Written submission from Seafield Estate

Background

The generic title ‘Seafield and Strathspey Estates’, covers the business interests of The Earl of Seafield and his family operating on around 35,000 hectares of Scotland. The land is owned by a number of separate businesses with different owners and ownership types. All owners aim to be responsible land managers and acknowledge they are part of the local community.

The family welcome the opportunity to respond to the Consultation.

General

In our earlier submission we pointed out how including Agricultural Holdings legislation within a Land Reform Bill could impact on confidence to let land. We note that the Scottish Government has not accepted this advice and by combining these different strands of legislation runs the risk of the sections dealing with Agricultural Holdings not achieving their stated objectives by undermining confidence to let by associating business relationships with political objectives. This is especially so now that the Bill shows that the section dealing with Agricultural Holdings is the largest section of the Bill. Even at this late stage we suggest that the title of the Bill could be changed to “Land Reform and Agricultural Holdings Bill”.

We support in principle many of the proposals in the Bill but have concerns relating to the absence of detail in many areas where it is intended to give enhancement later or leave powers with Scottish Ministers.

In order to be as brief as possible, we comment only on the main areas which we consider have the potential for negative impacts on business and the Scottish Economy.
Part 1: Statement of Rights and Responsibilities

While such a statement is welcome, it is strange that Scottish Ministers have not published this at this stage as one would have thought that clarity on this matter would be a cornerstone of developing the legislation.

Part 2: Scottish Land Commission

Given the apparent wide ranging remit that this body is to have and the impact that it may have on land management and policy, it is disappointing that the list of skills to be considered in making appointments includes ‘land reform’ with no mention of expertise in land management. It is essential that practical knowledge is available to the body and a minimum of one person should be experienced in land management.

Part 4: Engaging Communities in Decisions Relating to Land

Responsible landowners are already carrying out community engagement where practical and reasonable to do so. Recognition of and improvement to existing notification procedures should be the basis on which this is developed (for example, Forestry Commission Scotland’s Public Register). We would seek assurance that any development of this guidance will not place undue financial or administrative burden or restriction on business or place additional requirements on local authorities or agencies without appropriate resourcing.

Part 5: Right to buy to “further sustainable development”

Powers already exist to compulsory purchase land when in the public interest. This part of the Bill provides Scottish Ministers with wide powers without providing a definition of “sustainable development”. This is perceived as a fundamental flaw in the process of developing the bill and raises concerns over accountability in the democratic process.

Part 6: Removal of business rates exemption for sporting estates

Since the exemption was introduced, land management has embraced many other objectives, not only sport stalking, including culling deer to achieve regeneration of woodland and to achieve biodiversity improvement in other habitats. There will be valuation difficulties and the costs could exceed revenue generated at the expense of threatening the employment of those involved in the industry. Care will have to be exercised to ensure that any implementation does not have unintended consequences for biodiversity management and result in the Scottish Government failing to meet its obligations under the EU Habitats and Birds Directives.

Part 9: Access Rights

It is important to ensure any new provisions do not impact adversely on the ability to carry out land management operations and, in particular, to enable closure of paths temporarily as and when required to protect the health safety of the public and those working in the sector.
Part 10: Agricultural Holdings

Modern Limited Duration Tenancies (MLDTs)

This shows little advance on the current Limited Duration Tenancies (LDTs). An opportunity is being missed to bring in a modern vehicle offering wide freedom of contract capable of dealing with the current more expansive use of land for energy production etc.

Conversion of secure tenancies to MLDTs

The conversion is to enable the secure tenant to acquire a tenancy which he can then assign for value. It is difficult to reconcile this with the objective of opening up land for new entrants as, in addition to financing farming operations, the new entrant will have to buy a tenancy. It is also difficult to accept why a tenant who never purchased his lease should benefit from selling his tenancy. There would be a personal benefit to the tenant from such an arrangement but not a public benefit and the property rights of the landowner would appear to be breached. If this proposal goes forward, it will be essential to try and introduce a more balanced position by limiting the duration of the MLDT as much as possible. This would mean that the advantage of bringing a secure tenancy to a clear end date may balance the retrospective legislation changing contractual agreements and the owner's property rights for no public benefit and no arrangement for compensation.

Right to Buy

Absolute clarity on the triggers involved in establishing this right is essential and more work requires to be done in this area.

The proposal to grant the right across all secure tenancies without registration is not welcome. The current arrangement ensures that at registration farm boundaries are clearly agreed and established. This process should continue although the need to re-register could be removed.

Rent Review

There is currently an absence of detail on exactly how the rent will be assessed and it is likely that when there is an attempt to codify the process of arriving at a fair rent based on productive capacity it will be complex and subject to as much disagreement as the current system.

Tenants usually prefer to agree the actual rent as near to the term date as possible. The new arrangement will require the landowner to intimate the expected rent and the reasoning for it when notice is given one year prior to the actual review date. This introduces a historic base into a capacity valuation system where commodity and input prices could move significantly in the 12 month period.

Assessing productive capacity should include residential properties on the holding beyond that required for agriculture as the tenant could use them for holiday lets etc. Also, where the farmhouse is of a size larger than suitable to the character and size
of the holding, the rental calculation should include the value of this additional feature.

**Succession**

Since security of tenancy was granted, there has always been an expectation of the landowner obtaining vacant possession and history has proved this. Accordingly, holdings are valued above their actual tenancy value where for example there is no eligible successor and the tenant is in advanced years. Accordingly, the massive broadening of the succession class anticipated in the Bill with no clear public benefit and no provisions for compensation will go beyond the powers of the Scottish Parliament which must make legislation which is ECHR compliant.

**General comment on Succession and Conversion to MLDT proposals**

Land management requires flexibility for land to be redistributed to enhance and support other tenanted and owner occupied land. This allows tenants to grow their tenancy acreage providing economies of scale and land to be made available when suitable to new entrants. The outcome from the proposals in the Bill will therefore be to the disadvantage of many existing tenants who will have little opportunity to rent more land on the estate thereby gradually introducing inefficiencies into their businesses.

This is an example of how some of the proposals will not prove in the long term to be for the good of the farming industry. Neither are they in the public interest as they reduce the farming dynamics in a rural economy which is accepted generally as being fragile as it has most of our primary industries which tend to provide low returns.