

# **Land Reform (Scotland) Bill 2015**

**Rural Affairs, Climate Change and  
Environment Committee  
Stage 1 report - Scottish  
Government response**

## MINISTERIAL FOREWORD

We are grateful to the Rural Affairs, Climate Change and Environment Committee for their continued and constructive scrutiny over a wide range of land reform issues. The Committee's contribution to the debate in this area has helped to shape our thinking in relation to land reform and agricultural holdings.

The Committee's scrutiny of the Land Reform (Scotland) Bill is a clear demonstration of the Committee's extensive knowledge of many of the issues at the heart of this Bill. This knowledge and interest in the subject is reflected in the detailed Stage 1 report which was published on 4 December and the subsequent Stage 1 debate.

Underpinning the Bill is the Scottish Government's ambition to change the framework of legal and social rights and responsibilities that determine how our land is used and governed and the benefits our land can bring to our economy and our communities. Effective land reform aims to ensure the correct balance of land rights and how this can be managed to best deliver for the people of Scotland. We are confident that that is an ambition that everybody involved in the Bill, and the consideration of land reform more widely, shares.

We welcome the fact that the Committee's report endorses the core principles of the Bill, and supports many of the specific measures it contains. However, we acknowledge that the Committee's Stage 1 report contains a number of concerns and issues that were also raised in the Stage 1 debate on the Bill, and we hope that what we set out in our response to the report will assist Parliament in addressing these issues.

In light of the Stage 1 report, and the Stage 1 debate, the Scottish Government will work to strengthen the Bill where possible to ensure that it will contribute to our core objectives for land reform:-

- Encourage and support responsible and diverse land ownership;
- Increase transparency of land ownership in Scotland;
- Help ensure communities have a say in how land in their area is used;
- Address issues of fairness, equality and social justice connected to the ownership of, access to and use of land in Scotland; and
- Help to underpin a thriving tenant farming sector in Scotland.

We look forward to continuing to work with the Committee to ensure that this Bill, and many other measures relating to Land Reform, can be taken forward to ensure that our land delivers the best for the people of Scotland.



*Richard Lochhead*



*Julie O'Rourke*

## **SCOTTISH GOVERNMENT RESPONSE**

### **EXECUTIVE SUMMARY**

1. The Scottish Government welcomes the scrutiny of the Bill undertaken by the Committee, and the contributions made in the Stage 1 debate on the Bill. The Bill is the culmination of years of work, involving two review groups and a public consultation, and is significant step forward in ensuring our land is owned and used in the public interest and to the benefit of the people of Scotland.

2. We would like to stress that upon introduction of the Bill, we have clearly set out our policy objectives in the Policy Memorandum, and that the Bill is within the legislative competence of the Scottish Parliament. We are pleased that the Committee supports many of the general principles of the Bill, and we have noted where the Committee consider that there are improvements that can be made.

3. The key commitments the Scottish Government is making in response to the Stage 1 report, and the Stage 1 debate, are as follows:-

- In relation to developing the Land Rights and Responsibilities Statement, we will bring forward amendments at Stage 2 to clarify the focus of the statement on the face of the Bill:
- In addition, although Scottish Ministers have clearly stated their intention to consult widely on the Land Rights and Responsibilities Statement, we will also amend Part 1 to introduce a statutory duty on Ministers to consult on the first statement and during any subsequent review and to report to Parliament on the consultation when laying the statement:
- Finally on Part 1, full consideration is being given to the practical implications of a range of possible amendments which would help indicate on the face of the Bill, the desirability of having regard to relevant international and human rights obligations, standards and practices:
- In relation to Part 2, Scottish Ministers will bring forward amendments to the Bill at Stage 2 to ensure that, when appointing members of the Commission, Scottish Ministers are under a duty to have regard to the desirability of one of the Land Commissioners being a Gaelic speaker;
- For Part 3, Scottish Ministers are committed to increasing the transparency of landownership in Scotland and will continue to explore ways to strengthen the provisions currently in the Bill, while being realistic about what can be achieved in the time available:
- Specifically on section 35 of Part 3 on right of access to information on persons in control of land, we commit to: considering how best to provide further information on the intended use of the regulations; bringing forward amendments at Stage 2 to clarify the request authority for the purposes of section 35 on the face of the Bill; and strengthening the level of scrutiny

required for regulations in line with the recommendation of the Delegated Powers and Law Reform Committee.

- We further commit to providing further information to support Parliament's consideration of the Bill's provisions in relation to the entry in the valuation rolls of shootings and deer forests in Part 6, in time for Stage 2. The Government will continue to listen and work collaboratively with stakeholders throughout Bill scrutiny and then on implementation at the 2017 revaluation to secure fair and workable rating arrangements;
- On Part 8, Scottish Ministers, commit to completing a review in the course of 2016 into whether the current voluntary system has produced a step change in the delivery of effective deer management (compared to that set out in the SNH 2014 baseline assessment), to give urgent consideration to the report's findings, and to clarify that the review will address the particular issues related to the management of deer in lowland areas in addition to management issues associated with deer in upland areas;
- Further, we commit to commencing the new powers in Part 8 of the Bill during the course of 2016, if it becomes apparent from emerging findings from the review that it would be helpful to do so, rather than waiting for the completion of the review;
- To further strengthen the Bill's provisions in relation to agricultural holdings by amending the Bill to introduce a repairing lease, a new type of limited duration tenancy designed to help bring dilapidated agricultural units back to productivity; and
- As already indicated to the Committee, we will replace the regulation making power in section 79, Part 10, with substantive provisions to ensure that Agricultural Holdings (Scotland) Act 1991 tenant farmers can leave their holdings with dignity and security.

4. These are a highlight of the key areas in which we hope to make changes. As can be seen from our full response to the Committee's report, set out below, there are a number of other areas where we have indicated our intention to work towards further amendments and the provision of further information to improve provisions in the Bill and respond to issues raised by the Committee.

5. As Scottish Ministers stressed in the Stage 1 debate, the Bill is not the end point in Scotland's land reform journey but is a vital next step in a much wider and on-going programme of reform across urban and rural Scotland.

6. We look forward to continuing to working closely with the Parliament, the Committee and all stakeholders, as this Bill progresses to make sure we get the detail right and ensure that this Bill delivers for the people of Scotland within the time now available to complete the Bill process.

## **Background to and purpose of the Bill**

### *RACCE recommendation*

**(At paragraph 41)** The Committee believes it would be helpful if the Scottish Government responded to the paper submitted by the former members of, and four advisers to, the Land Reform Review Group, which outlines their view of the need for further urgent action to be taken to address significant problems of land ownership, management and development across Scotland, and particularly in urban areas.

### *Scottish Government response*

7. The Scottish Government has been consulting with stakeholders on the housing and regeneration land reform review group recommendations. This was an extensive consultation exercise involving over 300 people including housing and regeneration stakeholders. A wide range of issues were covered, including those highlighted by the authors of the paper referred to in the Committee's recommendation. This consultation has been a very helpful process and lot of good discussion and valuable points have been brought to light. Scottish Ministers are reflecting on the merits of these recommendations and how they might interact with their future aspirations around housing and regeneration.

8. This on-going work is an example of the work that the Scottish Government is taking forward as part of wider programme of land reform measures, and a clear demonstration that Scottish Ministers are committed to land reform now, and into the future.

## **Policy Memorandum**

### *RACCE recommendation*

**(At paragraph 49)** The Committee had to request further information relating to the human rights aspects of Part 10 of the Bill, which contains some of the most notable provisions in terms of European Convention on Human Rights consideration. The Committee recommends that the Scottish Government ensures that future Policy Memoranda contain all available information on such matters in order to better facilitate the work of parliamentary committees.

### *Scottish Government response*

9. The Scottish Government always prepares accompanying documents that meet the Standing Order requirements and provides supplementary information to Parliamentary Committees when requested. For this Bill, there is extensive coverage of the human rights aspects in relation to Part 10 of the Bill from page 67 onwards of the Policy Memorandum, which can be found on the following link:- [http://www.scottish.parliament.uk/S4\\_Bills/Land%20Reform%20\(Scotland\)%20Bill/b76s4-introd-pm.pdf](http://www.scottish.parliament.uk/S4_Bills/Land%20Reform%20(Scotland)%20Bill/b76s4-introd-pm.pdf).

10. Supplementary evidence on the human rights aspects in relation to Part 10 was also supplied to Committee after the Bill team gave oral evidence to the Committee on 2 September. It can be found from page 7 on the following link:- [http://www.scottish.parliament.uk/S4\\_RuralAffairsClimateChangeandEnvironmentCommittee/General%20Documents/Land\\_Reform\\_\(Scotland\)\\_Bill\\_2015\\_-\\_RACCE\\_response\\_-\\_10\\_September.pdf](http://www.scottish.parliament.uk/S4_RuralAffairsClimateChangeandEnvironmentCommittee/General%20Documents/Land_Reform_(Scotland)_Bill_2015_-_RACCE_response_-_10_September.pdf)

### *RACCE recommendation*

**(At paragraph 51)** Having visited Skye, Islay and Jura during its evidence-gathering at Stage 1, and also having previously visited Orkney, Bute and Gigha during this session of Parliament, the Committee is mindful of the potential impacts of policies on island communities and recommends that any changes that are made to the Bill are carefully considered from that perspective.

### *Scottish Government response*

11. In making any legislation, including changes during the Parliamentary process, the Scottish Government gives full consideration to the impact on Island communities, and indeed mainland communities.

## **Financial Memorandum**

### *RACCE recommendation*

**(At paragraph 58)** The RACCE Committee endorses the Finance Committee's report on the Financial Memorandum, particularly in relation to the economic impact of entry into the valuation roll of shootings and deer forests on local communities, and addresses some of the issues raised by the Finance Committee elsewhere in this report.

### *Scottish Government response*

12. The central issue in the Committee's recommendation regarding the Financial Memorandum relates to Part 6 of the Bill. In response to the RACCE Committee's recommendations relating to Part 6, and in particular that the Scottish Government should provide more analysis of the potential impacts of ending the sporting rates exemption, the Government will come forward with further information in time for Stage 2. This further information will address the recommendation of both the Finance Committee and RACCE in this area.

13. The Stage 1 Report notes that among other things the Finance Committee also recommended:

- That best estimate figures for costs, particularly those falling on other bodies, individuals or businesses, be provided before the Parliament is asked to vote on the Bill at Stage 1; and (specifically) that
- In order to comply with Standing Orders the best estimate figures setting out the possible costs to a local authority to add a new core path to its core path plan should have been provided.

14. The Scottish Government considers that the Financial Memorandum and supplementary information provided to the Finance Committee complies with the relevant Standing Orders in providing estimates of likely costs arising from the provisions of this Bill. In some areas, the Memorandum and supplementary information identifies, as far as possible, possible areas (and scale) of costs and the likelihood of the costs being incurred.

15. In terms of the costs of adding a new core path to existing core path plan, Part 9 of the Bill relates to access rights and core path plans and sets out the circumstances in which the access authority should review a core paths plan.

16. Local authorities and national park authorities (access authorities) are already expected to review their core path plans and to consult on the plans when they consider it appropriate. The only additional cost, arising from the provisions of the Bill, arises if a new path is proposed. Where this happens, the authority will need to serve a written notice on a land owner / occupier as part of its consultation. In the event that the authority does not know the identity of the land owner the Bill requires the access authority to make "reasonable" enquiries. In such circumstances there is

likely to be a cost of making an inquiry through the Registers of Scotland (estimated at £20) and putting a notice on the land in question.

17. Access authorities have been responsible for drawing up a core path plan in their areas since 2003. The need for new local paths will be a matter for local discretion and very difficult to predict. However, the additional cost described above is likely to be *de minimis* and should be capable of being met from existing resources.

18. The report of the Finance Committee records that, of the six local authorities who responded to its call for evidence, three suggested that in the absence of any guidance as to the meaning of “reasonable” enquiries it is not possible to assess the level of costs likely to be involved in the consultation process. However, we note that another authority took the view that “the increased enquiries associated with the implementation of the Bill should easily be subsumed into current service provision”.



## **Drafting and delegated powers**

### **Drafting**

#### **RACCE recommendation**

**(At paragraph 66)** Every effort should be made to ensure the final Bill that emerges from this process is as user-friendly as possible and the Committee therefore recommends that the Scottish Government refers to the written and oral evidence received by the Committee on this issue, and in particular the examples given in evidence by Dr Jill Robbie and others, relating to structural and presentational issues which could be resolved in a future re-drafting of the Bill.

#### **Scottish Government response**

19. The Scottish Government has fully considered the written and oral evidence heard by the lead Committee in relation to drafting, structural and presentational issues raised, including that of Dr Jill Robbie referred to in the Committee's recommendation. We do not consider that any significant change is needed to the structure of the Bill, and we consider that the time allocated for amending the Bill at Stages 2 and 3 would be better devoted to strengthening the substance of the provisions in the Bill.

20. The Scottish Government is committed to ensuring plain English is used in all documents published, including in legislation. When drafting legislation, we take structure seriously and consider carefully the needs of the end user when doing so. However, the key purpose of legislation is to make changes to the law. Such changes are often complex, and inevitably when draft legislation makes changes to existing legislation, or sets up a new legal framework, the resulting legislation may benefit from being read alongside the accompanying policy memorandum which contains a full explanation of the policy rationale behind the legislation being considered and the explanatory notes which provide further explanation of the legislative provisions within the Bill.

21. The Scottish Government believes that the Land Reform (Scotland) Bill is structured in a coherent manner, and, particularly when read alongside the accompanying documents that are prepared in accordance with Standing Orders, can be readily understood. As we have already said in oral evidence to the Committee, Part 5 in particular uses a similar structure to the right to buy provisions in Parts 2, 3, and 3A of the Land Reform (Scotland) Act 2003. As part of seeking to ensure that legislation can be understood by users, the Scottish Government often carries out awareness-raising campaigns or issues guidance. The guidance issued on the application of the 2003 Act is a good example; a more recent example would be the guidance issued in relation to the carrier bag charge.

## Delegated powers

### RACCE recommendations

**(At paragraph 76)** The Committee recommends that the Scottish Government gives very careful consideration to the regulation-making powers contained in the Bill, and ensures that as much detail and clarity about such provisions as is possible, including a timetable for their introduction, is provided to Parliament before the end of Stage 2.

**(At paragraph 77)** It will fall to subsequent Parliamentary committees in future sessions to scrutinise the forthcoming secondary legislation. It is therefore important that the Scottish Government carefully considers whether each set of regulations to be made under the Bill should be subject to an enhanced form of the affirmative procedure ('super-affirmative'); the affirmative procedure; or the negative procedure, given that regulations subject to a super-affirmative or affirmative procedures will receive a higher level of scrutiny by a Parliament not intimately familiar with the details and evolution of the primary legislation. There will be an opportunity at Stage 2 to amend any of the regulation-making powers in the Bill to require them to be subject to a specific statutory procedure, which will provide further scope to consider which would be most appropriately suited to a 'super affirmative' procedure.

**(At paragraph 78)** The Committee endorses the report made by the Delegated Powers and Law Reform Committee, notes the subsequent letter from the Committee to the Cabinet Secretary and looks forward to seeing the information requested in that letter.

### Scottish Government response

22. The Scottish Government replied to the report by the Delegated Powers and Law Reform Committee on 16 November. In considering the delegated powers in the Bill, we will review the comments and with recommendation made by RACCE in conjunction with the DPLRC's report, together the views of the full Parliament that will be expressed during the Stage 1 debate.

23. As indicated in the Scottish Government's letter to the Committee dated 9 December and in our response to the DPLRC, the Scottish Government has already made considerable progress on developing a new approach to one of the provisions that was of particular concern to the Committee and to the DPLRC.

24. In the letter to the Committee, the Scottish Government outlined the full details of the updated proposal to take forward the aims underpinning section 79, namely supporting 1991 Act tenant farmers to leave their holdings with dignity and security, while increasing opportunities for newer farmers to establish themselves.

25. As set out by the Minister for Environment , Climate Change and Land Reform in the Stage 1 debate on 16 December, It is the Scottish Government's intention to replace the regulation-making power in section 79 with substantive provisions at Stage 2.

26. In the reply to the report from the DPLRC, the Scottish Government indicated that with reference to some of the regulation making powers in the Bill, in particular those in sections 36, 82 and 83, we were strongly minded to increase the level of parliamentary scrutiny required. In light of the additional recommendations of the Committee on this issue, the Scottish Government confirms its intention to bring forward amendments to strengthen the level of scrutiny for the delegated powers contained in sections 36, 82 and 83.

27. In other areas the Scottish Government will of course take into account the view of the Parliament in relation to the delegated powers and will consider if bringing forward amendments to change the parliamentary procedure is in fact thought to be desirable or necessary.

28. Further consideration is on-going as to how best to provide further information on the use of the delegated powers within the Bill to provide more detail and clarity about the provisions as requested by the Committee, where this is applicable and feasible.

29. The Committee's request to provide a timetable for the introduction of the regulations is also noted. The Scottish Government will consider this request further and establish if it is possible to update the Committee on the planned implementation of the Bill by the end of Stage 2, and if it would be possible to provide an indicative timetable for the regulations.

30. On this latter point, the Scottish Government has to, however, take cognisance to the upcoming Scottish Parliamentary elections and potential for a change in priorities for any incoming Government.

## **Sustainable development and equalities (with health inequalities)**

### **RACCE recommendation**

**(At paragraph 92)** The Committee recommends that the Scottish Government considers the evidence submitted by NHS Health Scotland regarding health inequalities and in particular the merits of its suggestion that the likely effects on inequalities is considered as part of the decision-making process in the new Part 5 community right to buy to further sustainable development.

**(At paragraph 93)** The Committee also recommends that any amendments lodged take full account of the need for the Bill to deliver improved outcomes for equalities groups and for health inequalities across Scotland.

### **Scottish Government response**

31. The potential impact on equality is a central consideration for Scottish Ministers' decision making across all policy areas; tackling significant inequality in Scottish society is one of the Scottish Government's key national outcomes and reducing inequality in health is critical to achieving the Scottish Government's aim of making Scotland a better, healthier place for everyone, no matter where they live. As set out in the policy memorandum, land is intimately linked to ideas of well-being, social justice, opportunity and identity and is key to the success and development of people, communities and our economy. A key aim of the provisions in the Bill is to address issues of fairness, equality and social justice connected to the ownership of, access to and use of land in Scotland.

32. As highlighted in the Scottish Government's Equality Impact Assessment (EQIA), and as acknowledged by the Committee, there are a number of provisions in the Bill which have the potential to impact positively on equality groups, particularly in relation to the protected characteristics of age, disability and gender. Further, the EQIA did not identify any Bill provision that would adversely impact on any equality groups.

33. This Bill will also see the publication of a Land Rights and Responsibilities Statement for Scotland and the establishment of an independent Scottish Land Commission, to ensure more pro-active, longer term approaches to land reform in Scotland and to help consider fundamental issues of around how our land policies must be designed to tackle inequalities and ensure participative, sustainable growth over the longer term.

34. The Scottish Government has carefully considered the evidence submitted by NHS Scotland and welcome their contributions on this issue.

35. NHS Scotland also note that the existing capacity within communities can be a key factor in a community's ability to benefit from community rights, such as those set out in Part 5. This has been a key consideration of the Scottish Government's

Short Life Working Group on achieving the 1 million acre target of community ownership by 2020.

36. The Group have made a series of recommendations, which Scottish Ministers are currently considering, under a series of key themes including:

- Improving **awareness and understanding** of the actual and potential benefits of community land ownership across the WHOLE of Scotland; and
- Improving **equality of access to support services** for community ownership across the WHOLE of Scotland.

37. A key recommendation in the report looks at the issue of community capacity and considers there needs to be more recognition of the existing and considerable insight, understanding, experience and expertise in the processes and best practice around community ownership and that there is a need to facilitate more systematic and properly resourced peer support and peer mentoring across all communities in Scotland. The report also acknowledges that there is an equalities dimension to access to support for community ownership and that this should be reflected within any awareness raising activities and support provision<sup>1</sup>.

38. In their evidence, NHS Scotland also suggest that specific mention of the need to address inequalities and health inequalities should be made in section 47(10) of the Bill. In order to consent to an application for the right to buy land to further sustainable development under Part 5, Scottish Ministers must be satisfied that the sustainable development conditions in section 47 are met. This includes consideration of whether the transfer is in the public interest as well as whether the transfer is likely to result in significant benefit to the community and that not granting consent would likely result in significant harm. In determining what constitutes significant benefit and significant harm, section 47(10) already sets out that Scottish Ministers must consider the likely effect of the transfer of land on, economic development, regeneration, public health, social wellbeing and environmental wellbeing.

39. Considering the public interest, significant benefit and significant harm tests will include consideration of the potential impact on equality. This is true of a number of high level priorities as set out in the Scottish Government's national outcomes. It is not considered that the terms 'inequalities' or 'health inequalities', nor specific terms relating to other priorities, need to be specifically added to the list in section 47(10). However, Scottish Ministers will further consider if there would be any benefit in making any further additions to the list as it currently stands.

40. As with any policy or statutory provisions, any amendments to the Bill will be developed taking into consideration public sector equalities duties and the Scottish Government's stated aims to tackle significant inequalities and to reduce inequalities in health.

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<sup>1</sup> The Million Acre Short Life Working Group issued their Report and Recommendations in December 2015. Further information and a copy of the report is available here:- <http://www.gov.scot/Topics/Environment/land-reform/MillionAcres>.

## **Human rights**

### *RACCE recommendation*

**(At paragraph 107)** The Committee therefore restates the recommendation it made above to the Scottish Government that far greater information on the detail of the secondary legislation to be brought forward under the delegated powers in the Bill (particularly those relating to Part 3; the conversion of Modern Limited Duration Tenancies in Part 10, section 79; and with regard to rent reviews in Part 10, Chapter 4) must be made available before the commencement of those sections at Stage 2.

### *Scottish Government response*

41. As the Government has said in response to the recommendation made in paragraph 76, and in reply to the specific recommendations on Part 3 of the Bill in paragraphs 194 and 204, we will consider further the Committee's recommendation in relation to providing greater information on the details of the regulations that can be made under Part 3 of the Bill. We will update the Committee before the end of Stage 2.

42. In relation to Part 10, section 79, we have written to the Committee setting out the detail of our proposals, and we intend to bring forward amendments at Stage 2 to replace the delegated power with substantive provisions to enact these proposals. On Part 10, Chapter 4, we have kept the Committee updated on the work on rent reviews, and will continue to provide updates as that work progresses. Additionally, we have indicated to the DPLRC that we plan to bring forward amendments to strengthen the level of scrutiny the delegated powers on rent review are subject to, to ensure that Parliament has the opportunity to fully consider the regulations on rent review once they are finalised.

### *RACCE recommendation*

**(At paragraph 117)** Part 10 of the Bill aside, the Policy Memorandum provided a largely adequate commentary on the potential ECHR implications of the Bill. However, both this Committee, and the Delegated Powers and Law Reform Committee, had to request further information on various aspects of the Bill. The Committee reiterates its call on the Scottish Government to ensure that Policy Memoranda contain as much information as possible when published, particularly with regards to human rights issues and the content of proposed regulations.

### *Scottish Government response*

43. As set out in response to the recommendation at paragraph 49 above, the Scottish Government always prepares accompanying documents that meet the Standing Order requirements and provides supplementary information to Parliamentary Committees when requested to assist parliamentary scrutiny. For this

Bill as stated above, there is extensive coverage of the human rights aspects in relation to Part 10 of the Bill from page 67 onwards of the Policy Memorandum , which can be found on the following link:- [http://www.scottish.parliament.uk/S4\\_Bills/Land%20Reform%20\(Scotland\)%20Bill/b76s4-introd-pm.pdf](http://www.scottish.parliament.uk/S4_Bills/Land%20Reform%20(Scotland)%20Bill/b76s4-introd-pm.pdf).

44. Supplementary evidence on the human rights aspects in relation to Part 10 was also supplied to Committee after the Bill team gave oral evidence to the Committee on 2 September. It can be found from page 7 on the following link:- [http://www.scottish.parliament.uk/S4\\_RuralAffairsClimateChangeandEnvironmentCommittee/General%20Documents/Land Reform \(Scotland\) Bill 2015 - RACCE response - 10 September.pdf](http://www.scottish.parliament.uk/S4_RuralAffairsClimateChangeandEnvironmentCommittee/General%20Documents/Land_Reform_(Scotland)_Bill_2015_-_RACCE_response_-_10_September.pdf)

### RACCE recommendation

**(At paragraph 121)** Compatibility with the ECHR forms one of the tests governing legislative competence which means it needs to be carefully considered when framing legislation. However, the Scotland Act 1998 also makes it clear that the observing and implementing of international obligations is devolved to Scotland and therefore within the competence of the Scottish Parliament. It is therefore important that the other international human rights agreements, which the UK is signed up to and committed to implementing, and which are supported by the Scottish Government, are also recognised in the Committee's consideration of human rights issues in the context of this Bill. It is vital that the Bill gives due prominence to other obligations, such as the International Covenant on Economic, Social and Cultural Rights and the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Forests and Fisheries in the context of National Food Security, and the Committee has made recommendations regarding this later in this report.

### Scottish Government response

45. The Scottish Government acknowledges that there are various relevant international obligations, standards and practices which are not explicitly referred to in the Bill such as the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the Food and Agriculture Organisation of the United Nations' Voluntary Guidelines on Responsible Governance of Tenure (VGGTs).

46. However, Scottish Ministers already have a duty under the Scottish Ministerial Code to comply with, and take account of, international law and treaty obligations including the ICESCR.

47. These obligations, standards and practices were carefully considered by the Scottish Government in developing the proposals in the Bill and, as various witnesses to the Committee mentioned, much of the spirit and principles of these documents underpin the Bill's provisions.

48. The Scottish Government would, therefore, argue that the Bill is already underpinned by these obligations, standards and practices. Further, the Scottish Government would note that the provisions of the Bill are within competence, and capable of being exercised within competence, and will therefore be robust in the face of any potential legal challenge.

49. The recommendations of the Committee in this area are considered in turn in this response and particular concerns over making specific amendment on the face of the Bill to reference certain international obligations, standards and practices are highlighted in detail in the response to the Committee's specific recommendation on Part 1.

50. However, the Scottish Government will further consider the practical implications of possible forms of amendment to indicate on the face of the Bill, the desirability of having regard to relevant international and human rights obligations, standards and practices where appropriate.



## **Part 1 – Land rights and responsibilities statement**

51. The Scottish Government is pleased to note that the Committee supports the principle of Scotland adopting a land rights and responsibilities statement. The response to the Committee's recommendations is set out below.

### RACCE recommendation

**(At paragraph 134)** The Committee supports the principle of Scotland adopting a land rights and responsibilities statement. However, the Bill is currently unclear on whether the statement is intended as a statement of land rights and responsibilities (as titled) or as a statement of Ministers' objectives for land reform, which could be quite different. The Committee recommends that the focus of the statement should be on the former, keeping the latter as a matter of policy for the Government of the day (which should be guided by the principles of the statement) and that the Bill is amended to clarify this.

### Scottish Government response

52. The Scottish Government welcomes the Committee's support for the Land Rights and Responsibilities Statement and notes the Committee's preference for the stated focus on the face of the Bill for the statement to be a statement of land rights and responsibilities, rather than a statement of Scottish Ministers' land reform objectives.

53. As stated in the *Consultation on the Future of Land Reform in Scotland*, the statement is intended to set out the vision of both the Scottish Government and the people of Scotland, via thorough consultation, for the relationship between the people of Scotland and the land of Scotland and provide a set of principles to guide the development of public policy on the nature and character of land rights in Scotland.

54. Further, and as noted by the Minister for the Environment, Climate Change and Land Reform in evidence to the RACCE Committee on 02 November 2016, it is intended that the statement will interrelate with existing policies, including the Scottish Government's Economic Strategy, the Land Use Strategy<sup>2</sup> and the National Planning Framework. Taken together, these will set out a consistent and holistic approach to how the land of Scotland should be used, controlled and managed.

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<sup>2</sup> The Scottish Government's Land Use Strategy is currently under review and a draft for consultation was published on 29 November 2016. The consultation will be open until 29 January 2016 and a revised Land Use Strategy will be laid before Parliament by March 2016. The consultation contains a specific proposal looking at the relationship between the LUS and other policies relating to land in Scotland. For further information see: <https://consult.scotland.gov.uk/land-use-and-biodiversity/land-use-strategy-for-scotland>

55. The Scottish Government will, therefore, consider how best to take forward the Committee's recommendation to clarify the focus of the statement on the face of the Bill at Stage 2.

RACCE recommendation

**(At paragraph 136)** The Committee welcomes the Scottish Government's confirmation that a draft statement will be subject to a full and wide consultation process. Further to this, the Committee recommends that the resulting statement is debated and approved in Parliament and that the Bill be amended at Stage 2 to ensure that such debate and approval is required.

Scottish Government response

56. It is the policy of the Scottish Government to always consult on matters of importance to the people of Scotland. The Scottish Government has stated in the Policy Memorandum and consistently throughout Stage 1 that it is our intention to consult on the first draft of the land rights and responsibilities statement, and on each subsequent statement, and we welcome the Committee's acknowledgement of this commitment.

57. Throughout Stage 1, we have stated that we intend the statement to be subject to appropriate parliamentary scrutiny and this is reflected in the wording of Part 1. Section 1(2) states:

*"The Scottish Ministers must publish the first statement and lay it before the Scottish Parliament..."*

58. Furthermore, following each review of the statement, Scottish Ministers are similarly obliged to lay a statement before the Scottish Parliament under section 1(5).

59. The Scottish Government welcomes the Scottish Parliament's continuing interest and involvement in land reform issues and the development of the statement, however, no further wording is required on the face of the Bill in order to allow the Scottish Parliament to consider or take evidence on the land rights and responsibilities statement.

60. The Scottish Government believes the language currently used in Part 1 allows for appropriate levels of parliamentary involvement in and scrutiny of, as and when required, the land rights and responsibilities statement. However, we will bring forward amendments at Stage 2 to place a statutory duty on Scottish Ministers to consult on the first statement and during subsequent reviews.

RACCE recommendation

**(At paragraph 138)** The Committee also recommends that the Bill be amended to require the statement to take account of other international obligations, such as the International Covenant on Economic, Social and Cultural Rights and the Food and Agriculture Organisation of the United Nations' Voluntary Guidelines on Responsible Governance of Tenure, in order to further reflect fundamental human rights considerations and place Scotland's land policies in an international context.

Scottish Government response

61. As stated above, the Scottish Government acknowledges that there are various relevant international obligations, standards and practices which are not explicitly referred to in the Bill. The Scottish Government appreciates the spirit of the suggested amendment by the Committee and acknowledges the importance of reflecting human rights considerations in the statement and in our land policies generally. However, the rights in the ICESCR and the standards and practices in the VGGTs are aspirational and not matters which can be enforced by individuals. Given that such aspirational documents do not easily transfer into legislation at a domestic level which can be enforced through the courts, it would therefore not be desirable to include consideration of specific documents as a statutory requirement.

62. It is important, however, to note that Scottish Ministers already have a duty under the Scottish Ministerial Code to comply with, and take account of, international law and treaty obligations including the ICESCR.

63. Another issue of concern for the Scottish Government is that problems may result from listing only certain international obligations in Part 1. The Committee acknowledges at paragraph 132 that a range of international obligations have been suggested as relevant to land related policies, including the Universal Declaration of Human Rights.

64. Whilst it would be impossible and impracticable to list all relevant obligations, listing some international obligations which Scottish Ministers are to have regard to raises questions over why others are not included. Even if the list is stated to be non-exhaustive, it suggests those mentioned are of particular importance to the expense of others, when this may not be the case. If a document was referred to in Part 1 which later became obsolete or was superseded, this would result in Ministers having to consider an obsolete or superseded document in preparing the LRRS which would not be of benefit to the LRRS.

65. The Scottish Government suggests that it may be more suitable to include reference to the ICESCR or VGGTs within the statement itself, rather than on the face of the Bill. As the Committee acknowledges, there are a variety of interests and obligations which various parties wish to see represented in the statement and the Scottish Government is committed to consulting on the draft statement to ensure all options are considered.

66. This consultation will include consideration of the proper designation of human rights and their place in the statement. Whilst the statement itself may be a place in which a reference to the ICESCR or VGGTs could be considered, it is important that the consultation process is respected and not pre-empted.

67. Bearing these considerations in mind, the Scottish Government is looking further at the practical implications of a range of possible amendments which would help indicate on the face of the Bill, the desirability of having regard to relevant international and human rights obligations, standards and practices in developing the land rights and responsibilities statement. In particular, the Scottish Government is looking into possible amendments which will provide for detailed consideration of human rights to take place, whilst minimising the difficulties outlined above which may result from referring to specific documents in the Bill.

## **Part 2 – The Scottish Land Commission**

68. The Scottish Government welcomes that the Committee supports the establishment of the Scottish Land Commission, and that the Committee is content with the scope of the Commission's remit set out in the Bill. The response to the Committee's recommendations is as follows.

### **The Land Commissioners**

#### *RACCE recommendation*

**(At paragraph 149)**, the Committee recommend that the Bill should be amended at Stage 2 to ensure that both the strategic plan and work programme of the Commission are widely consulted upon and debated in, and endorsed by, the Scottish Parliament.

#### *Scottish Government response*

69. When developing the policy for the Bill in relation to the Land Commission, we gave careful consideration to a number of factors. These included:-

- I. The independence of the Land Commissioners and their ability to deliver their programme of work;
- II. Sound corporate governance required to ensure that public money is safeguarded;
- III. The role of Scottish Ministers; and
- IV. The role of the Scottish Parliament.

70. These factors are of particular relevance to the process that we have put in place in the Bill for both the strategic plan in section 6, and for the programme of work in section 7.

71. We consider that the processes in both sections 6 and 7 are proportionate, and that Part 2 requires the strategic plan and the programme of work to be laid before the Parliament. At the point of laying, the Scottish Parliament is of course free to determine for itself that there should be a debate, and whether there should be a form of parliamentary endorsement.

72. The Committee may wish to note that there is little legislative precedent for providing for Parliamentary debate and endorsement of such documents. To illustrate, section 57 of the Climate Change (Scotland) Act 2009 provides only that Scottish Ministers must lay the land use strategy, and subsequent revisions, before the Parliament (section 57(1) and (6)), and we note that the then Rural Affairs and Environment Committee elected to take oral evidence on the draft strategy. Similarly, the recent Revenue Scotland and Tax Powers Act 2014 provides for Revenue Scotland's corporate plan to be laid before the Parliament (section 11(4)(b)), but no provision is made for Parliamentary debate and endorsement.

### RACCE recommendation

**(At paragraphs 157 and 158)** The Committee listened to all of the views about the expertise and/or experience that the Commissioners as a whole should have and is not persuaded of the merits in ensuring that the Commissioners should have collective specific sectorial land management experience (farming, forestry, crofting etc) nor specifically of community land ownership, although these experiences and skills would be useful to the Commission. What is of utmost importance is that the Commissioners are people of integrity, principle and vision that are respected and trusted by the people of Scotland.

There is, however, merit in ensuring that the Commissioners collectively have some general land management experience and/or expertise and that the Commissioners have experience of understanding, working with and empowering communities. The Committee therefore recommends that the Scottish Government gives further consideration as to how best to ensure the Commissioners reflect those areas of interest.

### Scottish Government response

73. The Scottish Government has carefully considered the evidence that the Committee has heard in relation to the desired expertise and experience that the Commission must have when appointing the members of the Commission. We would like to reiterate that the list in section 9(1)(a) is non-exhaustive, and we are pleased that the Committee has come to the view that it is not persuaded by the merits in ensuring that the Commissioners should have collective specific sectorial land management experience (farming, forestry, crofting etc), nor specifically of community land ownership.

74. We agree wholeheartedly with the Committee that this experience and these skills would of course be useful to the Commission. We also agree that it is crucial that the Commissioners are people of integrity, principle and vision that are respected and trusted by the people of Scotland. That is why their appointment will be subject to a robust public appointments process, and why we have provided that the appointment of the members of the Commission must be approved by the Scottish Parliament in section 8(2) of the Bill.

75. To reflect the desirability of the Land Commissioners having land management experience and expertise, and indeed experience and expertise of understanding, working with and empowering communities, we intend to bring forward amendments at Stage 2.

RACCE recommendation

**(At paragraph 159)** The Committee notes the statutory requirement for at least one member of both the Scottish Land Court and the Crofting Commission to be a Gaelic speaker and believes it is essential to ensure that the Gaelic language be given equal status in law. The Committee therefore recommends that the Bill be amended to require at least one member of the Scottish Land Commission to be a Gaelic speaker, as well as having the other relevant skills and qualifications.

Scottish Government response

76. As the Committee recognise, it is imperative that the members of the Commission have a broad range of skills and expertise. As the Minister for the Environment, Climate Change and Land Reform advised the Committee in Dumfries on 2 November, and in the Stage 1 debate on 16 December, the Scottish Government fully recognises the Gaelic language as an integral part of Scotland's heritage, contemporary culture and national identity. When up and running, the Commission will have full regard to the National Gaelic Language Plan and the Commission will also be able to appoint Gaelic speaking staff and will be encouraged to recruit staff with Gaelic abilities and expertise.

77. It is imperative that the requirements in the Bill strike the correct balance between ensuring that there is the desired relevant experience and expertise within the membership of the Commission, and giving Scottish Ministers the flexibility to make appointments in a timeous fashion to allow the Commission to proceed with its functions.

78. In the Stage 1 debate, the Minister for the Environment, Climate Change and Land Reform stated that the Scottish Government hopes to appoint at least one commissioner with the required expertise who is also a Gaelic speaker. Therefore, we intend to amend the Bill at Stage 2 ensure that Scottish Ministers, when appointing members of the Commission, are under a duty to have regard to the desirability of one of the members of the Commission being a Gaelic speaker. This will ensure that during the public appointments process, all reasonable steps are taken to ensure that at least one of the Commission's members is a Gaelic speaker, as well as having the other relevant skills and qualifications.

## Tenant farming commissioner

### RACCE recommendation

**(At paragraph 174)** It is [...] essential that the [Tenant Farming] Commissioner has the appropriate powers to enforce the codes which will help to govern and guide the sector. The Committee therefore recommends that the Scottish Government considers widening the current penalties liable in the Bill so they cover non-compliance with codes, rather than failing to provide information relevant to an inquiry into alleged non-compliance. The Scottish Government should also give further consideration to putting the codes on a statutory footing.

### Scottish Government response

79. Research commissioned by the Agricultural Holdings Legislation Review Group found that around two thirds of tenant farmers were very or fairly satisfied with their relationship with their landlord, with only 15% being dissatisfied. In this context, we feel it would be disproportionately heavy-handed to focus the role of the Tenant Farming Commissioner (TFC) on enforcing penalties in cases of private contractual disputes between parties. Instead, it is our intention that the TFC's focus be on working positively with tenants and landlords to create and promote codes of good practice, helping to cultivate constructive relationships in the sector.

80. The codes of practice developed by the TFC will be admissible as evidence in any proceedings in the Scottish Land Court, and the Bill places an obligation on the Land Court to take the codes into account when determining proceedings to which they are relevant. As the Delegated Powers and Law Reform Committee noted, the codes will be able to influence the Land Court's rulings.

81. If the office of the TFC were to also have wide powers of enforcement, that would change the nature of the office, their relationship with tenants and landlords and the codes. It would also raise ECHR implications. Considerable work would need to be undertaken to determine precisely how the regulatory powers would operate, and to formulate a workable policy. Additionally, the oversight and support structures the TFC's office would require as a civil enforcement body would significantly increase its set up and running costs, as well as the administration work generated. Giving the TFC a substantial regulatory function would also blur the distinction between the role of the TFC and the role of the Land Court, potentially leading to confusion and conflict. Furthermore, elevating the legal status of the codes to put them on a level footing with primary or secondary legislation would create a rival source of law to the 1991 and 2003 Acts, again giving rise to potential confusion in the agricultural sector. Enshrining the codes in statute, with penalties imposed for non-compliance, would also remove any flexibility for those tenancies for which the codes might not be fully relevant.

82. The Scottish Government considers that the powers invested in the TFC by the Bill are appropriate for the execution of the role. And the establishment of the TFC is not an isolated measure: it is part of a wider package designed to create greater fairness and transparency in arrangements between tenants and landlords.



Measures in Part 10 of the Bill – such as those on rent review and amnesty – address some of the key sources of disputes between tenants and landlords, and are intended to ultimately help reduce the number of such disputes in future.

83. However, we have not ruled out further strengthening the TFC’s position:

- Section 22(3) of the Bill enables Ministers to amend the TFC’s functions in future should this be felt appropriate.
- If, once the TFC’s role has been established, the evidence shows that enforcement powers for the TFC are necessary, we will also consider bringing forward primary legislation to address this, enabling the issues above to be fully explored and appropriately scrutinised.

84. In the meantime, the Government would be happy to consider any specific proposals in this area that the Committee feels could be developed and delivered within the Bill timescales, and potentially to bring forward Stage 3 amendments to implement workable proposals.

#### RACCE recommendation

**(At paragraph 175)** The Committee heard powerful testimony from tenant farmers in different parts of the country about the stress and difficulties caused by the threat of disagreements ending up in the Land Court. It is essential for the improvement of the tenant farming sector that recourse to the Land Court is replaced, where at all possible, by processes of mediation and/or arbitration. The Committee recommends that the Scottish Government gives further consideration to the role the Tenant Farming Commissioner could play in leading and managing such a process, and further recommends that it liaises with the Scottish Arbitration Service to determine what role it could play to work with, and support, the Commissioner in delivering those aims.

#### Scottish Government response

85. The central aim of the role of the Tenant Farming Commissioner (TFC) is to improve relationships between tenant farmers and landlords, by working with stakeholders to establish – and promote adherence to – guidance on good practice. It is hoped that the TFC’s work will lead to a reduction in the number and intensity of disputes between parties, with fewer cases needing to be referred to the Scottish Land Court.

86. The Committee may wish to note that the Independent Tenant Farming Advisor has helped mediate in cases of conflict between landlords and tenants, carrying out an impartial review of the situation and recommending a course of action to achieve resolution. It would be open to the TFC, once established, to take a similar approach, with the parties having recourse to the Scottish Land Court if these actions are unsuccessful.

87. The Land Court will still have an important role to play in resolving legal disputes, and it is intended that the TFC complement rather than supplant that role.

88. It should also be noted that the 1991 and 2003 Agricultural Holdings (Scotland) Acts already enable a landlord and tenant, in certain circumstances, to agree to settle a matter by arbitration rather than through the Land Court. The parties can agree how the arbitration process is to be carried out, and either party may appeal against an arbiter's award to the Land Court.

89. The Scottish Government and the TFC will also be working with the Scottish Arbitration Centre and other partners to help raise awareness of the range of mediation and arbitration arrangements that tenant farmers and their landlords can access.

#### RACCE recommendation

**(At paragraph 176)** It is also vital that, subject to a full consultation, a statutory code of practice for land agents is developed by the TFC and then rigorously enforced. The Committee therefore recommends that the Scottish Government brings forward an amendment to section 25(2) of the Bill which lists codes of practice that may be prepared by the TFC, and includes a land agents' code as a priority.

#### Scottish Government response

90. Section 25(2) of the Bill already lists a range of codes of practice that may be prepared by the Tenant Farming Commissioner (TFC). This list is deliberately expressed to be non-exclusive so as not to preclude the TFC from preparing codes of practice on other topics, including the one the Committee identifies. Interested parties must be consulted before a code is published and a copy of each one is laid before the Scottish Parliament. It will be a matter for the TFC to decide whether a code of practice should be developed for land agents, and to take that forward if so.

91. The Scottish Government will be monitoring how well the TFC works in practice, including industry take up and compliance with codes of practice. If in the future the evidence shows that enforcement of any of the codes requires to be more rigorous, we will consider bringing forward primary legislation to address this.

## **Part 3 – Information about the control of land**

### **Section 35 - Right of access to information on persons in control of land**

#### **RACCE recommendation**

**(At paragraph 193)** The Committee notes the widely expressed view that Part 3 will not achieve the desired policy objectives. Giving people greater access to information on those who control land is clearly in the public interest and this section could help to deliver the wider policy objective of improving the transparency of land ownership in Scotland, but only as part of a suite of measures. Part 3 of the Bill must support the principle that people in Scotland have the right to know who owns, controls, and benefits from the land.

**(At paragraph 194)** It is disappointing that the details of both Part 3 provisions (in sections 35 and 36) are left to regulations. This was not helpful to the Committee and was not conducive to effective scrutiny. Provisions relating to improving transparency and accessibility should contain greater detail. The Committee recommends that the Scottish Government provides full detail on the regulations before the end of Stage 2.

#### **Scottish Government response**

92. We note the Committee's comments regarding the perceived lack of detail in the regulation making power in sections 35 and 36 and the comments made in the evidence received by the Committee. The Government considers that the drafting of both sections 35 and 36 defines the parameters and purpose of the regulation making power.

93. Given the Committee's comments we will explore how best we could potentially provide further information on the use of the regulation-making powers in sections 35 and 36, and what the regulations may contain, before the end of Stage 2.

94. In addition we will bring forward amendments at Stage 2 to enhance the form of scrutiny necessary for any regulations made under section 35 and provide that the affirmative procedure is required for all uses of the regulation making power under section 36, in line with the specific recommendations of the Delegated Powers and Law Reform Committee.

### RACCE recommendation

**(At paragraph 195)** Although the rationale behind limiting those able to access information is understandable on a practical level, it does seem anomalous to seek to improve transparency and then put limits on that transparency. The Committee recommends that the Scottish Government considers amending the parameters of the power set out in section 35 to allow everybody in Scotland the right to access information about those in control of land, rather than limiting that, as at present, to only those affected by that land.

### Scottish Government response

95. The purpose of the regulation making power in section 35 is for regulations to provide a mechanism in cases where there is an individual or a community having a specific issue with an area of land, and there may be a person with control of land who is not the legal owner, for that individual or community to request the name of any person with control of the land in order that the individual or community can seek to resolve the issue in hand.

96. The policy justification for limiting the regulation-making power is because the policy is that information should only be disclosed where the information is required to help an individual or a community to deal with a specific issue. If the regulation-making power was to be extended to allow regulations to give everyone in Scotland a right of access to information about persons with control there would have to clear and justifiable benefits of this

97. In extending the power in the way the Committee has suggested there would be a knock-on effect on the number of applications the Request Authority would have to process. Considerable resources might be required to enable the request authority to process the applications, require disclosure of information and consider when there were legitimate reasons that information should not be disclosed..

98. It is possible that the request authority would have to deal with requests from different people for information about the same land and it is also possible that there could be repeated requests for information about the same landowner in order to find out whether there had been any changes to the persons with control in control of land.

99. This could considerably increase the cost on the Request Authority so consideration would have to be given to establish if amending the regulation-making power in this way would justify this increase in cost. There is also the greater potential impact on landowners to consider as they may be subject to repeated requests for this information from various different applicants, this could have the potential to have a significant impact on them.

100. We will also have to consider how this recommendation would interact with the other recommendations the Committee have made in relation to requiring the disclosure of information about persons with a controlling interest in a proprietor on the Land Register. Consideration would have to be given to the role of the request

authority if there was to be compulsory disclosure of information about persons with controlling interests in proprietors on the Land Register

101. Scottish Ministers remain committed to increasing the transparency of landownership in Scotland and will continue to explore ways to strengthen the provisions currently in the Bill, while being realistic about what can be achieved in the time available.

RACCE recommendation

**(At paragraph 196)** The Committee notes the view of the Keeper that she should not be the Request Authority and recommends that the Scottish Government clarifies who this will be before the start of Stage 2.

Scottish Government response

102. There are a number of organisations and bodies that could take on the role of the request authority. Currently further work is being carried out to consider the various options and we would aim to clarify who the Request Authority will be in line with the Committee's recommendation, and to bring forward amendments at Stage 2 to clarify this on the face of the Bill.

**Section 36 - Power of the Keeper to request information relating to proprietors of land**

RACCE recommendation

**(At paragraph 204)** Notwithstanding the comments made on Part 3 above, if this section is to be retained as part of a suite of enhanced and improved measures to deliver the aim of improved transparency concerning those who own and control land, the Committee recommends that the Scottish Government brings forward amendments to strengthen the powers given to the Keeper so she can require information and impose sanctions for non-compliance.

Scottish Government response

103. When considering this recommendation, and in particular what sanctions could be imposed for non-compliance, consideration would have to be given to the effects this would have on persons making applications for registration to the Land Register.

104. The primary purpose of land registration in Scotland is to enable landowners to obtain a real right land, and this plays a pivotal role in the Scottish conveyancing process. Historically, in Scotland, it has not been possible to obtain a real right in land without recording a deed in your favour in the Registers of Sasines or registering it in the Land Register. The report refers to the suggestion from the

Cawdor Estate that the ultimate sanction would be that if the information about any person with a controlling interest in the proprietor was not supplied the applicant would not be able to register their title. This would be the most obvious and effective sanction to ensure that applicants provide this information when an application for registration is made. There is a precedent for this in that an application cannot be accepted on to the Land Register until arrangements have been made to pay any required Land and Buildings Transaction Tax.

105. The Land Register discloses the name of the person that has the real right and this can be an individual or a legal person. Disclosing information about persons with a controlling interest in a landowner is not required to establish legal ownership of land. The proposal would require information to be disclosed on the Land Register for another purpose other than that for which the Land Register was originally conceived. Careful consideration would have to be given to establish how providing information about persons with control of land on a compulsory basis would interact with the role the Land Register plays in the conveyancing process and in providing landowners with their real right in land.

106. It would also have to be considered what effect, if any, this may have on the commitment the Scottish Ministers have made to complete the Land Register within 10 years and the work Registers of Scotland are undertaking to progress this. The project to complete the Land Register will involve the need for large scale voluntary registration. It would have to be considered whether requiring the provision of this information would result in a disincentive to voluntary registration, and therefore, the completion of the Land Register.

107. There are also many complex legal and practical issues that would have to be addressed in taking forward any recommendation that would empower the Keeper to require the provision of additional information as a condition of registration. In addition consideration would also have to be given to the potential financial, administrative and enforcement measures that the recommendation would impose particularly on the Keeper and Registers of Scotland and on those people that would be required to provide this information.

108. There are a number of specific legal issues that would need resolving before the Scottish Government could decide that a particular proposal requiring disclosure of information about individuals with controlling interests in owners of land and tenants was within the legislative competence of the Scottish Parliament. Any proposal in this area will need to increase transparency of land ownership to address problems arising in relation to transparency of landownership and do so in a way that is rational, proportionate and non-discriminatory.

109. In particular Article 8 of the ECHR provides a right to private and family life. A measure that interferes with this right will only be compatible with Article 8 if it is provided for by law, it pursues one or more of the legitimate aims set out in Article 8(2) and is necessary in a democratic society to achieve those aims. The legitimate aims set out in Article 8(2) include the economic well-being of the country. A proposal requiring disclosure and publication of information about individuals without their consent will engage an individual's Article 8 rights. We will need to be satisfied

that such a proposal could be compatible with Article 8 and this will include considering the benefits that would be likely to arise from the proposal. In addition Article 14 of the ECHR prevents discrimination between different classes of persons in certain circumstances and so we would need to be satisfied that such a proposal didn't treat different categories of owners differently or if it did that this could be justified.

110. EU rules on free movement of capital apply to investing in land. If a proposal requiring disclosure of information about individuals with a controlling interest in an owner or tenant of land was a restriction on the free movement of capital we would need to be satisfied that the proposal was pursuing a public interest objective and doing so in a way that complies with the principle of proportionality. Whether a restriction is proportionate includes considering whether the restriction is a suitable means of achieving the public interest objective and whether it goes beyond what is reasonably necessary to achieve that objective.

111. In principle the Scottish Government can see the merits in the Committee's recommendation to strengthen requirements to provide more information on landownership in Scotland, but developing a policy further that would deliver an appropriate legislative measure and that would be within the competence of the Parliament, would be extremely challenging within the timetable for this Bill.

112. We are mindful of the comments made by both the RACCE and DPLR Committees in relation to the use of some of the regulation making powers in the Bill and the level of policy development for other provisions in this Bill. We would be concerned that even if further proposals could, in principle, be developed within the time available it may only be possible to bring forward wide regulation- making powers as Stage 2 or Stage 3 amendments.

113. As noted above, Scottish Ministers are committed to increasing the transparency of landownership in Scotland and will continue to explore ways to strengthen the provisions currently in the Bill, while being realistic about what can be achieved in the time available. The Government will give serious consideration to the Committee's recommendations.

#### RACCE recommendation

<p><b>(At paragraph 205)</b> Further information on the detail of the regulations must also be made available by the Scottish Government before the end of Stage 2.</p>
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#### Scottish Government response

114. The Scottish Government recognise that there is considerable interest in the provisions in the Bill which will improve the transparency of land ownership and notes the Committee's recommendation. Therefore, we will consider the recommendation and give serious consideration to what further information on the detail of the regulations under section 36 can be provided to the Committee before the end of Stage 2.

115. As indicated above, we will also respond to the recommendation of the Delegated Powers and Law Reform Committee and require all uses of the regulation making power in section 36 to be subject to the affirmative procedure, rather than just the first use of the power.

## Transparency of land ownership

### RACCE recommendations

**(At paragraph 219).** [ ] the Committee is of the view that Part 3 of the Bill is not likely to achieve all of its objectives as it stands and requires amendment. The Committee does not recommend deleting sections 35 and 36 in their entirety, which was suggested by some. Rather, as outlined above, the Committee recommends that those sections be strengthened, and become part of a suite of measures.

**(At paragraph 220)** Given that the provisions are not likely to go far enough in delivering the desired increased transparency about those who own, control and benefit from the land, and following all of the evidence heard and considered, the Committee recommends that the Scottish Government gives consideration to the following suggestions for amending the Bill, requiring— those who wish to buy land and register title in Scotland to be registered EU entities, and requiring current non-EU registered owners to register within 5 years of the commencement of the provision; those who wish to buy land and register title in Scotland to provide a named contact point in Scotland; those who wish to buy land and register title in Scotland to clearly identify those who will control the land and those who may benefit from that ownership and control; any other appropriate information that could reasonably be needed as part of the registration process and which would improve transparency and accountability.

**(At paragraph 221)** It is essential that any new proposals are both within the competence of the Scottish Parliament, and likely to be effective in providing a remedy to the current situation. The Committee recommends that the Scottish Government considers the proposals set out above and clearly sets out, in its response to the Committee's Stage 1 report, how it intends to ensure that the desired improved transparency is achieved.

### *General Comment*

116. The Scottish Government recognises and shares the Committee's desire for there to be greater transparency of landownership in Scotland. It is also clear from the evidence provided to the Committee there is a demand for greater transparency of landownership in Scotland. This was also clear from the responses received to the Scottish Government's *Consultation on the Future of Land Reform in Scotland*.



117. In this Bill, the Scottish Government has brought forward measures that are within the competence of the Scottish Parliament and will be effective in improving the transparency of landownership in Scotland.

118. Specifically section 35 will allow those people that can show they will benefit from having information about the persons in control of land in order to deal with issues they are having with the land to find out who has control over that land. The Committee have seen at first hand the work that Registers of Scotland are taking to complete the Land Register and in addition they have started work on developing Scotland's Land and Information System (ScotLIS) . The provisions included in this Bill taken together with the measures being led by Registers of Scotland will transform the availability of information about land ownership in Scotland.

119. Regulations made under section 36 will provide that individuals that have a controlling interest in landowners and certain tenants can be disclosed on the Land Register on a voluntary basis. The regulations will also provide that information about the category of the owner can also be provided. The Committee received evidence from John King of Registers of Scotland that most people respond positively to requests from the Keeper.

120. It is the intention of the Scottish Government to work alongside Registers of Scotland to inform, educate and encourage people to provide information about persons with a controlling interest in landowners and certain tenants on a voluntary basis. It is hoped that this will ensure that a culture develops where this information will always be provided when applications for registration are made.

121. As we have indicated, the Scottish Government will also consider further the Committee's recommendation to provide further detail about the use of regulation making powers in sections 35 and 36.

*Scottish Government Response to recommendation;*

*- those who wish to buy land and register title in Scotland to be registered EU entities, and requiring current non-EU registered owners to register within 5 years of the commencement of the provision*

122. As the Committee will be aware the Scottish Government consulted on the recommendation made by the Land Reform Review Group to make it incompetent for any legal entity not registered in a member state of the European Union to register title to land in the Land Register of Scotland. After reviewing this proposal the Scottish Government came to view that it would not provide the greater transparency of land ownership that those who supported this proposal suggest. We provided the Committee with a detailed analysis of this proposal in our letter to the Committee dated 10 September 2015.

123. Although we recognise the Committee's view that this provision may be useful, as part of a suite of measures, for the reasons the Government have already set out we will not bringing forward amendments to the Bill to limit land ownership in Scotland to legal entities registered in the EU.

124. In addition, a proposal that those who wish to register title to land in Scotland be individuals or be coming with a description of EU legal entity would be outwith the competence of the Scottish Parliament.

125. As the LRRG report commented, under EU law the rules relating to free movement of capital apply not just to movements of capital between Member States but also to movements of capital between Member States and third countries – both in and out. A proposal that only individuals and EU legal entities can register title to land in Scotland would be a restriction on the free movement of capital. Such a restriction will only be compatible with EU law if it pursues a public interest objective and does so in way that complies with the principle of proportionality. We do not consider that the proposal is proportionate as it would not achieve the desired objective and goes beyond what is reasonably necessary to achieve the level of transparency of landownership that the proposal seeks to achieve.

126. The proposal is predicated on entities formed in accordance with the law of a Member State of the EU having to comply with requirements that will result in a certain standard of transparency of landownership. However, even if this is the case, this does not necessarily mean that entities formed in accordance with the laws of a country not in the EU would be subject to lower requirements regarding transparency of ownership of land and so the proposal goes further than is reasonably necessary to ensure the desired standard of transparency of ownership of land.

Scottish Government Response to recommendations;

- *those who wish to buy land and register title in Scotland to provide a named contact point in Scotland*
- *those who wish to buy land and register title in Scotland to clearly identify those who will control the land and those who may benefit from that ownership and control.*
- *any other appropriate information that could reasonably be needed as part of the registration process and which would improve transparency and accountability*

127. As indicated above there are many complex legal and practical issues that would have to be addressed to implement the recommendation about requiring disclosure of information about persons with controlling interests in landowners.

128. As noted above, Scottish Ministers are committed to increasing the transparency of landownership in Scotland and will continue to explore ways to strengthen the provisions currently in the Bill, while being realistic about what can be achieved in the time available. The Government will give serious consideration to the Committee's recommendations and address these specific recommendations in more detail in due course.

## **Part 4 – Engaging communities in decisions relating to land**

129. The Scottish Government notes what the Stage 1 report says about the guidance, in particular that the Committee welcomes the principle of Part 4 and that it believes that it is fundamental to achieving the overall aims and objectives.

### RACCE recommendation

**(At paragraph 238)** Given that the importance of ensuring that the guidance is clear and fit for purpose the Committee recommends that the Scottish Government amends the Bill to ensure that the guidance is required to be debated and endorsed by Parliament.

### Scottish Government response

130. The Scottish Government welcomes the Committee's confirmation of the important role this guidance will play in delivering the overall aims and objectives of the Bill.

131. It is the policy of the Scottish Government to always consult on matters of importance to the people of Scotland. As stated in the Policy Memorandum, and in evidence to the Committee, the Scottish Government intend to develop this guidance collaboratively, seeking the views and input of communities, landowners and all those with an interest across Scotland. There is already specific provision in the Bill requiring Scottish Ministers to consult with such persons as they consider appropriate before issuing the guidance.

132. There are no set timescales for review of the guidance. How best to review and monitor the effectiveness of the guidance will be discussed as part of developing the guidance itself.

133. It is not common practice to debate guidance in Parliament and we do not believe a mandatory requirement to debate the initial guidance in Parliament would add value to the guidance. The Scottish Government does of course welcome the Scottish Parliament's continuing interest and involvement in the development of the guidance, however, no further wording is required on the face of the Bill to allow the Scottish Parliament to consider or take evidence on the guidance, once published, as and when they consider appropriate.

134. However, in line with the provisions in Part 1 of the Land Rights and Responsibilities Statement, the Scottish Government will consider further the potential benefits in making an amendment to require the Scottish Minister to lay the initial guidance before Parliament.

### RACCE recommendations

**(At paragraph 238)** The Committee also asks that the Scottish Government provides as much detail as possible on the content of that guidance before the end of Stage 2.

**(At paragraph 239)** The Committee is of the view that the Bill does not currently contain enough detail on the reasons why engagement is required, or the potential penalties for not adhering to guidance.

**(At paragraph 240)** The Policy Memorandum contains details in paragraphs 160 to 163 of the reasons for and benefits of engagement, some of which should be included in the Bill to clarify the purpose and intention behind the proposal.

**(At paragraph 242)** The Committee therefore recommends that the Scottish Government brings forward amendments to strengthen this Part of the Bill by using some of the language and detail contained in the Policy Memorandum, and highlighted in this report, regarding the reasons and requirement for collaboration between landowners and communities, and stating the potential consequences for not doing so.

### Scottish Government response

135. The Scottish Government notes the Committee's comments in paragraphs 236 and 237 on the content of the guidance and these, along with the wider comments of the Committee, will be important considerations in developing the guidance, following the passage of the Bill.

136. The purpose of legislation is not to explain policy objectives, but to effect changes to the law. Section 37(1) does this by imposing a duty on the Scottish Ministers to issue guidance. Section 37(3) sets out matters that the guidance must include information about. Section 37(2) requires Ministers to have regard to the desirability of furthering the achievement of sustainable development in relation to land. We consider that these provisions help set out the scope of the guidance.

137. Detail and explanation of the policy objectives, intended content of the guidance, an articulation of the benefits of engagement and setting out the possible consequences for not engaging are all set out clearly in the Policy Memorandum.

138. For example, paragraphs 166 to 175 of the Policy Memorandum set out details of the possible consequences for those who do not consider and follow the guidance, including: in certain circumstances using it as evidence supporting a right to buy application under Part 5 of the Bill; potentially affecting the award of future discretionary land grants; using existing statutory mechanisms to deal with public sector landowners failing to engage with communities; and options available to the Office of the Scottish Charity Regulator to take action against charities not considering and following the guidance.

139. As stated by the Minister for the Environment, Climate Change and Land Reform in her evidence to the Committee, it is important not to pre-empt stakeholder input and views into the consultation process to collaboratively develop the content of the guidance, which will include consideration of the best way to articulate the benefits of engagement and the consequences for both communities and landowners in not engaging.

140. The Scottish Government does not believe it would be appropriate or beneficial to attempt to articulate policy aims or intentions in legislation, nor to pre-empt the consultation process and the input of stakeholders.

141. However, the Scottish Government will consider what further information on the potential future content of the guidance could be provided in due course, as recommended by the Committee in paragraph 238.

## **Part 5 – Right to buy land to further sustainable development**

142. The Scottish Government notes that the Committee support the enabling and empowering of Communities across Scotland, which are key objectives of the Scottish Government and the commitment to pass power to people and communities. The response to the Committee’s recommendations is set out below.

### RACCE recommendation

**(At paragraph 258)** The Committee [ ] recommends that the Scottish Government clarifies whether it is the intention of Part 5 to act as a deterrent to any landowners currently causing significant harm and not developing land sustainably, or rather is to empower communities by providing realistic ownership opportunities.

### Scottish Government response

143. The Bill supports existing work to pass power to people and local communities, encourage and support responsible and diverse landownership and ensure communities have a say in how land in their area is used. Communities need to be able to influence development decisions, and in certain cases access land for their own development.

144. Part 5 proposes a right to buy land to further sustainable development and is absolutely about providing a mechanism to facilitate the transfer of ownership of land. Fundamental to this is the identification of significant harm which is likely to affect the community if the land is not transferred together with a likely significant benefit to the community if the land is transferred, and where only the transfer of land will resolve these issues.

145. The Scottish Government believes that the tests in Part 5 are reasonable and proportionate, and that Part 5, in combination with Part 4, will encourage better collaboration between communities, landowners and those who control land. Where the collaborative approach is not working, and communities find that their sustainable development is being blocked, then Part 5 has the potential to provide a mechanism for communities to apply to buy the land where the necessary conditions are met.

### RACCE recommendation

**(At paragraph 259)** Despite all of its evidence-taking, there remains a lack of clarity regarding the possibility of productively managed agricultural land being subject to a successful Part 5 right to buy application. The Committee believes that this is not, and should not be, the intention of the Bill and therefore recommends that the Scottish Government clarifies the policy intention behind the proposal and considers whether the Bill requires any amendment to reflect that. The Committee also recommends that the Scottish Government considers whether the Bill should be amended to include a further test to the 4 set out in section 47(2) of the Bill to ensure that the potential impact on the viability of smaller scale rural businesses (and perhaps on issues such as the impact on food production) is also taken into account before determining if the sustainable development conditions have been met.

### Scottish Government response

146. Part 5 is not a broad and general right and would only give Ministers power to consent to an application in specific circumstances. Broadly, those instances are where the transfer of land will further sustainable development and the other sustainable development conditions in section 47(2) are met. This includes a public interest test.

147. The focus of Part 5 is on the needs of communities, not the state of the land. However, one of the sustainable development conditions that must be met is that the transfer of land must be in the public interest. Even where the other conditions and requirements in section 47 are met, Scottish Ministers then have a power to decide whether to consent to the application. When assessing an application, Scottish Ministers would of course consider the effects of the transfer on the current landowner, the existing land management and existing land use and the potential impact on local businesses amongst other relevant considerations.

148. Under provisions in section 46, part of the application process includes a duty on Scottish Ministers to give public notice of application and invite people to comment on applications. Scottish Ministers must then have regard to views they receive.

149. It is important to reflect that this is not just a rural issue and that the right to buy will apply equally to urban areas. The importance of existing urban land uses and the impacts on smaller scale urban businesses will also, in certain cases, be relevant considerations.

150. The specific issues to be considered will vary depending on the circumstances of the particular case. We consider that the current structure of Part 5 ensures all relevant issues must be considered, however, further consideration will be given to this recommendation..

151. As such, the Scottish Government believes that the tests and processes in the Bill are proportionate and fair, and will allow Scottish Ministers to properly weigh the evidence for any right to buy application.

152. The Scottish Government does not consider any amendment to the process to be necessary to address the Committee's concerns as set out in paragraph 259 of their report. However, the Government would be happy to consider any specific proposals in this area that the Committee feels could be developed and delivered within the Bill timescales, and potentially to bring forward Stage 3 amendments to implement workable proposals.

### RACCE recommendation

**(At paragraph 260)** There may be clearly defined situations when it would be more appropriate for purchasers other than communities, to buy land, such as circumstances where there is no longer a community present to take advantage of the new right to buy, and/or where such land could be used for other purposes in the public interest (such as for tenant farming). The Committee [ ] recommends that the Scottish Government considers the benefits of local authorities, other public bodies, and/or Scottish Ministers being able to buy land for present or future community use, or as a buyer of last resort, and considers whether the Bill could be amended in this regard at Stage 2.

### Scottish Government response

153. Community ownership is at the heart of the Scottish Government's community empowerment agenda. The acquisition and management of land can make a major contribution towards creating stronger, more resilient and more independent communities.

154. The Scottish Government has an important role in supporting communities who have the ambition to take on ownership of land. Landownership is increasingly seen as an 'enabling tool' by many communities, with the ability to achieve a wide-ranging set of impacts and contribute to the continued resilience of Scotland's communities.

155. In line with the Scottish Government's approach to land reform and community empowerment, the provisions in Part 4 and 5 supports existing work to pass power to people and local communities, encourage and support responsible and diverse landownership and ensure communities have a say in how land in their area is used.

156. The provisions in Part 5 already acknowledge that communities may wish to work with other parties to purchase land under the right to buy land to further sustainable development and specific provision is made for community bodies to exercise the right to buy in conjunction with third party partners, which could include



bodies such as local housing associations or even local authorities or other public bodies.

157. Scottish Ministers, local authorities and other public bodies already have certain powers that would allow them to purchase land on the open market for certain purposes and there are already a wide range of compulsory purchase powers for public authorities to compulsorily require land in Scotland, in certain circumstances.

158. A summary of existing compulsory purchase powers can be found at the following link: <http://www.gov.scot/Publications/2011/10/21133522/11>

159. When exercising a right of compulsory purchase, in addition to meeting the conditions set out in this legislation, Scottish Ministers, or public agencies, would have to ensure that any decision to exercise these powers was compatible with their responsibilities to respect the rights under the European Convention of Human Rights, such as the right to the peaceful enjoyment of possession under Article 1 Protocol 1.

160. This would include considering the strength of the public interest in purchasing the land and whether this is a proportionate action to take. The same considerations would arise should any new compulsory purchase powers be considered.

161. Whether further powers are required for the Scottish Ministers, local authorities or other public bodies to purchase or compulsorily acquire land in the circumstances envisaged by the Committee in paragraph 260 of their Report is a much wider issue than is currently addressed by the provisions in Parts 4 and 5 of this Bill and would require further detailed consideration.

162. The Scottish Government does not consider that it would be appropriate, or possible, at this time for this detailed consideration to be undertaken ahead of Stage 2 of this Bill.

### *RACCE recommendations*

**(At paragraph 261)** It is also essential that the Scottish Government ensures that the right to buy provisions are well promoted across the country and supported by clear, concise and easy to apply guidance.

**(At paragraph 287)** The Committee recommends that the Scottish Government ensures that it produces clear and simple guidance for communities as a matter of urgency, and also establishes a single point of contact for communities seeking advice on all of the various right to buy provisions and is proactive in providing advice and support to communities seeking to use the provisions. The Committee also recommends that the Government gives further consideration to the appropriateness of Scottish Government officials providing advice as well as processing and then deciding upon applications.

### Scottish Government response

163. The Scottish Government already provides advice to communities and landowners on applications for existing rights to buy and works to publicise existing and updated legislation that supports community ownership. For instance we promote the Scottish Land Fund and officials will be attending events throughout Scotland to publicise community ownership, including changes made to legislation under the Community Empowerment (Scotland) Act 2015.

164. Ministers have confirmed that an expanded Scottish Land Fund will run from 2016 to at least 2020. The promotion of the Fund by Scottish Government partners (Highlands and Islands Enterprise and BIG Lottery) further demonstrates the Scottish Government's commitment to community ownership throughout Scotland.

165. The Scottish Government also currently provides funding to ensure the provision of advice and support to communities on issues around community ownership from other organisations and sources, such as the funding provided to the Development Trust Association Scotland, support the Community Ownership Support Service.

166. The Scottish Government has already begun the process of updating its guidance as a result of the changes brought in through the Community Empowerment (Scotland) Act 2015.

167. Officials have been attending events, alongside the likes of the Community Ownership Support Service (COSS) and Grow Your Own Working Group, to explain the key changes to groups of stakeholders.

168. In addition, we will be undertaking our own series of events aimed at informing community groups about various community right to buy provisions, and we are especially conscious that groups in urban areas will not have had any exposure to this legislation up to now. This will include publicity for the right to buy provisions in Part 5 of the Land Reform (Scotland) Bill when it becomes an Act.

169. Indeed, the final report of the short life working group on the 1 million acre target published on 11 December has recommended that "There needs to be a comprehensive and co-ordinated awareness raising programme of the opportunities of community land ownership". The report can be found at the following link:- <http://www.gov.scot/Publications/2015/12/5735>

170. Scottish Ministers are currently considering the range of recommendations in the Working Group's report on how to best support and facilitate community ownership and achieve the Scottish Ministers' desired target of 1 million acres in community ownership by 2020.

RACCE recommendation

**(At paragraph 272)** The Committee notes concerns raised by stakeholders regarding the definitions of the terms significant harm and significant benefit. Given that the right to buy to further sustainable development provisions depend upon the understanding and application of these terms it is vital that every effort is made to avoid confusion or ambiguity. The Committee therefore recommends that the Scottish Government ensures that it provides further guidance on the definition of these terms within this context before the end of Stage 2 and that clear and concise guidance is made available.

Scottish Government response

171. Section 47(10) of the Bill clearly sets out that in determining what constitutes significant benefit or significant harm to the community in relation to the sustainable development conditions, the Scottish Ministers must consider the likely effect of granting (or not granting) consent to the transfer of land or tenant's interest on the lives of the persons comprising that community with reference to: economic development, regeneration, public health, social wellbeing and environmental wellbeing.

172. The Scottish Government will consider the recommendation of the Committee. However our view is that "significant benefit" and "significant harm" are ordinary language, understood by both the courts and the public, and are best assessed on a case by case basis.

RACCE recommendation

**(At paragraph 273)** The Committee also notes comments made regarding the definition of a Part 5 community body and supports views that this should be flexible enough to go beyond a geographic or postcode based definition, and include communities of interest. The Committee recommends that the Scottish Government reconsiders whether the provisions in the Bill are flexible enough to allow for this, and if not, amends the Bill at Stage 2 to rectify this.

Scottish Government response

173. The aim of Part 5 of the Bill is to support the sustainable development of land to benefit local communities and avoid harm to such communities and give them more of a say over what happens in their area. The Scottish Government would not therefore support the widening of the definition term community to include communities of interest.

174. Changing the definition to include communities of interest could potentially create further problems for local communities, by allowing particular interest groups to compete for ownership of land in the locality.

175. In addition, it would be difficult to see how a community of interest could demonstrate that it met the significant harm and significant benefit tests. It is also likely to be more difficult for communities of interest to show the transfer of the land to a community of interest is likely to further sustainable development, when the community of interest itself was geographically dispersed.

176. However, there would be nothing to prevent a local community from seeking the support of a particular community of interest as part of its case for a right to buy application, if the local community felt that was advantageous. Similarly, a community of interest could work with a local community as a third party purchaser in an application for the right to buy to further sustainable development provided that the sustainable development conditions could still be met.

RACCE recommendation

**(At paragraph 279)** It would seem sensible to ensure that one new register of community interest in land be created, which would contain registrations relating to abandoned, neglected or detrimental land (created under the Community Empowerment (Scotland) Act 2015 and to furthering sustainable development (created under this Bill). The Committee recommends that the Scottish Government seeks to amend both this Bill, and the Community Empowerment (Scotland) Act 2015, to deliver that outcome. This should also help to simplify the processes involved for communities and landowners.

Scottish Government response

177. Section 44 of the Bill provides for a Register of Land for Sustainable Development, and section 74 of the Community Empowerment (Scotland) Act 2015 inserts Part 3A into the Land Reform (Scotland) Act 2003 to make provision for the community right to buy abandoned, neglected and detrimental land – including provision for a new register.

178. Amalgamating the two registers may prove to be more efficient. This has to be balanced with ease of understanding and accessibility of these registers by relevant parties – be it landowners and their agents, and the community bodies using them. However, the Scottish Government is considering the Committee's recommendations and will likely be in a position to bring forward amendments on this issue at Stage 2.

### RACCE recommendation

**(At paragraph 288)** It may be beneficial, in certain circumstances, for a community to be able to nominate a third party to apply to purchase the land on its behalf. However there is a danger that this may establish an inconsistency with the existing right to buy provisions and the Committee asks the Scottish Government to explain the rationale and justification for this. The Committee also notes the concerns that have been raised regarding the potential for the third party provisions to be exploited or abused and asks the Scottish Government to consider whether the Bill could be strengthened at Stage 2 (rather than for this to be covered in subsequent guidance and advice) to add additional safeguards to ensure the provision is used only as intended.

### Scottish Government response

179. There are a number of crucial distinctions between the existing community rights to buy and that proposed in this Bill. Part 5 of the Bill contains a right to buy even where there is an unwilling seller, unlike the pre-emptive community right to buy in Part 2 of the Land Reform (Scotland) Act 2003, but similar to the Part 3 Crofting Right to Buy and the new Part 3A right to buy in that Act (added by the Community Empowerment (Scotland) Act 2015).

180. The key test in the new Part 3A is whether the land is abandoned, neglected or the use or management of the land is causing harm to environmental well-being of the community. So the key test is about the condition and use of the land rather than the needs of the community. Whereas, the key tests for the right to buy to further sustainable development in Part 5 focuses on the outcomes for the community, rather than the condition of the land.

181. Under the provisions in Part 5, the community can nominate a third party purchase partner, who could be, for example, a housing association or local business partner etc. to help deliver the benefits to the community. The benefit of this arrangement is that third parties may have access to resources and be able to provide expertise unavailable to communities.

182. Scottish Ministers, in considering the application, will have to be satisfied that the sustainable development conditions are met and the procedural requirements are complied with. This will include consideration of the community body and third party purchaser's ability to deliver the proposals in their application. This may include scrutinising the arrangements between the community body and third party purchaser e.g. legal agreements setting out, for example, delivery timescales, rights, liabilities, maintenance arrangements etc. What evidence would need to be provided will depend on the specific circumstances of the case, however, Ministers would not be able to consent to an application if they were not satisfied that the transfer to the third party purchaser would be likely to deliver significant benefit to the community and that the other sustainable development tests were met.

183. We will further consider the Committee's recommendation and concerns but do not currently consider amendment at Stage 2 would be required.

RACCE recommendation

**(At paragraph 291)** The Committee recommends that the Scottish Government responds to the issues raised regarding situations where community bodies may seek to dispose of land acquired as a result of the new right to buy provisions before the end of Stage 2.

Scottish Government response

184. A community body that buys land under Part 5 may choose to sell part of their land if doing so is consistent with their constitution. In fact, buying the land, doing something with it and selling part or all of the land may be part of the proposals in the right to buy application and this may be what is required to further sustainable development, deliver benefits and prevent harm.

185. Section 43(1) of the Bill requires that a Part 5 community body that has bought land under Part 5 cannot modify its memorandum, articles of association, constitution or registered rules without Scottish Ministers' consent in writing.

186. Under section 43(2), where Scottish Ministers are satisfied that a Part 5 community body which has bought land, had it not bought that land, would no longer be entitled to buy the land, Scottish Ministers may acquire the land compulsorily. But, as set out earlier in relation to compulsory purchase powers, Ministers would have to be satisfied that purchasing the land would be compatible with their obligations under the ECHR.

187. The Scottish Government is content that there are sufficient safeguards in place.

RACCE recommendation

**(At paragraph 292)** The Committee also recommends that the Bill be amended to require applications to be reconsidered, post approval, where the original purpose is unable to be fulfilled or in situations where there is an apparent divergence from the originally stated and approved purpose.

Scottish Government response

188. As discussed above, section 43 of the Bill requires that Part 5 community bodies that have bought land under Part 5 may not modify their memorandum, articles of association, constitution or registered rules without Scottish Ministers' consent in writing.

189. If a Part 5 community body, after approval of its application for the right to buy, then wishes to amend its original purpose in acquiring the land, they will be entitled to do so long as the new purpose is compatible with the body's memorandum, articles of association, constitution or registered rules. The Committee may be aware that funders, for instance the Big Lottery Fund, impose terms and conditions on the granting of money to communities which they may seek to have returned to them if the original purpose supported by the grant is no longer being pursued by the community.

## **Part 6 – Entry in valuation roll of shootings and deer forests**

190. The Scottish Government notes the Committee's comments on Part 6, and welcomes the opportunity to reiterate and expand upon points made in our evidence to the Committee to date and in the accompanying documents to the Bill.

### RACCE recommendations

**(At paragraph 309)** This part of the Bill has attracted significant commentary and debate and the Committee sympathises with many of the concerns expressed. As it stands, there is a lack of clarity about the purpose, delivery, impacts and likely outcome of these proposals. The Scottish Government needs to address the serious concerns set out below as soon as possible, and certainly before the start of Stage 2, if the Committee is to be in a position to support Part 6 of the Bill.

**(At paragraph 310)** The Committee seeks a thorough, robust and evidence-based analysis of the potential impacts of ending the sporting rates exemption (including what impact imposing the exemption had in 1995). The Business Regulatory Impact Assessment which accompanies the Bill requires developing and strengthening and it is essential that, either there or elsewhere, there is a clear published assessment and demonstration of the potential economic, social and environmental impacts of reintroducing sporting rates.

**(At paragraph 311)** The Scottish Government must also set out a clear evidence-based rationale for taxing shootings and deer forests whilst continuing to exempt certain other rural businesses and the Committee therefore asks the Government to clarify what analysis it has carried out on this issue, why it believes continuing to exempt some rural businesses and not others is in the public interest and how it accords with the principle of fairness which the Minister stated was a policy intention of the measure.

**(At paragraph 312)** It is also essential that the Scottish Government clarifies a) which areas will be liable for valuation, b) who should be liable to pay and c) the basis for any exemptions and reliefs. These issues are addressed in further detail below.

### Scottish Government response

191. Part 6 proposes shooting and deerstalking be returned to the valuation rolls, and thereby subjected to rates liability (provided for by other legislation) in the same way as nearly all other non-domestic properties. The Scottish Government has been clear that the purpose of this measure is twofold: to reflect the principle of fairness and to raise revenue to help fund public services. The Government recognises that the proposal has provoked strong feeling; it was supported by 71% of the 983 consultation respondents who expressed a view, most citing fairness, but all but one of the 51 private landowning organisations opposed it.



192. It may help the Committee to know that, subject to Parliamentary approval of the Bill, the Government would anticipate the delivery steps and timetable to be broadly as outlined in the table below.

### Part 6 indicative delivery timeline

Process	Timing
Bill passes	Spring 2016
Assessors' engagement with the sector*; in-gathering and analysis of rental information; development of valuation methodology; production of 'practice note' for publication	Spring & Summer 2016
Assessors' production of draft valuations	from late 2016
Ministers set rates poundage for 2017-18 and consider relief schemes, having taken into account emerging valuations	late 2016 / early 2017
Assessors finalise valuations and deliver new valuation rolls to councils for 2017 revaluation	March 2017
Councils issue bills to rateable occupiers	from March 2017
Applications for rates relief subject to eligibility	during 2017-18
Assessors' deadline for valuation roll entries to take effect at start of 2017-18	31 March 2018

*\* Assessors have already started informal preparatory engagement with the sector on this issue.*

193. The Scottish Government recognises the importance of considering and assessing, as far as possible, the potential impact of this measure while acknowledging that all taxes have impacts. Tax breaks also have impacts, not least of pushing the tax burden on to a narrower tax base. The Government aims for rating arrangements that are fair and in line with policy priorities. Any sector-specific tax concession must reflect wider policy priorities, and be the result of a compelling special case, particularly given the context of wider pressures on the Scottish budget and competing cases for other sectors.

194. The Scottish Government does not believe that the current rates exemption for shootings and deer forests meets this test. Many other sectors for which there are also positive policy ambitions do not receive a sector-specific tax break. The only other sectors with a blanket rates exemption are agriculture (including forestry) and offshore oil and gas. With the principle of fairness in mind the Scottish Government is content that these are special cases which remain central to the Government's policy priorities.

195. The Government understands the calls for more detailed impact assessment, but would highlight the limitations on what is achievable in terms of modelling wider impacts from any tax liability (whether non-domestic rates or otherwise), given that tax is only one factor in an organisation's decision-making. The Government has not received any suggestions on how better to approach this in discussions with stakeholders to date. However, the Government will give further consideration to this and revert to the Committee in time for Stage 2.

196. Part 6, as a valuation provision, sets the foundation for subsequent taxation decisions. Once the tax base has been measured and prospective rates liabilities can be quantitatively assessed, Ministers will have options to determine the tax burden by setting the annual rates poundage and considering reliefs. This is no different for any other sector: at this time we know neither the valuations, the poundage, relief eligibility nor rates liability for any sector or individual properties for the 2017 revaluation. The Scottish Government would also draw to the Committee's attention the commitment included in Draft Budget 2016-17 to review the wider system of non-domestic rates, the detail of which is subject to confirmation in due course.

#### RACCE recommendations

**(At paragraph 327)** The Committee believes, with one exception, that it may be appropriate to tax larger, profitable, commercial sporting shooting enterprises if a clear case can be made that it would be economically, socially and environmentally appropriate to do so. However, based on the available information, the Committee believes the case for change has not yet been made. If additional evidence supports the need for change then the Committee believes that careful consideration must be given to the thresholds which will apply. The Scottish Government must also clarify that the small bonus business scheme, and any other rates relief that is made available, will be consistently applied across rural businesses.

**(At paragraph 328)** The Committee recommends that the Scottish Government clarifies its policy intentions in this regard and, if the provisions are to remain, ensures that the Bill is appropriately amended so that it will deliver those objectives. The Committee also recommends that the Scottish Government proactively advises the assessors as to the basis for valuations to ensure that they are compatible with the desired policy objectives of the Bill.

**(At paragraph 329)** Further to the recommendations made above regarding a thorough analysis of impacts, the Committee questions the estimate of expected revenue of £4m and recommends that the Scottish Government conducts case-studies and provides estimated calculations based on different sized business models.

**(At paragraph 330)** The Committee is also yet to be convinced that the Scottish Assessors Association and local authorities will have the necessary resources to adequately and accurately value and administer sporting rates in the time available.

We recommend that the Scottish Government and such affected organisations more robustly consider the issue of resources once proper impact assessments and analysis has been completed.

**(At paragraph 331)** The Committee also recommends that the Scottish Government reconsiders how any revenue raised by this measure, if it were to proceed, would be used, to ensure that funds which may be taken out of rural communities by the reintroduction of the rates is reinvested, at least in part, in those communities, for example by funding rural skills apprenticeships.

### *The role of the Assessors*

197. Given that rating valuation is a complex, varied and wide-ranging function, Scottish legislation has long provided for the role of independent Assessors, who measure and record the tax base in the valuation rolls. Appointed and funded by councils, the 14 Assessors in Scotland (who along with their staff are professional surveyors) operate independently, including from central and local government, and their valuations are subject to appeal in legal proceedings up to the Court of Session.

198. The Scottish Government believes that the Assessors are best-placed to value shootings and deer forests, as they do for approximately 220,000 other non-domestic properties, many of which are complex and challenging. Whilst our approach on Part 6 will continue to be one of engagement and collaboration, the Government does not intend to advise the Assessors in any way that might compromise their independence.

199. Part 6 of the Bill is only a valuation provision. The Bill itself does not provide for taxation, although it causes a specific tax base to be returned to rating by way of other legislation. This tax base comprises shootings and deer forests, which have been statutorily identified for valuation since the mid nineteenth century. The Government is content that the terms “shootings” and “deer forests” are sufficiently understood and have not needed statutory definition to date. The Lands Tribunal for Scotland has noted that a sporting element is critical to the concept of a deer forest, and that shootings can be understood as referring to the right of occupancy of land for the limited purpose of exercising a right to kill and take game or other wild animals. Setting a new statutory definition now would risk unduly altering the long-held common understanding of the terms, and the Government believes this would be unnecessary and undesirable. We recognise that Assessors will need to distinguish sporting and non-sporting deer culling, which in some cases may not be clear, but are content that this will be manageable, as it was pre 1995.

200. The Government recognises that incremental administrative costs will bear upon those Assessors and councils with shootings and deer forests in their areas, notably for the Assessors’ one-off exercise to re-establish the tax base. Based on our continuing discussions with the Assessors, COSLA and local authority practitioners, the Government believes the cost will be incremental and sustainable. The Assessors are funded by local authorities, and local government funding

requirements are discussed in the round in annual budget negotiations between the Government and COSLA.

201. The Government has been clear that any prevailing rates relief, such as the Small Business Bonus Scheme, would apply for shootings and deer forests in the same way that they do for other non-domestic properties. Scottish councils retain all the rates revenue they collect, and this would apply for rates revenue arising from this proposal. Under current local government finance arrangements, any additional rates revenue allows general revenue grant to be reduced whilst maintaining councils' guaranteed financial settlement, thus allowing the Government to allocate equivalent budget elsewhere. Ministers have previously said that the additional rates revenue would help increase the Scottish Land Fund, but have also indicated they would be happy to consider alternative spending proposals from the Committee.

### RACCE recommendations

**(At paragraph 339)** It is essential that this Part of the Bill is not at odds with Part 8 of the Bill and that a consequence of its enforcement is not a further decline in the effective management of deer in Scotland in the public interest.

**(At paragraph 339)** The Committee is concerned that there has not been an adequate analysis of the potential impact of ending the rates exemption on deer management, conservation measures, or on the environment more generally and also has not seen comprehensive evidence of any positive effects the exemption in 1995 had on deer management.

**(At paragraph 340)** The Committee also believes it will be challenging for the assessors to decide whether deer have been killed for sport or for land management and conservation reasons.

**(At paragraph 340)** Should this Part of the Bill remain, the Committee recommends that the Scottish Government amends the Bill at Stage 2 to clarify that the rates will not apply (or that up to 100% rates relief will be available) to those who can demonstrate they are managing deer effectively and in the public interest.

202. As with all types of property, the Assessors will need to establish a valuation methodology (these are often published as 'practice notes'). Before the exemption, the comparative principle had been adopted, whereby for each property the rolling average of the annual volume of game killed was identified, and species-dependant rates then applied (e.g. per brace of grouse). Relevant factors were taken into account, such as allowances for terrain or compliance with Red Deer Commission guidance. This methodology was contested by some stakeholders at the time, although upheld in appeal hearings. However, the Government recognises there is now a positive opportunity to look at this afresh, to ensure a fit-for-purpose approach to valuation, and is therefore encouraged that early discussions between the Assessors and the sector have already commenced.

203. The Government would reiterate the view that valuation methodology is for the Assessors to decide, as is the case for all other rateable properties. The Government does not think it necessary or desirable to legislate for valuation

methodology here. Ministers can, by Order, prescribe valuation or valuation methodology for subjects they specify, if such a need were to arise.

204. The Government recognises the potential conflict suggested to the Committee by some between the re-introduced rates liability and the deer management objectives, but considers this to be manageable. Although fiscal objectives may potentially conflict with policy objectives for a variety of sectors, this does not necessarily mean that tax should not be levied. The Government believe rates bills will be sustainable in respect of deer management, as they were pre 1995, and that there are better ways of targeting support for deer management (such as Scottish Rural Development Programme funding) than a blanket rates exemption.

205. Officials have been discussing with stakeholders the case for establishing a new rates relief, to promote positive deer management, and continue to be open to consider detailed propositions. However, any new relief would need to be practicable and be designed to improve outcomes.

206. As stated above, the Government will provide further material to support Parliament's consideration of this part of the Bill in time for Stage 2. The Government will continue to listen and work collaboratively with stakeholders throughout Bill scrutiny and then on implementation at the 2017 revaluation to secure fair and workable rating arrangements.

## **Part 7 – Common Good Land**

207. No specific recommendations are made in relation to Part 7 of the Bill, and the Scottish Government welcomes this part of the report.

## **Part 8 – Deer management**

### RACCE recommendation

**(At paragraph 361)** Consideration must therefore be given to strengthening the approach taken in the Bill to ensure that no further time is wasted, and damage caused (including making it less likely that Scotland will achieve its 2020 biodiversity targets), by the lack of, or by ineffective, deer management.

### Scottish Government response

208. We share the Committee's wish to see urgent progress towards sustainable deer management across Scotland. We have agreed a process with the RACCE Committee, and with the deer sector, whereby the latter has until 2016 to bring about a step change in delivery of the public interest in deer management. The position will be reviewed and all are aware that if the position remains unsatisfactory we will look to bring in a statutory management system for deer. In that event we will be able to use the additional powers in the Bill to ensure no further time is wasted or damage caused while a statutory system is being developed and put in place.

209. In this respect the powers in the Bill are interim measures. They are not intended to be the first elements of a statutory system, but rather to be useful additional measures that will work in a complementary fashion with the existing powers available to SNH.

210. We have the option to commence these powers at any time after the Bill has completed its passage through Parliament, and if during the course of 2016, it becomes apparent from emerging findings from the review that it would be helpful to commence the new powers sooner than we had anticipated, then we will do so.

### RACCE recommendation

**(At paragraph 369)** The Committee was clear in its 2014 report that if the 2016 review finds that real and sufficient progress has not been made, then the Government must move quickly to replace the failing voluntary system with further statutory measures. Given the evidence the Committee gathered during Stage 1 it is imperative that the Scottish Government and SNH ensures that a full review takes place and is published in 2016, and within timescales which enable the Scottish Government to be able to take action by the end of that year.

### Scottish Government response

211. We are absolutely committed to conducting the Review in the course of 2016 and to giving urgent consideration to its findings. But the implementation of that review is likely to be to a longer timescale and that is why we have the provisions in the Bill that can serve as stopgap should it become apparent that the voluntary

measures are failing and a fuller statutory deer management system may be necessary to secure the public interest.

212. It would also be important that the issue is considered carefully and that appropriate consultation takes place on any new proposals. We anticipate that there would be significant legal issues to be addressed and conducting a thorough evaluation involving all key stakeholders, finalising and implementing those recommendations would be a challenging exercise which would take time to get right.

### RACCE recommendation

**(At paragraph 370)** In addition to the measures proposed in the Bill, the Committee recommends that the Scottish Government gives consideration to amending the Bill to make the following statutory changes as proposed by the Land Reform Review Group, which could also be enacted quickly, following the conclusion of the 2016 review—

1. enabling SNH to set cull targets for each Deer Management Group area;
2. requiring landowners to apply to SNH for a licence to cull deer;
3. enabling SNH to, in certain circumstances, take over culling responsibility, either by carrying out the cull itself or allocating it to the local Deer Management Group or other suitably qualified persons.

### Scottish Government response

213. The LRRG recommendations were given careful consideration in developing the Bill provisions. We believe that the measures in the Bill on deer management would be more effective in supporting deer management, than those put forward by the LRRG.

214. The power for SNH to require a deer management plan as set out in the Bill is considered to be more effective than giving SNH the power to impose cull targets. Simply setting a cull target without information from the Deer Management Group (DMG) would be of limited value, and it would also allow DMGs to absolve themselves of responsibility for deer management planning.

215. LRRG also recommended that landowners be required to apply for a licence from SNH before they can cull deer. The current emphasis is on trying to encourage landowners to cull deer in certain areas and making the current voluntary system deliver the public interest, pending the outcome of the 2016 Review.

216. Intervention powers under the Deer (Scotland) Act 1996 already allow SNH to impose a compulsory deer control scheme and, where the work is not carried out, to do so themselves, or to employ contractors, and charge the occupier with the cost of carrying out those deer control measures.



RACCE recommendation

**(At paragraph 373)** Deer management challenges in the Lowlands are clearly often very different from those in the Highlands, however, there are fears that the lowland deer situation could be as bad as that faced in some parts of the Highlands. The significant problems in many parts of Lowland Scotland therefore require specific consideration in the upcoming review.

Scottish Government response

217. Ministers recognise that different approaches are required in the management of deer in lowland areas compared with that in the uplands. The 2016 Review will consider the particular issues related to the management of deer in lowland areas.

218. This difference of approach is reflected in Scotland's wild deer strategy, Wild Deer: a National Approach and in the WDNA Action plan 2015-2018 which recognises that roe deer in lowland areas have different impacts from red deer. Differences in levels of woodland cover in the lowlands, the different behaviour of deer species (red deer are herding animals, roe deer are more territorial), and differences in land holding patterns, mean that a different approach is required. This means that the need for collaboration can be less in lowland areas and that collaborative management structures developed for the uplands should not necessarily be adopted without adaptation in the lowlands. Nevertheless, we are committed to supporting the evolution of lowland deer groups

RACCE recommendation

**(At paragraph 374)** – There is an urgent need for better Lowland deer group structures; greatly improved collaboration between land owners and managers; more proactive positive engagement by local authorities and public agencies; and the establishment of deer larders to help with the processing and marketing of venison products. The lack of robust data on deer numbers, densities and impacts in the Lowlands must also be addressed. The Committee recommends that the Scottish Government seeks to address these issues as a matter of urgency, and also ensures that they are taken into account when setting the remit for the 2016 review.

Scottish Government response

219. The 2016 review will include consideration of lowland deer issues.

**Better Group Structures**

220. The evolving local groups in the lowlands are not directly comparable to the well-established DMGs in the uplands. These Lowland groups are not Deer Management Groups.

221. There are ten Lowland deer groups. Their memberships have been involved in activities such as reducing deer impacts on woodlands and on agriculture and control of the non-native Sika species, combined with recreational stalking.

222. The structure of Lowland deer groups is notably different to that of upland DMGs. The fragmented pattern of land ownership and occupation in the Lowlands means that membership varies but tends to be incomplete. Membership has traditionally been focused on deer stalkers rather than on owners or managers and therefore it is more difficult for these Lowland deer groups to deliver public interests or compliance with the Deer code as it is not always within their gift to do so.

223. SNH support is focused on developing coverage and membership and on maintaining momentum and trying to mediate between different management objectives. SNH, Forestry Commission Scotland (FCS) and Transport Scotland provide funding to support the work of the Lowland Deer Network Scotland (LDNS). In conjunction with FCS and Transport Scotland, SNH is focusing on communication of key messages aimed at better engagement with lowland land managers, particularly in the agricultural sector. The “Deer on your door step” initiative aims to improve knowledge of lowland deer management issues through community engagement. SNH also plans to support the delivery of training and skills through events akin to SNH Best Practice Demonstration Events.

224. The development of suitable approaches in lowland deer management is a key outcome of the 2020 wild deer strategy route map and as a part of this SNH and partner agencies will focus on Local Authority engagement and development of a pilot project to gain understanding of the impacts of deer in the lowland context on the public interests, in order to identify priority areas.

225. SNH is seeking to draw on the experience in assessing and managing for the public interest that is being developed in the upland DMGs to adapt and apply that knowledge where it is appropriate in the Lowland context.

### **Deer Larders**

226. SNH and Forestry Enterprise Scotland (FES) are actively involved with Scottish Quality Wild Venison (SQWV) which provides quality assurance of the highest standards in venison production. Historically the focus of SQWV have been more applicable to open range red deer stalking estates. This is now changing and standards are being developed which can be applied to low ground stalkers who are supplying smaller quantities of venison.

227. Through Wild Deer Best Practice training events individual stalkers in the low ground have increased their skills and understand the simple infrastructural changes they can make to ensure hygiene standards. Larder sharing is used by a number of syndicates and at times through FES larders. An initiative to be developed through the LDNS will investigate how current SRDP/LEADER funding could be used to support the construction of shared larders for groups of stalkers.

## Lowland Deer Data

228. Lowland deer are highly mobile animals, living in woodland, and obtaining an accurate estimate of populations is complex and costly. This has led to the use of indirect survey methods e.g. dung counting. SNH Counting techniques also includes thermal imaging counts during the winter in a rolling programme across the low ground. This programme is targeted at areas where complaints have arisen from damage to gardens, where there may be an increased deer-vehicle collision (DVC) risk or there are increasing impacts in woodland. Furthermore, SNH will continue to support DVC reporting which provides an index of any relative change in deer movements or numbers.

229. The most recent population estimates for Scotland suggest overall numbers of between 360,000-400,000 red deer, 200,000-350,000 roe deer, 25,000 sika deer and an estimated 2,000 fallow deer. All four species are found in the Lowlands, although roe deer predominate.

230. For those land managers who are taking forward certain woodland management works, prevalent through large parts of the lowlands and funded under the SRDP, then data gathering and deer management planning are an integral part of these options. Grant aid provides support to owners or occupiers of forested land to obtain the data they need to formulate a robust Deer Management Plan. These plans will help them control deer populations in order to secure the regeneration of various tree species. This grant is for the work required to carry out the population survey and baseline damage assessment at a landscape scale.

### RACCE recommendation

<p><b>(At Paragraph 375)</b> The Committee also recommends that the Scottish Government considers what, if any, role the new Scottish Land Commission could have in providing leadership on Lowland deer management issues.</p>
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### Scottish Government response

231. Scottish Natural Heritage (SNH) have a statutory duty to provide advice to Ministers on the management of wild deer.

232. In terms of the role of the Land Commissioners going forward, it will be for them, when appointed, to determine their own programme of work in accordance with the Bill's provisions.

### RACCE recommendations

**(At paragraph 389)** The Committee discussed, at length, the current powers SNH has to enforce section 7 and section 8 orders in situations where deer management is consistently failing, in its inquiry in 2013-14. It was noted then, and it remains the case, that the section 8 powers have never been used. The Committee remains concerned about whether these orders are usable within appropriate and practical timescales and asks the Scottish Government to consider whether amendment is required to these powers to allow SNH to issue orders on the basis of only one assessment of damage.

**(At paragraph 390)** However, the Committee supports the substantial increase in the level of fines for non-compliance with a section 8 order, and hopes that this may increase the weight carried by either the threat, or use, of a section 8 order.

### Scottish Government response

233. We are confident that section 7 and 8 orders under the Deer Act are useable within appropriate and practical timescales.

234. The legislation requires that SNH be satisfied that deer are causing damage and that action is necessary before proceeding with a deer control scheme. There may well be circumstances whereby a single assessment of damage will be sufficient to progress to using compulsory measures if necessary, and that the purpose of these control schemes would be to prevent further damage.

### RACCE recommendation

**(At paragraph 391)** The Committee asks the Scottish Government to clarify how the fine would be appropriately targeted and then apportioned between the liable members of a deer management group subject to a section 8 order, and also who would pay the fine in areas where no deer management group was in existence.

### Scottish Government response

235. The requirements of a section 8 control scheme are placed on owners and occupiers. In terms of section 13, any person who fails to comply with any requirement imposed by a control scheme is guilty of an offence and so the penalties would be imposed on those individuals separately. A single penalty would not therefore be apportioned between them.

## **Part 9 – Access rights**

### *RACCE recommendation*

**(At paragraph 399)** The Committee has no objections or concerns regarding this part of the Bill, but recommends that the Scottish Government considers the merits of expanding the role of Local Access Forums to allow them to deal with minor access rights disputes.

### *Scottish Government response*

236. The Scottish Government welcomes the fact that the Committee has no objections or concerns regarding Part 9. In terms of the recommendation that consideration is given to the merits of expanding the role of Local Access Forums to allow them to deal with minor access rights disputes, it may be helpful to provide some background information. Part 1 of the Land Reform (Scotland) Act 2003 requires each access authority to set up at least one Local Access Forum (LAF) to advise it, and any other person or body who asks for advice, on issues that arise in relation to the management of outdoor access.

237. Although composed mostly of volunteers, LAFs are statutory bodies with statutory functions as set out in the 2003 Act. These functions already include offering assistance to help resolve access disputes.

238. We know from experience and annual monitoring carried out by the Scottish Government that LAFs differ in their membership and the range of work undertaken. In their early days, LAFs played a key part in advising over the original core paths plan for their area.

239. Expanding LAFs' role into that of a formal first instance decision maker on local disputes would need careful consideration in the future. Any expansion of the role would need to take account of a range of factors, for example how LAFs vary in terms of their experience and capacity, and the views of LAFs themselves.

240. If LAFs were to become the formal first instance decision maker, we anticipate that LAF members would need appropriate training.

## **Part 10 - Agricultural holdings**

### *RACCE recommendation*

**(At paragraph 415)** The Scottish Government must demonstrate how the Bill can and will deliver improved security and conditions for investment for existing tenants, as well as also delivering the environment to create new tenancies for younger people and new entrants, whilst protecting the rights of landlords.

### *Scottish Government response*

241. Part 10 of the Bill has been designed as a package of measures to help deliver all three policy aims.

242. Provisions aimed at improving current tenants' security and investment include:

- the creation of an amnesty period in which improvements tenants have made that are not formally documented can be declared and confirmed as eligible for compensation at waygo, thereby giving tenants greater clarity on the level of compensation they will ultimately receive (Chapter 6);
- broadening the assignation and succession criteria to increase a tenant's options for passing on their tenancy (Chapter 5); and
- introducing a process whereby 1991 Act tenants may assign their tenancy, giving tenants the security to retire or leave their tenancy with a fair return on their investments, even in circumstances where they are not able to pass the tenancy to a relative (Chapter 1).

243. Measures designed to support new and progressing farmers include:

- the introduction of modern limited duration tenancies with a break clause at the five year point for new entrants, encouraging them to take up farming without tying them into a long-term commitment (Chapter 1); and
- providing that a landlord may not object to a tenant on the grounds of lack of skill or experience if the tenant is undertaking relevant training (Chapter 5).

244. We will also be bringing forward amendments at Stage 2 to further expand the opportunities for new entrants and those progressing in the industry. The provisions with which we propose to replace the current section s79 (explained in greater detail later in this response) will be targeted at increasing access to land for newer and less established farmers, by requiring outgoing tenants using this process to assign their tenancies to farmers in one of these groups.

245. All of the Bill's provisions have been informed by the need to ensure an appropriate balance between landlords' and tenants' rights when considered against the wider public interest.. As a package, Part 10 is also intended to provide greater transparency (for example, through the rent review process at Chapter 5) and

flexibility (for example, through the creation of MLDTs at Chapter 1) for both parties, to their mutual benefit. Satisfying human rights is about making sure any impact on parties is proportionate and fair. We believe we have brought forward provisions that deliver balance and fairness, meet the necessary public interests and comply with human rights.

246. As we have indicated elsewhere in this response, the Scottish Government will continue to monitor the size and health of the tenanted sector, which will help us to monitor the impact of the Bill over time, and we will provide the RACCE Committee with further information on that work.

247. However, legislation alone cannot secure a vibrant tenanted sector. Individual tenants and landlords also have a crucial role to play, as a great number already do, in creating an environment in which tenant farming can flourish. Ensuring that the Bill's provisions are as effective as possible in delivering our desired outcomes will require constructive engagement from parties across the sector and a willingness to focus on the future opportunities instead of looking into the past.

#### RACCE recommendation

**(At paragraph 417)** It is also vital that the Scottish Government clarifies how, and over what time period, it will measure the impacts of the measures in the Bill, if and when enacted, so that further steps can be taken if the provisions are not proving to be successful.

#### Scottish Government response

248. The Scottish Government agrees that it is important to be able to measure the impact of the changes the Bill makes to agricultural holdings in the future. We already collect a large amount of data on the tenanted sector with which to monitor its size and health, and we will continue to publish these results on an annual basis.

249. Over the past few years the Scottish Government has undertaken a large programme of research on agricultural holdings to develop an evidence base which has informed the Land Reform (Scotland) Bill. We recognise that further research, which will complement the range of statistics we collect on the tenanted sector, will be required to examine the impact of the legislative changes brought forward in the Bill. We are committed to undertaking this further research, although we recognise that it may be a number of years before some of the effects of the legislation are likely to be evident. We will provide further information to the RACCE Committee on this area of work in due course.

RACCE recommendation

**(At paragraph 435)** The Committee recommends that the Government amends the Bill at Stage 2 to introduce a new modern repairing lease, which would offer more benefits and flexibility to both landlords and tenants, and be likely to help deliver the Bill's objectives."

Scottish Government response

250. We have noted the widespread support for the introduction of a repairing lease, as recommended by the Agricultural Holdings Legislation Review Group in its final report. We are preparing to bring forward Stage 2 amendments to provide for a new repairing lease agricultural tenancy, and will provide the RACCE Committee with further details on these proposals as soon as possible.

RACCE recommendation

**(At paragraph 436)** In order to ensure that the data held on tenant farming in Scotland is as up to date and robust as possible the Committee recommends that the Scottish Government clarifies the amount of agricultural land in Scotland subject to contract and/or share farming arrangements.

Scottish Government response

251. As part of our data-gathering on the tenanted farming sector we are already considering how best to address the difficulties around gathering information on the amount of agricultural land in Scotland subject to contract and/or share farming arrangements. We are aware of the need for the information gathered to cover a range of contractual arrangements, including short term grazing arrangements. Moving forward, as part of our future data requirements for monitoring the success of the Bill we will be working with the industry to consider how best to capture this data.

RACCE recommendation

**(At paragraph 437)** The Committee was encouraged to hear about the model being followed at the Falkland Centre for Stewardship of seeking to let small plots to new entrants and smaller scale rural businesses and asks the Scottish Government to examine this example with a view to determining the best way of encouraging and enabling such letting arrangements."

Scottish Government response

252. Overcoming barriers to entry and attracting new entrants to farming is vital for the future of the industry as it drives innovation and best practice, and improves efficiencies. As the Committee will be aware, Forest Enterprise Scotland (FES) has 9 tenanted starter farmers, and an independent group which is expected to report



early in the new year is currently examining ways of increasing the number of starter farms on publicly owned land.

253. Creating opportunities for new entrants is something that the Scottish Government is fully committed to. As such, we are very interested in the work of the Falkland Centre for Stewardship and Government officials have been on a site visit there.

#### RACCE recommendations

**(At paragraph 450)** “The Committee is concerned, especially as there may be ECHR issues that need to be considered, that so little detail was provided on this issue [section 79] in the Bill, or during the Stage 1 process. The Committee therefore caveats all of its comments on this proposal with the need to see more detail from the Scottish Government before the end of Stage 2, so that a thorough assessment of the proposals – including any ECHR implications to which they may give rise - can be carried out.

**(At paragraph 451)** The Committee endorses the serious concerns raised by the DPLR Committee and supports its calls for the regulations in section 79 to be subject to an enhanced form of affirmative procedure.

#### Scottish Government response

254. We have written to both the RACCE and DPLR Committees confirming that we will be bringing forward Stage 2 amendments to replace the regulation-making powers currently at section 79 of the Bill with full provisions. We have also provided the Committees with a detailed note on our proposed policy.

255. The new policy will both allow for 1991 Act tenancies to be converted to MLDTs (with the agreement of the tenant and landlord), and will create a process under which secure 1991 Act tenants can assign their tenancy to a new entrant or to a progressing farmer.

256. The key features distinguishing this proposed assignment process from section 79 in its present form are that:

- The tenancy would remain a 1991 Act tenancy, rather than being converted to an MLDT. This has the advantage that the lease terms and conditions would be maintained. (Though as stated above, there will still be the option for a 1991 tenancy to be converted to an MLDT where both parties are in agreement.)
- Under the process there would effectively be two stages to departure. This would mean that when a tenant gives notice the tenant is not committing themselves to leaving the tenancy: an independent valuation is provided

which the tenant has the opportunity to consider before making a final decision to accept. The two-stage process is designed to be transparent and fair to both parties.

- Once the tenant had confirmed their desire to depart, the landlord would have the opportunity to buy out the tenancy as an alternative to it being assigned.
- The outgoing tenant would be able to assign their tenancy but only to a new entrant or to a farmer progressing in the industry, thereby helping to target those we wish to expand access to tenancies for.

257. The Scottish Government believes that this process will more closely meet the objectives of supporting outgoing tenants to retire with security and dignity while increasing routes into farming for newer entrants, and ensuring an appropriate balance between tenants' and landlords' rights, when considered against the wider public interest.

258. This new policy is designed to sit alongside the assignation and succession provisions in Chapter 5 of Part 10: the two are tailored to distinct sets of circumstances, and targeted to support different groups. Chapter 5 modernises the categories of relative to whom a tenant can pass on their tenancy, increasing the number of tenants who will have an eligible successor. This will both make it easier for a tenant to retire and remove obstacles to passing on tenancies to relatives able to farm the land more productively.

259. However, even after broadening the succession criteria there will be a significant number of farmers who do not have an eligible relative to pass their tenancy on to, or for whom family succession is not the best approach, and who therefore may be disincentivised from retiring. The new assignation process described above would provide such tenants with a route out of farming, while expanding opportunities for new or progressing farmers to access land.

#### RACCE comment

**(At paragraphs 461 and 463)** It is important to keep in mind the policy intention behind this proposal, which is that tenants have the first right to buy the subjects of their 1991 Act tenancies when that land is put up for sale. The Committee agrees with seeking to reduce or remove any barriers which are currently preventing tenants from engaging in that process, and is of the view that the need to register is one such barrier. [...] The Committee therefore supports the removal of the statutory requirement for tenants to register for the pre-emptive right to buy.

#### Scottish Government response

260. We welcome the Committee's support – and indeed the wide support from stakeholders – for the removal of the requirement for tenants to register for the pre-emptive right to buy their holding. This will ensure that all 1991 Act tenants have an automatic pre-emptive right to buy should the landlord intend to sell their holding.

RACCE recommendation

**(At paragraph 475)** The details of the tenants' bad husbandry provisions require updating to ensure they are fully fit for purpose in the 21st century and the Committee recommends that the Scottish Government ensures that this is addressed by the new Tenant Farming Commissioner.

Scottish Government response

261. The bad husbandry provisions are contained in the Agriculture (Scotland) Act 1948. Farming has changed considerably since this time and the Scottish Government fully accepts and endorses stakeholders' views that the bad husbandry provisions defined in the 1948 Act are in need of updating. We are happy to consider this as a potential role for the TFC to oversee, in conjunction with the main industry bodies, and have asked the Independent Tenant Farming Advisor to look into this initially.

RACCE recommendation

**(At paragraph 476)** The Committee also recommends that the Scottish Government and/or Tenant Farming Commissioner gives consideration to ensuring that there is a statutory requirement to re-let land on the same basis as the existing lease in circumstances where tenancies have been ended due to a tenant being in breach of the terms of their lease.

Scottish Government response

262. Dictating what landlords do with their land when a tenancy has ended due to a breach by the tenant would be a restriction on the landlord's use of the landlord's property. Work would be required to study what impact that solution would be likely to have in practice (on landlords, tenants, and the sector) and an evidence base around that, as well as whether it would be ECHR compatible. That would involve, among other things, consideration of whether less intrusive solutions could be used which would not unacceptably compromise the achievement of the aim. The point the Committee makes in relation to Chapter 5 of Part 10, at paragraphs 521 and 524 of their report, is equally valid here.

263. The Scottish Government agrees that it is important that the ECHR implications of amendments are fully considered and understood. The Committee's proposal at paragraph 476 is therefore something we would need to explore in more detail, and it would require more time than is available to give the proposal the due consideration and detailed scrutiny it would need before Stage 2.

RACCE recommendation

**(At paragraph 477)** “The Committee asks the Scottish Government to clarify who would buy the land in situations of last resort, where the tenant did not want to buy the land, and whether the sale to a third party provisions outlined in new section 38L are sufficient to deal with such circumstances.”

Scottish Government response

264. In the case of enforced sale, when the tenant farmer does not want to buy the holding, the provisions within section 38L and 38M set out the process to be followed when the land requires to be sold to a third party on the open market. Section 38M provides a regulation-making power for Scottish Ministers to set out the process that will be followed when the land is sold on the open market, and the persons to whom the land cannot be sold. We consider that these regulations will provide transparency and fairness for all concerned.

RACCE recommendation

**(At paragraph 478)** The Committee notes the differing views on the clawback provisions contained in new section 38N and asks the Scottish Government to reflect on this evidence to reconsider if the provisions are appropriately balanced between the rights of landlords and tenants.

Scottish Government response

265. The Scottish Government is considering all of the evidence provided by stakeholders on the clawback provisions contained within section 38N and will reflect on the points raised prior to Stage 2 of the Bill.

RACCE recommendation

**(At paragraph 497)** [...] the Committee recommends that the Scottish Government publishes accessible, transparent information on how the productive capacity of a holding would be calculated no later than the end of Stage 2. The Committee also recommends, should this Chapter remain in the Bill as it stands, that the regulations provided for in the Bill be subject to an enhanced form of the affirmative, rather than the negative, Parliamentary procedure, to ensure greater Parliamentary scrutiny.

Scottish Government response

266. Officials are continuing to work closely with stakeholders to reach a workable consensus on how productive capacity will be calculated. However, due to the complexity of the process and the importance of testing the model on farms to establish as robust and practical an approach as possible, we will not be in a position to provide full details before Stage 2. It is estimated that the rent modelling will take

at least 6 months, and we re-iterate our commitment to keeping the Committee informed of any developments arising from further meetings with stakeholders.

267. We remain confident that the move to calculating a 'fair rent' based on productive capacity will result in more objective and transparent rent reviews. However, it is vital that we do not rush this modelling work and that time is taken to practically test the new approach on different farming sectors.

268. The Scottish Government has listened carefully to the concerns of both this Committee and the DPLR Committee and in recognition of the centrality of productive capacity and standard labour requirements to the fair rent calculation, we are preparing Stage 2 amendments to increase the level of parliamentary scrutiny required for the exercise of the regulation-making powers in these provisions.

#### RACCE recommendation

**(At paragraph 498)** Whilst broadly supporting the move to rent calculations based on the productive capacity of a holding, it is essential that such a move does not create further conflicts between landlords and tenants, leading to more cases ending up in the Land Court. The Committee therefore recommends that the Scottish Government considers what role the Tenant Farming Commissioner could play in implementing and then monitoring any new rent review process.

#### Scottish Government response

269. The Scottish Government believes that the new rent provisions will lead to a more objective and transparent method of determining rents and as such will lead to fewer disputes. The Tenant Farming Commissioner (TFC) will devise codes of practice on a number of issues, including on the new rent review process, which all parties to a rent review will be expected to adhere to. The TFC will have the power to investigate any alleged breaches of the code. However, it is not envisaged at this time that the TFC's role will extend as far as implementing and monitoring the rent review process.

#### RACCE recommendation

**(At paragraph 524)** The Committee recommends that the Scottish Government, and any member considering amendments to this chapter should carefully consider all of the evidence given to the Committee during Stage 1, and proceed with caution, keeping the policy objectives, desired outcomes and rights of both tenants and landlords, and the key human rights issues, firmly in mind."

Scottish Government response

270. The Scottish Government strongly supports the need to continue to keep the policy aims, desired outcomes, the rights of tenant farmers and their landlords and ECHR compliance at the forefront of any amendments brought forward during the progress of the Bill through Parliament. Any amendments brought forward by the Scottish Government will have been carefully considered against these central objectives.

RACCE recommendation

**(At paragraph 534)** The Committee supports the provision of an amnesty for tenant's improvements and supports the consensus between many landlords and tenants that the Scottish Government should amend the Bill to change the amnesty period from two years to three years. No cut-off period should be established for improvements.

Scottish Government response

271. We have been pleased to note the widespread support for the principle of an amnesty. In light of both the Committee's and stakeholders' views, we are proposing to extend the amnesty period to three years at Stage 2. No cut-off period is being implemented in the Bill.

RACCE recommendation

**(At paragraph 535)** The Committee recommends that the Scottish Government continues to work with stakeholders to agree an updated list of eligible improvements. Consideration should be given to including areas such as housing, animal welfare and health and safety in the updated list.

Scottish Government response

272. The Scottish Government has asked the interim Independent Tenant Farming Advisor to work with the tenant farming industry to develop an updated list of eligible improvements. This will include, where necessary, any improvements needed to meet legal requirements, such as animal welfare, health and safety.

RACCE recommendation

**(At paragraph 536)** During its evidence-taking, the Committee sought views on a proposed new two-stage process for agreeing waygo, the first stage being the agreement of eligible improvements and compensation details, and the second stage being the serving of the notice to quit, only once there is clarity on what the waygo arrangements will be. There was widespread support from both tenants and landlords for this process being established and the Committee recommends that the Scottish Government brings forward amendments to the Bill at Stage 2 in this regard.

Scottish Government response

273. In its final report, the Agricultural Holdings Legislation Review Group did not recommend wholesale changes to the waygo process. However, we have listened carefully to the case some stakeholders have made for a two-stage waygo process in Stage 1 evidence. This has highlighted two key issues with the current waygo process: the fact that many tenants do not have comprehensive records of the improvements they have made, and the fact that tenants commit to quitting their tenancies without knowing what compensation they will be awarded at waygo.

274. The Bill's provisions on amnesty, contained in Chapter 6 of Part 10, will help to create greater certainty on both of these issues. Once enacted they will give tenants and landlords clarity on which improvements are to be included when determining waygo compensation, which will in turn mean that tenants have a more informed sense of the level of compensation they are likely to receive.

275. Furthermore, the amendments we will be bringing forward to replace section 79 of the Bill (see above) will create a process for the assignment of 1991 Act tenancies that includes a two-stage departure process. Under this approach, the tenant will receive an independent valuation of the sum the tenant would be awarded at the end of their tenancy, which they will be able to consider with no commitment to depart the tenancy.

276. The Scottish Government will keep how this operates in practice under review and is open to considering the wider implementation of a two- waygo process in future if it is supported by the industry.

RACCE recommendation

**(At paragraph 537)** The Committee recommends that the Scottish Government considers all of the evidence regarding waygo arrangements and gives further thought to any other waygo issues that the Bill could help address.”

Scottish Government response

As noted above, the Bill's amnesty provisions are intended to help address some of the key issues with waygo at present. We are also open to streamlining the waygo process, and to discussing with stakeholders how best to bring forward an improved waygo process in future.

RACCE comment

**(At paragraph 542)** The Committee was delighted that there was consensus across stakeholders regarding this provision [‘improvements by landlord’] and is also supportive of Chapter 7.

Scottish Government response

277. The Scottish Government is, like the Committee, pleased to note the wide support for Chapter 7, which will enable tenants to object or refuse consent to an improvement by the landlord if the improvement is not necessary in order to farm the holding in accordance with the rules of good husbandry. Landlords already have the right to object or refuse consent to tenants’ improvements, so the provisions in this chapter will create a fairer balance between the rights of landlords and tenants.

RACCE recommendation

**(At Paragraph 547)** The Committee wants to see a system of mediation and/or arbitration established, perhaps in conjunction with both the Scottish Arbitration Service and the new Tenant Farming Commissioner, in a bid to try and resolve disputes before the last resort recourse to the Land Court, and recommends that the Scottish Government considers amending the Bill to give effect to that aim.

Scottish Government response

278. Implementing this recommendation would require amending not only the Bill but also legislation more widely, potentially including the Arbitration (Scotland) Act 2010. This is something that we would need time to consult appropriately on.

279. As the Committee will appreciate, our priority for Stage 2 amendments is to ensure that the provisions already in the Bill (and those amendments already in preparation) are robust, and therefore we do not propose to develop what would be significant amendments to create a compulsory arbitration system in the Bill. However, the establishment of the role of the Tenant Farming Commissioner, and the work they will be carrying out to promote good practice and improve relations within the sector, is designed to help reduce the number and intensity of disputes between parties. In turn this is likely to lead to a reduction in the number of cases referred to the Land Court.



### RACCE recommendation

**(At paragraph 554)** Small landholders need a legislative solution to this problem [being caught in a ‘legal limbo, where there is no legislative route to prevent holdings falling into disrepair when current landholders are no longer able to maintain the holding’] and the Committee therefore recommends that the Scottish Government updates it on the progress of its consideration of these issues before the end of Stage 2 and considers whether amendments to support small landholders could be made to the Bill. If redress is not possible or intended via this Bill, the Committee asks the Scottish Government to clarify with urgency how it will achieve this, and within what defined timescale.

### Scottish Government response

280. We take the situation of small landholders seriously, and are committed to taking action to support them. Fully exploring the issues facing them, and how best to address them, will be a longer exercise than the Bill timescales allow for and we will be updating the RACCE Committee shortly on how we plan to take forward proposals in this area.

### RACCE recommendation

**(At paragraph 557)** It is disgraceful that in the 21st century some tenants are still living in farm housing that, in the private sector, would not be considered fit for human habitation. In pursuit of basic human rights and in order that tenant farming is seen as an attractive career and lifestyle option this situation must be addressed and the condition of housing must be brought up to private and domestic sector standards thus giving tenants parity with domestic housing leases. The Committee urges the Scottish Government to bring forward amendments at Stage 2 to address this issue.

### Scottish Government response

281. We are acutely aware that some tenant farming housing is in unacceptably poor condition, and that action is needed to improve the situation. This is a complex issue, as housing which forms part of an agricultural tenancy is treated as fixed equipment on the holding and therefore taken into account through fixed equipment references in agricultural holdings legislation. As the tenant farming houses interface with a range of legislation and policy areas, amendments to this Bill would not be the appropriate means to address this issue, given the amount of preparatory work needed to deliver robust and sustainable solutions. This is why we will be working with colleagues in housing and planning to develop plans to take this multifaceted area of work forward out with this Bill. We will provide information to the Committee separately on our progress in this area, given its importance for tenant farming families.

RACCE recommendation

**(At paragraph 558)** The Committee recommends that the Scottish Government, and the new Tenant Farming Commissioner, if established, urgently considers both the issues of provision of affordable quality housing for retiring tenants, and the poor conditions of some farm accommodation provided for current tenants.

Scottish Government response

282. The Scottish Government takes this issue seriously and accordingly we will be working with colleagues in housing and planning to develop plans to bring forward robust and sustainable solutions. As part of this, we will ensure the Tenant Farming Commissioner (TFC) is involved in those developments once the TFC is appointed.

RACCE recommendation

**(At paragraph 561)** The Committee, with two exceptions, accepts that the issue of the establishment of a right to buy for 1991 Act tenants is an ongoing one, and also accepts that there may be ECHR issues to be considered within that debate. However, this issue needs to be resolved and therefore the Committee recommends that the Scottish Government explores options for introducing such a right to buy in certain circumstances for 1991 Act tenancies only.

Scottish Government response

283. We appreciate that the Committee has heard from a range of stakeholders with different and conflicting views on issues around Right to Buy. These issues were fully considered during the Agricultural Holding Legislation Review and in discussions with stakeholders at this time. The Review Group clearly ruled out an Absolute Right to Buy for tenant farmers but supported a Right to Buy for certain tenant farmers in certain circumstances.

284. The Bill therefore delivers their proposals to enable a 1991 Act tenant to apply to the Land Court to order the sale of the holding where a landlord is in breach of their obligations and as a result the tenant cannot farm properly. Where the Land Court orders the sale, this would trigger the tenant's pre-emptive right to buy their holding.

285. The Bill also further simplifies the process for 1991 Act tenants to buy the land they are farming, by removing the requirement to register their interest so that all 1991 Act tenants have an automatic pre-emptive right to buy their holding should the landlord intend to sell it.

286. In addition, as indicated above, we will be bringing forward new provisions to allow for 1991 Act tenancies to be converted to MLDTs (with the agreement of the tenant and landlord), and the creation of a process under which 1991 Act tenants can assign their tenancy to a new entrant or to a progressing farmer.

287. At this time the Scottish Government considers that this combination of measures will effectively address the real issues faced by tenant farmers in Scotland.

## Other issues

### Rural Housing

#### RACCE recommendation

**(At paragraph 573)** The Committee would also welcome further consideration by, and comment from, the Scottish Government regarding the list of issues set out in paragraph 567, namely:-

1. whether the SLC could take on the role of a land agency which could examine the use of public land for rural housing (and if not, whether a separate land agency is required);
2. whether Scottish Ministers should have the power to force the sale of land for public purposes such as building houses;
3. how infrastructure challenges in providing more affordable rural homes can be best overcome;
4. how the many empty homes in rural Scotland can be brought up to standard and let or sold;
5. following the experiences the Committee heard on its visit to Jura, where people were unable to build houses on crofts, if there is a role for Government in the encouragement of local authority planners to prioritise the development and erection of eco-friendly pre-fabricated rural housing where appropriate; and
6. whether there should be a planning presumption in favour of rural housing introduced in Scotland.

#### Scottish Government Response

288. The list of issues raised by the Committee is wide-ranging and involves a lot of cross-cutting policy areas. The Scottish Government acknowledges the rural housing challenges that we face, and we are working across government to address them.

289. Our housing investment programmes are available across Scotland, with investment decisions agreed and prioritised in discussion with local authorities. However, we recognise that the housing system works differently in rural Scotland in a number of critically different ways. For example,

- The nature and diversity of rural Scotland makes it challenging for RSLs and Local Authorities to deliver in more remote parts.
- Land ownership is different with rural landowners playing both a significant role in the provision of local housing for rent and controlling how land is used.
- The house-building industry is structured in a different way with much less speculative building being done in comparison to urban areas and consequently the self-build market is more significant and important than in urban Scotland.

- The second home and holiday home market impact on the housing system putting the cost of housing out with the reach of many local people.
- There are generally higher levels of empty properties.
- The structure of employment is different with high levels of part-time working, thus affecting mortgage decisions

290. That is why we have introduced pilot projects to test new approaches in rural Scotland. These include the Rural Rent to Buy pilot in the Highlands and we are about to launch a self-build pilot initiative, also in the Highlands.

291. During the year we have worked with stakeholders as part of a Rural Housing Sounding Board to better understand rural housing issues and develop solutions. Based on the recommendations of the Sounding Board we have committed in the Programme for Government to establish a new Rural Housing Fund which will be available across all of rural Scotland from 2016 for a three year period.

292. The fund will be accessible to a wide range of applicants including community groups, community development trusts, social enterprises, private landowners and private developers, amongst others allowing them to take an active role in developing housing solutions for their local communities. The fund will provide feasibility support as well as both grant and loan funding for affordable housing projects. The fund will enable the refurbishment of empty properties as well as providing support for new build development.

293. It will complement existing investment in affordable housing directed through Registered Social Landlords and Local Authorities filling gaps in provision. It will provide opportunities to test new and innovative approaches to rural housing including addressing the issues such as tackling empty homes, infrastructure issues and use of pre-fabricated housing raised by the Committee.