Written submission from the Buccleuch Estates Ltd

Part 1: Land Rights and Responsibilities Statement
We are of the opinion that it is beneficial to have an overarching and detailed definition of land rights and responsibilities. However, such a statement must include detail not only of how such rights and responsibilities relate to ownership, but also include obligations for all those, such as tenants and other occupiers, who have an interest in the land to ensure all appropriate rights and responsibilities are defined.

Part 2: The Scottish Land Commission and Land Commissioners
We are fully supportive and enthusiastic of the proposed Land Commission and believe that it will be beneficial to all those with an interest in land. We would however question why there is once again specific mention of ownership within the remit of the Land Commission. Buccleuch have championed the registration of all land onto the Land Register and should this be achieved within the desired timescale then it is difficult to see what role the Land Commission could have in influencing ownership without affecting property rights. We believe that the focus of the Land Commission must be on the use of land and the management of land. The Commission must look to work alongside the National Planning Framework as well as the Land Use Strategy in developing spatial and development strategies for the benefit of Scotland.

We are pleased that the Land Commissioners will have a role in reviewing the impact and effectiveness of any new laws or policies. This review process should include identifying whether the laws and policies promote public benefit as well as any inconsistencies and inefficiencies within the policies/legislation.

We believe that it would be beneficial if the Land Commissioners have a ‘checks and balances’ role within their remit to review the effectiveness and consistency of the use of public funds by the Scottish Government and the influence those funds have on land use.

There is also a role for the Land Commissioners in identifying the public benefit in cases of Community Right to Buy or in Compulsory Purchase Schemes. A review by the Land Commissioners would ensure that any proposals under RTB or CPO would have genuine public benefit. The Commissioners should also be able to investigate if alternative remedies to issues are available and balance these against public benefit.

While the Land Commissioners can review the impact and effectiveness of laws and policies we believe that accountability for the laws, policies and decision making should remain with the Scottish Government.

Attention has been given to the eligibility criteria for Commissioners, as specified within the Bill and we appreciate that provision has been made to ensure the Commission as a whole has a breadth of experience. However, we note that there is no requirement for the Commission to have land use expertise within its makeup and we feel this is an area that would bring a positive added dimension to discussions. We would also wish confirmation that, as far as possible, Commissioners come from
all walks of life and diverse areas within Scotland and seek clarity on the definition of ‘land reform expertise’ to understand whether this is defined by the geographical context of the land under discussion or its potential use. All Commissioners must be in a position to review all matters referred to the Commission in an unbiased manner.

We note the functions of the Land Commissioners as laid out in Chapter 2, subsection 20, and would hope to see, within the final Act, definition of the full powers and remit of the Commission and how these relate to current legislation governing property rights.

**Part 3: Information about control of land etc.**

Buccleuch understand the need to share information about the control of land and would have no issues with this in principle. However, we would seek clarity on the definition of ‘control’ and wish to understand more about potential fees and penalties which may be levied.

We are actively involved in registering our land on the Land Register but, in our experience, heed must be given to the timeframes and the work which will be required to complete this.

**Part 4: Engaging communities in decisions relating to the land**

As conscientious landowners, where possible, Buccleuch actively engage local communities where major changes to land use may have a lasting impact on the local community / landscape.

Where such engagement is to become part of a Parliamentary Act, clarity and understanding would be sought as to the definition of community (a term currently used in relation to such a diverse range of groups from local and online communities to environmental and other special interest groups, to name but a few) and the geographical and interest boundaries which are to be included. Such a definition must be consistent with existing legislation with regards planning and compensation.

A clearly delineated sequence for community engagement must also be provided; with checks and balances in place to ensure this is not a stand-alone process but that it can run either sequentially or, ideally, in parallel with those already in place.

It would be useful to understand the sequence of how consultation should be undertaken. Should local residents be consulted before the Local Authority and national Government or should it be the other way round? Does it depend on who ultimately makes the decision?

In relation to community engagement, one must be mindful of the quality and agenda of the community voice, which can include both democratically appointed bodies (e.g. community councils) and their self-appointed sub structures, both of whom may claim legitimacy. Care must be taken to ensure any definition pays heed to their ability to represent the wider community as those who actively engage do not always have a subjective voice which can speak for all, rather are driven by their own prejudices.
Our experience of community consultation has been that some people or organisations choose not to engage in structured consultation preferring to pursue their own agenda through the media without reference to the facts. We believe these people or organisations should be encouraged to engage with the consultation rather than court public opinion on the basis of ignorance of the facts.

**Part 5: Right to buy land to further sustainable development**
As legislation currently exists allowing communities to buy land it is unclear why there is a requirement for another piece of legislation and where this fits with those already in place.

Clarity as to the definition of ‘sustainable’ would also be sought to ensure this is widely understood and agreed.

Under clause 41 of the Bill; *Eligible Land Tenant’s Interests*, we do not think that there should be any exclusions, thus allowing for the most equitable rules.

**Part 6: Sporting Rates**
We believe the imposition of sporting rates will be unviable and will cost more to collect than it returns. Such a change may also lead to job losses within the sporting industry, which is vital for some rural economies.

We would also like to point out that control of deer is not always be ‘sporting’. Buccleuch control deer purely as a management action for our commercial woodlands. In this case we would argue that there is no sporting opportunity and consequently no rates would be payable. This view is supported by the fact that we receive grant from the Forestry Commission for the culling of deer to aid establishment of woodland and to protect important habitats.

If as suggested in clause 218 of the Policy Memorandum, the reason for bringing in sporting rates was to ensure parity and fairness with other rural businesses we would question why it is not also being proposed to impose rates on agricultural and forestry businesses?

**Part 8: Deer Management**
Buccleuch already submit Deer Management Plans in relation to our forestry enterprise so we do not envisage that this will have any substantial effect on us.

**Part 10 – Agricultural Holdings**
**Conversion of 1991 Act Tenancies to MLDTs**
We are supportive of the conversion proposal if it is thought through correctly. We are however concerned by the suggested minimum conversion term to a MLDT that has been mentioned of 35 years as we can understand no logic for the choice of this time period. We would suggest that there should be a maximum term rather than a minimum term as this allows landlords the opportunity to plan for the future. There is also considerable thought required as to the terms that will make up the MLDT and how they will differ from the 1991 Act tenancy which it has converted from. The rent
that is paid for a farm is based on the terms of the tenancy and if those terms change then the rent should also be subject to review at the point of conversion.

**Right to buy notice**
We believe that the requirement to initially register for the pre-emptive right to buy should be retained but would think that the requirement to re-register every five years to be superfluous.

**Order for Sale**
We appreciate the purpose of the proposed Order for Sale and understand the requirement for this however there needs to be a comprehensive system of checks and balances to ensure that this is not abused. We are also pleased to read within clause 353 of the Policy Memorandum that the Government wants to ensure the most productive use of our agricultural land. We would therefore suggest that an equivalent sanction be available to the landlord for use where the tenant is not making the most productive use of agricultural land.

**Rent Review**
The change in basis of rent review from open market value to productive capacity is not something which we would take issue with. We do however think that residential dwellings within a farm tenancy should be valued differently depending on the viability of the farm as a full time unit. It is inequitable that a large farmhouse should be included for no value within a tenancy of a small farm simply because the let is an agricultural let.

For that reason we believe that all surplus residential accommodation, including an element of the tenant’s accommodation for part time farms should be taken into account for rental purposes.

We would also like to draw the committee’s attention to the fact that the productive capacity of a farm is very subjective and budgets can be composed to show a multitude of observations. This may lead to difficult conversations between landlords and tenants. The Committee should not assume that the change in method of calculating the rental value will reduce disagreement between parties.

**Assignation and Succession**
We object to the proposed widening of classes of successor and assignees. There seems to be a common preconception that landlords always want to gain vacant possession of their land. In Bucleuch’s case we are a long term landlord. We let land and we want the best the farmers to farm the land. If there is an extended family member working on the farm who have made their home in the community then subject to them being appropriate then we would look to work with them to take forward the farm.
We have a current example where we have identified the farm manager of a tenant as a potential successor on the unit. They have no legal claim to a tenancy but they have proved themselves as somebody we want to work with going forward. We would not support someone who succeeds to a farm where they are not suitable or competent. The widening of the succession and assignation makes this more likely.

Compensation for Tenants Improvements
We are supportive of the proposed amnesty for tenants' improvements. It is key however that the improvements should only be eligible as an improvement if it is an improvement for the benefit of the let holding. Should it be unnecessary to the requirement of the let area then it should remain as a fixture. We would like to remind the committee that the compensation provisions for tenants improvements and fixtures are both based of the premise of ‘Value to an Incoming Tenant’. 