

## Written Submission from Scottish Land and Estates

### Executive Summary

In our evidence we have strongly opposed the reintroduction of sporting rates, the widening of succession and assignation for agricultural tenants and the right to buy land for sustainable development. We have pointed out that some of the provisions contained within the Bill lack any clear policy objective or evidential basis and have also underlined the significant erosion of property rights which would result from some of the legislative measures. We have also pointed out that it is unjust to place a disproportionate burden on one section of society, namely private landowners, to deliver public interest aims.

We have however indicated that we support increased community engagement and increased transparency of ownership, as well as underlining our support for a vibrant agricultural tenanted sector. The main elements of our submission are as follows:

- We agree in principle with provisions relating to the publication of the Land Rights and Responsibilities Statement but have suggested that the content of the statement should be finalised during the passage of the Bill
- We support the principle of establishing a Land Commission, but strongly suggest that at least 1 commissioner has practical land management experience.
- We support the proposals regarding access to information to improve transparency and accountability, noting that this aligns with our Landowners' Commitment. We strongly support the requests being limited to legitimate and reasonable grounds.
- We support the community engagement provisions but have made a number of comments regarding proportionality, appropriateness and the need to ensure that support is provided.
- We do not agree with the provisions relating to the right to buy land to further sustainable development as we feel that no evidence has been provided for the need for such powers in addition to those which already exist or have been recently introduced in the Community Empowerment (Scotland) Act 2015.
- We strongly oppose the reintroduction of non domestic rates for shootings and deer forests for a myriad of reasons, including the fact that the claim that this is to ensure parity with other businesses is misleading as many sporting rights are not exercised on a commercial basis.
- We believe that the deer management section is largely unnecessary, and the increase in fine for failure to comply with a control scheme is unjustified and disproportionate.
- We support the proposed changes to access legislation
- We are supportive of attempts to establish modern letting vehicles but view MLDTs as a missed opportunity.
- We are disappointed that the detail of conversion is left to regulations and not provided on the face of the Bill.
- We disagree with the proposal to allow all secure tenants to have a pre-emptive right by default; experience has shown that the requirement to register is useful for both parties.
- We can support the idea that there should be some sort of sanction on repeatedly failing landlords but believe that the draft proposals need to be revised.
- we accept the move towards a new approach to setting farm rents but have very significant concerns that the legislation is running ahead of the necessary modelling and testing that is required to establish the degree to which any new system actually works.
- We fundamentally oppose the proposals to widen the class of potential assignees or successors, coupled with a restriction in the landlord's ability to object and the

removal of the viable unit test. The extent of the proposed change is significant and will, we believe, represent a significant change in the land owner's position and potentially infringe their property rights.

- We support the idea of an amnesty so that landlords and tenants can sort out any uncertainties over what will qualify as a tenant's improvement that would potentially be eligible for compensation at waygo.

### **Introduction and General Comments**

Scottish Land & Estates is a member organisation that uniquely represents the interests of landowners and land-based businesses in rural Scotland. Our members make a substantial social, economic and environmental contribution to rural Scotland, and landowners and land based businesses play an instrumental role in the delivery of key national and local government objectives for the benefit of the entire rural economy and the communities of which they are an integral part.

Landowners play a critical role in ensuring sustainable, healthy and empowered rural communities, providing housing, employment and a wide range of other public benefits. We believe much could be achieved by utilising existing structures and stimulating partnership working rather than simply considering land reform as way of transferring ownership of property. Our organisation enthusiastically supports a range of landownership and management types to deliver a myriad of economic, social and environmental benefits, and believes that private ownership has a key role to play alongside the other diverse ownership and management structures which already exist in Scotland.

Confidence in land as an investment requires a stable political environment and anything which impacts upon the fragility of that confidence has the potential to put off investors, whether local or from abroad. The consequent economic impacts are unpredictable, and we would counsel the effects of societal and attitudinal change are given proper time and consideration before further radical changes are introduced.

We welcome the opportunity to comment on the principles and objectives of the Bill.

Scottish Land & Estates has the following general comments to make on the Bill:

Due to the extent of the Agricultural Holdings provisions contained within the Bill, we would suggest that to provide parity with other legislation and to improve ease of future reference the Bill title should be changed to Land Reform and Agricultural Holdings Bill.

We welcome the recognition in the policy memorandum of the significant benefits already being delivered by those who own and manage land in Scotland.

We believe that the Bill includes some far reaching and fundamental changes to land ownership and governance in Scotland. Whilst we support some of those proposed, we do believe that there are some which would not deliver the aims of the Bill, and also feel that impact of certain measures has not been fully assessed. This is epitomised by the comments in the Financial Memorandum in relation to sporting rates where an admittance of the lack of detailed analysis of costs and of revenue is made.

We would suggest that a disproportionate burden is being placed upon certain private landowners to deliver what has been deemed to be in the public interest. This is particularly true for the suggested intervention measures to address sustainable

development and the significant widening of succession and assignation of agricultural tenancies coupled with a restriction in the landlord's ability to object.

The policy memorandum for the Bill rightly refers to the wide range of other legislative and policy measures being taken forward to deliver land reform objectives. However, we do not believe that the cumulative impact of these changes which include fisheries review, changes to private rented sector regime, review of CPO, changes to the planning system etc etc have been fully assessed.

A number of measures contained within the Community Empowerment (Scotland) Act 2015 will also assist in delivering the aims of the Land Reform Bill, most notably the powers for communities to buy land which is deemed to be abandoned, neglected or causing significant harm to the environmental wellbeing to the community. We believe that the guidance for these provisions should be developed prior to the end of Stage 1 of the Land Reform Bill to ensure that any considerations of the Part 5 provisions are considered in the context of the development of this guidance.

As well as suggesting that the Land Reform Bill is not viewed in isolation, we would also ask that our comments on the Bill are not viewed in isolation either. These comments contained within our written evidence build on those we have made during the land reform review, agricultural holdings review and various land reform related consultations and discussions.

Although we welcome the Scottish Government's consultation on a vision for agriculture, we remain of the view that the call from SRUC which outlines a clear overall vision for rural Scotland in its totality should be heeded.

The Scottish Government routinely makes the comment that good landowners or landlords have nothing to fear from land reform. However, a number of these measures will impact detrimentally on owners regardless of how well they manage their land or tenancies.

## **Land Governance (Parts 1 and 2)**

### **Part 1 Land Rights & Responsibilities statement**

Scottish Land & Estates agrees in principle with having a Land Rights and Responsibilities Statement (LRRS). The content of the statement is of the utmost importance and we suggest that the statement has to clearly set out what success looks like. This is critical if we are to review progress against the land reform objectives. As the statement will provide clarity on the Scottish Government's objectives for land reform we would suggest that the detail of the statement should form part of the Bill discussions. To fully understand if the measures being suggested will deliver the Scottish Government's land reform objectives these objectives should be clearly articulated prior to the finalisation of the legislation.

We welcome the fact that consultation on the LRRS will take place but would contend that significant consultation on the content took place as part of the pre Bill consultation and therefore suggest that the first LRR statement could be finalised during the passage of the Bill.

The LRRS must be balanced, so as not to place an unfair burden on one group of society and to ensure that both rights and responsibilities for all are included within the statement. Whilst the statement will be broad, the terminology used must be clear and meaningful.

We agree with the suggested 5 year review period, but would also point out that the guiding principles of the statement should have longevity to ensure stability and allow businesses and communities to make long term plans within the land rights and responsibilities framework.

We would like to underline that the statement should not be viewed in isolation, it must complement or align with strategic documents such as the Land Use Strategy and National Planning Framework. It should also play a role in pulling together disparate land use related policies and outcomes, for example the National Performance Framework has 15 national outcomes, one of which seeks to achieve 'strong, resilient and supportive communities, where people take responsibility for their own actions and how they affect others'. Thus the value of the LRRS would be increased through pulling all of these disparate outcomes together into a more joined up framework.

The LRRS must also provide an opportunity for communities to set their own priorities and objectives – it cannot be a centralised dictat. In addition, we would hope that the LRRS clearly recognises that community ownership is one of the means of delivering sustainable land use rather than an end in itself.

## **Part 2 The Scottish Land Commission**

Scottish Land & Estates is not in general a promoter of the establishment of further public bodies, but supports the principle of establishing a Land Commission along the lines set out in the Bill.

We believe that the Commission should have clear, specific, measurable and realistic objectives so that success can be measured and monitored. The appointment process for Commissioners is essential to the success of the organisation and to meeting the Scottish Government's land reform objectives. Therefore, we suggest that land management experience should be required for at least one of the Commissioners. We believe that practitioner as well as public policy/academic knowledge is critical in the development and monitoring of effective land law and policy. In addition, the Commission must have the power to challenge Scottish Government, providing a real land use/land reform checks and balance function.

We support the inclusion of land use in the functions of the Commission as we have long contended that land reform should not focus solely on land ownership. We would suggest that there should be explicit mention of the Land Use Strategy as well as the LRRS in relation to the things that the Commission should take cognisance of.

We would like clarity on the scope of the Commission's work. Will it focus on devolved issues or also consider matters reserved to Westminster?

From the financial memorandum and BRIA it would appear that the Commission is to be a fairly substantial body, employing 18 FTE staff. As the work plan for the Commission has still to be established we would be keen to know the basis for this resource requirement, which appears excessive. We would also like further information on the relationship between the Commission and the Scottish Government's Land Reform Team and Community Land Team – both of which perform a very valuable function. We would like reassurance that the Commission would not simply involve a wholesale transfer of these civil servants to the new body.

With regard to the Tenant Farming Commissioner (TFC), the role as stated would appear to be a sensible approach. Scottish Land & Estates is currently working with the Interim Tenant Farming Adviser and other industry bodies to develop guidance on a range of agricultural holdings issues, which are likely to form the basis of the codes that the TFC will lay before Parliament.

We believe that the powers/functions of the TFC as drafted are appropriate and will have a significant impact on addressing the small number of disputes that exist in the sector as well as driving improvements in practice. We therefore see no requirement for them to be extended further. Further clarity on the interaction between the TFC and the Land Court would be welcomed.

### **Part 3 Transparency of Landownership in Scotland**

#### **Section 35 – Right of Access to Information on Persons in Control of Land**

Scottish Land & Estates agrees with the proposals outlined within this section of the Bill, and would underline that they align with the openness principle of our landowners' commitment. We particularly welcome the certainty provided in relation to the circumstances when the request can be made, which ensures that the powers cannot be used for vexatious or nefarious reasons.

We believe that the examples given in para 111 of the policy memorandum provide a clear indication of the type of situations under which a request can be made.

The provisions in this Bill should not be viewed in isolation but should be viewed in the context of the land registration work being undertaken; actions being taken at UK and EU level re transparency and accountability; and also voluntary initiatives such as the Cairngorms Estate Statements, which Scottish Land & Estates plans to roll out across its membership. An example of this statement is provided as Appendix 1.

We do have a number of specific comments and queries on the provisions contained within Section 35.

- The definition of control to be contained with the regulations – the policy memorandum appears to have a misinformed view of Trust law, particularly in relation to beneficial ownership. The policy memorandum refers to the right to obtain information about individuals that have a controlling interest, or are in some other way involved in making decisions about the management of the land. Thus it would appear that control is being used in a wide rather than legal definition.
- The explanatory notes refer to requesting information on certain proprietors of land – ie the owner or holder of the property. The different descriptions as to whom the provisions would cover createsome confusion and we would suggest that this should be clarified on the face of the Bill, or through draft regulations being published during the Stage 1 consideration of the Bill.

In addition, Scottish Land & Estates has a number of specific operational questions regarding the provisions: How would multiple requests be dealt with? What can the person who requests information do with it once they have it? Can it then be put in the public domain?

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

Scottish Land & Estates supports this provision but would reiterate comments made above regarding the controlling interest.

### **Furthering the Sustainable Development of Land (Parts 4 and 5)**

We have a few general comments to make in relation to Parts 4 & 5 of the Bill:

With regard to para 158 of the policy memorandum. We feel that this should refer to all land managers rather just than landowners as some of the land use decision making which affects communities is made by the occupier or tenant rather than the landowner. In addition, as stated in the actual legislation the guidance to engage will apply to owners, tenants and occupiers and this should be clear within the policy memorandum.

Para 159 of the policy memorandum refers to powers being particularly useful in situations where the decisions taken by the landowner are not open to public scrutiny or public interest test. Firstly, this should refer to landmanagers to reflect the actual engagement provisions contained within the Bill, and secondly it would be helpful if the Scottish Government could provide examples of the situations referred to.

Para 162 of the policy memorandum states that landowners have to recognise that they have a responsibility to the communities that live and work in and around their land – we would contend that this responsibility is already recognised and evidenced on a daily basis across Scotland. Our helping it happen campaign has showcased only the tip of the iceberg in terms of demonstrating how this responsibility works in practice.

Para 162 also makes the comment that ‘there is a strong argument that the larger a land holding the greater that responsibility’. However, this is not strictly true – scale and influence are not inextricably linked. As we have underlined on many occasions a small farmer who owns all the potential development sites surrounding an East Lothian village may have a greater influence on his local community than someone who owns 10,000 acres of remote and sparsely populated moorland – why should the latter have a greater responsibility to their community than the former.

However, there is clear evidence that Scotland’s largest landowners or landowners who own a high percentage of land in a particular geographical area such as an island, have a very strong ethos of stewardship.

A number of barriers to rural development have continually been identified, and this is acknowledged within the policy memorandum. However, there is limited evidence to suggest that these other barriers to sustainable development are being adequately addressed. If this is the case then the ability of businesses and communities to progress sustainable development is severely restricted. There are a a myriad of different factors which can act as barriers to sustainable development – ownership being only one of these. We would suggest that the Scottish Government focus on ownership has 2 implications – firstly it gives the incorrect message that change of ownership is THE route to overcoming sustainable development barriers; and it also means that funding and other resources are focused on ownership change rather than looking at other issues which are likely to have a greater impact on rural sustainable development such as infrastructure, planning, funding, and capacity.

### **Part 4 – Engaging communities in decisions relating to land**

There are clear and tangible benefits of effective engagement for landowners, businesses and communities.

Scottish Land & Estates' Landowners' Commitment includes the following principles of good land management:

- Provide the wider estate community with an opportunity to contribute to relevant decision making
- Communicate estate plans with those who are affected by them
- Work with the community where appropriate to assist in the delivery of its social, economic and environmental aspirations

We believe that these align with the approach being suggested by the Scottish Government and welcome the publication of guidance to assist the engagement process. We welcome the fact that it applies to occupiers and tenants as well as owners – this inclusion recognises that those involved in land management all have a responsibility to engage with the wider community, not just owner.

We believe that the guidance has to be clear as to what is required and when. Proportionality is a key element of any engagement process. The engagement process should not be too onerous for either the land manager or the community.

It is imperative that engagement is not viewed as co decision making or formal consultation and it is critical that any voluntary guidance is not viewed as a replacement for formal engagement required through the planning system.

We believe that the development of the guidance should build on work carried out as part of the Perth College Sustainable Estates Project, as well reflecting the National Standards for Community Engagement.

Scottish Land & Estates has undertaken some work on the development and delivery of a Community Engagement Toolkit for members and would ask that the Scottish Government provides resources to support owners, tenants and occupiers in developing skills and capacity in community engagement.

Engagement is of course a 2 way process and support should continue to be given to communities to assist them in engaging. We would suggest that the focus should shift from support to communities wishing to progress community ownership to cover the many communities who want to work alongside private landowners to deliver public benefits. We do not feel that this group is sufficiently catered for at present – with resources being directed at community ownership feasibility.

Communities, as well as landowners, need to undertake a change of approach in relation to engagement. As stated in 'working together for sustainable estate communities' (an output from Sustainable Estates for the 21<sup>st</sup> Century) communities need to 'identify their needs and priorities and engage with estate representatives. This may require overcoming prejudices and embracing involvement with other partners.' We often hear claims that a landowner is unwilling to do something when in fact no dialogue has taken place and the unwillingness is perceived rather than real.

## **Part 5 – Right to Buy Land to Further Sustainable Development**

Scottish Land & Estates does not support this aspect of the Bill.

We cannot ascertain the need for these powers in addition to those contained within the Community Empowerment (Scotland) Act 2015 and the CPO powers which are already in place. During the passage of the Community Empowerment legislation it was stated that it was *‘the Scottish Government’s view that, through a combination of the broad dictionary definition of ‘abandoned’ and ‘neglected’, together with the requirement for Ministers to have regard to the matters set out in regulations made under section 97C(3) of the new Part 3A, the correct balance is struck between the need to provide communities with considerable scope to acquire land which is a barrier to sustainable development, whilst respecting the rights of land owners, giving them certainty as to whether their land is likely to be regarded as “eligible land” for the purposes of Part 3A.’* Thus significant powers have only in the last few months been provided for communities – surely the operation of these should be considered prior to the introduction of any further powers?

Also during the passage of the Community Empowerment Bill, the Minister for land reform stated that certainty regarding scope of the powers and what land it would apply to was critical. This was given as a reason as to why the neglected and abandoned land provisions were not extended to include ‘in need of sustainable development’. We believe that this principle should also be followed for any provisions introduced through the Land Reform Bill, and believe that as drafted the provisions provide neither certainty nor clarity.

The policy memorandum refers to the powers being particularly useful in situations where the decisions taken by the landowner are not open to public scrutiny or public interest test. Scottish Land & Estates would welcome examples of such decisions to further understand the context in which these comments are made.

These powers would appear to apply to land which is occupied and properly tended and managed, which is clearly at odds with the Scottish Government’s assertions that ‘good landowners have nothing to fear from the Land Reform Bill’. Whilst Scottish Land & Estates can accept that powers may be required to bring neglected and abandoned land into productive use, we do not agree with the need to create a power for communities to make a request to forcibly transfer land which is being sustainably used at present – ie productive farmland being transferred to deliver a community tourism project or allotments. We believe that the powers as drafted would allow for this to take place.

We have also previously been assured that these powers would not allow for cherry picking but can see no details within the Bill which would prevent this happening.

We are heartened by the inclusion of robust tests which have to be met, however we believe that the wording of the tests does not adequately clarify which land could be affected by the use of these powers. All parties – communities who wish to make requests and the landowners who would be affected - should be clear as to which land and properties would fall within the scope of the provisions.

We are concerned that differentiation is made between a home which is owned by the inhabitant and someone’s home which is rented. As drafted at present excluded land includes land on which there is an individual’s home, except where the home is occupied under a tenancy. We would question if this is equitable.

No mention is made of the need for Scottish Ministers in considering an application for community benefit to have regard to the damage or harm to the owners of the land in question by its enforced sale. People should not assume that this power would be



principally used to transfer land from large landowners to communities – it will affect all landowners of whatever size across Scotland. If you are a small farmer with a holding on the edge of a village and the request is made to transfer your most productive field to the community for housing, or the owner of 2 holiday cottages which provide the bulk of your income but are required for affordable housing, it does not seem equitable that the transfer of land is considered in terms of significant benefit or harm for the community but the significant harm to the individual's wider livelihood is not a material consideration.

As a result of the omission of the consideration of the impact on the owner, as well as other factors, we do not agree with the assertions made in relation to ECHR contained within para 201 of the policy memorandum.

It cannot simply be assumed that giving an individual the current market value for their land is sufficient to ensure that the individual does not bear an 'individual and excessive burden' in comparison to the anticipated community development benefits from a compulsory purchase of property.

Thus we would suggest that a need for Scottish Ministers to have regard to the effect of the transfer of the land on the individual should be contained within the primary legislation.

Finally with regard to the winding up of any Community Body post purchase, we note that the Bill contains the same provisions as the Land Reform (Scotland) Act 2003, namely that surplus assets must be passed to either another Community Body, or to the Scottish Ministers or to such a charity as the Scottish Ministers may direct. We would question if this is workable in circumstances where a third party purchase partner is involved, and would also question whether or not is equitable to allow for the transfer of the land to a charity but not to a locally based private landowner.

## **Part 6 Entry in valuation roll of shootings and deer forests.**

Scottish Land & Estates believes that sporting rates should not be reintroduced. We take this position for several reasons:

1. There is no clear statement of the policy objective of the proposal, with the Policy Memorandum simply stating that the main perceived benefit—to the respondents to the Scottish Government consultation on the proposal—was that it would ensure parity and fairness with other rural businesses. This ignores the fact that sporting rights are only rarely exercised as businesses and that similar land-based businesses continue to be exempt. We therefore challenge the policy basis for this provision.
2. The Scottish Government has itself recently undertaken a public consultation on non-domestic rating and valuation appeals systems and concluded that "all current exemptions provided, including to agriculture, should be retained". These exemptions include the exemption introduced in 1994 for sporting rates on shootings. This matter has therefore only recently been considered and dismissed by the Scottish Government.
3. The proposal ignores the reasons that the exemption was introduced in the first place (which were on the grounds of cost-effectiveness and practicality).
4. The Scottish Government has failed to undertake an economic impact assessment and therefore cannot show that the reintroduction would raise funds or that it would

not have a serious detrimental impact on rural businesses and land management. It also cannot show that the effects of the proposals would not disadvantage some sectors of the population disproportionately.

5. The proposal completely fails to recognise that sporting rights per se are not in fact a business. In some situations, the sporting rights may be exercised as a business, but in the vast majority of cases, the rights are occupied by individuals or groups, at substantial personal cost, for their own recreation or purely for management purposes.
6. If sporting rights are exercised as a business, the income from that business will already be subject to normal business taxation. Rates will be offset against profit and therefore tax take could actually decline as a result. The suggested 'income' from reintroducing rates will partly be offset by loss of tax revenue and much of the rest will be soaked up in costs of administration and the loss of jobs etc.
7. For all subjects where the sporting rights are not exercised as a business, this produces the entirely illogical and potentially unlawful situation whereby business rates are being levied on subjects which are not in fact businesses.
8. Since the valuation roll entry would relate to the shooting rights, whether used or not, those people not utilising those rights would still be liable to business rates, which seems to us to be unfair on those people.
9. We believe that the proposal will actually undermine the achievement of the Scottish Government's own objectives of sustainable economic growth and sustainable land management. In particular, we believe that there would be a negative impact on rural jobs, tourism and land management:

#### A loss of rural jobs

We believe that if these proposals are enacted this additional tax burden could result in the loss of sporting enterprises. This would mean the loss of rural jobs, such as gamekeepers, but it would also undoubtedly place a financial strain on the many downstream businesses supported by sporting enterprises such as game dealers and processors and those in the hospitality sector.

The land reform consultation responses stated that some people believed initial job losses would be replaced through diversification. However, in preparation for this evidence Scottish Land & Estates surveyed a proportion of its membership on sporting rights (153 responses covering over 1.2 million acres were analysed) and we found that most of the high sporting ground owners have already diversified as much as the land will allow and further opportunities are simply not available. 51% of Scotland is of the poorest quality (as determined by Macaulay land classification for agriculture) much of which is peatland (45% of Scotland) and would therefore not support or be appropriate for further afforestation. The opportunities for land uses are therefore restricted. Our members are already using this marginal land for renewable energy, agriculture, encouragement of access, conservation, forestry, tourism activities, conservation of designated areas, and peatland conservation. The additional job opportunities are limited and so the loss of jobs associated with sporting activity would be significant, especially in remote rural areas. Our survey shows the average cost of keepers and beaters wages on in hand sporting was £53,860. Almost all of this already cascades down into the local rural economy.

#### Impact on tourism

Shooting and stalking in Scotland attracts international and national tourists with the

PACEC survey for the Scottish Country Sports Tourism Group estimating that shooting and stalking accounted for 280,000 nights and expenditure of £69 million in 2012/13 for overnight visitors, excluding spend by local participants. Shooting and stalking seasons, where applicable, are outwith the summer peak season for Scottish tourists and so shooting and stalking allows the tourist season to be extended and reduces the seasonality of many rural businesses.

There are three primary potential impacts on tourism:

- A reintroduction of rates would push up the cost of accessing sporting activity, restricting access, making it less available to most and only available to those with more disposable income (which is not the case at the moment, with a variety of opportunities available at varying costs).
- Given that there is a competitive market for shooting and stalking, a price differential with England where sporting rates would not be imposed risks encouraging people to stay/travel south of the border for more affordable sport.
- The Scottish Country Sports Tourism Group has carried out significant work with estates and farmers to increase the range of sporting tourism available. We believe that it could be the more affordable and accessible sporting tourism which would be most heavily impacted by the reintroduction due to its marginal financial return.

#### Impact on land management and conservation

There are several current land management and conservation issues, such as sustainable deer management and sustainable moorland management, where the government, agencies, land managers and wider stakeholders are working together to make progress. In these situations there are different ways of helping everyone move in the right direction, including regulation, incentivisation, and education/collaboration. Scottish Land & Estates would argue that incentivisation is a productive way forward because it pulls people in the direction that society wants to see. The proposal to reintroduce sporting rates provides exactly the opposite signal; it potentially imposes greater cost and would seriously impact on beneficial land management.

Our survey found that 91% of sporting enterprises made a loss, with the average cost per acre being -£10.72. This is mirrored by the National Forest Estates, where deer management comes at a net cost of £17 per acre (Deer Management on the National Forest Estate, Current Practice and Future Directions 2014 - 2017).

This sort of loss will most likely be offset by other land uses (such as farming and forestry or energy production) and highlights the importance of diversified and integrated estate management. In some cases this demonstrates inward investment which his supporting jobs and management, but the important point with regard to land management and conservation is the number of public benefits which flow from the burden of these costs such as habitat management, legal pest control and fire risk management. The BASC Value of Shooting Survey (2014) puts the economic value of conservation work undertaken by shoot providers at £35 million.

The imposition of even greater cost puts the delivery of this immense and free public benefit at substantial risk. If sporting rights were to be made subject to non-domestic rates, all of this free public benefit is strongly disincentivised and would be reduced to an extent where pest species numbers would not be controlled properly, habitats such as heather would be degraded and lost, species such as hen harriers and waders (which we have a

high-profile international obligation to protect) would decline further, designated areas would fail to meet their international objectives and responsibilities, and fire risks increase dramatically. This would achieve the opposite of what respondents to the consultation response would like to see happen. We want to see positive management incentivised.

In summary, we cannot support the reintroduction of a sporting rate tax and believe it is unfair to single out one of the three main rural land uses of sporting, agriculture and forestry without a clear view of how it is justified, how it will be applied and what consequences it may have. We have seen no evidence that reintroduction of sporting rate will achieve economic growth and we are concerned it may actually decrease investment and employment and have a detrimental impact on conservation efforts while raising no net funds.

Should the principle of removing the exemption for shootings and deer forests be supported at stage 1 by Parliament, then Scottish Land & Estates, would stress that:

- Farmers and landowners who have diversified into non-agricultural businesses, which are already rated, could potentially be penalised as small business relief depends on the total rateable value of a farm.
- If the government wants to ensure that positive land management continues and is not disincentivised by the removal of the exemption, consideration should be given to allowing a continued exemption for those that can demonstrate that they adhere to good practice such as through involvement in a recognised accreditation scheme such as Wildlife Estates Scotland.
- Landowners have a responsibility for the welfare and environment of wild deer. The majority of Scotland is now covered by around 45 deer management groups (DMG) plus 10 Lowland Deer Groups (LDGs). While some of the necessary deer management cull as set out in the plan is shot by paying guest, all deer are taken for management purposes. Deer which are culled in line with a DMG plan or forestry plan should be considered separately to deer shot for 'sporting' purposes. If not, deer management may suffer.

## **Part 7: Common Good Land**

Scottish Land & Estates has no comments to make on this part of the Bill

## **Part 8 – Deer Management**

### **General Comments**

Scottish Land & Estates general response to the proposed additions and amendments to existing deer management legislation set out in this Bill, is that these changes create an additional unnecessary regulatory burden on landowners involved in the management of wild deer. We make a number of general points below.

1. Through the work of the Association of Deer Management Groups and the Lowland Deer Network, deer management groups and those involved in deer control in the lowlands, are modernising, becoming more inclusive and more outward-looking so that different perspectives on deer management are recognised and taken account of. Indeed, as recommended by the Rural Affairs, Climate Change and Environment Committee in its letter to the Environment Minister following its evidence sessions on deer management in November 2013, deer management

groups have stepped up the pace of delivery of deer management plans to attempt to meet the recommendation of completion by the end of 2016. The deer sector over a number of years has recognised a need for change and has on the whole responded positively to this challenge. The Monadhliaths Deer Management Group, for example, recently held a stakeholder meeting at Alvie Estate, near Kincaig. There were 40 attendees including community councils, local conservation bodies, members of the RACCE committee, crofters, farmers, other deer management groups, Cairngorms National Park Authority staff and estate staff. Interest in the event was also shown by Highland councillors and some of the new Scottish MPs. It is intended to hold the meeting on an annual basis and to also develop web-based information on the work of the Group. It is hoped this will enable strong links to be forged with the local community and other communities of interest.

Some deer management groups have moved forward more quickly than others, but that is only to be expected of any process of change that involves a range of individuals with their own views and experiences. Given the effort that those with a private interest in deer management have made to respond positively to calls from Government to modernise and play a full role in the delivery of public benefits, it seems unnecessary to us that further regulation should be imposed upon them at this time.

2. Scottish Land & Estates would also point out that a review of the current approach to deer management is underway and is due to report at the end of 2016. Creating new powers and increasing penalties at this time could undermine the outcome of the review. It should be for the review to assess the effectiveness of the current approach to deer management and make recommendations for change if this is required. We understand from the policy memorandum that accompanies the Bill that the Government do not intend to use the new powers until after the 2016 review, implying that the outcome of the review will determine their use. However, once the powers are available they can be used at any time regardless of the Government's intention at the time of drafting. As such we do not believe they should be included in this Bill. If powers are required they should follow the outcome of the review.
3. We would add that it is important for any organisation or individual involved in taking steps to modernise and develop the wild deer management sector, to recognise that the nature of deer management by necessity varies from area to area and particularly between the Highlands and Lowlands of Scotland. It is not possible to apply a countrywide approach to deer management planning because of fundamental differences in management approaches. Scotland's approach to wild deer management needs to recognise the diversity of situations in which deer management exists across Scotland and be flexible enough to accommodate it.
4. We would make one further general point. The current approach to deer management, particularly in the uplands, involves a delicate balance between the private and public interest in deer management that we believe should be valued. The approach enables those who wish to stalk to do so. While it is a marginal activity in itself in terms of profitability for estates, it generates considerable spin-off income into the local economy from food, drink and accommodation. The approach also enables deer to be managed in the public interest at very little cost to the public purse. If this balance can be preserved we

have a system that therefore benefits the environment, the rural economy and helps sustain rural communities. If this approach was to breakdown, Government could employ contract stalkers to manage deer and estates would lose out on their stalking. While it is questionable whether there are enough contract stalkers to carry out the work required, the real loser for rural Scotland would be the stalking tourism spend in local communities.

Given the points above, we would urge caution in continuing to take an ever increasing regulatory approach to deer management. It would be a great shame to push a sector that is willing to change and modernise and that already provides a cost-effective approach to deer management, to a point where it no longer worked for those within it.

We address the specific changes the Bill proposes below:-

#### **Para 69: Functions of Deer Panels**

While we have no particular issue with the suggested insertions to the Deer (Scotland) Act 1996 that are set out at Paragraph 69 of the Bill, we do question whether these amendments are needed. Deer Panels as created by the 1996 Act have an advisory function. The proposals in the Bill extend those functions to facilitating and enabling local community involvement and to communicating between deer managers and the local community. However, only a few deer panels have been set up. Deer management groups are more extensive and recognise the need for greater inclusion, openness and transparency particularly with regard to local communities. They are working on a voluntary basis to achieve this. This issue could easily be addressed through deer management groups via good practice mechanisms without the need to make further changes to the 1996 Act.

#### **Para 70: Deer Management Plans**

Scottish Land & Estates is concerned about the proposal to create a statutory power in terms of the production of deer management plans. The deer sector has progressively, over a number of years, been working more and more effectively with Scottish Natural Heritage and other interest groups in order to ensure that public benefits are delivered alongside their private interest in deer management. The focus of deer management groups has been changing and groups continue to develop and evolve such that they operate on a more professional and inclusive basis. This has included the voluntary development of detailed deer management plans. As reflected in our general comments above, deer management groups responded positively to the RACCE Committee's recommendation that all groups need to have plans in place by the end of 2016 and, as a result, the pace of delivery has stepped up significantly. To place additional powers on the deer sector at the current time when it has done so much to respond on a voluntary basis is unnecessary and these powers should be removed from the Bill. The sector should be allowed to prove that it can deliver to the timescales suggested. Powers should only be brought in if the sector fails to deliver, and legislation should be brought forward at that time.

#### **Para 71: Increase in penalty for failure to comply with control scheme**

The 700% increase in penalty for failure to comply with a control scheme (from £5,000 to £40,000) seems to us to be entirely disproportionate and unjustified. A fine of this nature is out of step with the other Penalties in the 1996 Act. It also seems to be an unjustified increase when neither SNH, nor its predecessor in deer matters DCS, have ever used Section 8 Control Scheme powers. The Section 7 Control Agreement process has worked well in terms of engaging interested parties and delivering improvements to poor, often

designated, habitats. As such matters have never escalated to the point of needing a Control Scheme, it would be helpful to understand the Government's justification for an increase of this magnitude and on what evidence it is based.

## **Part 9 – Core Paths**

Scottish Land & Estates supports the proposed amendments to the Land Reform (Scotland) Act 2003. We are particularly pleased to see the inclusion of a clause which requires notice to be given to owners and occupiers of land when, for the first time, their land is affected by a change to the local core paths plan.

## **Part 10 – Agricultural Holdings**

### **General remarks**

Before looking at the proposals in the Bill, we would like to make some general remarks about the approach being taken on agricultural holdings:

- Scottish Land & Estates understands the political drivers resulting in farm tenancy matters being dealt with in the Land Reform Bill but maintains that agricultural holdings legislation should be dealt with through its own Bill/Act. The policy objectives of the Land Reform Bill are focused on addressing perceived barriers to sustainable development in relation to land and achieving greater diversity of land ownership in Scotland. The policy objectives of a separate Agricultural Holdings Bill should be to better regulate the business relationship between agricultural landlords and tenants, create a better environment for the letting of farmland in the interests of a successful and profitable Scottish agricultural industry and to encourage new entrants into tenant farming. These policy objectives – of land reform and of agricultural holdings reform – do not necessarily sit together very well. In fact the land reform proposals could actually undermine the policy intention of the agricultural holdings provisions by having a negative impact on the farmland letting environment.
- We would wish to record our serious concerns about the lack of time remaining to fully scrutinize the provisions contained within the Bill. It is imperative for the sector that we do not create further problems for the future through not fully considering the consequences of legislative change.
- The members of the Review Group spent considerable time ensuring that they had taken all considerations into account and proposed 'an integrated package' that 'reflects the interlinked nature of the challenges being addressed'. The Bill, however, does not bring forward that integrated package of measures; it contains only a selection of the measures and leaves the more difficult issues for a future date. This is extremely disappointing as it suggests that we are not going to get what the industry needed i.e. legislative change followed by a prolonged period of stability. It suggests that important changes are going to be 'drip fed' by constantly changing legislation, which means that we will have ongoing uncertainty and debate about potential change that serves to undermine confidence in the sector from the land owners' point of view.
- Scottish Land & Estates takes the view that important legislative change should be included in primary legislation rather than deferred to secondary legislation. There

are important elements of the Bill—such as on conversion (s.79) and productive capacity (s.82)—that simply enables Ministers to bring forward regulations. This is far from satisfactory and simply highlights the undue haste in which this legislation has been brought forward. The reasons that this is important are, firstly, that the secondary legislation is subject to a lower level of scrutiny, and, secondly, because of the need to keep things as simple as possible. The higher the number of different Acts, Orders and Statutory Instruments that need to be referred to, the greater the chance of confusion and potential error in future. If at all possible, the legislation should be dealt with as one coherent Act so as to avoid adding complexity in an already complex area.

- The Bill allows Ministers to determine the commencement date for the different provisions (s.103) and so does not provide any clarity to those operating under existing law. For example, notices for Martinmas rent reviews in 2016 could already be served, but those involved will not know which regime they will be required to operate under. The question of how the legislation will be brought to bear in already established processes needs Committee consideration.

## **Chapter 1: Modern Limited Duration Tenancies**

Scottish Land & Estates is supportive of attempts to establish letting vehicles that allow the parties flexibility to adapt to market circumstances in a fast moving agricultural and wider rural sector. As such, Scottish Land & Estates is supportive of the proposed Modern Limited Duration Tenancies although we would emphasise that the differences between current LDTs and the proposed MLDTs appear minimal and so this represents a missed opportunity to develop a truly modern vehicle. On a couple of points of detail:

- Getting the termination of the MLDT wrong is particularly punitive i.e. both parties are tied into another 10 years. We would suggest reverting to the existing LDT position, which provides for a three year continuation in S.8 (6) of the 2003 Act. The risk associated with this provision in the Bill may serve as a disincentive to use MLDTs.
- We welcome the ability to contract out of fixed equipment requirements as this will allow greater flexibility and allow landlords and tenants to reach their own arrangements.

### *Conversion*

Scottish Land & Estates is disappointed that the detail of conversion is left to regulations and not provided on the face of the Bill. This will be an important change in the law and should be included in the primary legislation.

Without having the detail, Scottish Land & Estates generally takes the position that retrospective legislative changes to contractual relationships undermine confidence in those contractual vehicles which can have a detrimental impact on the sector – such as giving 1991 Act tenants a new right to convert into a fixed term tenancy which can be sold. This would be giving a substantial new and valuable right to tenants to continue a tenancy where in many cases it may otherwise have been expected to come to a natural end in the near future.

Scottish Land & Estates does, however, accept that a model which allows for conversion of a 1991 Act tenancy into a fixed term MLDT, if accompanied by reasonable balances for



the owner, could be one way of attempting to meet the policy intentions of increasing churn in the sector and assisting in delivering a vibrant tenanted sector.

Should the principle of conversion be supported at stage 1 by Parliament, then Scottish Land & Estates contends that the policy objectives would only be achieved if the detail of the provisions addressed the following points:

- The measures introduced are seen to be balanced between those of the three parties involved: the outgoing tenant, the incoming tenant and the landlord.
- The duration of the new MLDT has to be kept to one which provides sufficient incentive to the outgoing tenant, is affordable for new entrants and does not unduly disadvantage the landlord. We would suggest that this could be best achieved through a 15 year MLDT (i.e. not 35 years as has been suggested), which provides an adequate term for long term business planning, should have a value which is of benefit to an outgoing tenant but limits the loss to the owner (or at least reduces his incentive to claim compensation for the loss).
- The landlord must be seen as an active participant in the process and have a role in relation to the creation of the new tenancy and choice of the new tenant.
- There should be acknowledgement of the fact that some landlords would be disadvantaged through the introduction of such a provision. A mechanism to address this should be contained in primary legislation, including provisions for adequate compensation to be assessed on a case by case basis.
- The landlord should have a right of pre-emption.

Scottish Land & Estates believes that it is very important that Parliament is made fully aware of the potentially negative consequences for some landowners. The people likely to be severely affected are those that could reasonably be expecting to re-gain vacant possession of a holding in the near future; conversion could conceivably push that into the future by as much as a whole generation. This would limit their ability to restructure farm holdings to meet the needs and aspirations of other tenants looking to increase their tenanted land area or add it to their own farming operation to enhance their own efficiency. It would also have a disproportionate impact on those smaller land owners where the let farm might be their only or main asset. So while conversion could represent one way of freeing the sector from the grip of secure tenancies, there is also a significant downside that needs to be acknowledged and accommodated in the legislation. The granting of a new and valuable right to tenants would be achieved at the expense of the land owner's property rights and it will be important to ensure that the legislation strikes the appropriate balance between the rights of the different parties.

Finally, we note that section 79 (2) (b) refers to a situation where the tenant and landlord are deemed to have entered into an MLDT. This implies that there could be situations where the landlord had conversion imposed on them. Scottish Land & Estates would not support this and argues that conversion should involve the landlord as an active participant.

## **Chapter 2: Tenant's Right to Buy**

Scottish Land & Estates disagrees with the draft provisions that would allow all secure tenants to have a pre-emptive right by default. Experience has shown that the requirement to register is useful for both parties because it provides an opportunity, through mapping for example, to clarify the precise area with regard to which the tenant is seeking to establish their right. That clarity is useful and would help avoid dispute in the future in

terms of when and over what land the right to buy is triggered. Once this step has been undertaken we would accept that it is reasonable that there would be no further need to re-register (currently required every 5 years).

In addition, Scottish Land & Estates is disappointed that the Bill does not address the Agricultural Holdings Legislation Review Group's Recommendation 18, which focused on providing greater clarity about when the right to buy is actually triggered. The Bill refers to 'proposes to transfer the land to another person' but it remains unclear what this actually means. Scottish Land & Estates is concerned about this because a lack of clarity about when the right to buy is triggered could get in the way of constructive dialogue involving all parties about progressive rural development proposals. A landlord may not even want to talk to a third party who has an interesting idea (without any real understanding about whether that idea is going to go anywhere) for fear of triggering the right to buy. If there was greater clarity that the right to buy was only actually triggered when the land is advertised or otherwise exposed for sale, then there would be space for dialogue that could create opportunities in rural areas. It must not be forgotten that the vast majority of purchasers of farmland will want to acquire it with vacant possession i.e. without any tenancy in existence. As such the landlord has to secure vacant possession and to do so he has to either use existing statutory procedures, contractual provisions in the lease (if available) or negotiate with the tenant. As such these sales cannot proceed without involving the tenant.

There is also a strong concern that, in a situation where there are existing missives or option agreements already validly in place, the implementation of a suspensive condition contained therein, after the coming into force of this provision (in particular Bill section 80 (5) which repeals 2003 Act section 27(1)(g)(v)) might trigger the right to buy. Unless balanced by some means to avoid the retrospective nature of this proposed change, it has potentially serious implications for some property owners.

### **Chapter 3: Sale where Landlord in Breach**

Scottish Land & Estates can support the idea that there should be some sort of sanction on repeatedly failing landlords provided that: the land owner has an opportunity to remedy the situation; there are provisions to ensure that the proper value is delivered to the landlord and that the system cannot be abused; there is parity with the sanction on the tenant; and the current approach to obtaining a Certificate of Bad Husbandry is reviewed.

Unfortunately, as currently drafted there is not parity with the sanction on the tenant. This new power is proposed on the basis that while a landlord may serve an incontestable notice to quit on a tenant (e.g. where the landlord has been able to obtain a certificate of bad husbandry from the Land Court), no such reciprocal provision exists that would enable a tenant to "dispossess" a landlord. This new power to force the sale of the landlord's property is therefore framed as a reciprocal right which balances the power between tenant and landlord. Scottish Land & Estates believes, however, that this idea of balance is miss-conceived. While it is true that the landlord can serve a notice to quit on a tenant in some circumstances, the introduction of a power to force the landowner to sell goes further and does not represent a balanced approach. 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.

There are alternative options that are less draconian, such as preventing the landlord who fails to meet their obligations from continuing to be a landlord by appointing a third party to

manage on their behalf until the landlord can prove his ability to regain the management rights. Such alternative approaches would allow more of a balance in terms of providing an effective sanction on failing landlords with less of an impact on that person's individual property rights.

Scottish Land & Estates would argue that there needs to be a full review of all the provisions that exist for a landlord to regain possession, including the use of Certificates of Bad Husbandry. Our members tell us that these certificates are very rarely sought, not because there are no tenants to which these may be applicable, but because of the fear of the potential backlash for using such a mechanism. Therefore these provisions and their use should be reviewed as a priority by the Independent Tenant Farming Advisor or Tenant Farming Commissioner as a priority so that there are workable measures that can be used to actively manage poor performance by both landlords and tenants.

#### **Chapter 4: Rent review**

The merits and drawbacks of the existing section 13 of the 1991 Act, which deals with rent reviews, have been debated at length. While the cross-sector Rent Review Working Group (in 2012) recommended that section 13 should not be changed (but that there was a need to improve the process and transparency in the operation of the existing rent review provisions), the Agricultural Holdings Legislation Review Group (AHLRG) did recommend change to the rent review procedures. The argument of the AHLRG was that the open market approach to rents (i.e. the rent normally payable would be that which might be reasonably expected in the open market between a willing landlord and a willing tenant) cannot work in a situation where there is no market in the tenancies being compared. The group took the view that because demand exceeds supply rent levels could be pushed up above what might normally reflect the productive capacity of the land and that such a situation is not in the public interest.

While this argument holds water to some extent—section 13 is not perfect—Scottish Land & Estates had opposed change to s.13 of the 1991 Act. We believe that the established provisions supported by recently enhanced guidance, represented a pragmatic way forward and the more that the procedures are tested in the courts the more robust the procedures become. However, notwithstanding our belief that the system should not be changed and that any new system is unlikely to represent a significantly better approach which makes it worth changing, Scottish Land & Estates has acknowledged that there is ongoing disquiet about rent reviews and that others in the industry want to see a change. Consequently, Scottish Land & Estates has signalled that it would support moves to review section 13 with a view to basing the rent on the productive capacity of the holding. As such, we are now focused on ensuring that any new system actually works.

We are therefore extremely concerned that the legislation is moving ahead of necessary modelling and testing that is required to establish the degree to which any new system actually works. The Scottish Government is undertaking background modelling work to explore how a new approach based on productive capacity might work and this is intended to inform the Parliament's deliberations. To date, however, this work has not progressed well. An initial stakeholder meeting, held at the end of July to share progress on the modelling work, revealed that the work had moved forward without involving the expertise of practitioners and views of stakeholders and without building on established valuation principles. 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.

It cannot be overstated how important it is for everyone involved in the sector to get this proposed change to setting rent correct. Much of the current 'heat' in the tenanted sector relates to rents and rent reviews; if the legislation gets it wrong, the likelihood is that sector will be saddled with disquiet and further dispute generated by the legislation itself.

The Bill already provides for the government to bring forward regulations to define productive capacity of the holding. Much as Scottish Land & Estates would prefer that all the important elements of the legislation were on the face of the Bill rather than brought in by regulation, there is an argument to say that if the modelling work has not progressed far enough the whole rent section should be delayed. This is such an important issue that it makes sense to make sure that the new approach (including the inter-relations between productive capacity and surplus accommodation and diversification) has been sufficiently worked through and stress tested by the industry prior to legislating on it.

Finally, on the broad principle of moving to productive capacity, Scottish Land & Estates would take the opportunity to highlight that we are unlikely to be moving to a new regime that is simple and formulaic in the sense that anyone with the appropriate knowledge can key in the figures and arrive at the rental figure. Each farm is different and so there will be a process involving the exercise of expert knowledge and judgement. This suggests that there will still need to be some sort of sense check with regards to comparable evidence.

We would also highlight that the move to determining rent on the basis of the productive capacity of the holding has been framed as a 'fair rent', but what happens if the rent calculation results in a very low or zero rent. That would be unfair to the landlord. Can we really be moving to a system where landlords may be expected to rent out their property for no rental income? It will be extremely important to guard against this eventuality because it would be another disincentive to landlords to let, but it is difficult to know if this is an unjustified concern before we fully understand and test the new regime.

In terms of some of the detail of Chapter 4:

*The form and content of the rent review notice* – The notice must be served no earlier than one year before the rent review date. However it is required to detail the rent proposed and the notice is to be accompanied by information in writing detailing how the rent has been calculated. This will potentially create problems because most parties would presumably prefer the rent to reflect the current economic climate rather than a historical one. For example, parties experiencing a period of low prices could find themselves in the situation where rents were being set with reference to a period of high prices.

*Surplus Residential Accommodation* – The Bill suggests that any accommodation occupied by the tenant is deemed not to be surplus. This is contrary to recommendation six of the AHLRG Report which envisaged that allowance would be made in the rent for any residential accommodation above that necessary for the Standard Labour Requirements for the unit. There will be many small farms which are in effect part-time

(and where the tenant has another job), which include accommodation that is out of proportion to the associated land. It is perfectly reasonable that if a tenant of a small unit occupies accommodation that is out of proportion to the associated land, that significant value is associated to the provision of accommodation. This would reflect what anyone would be prepared to pay to stay in that sort of accommodation in that area. The landlord should be able to realise a reasonable return on letting their assets, otherwise the landlord is forced to let accommodation at below market levels. This is particularly significant when accompanied by the removal of the viable unit test on succession which will see a rise in small units occupied by “lifestyle farmers” who earn their income elsewhere and the farm is more of a hobby. It seems unjust that an arguably wealthy lifestyle farmer could avoid paying a market rent for a substantial house on a smallholding.

In addition, it appears that the ability to include rent on surplus housing provisions only applies if the tenant has permission to sublet. However many leases will specifically preclude subletting and so nullify these provisions. There will be many varied situations relating to housing but, for example, a landlord may be unable to achieve a higher rent for surplus accommodation if a second house on the farm is occupied by a member of the tenant’s family with no subletting.

*Phasing of rent increases* – The Bill seems to make no allowance for situations where the rent has been held at a low figure for particular reasons e.g. tenant investment in fixed equipment.

## **Chapter 5: Widening of assignment and succession**

Scottish Land & Estates fundamentally opposes the proposals to widen the class of potential assignees or successors, coupled with a restriction in the landlord’s ability to object and the removal of the viable unit test. The Minister’s Review Group specifically highlighted the potential risks associated with going too far on widening of assignment and succession rights, yet the Bill goes further than envisaged by the Review Group. The extent of the proposed change is significant and Scottish Land & Estates has attempted to diagrammatically represent that change in Appendix 2. We believe that the extent of the change effectively means that while the landlord may currently have some hope of regaining possession of their property at some stage in the future, under the proposed regime this prospect would be all but removed because the tenant would be able to find someone who would qualify. As such, the proposals come close to ring-fencing secure tenancies, which represents a significant change in the landlord’s position.

Our primary concern, however, is for the future of the let sector and of Scottish agriculture. In the context of the decline in this sector over the last 30 years, the widening of the assignment and succession rights of tenants could be understood as somehow protecting the let sector because it would make it less likely that secure tenancies would come to an end. This approach, however, fundamentally fails to understand the sector from the position of the land owner. Land owners would receive yet another signal that the government is very willing to intervene in ways that undermine their interests and so they would be looking for every opportunity to get out of the sector rather than to think about letting in future. So while the extension of assignment and succession rights may achieve the medium-term goal, it would be at the expense of the long-term health of the sector. If we want the let sector to have a long-term future we need land owners to want to let land voluntarily; using legislation to restrict their rights simply undermines the land owner’s position and therefore the sector.

There is also an extremely important point relating to the degree to which the assignation and succession provisions will actually support Scottish agriculture as a whole. Mechanisms that perpetuate the existing system of tenancies potentially result in a system that preserves the current structure of farms. This introduces inflexibility into Scottish agriculture at a moment when it needs greater flexibility. Scottish Land & Estates supports the idea that the ‘family farm’ is the bedrock of Scottish agriculture, but these farmers need flexibility if they are going to survive; the assignation and succession provisions could effectively consign many farmers to difficult times as their options are limited and opportunities reduced.

With regard to some of the detail, Scottish Land & Estates would raise several important issues:

### *1) Impact on land owner rights*

It is clear that by extending the class of those who might inherit the tenancy or have the tenancy assigned to them, the provisions in the Bill, if enacted, would significantly reduce the likelihood of a lease coming back to the land owner. Consequently it is clear that these provisions would infringe land owner property rights. Yet there is simply no consideration given by (or apparent awareness on the part of) the Scottish Ministers to the interests and legitimate expectation of land owners in relation to existing tenancies. European case law suggests that the legitimate interests of the community in the transformation and reform of the country’s agricultural tenancy supply requires a fair distribution of the social and financial burden involved. This burden cannot be placed on one particular social group, however important the interests of the other group or the community as a whole. At present, the proposed changes fall disproportionately on land owners and we would stress that it is vitally important to ensure that an appropriate balance of rights between land owners and tenants is struck.

This impact is compounded by detailed elements of the proposals, as follows:

- There is a potential loophole in that any potential near relative successor could commit to undertake a course of training to succeed to the tenancy or have it assigned; they would not have to finish the course as it stands.
- Where a landlord objects to an ‘other person’ (i.e. a non-near relative), the ability of the landlord to offer any reasonable ground for not accepting the potential assignee, legatee or acquirer has been countered by the direction that if the potential tenant can offer any reasonable ground for why they should take on the tenancy, the Land Court must quash the landlord’s objection. The effect of this proposal is that the landlord’s purported ability to object is illusory, compounding the impact on their property rights.

### *2) The policy justification is weak*

The Scottish Government’s Policy Memorandum states (at paras 368-9) that the overall aim of these changes to the assignation of and succession to agricultural tenancies is “to encourage tenants to retire or move on from tenancies with dignity and confidence in order to release land to younger tenants and ensure land continues in productive agricultural use”. However, there is nothing in the Policy Memorandum to clarify what the supposed legitimate aim is or what social policy objective is being furthered by the extension of assignation or succession rights. It is not the social protection of existing tenants (since the Bill gives rights to potential new tenants) or the protection of dependent family

relationships (since there is no need for any dependency to be shown to give a right to inherit). Similarly, apart from saying that family structures are changing, nothing is explained as to what social assumptions have changed that would now justify new rights of inheritance of a tenant's interests beyond the tenant farmer's immediate family to a new definition of extended family.

*3) The logical connection between the policy objective and the proposals in the Bill is poor*

We would argue that it is far from clear that the proposed changes are the best way to achieve the espoused objective of encouraging tenants to retire or move on from tenancies with dignity in order to release land to younger tenants and to ensure land continues in productive agricultural use. Indeed we would say that tenants are perfectly able to retire with dignity at present. The tenancy does not necessarily have to be assigned to another person, for example, for that to be the case. The issues surrounding the ability of tenants to retire with dignity have more to do with appropriate retirement planning throughout their working lifetime than they do with assignation or succession.

There is potentially an issue around the tenant being able to realise the value that they have invested in the holding so that they can better provide for their retirement, but that can be dealt with by a) conversion for value or b) ensuring that waygoing compensation procedures work properly. We therefore believe that the policy objectives are more likely to be met by other proposals in the Bill – conversion and the amnesty on tenant's improvements – than changes to assignation and succession.

Similarly, we would argue that these changes are not required to ensure that land continues in productive agricultural use. If land returns to the land owner and they farm it themselves, let it to a new entrant or let it to new tenant or to a neighbouring tenant, it is in productive agricultural use. Indeed there is a strong argument that allowing those sorts of changes would lead to an increase in agricultural efficiency as it would allow other farmers to improve their operation, rather than perpetuating existing farm structures and limiting the flexibility of the industry.

Consequently, we believe that while the stated desired outcome might be creating turnover in the let sector with tenants retiring earlier, the actual outcome will be close to ring-fencing and preserving the let sector (which will introduce inflexibility and perpetuate the slow decline of the sector).

If the Parliament decides to retain the changes to assignation and succession, we would highlight two very important points:

*1) The need for balance – assignation*

Given the fact that the proposals significantly alter the land owner's position and enhance the tenant's position, Scottish Land & Estates believes that a much better balance is required to avoid contravening land owner property rights. One such mechanism that could be introduced to attempt to find a better balance would be a pre-emptive right for the land owner at the point of the proposed assignation.

*2) The need for balance – succession – focus on hardship*

Scottish Land & Estates is not absolutely opposed to any change in the succession provisions. Our understanding from previous cross sector meetings on this issue is that the

driver for change in this area has primarily come from specific cases where a tenant's death has resulted in hardship for other wider family members, such as when a brother working on the farm has been unable to succeed to the tenancy. Scottish Land & Estates understands the distress caused in this sort of situation and so signalled to the AHLRG that if the succession provisions in the Acts were to be changed then they should be focused on cases of hardship and be limited to those with a meaningful connection to the holding.

### **Chapter 6: Compensation for Tenant's Improvements**

Scottish Land & Estates originally proposed the idea of an amnesty and so we support the principle that landlords and tenants should be given a period to sort out any uncertainties over what will qualify as a tenant's improvement that would potentially be eligible for compensation at waygo. Scottish Land & Estates sees this as an important issue because if one of the problems is that some tenants feel that they are not being or are unlikely to be fairly recompensed for improvements at waygo, then this can cause resentment and may be causing some to delay retirement or reduce investment in the holding. If we can get to a stage where every holding has an agreed list of improvements, we should be able to remove one of the potential blockages in the working of the let sector and move on to better relations.

### **Chapter 7: Improvements by the Landlord**

Scottish Land & Estates does not have significant concerns about this change in the law. As the Agricultural Holdings Legislation Review Group stated, the circumstances where it would apply are rare.



## Appendix 1

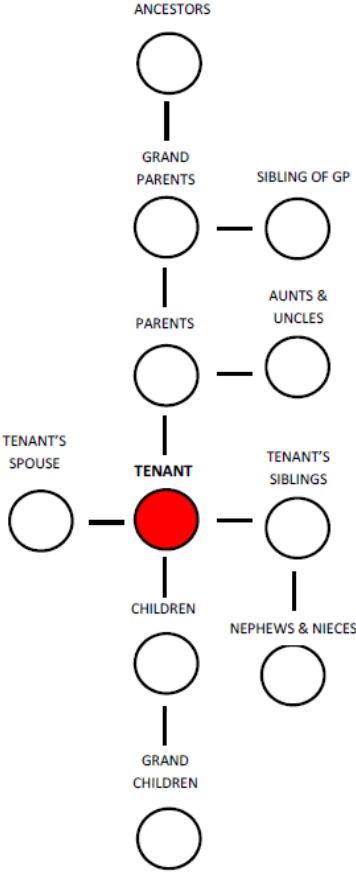
### Cairngorms National Park Estate Management Statement

<b>Name of Estate:</b>	Glenlivet Estate	
<b>Area (ha):</b>	23,067 ha	
<b>Location:</b> <i>e.g. Deeside, Strathspey.</i>	Tomintoul, Moray	10
<b>Ownership:</b> <i>e.g. family owned, Trust, NGO, etc.</i>	The Crown Estate	10
<b>Overall purpose of management:</b> <i>Short statement about purpose/aims with links to online information where relevant.</i>	To manage the estate as an outstanding example of a sustainable highly integrated multiple-use upland estate, which provides a commercial return. The aims are to provide opportunities for sustained employment in agriculture, forestry, sporting and tourism while giving high priority to the long term development of the estate's community, it's recreational, educational and other resources. This is balanced with the need to protect, conserve and enhance the rich natural and cultural heritage of the estate.	100
<b>Overview of management:</b> <i>Brief overview (e.g. bullet points) of the key activities and relative importance of each.</i>	<ul style="list-style-type: none"> <li>• Let farming (around 35 main tenanted farms)</li> <li>• In-hand commercial forestry 3500ha</li> <li>• Let cottages (12 no.)</li> <li>• Let sporting lease (grouse &amp; pheasant shooting, deer stalking, fishing)</li> <li>• Other commercial leases (e.g. business units in Tomintoul, peat cutting, ski centre, mountain bike centre)</li> <li>• Development of new business opportunities; e.g. renewable energy projects (micro-hydro)</li> <li>• Development of tourism to support local economy (e.g. mountain bike centre, walking trail network, visitor centre and adventure playground, glamping site)</li> <li>• Habitat management and landscape improvements and enhancement of biodiversity</li> <li>• Stewardship and enhancement of heritage sites</li> <li>• Ranger Service (education services, visitor services etc)</li> <li>• Partnership working; community, customers &amp; stakeholders</li> </ul>	100
<b>Delivering the National Park Partnership Plan</b> <i>Brief overview (e.g. bullet points) of ways in which the estate helps deliver the NP Partnership Plan – e.g. participation in projects, ongoing</i>	<p>The Crown Estate regularly works in partnership with the CNPA and other stakeholders to deliver a number and variety of small and large projects across all areas of the NP partnership plan.</p> <ul style="list-style-type: none"> <li>• Investment in ranger service to deliver education, volunteering, access, events, interpretation and a welcome to visitors</li> </ul>	200

<p><i>conservation management, delivering visitor experience, delivering community action plans.</i></p>	<ul style="list-style-type: none"> <li>• Provision and management of high quality visitor facilities and access network – over 100 miles of waymarked trail (all designated as core paths) plus new BikeGlenlivet mountain bike centre</li> <li>• Management of Tomintoul spur of Speyside Way in partnership with CNPA</li> <li>• Regular community liaison meetings, newsletters and support of community led initiatives e.g. community broadband</li> <li>• Close partnership relationship with the Tomintoul and Glenlivet Development Trust.</li> <li>• Local employer and policy to work with local supplies and locally based contractors</li> <li>• Led projects to develop economic regeneration of area e.g. mountain bike centre, marketing group, destination management. Significant investment in tourism infrastructure recreational access and community facilities.</li> <li>• Investment in farm infrastructure and supportive of farm diversification by tenant farmers</li> <li>• Habitat improvement projects e.g Riparian woodland planting, broadleaf woodland creation</li> <li>• Support variety of wildlife projects e.g. Highland tiger, wild plants project, Scottish mink initiative</li> <li>• Deliver aims of Cairngorms Nature/LBAP and contribute to Cairngorms Nature strategy group</li> <li>• Management SSSI sites and designated sites to favourable status</li> <li>• Renewable energy projects – Biomass boiler at estate office, micro-hydro and joint venture biomass boiler installations with farm tenants</li> <li>• Hold WES accreditation, Green tourism award (gold), VisitScotland grading (4star) and numerous other awards</li> <li>• Member of Cairngorms Business Partnership and variety of other area and community groups and associations</li> </ul>	
<p><b>Contact:</b> <i>Email/phone number of main person to contact for more information. Web address if relevant.</i></p>	<p>Alan Laidlaw Portfolio Manager</p> <p>0131 260 6070</p> <p><a href="http://www.glenlivetestate.co.uk">www.glenlivetestate.co.uk</a></p>	

Appendix 2

CURRENT SITUATION - ASSIGNATION

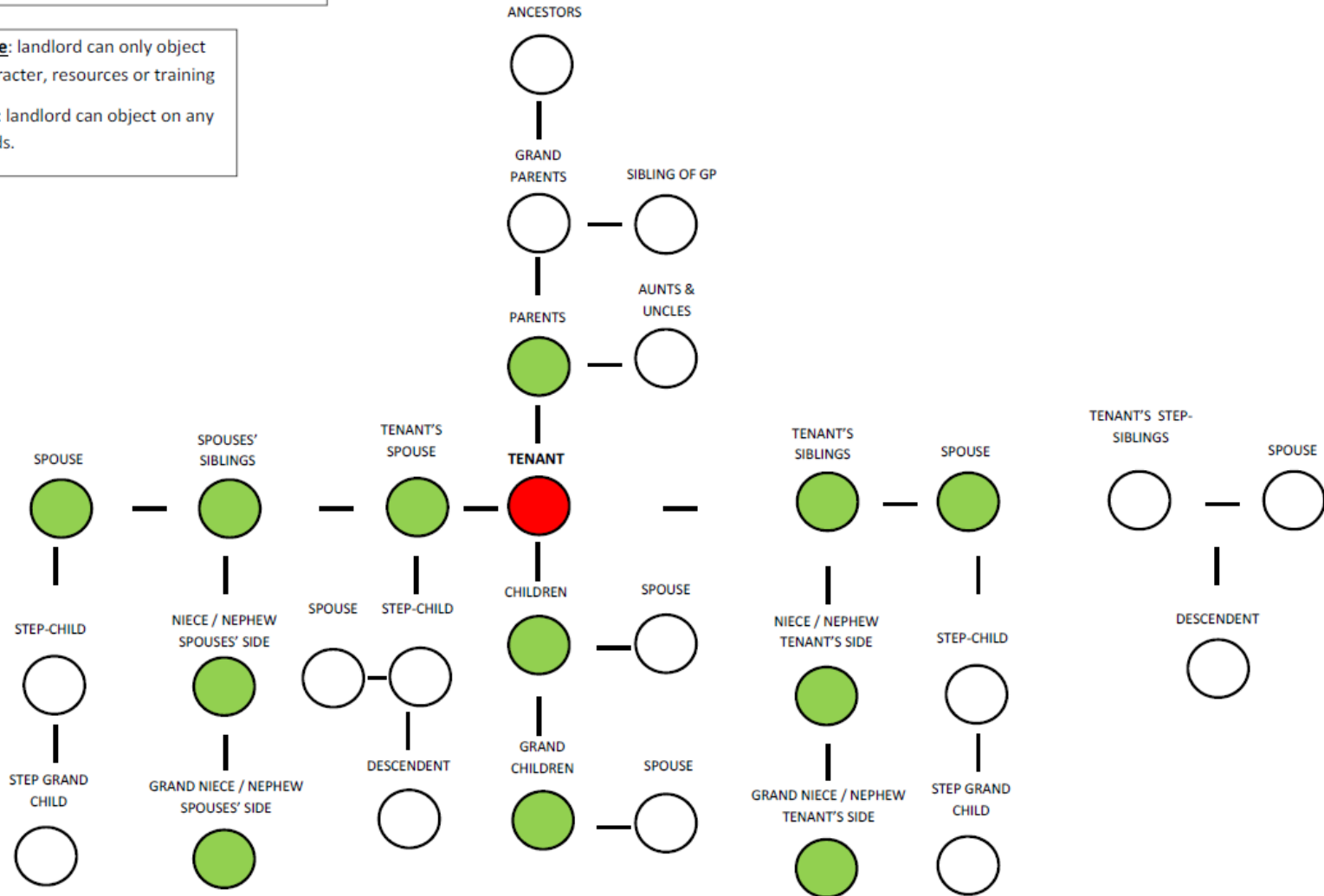


Note: Potential assignee could be any one of those listed in the Succession (Scotland) Act 1964 depending on who is alive at the point of assignation.

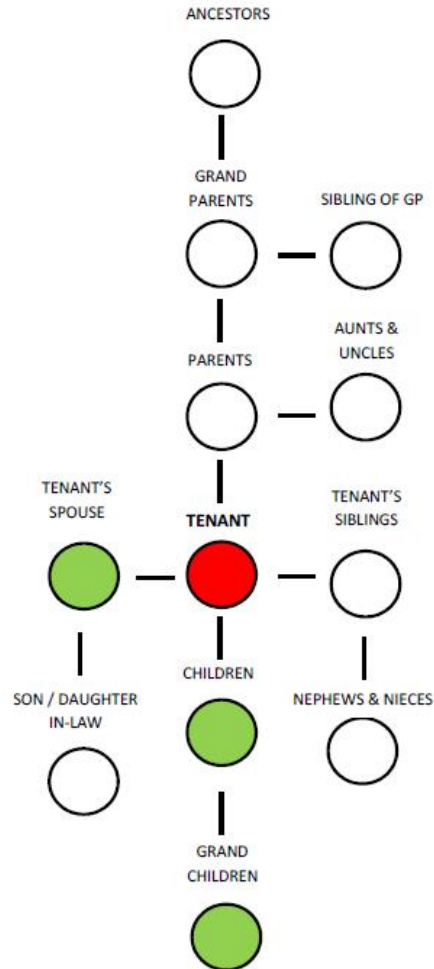
**FUTURE SITUATION FOR ASSIGNATION (AS PER BILL)**

Note: **Near relative**: landlord can only object on grounds of character, resources or training

**Non-near relative**: landlord can object on any reasonable grounds.



CURRENT SITUATION - SUCCESSION



Note: Potential legatee or acquirer could be any one of those listed in the Succession (Scotland) Act 1964 depending on who is alive at the point of the tenant's death, but only the 'near relatives' are 'safe' in the sense that the non-near relatives could be served with an incontestable notice to quit.

**FUTURE SITUATION FOR SUCCESSION (AS PER BILL)**



Note: **Near relative:** landlord can only object on grounds of character, resources or training

**Non-near relative:** landlord can object, but this 'other person' can appeal to the Land Court and that person can provide any reasonable ground for the Land Court to quash the landlord's objection.

