Written submission from Tom Packe

General Comment

The objectives, on the whole, are fine but above all, farms must readily be available to let out to genuine farm tenants. To encourage landowners to do this, they must have absolute faith in the Scottish Government that their land will remain theirs and there would be no possibility in the future of tenants being given the right to buy or for any member of the tenant’s family being able to succeed to the tenancy. The danger of landowners losing control of their land, perhaps for ever, is no doubt the main reason why there has been such a sharp decline in farms becoming available to let out to tenants. When I was at agricultural college in the 1960’s, there were plenty of farms available for letting and many agricultural students secured a farms to rent (very few, if any, could possibly have afforded to buy a farm outright) and so they did not have to work for someone else or in some other area of agriculture. Trust builds up between landowner and tenant and so the landlord/tenant system works very well. Look at the past ways of doing things and if they worked well then, why change things, other than perhaps to put in place a few safeguards for both landowner and tenant against the few unscrupulous people that there will inevitably be in any business or profession.

Establishing a Scottish Land Reform Commission

1. I support this in principle, but the Commissioner must also be experienced in farming and land management.

2. It is proposed that a person is deemed to be ineligible to become a Commissioner if he or she has been an MP, MSP, MEP etc. within one year. I believe this is too short and that period should be 3 or even 5 years. This is to prevent any political bias creeping in.

Landowners engaging with Communities

1. A large majority of landowners will do this already.

2. Should the community wish to purchase or lease land for the common good, then it is important that there would not be an adverse effect on the landowner because of it. For example, I was approached several years ago by a sports club in a town and asked if I would ask my clients to allow them to buy approx. 100 acres of farmland for sports grounds and facilities. Although sympathetic, the answer in this case was “no” because the farm (which was anyhow let to a farm tenant) would become uneconomic. Had it been for a sports pavilion, then the answer may well have been different.

3. Powers already exist for communities to buy land for further sustainable development. Why legislate to introduce yet another layer of powers to achieve the same purpose?

Sporting Rates

The question must be asked why sporting rates were abolished 20 years or so ago? The same reasons would still apply today. There is no doubt that many landowners
would suffer because if sporting rates were reintroduced, then they would make sporting in many areas uneconomic, especially in the Highlands and on the west side of the country (stalking in particular) because landowners would simply close down sporting on their land. Sporting attracts many sportsmen from the UK and overseas.

Many highland estates will not have other economic enterprises they can fall back on. Relatively little additional money would be brought into the country should sporting rates be reintroduced. Where commercial sportings are practiced, then the local communities benefit too. If those sportsmen do not appear, then they suffer. In my view (and many others too), the Scottish Government would do far better to retain the status quo. Don’t let fieldsports become a political matter. Please also remember that well managed sporting estates, of which there are many in Scotland, enhance the amenity enormously and also the conditions for wildlife to flourish overall.

Deer Management

Introducing power for SNH to require deer management plans to be introduced, I understand, already exists. If that is the case, then why introduce more powers?

Agricultural Holdings

1. The “Modern Limited Duration Tenancy” (MLDT) is fine in principle (though why not tweak the existing LDTs and SDLTs instead?), but I still believe that the English “Farm Business Tenancy” is the best system for this day and age because it gives much greater freedom of contract between landlord and tenant. It works well in England and that being the case, I suggest that you legislate for a similar system in Scotland too.

2. I would be in favour of converting 1991 tenancies into MLDTs if they were enacted, subject to certain safeguards. I believe the minimum statutory term should be for 40 years or when the tenant reaches 65, whichever is the earlier (unless the tenant requests to vacate at an earlier date, subject to say two years notice). However, there should also be a right for the tenant to extend the lease on an annual basis (or longer) after the end of the initial term, if both landlord and tenant agree to it. I believe it is important to remember that farming is a career and for a tenant to possibly lose the farm during his working life, especially when he may be supporting a family, could be very hard and therefore wrong. Forty years in the context of landownership is not that long a period of time.

3. I am not in favour of removing the requirement for a tenant to register a “right to buy interest.” I am not actually in favour of the tenant having any automatic right to buy the farm at all, as this will
   
a) reduce the amount of farms available to rent (especially for the younger generation) and

b) most certainly make most landowners decide not to let out their farms at all.
Therefore, this would have a double adverse effect. If a tenant wants to own a farm, then he should go out and buy one, along with everyone else, on the open market. Obviously, if he comes to a private agreement with his landlord to buy the farm he rents from him, then fine.

4. I would support a new power for the Land Court to order the sale of the holding to the tenant (or on the open market) where the landlord repeatedly breaches his/her obligations, but only as a last resort. Persuasion is best, but then an application perhaps to the Land Commissioner, failing which, to the Land Court and the Land Court should then only order a sale if the breaches or short-comings have not been mainly met within an agreed time-scale.

5. In principle, I am in support of the proposed procedure for rent reviews. The productive capacity of the farm by a competent farmer must always be taken into account, but this should also reflect the fixed equipment supplied by the landlord. In other words, if the fixed equipment supplied by the landlord was unsuitable for the type of farm in question, then the rent payable should reflect that. Diversification and enterprises, especially high-risk ones, by the tenant should be kept separate from the productivity of the farm in rent reviews. Most farm leases allow for surplus cottages and houses to be taken back by the landlord and therefore, these surplus ones should not be taken into account when assessing the rental value of the farm unless the tenant was letting them out and making money from them. If the farmhouse for the farm is substantially larger than the size of the farm would normally justify, then a proportion of that rental value of the house should be separated out from the farm rental value. This is a complex area which competent land agents/factors will already be familiar with.

6. Assignation and Succession: If a tenant wishes to assign the remainder of a fixed term lease, such as in a Limited Duration Tenancy (or if the tenant dies), then I believe the tenant (or executors) should be permitted to assign the lease for the remainder of the term to anyone who is competent in farming (and who will actually be involved with the farming itself), but always subject to the approval of the landlord, whose agreement should not be unreasonably withheld.

7. I am in agreement to the 2 year amnesty period for existing tenants to seek approval of their landlords for any unapproved improvements to the agricultural holdings they have made and/or for the supply of unapproved necessary fixed equipment, so that compensation can be claimed by the tenant at the end of the tenancy. But there would have to be detailed safe-guards put in place.

8. I am also in agreement to a new procedure for a tenant to object to any improvement proposed by the landlord if he or she believes it is not reasonable for the productivity of the holding. But again, there would have to be safe-guards put in place.
Generally, I support the Bill, but much more detail is required first. I would like to see as much detail as possible put in place now, rather than leaving it to the Minister to come up with the detail later on, which is so often approved by Parliament in secondary legislation without a full debate. It is important for us all to see the whole picture from the outset.

Again, I repeat here the importance of having many more farms available for letting to tenants and that means, above all else, encouraging landowners to let by removing the obvious barriers to this as stated above.