing lease in circumstances where tenancies have been ended due to a tenant being in breach of the terms of their lease.
477. The Committee asks the Scottish Government to clarify who would buy the land in situations of last resort, where the tenant did not want to buy the land, and whether the sale to a third party provisions outlined in new section 38L are sufficient to deal with such circumstances.
478. The Committee notes the differing views on the clawback provisions contained in new section 38N and asks the Scottish Government to reflect on this evidence to reconsider if the provisions are appropriately balanced between the rights of landlords and tenants.

Chapter 4 - Rent reviews

479. Chapter 4 amends the Agricultural Holdings Act 2003 with regard to rent reviews. Section 82 of the Bill changes the basis for setting farm rents so they are based on the productive capacity of the land. It would insert a new schedule into the 1991 Act, which would set out detailed provisions in relation to rent reviews. If the landlord and tenant cannot agree on the rent, and it is set by the Land Court, the Bill provides that the Court should have regard to the productive capacity of the holding. Productive capacity would be determined in accordance with regulations made by Scottish Ministers. These regulations would be subject to negative procedure. The rent would also take into account the open market rental value of any surplus accommodation and any fixed equipment used for non-agricultural purposes.
480. Section 83 amends the 2003 Act to provide that rent for existing LDTs and the new MLDTs would be determined in a rent review in the same way.
481. On its numerous fact-finding visits the Committee heard first hand evidence from tenants (as it has done on previous visits to Bute and other parts of the country) about the uncertainty and stress caused by the setting and review of rents, and the difficulties of the current system in which more cases end up in the Land Court, often at great personal and financial cost. Many tenants felt that the TFC should play a role in ensuring that the new rent review process is established and

then operates successfully. It was also felt that there should be steps taken to ensure that the options of mediation and/or arbitration should be encouraged and fully explored in rent review cases, before the last resort of the Land Court becomes an option. The principle of this suggestion was supported by other stakeholders, including some landowners.

482. Evidence from organisations such as the STFA and NFUS supported the move to calculate rents on a productive capacity basis, since moving away from the current open market test (where no such open market exists) will help improve transparency and reduce conflict. However, the NFUS noted that it had hoped that the process of how this will be calculated would have been further ahead than is the case.²¹⁷ The STFA is confident that enough evidence is available in order to work out productive capacity fairly.²¹⁸

483. In terms of the policy direction, concern was expressed that basing reviews on farm productivity could lead to a substantial increase in rents which would not have a positive effect on the tenanted sector, or, conversely, that rents may regress leading to less investment by landlords and less land being made available for rent. There were also concerns that the Scottish Government has not completed sufficient impact analysis of the proposed legislative changes and that the provisions will make rent reviews more complicated.

484. Concerns were also expressed about leaving the details of such a significant change to secondary legislation, and that, consequently, the details of how the productive capacity will be determined is currently unclear and very difficult to scrutinise. It was stressed that the regulations must be workable, fair and subject to full consultation with stakeholders and practitioners, some of whom expressed fears that there was the potential for a productive capacity test to lead to further disputes and greater recourse to the Land Court. SLAE stated—

” We are still a long way from having a clear view of what a new approach looks like and how it works in practice. This means that it remains unclear what exactly s.13 is going to be replaced with and whether or not the new approach represents an improvement. It seems incredible that the Scottish Government has introduced a Bill with legislative provisions that would introduce a new rent review procedure and a new mechanism that the Land Court should use to determine a ‘fair rent’ without actually having a clear idea of how this would work. This betrays the fact that the Scottish Government itself, at the time of introducing the Bill, cannot have done proper impact analysis of its proposed legislative change.²¹⁹

485. It was also noted that the Bill does not implement the AHLRG’s recommendation on determining rents. The group recommended that rents be determined on the basis of the productive capacity of the holding, but the Bill says that the rent will be the fair rent having regard to productive capacity. What that means is that productive capacity is a default presumption for the rent subject to appeal to the overarching criteria of fairness.

486. It was also noted that the subsequent regulations would need to be based on up to date and robust data, and consider issues such as the hypothetical output of a farm compared to its actual current output, and how the volatility of the market will be taken into account in any projections of output in the future.

487. The Scottish Government confirmed that it is continuing to work on this issue closely with stakeholders—

” To date, two stakeholder meetings have occurred to develop a suitable rental model as proposed in the Bill. The Scottish Government would be happy to share the minutes of these meetings with the committee if they would find that useful. However, these meetings were to scope out initial thoughts and direction of travel and it is expected that by the end of October we will have a much clearer picture of what the final model will look like, and it might be more beneficial for committee members to see it at that stage.²²⁰

488. The Scottish Government wrote to the Committee on some other aspects of the rent review chapter which have been raised in evidence, and confirmed that it is still to come to a view on issues such as whether a farmhouse will be eligible to be treated as fixed equipment provided by the landlord and that it will give further consideration as to whether the sections relating to the withdrawal or termination of a rent review notice (paragraphs 4 and 5) are necessary.²²¹

489. Scottish Government officials also sent the Committee additional information²²² regarding its rent review modelling work (the most recent of which was on 4 November 2015). The Scottish Government stated that the purpose of the information sent to the Committee is to set out—

- a draft definition of productive capacity;
- the draft non-exhaustive list of other factors to take account of when setting productive capacity;
- draft proposals on how land Court should address the issue of fair rent;
- a statement on relevant price data to use when assessing potential output; and to
- discuss outstanding issues related to rental assessments.

490. The information provided by the Scottish Government also states—

” The draft provisions ... are intended as a starting point for further exploration with stakeholders following clarity on what the Bill will require. They are not intended as specific legislative drafting as more time will be required to undertake this process in full consultation with stakeholders, allowing them to consult internally.

491. The definition of productive capacity provided in the paper is—

” ... the sustainable yield of agricultural products that would reasonably be expected from the holding under a system of farming suitable to it when farmed by a competent, efficient and experienced tenant with adequate resources for that system with such assessment being made as at the effective date and taking account of any factors that might reasonably be thought to vary it before the next rent review.

492. The information sent by the Government included agendas and minutes of stakeholder meetings but it was not clear from the information exactly what the current position is, and what may have been agreed between the Government and stakeholders, and which issues remain outstanding. The Cabinet Secretary subsequently confirmed that the modelling work is ongoing to move towards a fair, open and transparent rent review process but could not give an estimated date of when this work would be completed.²²³

493. In his letter of 17 November 2015, the Cabinet Secretary addressed the issue of surplus accommodation in the rent review process, stating—

” While we want the new provisions to encourage the renting of surplus accommodation in rural areas, we do not want a situation where the tenant may be forced to leave their home because of an unaffordable increase in rent, arising from the new provisions. Officials are working closely with stakeholders on the details of productive capacity and we will explore surplus accommodation as part of this work.

494. During its evidence-gathering the Committee was reminded of the urgent need to change the process for setting and reviewing agricultural rents in Scotland to ensure that fairness is delivered for both tenants and landlords, and to try and remove the current high levels of anxiety that the rent review process can cause for farmers across the country.

495. The Committee has long argued for the need to move away from the current open market basis for calculating rents to a fairer system that delivers rents more directly linked to the productivity of the holding. The Committee therefore supports the underlying principle of this chapter of Part 10.

496. However, despite the Scottish Government sending information to the Committee regarding on-going discussions with stakeholders, it is concerned that there is not clearer and more accessible detail available on how productive capacity will be defined, calculated and applied, and that the details (including the issue of surplus accommodation) are left to regulations which are still in the process of being worked up. However, the Committee notes that progress has been made in recent weeks and looks forward to receiving a further update on this from all involved as the Bill progresses.

497. To support that decision-making process, the Committee recommends that the Scottish Government publishes accessible, transparent information on how the productive capacity of a holding would be calculated no later than the end of Stage 2. The Committee also recommends, should this Chapter remain in the Bill as it stands, that the regulations provided for in the Bill be subject to an enhanced form of the affirmative, rather than the negative, Parliamentary procedure, to ensure greater Parliamentary scrutiny.
498. Whilst broadly supporting the move to rent calculations based on the productive capacity of a holding, it is essential that such a move does not create further conflicts between landlords and tenants, leading to more cases ending up in the Land Court. The Committee therefore recommends that the Scottish Government considers what role the Tenant Farming Commissioner could play in implementing and then monitoring any new rent review process. Further comment is made in the section on conflict resolution later in this report.

Chapter 5 - Assignment of and succession to agricultural tenancies

499. Chapter 5 of Part 10 deals with matters of assignment of and succession to agricultural tenancies. The PM sets out the underlying policy intent of this part of the Bill, following recommendations made by the AHLRG, to modernise succession arrangements so that the same rights of succession, to a wider class of person, should apply whether a lease is being transferred within a tenant's lifetime, or bequeathed or transferred after their death, with the aim being to better encourage tenants to retire or move on from holdings "with dignity and confidence in order to release land to younger tenants and ensure land continues in productive agricultural use."²²⁴ The PM states—

” 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.²²⁵

500. Section 84 amends the Agricultural Holdings (Scotland) Act 1991 to widen the classes of family member to whom 1991 Act tenancies could be assigned and restricts the landlord's ability to object to an assignment to a family member who is a near relative to three grounds—

- that the person is not of good character;
- that the person does not have the resources to farm the holding efficiently; and

- that the person has neither sufficient training nor experience to farm the holding efficiently (however, this restriction does not apply where the person is engaged in appropriate training).
501. Section 85 amends the 2003 Act in the same respect with regard to assignments of LDTs.
502. Section 86 of the Bill amends the 2003 Act to allow MLDTs to be assigned. The landlord could object to a proposed assignment if there are reasonable grounds, including that the tenant was not able to pay the rent and maintain the holding; and that the tenant lacked the appropriate skills and experience. Where the incoming tenant was a near relative of the outgoing tenant, the landlord would only be able to object on the three grounds set out above.
503. Section 87 amends the 1991 Act to widen the classes of family member to whom a 1991 Act tenancy could be bequeathed.
504. Section 88 amends the 2003 Act and the Succession (Scotland) Act 1964²²⁶ and outlines provisions for succession to LDTs and MLDTs to ensure that the new proposed letting arrangement is correctly referenced, and to expand the class of person to whom an LDT or MLDT can be bequeathed.
505. The final section of this Chapter, section 89, amends the 1991 Act to set out a new process for landlords to object to a tenant's successor to a 1991 Act tenancy. Where the incoming tenant was a near relative of the outgoing tenant, the landlord would only be able to object on the three grounds set out above. Section 89 would provide a right for the legatee to challenge a landlord's refusal of a bequest in the Land Court. Where the legatee was a near relative, the Land Court would consider the three grounds above. Where the legatee was not a near-relative, the Land Court would consider whether there was a reasonable ground for the landlord's objection.
506. These provisions were supported by many people and organisations on the basis that they would have a very positive effect on the tenant farming sector, particularly in terms of achieving the policy aim of encouraging retirement and encouraging new entrants into the sector. A strong view, echoed by the STFA, was that the assignment and succession provisions in the Bill rebalanced rights between landlords and tenants following decades of erosion of tenants' rights. The STFA added that the changes also reflected the fact that the current job market is more fluid than in the past, and that family structures have changed significantly in recent years, with more children leaving holdings, and more nieces and nephews coming to work on farms. The STFA stressed that succession is currently a risky and anxious time for a tenant, as landlords have up to two years to object to a succeeding tenant, and that the changes proposed in the Bill will both remove that risk and simplify the process.²²⁷

507. Some felt that the provisions do not actually go far enough and that 1991 Act tenants should be able to freely assign their tenancies. The STFA stated in its written submission that—

” Scottish Government statistics show an annual loss of around 120 secure tenancies to the sector. Most of this land, if re-let will be let out on short term arrangements usually to established farmers. If only a quarter of these farms were available for assignation to new entrants the demand for land by new entrants and those progressing up the farming ladder would soon be satisfied. There will be continuing need for progression through the industry with tenants looking for the next step and others whose tenancies will have come to an end. It must be in the public interest that this land is retained in secure tenure and is available for re-letting. STFA is aware of a number of small farms without family successors which would be suitable as assignable tenancies to new entrants. Furthermore, assignable tenancies will also create scope for share farming arrangements where a retiring farmer can take a new entrant into the business with a view to assigning the lease at a later stage.²²⁸

508. In response to this point, Scottish Government officials said this option was considered but it was decided no case had been made that doing so would help deliver the objectives of the Bill, and that full assignation could result in less land being available in the future for tenancy.²²⁹ The AHLRG also concluded that the case for open assignation had not been made.

509. However, when questioned about the merits of establishing open assignation for value which would allow a landlord to buy out the lease if they wanted to do so and were able to meet the valuation, and which was linked to a fit and proper person test, the Cabinet Secretary told the Committee that he was “not ruling anything out”.²³⁰

510. Others objected to this proposal on the grounds that it was an unwarranted and unjustified extension which would be disadvantageous to landlords and represent a significant loss of their rights. It was felt by some that widening assignation and succession rights would also be a disincentive to investment and counterproductive to the aim of encouraging the letting of land. SLaE told the Committee that it had fundamental concerns on this policy as the effect of widening the class of those who can succeed to, or be assigned, a lease in the Bill will be the loss of any realistic prospect of the landlord ever getting vacant possession of their land. It added that this was a retrospective change to the terms of 1991 Act tenancies that goes to the heart of the confidence issue and asked how landlords can have confidence in future legislation when the terms of existing legislation and agreements are constantly being altered in such dramatic terms. These concerns were supported by Andrew Howard who said the Bill was trying to force land to remain in tenure rather than looking to create a flexible, modern tenanted sector and that landlords would be deprived of land they previously thought they would get back at some stage. He also said that this would not help

new entrants as it would lock land into permanent tenure, regardless of productivity. He added that, if passed, these provisions were likely to be challenged, and said there was a lack of acceptance that sometimes a tenancy should be able to end, even if a tenant does not want it to.²³¹

511. SLaE also sent the Committee a legal opinion it has received which concludes that this chapter of Part 10 is not compatible with the A1P1 rights of landlords and is therefore not within the legislative competence of the Scottish Parliament.²³² Charles Livingstone raised the question of the rights of those who expect to be assigned, or succeed to, a tenancy but who will no longer receive one as a consequence of the proposals in the Bill.²³³
512. The NFUS had mixed views on the proposals and said that there was agreement that mechanisms are required to deal with situations where someone dies out of turn, and where an existing family member is actively farming the holding but can't succeed to that holding under the current law.²³⁴
513. Other concerns raised included that—
- the policy intention is unclear: is it to extend the lifespan of secure tenancies, or is it to address unfairness of death out of turn or the inability of direct family to take over a business?;
 - the widening of assignation does not pay due regard to the proposed assignee's connection with the holding;
 - the provisions on assignations do not address the situation of joint tenancies, where the interest in the lease is divided between family members;
 - cousins should be included in the definition of a near relative;
 - the provisions should extend to those who have worked on a farm for a long period of time and have a connection to a holding;
 - the requirement for a new tenant to have started an agricultural training course is too weak and needs to be a more robust professional farmer test; and that
 - there should be a reasonable ground to refuse an assignation to a tenant who already has a viable unit.
514. The NFUS noted that the AHLRG recommended the removal of the viable unit test (a viable unit is defined in the 1991 Act as a unit capable of providing an individual occupying it with full time employment and the means to pay the rent and for adequate maintenance of the unit), aside from retention of the part which allows a landlord to object to a successor tenant on the basis that he already farms another viable unit. The rationale for this was to prevent single parties from accumulating multiple secure tenancies.

515. In the context of this Bill, if succession and assignation is widened significantly as proposed, it is possible that this scenario is more likely to occur than previously. The NFUS agrees with the AHLRG that this portion of the viable unit test should be retained in order to prevent this from occurring.
516. However, the STFA said that any viable unit test in this context was judgmental and unnecessary, adding that UK Department for Environment, Food and Rural Affairs (DEFRA) has recommended removing the viable unit test in England and Wales and it is right that Scotland should follow suit. The STFA stated that farmers would not continue to farm consistently unviable units. However, SLaE retains a concern that without a viable unit test, farms will not have the opportunity to restructure and that unviable tenancies could be locked into tenure.²³⁵
517. The Cabinet Secretary told the Committee that the viable unit test issue had been considered before introducing the Bill and that, when considering whether any amendment should be made to the Bill in this regard, careful thought should be given to whether any viability test could be a barrier to delivering the aims of the succession and assignation proposals in the Bill.²³⁶
518. On the issue of the policy intention of these measures, the NFUS stated that—
- ” where a party has been actively involved in a farm business it would seem fair if they were able to have a tenancy assigned to them, or succeed one on death. If the policy aim is to extend the lifespan of secure tenancies then the proposals in the Bill will aid this, however if the policy aim is to address unfairness of death out of turn or the inability of direct family to take over a business, the proposals seem to go wider than what is required.²³⁷
519. In a letter to the Committee the Cabinet Secretary addressed the issue of the provisions being extended to cover people who have worked on a farm for a long period of time but are not captured by the classes of people set out in the Bill, stating—
- ” At present the Bill does not provide for any other persons, other than those listed, regardless if they have worked on the farm over a long period of time to succeed or have a tenancy assigned to them. Prior to 1949, tenants had a general right to bequeath their tenancy to whoever they wanted; however, we consider that the current provisions are a proportionate solution to ensuring tenancies continue and modern family units are respected while balancing the impact on all parties concerned.²³⁸
520. The issue of assignation of and succession to tenancies, and particularly the widening of the categories of people to whom a 1991 Act tenancy can be assigned, or who may succeed to a 1991 Act tenancy, has proven to be one of the most controversial aspects of the Bill, and has seen significant disagreement between landlords and tenants.

521. As stated in the earlier part of this report on human rights, it is of vital importance that the Bill's ECHR implications are fully considered and understood before any legislation is passed by the Parliament. Lessons must be learnt from the *Salvesen v Riddell* judgement. The defect in the 2003 Act which was identified in that case has had serious consequences for the sector and for the Scottish Government.
522. Examining this from a purely policy position, the Committee has mixed views. It supports solving the current problems of death out of turn, and situations where tenancies are not passing to those who actively farm the holding because the current law does not reflect some family arrangements. The Committee also notes issues raised about those having worked on, and having a strong connection to, a holding but not being covered by the classes of people set out in the Bill. These problems must be solved.
523. There were differing views within the Committee about the potential merits of establishing freedom of assignation for 1991 Act tenancies. Some think it may provide a solution for 1991 Act tenancies to ensure tenancy continues to the most appropriate person, whilst others are concerned that this may be to the detriment of the sector and further erode opportunities for new entrants.
524. The Committee recommends that the Scottish Government, and any member considering amendments to this chapter should carefully consider all of the evidence given to the Committee during Stage 1, and proceed with caution, keeping the policy objectives, desired outcomes and rights of both tenants and landlords, and the key human rights issues, firmly in mind.

Chapter 6 - Compensation for tenant's improvements

525. Chapter 6 of Part 10 introduces an amnesty for tenant's improvements. The background to this, as set out in the PM, is a shift away from the traditional model of the landlord/tenant relationship in agriculture, where the landlord provided the fixed capital, and the tenant provided the working capital, management and labour. The PM states that the trend has been for tenants to provide more of the fixed capital than used to be the case. The provisions in the Bill are therefore aimed at dealing with an issue that has been hotly debated in recent years: ensuring that tenants are appropriately compensated for improvements and investments made in the holding when they leave it.
526. Currently, determining such compensation depends on there being an accurate recording of improvements which have been made on a holding, and for payments to be made should evidence be provided that a landlord gave written permission in advance, or that a notice was served by a tenant on a landlord in advance, that an improvement was required and going to be made. It seems that many cases such agreements and up to date records are not available and that some improvements

may have been made without having followed the appropriate formal process. This is resulting in some tenants not being compensated as they should be.

527. To try and offer a solution to this issue, sections 90 to 95 provide for an amnesty period of two years which would begin when this part of the Act came into force. During this two year period a tenant would be able to serve an amnesty notice on their landlord with details of the improvement. Landlords could object to the notice in which case the tenant could apply to the Land Court for a decision on whether the improvement qualifies, and how much compensation the tenant would be entitled to for having made the improvement. Section 95 provides a basis for tenant and landlord to come to an agreement about the value of such improvements.

528. There was much support for the principle of an amnesty. However, many people questioned why a period of two years had been set, when the AHLRG suggested 3 years. In evidence to the Committee both the SLaE and STFA supported a three year period, with the STFA noting that a 3 year period would match the rent review cycle. In response, Angela Morgan, a Land Reform and Agricultural Holdings Policy Officer at the Scottish Government, stated that—

” It is expected that two years will be sufficient to resolve the issues in the majority of cases. The sooner parties can reach a clarification on the matter, the better. Obviously, for some individuals, the final length of the amnesty period will go beyond the two years if they apply to the Land Court towards the end of the two-year period. That said, we are listening to stakeholders’ views on the matter and will carefully consider all the evidence that is gathered. At the moment, however, we think that two years should be sufficient to resolve the issues.²³⁹

529. The Committee also received views that the current list of eligible improvements (in Schedule 5 of the 1991 Act) requires updating as it was drafted in the 1940s. Angela Morgan agreed that the list is out of date and said that the Government is currently working with practitioners to agree an updated list.²⁴⁰ However, Billy McKenzie later told the Committee that the Government was “aware” that this needed to be done, adding that it would happen “over time” via secondary legislation.

530. RICS suggested there should be a cut off period of 30 years for improvements, as those made before then would no longer have any intrinsic value. However, both STFA and SLaE disagreed with this noting improvements should be based on value and not age, that some improvements had a permanent value, and that there were plenty of examples of older improvements continuing to add value to a holding.²⁴¹

531. There was also a strong view that the Bill is currently a missed opportunity in terms of addressing other problems with current waygo arrangements and should include provisions about when waygo can be negotiated. The Committee heard

that the current system of negotiating waygo at the very end of a tenancy often puts the tenant in a weak position and can be a disincentive for a farmer to retire.

532. During evidence-taking, a consensus developed around the suggestion that waygo becomes a clearly defined two stage process: stage one being the notification of improvements and discussion and agreement of waygo; and stage two being the serving of a notice to quit.
533. There were also views that improvements should include changes that may not obviously be thought of as leading to increased productivity, such as improvements to animal welfare and/or health and safety requirements, and also improvements made to housing.

534. The Committee supports the provision of an amnesty for tenant's improvements and supports the consensus between many landlords and tenants that the Scottish Government should amend the Bill to change the amnesty period from two years to three years. No cut-off period should be established for improvements.

535. The Committee recommends that the Scottish Government continues to work with stakeholders to agree an updated list of eligible improvements. Consideration should be given to including areas such as housing, animal welfare and health and safety in the updated list.

536. The Bill currently misses the opportunity to further improve and clarify the process for waygo, which continues to be a source of potential conflict between tenants and landlords. During its evidence-taking, the Committee sought views on a proposed new two-stage process for agreeing waygo, the first stage being the agreement of eligible improvements and compensation details, and the second stage being the serving of the notice to quit, only once there is clarity on what the waygo arrangements will be. There was widespread support from both tenants and landlords for this process being established and the Committee recommends that the Scottish Government brings forward amendments to the Bill at Stage 2 in this regard.

537. Finally, the Committee recommends that the Scottish Government considers all of the evidence regarding waygo arrangements and gives further thought to any other waygo issues that the Bill could help address.

Chapter 7 - Improvements by landlord

538. Chapter 7, the final chapter of Part 10, deals with the issue of improvements made by landlords. Currently landlords in a 1991 Act tenancy can make improvements to a holding without the consent of the tenant (which could lead to increased rents) and without establishing that the improvement would improve the efficient

management of the holding, but, as discussed above, can object and refuse to consent to improvements proposed by the tenant.

539. The PM explains that the Scottish Government does not believe this is an appropriate balance of landlord and tenant rights and therefore is seeking to redress that in the Bill.
540. Section 96 would require landlords to give tenants a notice of certain improvements; would give the tenant a right to object or refuse consent on certain grounds (that the improvement work is necessary for the maintenance of an efficient unit); and would refer disputes to the Land Court. The provisions require that where the tenant had not been given notice of such improvements, the value of the improvement would not be taken into account in rent reviews. The provisions would not apply to work done in an emergency, e.g. to control an outbreak of an animal disease.
541. All stakeholders who gave oral evidence to the Committee on this issues: SLaE; the NFUS; the STFA; the RICS; SAAVA; the LSS; and Andrew Howard, indicated that they are content with the provisions.²⁴²

542. The Committee was delighted that there was consensus across stakeholders regarding this provision and is also supportive of Chapter 7.

Other agricultural tenancy issues

Resolving disputes

543. The Bill would extend the role of the Land Court in several areas—
- resolving disputes arising from the amnesty on improvements;
 - deciding on applications from the tenant for an enforced sale; and
 - ruling where a tenant has objected to a proposed improvement by a landlord.
544. The Land Court would continue to rule in rent review disputes, using the revised rules for calculating rent.
545. SAAVA and RICS indicated that the Land Court is not a suitable forum for rent review disputes, and that a rent assessment panel or arbitration would be more appropriate.
546. The Committee heard a great deal of concern from many of the tenants it met with during its fact-finding visits across Scotland about the personal and financial costs involved in a case ending up in the Land Court, and how the threat of the Land Court often results in tenants not pursuing cases at all. The Committee also heard from some landowners that they would much prefer to avoid the Land Court route if possible.

547. As stated elsewhere in this report, the Committee wants to see a system of mediation and/or arbitration established, perhaps in conjunction with both the Scottish Arbitration Service and the new Tenant Farming Commissioner, in a bid to try and resolve disputes before the last resort recourse to the Land Court, and recommends that the Scottish Government considers amending the Bill to give effect to that aim.

Long leases and small landholders

548. Two further proposals were raised which could help to improve confidence in the tenanted sector—

- converting very long agricultural leases to ownership; and
- transferring small landholders to crofting tenure where possible.

549. During its public meeting in Dumfries, the issue of small landholders was raised. It was stressed to the Committee that the Bill does nothing to help the problems facing small landholders in Scotland, and it was further noted that small landholdings could offer a realistic way into farming for new entrants.

550. Small landholders are tenants under the Small Landholders Acts 1911-1931. The character of these small landholdings is similar to crofts and the legislation governing them has a shared history with crofting. Once numerous, in 2014 there were an estimated 149 small landholders in Scotland, scattered from Strathspey to Stranraer, and the 2015 survey estimated the number at 76. Small landholders in the areas where crofting tenure was extended in 2010 can apply to convert their holding into a croft. To date no small landholders have succeeded in doing this. Small landholders who remain outwith the Crofting Counties following this extension do not have this option.

551. Responding to these two issues, Scottish Government officials told the Committee that the Government did not support converting long leases to ownership because it would be unhelpful in terms of landlords' confidence, and would result in less tenanted land being available in the future. Officials added that the Government is currently considering issues relating to small landholders.²⁴³

552. The Committee raised the issue of small landholders again with the Cabinet Secretary who confirmed that the Government is considering the matter.²⁴⁴

553. There remain outstanding and unaddressed issues relating to small landholders in Scotland who are currently caught in a legal limbo, where there is no legislative route to prevent holdings falling into disrepair when current landholders are no longer able to maintain the holding.

554. Small landholders need a legislative solution to this problem and the Committee therefore recommends that the Scottish Government updates it on the progress of its consideration of these issues before the end of Stage 2 and considers whether amendments to support small landholders could be made to the Bill. If redress is not possible or intended via this Bill, the Committee asks the Scottish Government to clarify with urgency how it will achieve this, and within what defined timescale.

Condition and provision of housing

555. Many tenants the Committee met on its fact-finding and engagement visits raised the issue of the condition and provision of housing on agricultural tenancies. Many felt that there needed to be clearer rules governing the responsibility of maintaining and improving farm housing, and also further consideration given to the provision of housing for retiring tenants. It was put to the Committee on one of its visits that it was all well and good trying to create an environment that made it easier for tenants to retire, but where would they live when they did?

556. The Cabinet Secretary subsequently wrote to the Committee on this issue, stating—

” The ‘tolerable standard’ is the minimum standard for all living accommodation in buildings in Scotland; including farmhouses, farm cottages and crofts let under agricultural tenancies, small landholdings and crofts.

The ‘repairing standard’ for housing applies to most tenancies in Scotland, except houses that are not sublet through agricultural holdings. Farmhouses are excluded from the majority of housing legislation as they are part of the agricultural tenancy. I’m sure you are aware that farmhouses can also create dispute between parties when the repair and/or replacement of fixtures are not adequately undertaken by either party; leads to farmhouses falling in to poor condition and state of repair.

Which is why, my officials will be working with housing colleagues to consider how best to assess the state of repair of houses that are part of an agricultural tenancy, small landholdings and crofts to enable us to develop a fully joined up approach to ensure houses in Scotland are suitable for those people who live in them.

557. The Committee heard concerns from tenants regarding the adverse condition of their housing (and indeed saw evidence of this), and about the provision of housing for retiring tenants. It is disgraceful that in the 21st century some tenants are still living in farm housing that, in the private sector, would not be considered fit for human habitation. In pursuit of basic human rights and in order that tenant farming is seen as an attractive career and lifestyle option this situation must be addressed and the condition of housing must be brought up to private and domestic sector standards thus giving tenants parity with domestic housing leases. The Committee urges the Scottish Government to bring forward amendments at Stage 2 to address this issue.

558. Rural housing issues more generally are considered below, however, the Committee recommends that the Scottish Government, and the new Tenant Farming Commissioner, if established, urgently considers both the issues of provision of affordable quality housing for retiring tenants, and the poor conditions of some farm accommodation provided for current tenants.

Right to buy for 1991 Act tenants

559. Whilst the AHLRG concluded that a right to buy for 1991 Act tenants (called an absolute right to buy in the AHLRG report) should not be introduced and the issue has not been pursued by the Scottish Government, the issue was raised with the Committee during the Stage 1 process, including on its fact-finding visits. Both sides of this argument have been well rehearsed over the years and the issue remains one strongly supported by some and strongly opposed by others.

560. On its visits the Committee heard suggestions for different forms of a right to buy, including suggestions that any such right to buy be made available for a limited time only; that there should be an option for the landlord to buy out the lease if the tenants agreed; and that there should be built in clawback provisions should the holding be sold on within a set time after a sale had been completed.

561. The Committee, with two exceptions,^{iv} accepts that the issue of the establishment of a right to buy for 1991 Act tenants is an ongoing one, and also accepts that there may be ECHR issues to be considered within that debate. However, this issue needs to be resolved and therefore the Committee recommends that the Scottish Government explores options for introducing such a right to buy in certain circumstances for 1991 Act tenancies only.

^{iv} Jim Hume MSP dissents from this paragraph.

Part 11 – General and miscellaneous

562. Part 11—

- contains some definitions in the general interpretation in section 98;
- details whether regulation-making powers provided in various parts of the Bill should be subject to the negative or affirmative procedure in section 99;
- explains the ancillary provision in section 100;
- sets out how the Bill applies to the Crown in section 101;
- gives effect to the Schedule in section 102;
- explains when different parts of the Bill will come into force in section 103; and
- confirms the short title of the Act will be the Land Reform (Scotland) Act 2016 in the final section, 104.

563. Of these, the Committee was most concerned with the subordinate legislation section which details which regulations provided for in the Bill would be subject to the negative procedure, and which to the affirmative procedure.

564. This is of particular importance as the affirmative procedure guarantees that Parliamentary approval must be given before the regulations come into force, and often ensures a more rigorous committee scrutiny process than the negative procedure, as a motion recommending approval is debated by a lead committee, with the lead Minister, and a report to Parliament must be made. There is also the option for an enhanced form of the affirmative procedure, known as the super-affirmative procedure, which ensures that an earlier draft of the regulations be laid in Parliament with a long period for consultation and debate, before a final draft is laid and then subject to the normal affirmative procedure. Further comment on this can be found earlier in this report and also in the report by the DPLR Committee.

Other issues

Rural housing

565. The issue of the condition and provision of rural housing across Scotland, which does not currently feature in the Bill, was raised, particularly on the Committee's visit to Jura and Islay. At the public meeting held on Jura the Committee heard experiences of both the lack of both affordable social and private starter housing, and the difficulties in getting mortgages for such properties.



Figure 14 Public meeting on Jura

566. The Scottish Government's Programme for Government 2015-16 included information about a new Rural Housing Fund—

” We recognise the unique issues associated with provision of housing in rural Scotland. We have listened to rural stakeholders and to help address these issues we will introduce a new rural housing fund. This fund will aim to increase the supply of affordable housing of all tenures in rural areas of Scotland.

Over the next three years, the fund will be available to community groups and rural landowners, enabling them, and other eligible applicants, to take a more active role in meeting the housing needs of their communities. The fund will have two components, the main one offering funding to enable the direct provision of new affordable housing and upgrading of empty properties and a second smaller component providing a contribution to feasibility studies.²⁴⁵

567. The Committee raised this issue with the Cabinet Secretary during its final evidence session on the Bill in November. Issues raised included—

- whether the SLC could take on the role of a land agency which could examine the use of public land for rural housing (and if not, whether a separate land agency is required);
- whether Scottish Ministers should have the power to force the sale of land for public purposes such as building houses;
- how infrastructure challenges in providing more affordable rural homes can be best overcome;
- how the many empty homes in rural Scotland can be brought up to standard and let or sold;
- following the experiences the Committee heard on its visit to Jura, where people were unable to build houses on crofts, if there is a role for Government in the encouragement of local authority planners to prioritise the development and erection of eco-friendly pre-fabricated rural housing where appropriate; and
- whether there should be a planning presumption in favour of rural housing introduced in Scotland.

568. The Cabinet Secretary told the Committee that Scotland was at an “exciting juncture”²⁴⁶ in relation to the land reform debate and that the areas highlighted by the Committee were amongst a range of other issues that required further consideration. He added that whilst it is not the intention that the SLC be a land agency, there would soon be an opportunity to link policy developments such as the forthcoming devolution of the Crown Estate to Scotland, the establishment of the SLC, the passing of the Land Reform Bill, and other Government initiatives, such as the use of public land in Scotland to provide start farm units. He also noted that local authorities currently have powers in terms of the compulsory purchase of land for housing provision,²⁴⁷ although the Committee recognises that these powers are rarely, if ever, used.

569. On 9 November 2015 the Minister wrote²⁴⁸ to the Committee to update it on progress with the review of the Croft House Grant Scheme (CHGS). The CHGS, which has operated in its present form since 2006, provides grants to crofters to build or improve their homes and currently has an annual budget of £1.4m and, since 2007, has provided support to almost 700 crofters.

570. The Scottish Government carried out a consultation on potential changes to the CHGS which ran between January and March 2015 and received 53 responses. An analysis was published in August 2015.

571. The letter states—

” Feedback from the consultation has been very helpful and we have been refining proposals on a number of matters in light of this, including the geographical areas eligible for the standard and higher rate of grant under

the scheme, and the appropriate level of grant. I have also been considering whether it would be helpful, and workable in practice, to introduce a more formal method of targeting the scheme to those who need it most.

As a number of changes that I am considering progressing differ from those set out in the consultation paper, I believe that it would be beneficial to undertake a further, short engagement exercise with key stakeholders who responded to the consultation.

Although the further engagement exercise with key stakeholders was not anticipated at the outset of the review, I expect that it will still be possible to lay new regulations before dissolution of the Scottish Parliament at the end of March 2016, with changes coming into force shortly after.

Based on stakeholders' responses to the CHGS consultation, I also propose to look at again at scope to reintroduce a loan scheme to help crofters build their homes – including the potential benefits and barriers to doing this. In doing so I will look to align any specific support for crofters with wider housing policy. This is, however, a longer-term piece of work because I understand the impact that changes to CHGS will have on crofters and am keen to launch the new grant arrangements as soon as possible, without any delay that linking this to the exploration of the reintroduction of a loan scheme would cause.

I understand that in 2008-9, the then Rural Affairs and Environment Committee called for the reinstatement of the loan element to croft house assistance, as part of its inquiry into rural housing. I would welcome any additional views, or indeed further detailed consideration of this matter, that the RACCE Committee would wish to take forward now in light of changes to the mortgage market since 2009.

I hope that providing this update on progress on the review of CHGS, along with timetable for introduction of the new arrangements, provides certainty to the Committee, and to crofters, of the Scottish Government's commitment to continuing to provide support to improve croft housing.

572. The Committee notes the issues raised by people in Scotland about the lack of affordable housing in many parts of rural Scotland and the difficulties experienced in seeking mortgages for private properties when they do become available. If we are to truly fulfil the ambition of seeing thriving, sustainable rural communities across Scotland, with more young people choosing to live and work in those communities, then it is essential that there are enough affordable homes for people to live in. The Committee welcomes the Scottish Government's intention to establish a Rural Housing Fund and will monitor (and recommends that its successor committee does the same) the roll-out, take-up and effect of that fund with interest. However, the Committee remains concerned that much more needs to be done to address the problem of the lack of availability and difficulties in constructing houses in rural Scotland, including the provision of necessary infrastructure.

573. The Committee would also welcome further consideration by, and comment from, the Scottish Government regarding the list of issues set out in paragraph 567 above.

574. The Committee notes the update from the Minister regarding the consultation on potential changes to the Croft House Grant Scheme in early 2015, and the recent decision to hold an additional engagement exercise with key stakeholders who responded to the first consultation. The Committee looks forward to further updates on the outcome of the second consultation exercise, and will scrutinise the resulting order should it be laid before the end of the session in March 2016.

575. The Committee welcomes the Minister's suggestion that a loan element could be included in the Croft House Grant Scheme on the condition that any loan scheme would be in addition to the Croft House Grant Scheme and would not reduce grant funding.

¹ [Land Reform \(Scotland\) Bill](#), as introduced (SP Bill 76, Session 4 (2015)).

² [Land Reform \(Scotland\) Bill. Explanatory Notes](#) (and other accompanying documents) (SP Bill 76-EN, Session 4 (2015)).

³ [Land Reform \(Scotland\) Bill. Policy Memorandum](#) (SP Bill 76-PM, Session 4 (2015)).

⁴ [Land Reform \(Scotland\) Bill. Delegated Powers Memorandum](#) (SP Bill 76-DPM, Session 4 (2015)).

⁵ [Land Reform \(Scotland\) Bill. Equality Impact Assessment](#).

⁶ [Land Reform \(Scotland\) Bill. Business and Regulatory Impact Assessment](#).

⁷ Rural Affairs, Climate Change and Environment Committee. Land Reform (Scotland) Bill - [call for views](#).

⁸ Rural Affairs, Climate Change and Environment Committee Twitter account: https://twitter.com/SP_RuralClimate.

⁹ Rural Affairs, Climate Change and Environment Committee. Land Reform (Scotland) Bill - [call for views video](#).

¹⁰ Rural Affairs, Climate Change and Environment Committee. Land Reform (Scotland) Bill – [written submissions](#).

¹¹ Scottish Parliament Information Centre. (2015) [Land Reform \(Scotland\) Bill](#). SPICe Briefing SB 15/49.

¹² [Land Registration etc. \(Scotland\) Act 2012 \(asp 5\)](#).

¹³ [Community Empowerment \(Scotland\) Act 2015 \(asp 6\)](#).

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- ¹⁴ Scottish Government (2014). A Consultation on the Future of Land Reform in Scotland Available at: <http://www.gov.scot/Publications/2014/12/9659>.
- ¹⁵ Land Reform Review Group. (2014) [The Land of Scotland and the Common Good – Report of the Land Reform Review Group](#).
- ¹⁶ Agricultural Holdings Legislation Review Group. Final Report (2015). Available at: <http://www.gov.scot/Publications/2015/01/5605>.
- ¹⁷ Rural Affairs, Climate Change and Environment Committee. Letters to the Scottish Government regarding reviews of [land reform](#) and [agricultural holdings](#).
- ¹⁸ Published responses to the Scottish Government’s Consultation on the Future of Land Reform in Scotland. Available at: https://consult.scotland.gov.uk/land-reform-and-tenancy-unit/land-reform-scotland/consultation/published_select_respondent.
- ¹⁹ Scottish Government (2015). A Consultation on the Future of Land Reform in Scotland: Analysis of consultation responses. Available at: <http://www.gov.scot/Resource/0047/00477022.pdf>.
- ²⁰ Ian Cooke, Richard Heggie, Bob Reid, Dr Madhu Satsangi and David Adams. Written submission. Policy Memorandum, paragraph 8.
- ²² [Land Reform \(Scotland\) Act 2003 \(asp 2\)](#).
- ²³ [Agricultural Holdings \(Scotland\) Act 2003 \(asp 11\)](#).
- ²⁴ Scottish Government Head of Land Reform and Tenancy Unit. Written submission, 10 September 2015.
- ²⁵ [Land Reform \(Scotland\) Bill. Business and Regulatory Impact Assessment](#).
- ²⁶ Finance Committee. *Report on the Land Reform (Scotland) Bill’s Financial Memorandum, 2015 (Session 4)*.
- ²⁷ Finance Committee. [Call for views on the Land Reform \(Scotland\) Bill Financial Memorandum](#).
- ²⁸ Scottish Government Head of Land Reform and Tenancy Unit. Written submission, 10 September 2015.
- ²⁹ Dr Jill Robbie. Written submission.
- ³⁰ Rural Affairs, Climate Change and Environment Committee. *Official Report, 7 September 2015*, Cols 2-3.
- ³¹ Rural Affairs, Climate Change and Environment Committee. *Official Report, 2 November 2015*, Col 6.
- ³² Delegated Powers and Law Reform Committee. 58th Report, 2015 (Session 4). Land Reform (Scotland) Bill at Stage 1 (SP Paper 807 (Web)).
- ³³ [Agricultural Holdings \(Scotland\) Act 1991 \(c.55\)](#).
- ³⁴ Rural Affairs, Climate Change and Environment Committee. *Official Report, 2 September 2015*, Col 4.
- ³⁵ Scottish Government Head of Land Reform and Tenancy Unit. Written submission, 10 September 2015.
- ³⁶ Rural Affairs, Climate Change and Environment Committee. *Official Report, 2 November 2015*, Col 5.
- ³⁷ Policy Memorandum, paragraph 398.
- ³⁸ Defined by NHS Health Scotland as “Health inequalities are unfair and avoidable differences in people’s health across social groups and between different population groups”
- ³⁹ NHS Health Scotland. Written submission.
- ⁴⁰ [Scotland Act 1998 \(c.46\)](#).
- ⁴¹ Rural Affairs, Climate Change and Environment Committee. *Official Report, 7 October 2015*, Col 19.
- ⁴² Brodies LLP. Written submission, paragraph 2.2.
- ⁴³ Policy Memorandum, paragraph 86.
- ⁴⁴ Policy Memorandum, paragraph 133.
- ⁴⁵ Policy Memorandum, paragraph 201.
- ⁴⁶ Policy Memorandum, paragraphs 408 and 409.
- ⁴⁷ Scottish Government Head of Land Reform and Tenancy Unit. Written submission, 10 September 2015.
- ⁴⁸ Scottish Government Head of Land Reform and Tenancy Unit. Written submission, 10 September 2015.
- ⁴⁹ Policy Memorandum, paragraph 42.
- ⁵⁰ Rural Affairs, Climate Change and Environment Committee. *Official Report, 7 September 2015*.
- ⁵¹ Rural Affairs, Climate Change and Environment Committee. *Official Report, 7 September 2015*, Col 31.
- ⁵² Rural Affairs, Climate Change and Environment Committee. *Official Report, 7 September 2015*, Cols 3-4.
- ⁵³ Rural Affairs, Climate Change and Environment Committee. *Official Report, 2 November 2015*, Col 6.
- ⁵⁴ Rural Affairs, Climate Change and Environment Committee. *Official Report, 7 September 2015*, Col 32.

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- ⁵⁵ Rural Affairs, Climate Change and Environment Committee. *Official Report*, 2 September 2015, Col 8.
- ⁵⁶ Rural Affairs, Climate Change and Environment Committee. *Official Report*, 2 November 2015, Col 7.
- ⁵⁷ Rural Affairs, Climate Change and Environment Committee. *Official Report*, 2 November 2015, Col 7.
- ⁵⁸ Scottish Government Head of Land Reform and Tenancy Unit. Written submission, 10 September 2015.
- ⁵⁹ Rural Affairs, Climate Change and Environment Committee. *Official Report*, 7 September 2015, Col 7.
- ⁶⁰ Rural Affairs, Climate Change and Environment Committee. *Official Report*, 2 September 2015, Col 12.
- ⁶¹ Rural Affairs, Climate Change and Environment Committee. *Official Report*, 2 November 2015, Col 9.
- ⁶² Rural Affairs, Climate Change and Environment Committee. *Official Report*, 7 September 2015, Col 37.
- ⁶³ Rural Affairs, Climate Change and Environment Committee. *Official Report*, 7 September 2015, Col 6.
- ⁶⁴ Rural Affairs, Climate Change and Environment Committee. *Official Report*, 7 September 2015, Col 6.
- ⁶⁵ Rural Affairs, Climate Change and Environment Committee. *Official Report*, 7 September 2015, Col 7.
- ⁶⁶ Rural Affairs, Climate Change and Environment Committee. *Official Report*, 2 November 2015, Col 11.
- ⁶⁷ Scottish Government Head of Land Reform and Tenancy Unit. Written submission, 10 September 2015.
- ⁶⁸ Rural Affairs, Climate Change and Environment Committee. *Official Report*, 7 September 2015, Col 39.
- ⁶⁹ Scottish Government Head of Land Reform and Tenancy Unit. Written submission, 10 September 2015.
- ⁷⁰ Rural Affairs, Climate Change and Environment Committee. *Official Report*, 4 November 2015, Col 5.
- ⁷¹ Scottish Government Head of Land Reform and Tenancy Unit. Written submission, 10 September 2015.
- ⁷² Rural Affairs, Climate Change and Environment Committee. *Official Report*, 4 November 2015, cols 3-4.
- ⁷³ Scottish Government Head of Land Reform and Tenancy Unit. Written submission, 10 September 2015.
- ⁷⁴ Scottish Government Head of Land Reform and Tenancy Unit. Written submission, 10 September 2015.
- ⁷⁵ Policy Memorandum, paragraph 95.
- ⁷⁶ Rural Affairs, Climate Change and Environment Committee. *Official Report*, 7 September 2015, Col 9.
- ⁷⁷ Rural Affairs, Climate Change and Environment Committee. *Official Report*, 7 September 2015, Col 40.
- ⁷⁸ Policy Memorandum, paragraph 108.
- ⁷⁹ Policy Memorandum, paragraph 19.
- ⁸⁰ Rural Affairs, Climate Change and Environment Committee. *Official Report*, 7 September 2015, Col 9.
- ⁸¹ Rural Affairs, Climate Change and Environment Committee. *Official Report*, 7 September 2015, Cols 9-11.
- ⁸² Rural Affairs, Climate Change and Environment Committee. *Official Report*, 7 September 2015, Col 46.
- ⁸³ Rural Affairs, Climate Change and Environment Committee. *Official Report*, 7 September 2015, Cols 41-42.
- ⁸⁴ Scottish Government Head of Land Reform and Tenancy Unit. Written submission, 10 September 2015.
- ⁸⁵ [Land Registration etc. \(Scotland\) Act 2012 \(asp5\)](#).
- ⁸⁶ Rural Affairs, Climate Change and Environment Committee. *Official Report*, 7 September 2015, Col 68.
- ⁸⁷ Rural Affairs, Climate Change and Environment Committee. *Official Report*, 7 September 2015, Col 45.
- ⁸⁸ Rural Affairs, Climate Change and Environment Committee. *Official Report*, 7 September 2015, Cols 41-42.
- ⁸⁹ Scottish Government Head of Land Reform and Tenancy Unit. Written submission, 10 September 2015.
- ⁹⁰ Policy Memorandum, paragraph 128.
- ⁹¹ Rural Affairs, Climate Change and Environment Committee. *Official Report*, 7 September 2015, Cols 69-70.
- ⁹² Rural Affairs, Climate Change and Environment Committee. *Official Report*, 7 October 2015.
- ⁹³ Scottish Government Head of Land Reform and Tenancy Unit. Written submission, 10 September 2015.
- ⁹⁴ Rural Affairs, Climate Change and Environment Committee. *Official Report*, 2 November 2015, Col 14.
- ⁹⁵ Rural Affairs, Climate Change and Environment Committee. *Official Report*, 2 November 2015, Cols 12-14.
- ⁹⁶ Convener's Group meeting with the First Minister. *Official Report*, 30 September 2015, Col 26.
- ⁹⁷ Policy Memorandum, paragraph 172.

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- ⁹⁸ [Charities and Trustee Investment \(Scotland\) Act 2005 \(asp 10\).](#)
- ⁹⁹ Rural Affairs, Climate Change and Environment Committee. *Official Report*, 7 September 2015, Col 47.
- ¹⁰⁰ Rural Affairs, Climate Change and Environment Committee. *Official Report*, 7 September 2015, Col 19.
- ¹⁰¹ Rural Affairs, Climate Change and Environment Committee. *Official Report*, 7 September 2015, Col 48.
- ¹⁰² Rural Affairs, Climate Change and Environment Committee. *Official Report*, 7 September 2015, Col 47.
- ¹⁰³ Rural Affairs, Climate Change and Environment Committee. *Official Report*, 7 September 2015, Col 47.
- ¹⁰⁴ Rural Affairs, Climate Change and Environment Committee. *Official Report*, 7 September 2015, Col 20.
- ¹⁰⁵ Scottish Government Head of Land Reform and Tenancy Unit. Written submission, 10 September 2015.
- ¹⁰⁶ Rural Affairs, Climate Change and Environment Committee. *Official Report*, 2 November 2015, Col 21.
- ¹⁰⁷ Rural Affairs, Climate Change and Environment Committee. *Official Report*, 2 September 2015, Col 20.
- ¹⁰⁸ Rural Affairs, Climate Change and Environment Committee. *Official Report*, 2 November 2015, Col 23.
- ¹⁰⁹ Rural Affairs, Climate Change and Environment Committee. *Official Report*, 2 November 2015, Col 23.
- ¹¹⁰ Rural Affairs, Climate Change and Environment Committee. *Official Report*, 7 September 2015, Cols 51-52.
- ¹¹¹ Rural Affairs, Climate Change and Environment Committee. *Official Report*, 2 November 2015, Col 25.
- ¹¹² Rural Affairs, Climate Change and Environment Committee. *Official Report*, 7 September 2015, Cols 52-53.
- ¹¹³ Rural Affairs, Climate Change and Environment Committee. *Official Report*, 2 November 2015, Col 28.
- ¹¹⁴ Rural Affairs, Climate Change and Environment Committee. *Official Report*, 7 September 2015, Col 54.
- ¹¹⁵ Rural Affairs, Climate Change and Environment Committee. *Official Report*, 2 November 2015, Col 30.
- ¹¹⁶ Rural Affairs, Climate Change and Environment Committee. *Official Report*, 7 October 2015, Col 36.
- ¹¹⁷ Rural Affairs, Climate Change and Environment Committee. *Official Report*, 7 October 2015, Col 11.
- ¹¹⁸ Rural Affairs, Climate Change and Environment Committee. *Official Report*, 7 October 2015, Col 41.
- ¹¹⁹ Policy Memorandum, page 26, cited as “Derived from work of the Land Reform Policy Group, Sewel et al, 1998”.
- ¹²⁰ [Scottish Courts and Tribunals 2012, paragraph 56.](#)
- ¹²¹ Rural Affairs, Climate Change and Environment Committee. *Official Report*, 7 September 2015, Col 26.
- ¹²² Rural Affairs, Climate Change and Environment Committee. *Official Report*, 7 September 2015, Col 51.
- ¹²³ Scottish Environment Protection Agency. Written submission.
- ¹²⁴ Rural Affairs, Climate Change and Environment Committee. *Official Report*, 2 September 2015, Cols 24-26.
- ¹²⁵ Rural Affairs, Climate Change and Environment Committee. *Official Report*, 7 September 2015, Col 25.
- ¹²⁶ Rural Affairs, Climate Change and Environment Committee. *Official Report*, 2 November 2015, Col 25.
- ¹²⁷ Scottish Government Head of Land Reform and Tenancy Unit. Written submission, 10 September 2015.
- ¹²⁸ Scottish Government Head of Land Reform and Tenancy Unit. Written submission, 10 September 2015.
- ¹²⁹ Policy Memorandum, paragraph 181.
- ¹³⁰ [Local Government etc \(Scotland\) Act 1994 \(c. 39\).](#)
- ¹³¹ [Local Government Act \(Scotland\) 1975 \(c. 30\).](#)

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- ¹³² Policy Memorandum, paragraph 212.
¹³³ Rural Affairs, Climate Change and Environment Committee. *Official Report*, 2 November 2015, Col 32.
¹³⁴ Policy Memorandum, paragraph 215.
¹³⁵ Rural Affairs, Climate Change and Environment Committee. *Official Report*, 30 September 2015, Col 44.
¹³⁶ Policy Memorandum, paragraph 219.
¹³⁷ Policy Memorandum, paragraphs 220-223.
¹³⁸ Rural Affairs, Climate Change and Environment Committee. *Official Report*, 30 September 2015, Col 37.
¹³⁹ Rural Affairs, Climate Change and Environment Committee. *Official Report*, 30 September 2015.
¹⁴⁰ Rural Affairs, Climate Change and Environment Committee. *Official Report*, 30 September 2015, Col 39.
¹⁴¹ Policy Memorandum, paragraph 214.
¹⁴² Scottish Government (18 November 2015). Supplementary written submission.
¹⁴³ Scottish Assessors Association. Written submission.
¹⁴⁴ Rural Affairs, Climate Change and Environment Committee. *Official Report*, 7 September 2015, Col 30.
¹⁴⁵ Rural Affairs, Climate Change and Environment Committee. *Official Report*, 30 September 2015, Col 46.
¹⁴⁶ Rural Affairs, Climate Change and Environment Committee. *Official Report*, 30 September 2015, Col 47.
¹⁴⁷ Rural Affairs, Climate Change and Environment Committee. *Official Report*, 7 September 2015, Col 31.
¹⁴⁸ Convention of Scottish Local Authorities. Written submission to the Finance Committee.
¹⁴⁹ Rural Affairs, Climate Change and Environment Committee. *Official Report*, 2 November 2015, Col 35.
¹⁵⁰ Andy Wightman. Supplementary written submission.
¹⁵¹ Rural Affairs, Climate Change and Environment Committee. *Official Report*, 7 September 2015, Col 35.
¹⁵² Rural Affairs, Climate Change and Environment Committee. *Official Report*, 2 November 2015, col 36.
¹⁵³ Rural Affairs, Climate Change and Environment Committee. *Official Report*, 7 September 2015, Col 33.
¹⁵⁴ Rural Affairs, Climate Change and Environment Committee. *Official Report*, 30 September 2015, Col 49.
¹⁵⁵ Rural Affairs, Climate Change and Environment Committee. *Official Report*, 2 November 2015, Col 35.
¹⁵⁶ [Local Government \(Scotland\) Act 1973 \(c.65\)](#).
¹⁵⁷ Rural Affairs, Climate Change and Environment Committee. *Official Report*, 7 September 2015, Col 28.
¹⁵⁸ Policy Memorandum, paragraphs 229-240.
¹⁵⁹ Rural Affairs, Climate Change and Environment Committee. *Official Report*, 7 September 2015, Col 59.
¹⁶⁰ Scottish Government Head of Land Reform and Tenancy Unit. Written submission, 10 September 2015.
¹⁶¹ Policy Memorandum, paragraph 254.
¹⁶² Rural Affairs, Climate Change and Environment Committee. *Official Report*, 7 September 2015, Cols 37-38.
¹⁶³ Rural Affairs, Climate Change and Environment Committee. [Deer management inquiry](#).
¹⁶⁴ Rural Affairs, Climate Change and Environment Committee (2014). [Letter to the Scottish Government on deer management issues](#).
¹⁶⁵ Scottish Natural Heritage (2015). [2014 Deer Management Group Assessment report](#).
¹⁶⁶ Rural Affairs, Climate Change and Environment Committee. *Official Report*, 30 September 2015.
¹⁶⁷ Rural Affairs, Climate Change and Environment Committee. *Official Report*, 30 September 2015, Col 2.
¹⁶⁸ Rural Affairs, Climate Change and Environment Committee. *Official Report*, 30 September 2015, Cols 3-4.
¹⁶⁹ Scottish Natural Heritage (2015). [2014 Deer Management Group Assessment report](#).

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- ¹⁷⁰ Rural Affairs, Climate Change and Environment Committee. *Official Report*, 30 September 2015, Col 7.
- ¹⁷¹ Rural Affairs, Climate Change and Environment Committee. *Official Report*, 30 September 2015, Col 2.
- ¹⁷² [Deer \(Scotland\) Act 1996 \(c.58\)](#).
- ¹⁷³ Rural Affairs, Climate Change and Environment Committee. *Official Report*, 7 September 2015, Col 39.
- ¹⁷⁴ Rural Affairs, Climate Change and Environment Committee. *Official Report*, 30 September 2015, Col 34.
- ¹⁷⁵ Rural Affairs, Climate Change and Environment Committee. *Official Report*, 30 September 2015, Cols 34-35.
- ¹⁷⁶ Rural Affairs, Climate Change and Environment Committee. *Official Report*, 30 September 2015, Col 35.
- ¹⁷⁷ Scottish Government Head of Land Reform and Tenancy Unit. Written submission, 10 September 2015.
- ¹⁷⁸ Malcolm Combe. Supplementary written submission.
- ¹⁷⁹ Review of Agricultural Holdings Legislation (2015). [Final Report](#).
- ¹⁸⁰ Rural Affairs, Climate Change and Environment Committee. *Official Report*, 4 November 2015, Col 6.
- ¹⁸¹ [The Supreme Court \(2013\). Salvesen v Riddell and another, Lord Advocate intervening \(Scotland\) Judgment](#).
- ¹⁸² Rural Affairs, Climate Change and Environment Committee. *Official Report*, 16 September 2015.
- ¹⁸³ Rural Affairs, Climate Change and Environment Committee. *Official Report*, 16 September 2015.
- ¹⁸⁴ Rural Affairs, Climate Change and Environment Committee. *Official Report*, 16 September 2015, Col 4.
- ¹⁸⁵ Rural Affairs, Climate Change and Environment Committee. *Official Report*, 16 September 2015, Col 5.
- ¹⁸⁶ Rural Affairs, Climate Change and Environment Committee. *Official Report*, 4 November 2015.
- ¹⁸⁷ Policy Memorandum, paragraph 410.
- ¹⁸⁸ [Agriculture \(Scotland\) Act 1948 \(c.45\)](#).
- ¹⁸⁹ Scottish Government Head of Land Reform and Tenancy Unit. Written submission, 10 September 2015.
- ¹⁹⁰ Scottish Government Head of Land Reform and Tenancy Unit. Written submission, 10 September 2015.
- ¹⁹¹ Rural Affairs, Climate Change and Environment Committee. *Official Report*, 16 September 2015.
- ¹⁹² Rural Affairs, Climate Change and Environment Committee. *Official Report*, 16 September 2015.
- ¹⁹³ Rural Affairs, Climate Change and Environment Committee. *Official Report*, 16 September 2015.
- ¹⁹⁴ Rural Affairs, Climate Change and Environment Committee. *Official Report*, 16 September 2015, Col 12.
- ¹⁹⁵ Rural Affairs, Climate Change and Environment Committee. *Official Report*, 16 September 2015.
- ¹⁹⁶ Rural Affairs, Climate Change and Environment Committee. *Official Report*, 16 September 2015, Col 46.
- ¹⁹⁷ Rural Affairs, Climate Change and Environment Committee. *Official Report*, 28 October 2015, Col 17.
- ¹⁹⁸ The landlord would not be able to object under this ground if the tenant was enrolled on a training course which they are expected to complete within 4 years, and they are able to make arrangements for the holding to be farmed while they are undertaking the training.
- ¹⁹⁹ Delegated Powers and Law Reform Committee. 58th Report, 2015 (Session 4). Land Reform (Scotland) Bill at Stage 1.
- ²⁰⁰ National Farmers Union Scotland. Written submission.
- ²⁰¹ Rural Affairs, Climate Change and Environment Committee. *Official Report*, 16 September 2015.
- ²⁰² Rural Affairs, Climate Change and Environment Committee. *Official Report*, 16 September 2015.
- ²⁰³ Rural Affairs, Climate Change and Environment Committee. *Official Report*, 16 September 2015.
- ²⁰⁴ Rural Affairs, Climate Change and Environment Committee. *Official Report*, 16 September 2015.
- ²⁰⁵ Rural Affairs, Climate Change and Environment Committee. *Official Report*, 7 September 2015, Col 47 and Scottish Government Head of Land Reform and Tenancy Unit. Written submission, 10 September 2015.
- ²⁰⁶ Law Society of Scotland. Written submission, paragraph 24.
- ²⁰⁷ Law Society of Scotland. Written submission.

Rural Affairs, Climate Change and Environment Committee

Stage 1 Report on the Land Reform (Scotland) Bill, 10th Report, 2015 (Session 4)

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- ²⁰⁸ Rural Affairs, Climate Change and Environment Committee. *Official Report*, 16 September 2015, Col 22.
- ²⁰⁹ Rural Affairs, Climate Change and Environment Committee. *Official Report*, 16 September 2015, Cols 23-24.
- ²¹⁰ Rural Affairs, Climate Change and Environment Committee. *Official Report*, 16 September 2015, Col 23.
- ²¹¹ Policy Memorandum, paragraph 359.
- ²¹² Scottish Land and Estates. Written submission.
- ²¹³ Rural Affairs, Climate Change and Environment Committee. *Official Report*, 16 September 2015.
- ²¹⁴ Rural Affairs, Climate Change and Environment Committee. *Official Report*, 16 September 2015.
- ²¹⁵ Rural Affairs, Climate Change and Environment Committee. *Official Report*, 4 November 2015, Col 16.
- ²¹⁶ Scottish Government (17 November 2015). Supplementary written submission.
- ²¹⁷ Rural Affairs, Climate Change and Environment Committee. *Official Report*, 16 September 2015, Col 32.
- ²¹⁸ Rural Affairs, Climate Change and Environment Committee. *Official Report*, 16 September 2015, Col 33.
- ²¹⁹ Scottish Land and Estates. Written submission.
- ²²⁰ Scottish Government Head of Land Reform and Tenancy Unit. Written submission, 10 September 2015.
- ²²¹ Scottish Government Head of Land Reform and Tenancy Unit. Written submission, 10 September 2015.
- ²²² Scottish Government. Supplementary written submissions (30 October 2015 and 4 November 2015).
- ²²³ Rural Affairs, Climate Change and Environment Committee. *Official Report*, 4 November 2015, Col 19.
- ²²⁴ Policy Memorandum, paragraph 368.
- ²²⁵ Policy Memorandum, paragraph 372.
- ²²⁶ [Succession \(Scotland\) Act 1964 \(c.41\)](#).
- ²²⁷ Rural Affairs, Climate Change and Environment Committee. *Official Report*, 16 September 2015.
- ²²⁸ Scottish Tenant Farmers' Association. Written submission.
- ²²⁹ Rural Affairs, Climate Change and Environment Committee. *Official Report*, 7 September 2015, Cols 53-54.
- ²³⁰ Rural Affairs, Climate Change and Environment Committee. *Official Report*, 4 November 2015, Col 22.
- ²³¹ Rural Affairs, Climate Change and Environment Committee. *Official Report*, 16 September 2015.
- ²³² Scottish Land and Estates. Supplementary written submission.
- ²³³ Rural Affairs, Climate Change and Environment Committee. *Official Report*, 7 October 2015, Cols 49-50.
- ²³⁴ Rural Affairs, Climate Change and Environment Committee. *Official Report*, 16 September 2015, Cols 37-38.
- ²³⁵ Rural Affairs, Climate Change and Environment Committee. *Official Report*, 16 September 2015.
- ²³⁶ Rural Affairs, Climate Change and Environment Committee. *Official Report*, 4 November 2015, Col 21.
- ²³⁷ National Farmers Union Scotland. Written submission.
- ²³⁸ Scottish Government (17 November 2015). Supplementary written submission.
- ²³⁹ Rural Affairs, Climate Change and Environment Committee. *Official Report*, 2 September 2015, Col 56.
- ²⁴⁰ Rural Affairs, Climate Change and Environment Committee. *Official Report*, 2 September 2015, Col 56.
- ²⁴¹ Rural Affairs, Climate Change and Environment Committee. *Official Report*, 16 September 2015.
- ²⁴² Rural Affairs, Climate Change and Environment Committee. *Official Report*, 16 September 2015.
- ²⁴³ Rural Affairs, Climate Change and Environment Committee. *Official Report*, 2 September 2015, Cols 42-43.
- ²⁴⁴ Rural Affairs, Climate Change and Environment Committee. *Official Report*, 4 November 2015, Col 9.
- ²⁴⁵ Scottish Government. (2015) [Programme for Government 2015-16](#).
- ²⁴⁶ Rural Affairs, Climate Change and Environment Committee. *Official Report*, 4 November 2015, Col 27.

²⁴⁷ Rural Affairs, Climate Change and Environment Committee. *Official Report, 4 November 2015*, Cols 27-28.

²⁴⁸ Scottish Government (2015). [Letter to the Rural Affairs, Climate Change and Environment Committee regarding the Croft House Grant Scheme.](#)

Annexe A

Extracts from the minutes of the Rural Affairs, Climate Change and Environment Committee meetings at which the Bill was discussed

21st Meeting, 2015 (Session 4), Monday 8 June 2015

1. The Scottish Government's consultation on the future of land reform in Scotland: The Committee took evidence on issues raised by the consultation from—

Paul Ross, Branch Chairman, NFU Scotland;

Graeme Harrison, Area Manager, Highland and Islands Enterprise;

Kristin Scott, Area Manager for the Northern Isles and North Highland, Scottish Natural Heritage;

Mark Hull, Chair, Community Power Orkney;

Jan Falconer, Head of Strategic Development and Regeneration, Orkney Islands Council.

2. The Scottish Government's consultation on the future of land reform in Scotland: The Committee and witnesses answered questions from members of the public.

22nd Meeting, 2015 (Session 4), Wednesday 17 June 2015

1. Decision on taking business in private: The Committee agreed to take items 3 and 4 in private, and to consider the Land Reform (Scotland) Bill approach paper in private at future meetings.

3. The Scottish Government's forthcoming land reform bill: The Committee considered its approach to the scrutiny of the expected bill at Stage 1 (subject to formal referral by Parliament) and agreed to:

Further considerations of the Committee's approach to the bill being in private;
Issue a call for views;

Send the call for views to the organisations listed in the private paper;

An initial list of witnesses to give oral evidence;

Seek permission to hold two external Committee meetings to take evidence on the bill;

The purpose and location of the external meetings;

Seek permission to conduct fact finding visits as part of its scrutiny;

The broad scope of any fact finding visits;

Proposed media strategy;

Public engagement strategy;

Timetable for stage 1;

Discuss evidence heard in Committee meetings in private;

Delegate to the Convener the responsibility for approving any claims for expenses as part of the scrutiny of the bill; and to

Consider drafts of its stage 1 report in private.

25th Meeting, 2015 (Session 4), Wednesday 2 September 2015

2. Land Reform (Scotland) Bill: The Committee took evidence on the Bill at Stage 1 from—

Trudi Sharp, Deputy Director for Agriculture, Rural Development and Land Reform, Kate Thomson-McDermott, Head of Land Reform Policy Team, Fiona Taylor, Land Reform Bill Manager, Matt Smith, Land Reform Policy Officer, and Rachel Rayner, Solicitor, Scottish Government;

Trudi Sharp, Deputy Director for Agriculture, Rural Development and Land Reform, Dougie McLaren, Business Rates Policy Manager, Brian Peddie, Local Government Relationship Manager, Hugh Dignon, Head of Wildlife Management, and Helen Jones, Head of Landscape and Involvement with the Natural Environment, Scottish Government;

Trudi Sharp, Deputy Director for Agriculture, Rural Development and Land Reform, Billy McKenzie, Team Leader EU Rural Development Programme and Agricultural Holdings, Fiona Buchanan, Agricultural Holdings Policy Officer, Angela Morgan, Land Reform and Agricultural Holdings Policy Officer, and Andrew Campbell, Solicitor, Scottish Government.

26th Meeting, 2015 (Session 4), Monday 7 September 2015

1. Land Reform (Scotland) Bill: The Committee took evidence on Parts 1-5, and Part 7, of the Bill at Stage 1 from—

Malcolm Combe, Lecturer in Law, School of Law, University of Aberdeen;

Andy Wightman, independent researcher;

Steven Thomson, Senior Agricultural Economist, Land Economy, Environment and Society Research Group, Scotland's Rural College;

Dr. Jill Robbie, Lecturer in Private Law, University of Glasgow;

Sarah-Jane Laing, Director of Policy and Parliamentary Affairs, Scottish Land and Estates;

Peter Peacock, Policy Director, Community Land Scotland;

Archie Rintoul, Senior Vice Chair, Royal Institution of Chartered Surveyors;

Andrew McCornick, Vice President, National Farmers' Union Scotland;

Pete Ritchie, Executive Director, Nourish Scotland;

Andrew Prendergast, Development Officer, Plunkett Foundation Scotland;

John King, Business Development Director, Registers of Scotland;

Fiona Mandeville, Chair, Scottish Crofting Federation;

Rachel Bromby, Managing Agent, Cawdor Estate;

John Glen, Chief Executive, Buccleuch Estates.

27th Meeting, 2015 (Session 4), Wednesday 16 September 2015

- 1. Land Reform (Scotland) Bill:** The Committee took evidence on Part 2, Chapter 3, and Part 10 of the Bill at Stage 1 from—
Scott Walker, Chief Executive, National Farmers Union Scotland;
Christopher Nicholson, Chairman, Scottish Tenant Farmers' Association;
Martin Hall, President, Scottish Agricultural Arbiters and Valuers Association;
Mike Gascoigne, Convener, Rural Affairs sub-committee, Law Society of Scotland;
Andrew Howard, Managing Director, Moray Estates;
David Johnstone, Chairman, Scottish Land and Estates;
Niall Milner, RICS Scotland Rural and Geomatics Professional Group Board, Royal Institution of Chartered Surveyors.
- 3. Land Reform (Scotland) Bill (in private):** The Committee considered evidence taken on the Bill at Stage 1.

29th Meeting, 2015 (Session 4), Wednesday 30 September 2015

- 1. Land Reform (Scotland) Bill:** The Committee took evidence on Part 8 (Deer Management) of the Bill at Stage 1 from—
Alex Hogg, Chairman, Scottish Gamekeepers Association;
Robbie Kernahan, Unit Manager of Wildlife Operations, Scottish Natural Heritage;
Richard Cooke, Chair of the Association of Deer Management Groups and the Lowland Deer Network Scotland;
Duncan Orr-Ewing, Convenor of the LINK Deer Task Force, Scottish Environment Link;
Douglas McAdam, Chief Executive, Scottish Land and Estates;
and on Part 6 (Entry in the Valuation Roll of Shootings and Deer Forests) of the Bill at Stage 1 from—
Douglas McAdam, Chief Executive, Scottish Land and Estates;
Richard Cooke, Chair, Association of Deer Management Groups;
Colin Shedden, Director, British Association for Shooting and Conservation;
Rupert Shaw, Vice Chair of NFU Scotland's Legal and Technical Committee, National Farmers Union Scotland;
Alasdair MacTaggart, President, Scottish Assessors Association;
Bruce Cooper, Angus Glen Moorland Group.
- 2. Land Reform (Scotland) Bill (in private):** The Committee considered evidence heard earlier in the meeting.

30th Meeting, 2015 (Session 4), Wednesday 7 October 2015

- 2. Land Reform (Scotland) Bill:** The Committee took evidence on human rights aspects of the Bill from—
Eleanor Deeming, Legal Officer, Scottish Human Rights Commission;
Kirsteen Shields, Lecturer, University of Dundee;

Megan MacInnes, Advisor - Land, Global Witness;
Charles Livingstone, Partner, Brodies;
Mungo Bovey QC, Faculty of Advocates.

4. Land Reform (Scotland) Bill (in private): The Committee considered evidence heard earlier in the meeting.

32nd Meeting, 2015 (Session 4), Monday 2 November 2015

2. Land Reform (Scotland) Bill: The Committee took evidence on parts 1-9 of the Bill at Stage 1 from—

Aileen McLeod, Minister for Environment, Climate Change and Land Reform, and Kate Thomson-McDermott, Head of Land Reform Policy Team, Scottish Government; Rachel Rayner, Solicitor, Scottish Government Legal Directorate; Stephen Sadler, Head of Land Reform and Tenancy Unit, Scottish Government.

33rd Meeting, 2015 (Session 4), Wednesday 4 November 2015

1. Land Reform (Scotland) Bill: The Committee took evidence on the Bill at Stage 1 from—

Richard Lochhead, Cabinet Secretary for Rural Affairs, Food and Environment, Billy McKenzie, Team Leader EU Rural Development Programme and Agricultural Holdings, and Angela Morgan, Land Reform and Agricultural Holdings Policy Officer, Scottish Government; Andrew Campbell, Solicitor, Scottish Government Legal Directorate.

2. Land Reform (Scotland) Bill (in private): The Committee considered evidence heard earlier in the meeting and at previous meetings.

Annexe B

List of other written evidence

-  Brymer, Stewart
-  Walker, Colin
-  Allen, Fiona
-  Albert, Liz
-  Amory, DH
-  Sinclair, Mike
-  Stewart, James Gordon
-  Ross, Diane and George
-  Fletcher, Jamie
-  Macdonald, Alistair
-  Watson, Gregor
-  South Ayrshire Common Weal
-  Black, Donald
-  Fenton, James
-  Kennedy, David
-  McCorquodale, James
-  Galbraith, James
-  Gladstone, Robert
-  Community Land Advisory Service
-  Tuck, Miff
-  Druidaig Estate
-  Steele, Gill
-  Berry, William
-  Lowe, Ian
-  Dormont Estate
-  Dey, Ian
-  Association of Deer Management Groups
-  Packe, Tom
-  NHS Health Scotland
-  Wright, Kenneth
-  Lowland Deer Network Scotland
-  McKay, Dennis
-  Murdo, Henry
-  Margo McLellan
-  Wilson, Ron
-  Holmehill Community Buyout
-  Association of Scotland's Self Caterers
-  Luss Estates Company
-  Lothian Estates
-  King, Neil

-  Borders Deer Management Group
-  Royal Society of Edinburgh
-  Dalhousie Estates
-  Crichton Maitland, Mark
-  Craufurdland LTD
-  Archaeology Scotland
-  Anonymous
-  Scottish Assessors' Association
-  Pitlochry Estates Trust
-  St. Andrews's Land Reform Group
-  McLeod, John
-  Dobie, D.
-  Balfour, Dr Jean
-  Plunkett Foundation Scotland
-  Federation of City Farms and Community Gardens
-  Balcaskie Farm and Estate
-  Estate Business Group
-  Community Land Scotland
-  Roe, Alison
-  Office of the Scottish Charity Regulator
-  NOURISH Scotland
-  Global Witness
-  Bidwells
-  Robbie, Dr. Jill
-  Scottish Wildlife Trust
-  Wightman, Andy
-  Walker, Adrian
-  Bryden, Prof. John M.
-  Trotter, Alexander
-  McGregor, Camy
-  Hillhouse Estates Ltd
-  Royal Town Planning Institute
-  National Trust for Scotland
-  Moncreiffe, Ossian
-  Alvie and Dalraddy Estates
-  Historic Houses Association
-  RSPB
-  Baird, William
-  Anderson, Will
-  Ullapool Community Trust
-  Moray Estates Development Company LTD
-  Dr. Alastair MacDonald
-  McCann, Eileen
-  Merkland Estate
-  SCVO

- Scottish Allotments and Gardens Society
- Wigan, Michael
- Drurie, Nick
- Know Edge Ltd
- Cultybraggan Farm
- Seafield Estate
- Thomson, Robin
- Pinsent Masons
- Aberdeen and Grampian Chamber of Commerce
- Joicey, James
- Whitfield, Peter
- Torwoodlee and Buckholm Estates Company Ltd
- Humphrey, Edward
- Rural Housing Scotland
- Community Woodlands Association
- Law Society of Scotland
- Ferrie, Gordon
- Scottish Agricultural Arbiters and Valuers Association
- BASC
- McCabe, Mhairi
- Adams, Prof. David
- Anonymous
- League Against Cruel Sports
- Bell-Irving, John
- Trotter, H.P.
- Telfer, James
- Scottish Land and Estates
- Eyre, Daibhidh
- NFU Scotland
- Welstead, Fenning
- Scottish Environment LINK
- SRUC
- DTA Scotland
- Callendar Estate
- Earlstoun Estate
- Bargany Farms
- Argyll and Bute Council
- John Muir Trust
- Scaniport Estate
- Rozga, Margaret
- Scottish Community Alliance
- Reid, Sandra
- Scottish Countryside Alliance
- Stirling Council
- Shelter Scotland

- Winther, Anne M.
- Pattinson, Mark
- Combe, Malcolm
- Montgomerie, Miles
- Barron, Richard
- RICS
- SOLAR
- Scottish Crofting Federation
- Scottish Woodlands Ltd
- Evangelical Alliance Scotland and Highland Theological College
- Glasgow City Council
- Scottish Property Federation
- Cawdor Estates
- Wemyss and March Estate
- Buccleuch Estate Ltd
- Fetternear Estate
- Game and Wildlife Conservation Trust
- Scotwood Macdonald Ltd
- Younger, Malcolm
- Dawes, Jonathan
- Stein, David
- Planning Advice Service
- Anonymous
- Brodies LLP
- Dunecht Estates
- Stormont, Alexander
- Timber Transport Forum
- Highlands and Islands Enterprise
- Scottish Gamekeepers Association
- Confor
- DWP Harvesting
- Chartered Institute of Housing
- MacLeod, Dr. John
- Gordon Duff, Priscilla
- Gordon, John
- Scottish Tenant Farmers' Association
- McCarthy, Dr. Frankie
- British Deer Society
- Rewilding Britain and Rewilding Britain V2 - updated 27 October 2015
- Hollybush Farm
- MacLean, Charles
- Ballogie Estate Enterprises
- Bell Ingram Ltd
- Stracathro Estates Ltd
- Hopetoun Estates

-  MacLean, Hector
-  Leys Estate
-  Fyne Forestry Ltd
-  SEPA
-  Church of Scotland and Society Council
-  Highland Council
-  Wang, Peter
-  Fairweather, Peter
-  Charles Connell and Co Holdings Ltd
-  Grant, James
-  Crofting Commission
-  Ellwood CR, Jeanette
-  Fforde, Charles
-  Network Rail
-  COSLA
-  Global Witness
-  Fletcher, Jamie supplementary evidence
-  Scottish Land and Estates supplementary evidence
-  Faculty of Advocates
-  John Muir Trust supplementary evidence
-  Game and Wildlife Conservation Trust supplementary evidence
-  Combe, Malcolm supplementary evidence
-  COSLA supplementary evidence
-  Wightman, Andy supplementary evidence
-  Ian Cooke, Richard Heggie, Bob Reid, Dr Madhu Satsangi and David Adams

Scottish Government Correspondence

-  Letter from the Scottish Government Bill Team on the Land Reform (Scotland) Bill 10 September 2015
-  Letter from the Scottish Government on rent reviews 30 October 2015
-  Letter from the Scottish Government on rent reviews 12 November 2015
-  Letter from Cabinet Secretary for Rural Affairs, Food and Environment on the Land Reform (Scotland) Bill 17 November 2015
-  Letter from the Minister for Environment, Climate Change and Land Reform on the Land Reform (Scotland) Bill 18 November 2015

Annexe C

Link to reports on the Bill by the Delegated Powers and Law Reform Committee and the Finance Committee reports—

- Finance Committee: [Report on the Land Reform \(Scotland\) Bill's Financial Memorandum.](#)
- Delegated Powers and Law Reform Committee: [58th Report, 2015 \(Session 4\): Land Reform \(Scotland\) Bill at Stage 1.](#)

