1. RICS is an independent professional body originally established in the UK by Royal Charter. We have a commitment to provide advice to the government[s] of the day and, in doing so, have an obligation to bear in mind the public interest as well as the interests of its members.

2. RICS in Scotland is therefore in a unique position to provide a balanced, apolitical perspective on issues of importance to the land, property and construction sectors.

3. RICS notes that the Scottish Government views land reform as a process, not an event.

4. Unpredictable legislative change does not create favorable conditions for property and land markets. Indeed, these markets require consistency to reach the necessary degree of stability to create confidence. As such, RICS believes a balance needs to be struck between the land reform process and the establishment of stable, consistent legislative and economic conditions.

5. This Land Reform Bill (LRB) will have a lasting and significant impact on Scotland for generations. For these reasons it is important that the legislation is measured, balanced between all participants in a particular sector or market, and considers environmental and economic sustainability.

6. RICS acknowledges that Parliamentary consideration has to be concluded by March 2016, and we believe that the timetabling of the LRB does not allow for sufficient scrutiny and consideration of some significant provisions in the Bill. RICS believes that this will create legislation that is too vague, undemocratic and open to interpretation.

7. Furthermore, there are many provisions in the LRB that allow for secondary legislation, or the creation of regulations and guidance through an appropriate Minister. This lack of clarity makes commentary difficult to provide.

8. In order to ensure each respective part of the Bill is provided with enough time to look at all issues in detail, we believe that the Scottish Government, and Parliament, have to be realistic as to what Parts of the Bill are both crucial to land reform – as a process - and achievable within the seven month timescale (following the closure of this Call for Evidence).

9. We would suggest that the following parts are the most important, and achievable, priorities to be taken forward in the Bill, at this time:
   - Part 1: Land Rights and Responsibilities Statement
   - Part 2: Scottish Land Commission
   - Part 3: Information about Land Control
   - Part 9: Access Rights

10. Taking into account the list in the previous statement above, we believe the following parts of the Bill require more deliberation, and should be considered further in the next Scottish Parliamentary session:
11. The main reason for the omissions above is that they are too subjective - particularly the provisions on agricultural holdings.

12. We believe a full assessment of the impact that any new legislation would have on Scotland needs to be undertaken; such as a cost-benefit analysis. RICS is not aware of any Scottish Government-led program of this nature.

13. Having considered, and responded to, the Scottish Government’s consultation on land reform proposals - *A Consultation on the Future of Land Reform in Scotland* - it appears that the majority of the LRB has reverted focus onto the rural issues of land reform.

14. Indeed, many of the urban-based proposals have been detached from the LRB, thus limiting significant change in Scotland’s urban setting.

15. We would hope that certain recommendations from the Land Reform Review Group report, such as the Housing Land Corporation, will resurface in future legislation or policy.

**Part 1. Land Rights and Responsibilities Statement**

16. RICS welcomes the notion of a Land Rights and Responsibilities Statement (LRRS), but not the proposal to update (refresh) that statement every five years.

17. We believe that an updated statement should only occur when unreservedly necessary. This approach will help build the consistency and stability that property and land markets need, leading to sustained confidence and a stronger economy.

18. Ideally, should a refreshed LRRS be required, it would be compiled shortly after the formation of a new Government (following a Parliamentary election), as this timetabling should provide clarity of any Government’s policy and legislative ambitions for the land of Scotland at the start of their Government tenure. This would ensure accountability.

19. As indicated in the LRB policy memorandum, RICS agree that LRRS will “provide a key reference point for the Scottish Ministers” and “will also provide reference for the planned Scottish Land Commission, public agencies and the Scottish Parliament and provide communities and the private sector with a clearer understanding of the Scottish Government’s ambitions and aims for the future of land reform in Scotland”
20. For this reason, we believe the Scottish Land Commission (the Commission) should be regarded as a partner in the compilation of the first, and future, LRRS.

21. A refresh should also take into account appropriate documents, such as the Scottish Government’s Land Use Strategy, Scottish Planning Policy and National Planning Frameworks – all of which will play a role in any land reform programme, and can be amended as necessary.

22. The LRB should make a requirement for the Government to undertake extensive stakeholder engagement over the 12 month period prior to the publishing the final version of the first statement, and future statements thereafter.

Part 2. The Scottish Land Commission

23. RICS welcomes the proposal of an independent Scottish Land Commission (the Commission) as it would provide continuity as Governments change, and develop a high level of knowledge and expertise that would greatly assist in the implementation of successive Governments’ Land Reform policies.

24. It is essential that the Commission, and its remit, had the support of all of the major political parties in Scotland to ensure a consistent approach, professional reputation and impartiality.

25. Furthermore, the remit of the Commission has to be beneficial to the public, and its role and duties must be clearly defined. The Commission should not be viewed as a Government agency, but as a wholly independent and impartial body with the status of Royal Commission that is able to act in the wider public interest to shape, rather than necessarily burden, land markets.

26. We welcome the Commission’s remit, which does not make recommendations for change, but takes a role similar to that suggested of the Land Reform Review Group (LRRG) report’s Scottish Land and Property Commission; which should have “responsibility for understanding and monitoring the system governing the ownership and management of Scotland’s land, and recommending changes in the public interest”.

27. The formation of the Commission may result in increased costs to the public purse, but the potential outcomes of the Commission’s research, evidence gathering and positive impact on land (should it follow the remit outlined above) should outweigh the costs.

28. RICS has always advocated separate offices for Land Commissioners and the Tenant Farming Commissioner (TFC); this option has been discounted in favour of fewer new public bodies and, therefore, costs. This is disappointing.

29. However, should the Commission go ahead as currently provided for, RICS welcomes the provision that does not allow Land Commissioners to delegate their functions to the TFC.
30. Unfortunately, there does not appear to be provisions to prevent the TFC delegating his/her functions to Land Commissioners. This practice should be inhibited, and legislative provisions made to ensure so.

31. The reasons for this is that with the TFC being able to delegate functions to Land Commissioners, this could lead to the TFC taking up a disproportionate amount of time of the commission and the secretariat i.e. commission staff could get overwhelmed with tenant farming issues, leading to the neglect of larger land issues.

32. This would not be beneficial to the principles of land reform and Land Commissioners’ remit to undertake research etc.; there is a need to maintain the priorities of the Land and Tenant Farming Commissioners.

33. All work undertaken by the Commission should be open, transparent and accessible to the Scottish public.

34. As stated previously in this submission, the Government should actively liaise with the Scottish Government in regard to the LRRS.

**Land Commissioners**

35. RICS welcomes the proposal that the Commissioners will be appointed by Ministers, with approval from Parliament; be required to have relevant expertise and experience in land; and have not served in the political arena for 12 months.

36. It is important that they are non-political, arms-length from Government, and follow the Commission’s remit to monitor the impact of land reform provisions and gather evidence.

37. In the interests of transparency and democracy, and the Commission’s independence from Government, we believe the Commission Chair should also be approved by Parliament, not appointed by Ministers.

**Tenant Farming Commissioner**

38. Should the Bill go forward as currently specified, RICS welcomes the appointment criteria of the TFC, such as relevant expertise and experience in agriculture.

39. RICS is keen to see a vibrant tenanted farming sector in Scotland, and we recognise that in order for this aspiration to be met, there is a need for better working relationships amongst sector participants.

40. Accordingly, our preference is for a Tenant Farming Commission that comprises a board of established experts from a range of sector stakeholders; such as RICS, STFA, SAAVA, NFU and SLE, and the Law Society of Scotland – as this would ensure consistency and objectivity.
41. Whilst this may not be case, RICS still welcomes the proposal to appoint a Tenant Farming Commissioner as we believe this will go some way to improve the sometimes fragile landlord/tenant relationships.

42. RICS members advised that there may be financial implications for the TFC – particularly in regard to questions of law being referred to the Land Court. There will need to be legal advice provided to the TFC for these instances, which will come with a cost.

43. With regard to specific legislative provisions within the LRB, RICS has the following comments:
   a. Section 28 (4)(c) – RICS does not understand the purpose of this provision;
   b. Section 31 (1)(e)(iv) – this provision is too vague, and should specify to whom the recommendation should be made.

**Codes of Practice**

44. With regard to the Codes of Practice, at present, the LRB makes no set period for a review of the Codes of Practice. It is therefore imperative that the Codes are developed after extensive stakeholder engagement.

45. The Scottish Government may wish to consider suggesting an approximate timescale review – RICS suggests ten years - to ensure Codes remain applicable and relevant due to changing markets, legislation and best practice.

46. RICS rural practice members represent both landlords and tenants, and can therefore provide an in-depth, impartial perspective of what both sides of the table require in rent reviews and negotiations. Being guided by experiences and views of our experienced members, RICS is therefore ideally placed to assist the appointed, or acting, TFC in producing the proposed Codes of Practice.

47. It may be beneficial to the sector if a Code of Practice panel, comprising the aforementioned stakeholders, was initiated to oversee the development of the code and accompanying guidance. This would ensure transparency and clarity.

48. Land agents in Scotland, who are members of RICS, already operate under the Institution’s strict guidelines and codes of practice; any new code of practice will have to take this into account.

**Part 3. Information about Control of Land**

49. RICS supports transparency and sharing of appropriate information of land as we consider this to be in the public interest.

50. Furthermore, RICS believes that for the property market to work effectively and efficiently there needs to be sufficient information for participants in the market to act in a knowledgeable and informed manner.
51. Transparency of ownership could also assist communities in identifying who is responsible for the management of land and assets, and therefore would serve in the interests of the public.

52. However, RICS believes that the provisions of the LRB that relate to the procedures that need to be undertaken to ascertain information about control of land are not necessary, add a level of bureaucracy to the process, will not bring an improved level of transparency, and are not in the public interest. It would be much better for such information to be recorded by the Keeper at the outset.

53. In short, RICS believes that when land is registered, all details of ownership should be publicly available - it should be easy to access and free.

**Part 4. Engaging Communities in Decisions Relating to Land**

54. RICS welcomes the Bill’s legislative provision for guidance on community consultation, and will work with the Government in its development.

55. A definition of “sustainable development” is required, as is an indication of what statutory teeth the engagement programme would have, should a landlord not follow the guidance produced.

56. Furthermore, in ensuring compliance with the guidance, RICS members were quick to point out that it would be easier to hold the public sector to account in comparison to the private sector. This makes it all the more important to set out clear, statutory tests of how the concept of sustainable development would be interpreted in such circumstances.

57. RICS believes that without clarity as to what sanctions will be introduced for not following guidance this part of the LRB should not be an immediate priority.

**Part 5. Right to Buy Land to Further Sustainable Development**

58. RICS believes that this part of the LRB needs significantly more scrutiny and inspection. First and foremost because a statutory definition of “sustainable development” has not been clearly identified.

59. At global, national and local level RICS, and its members, are committed to promoting sustainable development not only for today, but also for future generations by adhering to the following principles:

   - protection of the environment through the preservation of natural capital;
   - promotion of social equity by ensuring access to services for the benefit of all;
   - support of a healthy local economy, including high levels of employment.
60. We would urge that a robust definition is announced prior to the LRB evidence gathering stage being completed, using the above as a template if necessary, and only after extensive stakeholder engagement; this would ensure clarity.

61. RICS acknowledges that the Scottish Planning Policy uses the Brundtland definition of sustainable development (Our Common Future, The World Commission on Environment and Development, 1987): “Development that meets the needs of the present without compromising the ability of future generations to meet their own needs”.

62. This definition does not go far enough, and we believe that the Local Government in Scotland Act 2003, Sustainable Development Advisory Note’s definition is more robust: “Development which secures a balance of social, economic, and environmental well-being in the impact of activities and decisions; and which seeks to meet the needs of the present without compromising the ability of future generations to meet their own needs”.

63. If the Land Reform Bill was to proceed with this definition, RICS believes there needs to be tests of what constitutes “sustainable development”, as well as “significant harm” and, “significant benefit” – and that they should not be ambiguously referenced in the Land Reform Bill.

64. The provision of such tests will lead to consistency and, therefore, confidence in the land and property markets – which should be a key objective of the land reform process.

Part 6. Entry to Valuation Roll of Shooting and Deer Forests

65. RICS acknowledges that this proposal brings shooting and deer forests into line with other commercial subjects in Scotland. However, it is hard to estimate what the effect of this Bill provision will have on the rural economy of Scotland.

66. The Bill’s Policy Memorandum states that “many small-scale shootings would be expected to eligible for rates relief under the existing Small Business Bonus Scheme”. Whilst this statement may be accurate, without research it is hard quantify how many estates will, and how many will not, benefit from rates relief. Additionally, we do not know the level of value likely to be attributed to the new subjects. Therefore, the actual impact on the rural economies, which are often fragile, will not be known.

67. Furthermore, whilst the Scottish Government has committed to continue the Small Business Bonus Scheme (SBBS) until 2016/17, it has not intimated whether the scheme will continue beyond this date; the proposed date where business rates exemptions will cease. Indeed, it is unknown what reliefs, if any, will be in place in two years’ time.
68. We acknowledge that a previous Government review already suggested that rate relief on agriculture, forestry and sporting rights should not be introduced “until the economic impact had been thoroughly evaluated”. In considering all the aforementioned contentions for consideration (paragraphs 66 and 67), in the interests of market participants and the public RICS strongly concurs that a review has to take place before implementation of this proposal.

69. Section 67, subsection 2, of the Bill states that “The assessor for each valuation area must, when making up or altering a valuation roll, enter separately the yearly value of any (a) shootings, (b) deer forests, in so far as exercisable or, as the case may be, situated in that area”.

70. RICS seeks clarity from the Scottish Government that “yearly value” is the Rateable Value (RV) and, indeed, whether it is to be reviewed annually.

71. For these reasons, we believe this Part should be removed from the current Land Reform Bill.

72. The LRB Policy Memorandum states that “shootings and deer forests are not defined in statute, nor does the Scottish Government propose to do so”. RICS believes there is sufficient case law to clarify this definition and, therefore, does not believe a statutory definition is required.

Part 7. Common Good Land

73. RICS acknowledges that the legal status of Common Good property is that it is owned by the local authority, and is to be managed by the local authority for the benefit of the people of the burgh that the Common Good property pertains.

74. Despite the fact that extensive case law exists, there is still uncertainty and difficulties in defining what “Common Good” is, and whether assets identified as Common Good are alienable or inalienable. This presents profound difficulties to local authorities attempting to affect good estate management of their property portfolio as required by law.

75. RICS believes that while the proposed changes to take into account the issues of the Portobello Park case are welcome, they do not address the main issues.

76. Consequently, the management and disposal of common good property continues to be problematic, contentious and expensive relative to the management and disposal of other local authority assets.

77. Paragraph 244 of the Policy Memorandum states that the proposed change will be a benefit to local government as it should present savings in opportunity costs in terms of time saved in the process of obtaining consent for change of use of common good property. Whilst that may be true, to an extent, the process of
obtaining consent from a Sheriff or Court of Session is still an expensive and time consuming process which is a barrier and disincentive to good estate management for the public benefit.

78. RICS is of the view that the current LRB proposals in relation to Common Good represent a missed opportunity to extinguish common good status, which would result in all common good property being treated like all other local authority assets.

79. The current proposals run contrary to many of the policy objectives of the LRB as noted in the Policy Memorandum, particularly objectives outlined in paragraphs 2, 4, 7 and 8.

80. As such, the provisions relating to Common Good have to be considered further, with the view to exploring the possible abolition of Common Good property, and how this might be achieved, while leaving such property within the ownership of local authorities.

Part 8. Deer Management

81. RICS believes that the deer management provisions of the land reform bill should be considered separately and at a later date.

82. This primarily because the provisions appear to preempt the review, scheduled for 2016, in which Deer Management Groups (DMGs) are expected to develop effective and environmentally responsible management plan.

83. By introducing new legislation before this date, there is little, if any, opportunity for the deer management sector to finalise their plans demonstrate that they are working.

84. RICS believes that the deer management proposals in the LRB are only taken forward if Parliament is satisfied, and after robust scrutiny by Scottish Natural Heritage (SNH).

Part 9. Access Rights

85. RICS believes that the LRB’s provision regarding access rights appear to be a sensible tidying up of legislation.

Part 10. Agricultural Holdings

86. RICS wishes to re-emphasise that agricultural holdings is too substantive an issue to be drawn into the LRB, and should be seen as a package that has their own Bill, with separate Parliamentary scrutiny.
87. Having separate legislation for agricultural holdings would diffuse any unnecessary confusion, and we strongly urge the Scottish Parliament to consider this proposition.

88. RICS believes that any changes to legislation are aimed at creating improved market conditions, which are vital in ensuring farming is undertaken efficiently to guarantee security of food supplies, the primary public interest in agricultural production and the original reason behind the introduction of agricultural tenancy legislation.

89. Furthermore, agricultural holdings legislation needs to create greater confidence in the sector which, when coupled with the objective to guarantee food supply, can assist the Scottish Government’s vision for a vibrant tenanted farming sector.

90. Whilst RICS agrees with the Scottish Government’s vision, we sometimes differ on the approach.

91. RICS operates to ensure that the farming sector is open and accessible to new entrants – whether they do so via a tenancy or another means – and at times, it appears that the LRB agricultural holdings provisions looks beyond the intention to be food supply guarantor and concentrate on assisting the well-being of tenant farmers.

92. RICS strongly advocates the notion of ‘Freedom of Contract’, and remain so in light of the rent and contractual proposals in the agricultural holdings chapters of the Land Reform Bill.

93. Freedom of Contract allows the two involved parties – the landlord and tenant – freedom to devise their own contractual responsibilities and obligations; mediated, if necessary, by an experienced RICS rural practice surveyor. As experienced experts who represent both lands and tenants, the RICS membership in Scotland believes that the introduction of more Freedom of Contract, when used in the creation of new farm tenancies, would result in additional security for both landlord and tenant.

94. RICS believes that it would provide the biggest single injection of confidence into the sector as has been seen in England following the introduction of Farm Business Tenancies.

95. That said, RICS agrees with the proposals on creating apprenticeships which will provide greater opportunity for new entrants and the provision for longer term, more flexible letting vehicles to encourage the release of more land into the sector.

96. RICS is pleased that the absolute right to buy is not be included in the LRB provisions; we welcome Government support to facilitate industry leaders to improve landlord/tenant relationships; and we support a rent register.

i. Modern limited duration tenancies (MLDT)
97. It is the experience of many RICS members that landlords do not let beyond five years due to legislation creep; that is, with changing Government administrations comes changing policy and legislation. This lack of consistency – beyond Parliamentary terms - does not provide long-term security for the landlord or tenant and, therefore, damages confidence in the sector.

98. RICS acknowledges that MLDTs will be introduced, and accept the principles. However, there should be added facility for landlords and tenants to agree duration. This, we believe, will create confidence and, as a consequence, lead to more investment from the landlord and longer term relationships.

99. RICS believes there is scope to introduce greater freedom of contract within the MLDT framework.

100. Similarly, concerns were raised by the RICS membership that the draft LRB does not clarify whether the existing form of Short Limited Duration Tenancies (SDLTs) or Limited Duration Tenancies (LDTs) will continue.

101. At present, the LRB reads as though the MDLT will be the only form to be used; this leaves seasonal grazing and cropping arrangements in limbo.

102. There have also been concerns that landowners have been claiming Basic Payment on land let under seasonal agreements. RICS suggests that to try to counteract this, there must be a format for short term grazing, or mowing and cropping agreements that avoids the use of certain devices, such as contracting agreements.

Conversion of 1991 Act Tenancies

103. RICS is concerned that the minimum duration is not mentioned in statute. This needs to be clarified, and not developed through regulations if the Bill is passed through Parliament.

104. That said, RICS would welcome the opportunity to assist the Scottish Government in the development of these regulations.

105. With regard to specific legislative provisions regarding conversation of 1991 Act tenancies within the LRB, RICS has the following comments:

   o Section 79 (3)(f) – the minimum terms needs to be clarified. If it is too long, there could have significant implications on the dynamic of the landlord/tenant relationship.

ii. Tenants Right to Buy

106. Whilst RICS acknowledges that the LRB provisions introduce an automatic registering of interest for a tenant, it is the experience of our members that tenants only register if they have an interest in buying their let farm.
RICS believes that this provision is unnecessary and could upset the landlord/tenant balance. If a tenant wishes to buy his/her holding, the process of registering an interest is currently very straightforward.

However, the automatic registration could be a risk to sustainable development – one the key components of the Scottish Government’s overall land reform plan.

Should a landlord wish to sell land for sustainable development, a farmer (who has automatically registered interest) may intervene and purchase it. The landlord would then relinquish this particular plot of land to the tenant farmer, and be advised to find another plot to ensure s/he meets the sustainable development obligation. This could create another avenue of friction.

Essentially, registration could hinder negotiations for a sale for a sustainable development to, for example, a neighbouring business, for fear of triggering the tenant’s purchase. The individual tenant’s rights may, therefore, prejudice the wider public interest of the sustainable development proposed. Automatic registration could impede sustainable development in a way that does not exist at present.

iii. Sale where landlord in breach

RICS is of the impression that there are already existing remedies in instances where a landlord is in breach – such as referring the dispute to the land court.

If the landlord still does not do what land court says, s/he will violate a court order.

This provision is another example of where agricultural holdings moves beyond the intention of guaranteeing food supply and promotes the rights enjoyed by a tenant farmer.

iv. Rent Review

RICS agrees that the current rent review system requires fine-tuning to improve efficiency and effectivity – particularly as comparable rental evidence can produce rents that are in excess of the productive capacity of the holding.

However, at the same time, in being based on farm productivity, there could be a substantial increase in rents.

Indeed, it is the view of RICS rural practice members that a comprehensive definition of “productive capacity” needs to be established during stage 1, and RICS volunteers its expertise in assisting Government in its development.

Furthermore, RICS members believe it would be unusual and bad practice to set a “fair rent” without considering market evidence; other forms of commercial rents are set this way.

With regard to specific legislative provisions regarding rent review within the LRB, RICS has the following comments.
Section 2 (1)(d): RICS is not convinced that a landlord or tenant can predict what the rent could feasibly be two years hence;

Section 2 (3)(a): RICS does not comprehend why rent reviews need to take place in Whitsunday or Martinmas;

Section 2(3)(b): There may be instances where there are elements within contractual lease agreement whereby rent review dates could be out of sync. This needs to be addressed;

Section 3(1): RICS believes there needs to be an additional provision which ensures a reduction or increase in rent is taken into account following an increase or reduction in the area let; for example, after the resumption, or addition, of land to or from the tenancy;

Section 9 (2)(b)(i): RICS suggests that the Bill is amended to read “any accommodation all or part of which needs to be occupied by the tenant of the holding” – this would ensure the farmhouse is considered proportionate to the land farmed;

Section 11 (1): many RICS valuers were not sure how this provision could be implemented. It is assumed that this provision means that the next rent review is still due three years from rent review that went to land court. RICS seeks clarity on this point;

(83 Limited duration tenancies and modern limited duration tenancies: rent review) Section 3 (9A)(1)(c): RICS is not convinced that a landlord or tenant can predict what the rent could feasibly be two years hence, and believe that guidance needs to be developed as to what is payable.

RICS suggests that any new system is extensively trialled before any full roll out. Ideally, the trial should be carried out by RICS regulated land agents, on behalf of the Scottish Government, and last at least three years to ensure it is robust and effective.

Referral of rent to land court

120. RICS believes that the Land Court is not the most appropriate venue for rent disagreement. Whilst referrals to Land Court puts the disagreement in a formal domain, the costs and timings are considered too high and slow, respectively.

121. Indeed, RICS believes that rent disagreements should not be referred to the land court in the first instance, but to a rent assessment panel.

122. RICS is firmly of the view that only after all other mechanisms, such as arbitration and mediation, have been exhausted, should a rent dispute go to the land court.

123. RICS currently offers a service, where we can appoint an Arbitrator or an Independent Expert to resolve a rent review dispute, and are also are able to appoint Mediators if a party wishes to go down this route.

124. Taking a rent review dispute to Court is not commonly the most effective way of finding a resolution; particularly where the parties previously enjoyed, and may well want to continue to enjoy, a close working relationship. This is because it is primarily a hostile process: parties are put in direct opposition to each other to ultimately determine a winner and loser.
125. As a result, the court system tends to heighten the conflict between the parties as each tries to show the other in the worst possible light, rather than trying to reach an amicable compromise.

126. Alternative Dispute Resolution (ADR) is usually cheaper and quicker than taking a case to court. The courts themselves recognise the effectiveness and increasing importance of alternative means of resolving disputes. Indeed, judges will sometimes suggest this course of action prior to a court hearing.

127. Going down the ADR route is generally quicker, more flexible, and cheaper. It is also conducted in private, which both parties usually prefer. Furthermore, the person appointed by RICS is an experienced expert with knowledge of the actual practice in the field, whose decision will reflect this.

128. RICS' Dispute Resolution Services (DRS) make thousands of appointments each year from its panels of dispute resolvers. This service has been well established in Scotland for many years, and has proven to be dependable and effective for landlords and tenants alike. Only those who are able to reflect the high standards of knowledge and experience expected by RICS are able to join a panel.

129. Another option parties have is Mediation. RICS have a UK wide panel of trained Mediators to choose from. Key advantages include:

i. Speed - a mediation can usually be set up within a matter of weeks and usually last no longer than two days;

ii. Accepted outcomes - parties who are frequently unhappy about binding decisions that are handed down would be more satisfied with the ownership of an agreement facilitated by a mediator;

iii. Best service - mediation is a negotiating arena in which landlords and tenants would be better served by chartered surveyors who are more comfortable in advocate mode rather than expert mode.

v. Assigntion of and succession to agricultural holdings

130. RICS believes that the widening of the entitled persons to succeed an estate goes too far.

131. A direct consequence of this broadened list is a limiting of the number of new entrants to the farming sector. This contradicts the Scottish Government’s vision for a vibrant tenanted farming sector.

132. RICS believes that the best farmer should be farming the land as far as possible to ensure continuity of the national food supply; this is not necessarily going to be a distant relation of an existing tenant.

vi. Compensation for tenant’s improvements

Amnesty
133. Whilst RICS accepts the proposals around amnesty, there is currently no backstop for a claim. RICS believes this needs to be considered, and suggests a threshold of 30 years. We suggest 30 years to reflect a reasonable maximum period by which improvements would generally be written-off.

**Tenant improvement**

134. RICS acknowledges that a tenant must be able to reasonably demonstrate that s/he provided equipment – but this Bill’s statement is not entirely clear. A clear definition in the Bill could provide clarity and prevent potential disputes in the future.

**Improvement by landlord**

135. The Bill provisions do not indicate a trigger date, and RICS suggests this is deduced during stage 1.

136. Furthermore, RICS believes that the provision within the Bill which demands that landlords notify a tenant before any improvements is unnecessary. RICS has heard of no instances where a landlord has made improvements without seeking tenant approval.

137. RICS has issues over section 100 Ancillary provision. This provision states that appropriate Ministers “may by regulations make such incidental, supplementary, consequential, transitional, transitory or saving provision as they consider appropriate for the purposes of or in connection with this Act or any provision made under it.” Furthermore, “Regulations under subsection (1) may modify any enactment (including this Act).”

138. RICS believes this specific provision bestows too much authority to Scottish Ministers. These provisions are undemocratic and provide the opportunity for Ministers to make amends to legislation, and create new regulations, without sufficient Parliamentary scrutiny. This is undemocratic and could affect consistency and confidence in the sector.