Written submission from the Wemyss and March Estate

This response is being submitted on behalf of Wemyss and March Estate, a diverse rural business with land and property interests in both Scotland and England. The Estate is actively involved in farming, forestry, sporting, residential and commercial property, leisure and tourism, nature conservation and the natural and built environment. We currently provide 144 privately rented houses in Scotland, of which 65 are affordable, with rents in line with Council or RSL levels. We also provide a further 60 houses to staff members, pensioners and farm and rural tenants. We are a commercial business and active members and supporters of our local communities. We currently employ 72 fulltime, 20 part time and 41 seasonal or casual staff.

Our land interests are diverse and range from low ground arable in East Lothian and Gloucestershire to remote hill grazings in the Southern Uplands. In Scotland nearly 70 % of our farmland is retained in hand, whereas all of our English farmland is let.

General Comments

- It is a concern that this primary legislation is so vague in so many areas. The details will follow via a raft of secondary regulations and it is highly likely that the level of scrutiny within a majority government will be less than with properly drafted and detailed primary legislation.
- It is difficult to form a complete view of the implications of the Land Reform Bill as drafted because so much of the detail is missing.
- We would continue to encourage that a balanced and fair view is taken of Land Reform, which is evidence based and seeks to deal with genuine issues rather than minority driven ideologies.
- We would encourage the Government to tread very carefully when considering the impact that the Land Reform bill may have on private property rights and be mindful of the potential cost if rights are restricted or removed.
- Policy reform should be clear and consistent across Government so that policy interactions are fully and properly considered. Unintended consequences are will be damaging and costly so every effort must be taken to ensure drafting is careful and considered across the board.
- Please avoid widening the gap between urban and rural land use.
- Focus on land use NOT ownership.
- In our view the focus on Community Ownership is misplaced. The policy headline of "a million acres in community ownership by 2020" is arbitrary and has no basis as a policy driver. Community ownership should be considered as one of many valid ownership structures and if this is to be favoured it must be properly tested and justified within practical time margins. If public funds are to be used to funded community ownership then scrutiny must be of the highest order to make sure the public funds are being used reasonably.
Communities should be encouraged to explore other forms of tenure as well as ownership. These may well deliver the same result as a fraction of the cost.

The proposed legislation will carry significant costs, legal burden and complexities. Much will be funded by Scottish tax payers and the government must be absolutely sure that their policy preferences are balanced and, genuinely in the publics' best interests.

Sustainability is extremely hard to define and will vary in terms of aspiration and location. Barriers to sustainable development exist at all levels but it is common place to come up against planning, lack of broadband, lack of housing, poor infrastructure or transport services. These are real problems in rural Scotland and should be the Government's priority and focus.

The Government must be more open and recognise the significant contribution that existing rural businesses, estates and farms already make to Scotland economy.

Comments on the Land Reform (Scotland) Bill - as introduced

Part 1

We would prefer to see a coherent and inclusive National Rural Policy for the Country as a whole, which sets out the Governments aspirations and policies for rural Scotland. This would help to manage policy making and assist with aligning policies and may help to avoid conflict and unintended consequences. Land rights and responsibilities could form a part of such a policy document.

We previously commented on the precise wording of the suggested land rights and responsibilities statements and in the absence of more details is it hard to comment further. Our previous comments in relation to the suggested principles are as below:

Principle 1 – We do not agree with this. The rights of property owners must be recognised and considered in a reasonable and balanced manner with in this principle.

Principle 2 – We would support this.

Principle 3 – What does fairer mean? These principles should be clearly defined.

Principle 4 – We would argue that ownership is already diverse and reflects a mix of ownership types, both public and private. The focus on ownership is misplaced in our view, and is supported by an ideological agenda and not by robust evidence. As mentioned in your vision statement, we would contend that land use and uses should be at the centre of these guiding principles not ownership.

Principle 5 – We would support this if the outcomes were clear and in the interests of the wider community and most importantly represented a good and
reasonable use of public funds (assuming public funds are involved) compared with other uses.

Principle 6 – We already seek to achieve this.

Principle 7 – Private property rights need to be considered in balance within this principle.

**Part 2**

We continue to broadly support the formation of a Land Commission, including a Tenant Farming Commissioner, but are concerned by the lack of detail.

We hope the additional costs and bureaucracy will be minimised and that the new Commission will add balance and credibility to the land use debate. This would be welcome and will help to restore confidence in the sector.

We hope the Government will look for practical experience and common sense amongst potential commissioners.

We support the view that the new Land commission will have a wide remit to consider all matters that affect land and not just land reform.

**Section 10** – we would suggest that sub section 2 should be extended to include a spouse or a member of the person’s family – perhaps the same definition of near relative as used in the agricultural holdings legislation would be appropriate to make sure the commission not biased.

**Part 3**

We continue to support openness within land ownership, but are concerned that the proposals are not defined sufficiently and that the operation of this section is therefore unclear.

What does affected by the land mean? and what will the process be for obtaining the information.

The implications of this section are not obvious and this stage.

**Part 4**

It is difficult to comment on this section as the details are so vague.

**Part 5**

We do not support the creation of this new right and believe the proposal will prove expensive to administer and may leave the Government exposed to compensation claims in respect of existing property right and criticism over the use of public resources. Are the powers in the new Communities Empowerment Bill and in existing CPO powers not sufficient to deal with this issue.
The proposal is largely based on the definition of sustainability and despite the fact that the draft bill attempts to offer definition the issue remains anything but clear. The draft bill does not add much clarity.

We would encourage communities to look at to the avenues and opportunities as well and as stated earlier consider other tenures aside from ownership.

Part 6

We do not support the reintroduction of sporting rates. In our view this policy is a mistake and will be harmful to fragile rural communities and economies, affecting jobs, tourism and environmental investment. The reasons behind the original exemption remain and the reintroduction will generate little surplus income after collection costs are deducted.

Part 7 – No comment

Part 8 – We believe this section is not required as the measures being proposed are largely unnecessary.

Part 9 – We support these changes.

Part 10

This area of law should have it is own legislation. It is far too complex and the raft of existing laws badly needs consolidation. The AHLRG undertook a significant consultation exercise ahead of publishing their report and the inclusion of these key policies in part 10 belittles their work and diminishes the sector.

We remain concerned that the proposals will not bring about a return of confidence to the sector and the continuing bias shown toward tenant farmers is misplaced and unhelpful. The proposals do little to remove potential conflict and the opportunity to improve relations has been diminished by the widening of succession and assignation rights which introduces a new dynamic to the let farm sector.

We are also disappointed the opportunity to do more for new entrants has not been taken.

In the absence of complete freedom of contract we support the retention of SLDT’s and are pleased that the government have recognised the need to have arrangements for shorter lets.

We disagree with para 330 ( Policy Memo ) and do not share the view that the AHLRG have built a high level of confidence in the industry and believe the balance between landlords and tenants remains skewed in favour of tenants.
Chapter 1

Para 335 (policy memo) identifies the need for a more modern and flexible tenancy and we hope the new MLDT will prove to be just that.

We do not see why a tenant should not have to give the same period of notice to terminate as the landlord and would prefer to see a not less than 1 year nor more than 2 years applicable for both parties. This mechanism appears to be good enough for the break clause!

Clause 18A – 6(b) – the period of notice being 12 months is too long for this purpose and should be shortened to 3 or 6 months. What will the procedure be if the breach cannot be remedied?

Chapter 2 – no comment.

Chapter 3 – no comment

Chapter 4

We broadly support the proposed rent review mechanism, but await further guidance on the details and suggest that the intended mechanism is properly tested before legislation is passed. Much of the conflict within the tenanted sector stems from rent reviews so it is vital that this element is properly and fully considered in a balanced and fair manner.

Chapter 5

We do not support these proposals at all and consider the widening of succession and assignation rights to be a potentially serious erosion of our property rights.

This proposal destroys the concept of a willing landlord and tenant and could create a perpetual tenancy in situations where one was never envisaged and where some prospects of possession was anticipated.

The stated aim of invigorating the tenanted sector is greatly diminished by these proposals.

In our experience, the relationship we have with our farm tenants is a corner stone of our management ethos and is formed from the initial selection and marketing process by careful assessment and judgement. Great care is taken to make sure that a successful tenancy results, where both parties can benefit from mutual, respect and cooperation. The thought of successors or assignees being forced upon us is unacceptable and will do nothing to foster harmonious relationship amongst the tenanted sector.
We accept that the make-up of a modern family is different than in the past and have no difficulty with some widening to accommodate this demographic but the list of successor contained in the draft bill is far too wide and in our view is unreasonable.

Chapters 6 and 7 – no comment

Part 11 – no comment