Written submission from Cawdor Estates

General

We echo the comments made by the Royal Institution of Chartered Surveyors and welcome the Scottish Government’s proposals for change to secure a more dynamic and vibrant rural sector in the future. This legislation is significant and will have a lasting impact on rural regions and very likely urban areas as well. Its impact will be felt for many years.

We do, however, strongly believe that Agricultural Holdings legislation should either be excluded and dealt with in a separate statute or given due recognition in the title of the Bill.

We are also concerned about some of the detail which is not included in the Bill and which will, if enacted as currently drafted, be left to Scottish Ministers to introduce via secondary legislation without further consultation.

We welcome many of the proposals contained within the Bill, but urge caution that yet more layers of regulation and bureaucracy may be imposed on private landowners where, more often than not, the aims of such regulation are already being met.

Part 1 - Land Rights and Responsibilities Statement

We welcome a Land Rights and Responsibilities Policy Statement. However, as there are already initiatives such as this in place we do not believe that the Policy Statement is essential. We would not support something emotive and ideological but welcome a clear policy detailing appropriate aspirations and specific and achievable targets for a national Rural Policy.

As one of the larger landowners in Scotland, we are firmly committed to managing land effectively and sustainably to the benefit of all, including for the public good. There is a real opportunity to generate public benefit from private land. We already work closely with the local Community Council, provide extensive rural housing on a long term basis, grant and maintain specific access to land including opportunities for training for the Armed Forces, and significant forestry operations. We deliver renewable energy, tourism opportunities, specific conservation measures and educational benefits. Much of our management outcomes are at little or no commercial return to the business. This Estate is a business contributing to the local, regional and national economy and as a well-established entity we recognise the importance of taking into account social considerations when making business decisions.

We welcome greater partnership and collaboration with local communities, but would ask for a clear definition of public benefit and community. ‘Community’ can mean a number of different entities and clarity is required. However, we are a willing and enthusiastic partner in delivering public benefit and recognise the potential opportunities within the wider area, especially in relation to education.
We believe that land reform should not just be focused on who owns the land but how effectively it is managed. The easy emphasis on 432 people owning half the land area of Scotland as being undemocratic, as is represented, is untrue: this situation does not in any way impede the right of individuals of voting age to vote or to be represented through the parliamentary system. It may as well be said that it is undemocratic having only 129 MSPs to represent the country, which is a moot point. The real question is, is this situation anti-competitive and in what way? Issues of scale in terms of land ownership are arise almost entirely from the low productivity that vast areas of Scotland can be characterised by: rock, scrub and bog.

Finally, we note that the Bill has not addressed nor clarified many vital elements which need to be considered in relation to the rural economy, namely:

- The impact of the proposed changes to food production
- The impact on financially sustainable farm and estate businesses
- The potential impact on tourism
- A strategy for future investment in Rural Communities

**Part 2 - Scottish Land Commission**

We welcome the proposal that Minister-appointed Commissioners must have relevant expertise and experience in land. We also agree that the Commissioners must be arms-length from Government with a remit to monitor the impact of Land Reform provisions.

However, we strongly believe that the Tenant Farming Commission and the Scottish Land Commission should remain totally separate. The Land Commission’s remit is far wider than simply agricultural holdings, and the knowledge and expertise required for the latter is very specific. For instance, this process has poorly represented the important forestry sector.

We also note that the creation of the Commission, five Commissioners and a Tenant Farming Commissioner will be a considerable annual cost in the region of £1.3 million or more per annum.

**Part 2 Chapter 3 - Tenant Farming Commissioner**

We welcome the proposal to appoint a Tenant Farming Commissioner.

We are very keen to see a vibrant tenant farming sector in Scotland. We welcome the desire to have better working relationships amongst sector participants. We feel that the current systems lead to unnecessary conflict and divisiveness. As a Landlord, we would welcome the opportunity for more direct negotiation and arbitration but at present are committed to a legalistic and adversarial approach with the Land Court the only means of achieving resolution.

Therefore, we would like to see a Tenant Farming Commission which comprises a number of different, expert stakeholders such as RICS, SAAVA,
STFA, NFUS, SLE and the law Society of Scotland. These stakeholders, particularly those from RICS and SAAVA, often represent both landlords and tenants and therefore can offer impartial professional advice and perspective in relation to rent reviews and lease negotiations.

We believe a Tenant Farming Commissioner will help improve the sometimes unfortunate, and unnecessary, fragile relationship between landlords and tenants. Proposed Codes of Practice are already in existence from various member organisations, but we have no objection to the Tenant Farming Commission to produce these provided they are balanced and well thought out.

Implementation of the Codes of Practice will inevitably lead to increased costs to landlords and tenants as additional professional advice will have to be sought. Most tenants and landlords have good working relationships and these additional costs are a real concern.

Part 3 – Transparency of Landownership in Scotland

We welcome the decision to exclude from the Bill the recommendation of the Land Reform Review Group (2104) that ownership of land in Scotland should be restricted to natural persons and European Union registered entities (Part 2, Section 5 – Owners of Land, paragraph 11). We believe there are legitimate concerns regarding inward investment or existing investment.

However, clarification is needed as to possible Regulations in relation to access of information.

We believe that land reform should not be focused solely on who owns the land but how effectively it is managed. We do not understand the very narrow focus on scale entirely divorced from value so far presented: it is arguable that the landholdings of the much-publicised 432 land ownerships have an equivalent value to only a passingly small fraction of Edinburgh New Town for example and are, in value terms or as a proportion of productivity, insignificant. We welcome and support a full land registry giving transparency of ownership and land use and the public benefit that already exists.

Nevertheless, we are concerned that the government is pursuing the fragmentation of larger landholdings without taking any account of what these landholdings actually consist of. Instead of this fragmentation being a virtue it could instead undermine the sustainability the government seeks to foster. For instance, it is already well understood that conservation initiatives function much more effectively at large scale. The positive case for fragmentation has not been properly presented for debate that could help inform successful legislation.

Parts 4 and 5 – Furthering the Sustainable Development of Land

In relation to guidance on engaging communities and decision relation to land, we believe that good practice is the key, and not legislation. There is real concern as to what is appropriate and as to when Community engagement would be required. The Bill offers no guidance on this. The day to day
business of an Estate or Farm should not be impacted by a requirement to engage on minor issues.

Within the Bill, there is an extension of the existing community right to buy to ‘further sustainable development’. Whilst there is clarity on when sustainable development conditions are met, there is no detailed definition of ‘sustainable development’ per se and we believe that a proper definition for this must be included. The concept of sustainable development is a moving feast and has expanded somewhat from the original definition laid out in the Brundtland Report (1987)\(^1\). We would also ask that ‘public interest’ is further defined.

We also believe that it is inequitable for salmon fishings and mineral rights relating to land to be included.

**Right to Buy Land to Further Sustain Development**

We welcome the principle of community ownership especially where a landowner is in breach of good land management and nefariously treats tenants and other stakeholders.

However, there is a major concern. It is evident that existing large-scale Community Ownerships have not been fully assessed for financial viability. There is a lack of transparency in terms of public funding on an ongoing basis being made to these community ownerships, through Government, Local Government and the EU. A requirement of the Bill should be for the Land Commissioners to produce a fully audited report of costs of large-scale community ownership.

The other issue is once a community has bought as area, there is an unwillingness to support the ongoing maintenance and investment in that asset.

There is a lack of clarity as to the definition of ‘sustainable’ in the Right to Buy Land for sustainable development.

The legislation should not make it possible for others to forcibly acquire the best parts of another person’s assets to the detriment of what remains, and excluded land must include garden and curtilage of property.

We are also concerned that there is considerable scope within the Draft Legislation for misuse, i.e. a community fronting a third party purchaser to acquire a commercial development.

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\(^1\) “Sustainable development is development that meets the needs of the present without compromising the ability of future generations to meet their own needs. It contains within it two key concepts:

- the concept of needs, in particular the essential needs of the world’s poor, to which overriding priority should be given; and

- the idea of limitations imposed by the state of technology and social organization on the environment’s ability to meet present and future needs.”
Clarity is again required as to whether commercial tenancies are included, which drafting seems to indicate. If this is the case, there will be a very negative impact on investment in Scotland.

Community Bodies

Clarification is required as to the definition of a Community Body and their financial viability through the publication of regular financial statements and the amount of public subsidy. Public benefit must be clearly demonstrated on an ongoing basis. There is also no reference in the Bill as it is drafted as to how any disposal of a previously acquired asset by a Community Body is dealt with. This is a crucial consideration.

Right to Buy

A definition of Public Interest is absent from the Bill and it is imperative that this is understood.

We would also state that compensation must reflect the true, open market value of the asset being acquired.

Part 6: Sections 66 and 67 – Entry in Valuation Roll of Shootings and Deer Forests

We do not in principle object to the cessation of Sporting Estate Tax Relief and the reintroduction of business rates in line with all other commercial activities. We understand that many businesses will continue to benefit from various business supporting initiatives such as the Small Business Bonus Scheme.

However, as an employer of 10 full time employees directly involved in the management of the sporting element of this estate, and a further two full time seasonal workers and up to 40 day and temporary beaters, we would urge Ministers to ensure a full economic assessment is conducted to determine the potential impact this change will have on the sector which is associated with economically fragile areas of the countryside. In reality, most deer, shooting and salmon fishing activity operate at a loss. Any additional cost burden will only have a negative effect on employment and maintenance.

Additionally, it is doubtful that the re-introduction of sporting rates would have any net benefit to Government, which is the main reason they were abolished. As noted above, there is the real possibility that the impact on remote communities would be considerable.

Further considerations for Ministers on which to seek clarity are:

- What valuation method will be employed by local authority Assessors in establishing net annual value?
- How will local authority Assessors differentiate between deer culled for sport and deer culled for management purposes? Relief must be given
for management culls and culls undertaken in the public interest. Some definition is therefore required that reflects on commercial activity.

- Any additional costs may provide a disincentive to maintain deer management, a key consideration in the Bill. Also, marginal local communities, many of which are already community-owned estates, which have very few alternative sources of non-grant income will be detrimentally effected.

- Will business rates apply to all land, including public and private? There are large area owned by Government and agencies, such as Forest Enterprise Scotland, as well as charities.

**Part 8: Sections 69 to 71 Deer Management**

We welcome an increase in the powers of Scottish Natural Heritage to permit SNH to request Deer Management Plans to be created as we believe this is part of existing sound land management. We would be interested to know how business rates will apply in this area where cull obligations are already imposed upon land owners.

We would also submit that existing Deer Management Plans and the structure of Deer Management Groups are working effectively and in compliance with SNH.

**Part 9 – Changes to Core Path Legislation**

We welcome the inclusion of appropriate consultation being made with landowners prior to Core Path plans and amendments being issued. This has on several occasions been absent from previous plan implementation and has resulted in appropriate paths being constituted.

We believe that there should be greater scope for landowners to make applications for amendments to Core Paths where it is evident that the route has significant impact on farming and forestry management and safety, and as a consequence are inappropriate for public use. We would propose that providing the landowner proposes a reasonable alternative route that the local authority authorise the amendment within a fixed timescale of no more than 6 weeks.

**Part 10 - Agricultural Holdings**

We welcome Scottish Government’s recognition that current legislation requires revisiting in order to support a vibrant, dynamic tenant farming sector. Further flexibility is needed in the Legislation to encourage investment in agriculture as the farming industry has changed dramatically in relation to food production.

However, we believe that this review should not form part of the Land Reform Bill and should be given its own Bill which in turn would allow for more detailed scrutiny of the provisions.
Having said that, we welcome and support the proposal to retain the five-year Short Limited Duration Tenancy. We believe this offers flexibility for both landowners and tenants, especially required in the time of such volatile agricultural commodity prices.

The new Modern Limited Duration Tenancy should provide benefits to landlords and tenants, although we believe it could have gone further, giving more freedom of contract in relation to duration of tenancy and the ability to diversify and apportion rent accordingly.

We also welcome the amnesty on tenant improvements.

However, the widening of succession rights for 1991 Act tenants is far too broad and does not strike the correct balance of power between landlords and tenants. We also fear this may result in tenants who have no experience of agriculture and no working connection to the farm in question. We believe that if the succession eligibility criteria are to be widened then there must be more detailed tests demonstrating suitability. Why an incumbent tenant is the entity best placed to decide on how the future tenancy of the holding should develop or evolve is unclear. Since many tenancies function, in our experience, as de facto retirement schemes it is doubtful that incumbent tenants would necessarily make the best decision on behalf of the holding or to relate it to wider issues in the area, such as sustainability derived from improved economies of scale.

We have grave concerns that there is a lack of detail with regard to the conversion of 1991 Act tenancies to Limited Duration Tenancies. There must be clarification on details of the assigned lease, particularly the length of tenure, as soon as possible. There are benefits to lifetime succession arrangements to encourage and enable retirement from farming which can breathe new life into the sector and give young farmers the opportunity to enter the sector, but the interests of the landlord must be protected. Therefore, we feel that the length of tenure should be set at a level which can encourage this generational change.

With regard to farm rent reviews, under current arrangements, it is proving frustrating to find acceptable comparable rents against which to judge where a review should be set. Whilst it can be argued to be in the landlord's favour that tendered SLDT and LDT rents can be considered where there is a lack of evidence of secure tenancy rents, we do not believe this is sustainable nor equitable.

We would suggest that the productive capacity of the holding, taking into consideration the terms of the tenancy agreement and any Single Farm Payment or equivalent, is a more objective measure of the individual holding which can be unrefuted. We also strongly believe that the residential elements of holdings must now be taken into consideration. The £1 allowance for farm dwellings is antiquated and severely prejudices landlords. In our experience this archaic provision has the effect of infantilising tenant farmers, who can pretend to be exempted from the economic realities experienced by all other ordinary households. It also appears to be the case that many of the beneficiaries of these economically artificial arrangements (where
accommodation has no recognised value) tend not to look after the tenanted property. Alternatively, allowing a provision to link rents to agricultural commodity prices may offer an equitable solution.

Furthermore, we propose that if the landlord and tenant cannot reach agreement on a new rent within the given timescales and notice period, there should be an opportunity to refer the rent to arbitration in the first instance rather than automatically to the Land Court. This will be a less costly option for both parties and is far less confrontational and should engender better landlord and tenant relationships. This simple provision should have been introduced in the 2003 legislation and it has been a conspicuous and problematic omission.

Additionally, in order to seek clarity for landlords and tenants of 1991 Act tenancies, we would proffer the opinion that there should be the ability for either party to request the other to enter into a written tenancy agreement where none exists.

We welcome that the Absolute Right to Buy has not been included in this Bill and that there will be clarity on the circumstances of trigger of the pre-emptive right to buy for secure 1991 Act agricultural tenants.

However, we strongly believe that the removal of the Registration of Right to Buy is an error. A deemed Right to Buy only undermines the generally very good Tenant-Landlord relationship and potentially leads to a lack of investment. Since the introduction of the Right to Buy, inward investment to Scotland has declined and as a consequence, the tenanted sector.

We also assert that sale to a third party, unless agreed by the Landowner, should not be included in the Bill. Also, there is a conflict of the valuer and the person appointed to sell the land are the same person.

Conclusion

Scottish Ministers are to be congratulated on many of the measures within the Bill. However, we do believe that there should be further clarity provided on a number of issues as noted above and that there should be time for further consultation once these are known. We look forward to seeing the final outcome of this consultation.