Written submission from Federation of City Farms and Community Gardens

In general we welcome the provisions in this Bill, as we know that communities find it hard to access land for growing, and we feel that most of the new rights in the Bill will make it easier for communities to find and use land. However, as you will see from our comments below, we believe there are a few changes that need to be made to make this Bill fully effective.

Part 1 - Land Rights and Responsibilities Statement

While we welcome a statement on Land Rights and Responsibilities, we would prefer the Bill to be more ambitious and follow the recommendation of the Land Reform Review Group to form a National Land Policy. The consultation required for this would allow people all over Scotland to have their say about what land should be used for. The FCFCG would like a National Land Policy to support productive community use of land.

Part 2: The Scottish Land Commission

Given our comments on Part 1, we would propose the Scottish Land Commission as the body responsible for production of a National Land Policy. In general terms we welcome the new Commission, and would hope that the new Commissioners would also understand community use of land, as well as law, finance, economics and the environment. The FCFCG, and the Community Land Advisory Service, would be very keen to work with the new Commission to share 35+ years of experience in this area.

It will be important to make sure that the Commission does not become too large, cost too much or duplicate the work of others.

Part 3: Information about control of land

We are very pleased to see measures seeking to improve information on land, its value and ownership. For many of our members finding this information can be a huge barrier to accessing land – groups don’t have the technical expertise to know where to look, and they often can’t afford to access the records once they know where they are located. For this reason, we strongly suggest that the fees for making information requests (s.35 (2e)) are proportionate, and kept to a minimum, based on an organisation’s ability to pay.

Part 4: Engaging communities in decisions relating to land

We are very pleased to see the inclusion of Part 4 as we regard engagement between landowners and communities to be essential. In our experience, many of the problems faced by community groups are down to lack of communication with landowners/managers (eg: one Development Trust we have worked with had difficulties dealing with the Forestry Commission Scotland as different layers of the FC sent out different, often conflicting, messages). Therefore, guidance for landowners/managers would be very welcome, and the FCFCG would be very interested in helping to prepare this guidance. We have already published a Landowners’ Guide, which has been used by many landowners, both public and
private, and we have several good examples of negotiation (eg: between a developer and meanwhile community garden at The Grove in Edinburgh, or between the local council and Greener Kemnay, a group that want to start a community garden).

However, we are concerned that Part 4 only makes provision for voluntary guidance – for these examples of best practice to be adopted, surely they need to be made a statutory requirement, with incentives for using them, or disincentives for not using them? For example, a landowner might be ineligible for public funding if they don’t adhere to the guidelines? If the guidance is not enforceable, it is likely to be of limited use.

**Part 5: Right to buy Land to Further Sustainable Development**

We welcome the inclusion of Part 5, as we know that access to land is a significant challenge for community growing groups. However, as with Part 4, we are concerned that this new provision will be of limited practical use, as the conditions to be met by community groups are too onerous. For example:

- **s47 (2) Conditions for sustainable development** - how is a community group supposed to prove “that not granting consent to the transfer of land is likely to result in significant harm to that community” (condition ‘d’)? In our opinion it would be better to concentrate on the significant benefit to a community that would result from a change in land ownership instead.

- **s.48(1)(a) – Arrangements for a ballot to be conducted by a community group.** These are not in keeping with the changes made to the right to buy by the Community Empowerment (Scotland) Act 2015 which removed responsibility for conducting the ballot from the community body and placed it in the hands of an independent ballotter appointed by Scottish Ministers. Surely it would be better for the ballot to be run by someone independent with the relevant skills and experience? Organising a ballot could be a huge barrier for a community group with limited capacity and resources.

- **S.42(9) – Membership of a community body.** Community growing groups involve people from all walks of life, and often from a wide geographical area. For example, the FCFCG office is at Gorgie City Farm in Edinburgh, and the volunteers and visitors who benefit from the project come from across the city, even as far as the Lothians and Fife, not a single postcode area. These are the people who would benefit from any transfer of land, so in our opinion it makes sense that they should be included in the definition of a community for the purposes of Part 5. People who work/volunteer in a postcode area will be affected by decisions made about land in that area, and so should also have a say in what happens there.

Having said this, there are some points in Part 5 that are welcome, eg: **s.47(10), factors that Ministers must take into account when determining what constitutes significant benefit or harm to the community.** We are pleased to see health and wellbeing included in this list. Perhaps ‘community resilience’ or ‘community cohesion’ would be better than ‘regeneration’ though? An area may not need to be regenerated, but community cohesion could still suffer harm if an application for transfer of land was not approved, especially if the land was already being used by
the community and they stood to lose their access if the land was sold to another party.

In principle we agree with the proposed new Right to Buy and we hope it will be of use to community growing groups looking for land. However, it seems to us that the conditions in Part 5 are so onerous that it will almost never be used. This is the mistake that was made with the original Right to Buy in the Land Reform Act 2003 – only a handful of land transfers have taken place in the 12 years since that law was passed, which seems to us to be a huge missed opportunity.

One way to make Part 5 more useful might be to bring it in line with the provisions in the recent Community Empowerment Act. Instead of a single Right to Buy, there could be a sliding scale of options for communities including the Right to Lease, Use, Occupy or Manage land instead. This would make it easier for Ministers to make decisions, and easier for communities to manage the process. We know that many community groups do not want the responsibility of actually owning land - they simply want to use it. If the conditions to be met for leasing, using, occupying or managing land were proportionately more lenient than the conditions for buying land we think that Part 5 would be much more widely used, particularly for meanwhile use.

Communities will need support to make the most of the new provisions in Part 5 of the Land Reform Bill (2015), and it is our suggestion that this is funded by the Scottish Government as part of their implementation plan for the new Act (eg: funding for work of organisations like the Community Ownership Support Service and the FCFCG’s own Community Land Advisory Service, as well as other support organisations such as Third Sector Interfaces).