Written submission form the Earlstoun Estate ("the Estate")

The Estate comprises some 9,000 acres located in Galloway. This upland Estate has some seven agricultural tenancies.

The Estate lodged Submissions in respect of the prior Consultation Paper. The Estate adheres to the terms of these Submissions.

The Estate’s response on the Land Reform (Scotland) Bill is as follows:-

Part 1

It is suggested that the Scottish Ministers’ statement referred to should be published in draft form to allow interested parties to put forward their comments (if any). Time should be allocated for the consideration/review by the Scottish Ministers of any responses received before the statement is finalised and laid before Parliament.

Part 2

It should be clarified that any remit of the Tenant Farming Commissioner, in the area of succession, should be restricted to succession to agricultural tenancies. The Commissioner should have no remit in relation to the general law of succession.

Part 3

It is a matter of concern that the proposal is subject to regulation to be promoted by the Scottish Ministers. It is submitted that any such provisions should be subject to primary legislation.

Part 4

It is suggested that the guidance to be issued should extend to include a definition of communities.

In many rural areas, there are often split communities; those who have lived and worked in the community throughout their entire lives, and, those who might be regarded as incomers/second homeowners. It would be naïve to believe that these distinct groups would always agree on what constitutes a sustainable development of land.

Part 5

In respect of Section 47(2), there is no clear guidance as to the criteria for determining what constitutes sustainable development.

There is concern that by the very nature of differing aspirations within communities, there could be conflict over what might be classified as sustainable development. There is a fear that the legislation could encourage the setting up of competing community bodies.
Additionally, there is concern over the scope to involve a third party purchaser. In particular, the possibility of a community body being manipulated by such a third party, and, used to secure a purchase of development land with a view to profit on the part of the third party.

It is believed that the existing Compulsory Purchase legislation offers better protection for communities and owners of land.

Moving on to Section 56, a landowner’s interest must be protected in situations where a right to buy is exercised in anticipation of a change in circumstance; such as a Local Plan variation.

Part 6

While of no direct relevance to the Estate, there is a concern over employment and additional costs which could result from the exemption being forfeited.

Part 7

No comment.

Part 8

No comment.

Part 9

Broadly welcomed.

Part 10

Modern Limited Duration Tenancies

The proposal to allow greater flexibility to landlords and tenants to negotiate on matters such as fixed equipment, rent and purposes is considered helpful.

While the proposal to encourage new entrants by offering a five year break clause to a MLDT is positive, much more must be done. In particular, it would be helpful to include provisions which encourage older tenants to retire in an orderly fashion, thus freeing up additional land for new entrants.

Conversion of 1991 Act Tenancies to MLDTs

The proposed Regulation to secure the above, will in many instances breach existing contractual arrangements between a landlord and a tenant. While parties may agree to such conversion, some will not; and, may take the view that they have not been treated in an equitable manner with their rights overridden for political purposes.
There is a possibility that some tenants may take advantage of such provision, solely with a view to securing financial benefit out of an open market assignation.

**Tenant’s right to buy**

It is suggested that a *de minimis* exception should apply to situations where such a right could be an impediment to the sale of a small area of land required, say, for the expansion of a local business. In the absence of a tenant agreeing to a resumption of land, in such circumstances, employment opportunities could be lost.

It is suggested that any *de minimis* exemption might be restricted to a few acres.

**Assignation and Succession**

The proposal that the “lack of training or experience” ground for objection being met by a party starting an agricultural training course within six months is detached from reality.

It would seem appropriate in such situations for it to be conditional on the assignee completing the training course by a certain period. In the absence of this, an assignation should be capable of rescission.

**Compensation for Tenant’s Improvements**

The proposed “amnesty period” penalises landlords who have dealt with their interests on the basis of contractual arrangements (long standing in many instances) and existing legislation.

The proposal is a dangerous precedent for all who have an interest in agricultural land. It will not encourage the release of land to new entrants.

**Rent Review**

It is difficult to accept that an open market comparison is not the appropriate way to determine a fair rent.

However, if the “agricultural productivity” test is to be the basis for future rent reviews, there can be little doubt that the timescale and expenses incurred will be an unfortunate consequence. It can only be anticipated that there will be a growth in the agricultural consultancy business. One way or another, the costs will have to be met by the landlords and tenants.

**Succession**

There are concerns that with the wider changes to the laws of succession proposed by the Scottish Government, landlords could face unnecessary difficulties by competing interests of those who have an entitlement to succeed to the estate of a deceased tenant.

It is hoped that the foregoing may be taken into account by the Committee.