SPICe Briefing
Land Reform (Scotland) Bill

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Clockwise from top left: Man with granddaughter south pier Isle of Gigha (Wikimedia Commons A. MacNeill); Boundary stone, Cat Law Strathmore/Glen Prosen (Wikimedia Commons R. Webb); Red deer stag (SNH); Carterhaugh Farm, Buccleuch Estate; (Wikimedia Commons R. Webb).
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EXECUTIVE SUMMARY

The Land Reform (Scotland) Bill was introduced to the Scottish Parliament on 22 June 2015. The lead committee on the Bill is the Rural Affairs, Climate Change and Environment Committee.

Part 1 proposes that the Scottish Government prepare a land rights and responsibilities statement and publish it within 12 months; Ministers must review this, and subsequent statements within five years.

Part 2 provides for the creation of a Scottish Land Commission to e.g. review the impacts and effectiveness of land law or policy, and to recommend changes to these; as well as to gather evidence and conduct research. The Land Commission will consist of a total of 6 members – 5 Land Commissioners and a Tenant Farming Commissioner.

Part 3 provides for a right of access to information about persons in control of land for interested parties, as well as a power for the Keeper of the Registers of Scotland to request information relating to proprietors of land.

Part 4 requires Ministers to “issue guidance about engaging communities in decisions relating to land which may affect communities”. In preparing this, regard must be paid to “the desirability of furthering the achievement of sustainable development in relation to land”.

Part 5 provides for a right to buy land to further sustainable development for eligible Community Bodies (or a third party purchaser).

Part 6 ends business rate exemptions for shootings and deer forests by including them on the valuation roll so that they are identified and valued by the Assessors.

Part 7 amends the Local Government (Scotland) Act 1973 so that local authorities can change the use of inalienable common good land with court approval, without the need to pass a private bill in the Scottish Parliament.

Part 8 makes a minor technical amendment to the Deer (Scotland) Act 1996 as well as introducing a power to require landowners and occupiers to prepare deer management plans subject to certain conditions.

Part 9 makes minor technical amendments to the Land Reform (Scotland) Act 2003 in relation to reviewing and amending core paths plans, and judicial determination of the existence and extent of access rights and rights of way.

Part 10 is extensive and introduces substantial amendments to both the Agricultural Holdings (Scotland) Act 1991, and the Agricultural Holdings (Scotland) Act 2003. These are: the creation of a modern limited duration tenancy; the removal of the requirement for a tenant to register their interest in purchasing their holding under existing right to buy provisions; enabling a tenant to apply to the Scottish Land Court to order the sale of their holding where the landlord persistently fails to meet their obligations under certain circumstances; simplifying and improving the process for triggering and carrying out a rent review for certain tenancies; widening the class of people to whom a tenant farmer can assign or leave their tenancy upon death; providing for an amnesty period whereby certain tenants can serve a notice on their landlord detailing improvements that have been made that they would like compensation for on departure; and providing a right for tenants to object to certain improvements proposed by the landlord if they are considered unnecessary.
BACKGROUND AND POLICY CONTEXT

This briefing is intended to help inform Parliamentary scrutiny of the Land Reform (Scotland) Bill at Stage 1, by summarising its key provisions. SPICe Briefing SB 15-28 Land Reform in Scotland (Reid 2015) provides an overview of land reform before and after devolution, recent scrutiny and current Scottish Government policy, as well as detailing some of the key Acts of the Scottish Parliament that contain land reform measures, and the recommendations of the Land Reform Review Group (LRRG) (2014). These are not covered in detail in this briefing; however a summary of key points is included below:

- Land is a finite, national resource, and the current pattern of ownership and use largely reflects historical forces and events of the second half of the nineteenth century, however opinions differ about the role that land ownership plays in the ‘Scottish psyche’.
- Opinions also differ on whether ownership is the key determinant of how land is used.
- Land reform, and the role of human rights in land reform, has recently moved back up the policy agenda, and been defined in a Scottish context as “measures that modify or change the arrangements governing the possession and use of land in Scotland in the public interest”.
- Before Scottish devolution key reforms sought to safeguard agricultural tenants.
- The Land Reform Policy Group (LRPG) published Recommendations for Action in 1999 (LRPG 1999), and a series of legislation was enacted, including the Abolition of Feudal Tenure etc. (Scotland) Act 2000, the Land Reform (Scotland) Act 2003, and the Agricultural Holdings (Scotland) Act 2003.
- The 2003 Land Reform Act introduced a public right of responsible access to land, a Community Right to Buy rural land when it was put on the market, and a Crofting Community Right to Buy regardless of whether it was for sale. At present approximately 500,000 acres are in community ownership.
- Recent scrutiny of the 2003 Land Reform Act highlighted a range of problems with the Community Right to Buy and Crofting Community Right to Buy provisions, including concerns about administrative complexity and unwieldiness.
- In 2012 the Scottish Government established the LRRG, who were asked to identify how land reform might: enable more people in rural and urban Scotland to have a stake in the ownership, governance, management and use of land; assist with the acquisition and management of land and assets by communities; and generate support, promote, and deliver new relationships between land, people, economy and environment in Scotland. The Group reported in 2014 with over 60 recommendations, noting that there was “no single measure, or ‘silver bullet’, which would modernise land ownership patterns in Scotland and deliver land reform measures which would better serve the public interest”.
- Recent Scottish Government action includes asking the Registers of Scotland to complete the Land Register by 2024, setting a target of 1 million acres in community ownership by 2020, and introducing the Community Empowerment (Scotland) Bill (passed 17 June 2015) which extends the Community Right to Buy to urban Scotland, amends and simplifies the 2003 Land Reform Act and introduces a right to buy “abandoned or neglected” land in certain circumstances without a willing seller.

SPICe Briefing SB 15-38 International Perspectives on Land Reform (Pollock 2015) 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 Bill with international approaches to similar issues.
In November 2014 the Scottish Government (2014a) announced that there would be a Land Reform Bill; and in December 2014 the Scottish Government published A Consultation on the Future of Land Reform (the Consultation) (2014b), to which 1,269 responses were received. The Consultation contained questions on 11 key proposals for inclusion in a Land Reform Bill; taking into account the LRRG’s recommendations, and also including a specific proposal to take forward some of the recommendations of the Agricultural Holdings Legislation Review Group (AHLRG) (Scottish Government 2014c). It also consulted on an accompanying draft statement of land rights and responsibilities. An Analysis of Consultation Responses was subsequently published (Scottish Government 2015a).

Some of the proposals upon which the Scottish Government consulted were not taken forward in the Bill and others were amended; the proposal for a statement of land rights and responsibilities has been subsumed into the Bill.

THE BILL

The Land Reform (Scotland) Bill (the Bill) was introduced to the Scottish Parliament on 22 June 2015. The designated lead committee on the Bill is the Rural Affairs, Climate Change and Environment (RACCE) Committee.

The Policy Memorandum (PM) that accompanies the Bill states:

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

- Ensure the development of an effective system of land governance and on-going land reform in Scotland.
- Address barriers to furthering sustainable development in relation to land and improve the transparency and accountability of land ownership.
- 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.

The Explanatory Notes (EN) also provide detailed commentary on each section, and include a Financial Memorandum (FM). Along with the Bill, an Equality Impact Assessment (Scottish Government 2015b) and a Business and Regulatory Impact Assessment (BRIA) (Scottish Government 2015c) have also been published.

PART 1: LAND RIGHTS AND RESPONSIBILITIES STATEMENT

CONSULTATION

The Consultation notes that land is a finite resource and that how land is owned and used has a crucial influence on “wellbeing, economic success, environmental sustainability and social justice”. A vision and set of guiding principles on the nature and character of land rights in Scotland is subsequently set out, as follows:

Vision

For a strong relationship between the people of Scotland and the land of Scotland, where ownership and use of the land delivers greater public benefits through a democratically accountable and transparent system of land rights that promotes fairness and social justice, environmental sustainability and economic prosperity.
Principles

- The ownership and use of land in Scotland should be in the public interest and contribute to the collective benefit of the people of Scotland.
- There should be clear and detailed information that is publicly available on land in Scotland.
- The framework of land rights and associated public policies governing the ownership and use of land, should contribute to building a fairer society in Scotland and promoting environmental sustainability, economic prosperity and social justice.
- The ownership of land in Scotland should reflect a mix of different types of public and private ownership in an increasingly diverse and widely dispersed pattern, which properly reflects national and local aspirations and needs.
- That a growing number of local communities in Scotland should be given the opportunity to own buildings and land which contribute to their community’s wellbeing and future development.
- The holders of land rights in Scotland should exercise these rights in ways that recognise their responsibilities to meet high standards of land ownership and use.
- There should be wide public engagement in decisions relating to the development and implementation of land rights in Scotland, to ensure that wider public interest is protected.

The question on whether the Scottish Government should have a Land Rights and Responsibilities Statement attracted the highest number of responses of all the questions in the Consultation (87%), with 87% of those who responded agreeing.

The PM notes that:

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

SECTION 1 LAND RIGHTS AND RESPONSIBILITIES STATEMENT

It was not initially proposed that the vision and principles be included in the Bill, because the publication of a statement of this nature doesn’t necessarily need enabling primary legislation, however Part 1 Section 1 proposes that the Scottish Government prepare a “land rights and responsibilities statement” (LRRS), and publish it within 12 months of that section coming into force; Ministers must review this, and subsequent statements within five years.

It is intended that a draft LRRS will be consulted on, ahead of a final one being laid before Parliament to “provide a key reference point” for Scottish Ministers, the planned Scottish Land Commission, as well as other public agencies, the Parliament, communities and the private sector.
PART 2: THE SCOTTISH LAND COMMISSION

CONSULTATION

The LRRG (2014) recommended that “there is a need for a single body with responsibility for understanding and monitoring the system governing the ownership and management of Scotland’s land, and recommending changes in the public interest”.

The Consultation recognises that both the LRPG (1999) and the LRRG (2014) highlighted the iterative nature of land reform, and proposed the creation of a Scottish Land Reform Commission to “allow for valuable oversight of the wide spectrum of land reform issues, ensuring Scotland continues to make progress to address current and emergent issues”. The Consultation goes on to state that the Commission could have responsibilities such as “promoting land reform; collecting evidence and carrying out studies; and monitoring the impact and effect of law, policies and practices on landownership in Scotland”.

A high number of all respondents (82%) addressed the question of whether there should be a Scottish Land Reform Commission, with 79% agreeing. The PM states that:

The Scottish Government […] believes that the establishment of a Scottish Land Commission […] will provide a valuable level of oversight to ensure Scotland continues to make progress to address current and emergent issues of land reform.

Furthermore:

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

Information relating to the proposal for a Tenant Farming Commissioner is included at Part 10.

CHAPTER 1 – THE COMMISSION

The Scottish Land Commission (Land Commission), to be known in Gaelic as Coimisean Fearainn na h-Alba, would be established by Section 2. This section also stipulates that it will consist of a total of 6 members, including 5 Land Commissioners and a Tenant Farming Commissioner (all Commissioners). Subsection (5) allows Scottish Ministers to make regulations changing the number of Land Commissioners.

Sections 3, 4 and 5 relate to the status, functions, and general powers of the Land Commission. Neither the Land Commission nor its staff are to be servants or agents of the Crown; nor will either party enjoy any status, immunity or privilege of the Crown. This also extends to the Commission’s property. The Commission’s function is to provide property, staff and services to all Commissioners to ensure that they can perform their functions. General powers allow the Commission to “do anything which it considers to be necessary or expedient for the purposes of, or in connection with the exercise of” its functions or those of all Commissioners (Section 5(1)).

The EN states that Section 6 “imposes a duty on the Commission to regularly set out in a strategic plan how it, the Land Commissioners and the Tenant Farming Commissioner plan to exercise their functions”. This is to include (subsection (2)) objectives and priorities of the Commission and all Commissioners, as well as cost estimates for the exercise of their respective functions. Further requirements include submitting a strategic plan within 6 months of
the section coming into force, and further strategic plans every 3 years to Ministers for approval before publication and being laid before the Parliament. Alongside the strategic plan, **Section 7** requires the Land Commissioners to prepare a work programme setting out information on, and a timetable for proposed reviews into the impact and effectiveness of any law or policy on any matters relating to land (as set out in Section 20(1)).

The procedure for appointment of all Commissioners is set out in **Section 8**: Ministers appoint members of the Commission, with the approval of Parliament, for a specified period not exceeding 5 years. There are particular conditions attached to these appointments (as set out in Sections 9 to 11); further provisions allow Ministers to re-appoint an existing or previous member, and require Ministers to appoint one of the Land Commissioners as chair to the Commission.

**Sections 9 to 11** relate to eligibility for appointment, disqualification from membership, and resignation and removal. The EN notes that “land matters are complex and multi-faceted”. Therefore, to ensure that there is a range of expertise, **Section 9** requires Ministers to appoint members to the Commission who have experience or expertise in land reform, law, finance, economic issues, planning and development, and to encourage equal opportunities. Specifically in relation to the Tenant Farming Commissioner, Ministers must ensure that the relevant Commissioner has expertise or experience in agriculture. **Section 10** sets out who cannot be a member of the Land Commission, and excluded e.g. current or recently retired politicians and local authority employees.

Furthermore, the Tenant Farming Commissioner cannot be an owner or tenant of land subject to a 1991 Act tenancy, a short limited duration tenancy, a limited duration tenancy or a modern limited duration tenancy (known as a “relevant tenancy”). **Section 11** details the terms and conditions allowing all Commissioners to resign, as well as the circumstances in which Ministers can revoke the appointment of a Commissioner, e.g. in the case of insolvency, imprisonment, illness or absence.

**Sections 12 to 19** permit or require the Commission to carry out various administrative functions such as employing and paying staff, keeping proper accounts, and complying with legislation relating to public bodies.

**CHAPTER 2 – THE LAND COMMISSIONERS**

Chapter 2 consists of **Sections 20 and 21** which set out the functions of the Land Commissioners; these relate to ownership and other rights in land, as well as its management and use in Scotland, specifically:

- To review the impact and effectiveness of any law or policy
- To recommend changes to any law or policy
- To gather evidence.
- To carry out research.
- To prepare reports.
- To provide information and guidance.

Land Commissioners are also required to consider any matter referred to them by Ministers, as well as having regard to the LRRS (Section 1), strategic plan and work programme (Sections 6 and 7), and to collaborate with the Tenant Farming Commissioner.

The Land Commissioners may also delegate their functions to relevant persons or committees.
CHAPTER 3 – THE TENANT FARMING COMMISSIONER

Information relating to the proposal for a Tenant Farming Commissioner is included at Part 10.

PART 3: INFORMATION ABOUT CONTROL OF LAND ETC.

CONSULTATION

The Consultation asked whether “restricting the type of legal entities that can, in future, take ownership or a long lease over land in Scotland would help improve the transparency and accountability of land ownership in Scotland”, and then for views on the LRRG’s recommendation (2014) that land ownership should be limited to legal entities registered in the EU; recognising that it is important that “any proposals taken forward are proportionate, effective, and comply with the requirements of EU law and the European Convention on Human Rights (ECHR) as well as other international obligations”. The Consultation also stated that:

Clear and up-to-date information about land, its value and ownership provides a good basis for open and transparent decision making - for both the private and public sectors.

Just over 80% of all respondents commented on whether restriction on ownership would help transparency and accountability, with the majority (79%) agreeing. In relation to the LRRG’s specific recommendation on limiting ownership to EU registered legal entities, just over 70% responded, with 82% agreeing; individual respondents expressed strongest support. Of those who disagreed, organisations, private landowner organisations and private sector and professional bodies were the least supportive.

The PM notes that there was a “clear public desire for greater transparency”, however there “were a range of issues requiring further consideration in order to decide on the best way to achieve this aim”. Therefore, having considered making it incompetent for non EU registered entities to register title to land in Scotland, the Government:

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

As an alternative, the Bill proposes a power to make regulations that give a right of access to information (for interested parties) on persons in control of land (Section 35), and a power to make regulations enabling the Keeper of the Land Register to request additional information relating to proprietors of land (Section 36). These are outlined below.

SECTION 35 – RIGHT OF ACCESS TO INFORMATION ON PERSONS IN CONTROL OF LAND

Section 35 makes provision for regulations to be made to access information about persons in control of land from the “request authority” (it is not yet clear who this will be; also to be defined in regulations), and may include provisions relating to:

- What is meant by persons in control of, and persons affected by land.
• In what circumstances information can be requested.
• What form the request should take, whether a fee is payable, and who the request should be made to.
• Powers to require information, and the circumstances where information need not be provided.
• Powers to require information from third parties.
• Appeals against decisions.

The PM states:

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

Regulations may also make provision for civil penalties and offences for failure to comply. The EN states that they:

[…] could provide that a person may be liable to a civil penalty or subject to the offence if the person fails, without good reason, to respond to a request from the request authority for the information.

Furthermore:

[…] if the regulations make provision imposing criminal offences, the maximum penalty that can be imposed in relation to those offences is a fine not exceeding level 3 on the standard scale. Currently this is set at £1,000.

SECTION 36 – INFORMATION RELATING TO PROPRIETORS OF LAND ETC.

Section 36 amends the Land Registration etc. (Scotland) Act 2012 to insert a new Section 48A that provides a power to make regulations allowing the Keeper of the Registers of Scotland to request information relating to certain proprietors of land. This might include the category of person or body into which the proprietor falls e.g. whether they are a community body, charity, or trust. The regulations might also allow information to be requested relating to persons with a controlling interest in proprietors of plots of land and leases and set out what is meant by a “controlling interest”.

PART 4: ENGAGING COMMUNITIES IN DECISIONS RELATING TO LAND

CONSULTATION

The Consultation included a proposal to impose a duty of community engagement on charitable trustees when taking decisions on land management. It recognises that charities whether they hold land or not, are required to act in accordance with their purposes and relevant legislation; however those that own land may not be required to consider the views of resident communities or those affected by their use of the land. Of those who responded (79%) 76% agreed that a trustee of a charity should be required to engage with the local community before taking a decision on the management, use or transfer of land under its control. There was widespread
support for this proposal, except for private landowner organisations and private sector and professional bodies, who largely opposed the proposal. The PM recognises that for landowners to take communities’ needs into account, communities will need to be clear on what they want, and states:

Fundamentally, the Scottish Government wants to see better collaboration and engagement between land owners and communities. There is recognition now amongst landowners that there are considerable benefits from working with their local communities and there are many productive partnerships springing up around Scotland.

Furthermore:

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

The Bill introduces a requirement on Ministers to produce guidance for all landowners (not just charities) and tenants on engaging with communities on land-based decisions.

SECTION 37 – ENGAGING COMMUNITIES IN DECISIONS RELATING TO LAND

Section 37 requires Ministers to “issue guidance about engaging communities in decisions relating to land which may affect communities”. In preparing this, regard must be paid to “the desirability of furthering the achievement of sustainable development in relation to land”. The PM explores sustainable development in relation to communities (see below), but not in relation to land. Sustainable Development is considered further overleaf. Subsection (3) requires the guidance to include information about:

- The types of land and types of decision in relation to which community engagement should be carried out.
- The circumstances in which persons with control over land (e.g. owners and occupiers) should carry out community engagement.
- The ways in which community engagement should be carried out (e.g. by consulting or involving the community).

Before issuing this guidance, a consultation must be held with appropriate persons.

The PM goes on to explore consequences where guidance is not considered or followed, stating that this “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 […]”; furthermore Ministers are:

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

PART 5: RIGHT TO BUY LAND TO FURTHER SUSTAINABLE DEVELOPMENT

CONSULTATION

The Consultation proposed powers for Ministers, or another public body, to intervene where the scale or decisions of landowners are acting as a barrier to the sustainable development of
communities. Of those who responded (81%) 72% agreed that there should be powers to direct private landowners to take action to overcome barriers to sustainable development. The majority of individual respondents (75%) supported the proposal, however over 90% of private landowner organisations and over half (57%) of private sector and professional bodies who addressed the issue disagreed.

**Sustainable Development**

SPICe Briefing SB 15-38 International Perspectives on Land Reform (Pollock 2015) contains information relating to definitions of sustainable development, and the PM states:

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

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

To date, the only case law relating to land reform and sustainable development was 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.

On the subject of sustainable development for communities the PM notes that there is often a need for “[…] the use of physical assets including land, buildings or other property, which lie in private or other ownership, and that the availability “of physical assets for sustainable development is determined by the willingness or ability of land and property owners to allow communities access to them”. The PM goes on to recognise that there “are many examples of land owners who have positively engaged with communities wishing to develop, and have supported their local communities by allowing sale, lease or use of land or buildings”; e.g. for housing, allotments, renewable energy, community shops or social enterprises. Equally however, there are examples given where “communities have been unable to influence development decisions and cannot access land for their own development, [which] can have detrimental impacts”.

Furthermore:

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

At present, the Land Reform (Scotland) Act 2003 (as amended by the Community Empowerment (Scotland) Act 2015) provides for a community’s right to register an interest in
land or assets, and to purchase if it comes on the market, or in certain circumstances e.g. if the land is abandoned, neglected or detrimental; and an outright right to buy for crofting communities. The PM notes that this will “help many communities; but there may be circumstances where further mechanisms are required”.

Sections 38 to 65 therefore propose a right to buy land to further sustainable development, subject to the specific conditions outlined below. Many of these sections are technical and largely mirror existing procedures for Community Right to Buy (CRtB). Guidance, including a flow chart setting out the process for the current CRtB (Under Part 2 of the 2003 Act) has been published by Highlands and Islands Enterprise (2015).

SECTIONS 38 TO 43 - KEY TERMS

Section 38 defines the meaning of land for the purposes of this part, and includes bridges and other structures built on or over land, inland waters, canals, and the foreshore as well as inland salmon fishings or separately owned mineral rights.

Section 39 defines eligible land as all land, except for that which is “excluded”, e.g. land on which there is an individual’s home, except where the home is occupied by an individual under a tenancy, croft land, and land owned by the Crown.

Sections 40 and 41 set out the criteria that must be met in order for a Community Body (CB) to buy rights to salmon fishings, mineral rights or to a tenant’s interests. In summary there must be a simultaneous or on-going application to buy the land to which these rights and interests relate or Ministers must have already consented an application to buy the relevant land.

Section 42 defines CBs for the purposes of this Bill. Either a CB can apply to exercise the right to buy itself, or it can nominate a third party purchaser to exercise the right to buy on its behalf.

If it intends to exercise the right to buy itself, a CB can be a company limited by guarantee, a Scottish Charitable Incorporated Organisation, or a community benefit society. In the circumstances where a CB is nominating a third party purchaser, then it is to be a body corporate. The legal structure of these CBs is expected to include a definition of the community to which the CB relates, as well as provisions:

- Enabling the CB to exercise the right to buy.
- That the CB must have no fewer than 10 members.
- That at least three quarters of the members of the CB are members of the community.
- That the members of the CB who are members of the community have control of the organisation.
- Ensuring proper arrangements for financial management.

In most circumstances, there is a requirement that a CB have no fewer than 10 members; however Ministers are allowed to waive this requirement if they consider that it is in the public interest.

Ministers must confirm in writing that the main purpose of a CB is consistent with furthering the achievement of sustainable development.

A community to which a CB applies is defined either by reference to a postcode unit (or units), or a type of area which Ministers set out in regulation, or both. In addition to being resident, community members must also be entitled to vote at local government elections in a polling district that encompasses that postcode, or the alternative areas as set out by Ministers.
Section 43 sets out minor supplementary provisions to Section 42.

SECTION 44 REGISTER OF LAND FOR SUSTAINABLE DEVELOPMENT

Section 44 provides for the creation of a Register of Land for Sustainable Development; to be known as the Part 5 Register, it is to be set up and kept by the Keeper of the Registers of Scotland (the Keeper). Further provisions in this section relate to what information must be kept in the Register, the availability of certain financial information, the ability of Ministers to make regulations to modify the section, and the duties of the Keeper in relation to the Register.

SECTIONS 45 TO 51 APPLICATIONS FOR CONSENT

Section 45 is significant and sets out the process that a Part 5 CB (or nominated third party purchaser) must undertake when submitting an application to exercise the right to buy, and include landowner details, and where relevant the tenant and creditors, as well as other information set out by Ministers in regulations, as well as the reasons why the CB considers that its proposals satisfy the sustainable development conditions (as set out in Section 47), the location and boundaries of the land, all rights and interests in the land known to the CB and the proposed use, development and management of the land.

Section 46 details the procedure that Ministers must follow upon receiving an application under Section 45, and include inviting relevant persons to provide written comments, and giving public notice of receipt of the application, and inviting views on this.

Section 47 is significant and requires Ministers to be satisfied that a Section 45 application complies with the sustainable development conditions and associated procedure before consent. Sustainable development conditions (subsection 2) are met if:

- The transfer of the land is likely to further the achievement of sustainable development in relation to the land.
- The transfer is in the public interest.
- The transfer of land is likely to result in significant benefit to the community and is the only practicable way of achieving that benefit.
- Not granting consent is likely to result in significant harm to the community (subsection 10 relates to what constitutes significant benefit or harm).

Procedural conditions (subsection 3) are met if:

- In the six months prior to the application being made, the CB has submitted a written request to the landowner to transfer the land to the CB or person named in the application (i.e. nominated third person) and the owner has not responded or agreed to the request.
- The land is eligible land, the owner and any creditor is identified, as well as any third party purchaser where relevant and has shown consent.
- The owner is not prevented from selling the land or subject to any enforceable personal obligation.
- A significant number of the members of the community have a connection with the land; the land is sufficiently near to land where those members of the community have a connection, or the land is in or sufficiently near to the area comprising that community.
- The community has approved the exercise of the right to buy and the CB complies with Section 42.
Further provisions relate to applications about land consisting of salmon fishings or mineral rights; these must comply with Section 40, i.e. that a Part 5 CB or third party purchaser must already have purchased the land that relates to the salmon fishing or mineral rights, or be in the process of applying to buy the land under Part 5.

Where an application includes a request to buy a tenant's interest, Ministers must also be satisfied that the sustainable development conditions are met, and that the application complies with Sections 41 and 42.

The final provisions in this section (subsection 10) detail what Ministers must consider in determining what constitutes significant benefit or harm in relation to a community, for the purposes of the sustainable development conditions in subsection 2. Ministers must consider the likely effect of granting (or not granting) consent to the transfer of land or tenant’s interest on the lives of community members with reference to:

- Economic development.
- Regeneration.
- Public health.
- Social wellbeing.
- Environmental wellbeing.

Section 48 sets out the requirements for a ballot to establish the support of the community to purchase land.

Section 49 stipulates that only one CB may apply under this Part in relation to the same land or tenant’s interest. Where there are dual applications, having had due regard to all views on each of the applications and to responses to these views, it is for Ministers to decide which application should proceed.

Section 50 provides that Ministers may impose conditions on their consent to an application to exercise the right to buy.

Section 51 requires Ministers to give detailed notice in writing of their decision, and their reasons for it, to the landowner, the CB, the tenant and/or third party purchaser (where relevant), the Keeper, and every other person who was invited to send views on the application.

SECTIONS 52 – 57 PROCEDURE FOLLOWING CONSENT

Section 52 allows Ministers to make regulations prohibiting certain persons from transferring or dealing with the land, or (if relevant) tenant’s interest for a specified period in relation to an application under this Part.

Section 53 relates to the procedure following Ministerial consent where a CB (or if relevant nominated third party purchaser), is required to notify their intention to buy or to withdraw.

Section 54 details the process for purchasing the land following Ministerial consent, and includes:

- The CB (or third party purchaser) is responsible for preparing the necessary documents, specifically in relation to ensuring that the land or interest transferred or assigned is the same as that specified on the application, and that Ministerial conditions (if any) are met.
- The landowner must make the relevant title deeds and other documents available, and transfer the title accordingly.
If within six weeks of Ministerial consent an owner or tenant refuses or fails to make the relevant deeds available, or if they cannot be found, the CB (or third party purchaser where relevant) can apply to the Lands Tribunal for an order requiring their production.

Thereafter, if an owner or tenant refuses, or fails to effect the transfer, the Lands Tribunal may authorise its clerk to adjust, execute and deliver such deeds or other documents to complete the transfer.

Section 55 sets out the process for completing the transfer of land or assignation of a tenant’s interest, and includes:

- The amount payable for the land or tenant’s interest is the value as assessed by the valuer appointed by Ministers (under Section 56).
- This is to be paid (excepting specific circumstances) within six months of Ministerial consent of the right to buy.
- If, on the payment date, the owner is not able to provide the title deeds, or the tenant is unable to assign their interest to the CB (or third party where relevant), payment is to be made to the Lands Tribunal until such time as the issue is resolved.
- If payment is not made by the CB (or if relevant the third party) on the due date, then the right to buy will no longer be able to be exercised – excepting the specific circumstances outlined above.

Section 56 requires Ministers, where they have consented a right to buy, to appoint and pay for a qualified, independent, knowledgeable and experienced valuer to assess the value of that land or tenant’s interest. Ministers have seven days to appoint a valuer following granting consent, and the valuer has eight weeks (or longer by Ministerial approval) to carry out the work, and notify all relevant parties.

The value to be assessed is the market value on the date of Ministerial consent, having taken the owner’s, CB’s, tenant’s, or third party purchaser’s (where relevant) written views into account. If all parties have already agreed a valuation, then the valuer must be notified in writing. Market value is defined as the sum of the open market value if the sale were between a willing seller and buyer, plus any depreciation in the value of other land and interests belonging to the seller or tenant as a result of the transfer, plus any disturbance to the seller or tenant resulting from the transfer. In determining the value the land or the tenant’s interest, account may be taken of the known existence of a potential purchaser, however may not be taken of there being no time to market the property or of the depreciation of other land or interests or disturbance.

Section 57 relates to a situation whereby the application to purchase a tenant’s interest does not apply to the entire tenanted land. In this case, the valuer will assess the equitable allocation of rents or rights and obligations under the tenancy, and inform all parties.

SECTIONS 58 AND 59 COMPENSATION

Section 58 sets out the circumstances for payment of compensation in connection with an application to exercise the right to buy. It is payable either by the CB or (where relevant) the third party purchaser, except where an application has been refused, in which case it will be paid by Ministers.

Section 59 allows Ministers to pay a grant to a CB or (where relevant) a third party purchaser to pay compensation, in certain circumstances. These circumstances are:
• Where, after settlement of its other relevant liabilities, the CB (or third party purchaser where relevant) has insufficient money to pay, or to pay in full, the amount of compensation it has to pay.

• The CB (or third party purchaser where relevant) has taken all reasonable steps to obtain money in order to pay, or to pay in full, that amount (other than applying for a grant under this section) but has been unable to obtain the money, and

• That it is in the public interest for Ministers to pay.

Ministers are not bound to pay a grant, even if all circumstances arise, and that grant may be subject to conditions. Ministers may set out in regulations the form of the application, and relevant procedure.

SECTIONS 60 TO 63 APPEALS AND REFERENCES

Section 60 allows a landowner, or (where relevant) a tenant, a person who is a member of the relevant community, or a relevant creditor to appeal to the sheriff against a decision by Ministers to consent a right to buy application. Equally, a CB may appeal against a Ministerial decision to refuse an application.

Section 61 sets out the system of appeals to the Lands Tribunal against a valuation or determination of tenant's interest. It allows the landowner, (where relevant) the tenant, the CB, and (where relevant) the third party purchaser to appeal within 21 days of receiving the relevant notice.

Section 62 allows relevant persons to refer questions relating to a right to buy under this Part to the Lands Tribunal, and in considering these questions the Lands Tribunal may have regard to representations made to it by other relevant persons.

Section 63 allows relevant parties to also come to agreement amongst themselves on a matter which is subject to an appeal.

SECTION 64 MEDIATION

Section 64 allows Ministers, on request from relevant parties, to arrange or facilitate mediation in relation to a proposed right to buy.

SECTION 65 INTERPRETATION OF PART 5

Section 65 ensures that references to the Lands Tribunal means the Lands Tribunal for Scotland, and sets out other minor matters of interpretation.

PART 6: ENTRY IN VALUATION ROLL OF SHOOTINGS AND DEER FORESTS

BACKGROUND

Part 6 of the Bill seeks to end the current exclusion of shootings and deer forests from the list (valuation roll) of non-domestic properties valued for business rates. Business (non-domestic) rates are a property tax which is fully devolved to Scottish Ministers. They are calculated using the rateable value of a non-domestic (business) property set locally by independent Assessors, multiplied by an annual rate (poundage) set nationally by Scottish Ministers. Usually the owner/
occupier or tenant of the property pays the rates bill (Scottish Government 2012). SPICe Briefing SB 15-32 Non-domestic Rates provides further information (Berthier 2015).

Some relief schemes and exemptions are available on these rates. Most relevant are -

- **Small Business Bonus Scheme** – Ratepayers who occupy one or more non-domestic properties with a combined rateable value of £35,000 or less may be eligible for a discount of between 25% and 100% on each property with rateable value up to £18,000.

- **Exemptions** - Some types of property are exempt from rating entirely. These include the following: agricultural land and buildings; public parks; public roads; shootings and deer forests; offshore oil and gas subjects; and sewers.

Section 151 of the Local Government etc (Scotland) Act 1994 excluded shootings, deer forests and fishings from the valuation roll. Interpretation of these terms is made by the Assessors. Agricultural land and buildings are exempt under Section 7 of the Valuation and Rating (Scotland) Act 1956.

The LRRG (2014) note that the current exemption of agriculture is due to public policy from the 1920’s when agriculture was in some trouble. They also state that one of the reasons for exempting deer stalking was that the rates were seen as discouraging high deer culls, which were (and still are, say the LRRG) seen to be in the public interest.

There are three main bodies involved in the rating system. First, the Scottish Assessors (who are appointed by local authorities, and operate independently) set the rateable values of non-domestic properties. Second, the Scottish Government has responsibility for the overall policy framework and sets the annual tax rate (poundage) and funds most of the cost of rates relief. Third, Councils calculate and issue bills, determine relief eligibility and collect payments. The revenue from non-domestic rates helps to fund local services.

**RELEVANT REPORTS**

In recent years a number of reports have been published which consider and make recommendations about non-domestic rate exemptions for land based businesses.

The LRPG (1999) argued that the scope for reducing or abolishing rates exemptions on sporting, forestry and agricultural land should be considered. But before that the “economic impact [of doing so] … should be thoroughly evaluated.”

In 2012 the Scottish Government published proposals in a consultation on how non-domestic rates could be improved: **Supporting Business, Promoting Growth** (Scottish Government 2012) asked “Are the current reliefs and exemptions offered appropriate?” Following this consultation, the Scottish Government (2013a) stated:

All rates reliefs will be kept under regular review to ensure that benefit is directed where it is most needed... Although views were mixed, the Scottish Government has on balance decided that all current exemptions provided, including to agriculture, should be retained.

The LRRG (2014) made three main recommendations relating to non-domestic rate exemption for land based businesses, as follows:

- There is no clear public interest case in maintaining the current universal exemption of agriculture, forestry and other land based businesses from non-domestic rates. The Government should review this historic exemption, with a view to the phased introduction of non-domestic rates for these land based businesses.
• ‘Sporting rates’ could be tailored to each of the species involved and have the potential to be one of the tools available to help deliver the Government’s Land Use Strategy and other rural objectives. The Government should review the current exemptions from sporting rates and introduce a reformed rates system as appropriate in the public interest.

• There is a lack of clarity over the public costs and public benefits that result from the current exemptions and reliefs for agriculture and forestry land in national and local taxation. Each of the exemptions and reliefs should be reviewed and reformed as necessary, to ensure that there is a clear and transparent public interest justification for the public expenditure through revenue foregone.

In March 2015 the House of Commons Scottish Affairs Committee made several comments and recommendations (2015) related to tax relief on land based businesses in the report on its Inquiry into Land Reform in Scotland. The Committee was particularly concerned with a lack of understanding of a number of aspects of rate reliefs for land based industries. In particular, they stated:

• It is not clear whether exemption from non-domestic rates is having the desired impact and whether there are any unintended consequences arising from the reliefs available to agricultural landowners.

• It is important for both the UK and Scottish Governments to consider whether parts of the tax system are pushing up land prices and undermining a commitment to increasing community land ownership.

• There is a need for proper oversight and scrutiny of tax reliefs and exemptions. These reliefs mean that tax income is forgone in order to support policy objectives and they should be open to the same scrutiny as other government spending.

• The UK and Scottish Governments should work together on areas of shared interest, such as land tax reliefs in order to ensure a tax system that supports the Scottish Government’s stated aim of increased community ownership of land.

CONSULTATION

The Consultation proposed that the Bill “should include provisions to end the business rate exemptions for shootings and deer forests. Ending these exemptions would require identification and valuation of subjects by the Assessors, with rates bills calculated and relief applications determined by local authorities”. Of those who responded 71% agreed that the current business rate exemptions should be ended. A majority of individual respondents (75%) supported ending the exemption. All but one of the 51 private landowner organisations disagreed.

There were no proposals included relating to the broader LRRG (2014) recommendations on, for example, reviewing the costs and benefits of the exemption followed by a phased reintroduction, tailoring sporting rates to specific species to help deliver rural objectives, or reintroducing non-domestic rates for all land based businesses.

SECTIONS 66 AND 67 REPEAL OF EXCLUSION AND VALUATION

Section 66 repeals Section 151(1) of the Local Government etc (Scotland) Act 1994. This means that shootings and deer forests would be included on the valuation roll.

Section 67 amends the Local Government Act (Scotland) 1975 so that an Assessor in each valuation area must “enter separately the yearly value of any – a) shootings, b) deer forests”.
The PM states that it does not propose to define shootings and deer forests in statute, as:

Interpretation of the terms would be for the Assessors, subject to the valuation appeal framework, as it was pre 1995. In arriving at respective values, Assessors would consider all aspects of the use made of the lands and heritages, considering all pertinent information.

Furthermore, the intention is for the proposed changes to come into effect at the next revaluation for non-domestic rates, on 1 April 2017. It is expected that many small-scale shootings would be eligible for rates relief under the existing Small Business Bonus Scheme.

**Assessment of costs**

The Financial Memorandum (FM) states that although shooting and deerstalking is carried out on land held by the Scottish Government and by Scottish Natural Heritage (SNH), that land is currently let to tenants, therefore no costs are expected on the Scottish Administration. However, Forestry Commission Scotland will be liable for non-domestic rates for any shootings or deer forests in the National Forest Estate for which it is deemed the rateable occupier. Forest Enterprise Scotland annually culls around a third (approximately 33,000) of the national total of deer culled, most of which is undertaken by either staff or contractors, as a land-management activity. A small proportion, around 9%, is recreational stalking; the FM considers that “it is not possible to estimate the non-domestic rates liability for this ahead of the assessors’ valuations”.

The FM states that small administration costs will fall on local authorities with new entries on the roll. However, local authorities will not benefit from any additional receipts. Although receipts from ratepayers will accrue to local authorities, there will be a “corresponding reduction to the general revenue grant as part of these local authorities’ finance settlement from the Scottish Government thus enabling equivalent funding to be directed elsewhere within the Scottish Government’s budget” (para 103). Assessors would face an administrative cost in making new entries onto the valuation roll and maintaining them.

The FM also notes that there will be costs on rateable occupiers of shootings and deer forests, with gross liability estimated to be £4 million, subject to rates relief. However, it also states that a “more accurate estimate, which would require detailed analysis, taking into account changes in the tax base and the impact of changes in reliefs, is not possible due to the absence of valuation data since 1995”.

The Business Regulatory Impact Assessment (BRIA) states that the “private estate businesses that were interviewed as part of this assessment indicated that without yet knowing the details of any additional rates that they may be liable for it would not be possible to give an accurate indication of the effect that the rates would have on their business.” Although some private estates stated that “deer stalking […] did not run at a profit […] [and was] used as the incentive to get people to come” to remote rural areas.

**PART 7: COMMON GOOD LAND**

**BACKGROUND**

The concept of “common good” property has its origins in the Middle Ages where local communities used areas of land/property for communal purposes. In time such property and other assets became part of the Scottish burghs (or town governments) where it was administered on behalf of local inhabitants (Ferguson 2013).
The Local Government (Scotland) Act 1973 (1973 Act) brought an end to the burgh system in 1975 by abolishing the town councils which had responsibility for the burghs. Their common good assets were transferred to the new district or islands councils and then, in 1996, to the current unitary local authorities (Local Government etc. (Scotland) Act 1994 (1994 Act)). Common good property is, therefore, limited to those assets held by the burghs at the time of their abolition. No new common good property can now be created (Campbell et al. 2014).

The LRRG (2014) noted that the combined value of common good funds (including cash securities and land and buildings) was over £300 million in 2012. Whilst this is less than 1% of the value of property owned by Scotland’s councils (reported to be £35 billion in 2011), the location and character of the property makes them important. Two categories of common good land are relevant in the context of the Bill, and based on case law can be defined as follows:

- **Alienable common good land** is common good land able to be sold or leased or used for a different purpose by a local authority.

- **Inalienable common good land** is common good land about which there is a question as to the right of the local authority to dispose of it, or change its use.

**RELEVANT REPORTS AND LEGISLATION**

The recent case of Portobello Park highlights issues associated with common good legislation which the Bill seeks to address. Section 75 of the Local Government (Scotland) Act 1973 makes provision for the disposal (sale) and appropriation (change of use) of alienable and inalienable common good land. Ferguson (2013) explains this as follows:

- Section 75(1) allows alienable common good land to be disposed of by councils to third parties without going to court. It can also be appropriated by councils for other uses without going to court.

- Section 75(2) allows inalienable common good land to be disposed of by councils to third parties only if the court agrees to it. It also means that it cannot be appropriated by councils for other uses.

In 2013, dispute arose over whether Edinburgh City Council could legally build a high school on Portobello Park, which it accepted was inalienable common good land. To change the use of the land from a park to a school, given some opposition, the Council had to introduce a Private Bill to the Scottish Parliament. The Bill received Royal Assent on 1 August 2014, creating the **City of Edinburgh Council (Portobello Park) Act 2014** and solved the specific legal problem by allowing the change of use.

This case highlights the need for a general statutory provision for the appropriation of inalienable common good land (Campbell et al, 2014). More detail can be found in SPICe Briefing SB 13-29 The City of Edinburgh Council (Portobello Park) Bill (Campbell & Evans 2013).

Part 6 of the **Community Empowerment (Scotland) Act 2015** addresses some issues related to common good land. First, to increase transparency, local authorities must establish and maintain a register of their common good property. They must publish and notify community councils or bodies of any planned disposals or appropriations. Second, Scottish Ministers must consult with local authorities, community councils and appropriate community bodies before issuing guidance about the management and use of common good property, to which local authorities must then have regard.

The LRRG (2014) argued that cases such as Portobello Park indicate that the measures contained in the Community Empowerment (Scotland) Act 2015 are only part of the reforms
required since “the legal framework governing the management of Common Good property is complex and unclear”. It suggested that "a modernised statutory framework could be enacted through a new Common Good Act to replace the current Act from 1419”.

CONSULTATION

The Consultation asked whether the need for court approval for disposals or changes of use of common good property, where this currently exists, should be removed, and if so, what should take the place of court approval; 54% of respondents addressed this question, with the majority (65%) of those who provided a view opposing the proposal. The Bill does not include provisions removing the need for court approval for disposals, or changes of use of common good property.

The Consultation also asked whether there should be a new legal definition of common good, and what such a new legal definition might look like. Of the 44% who addressed this question, the majority (71%) agreed that there should be a new legal definition. Many respondents felt that any new definition should be subject to further consultation.

The Bill does not propose a new legal definition of “common good”, and the provisions that are included have not been consulted on, however have been well rehearsed in the recent Portobello Park case.

SECTION 68 COURT APPROVAL

Section 68 amends Section 75 of the Local Government (Scotland) Act 1973 so that local authorities can change the use of inalienable common good land with court approval, without the need to pass a private bill in the Scottish Parliament.

PART 8: DEER MANAGEMENT

BACKGROUND

There are four species of wild deer established in Scotland: two native species, roe deer and red deer; and two introduced species sika and fallow deer. A fifth species, also introduced, the muntjac, has been reported but has not been confirmed as being resident in Scotland.

The most recent population estimates for Scotland suggest overall numbers of between 360,000-400,000 red deer, 200,000-350,000 roe deer, 25,000 sika deer and an estimated 2,000 fallow deer. Red deer numbers on the open hill have increased substantially (around a 75-80% increase) since the 1960s, but more recently numbers have stabilised and the most recent count data shows a small decline of around 5%. (Clutton-Brock et al. 2004, Scottish Parliament 2013b & SNH 2013a). Counting deer accurately is fraught with difficulty, either because they range over wide areas (red deer on open hill), or cannot be seen as they are hidden in dense cover, meaning indirect population assessments must be used. Rather than considering how many deer are appropriate at a national scale, it is more helpful to consider how many deer are appropriate at a local scale, and to consider their impacts on their habitats, rather than absolute numbers. Further, deer are not the only large herbivores in the Scottish uplands, which are also used for sheep grazing. Due to changes in support through the Common Agricultural Policy hill sheep numbers have declined significantly in recent years from a peak in the 1980s, and are now at ~pre-1950 levels (SRUC 2011).
The Public Services Reform (Scotland) Act 2010 transferred the functions of the Deer Commission for Scotland to SNH. Under the Deer (Scotland) Act 1996 SNH is now responsible for securing the conservation and sustainable management of deer in Scotland. The 1996 Act remains the principal statute. It also sets close seasons (a period in each year during which no person can kill deer) for male and female deer of each species. Where deer are impacting on agriculture, forestry, the natural heritage or other public interests, Section 7 of the Act provides a mechanism for SNH to negotiate a control agreement with landowners. There are eight control agreements currently in force, all of which relate to protection of habitats on sites designated for nature conservation (Scottish Parliament 2013a). Section 8 of the Act also provides backstop powers for SNH to implement a control scheme, including for SNH to carry out deer control, and recover costs. These powers have not been used (Scottish Parliament 2013b).

Part 3 of the Wildlife and Natural Environment (Scotland) Act 2011 made amendments to the 1996 Act. It required SNH to draw up a code of conduct on sustainable deer management. It provides powers for SNH to introduce a competence test for deer hunters by regulation, if the voluntary approach to securing this does not work, and it made minor amendments to SNH’s powers to provide authorisations to shoot deer in the close seasons and make control agreements and control schemes.

Scotland’s Wild Deer: A National Approach was a strategy produced in 2008 which sets out guiding principles, objectives, key actions and tools for deer management (Deer Commission for Scotland, Forestry Commission Scotland and SNH 2008). The Strategy was reviewed by SNH in 2014, and a revised strategy, also called Scotland’s Wild Deer: A National Approach, was published in April 2015 (SNH 2015). The strategy is supplemented by the Code of Practice on Deer Management, which came into place in 2012 (SNH 2011). The Code explains what the public interests in sustainable deer management are. It defines what land managers must, should and could do to deliver sustainable deer management.

Wild deer, particularly red deer on the open hill, range freely over wide areas. There are no significant natural predators of deer in Scotland (golden eagles and foxes account for a few deer calves). If deer numbers are not humanly controlled, they will expand until they reach the carrying capacity of the available habitat, and will fluctuate depending on the severity of winter weather. Most wild deer populations are subject to some degree of management. This takes two forms, hunting or “stalking” by shooting with high velocity rifles, or fencing, either to keep deer in or out. Male deer are prized as sporting quarry, and their stalking is often let out commercially. Culling of female deer is let less often (but is a growing market) and the majority of female deer are culled by professional stalkers. Around 100,000 deer (all species) are culled each year in Scotland. Since the mid-1990s the number of deer culled annually has remained relatively constant (SNH 2013 & Scottish Parliament 2013c). Deer fencing is used widely to protect forestry, woodland, farm and croft land and other vulnerable habitats. As well as impacting on deer movements fencing can impact on the landscape and public access. Fencing can also have deer welfare implications where access to shelter and feeding is cut off or if a compensatory cull is not taken to prevent over stocking outwith the enclosed area. Correct fence design can mitigate such negative effects.

Further information is provided in SPICe Briefing SB 13-74 Wild Deer in Scotland (Edwards & Kenyon 2013).

**DEER MANAGEMENT GROUPS AND LOWLAND DEER GROUPS**

Deer Management Groups (DMGs) have been established over the last 30 years or more (the first group was formed in 1965) to coordinate deer management between neighbouring landowners, and to manage conflicts which can arise where different land uses require different densities of deer. For example, a landholding where sporting stalking is the main objective might
wish a higher density of deer than a holding where grouse shooting or restoration of native woodland is the main objective. Groups now cover virtually the entire open hill range of red deer. Groups cover areas where there are distinct herds of deer and may range in size from 20,000 to 200,000 hectares. They can include as few as 3 or as many as 30 different landholdings. Groups are often subdivided into sub-groups for practical purposes (Association of Deer Management Groups (ADMG) (2011)).

The increase in woodland cover has led to deer expanding their range in lowland areas. All four species are present, with the most numerous being roe deer. Deer in lowland areas behave differently, holding territories, rather than ranging over wide areas. While there is not therefore the same need for collaborative management ranging across different landholdings, there remains a place for collaboration in management. The Lowland Deer Network Scotland was set up to promote collaborative deer management in lowland and urban areas, and Lowland Deer Groups have been established in a number of areas (Lowland Deer Network Scotland 2013).

There are currently 44 upland groups and a further 10 which cover lowland areas. The following figure shows the areas covered by DMGs and the Lowland Deer Network.
In the autumn of 2013 the Rural Affairs, Climate Change and Environment (RACCE) Committee held a short inquiry into deer management in Scotland. The Committee took evidence at two meetings in November 2013 from a range of organisations, including the Association of Deer Management Groups; the Scottish Gamekeepers’ Association; Scottish Environment Link; and SNH (Scottish Parliament RACCE 2013a & 2013b).

INQUIRY BY THE RURAL AFFAIRS, CLIMATE CHANGE AND ENVIRONMENT COMMITTEE
In February 2014, following its inquiry, the Committee wrote a letter to the Scottish Government setting out its findings (Scottish Parliament RACCE Committee 2014a). The Committee found that of the 40 DMGs then in existence, 16 had deer management plans, and a further 12 were developing plans. The Committee thought that progress towards all groups having demonstrably effective and environmentally responsible plans had been too slow, and called for all DMGs to have such plans in place by the end of 2016. The Committee said that it would monitor progress against this, and that if a voluntary approach failed, would return to consider what further action might be necessary. The Committee recommended that plans should be made publicly available and also made recommendations in relation to the transparency of group meetings and participation in groups.

Responding to the Committee’s letter in March 2014, the then Minister for Environment, Paul Wheelhouse MSP, agreed that progress in adopting deer management plans across the board had been too slow (Scottish Parliament RACCE Committee 2014b). The Minister welcomed the work that the ADMG was doing to urge its members to engage in deer management planning. He outlined work that SNH was doing in collaboration with the ADMG. This included devoting increased staff time to support deer management planning by DMGs, and the provision of funding of £100,000 per year over two years to support the production of deer management plans.

**DEVELOPMENTS SINCE THE COMMITTEE INQUIRY**

**The Land Reform Review Group report**

Chapter 23 of the LRRG’s final report relates to wild deer. It charts the development of the framework for regulating the management of wild deer in Scotland since the nineteenth century, and the evolution of a voluntary system of management by DMGs since the 1960s. The Review Group commented on the recommendation of the RACCE Committee in relation to deer management planning, and went on to say that (LRRG 2014):

> In response to this deadline, the Association of Deer Management Groups (ADMG) is actively encouraging DMGs to develop Deer Management Plans (DMPs) and consulting on a DMG benchmark standard for the operation of the DMGs. However, the evidence to the RACCE Committee showed that, despite all the efforts of some in the DMG movement, there has been very little, if any, significant improvement in the operation of DMGs since reports criticising their lack of progress in the previous two decades. Also, while the RACCE Committee emphasised the need for DMGs to have DMPs, the clear evidence to their inquiry was that even where such Plans had been produced with public sector encouragement, the Plans were not then used or updated.

> Improvements in the operation of DMGs would be a positive development. However, these will not directly address the need to ensure adequate culls are carried out where necessary to protect public interests. In addition, DMGs are concentrated in the Highlands and based mainly around cooperation between relatively large scale land owners. There are few DMGs in the rest of Scotland, where that model is generally less directly applicable due to different patterns of land ownership and land use.

The LRRG recommended that changes should be made to the statutory framework now, rather than waiting until the end of 2016. They also considered that SNH should set cull targets for each DMG area, and that instead of the current system, which requires landowners to inform SNH how many deer they have shot, landowners should be required to apply to SNH for a licence to cull deer. The group thought this would enable SNH to identify situations where it considers proposed culls will not be sufficient to protect public interests, and to then require higher culls. Landowners would have the first option of culling wild deer on their land. However, if a land owner consistently failed to meet the standards required for sustainable deer
management in the public interest, the Group said they should no longer have a monopoly over hunting wild deer on their land. If this situation occurred the Group recommend that SNH should be able to take over responsibility for the cull required, by either carrying out the cull itself or allocating it to the local DMG or other suitably qualified hunters.

Updates to the RACCE Committee

In May 2015, the Committee wrote to the Association of Deer Management Groups, Forestry Commission Scotland; and the Scottish Gamekeepers’ Association requesting updates on the operation and effectiveness of deer management groups, and the timescales for adoption and publication of deer management plans (Scottish Parliament RACCE Committee 2015a, 2015b & 2015c).

The ADMG response to the Committee provided an update on the production and publication of deer management plans (Scottish Parliament RACCE Committee 2015d). Of 45 deer management groups, 41 were in the process of developing effective plans. One plan, produced by the North West Sutherland DMG had been published on the ADMG website (2015). The Monadhliath DMG was also close to finalising its plan, a final draft of which was presented to the public at a meeting in June 2015. The ADMG said that it expected 41 groups would have completed plans by the end of 2016. While a small number of groups might not have plans in place, these would mainly be in areas where groups were being restructured. ADMG’s response to the Committee concluded by saying that:

We believe that the voluntary principle has the flexibility to demonstrate that it can deliver 21st Century sustainable deer management at a landscape scale with a range of public benefits associated with it. We would also suggest that the evolving methodology for deer management will be of relevance and value when extended to managing wildlife as a whole at ecosystem scale.

THE CONSULTATION

The Consultation took a different approach from the one recommended by the LRRG, and proposed to:

[…] give further powers to SNH to act in areas of the country where they judge that insufficient progress is being made to protect the public interest. The powers would build on those already available through the Deer (Scotland) Act 1996. The aim of the powers would be to ensure that SNH can require that landowners have in place detailed sustainable deer management plans that protect the public interest and that the plans are fully carried out.

The new powers would not be intended as a replacement for the voluntary system of deer management, but as a backstop to be brought into play where the voluntary system was not delivering the public interest in certain areas. If Scottish Ministers decided on the basis of the review at the end of 2016 that there was a requirement to replace the voluntary arrangements with a statutory system, then this would be developed at that point. However, we consider it important that the proposed additional measures are in place - to ensure that deer management plays its part in delivering the 2020 Biodiversity targets - which could be implemented without delay if it is concluded that the current arrangements need strengthening.

The Consultation thus suggested that the Government had not closed the door on the type of approach recommended by the LRRG, but that it would decide on this following a review of progress at the end of 2016. In the meantime it would seek additional powers for SNH in relation to deer management planning through this Bill.
SECTIONS 69 TO 71 – DEER MANAGEMENT

Section 69 makes a minor amendment to the 1996 Act on the role of deer panels. These are consultative panels which SNH can appoint to advise on deer management, generally or in particular areas.

The key provision on deer management planning is Section 70. It introduces a permissive power for SNH to require landowners and occupiers to prepare deer management plans, if two conditions are both met. These conditions are:

- That deer or deer management have caused, are likely to cause, or are causing damage to woodlands; agricultural production; the natural heritage; public interests of a social, economic or environmental nature; or to livestock; or are posing a risk to public safety (e.g. a road collision risk).
- That measures require to be taken to prevent further damage, remedy damage, or to prevent a danger or potential danger.

If SNH requested a deer management plan, owners and occupiers would have at least 12 months to produce it (longer at SNH’s discretion). SNH could either approve a deer management plan, or reject it. It would not have an explicit power to amend a plan, but presumably the intention of subsection (7) of new Section 6A of the 1996 Act, which allows a plan to be amended until SNH either finally approves or rejects it, would allow SNH to intimate to owners what it wanted to see in a plan, and for them to develop a proposal on that basis, if they so wished.

Under subsection 5 of Section 70, where a plan had either not been produced in the timescale, had been rejected by SNH, or the measures in the plan had not been taken, SNH would then start the process of seeking a control agreement with the owners and occupiers of the land under Section 7 of the 1996 Act.

Sections 7 and 8 of the Deer (Scotland) Act 1996 set out a process for SNH to liaise with landowners to agree or impose measures to manage deer. Section 7 relates to voluntary “control agreements”. It provides that having had regard to the code of practice on deer management, where SNH is satisfied that deer “have caused or are likely to cause damage to woodland, agricultural production, [...] or the natural heritage or damage to public interests of a social, economic or environmental nature; or have become a danger or a potential danger to public safety, it shall consult with those owners or occupiers, to secure agreement on deer management.” Control agreements usually set a target for reducing deer numbers, usually expressed as a density of deer per unit area. They may also provide for other measures, such as fencing, to manage deer impacts.

Section 8 relates to compulsory control schemes, where it has not been possible to secure a control agreement. This section provides that SNH “shall make a scheme (a “control scheme”) for the carrying out of such measures as it considers necessary for those purposes [reducing or preventing damage caused by wild deer]”. Section 8(7) states that where “any control scheme has been confirmed, every owner or occupier shall take such measures as the scheme may require of him in accordance with its provisions”. The power in Section 8 of the Act has never been used. A letter from the Chief Executive of SNH to the RACCE Committee of May 2015 described SNH’s approach to the use of these powers. It concludes (Scottish Parliament RACCE Committee 2015e):

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1 Which would be inserted by Section 70 of the Bill
Within the regulatory toolbox in the Deer Act, not all regulatory action involves compulsory action. Section 7 Agreements are voluntary and are often negotiated on the interpretation of one visit and an objective assessment of current impacts.

Where it is clear that deer are the main factor and as a consequence of ongoing impacts, changes are occurring or inevitable and we have failed to secure a voluntary solution, a one-off assessment could also be used as evidence of damage and lead to the use of Section 8. However, there are risks associated with this approach. If compulsory action is to be pursued, SNH need to be satisfied (and able to convince Ministers) that evidence is reasonable, proportionate and fit for purpose. In the Deer (Scotland) Act, it also makes it clear that we cannot use Section 8 to enhance a site, only to remedy damage caused.

This all relates to risk appetite. If we consider it important to maintain progress on delivering ecosystem health and our biodiversity aspirations for 2020, then we could seek to progress Section 7 Agreements and Section 8 Control Schemes on the basis of ‘likely to’ cause damage.

The question remains about whether a one-off assessment of current impacts will be sufficient evidence to underpin compulsory regulatory measures, due to lack of evidence that changes in habitat condition have occurred due to deer.

It will also be necessary to demonstrate that all practical alternatives have been considered (e.g. fencing, advice or incentives) in the stages preceding such compulsory action.

Section 71 increases the penalty for non-compliance with a Section 8 control scheme from level 4 on the standard scale, currently £2,500, to £40,000.

The PM explains that the Government intends that the powers in the Bill could be used following the review of deer management planning which is to be completed by SNH working with the ADMG and DMGs by the end of 2016.

PART 9: ACCESS RIGHTS

BACKGROUND

Part 1 of the Land Reform (Scotland) Act 2003 established statutory public rights of access to most land (and inland water) in Scotland, provided that this access is carried out responsibly, as detailed in the Scottish Outdoor Access Code (SNH 2005).

Local authorities and national park authorities (known as access authorities) are required to draw up a plan for a system of paths (known as core paths) to give the public reasonable access throughout their area. Where possible, core paths are expected to link up with other path networks to improve access for all types of non-motorised user (e.g. walking, cycling, horse-riding).

CONSULTATION

The LRRG (2014) examined a range of issues linked to access rights and found that the existing framework was generally working well, however that there were some remaining challenges relating to implementation of the statutory framework. The PM states:

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

Part 9 of the Bill therefore makes technical changes to the Land Reform (Scotland) Act 2003 on matters arising from examination by the LRRG and responses to the Consultation.

**Section 72 Core Paths Plans**

The majority of provisions in Section 72 amend Section 20 (review and amendment of core paths plan) of the Land Reform (Scotland) Act 2003; two key amendments are made.

First, a new Section 20(1) is substituted in. This sets out two different circumstances where a review of core paths plans can be carried out. The access authority may review the core paths plan when they consider it appropriate to do so, or Ministers may require a core paths plan review.

Secondly, four new sections are inserted.

**Section 20A** sets out the procedure to be followed when amending a core paths plan following a review by an access authority. Key actions include giving public notice of the amended plan, making both the original and amended plans available for public inspection for a minimum of 12 weeks, and consulting relevant persons. Where there are no objections (or any that have been made are withdrawn), the local authority must adopt the amended plan. If the access authority in trying to resolve an objection, proposes a modification to the amended plan, further notification and consultation must be carried out with relevant persons.

If objections remain outstanding, a local inquiry should be held into whether the plan will, if adopted, give the public reasonable access throughout the area. Once the local inquiry has reported, Ministers may direct the local authority to adopt the amended plan. Ministers may direct the plan to be adopted with modification(s) detailed in the direction.

**Section 20B** provides for owners and occupiers of land which is to be included in a core paths plan for the first time following a review to be served written notice to explain the potential effect of the amended plan, and giving further relevant details.

**Section 20C** sets out the process for making a single amendment to a core paths plan subject to appropriate consultation and notification.

**Section 20D** details the matters that the local authority must take into account when amending a core path under Section 20C, e.g. service of notice, referral to a local inquiry where there are ongoing objections.

**Section 73 Access Rights: Service of Court Applications**

This section amends Section 28 of the Land Reform (Scotland) Act 2003 (judicial determination of existence and extent of access rights and rights of way) to expand the notification requirements when an application is made to the sheriff court on whether a person has exercised their access rights responsibly. The amendment requires the person seeking the declaration to also serve the application on the person whose exercise of access rights is in question.
PART 10: AGRICULTURAL HOLDINGS

BACKGROUND

In the late 19th Century over 90% of farms in Scotland were tenanted. Since then, there has been a continuous reduction in the number of tenanted holdings and the area of land that is rented. Figures from 2014 show 23% of agricultural land is rented on agricultural tenancies of more than one year, or is in crofting tenure. A further 13% of agricultural land is rented on a seasonal basis, i.e. leases of less than a year for grazing or mowing. This equates to 1.33 million hectares of land (rented on a full tenancy or croft) and 770,000 hectares of land rented on a seasonal basis. In 2014, there were 16,760 holdings that rented land (including crofts) which equates to around 32% of all holdings (Scottish Government 2015d). Three explanations were given by the LRRG (2014) for this trend: the break-up of large estates post WW1 following recession and the tax regime with tenants converting to owner-occupancy; consolidation of farms into larger units e.g. due to mechanisation; and the introduction of security of tenure in the 1940s, which has made landowners reluctant to create new tenancies since that time. Scotland currently has one of the lowest proportions of rented land anywhere in Europe.

Given the high capital costs of land purchase, tenancy is seen as the route into farming for new entrants. Letting and leasing land also gives flexibility e.g. allows a farmer to retire without selling their farm; or to expand without the capital cost of land purchase. Leasing land offers landlords an opportunity to obtain an income from their land without the capital cost of owning stock and machinery. The Scottish Government’s vision is “a dynamic sector that gets the best from land and the people farming it, provides opportunities for new entrants and forms part of a sustainable future for Scottish farming as a whole”.

Cook & Grieve (2009) reviewed routes into farming. Their report sees a staged entry into farming for new entrants as they gradually accumulate the necessary capital, experience and skills, with tenancy being a final stage.

In Scotland the relationship between landlord and tenant is governed by a specific body of law on “agricultural holdings”. The principle statute is the Agricultural Holdings (Scotland) Act 1991 c.55 (as amended). Under this legislation there are five possible tenancy arrangements:

- Leases of less than a year for grazing or mowing (accounting for 770,000 hectares of land in 2014).
- Short Limited Duration Tenancies (SLDT) of up to 5 years (834 in 2014).
- Limited Duration Tenancies (LDT) of a minimum of 10 years (an SLDT can be converted to an LDT at any time during the lease) (528 in 2014).
- “1991 Act tenancies” or “secure tenancies” entered into under the 1991 Act or preceding legislation, where the tenant’s security of tenure is protected by the legislation. A 1991 Act tenancy can be converted to an LDT (estimated to be 4,993 in 2014).
- Limited partnership tenancies where the tenant is a partnership made up of the landowner (or their representative) as the limited partner, and the farmer as the general partner. The limited partnership lasts for a fixed term specified in a partnership agreement, and if it runs on after that term has expired, there are notice provisions in the legislation requiring that the general partner is effectively given 4 years’ notice of the termination (532 in 2014).²

² Figures for the number of tenancies of each type taken from Scottish Government (2015d).
The Agricultural Holdings (Scotland) Act 2003 (‘the 2003 Act’, asp11) was developed as a part of the then Scottish Executive’s Land Reform Programme. The 2003 Act:

- Introduced two new forms of fixed term tenancy: LDTs and SLDTs.
- Gave tenants greater rights to diversify.
- Gave tenants a pre-emptive right to buy their farm. To exercise this right, the tenant must have registered their interest, and they then have first option if the landlord decides to sell. If the landlord and tenant cannot agree the price, an independent valuation is carried out.
- Gave the Scottish Land Court the main role in resolving disputes between landlord and tenant.

The Tenant Farming Forum (TFF) was set up after the 2003 Act was passed to facilitate discussion between landlords and tenants on contentious issues and to help reach consensus where possible. The TFF is an industry-led body made up of: NFU Scotland, RICS Scotland, Scottish Land and Estates, and the Scottish Tenant Farmers Association. A representative from the Scottish Association of Young Farmers can also attend, and the Law Society is also represented to provide legal input. A representative from the Scottish Government also attends.

The Public Services Reform (Agricultural Holdings) (Scotland) Order 2011 introduced a number of changes to the 2003 Act as recommended by the Tenant Farming Forum (TFF). The main changes made by the Order were to reduce the minimum term of an LDT from 15 to 10 years and allow an SLDT to be converted to an LDT at any time instead of only at the end. Two of the changes proposed by the TFF could not be made through the Order. These were a change to the definition of who is a “near relative” of a tenant farmer to include grandchildren and the prohibition of upward only and landlord only initiated rent reviews. These measures were implemented by the Agricultural Holdings (Amendment) (Scotland) Act 2012.

In a judgement given in 2013, the Supreme Court found that Section 72(10) of the 2003 Act was incompatible with the ECHR and so was outwith the legislative competence of the Scottish Parliament. The provision was introduced by amendment to the Bill which became the 2003 Act which was intended to prevent landlords concerned about the right to buy, from dissolving limited partnerships before their term, because of the forthcoming legislation. The Court gave the Scottish Government a year to resolve the situation. The Agricultural Holdings (Scotland) Act 2003 Remedial Order 2014 was made on the 2 April 2014. The Order provides landlords affected by the defective section of the Agricultural Holdings (Scotland) Act 2003 a means to recover vacant possession. It provides landlords a route to termination of the lease and the recovery of vacant possession after a notice period.

Small landholders are tenants under the Small Landholders Acts 1911-19313. The character of these small landholdings is similar to crofts and the legislation governing them has a shared history with crofting. Once numerous, in 2014 there were an estimated 149 small landholders in Scotland, scattered from Strathspey to Stranraer. Small landholders in the areas where crofting tenure was extended in 2010 can apply to convert their holding into a croft. To date no small landholders have succeeded in doing this.

Two of the LRRG’s 62 recommendations (2014) relate to tenant farming:

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3 The Small Landholders (Scotland) Act 1911 (c 49), Land Settlement (Scotland) Act 1919 (c 97) and the Landholders and Agricultural Holdings (Scotland) Act 1931 (c 44)
That the requirement for prior registration for the agricultural right to buy should be removed and all these tenants should have first option on buying any part of their tenanted holding which their landlord decides to sell.

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

The Group also recommended that small landholders should have a right to buy their holding.

More detailed background information is available in SPICe Briefing 14-52 Tenant Farming in Scotland (Edwards & Kenyon 2014).

AGRICULTURAL HOLDINGS LEGISLATION REVIEW

In November 2013 the Scottish Government announced details of its planned review of agricultural holdings legislation (AHLR) (Scottish Government 2013b). The review was led by the Cabinet Secretary, who appointed a six person group to advise him. The interim report was published in June 2014 (Scottish Government 2014d).

The potential role of small landholdings in achieving the Government’s aspirations for the tenanted sector, and the LRRG’s recommendation to give small landholders a right to buy were considered as part of the review.

The Review published its final report on 27 January 2015 (Scottish Government 2015e). The Report included 49 recommendations. The report was in nine sections with recommendations grouped under each section. Not all of the recommendations were for legislative change, e.g. the first recommendation was that the Scottish Government should encourage the efforts of industry leaders to improve landlord/tenant relationships through self-regulation. In relation to new entrants, the Review recommended that the Government should consider how it could provide more starter farms, including through land acquisition, and by negotiating with the larger private owners of agricultural land in Scotland (recommendations 36 and 37). Some of the recommendations for the review related to the way farm leases are treated for taxation purposes in relation to agricultural property relief; business property relief, and entrepreneurs’ relief, which are reserved matters. Some of the recommendations of the review on taxation were intended to be taken forward in conjunction with work the Scottish Government is doing in other areas, e.g. the review of non-domestic rates. The other recommendations were for legislative change, principally to the Agricultural Holdings (Scotland) Act 1991, and these are discussed below.

THE CONSULTATION

Proposal 9 in the Consultation related to agricultural holdings. The Consultation cross-referred to the work of the Agricultural Holdings Legislation Review, and, having described it in outline, asked whether some of the proposals of the review should be taken forward by the Bill.
CONSIDERATION OF THE AGRICULTURAL HOLDINGS LEGISLATION REVIEW BY THE RACCE COMMITTEE

The RACCE Committee took evidence on the report of the Agricultural Holdings Review at its meetings of 25 March\(^4\) and 1 April 2015\(^5\) (Scottish Parliament RACCE Committee 2015f & 2015g). It also received written evidence on the review which is available on the Committee’s webpage. Following this evidence the Committee wrote to the Cabinet Secretary on 12 May 2015. The Committee’s letter set out what the Committee believes should be the objective of agricultural holdings reforms, and Government work in the tenanted sector (Scottish Parliament RACCE Committee 2015h):

> These issues have been subject to review and consultation over a long period of time, and it is easy to lose sight of what the desired outcomes are that we are working to achieve. The Committee, like others engaged in this process, want to see tenanted land being more readily available, both to current farmers and their families and to new entrants; rents which are fair and proportionate to both landlords and tenants; and fair and proportionate compensation terms and waygo\(^6\) arrangements that reflect the investments and improvements made in a holding by either party. We also want to see improved clarity and transparency in all the operations of the tenanted sector, which should help remove some historical conflicts and mistrust and replace it with a new spirit of cooperation and forward-thinking.

The Committee also considered whether the recommendations of the review should be implemented through the Land Reform Bill, or through a separate Agricultural Holdings Bill:

> Given the time remaining in this session of Parliament, and the commonality of some of the issues involved, we can understand the rationale behind bringing forward a single bill which will include both land reform and agricultural holdings issues. However, scrutiny of such a wide ranging and important bill in the time remaining in this session will be a challenge, both for the Committee and for Parliament as a whole. We therefore look forward to the full cooperation of the Scottish Government and its agencies in working with the Committee and Parliament as constructively as possible to ensure that this legislation, so long in the making and so vital to so many people across Scotland, is given appropriately robust and effective scrutiny.

The Committee went on to make detailed comments on some of the recommendations of the review, and these have been highlighted in the table below.

The Cabinet Secretary responded to the Committee’s letter on the 6\(^{th}\) June 2015. By that time the Government was close to finalising proposals for the Land Reform Bill, so the Cabinet Secretary was unable to provide details of the Bill’s contents before it was introduced to Parliament. He did provide the Committee with some further information, including that (Scottish Parliament RACCE Committee 2015i):

- Andrew Thin had been appointed as Independent Adviser on Tenant Farming pending the creation of the office of Tenant Farming Commissioner with statutory powers through the Bill.

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\(^4\) From the Law Society of Scotland; National Farmers Union of Scotland; Royal Institute of Chartered Surveyors; Scottish Agricultural Arbiters and Valuers Association; Scottish Land and Estates and the Scottish Tenant Farmers Association.

\(^5\) From the Cabinet Secretary for Rural Affairs, Food and Environment; Andrew Thin; and Hamish Lean

\(^6\) Waygo is the name for the ending of a tenancy
The Scottish Government was working on a model to be used for assessing farm rents according to a farm’s productive capacity, of which further details would be made available after the summer.

THE BILL

Part 10 of the Bill is on Agricultural Holdings. It contains 24 sections (74 – 97) divided into seven chapters. Some of these sections introduce substantial new amending sections into the 1991 and 2003 Acts. Chapter 3 of Part 2 of the Bill establishes the office of Tenant Farming Commissioner, as one of the members of the Scottish Land Commission established by Part 2 of the Bill, alongside 5 Scottish Land Commissioners. For ease of reference these provisions are also described in this section.

The table below shows which of the recommendations for legislative change made by the AHLR have been taken forward by the Bill, and which have not. The table has been organised to follow the structure of the Bill. Where the recommendations have been taken forward, the provisions of the Bill which implement them are briefly described. The table also notes the conclusions the RACCE Committee came to after taking evidence on the Agricultural Holdings Legislation Review Report (Scottish Parliament RACCE Committee 2015f & Scottish Government 2015e).
Table 1 - How have the recommendations of the Agricultural Holdings Review been taken forward in the Bill?

<table>
<thead>
<tr>
<th>Recommendation</th>
<th>In the Bill Y/N</th>
<th>How taken forward in the Bill / comment for recommendations not taken forward</th>
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<tbody>
<tr>
<td><strong>Part 3, Chapter 2 – the Tenant Farming Commissioner</strong></td>
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<tr>
<td>Recommendation 2 - A new office of Tenant Farming Commissioner should be established to promote and secure effective landlord/tenant relationships and behaviours across the agricultural tenanted sector underpinned by robust codes of practice.</td>
<td>YES</td>
<td><strong>Section 22 in Chapter 3 of Part 2</strong> creates the office of Tenant Farming Commissioner (TFC). The TFC would have a number of functions including the preparation and promotion of codes of practice on a range of agricultural holdings matter (8 areas are listed in subsection 25(2)). The TFC would have powers to inquire into breaches of a code of practice, and would have a power to impose a fine of up to £1000 where a person failed to comply with a request to provide information (Section 29(3)). The TFC must publish a report on an inquiry (Section 31(1)), and such reports are admissible as evidence in any proceedings before the Land Court (Section 31 (2)).</td>
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<tr>
<td>The majority of the RACCE Committee believed that it is essential that the commissioner has statutory codes to enforce rather than voluntary ones. The Committee sought clarity on the Commissioner’s role in resolving disputes between landlords and tenants.</td>
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<tr>
<td><strong>Part 10, Chapter 1 – Modern Limited Duration Tenancies</strong></td>
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<tr>
<td>Recommendation 24 - A new “modern LDT” with a minimum 10 year term should be developed to enable landlords and tenants greater freedom in agreeing terms relevant to the type, duration and purpose of the holding and lease. An optional break at 5 years should be available where the tenant is a new entrant.</td>
<td>YES</td>
<td><strong>Section 74</strong> repeals Section 5 of the 2003 Act which created Limited Duration Tenancies. It would insert new Sections 5A and B into the 2003 Act. Section 5A would provide for modern LDTs with a minimum term of 10 years, and for existing Short Limited Duration Tenancies to be converted into them. Section 5B would allow for a 5 year break clause to be included in the lease of a modern LDT where the tenant was a new entrant to farming. Scottish Ministers would have a power to make regulations defining who is a new entrant to farming. The Landlord would have limited ability to exercise the break but the new entrant would be unrestricted save for notice requirements.</td>
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<tr>
<td>The RACCE Committee supported this proposal, and the idea of a 5 year break clause for new entrants.</td>
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<tr>
<td>Recommendation 25 - Provision should be made to allow for a modern “full repairing” LDT, where a tenant takes full responsibility for all repair, renewal and replacement of fixed equipment on the holding in return for a minimum term of 35</td>
<td>NO</td>
<td></td>
</tr>
</tbody>
</table>

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7 Alex Fergusson MSP dissented.
years and mandatory application of the new rent review provisions recommended in Section 5 of this Report.

The RACCE Committee supported the idea of a full repairing lease where responsibility for the fixed equipment was taken on by the tenant, but, while making no recommendation as to the minimum term, said that this needed to be a balance between maximising confidence and the likelihood of such tenancies being offered, with the fact that the holding will have little or no fixed equipment.

| Recommendation 26 | Partly | It would be for the parties to the lease to determine in the lease the rent for a modern LDT. **Section 83** inserts new Sections 9A and 9B into the 2003 Act and provide that where there are no provisions for review of rent in the lease, the rent for existing LDTs and the new modern LDTs would be determined in a rent review by reference to the productive capacity of the land; and also take into account the open market rental value of any surplus accommodation and any fixed equipment used for non-agricultural purposes.

As noted above the Bill does not provide for repairing leases with a minimum 35 year term.

| Recommendation 27 | Yes | **Section 77** inserts a new Section 16A into the 2003 Act which would provide for the treatment of any fixed equipment if it is included in a modern LDT. It would require the landlord to provide sufficient fixed equipment as to allow the tenant to maintain efficient production (of the type specified in the lease); and within 6 months of the start of the lease, to put the fixed equipment into the state of repair as is stated in a schedule of condition. It would require the landlord and tenant to draw up a schedule of the fixed equipment on the holding; and, unless the lease provides to the contrary, it would require the landlord to renew or replace fixed equipment where necessary due to natural decay or fair wear and tear. The tenant is obliged to maintain fixed equipment in as good a state of repair (natural decay and fair wear and tear excepted) (Sub Section 77(5)(b)).

| Partly | Recommend 26 - Rent provisions in relation to a new modern LDT should be agreed at the start of the lease by the contracting parties, taking into consideration the provisions of a new statutory code on negotiating rent reviews, or if the lease is silent on the issue then the rent provisions should be as set out in Section 5 of this Report for 1991 Act tenancies. In the case of a full repairing lease the rent controls set out in Section 5 should apply in all cases.

| Yes | Recommendation 27 - Parties to a "modernised LDT" should be able to negotiate fixed equipment arrangements subject to the provisos that fixed equipment provided by the landlord is sufficient to allow the tenant to farm for the purposes set out in the lease, details are specified in the lease along with a record of condition, and responsibility for maintenance is clearly stated.
| Recommendation 28 - Modern LDTs should be assignable within the duration of the lease at market value, subject to the landlord having the same grounds for objection as in the 1991 and 2003 Acts (finance, ability, character, etc). | YES | Section 86 inserts a new Section 7B into the 2003 Act and would allow Modern LDTs to be assigned. The landlord could object to a proposed assignation if there are reasonable grounds, including that the tenant would lack the wherewithal to pay the rent and maintain the holding; and that the tenant lacked skills and experience. Where the proposed assignee was a near relative of the outgoing tenant, the landlord would only be able to object on the grounds that the tenant a. was not of good character; b. did not have sufficient resources or c. lacked training or experience.  

8 The landlord would not be able to object under this ground if the tenant was enrolled on a training course which they are expected to complete within 4 years, and they are able to make arrangements for the holding to be farmed while they are undertaking the training. |
|---|---|---|
| Recommendation 29 - Modern LDTs should include a requirement for landlords to give written notice of intent to terminate not less than two and not more than three years before the expiry of a modern LDT, failing which the lease will continue on tacit relocation for one year at a time subject to termination on the same notice period. (Section 12.2 of this Report). | PARTIALLY | Section 76 inserts new Sections 8A to 8E into the 2003 Act providing for termination of modern LDTs. Under 8A they could be terminated by agreement. 8B introduces a double notice provision where the tenancy is terminated by the landlord. The landlord must give a notice of intention to quit between 2 and 3 years before the end of the term, and a notice to quit between 1 and 2 years of the end of the term. Where the tenant wishes to terminate the tenancy, 8C would allow them to do that by giving notice to the landlord within 1-2 years of the term. Where the tenant is a new entrant and there is a 5 year break clause, either party would be able to end the tenancy after 5 years by giving the other notice within 1-2 years of the date of the break clause.  
The Bill departs from the recommendation in that where a modern LDT is not brought to an end in accordance with these arrangements, 8E would provide for it to be extended for another 10 year term. It also provides for the term of a modern LDT to be extended during the term of the tenancy by agreement in writing. |
| Recommendation 30 - Modern LDTs should include robust arrangements for compensation and waygo in order to give tenants the confidence to invest on what are (potentially) quite short duration terms. These should be modelled on those in the 2003 Act with some simplification of process where practicable. The overriding aim should be to ensure that tenants are able to | YES | The existing provisions for compensation for improvements which currently apply to LDTs will be extended to MLDTs. Section 90 of the Bill provides that there will be a 2 year amnesty to allow tenants who had not followed the correct procedure to have improvements recognised as eligible for compensation at waygo to serve notice |
invest with confidence in this type of tenancy.

<table>
<thead>
<tr>
<th>Recommendation 31 - The option of allowing such leases to be extended by the landlord and then sold with improvements on the open market by the tenant (thereby avoiding formal waygo) should also be considered, especially with regard to full repairing leases.</th>
<th>PARTIALLY</th>
<th>As noted above, <strong>new Section 8E which Section 76</strong> inserts into the 2003 Act allows modern LDTs to be extended either at the term or beforehand, and <strong>Section 86</strong> allows them to be assigned. However, the extension would only be by agreement, and the landlord would have the restricted grounds to withhold consent to the assignee. Partial because the Bill does not apply to full repairing leases (which imposes full repairing and insuring obligations on the tenant).</th>
</tr>
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<tbody>
<tr>
<td><strong>Recommendation 32 - Provision should be made to enable land to be let for a period of up to one year, which will end without notice, for the purpose of grazing, mowing or cropping. Such leases should include a requirement for a declaration to be made to the incoming seasonal tenant to the effect that defined minimum soil nutrient and organic matter status are met, and by the outgoing seasonal tenant confirming that this has been maintained.</strong></td>
<td>NO</td>
<td>The Bill does not change the existing provisions in the Agricultural Holdings Acts on lets of less than one year.</td>
</tr>
<tr>
<td><strong>Recommendation 33 - Further consideration should be given to allowing an approved environmental charity to let land under the modern LDT arrangements which include reasonable environmental conditions as to the management of the land.</strong></td>
<td>NO</td>
<td>The Bill does not include any specific provisions in relation to the creation of modern LDTs by an approved environmental charity.</td>
</tr>
</tbody>
</table>

### Part 10 Chapter 2 – Tenant’s Right to Buy

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

**YES**

**Section 80(2) repeals Sections 24 and 25 of the Agricultural Holdings (Scotland) Act 2003 and in so doing remove the requirement for 1991 Act tenants to register for the pre-emptive right to buy.**

**Recommendation 18 - Further consideration should be given to when the pre-emptive right to buy the agricultural holding should be triggered, for example when the land is advertised or otherwise offered for sale, or (if not previously advertised or otherwise exposed) when negotiations are successfully concluded with another person with a view to the transfer of the**

**NO**
<table>
<thead>
<tr>
<th>Recommendation 19 - Further consideration should be given to ways to ensure the effectiveness of a 1991 Act tenant's pre-emptive right to buy in circumstances where a company owns a farm tenanted on a secure 1991 Act tenancy, and a transfer of the interest in a holding can be effected through the transfer of some or all of the shares in the company rather than the sale of the land.</th>
</tr>
</thead>
<tbody>
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<td>NO</td>
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<tr>
<th>Recommendation 20 - Further consideration should be given to the potential need to introduce an amendment to Part 2 of the 2003 Act to make clear that where there is an interposed lease and the landowner takes steps to transfer the land, the pre-emptive right to buy for any 1991 Act tenant sitting under the interposed lease is still triggered.</th>
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<td>NO</td>
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<th>Part 10 Chapter 3 – Sale where landlord in breach</th>
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<th>Recommendation 21 - Provision should be made to enable a 1991 Act tenant to request the Scottish Land Court to order the sale of a holding where the landlord has persistently failed to fulfil their obligations under the tenancy, triggering the tenant's right to buy. The Scottish Land Court will have discretion to order the sale, taking into consideration the respective rights and interests of both parties.</th>
</tr>
</thead>
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<tr>
<td>YES</td>
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Section 81 introduces a process whereby the tenant may apply to the Land Court for an order for sale if the landlord has not complied with an order of the Land Court, or an award made by an arbiter, to make good a material breach of the landlord’s obligations to the tenant in a material regard and by the specified date (new Section 38A of new Part 2A of the 2003 Act which would be inserted by Section 81 of the Bill). New Section 38B provides for the Court to have a discretionary power to order the sale. Sections 38C and 38D would provide powers to prevent transfer of the land or rights in the land after an order had been made. Sections 38E to 38J provide a process for the tenant to buy the land, and for the valuation to be determined. If the tenant did not buy the land, Section 38L would allow them to apply to the Land Court for a variation of the order for sale which would permit the land to be sold on the open market. The terms of such a sale would be set by regulations made under Section 38M. Section 38N would allow the former landlord to clawback some of the increase in value of the land if the former tenant or third party purchaser sold it on at a profit within ten years. Section 38O would allow owners or former owners to be compensated by Scottish Ministers for some of the
<table>
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<th>Recommendation 22 - The potential for proposals in the current consultation on Land Reform to address situations where the way land is being managed is impacting upon tenant farming communities and agricultural productivity, creating a barrier to local sustainable development, should be considered further.</th>
<th>NO</th>
<th>Part 5 of the Bill contains a right for community bodies meeting specified requirements to apply to Ministers to buy land to further sustainable development, but the Bill does not contain similar proposals which are specific to tenant farmers, or groups or communities of tenant farmers. Note: Section 41 of the Bill would allow a Community buying land under these provisions to buy out tenancies over the same land. As introduced these would include tenancies of agricultural holdings.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Recommend 23 - Further consideration should be given to providing small landholders with an automatic pre-emptive right to buy their holdings, should they come up for sale.</td>
<td>NO</td>
<td>The Bill does not contain provisions on a pre-emptive right to buy for small landholders. The Government has commissioned work to identify the extent of small landholdings in Scotland in order to consider the best way forward for these types of holding, the results of which are being considered.</td>
</tr>
</tbody>
</table>

**Part 10 Chapter 4 – Rent Reviews**

| Recommendation 3 - Legislative provisions on rents for secure 1991 Act agricultural tenancies should be amended so that rents are determined on the basis of the productive capacity of the holding, farmed by a hypothetical tenant (who is an efficient and experienced farmer of adequate resources who will make best use of the land) using the fixed equipment provided by the landlord, taking account of the budget for the holding, and including the contribution from non-agricultural diversified activity. | YES | Section 82 changes the basis for setting farm rents so they are based on the productive capacity of the land. It would insert a new schedule 1A into the 1991 Act, which would set out detailed provisions in relation to rent reviews. If the landlord and tenant cannot agree on the rent, and it is set by the Land Court, paragraph 7(4)(a) provides that the Court should have regard to the productive capacity of the holding. Productive capacity would be determined in accordance with regulations made by Scottish Ministers. These regulations would be made under the negative procedure under paragraph 8 of the new Schedule 1A, inserted into the 1991 Act. |
| Recommendation 4 - Legislative provisions for regulating rent reviews and determinations of rent for agricultural holdings should enable rent to be paid for non-agricultural activity on a holding that reflects a fair market rate for the landlord's assets | YES | In determining the rent for a holding, paragraph 7(4)(c) of new Schedule 1A of the 1991 Act would require that the Land Court have regard to the open market rent of any fixed equipment or land |
| Recommendation 5 | If objecting to a diversified activity on a tenanted holding, the process should be limited to only one notice of objection by the landlord and to create a presumption that if planning permission has been granted for the diversified activity, that the activity is allowed unless the landlord can demonstrate that objections under Section 40 subsection 9 of the 2003 Act apply. | NO |
| Recommendation 6 | In considering the appropriate rent for an agricultural holding, provision should be made for any housing provided on a holding in excess of that reasonably required for the labour requirements associated with that holding. | YES | Paragraphs 7(4)(b), 9 and 10 of new Schedule 1A to the 1991 Act would require the Land Court to include in a rental calculation the open market rental value of any surplus accommodation. Accommodation which is occupied in whole or in part by the tenant or is not permitted to be sublet cannot be treated as surplus. |

### Part 10, Chapter 5 – Assignation of and succession to agricultural tenancies

| Recommendation 13 | Current legislation should be amended to allow secure 1991 Act tenancies and LDTs to be: assigned by the tenant farmer in their lifetime; bequeathed where this is permitted in the lease; or transferred by a tenant's executors on death, to any living parent, or any living descendant of a parent, or spouse or civil partner of any living descendant of a parent of the tenant or of the tenant's spouse or civil partner. | YES | Section 84 amends Section 10A of the 1991 Act to widen the classes of family member to whom 1991 Act tenancies could be assigned. Section 87 of the Bill would amend Section 11 of the 1991 Act to widen the classes of family member to whom a 1991 Act tenancy could be bequeathed. The Bill substantially widens the potential assignees/successors e.g. it would include a step-child of the tenant's spouse's sibling's spouse. |
| Recommendation 14 | Current legislation should be amended to remove a landlord's ability to object to the lifetime assignation or the succession of a tenancy on the grounds that that the agricultural holding is not a “viable unit” and the landlord intends to amalgamate it with another holding. | YES (but only for near relatives of the tenant) | Section 89(5) repeals Section 25 of the 1991 Act is repealed so the viable unit test on succession would be repealed. For assignation, subsection 84(5) of the Bill would insert new Section (3A) into Section 10A of the 1991 Act which would restrict the landlord’s ability to object to an assignation to a family member who is a near relative to three grounds: |
1. That the person is not of good character
2. That the person does not have the resources to farm the holding efficiently
3. That the person has neither sufficient training or experience to farm the holding efficiently

Section 85(2) makes an similar amendment to the 2003 Act in respect of assignations of LDTs; Section 86(2) in respect of assignations of MLDTs; Section 89(4) would make similar provision in respect of bequest of 1991 Act tenancies, and LDTs and MLDTs

Note: The definition of a near relative, to whom the landlords rights to object to an assignation/bequest is more restricted includes some but not all of the family members to whom the tenant would be permitted to assign or bequeath their tenancy.

**Recommendation 15** - Provision should be made to enable any secure 1991 Act tenant to convert the tenancy into a new long duration modern LDT with a minimum term of 35 years and then be able to transfer that agricultural tenancy to anyone on the open market for value.

The RACCE Committee supported the proposal to allow a 1991 Act tenancy to be converted into an LDT.

**PARTIALLY**

Section 79 creates a power for Ministers to make regulations to provide for the conversion of a 1991 Act tenancy to be converted into a modern LDT, and specifies a number of specific points which such regulations may cover e.g. notice periods; and set the minimum terms of the lease (so could prescribe a minimum term following conversion from one to 10 years). Once the existing tenant had a modern LDT they could assign it, but this would be subject to the assignation provisions affecting MLDTs which would include a qualified right of objection for the landlord. The landlord could object to a proposed assignation if there are reasonable grounds, including that the tenant would lack the wherewithal to pay the rent and maintain the holding; and that the tenant lacked skills and experience. Where the incoming tenant was a near relative of the outgoing tenant, the landlord would only be able to object on the grounds that the tenant a. was not of good character; b. did not have sufficient resources or c. lacked training or experience.\(^9\)

\(^9\) The landlord would not be able to object under this ground if the tenant was enrolled on a training course which they are expected to complete within 4 years, and they are able to make arrangements for the holding to be farmed while they are undertaking the training.
| Recommendation 35 - Provision should be made to allow tenants who wish to assign an LDT (including one arising from converting a secure 1991 Act tenancy) to a new entrant to do so through a contractually based staged assignation process that facilitates appropriate apprenticeship arrangements and includes effective protection for the assignor, the assignee and the landlord. | PARTIALLY | Section 79 creates a power for Ministers to make regulations to provide for the conversion of a 1991 Act tenancy to be converted into a modern LDT, and specifies a number of specific points which such Regulations may cover e.g. notice periods; minimum terms of the lease. Once the existing tenant had a modern LDT they could assign it to a new entrant, but the Bill does not make provision for the phased transfer envisaged in Recommendation 35, and while regulations under Section 79 would not be limited to the specified matters it is not clear whether this would be within the scope of the Bill. |
| Recommendation 46 - Consideration should be given to amending the current provisions for succession, or assignation of, existing SLDTs and LDTs to more closely match those being proposed for the new letting vehicles. | PARTIALLY | Sections 85, 86 and 88 provide the same arrangements for succession and assignation of existing LDTs as for the new modern LDTs. |
| Part 10, Chapter 6 – Compensation for tenant’s improvements, and Chapter 7 – Improvements by the landlord | |
| Recommendation 9 - Allowing the registration of secure 1991 Act agricultural tenancies in the Land Register, should be considered further to determine what impact this would have on a tenant’s ability to offer the lease for the purpose of granting a standard security over it. | NO | The RACCE Committee found that while there were no objections to this recommendation, it had not heard evidence that this would make a significant difference to banks in making lending decisions. The Committee agreed that it should be considered further but suggested it should not be seen as a panacea for tenants having difficulty in obtaining finance. |
| Recommendation 10 - Provision should be made for a three year amnesty during which a tenant farmer may serve formal notice on the landlord to the effect that specified items not previously agreed may be treated as tenant’s improvements at waygo, including any claim that might be made under existing | PARTIALLY (note the length of amnesty period) | This recommendation relates to an improvement to a holding which has been paid for by the tenant, but where the proper procedure for notifying the landlord or obtaining the consent of the landlord has not been followed or records have been lost and therefore the improvement cannot be included in the assessment of |
provisions for improvements where no notice has been given, but which involve equipment that the landlord should have provided at the commencement of the lease.

The RACCE Committee supported the recommendation for an amnesty and that it should last for three years.

**Sections 90 to 95** provide for there to be an amnesty period of *two years* which would begin when this part of the Act came into force. During this two year period a tenant would be able to serve an “amnesty notice” on their landlord with details of the improvement. Landlords could object to the notice in which case the tenant could apply to the Land Court for a decision on whether the improvement qualifies, and, if it does, whether the amount of statutory compensation payable at waygo for a tenant improvement should be reduced. Section 95 provides a basis, during the amnesty period, for tenant and landlord to come to an agreement about whether compensation is payable for such improvements.

Note: The amnesty only deals with whether improvements are eligible for compensation i.e. whether compensation is payable not whether any is actually paid. Value of compensation can only be determined at waygo because it is the value to an incoming tenant.

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

**YES**

**Section 96** inserts new Sections 14A to 14F into the 1991 Act (and analogous Sections 10A to 10F into the 2003 Act in respect of LDTs, SLDTs, and MLDTs) which would require landlords to give tenants a notice of certain improvements; would give the tenant a right to object; and would refer disputes to the Land Court. The provisions would require that where the tenant had not given notice of such improvements, the value of the improvement would not be taken into account in rent reviews and would be disregarded in any assessment of the tenant’s statutory fixed equipment maintenance obligations. The provisions would not apply in work done in an emergency, e.g. to control an outbreak of an animal disease.

**Recommendation 12** - Further work should be undertaken, with relevant industry bodies, to revise the current list of improvements that can be eligible for compensation set out in Schedule 5 and Section 17 of the 1991 Act.

**NO**

**Miscellaneous Amendments**
| Recommendation 45 - Further consideration should be given to ensuring that any agricultural tenancy under the 1991 and 2003 Acts going forward, except a short term grazing or cropping tenancy, can only be terminated at their end date or, when they are running on tacit relocation, at the anniversary thereof by a notice to quit given not less than two years nor more than three years before the end date of the lease or any anniversary thereof. | NO | The Bill would not change the notice periods for 1991 Act tenancies, or existing LDTs or SLDTs. The notice periods for the new modern LDTs are as noted above (Recommendation 29), and while they include a double notice period, the notice to quit would be given between 1 and 2 years of the term date. |
| Recommendation 47 - Further consideration should be given to amending the 2003 Act, so that in any agricultural tenancy, with the exception of short grazing or cropping leases, a claim can be made by a tenant for loss and damage arising from the exercise of the sporting rights in a manner that was not in the contemplation of the parties at the commencement of the lease. | NO |
| Recommendation 48 - Further consideration should be given to amending current provisions on the service of notices for 1991 Act tenancies, SLDTs, LDTs and make provision for new letting vehicles so that any notice that requires to be served by anyone under the Acts on the landlord may be served on the original landlord unless notice was given to the tenant of the new landlord and to provide that anything that is required or authorised to be done by, to or in respect of the landlord or tenant may be done by, or to or in respect of any agent of the landlord or tenant. | NO |
| Recommendation 49 - Further consideration should be given to incorporating the miscellaneous changes set out in Appendix F and G of this Report and consideration should be given to consolidating the Agricultural Holdings (Scotland) Acts, though it is not anticipated this should be done within this Parliamentary term. | NO |
SOURCES


Scottish Parliament Rural Affairs, Climate Change and Environment Committee (2014a) *Letter to the Minister for the Environment and Climate Change on deer management issues in Scotland*. Available at: [http://www.scottish.parliament.uk/S4_RuralAffairsClimateChangeandEnvironmentCommittee/General%20Documents/2014.02.06_-_Convener_to_Minister_deer_letter.pdf](http://www.scottish.parliament.uk/S4_RuralAffairsClimateChangeandEnvironmentCommittee/General%20Documents/2014.02.06_-_Convener_to_Minister_deer_letter.pdf) [Accessed 22 August 2015].

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SB 15-32 Non-domestic Rates
SB 15-28 Land Reform in Scotland
SB 14-52 Tenant Farming
SB 13-74 Wild Deer in Scotland

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