Written submission form the Scaniport Estate

We write in response to the Committee’s call for evidence on the Land Reform (Scotland) Bill (“the Bill”) introduced to the Scottish Parliament on 22nd June 2015.

By way of brief background, Scaniport Estate, situated approximately 10 miles south-west of Inverness, extends in total to around 3,260 acres. The land comprises around 1,500 acres of commercial woodland, managed under a Long Term Forest Plan, and around 1,700 acres of tenanted farmland. There are three individual tenant farmers who occupy the land under five separate tenancies, comprising two 1991 Act tenancies, a Limited Partnership arrangement and two Limited Duration tenancies. All of the farmers are either second or third generation tenants and the estate enjoys excellent and mutually beneficial relations with these individuals.

We would respond to the Committee’s call for views as follows:-

Part 1 – Land Rights and Responsibilities Statement

Whilst we see no difficulty with the principle of the Scottish Ministers preparing a Land Rights and Responsibilities Statement, we would query the likely merit of such a Statement, particularly where the Statement will not be debated or endorsed by the Scottish Parliament. It is also, in our view, key that such a Statement must have clear purpose, fairly represent the broad range of aspirations and interests across all of the Scottish people and provide clear, meaningful and beneficial objectives rather than ideological aspirations.

Part 2 – The Scottish Land Commission

As noted by us in previous consultation responses, it is very important that the Commission takes account of the interests of all stakeholders and ensures that these are fairly and equally represented.

We had noted in earlier consultation responses that we felt that it was important that the Commission should have a broad range of expertise represented, and whilst the Bill sets out the desired expertise and experience of members to be appointed, it is notable that practical land management is not listed. We feel that it must surely be fundamental that this expertise is present amongst the members to ensure that their objectives are capable of being achieved at grass roots level. Some have suggested that “land management” could be construed as meaning landowners, but effective practical land management is key to all forms of land tenure, be that owner occupation on all scales, agricultural tenants, crofting tenants, commercial tenants, etc.

We also note that it is proposed that the Scottish Ministers are to ensure that the person appointed as the Tenant Farming Commissioner must have expertise or experience in agriculture. Whilst this is clearly crucial, it is also felt important that this individual has relevant expertise and understanding of agricultural tenancy law and practical land management in order that he/she can effectively carry out their role.
Part 5 – Right to Buy Land to Further Sustainable Development

Fundamentally, the Bill does not contain a definition of “sustainable development” and other terms such as “significant harm”, “significant benefit” and “public interest”. These are also open to significant interpretation and without proper definition will undermine the successful operation of this legislation.

Community acquisitions of land and land assets must be underpinned by real, identifiable social, economic and environmental benefits which are achievable at an affordable level and must be demand led. In order to gain public support and funding, the justification for such ventures must demonstrate that they are “sustainable” without disproportionate and ongoing public funding and/or show that the proposed ‘benefits’ are not sufficiently achievable by other measures or ownership structures other than community ownership. The Scottish Government must be able to openly demonstrate that such community acquisitions will, in the long run, not be a burden on taxpayers.

It is also not clear to us why the powers envisaged by the Bill are required, given the recent coming into force of the Community Empowerment (Scotland) Act 2015.

Part 6 – Sporting Rates

We do not believe that the current business rate exemption for sporting rights should be removed. We would make the following points:-

- Removal of the exemption will have a significant impact on land management practices and consequently the environmental benefits of sound sporting management.

  At Scaniport, deer stalking rights are currently exercised by a third party, with no rent passing, in order to allow effective deer control in an area which has in the past suffered from significant deer management problems. Management of deer numbers is essential to protect the agricultural crops of the estate’s tenant farmers and also young woodlands, and this is the case across much of Scotland.

- In the wider rural context, this proposal could have a detrimental effect on the economy in some fragile rural areas which depend on sporting estates for employment, inward investment and the livelihoods of many support industries.

- If this proposal is taken forward, we would urge that only those actively exercising shooting and deer stalking rights in a commercial manner should be taxed and sporting activities required for effective vermin and deer control should be exempted. Further if rights are not exercised at all, they should not be taxed.

- We would query whether the tax raised from the rating of shootings and deer forests will cover the costs of valuation, period revaluation and administration, and would further query whether any detailed research into the economic and environmental impact of this proposal has been undertaken. If it hasn’t, then this should be seen as an essential pre-cursor to this proposal being taken any further.
Part 10 – Agricultural Holdings

As was set out in our earlier consultation responses to the Land Reform Review Group, it is disappointing that some of the recommendations made by the Agricultural Holdings Legislation Review Group (AHLRG) have been taken forward as part of the Bill. These issues are of crucial importance to the tenanted farm sector and should have warranted separate detailed consideration and legislation, rather than the rather hastily pushed through provisions that are now being included within the Bill.

We also believe that what the tenanted sector requires is a period of stability rather than continual legislative changes, and a focus on the parties working together rather than against each other. Continual change encourages polarised opinions, which only serves to heighten tensions.

Further, the AHLRG sought to put forward proposals which would encourage the letting of land and we are just not sure that the measures proposed in the Bill will succeed in achieving this stated aim.

We would, however, make the following comments on Part 10 of the Bill:-

- Section 74 - we feel that it is an omission that landlords and tenants should not be able to agree leases of terms between five and ten years. There may be circumstances where such a lease term is most suitable to the parties and the legislation should provide for this. We see no disadvantage to either party of the legislation being amended to allow for this.

- Section 76 – it is disappointing that the Bill goes against the recommendations of the AHLRG with regard to the termination of Modern Limited Duration Tenancies (MLDTs). The AHLRG recommended that such leases, if not terminated at their expiry, would continue on tacit relocation for one year at a time until terminated in accordance with the specified notice procedure. However, the Bill proposes that if not terminated, the lease will continue for a further term of 10 years. This seems excessive for what may be a genuine error on the part of either the landlord or tenant as regards service of notices. We would also query whether some tenants would wish to be bound by the lease for such an extended period of time. We would also suggest that notice provisions to terminate MLDT’s should be the same for both landlord and tenant.

- Section 77 - we would question whether a period of six months within which to put fixed equipment in order is sufficient. Whilst this section does provide that this period may be extended where the landlord cannot comply due to other enactments, a period of six months may not be sufficient in order for the landlord to deal with other matters such as appointment of contractors, finance, undertaking works, etc.

- Section 78 - a period of 12 months during which a tenant may remedy a breach of the lease terms seems unfair to the landlord, particularly where a serious and material breach has taken place, such as non-payment of rent.

- Section 80 – we would suggest that the requirement for tenants to register their pre-emptive right to buy should remain. Not all tenants wish to register or ultimately exercise the pre-emptive right to buy and this is demonstrated by the current low level
of registrations. Removing the requirement to register introduces an unnecessary element of uncertainty for the landlord, particularly where in some cases the exact nature of the tenancy held may only be determined by potentially lengthy legal processes. This has the potential to introduce unnecessary stress on landlord/tenant relationships and jeopardise otherwise potentially constructive dialogue between the parties in such instances.

- Chapter 3 – Sale where Landlord in Breach – this element of the Bill requires further specification and in particular the definition of what is deemed to be a “material” failure of the landlord to comply with an order of the Land Court or an arbiter. We would also have concern about the procedure proposed, particularly in circumstances where neither the tenant nor a third party purchase the farm. These proposals should be considered further in detail, perhaps by the Tenant Farming Commissioner, before being finalised and implemented.

- Chapter 4 – Rent Reviews - it seems unnecessary and of potential detriment to either both landlord and tenant that a rent review Notice served at least 12 months in advance of the rent review date is required to include the rent that the party serving the Notice proposes should be payable with effect from the rent review date. Many factors which will influence the fair rent, both up and down, can change over a period of over 12 months and therefore this is not of benefit to either landlord or tenant. The current voluntary code of practice whereby rent proposals are intimated at least four months prior to the rent review date works well and we see no reason why a similar timeframe should not be introduced into legislation.

We also understand that the Scottish Government have not yet finalised modelling work to analyse the likely impact of the proposed change which would see rent reviews based largely on the productive capacity of the holding. Until such time as this modelling has been completed and considered by all stakeholders, there is an argument that the provisions in the Bill should not be enacted.

- In relation to the treatment of surplus rental accommodation in a rent calculation, regard should be had for the size of the accommodation occupied by the tenant of the holding, not just surplus accommodation. In some cases, the size of the house occupied by the tenant will be materially disproportionate to the size of the holding and in effect the holding will be only a part-time occupation for the tenant. In such situations, where the rent is to be based on the productive capacity of the holding, this could lead to an unfair rent for the subjects occupied being arrived at.

- Chapter 5 – Assignation of and Succession to Agricultural Tenancies – the provisions relating to the changes in succession and assignation of 1991 Act tenancies have the effect of substantially widening the category of eligible successors that an agricultural tenant may pass the tenancy to, both on death and during life. This is likely to be of concern to most landlords, who at the present time have an element of certainty as to potential successors to any tenancies. The widening of these rights will mean that the landlord has only a very limited ability to influence who may ultimately farm a holding and does not represent a fair balance of landlord’s and tenant’s rights. This will also arguably lead to a much reduced turnover of tenancies, meaning fewer opportunities for new entrants to the industry, and is potentially detrimental to the long-term health of the sector as a whole.