This briefing considers the current patterns of land ownership, governance, use and management in Scotland, and compares them with those of other countries around the world. It compares the proposals of the Land Reform (Scotland) Bill 2015 with international approaches to similar issues.
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EXECUTIVE SUMMARY

The ways in which land and property are owned, governed, used and managed in different countries are largely influenced by the unique socio-cultural, economic and geo-political history of each country. The land reform debate in Scotland, which in the past was often associated with historical events, is increasingly characterised by a policy approach that takes into account sustainable development, the public interest and human rights. Some aspects of this approach can also be seen in other countries. However, land reform in other countries is often driven by factors that are not relevant to the Scottish context, such as emerging political democracies, and conflict resolution.

Land ownership patterns in Scotland appear to be generally accepted as unique in a European context. Furthermore, the shift in policy towards community ownership in Scotland since the Land Reform (Scotland) Act 2003 (the 2003 Act) is in contrast to the apparent European trend towards increasing land consolidation. The Community Right to Buy and Crofting Community Right to Buy (both enshrined in the 2003 Act) are correspondingly unique pieces of existing legislation, despite the growing Community Land Trust movement in North America and Europe, and draft legislation in Kenya that seeks to restore and register community land rights.

The proposals in the Land Reform (Scotland) Bill 2015 (the Bill) and their underlying policy aims can be considered in comparison with international approaches across all continents, to varying degrees determined by the factors noted above. There is precedent for national land policies and commissions, particularly in less economically developed nations, with regional land commissions also present in Canada and England. The proposed rights of access to land information appear to be unique, whilst the extent and accessibility of Scotland’s centrally held information on land appears to be generally less than many countries in Europe and beyond.

The proposals in the Bill to require Scottish Ministers to issue guidance on community engagement and to provide a right to buy land to further sustainable development appear to be unique. However, intervention in land sales for sustainable development objectives also occurs in other European countries such as France and Germany.

Within Europe, Scotland’s largely voluntary approach to deer management appears to be similar only to the approaches taken in Switzerland and the rest of the UK. Whilst control orders may be imposed on deer managers by Scottish Natural Heritage (SNH), none have been issued to date, and there is no requirement for deer management plans, etc. from all deer managers, as there is in several other European countries. The proposal to give SNH additional powers to require deer management plans would remain discretionary, rather than an across-the-board statutory requirement for all landowners.

The measures currently in place to support tenant farmers in Scotland do not appear to differ significantly from the rest of Europe, partly due to Scotland’s commitment to delivering the EU Common Agricultural Policy via the Scottish Rural Development Programme 2014-2020. However, some measures exist elsewhere that do not exist in Scotland, namely rent controls, a tenants’ absolute right to buy, and new entrant partnerships.
INTRODUCTION

Among material resources, the greatest, unquestionably, is the land. Study how a society uses its land, and you can come to pretty reliable conclusions as to what its future will be.

E.F. Schumacher (1973)

The ways in which land and property are owned, governed, used and managed in different countries are largely influenced by the unique socio-cultural, economic and geo-political history of each country. In Scotland, the debate around land reform has often been associated with past events, such as “the establishment of individual property rights over former clan territory as a direct result of the Jacobite uprising of 1745-6 and its aftermath” (McKee et al 2013), and the Highland Clearances, described by McKee et al (2013):

A Britain-wide shift under the control of a new class of landed gentry in the eighteenth and nineteenth centuries resulted in many Highland landlords clearing people from the land, often forcefully, in order to capitalise on the more profitable nature of sheep and cattle grazing which emerged as a result of agricultural improvements.

When Queen Victoria acquired Balmoral Castle and Estate in 1852, newly rich Victorian industrialists began purchasing Highland estates for sporting and other leisure activities, aided by the release of cheap land after the collapse of sheep prices in the 1870s. This led to sporting estates covering almost 60% of Scottish land towards the end of the nineteenth century (Warren 2009).

Whilst these historical events provide some context for the land reform debate in Scotland, post-devolution (i.e. 1999 onwards) policy and legislation appears to have had a different focus. For example, the Land Reform (Scotland) Act 2003 (the 2003 Act) followed recommendations of the Land Reform Review Policy Group’s final report (1999), whose foreword begins: “The Government’s approach to land reform has been to focus on the future, not the past.” This policy focus on “a modern debate” continues, and was expressed in the Programme for Government 2014-15 (Scottish Government 2014a). The Policy Memorandum for the current Land Reform (Scotland) Bill, introduced on 22 June 2015, characterises “a debate firmly focused on looking forward”, according to which “the Scottish Government’s desire is to move from a reactive place of addressing historic issues to a proactive position”.

The context of the current debate is further clarified by considering its approach to sustainable development, the public interest and human rights. For example, it appears that land is increasingly being considered as a factor in delivering the Scottish Government’s commitments to various international human rights commitments. For example, the Scottish Human Rights Commission (2015) comments:

[…] the International Covenant on Economic, Social and Cultural Rights places a duty on ministers to use the maximum available resources to ensure the progressive realisation of rights like the right to housing, food and employment.

Viewed through this broader human rights lens, land is seen as a national asset with key questions arising of how to strike the most appropriate balance between the legitimate rights of landowners and the wider public interest.

The realisation of human rights is also a theme echoed in the Policy Memorandum for the recently passed Community Empowerment (Scotland) Bill 2015.

A more detailed introduction to the broad subject of land reform in Scotland is available in SPICe Briefing 15-28 Land Reform in Scotland (Reid 2015).
Box 1 – Definitions of Land Reform

There are several relevant definitions of land reform. The following are two definitions given in an international context, and three definitions given from the Scottish perspective:

- **United Nations (1962):** “[...] the ideal land reform programme is an integrated programme of measures designed to eliminate obstacles to economic and social development arising out of defects in the agrarian structure”.

- **World Bank (1975):** “[...] land reform is concerned with changing the institutional structure governing man’s relationship with the land”.

- **Land Reform Policy Group (1999):** “[...] the objective of land reform is to remove the land-based barriers to the sustainable development of rural communities”.

- **Land Reform Review Group (2014):** “[...] measures that modify or change the arrangements governing the possession and use of land in Scotland in the public interest.”

- **Land Reform (Scotland) Bill (2015) Policy Memorandum:** “In essence all land reform measures follow a similar pattern, of ensuring that public interest in relation to rights and responsibilities around land are balanced with private interests.”

There is a lack of collated information on, and comparative analysis of, the nature and regulation of land ownership, governance, use and management in an international context. Existing comparisons (e.g. Land Reform Review Group (LRRG) 2014; Putman 2011; Scottish Land and Estates 2013; Wightman 2012) and calls for comparative research (e.g. Law Society of Scotland 2015 and Scottish Environment LINK 2013) have focused on Europe. However this paper places land reform in Scotland in a wider international context in order to explore how land issues and the Scottish Government’s current policies compare internationally in a broad sense.

In every case, either within or outwith the EU, there is a balance to be made between the comparison of land issues in particular, and the relevant political, economic, social and demographic contexts in general. Often, similarities with Scotland in one of these respects must be traded off against differences in the other respects. International comparisons must be made with care and the case studies provided in this briefing should be considered within their full context.

**SCOTLAND IN CONTEXT**

This section sets out Scotland’s pattern of land ownership; the effects of the 2003 Act; and land use and management practices in Scotland.
PATTERNS OF LAND OWNERSHIP

The following chart breaks down different categories of private and public land ownership in Scotland, based on data from Wightman (2013):

**Figure 1 – Land ownership in Scotland**

It is regularly cited (e.g. LRRG 2014) that 50% of Scotland’s private rural land belongs to 432 owners (e.g. Wightman 2013), and that “Scotland has the most concentrated pattern of land ownership in the developed world” (Hunter et al 2013). Whilst not representative of all land, or of the whole of Europe, the following table shows the contrast between the pattern of private forest ownership in Scotland and that of a selection of other European countries:

**Table 1 – Private forest ownership in Scotland and a selection of European countries**

<table>
<thead>
<tr>
<th>Landholding Class (ha)</th>
<th>Percentage of landholdings (European Countries)*</th>
<th>Percentage of landholdings (Scotland)</th>
</tr>
</thead>
<tbody>
<tr>
<td>&lt;1 ha</td>
<td>59.6%</td>
<td>6.3%</td>
</tr>
<tr>
<td>1-2 ha</td>
<td>13.7%</td>
<td>4.4%</td>
</tr>
<tr>
<td>3-5 ha</td>
<td>12.9%</td>
<td>5.8%</td>
</tr>
<tr>
<td>6-10 ha</td>
<td>6.1%</td>
<td>6.7%</td>
</tr>
<tr>
<td>11-20 ha</td>
<td>3.7%</td>
<td>9.8%</td>
</tr>
<tr>
<td>21-50 ha</td>
<td>2.4%</td>
<td>12.0%</td>
</tr>
<tr>
<td>51-100 ha</td>
<td>0.9%</td>
<td>10.7%</td>
</tr>
<tr>
<td>&gt;100 ha</td>
<td>0.7%</td>
<td>44.3%</td>
</tr>
</tbody>
</table>


Hunter et al (2013) explain:

Its concentrated land ownership pattern differentiates Scotland markedly from other European countries where, typically, land is owned by very large numbers of people and where extensive estates of the Scottish sort are few or non-existent. This contrast does not go back indefinitely in time.
Whereas the feudal tenure system\textsuperscript{1} has been abolished for centuries in most western European countries, it was not formally abolished in Scotland until the Abolition of Feudal Tenure etc. (Scotland) Act 2000. Other constitutional and legal reforms, as well as political and social revolution in some cases, have altered patterns of land ownership in Europe – notably in Denmark, France, Ireland and Italy – such that landholdings decreased in size and increased in number.

However, there is also legislation relating to land consolidation for varying land use purposes in some European countries, generally dating back to the 1970s-80s (Vitikainen 2004). This appears to have resulted in a more recent European trend towards land consolidation, which is in contrast to the Scottish Government’s policy of increased devolution of land ownership to communities. Pasakarnis & Maliene (2009) explain:

Many Western European countries have long traditions of land consolidation. Twenty years ago, land consolidation in some Western European countries changed from an agricultural farm-focused instrument to an instrument that is likely to cover public demand in land and to solve land use conflicts […]; and from a landscape-destroying means to an environmentally friendly and sustainable land management instrument […]. A third impetus came from the EU regarding cohesion policy where land consolidation was investigated as an indispensable measure for an integrated rural development […].

Thomson et al (2014) note, “Denmark, France and the Netherlands all have administrative bodies with the power to forcibly reallocate land between different farms if this will improve viability”. Areas of particularly high landscape fragmentation in Europe are said to be “mostly found in the vicinity of large urban areas and along major transportation corridors”, and the European countries with the highest levels of fragmentation are Belgium, Luxembourg and the Netherlands, followed by Germany and France. Scandinavia, Ireland and Scotland are identified as areas of low fragmentation (European Environment Agency 2011).

Many of the above claims surrounding patterns of land ownership in Scotland are not, or cannot be, verified by official data. As Hindle et al (2014) note, “no definitive database of “estates” (or landowners) exists in Scotland”. This lack of data on land ownership appears to be largely replicated internationally. However, the following is a sample of land ownership data that appears to be available:

- **Andalucía (Spain):** “[…] 2% of the population [own] 55% of arable land.” (Burgen 2014)
- **Brazil:** “[…] 45% of agricultural land is held by around 1% of landowners […].” (World Health Organization 2015)
- **Colombia:** “An estimated 0.4% of the population owns 62% of the country’s best land.” (USAID 2010a)
- **Guatemala:** “The largest 2.5% of farms occupy nearly two thirds of all agricultural land […].” (Mauro & Mennella 2013)
- **India:** “3.5% of all farmers own nearly 38% of all agricultural land.” (USAID 2011)
- **Russia:** “By mid-2008 […] 196 large agroholdings controlled 11.5 million ha […]. Of these agroholdings, 32 had landholdings of over 100,000 ha. (Visser et al 2013)

\textsuperscript{1} Under a feudal tenure system, land is theoretically held under the Crown, which would grant land in return for military or other services. Grantees would in turn make sub-grants land for other services, and so on, creating a hierarchical land tenure structure. Those making grants, “superiors”, retained a legal interest in the land and the services performed by grantees (“vassals”) were gradually replaced by financial payments, or “feu duties”. 

There are problems with inferring direct comparisons between Scotland and other countries in terms of land ownership patterns. For example, the above selection of statistics includes different types of owners (from farmers, to legal entities, to owners in general), and different categories of land (from agricultural land measured in hectares, to landholdings counted discretely). In addition, the above data for Russia, for example, suggests that it has at least six times as many landholdings of over 100,000 ha compared to Scotland’s five (Wightman 2013); yet Russia’s land cover is vastly larger than Scotland’s.

Scottish Land and Estates (2013) note:

Much is made of the fact that some individuals in Scotland own large landholdings, but large landholdings are equally as common in other countries, especially in countries where the productive value of the land is low.

Some large estates exist in Italy and Spain as leftovers from the “latifundia” system, of Roman origin. This has been largely abolished by modern land reforms such as the Italian Government’s prioritisation of small farms in the mid-20th century, which broke up many latifundia in identified zones with the highest percentage of latifundia and absentee landlords (Zamagni 1993). Other large modern estates not descended from the Roman system exist too, and are also present in other countries across Europe. Otero & Bailey (2003) and Otero (2009) profile private estates of varying sizes across Europe, though most of those studied appear to be smaller than 20,000ha, whilst the ten largest private estates in Scotland are between 35,000ha and almost 98,000ha (Wightman 2013).

As noted earlier, larger landholdings appear to exist in Russia, but also in the Australian outback, where it has been reported in the media that “one of the world’s largest private landholdings”, of almost 11 million ha, is for sale (e.g. Clarke-Billings 2015). The context of size is again, crucial: the whole of Scotland covers less than 8 million ha. Yet to compare, this landholding covers around 1.4% of Australian territory, whilst what Wightman (2013) reports to be the largest landholding in Scotland – Buccleuch Estates, at 241,887 acres – covers 1.2% of Scotland.

LOCAL GOVERNMENT STRUCTURES AND THE ROLE OF COMMUNITIES

In its Report to the First Minister, the Commission on Local Government and The Scottish Parliament (1999) stated:

It could be said that Scotland today simply does not have a system of local government in the sense in which many other countries still do. The 32 [unitary authorities] now existing are, in effect, what in other countries are called county councils or provinces.

The structure of local government in Scotland (and the UK) continues to be unusually centralised when considered in a European context. Countries such as France, Norway and Switzerland have representation and governance at various regional levels (e.g. departments, municipalities, cantons, and counties). Moreno (2012) gives details of local government in all EU Member States and notes that the UK and France are the opposite “extremes” of the spectrum of local government in terms of the number, size and average population of local authorities.

There are around 1,200 community councils (“CCs”) operating in Scotland (Community Council Short-Life Working Group 2012), established under the Local Government (Scotland) Act 1973. In many European countries the municipality council is the lowest level of local government, (Local Government and Regeneration Committee 2014), whereas changes to the local government structure in the UK since the 1960s has meant that sub-county administrations such as municipal borough councils have been abolished.
Community Councils Scotland (2014) explains that community councils are voluntary organisations that can “complement the role of the local authority but are not part of government”, and have the right “to be consulted on planning applications” and “to comment on licensing applications”. Their role is to “advise, petition, influence and advocate numerous causes and cases of concern on behalf of the local community”. Community councils thus have no statutory role in land ownership or management decisions.

However, SRUC’s Rural Policy Centre (2015) notes some recent and current work to encourage local government to work with communities to reflect “local circumstances and priorities”. For example: supporting statutory guidance to The Local Government in Scotland Act 2003 (Part 2) led to a Community Planning Partnership to be established for each local authority; in 2012, COSLA issued a Statement of Ambition “which placed community planning at the core of public service reform”; and the Scottish Parliament recently passed the Community Empowerment (Scotland) Bill 2015.

The Commission on Strengthening Local Democracy (2014), set up by the Convention of Scottish Local Authorities (COSLA), states:

[...] over the decades Scotland has become perhaps one of the most centralised countries in Europe. [...] Quite simply, we are depriving communities of their enormous potential and if we don’t do something soon, inequalities in Scotland will start to overtake some third world countries.

Hoffman (2013) notes that the structure of local government may appear relevant to the community ownership of land:

It might be hypothesized that if Scottish communities had their own democratic local governments, with the power to regulate land use and levy taxes, there would be no need for community ownership. Such, however, is not the case.

However, before the Local Government etc. (Scotland) Act 1994 created the 32 local authorities in Scotland, the Scottish Office (1993) commented:

The Government’s plans for the reform of local government are at the heart of their strategy to pass decision-making downwards. The new single-tier, all-purpose local authorities will be better able to promote effectively the interests of the area they represent. They will be able to identify more with their area. And they will be more accountable to the people who live there. In such, they will reflect the diversity of Scotland as a whole and revive the dynamism of local democracy.

SPICe Briefing 07-31 Local Government – Subject Profile (Herbert 2007) provides further background on the structure of local government and Community Councils in Scotland.
THE 2003 ACT: ACCESS TO LAND, COMMUNITY AND CROFTING COMMUNITY RIGHT TO BUY

The 2003 Act has three parts, setting out access rights, the Community Right to Buy and the Crofting Community Right to Buy, in turn.

Access to Land

Part 1 of the 2003 Act established the public’s statutory rights of responsible access to most land and inland water for recreational, educational and commercial (e.g. river guiding) purposes. Specific duties and powers were given to Local Authorities and National Park Authorities in Scotland, whilst access users and land managers were made subject to specific responsibilities, all of which are set out in the Scottish Outdoor Access Code (Scottish Natural Heritage 2005).

Several other European countries have a long history of customary “freedom to roam”, only formalised in law in the second half of the twentieth century (e.g. Austria, Germany and Norway). In countries such as Austria, France, Poland and Turkey, access to public land is generally unrestricted, whilst private landowners reserve the right to temporarily or permanently restrict access to their land. Meanwhile, Finland, Sweden and Norway appear to have notably “far reaching” public rights to land, which Bauer et al (2004) describe as “possibly the widest in Europe”. In each of these countries, legislation ensures that the public is entitled to recreational access to land “no matter who owns the land”.

Community Right to Buy (CRtB)

Before the passage of the 2003 Act, Macmillan et al (2002) noted:

> Although common ownership persists in the mountainous regions of France, Italy, Norway and Switzerland, there is no strong tradition in Scotland.

“Common ownership” in this context appears to lie somewhere in between the notions of “Common Good Land” in Scotland on the one hand, and “community” ownership, as it is usually thought of in Scotland, on the other. Common Good Land is land given by the Crown to Royal burghs of Scotland in the Middle Ages, and whose title is today by local authorities for the common good of local people.² Like Common Good Land in Scotland, the notion of common land ownership in parts of Europe appears to have a long tradition, and unlike the notion of “community ownership” in the Scottish context, does not appear to require purchase by a community organisation or transfer of land title. However, unlike Common Good Land, local people own these pieces land in parts of Europe, whereas Common Good Land is owned by a local authority and merely managed in the interest of the local community.

Although community land ownership in Scotland predates the 2003 Act, its prevalence appears to have changed in the intervening years, such that although community ownership only accounts for 2% of land nationally, there is now substantial regional variation. For example, in 2013 the proportion of land in community ownership in the Outer Hebrides was almost 40%, with around 70% of the local population living on community-owned land (Highlands and Islands Enterprise 2013).

Part 2 of the 2003 Act gave communities the right to register interest in land, usually before it comes on to the market, and owners whose land is subject to a successful community interest

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² See SPICe Briefing 14-58 Community Empowerment (Scotland) Bill provides further detail on the history of Common Good Land in Scotland.
registration must inform Scottish Ministers and the relevant community body if they wish to sell the land. The community body then has a right of first refusal to buy the land.

The recently passed Community Empowerment (Scotland) Bill 2015 amends the 2003 Act to simplify the CRtB process, extend the CRtB to urban areas, and give community bodies the right to buy “abandoned or neglected” land without a willing seller under certain circumstances. The Scottish Land Fund has underpinned the CRtB by awarding grants to eligible communities in order to purchase land or land assets (Big Lottery Fund 2015), and its budget has been increased for the 2016-2020 period. Furthermore, in response to the LRRG’s final recommendations, in March 2015 the Scottish Government set up the 1 million acres short life working group, whose remit is to produce a strategy and action plan for reaching the Government’s target of 1 million acres of land in community ownership by 2020 (Scottish Government 2015a).

The CRtB appears to be unique in an international context, even within the UK. In England (and in future, Wales), voluntary communities and organisations have a right to bid for local council-approved Assets of Community Value, yet there is no obligation on the owner’s part to sell to the community bidder when their land comes on to the market (Sandford 2015).

**The Community Land Trust Movement in the USA and Beyond**

In the USA, there has been a growing Community Land Trust (CLT) movement since the 1960s, with over 200 CLTs now in operation throughout the country. A federal definition of “community land trust” was introduced by legislation in 1992, although Davis (2007) explores the continuing variation between CLTs, despite their shared features. Some municipal governments and their agencies in the USA, such as Chicago’s Department of Housing, have organised and sponsored city-wide CLTs, and there is also some federal funding available to CLTs (Weiss 2005).

CLTs’ primary aim is to provide affordable housing, with a wider aim of addressing local housing needs more generally. In contrast, community buyouts in Scotland under the 2003 Act have wider and more varied sustainable development goals. For example, Pillai (2005) describes the outcome of one of the earliest community buyouts in Scotland:

> The community of Eigg [which bought Eigg through the Isle of Eigg Heritage Trust in 1997] has made significant progress in its economic, social and environmental objectives. The community’s key achievements include […] establishment of a trading subsidiary company, establishment of Eigg Tearooms and Eigg Construction (which has renovated three houses), and the creation of 14 full- and part-time jobs. The Trust has initiated schemes for waste management, woodland regeneration and hydropower.

Furthermore, unlike the Community Right to Buy provisions in the 2003 Act, CLTs are afforded no land rights by US legislation. The community land trust movement also appears in Australia (e.g. Waratah CLT Association 2015), Belgium (e.g. Community Land Trust Brussels 2015), Canada (e.g. Denman Community Land Trust Association 2015), France (Community Land Trust France 2015) and the UK (e.g. Bristol Community Land Trust 2015).

**Restoring Community Ownership Rights in Kenya**

The Kenyan Government has introduced a number of Bills under its 2009 National Land Policy that relate to a process of land reform. One of the most recent is the Community Land Bill, which has yet to pass. It seeks to provide for “the recognition of community land rights, ownership and tenure systems” and “registration of community rights” (Government of Kenya 2014). Rather than providing a community right to buy, as such, Kenya’s Community Land Bill aims to provide for conversion of public land to community land, developing and registering
community bodies (i.e. assemblies and “Land Committees”), and other measures intended to formalise and safeguard the rights of communities over land. In some ways, these proposals also appear to bear some similarities to Part 3 of the 2003 Act (outlined below). Odote (2014) explains:

“The concept of community land was well established in Kenya and other African countries prior to the colonial era. Communities had their traditional methods of marking out their territory... They had their own leadership structures that administered land rights among their members for purposes of activities such as construction of shelter, farming, grazing, hunting and gathering.

[...]

Towards the end of the colonial period, the government initiated a policy of converting customary land tenure into individual private ownership either as individual property or as a group property (in the form of group ranches).

As such, the purpose of Kenya’s Community Land Bill is to restore customary land rights to communities, which on the face of it bears some resemblance to the restoration of traditional crofting land to crofter owner-occupiers in Scotland via various pieces of legislation. However, the Kenyan policy is based on the country’s colonial history, rather than to provide any right to purchase land. Thus, although there appear to be some general parallels with community land ownership and land reform in Scotland, the historical context and legislative specifics in the Kenyan case are very different.

**Crofting Community Right to Buy (CCRtB)**

Part 3 of the 2003 Act allows Crofting Community Bodies to purchase crofting land, eligible additional land and associated rights without the need to wait for the land to come on to the market. Exercising this right requires a simple majority in favour of the purchase from a ballot of the crofting community, and the consent of Scottish Ministers.

A croft is an agricultural holding that includes a share in an area of common grazing. This type of land tenure is “unique to parts of Scotland” (SPICe Briefing 10-01 Crofting Reform (Scotland) Bill, Edwards 2010), although there appear to be some similarities between Scottish crofting and certain archaic forms of agricultural tenure in the Nordic countries, such as the “husmann” system in Norway (Shuckmith & Rønningen 2011).

There is also a tradition of common grazing land in the mountainous regions of Europe, as well as in Mediterranean and Eastern European countries, and countries (such as Scotland) with areas of extensive grassland (Eurostat 2011). The following graph shows common land area recorded in 2010 as a percentage of utilised agricultural area (UAA), where data was available.
The uniqueness of crofting means that the CCRtB is correspondingly unique. Compulsory purchase is used in many countries across all continents (as explored later), though international examples appear to be entirely unrelated to the practice of crofting.

USE AND MANAGEMENT PRACTICES

Land use and management practices in Scotland are also unusual in some respects when compared to those of its European neighbours. For example, of 26 selected countries, Scotland ranked 23rd for rented land as a share of UAA, ahead only of Poland, Ireland and Romania (Thomson et al 2014). The countries with the highest proportion of rented land were Slovakia, the Czech Republic, Bulgaria and France. Data collected since the 1970s shows that rented land share has been increasing in Canada, Denmark, France, Ireland and Norway; meanwhile it has been decreasing in Belgium, the Netherlands, England and Scotland (Thomson et al 2014). The reasons for the increase in rented land in Norway are explored as a case study below, under Part 10: Agricultural Holdings.

Forest and other wooded land covers 41% of the 27 EU Member States (Eurostat 2013), whilst “Scotland has a very low percentage of woodland cover compared with other countries in Europe” (Scottish National Heritage 2015), at just 17.8% of the total land area in 2010 (Forestry Commission 2011). NFU Scotland (2015) states that 75% of Scotland’s land is used for agricultural production and that around 10% of all Scottish jobs are dependent on agriculture. By comparison, the UK total of agricultural land as a share of total land area is 71%. In European terms, only Moldova appears to have a similar percentage of agricultural land, followed by Ireland, Greece and Denmark with 60-65% (World Bank 2015).

Wildlife Estates Scotland (2010) note that:

Scottland differs from other European countries in that wildlife/sporting objectives have been second only to farming as determinants of land use over very large areas of the countryside for many generations. Shooting, stalking and fishing in Scotland are not by-products of management for other purposes; they are an important primary land use [...] .

Research by Higgins et al (2002) showed that Scotland had the largest concentration of land dedicated to game sport in Western Europe. However, since land used for this purpose is often also used for other activities, it can be difficult to determine precisely how much land is actually used for game sport. More recent data on how Scotland compares to Europe in this regard does not appear to be readily available.
Scotland is one of very few European countries to have largely voluntary measures for wild deer management. Most other European countries, excluding Sweden and the rest of the UK, at least insist on state approval for local measures, with several having their targets, cull quotas and management plans all imposed by the state. These are explored in more detail below under Part 8: Deer.

THE LAND REFORM (SCOTLAND) BILL (2015) [AS INTRODUCED]

The following section provides a very brief outline of the Land Reform (Scotland) Bill [as introduced], and the process that led up to its introduction to the Scottish Parliament on 22 June 2015.

THE LAND REFORM REVIEW GROUP’S RECOMMENDATIONS

Since the establishment of the independent Land Reform Review Group (LRRG) in 2012 by the Scottish Government, land reform has moved up the policy agenda in Scotland. The LRRG was appointed to (Scottish Government 2014b):

- Enable more people in rural and urban Scotland to have a stake in the ownership, governance, management and use of land, which will lead to a greater diversity of land ownership, and ownership types, in Scotland;
- Assist with the acquisition and management of land (and also land assets) by communities, to make stronger, more resilient, and independent communities which have an even greater stake in their development;
- Generate, support, promote, and deliver new relationships between land, people, economy and environment in Scotland.

The LRRG’s final report (2014) contained 62 recommendations on a wide range of issues relating to land. Following this, the Scottish Government published A Consultation on the Future of Land Reform in Scotland (the Consultation) (2014c), to which there were 1,269 responses from a variety of stakeholders. On the basis of this, the Land Reform (Scotland) Bill 2015 (the Bill) was introduced on 22 June 2015.

KEY AIMS OF THE BILL

The Bill’s Policy Memorandum outlines three key aims of the provisions in the Bill:

- 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.

With a view to addressing the above key aims, the Bill sets out 10 proposals, which the Bill’s Policy Memorandum sets out under four headings: Land Governance (Parts 1 and 2); Transparency of Landownership in Scotland (Part 3); Furthering the Sustainable Development of Land (Parts 4 and 5); and Rights and Responsibilities over Land (Parts 6 to 10). The remainder of this briefing follows this structure, but does not address or compare Part 6: Entry in
INTERNATIONAL APPROACHES

In what follows, each of the four main issues above and some of the Bill’s proposed measures for addressing them are set out in more detail and compared with international case studies.

LAND GOVERNANCE

Although land reform has, to varying extents, been on the policy agenda since the formation of the Scottish Parliament in 1999, the Bill’s Policy Memorandum notes that “this has in some respects been carried out in a piecemeal fashion over time”. The first main focus of the Bill is to demonstrate that the Scottish Government remains committed to land reform as a long-term agenda.

Part 1: Land Rights and Responsibilities Statement

The LRRG (2014) recommended that the Scottish Government develop a national land policy, noting:

The widespread occurrence of national land policies in other countries also means that there is considerable international experience in developing and putting in place national land policies, with the associated arrangements to monitor their effectiveness.

In response, the Scottish Government consulted on a draft land rights and responsibilities statement (Scottish Government 2014c), which the Policy Memorandum explains will “set [the Scottish Government’s] objectives for land reform in Scotland, which will inform future land reform in a consistent and holistic manner”. The Bill proposes placing a duty on Scottish Ministers to produce a statement of land rights and responsibilities and review it (and any subsequent statement) every five years. The statement appears to be intended to constitute an overarching, long-term national land policy statement for Scotland.

Examples of countries around the world with an explicit national land policy include:

- Jamaica (National Land Policy of Jamaica 1997)
- Kenya (National Land Policy 2009)
- Malawi (Malawi National Land Policy 2002)
- Russia (The Land Code of the Russian Federation 2001)
- Rwanda (National Land Policy 2004)
- Uganda (The Uganda National Land Policy 2013)
- USA (Federal Land Policy and Management Act 1976)

Countries currently drafting a national land policy include India (Government of India 2013) and Myanmar (Government of the Republic of the Union of Myanmar 2014).

A number of former Soviet countries in Eastern Europe have also implemented broad-ranging land reform laws in recent decades (Hartvigsen 2013). Several of these and the above countries’ measures are or were part of a transition to independence, towards a democratic
political system, or out of a conflict situation. As such, the background and reasons for a national land policy in these international examples are quite distinct from the situation in Scotland.

Closer to home, most Western European countries appear to have no explicit, overarching national land policy; rather, statements of land rights and responsibilities are often included in their constitution. For example, the German “Basic Law” mentions ownership obligations and transfers of land into public ownership (Federal Republic of Germany 1949), whilst the Constitution of Spain (1978) mentions the regulation of land use in accordance with the general interest, as well as the community benefits of town-planning policy. These brief constitutional statements are usually backed up by specific land laws without the kind of overarching policy statement proposed in the Bill.

Land Rights and Responsibilities in an International Context

Rights and responsibilities, particularly Scotland’s commitment to various international human rights standards, have become a significant part of the land reform debate both in Scotland and internationally. MacInnes (2015) states:

[…] the international context tells us that human rights could play an important and progressive role in support of a number of proposals for land reform being considered by the Scottish Government.

Meanwhile, the EU Task Force on Land Tenure (2004) notes:

While access to land is not recognised as a human right as such, it may be considered as a means to achieve fundamental human rights, as defined by international conventions.

Article 1 Protocol 1 (A1P1) of the European Convention on Human Rights states that every natural or legal person is entitled to the peaceful enjoyment of their possessions, except where a State deems it necessary to control the use of property for matters of public interest. Commonly referred to as “the right to property”, it has been suggested that A1P1 could hinder land reform in Scotland on the grounds that owners’ right to peaceful enjoyment of their land could be breached by certain proposals. In written evidence to the Agricultural Holdings Legislation Review, Scottish Land and Estates (2015) stated that “if the Scottish Government were to bring forward legislation that interfered with landlords’ property rights, compensation could be required”. They also stated that landowners “may seek the protections of Article 14 [of ECHR] against discriminatory treatment”.

Other commentators have noted that using human rights legislation including, but not limited to, ECHR could further land reform in Scotland. Shields (2015) notes that A1P1 is not an absolute right for landowners, but is explicitly a qualified right. Professor Alan Miller, Chair of the Scottish Human Rights Commission (SHRC), explored the issue (Rural Affairs, Climate Change and Environment (RACCE) Committee 2014):

Therefore, what human rights provides is a broader impetus for land reform, rather than an inhibition, as is suggested in the way that the issue is currently couched – that is, in questions about whether a landowner has a red card that can be used with reference to the ECHR to stifle discussion about different use of the land.

International examples of a human rights based approach to land ownership and management are often contextually very different to the case in Scotland. The following table gives some examples of these diverse approaches.
Table 2 – A summary of human rights based approaches to land reform

<table>
<thead>
<tr>
<th>Emphasis</th>
<th>Examples</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Indigenous Communities</strong></td>
<td><strong>Australia</strong> introduced the Aboriginal Land Rights (Northern Territory) Act in 1976, which allows for land to be transferred to Aboriginal Land Trusts for the benefit of traditional Aboriginal owners (Commonwealth of Australia 2015).</td>
</tr>
<tr>
<td><strong>Post-conflict Scenarios</strong></td>
<td><strong>Bosnia and Herzegovina</strong>, partly aided by incentives from the international community, employed various restitution practices to resettle people displaced by the 1992-95 conflict (Williams 2013).</td>
</tr>
<tr>
<td><strong>Women</strong></td>
<td>Drafted policy in <strong>India</strong> states that, alongside measures to assign land to the landless poor and nomads, women’s groups should be able to purchase land for cultivation, and that new land assignments (of different types) should either be in a woman’s name or in the joint names of a man and a woman (Government of India 2013).</td>
</tr>
</tbody>
</table>

Part 2: Scottish Land Commission, Land Commissioners and Tenant Farming Commissioner

The Bill proposes that a Scottish Land Commission is set up and must prepare a strategic plan and programme of work to be approved by Scottish Ministers. The functions of proposed Land Commissioners include: reviewing the impact and effectiveness of, and recommending changes to, law or policy in relation to land; gathering evidence, conducting research and preparing reports; and providing information and guidance.

The following table provides a simple comparison of a number of examples of independent commissions performing some of the proposed functions of the Scottish Land Commission, though often also performing reform-specific functions:

Table 3 – A comparison of contemporary land commissions

<table>
<thead>
<tr>
<th>Function</th>
<th>Brazil</th>
<th>British Columbia</th>
<th>Kenya</th>
<th>Namibia</th>
<th>Scotland</th>
<th>Singapore</th>
</tr>
</thead>
<tbody>
<tr>
<td>Administering land</td>
<td>x</td>
<td>x</td>
<td></td>
<td>x</td>
<td></td>
<td>x</td>
</tr>
<tr>
<td>Compliance and enforcement</td>
<td></td>
<td></td>
<td>x</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Conducting research</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td></td>
<td></td>
<td>x</td>
</tr>
<tr>
<td>Devolution of ownership</td>
<td>x</td>
<td>x</td>
<td></td>
<td></td>
<td>x</td>
<td></td>
</tr>
<tr>
<td>Land management on behalf of Government</td>
<td>x</td>
<td></td>
<td>x</td>
<td>x</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Liaising with stakeholders</td>
<td>x</td>
<td>x</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Policy development</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td>x</td>
<td></td>
</tr>
<tr>
<td>Promoting land reform</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Providing information and guidance</td>
<td>x</td>
<td>x</td>
<td></td>
<td>x</td>
<td>x</td>
<td></td>
</tr>
</tbody>
</table>

The following gives a little more detail on the examples contained in the table above.
Agricultural Land Commission of British Columbia

In Canada, the Agricultural Land Commission (ALC) of British Columbia is an independent body that administers the province’s Agricultural Land Reserve (ALR) – a collection of private and public agricultural land considered in need of protection, amounting to around 5% of British Columbia’s land area (Government of British Columbia 2014). The ALC mainly considers land use applications, although states (ALC 2014):

In addition, the ALC conducts other activities including: policy development, local government land use planning and bylaw reviews, regulation interpretation, ALR boundary reviews and compliance and enforcement activities. The ALC also participates in other government land use initiatives and liaises with stakeholder groups.

The ALC collaborates with local governments to “accommodate, support and encourage farming on ALR lands”, and ensures that community plans for relevant land are consistent with policy, by requiring that they are forwarded for review to the ALC. In 2014, the ALC’s focus was broadened from mainly farming interests (which still take precedence) to also consider economic, cultural and social values, and regional and community planning objectives (Province of British Columbia 2014). Its annual budget has been increased from $1.9 million in 2012-13 to $3.5 million in 2014-15 (Government of British Columbia 2014).

London Land Commission

Closer to home, another non-national body is the recently announced London Land Commission, to be part of the Greater London Authority (2015). Its remit is narrow: encouraging the development of brownfield sites and “surplus” public sector land and property in order to meet the previous UK Government’s target of over 400,000 new homes in the capital (HM Treasury & Department for Communities and Local Government 2015), with an annual budget of £1 million. The London Chamber of Commerce and Industry (2015) has warned that “the scale of the lack of information held by London’s councils […] could potentially cripple the London Land Commission” and recommended that the present Government honours the annual funding commitment. The UK Government announced plans in its Summer Budget (HM Treasury 2015) to establish a Greater Manchester Land Commission, as part of an agreement with the region’s 10 councils to devolve further powers to the city.

Singapore Land Authority

The Singapore Land Authority was the result of four Government agencies responsible for land administration merging in 2001. The agency is a statutory board under the Government’s Ministry of Law, responsible for overseeing Singapore’s land registration and survey systems, and managing the sale and rental of state land (Singapore Land Authority 2015).

National Land Commissions in Less Economically Developed Countries

The majority of the land commissions that exist internationally are situated in less economically developed countries. Although the functions of these bodies in some countries appear similar to some of those proposed by the Bill, it is essential to note that there are current and historical political tensions in the countries studied here, as well as other sensitivities, and these significant differences should be considered alongside any apparent similarities in terms of land commissions.

Brazil’s National Institute for Colonisation and Agrarian Reform (INCRA) is a federal agency created in 1970, currently operating 30 regional offices. Its main stated purpose is the “democratisation of access to land… contributing to sustainable development” (INCRA 2015). It conducts a wide range of functions, from administering land, to managing property certification,
to partnering with a variety of institutions to deliver a national education program for young people and adults, about agrarian reform.

As mentioned, a number of African countries have adopted a national land policy in recent years. Many of those countries have set up accompanying land commissions. A reasonable amount of detail is available on the current situation in Kenya, providing a suitable example of one of these countries.

Kenya set up a National Land Commission (NLC) in 2013, whose main functions and powers include (National Land Commission 2015):

- Managing public lands on behalf of national and local government.
- Recommending national land policy and otherwise advising the national government.
- Conducting research related to land use and management.
- Ensuring that public lands are ‘sustainably managed for their intended purpose and for future generations’.

The NLC’s National Strategic Plan 2013-2018 (2013) is intended to support the implementation of its National Land Policy. This plan addresses five key areas, including improved land registration and the devolution of land ownership and management to local communities in certain areas.

It is relatively early to assess the success of these measures in Kenya, although the Land Development and Governance Institute (2014) has recommended that legal inconsistencies surrounding the remit of the NLC be resolved, that many of its functions should be decentralised to the county level, and that it should conduct civic education campaigns to clarify the separate roles of the NLC and the Kenyan Government’s Ministry of Lands. The NLC’s progress report (2014) notes that citizens’ lack of awareness is “giving way to manipulation by “land brokers”.” The report also identifies lack of funds as one of the major challenges faced by the NLC.

Namibia established a Land Reform Advisory Commission in 1995, whose key aims include regulating foreign acquisition of land and providing for state acquisition of agricultural land. The Namibian Government has a right of first refusal in all agricultural land sales. The context of Government intervention in Namibia is specifically the redistribution of land from white owners to black owners in the wake of the country’s independence from South Africa in 1990. The Government also issues land rights certificates in certain regions to families living on, and farming, communal areas where customary land rights have been given by chiefs (LEAD Project 2005). As such, the Namibian cultural context is very different to that of Scotland.

Similar commissions exist in Ghana, Liberia, Senegal, South Africa, South Sudan and Uganda. Rwanda, in particular, has National, Provincial and District Land Commissions (Republic of Rwanda 2013), with a total land area of a third of Scotland’s.

TRANSPARENCY OF LANDOWNERSHIP IN SCOTLAND

The transparency of landownership in Scotland was identified in the consultation as a key policy area, to be achieved by “making public sector information on land, its value and ownership readily available to support open and transparent decision making by both the private and public sectors” (Scottish Government 2014c). This theme is taken forward in the Bill, although with different proposals than those upon which the Scottish Government consulted. The consultation proposed limiting the legal entities that can own land in Scotland in future to those formed in accordance with the law of an EU Member State. The Bill’s Policy Memorandum states:
The Scottish Government asked for views on this recommendation of the LRRG, while recognising that further consideration was required to determine whether this was the best way to achieve the LRRG’s aims of greater transparency and accountability, and that there were a number of legal issues relating to EU law and rights under the ECHR that required further consideration.

Although the Policy Memorandum also notes that 82% of Consultation responses favoured the LRRG’s recommendation to limit the legal entities that can own land in Scotland, the proposal does not appear in the Bill as introduced.

**Box 2 – Land Governance Assessment Framework**

The World Bank has created a Land Governance Assessment Framework (LGAF) (2011), a set of voluntary guidelines which the Scottish Affairs Committee recommended that the Scottish and UK Governments considered using “to assess whether Scotland’s system of land governance is fit for purpose” (2014). So far, the LGAF has been piloted and implemented in African, Eastern European and Central Asian countries.

Panel 6 of the World Bank’s score card template for the LGAF is “Public Provision of Land Information: Registry and Cadastre”, and contains the following indicators:

- Mechanisms for Recognition of Rights.
- Completeness of the Land Registry.
- Reliability of Registry Information.
- Cost-effectiveness and Sustainability of Land Administration Services.
- Fees are Determined Transparantly.

**Part 3: Information about Control of Land Etc.**

The Bill proposes two key measures to improve the transparency of land ownership in Scotland by improving access to information on it: (i) giving a right of access to information on the controlling interests of a landholding where it can be shown that this information is needed; and (ii) providing the Keeper of the Records of Scotland with the power to request that this information is disclosed by applicants.

*Right of Access to Information on Persons in Control of Land*

Although there do not appear to be similar provisions specific to land ownership in other countries, there has recently been international discussion of registers of beneficial ownership of companies and trusts. The Scottish Affairs Committee (2015) commented that:

We welcome the introduction of a publicly available register of people with significant control of a company [announced by the Prime Minister in October 2013] as the first step in unpicking complex ownership arrangements used by some individuals and companies to avoid their tax obligations. We are, however, disappointed that the Government has stopped short of ensuring public access to information on beneficial ownership of land held by trusts.
The incoming Government must ensure that information on beneficial ownership through trusts is made publicly available.

The European Parliament (2015) reports that:

The ultimate owners of companies will have to be listed in central registers in EU countries, open both to the authorities and to people with a “legitimate interest”, such as journalists, under a Parliament/Council deal endorsed by the Economic and Monetary Affairs and Civil Liberties Committees [in January 2015].

[…] To access a register, a person will in any event have to demonstrate a “legitimate interest” in suspected money laundering, terrorist financing and in “predicate” offences that may help to finance them, such as corruption, tax crimes and fraud.

Outside of the EU, in 2014 Ukraine legislated on a compulsory register of the beneficial owners of legal owners (Dentons 2014). In 2008 an American bill legislating on making such registers compulsorily available to States for law enforcement purposes (United States Congress 2008) was introduced, and has been introduced in every subsequent session of Congress. To date, this bill has not been passed. Denmark has committed to creating a public register of beneficial ownership of all Danish companies (Gascoigne 2014).

**Power of Keeper to Request Information Relating to Proprietors of Land**

The Bill proposes giving Scottish Ministers a power to make regulation allowing the Keeper to request additional information from applicants and include it in the Land Register. The information might include information about individuals with a controlling interest in the legal owners of land, for example where the owner is a company, trust or similar legal entity.

There do not appear to be similar measures in place abroad.

**Information on Land Ownership in Scotland**

Although the specific measures in the Bill that seek to address the transparency of land ownership do not appear to have relevant international counterparts, the underlying aim of transparency can be compared with how other countries approach the information held on land more generally.

Currently, data on land in Scotland is duplicated across multiple resources in the public sector and in some cases access to that data incurs a cost to the user. The LRRG (2014) set the situation in Scotland within an international context:

> An efficient regime for recording titles to land is a key aspect of a modern effective system of land ownership. …Scotland might now be regarded unusual in a European context in not having a comprehensive map based system recording who owns the land.

The Group further reports that, despite the Scottish Government’s commitment (2014d) to register all public land within five years and complete the land register within ten years:

> By 2012, over 30 years since the introduction of the Land Register [in Scotland], 56% of Scotland’s estimated 2.2 million title units were recorded in the Register… Registers of Scotland estimate that at the current rate, it will be a further 40 years before 80% of titles are on the register.
Ralphs & Wyatt (2003) note the considerable cost and implementation time needed for European examples of modern national land information services:

The process [of implementing a national land information service (NLIS)] cannot be hurried – Switzerland has proposed to upgrade its cadastral system, which some already regard as the best in the world, and it is estimated that this process will take thirty years and around 2 billion ECUs. The Swedish Land Data Bank took over ten years to complete.

Meanwhile, in several European countries, cadastres have been created that incorporate the ownership information contained in land registers, which can lead to the duplication of land information. This issue and others are explored below with two European examples.

The Spanish Cadastre

The Spanish Cadastre is a comprehensive database covering 95% of territory. It contains physical information, legal information on the owner’s identification, and economic information on the land and building values, as well as valuation criteria. Registration of a property on the Cadastre is compulsory, whereas registration on the Land Register is voluntary.

In 2003, Spain created its Cadastral Virtual Office (CVO), which provides online services free to registered users, including: single and multiple information queries; certificates of cadastral data; information exchanges between public administrative bodies and other organisations; and web map services. The information exchanges that the CVO allows is a way of keeping the cadastre up to date and required the creation of an interface with the systems of external organisations. The main steps for implementing Spain’s CVO project were the consolidation of existing databases, the introduction and integration of the required technology, and some legislative reforms to support access and maintain compliance with data protection law (Fernandez 2006).

A noted obstacle for the CVO has been to allow for user profiles with different competencies (public bodies, private companies or individuals), in accordance with Spanish data protection law (Fernandez 2006). The Spanish Government has also acknowledged that the information in its cadastre can contradict information (e.g. regarding boundaries) in its land register. In response, the Spanish Government drafted legislation in 2014 with a view to ‘facilitating the secure exchange of data’ between its land register and cadastre, which reportedly will save the State €1.8 million annually (Council of Ministers 2014).

Box 3 – Land Information: Terminology

There are several relevant definitions relating to land registration:

- “Land Register”: Usually only contains information about land rights on the basis of deeds or titles.
- “Cadastre”: Usually a much more comprehensive data bank, based on maps of land parcels.
- “National Land Information Services (NLIS)”: General term, usually consisting of an integrated land register and cadastre (sometimes simply called a “cadastre”). Often based on a digital data format.
The Swiss Cadastral System

The basic principles of the Swiss cadastral system are: ‘no ownership without registration’, ‘no registration without surveying’, and ‘no surveying without boundary definition’ (Steudler 2014). Since 1993 the system has had a digital format with two main components: land registry and official surveying. The principles behind this reform included: avoidance of duplication; increased data accuracy; and increased flexibility for data acquisition (Kaufmann et al 2002). The main official surveying tasks at the municipal and regional levels are with the private sector, overseen by the public sector at the cantonal and Federal levels, in part by legislation regarding their registration responsibilities. The Swiss cadastral system has been subject to ongoing reform (Federal Directorate for Cadastral Surveying 2011).

Similarly complete and integrated land information systems operate in Austria, Germany, Lithuania, the Netherlands and other European countries, as well as outside of Europe (e.g. Canada, USA, Mexico and South Africa) (International Federation of Surveyors (FIG) 2015). There is a current emphasis on improving these systems in developing countries, supported by NGOs such as FIG and other institutions such as the World Bank. Brymer (2015) notes in written Stage 1 evidence that Norway has had a similar experience of digitising its land information, and suggests that external input from a company such as Amitiba, which worked on the Norwegian NLIS, “would lead to a quantum leap forward” as part of a collaborative approach.

Other International Measures Addressing Transparency and Accountability of Ownership

Although Treaty provisions in the EU limit the restrictions a Member State can place on foreign land ownership, a handful of Member States either currently impose restrictions or have done so previously. For example, Denmark, Finland and Malta are subject to exceptions to the EU Treaty governing foreign investment in property. In Denmark there are restrictions on property purchase that centre on residency (Jørgensen & Lentz 2015). Compliance is monitored by the Danish Land Register and enforcement measures include the power to order an owner to dispose of their property within a set time limit of between six months and one year. Violation of this order is punishable by a fine.

Several states in the USA also restrict foreign ownership of agricultural land (National Association of Realtors 2006), as do some Canadian provinces (e.g. Saskatchewan Farm Land Security Board 2013), Australia (Foreign Investment Review Board 2015), Russia (Madalo 2002), and several African and Asian countries.

FURTHERING THE SUSTAINABLE DEVELOPMENT OF LAND

Sustainable development is a key theme in the Scottish Government's approach to land reform and “is integral to the Scottish Government’s overall purpose” (Scottish Government 2015b). The Government’s Land Use Strategy (2011) contains ten “Principles for Sustainable Land Use”. These state that land use decisions should be informed by “the opportunities and threats brought about by the changing climate”, “an understanding of the functioning of ecosystems”, and the suitability of some land to a primary use. Furthermore, the Principles include: encouraging land use that delivers multiple benefits; regulation that both protects public interest and places as light a burden on businesses as possible; giving people the chance to contribute to decisions about land use; and recognising that “all Scotland’s landscapes are important to our sense of identity and to our individual and social wellbeing”. The Scottish Government has published its fourth Progress Statement (2015c) on how the Strategy is being delivered.
Sustainable development was first defined as “development that meets the needs of the present without compromising the ability of future generations to meet their own needs” (Brundtland Commission 1987). It is usually thought to have three overlapping dimensions: society, the economy and the environment. In 2006 the Scottish Government published an international literature review on sustainable development that differentiates between the “Venn diagram” explanation of sustainable development as the intersection of all three of these outcomes, and a “Russian doll” concept, according to which “all economic activity should be bent towards social progress and… this must be achieved within environmental limits.” (Scottish Government 2006).

Five principles of sustainable development were developed with support from the Sustainable Development Commission and agreed by the UK Government (including Northern Ireland), the Welsh Assembly Government and the then Scottish Executive. These remain shared principles among all the UK and devolved administrations. The two overarching principles are “Living within environmental limits” and “Ensuring a strong, healthy and just society”, with three further principles feeding into those two: “Achieving a sustainable economy”; “Using sound science responsibly” (to inform public policy); and “Promoting good governance” (e.g. open, democratic and participatory governance systems). The UN’s Sustainable Development Goals include several goals connected to land, which countries will be encouraged to address within their own context once the Goals are adopted in September 2015 (United Nations 2015).

In the Court of Session case of Pairc Crofters Limited and Pairc Renewables Limited v the Scottish Ministers, 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” (Scottish Courts and Tribunals 2012). 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 CCRtB.

The Bill’s Policy Memorandum derives its definition of sustainable development from the LRPG (1999), as “development that is planned with appropriate regard for its longer term consequences […] and] requires an integrated approached to social, economic and environmental outcomes”.

Part 4: Engaging Communities in Decisions Relating to Land

The Consultation (2014) stated that “in some instances the scale or pattern of land ownership, and the decisions of landowners can be a barrier to sustainable development in an area”. The provision outlined by the Scottish Government in the consultation for removing these barriers was considerably different to the measure included in the Bill as introduced. The initial proposal was to place a specific duty on charitable trustees to engage with the local community when making decisions related to land.

The Bill as introduced instead proposes placing a duty on Scottish Ministers to issue guidance for landowners and communities on engagement about land decisions. The Policy Memorandum notes that the Office of the Scottish Charities Regulator may take this guidance into consideration in its regulatory and oversight operations, meaning “further consequences” of this proposal for landowners with charitable status.

There does not appear to be a comparable international example of such Government-issued guidance on engagement between landowners and communities. However, a handbook on
Community engagement has been issued by the South Sudan Law Society (Deng 2012), which states:

[...] companies are legally obligated to negotiate investment agreements directly with landowning communities when seeking to invest on community land. Community consent is often a de facto requirement on public land as well.

However, as with Scotland, there does not appear to be either a legal or a de facto requirement on private landowners in South Sudan to engage with communities. This body of guidance was not commissioned or endorsed by the South Sudanese Government and so is not analogous to the Bill’s proposal.

Part 5: Right to Buy Land to Further Sustainable Development

The Bill further proposes giving Ministers the powers to approve the sale of land on behalf of communities in order to further sustainable development. In contrast to the existing CRtB, under this proposal, communities could request that a third party (e.g. a local housing association) – rather than themselves – acquires the land in question. These powers of intervention are intended as a last resort for Ministers where other measures have failed to deliver sustainable development for communities. The Bill’s Policy Memorandum notes:

For all landowners, including private landowners, a lack of consideration of the guidance [from Scottish Ministers, proposed in Part 4] and lack of engagement could be a factor that Scottish Ministers would consider as part of the evidence provided by a community body to support an application for the right to buy land to further sustainable development as it may assist in evidencing why the transfer of the land to the community body, or nominated third party, is the only way of achieving the desired benefit to the community.

Intervention in Land Sales Internationally

Most examples of State intervention in land sales involve the State’s compulsory purchase of land in the public interest, often for infrastructure or housing projects but not explicitly in favour of “sustainable development”. However, the following are two examples in which powers of intervention have been given by the State to private companies to exercise with regards to land sales, subject to State approval. It should be noted that neither example is strictly comparable to the Bill’s proposal. As mentioned, the existing CRtB introduced by the 2003 Act appears to be internationally unique, and its proposed extension under the Bill appears to be similarly unique.

Les SAFERs’ Pre-emption Rights in France

Companies of land and rural settlement planning (Les SAFERs) are private, non-profit organisations in France, set up by the French Government (1960) to:

…acquire land or agriculture or forestry freely offered for sale by their owners, as well as wastelands, to be reassigned after future development… They can conduct operations to facilitate the reorientation of land, buildings or farms to non-agricultural uses to promote rural development and the protection of nature and the environment.

A SAFER has a pre-emptive right to buy agricultural land, subject to Government approval, although sellers are free to reject the SAFER’s offer. The pre-emption right must be exercised in accordance with the Rural Code (French Government 1992), whose main objectives include the sustainability of farming and maintenance of farmers. In non-pre-emption cases, SAFERs can also sell land for non-agricultural uses and national infrastructure projects. After purchase, SAFERs are required to sell acquired land within five years. The use of pre-emption in sales of land notified to SAFERs is uncommon, occurring in less than 1% of sales (Fédération nationale des Safer 2012).
Thomson et al (2014) note that “there is a potential conflict of interest between seeking to boost budgets and serving individual local farmers’ needs”. In cases where a buyer and seller of a residential property have already settled a transaction, but a SAFER offers to act as an intermediary, the SAFER can collect commission even though no action has been taken in the interest of sustaining the agricultural sector. The French Court of Auditors (2014) criticised this practice, noting it earned SAFERs €42 million in 2012 alone – a fee ‘borne essentially by the local authorities’. Moreover, the Fondation iFrap think tank has raised concerns that this practice may be illegal, but notes that careful legal analysis has yet to be done (François 2015). The SAFERs were also criticised for a lack of transparency with regards their activities and the Court of Auditors recommended stronger State controls over, and increased monitoring of, the SAFERs’ long term strategies.

The European trend towards land consolidation mentioned above applies in France, which appears to be in contrast to some of the SAFERs’ objectives. For example, the utilised agricultural area in France decreased by 3.25% between 2000 and 2010, whilst the number of farm operations decreased by 26.31% (National Institute of Statistics and Economic Studies 2013).

Land Transfer Law and the BVVG in Germany

In Germany, legislation allows for intervention by independent, regional Expropriation Authorities in cases of land transfer and lease where it is expected that the distribution of land ownership and use will hamper sustainable development of agricultural land (Deutsch 2005 and Scottish Law Commission 2014). Despite this legislation, Herre (2013) notes that since the reunification of Germany there has been a trend towards increased concentration of private land ownership: the number of farms almost halved between 1991 and 2012 and the number of farms of 500-1,000 ha is growing. Herre attributes this to the actions of the state-owned German Land Use and Management Company Ltd (BVVG), which has been responsible for selling and leasing former East German Trust land since 1992.

Herre (2013) reports that in 2007, the German Government began advising the BVVG to limit lease renewals in favour of land sales to private investors. Forstner et al (2011) note that the result of this policy shift in Germany been the accelerated increase of land prices, stating that the “actual price level is seen by farmers, consultants and other experts as (far) too high” (translated by Herre 2013).

Scottish Land and Estates (2013) views land ownership trends in Germany positively. It cites Germany as a European example of previous land reform policies “which result in sub-division of land parcels and disparate ownership” being reversed, explaining that these earlier policies “can result in a pattern of ownership and land use which is unsustainable from an economic, social and environmental point of view”.

In some Canadian provinces, “Crown [Estate] tenants are actively encouraged to buy farmland through discounted (by up to 10%) sale prices and phased payment arrangements”, and some (including Saskatchewan) use State pre-emption rights to buy land for reallocation to new entrants to farming, or farms in need of more land (Thomson et al 2014).

RIGHTS AND RESPONSIBILITIES OVER LAND

The Bill contains five parts under the heading of rights and responsibilities over land. This briefing will only consider two of them in an international context: the proposals relating to deer and agricultural holdings.
Part 8: Deer

The Bill seeks to amend the Deer (Scotland) Act 1996 in three ways:

- A regulation making power for Scottish Ministers to confer new functions on deer panels, specifically to encourage community involvement in deer management.

- Additional powers for the deer authority, Scottish Natural Heritage (SNH), in particular a power for SNH to require owners/occupiers to develop, agree and implement a deer management plan.

- An increase in the maximum fine for failing to comply with a deer control scheme imposed under Section 8 of the Deer (Scotland) Act 1996, from £2,500 to £40,000.

The Role of SNH in Deer Management

The LRRG (2014) state that:

…there is also now a need to manage deer numbers across Scotland to control their current and potential negative impacts on public interests including, for example, environmental damage to habitats, economic damage to crops and the social costs which can result from deer-vehicle collisions.

Deer management consists primarily of fencing and culling activities. Fencing helps to control deer densities and movements, but also to avoid vehicle collisions by preventing deer’s access to roads. In the absence of natural predators, deer numbers are limited by the carrying capacity of their habitat, and, in the absence of culling by man, large numbers of deer would die in periods of severe winter weather. Culling is therefore used mainly to avoid large mortalities in winter for reasons of public and moral acceptability, and to reduce overgrazing in order to meet land management objectives related to biodiversity, agriculture and tourism. As well as being a necessary management practice, culling of (mainly) male deer is also carried out as a sport by paying guests. A more detailed overview of wild deer and their management in Scotland is available in SPICe Briefing 13-74 Wild Deer in Scotland (Edwards and Kenyon 2013).

Since 2010, SNH has been the public deer authority in Scotland, when it took on the functions of the Deer Commission Scotland. Sections 7 and 8 of the Deer (Scotland) Act 1996 give SNH legislative power to secure voluntary “control agreements” (Section 7) and impose compulsory “control schemes” on landowners whose voluntary approach to deer management is deemed by SNH to be unsatisfactory (Section 8). Under Section 8, SNH is entitled to take measures, including culling, as it deems necessary where damage is occurring, or is likely to occur. Section 9 allows SNH to recover expenses from the land manager concerned, in relation to the measures carried out under Section 8. To date, SNH has not used Section 8, despite having stated in evidence to the RACCE committee in 2013 that it was actively considering using the power at Caenlochan and may ask the Minister for the Environment to use Section 8 at Ardvar if a Section 7 agreement could not be met. There is still opposition to SNH’s proposed agreement at Ardvar from the John Muir Trust and negotiations were on-going as of May 2015. SNH states that “If some of the properties [at Ardvar] refuse to sign up to it, then the SNH Board has indicated it is [sic] will pursue the Section 8 route” (Davies 2015).

The Legal Status of Game and Hunting Rights

In Europe, game is either considered “res communis” (belonging to everyone) or “res nullius” (belonging to no one). Sometimes the ownership of deer and other wildlife is vested in the state, either because it is on state land or because the state assumes ownership on behalf of all
citizens, where wildlife is legally considered res communis (Cirelli 2002). The following table summarises the legal status of game throughout Europe:

Table 4 – The legal status of game throughout Europe

<table>
<thead>
<tr>
<th>Legal Status</th>
<th>Countries</th>
</tr>
</thead>
<tbody>
<tr>
<td>Res communis</td>
<td>Croatia, Finland, Hungary, Italy, the Netherlands, Poland, Portugal, Romania, Slovenia, Switzerland.</td>
</tr>
<tr>
<td>Res nullius</td>
<td>Austria, Belgium, Czech Republic, England &amp; Wales, Germany, Norway, Scotland, Spain, Sweden.</td>
</tr>
</tbody>
</table>

Putman (2011) comments that:

The distinction is a subtle one but the difference may be significant and in large part relates to the extent to which the state may determine or intervene in management structure or practice. (Thus where game is defined as res communis, the state may elect to sell licences to hunt, or allocate management of game management districts (GMDs), to individuals or hunting groups without reference to the landowner; where game is regarded as res nullius, the right to shoot that game more generally involves some sort of ‘contract’ with the landowner or his agent.)

For example, hunting rights in Scotland belong to the landowner, but may be leased out, whilst in France hunting rights are devolved to compulsory Communal Hunting Associations. These allow a range of specified people – both landowners and local residents – to hunt (Cirelli 2002).

Distinct management models across Europe

Putman (2011) identifies at least four distinct management approaches in Europe:

Table 5 – A summary of game management approaches across Europe

<table>
<thead>
<tr>
<th>Description</th>
<th>Examples</th>
</tr>
</thead>
<tbody>
<tr>
<td>Game Management Districts, management objectives, management plans and quota/cull targets are all imposed by the State via either a National or Regional Authority.</td>
<td>Finland, Denmark, Switzerland, France, Latvia, Romania and Slovenia.</td>
</tr>
<tr>
<td>Game Management Districts are imposed by the State whilst management plans and quota/cull targets are proposed by a Landowners’ or Hunters’ Association and approved by the State. Some management objectives are imposed by the State, whilst others are merely approved by the State.</td>
<td>Lithuania, Hungary, Poland, Austria and the Czech Republic.</td>
</tr>
<tr>
<td>Game Management Districts, management objectives, management plans and quota/cull targets are all proposed by a Landowners’ or Hunters’ Association and approved by the State.</td>
<td>Germany, Slovakia, Belgium, Spain and Italy.</td>
</tr>
<tr>
<td>Game Management Districts, management objectives, management plans and quota/cull targets all are proposed by a Landowners’ or Hunters’ Association, or equivalent. These measures are voluntary.</td>
<td>UK (including Scotland) and Sweden.</td>
</tr>
</tbody>
</table>

The European game management systems above are listed in order of decreasing regulation by the state, with the UK (including Scotland) one of only two European countries whose approaches are largely voluntary. The LRRG (2014) notes that although Scotland shares this
low level of regulation with Sweden, the latter “has very different hunting traditions and systems” to Scotland. The LRRG (2014) further states that, despite Scotland’s differences to other European countries in terms of regulation, it “shares many elements with the equivalent frameworks regulating the hunting of deer in other European countries”. These similarities are noted by the LRRG to include: the regulation of hunting seasons; permitted methods, weapons and ammunition; and the handling and disposal of venison.

In line with Scotland’s approach to deer management with little state involvement, the Association of Deer Management Groups (ADMG) has developed a “Benchmark” (2014), “not intended as an absolute standard but all [Deer Management Groups] should use it as a measure of progress towards sustainable collaborative deer management”. In a written submission to the RACCE committee, ADMG (2015) state:

Deer management varies greatly across Scotland and [...] a one-size-fits-all approach would not be appropriate or practicable. The Benchmark therefore requires local interpretation and application.

Analysis of the responses to the consultation (Nicholson 2015) notes that, although 69% of respondents providing a view on deer management agreed with proposals to introduce further provisions to build on SNH’s existing powers:

 [...] many respondents considered that there was no need to introduce further deer management regulation measures as there was no demonstrated need for such action. A common view was that the outcome of the review planned for 2016 should be considered before developing more regulation.

The Royal Society for the Protection of Birds (RSPB) Scotland (2015) notes in its consultation response:

RSPB Scotland supports increased regulation of deer management in Scotland, and learning from deer management structures that are already in place in other European countries, and North America. [...] The LINK Deer Task Force has taken independent legal advice on this issue and we understand that an equivalent deer management system could be constructed for Scotland by the public authorities, which protects private property rights, and is therefore compliant with the European Convention on Human Rights.

Part 10: Agricultural Holdings

The Bill proposes taking forward some of the recommendations of the Agricultural Holdings Legislations Review Group (AHLRG) (2015), with amendments to and new provisions for the Agricultural Holdings (Scotland) Act 1991 and the Agricultural Holdings (Scotland) Act 2003. Given the complicated nature of existing agricultural holdings legislation and the seven chapters contained in Part 10 of the Bill, this paper does not compare each provision with the international situation; instead, a high level approach is taken

The Tenanted Agriculture Sector in Scotland

The Bill’s Policy Memorandum notes that the tenanted sector contributes over £790 million of food production in Scotland, but that since 1982 the area of let land has decreased by 44%, “resulting in Scotland now having one of the lowest proportions of rented land anywhere in Europe”. There are a number of possible tenancy arrangements under the above legislation, with different features:
• Short Limited Duration Tenancies (SLDTs) have a minimum lease duration of one year and a maximum lease duration of five years.

• Limited Duration Tenancies (LDTs) have a minimum lease duration of ten years and no maximum lease duration.

• Only “1991 Act”, or “secure”, tenancies have continuity of tenure protected by legislation and give tenants a pre-emptive right to buy their farm.

More information on the sector is available in SPICe Briefing SB 14-52 Tenant Farming (Edwards & Kenyon 2014). The following table provides an overview of measures in a range of countries that seek to address tenant security and support for new entrants to farming (adapted from Thomson et al 2014).
Table 6 – A comparison of farming tenancy measures across Europe

<table>
<thead>
<tr>
<th>Measure</th>
<th>Austria</th>
<th>Belgium</th>
<th>Canada</th>
<th>Denmark</th>
<th>Finland</th>
<th>France</th>
<th>Hungary</th>
<th>Ireland</th>
<th>Italy</th>
<th>Latvia</th>
<th>Lithuania</th>
<th>Netherlands</th>
<th>N. Zealand</th>
<th>Poland</th>
<th>Portugal</th>
<th>Scotland*</th>
<th>Slovakia</th>
<th>Slovenia</th>
<th>Sweden</th>
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* As noted, restrictions on lease duration, continuity of tenure, and pre-emptive right to buy only apply to certain tenancies in Scotland.
EU Common Agricultural Policy

The EU Common Agricultural Policy dictates agricultural policy in Member States and has two “pillars”: Pillar 1 supports farmers’ incomes and is delivered through direct payments and market measures, entirely financed by the European Agricultural Guarantee Fund. Pillar 2 supports sustainable development of rural areas, is implemented via seven-year Rural Development Programmes (RDPs), and is co-financed by the European Agricultural Fund for Rural Development. EU Member States must implement Pillar 2 through an RDP, but the measures included in their RDPs can vary; for example, no part of the UK has included early retirement schemes as part of their RDPs, but several other countries including Ireland have introduced varying levels of provisions to facilitate early retirement from farming. This means that although EU Member States will have agricultural policies that seek to further common objectives, these policies can be quite varied between countries. The Scottish Rural Development Programme (SRDP) 2014-2020 was approved in May 2015.

Rent Controls in Belgium and the Netherlands

There are no maximum or minimum rents for agricultural tenancies in Scotland, which does not appear to be unusual in comparison to the countries studied by Thomson et al (2014). The authors explain that in Belgium:

Maximum rental values are calculated with reference to a nominal historical rental value, multiplied by a local rent coefficient. The latter are set every three years by a commission for each Provence comprising members of regional governments plus representatives of agricultural organisations, taking account of changes in agricultural profitability across the country.

Rent coefficients are inflated for longer leases, “to reflect the greater security offered”, and Thomson et al (2014) note that “there is anecdotal evidence that some tenants pay additional undeclared rent to access preferred land”.

In the Netherlands, regulation of agricultural leases has been lessened since 1958, due to worries that heavy regulation was causing the amount of rented land to decline; as a result, not all agricultural tenancies are subject to regulation. Thomson et al (2014) describe that although maximum rents only apply to regulated tenancies, “the market seems to use them as an objective benchmark for setting rents for unregulated tenancies too”.

Tenants’ Absolute Right to Buy in Canada and New Zealand

As the above table illustrates, many countries across Europe give tenant farmers a pre-emptive right to buy their farms, but of the countries surveyed only Canada and New Zealand offer most (but not all) tenant farmers an absolute right to buy. This right specifically applies to tenant farmers on Crown Estate land. In New Zealand, for example, Thomson et al (2014) clarify that since 1948, productive Crown Estate land has been “typically let on a 33-year perpetually-renewable lease with (effectively) an absolute right to buy”.

Support for New Entrants in Scotland and the USA

As part of the SRDP 2014-2020 (Scottish Government 2014e), the Scottish Government has proposed launching a £20 million advisory service in 2016 for farmers, foresters, crofters, other land managers and those involved in the food sector. This is alongside a proposed £10 million Knowledge Transfer and Innovation Fund to support skills development, knowledge exchange and innovation, and start-up and business improvement support for new entrants to agriculture in Scotland. Alongside the SRDP, since 2012 Forestry Commission Scotland (FCS) has created ten “starter farm” tenancies on Scotland’s National Forest Estate. FCS are now working on a joint initiative with Scottish Land & Estates, NFU Scotland and The Crown Estate “to match
opportunity with demand, and generate new ways to enter the sector” (Forestry Commission Scotland 2015).

The United States Government’s Department of Agriculture (USDA) (2015a) notes that:

Capital access, land access, and access to knowledge and information to assist in ensuring profitability and sustainability, are vital to those just entering agriculture and in their first ten years of operation.

The Beginning Farmer and Rancher Development Program (BFRDP) in the USA funds projects run by training and outreach providers, giving priority to community- and school-based initiatives. One of the techniques that the BFRDP funds is “land links”, which facilitates networking with a view to matching retiring farmers with new entrants. Between 2009 and 2012, the BFRDP gave 145 awards totalling over $71 million and in 2015 announced that over $18 million would be available for the latest round of award applications (USDA 2015b). The BFRDP (2012) reported that in a 2011 survey of participants in BFRDP-funded training, 62% had developed a farm plan and 35% had started a farm.

**Terre de Liens and the ‘Rural Code’ in France**

The table above shows that, of the countries studied, France has in place the highest proportion of tenure control measures.

The number of agricultural holdings in France is in decline, a trend seen across Europe (TNI 2013) and agricultural land prices are rising. As a result, new entrants to the farming sector who have not inherited farmland have limited access to land ownership and established farmers can be prevented from expanding their enterprises (although established farmers are normally in a better position to purchase additional land than new entrants). In response, Terre de Liens is a non-governmental, non-profit membership association that has been acquiring farmland in France since 2007, in order to provide long-term tenancies to farmers.

France’s Rural Code (French Government 1992) not only guides the practice of the SAFERs as explored above, but also provides tenant farmers with secure land rights. For example (Merlet (2007), the minimum lease for farmland is nine years, rents are controlled by local government in correlation with agricultural prices, and tenants have a pre-emptive right to buy after three years of renting farmland. Although an owner has a right to reclaim tenanted land, this right can only be exercised on the conditions that they will personally inhabit the land’s dwellings, and either they or a spouse/ descendant will work the land previously worked by the tenant.

Merlet (2007) reports that these State measures have not caused a reduction in the amount of rented farmland in France, despite the number of holdings reducing; landowners appear not to have been discouraged from renting their land to tenant farmers. However, Merlet also explains:

The Spanish tenant farming policy, which was inspired by what happened in France, had very different effects. Landowners reacted by refusing to yield their lands to be worked by others. Because of this, land access is even more difficult for small farmers in certain regions. The relative weakness of Spanish farmers’ organisations as compared to French agricultural organisations is likely one of the reasons that explains this relative failure.

Similar reactions from landowners to tenant farming policy reform also appear to have occurred in countries outside of Europe, although for reasons attributed to policymakers rather than farmers’ organisations. For example, the United States Agency for International Development (USAID) criticised agricultural tenancy reform in Nepal in (2010b), stating that:
Decades of changing land laws and reforms… and inadequate documentation of land rights contribute to a lack of tenure security [in Nepal]. Some rural landowners will allow land to lie idle rather than renting it out for fear of tenants gaining rights to the land under land reform law. Those tenants who do cultivate land are often subjected to eviction every one or two years by landowners who fear tenant claims of ownership rights to land.

As mentioned, land rights are well-documented and accessible in Spain and the country’s land policies are outlined in its constitution rather than a series of land laws and reforms; it appears that very different national contexts can produce comparable outcomes for the tenant farming sector.

**The Rise of Rental Farming in Norway**

Despite a total land area around five times that of Scotland, agricultural land only accounts for 3% of land cover in Norway, with a UAA of around 1 million ha, of which 55% is arable land and 45% is grazing land. Traditional owner occupation of farmland in Norway has undergone a shift in the last few decades, from 12% of farmland rented in 1959 to 42% in 2014. Most of this rise is down to an increase in mixed tenure farms rather than wholly rented farm holdings. Meanwhile, since 2000, the number of farms has reduced by over a third and the average farm size has increased by around a third, to 21.6 ha (Thomson et al 2014).

Ownership and rental of agricultural land in Norway is subject to three key policies:

- The Allodial Acts ensures that family members have preferred buyer status when agricultural properties are put up for sale.
- The Concession Act allows authorities to demand that buyers of agricultural land live on the property for a minimum of five years and gives preference to buyers whose stated occupation is farming.
- The Agricultural Act places responsibility on landowners to ensure that their agricultural land is being actively farmed either by themselves or by a tenant farmer. It also imposes a minimum rental period of ten years, stipulates that the condition of the land must be maintained, and allows only formal written contracts between landowners and tenants, rather than informal verbal contracts.

Since Norwegian agricultural policy favours ownership transfers within the family, there are no specific policy provisions for new entrants to farming who are not from farming families. Forbord et al. (2014) state that the effects of these requirements are: a reduced probability that tenant farmers will purchase the land they rent; an indirect restriction on farm expansion through land purchase; and an assurance for both landowners and tenants that rental farming is “a secure option”.

Dramstad & Sang (2010) note, however, that although a further advantage may be that agricultural land is less likely to be abandoned, it is less clear “whether this is an effective long term arrangement or simply delays and diffuses the process of land abandonment”.


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