Written submission from Hector Maclean

Having practised as a land manager (factor) starting in England, and for the last 35 years, responsible for around 25 estates in every county of Scotland, as well as my own in the Glens of Angus, I have some experience of landowners, tenants, and the effects of past changes in legislation.

I also have experience of responding to calls for ostensible consultation on policies already decided, which is why it is with reluctance & brevity I respond at the last minute to the proposed legislation on Land Reform.

Part 2 Land Commissioners

As a young land agent training in England in the 1970’s I learnt from Codes of Practice produced by the RICS and similar organisations covering many of those examples in S25(2) I have not seen these for many years, but having a Land Commission to produce them sounds like a sledgehammer cracking a nut.

I do wonder if those promulgating this Bill got their idea from the Access Code. This provided a framework for dispute resolution where very little previously existed. By contrast, there is a huge body of agricultural legislation and case law. It is difficult to see just where a Code of Practice fits in without modifying the law. If the law sets a time limit, a Code may well suggest good practice is not to run up against it; would running up against it, in contravention of the Code, be punishable by a fine?

If the effect of the Commission is to better educate landlords and tenants in their respective rights and responsibilities, then it is to be welcomed.

It will be interesting to see if non-compliance with Codes will be enforced impartially as between landlords and tenants, or if ignorance by one is more excusable than by the other.

Part 3 Transparency of landownership is long overdue. The cost is unfortunate.

Part 4 Engaging communities...

In general I applaud any attempt to energize rural communities, but giving powers and teeth to existing structures, such as Community Councils seems the best & most democratically accountable way to do it. It is surprising that many show the activity they do, as the democratic afterthought they currently are. I believe they should be the focus of local debate and the pool of local information. Hopefully this could be achieved without party politicising them. Had this been done before, and the green shoots shown by some Community Councils fostered, I believe there would be less call for this Bill.

Part 5 Right to Buy Land...

If a community can convince Ministers that it really can carry out sustainable development better than the existing landowner in the wilderness that comprises most of Scotland, good luck to it. The main problem I see is over planning issues. Planning permission may well be more easily obtained by a community for development when this would be denied the existing landowner. There are questions of equity and valuation in this.

For the past 30 years I have offered free of any charge 2 acres of my best land, the old mansion house garden, to anyone who would use it. For a short while (maybe 10 out of 30)
it has been used productively. Our difficulty, in a not especially remote part of the highlands, is to persuade anyone to live here. Tackling issues such as appalling and expensive broadband, no terrestrial TV, no mobile phone reception, the possibility of FM radio being discontinued (leaving a poor Long Wave the only obtainable radio), expensive fuel, no public transport and the cost of meeting ever higher standards of water and sewage quality are all more important factors in deciding to live here than the measures proposed in the Bill.

One reason many folk appear to live in an area such as ours is because they are not especially sociable or community minded. No-one, other than my wife or myself, has organised a public function in our village hall for years, and we need to reach far afield for support. In neighbouring glens the village halls have closed.

Houses sold in our glens here invariably go for second homes. There is plenty of talk of absentee landowners, very little of absentee house or cottage owners.

**Part 6 Entry in Valuation Roll of Shootings & Deer Forests**

Shootings - I see the logic of reinstating these rates. I had imagined they were removed with a view to protecting the economies of fragile communities. Ceasing that protection appears somewhat at variance with the rest of this Bill. Unless, of course, it is seen to protect the wrong sort of community. I would not anticipate any of the other provisions of the Bill making up the shortfall of income to the communities affected by the addition of a rates burden.

**Part 10 Agricultural Holdings**

It should surprise no-one that there are some bad landlords & some bad tenants. Unfortunately we tend to hear only of bad landlords and unhappy tenants. To my mind a far bigger problem than inadequate legislation is the cost of accessing and implementing the legislation that there is. In days past, the Scottish Land Court, or an arbiter, was a relatively cheap way of providing such justice. No more. Legislators, under the impression that a new law will solve matters usually compound the problem, creating wealth only for factors & lawyers. Burying agricultural holdings legislation in a Land Reform Bill does not help.

For myself, I have, over the past 15 years, terminated the 2 large agricultural tenancies on my land, for many reasons, but the direction of previous legislation combined with speculation on future legislation was a very significant factor. As a factor I am aware of a reluctance to let land due to it being a political football.

The Modern Limited Duration Tenancy- What is so wrong with freedom of contract? Effectively that’s what we have in Scotland for commercial and industrial lets (unlike England) and the number and contribution of these to the economy dwarfs that of agricultural holdings. Is anyone interested in how many owners there are of these units?

I’m afraid I see nothing here that will encourage landowners to let land.

**Rent Reviews –**

Stating the date by which a rent must be agreed (Shed 1A (3) (3)) is confusing. Is it the effective date of the rent (term date) or some arbitrary date chosen by the applicant. If the latter, what happens if it is not met?
The tenant with a smart Georgian farmhouse in East Lothian will do well now that the value the house is no longer added to the open market rent of the holding. It seems that residential accommodation “necessary to provide accommodation for the standard labour requirement of the holding” has no value under this formula (Sched 1A 7(4)). This is bizarre, and hardly conducive to letting land with accommodation if there is a choice to amalgamate. Undoubtedly some farmhouses and cottages add more to the open market rental value of a holding than others; it is inequitable not to take account of this.

Assignation- I have lost count of the times succession rights have altered in my professional life. Is this one going to make everyone happy?

Chapter 6

S 90. Amnesty for certain improvements by tenants - Good idea

The phrase “not fair and equitable for compensation to be paid” (S93 (3)) leaves plenty of scope for argument.

S96 Notice for certain improvements by landlord - Fair enough

The overall effect of this Bill if enacted will, in my opinion, be hugely beneficial to lawyers and factors, whose services will become even more indispensable. I do not think it will increase the supply of let land at all, save by the calm of its wake making fresh legislation unlikely for a few years.

A Scottish Land Commission and Tenant’s Commission, if not packed with the usual cronies, could do a good job of setting standards and especially of educating everyone in their mutual obligations and rights. A very expensive way of doing it.

If a community can come up with a convincing better idea than the current landowner for a piece of land I don’t have a problem with them being given the right to acquire it.

Disregarding the relative value of farmhouses is not equitable.