1. The Rural Affairs, Climate Change and Environment Committee has been considering many of the issues featured in the Land Reform (Scotland) Bill throughout this session of Parliament. One of its first pieces of work was to look at the post-legislative scrutiny commissioned by its predecessor committee in Session 3 on the Land Reform (Scotland) Act 2003. In this session the Committee has scrutinised the Scottish Government commissioned reviews of both land reform and agricultural holdings every step of the way; and has also scrutinised Bills on agricultural holdings; crofting; community empowerment and right to buy changes; and long leases. Before scrutiny of this Bill began the Committee had already heard a wide range of views on issues such as land reform, land management, community empowerment, agricultural holdings, and deer management, both formally at the Parliament in Edinburgh and informally during visits across the country. The Committee therefore began its scrutiny of the Bill with extensive background knowledge of many of the issues involved and a well-informed understanding of the problems that need to be resolved.

2. In scrutinising the Bill the Committee has continued to hear from, and engage with, as many people as possible across the country, and embarked on an extensive evidence-gathering and engagement exercise. Indeed, before the Bill had even been formally introduced the Committee travelled to Kirkwall in Orkney to listen to views on the Scottish Government’s consultation proposals. The Committee issued a call for written submissions; held public evidence sessions, including two formal meetings outside Edinburgh (in Skye and Dumfries); and visited Islay; Jura; Fife, and the Scottish Borders to meet people with direct experience of the issues dealt with in the Bill. In Jura and Dumfries the Committee held public meetings where people came along and put questions about the Bill and its potential consequences directly to members of the Committee. The Committee also engaged via social media (Twitter, YouTube and Facebook), publishing videos, photographs and other information, to maximise its engagement. This Bill will affect many people and communities across Scotland and it was therefore vital that the Committee’s scrutiny was informed by as many people as possible.
Call for Evidence

- 601 views of video

Evidence Received

- Written Evidence: 200
- Oral Evidence: 48, representing 29 organisations
- Time spent taking oral evidence at meetings: 20 hours 9 mins
- Written evidence received: 82 from individuals

Social Media Engagement

- Facebook:
  - 5 Posts
  - 17,462 Reach
  - 184 Likes
  - 29 Comments
  - 69 Shares
  - 1,702 Post-clicks

- Twitter:
  - 1,103 retweets of #landreformbill
  - 116 mentions of @SP_RuralClimate and the Land Reform Bill
3. The Committee has listened to all opinions on the Bill very carefully and gives detailed views in this report. The Committee believes that the Bill should be bold in its ambition and clear in its purpose, in order that many of the issues which have undermined the confidence and trust that people in Scotland have in the ownership, and use of land, can be settled for a long time to come. Whilst acknowledging that the Bill is part of an on-going land reform journey, it needs to deliver a rebalancing of the rights of people and property, and to tackle the current unhealthy balance of power, so that everyone in Scotland can have an improved relationship with, and connection to, the land on which they live and work.

4. The Bill could result in real progress in delivering equalities and health inequalities benefits, particularly through the parts of the Bill relating to: the establishment of a Scottish Land Commission; access to information about those in control of land; community engagement and right to buy, and agricultural holdings (in terms of both age and gender issues). The Bill should be able to create an environment where land in Scotland can be owned, managed, tenanted and enjoyed by every part of society and to the benefit of all its people.

5. Whilst the Committee supports many of the general principles of the Bill and many of the measures within it, it is clear that some parts of it are unlikely to fully deliver the ambitions of the consultation and review processes which informed it. The Committee is concerned that a number of the important provisions are to be taken forward via secondary legislation and are therefore lacking in detail at this stage. This has made scrutinising some aspects of the Bill very difficult and the Committee therefore believes that it is essential that the Scottish Government publishes more details about the likely/intended content of planned regulations before the end of Stage 2.

6. The Committee broadly supports (subject to recommended improvements) the parts of the Bill relating to: the establishment of a land rights and responsibilities statement and Scottish Land Commission (Parts 1 and 2); establishing a right to buy to further sustainable development (Part 5); the minor revisions to common good land and access rights legislation (Parts 7 and 9); and, subject to the statement made by Alex Fergusson MSP at the start of Part 10, some of the agricultural holdings provisions in Part 10 (Chapter 2: removing the need for 1991 Act tenants to register a right to buy interest; Chapter 3: forcing sale where a landlord is in breach of their lease; Chapter 6: introducing an amnesty for tenant’s improvements; and Chapter 7: tightening the rules where landlords wish to make improvements).
7. The Committee also supports the broad principles of other policy issues in the Bill, such as the need to make land ownership and control in Scotland much more transparent and accessible (Part 3); improving engagement with communities in relation to land decision-making (Part 4); and other parts of the agricultural holdings provisions in Part 10 (making the rent review process fairer and more transparent; improving confidence in the sector; creating a better environment for investment in holdings by both landlords and tenants; providing better opportunities for new entrants and younger farmers; and helping older tenants to retire more easily). However, the Committee believes that the details of the parts of the Bill which relate to these policy areas will require amendment at Stage 2 to make certain that they will deliver the radical changes needed on the ground.

8. The Committee regrets that as presently drafted Part 3 is unlikely to deliver the improved transparency about those who not only own land, but control or benefit from land, that the Scottish Government is seeking, and that the Committee and many people in Scotland want, and have a right, to see. The provisions in the Bill must be enhanced and strengthened if it is to achieve its aims and the Committee sets out several options for doing so in its report.

9. The Committee welcomes the principle of Part 4 of encouraging much improved engagement between landowners and communities. However, the Bill needs to be strengthened, preferably by using some of the detail and language contained within the Policy Memorandum, to make it clear why such engagement is being required, the circumstances and issues on which it would be reasonable to engage, and what the consequences could be for not following the guidance. It is essential that the guidance provided for in the Bill can make a real difference.

10. The Committee has significant concerns regarding Part 6 of the Bill, relating to the reintroduction of non-domestic business rates for shootings and deer forests. Whilst supporting the principle of examining taxation to ensure it is fairly applied and transparent, the Committee calls on the Scottish Government to provide a thorough, robust and evidence-based analysis of the potential economic, social and environmental impacts of ending the sporting rates exemption 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.

11. The Committee is not convinced that sufficient progress has been made to date in addressing the lack of sustainable deer management in Scotland in the public interest. The Committee believes it is therefore imperative that the Scottish Government and SNH undertake and publish a full review during 2016, and within timescales which enable the Scottish Government to be positioned to take action by the end of that year. The Committee also calls on the Scottish Government to consider amending Part 8 of the Bill to add further statutory measures that could be enacted quickly, if needed, following the conclusion of the review in 2016.
12. Although the majority of the Committee (subject to the statement made by Alex Fergusson MSP at the start of the section of this report on Part 10 of the Bill) supports many of the specific agricultural holdings measures set out in Part 10 of the Bill, and indeed many of the principles behind the measures, it questions whether the Bill can deliver all of its stated objectives of maintaining or increasing the amount of land available to let; strengthening the rights of tenants and making it easier for them to invest in their tenancies; protecting the rights of landlords; and ensuring that there is continued confidence in the sector for land to be let. The Committee also has concerns about some of the specific proposals in Part 10, such as the process of being able to convert secure 1991 Act tenancies into the new form of tenancy in Chapter 1. Whilst supporting the principle of the proposed new rent review process (set out in Chapter 4) of using the productive capacity of a holding as a factor in determining the rent, the Committee remains concerned at the lack of detail on this in the Bill despite some recent progress having been made. There is also further thought required to be given to the proposals on assignation and succession in Chapter 5 before the Committee can be satisfied that the provisions in the Bill are appropriately balanced and will achieve the stated policy intentions.

13. The majority of the Committee also acknowledges that the call for 1991 Act tenants to be given a right to buy remains live and contentious issue and therefore calls on the Scottish Government to consider options for resolving this issue, which include giving 1991 Act Tenants a right to buy in certain circumstances.

14. The Committee recognises that the Bill must be robustly scrutinised from a European Convention on Human Rights (ECHR) perspective, so that both the Scottish Government and the Scottish Parliament are as confident as possible that the whole Bill is compatible with ECHR and as protected from potential legal challenge. The Committee acknowledges that the Bill raises a number of issues connected to human rights and, in particular, to ECHR. As the Committee is still dealing with the serious consequences of the UK Supreme Court’s ruling in 2013 that one section of the Agricultural Holdings (Scotland) Act 2003 was not compatible with Article 1, Protocol 1, to the ECHR, and the subsequent steps taken by the Scottish Government to remedy that defect, the Committee spent a great deal of time at Stage 1 examining the human rights aspects of the Bill, taking a large amount of evidence on these issues.
15. The Committee is determined to ensure that a) the policy intentions of all parts of the Bill are clear; b) the Bill is compatible with ECHR and protected from challenge; and c) that measures in the Bill which may cause interference with rights protected by the ECHR pursue legitimate public interest aims, and do so in a proportionate manner, striking a fair balance between the rights of all affected parties, including communities, tenants and landowners. The Scottish Government must also ensure that Policy Memoranda accompanying bills contain as much information as possible with regards to human rights issues.

16. Finally, the Committee believes that it is essential that the Bill clearly states, in Part 1, that land is a national asset for the benefit of all the people of Scotland, and that, alongside the ECHR considerations, the Bill is firmly and explicitly set within the context of other international human rights obligations, such as the International Covenant on Economic, Social and Cultural Rights and the United Nations’ Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security.