Written submission from the Development Trusts Association Scotland (DTAS)

The Development Trusts Association Scotland (DTAS) is the national organisation for development trusts in Scotland, with a membership of just over 230 community led organisations engaged in the regeneration of their communities through a combination of enterprise, community ownership and creativity. Access to land and property can be a key factor for development trusts in both furthering the aims and aspirations of the community, and building the financial sustainability of the organisation. The inability to access to relevant land and property, can therefore have a negative consequence on the ability of communities to address key local issues such as addressing de-population, housing need and disadvantage.

As such, land reform (in addition to the recent Community Empowerment Act) is a legislative area in which the development trust movement has a keen interest. DTAS appreciates that land reform is a wide ranging and complex area, so within this submission, we have restricted ourselves to making some general comments about the Land Reform Bill, focussing on the areas within the Bill which potentially have the most direct relevance to our members and highlighting issues for future legislation.

General Comment

In general DTAS warmly welcomes and supports the introduction of the Land Reform Bill, but would make the general observation that the Bill could be strengthened in several areas by greater acknowledgement of, and reference to, the International Covenant on Economic, Social and Cultural Rights. There is also a potentially stronger link to be made between land reform and the Scottish Government’s ambition for a fairer and more socially just Scotland – an ambition supported by communities up and down the country.

Part 1 and Part 2

After years in which it seemed the issue of land reform had fallen off the Scottish political agenda, DTAS welcomes the introduction of the new Land Reform Bill to the Scottish Parliament. We recognise that a wide range of policy areas have a ‘land dimension’ and that any system of land ownership needs to be updated and refined on an ongoing basis in response to changing circumstances and new challenges.

DTAS is very pleased to see the above sentiments reflected within the Land Reform Bill, and particularly welcomes both the proposal to have a Land Rights and Responsibilities Statement (Part 1) and the proposal to establish a Land Commission (Part 2). Given the potentially contentious nature of some land reform measures it is essential that the broader purpose behind land reform is clearly stated; any land statement needs to acknowledge and address the part which land policy plays in achieving the wider public objectives set out in the Policy Memorandum which accompanies the Bill. DTAS does not regard a Land Rights and Responsibilities Statement as an alternative to developing a Land Policy, and urges the RACCE Committee to giver further consideration to the relationship between a Land Commission, a Land Rights and Responsibilities Statement and a Land Policy.

Part 4

While welcoming measures to encourage meaningful dialogue between land owners and communities, the experience of many DTAS members of other community engagement processes (regeneration, public service delivery, etc) is not particularly positive. Community engagement processes are often mechanistic (tick box) and / or tokenistic in nature, and
result in communities having a minimal impact on effecting decisions. Community engagement processes in general tend to reinforce rather than challenge existing power relationships, so community engagement seldom contributes to community empowerment. If statutory guidance around engaging communities is to be produced, it needs to be meaningful, and DTAS urges the RACEE Committee to consider measures which would strengthen this measure.

Part 5

DTAS welcomes the proposed introduction of The Right to Buy to Further Sustainable Development. Nothing currently exists between the Community Right to Buy and existing compulsory purchase powers, and the experience of our members suggests that there are many instances (such as those outlined in the Bill) where such a power would be extremely useful. It is important that in legislating for this power, the requirements placed on communities to trigger its use are proportionate and not insurmountable, and we would urge the RACEE Committee to reflect on this within their deliberations. DTAS also welcomes the provision enabling a community to nominate a third party to take ownership, which in the right circumstances would be a useful mechanism to support the achievement of sustainable development at a local level.

Part 7

In the experience of DTAS, common good land and assets continue to figure in the plans and aspirations of community organisations involved in community-led development. While supporting the proposed amendment to the Local Government (Scotland) Act, DTAS believes that the ongoing confusion and complexity around common good land needs addressed and this requires a much more fundamental review of the legal framework surrounding common good.

Omissions from the Bill

In launching, and promoting the Land Reform Bill, the Minister has been clear to stress that land reform is an issue that affects urban as well as rural communities. As an organisation which has a significant membership within Scotland’s towns and cities, DTAS fully supports this position. While DTAS notes that a ‘separate work stream’ has been established within the Scottish Government to consider the ‘urban land and housing’ recommendations within the Final Report of the LRRG, we feel that the result of this is the reinforcement of the widely held perception that land reform is a rural development issue.

While there are important wider land reform issues about the operation of urban land markets, addressing vacant and derelict land and the barriers to large scale regeneration projects, the particular focus of development trusts is community-led regeneration and community-led development. This requires that communities have the necessary tools to be able to prosecute this successfully. The Community Empowerment Act provides some new measures which will assist in these processes, but DTAS believes that the proposed Community Sale Order (see appendices) in particular would greatly enhance the ability of communities to address blight and get unused land back into productive use.

The other major omission from the Land Reform Bill is the contribution which land reform can make toward assisting communities address identified local housing need. The required housing projects are often small scale in nature, but require that land is made available in the right way, in the right place and at the right price. DTAS therefore welcome
the recommendations within the LRRG Final Report which seek to address the land supply issue (see appendices).

DTAS recognises that it is unlikely that these issues will be addressed within the current Land Reform Bill at this stage of the process, but would welcome a commitment from Scottish Ministers to bringing forward these, or other, recommendations which address housing and urban regeneration, at the earliest practicable possibility.
This is one of six briefing papers prepared by Professor David Adams of the University of Glasgow to help explain key proposals for urban land reform made in 2014 by the Scottish Government's Land Reform Review Group (LRRG) to whom he acted as an independent adviser. This paper focuses on the LRRG’s recommendations “that further mechanisms are required to address the persistent challenge of vacant and derelict land in urban areas” and “that Local Authorities should have the right to exercise a Compulsory Sale Order over an area of vacant or derelict land, and also that Community Councils, or appropriate community bodies, should have the right to request that a local authority exercises a Compulsory Sale Order” (see pages 103 and 122-124 of the LRRG report).

What are compulsory sale orders?

Compulsory sale orders (CSOs) would provide new statutory powers to enable local authorities to require that specified land which has been vacant or derelict for an undue period of time should be sold by public auction to the highest bidder. As these powers would be discretionary, it would be for local authorities to decide on a case-by-case whether or not to exercise them.

Why are compulsory sale orders needed?

CSOs are needed to help solve the problem of semi-permanent land vacancy and dereliction across parts of Scotland. There are about 11,000 hectares of vacant or derelict land in Scotland, and this figure has changed only marginally since the late 1990s. Over 75% of this land is thought to have been vacant or derelict since at least 2006, and over 50% since at least 1995. Such land vacancy and dereliction disproportionately affects Scotland’s most deprived communities. There is strong research evidence from a number of studies that unrealistic owner expectations of what land might be worth is partly responsible for semi-permanent vacancy. Contrary to popular perception, urban vacancy and dereliction in Scotland is now primarily a matter of private not public land ownership, with more than twice as much vacant and derelict land, for example, held by known single private-sector owners than known single public-sector owners. Keeping land vacant when someone else could put it to beneficial use impedes the chances of achieving sustainable and resilient settlements. In such circumstances, a change of land ownership is often an important step towards re-use or redevelopment. The LRRG thus concluded that there must come a point when it is no longer in the public interest for an owner to retain land and property indefinitely, without use or sale. When this point is reached, a CSO could be triggered, requiring the land to be sold by public auction.
What kind of land might be affected by compulsory sale orders?

In principle, a CSO could apply to any ‘abandoned’ land that has remained in a vacant or derelict condition for an unacceptable period of time. This would require local authorities, who already collect and supply information on vacant and derelict land to the Scottish Government, to use this information as the basis of a new, publically available, statutory register. There would be formal procedures with rights of appeal to enable owners to claim that land had been wrongly included on the register and for others to suggest that land had been wrongly omitted.

Could empty property also be subject to compulsory sale orders?

The LRRG report implied that CSO powers could extend to empty property, but there is no currently no comprehensive register of empty property in Scotland.

What would constitute an unacceptable period of time for keeping land vacant?

This would be a matter for debate and legislation. But the LRRG suggested that the use of CSO’s could be linked to the current validity of planning permissions (generally 3 years), reflecting the already well-established principle of public policy that it is reasonable to expect development to commence within 3 years of permission having been granted. Applying this principle would suggest that a CSO could be served at any point after land had been registered as vacant or derelict for more than 3 years.

Who might initiate a compulsory sale order?

Apart from the local authority, the LRRG report suggested that CSO powers might also be granted to other public agencies already having CPO powers. It also recommended that community councils, or appropriate community bodies should have the right to ask the local authority to initiate a CSO. The LRRG did not comment on whether CSOs would need to be confirmed by Scottish Ministers in this same way as for CPOs, but this may be necessary to ensure compliance with Human Rights legislation.

What would be the effect of a compulsory sale order?

A CSO would require the owner to make arrangements for the land to be offered for sale by public auction within a period of six to eight months. The local authority would have reserve powers to organise the auction itself if the owner failed to act, or if the proposed arrangements for holding the auction were deemed unsatisfactory. The notice served on the owner would be accompanied by a planning statement prepared by the local authority. This would detail any existing planning permissions and relevant development plan allocations and policies. It would be intended to clarify what types of development would and would not be likely to be permitted on the land. The statement would be published on the local authority website and would be expected to be referenced in any sale particulars.

Who would be allowed to bid at the auction?
Although there would be no restriction on who might participate in the auction, measures would need to be introduced to avoid speculative purchases by parties who continued to keep the land vacant. This could involve attaching an implicit statutory condition to the sale which gave the local authority the right to purchase the land three years after the sale, at a valuation set at that date by the District Valuer, if no development on the site had by then commenced. Alongside the planning statement, this condition would help ensure that bids made at the auction were based on realistic proposals, and not speculative ones. If no bids were made at the auction, the land would remain unsold, and there would be a period of time, possibly 3 years, before a further CSO could be initiated. However, this scenario is highly unlikely as, in most circumstances one would expect a community organisation or local authority to make at least a nominal bid for the land, especially as no reserve price would be allowed.

**How would CSOs help local communities?**

Community bodies may choose to bid at auction to provide more open space, allotments or community gardens as well as promote new development in their areas. CSOs could thus provide a useful alternative to the ‘community right to buy’. Even if community bodies were outbid by others, simply bringing vacant land back into productive use would be of direct benefit to many communities across Scotland.
This is one of six briefing papers prepared by Professor David Adams of the University of Glasgow to help explain key proposals for urban land reform made in 2014 by the Scottish Government’s Land Reform Review Group (LRRG) to whom he acted as an independent adviser. This paper focuses on the LRRG’s recommendations that to achieve the Scottish Government’s national housebuilding targets and place-making aspirations requires “the establishment of a Housing Land Corporation, a new national body charged with the acquisition and development of sufficient land” and that the Corporation “should have explicit performance targets that recognise the specific needs of small rural communities and an extended operational role to enable these to be addressed” (see pages 132-141 of the LRRG report).

What is the Housing Land Corporation?

The Housing Land Corporation (HLC) would be a Scotland-wide organisation, directly responsible to Scottish Ministers for making sure that enough building land is immediately available for new housing in both urban and rural areas. Although it would work closely with local authorities (and may even subcontract some of its functions to the larger local authorities), it would have a national remit and a national purpose which the LRRG defined as “achieving Scottish Government housebuilding targets, in a way which delivers quality placemaking and improved housing standards”. Although the HLC would be expected to develop a high profile across the whole of Scotland, its precise format was seen by the LRRG as less important than its ability to achieve this purpose.

Why is the Housing Land Corporation necessary?

For a long time neither Scotland, nor indeed the wider UK, have built enough houses to keep up with needs and demand. The result is apparent is rising house prices and worsening affordability. Younger generations now have much less chance of owning a home of their own than their parents. Without radical action, Scotland’s housing crisis is likely to deepen over the years to come.

Cannot this problem be solved simply by reforming the planning system?

Some people think that the way to solve the housing crisis is simply to loosen the planning system and ensure more land is allocated for development. While continued planning reform remains necessary in Scotland, the LRRG identified a far more important reason why not enough homes are built – the serious shortage of ‘oven ready’ building land in the places where people want to live. Even if the planning system were to ‘allocate’ large areas
of additional land for development, unless it is readily ‘available’ to a wide range of builders who can start on site with minimal delay, it would have only a limited impact.

Why is land allocated by planners not always readily available to builders?

There are two main reasons why the market availability of land differs from planning allocations. First, it is well known that the larger and better resourced housebuilders tend to capture any land allocated by the planning system for development (often before it is actually allocated) and so close off opportunities for medium-sized and smaller builders or self-build. Moreover, once these companies control the land supply in any locality, they can then build at a relatively modest pace to achieve high selling prices. Secondly, to turn major planning allocations into available development sites, someone has to pay for roads, sewers, schools, open space and other public facilities. In recent decades ‘planning agreements’ have been increasingly used across Scotland as a means to make developers (and by implication, new home buyers) pay for these costs. But planning agreements are time-consuming and costly to negotiate, and do not always meet the full ‘public goods’ cost of new development. Put together, these two reasons make it essential to find a better way to channel land directly to a wider range of builders, while paying more efficiently for all that needs to be invested in any major new development beyond immediate house construction.

What difference would the HLC make in rural areas?

Many commentators have identified a particular ‘rural housing crisis’ in Scotland, evident in worse affordability, greater homelessness, and higher levels of dampness and disrepair than in many urban location. There is an undue dependence on the private rented sector and in some cases, tied housing. Second homes and holiday homes often exacerbate the rural housing crisis. Housing shortages encourage out-migration, especially of younger people, producing fragile rural settlements. Research has shown that even within rural areas, shortages of land are at the heart of the housing problem. These will need to be addressed sensitively by the HLC. It will need to think not just about the larger rural settlements, but also about shortages in villages and small rural communities.

How would the HLC operate?

Working alongside local authorities, the HLC would take land into public ownership at a low but fair price, investing in the necessary infrastructure, and then selling the land to housebuilders as serviced sites or plots. This would be a more efficient way to capture value uplift and invest in public goods than reliance simply on planning agreements. As well as ensuring that better designed and more energy efficient homes are built more quickly and more cheaply, the HLC would also use its control of land ownership to ensure that places as a whole are designed and built to a much higher quality than often happens today. Crucially, however, the HLC will not become a monopoly land supplier, but will work alongside existing market processes to bolster the overall supply of land.

Would the HLC build homes itself?

No. Instead, it would channel land to all types of builders – self-build, small and medium-sized companies and not just the big volume builders, so ensuring a greater number and
diversity of homes for sale. Often, it would establish joint venture companies to develop land in a particular area, involving developers, landowners, local authorities and community interests in a joint effort to make sure enough high quality homes and places are built.

What impact could the HLC make in economic terms?

One reason why the HLC needs to be established nationally and work right across Scotland is that it will be charged with helping to reduce house price inflation in Scotland to the European average. Here, the example of Germany is instructive, where over a lengthy period, an interventionist approach has resulted in a freer, more diverse and better functioning market which has largely avoided the boom and bust of the UK housing market. The HLC therefore presents an opportunity for Scotland to take a different path from the rest of the UK, which is likely to remain locked into the model of speculative housebuilding. In Scotland, the HLC offers the chance to create a step change in housing supply.

Where else has public management of the land supply been tried?

In the Netherlands, public authorities have long directly managed the supply of building land. As well as producing better quality homes and development than delivered in much of the UK, this has also result in faster development. For example, between 1996 and 2005, the Dutch built 90 new settlements and increased the housing stock by 7.5% though the widely commended VINEX housing programme.