Written submission from NFU Scotland

1. NFU Scotland (NFUS) welcomes the opportunity to comment on this draft Bill. NFUS represents over 9,500 farmers and growers throughout Scotland, and as such has a unique oversight of the spread of issues covered by this Bill. NFUS realises that for many of its members, land reform is a very emotive issue. As such, NFUS has conducted extensive consultation with its membership, both internally via Committee structures, and via open meetings in its Regions.

2. NFUS previously noted that it considered agricultural holdings merited a separate Bill. Within the scope of the draft Bill, provisions relating to this forms a large and important portion. With this in mind, NFUS feels that renaming this Bill ‘Land Reform and Agricultural Holdings’ could go some way to acknowledging this, and also assist in dealing with perception within the industry.

3. NFUS recognises that Scottish Government considers land reform to be an ongoing process, but feels that it is vital that the emphasis must be on how land is utilised, rather than who holds ownership. An, understanding of the practicalities and implications for land management and farming must be at the forefront of policy discussions and decisions. With farming being the prime use on the bulk of rural land and the food and drinks industry a major employer across Scotland land reform should be complimentary to the Scottish Government’s objective of growing the food and drink industry. Good and prudent land managers must have nothing to fear from these provisions.

1. Land rights and responsibilities statement (LRRS)

4. NFUS noted previously that having a stated LRRS should prove to be a positive step, and for the most part members have been in favour of this as a framework for the new Scottish Land Commission. However, NFUS wishes to emphasise once more, that any LRRS must have specific regard for agriculture. As the foremost land use in Scotland, it is vital that any policy produced has adequate consideration for the importance of food production.
5. Scotland’s food exports now surpass £1.1 billion with total food and drink exports valued at £5.1 billion in 2014. Increasing international awareness and appreciation of the quality and provenance of Scottish food, and Scotland’s distinguished heritage as a food-producing nation is helping to drive year on year export growth. In order for this to continue, along with the associated benefits to the rural economy that it brings, it is vital that the importance of food production is strongly recognised in land reform. Food production is the largest manufacturing industry in Scotland. This bill will have impacts on this, and the LRRS has the potential to impact upon primary production.

2. Scottish Land Commission

6. NFUS recognises the formation of the SLC as part of Scottish Government’s recognition that land reform is an evolving process. The Bill notes that the SLC will be required to prepare a strategic plan, with set objectives and priorities, and that it will be approved by Ministers. Scrutiny of these proposals will be critical, it is important that local communities and stakeholders have the opportunity to provide views on any draft strategic plan, and this should also seek approval from the Parliament.

7. It is essential that the plan is fit for purpose and delivers the best opportunities for development within these areas. In order for success it is essential that the individuals who make up the SLC come from a broad range of interests and represent all views and opinions. An SLC that is seen to be dominated by one agenda will fail to garner the support of the broad community.

8. NFUS members voiced concern over the suggested areas of expertise as outlined in the Bill. Agriculture, and any mention of practical land management experience is a notable omission from the current list. NFUS suggests strongly that this should be a pre requisite within the Commissioners, it is not enough to simply have the whole of agriculture represented by the Tenant Farming Commissioner. It should also be made clear how the Tenant Farming Commissioner interacts with the wider Scottish Land Commission.
9. Recognising that land reform is an evolving process, there must be clear operational standards set between the Commission and other government departments. Rural Scotland does not operate in isolation, the work of other departments has significant impacts, and if overall objectives are to be achieved it will important that policy moves consistently in one direction and rural dwellers do not find themselves competing against policies with differing objectives.

10. In recent years in recognition that centralised decisions don’t always provide the best outcome there has been a political move to grant greater devolution and local autonomy. NFUS members are concerned about how a centralised Commission can truly appreciate the complex matrix of localised needs and aspirations that are contained within rural Scotland. Some provision should be made for a framework of regional advisory boards.

3. Tenant Farming Commissioner

11. NFUS has pushed for some time the concept of an independent overseer for tenancies. The work completed by the Agricultural Holdings Review Group (AHLRG) was commendable, and it was encouraging to note that the Group considered that many tenancies function well in the interests of the parties involved. However, it was also recognised that in some instances this was not the case, and NFUS is pleased that Scottish Government has included a position for a Tenant Farming Commissioner within this Bill.

12. NFUS has been working with the Interim Commissioner, and will continue with discourse on behalf of members. NFUS is encouraged by work undertaken so far, and will continue to engage whilst the Commissioner works to produce industry codes.

13. NFUS realises that in the first instance it will be difficult to foresee the volume of issues which will be referred to the new Commissioner. NFUS wishes to urge Scottish Government to make provision to review the allocated time and budgets attributed to this role, to ensure that this can be increased if dictated by demand.
14. It is very encouraging to note that the Bill contains a list of codes of practice for the Commissioner to prepare. During consultation, NFUS members have felt that in order to be able to make a real difference these codes must be statutory, which will ensure that the Commissioner can enforce meaningful sanctions if he considers this necessary. It has however been noted that the maximum sanction which the Commissioner can apply within the Bill is £1,000. This level is set far too low to be meaningful, and NFUS feels this should be reviewed.

15. NFUS believes that the Tenant Farming Commissioner must be pro-active, there is a role in terms of providing support and assistance to individuals involved in disputes, as well as additional information. One of the roles of the Commissioner is to produce statutory codes, and the Commissioner must be proactive to ensure that these are being followed. Where bad practices is uncovered the emphasis should be on remedying this at the earliest possible stage.

16. Two issues that are often central to many disputes are rent reviews and waygo. The fear of lengthy legal procedure often results in one of the parties agreeing to a settlement which would otherwise not be deemed acceptable. If the sentiment of the industry is to change the Commissioner will have an important role to play.

4. Transparency of land ownership
17. It is recognised that with land ownership comes a unique responsibility, which in turn relies on accountability of those who own or control land. NFUS members have voiced concern over the motives of persons requiring this type of information, however realises that in principle increased transparency is very hard to argue against.

18. As a safeguard, NFUS wishes to stress that any fee applied to seeking this information must be high enough so as to prevent malicious applications for information. In addition to this, NFUS understands that the intention of the Bill is to ensure that third parties must have a ‘justifiable reason’ for requiring such information. NFUS feels that exactly what constitutes a ‘justifiable reason’ should be clearly described.
5. Engaging communities in land based decisions

19. NFUS wishes to emphasise strongly that farmers are often an integral part of rural communities. Members have voiced concern over the intention for Ministers to issue guidance about engaging communities in decisions relating to land which may affect communities. NFUS wishes to be included in stakeholder engagement relating to any guidance.

20. There is very little detail contained within the Bill in its current form, and as a result members are worried about what the guidance may contain, and what this will mean for their farming businesses. Members feel strongly that communities should not be able to dictate to a farming business how operations are carried out, and that safeguards must be in place to ensure that a community cannot have a detrimental impact on how such businesses go about their day to day business.

21. NFUS feels that it is imperative that Ministers consult not just with communities in producing such guidance, but also includes NFUS and other landowner representative bodies in discussions. Only by doing so will landowner interests be adequately protected from potential harm.

22. In considering any ‘failure’ to adhere to guidance, in relation to an application to purchase land for sustainable development, NFUS feels that it is imperative that what constitutes a failure is clearly laid out, so that a landowner or occupier cannot inadvertently fall foul of this guidance.

23. NFUS is encouraged to note that this guidance is to apply to land held by charities, and that the conduct of trustees will be of relevance. Increased transparency and accountability of trusts is something which a number of NFUS members feel is vital to improving where there are ongoing management issues which they have been unable to resolve at the current time.
6. Right to buy land to further sustainable development

24. NFUS does not understand why this provision is contained within this Bill, when Local Authorities have had the ability to exercise compulsory purchase powers since 1973. The Community Empowerment bill introduced additional ability for communities to purchase ‘neglected or abandoned’ land, but this right to buy appears much more of an absolute one. NFUS feels that this is unnecessarily harsh, and does not seem to give due consideration to the balance of landowner or occupier rights.

25. NFUS is very concerned to note that there is no definition provided for ‘sustainable development’. Without this definition, it is difficult to give a thorough consideration to the appropriateness of this proposal. NFUS feels strongly that a definition should be provided within this Bill, and as such this should be subject to detailed scrutiny by the Scottish Parliament.

26. NFUS notes that in policy guidance it is stated that ‘fundamental to this is the identification of significant harm’. However it is not noted in the Bill what constitutes ‘significant harm’. NFUS considers that a clear definition of this must be provided, so that both communities and land owners/occupiers are well informed.

27. NFUS suggests that within the context of this Bill, it could be suggested that this measure is targeted at urban land, or land held under large landownership. This measure will affect all land in Scotland, and many farmers on urban fringes in particular feel very threatened by this portion of the Bill.

28. NFUS recognises that for some areas of Scotland there is some evidence that local development can prove difficult due to reticence of land owners or occupier involved to participate in proposals. However, it is important to realise that there can be valid reasons for a landowner or occupiers interests not aligning with the wishes of the local community. A landowner may have genuine reasons for not wishing to sell a piece of land for another use, and Scottish Government must have a thorough appreciation of such reasons and the rationale for these.
29. Loss of any parcel of land is recognised as the ultimate sanction against any landowner, and NFUS considers that this should be a last resort. Consideration should be given to allowing a community to enter in a lease arrangement with a landowner, if parties wish, as opposed to a sale which is potentially not based on the willing buyer, willing seller principle.

30. In setting out the ‘key tests’ NFUS notes with concern that there appears to be no regard given to any detrimental effect on the landowner or occupier of the transfer taking place. NFUS suggests that consideration must be given to any effect on the remaining parcel of land, as well as any financial implications. As noted previously, there are many farms on urban fringes, some of them extremely marginal, and the loss of land to any such unit could have disastrous consequences. NFUS feels strongly that a statement which ensures that Ministers must have due consideration for detrimental impacts on the business losing the land must be included in this Bill. In addition, where it is demonstrated that significant harm is likely to occur to the land owner/occupier this must be a reason for the transfer not taking place and a community must be advised to seek alternative options to achieve its aspirations.

31. NFUS members have voiced extreme concern about the criteria for constituting a community outlined in this Bill. Members frequently report issues where parties have moved into a locality, often from a previously urban existence, and often end up at odds with the rural businesses who have often been established in that location for generations. NFUS members feel that in order to prevent such individuals from steering their own agendas through community rights that individuals should have held residency in a community for at least five years.

32. NFUS members have also voiced concern over how communities can be constituted. NFUS understands that the definitions provided are consistent with previous legislation, but cannot understand the rationale for using a postcode area. This blunt instrument takes absolutely no account of diverse factors such as shared culture or common interests, and NFUS feels that better definition should be sought.
33. In making an application, communities must be required to complete a full and detailed business plan, and financial analysis for their project. Communities must have to demonstrate why the particular parcel of land is needed, and be clear about the exact extent to what is required.

34. NFUS is aware whilst there are a number of community led projects which have been a success, there have also been some high profile failures. NFUS feels strongly that Scottish Government must make a register of such projects, in order to examine the successes and failures and reasons for these.

35. If a transfer does successfully take place, there must be adequate compensation provisions for the land owner losing the land. Regard must be given to established compensation heads of claim, including severance, injurious affection, and disturbance for remaining land. In addition to this, the purchasing community should also be required to make provision to cover the landowner’s costs in relation for any necessary professional representation in the context of the transfer.

36. In addition to this, NFUS members feel strongly that if land is purchased under this proposal and subsequently developed, the landowner must be entitled to additional compensation payable by the community to reflect the increase in value of the land lost.

37. NFUS wishes to voice concern over the proposal to allow communities to act with a third party partner. Whilst the logic for this is likely to be funding, NFUS has already heard some evidence to suggest that the unintended consequence of this will in fact result in third party developers seeking out communities for their own profits, rather than the assumed intention of communities being in the driving seat and the third party being brought in as a partner. NFUS assumes that profiteering by developers is not an aim of this Bill, and suggests caution around this measure.
38. NFUS to make it clear that being subject to any proposed right to buy is stressful for any owner or landowner. Where an application has been made which has not been successful, NFUS feels that consideration should be given to a timespan being applied during which a community cannot make any further application to the same parcel of land. This should ensure that only the most robust community projects succeed, but also ensure that landowners are not subject to repeatedly stressful situations which could impact on their ability to plan their business.

39. Where a community is successful in purchasing a piece of land for a project which subsequently fails, the community making the application must be liable for the landowner’s associated costs. NFUS suggests that Critchel Down Rules are applied to ensure that land is offered back to the former owner.

40. Finally, NFUS feels that this Bill is contradictory, in that it is apparent that there is no level of accountability required of communities who undertake projects. This appears totally at odds with increasing accountability for landowners and occupiers under this Bill. NFUS suggests that some thought should be given to having individuals contained within a constituted community body accountable and liable for proposals which they are responsible for driving.

7. Entry into the valuation role for shooting and deer forests

41. NFUS does not agree that shooting and deer forests should be entered into the valuation role. NFUS considers that many estates provide substantial rural employment in areas, and as a result play a vital role in sustaining rural communities where otherwise there would be none. There are substantial tourism benefits from such businesses, and this results in inward investment in such areas. NFUS is very concerned that this proposal is contained within the Bill, as it is not aware that Scottish Government has carried out any research into the full financial implications of this proposal. Whilst it is clear that ‘parity’ is the aim of Scottish Government, NFUS feels that this proposal must be researched more fully before any changes are implemented.
42. NFUS notes in the policy guidance that ‘many small scale shootings would be expected to be eligible for rates relief under the existing Small Business Bonus Scheme’. NFUS understands that this scheme is calculated on the total combined rateable value of all properties within a business. Many farm businesses will pay non domestic rates on properties which are currently not covered by exemptions. As a result of this, farm businesses which have diversified (e.g. farm shops) in order to strengthen their business and reduce their risk will be exposed to these rates with no exemptions applied. This system will directly apply a penalty to farm businesses which have shown initiative. In addition to this, NFUS has serious concerns that this proposal will act as direct disincentive for farm businesses to diversify in the future.

43. In addition to this, NFUS notes that in theory the straight application of a rating system would apply to any land which has sporting rights, regardless of whether these are exercised or not. At a time when agriculture is suffering historically low prices, NFUS has concerns about the additional burden that this will place on such businesses.

44. NFUS also questions the context of this proposal in relation to the deer control methods. The proposals appear to be contradictory in that landowners will have additional requirements to control deer, whilst at the same time potentially have to pay rates which could be based on numbers killed.

45. Finally, NFUS questions how deer farms will be treated if any rate applied is based on numbers killed.

8. Common Good Land

46. NFUS has no comment to make in relation to the proposals which relate to common good land.
9. Deer

47. NFUS is concerned by the proposals outlined in the bill in relation to deer management. Over recent years, there has been substantial moves from within the land management industry to modernise deer control. There is a current deadline of 2016 for the production of deer management plans, and NFUS is unsure why the results of this have been preempted by this Bill. Until this deadline has passed, it seems unfair to impose further regulation at this time. The creation of additional powers, with hefty sanctions, runs the risk of undermining the good work which is already being carried out.

48. NFUS members have also voiced concern over the bluntness of these proposals. The necessity of deer management varies from area to area, for example the stark differences which can be seen in the Highlands and Lowlands. As a result of this, a countrywide approach to deer management will be difficult to apply as a one size fits all approach.

49. NFUS also questions the requirement for the substantial increase in the fine for failure to comply with a control scheme. NFUS members are concerned about the scale of this, and NFUS would like Scottish Government to clarify justification for this.

10. Core Paths

50. NFUS does not have any significant concerns with the proposals contained within the Bill. It is positive to note that the importance of engaging with landowners in relation to paths has been covered by some of the proposals.
51. Generally, NFUS members are supportive of access takers. However, some members report repeated issues with irresponsible access. In these circumstances recourse is almost impossible from a landowner’s point of view. In the spirit of encouraging local authorities to work with landowners in relation to public access, NFUS is pleased to see that landowner consultation is noted in the Bill. However, NFUS feels that consultation requirements should be stringently laid out, and not left to an individual local authority to determine what it deems suitable. A path may seem relatively innocuous on a plan, but it could have severe detrimental impacts to the landowner concerned, so a robust consultation process which allows for objections to be scrutinised appropriately is a must.

52. NFUS would also like to take this opportunity to voice ongoing concerns relating to the maintenance of access provision. There is very little funding available for the ongoing upkeep of paths, and whilst Government targets aim to increase the use of such recreational facilities, there is no composite plan to ensure that these remain fit for purpose, and to ensure that landowners are not inadvertently exposed to liabilities.

11. Agricultural Holdings
53. NFUS has been pleased to engage with the recent review of agricultural holdings legislation by the Agricultural Holdings Review Group (AHLRG). It was pleasing to note that the AHLRG considered that the tenancy sector was not fundamentally broken, as NFUS considers that a healthy and vibrant tenanted sector is a vital component of Scottish agriculture.

12. Modern Tenancies
54. There are a range of vested interests within the tenanted sector, and in providing views NFUS has consulted widely with its membership and taken a view on what it considers to be in the best interests of the industry as a whole. Crucial to the future success of the Bill is the restoring of confidence within the tenanted sector. Letting land is ultimately a choice, and without this it is unlikely that landowners or owner occupied farmers will find letting land a viable or safe option.
55. During the course of consultation as part of the AHLRG work, it became apparent that the industry recognised that the system introduced in 2003 of SLDT/LDT could function well given the right circumstances. The system introduced in 2003 intended SLDT’s be used for cropping lets and LDT’s for livestock farming. The clear distinction between shorter and longer duration is the principle that largely is accepted, but due to circumstance distortion has occurred within the industry with much shorter letting periods being the norm than either party would like under ideal conditions.

56. The Bill recommends a new version of letting vehicles, starting with retention of the SLDT option to accommodate lets of 1-5 years in duration. Some NFUS members have voiced concerns that landlords acting on the advice of professional advisors will elect to use the shortest duration as a default option, in order to minimise their risks. However, NFUS notes that the lack of ability to provide a fiscal incentive for letting of a certain duration means that the risk of including a single longer term option could result in landlords opting to use contract farming or annual agreements which are much less secure and in general less preferable than fixed term letting agreements.

57. The industry requires the right conditions that encourage and promote long term sustainable letting. It is for the benefit of all parties to work together to achieve this. There are good examples, even in the uncertainty of the last ten years, of those who have rented land with agreements that have functioned well. But all too often circumstance has dictated short term agreements, which are not conducive to a productive industry. Where this exists, with the fear that leases will not be renewed, this discourages investment, lower levels of production, and less confidence. NFUS is encouraged by evidence in Scottish Government’s statistical analysis as part of the AHLRG workstream which showed that over 70% of SLDT/LDT tenants reported to have had agreements renewed at the end of their fixed term.
58. The success of the modern tenancies is imperative for the sector, and Scottish Government must bear in mind that any changes brought about to 1991 Act tenancies will also have a bearing on the confidence of current and future landlords to let land. NFUS is aware that in 2017 the first generation of LDTs will come to an end, and these tenants must be able to reach agreements which work for their business, whether this is in the form of a new agreement, or a supply of additional or other let land.

59. NFUS also notes the second option the ‘MLDT’, of not less than 10 years in duration, to replace the current LDT option but provide a greater level of flexibility. NFUS feels that in order to ensure that the interests represented are taken account of there should be standard templates for such agreements, and that the industry must take collective responsibility for urging individuals to be clear as to the terms they are signing up for. The ability to insert a break clause at year 5 for new entrants is seen as a sensible precaution, however it would be prudent to distil the specific terms under which such a tenancy can be terminated by either party under this provision.

60. NFUS has considered the various options for tenancies outlined by this Bill. With the provisions applied, it is quite clear that land will be more likely to be let to existing or developing businesses under the MLDT system. As such, NFUS is concerned that aside from other initiatives such a starter farms, there are no options which will assist new entrants in getting on the farming ladder.

61. NFUS was pleased to see the AHLRG recommendation relating to repairing tenancies for a period of 35 years when let to a new entrant, and is disappointed to note that this is not contained within this Bill. NFUS feels strongly that starter farms have their place in the system, however would like to see this provision facilitated to offer an option to new entrants.
13. Assignation/Conversion

62. Currently it is possible to assign a 1991 Act tenancy to those who would have been entitled to succeed an estate under the laws of intestacy. Often tenants do not have a successor, or anybody to which they could assign their lease where the landlord would not be entitled to object. This is another reason why many 1991 Act tenants choose to extend their working life, or stay on farms till death. As a result, there can be a knock on effect of stagnation for the sector, and a further barrier to those wishing to come into farming.

63. The potential for conversion of secure tenancies is something has been a point where across the industry there has been strongly opposing views. NFUS originally proposed assignation for a 25 year duration, or to retirement age. NFUS also proposed a limited class of assignees, at that time to target this measure specifically at new entrants. Since that submission was made there has been much debate within the industry about what form this measure should take, whether a value should be attached to it, and what duration it should attract.

64. Conversion provides secure tenants with an alternative to the waygo process should they wish to leave their tenancy, and whilst not all landlords agree with the principle of this proposal, this will mean that some tenancies which would otherwise have continued in perpetuity may revert back to the landowner at some stage. In short, this option has the potential to offer something positive to both landlord and tenant.

65. Calls for open assignation allowing secure tenancies to be ring fenced have come mainly from secure tenants, including the NFUS Tenants Working Group, who believe that land held under such tenancies should continue to be so in the future. Other tenants who have concerns about their ability to realise adequate compensation at wagyo have also supported this as an alternative.
NFUS understands that this option was substantially investigated by the AHLRG, who recommended a term of 35 years was applied. NFUS also understands that there are substantial legal uncertainties over whether this option is possible either in an open or limited version. Therefore, NFUS suggests that at this current time this places the industry in an impossible position with regards to this option. Clarity is required on what is actually possible so that the industry can discuss the issue from an informed position and come to a conclusion that is in the best interest of the tenanted sector. NFUS asks that the Scottish Government as a matter of urgency confirm to the industry definitive guidance over what is possible.

As an aside, NFUS notes that currently there is no automatic right of first refusal for the landlord to purchase any assignation. Application of this seems a basic fairness, which should be given some consideration. In addition, there should be a requirement for involvement of the landlord in discussions over any assignee. In the spirit of fostering and facilitating positive business arrangements going forward this is the sort of discourse the industry should be encouraging.

### 14. Assignation/Succession

Because the structure of families has changed, assignation and succession provisions have been another source of contention within the industry. As a pre requisite, NFUS believes that assignation and succession provisions should relate to family ties, and provide a solution where death occurs out of turn. Succession provisions should ensure that a family farm can continue to operate as such.

Understandably, there is concern from some landowning members that any changes to current assignation and succession provisions are retrospective in nature, and in effect altering the terms of what parties signed up for in the first instance.
70. By making changes as proposed, it must be acknowledged that there will be circumstances where landlords who anticipated farms coming back in hand may now find that this will not be the case, and find their situation unacceptably compromised. In addition, it must also be recognised that any changes applied to 1991 Act tenancies will undoubtedly have an effect on attitudes towards future letting arrangements. It has been expressed to NFUS on a number of occasions by landowners and their professional representatives that changes of this nature are the sort which undermine confidence within the sector, and there is a fear that fixed term tenancies will suffer as a result of this.

71. As with assignation for conversion, wider assignation and succession have been topics on which NFUS members have had polarised views. Secure tenants, including the Tenants Working Group, believe that secure tenancies should be propagated as much as possible, and generally feel that the much wider proposals in the Bill are a positive step.

72. NFUS has previously noted that where a party has been actively involved in a farm business it would seem fair if they were able to have a tenancy assigned to them, or succeed one on death. If the policy aim is to extend the lifespan of secure tenancies then the proposals in the Bill will aid this, however if the policy aim is to address unfairness of death out of turn or the inability of direct family to take over a business, the proposals seem to go wider than what is required.

73. NFUS notes that the AHLRG recommended the removal of the ‘viable unit test’, aside from retention of the part which allows a landlord to object to a successor tenant on the basis that he already farms another viable unit. The rationale for this was to prevent single parties from accumulating multiple secure tenancies. NFUS is unsure if the omission of this from the Bill is due to error, or intended. In the context of this Bill, if succession and assignation is widened significantly as proposed, it is possible to suggest that this scenario is much more likely to occur that previously. NFUS agrees with the AHLRG that this portion of the viable unit test should be retained in order to prevent this from occurring.
15. Pre-emptive Right to Buy
74. NFUS is pleased to see this provision contained with the Bill, and feels that for secure tenants who have been in their holdings for a long period of time this seems a reasonable step. This removes a perceived area of contention, and is seen as a positive portion of this Bill.

16. Enforced Sale
75. Enforced sale is recognised as something which will be useful in the context of landowners are persistently negligent in relation to the terms of their tenancy obligations. However there is a recognition that this is unlikely to occur often.

17. Rent Review
76. NFUS welcomes the move to assessing the rent of 1991 Act tenancies based mainly on productive capacity of the holding. The current system of comparables, coupled with recent case law has provided a key area of dispute and mistrust within the sector. NFUS and other stakeholders are already engaging with Scottish Government in relation to the mechanics of how this new system should work.

77. With regards to the other provisions under rent reviews, NFUS members recognise that there is a disconnection between the open market for residential rents and farm rents. Many farm tenancies also contain a number of residential properties, which are sublet to third parties. It is also recognised that some are sublet with consent, and some do not have consent.

78. It seems fair that where there is surplus residential accommodation which exceeds the labour requirement of that holding that a landlord is entitled to a proportion of the rental income for such property. NFUS notes however, that this does not match with the AHLRG recommendation that any housing provision in excess of reasonably required labour should be taken into account. Some members feel aggrieved by this, as there are instances of very large farmhouses on proportionally small farms. In addition to this, some tenants have reported that whilst they have sublet cottages, they have taken these on in their unimproved state, and thus do not feel that it is fair that a landlord should benefit from this.
79. The 2003 Act removed the requirement for a tenant to reside on the holding. As a result, some tenants have been able to sublet the main farmhouse, which due to high residential rents will often pay the complete rent for the main holding under the 1991 Act tenancy. This appears a basic unfairness for the affected landlords.

80. Finally, NFUS recognises the portion of this section which notes that an open market rent should be paid for what the landlord has provided in relation to a diversification. This measure is a difficult balance to strike, at the very least the landlord has provided the bare land, but the venue has succeeded as a result of the tenant's ingenuity. Further guidance will be required in relation to this part of the proposals.

18. Waygo

81. NFUS strongly believes that all tenants are entitled to receive fair compensation at the end of their tenancy. In order to clarify what can be an uncertain process due to the fact that notice may be lost or not served, and to bring everything up to date, the idea of an amnesty is widely supported by the industry. All parts of the sector recognise the issue of improvements which have not been notified. This causes confusion and concern in relation to waygo. It is generally accepted that an amnesty process is positive, to allow things to be brought up to date.

82. The AHLRG suggested a three year period, this coincides with the length of time for rent reviews. NFUS were disappointed to see that the Bill suggested a shorter period of time, and strongly suggest that an amendment is forthcoming for a three year period. The period noted is for a 2 year duration, however it is not clear if improvements must simply be registered during this time, or if all disputes over improvements must also be settled during this period. In addition, it is not clear what will happen to improvements which are not registered, and it must be made clear if these are to become fixtures.
83. During the course of discussions, it has become apparent that waygo disputes are now one of the key areas of contention within the industry. NFUS recognises the importance of waygo, as it can act as a direct disincentive for farmers who would otherwise retire and make way for others in their place. At this current time a tenant must give notice to quit his holding without knowing what his waygo payment will be. The perception is that this weakens the tenants negotiating position. It should be noted however, that there are some examples of excellent practice where there is a substantial amount of informal discussion around an intention to exit before any formal notice is given.

84. NFUS feels that the concept of a double notice provision must be introduced and should from part of this Bill. This would allow a tenant to serve a notice of intention to quit the holding, thus formalising the informal discussions noted previously that take place in some cases and that could be considered to be best practice. This would then allow the landlord the opportunity to formulate a waygo offer and hold discussions with the tenant. If an agreement on waygo is reached between both parties then this could be followed with a second notice, within a defined timeframe, noting final intention (or otherwise) to quit the holding based on safe knowledge that the waygo sum has been agreed and will not change.

Ends.