Written submission from Bidwells

Introduction

Bidwells is a professional services property firm employing over 50 people in Aberdeen, Fort William, Inverness and Perth.

Bidwells provides property advice to a wide range of clients including charities, community owners, corporate, institutional, private, public and Scottish Government. The range of professional specialisms include accounts management, architecture and building, commercial property, conservation management, agriculture, community, crofting, fishing, forestry, marine and coastal management, deer and grouse management, sporting, planning and renewables.

Bidwells is actively involved in the management of over 250,000 hectares of land and forestry throughout Scotland.

We submitted comments on the Consultation Paper "The Future of Land Reform in Scotland" earlier this year.

Bidwells welcomes the opportunity to comment on the Land Reform (Scotland) Bill.

We have commented on the key points we believe require further clarification or should be considered for amendment as part of the drafting of the Bill.

SUMMARY

- We have concerns that the production of a Land Reform Bill in advance of there being clarity on the Scottish Ministers' objectives for land reform, i.e. the provision of the Land Rights and Responsibilities Statement – is illogical in its ordering. Without being made fully aware of what the objectives of Land Reform are, it is difficult to comment properly on at least some parts of the Bill.

- In producing their statement on Land Rights and Responsibilities, Scottish Ministers should take into account the existing rights, views and opinions of as wide a range of those with an interest in property as possible – this must include those who currently own and manage property.

- As the single largest landowner in Scotland, the Scottish Ministers should give full consideration to what might be achieved from reform of this estate (e.g. Forestry Commission Scotland) as a possible means of testing how deliverable (in social, environmental and financial terms) land reform measures are.

- It is of concern that the Bill proposes the granting of sweeping powers to Ministers in respect of their abilities to determine policy matters and to introduce secondary legislation, much of which may affect the existing rights and interests of property owners. We believe such issues should be exposed to the full scrutiny of the Scottish Parliament, rather than being left in the hands of certain members of the Executive. It is crucial that such
parliamentary safeguards are allowed for, particularly as we believe that at least some of the proposals outlined in the Bill run the risk of being in conflict with property rights as laid out in the European Convention of Human Rights.

- Land use diversification does not entirely depend on ownership of property and we would urge that methods of encouraging this aim, which do not necessarily include changes of ownership, are fully considered.

- Membership of the Scottish Land Commission must aim to represent the full spectrum of views of those with an interest in the subject. Of necessity, this will require input from landowning and land management experts.

- It is of concern that the Bill proposes the rights to demand information relating to property (who can demand it, from whom and what information can be demanded) will be introduced through secondary legislation without the safeguard of parliamentary scrutiny (see bullet point 4 above).

- This concern is also relevant to the proposed Right to Buy for Sustainable Development.

- In relation to the Entry in Valuation Roll of Shootings and Deer Forests, we have concerns about the effects this may have on current landowning interests, including the public sector, farmers, owners of commercial woodlands, charities etc. Assessors may attribute "sporting value" to areas where management of (particularly) wild deer populations is not, in general, undertaken as a sporting business, rather as a necessary part of good land management and stewardship. As a general point, on all land and estates where sustainable management and businesses are supposedly being encouraged, it seems perverse to burden them with additional costs.

- We believe that the proposed modern limited duration tenancy provisions as drafted will do little to stimulate the tenanted sector. There must be more freedom between Landlord and Tenant to allow the correct tenancy agreement to reflect the specific circumstances and allow the best possible outcome and opportunity for Landlord and Tenant.

- We believe that all provisions of the Bill should be evidence based and that a thorough review of existing public and community ownerships should be undertaken to properly inform implementation of the Land Reform process.

Part 1 – Land Rights and Responsibilities

We believe the development of a Land Reform Bill in advance of their being a clear statement available on the Scottish Ministers' objectives (The Land Rights and Responsibilities Statement) is a somewhat illogical order to work to.

Without a full understanding of what the Bill hopes to achieve, any comments on the Land Reform (Scotland) Bill must be somewhat generalist by necessity. Having a clear objective (or list of objectives) is an essential foundation of forming a strategy / plan to achieve the desired outcome.
We believe any Statement of Land Rights and Responsibilities must pay due regard to:

1 Potential effect on existing businesses
2 Cost of delivery to the taxpayer
3 Encouragement of future investment into property based businesses.

**Part 2 – The Scottish Land Commission**

We note and welcome the intention to create a Land Commission that will comprise five Commissioners and a Tenant Farming Commissioner, with the proviso that those appointed are demonstrably capable of representing the properly considered views of those with an interest in land. This must include proper representation for those who currently own and manage property. We suggest that the Strategic Plan to be submitted to The Scottish Ministers should be available for consultation to the wider public and key stakeholders prior to its adoption by the Ministers. We welcome the appointment of a Tenant Farming Commissioner and look forward to having input into the various codes of practice detailed in section 25. We believe there are potentially significant benefits for both landowners and tenants in having a means of clarifying the operations of the Agricultural Holdings Acts in an effort to resolve disputes without resorting to court action. We do, however, have some concern about the scale of this appointment and the resourcing which might be required in order to properly discharge its role, on the basis that there are currently c.6,000 tenanted farms and that the Land Court has been dealing with an average of 44 cases per annum over the last five years, many of which relate to relatively straightforward matters of dispute.

From our experience the majority of Landlords and Tenants enjoy good working relationships and care should be given in the drafting of Codes of Practice to allow flexibility and not impact where relations are already good.

From both the Tenant's and Landlord's perspectives there are concerns the implementation of Codes of Practice could result in increased costs to the sector, as all involved will require to take additional professional advice, and costs are a significant burden.

**29 – Enforcement Powers**

Clarification should be made in relation to breaches of Codes of Practice that non-compliance penalties ought only to be imposed following failure to meet the instructions of the Farming Commissioner rather than a breach of Code of Practice.

**31 – Report on Enquiry**

Clear timescales should be set out for the provision of the report.

**Part 3 – Information about Control of Land**

It is not clear at this stage what Regulations the Ministers may introduce in respect of access to information as these are not stated in the Bill - other than proposing the
Ministers be given broad powers to make these Regulations relating to access to information. We suggest that there should be further clarity about possible Regulations that may be covered by this section prior to inclusion of this section in the Bill. We have no concerns about the Keeper having further powers to gain information on land ownership, but are concerned that Ministers may, by means of introducing secondary legislation which has not been subject to parliamentary scrutiny, allow for as yet undefined persons or organisations to demand as yet undefined information from as yet undefined property owners.

Part 4 – Guidance on Engaging Communities and decisions relating to Land

We have considerable experience in engaging with communities of various scales throughout Scotland. We act for a number of communities and manage many existing agreements between landowners and community groups. Community engagement takes many forms, ranging from entering into formal arrangements for management of certain areas, through to making available a field on an informal basis for the local fete or Highland Games.

We believe there needs to be clarity in this section of the Bill in relation to guidance on what is appropriate and when community engagement should be required. This must be informed by the practical needs of running businesses and should not have an undue impact on day to day operations e.g. the timing of agricultural operations, crops to be sown, maintenance of fixed equipment, road repairs, etc. One could envisage the situation where a farming or estate business is "forced" to engage in consultation on a variety of minor issues which could be intrusive, obstructive and unproductive to wider community relations. There are already established engagement processes in relation to matters such as Forest Plans and planning applications. We believe, particularly where farm and estate businesses are involved in operations having a significant impact on the community, such as diversification, tourism, etc, that there can be positive benefit in additional voluntary community engagement and this should be encouraged through good practice rather than embodied in the Bill.

Part 5 – Right to Buy Land to Further Sustain Development

We believe there are instances where it has been and will be appropriate in the future, for communities to take control of land and assets through ownership, lease or licence. We believe a thorough review of existing public and community ownerships should be undertaken. The benefits, successes, challenges and failures should be transparent and the public should have a clear understanding of what the total cost to the public purse is and has been – not just the cost of acquisition. In the future, community ownership should be based on sound business cases and provide a realistic return on any public investment.

A key issue relating to Right to Buy Land for Sustainable Development is the lack of clarity in terms of the definition of sustainable.

We believe that it should not be possible to "cherry pick" assets as this could have a detrimental impact on remaining ownership. Cherry picking, or the risk of cherry picking could also act as a significant disincentive to owners investing in their property, particularly if there is a risk that the asset can be compulsorily acquired.
39 – Eligible Land

We believe that the excluded land definition should be widened to include garden and curtilage.

41 Eligible Land: tenant’s interests

Clarification on the types of tenancy that are referred to is required within this section.

42 – Part 5 Community Bodies

There is a significant amount of clarification required in terms of what constitutes a community body and where it is appropriate for that community body to nominate a third party purchaser. We are of the opinion that it is inappropriate to use Legislation to allow a community to facilitate a third party to acquire assets.

Community bodies should conform to accepted financial standards and act in a transparent and accountable way.

43 – Provisions Supplementary to Section 42

We believe there should be scope within the Legislation for the land to be sold back to the landowner in the event that the community choose to make a disposal and on the same basis of valuation at the time of purchase. It is not obvious how the sale of assets as a result of the failure of a community project will be dealt with and this requires to be addressed.

44 – Register of Land for Sustainable Development

We welcome the Register of Land for Sustainable Development and that this will be publicly available and give clarity to what is deemed to be sustainable development in terms of the Bill.

45 Right to Buy: application for consent

We would reiterate our concerns about the inclusion of the ability to nominate third party purchasers and believe there should be clarity as to the status and probity of any third party purchaser.

47 – Right to Buy Ministers Decision on Application

A definition relating to public interest is required in Section 47(2b).

54 Completion of Purchase

Whilst this section sets out the completion of a purchase we believe that there should also be a section detailing how a community should deal with disposal of assets.
55 – Completion of Transfer

As the Bill is not explicit in relation to the type of tenancy, we have concerns about the valuation of a tenant's interest as this would appear to refer to the Right to Buy of Tenant's Interest from an agricultural perspective rather than a commercial business.

56 – Assessment and Value

We believe it must be appropriate that the valuer takes into account any open market tendered bids that have been received for the property where a community is the purchaser and where an asset has been presented to the open market.

58 Compensation

We support the compensation provisions, both with regard to owners, former owners and tenants who may suffer costs or loss as a result of a community’s failure to complete an application and there is scope for recovery of these losses.

59 - Grants towards Liabilities to pay Compensation

We note that The Scottish Government underwrite compensation on behalf of communities and whilst we believe this appropriate the information relating to this should be publicly available.

Part 6 – Entry in the Roll – Shootings and Deer Forests

It is not clear what the rationale is for the reintroduction of sporting rates and charges being levied on these as it appears to conflict with the current desires to manage salmon fishings and deer forests sustainably. In our experience most salmon fishing operations operate on a cost neutral basis or at a loss, taking into account the costs of employment, e.g. ghillies and riverbank maintenance. The next largest cost incurred is River Board levies which are based on the old Rateable Value system. With Catch and Release being in place on most rivers to encourage conservation, letting salmon fishings is increasingly difficult and many rivers have significant periods when the fishings are not taken up by tenants at any price. Any increase in rates and costs to these rural businesses is likely to result in a reduction in employment and maintenance in sensitive rural areas.

66-67 - Repeal of Exclusion of shootings and deer forests from the valuation roll.

The Bill provides little detail in respect of this proposal and a number of questions arise, namely: -

(i) **What valuation method will be employed by Local Authority Assessors in establishing net annual value?** Pre 1995 when shootings and deer forests were removed from the valuation roll, owing to insufficient evidence of "statutory" rents of sporting rights, Regional Assessors used the number of deer culled and the income generated from the letting of sportings as proxies for assessment of rental value, defined in the statute as "the rent at which the lands and heritages might reasonably be expected to be let from year to year if no grassum or consideration other than rent were payable in respect of the lease and if the tenant undertook to pay all rates and
had to bear the costs of repairs and insurance and other expenses, if any, necessary to maintain the land and heritages in a state to command that rent”. We believe that more evidence may now be available of leases of sporting rights for a year or longer which meet the terms of the above rating hypothesis than was the case pre 1995 and have been participating in some work with Scottish Land and Estates to assess the availability of such evidence.

(ii) How will Local Authority Assessors differentiate between deer culled for sport and deer culled for management purposes? The culling of deer is carried out for a number of different management purposes – for deer welfare; to protect the environment; to prevent economic damage to farm crops, forestry etc; to reduce the risk of road accidents; and for sport – “deer stalking”. All culls, including those let for sport, are for management purposes to keep deer numbers at a sustainable level. We, together with the Association of Deer Management Groups (ADMG) oppose the reintroduction of business rates on the basis that income generated from the letting of deer stalking for sport is necessary to meet the cost of essential deer management, a public service in respect of private land delivered at no direct cost to the public.

If Part 6 of the Bill is to be implemented relief should at the least be available for management culls which are undertaken in the public interest and which generate no income from letting. A definition is therefore required for deer not culled for sporting purposes and we would suggest: “Deer of all species, killed by an owner or tenant of sporting rights or those acting on their behalf, for the purposes of sustainable deer management and for which no payment is made by a third party as a hunting fee”.

(iii) What financial burden will business rates on sporting rights represent? We are particularly concerned that the Scottish Government appears not to have carried out a full economic impact assessment on the proposed measure. This being a requirement of legislation we trust that an impact assessment may still be carried out during the passage of the Bill.

We would make the point that any significant additional cost is likely to have a negative effect, being a disincentive to maintain deer management and investment. In some circumstances deer related employment may be reduced which would be detrimental to the local economy and potentially to local communities, the support of which are one of the main objectives of the Bill.

One of the consultants currently assisting the DMGs in writing deer management plans has made the comment – “I have come to realise over the past year or so just how important sporting income from red deer is to a number of community owned estates. The ones I know about have taken on or increased the activity that was taking place beforehand. It is often one of their few sources of income (usually the only one) that is not tied up in grant obligations and can therefore be used as unrestricted funds. If they are now to face a rates bill, it will have a disproportionate effect on them, potentially wiping this income out. I hope the Scottish Government are aware that the people they are intending to help could be unwitting casualties of their new initiative”.

(iv) Will business rates on sporting rights apply on all land? Deer are present on virtually all land in Scotland including many urban and near urban areas.
That being the case, as deer in most situations could potentially be utilised for sporting purposes, some value is likely to be attributed by Assessors to sporting rights on any land regardless of scale or activity, including public as well as private land. It should be noted that deer stalking is let on some land owned by the Scottish Government, for example land under the management of Forest Enterprise Scotland.

(v) Will sporting rights qualify for relief under the Small Business Bonus Scheme (Scotland)? If so this will be beneficial to smaller subjects where the value of sporting rights is assessed below relief threshold levels. However, assessments will be required to establish this. It is also not clear whether sporting rates may be aggregated with rates payable on any other rateable enterprise operated within the same business (eg self catering or horse livery) for SBBS purposes. If so there is a danger that some smaller sportings subjects may be liable to pay rates while other are exempt, which would be inequitable.

(vi) Parity with other business. As justification for the proposed repeal it has been said that exemption for sporting rights is anomalous in terms of other business. However exemption is proposed to remain in place for fishings, farming and forestry. In what respect does management of land for shooting and deer stalking differ from fishery management, agriculture or timber growing?

And some additional points of concern:

(vii) Reduced resources for deer management. In the early 1990s when deer stalking and shootings were removed from the valuation roll, Deer Management Groups were at an early stage of development. Since that date the increasing importance of collaborative management has necessitated the funding of DMGs and ADMG. Total DMG and ADMG subscription income is estimated to be around £150,000 per annum, raised voluntarily. This money is invested directly into the organisation of collaborative deer management and could be much reduced if those who contribute are faced with business rates. The funding of DMGs could indeed be said to have utilised the moneys required for sporting rates prior to 1995, a beneficial outcome of the exemption.

(viii) Possible effects on deer data gathering. At present the annual return of culls to Scottish Natural Heritage is limited to landholdings of which SNH has knowledge. It is known that many landholdings are not included despite comprehensive information being held on landholding occupation within other parts of Government. It is highly desirable that accurate annual cull statistics are gathered as a basis for assessing population trends and impacts and to monitor the effectiveness of management at individual location level. It should be noted that such information should be available not only in respect of farms, estates, woodlands and crofts but also for some domestic properties; recreational land such as golf courses; common land; land owned by companies, membership organisations and charities; as well as land in public ownership through Government Agencies and Local Authorities. The reintroduction of sporting rates is likely to discourage those disinclined to volunteer an annual return from doing so.

(ix) Availability of local services. Business rates are intended to contribute to the cost of services provided by Local Authorities. Deer management often takes place in remote areas where residents do not have full and equivalent access of
such services, for example public transport, proximity to schools, road maintenance and snow clearance. (Indeed in many cases privately employed deer stalking personnel contribute to local services by carrying out snow clearance on behalf of the Council). Local rates relief for remoteness should be available for sporting rates.

Notwithstanding the above, we believe that there is an opportunity for the reintroduction of business rates for sporting rights to have a positive effect, to act as an incentive to sustainable deer management rather than as a disincentive. We would therefore propose that relief should be available for sporting rights which are managed in a way which meet relevant public interest criteria. For example a landholding which participates in a Deer Management Group for which there is an effective deer management plan, endorsed by Scottish Natural Heritage, might qualify for relief. This would have the effect of promoting collaboration, furthering the public interest and strengthening the voluntary approach to deer management. Appropriate use of reliefs would also be a powerful mechanism for ensuring continued and appropriate management of designated sites, leading to improvements in habitat condition where necessary.

Part 8 – Deer Management

We understand Scottish Natural Heritage and the Association of Deer Management Groups are currently making good progress in supporting the existing Deer Management Groups and Lowland Deer Network Members towards achieving Scottish Government targets in advance of RACCE review scheduled for 2016.

69-70 Functions of Deer Panels and Deer Management Plans

It is understood from the policy memorandum which accompanies the Bill that these measures, introducing additional powers for SNH to intervene in situations where deer management is deemed to be unsatisfactory, will not be introduced until after the 2016 Review of Deer Management. In his response to the RACCE Committee review of deer management in 2013 the then Minister accepted and endorsed the recommendation of the Committee that the deer sector should be given until 2016 to demonstrate that the voluntary approach to collaborative deer management is fit for purpose. The inclusion of additional statutory measures in the Bill is at odds with this conclusion. We would therefore wish to see the deferment of implementation until after 2016 review confirmed within this Bill.

Should there, after the 2016 review, be a small number of areas where insufficient progress is being made or where failure to co-operate by some may be inhibiting others, all reasonable attempts at persuasion having failed, we, together with ADMG might not oppose intervention by SNH. We do not therefore object in principle to this proposal in the Bill but would wish to have additional detail as to how it would be implemented in practice, post 2016. We consider the proposed penalty to be imposed in such circumstances to be disproportionate.

To conclude, we oppose the proposed repeal of the exclusion of shootings and deer forests from the Valuation Roll for the reasons stated above. If however this is implemented we believe there is an opportunity for it to be used to support effective deer management if reliefs are available for deer
managers who meet certain relevant criteria. This could have a very positive effect and we would be willing to be involved in developing detailed proposals for an exemption scheme along these lines.

71

We have very real concerns about the substitution of the Level 4 in the Standard Scale fines being increased to £40,000 when considered alongside other penalties this would appear to be extreme and particularly on a small farm would be a completely disproportionate level of fines.

**Part 9 – Core Paths**

We note the changes to the Core Path Legislation. We believe that there should be wider scope for landowners to make applications for Core Paths to be moved for management and operational reasons and that this should be capable of being carried out within a fixed timescale where the landowner is providing a reasonable and alternative route. The Local Authority, in terms of the procedure, should be able to authorise this amendment within a fixed period, e.g. four weeks.

We welcome the inclusion of specific consultation with landowners relating to Core Path plans and amendments to plans. We have experience of Core Paths being implemented where no appropriate consultation has taken place with landowners and where assumptions were made relating to existing infrastructure that has had significant impact on farming businesses and has also led to Core Path routes that are potentially inappropriate for the public to use. Examples would be through the middle of farm buildings, through cattle handling areas and on routes having a significant detrimental impact on land and farm management operations.

**Part 10 – Agricultural Holdings**

**Chapter 1 – Modern Limited Duration Tenancies**

We believe the current Limited Duration Tenancy structure operates with partial success but provides little stimulus for new land to become available to the tenanted sector. We are concerned that the proposed modern Limited Duration Tenancies (as proposed) will present further barriers to letting land and barriers to investment in the sector.

We believe that to encourage more letting in the sector, and to encourage more landowners to invest in agriculture, specifically for letting land, further flexibility in the Legislation is required. The initial Legislation dating back to the post-war years was put in place with food production as a core aim. This Legislation does not recognise that the farming industry, both from a Tenant and Landlord perspective, has moved on and agriculture as an industry has changed dramatically. The types and level of investment required have also changed significantly and therefore freedom to enter into appropriate commercial terms which will encourage investment both in land and fixed equipment are necessary to allow the industry to develop and produce the level of food required at cost effective levels to the general public.
8c Termination of modern duration tenancies by tenant

The termination of an MLDT should be the same for both Landlord and Tenant.

77 – Fixed Equipment

The terms relating to the fixed equipment should be agreed at the commencement of the tenancy and the Tenant should not retrospectively be able to call on the provision of fixed equipment. We welcome the requirement for a Record of Condition of any fixed equipment.

Section 16a(2) is helpful as in many instances there will be little or no fixed equipment, particularly where the tenant has sufficient fixed equipment on another holding to service the needs of the tenanted land.

Section 16a(8) we note that insurance premiums for fire cannot be paid for by the Tenant. This should be clarified in relation to his own fixed equipment and there should be a requirement for a Tenant to insure all crop in store at his own costs.

Section 18a – there is a clear concern within the industry that where there is poor husbandry it is extremely difficult and costly to effect a remedy. We believe that the appointment of the Tenant Farming Commissioner will allow for Codes of Practice to ensure that Tenants carry out maintenance operations and repair all fixed equipment in terms of their lease. We consider that Schedule 6 of the Agricultural Holdings (Scotland) Act 1948 should be updated to reflect this.

79 – Conversion of 1991 Act Tenancies into Modern Limited Duration Tenancies

We welcome this opportunity to develop the industry but note that the Scottish Ministers have yet to give details of the Regulations within this section. Currently, due to the Right to Buy, land within 1991 Act tenancies is no longer tradeable as an investment. This results in loss of land to the tenanted sector. Ministers may be interested to note that we have recently agreed voluntarily with a number of tenants on behalf of clients to enter into Limited Duration Tenancies for longer terms than ten years thereby ensuring investment in the holding from both parties.

Chapter 2 – Tenant’s Right to Buy

Removal of the Registration of Right to Buy would, we believe, be a retrograde step. In our experience many Tenant’s Registrations have contained significant errors within them in terms of boundaries and terms, and therefore the Registration is an important safeguard. Allowing the Landlord and Tenant to engage in rectifying any factual discrepancies.

Many of our tenanted clients have very good, close relations with the Landlord and would not wish to impact on this relationship by having a deemed Right to Buy.

Since introduction of the Right to Buy there has been a significant drop in investment in land that has been acquired for the purposes of letting in Scotland. The impact of this has been a reduction in the tenanted sector and more land being farmed in-hand.
Chapter 3 – Sale where Landlord is in Breach – Part 2a

There is significant clarification required in relation to this section of the Bill and as to what would constitute an actual breach. We note from our experience that it is extremely difficult and costly to effect remedies in breaches of tenancy conditions, particularly with regard to good husbandry.

We have concerns relating to the subjective nature of how this Legislation could be imposed and believe that the remedies within the current Agricultural Holdings Legislation in respect of obligations are appropriate.

38L – Sale to a Third Party

Unless agreement with the landowner, sale to a third party should not be included in the Bill.

38M – Procedures for Sale to a Third Party (2b)

We do not believe it is appropriate that the valuer should also be the person appointed to sell the land.

38N – Post Sale Obligations

We welcome the post-sale obligations but there should be provision to take account of and to ensure that any sale is at full market value prior to implementation of the clawback provisions.

4 – Rent Review

We have been involved in the detailed discussions relating to the provisions of the amendment to Section 13 of the Agricultural Holdings Act via both the Tenant Farming Forum and the Review Group. We have a number of reservations in respect of the productive capacity test. This is likely to result in cost increases of rent reviews to tenants and landowners as the level of budgeting and the scope for disagreement on specific items within budgets will be significant. Section 13 already requires the valuer to take account of prevailing conditions in agriculture and looking back over the last 15 years where for almost 10 years in the 1990s agricultural rents froze owing to the prevailing economic conditions.

The Legislation as drafted excludes any reference to how "surplus residential" accommodation is to be valued. This is a critical component and should be addressed.

9b – Determination of Rent

This section should reflect on the provision of the farmhouse. There should also be the ability to take into consideration surplus fixed equipment and equipment used for diversification. On many farms there is fixed equipment provided that is used in relation to another business, e.g. vegetable production that is being carried out on another holding and therefore this should be reflected in the rent.
Chapter 5 – Assignation and Succession of Agricultural Tenancies

We have concerns about the widening of the assignation rights in Chapter 5, both with respect to the 1991 Act Tenancies, Limited Duration Tenancies and Modern Limited Duration Tenancies. We believe that the person who owns the rights should have a specific connection to the holding and should have worked on the farm and been associated with it for at least three years and therefore have a working knowledge of the holding and an existing business relationship with the Landlord. Widening of the assignation rights, particularly for a Limited Duration Tenancy and Modern Limited Duration Tenancy acts as a specific disincentive to investment in the sector.

We fully understand where the holding is being farmed as part of a wider suite of connected farming businesses, e.g. within a family partnership, where it may be desirable for the benefit of that farming business to be carried on being farmed by another member of the family. In this instance the link between Landlord and that family farming partnership would already have been established and the parties known to the Landlord. One of the key aims of Agricultural Reform we believe is to encourage letting of land and to do this flexibility within the industry is required. We would not suggest that the assignation and succession rights be extended beyond the immediate family or to another family member unless an existing relationship has been established over the previous three years.

Chapter 6 – Compensation for Tenant’s Improvements

We note and broadly support the terms of the amnesty. In some instances agreements were entered into that were specifically linked to rent reviews and terms at that time and therefore the possible retrospective nature of this could result in challenges to previous agreements. In addition some fixed equipment was erected by Tenants with a view to getting a specific return over a period, not in the expectation of receiving compensation. A number of landowners who have modest means have real concerns about this proposal as the Tenants may have over-developed the fixed equipment to provide provision for their other business interests and this could result in the Landlords being unable to meet compensation. Alternatively this may result in a very substantial ingoing valuation to any new Tenant which will be a barrier within the industry.

Summary

We trust our comments are of assistance and would welcome any questions from the Committee. We would be pleased to make further representation on any specific points detailed above as required.