Written submission from the Scottish Allotments and Gardens Society

Introduction:
The Scottish Allotments and Gardens Society (SAGS) welcomes the Land Reform Scotland Bill as a genuine and measured attempt to address inequalities of land ownership and to address some of the barriers facing communities who wish to access and engage with the land.

Urban Land is neglected:
The draft bill as a whole is oriented almost exclusively to land reform issues in a rural environment to the neglect of land reform issues in the urban environment. SAGS therefore view it as incomplete. A process of consultation and research should be started to identify specific barriers to accessing land for people living in the main population centres. This would enable the drafting of legislation tailored to addressing these barriers. Whilst SAGS is specifically concerned to ease access to land for allotments we believe that the rural focused nature of the draft bill will be a concern to many groups and communities interested in obtaining land in the urban environment for a range of other community purposes, such as gardens, sporting and recreation.

Greater integration with the Community Empowerment Act:
The draft Land Reform Bill must integrate more closely with the Community Empowerment Act. For two years SAGS has been intimately involved in research and detailed negotiation throughout the consultation process which culminated in the Community Empowerment Act (CEA) and section 9, setting out the main legislative framework for allotments. SAGS believe this legislation is suitable and fit for purpose. It is essential therefore that the Land Reform Bill extends, supports and reinforces the CEA. One specific area that the CEA did not regulate is allotments sited on private and non-local authority owned land. The draft Land Reform Bill deals with agricultural tenancies and Crofting Legislation exists. This leaves allotments sited on private land in a peculiarly excluded and derecognised position with regard to overarching and supportive legislation.

The Scottish Land Commission must include urban land expertise:
SAGS agree with the proposals for a Scottish Land Commission. In common with other submissions we identify the need for an appropriate spread of expertise amongst the commissioners. At least one commissioner should have expertise of urban land and community development and capacity building issues in the urban environment.
Engaging with communities in decisions relating to land must be law and not simply guidance:

134. Subsection (1) imposes a duty on Ministers to produce guidance about engagement with communities in decisions relating to land that may affect communities. It is our view that it should be an actual legal duty to engage with communities before decisions about land that affect the community are made. Furthermore, communities that perceive they are a community affected by a decision should be able to request they are consulted. This is a similar approach to the CEA that provides a mechanism for community bodies to put forward their ideas on services. It seems entirely proper that communities should also be able to request their say on land issues which impact on outcomes for their community. Please refer to Part 2 Community Empowerment (Scotland) Act 2015 and duties contained within that, especially section 4 on Community Planning Partnerships

Definition of sustainable development used is vague and the notion of harm defined in the draft bill could be used to block communities attempts to buy land:

It is unclear how the bill will interpret sustainable development for the purposes of the community right to buy and specifically what criteria and benchmarks communities will require to satisfy. More information on this is required to enable communities make decisions about whether to make applications and how to frame these.

Subsection (2) sets out the sustainable development conditions, which must be met for Ministers to consent to an application. In addition to sustainable development not being clearly defined the requirement that “not granting consent to the transfer is likely to result in significant harm to the community” is too rigorous a test. Proving a benefit to the community should be sufficient. In the case of allotments it would be very difficult to claim that a community not obtaining land for an allotment would experience significant harm. This test will disallow many beneficial projects. It seems unreasonable that a law aimed at addressing inequalities in land distribution and access should require those who are disadvantaged to prove significant harm to before the balance can be redressed.

Land contamination issues is ignored in the draft bill:

The draft Bill does not specifically address the issue of land contamination and preserving the quality of land for growing and food production purposes. In some areas, particularly urban areas, there is a shortage of land suitable for growing food and there are pockets of land that communities cannot use due to contamination. This should be taken into account when making decisions about community rights to buy and changes of use of land that affect communities. Wherever possible land should be preserved in a condition suitable for food production, whether this is the actual immediate use or not. Please refer to CEB Part 9, Section 119. Duty to prepare food-growing strategy, subsection (3)

“(3) A food-growing strategy is a document—
(a) identifying land in its area that the local authority considers may be used as allotment sites,
(b) identifying other areas of land in its area that could be used by a community for the cultivation of vegetables, fruit, herbs or flowers,
(c) describing how, where the authority is required to take reasonable steps under section 112(1), the authority intends to increase the provision in its area of—
(i) allotments, or
(ii) other areas of land for use by a community for the cultivation of vegetables, fruit, herbs or flowers, and

(d) containing such other information as may be prescribed.”

Further consultation and research is required to develop a means by which landowners can be required to decontaminate land that is not being actively used.

**Legal restrictions on changing articles of association must be developed for community organisations obtaining land:**

To ensure sustainability and/or longevity of community bodies in control of or owning land it is necessary to build safeguards to stop organisations slowly changing their articles of association away from community purposes. Community rights to buy land are pointless if over time the land is then sold or returns to private ownership or the community body gradually becomes less community oriented through changing their articles of association. The Scottish Government should consider the possibility to transfer the property into **non-heritable** common good land, held in trust by that community body for that community and registered by the Local Authority. Please refer to CEA Part 8 Common Good Property.

**The community of a body needs refining and clarifying:**

Further work is required to define the community of a body that will allow for some flexibility to include appropriate persons to be included in the community that may not live within the precise area understood to be the community. In urban areas where there is a shortage of land for certain community purposes it may well be acceptable for the greater good to allow a community body to be more loosely defined so that greater access to land can be achieved. For example there may not be suitable land for allotments in one community council area but another area does have suitable land. There are examples of community gardens available to a local community funded by the public purse that are not available to neighbouring community which does not have any suitable land to develop.

**The tenants right to buy must include allotments on private sites:**

There is, as noted above, an emphasis within the draft Bill on rural land and agricultural tenancies. Section 80 pertaining to the tenants right to buy should be developed to include allotments on privately owned and non-local authority land, this should include the removal of the requirement to register. Please refer to the CEA part 4, community Rights to buy land. This is crucial in the Land Reform Bill. Some further consultation would be appropriate on this
matter to ensure the balance of tenants rights in this case does not become a disincentive to landlords to provide or lease land for allotments.

All dealings related to community’s interests in land must be transparent:

The Land Commission and all its activities and decisions along with all decisions regarding community right to buy and appeals must be publicly available and subject to Freedom of Information (Scotland) Act 2002.

Further omissions in the draft Land Reform Bill that need addressed:

More funding to decontaminate land is required; this is a real and practical barrier to communities accessing land.

There must be a statutory limit on the length of time that local authorities can keep land in a land bank. Such land is not being used to benefit any communities. Please refer to the CEA, part 3a Community Right to buy abandoned, neglected or detrimental land.

The requirement for companies owning land in Scotland to be registered in an EU member state must be re-introduced to the bill.