Written submission by Glasgow City Council

This document is the formal submission from Glasgow City Council in response to the call for evidence on the Land Reform (Scotland) Bill. It draws heavily on the submission which the Council made to the Scottish Government’s pre-legislative consultation in early 2015.

The Council’s submissions have focussed on those parts of the Bill having (or likely to have) a direct impact on the activities of this Council. We are conscious that the Bill is in many respects heavily focussed on land reform issues of particular relevance to rural areas but given that the proposals do not contain any geographical limitations we feel it is appropriate for a predominantly urban authority such as Glasgow City Council to put forward its views on relevant parts of the Bill. As a general observation we would draw the committee’s attention to the fact that the legislation being considered will have an impact nationally, not just in rural areas, and would ask the Committee to keep in mind the implications of applying solutions to rural problems in urban areas.

The Council is supportive of the general principles set out in the Bill and accompanying policy statements but we do have some reservations and suggestions regarding certain aspects of the detailed implementation of these proposals. Our comments focus on the following parts of the Bill as introduced:

- publishing a statement of the Scottish Government’s objectives for land reform;
- establishing a Scottish Land Reform Commission;
- seeking to improve information on land, its value and ownership;
- publishing guidance to landowners on engaging with communities on decisions which may affect them;
- introducing a right to buy to further sustainable development;
- local authorities being able to seek court approval to put common good land to a different use; and
- core paths.

Our specific comments on parts and clauses of the Bill are as follows:

**Part 1 – land rights and responsibilities statement**

Clause 1: In our submission to the Scottish Government’s consultation we opined that the consultation window was too short to allow for meaningful examination of the proposed land rights and responsibilities statement. Following from this, we feel that the clause would be strengthened if it included specific obligations on the Scottish Ministers to consult widely on their proposed statement before it is laid before the Parliament.
Part 2, Chapter 1 – Scottish Land Commission:

The Council is supportive of the concept of having a Scottish Land Commission.

Part 2 Chapter 2 – Land Commissioners:

Clause 20: We note that the functions set out here could be seen as overlapping with and even duplicating the functions of the Scottish Law Commission as set out in section 3 of the Law Commissions Act 1965. While we appreciate the merit in matters relating to land law being considered by a specialist body with land as its core function, we feel the relationship between the two bodies could usefully be clarified in the legislation.

Clause 32: Given that the Scottish Land Commission (and therefore by extension the Tenant Farming Commissioner) will be subject to the Freedom of Information (Scotland) Act 2002 by virtue of Clause 19(2), they will also be subject to the provisions of the Environmental Information (Scotland) Regulations 2004 and we would anticipate that much of the information which the Commission will hold will in fact fall to be classed as environmental information for purposes of the 2004 Regulations. We are not convinced that the provisions set out in Clause 32 are consistent with the exceptions set out in the 2004 Regulations and would recommend that these are reconsidered.

Part 3 – information about control of land:

Clause 35: The Council welcomes initiatives such as this which support transparency and accountability. However we do not think that the costs associated with this proposal have been adequately thought through. The Financial Memorandum states that there will be no financial impact on local authorities arising from this provision. We disagree. Maintaining the information covered by this section in an accessible format would involve significant effort on our part, firstly in assessing the thousands of titles to land which we hold and secondly in developing and maintaining a database to hold the information. We have responded to previous consultations regarding public sector land directories in detail setting out the precise scale of this problem within Glasgow, and these observations are equally applicable here unless a fees regime established in accordance with Clause 35(2)(e) is intended to be a full cost recovery model, which we suspect is unlikely. The complexity of this council’s land holdings is such that we may, despite our best efforts, be unable to comply with the requirements (presently unstated) under this provision and so end up incurring civil penalties are even prosecution, simply because the complexity of land ownership in an established urban setting is not fully recognised. We are further of the view that criminal sanctions in this area could be seen as a disproportionate response in the absence of any clear evidence that lack of this information is a significant problem.
Part 4 – engaging communities:

While the Council is supportive of community engagement we feel the provisions set out in the Bill are extremely vague and again may be subject to differences in application in an urban as opposed to a rural setting.

Part 5 – right to buy land to further sustainable development:

As a general observation, this Council remains unconvinced as to the necessity of this Part of the Bill. We are not aware of any worthwhile developments which have been unable to proceed because legislation of this type was not in place. Any worthwhile sustainable development opportunity could proceed under existing law, principally through the mechanism of an “agency” CPO (compulsory purchase order) being promoted by the relevant local authority which then conducts a back to back transfer of the acquired property to the end user. This has the advantage of requiring the proposal to secure the backing of the relevant local authority, which will have greater local knowledge of the area, its history, planning limitations and proposals and other relevant factors, than a decision taken under the proposed new legislation which is taken remotely by the Scottish Ministers. Such centralised decision-making also offends the concept of localism in decision-making, and at the very least we think the legislation should require any proposed right to buy application to be supported by the relevant local authority or for the Scottish Ministers to be obliged to consult the relevant local authority prior to approving a request.

We have a number of more technical observations on this Part of the Bill which we would be happy to expand on later in the legislative process if this Part of the Bill proceeds. Two major points we would flag up at this point are firstly, that “sustainable development” which lies at the heart of these proposals is not actually defined anywhere; and secondly, the Bill takes no cognisance of the provisions of the Community Empowerment (Scotland) Act 2015. Given the detailed mechanisms set out in that Act for transfers of interest from public bodies to community bodies, we think the right to buy provisions in this Bill should be disapplied from bodies subject to the Community Empowerment Act.

Part 6 – shootings and deer forests:

We have no comments on this Part of the Bill.

Part 7 – common good land:

Clause 68: we welcome the proposed amendments to section 75 of the Local Government (Scotland) Act 1973. However we feel it would also be helpful to
introduce a provision for seeking declarator from the court as to whether land is common good or not; and if it is common good, whether it is alienable or inalienable, given that recourse to the court under the provisions of section 75 is generally only required to dispose of inalienable common good property. Adding a new statutory definition of “dispose” would also be a helpful move, but more fundamentally we think clearer statutory guidance on what actually constitutes common good land would be beneficial.

Part 8 – deer management

We have no comments on this Part of the Bill.

Part 9 – access rights

In general, we welcome the proposed amendments to the Land Reform (Scotland) Act 2003 and the improved clarity these will bring to the system. However there are a number of additional points we would like to have seen addressed, such as the continuing requirement for a public inquiry where there are unresolved objections – even a single objection, clearly intended to be mischievous, can trigger this requirement and we would prefer there to be some form of filter allowing the inquiry requirements to be disapplied if the Scottish Ministers are satisfied that the unresolved objections are without merit or vexatious. More flexibility for access authorities to make minor revisions to plans without the full procedure being required would also be a welcome step forward. If an inquiry has already been held in relation to a proposal (for instance, in terms of the Town and Country Planning Acts) then we again feel it should be unnecessary to hold a further inquiry under the 2003 Act.

Part 10 – agricultural holdings:

We have no comments on this Part of the Bill.

Part 11 – general and miscellaneous

We have no comments on this Part of the Bill.