

CALEDONIA BRIEFING No. 8

# Land Reform (Scotland) Bill

v.1.0

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## INTRODUCTION

This briefing paper provides an analysis and commentary on the Land Reform (Scotland) Bill introduced in the Scottish Parliament on 22 June 2015. It is intended to be of assistance to those wishing to respond to the consultation launched by the Rural Affairs, Climate Change and Environment Committee which closes on 14 August 2015. The Briefing is not intended to be exhaustive but merely to highlight some of the key issues arising from the Bill.

The Bill follows the Scottish Government's *A Consultation on the Future of Land Reform in Scotland* published in December 2014 which sought views on what measures the Bill should contain. That consultation, in turn was in response to the Final Report of the Land Reform Review Group (LRRG) published in May 2014.

The Bill forms only a part of a wider programme of reform in land relations in Scotland. This includes reform to succession law, compulsory purchase, housing tenure and land markets, land information and registration and governance of Crown lands. These wider processes will be looked at in future briefings.

Following the publication of the Bill by the Scottish Parliament, the Rural Affairs, Environment and Climate Change Committee has been designated the lead committee to scrutinise the Bill. It has launched an invitation for evidence to be submitted by 1700hrs on 14 August 2015. Details can be found here

[www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/90754.aspx](http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/90754.aspx)

This is Stage One of the legislative process where the Committee considers the general principles of the Bill and not the fine detail. Accordingly, evidence should focus on what the Bill is proposing to do rather than on the detail of the wording of sections (though these of course are relevant and can be cited where they are relevant to the general principles).

The Scottish Parliament has also published **Explanatory Notes** and a **Policy Memorandum** to the Bill. These are worth reading to clarify the rationale and intention behind the various parts of the Bill. The Bill and the accompanying documents can be found on the Scottish Parliament's Land Reform Bill page.

[www.scottish.parliament.uk/parliamentarybusiness/Bills/90675.aspx](http://www.scottish.parliament.uk/parliamentarybusiness/Bills/90675.aspx)

There are two further documents that I refer to in this Briefing. The first is the December 2014 Consultation on what should be included in the Bill and the second is Caledonia Briefing No. 7 that I prepared in response to it. Both can be obtained from this page

[www.andywrightman.com/hot-topics/land-reform-2014-2016](http://www.andywrightman.com/hot-topics/land-reform-2014-2016)

The Bill is in ten substantive Parts as follows.

- Part 1 Land Rights and Responsibilities Statement
- Part 2 The Scottish Land Commission
- Part 3 Information about Control of Land
- Part 4 Engaging Communities in Decisions Relating to Land
- Part 5 Right to Buy Land to Further Sustainable Development
- Part 6 Entry in Valuation Roll of Shootings and Deer Forests

Part 7 Common Good Land  
Part 8 Deer Management  
Part 9 Access Rights  
Part 10 Agricultural Holdings

## **PART 1 LAND RIGHTS AND RESPONSIBILITIES STATEMENT**

Part 1 of the Bill is short and straightforward. It obliges Scottish Ministers to lay before Parliament a Land Rights and Responsibilities Statement (defined in 1(2)) as a “statement of the Scottish Ministers’ objectives for land reform.

### **Issues**

1. Should the Statement be a statement of Ministers’ objectives for land reform or a statement of land rights and responsibilities as the title implies? The December Consultation suggested a broader statement of land rights and responsibilities - a statement that could, (as I argued in Briefing 7) provide the beginnings of a proper National Land Policy - something the LRRG recommended.<sup>1</sup> This recommendation has not been agreed to by Scottish Ministers. Instead, in their December Consultation, they proposed a Land Rights and Responsibilities Statement. This remains a valuable proposal but not if reduced to a statement merely on Scottish Ministers’ objectives for land reform. It would be much more useful if the Statement were to be one on land governance, policy and land reform.

Such a Statement would represent a high level statement of principles governing land rights and responsibilities and incorporating international norms as set out, for example in the 2012 United Nations Food and Agricultural Organisation’s *Voluntary Guidelines on the Responsible Governance of Tenure*. These were adopted following a three-year process by 700 delegates from 133 countries.<sup>2</sup> The Guidelines were endorsed by the 2013 G8 Summit and the UK Government has adopted them in relation to its overseas development programme. The Guidelines, however, apply to all countries. Neither the UK or Scottish Government has yet adopted them in relation to land rights within their respective jurisdictions. A Land Rights and Responsibilities Statement provides an opportunity for Scotland to endorse such international agreements and adopt them in Scottish law.

2. In the December Consultation, the focus was very much on a high level statement of principles around rights and responsibilities. I suggested in my briefing in response that Parliament should be given the opportunity of debating and endorsing or adopting the statement. This would widen the democratic engagement with the principles, build cross-party support for them and embed them more firmly in public policy. The Bill provides no requirement that the Statement should be endorsed by Parliament. It should.

## **PART 2 THE SCOTTISH LAND COMMISSION**

Part 2 of the Bill provides for the establishment of a Scottish Land Commission. The proposed Commission reflects the following recommendation of the LRRG.

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<sup>1</sup> “The Scottish Government should develop a National Land Policy for Scotland, taking full account of international experience and best practice.” LRRG report pg. 168.

<sup>2</sup> See [www.fao.org/nr/tenure/voluntary-guidelines/en/](http://www.fao.org/nr/tenure/voluntary-guidelines/en/)

*The Review Group considers that there is a need for a single body with responsibility for understanding and monitoring the system governing the ownership and management of Scotland's land, and recommending changes in the public interest. The Group recommends that the Scottish Government should establish a Scottish Land and Property Commission.*<sup>3</sup>

The Commission is to be a body corporate that would consist of five Land Commissioners and one Tenant Farming Commissioner to be appointed by Ministers and approved by Parliament. In appointing Commissioners, Ministers must have regard to the desirability of the Commission having expertise or experience in land reform, law, finance, economic issues, planning and development and environmental issues. The Commission would have staff and a Chief Executive. It must produce a programme of work and a strategic plan (the latter requiring approval by Scottish Ministers). Its functions are outlined in Section 20.

- (a) to review the impact and effectiveness of any law or policy,
- (b) to recommend changes to any law or policy,
- (c) to gather evidence,
- (d) to carry out research,
- (e) to prepare reports,
- (f) to provide information and guidance.

In exercising its functions, the Commission must, under Section 20(3)(a) have regard to,

- (i) the land rights and responsibilities statement prepared under section 1,
- (ii) the strategic plan prepared under section 6,
- (iii) the programme of work prepared under section 7.

The Tenant Farming Commissioner has specific duties under Chapter 3 of Part 2 of the Bill. These relate to the law on agricultural tenancies.

## **Issues**

1. The establishment of the Commission is a welcome move that should help to ensure that vital topics of public interest in relation to land can be the subject of investigation and review independent of the political process. The LRRG recommended that such a body "*should operate within the framework of the proposed National Land Policy*". There is no proposal in the Bill to formulate a National Land Policy. Instead, the Commission is required to have regard only to the Land Rights and Responsibilities statement. It would be desirable if the Commission were to be given the explicit statutory responsibility to formulate and draft a National Land Policy taking account of international obligations and best practice.
2. It appears odd that the members of the Scottish Land Commission must be approved by Parliament (section 9(2)) but that the Land Rights and Responsibilities statement that Commissioners must have regard to is a product solely of Scottish Ministers with no input from Parliament. This is a contradiction (see Issue 2 previously).

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<sup>3</sup> LRRG Final Report para. 21, page 238

3. There has been some concern from rural land management interests that the range of expertise in land reform, law, finance, economic issues, planning and development, and environmental issues is too narrowly focussed and that there should be expertise in practical land management. Whilst such expertise may indeed be useful, “land management” is often used as a code for representing the interests of the landed class which, as a vested interest, it would not be appropriate to have represented. Even where it is used literally, there is a wide range of land management from forestry to commercial property, from fisheries to housing, transport, recreation and water management. It would be impossible for all land management expertise to be reflected.

As things stand there is one Commissioner (the tenant farming commissioner) who, unlike others, must have expertise or experience in agriculture. More fundamentally, however, the Commission a body charged with keeping under review laws and policies relating to land. This demands expertise in public policy in relation to land covering topics as wide as common good law, compulsory purchase, land registration, nature conservation etc. The Commission will no doubt engage with a wide range of interested parties (including land management interests) in undertaking its statutory functions but it is a body principally concerned with the law and public policy and requires well developed skills in those areas.

### **PART 3 INFORMATION ABOUT CONTROL OF LAND**

In the December Consultation, the Scottish Government proposed that it should be incompetent in law for anyone wishing to own land in Scotland via a corporate entity (most typically a company) to do so via any such entity that was not registered in an EU member state. In other words, should anyone (literally anyone - Scot, a Peruvian or an Ethiopian) acquire land and seek to register their title in the Land Register in the name of a Bahamas company or a company in Grand Cayman, the Keeper of the Registers of Scotland would be legally bound to reject it. The person concerned would be required to resubmit the application in the name of a company that was registered in an EU member state.

In light of ongoing concerns about money laundering, criminality and transparency (most recently highlighted by Prime Minister David Cameron and Transparency International)<sup>4</sup> and in the context of commitments by EU member states to establish registers of beneficial ownership, this move was welcome and timely. By eliminating offshore tax havens from property ownership and insisting on EU incorporation, such landowners would then be legally accountable via Directors and would be required to submit publicly available Annual Returns and Accounts to the relevant Registry including details of the names of beneficial owners. This would represent a substantial step forward in international efforts to tackle the malign impact of secrecy jurisdictions and would set a leading example to the UK Government about how to tackle such impacts. In responses to the December consultation, 79% of respondents agreed with this proposal.

This proposal, however, has been dropped and does not appear in the Bill. What does appear is provision for Ministers to make regulations that would allow only those members of the public affected by land held in secrecy jurisdictions to request that information on beneficial ownership to be divulged. Such requests are to be made to the Keeper of the

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<sup>4</sup> See [www.theguardian.com/politics/2015/jul/28/david-cameron-fight-dirty-money-uk-property-market-corruption](http://www.theguardian.com/politics/2015/jul/28/david-cameron-fight-dirty-money-uk-property-market-corruption) AND [www.transparency.org.uk/publications/15-publications/1230-corruption-on-your-doorstep/1230-corruption-on-your-doorstep](http://www.transparency.org.uk/publications/15-publications/1230-corruption-on-your-doorstep/1230-corruption-on-your-doorstep)

Registers of Scotland who, in turn by Ministerial regulation is given power to request information from Hanky Panky Corporation in Road Town, Tortola, British Virgin Islands.

And that is the totality of the Bill's provisions.

## Issues

1. The explanation provided in the Policy Memorandum accompanying the Bill is as follows.

*The Scottish Government has considered this measure further and has formed the view that it would not have significantly increased the accountability and traceability of land owners in Scotland. This proposal would still have allowed trusts to own land. When land is held in trust the beneficiaries of the trust or a person that may have control of the trust may not be known. This policy may have encouraged more land to be held by trusts. This may have had the effect of reducing the accountability and traceability of land owners. It also would not have prevented the use of complex company structures, where companies are owned by companies, which results in land ownership being obscured. In these structures nominee directors are sometimes used which also hinders traceability and accountability.<sup>5</sup>*

This explanation is thoroughly unconvincing. It suggests that barring offshore companies would still allow trusts to own land. That is true but if that is deemed a problem then that should be dealt with on its own merits. It has no bearing on the question of whether to bar corporate entities. I have seen no evidence of offshore trusts owning land in Scotland (plenty offshore trusts hold financial assets). All of the reported instances are of companies. The argument about companies owned by companies is also specious. By insisting that the parent company is registered in the EU, the primary purpose of ensuring transparency and accountability is significantly enhanced through the public availability of identified persons (Directors) with legal responsibility, through the enhanced availability of information available via annual returns, and through the liability of EU registered companies to disclose beneficial ownership under EU law.

2. It is not clear why this proposal has been dropped. The explanation given is wholly unconvincing. What then is the real reason? That is now for Parliament to determine through rigorous scrutiny of Ministers, requests for clarification and detailed investigation. When, in 2012, I originally suggested such a measure during the passage of the Land Registration (Scotland) Act 2012, the proposal was rejected by Scottish Ministers.<sup>6</sup> But the Economy, Energy and Tourism Committee agreed that action was needed. They argued that,

*219. We consider that the Scottish Government should reflect further on options for ensuring that the land registration system reduces the scope for tax evasion, tax avoidance and the use of tax havens, and that the Government should explain prior to Stage 2 what additional provisions can be included, whether in the Bill or otherwise, to achieve this objective.<sup>7</sup>*

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<sup>5</sup> Land Reform (Scotland) Bill Policy Memorandum para. 128.

<sup>6</sup> See <http://www.andywrightman.com/archives/504>

<sup>7</sup> See <http://www.andywrightman.com/archives/754> for reference.

The LRRG considered the matter carefully and recommended a prohibition. The Scottish Government proposed a prohibition last December. But now the proposal has been abandoned. One theory is that it was frustrated and blocked internally by the Scottish Government's legal directorate on the grounds that if a law cannot achieve its purpose fully, then such a law should not be promoted.

2. One possible problem might be competence. No mention is made of this in the Policy Memorandum. But property law and land registration are both devolved matters. There might be some implications for international treaties etc though the LRRG concluded the proposal was fully compliant with EU law. It is vital that Parliament probes this matter fully. It may well be that if the proposal does invoke reserved matters, that action might have to be taken at Westminster. By abandoning the proposal, Scottish Ministers are now proposing measures far less radical than those being promoted by the UK Government. This was not the case in December 2014.

## **PART 4 ENGAGING COMMUNITIES IN DECISIONS RELATING TO LAND**

Part 4 of the Bill requires Scottish Ministers to publish guidance on engaging communities in decisions relating to land which may affect communities. This proposal (and the right to buy in Part 5) are in response to proposals in the December consultation on engagement by charitable landowners and Ministerial powers of intervention in the land market.

The Policy Memorandum (pages 28-30) expands upon the intentions behind such guidance. In addition to being of self-evident utility in establishing expectations and standards of engagement by the owners of land, the Scottish Government is exploring ways in which adherence to the Guidance could be taken into account in future decisions about public funding and in relation to evidence to support the exercise of the new right to buy power in Part 5.

In addition, the guidance is designed to provide a standard against which any complaint made to the Office of the Charity Regulator could be determined. Further details are provided on page 30 of the Policy Memorandum.

### **Issues**

1. This proposal is welcome. Statutory guidance that can be taken into account in the context of other processes (such as the awarding of public subsidies) can provide a clear incentive for landowners to ensure that community consultation is meaningful and productive. This measure is very much at the voluntary end of the scale of intervention but as a means to encourage and signal expectations it could be of significant use.

## **PART 5 RIGHT TO BUY LAND TO FURTHER SUSTAINABLE DEVELOPMENT**

This part of the Bill represents a significant new power of intervention in the land market. In essence it is akin to a power of compulsory purchase that can be triggered and exercised by communities in defined circumstances with the approval of Scottish Ministers. The key elements of the proposal are as follows.

All land except some defined excluded land is eligible for the right to buy. Excluded land includes individual's homes except where these are occupied under a tenancy.

A tenant's interest in land is eligible for the right to buy (with some exceptions).

A community can nominate a third-party to be the owner (for example a housing association or private business).

To secure the right to buy, any community must satisfy Scottish Ministers that all the sustainable development tests are met. These are that,

- the transfer of land is likely to further the achievement of sustainable development in relation to the land;
- the transfer of land is in the public interest;
- the transfer of land is likely to result in significant benefit to the community; and is
- the only practicable way of achieving that significant benefit; and
- not granting consent to the transfer of land would result in significant harm to the community.

The Bill provides that, in assessing the last three tests, reference should be made to economic development, regeneration, public health, social wellbeing and environmental wellbeing.

Much of the the process will operate in a similar fashion to the existing community right to buy under the Land Reform (Scotland) Act 2003. A community body needs to be established, applications will be held in a register kept by the Keeper of the Registers of Scotland and applications to exercise the right will be made to and determined by Scottish Ministers. Communities will need to demonstrate support to exercise the right to buy through a ballot. Owners of land will have the right to state their views on any application and appeals will be available to the courts in relation to decisions made.

The provision mirror closely the new right to buy created in the Community Empowerment (Scotland) Act 2015 which gives communities the right to acquire land that is abandoned or neglected and the earlier right to buy contained in Part 2 of the Land Reform (Scotland) Act 2003.

## **Issues**

1. This proposal fills a much needed gap in the means by which interventions can be made in the land market. To date, there has been nothing between the existing community right-to-buy (which can only be exercised if and when the owner is willing to sell) and existing powers of compulsory purchase. The latter can only be exercised by public bodies for limited purposes and are exacting in terms of expense and legal process. In my experience over 20 years of working with communities, there are many instances where such a power would be very useful. The hurdles to cross are significant (perhaps too onerous) but this power should enable land to be secured for vital purposes - something which is currently beyond the power of communities to do.
2. The provision enabling a community to nominate a third party to take ownership is novel and potentially extremely valuable. It could enable important private investment or crucial public services to be delivered in circumstances where otherwise nothing might happen. The success of this measure will, like other right to buy provisions be in part dependent on widespread awareness of its existence and community capacity to implement the rather complex procedures involved. Given the limited use of the 2003



Act powers this represents a serious challenge but one which the Scottish Land Commission, with its powers to issue advice and guidance, may assist with.

## **PART 6 ENTRY IN VALUATION ROLL OF SHOOTINGS AND DEER FORESTS**

This very short part of the Bill simply amends the Local Government (Scotland) Acts of 1975 and 1994 with the effect of re-introducing non-domestic rates for shootings and deer forests that were abolished in 1994.

All land in Scotland with very few exceptions has been subject to some form of land tax since 1667. Modern land tax dates from the Lands Valuation (Scotland) Act 1854 which established a uniform system of land valuation across Scotland with separate valuation rolls compiled for each burgh and county. Valuation rolls recorded individual properties, the names and addresses of owners and tenants and the annual rental value of the property. A rate (or poundage) was paid by the owners of the land.

Section 42 of the 1854 Act stipulated that deer forests and shootings would be subject to rates where they were actually let out. In 1886, the Sporting Lands Rating (Scotland) Act provided that a separate valuation would be made of all shootings and deer forests and that they would all be subject to rating whether let out or not.

Section 7 of the Valuation and Rating (Scotland) Act 1956 provided 100% exemption for all "agricultural lands and heritages". Shootings and deer forests, however, continued to be liable for the rates established under the 1886 Act until 1 April 1995 when they too were abolished.<sup>8</sup> These exemptions meant, that for the first time in the recorded history of Scotland, the owners of over 96% of the land area in Scotland ceased to be liable for any local land taxes and the burden fell, instead on houses, factories, offices and other types of non-domestic land.

Figure 1 illustrates an extract from the Valuation Roll for Highland Regional Council in 1994 which was the final Roll to include shootings and deer forests (highlighted in green). The Bill requires such entries to be included once again in the Roll and for the occupiers of such land to contribute along other payers of non-domestic rates to the provision of local services.

The re-establishment of a local tax liability on land devoted to shooting and deer forests ends the indefensible abolition of this element of non-domestic rating by the Conservative Government in 1994. To most people, it might seem odd that, whilst the hair salon, village shop, pub and garage are subject to rating, deer forests and shootings pay nothing. To take one example, the Killilan deer forest near Kyle of Lochalsh is owned by Smech Properties Ltd., a company registered in Guernsey which, in turn, is owned by Sheik Mohammed bin Rashid al Maktoum, the King of Dubai and Prime Minister of the United Arab Emirates.

Killeen was included on the valuation roll in 1994 at a rateable value of £3500. By comparison, the local caravan site had a rateable value of £3100. Today, the caravan site has a rateable value of £26,250 and pays £12,127 per year in rates whilst one of the world's richest men, whose land is held in a tax haven has (unlike the local caravan site) paid no local rates for twenty years on the land he uses for shooting.

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<sup>8</sup> Local Government (Scotland) Act 1994 Section 151(1).

VALUATION ROLL - 01/04/94

03/21 - ALNESS

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| REF      | DESCRIPTION AND SITUATION OF SUBJECT |                            | PROPRIETOR  | TENANT AND OCCUPIER OR INHABITANT OCCUPIER                                    | NET ANNUAL VALUE £ | RATEABLE VALUE £ |
|----------|--------------------------------------|----------------------------|---|---|--------------------|------------------|
|          | DESCRIPTION                          | SITUATION                  |   |   |                    |                  |
| 340 R14A |                                      |                            |   |   |                    |                  |
| 00-9     | DEER FOREST & SHOOTINGS (PT)         | MYVIE                      | JOHN LLOYD CO<br>MESSRS PANNELL KERR<br>FORSTER 38 ALBYN PLACE<br>ABERDEEN  | PROPRIETORS   | 2600               | 2600             |
| 00-8     | SHOOTINGS (PART OF)                  | NOVAR & KINLOCH            | R & L MUNRO FERGUSON<br>PER FACTOR<br>NOVAR ESTATES OFFICE<br>EVANTON<br>IV16 9SL                                 | PROPRIETOR  | 1940               | 1940             |
| 00-7     | FISHINGS (PART OF)                   | RIVER GLASS                | A & L MUNRO FERGUSON<br>PER FACTOR<br>NOVAR ESTATES OFFICE<br>EVANTON IV16 9                                      | PROPRIETOR  | 60                 | 60               |
| 00-6     | FISHINGS                             | ALNESS RIVER (UPPER & MID) | "   | PROPRIETOR  | 1425               | 1425             |
| 10-9     | FISHINGS                             | MID ALNESS RIVER           | THE KILTON TRUST<br>PER FACTOR<br>ESTATE OFFICE<br>NOVAR IV16 9   | PROPRIETOR  | 1010               | 1010             |
| 20-2     | FISHINGS                             | MID ALNESS RIVER           | RONALD MUNRO FERGUSON<br>PER FACTOR<br>ESTATE OFFICE<br>NOVAR<br>EVANTON IV16 9SL                                 | PROPRIETOR  | 370                | 370              |
| 30-1     | RIVER GAUGING STATION                | RIVER ALNESS               | HIGHLAND RIVER PURIF BOARD<br>STRATHPEPPER ROAD<br>DENDOMALL  | PROPRIETORS   | 550                | 550              |
| 00-4     | SHOOTINGS                            | CONTULLICH                 | PAT MUNRO (CONTRACTORS)<br>LTD<br>CAPLICH<br>ALNESS<br>IV17 0XK   | PROPRIETOR  | 150                | 150              |
| 00-3     | SHOOTINGS                            | BALLACHRAGGAN              | "   | PROPRIETOR  | 100                | 100              |
| 00-2     | FISHINGS (PART OF)                   | RIVER ALNESS               | ALNESS LTD<br>ARDROSS CASTLE<br>ALNESS  | ALNESS ANGLING CLUB<br>PER MR A R DENT<br>33 OSDALE PARK<br>ALNESS ROSS-SHIRE | 550                | 550              |
| 00-1     | SALMON FISHINGS                      | EX ADVERSO TEANINICH       | ALNESS DIST FISHERY BOARD<br>PER MR J H STEWART (CLERK)<br>MUNRO & NOBLE<br>26 CHURCH STREET<br>INVERNESS IV1 1HE | PROPRIETOR  | 215                | 215              |
| 00-7     | SHOOTINGS                            | KILDERMORIE                | MR & MRS DUNCAN<br>KILDERMORIE LODGE<br>KILDERMORIE<br>ALNESS IV17 0YH  | PROPRIETORS   | 500                | 500              |
| 10-0     | SHOOTINGS                            | SOUTH KILDERMORIE          | GEOFFREY C WILLIAMS<br>31 UPPER MONTAGU STREET<br>LONDON<br>N1H 1RG   | PROPRIETOR  | 445                | 445              |
| 00-6     | DEER FOREST                          | KILDERMORIE                | MR & MRS DUNCAN<br>KILDERMORIE LODGE<br>KILDERMORIE<br>ALNESS IV17 0YH  | PROPRIETORS   | 1700               | 1700             |
| 10-9     | DEER FOREST                          | SOUTH KILDERMORIE          | GEOFFREY C WILLIAMS<br>31 UPPER MONTAGU STREET<br>LONDON<br>N1H 1RG   | PROPRIETOR  | 1500               | 1500             |
| 00-5     | SALMON FISHINGS                      | KILDERMORIE                | MR & MRS DUNCAN<br>KILDERMORIE LODGE<br>KILDERMORIE<br>ALNESS IV17 0YH  | PROPRIETORS   | 20                 | 20               |
| 10-8     | SALMON FISHINGS                      | KILDERMORIE                | GEOFFREY C WILLIAMS<br>31 UPPER MONTAGU STREET<br>LONDON<br>N1H 1RG   | PROPRIETOR  | 30                 | 30               |
| 20-1     | SALMON FISHINGS                      | KILDERMORIE                | SEC OF STATE FOR SCOTLAND<br>PER FORESTRY COMMISSION<br>21 CHURCH STREET<br>INVERNESS IV1 1E                      | PROPRIETOR  | 20                 | 20               |
| 00-4     | DEER FOREST (PART OF)                | KILDERMORIE                | "   | MR & MRS DUNCAN<br>KILDERMORIE LODGE<br>KILDERMORIE<br>ALNESS IV17 0YH        | 100                | 100              |

Figure 1. Extract from Highland Region Valuation Roll Volume 2. 1 April 1994.

## Issues

1. The proposal attracted support from 71% of consultees who responded to the December Consultation. However, of 51 landowning organisation that responded, all but one were opposed. Unsurprisingly, the beneficiaries of a tax relief are not enthused by its abolition. In this context, it is important to emphasise that the rating burden prior to the 1995 abolition was not onerous (ref the Killilan example above) and it remains to be seen how significant the yield is likely to be.

One of the disadvantages of merely re-setting the clock to 1995 is that the logic of assessing the rental value of such land on the basis of the numbers of animals killed is itself a legacy from the 19th century when such land was rented out to tenants for shooting and game tallies where a convenient means of assessing rating liability. An alternative approach would be to take estates as a whole, assess the rental value of the land and levy rates at the same rate (47p) as all other non-domestic subjects. Such an approach would be simpler and more equitable. It would also (since the abolition of rates has been capitalised into land values) reduce the price of land which would make it more available to a wider range of people.

2. The re-introduction of rating for shootings and deer-forests begs the question why agriculture remains exempt. In May 2014, in response to a recommendation from the LRRG that this exemption should be abolished, the Scottish Government emphasised that they had no plans to do so. It now remains something of an anomaly however,, that other exemptions (agriculture, vacant land etc.) should remain. This is a question that Parliament might probe more closely.

## PART 7 COMMON GOOD LAND

Part 7 of the Bill makes a very modest amendment to the Local Government (Scotland) Act 1973 to allow a local authority to apply to the courts if it wishes to appropriate inalienable common good land - in other words to use it for an alternative purpose but retain ownership of it. Currently, councils can seek such authority where they wish to dispose of land (i.e. sell it) but not where they wish merely to change its use.

The result of this has been that Councils are faced with a time-consuming and expensive process of promoting private legislation such as happened in the case of Portobello High School. The proposed amendment allows the courts to be the arbiter of any such plans in the event of either a disposal or an appropriation.

## Issues

1. This is a very modest and welcome reform that remedies the illogical position that a Council can potentially obtain court approval to sell inalienable land but has no powers at all to do something less drastic in the form of appropriating for another use. Application to the courts for approval in such matters was introduced following the abolition of local government by the 1973 Act in order to provide for a judicial means of securing changes to the status of common good land. The fact that the legislation omitted to make any provision at all for the appropriation of inalienable common good

land is regarded as an omission on behalf of Parliament at the time. The Bill remedies that defect.

2. The wider question of reform in the law governing the status, ownership and management of Scotland's oldest form of community ownership of land remains unresolved. The Community Empowerment (Scotland) Act 2015 provides for a statutory register of common good land and consultation with communities over plans to sell but the underpinning legal framework remains archaic and complex. A fundamental review of this legal framework is still urgently needed as a growing number of cases across Scotland demonstrate.<sup>9</sup>

## **PART 8 DEER MANAGEMENT**

The existing framework of deer management is governed by the Deer (Scotland) Act 1996 and the Wildlife and Natural Environment (Scotland) Act 2011. Deer are a public resource but managed by private interests in line with plans which are currently drawn up and adopted on a voluntary basis.

Parliament has identified that this approach should be reviewed at the end of 2016 and the Bill provides some interim measures on community involvement in drawing up deer management plans and providing the means to compel the production of deer management plans. These proposals will enable new powers to be brought into effect quickly if the 2016 review confirms that they are necessary.

### **Issues**

There are no substantive issues in relation to this proposal.

## **PART 9 ACCESS RIGHTS**

Part 9 of the Bill is a minor amendment clarifying the law on core paths contained in Part 1 of the Land Reform (Scotland) Act 2003.

### **Issues**

There are no substantive issues in relation to this proposal.

## **PART 10 AGRICULTURAL HOLDINGS**

Part 10 of the Bill contains a wide series of measures in seven Chapters. This part of the Bill comprises around 40% of the length of the Bill. This is a specialist topic and the provisions arise from the Scottish Government's Agricultural Holdings Legislation Review that published its final report in January 2015.<sup>10</sup> The issues and proposals contained in Part 10 are complex and technical and this Briefing does not propose to undertake any analysis of them.

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<sup>9</sup> See <http://www.andywrightman.com/common-good> for background and <http://www.andywrightman.com/archives/category/common-good> for examples of cases.

<sup>10</sup> <http://www.gov.scot/Topics/farmingrural/Agriculture/agricultural-holdings/review-of-legislation>

Regardless of the form in which these proposals eventually pass into law, the current framework of agricultural land tenure remains deeply problematic. Significant numbers of tenants continue to face real difficulties including termination of leases and much of the debate around the topic has been a proxy for a power struggle between the landed class and tenants. A more fundamental review of land allocation and governance of Scotland's agricultural land is needed and should include consideration of the needs of local communities, individuals and businesses in securing equitable access to Scotland's valuable agricultural land and the financial support system associated with it.

## **RESPOND TO CALL FOR EVIDENCE**

the Rural Affairs, Environment and Climate Change Committee has been designated the Lead Committee for scrutinising the Bill. It has issued a call for evidence which should be submitted by **1700hrs on 14 August 2015**.

For further details, see,

<http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/90754.aspx>