Written Submission from Pinsent Masons LLP

Pinsent Masons LLP is a multi-national law firm with three offices in Scotland advising national and international clients with property interests in Scotland. We have extensive experience of acting for landowners, developers, investors and funders. We advise both the public and private sectors on commercial and rural properties.

We are responding to Part 3 (Information about control of land), Part 4 (Engaging communities in decisions relating to land) and Part 5 (Right to buy land to further sustainable development) of the draft Bill.

General Comments about the Bill

The proposals in the Bill have the potential to significantly impact on property and land ownership in Scotland. In our view the Bill, as currently drafted, lacks sufficient detail to enable us to give informed comment and to fully understand the implications of the draft legislation.

Many aspects of the Bill only provide a bare framework (e.g. Part 3 (Information about control of land etc), Part 4 (Engaging Communities in decisions relating to land) and Part 5 (Right to buy land to further sustainable development)) with important details left for the Scottish Ministers to complete by way of regulations. We consider this to be unsatisfactory, particularly when the framework in the Bill itself lacks clarity. We have mentioned in our detailed comments below where we require further detail in order to understand the consequences of the Bill.

Without further detail being provided a period of legal uncertainty will exist which will have a negative impact on the Scottish economy as landowners, developers and "communities" try to anticipate how the legislation may affect them.

In our view proposals throughout the Bill to defer detail to future regulations by the Scottish Ministers should be reviewed and avoided where possible to avoid uncertainty for landowners, developers and communities and to ensure that the Scottish Parliament's intentions are properly defined and that the scope for the Scottish Ministers subsequently to "expand the envelope" is minimised.

Part 3 Information about control of land

Section 35

We support the principle that persons affected by land have a right to more information on persons in control of that land but we need more detail as to the meaning of "persons in control of land", "persons affected by land" and "requesters". Without this detail we cannot comment on the consequences of these provisions.

With the obligation on the Keeper of the Registers of Scotland to complete the Land Register within 10 years we wonder whether she will have the resources
available to deal with requests for information and how the Registers staff will ensure that information is only provided to those entitled to such information. We are concerned about an increase in the risk of fraud if information is provided to those not entitled to it – this became a significant problem in England & Wales when availability of information was widened a few years ago.

**Section 36**

In relation to the proposed powers of the Keeper of the Registers of Scotland to request information relating to proprietors, there should be more clarity around who or what would prompt such a request being made. The consequences for any party failing to respond to any such request should also be clarified in the Bill.

**Part 4 Engaging communities in decisions relating to land**

It is very difficult for us to give detailed and informed comment on Part 4 of the Bill without further guidance and detail on what is meant by terms such as "land", "engaging", "communities "decisions" and "sustainable development". Responsible land owners already engage with local communities and see the benefits of sharing the use of the land. How far legislation can go in compelling reluctant land owners to engage is unclear.

**Part 5 Right to buy land to further sustainable development**

Again we require further detail before we can give meaningful comments on the impact of this proposed legislation. It is not clear what will constitute "sustainable development" and this is vital in understanding the impact of this legislation. The legislation must be clear on the purpose behind the policy and the meaning of "sustainable development" rather than leaving it to the Scottish Ministers to define at some future point. In that regard, "sustainable development" could mean many things – for example, does it mean environmental sustainability/green credentials; medium to long term economic sustainability/viability; supporting the continued viability/existence of a particular community in a particular location; or something else? The procedure for exercising the right to buy has been set out in detail but the circumstances in which such a right may be exercised requires significant clarification.

We are concerned that this further attack on the certainty of land ownership could have adverse effects on the Scottish economy. Potential investors and developers (working on regeneration and delivering much needed housing) need certainty and would be deterred from investing in Scottish property if there was potential for land to be purchased by communities with the State's approval where the land owner does not wish to sell the land. There are already rights for communities to buy land introduced by the Land Reform (Scotland) Act 2003 and the Community Empowerment (Scotland) Act 2015. Some of the rights arise only when the land owner wishes to sell the land but the community right to buy neglected or abandoned land (Part 3 A of the 2003 Act introduced by section 74 of the 2015 Act) does not require the owner to be willing to sell.
The property development and investment industries make a valuable contribution to the Scottish economy and would be adversely affected by any further uncertainty around land ownership and the ability to use land for the purposes which the land owner wishes to use it for without state or community interference.

We consider that if there are existing development proposals by the land owner or the land owner has entered in to contractual arrangements with another party for the use of the land these should expressly be reasonable grounds for refusing to sell the land to the community body.

Where a community body acquires land there must be restrictions on the use to which the land can be put to ensure that the community body carries out the planned sustainable development and does not sell it commercially for profit. We note that section 43 gives the Scottish Ministers the right to compulsorily purchase land if the community body would no longer be entitled to acquire the land. How will the use to which the community body puts the land be monitored? How will the Scottish Ministers establish if they have the right to compulsorily purchase the land? We also consider that the original owner should have the right to re-acquire the land (similar to the Crichel Down rules for land compulsorily purchased).