Written submission from the Scottish Property Federation

Introduction to SPF

1. The Scottish Property Federation (SPF) is a voice for the property industry in Scotland. We include among our members; property investors including major institutional investors, developers, landlords of commercial and residential property, and professional property consultants and advisers. As part of the wider British Property Federation our members are based from across the UK with some overseas investors as well, with over 400 corporate members overall and over 150 either based in Scotland or with interests in Scotland.

2. The commercial property industry in Scotland contributes some £5.99bn to the Scottish economy in Gross Value Added (2012 figures) representing some 5.3% of total Scottish GVA at the end of 2012. This figure rises substantially if housing development and wider construction activity is added.

General comments

3. The SPF welcomes the opportunity to provide evidence to the Committee on this Bill. This consultation touches on many issues of interest to our membership including potential reform of measures relating to ownership, transparency, the use of land for the public interest and government intervention in development and land use issues. It would be true to say that the bulk of our membership interest is in urban areas but we do nonetheless have members engaged in regional towns, new towns and edge of town developments, including the assembly and delivery of strategic land with serviced infrastructure provision for development purposes.

Land rights and responsibilities statement

4. The SPF agrees in principle with the establishment of a Land Rights and Responsibilities policy. However our members are concerned about the draft statement, which is referred to in the Policy Memorandum. The consultation and indeed wider discussions with the government suggested that the aim of this initiative was at least partly to move the debate on from an historic association with landed estates which are principally (but not wholly) rurally based. Indeed a specific aim of the consultation is to include the urban land and property ownership cadre but there appears to be little realisation of how different ownership and occupation is in the urban centres.

5. A concern is that the draft policy begins with a broad statement that ‘the ownership and use of land in Scotland should be in the public interest and contribute to the collective benefit of the people of Scotland’. Taken literally this principle might be perceived as being against any form of private ownership or
investment - we do not think this is its intent but it is a blunt statement and is therefore potentially misleading. Again, these comments are no doubt well-intentioned but they risk confusion and misinterpretation.

6. As already stated the Bill does appear to be rooted in the rural land reform debate despite the LRR statement purporting to be aimed at covering both urban and rural land and property. Our members also wonder about the definition of ‘ownership’ – does the Bill relate to beneficial ownership within the scope of the LRR Statement and wider proposals? Clarification on this point would be welcome although we suspect if the intention is to include beneficial ownership this would add significant complexity and could be very difficult to achieve.

7. The Vision for the Land Rights and Responsibilities identifies that ‘the ownership and use of the land delivers greater public benefits through a democratically accountable system of land rights’. However, there is no explanation of what this is intended to mean in practice. The whole of Scotland is arguably already accountable via the planning system and associated planning authorities. Likewise the authorities’ licensing processes cover other aspects of land use, as do the public agencies that are ultimately accountable to Parliament. This is complemented by land rights enshrined by Acts of Parliament and case law.

8. There is an argument that by extending the powers for direct Ministerial interventions and rights for specific community groups, that the government may be inadvertently undermining accountabilities that will lead to lesser democratic oversight than currently exists, particularly in relation to the role of local authorities.

Scottish Land Commission

9. Our members wish to ensure that any Scottish Land Reform Commission is balanced and reflects both urban and rural interests for property landlords and owners as well as occupiers and communities. It would be important that the Commission co-ordinates its role with the Scottish Law Commission’s work programmes. The Commission, if properly constituted, could help to make informed views on proposals for land reform and it could comment on emergent issues. It could also examine land ownership issues independently of government and make recommendations accordingly.

10. Any such body should seek to include an equal representation of landowning bodies, community groups, planning and valuation experts, legal and financial practitioners. Its remit should be set clearly and there should be a greater understanding of the different make-up of ownership and investment in the urban realm as opposed to the rural picture, which seems to have largely influenced this consultative process thus far.
Information about control of land

11. It has been argued that it will be in the public interest, including the private sector, to promote up-to-date and transparent information on land, valuation and ownership. There are a wide range of sources of such information already and that there would be a benefit in bringing such information together. The SPF has tended to support transparency in general and often cites this as an attractive aspect of the UK and Scottish property markets. However, it is likely that there will be some concern over the extent of public information about land and property interests that might be expected to be made accessible.

12. Our members do welcome better co-ordination of existing information on land and property. This would be likely to require an amalgamation in some shape of the Registers of Scotland, Scottish Assessors’ Association and various other government data systems. In our response to the Scottish Government’s Land Reform consultation of late 2014 we suggested consideration of the Norwegian National Land Information System (NLIS) and we understand that the government has set up a group of professional bodies to examine this possibility. We would prefer this approach to outright restrictions upon the non-EU based ownership of Scottish land which we fear could send negative signals to international finance.

Engaging communities in decisions relating to land

13. The planning process itself includes opportunities for local communities to influence the development plan and to comment or even object to development proposals. Our members are concerned at the apparent drift away from regarding the elected local authority or councillors as representatives of the local community. This might be dangerous as it may allow groups to become defined as community bodies that are focused on a single issue which is not necessarily representative of their wider community and needs careful consideration. There is also a risk of groups possessing different objectives at odds with each other – there will need to be a robust process to deal with any such conflict of views. It is also important to consider that well intentioned policies can run the risk of being misused. It will be important to ensure a proper system of checks and balances that reduce the significant processes that are already built in to the development process in particular.

Right to buy land to further sustainable development

14. The SPF is a membership body with development companies at its very core. A number of members would therefore recognise concerns with site assembly and the ability to unlock land for sustainable development purposes. Indeed a number of members are active in the provision of strategic land with service
infrastructure provision. However, state intervention is a blunt instrument and such powers should be used appropriately. Recently we have received a summary of briefings provided by Professor David Adams of the University of Glasgow which considers among other matters the case for a Majority Land Assembly (MLA). We are considering these suggestions carefully within our membership and therefore we cannot provide a view to the Committee at this stage, but these proposals may be also be of interest to the Committee as they do stem from points made to the Land Reform Review Group last year.

15. It is an unfortunate fact that much commercial activity involved in negotiations for development or redevelopment may occur with little apparent public sign of progress. This situation is more acute nowadays when commercial developments are often dependent on pre-sales or letting before construction or refurbishment work commences. Should a community conclude that the land or property in question may suit a community purpose in the belief that commercial negotiations have failed or are not making progress then this could disrupt and inhibit the willingness of businesses to enter into new development arrangement. Indeed the very possibility of government intervention in the midst of a complex planning process may well be a deterrent to investment activity.

16. Some commercial developments can be exceedingly complex and on occasions take the better part of a decade to come to fruition, sometimes through no fault of the parties directly involved. Likewise complex mixed use development and regeneration initiatives are also time and resource consuming. We are concerned that the lack of detail within the Bill may cause concerns over future policy direction, leading to uncertainty for developers and investors across Scotland as they assess the risk of the Bill’s measures being used against them should local groups/Ministers believe their project is taking too long to deliver.

17. If any such power is to be invoked then it should with the caveat that it should only be in extreme situations as this effectively involves the State removing property against the wishes of an individual or business. There are such powers that already exist via the CPO process and we believe this process should be reinvigorated - there is of course a review the CPO process underway at the Scottish Law Commission. We believe much greater use could be made of CPOs and there has been significant and successful use of CPO within the Dundee waterfront initiative.

18. In any case where the community is given the opportunity to buy land for its use, the land should be made subject to title conditions preventing the community from using the land for anything other than their proposed community use. This might be by way of an economic development burden; but if the land was owned by a private entity before it was acquired by the community, that private entity should have the benefit of controls to ensure that the community cannot subsequently exploit the land and create development value for its own benefit.
19. Where community groups identify vacant premises as potentially subject to a forced sale then resolving a situation where the asset is under administration and in the effective control of a lender/administrator could be difficult. In addition if there are situations where the landlord has died intestate this could also prove difficult. Ministerial interventions will need to be carefully considered as the cases will vary and rarely, we suspect, will it be straightforward to deduce where obstacles to development lie.

20. The Policy Memorandum advocates an increasingly diverse and widely dispersed pattern of ownership. Again this somewhat betrays the foundation of the consultation as one aimed primarily at rural patterns of landed estate ownership. In the urban realm there is already often a diverse mix of ownership and tenancy arrangements which does not appear to be recognised by the government. However, the government should also consider that the fragmentation of property ownership has frequently played a negative role in relation to town centres and high streets, where it is difficult for private sector investors and public authorities to direct and control policy when faced with a myriad of different property owners and occupiers.

21. We support transparency and our view is that transparency is best supported via the completion of the Land Register, an initiative we are pleased to see reaffirmed in the Policy Memorandum together with an ambitious target for completing the register.

**Common Good Land**

22. The consultation over the conversion of Long Leases and the legislative process which supported the passing of the Community Empowerment (Scotland) Act process suggests that there remains a great deal of uncertainty over the definition and known extent of common good land. The fact that we have the Common Good Land Register proposals through the Community Empowerment Act suggests this is a good opportunity to establish a new, clear and unambiguous definition of common good land.