INTRODUCTION

1. This document relates to the Agricultural Holdings (Scotland) Bill introduced in the Scottish Parliament on 16 September 2002. It has been prepared by the Scottish Executive to satisfy Rule 9.3.3(c) of the Parliament’s Standing Orders. The contents are entirely the responsibility of the Scottish Executive and have not been endorsed by the Parliament. Explanatory Notes and other accompanying documents are published separately as SP Bill 62–EN.

POLICY OBJECTIVES OF THE BILL

2. In preparation for the advent of the Scottish Parliament, the Land Reform Policy Group was set up in October 1997 with the remit:

"to identify and assess proposals for land reform in rural Scotland, taking account of their cost, legislative and administrative implications and their likely impact on the social and economic development of rural communities and on the natural heritage."

3. The Land Reform Policy Group identified the following areas for reforming existing agricultural holdings legislation:

- limited duration tenancies;
- wider opportunities for diversification;
- simpler and cheaper disputes resolution, and
- other measures to protect the interest of tenants.

4. The Land Reform Policy Group’s final recommendations, published in January 1999, covered a wide spectrum of action. These were accepted in full by the Scottish Executive, as set out in the Land Reform Action Plan published in August 1999. The Agricultural Holdings (Scotland) Bill forms a key element of this programme for action, will modernise agricultural holdings legislation and free up farm tenants and landowners from existing constraints on their business.

5. This Bill has developed and taken forward these proposals as follows.
New tenancy options (sections 1-22, 38-42, 45-51 and 58)

6. In recent years, the tenanted sector in Scotland has contracted markedly. A major reason for this is that landlords have become unwilling to enter into new 1991 Act tenancies, which give great security of tenure to tenants. Indeed, such tenancies frequently pass from one generation to another within the same family. (Although such tenancies are commonly referred to as “1991 Act tenancies”, the 1991 Act was principally consolidating legislation. The main legislative basis for these tenancies is the Agricultural Holdings (Scotland) Act 1949, although a number of current tenancies were originally established before even that Act was passed.)

7. Where landlords have let land in recent years, it has increasingly been through the use of a limited partnership as tenant within a 1991 Act tenancy. The landlord and occupier of the land enter into a limited partnership, with the landlord as limited partner (with limited financial liability for any losses of the partnership) and occupier as general partner. The landlord then concludes the lease with the limited partnership, which legally becomes the tenant. Although the limited partnership and its general partner theoretically have strong security of tenure, in practice the partnership is dissolved after a set period.

8. The current arrangements therefore have substantial disadvantages. Landlords have been unwilling to let land, because of their inability to terminate the tenancies. This has in turn made it difficult for young people and other new entrants to enter the industry. Where landlords have let land, this is now usually through the use of limited partnership tenancies, which can deprive tenants of security of tenure.

9. Against this background, the Land Reform Policy Group concluded that new tenancy options were required. The Bill introduces two new options, which closely reflect proposals developed and agreed by NFU Scotland and the Scottish Landowners’ Federation. The Executive believes that these options will prove popular with landlords and tenants alike. Existing tenancies under the 1991 Act (secure tenancies and grazing and mowing lets) will continue. Sections 1 and 3 also allow for these tenancy options to remain available in future, if explicitly agree by the parties.

10. The two new tenancy options are the short limited duration tenancy (SLDT) and the limited duration tenancy (LDT). Both types will have a fixed duration. The term of the SLDT will be 5 years, or a shorter term if the parties so agree. The term of the LDT will be 15 years, or a longer period if the parties so agree.

11. The SLDT provides a relatively short-term letting period. It will, for instance, suit parties interested in agreeing cropping lets or allow a small landlord the flexibility to let part of their land for a period where they would be unable to tend to it themselves. There will be little regulation to the SLDT. No diversification, rent review, assignation or notice to quit provisions will be involved, unless the parties agree otherwise when concluding the lease.

12. The LDT will provide landlords with an ability to let land into the long term with considerably greater confidence than 1991 Act tenancies allow. For tenants, the LDT will offer a degree of security of tenure that limited partnership tenancies cannot provide. It is hoped that both landlord and tenant will be encouraged to invest in land let under a LDT. The landlord will
have the assurance of a tenant they know on the land for a long period and the ability to reclaim the land at the end of the term if they wish. Importantly, the LDT will give tenants a term of at least 15 years to plan, invest, manage their business and reap the benefits of that investment.

13. Although parties will not be able to enter into a LDT or SLDT for a period greater than 5 years but less than 15 years by virtue of sections 4 and 5, the parties to a LDT may terminate the tenancy by agreement at any point. Alternatively, a LDT tenant will be able to assign their interest in the tenancy to a third party, subject to the landlord’s right to object to a particular assignee. If a second SLDT is entered into, involving the same parties and land, within 12 months of the termination of the first, the Bill makes clear that the SLDTs will be treated as one continuing tenancy. If the duration of a SLDT exceeds 5 years, it will be deemed to be a LDT of 15 years.

14. The Bill includes other provisions in relation to LDTs. In particular, it sets out rent review procedures which will apply unless the lease sets alternative procedures (sections 9-11 refer), and notice to quit procedures which the lease may not overturn (section 8 refers). Added to that, tenants under a LDT will be allowed to assign their interest in the tenancy, although the landlord will have a right to object to a proposed assignee (section 7 applies). The diversification provisions in Part 3 of the Bill will apply to LDT tenants, but not SLDT tenants.

15. Sections 19 to 22 (and paragraph 2 of the schedule) address what happens to a tenancy on the death of the tenant. SLDT and LDT tenants will be able to bequeath their interest in the tenancy to a successor on their death. The powers of the executor will be extended so, if the tenant dies intestate or a bequest fails, they may assign the tenancy to any third party, provided this would be in the best interests of the deceased’s estate.

16. Sections 38 to 42 and 45 to 51 extend the provisions in the 1991 Act relating to the payment of compensation from landlord to tenant or vice versa to SLDTs and LDTs. So, a tenant is entitled to receive compensation from the landlord at waygo for improvements made by the tenant to the land, for game damage, for disturbance and for resumption of the land by the landlord.

17. With the introduction of the new tenancy options, the Executive is keen to ensure that landlords cannot use the device of limited partnerships in future to deprive the tenant of their statutory rights. Legislation relating to the operation of limited partnerships is a matter reserved to Westminster. Nonetheless, section 58 addresses the issue in relation only to agricultural holdings and will apply to limited partnership tenancies entered into in future. Where a limited partnership is dissolved, the general partner will be able to notify the landlord that they are assuming the tenancy in place of the limited partnership. Alternatively, where a limited partnership acts in a way that restricts the effect of the protections provided for tenants by the Bill, any partner other than the landlord or an associate of the landlord’s can enforce or exercise these rights.

A pre-emptive right to buy for secure tenants (sections 23 to 33)

18. When a landlord sells land, it is often in their best interests to offer a holding to a sitting tenant. The value of land with a sitting tenant is typically around 50% of its value with vacant
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possession. However, by purchasing the landlord’s interest in the land, the tenant obtains ownership of the land with vacant possession, while a third party who bought the land would purchase it with a sitting tenant on the land. As a result, it is often in the interests of both landlord and tenant to agree a value that approximately splits the difference between sitting tenant value and vacant possession value.

19. However, situations also arise where the landlord does not offer to sell the land to a sitting tenant. In some cases, the first the tenant will learn about a sale is when the new landlord introduces him or herself.

20. The Land Reform Policy Group (LRPG) considered whether tenant farmers should be given a right to buy their holding. While conscious of the arguments in favour of a pre-emptive right to buy in principle, the Group felt that the proposal should not be included in the White Paper. Ministers at that time accepted the Group’s recommendations that a right to buy should not be pursued, because of the practical difficulties involved. However since then the issue continued to arise. In the light of this, Ministers re-considered whether there was any way in which the practical difficulties could be overcome and a meaningful pre-emptive right to buy introduced. The Executive’s proposals for a pre-emptive right to buy were set out for consultation in the draft Bill document.

21. The policy aim is to provide tenants with a right to buy the holding they rent in certain circumstances. The right will only apply to 1991 Act tenants whose interest in the land can have a virtually indefinite duration. The pre-emptive right to buy will ensure that ownership of the land can no longer be sold over these tenants’ heads.

22. The Bill provides a right to buy mechanism that can apply where a landlord and tenant have been unable to conclude a transaction between themselves voluntarily. This statutory mechanism is in many ways similar to that applying to the community right to buy under Part 2 of the Land Reform (Scotland) Bill. In order to exercise the right to buy, the tenant will have to register their interest with the Registers of Scotland (there is of course nothing to stop a landlord from voluntarily offering to sell land to a tenant who had not registered interest or was ineligible to exercise the statutory right). This is an important requirement, because on the register hangs the sanction for the tenant if the land is sold over their head (section 27(3) refers). In such circumstances, the tenant will be able to buy the holding from the third party purchaser at any time. With such a sanction against them, it is important that third party bidders for land can reassure themselves about the existence of tenants who may have a right to buy. The Register of Interests will provide the means to alert third party bidders, who can then seek confirmation from the seller about whether registered tenants have decided to exercise their right to buy.

23. The registration will contain details of the tenant, landlord and land registered. The landlord will be given the opportunity to consider and challenge any information within a registration.

24. In general terms, the right to buy will be triggered by the decision of the landlord to sell land including the holding. The nature of the triggers, listed in sections 25 and 26, is similar to that in section 37 of the Land Reform (Scotland) Bill for the community right to buy. So, for instance, transfers on succession and intra-family transfers will not trigger the right to buy.
25. The landlord will be required to inform registered tenants of their decision to sell land including the holding (section 25 refers). The tenant will then have a period of 14 days in which to confirm that they wish to purchase the landlord’s interest in the holding (see section 28(2)). Failure to do so, or intimation that they do not wish to buy at this time, will extinguish the right to buy on this occasion, although the tenant will be able to re-register interest in the land, which would enable them to utilise the pre-emptive right to buy on a future occasion.

26. Sections 29 to 33 set out a valuation process. Where a valuer is appointed, the valuation price in most cases should be what the valuer considers the parties would have agreed upon had they concluded the transaction voluntarily, having regard to the particular circumstances of that transaction. There may, however, be occasions where this valuation failed to ensure that the landlord did not suffer a financial loss by being required by the legislation to sell the land in a particular way. In these circumstances, the value to apply is the reduction in value to the remainder of the estate to be sold to a third party that arises from the sale of the land to the tenant. The valuation mechanisms aim to ensure that the landlord does not incur a loss on market value when selling the land. However, these mechanisms should also ensure a fair price for tenants. Either party will be able to appeal against a valuation to the Land Court.

Wider opportunities for diversification (sections 34 to 36, 44, 46(2) and 54)

27. Diversification is crucial if agriculture is to adapt successfully for the future. The present legislation is founded on a post-war need to maximise food production and it fails to allow tenants to diversify into other economic activities as they would wish. It also fails to take account of the increasing public interest in protecting and enhancing the environment and in particular in environmentally friendly farming activity.

28. The Bill introduces arrangements that will make it easier for tenants under 1991 Act and LDT tenancies (i.e. those with a long-term interest in the lease) to enter into non-agricultural activities. The provisions will apply to future actions in both new and existing leases, including those whose terms explicitly prohibit diversification.

29. The Bill does not attempt to define or otherwise restrict the nature of activities that can be entered into under these arrangements. Instead, the tenant will be obliged to notify the landlord of the proposed activity and the landlord will be given the opportunity to consider whether they believe that the proposal would undermine their legitimate interests. Provided the tenant provides sufficient information to the landlord, section 35(9) restricts the landlord’s principal grounds of objection to being that the intended use would:

(a) lessen significantly the amenity of the land or the surrounding area;
(b) substantially prejudice the use of the land for agricultural purposes in the future;
(c) be detrimental to the sound management of the estate of which the land consists or forms part; or
(d) cause the landlord to suffer undue hardship.

30. Where a landlord objects to a tenant’s proposals, the Bill will require them to set those out in writing to the tenant, who can then apply to the Land Court for an order that the diversification can nonetheless take place, using the Land Court’s powers conferred by section
60(2)(b) of the 1991 Act (as inserted by section 59 of the Bill). The Bill also allows the landlord to attach conditions to their approval. The Land Court will have the power to remove or modify any such objections or insert new conditions.

31. Ancillary changes ensure that a landlord cannot use the tenant’s use of land in fulfilment of the terms of a recognised conservation scheme as constituting “bad husbandry”, a situation that would often otherwise allow the landlord to irritate the lease. In addition, sub-letting will be allowed, if in furtherance of another non-agricultural activity (e.g. a holiday home business), notwithstanding the terms of the lease.

32. Separate arrangements will apply to the planting of trees for cropping purposes. In these circumstances, with trees typically requiring 50-75 years to mature, many plantations would outlive the tenancy. For subsequent tenants, this would restrict how they could use the land for agricultural purposes. For landlords, the rental value of the land would consequently fall. Section 35(13) refers.

**Simplified arbitration procedures (sections 59 to 74)**

33. Under existing arrangements, a landlord and tenant can approach an arbiter to resolve a dispute on their behalf where they have been unable to agree. Most commonly, arbiters assess rent payable under rent reviews. Also common, for example, are arbitrations to assess liability for maintaining or replacing fixed equipment and the calculation of compensation at waygo. Where the parties are unable to agree on a valuer, either party can approach the Scottish Ministers to appoint an arbiter on their behalf from the statutory panel of arbiters. Arbiters are appointed to the statutory panel every 5 years by the Lord President of the Court of Session in consultation with the Scottish Ministers.

34. Reform of dispute resolution arrangements in questions between landlord and tenant has been a key element since the Executive’s land reform programme began. The Land Reform Policy Group reported concerns that existing arrangements too often are lengthy, complex and expensive. Pursuing a recommendation made by the Group, in 1999 Ministers asked the Scottish Law Commission to report with recommendations on dispute resolution arrangements. The Commission reported in May 2000 (SLC Report 178: Report on Jurisdictions under the Agricultural Holdings (Scotland) Acts).

35. The Commission found that there are strengths within current arrangements. They give parties the opportunity to have a dispute resolved privately and often informally by an expert in the subject. Most arbitrations are conducted to the satisfaction of both parties. However, the Commission also made some telling criticisms. Chief amongst these were that too many arbitrations are complex, protracted and expensive and that, depending on the issue and the availability of arbiters at any time, the arbiter appointed in a compulsory arbitration might not have expertise in that matter.

36. The Commission’s recommendations received substantial support and have been adopted within the Bill. The existing system of compulsory arbitration is abolished. Instead, the Land Court will be given universal jurisdiction in agricultural holding disputes. Unless the dispute relates to a small group of issues which, due to their nature, will be within the Land Court’s
exclusive jurisdiction (typically because they raise questions of law), parties will have the opportunity to choose an arbiter or alternative form of dispute resolution instead. However, either party can apply to the Land Court (even without the consent of the other party).

37. The Bill will also abolish the related jurisdictions of the sheriff. In place of a multiplicity of appellate and supervisory jurisdictions, the system will be based in every case on a two-stage procedure, consisting of a first instance decision and only one opportunity of appeal.

38. The Executive believes that these changes will make dispute resolution arrangements quicker, simpler and cheaper than at present. Opportunities will remain for arbiters to undertake the role of resolving disputes, and those who can earn the trust of both parties and provide a high quality and good value service stand to do well.

Measures to strengthen the position of tenants (sections 55 and 56)

39. Existing arrangements aim to give secure tenants strong ongoing security of tenure, unless the landlord wishes to resume the land for a purpose provided for in current legislation. While the tenant would have the opportunity to object to certain proposed changes of use through the planning process, this will not be available to tenants in situations where the change of use does not require planning permission (e.g. afforestation). The Executive is concerned that there is no process for ensuring that such a change of use is in the broader interests of the local community.

40. Section 55 of the Bill therefore ensures that, where a landlord wishes to resume land for a non-agricultural purpose that does not require planning permission, the consent of the Land Court should be required before the tenant is required to quit the holding. Furthermore, the Land Court should agree to a notice to quit in these circumstances only where the economic and social benefits of doing so would exceed the benefits were the tenant to remain on the land.

41. Time limits for tenant rights to compensation for game damage are modified and tenant rights to regain the tenancy in cases of mineral development are strengthened (sections 43 and 56 respectively).

ALTERNATIVE APPROACHES

New tenancy options

42. The Executive’s proposals received warm support from the consultation on the draft Bill. However, there was a sizeable body of opinion expressed by land agents and some landowners in favour of freedom of contract. They argued that landlords and tenants should be given the flexibility to agree terms that best reflect their particular needs.

43. The Executive considered these arguments, but believes that the proposals developed by NFU Scotland and SLF better match broader Executive policy for the agriculture industry. In particular, the farm business of the future will have to be adaptable and flexible. They will also have to focus on the needs of customers. The tenant investment in the agricultural business and/or diverse activities that will provide the foundations for these enterprises can only be made
if the tenant can remain on the land long enough to obtain returns on that investment. The LDT provides a framework within which that investment can be made.

A pre-emptive right to buy for secure tenants

44. In responding to the draft Bill a number of landowners and land agents argued that, while land should not be sold over the tenant’s head, a requirement upon the landlord to offer the land to the tenant (without an obligation to sell to them) would overcome this. The Executive believes that its right to buy proposals need not undermine the interests of landlords (who will neither be required to sell land against their will nor to accept a price below market value for that land). With these protections in place, there is no reason why tenants should not be given a full right to buy the land from a selling landlord.

45. A section of the tenant community argued that secure tenants should be provided with a right to buy the land at any time. The Executive is however concerned that this would undermine efforts to revitalise the tenanted sector through the Bill, since many landlords would choose not to let land. Furthermore, any such right might run a risk of challenge under the ECHR, if the existence of an absolute right to buy over tenanted land suppressed its value. The Executive is concerned that the cost of compensating landlords for such a reduction in value, in order to overcome this risk of challenge, could be substantial.

Wider opportunities for diversification

46. The diversification proposals attracted broad support from respondents, including from landowners and land agents. Some respondents questioned why the Executive proposed to extend the provisions to existing leases. However, in the Executive’s view, the agricultural sector must be encouraged to adapt and embrace new ideas in order to succeed in future. The Bill builds in protections for the landlord, to enable them to object to a diversification proposal that might undermine the land or cause them undue hardship. With these protections to cover for landlords’ reasonable objections in place, there is no reason why the provisions should not extend to existing 1991 Act tenancies.

47. Several respondents suggested that the Bill should define “diversification”. However, in the Executive’s view, it would be virtually impossible for the Bill to define the term or list eligible or ineligible activity comprehensively, especially to take account of future developments. By providing landlords with the opportunity to object, the Bill ensures that proposals which could prejudice the land or their interests can be stopped.

Simplified arbitration procedures

48. The Commission considered the continuation of the compulsory arbitration with amended procedures as an alternative to extending the jurisdiction of the Land Court. They believed that there was considerable scope for simplifying arbitration procedures. However, they considered that greater benefits could be achieved by extending the role of the Land Court, in that it could provide a better quality of justice, operate more expeditiously and produce cost savings to the parties. Allowing either party the opportunity to apply to the Land Court without the support of the other party would focus arbiters into ensuring that they can be attractive to both parties to the dispute.
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CONSULTATION

49. These proposals have benefited from a substantial degree of consultation over the past four years. The Land Reform Policy Group recognised the need to consult extensively on what should be done. The Scottish Office and, more recently, the Scottish Executive had already undertaken wide-ranging consultation on agricultural holdings law and policy prior to bringing forward the draft Bill:

- In February 1998 the Group issued a first consultation paper on identifying the problems and opportunities which land reform should address. 6,750 copies were issued, and 364 responses were received.
- Then in September 1998 the Group issued a second consultation paper on identifying the solutions, assessing possible options for action in terms of what would be achieved by the proposed change; the legislative implications; and the administrative implications; and the cost. A summary version was also made available. 5,000 copies of the full version and 13,400 copies of the summary version were issued, and 846 responses were received to this second consultation phase.
- Throughout the consultation process, written responses were supplemented by contributions made in the course of 14 local seminars held throughout Scotland (attended by some 330 people in all), 7 expert seminars on specialist issues, and a wide range of bilateral meetings with relevant representative bodies and individuals.
- All of this informed the Group’s final recommendations, published in January 1999. 16,000 copies were issued, and a copy sent to all who had previously commented. The further comments received (though this was not a consultation paper) were also taken into account.

50. In the period from January 1999 to the establishment of the Scottish Parliament, policy development was informed by further bilateral meetings with relevant representative bodies and individuals. In addition, 14 consultation papers on specific issues were put to the Landlord and Tenant Consultative Panel, consisting of individuals and organisations that had expressed an interest in participating in the development process.

51. Following the establishment of the Scottish Parliament and the creation of the Scottish Executive, the White Paper Agricultural Holdings – Proposals for Legislation was issued on 17 May 2000. 2,750 copies were issued, and a copy sent to all those who had previously commented on the aspects relating to Agricultural Holdings reform. Almost 100 written responses were received.

52. In October 1999, Ministers asked the Scottish Law Commission to take the lead in developing detailed proposal on how best to revise dispute resolution procedures. The Commission examined the practical workings of the system and analysed the relationship between the various procedures and jurisdictions that presently apply, in consultation with leading experts in the field. Their proposals were summarised in the White Paper. A full analysis of current arrangements and proposals for change were set out in Scottish Law Commission Report No. 178, Jurisdictions under the Agricultural Holdings (Scotland) Acts (May 2000).
53. Shortly after the issue of the White Paper, Ministers invited the National Farmers Union of Scotland (NFU Scotland) and the Scottish Landowners’ Federation (SLF), as representatives of the key stakeholders for this legislation, to work together to develop detailed proposals about tenancy arrangements that landowners and tenants alike could support. Both organisations accepted and, after some lengthy deliberation, submitted their detailed agreement to the Executive in May 2001. The organisations since continued to liaise with the Executive on refinements to their agreement.

54. The land reform website www.scotland.gov.uk/landreform was launched on 6 August 1999, and it has provided a further means for the public to learn about and comment on the proposals. There has also been a wide range of meetings with relevant representative bodies and individuals.

The draft Bill

55. The draft Agricultural Holdings (Scotland) Bill was published in April 2002, and was subject to a 12 week consultation period. The associated document included details of the Executive’s policy proposals for a pre-emptive right to buy for secure tenants. About 3,400 copies were distributed, and over 260 responses were received. All the responses were considered and the observations made have informed the development of policy, with the result that significant changes have been made to the final version of the Bill.

56. A copy of the responses to the consultation (other than those given in confidence) has been placed in the Scottish Executive Library, and a further copy is in the Parliament’s information centre. The Scottish Executive has also prepared a paper summarising the responses and the action taken to amend the draft Bill, which will be widely available, and will also be placed in the Scottish Executive Library and the Parliament’s information centre.

EFFECTS ON EQUAL OPPORTUNITIES, HUMAN RIGHTS, ISLAND COMMUNITIES, LOCAL GOVERNMENT, SUSTAINABLE DEVELOPMENT, ETC

Equal opportunities

57. The Bill treats all landowners equally, while the rights and responsibilities of tenants are distinguished only according to the type of tenancy they have entered into. The Bill does not treat any party distinctively on the basis of their gender, race, disability, marital status, religion or sexual orientation.

58. In response to the consultation on the draft Bill, the Scottish Parliament’s Equal Opportunities Committee sought clarification about the effect of rules applying on succession to new SLDTs and LDTs on tenants’ beneficiaries. The Executive has been happy to offer reassurance that the Bill does nothing that would affect the financial interests of beneficiaries. With this exception, no difficulties have been raised in relation to equal opportunities since consultation on the legislative proposals began in 1999.
59. The Executive is keen to work with key stakeholders to ensure that landlords and tenants have a good understanding of their respective rights and responsibilities, which should further support equal opportunities objectives.

**Human rights**

60. The Executive is of the view that the Bill is compatible with the European Convention of Human Rights.

61. One of the principal human rights issues in the Bill relates to the introduction of a pre-emptive right to buy for tenant farmers. In this respect, the Executive has given careful thought to the application of Article 1 of Protocol 1 to this proposal. Article 1 of Protocol 1 guarantees the right of peaceful enjoyment of possessions. Depending on how it was implemented, the pre-emptive right to buy might restrict the freedom that landlords will enjoy in disposing of property.

62. A control on the disposal of property complies with Article 1 of Protocol 1 if it is lawful, seeks a legitimate aim, is fairly balanced between the public or general interest and the private interest, and is proportionate. The pre-emptive right to buy, as provided for in the Bill, will not apply unless the landlord already intended to sell the land. It will also ensure that the transaction price reflects market value, reflecting the already common practice where the landlord voluntarily offers to sell holdings to the sitting tenant. It will also be triggered in circumstances where the landlord is selling land to a third party without offering it to a tenant with a registered interest (that is, a sale in contravention of the tenant’s right to buy). So, for instance, the pre-emptive right to buy will not be triggered on succession or an intra-family transfer, or as a gift.

63. Also relevant is Article 6 of the Convention, which guarantees a right of access to an independent tribunal. The dispute resolution procedures have been developed with this principle in mind, so a right of appeal is available, including against judgements on fact as well as interpretations of law.

**Island communities**

64. The provisions in the Bill are designed to benefit the whole of Scotland. They do not discriminate for or against island communities.

**Local government**

65. The powers and functions of local authorities will not be directly affected by these provisions.

**Sustainable development**

66. The provisions on diversification will help promote sustainable development by allowing tenants the right, subject to certain reasonable conditions or objections by the landowner, to diversify into non-agricultural activities. This should create new economic opportunities for tenants, which should in turn assist rural communities more broadly. The provisions will also
make it easier for tenants to enter into agri-environmental schemes and other activities that can protect and enhance the environment.

67. If tenants are to plan, develop and invest in the land they lease, to improve their viability or environmental quality, they need assurance that they can recoup the value of that development and investment. The new LDT will do this by providing tenants with security of tenure for a period of at least 15 years.

**Business cost compliance**

68. A key aim of the Bill is to stimulate the tenanted sector. The Bill strives to do this by striking a balance between the interests of landlord and tenant in such a way that landowning businesses are encouraged to offer agricultural land for let and demand to enter into tenancies is encouraged. The Bill also aims to develop new opportunities for tenants to develop and adapt their businesses successfully for the future. Where this requires the imposition of restrictions or costs upon landlords, the provisions in the Bill have been constructed to minimise compliance costs on individuals and businesses. A draft Regulatory Impact Assessment for the Bill was issued in July 2002 for comment.
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AGRICULTURAL HOLDINGS (SCOTLAND) BILL

POLICY MEMORANDUM

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