Written submission from Will Anderson

I am a Chartered Forester with over 30 years’ experience in forestry and integrated land management.

The inclusion of Part 1 requiring the drawing up of a Statement on Rights and Responsibilities is surprising given the time spent in recent years by the Scottish Government on Land Reform issues. Such a statement is central to identifying the direction that the Scottish Government intends for Land Reform and its omission from the Bill, as published, can be considered a lost opportunity in the consultation.

The Land Commission described in Part 2 appears to be given considerable influence over land use and policy advice. It is therefore disappointing that the required expertise or experience for members completely omits any reference to land management. The inclusion of a member with experience of balancing cross sector land management, such as agriculture, forestry, sport and conservation would be fundamental to advising on the practical implications of the Commission’s work.

The information about control of land in Part 3 is to be welcomed and the completion of the cadastral Land Register is an important step in future land management. However, the costs associated with this should not be underestimated, either for Registers of Scotland (RoS) or for land owners. To enable completion in a realistic time scale will require appropriate resourcing of RoS which, at present, does not appear to be planned for.

Responsible landowners are already carrying out community engagement (Part 4) where practical and reasonable to do so. Recognition of and improvement to existing notification procedures should be the basis on which this is developed. It is important that any guidance does not place undue financial or administrative burden or restriction on business or place additional requirements on local authorities or agencies without appropriate resourcing. There appears no consideration of how the feedback from the “community” is to be incorporated in land management planning and it will be important to include tests of reasonableness and to manage expectations to what is practical and deliverable. The current forestry consultation procedures are a good basis on which to develop this.

In part 5, the use of “sustainable development” without definition in the Bill is considered a significant flaw. This approach, along with the reliance on, and repeated requirement for, secondary legislation throughout the Bill gives the unfortunate impression of a hasty construct which has been published for political expediency. In such a case, apart from the unintended consequences that inevitably flow from poor legislation, the potential latitude this will give Ministers without reference to the Scottish Parliament raises questions over accountability in the democratic process. In all cases the rights of the landowner must be protected in compliance with the European Convention on Human Rights (ECHR) Protocol 1, Article 1.

There is a question over whether the proposals in Part 6 are likely to have significant unintended consequences on employment and environmental management. The section refers to the reintroduction of rates on “shootings and deer forests”. Given that there is no definition of what constitutes “shootings and deer forests” the
valuation process will be complex and unless carefully managed could result in serious impacts on forestry and other deer control required for habitat management. Quite apart from the potential loss of employment, care will have to be exercised that any such change does not result in the Scottish Government failing to meet its obligations under the EU Habitats and Birds Directives, particularly as there may be unforeseen complexities and potential conflicts between parts 6 and 8 of the Bill.

It is important in Part 9 that any new provisions do not impact adversely on the ability to carry out land management operations and, in particular, to enable closure of paths temporarily as and when required to protect the health safety of the public and those working in the sector. This is particularly significant in respect of timber harvesting operations.

It is not intended to go into detail in respect of Part 10 Agricultural Holdings other than to say that it is disappointing that such a complex legal subject does not have its own Bill yet it comprises over 50% of the content of the “Land Reform” Bill. From a practical perspective it is hard to see how the proposals put forward will meet the Scottish Government requirement of increasing access to let land and some proposals appear to be questionable in respect of obligations under the ECHR.