Written submission from Argyll and Bute Council

ARGYLL AND BUTE COUNCIL

RESPONSE TO CONSULTATION ON LAND REFORM (SCOTLAND) BILL 2015

While Argyll and Bute Council is broadly supportive of the Bill, which aims to modernise and improve land law in Scotland, there are a number of issues arising in relation to the Bill which are of concern. In addition, although not part of the Council’s corporate response to the Bill, attached as appendix one to this document, are details of various representations from individuals throughout Argyll and Bute, which highlight their concerns with certain provisions in the Bill, and the Bill as a whole. Argyll and Bute Council anticipate that the Scottish Government will note the concerns outlined, and encourage the Scottish Government to take the views of their constituents into account as the Bill progresses.

In general, we are concerned that the approach taken within the Bill is to set out much of the detail contained therein by means of secondary legislation at a later date. In our view, this confers on Ministers significant power to determine substantial and important areas of policy, and to affect the rights of both the owners of land and tenants. It is considered therefore, that there is potential for the level of scrutiny of secondary legislation to be less rigorous than full parliamentary scrutiny. In addition, whilst the Council acknowledge that there is a requirement for the Scottish Government to be able to adapt to changing circumstances without the need for constant recourse to parliament, we have significant reservations about Section 100 of the Bill which provides Scottish Ministers comprehensive power to make regulations in relation to any of the provisions contained within the Bill which they consider appropriate.

We are additionally concerned that some of the provisions set out in the Bill as it currently stands, potentially conflict with both existing property law and Article 1 Protocol 1 of the European Convention on Human Rights which guarantees the right to property.

Land Rights and Responsibilities Statement

While it is difficult to comment further on any possible implications for the Council in the absence of any such statement, it is considered that any statement should take into account the views of all those with an interest in land, and should be supportive of those interests.

Scottish Land Commission

The Council broadly welcome the creation of a Scottish Land Commission, and the removal of some of the issues relating to land ownership in Scotland from direct political influence or activity. However, it is important that local communities and stakeholders have the opportunity to provide their views to the Commission in relation to matters within their remit, and that those views should be considered by the Commission when producing any strategic plan.
In addition, it is considered that housing should be a key feature of the work of the Commission, and that while the functions of the Land Commission and the Tenant Farming Commissioner are set out, a precise definition of these roles needs be established.

**Information about the Control of Land**

The Council is concerned that with regard to the power to obtain information about the control of land, the nature of who can make such a demand for information, who that information can be obtained from, and the nature of the information that can be obtained, will not be subject to appropriate parliamentary scrutiny as these provisions will be determined by secondary legislation.

**Community Engagement**

While Community Engagement is to be welcomed in relation to decisions relating to land which may affect those communities, the detail of such guidance will only be known if and when the Scottish Ministers issue it. We would note that while the explanatory notes accompanying the Bill set out the consequences of failing to comply with such guidance, including Scottish Ministers considering this as a factor when determining a community buy-out application, there is nothing contained within the Bill itself relating to the failure to comply with any guidance issued.

**The Right to Buy to Further Sustainable Development**

While the right to buy for sustainable development as drafted in the Bill is to be welcomed, key parts of the right to buy proposed remain to be set out in regulations. In particular, it falls to Scottish Ministers to determine many of the types of land which will be exempt. In addition, the Council is concerned that the meaning of what constitutes *sustainable development* is not set out and requires clarification. It is considered that there is potential for the meaning to change over time, and that this could present an obstacle to investment and growth within Argyll and Bute in relation to potential landowners, who may be reluctant to invest in the area as they will be unclear whether their plans will be deemed *sustainable*, and who may subject to a community buy-out at a later date under the conditions set out in the bill, regardless of whether or not they wish to sell.

In addition with regard to the provision within the Bill, which allows communities to nominate a third party to act in relation to a community buy-out, it is considered that there is potential for conflicts of interest in that there is a risk of developers actively promoting buy-outs to communities for profit.

**Entry in Valuation Roll of Shootings and Deer Forests**

The Bill makes provisions for all shootings and deer forests to be entered onto the Valuation roll. It is considered that it will be necessary for local authorities to value each shoot and attend to the relevant accounting, thereby adding to the Council’s costs. Clarification is required on how sporting rates will be assessed and valued.
The Council further considers that there is a high possibility of valuation appeals. There is potential for an adverse effect on existing farm diversification schemes resulting in some exceeding the Small Business Bonus Scheme. In addition, rural areas such as Argyll and Bute are already economically fragile and have little capacity for an increased tax burden.

**Agricultural Holdings**

As a rural area, Argyll and Bute Council supports the Scottish Government’s goal of a thriving tenanted farming sector. The Council welcome the proposed introduction of rent reviews based on a fair rent which takes into account agricultural productivity, the extension of assignation and succession rights to a wider class of people, compensation for tenant’s improvements and compulsory sale orders for landlords who fail to comply with a court order.

However, the Council is concerned that again key parts of the proposals remain to be set out in secondary legislation. For example, conversion of 1991 tenancies to a Modern Limited Duration Tenancy proposed by the Bill, will not be clarified until Ministers introduce regulations. There is concern that 1991 tenancies which are long term, heritable tenancies with security of tenure may be lost to limited term tenancies.

As stated, tenant farmers are a vital part of the community in Argyll and Bute and crucial to the economic prosperity of the area. While the proposals go some way to make the relationship between tenant farmers and their landlords more equitable, it is considered that whatever the final form of the provisions which become law, significant challenges will remain for tenant farmers.