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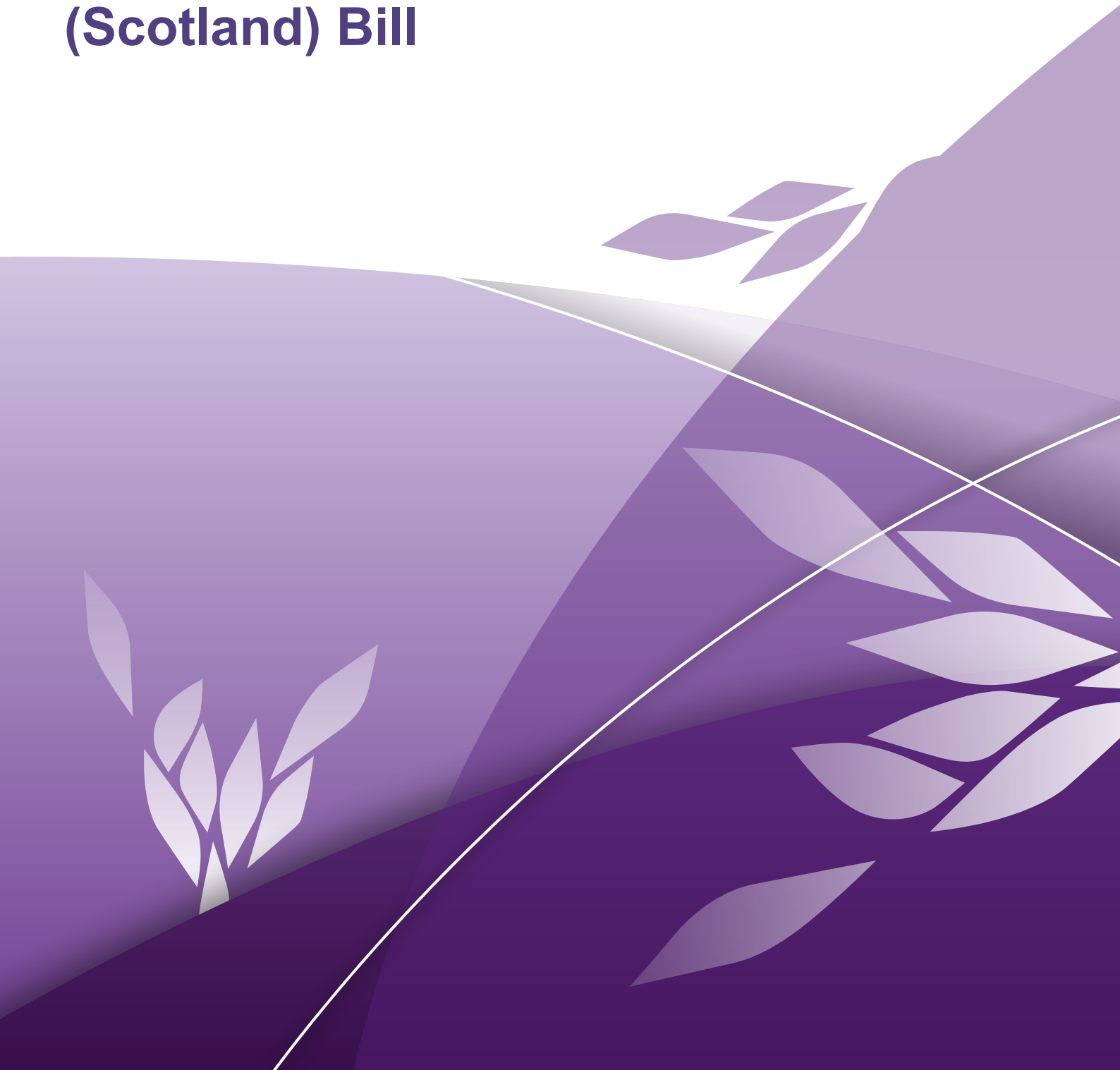
Pàrlamaid na h-Alba

Net Zero, Energy and Transport Committee

Stage 1 report on the Land Reform (Scotland) Bill



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To consider and report on matters falling within the responsibility of the Cabinet Secretary for Transport and the Cabinet Secretary for Net Zero and Energy, with the exception of matters relating to just transition; and on matters relating to land reform, natural resources and peatland, Scottish Land Commission, Crown Estate Scotland and Royal Botanic Garden within the responsibility of the Cabinet Secretary for Rural Affairs, Land Reform and Islands.


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Executive Summary

The Land Reform (Scotland) Bill is a large, complex Bill making many changes, some technical, others more radical in intent. Over the year-long period during which Stage 1 of the Bill has run, the Committee has sought to hear from diverse voices, to be out and about in rural and agricultural Scotland, and to provide safe spaces for those most affected to put their views directly to us.

The Bill makes changes in two main areas.

Part 1 – Land Reform

In Part 1, the Bill amends existing legislation around the ownership of large estates. There are two main policy aims:

- To place additional responsibilities on owners of large estates. Primarily, these are to do with community engagement by the landlord and having to prepare and publish management plans for their estates;

- To reduce the concentration of rural land ownership. It increases opportunities for community buy-outs and, where a large estate is put on the market, it gives Ministers the power, if certain conditions are met, to make breaking the land up ("lotting") a condition of sale.

Many stakeholders supported the aims behind Part 1. Viewed internationally, Scotland remains an outlier in terms of concentration of ownership and the average size of estates, despite prior reforms. Many stakeholders agree that reform has lost momentum and that further change is needed.

It is clear that in much of rural Scotland, a lack of available land is a serious impediment to economic development, local services, affordable housing and other quality-of-life issues. Put simply, the scarcity of useful land stops some communities flourishing. There can be a power imbalance that leaves landowners, and not the community, the key local decision-takers.

Opposition to Part 1 included opposition in principle to the idea of interfering in the free use of property other than in exceptional circumstances. There was also a view that recent changes should be allowed to bed down, with what felt like an ongoing nibbling away at property rights in large estates undermining their financial position and scaring away investors.

These might include investors in natural capital regeneration. There was a view that large estates, with their economies of scale, were assets not liabilities in tackling the twin climate and biodiversity crises: they made it easier to make the "landscape scale" changes Scotland needs.

One issue on which both sides agreed was that, in its current form, Part 1 risks not delivering, with its approach seen as potentially burdensome and bureaucratic. The Committee agrees. If Part 1 becomes law, it should set out processes that are as simple as they can be, are not an administrative headache, and actually deliver positive change for people.

Despite strong differences of opinion on the underlying motivations for Part 1, the principle of large landowners having to prepare Land Management Plans, following community consultation, was broadly welcomed, albeit with some concerns from landowner representatives about cost and it not being a box-ticking exercise. The Committee welcomes this provision with its potential to create an accessible “one stop shop” for information about large parcels of land and improve transparency about estate ownership and use.

A majority of the Committee, however, think that the land size threshold set for community engagement obligations (for mainland estates, 3,000 hectares or more) is too high. A majority recommend that the Government reviews this ahead of Stage 2.

In relation to all of the thresholds in the Bill, there has been disagreement within the Committee about the appropriate level and we have recommended that the Government keeps this under review and use their power to amend the thresholds if they find the Bill is not meeting its aims.

We also support the principle of extending communities’ ability to buy land but the changes made by section 2 are unlikely to accomplish much on their own. We are disappointed that the review of the community right to by has not been completed on the same timescale as this Bill so that changes in this area could be considered in the round.

The Committee also supports giving the Scottish Ministers the ability to provide that large landholdings (which in this context mean estates of 1,000 hectares and over) should be sold in lots to increase opportunities to diversify land ownership. However, the basis on which these decisions will be made remains unclear and we have recommended that the “transfer test” set out in the Bill be reconsidered to ensure it is clear that the public interest will be at the heart of lotting decisions.

The Bill creates a new Land and Communities Commissioner. We think the Commissioner should have the ability to pro-actively investigate potential breaches of community engagement obligations created under the Bill, rather than waiting on these to be reported. In relation to the Commissioner’s report to inform lotting decisions, we think they should have to seek independent professional advice. With these adjustments, the Commissioner could play a useful role in supporting the implementation of the Bill’s provisions.

Part 2 - Leasing Land

Part 2 of the Bill makes diverse changes concerning leasing land.

The most significant changes in Part 2 relate to agricultural tenancies. The main aims of these are:

- To reverse the decline of agricultural tenancies by modernising the law and making tenancies and the tenanted way of life more attractive and viable;
- To enable the tenanted sector to play a fuller role in responding to the twin climate and biodiversity crises.

Some of these changes, especially those of a more technical nature were welcomed. Others were more contentious. Taken together, these could be said to rebalance the landlord-tenant relationship. For many tenant farmers we heard from, these address long-standing unfairness. If anything, there was sometimes a view they should go further.

Others thought the changes, overall, would make owners even more loath to offer tenancies because of an increased financial risk. The fact that the changes are not solely forward-looking but will affect aspects of existing contracts was seen as unfair. We are deeply concerned by stakeholder views that the Bill will not arrest the decline in the number of agricultural tenancies.

The Committee supports most of the provisions in Part 2, including:

- The repeal of uncommenced section 99 of the Land Reform (Scotland) Act 2016, confirming that tenants are required to register an interest in a right to buy;
- Adopting a principles-based approach, not a list-based approach, to compensation for improvements;
- The expansion of compensation for game damage;
- The inclusion of productive capacity as one of a number of considerations to be taken into account in rent reviews;
- The expanded meanings of good husbandry and good estate management.

However, we recommend that the Scottish Government considers how best to proceed with the reform of provisions on resumption (when the landlord takes back part of the tenancy) in light of significant criticism of the proposed methodology. We also consider clarity about the meaning of “sustainable and regenerative agriculture” is essential as this is central to much of Part 2. This should be defined in the Bill, or by cross-reference to the Code of Practice being developed under the Agriculture and Rural Communities (Scotland) Act 2024.

The idea of creating a model lease for environmental purposes, separate from a “traditional” agricultural holding, is unobjectionable but the way the Bill has provided for this has caused some confusion, with some concerns this provision may cause legal uncertainty.

The provisions in Part 2 to modernise the law on small landholdings are welcome, though it is unhelpful that consolidation of this law is being done by amendment at Stage 2, rather than this being included in the Bill at introduction for the Committee to scrutinise at Stage 1.

Readiness of the Bill and importance of getting it right

The view that Part 1 needs significant change is shared by the Scottish Government’s own statutory advisor: the Scottish Land Commission. In late January, it came forward with various proposed changes. The Committee thanks the Scottish Land Commission for their further contribution.

With any large Bill, some tweaking of provisions after introduction is entirely normal, as a natural part of the scrutiny process but the changes suggested – together with others proposed to Part 2 – are more fundamental. When substantial revisions are considered necessary, this puts more onus on the Government and Parliament at amending stages to ensure we get things right.

Conclusion

For many people and communities in Scotland, especially rural Scotland, land reform is unfinished business and that is why they consider the Bill necessary.

For the Scottish Government, the Part 1 provisions build on previous efforts at land reform during the devolution era. They are necessary to kick-start a process at risk of stalling. The majority of Committee Members agree. But significant change will be needed to ensure they actually deliver against the Scottish Government's ambitious policy objectives.

Stakeholders and the Committee agree that the decline in agricultural tenancies is worrisome and that we need a stronger sector: to support rural development, to deliver on national goals for sustainable food and food security, and to meet the challenge of climate change and nature restoration.

To the extent that this recovery can be enabled through legal change, Part 2 aims to strike a delicate balance. The Committee considers that it gets most things right but the resumption provisions need more work and broader consideration is needed of how to actively encourage the leasing of land for agriculture.

A majority of the Committee recommends to the Parliament that it support the general principles of the Land Reform (Scotland) Bill.[i]

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[i] Edward Mountain and Douglas Lumsden dissenting

Conclusions and Recommendations

Community Engagement Obligations

1. The Committee supports the general principle behind section 1, of allowing the Scottish Ministers to impose community engagement obligations on large landowners.

2. We also support the specific requirement to produce land management plans (LMPs) which have potential to deliver essential increases in transparency about land ownership and use in Scotland. The Committee recognises that some land managers are already producing good quality public LMPs. Some of what estates will be required to set out in the plan may already be in the public domain, although it may not always be easy for most people to locate. By contrast, LMPs have the potential to be an accessible "one stop shop" for information about large parcels of rural land, improving transparency around land ownership and use in Scotland, and performing a useful community purpose. They may also add to the general understanding of what large estates do, including their engagement with the local community.

3. The Committee accepts that much of the detail relating to LMPs, and to any other community engagement obligation created under the Bill, is best left to secondary legislation, to allow greater flexibility to adjust the requirements as these new provisions bed in and we learn from experience. However, the relevant regulations (under inserted section 44M) should be subject to a pre-laying procedure that allows the Parliament to consider them in draft. We also recommend a pre-laying procedure for regulations under inserted section 44A (the more general power to place community engagement obligations on larger landowners) to ensure that these too can be considered in draft by the Parliament. The Bill should be amended to also require the Scottish Government to consult before laying either draft.

4. We recommend an amendment to require a landowner preparing an LMP to consider the local place plan (LPP) for the area, if one exists. An LPP is a potentially important and useful statement of community ambition that could help shape an LMP positively.

5. We also recommend that LMPs should be required to set out how the prior community engagement that was undertaken has impacted the plan. This "nudge" in legislation may make it more likely that engagement will be meaningful and less likely that it will be a "tick-box exercise".

6. The Committee considers it important that not only are LMPs created, but the plans set out in them are actually taken forward. The Scottish Government should consider how it can encourage the delivery of the plans, while leaving flexibility for landowners to respond to changing circumstances. We request further information on how the implementation of LMPs will be encouraged and monitored to ensure that they have a tangible impact.

7. We understand why the Bill has made provision for LMPs to be regularly reviewed. In choosing to set 5-year review cycles, it has sought to strike a balance between ensuring plans remain current and not imposing unrealistic or unhelpful obligations on landowners. We do consider it important that LMPs are opportunities for long-

term thinking about land management, including responding to the climate and nature emergencies. Guidance on the length of management plans and other matters would assist landowners in preparing their LMPs.

8. The Committee sees some merit in aligning the land size thresholds operating across the Bill for reasons of policy cohesion and clarity for stakeholders. We have heard varying evidence as to what that threshold should be, with many suggesting the current 3,000 hectare limit in relation to community engagement obligations is too high. We note that there is a power in the Bill to vary thresholds. We have also heard that reference to "sites of community significance" rather than a threshold based on scale may be more appropriate. We recommend that the Scottish Government reflect on whether the threshold in section 1 of the Bill should be reduced ahead of Stage 2.[ii]

9. The Committee recommends that, if the Bill passes, whatever thresholds are set out should be subject to ongoing monitoring and review. We note that there is already a delegated power in the Bill to amend these thresholds. Consideration should be given to adding a reporting requirement on the success (or otherwise) of these thresholds so that the Parliament and stakeholders can be updated on how provisions are operating and whether the Scottish Government is considering use of the power to alter these thresholds.

10. We also suggest that the Scottish Government addresses the potential loophole created by the Bill's application to only contiguous holdings. We recommend that it should be clarified in the Bill that land split by a road, railway or similar, should be treated as contiguous. Otherwise, how linked holdings are, in terms of their management and their use, should be considered in determining any adjustments needed to the provision. There is an additional challenge in relation to individuals or business entities using separate legal vehicles for ownership of two or more landholdings. We ask the Scottish Government to clarify whether the Register of Controlling Interests provides an answer in such cases.

11. The Committee considers that a fixed list of those who can allege breaches of community engagement obligations (with the ability to update this list) is a sensible approach to ensure claims are validated. However, we consider that the list of those who can allege breaches of community engagement should be wider than currently in the Bill. The additions suggested by the Scottish Land Commission are a good starting point. We ask the Scottish Government to reflect further on who to add to this list to help ensure compliance.

12. The Committee recommends that the Bill be amended to provide the Land and Communities Commissioner with the power to pro-actively investigate potential breaches of community engagement obligations.

13. The Committee recommends that provision be made in the Bill to allow removal of identifying details from reports of breaches of community engagement obligations before these are shared with the landowner when the Land and Communities Commissioner considers that there are good reasons to do so.

14. The Committee is concerned that a one-off fine of up to £5,000 is insufficient

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ii Douglas Lumsden and Edward Mountain dissented from the last sentence of this recommendation.

deterrent for breach of community engagement obligations, especially given the Scottish Government's own estimate that preparing an LMP would on average cost more than this. We ask the Scottish Government to clarify whether the Bill allows recurring fines for continuing failure to comply with an obligation, such as preparing an LMP. If not, clarification by way of amendment would appear necessary. Additionally, there should be implications for the landowner in terms of cross-compliance (e.g. future eligibility for agricultural support).

Community Right to Buy: Registration of Interest

15. The Committee welcomes the extension of communities' ability to register an interest in relation to large landholdings but notes that the provision is unlikely to be successful in meeting the Government's aim of increasing community ownership as currently drafted so will need significant revision at Stage 2. Specifically, the Committee recommends that the timescales need to be adjusted to allow communities more time to note their interest and prepare an application. We note the Scottish Land Commission's suggestion of a 90 day period.

16. We also note the ongoing review of community right to buy. The change set out in the Bill seems, at best, a small piece in a larger puzzle, unlikely to have much impact alone. It is therefore disappointing that we are not able to consider an overall package of reform in this area, including the results of the review, that might collectively have had a real impact.

17. The Committee heard varying evidence about what the land size threshold should be for this provision. There was some support for the existing 1,000 hectare threshold, for a lower threshold of 500 hectares, and for an approach based not entirely on scale that includes consideration of "sites of community significance". The Committee has mixed views on the appropriate threshold but agrees that the Scottish Government should amend the Bill at Stage 2 to exempt small scale, uncontroversial land transfers.

18. As with the different threshold the Bill sets for community engagement and Land Management Plans, we recommend that whatever threshold is set out should be subject to ongoing monitoring and review, if the Bill becomes law, with the option to use the power in the Bill to change it. Consideration should be given to adding a reporting requirement on the success (or otherwise) of these thresholds so that the Parliament and stakeholders can be updated on how provisions are operating and whether the Scottish Government is considering use of the power.

19. The Committee recommends, in line with the Delegated Power and Law Reform Committee's recommendation, that regulations under inserted section 46L should be subject to a pre-laying procedure that allows the parliament to consider a draft of the regulations, and that this power should also be subject to a statutory requirement to consult those potentially affected.

Lotting of Large Landholdings

20. The Committee supports the principle of allowing the Scottish Ministers to make lotting decisions in respect of large landholdings.

21. The Committee has heard evidence that lotting is complex, requiring skills, knowledge and experience. We therefore recommend that provision be added to the Bill requiring that independent, professional advice from suitably qualified

people with experience of lotting, be taken before the Scottish Ministers make a lotting decision.

22. The Committee considers that the transfer test, as drafted, will not meet the aims of the Scottish Government as it does not sufficiently take account of the public interest and does not scrutinise the buyer of lotted land. We recommend these provisions are revised to provide a more robust test that might actually serve the purpose of diversifying land ownership in Scotland and ensuring that land is used in the public interest.

23. The Committee notes a potential loophole in the Bill that subsequent sales could be used to recombine lots, undermining the intention of these provisions. We recommend the Scottish Government consider this issue and how best to ensure this does not happen.

24. The lack of a timeframe for the Scottish Government to make a lotting decision appears hard to justify, with the potential to leave sellers and other interested parties in a sale in limbo, uncertain of what, if anything, is happening next. The Committee asks the Scottish Government to address this by amendment if the Bill proceeds past Stage 1.

25. The Committee recommends adding a statutory requirement for the Scottish Ministers to consult before exercising the regulation-making powers in inserted sections 67S(6), 67V(4) and 67Y. In respect of the power in section 67Y (to modify various provisions relation to lotting decisions, including the land size thresholds) we also recommend adding a pre-laying procedure so that the Parliament can consider draft regulations.

26. The Scottish Government says in its Policy Memorandum that the transfer test combined with the pre-notification requirements in section 2 amount in tandem to a public interest test. Many stakeholders doubted this and felt that, without a clear public interest test on the face of the Bill, lotting decisions would be more open to challenge in court. We recommend that the Scottish Government consider having a more express public interest test on the face of the Bill, including reference to proportionality and the need for a policy rationale. There should be guidance on the public interest test, providing more clarity about the circumstances in which Scottish Ministers would (or would not) expect to make a lotting decision.

27. As well as strengthening the Bill to ensure decisions are taken in the public interest, the Committee highlights the importance of ensuring that a balanced approach is taken in respect of lotting to ensure the interference with property rights is proportionate to achieving the public interest goal.

28. As with other provisions in Part 1, the Committee heard different views about what the threshold for lotting should be. There was support for the proposed 1,000 hectare threshold, views it should be 500 hectares, and views that it should catch "sites of community significance". The Committee does not have a single shared view on lotting thresholds and again recommends this should be kept under review if the Bill passes, with the option to change the threshold again available via a delegated power in the Bill. Again, there should be consideration of a reporting requirement so that the Parliament, and wider stakeholders, can apprise the effectiveness of current thresholds and recommend change where appropriate.

Land and Communities Commissioner

29. The Committee supports the creation of a Land and Communities Commissioner.

30. The Committee does not consider that large landowners should be immediately disqualified from being appointed Land and Communities Commissioner.

Sustainable and Regenerative Agriculture

31. The Committee recognises the Bill's intention to support sustainable and regenerative agriculture but notes evidence that other factors are relevant and other means of support are needed. We expect these are issues the Rural Affairs and Islands Committee will be pursuing with the Scottish Government as the Agriculture and Rural Communities (Scotland) Act is rolled out in the coming months.

32. The Committee asks the Scottish Government to respond to views that there needs to be a clearer understanding of what "sustainable and regenerative agriculture" actually means in practice if Part 2 of the Bill is to have maximum impact. We recommend a definition is added to the Bill, or a cross-reference to the Code of Practice that will be produced under the Agriculture and Rural Communities (Scotland) Act to ensure a consistent reading across related legislation.

Disincentivising Letting of Land

33. The Committee is deeply concerned by key stakeholder views that, while the Bill may improve the position of secure tenants, it is unlikely on its own to arrest long-term decline in the number of agricultural tenancies. We support the intention in the Bill to ensure an improved position for tenants but this is undermined if tenancies are not being offered in the first place.

Model Lease for Environmental Purposes

34. The Committee welcomes the intention behind section 7 of the Bill but is not clear why the Scottish Government considered it was necessary to include it in the Bill. The act of publishing a model lease is not, in itself, a guarantee that it will be widely used. We ask the Scottish Government to explain what action they will take, and what incentives will be made available, to ensure take-up of the lease by both landlords and tenants.

35. We also recommend that the legal status of the model tenancy be clarified, in particular, to make clear that it sits outwith the agricultural holdings framework.

Small Landholdings

36. The Committee supports modernising the law on small landholdings and we note the preference of small landholders to be aligned with 1991 Act tenancies. We agree that it makes sense to take the opportunity of the Bill to consolidate the scattered and complex law in this area, but are disappointed this was not done in the Bill as introduced as this would have allowed more time for changes to be considered than will be possible if consolidation takes place by way of amendment. We ask the Scottish Government to seek to ensure small landholders and other affected stakeholders have as much time as possible to consider a draft of the relevant amendment.

37. We highlight the issue raised by the Registers of Scotland in respect of the Keeper's role in relation to challenges to registration of interest. We recommend the Scottish Government give consideration to whether it is appropriate for the Keeper to act as arbiter in these circumstances.

38. The Committee supports bringing small landholders within the remit of the Tenant Farming Commissioner but recommends that the suggested role of the Commissioner in appointing an agent to value compensation should be limited only to cases where the parties cannot agree.

39. The Committee recommends providing more information on the face of the Bill about the power set out in paragraph 40 (compensation awarded by valuer) in the schedule to the Bill so as to set clearer parameters as to the limits of this power.

40. We also recommend that the Scottish Ministers should have to consult before exercising this power, given the potentially significant impact the valuer's assessment could have on stakeholders.

41. The Committee asks the Scottish Government to clarify whether it considers the powers in paragraphs 49 and 50 of the schedule are necessary given that similar powers in other legislation have never been exercised.

42. We recommend that if these powers are retained in the Bill, a consultation requirement is added so that relevant stakeholders are able to input into the changes given the significance of the right to buy provisions.

43. The Committee recommends, in line with the Delegated Power and Law Reform Committee's view, that the power in paragraph 59 of the schedule (registration of a small landholder's interest in acquiring land) should be more narrowly drafted to give a clearer sense of what this power will be used for rather than granting a catch-all power for any provision related to the registration of a small landholder's interest in land.

Tenant's Right to Buy

44. The Committee supports the repeal of uncommenced section 99 of the Land Reform (Scotland) Act 2016. This clarifies the current legal position that tenants of 1991 Act tenancies must register an interest in a right to buy, rather than this being automatic. Given the evidence we have received that some tenants were unaware that section 99 had never come into force, we ask the Scottish Government to clarify how it will make the sector widely aware of the correct legal position on registration.

45. We also recommend that the process should require that a plan be submitted at the point of registration of interest.

46. The Committee is concerned about the reliance on secondary legislation in respect of provision about a tenant's registration of interest. This was the approach in the 2016 Act and is the approach again now. This does not give any certainty to tenants or landlords about how registration will work in practice. We consider the power as drafted to be broad and recommend that this should be framed more narrowly, with more detail on the face of the Bill about its parameters.

Resumption

47. The Committee considers that the compensation payable on resumption, particularly in respect of 1991 Act tenancies, requires review and we are supportive of significantly increasing the amount to be paid. However, in light of the significant criticism of the proposed methodology for doing this, we recommend that the Scottish Government gives further consideration to how best to proceed. We note the Scottish Land Commission's recommendation of a wider review before any changes are made, but also note the concerns of the Scottish Tenant Farmers Association about the impact of delay. The Scottish Government should reflect on the evidence we have gathered on these provisions and try to find a route forward that avoids the issues identified. In particular, consideration should be given as to whether making these changes in respect of 2003 Act tenancies is appropriate.

48. We also highlight that clarity is needed around compensation for value other than agricultural value (for example, hope value). We note concerns that this issue is likely to lead to disputes in the Land Court so urge the Scottish Government to clarify if and how non-agricultural value is to be assessed in respect of resumption.[iii]

49. The Committee recommends that changes made in relation to resumption should equally apply to notices to quit.

50. Given the evidence the Committee has heard that more resumptions are agreed without conflict, and concerns that the proposed statutory process may be cumbersome, we recommend this process be a “fallback position” when parties cannot reach agreement rather than having to be used in all cases.

51. The Committee recommends the Scottish Government reconsiders whether the one year notice period for resumption required under the Bill is appropriate. We note that this is a considerable jump from a 2 month notice period and suggest that, if the current time period has been assessed as unsuitable, a middle ground between the two might alleviate concerns.

52. We also request that the Scottish Government clarifies how section 17 of the 2003 Act is intended to operate – is this intended to be the only means of resumption in relation to 2003 Act tenancies, or is contractual resumption also possible?

53. In line with the Delegated Powers and Law Reform Committee, we recommend that a statutory requirement for the Scottish Ministers to consult before exercising the power in inserted schedule 2A be added to the Bill.

Compensation for Improvements

54. The Committee supports a principles-based approach to compensation for improvements, to allow the law to keep up with modern agriculture. However, we do recognise concerns that this may create less certainty than a fixed lists approach and ask the Scottish Government to reflect on the contents of the new indicative lists to ensure these are comprehensive enough to provide sufficient clarity about improvements that emerge in future.

55. The Committee recommends that the Scottish Government reconsiders Part 4 of schedule 5 which seems likely to cause confusion and does not help tenants in identifying whether their improvements require consent or notice.

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iii Edward Mountain dissents from this recommendation.

56. The Committee also supports the recommendation of the Delegated Powers and Law Reform Committee that the power to modify the lists of improvements in schedule 5 should be subject to the higher level of parliamentary scrutiny that would be afforded by the affirmative procedure.

Diversification

57. The Committee welcomes the intention of provisions to encourage consideration of environmental benefits of diversification, but reiterates our concerns about the lack of clarity in what is meant by "sustainable and regenerative agriculture" (see our recommendation at paragraph 32 and 308).

58. We also recommend that compensation for tree planting should be subject to the same principles as other diversifications to avoid disincentivising tenants from planting trees.

Game Damage

59. The Committee supports the expansion of compensation for game damage as provided for in the Bill.

60. We request that the Scottish Government clarifies how the compensation provisions interact with a tenant's right to control deer. In particular, reflecting on concerns that the tenant's right is of a limited nature, what action is required from a tenant to enable them to claim compensation?

61. We highlight concerns about game damage disputes ending up in the Land Court and recommend that the Scottish Government reflect on how best to avoid this. In particular, consideration should be given to whether some form of arbitration or standard claim procedure would improve the process of assessing and being compensated for game damage.

Standard Claim Procedure

62. The Committee is broadly supportive of the standard claim procedure set out in the Bill. We consider it important to encourage early engagement ahead of waygo and quick settlement at waygo. However, we recognise that there are some cases where this process is negotiated without issue between parties, so consider the statutory process in the Bill should be a backstop for when parties cannot reach agreement, rather than something that must be followed in all cases.

63. The Committee recommends that the Scottish Government reconsider the timescales set out in the standard claim procedure. It is important to ensure claims be settled as quickly as possible, but this needs to be balanced with the practical reality that valuations cannot be accurately completed until late in the day. We recommend consideration is given to a backstop date for payment that reflects that a full and accurate valuation cannot be established until the date of waygo itself.

64. The Committee endorses the level of interest to be paid on outstanding compensation claims that is set out in the Bill.

Rent Review

65. The Committee supports the provision the Bill makes on rent reviews. In particular,

we support including productive capacity within the number of considerations to be taken into account in a rent review. We also recommend that the Scottish Government considers including "earnings capacity" - which may not always align with productive capacity- within those factors.

66. The Committee considers that an alternative method of dispute resolution is needed for the rent review provisions to avoid the time and expense of cases having to be resolved by the Land Court. We ask that the Scottish Government undertake development of such a process, perhaps adding to the Bill a requirement that regulations, subject to the affirmative procedure, must be brought to introduce this.

67. The Committee recommends that amendments are brought forward at Stage 2 to take account of the regards and disregards that are set out in section 13 of the 1991 Act but have not been incorporated in the Bill.

68. We also recommend that the term "comparable holding" be retained rather than changing this to "similar holding". This is a well-understood term in the current law on rent reviews and a change in wording risks having unintended legal consequences.

69. We consider that guidance will be necessary in relation to the meaning and assessment of "productive capacity" and therefore recommend the Scottish Government considers whether a statutory requirement to produce such guidance would be a helpful addition to the Bill.

Rules of Good Husbandry and Estate Management

70. The Committee is supportive of expanding the meaning of good husbandry and good estate management so that it is not solely focussed on efficient production.

71. We recommend that consideration is given to having penalties for breach of rules of good estate management, which would harmonise the position with breaching rules of good husbandry.

72. The Committee considers that disputes may still arise under these rules about where the correct balance lies between “efficient” production and “sustainable and regenerative” farming. We recommend that guidance is produced to clarify this. The Scottish Government should consider whether it is useful to add a provision to the Bill to make this statutory guidance that landlords and tenants must act in accordance with.

General Principles

73. The Committee recommends to the Parliament that it supports the general principles of the Land Reform (Scotland) Bill.[iv]

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iv By majority (Yes: Bob Doris, Monica Lennon, Michael Matheson, Mark Ruskell, Kevin Stewart. No: Douglas Lumsden, Edward Mountain)

Membership changes

74. The following are no longer Net Zero, Energy and Transport Committee Members but took part in Stage 1 consideration —

- Ben Macpherson MSP (resigned 10 September 2024)
- Jackie Dunbar MSP (resigned 5 November 2024)

75. The Committee thanks them for their contribution to consideration of this Bill.

Introduction

76. The Land Reform (Scotland) Bill was introduced in the Scottish Parliament on 13 March 2024 by the Cabinet Secretary for Rural Affairs, Land Reform and Islands. [1] It is a Scottish Government Bill. Shortly after introduction, the Scottish Parliament agreed to refer the Bill to the Net Zero Energy and Transport Committee for Stage 1 consideration. This means that it fell to this Committee to gather evidence and views on the Bill, and to report to the Parliament on whether its general principles should be agreed to.

77. Land reform is a broad concept. It means measures which modify or change the management, use and possession of land in the public interest. [2] In Scotland this is set against a backdrop of an unusually concentrated pattern of landownership, with a relatively small number of owners owning a large proportion of land. [3] This has been considered a consequence of Scotland's "agrarian transition, and the way in which Anglo-Norman feudalism was imposed on the complex clan-based land ownership system". [4] The low productive value of much of Scotland's agricultural land may be another background element.

78. Most other countries with a feudal history underwent significant reform in the 19th or 20th centuries to redistribute land or emancipate tenants. The dominant approach to this was obliging landlords to sell part of their holdings to meet community needs. [5] A number of countries continue to have "mechanisms in place to manage who can own what land, to meet a varied range of policy objectives". [6]

79. Since devolution, land reform has developed as a policy area. The key changes made by the Scottish Parliament have been:

- Abolition of feudal tenure by the Abolition of Feudal Tenure (Scotland) Act 2000, splitting ownership of land or property (including urban property) between a "feuar" and "superior" and replacing this with outright ownership;
- Introducing rights of access over land in the Land Reform (Scotland) Act 2003;
- Introducing community rights to buy in the Land Reform (Scotland) Act 2003 (later extended by the Community Empowerment (Scotland) Act 2015);
- Requiring the Scottish Government to produce a Land Rights and Responsibilities Statement. This statement includes principles based on promoting human rights in relation to land; contributing to public interest and wellbeing; balancing public and private interests; supporting sustainable economic development; protecting the environment; increasing diversity of land ownership and tenure (including community ownership); meeting high standards of land ownership, management and use to deliver a wide range of benefits; ensuring the availability of information about the ownership, use and management of land; and ensuring meaningful collaboration and community engagement in decisions about land;
- Establishing the Scottish Land Commission (SLC) to "address issues relating to

the ownership of land, land rights, management of land, and use of land", as well as "land taxation, and the effective use of land for the common good";

- Creating a public register of controlling interests to improve transparency about who makes decisions about land management and use.[7]

80. Part 2 of the Bill is about land reform in a more narrow sense, relating to the landlord-tenant relationship in a predominantly agricultural or rural context. The backdrop to Part 2 is a concern that the tenanted sector is in long-term decline. Prior to 2003, the tenanted sector was considered to be "in freefall", with the area of land tenanted having reduced by about a third between 1982 and 2003. A factor in this appears to have been the creation of "1991 Act tenancies" (see below), which gave tenants security of tenure and other rights including rights of succession and the pre-emptive right to buy.[8] The number of new tenancies being made after this change dropped sharply.

81. The Land Reform (Scotland) Act 2003 introduced Short Limited Duration Tenancies (up to 5 years) and Limited Duration Tenancies (minimum of 10 years). The Land Reform (Scotland) Act 2016 introduced Modern Limited Duration Tenancies (minimum of 10 years, replacing Limited Duration Tenancies) to try to address the decline in agricultural tenancies by offering new types of tenancy that might be more appealing to landlords, while still providing a degree of security for tenants. Use of these fixed duration tenancies has steadily increased, as 1991 Act tenancies have steadily decreased. This has slowed the overall decline in the number of tenancies but decline is still the trend.[9] The most recent figures show that in 2021 there were 6,057 holdings with rented land, compared with 6,587 in 2016 and 6,598 in 2013.[10]

82. The Policy Memorandum sets out that this Bill aims to:

- further improve the transparency of land ownership and management in Scotland;
- strengthen the rights of communities in rural areas by giving them greater involvement in decisions about the land on which they live and work;
- improve the sustainable development of communities by increasing opportunities for community bodies to purchase land when it comes up for sale;
- allow Scottish Ministers to consider (before a planned sale) if land being sold in lots could increase the supply of more varied plots of land in a way that might be expected to have a positive impact on the ongoing sustainability of communities in the area;
- support the use of land for environmental purposes including sustainable farming by providing a model lease (a 'land management tenancy'); and
- modernise legislation relating to small landholdings and agricultural holdings.[11]

83. The background to the Bill, and an overview of its contents, is set out below. A fuller briefing on the Bill has been published by the Scottish Parliament Information

Centre (SPICe). [12]

Background to the Bill

84. The Bill is largely an amending Bill - that is, it amends and adds new provision to existing legislation rather than being a stand-alone Bill. The exceptions to this are section 7, which creates a duty to publish a model lease, and the schedule (introduced by section 8), which makes changes to the law for small landholders. The key pieces of existing legislation and the consultations that have informed the Bill's development are set out below.

Part 1

85. Part 1 of the Bill relates to land reform. Key pieces of previous legislation on this topic are:

- the Land Reform (Scotland) Act 2003 (the 2003 Act)
- the Land Reform (Scotland) Act 2016 (the 2016 Act).

86. The provisions set out in Part 1 of the Bill originated from a request from the Scottish Ministers to the SLC to undertake a review of the scale and concentration of land ownership. The SLC published its report to the Scottish Ministers on 20 March 2019. [13] This contained recommendations aimed at addressing concentrated ownership.

87. The Scottish Government developed these into legislative proposals which it consulted on between 4 July and 30 October 2022. [14] These included:

- Creating a legal duty for large scale land holdings to produce land management plans;
- Regulating the market in large scale land transfers by applying a Public Interest Test, and introducing a requirement to notify an intention to sell;
- Creating a legal duty to comply with the Land Rights and Responsibilities Statement;
- Defining large scale land holdings as those over 3,000 hectares or more than a specified minimum proportion of an inhabited island.

88. A consultation analysis was published on 2 June 2023. [15]

89. How the Bill compares with proposals in the consultation and the SLC's proposals is analysed in the SPICe briefing on the Bill. [16] The main differences are discussed later in the main body of this report.

Part 2

Model lease for environmental purposes

90. The "Land Reform in a Net Zero Nation" consultation included a new form of tenancy called a "Land Use Tenancy". This was to help agricultural tenants to engage in other land use activities within one tenancy. The consultation suggested this would cover woodland management, agroforestry, nature maintenance and restoration, peatland restoration, and agriculture. The proposal was that this Bill would then introduce a new legal framework for the lease and set out the key elements of it. Seventy-one percent of respondents who answered the question on this part of the consultation were supportive of creating a land use tenancy.

91. This Bill does not create the new statutory tenancy proposed in the consultation, favouring a non-statutory model lease which "aims to meet consultation respondents' desire for flexibility". [17]

Small landholdings

92. 'Small landholdings' are a legally distinct form of tenure in Scotland, not just all holdings under a certain size. The Policy Memorandum says there are only 59 of these left in Scotland. The SPICe briefing on the Bill describes these as:

> "small tenanted farms of less than 50 hectares, subject to a series of laws collectively called the Small Landholders (Scotland) Acts 1886 to 1931 (“the Landholders Acts”). These holdings only exist in Scotland, outwith the traditional 'crofting counties' of Argyll, Inverness, Ross and Cromarty, Sutherland, Caithness, Orkney and Shetland.
>
> In essence, ‘small landholders’ are tenanted holdings under a specific, and quite rare, type of agricultural tenancy governed by this older legislation. " [18]

93. The law governing small landholdings is set out across many pieces of legislation dating from 1886 [19] and has not been updated since 1931. [20] In May 2014, the Land Reform Review Group, established by the Scottish Government, recommended "major improvements in the position of tenants under the Small Landholders (Scotland) Act 1911". [21] In January 2015, the Scottish Government's Agricultural Holdings Legislation Review also highlighted a lack of rights for small landholders and agreed that there was a need to modernise the legislative framework. [22]

94. The Scottish Government's 'Review of Legislation Governing Small Landholdings' was published on 31 March 2017. [23] The review considered:

- retaining the status quo (which was considered likely to lead to a further reduction in the number of small landholdings);
- converting small landholdings to crofts or 1991 Act tenancies (which it was not clear that stakeholders would welcome); and

- reforming and modernising the small landholdings sector.

The Review concluded that "from the point of view of retaining diversity within the sector, it makes sense for small landholdings to remain, and it then follows that they must be reformed and modernised". [24]

95. Small landholders were consulted as part of the overall consultation process for this Bill. [25] An analysis of that specific consultation was published on 2 June 2023. [26] SPICe also provide a summary of this consultation alongside how the Bill compares to earlier proposals on small landholdings in their briefing on the Bill. [27]

Agricultural holdings

96. 'Agricultural holdings' typically refers to tenanted agricultural land other than crofts. (Crofts are usually excluded from the term as tenanted crofts are under a distinct form of tenure, and are regulated under separate legislation).

97. The main types of agricultural tenancies in Scotland are:

- Leases of less than a year for grazing or mowing.
- Short Limited Duration Tenancies (SLDTs) of up to 5 years.
- Limited Duration Tenancies (LDTs) of a minimum of 10 years. (However, new LDTs cannot be entered into - the Land Reform (Scotland) Act 2016 replaced these with Modern Limited Duration Tenancies).
- Modern Limited Duration Tenancies of a minimum of 10 years, a variation on LDTs designed to reduce risk to the landlord to encourage providing tenancies to new entrants.
- Repairing Tenancies, long tenancies of at least 35 years, typically on a run-down farm, with an initial 'repairing period' of 5 years during which the aim is to improve the land to a standard to be farmed.
- “1991 Act tenancies” or “secure tenancies” entered into under the Agricultural Holdings (Scotland) 1991 Act or preceding legislation, where the tenant’s interest is capable of being passed to subsequent generations. [28]

98. The main pieces of legislation governing agricultural holdings today are:

- Agricultural Holdings (Scotland) Act 1991
- Agricultural Holdings (Scotland) Act 2003
- Land Reform (Scotland) Act 2016

99. The provisions in the Bill in relation to agricultural holdings are motivated by three things:

- completing reforms that were considered by the 2016 Act (the provisions on

rent reviews and on removing the requirement for tenants to pre-register their interest in exercising their pre-emptive right to buy in the 2016 Act were never brought into force. The Bill takes new approaches in these areas);

- EU exit leading to new agricultural policies to replace the EU's Common Agricultural Policy;

- increased concern for climate change and biodiversity loss. [29]

100. In March 2022, the Scottish Government published a new 'vision for Scottish agriculture'. [30] Legislative proposals to implement this were brought forward in the Agriculture and Rural Communities (Scotland) Bill (now Act). However, tenancy reforms were not covered in it. Instead, they are covered by this Bill. The Scottish Government says the underlying ambition is for Scotland to "become a global leader in sustainable and regenerative agriculture". [31]

101. Proposals for agricultural holdings were therefore generally consulted on as part of the Agriculture Bill consultation [32] rather than in the consultation preceding this Bill. [33] . A consultation analysis for the Agriculture Bill was published on 22 June 2023. [34]

102. An analysis of how proposals in this Bill compare with what was set out in that consultation is outlined in the SPICe briefing on the Bill. [35]

Overview of the Bill

103. The Bill makes a large number of changes, mainly textual amendments to already existing legislation on land reform or agricultural holdings.

104. The Policy Memorandum explains that changes are in four main areas:

- Land reform: new laws affecting large holdings of land (Part 1);
- Creating a model lease designed for letting land wholly or partly for environmental purposes (Part 2);
- Agricultural holdings legislation (Part 2); and
- Small landholdings legislation (Part 2).

Part 1

105. The stated aims behind Part 1 are:

- To further improve the transparency of land ownership and management;
- To strengthen the rights of communities in rural areas by giving them greater involvement in decisions about the land on which they live and work;
- To improve the sustainable development of communities by increasing opportunities for community bodies to purchase land when it comes up for sale;
- To allow Scottish Ministers to consider (before a planned sale) if land being sold in lots could increase the supply of more varied plots of land in a way that might be expected to have a positive impact on the ongoing sustainability of communities in the area. [36]

106. The key measures that would apply in relation to large landholdings are—

- New obligations to produce Land Management Plans and to engage with local communities, to support compliance with the principles of the Land Rights and Responsibilities Statement;
- Community bodies to receive prior notification in certain cases that the owner intends to transfer a large landholding, or part of it, and provide an opportunity for them to purchase the land; and
- Introduction of a "transfer test" at the point of certain transfers of large landholdings (or part of a large landholding) if the land to be transferred is over 1000 hectares[v] to determine if the owner should be required to transfer the land in smaller parts (known as "lotting").

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v Or if the land to be transferred is over 50 hectares, forms part of a landholding of over 1,000 hectares, and other areas of land on the large landholding are also being transferred. This is an anti-avoidance measure to prevent large landowners dividing land they want to transfer of 1,000 hectares (or more) into smaller parcels to avoid being caught

107. There are two definitions of large landholdings, depending on which Part 1 provision applies, as discussed further below.

Part 2

108. The Policy Memorandum says the aim of Part 2 is to modernise the law on agricultural holdings and small landholdings and provide for a new model lease (the 'land management tenancy'). [37]

109. Chapter 1 of Part 2 places a duty on Scottish Ministers to publish a model lease for environmental purposes.

110. Chapter 2 of Part 2, together with the schedule, make changes relating to small landholdings. These give small landholders similar rights to other agricultural tenants and extend the role of the Tenant Farming Commissioner to these holdings.

111. Chapter 3 of Part 2 makes changes in relation to agricultural holdings, specifically:

- Diversification – providing tenant farmers with greater opportunity to diversify their business, and in that way to improve farm incomes and help address the twin crises of climate change and biodiversity loss;
- Agricultural improvements – giving tenant farmers more scope to improve their holdings, and participate in sustainable and regenerative agriculture;
- Good husbandry and estate management rules – ensuring that tenant farmers can undertake sustainable and regenerative agricultural practices in accordance with these rules;
- Waygo (the term for a tenancy ending) – enabling tenants and landlords to resolve waygo claims in good time and both move on;
- Rent review – drawing on the work of the Tenant Farming Commissioner, to create a flexible 'hybrid' system of review better suited to modern needs;
- Resumption – ensuring that tenant farmers receive fair compensation where the landlord takes back any part of the leased land;
- Compensation for game damage – modernising the compensation for game damage provisions by making good a wider range of losses; and
- Pre-emptive right to buy – repealing provision that would have removed the requirement to register interest and giving Scottish Ministers power to create a new process.

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by the provisions. (See Policy Memorandum paragraph 134)

Parliamentary scrutiny of the Bill at Stage 1

112. The Committee launched a call for views on 4 April that closed on 21 May. We received 122 responses. [38] All other correspondence received relating to the Committee's scrutiny is published and available to read at the Bill's Stage 1 homepage. [39]

113. We took formal evidence from 13 panels of witnesses:

- 11 June – the Scottish Land Commission
- 18 June – a panel of legal experts: Law Society of Scotland, Faculty of Advocates, Jill Robbie (University of Glasgow), Turcan Connell
- 25 June – a range of stakeholders on Part 2 of the Bill: National Farmers Union Scotland, Scottish Land and Estates, Scottish Tenant Farmers Association, Royal Institute of Chartered Surveyors, Central Association of Agricultural Valuers
- 5 November – Community Land Scotland, Scottish Community Alliance, Development Trusts Association Scotland
- 19 November – Scottish Land and Estates, Countryside Alliance, National Farmers Union Scotland
- 26 November – a further panel of legal experts: Malcolm Combe (University of Strathclyde) and Calum MacLeod (Harper MacLeod)
- 3 December – a panel of researchers and commentators: Magnus Linklater, Laurie Macfarlane, Peter Peacock, Andy Wightman
- 10 December – the Crofting Commission and the Scottish Crofting Federation
- 17 December – a panel of practitioners with expertise on Part 2 of the Bill: Hamish Lean (Shepherd and Wedderburn), Tom Oates (Oates Rural), Andrew Wood (Bidwells), Martin Hall (Davidson and Robertson)
- 28 January – Moray Estates, Ardtornish Estate, Wildland, Colonsay Community Development Company, Applecross Community Company, Coigach Community Development Company
- 4 February – Scottish Environment LINK, Landworkers' Alliance, REVIVE Coalition, John Muir Trust
- 4 February – Gresham House, Bidwells, Highlands and Islands Enterprise
- 18 February – the Cabinet Secretary for Rural Affairs, Land Reform and Islands and supporting officials

114. Committee Members have also made two visits in connection with the Bill:

- Highland Perthshire on 23 September – we met with Atholl Estates, Oxygen Conservation and a group of local people identified through working with Aberfeldy Development Trust.

- Langholm area on 31 October/1 November – we met with the Langholm Initiative (specifically representatives of the Tarras Valley Nature Reserve), Newcastleton and District Development Trust, Buccleuch Estates, Gresham House and James Jones and Sons. We also met the Borders Forest Trust (specifically in relation to Carrifran Wildwood, near Moffat).

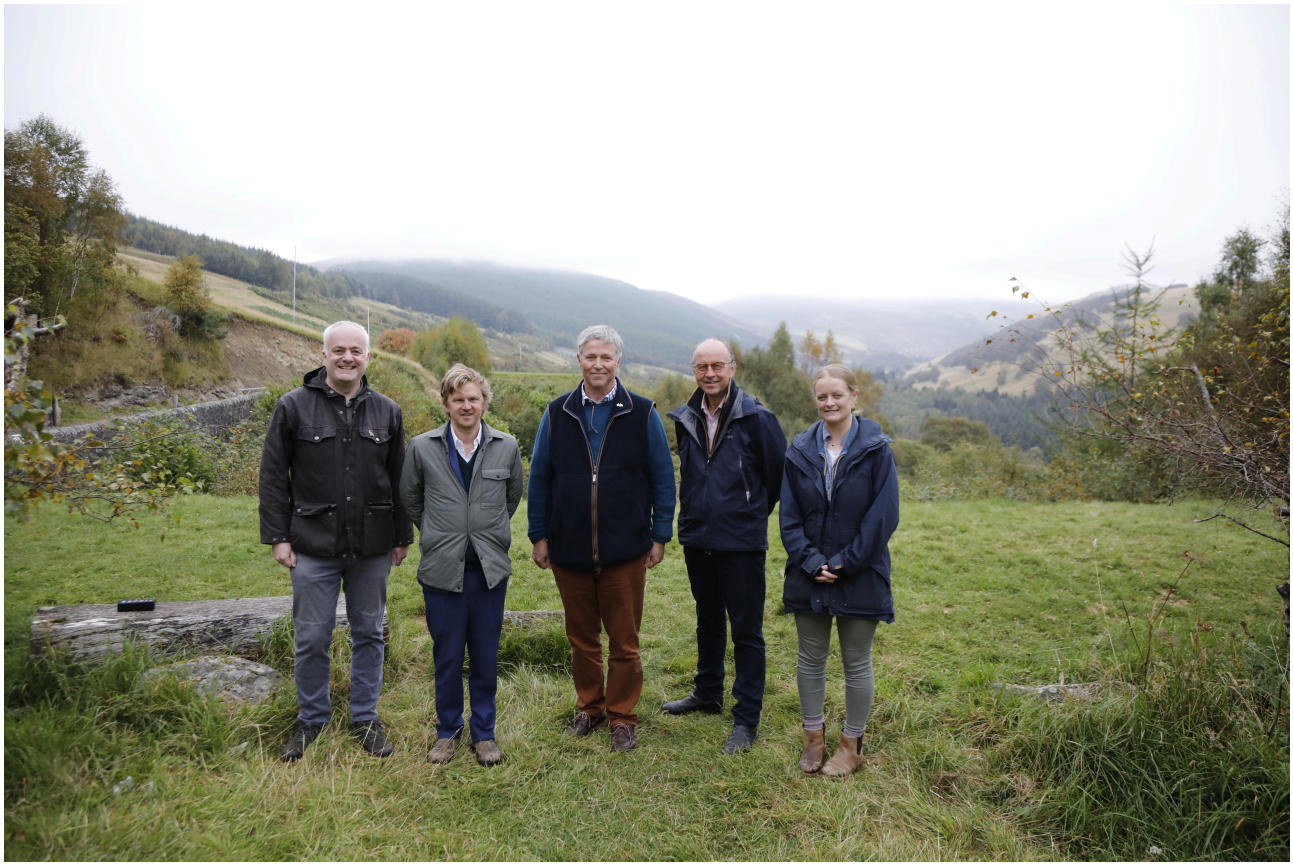
Highland Perthshire

115. Our visit with Atholl Estates allowed us to hear how the estate is currently run, including their business planning and their relationship-building with tenants and the local community. They gave their overarching view of Part 1 of the Bill - that it takes an ideological rather than evidenced stance that “big is bad” with a core intent is to break up large land ownership. Atholl considered that big can be good, in particular highlighting the climate emergency which they said calls for landscape-scaled solutions and the more big players there are, the easier it generally is to make positive change. They also considered there to be little evidence of how the Bill will actually benefit communities as it intends to. Atholl Estates considered Part 2 of the Bill to be representative of an ongoing trend of retrospectively altering private contractual agreements, undermining long-term trust in leasehold agreements and, ultimately, the interests of everyone in the agriculture sector.

116. Participants at the lunchtime community event in Aberfeldy included different community council representatives from Highland Perthshire, people running local businesses, and local campaigners on land or environmental issues. Participants tended to see the Bill through the prism of what they called a “crisis” in local housing. Many young people feel driven out and younger economically active people often cannot afford to move in. Participants raised concerns about difficulties in filling roles in key services. There was also perceived to be a more general development crisis, with businesses often literally lacking room to grow. Participants highlighted the area as a great place to live but gave a sense of frustrated ambition.

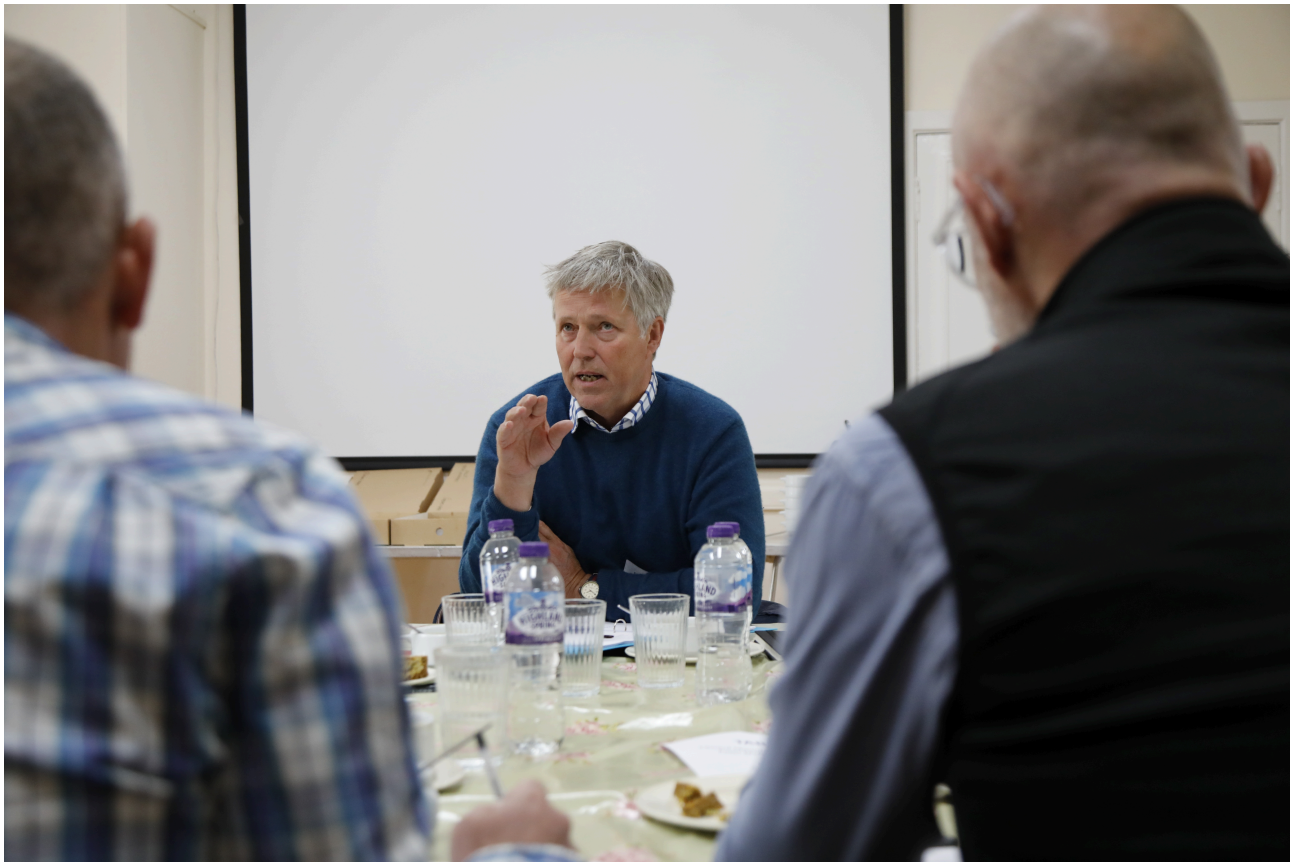
117. With Oxygen Conservation we discussed their vision for Invergeldie. Oxygen have big ambitions to transform the estate, restoring native woodland and peatland and creating a biodiversity haven. The business model is for the estate to pay its way mainly through giving carbon credits to investors. Oxygen recognise this is a new field and are happy to be seen as pioneers. The Bill makes them nervous because they feel it will slow them down, although they hope not catastrophically. They are concerned that excess bureaucracy and over-caution could damage confidence in the natural capital sector in Scotland. They consider that the Bill suggests a political mood that views large landowners with suspicion, even when their business model aligns with governmental goals. They believe it creates an ambiguous political message that risks scaring off investors.

Visit to Atholl Estates



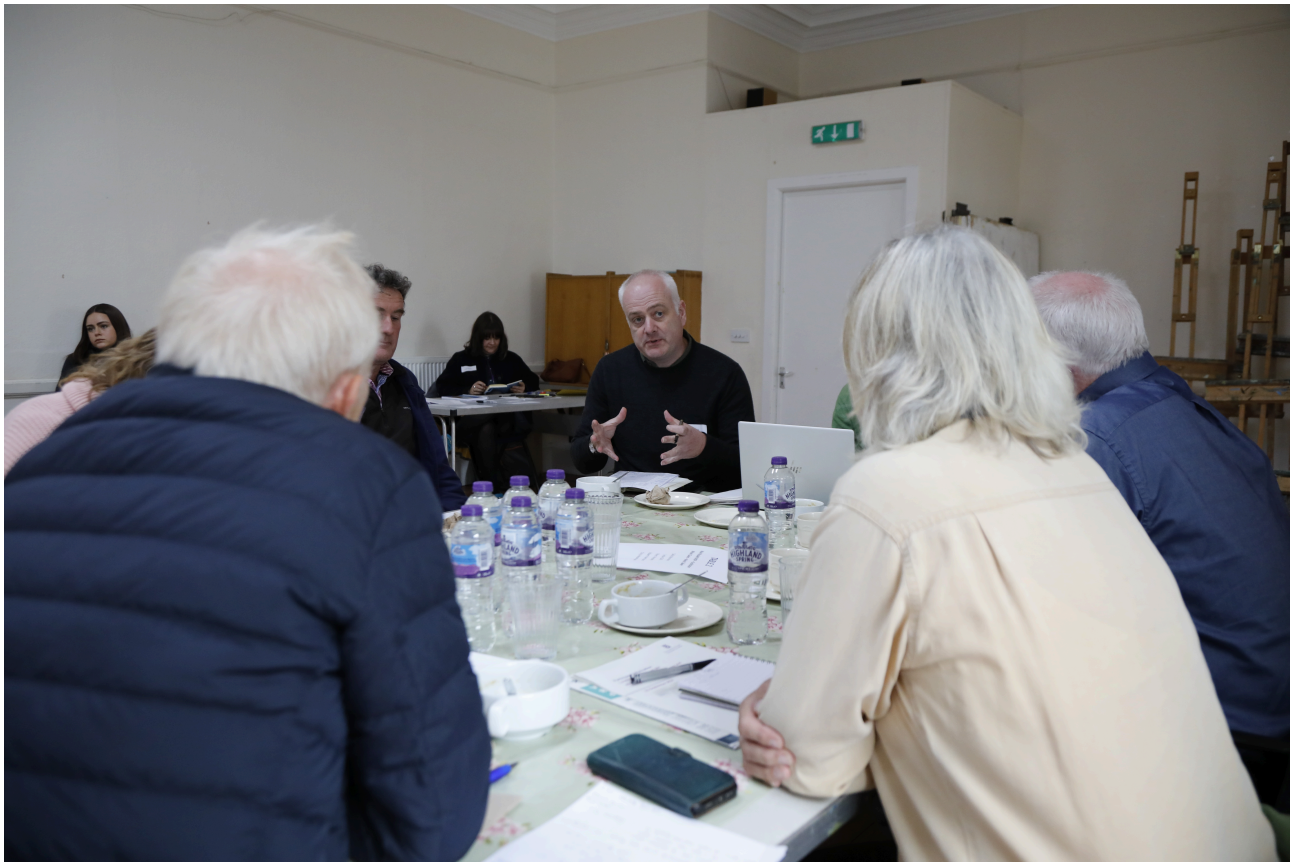
Source: The Scottish Parliament

Aberfeldy Town Hall event



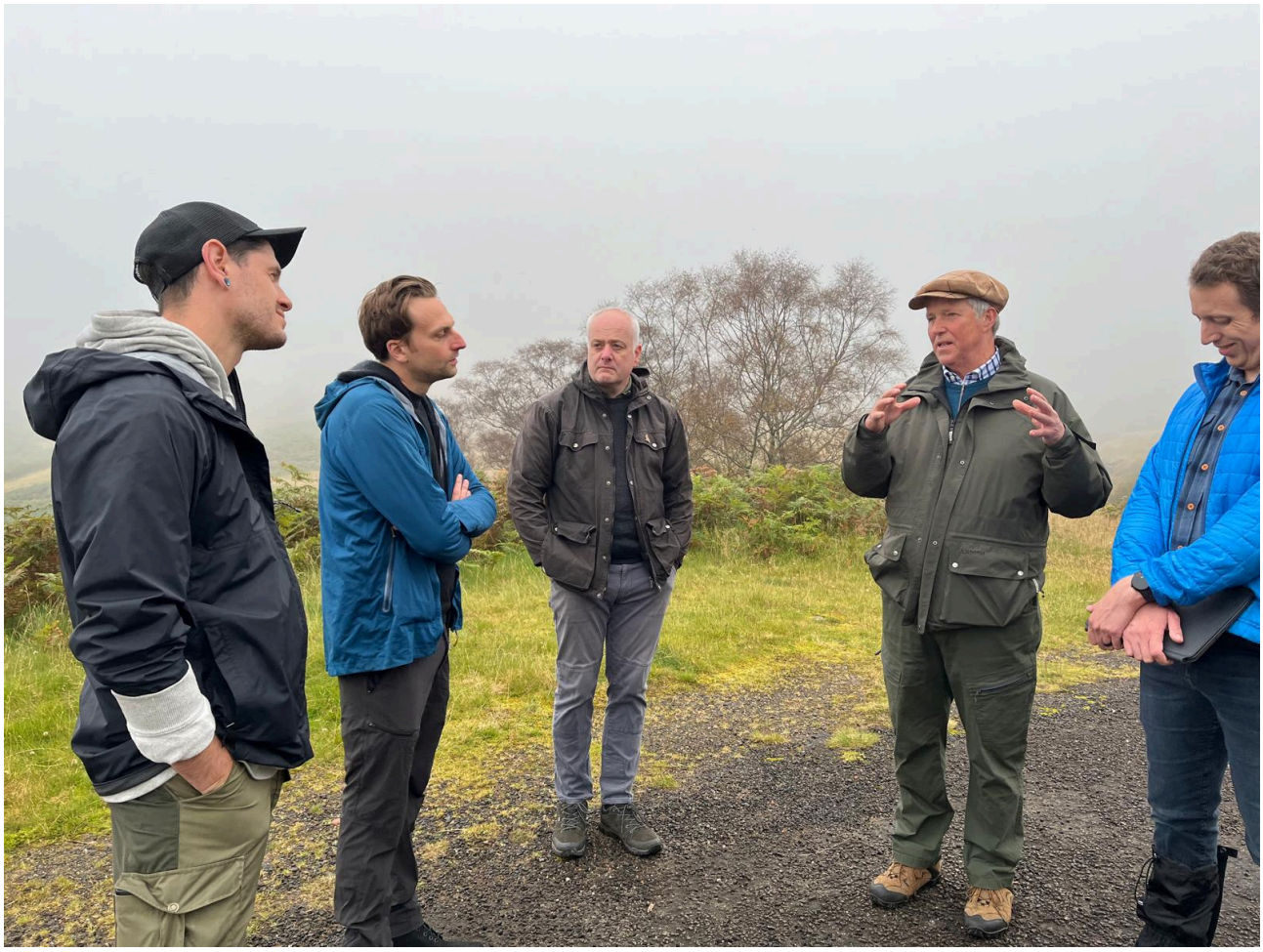
Source: The Scottish Parliament

Aberfeldy Town Hall event



Source: The Scottish Parliament

Visit to Oxygen Conservation at Invergeldie Estate



Source: The Scottish Parliament

Langholm area

118. When we met Langholm Initiative and Newcastleton and District Development Trust they outlined what they saw as community needs and we discussed local engagement and consultation, which is a key part of local development trusts' work. This was highlighted as taxing - relying on hours of volunteer work and enthusiasm. The following day we heard more from the Langholm Initiative about their community buy-out of Langholm Moor from Buccleuch Estate to form the Tarras Valley Nature Reserve. They described this as challenging as they were required to move quickly, secure funding, come up with business plan, etc. They considered that major buy-outs still frequently happen over the heads of the local community, indicating a need for change. They highlighted the purchase of Langholm Moor as a good news story but emphasised that it took enormous effort and a bit of luck.

119. In our meeting with Buccleuch Estate, their main concern was that the Bill will force a legalistic approach on all potential transactions, as it appears that all that matters is the size of the estate, not the size of the sale. They read the Bill as effectively mandating that, going forward, informal conversations with potential purchasers are out, even if it is just to scope if there is any interest to buy. If so, this means that Buccleuch could not have picked up the phone to discuss the Langholm Moor sale with the Initiative. As Buccleuch understands it, instead they should call the Scottish Government. They considered this escalatory and at risk of slowing everything

down. The other local landowners andland managers joining us for lunch expressed similar views. They read the Bill as appearing to nip in the bud conversations between landowners and potential buyers, putting up a bureaucratic wall. Concerns about loss of necessary investment in the domestic timber sector were also raised.

120. At Carrifran Wildwood we discussed Borders Forest Trust's plans for the land and ambitions to buy more. The lotting provisions were viewed as an opportunity in this respect. Even in these relatively early days, Carrifran Wildwood was considered aconservation success, particularly for birds, with many new woodland species colonising what had been an ecological desert. The community engagement provisions were considered the most significant element of the Bill with effective consultation viewed as essential but a big demand on resources.

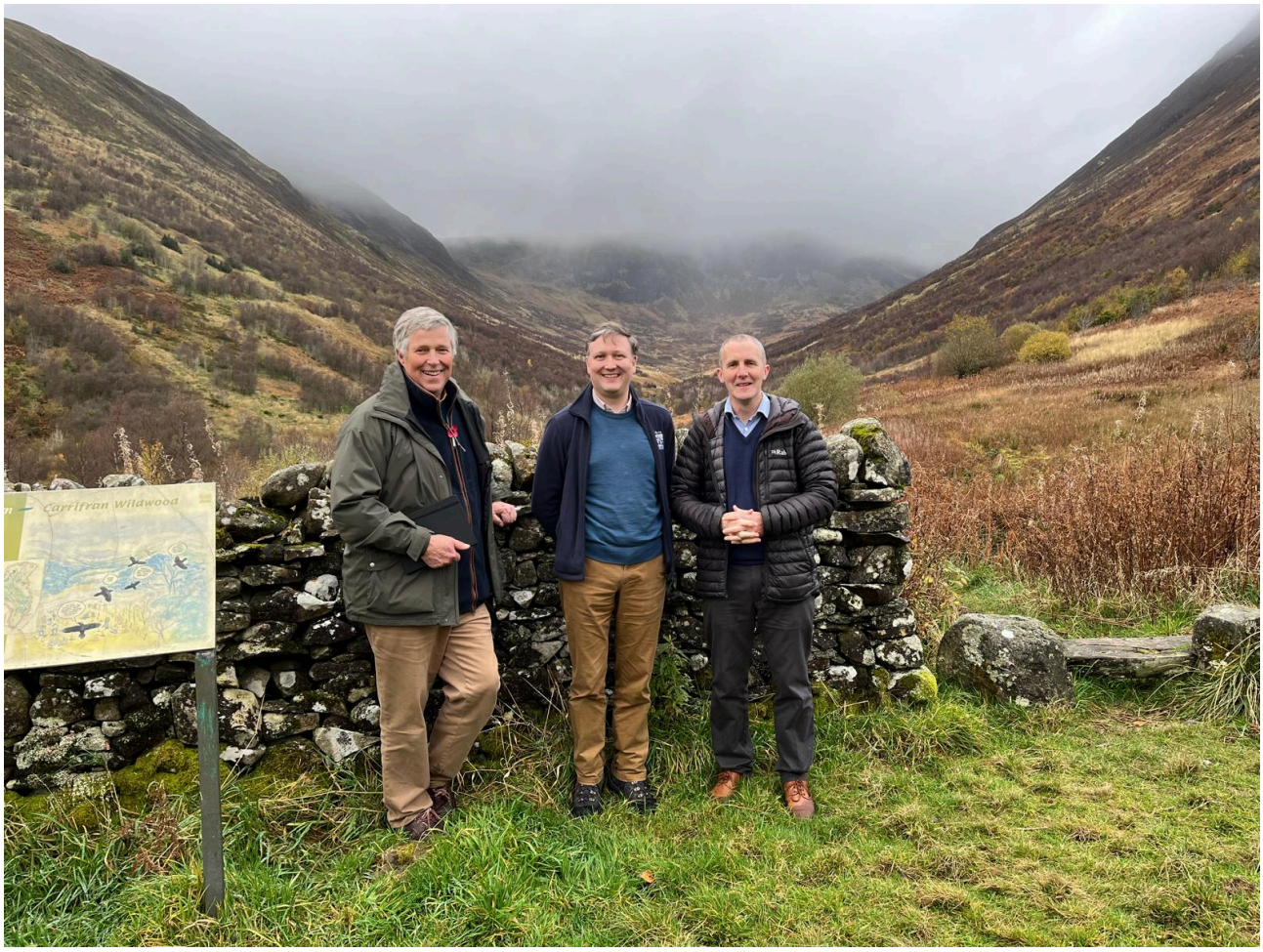
Visit to Tarras Valley Nature Reserve

Source: The Scottish Parliament

Meeting with Buccleuch Estates

Source: The Scottish Parliament

Visit to Carrifran Wildwood with Borders Forest Trust



Source: The Scottish Parliament

121. We held two further engagement events to gather views on the Bill:

- Royal Highland Show panel – the Convener hosted a panel event with Q&A from audience members. The panellists were: Andrew Barnes (Scotland's Rural College), Sarah-Jane Laing (Scottish Land and Estates), Hamish Lean (Shepherd and Wedderburn), Christopher Nicholson (Scottish Tenant Farmers Association) and Andy Wightman (campaigner, creator of Who Owns Scotland website)

- Tenant Farmers focus group 22 January –the Committee heard from a group of 12 tenant farmers (split into 2 groups for discussion) identified through discussions with the Scottish Tenant Farmers Association, NFU Scotland and the Nature-Friendly Farming Network.

Royal Highland Show

122. The event at the Royal Highland Show had a “town hall” format, with around 60 attendees from diverse backgrounds but a common interest in land issues. Attendees were invited to pose questions to the panellists after they made brief opening statements giving their general impressions of the Bill.

123. The topics attendees raised for discussion were varied. They included fundamental questions about inequalities in land ownership and the benefits and disadvantages

of large scale landholdings as well as seeking panellists' views on the detail of the Bill such as:

- why the 3,000 hectare threshold had been set for land management plans,
- whether it is a weakness that (a) holdings under 1,000 hectares are untouched by Part 1 and (b) there is no public interest test set out in relation to lotting,
- what they thought of the requirement to produce a new model lease for environmental purposes,
- their concerns with the resumption provisions,
- why small landholdings were not being converted to crofts,
- whether the rent review provisions were "right" this time (with a view that previous efforts to improve this had been unsuccessful).

Panellists and the Convener at the Royal Highland Show event

Source: The Scottish Parliament

The audience at the Royal Highland Show event

Source: The Scottish Parliament

Tenant Farmers event

124. We heard diverse views from the tenant farmers we met online but overall participants broadly agreed on many key issues. A minority were relatively more optimistic but everyone agreed the agricultural sector faced serious challenges. If things did not change, there was a concern that there might not be much tenant farming left in a couple of generations. This was considered more than just bad in itself: it ripples out into the community threatening community anchors such as the primary school, the village shop, etc. Participants saw legislative reforms as a necessary but not sufficient to turn things around.

125. A wide range of issues were discussed in the session, and the views expressed are referred to where relevant in the body of this report. Some of the key topics discussed were landlord-tenant relations (which could be poor), difficult experiences with rent reviews (and with land agents more generally), right to buy provisions (confusion around what is required under these and reluctance to use them), problems experienced with deer, and ambitions and concerns around diversification.

126. The views gathered during these visits and engagement events have informed our consideration of the Bill and are referred to at various points in this report. As ever, the Committee is very grateful to all who took the time to contribute to our Stage 1 scrutiny and assist in our understanding of the Bill.

127. The Delegated Powers and Law Reform Committee reported to us on delegated powers set out in the Bill. [40] They made a number of recommendations about several of these powers, as discussed later in the report. Overall, they considered the Bill a "framework" that conferred broad powers, often with little detail on how these would be used. They considered that "limited policy development" before the Bill had been introduced had led to an approach of setting out powers that allowed "unspecified changes to fundamental aspects of the Bill".

128. The Finance and Public Administration Committee solicited written evidence on the Financial Memorandum to the Bill. It received 3 responses. [41] The Convener of the Finance and Public Administration Committee wrote to the Convener of this Committee highlighting some financial implications of the Bill. [42] These comments are referred to where relevant in this report.

129. In the course of our Stage 1 scrutiny, the SLC produced formal advice to Ministers on ways of strengthening the Bill. There was separate advice on both Part 1 and Part 2 with the former arriving in late January, close to the end of our Stage 1 scrutiny. The SLC are statutory advisors on land reform to the Scottish Ministers and, as noted above, their work (especially on Part 1) lies behind much of the current Bill.

Part 1

Is Further Land Reform Needed and Will the Bill Meet the Government's Aims?

130. Proponents of further land reform cite a problem with the scale and concentration of land ownership in Scotland. They consider intervention necessary to break up concentrated power and encourage diverse ownership and more community engagement in how land is used. The SLC explain:

> There is by no means an automatic relationship between the scale of ownership and the public interest, but there is a very significant risk related to the concentration of power. That was our conclusion, and our recommendation to the Government was that reforms are needed to moderate the power that is inherent in the scale of land ownership. [43]

131. However, others challenge this view. They point to what they see as the benefits of large landholdings and also refer to the levers already available to address some of the issues the Bill attempts to address, some of which are still relatively new law. Scottish Land and Estates (SLE) emphasise that the Bill conflates scale and concentration. [44] They question the fundamental premise of the Bill in targeting large-scale landholdings when the problem identified was not about how large some landholdings were, but about how landownership is concentrated among too few landowners. This can be as significant a problem in urban areas with landholdings of a much smaller size.

132. Our call for views asked if Part 1 of the Bill would fulfil the Scottish Government's objectives in relation to land reform. Only eight per cent said yes [45] and among the minority who said it would, there was a view that more should be done. The SLC for example stated that Part 1 would help address the Scottish Government's aims but that a programme of further reforms, including tax and fiscal reforms, would be required to achieve "more systemic change in the pattern of land ownership". [46] As noted below, the SLC has since gone on to propose a number of significant changes to Part 1 which they see as necessary to make the Bill truly effective.

133. It is notable that both supporters and opponents of further land reform share doubts that the Bill will meet the Scottish Government's objectives. A number of landowners or representatives of landowners, thought the Bill would mean more bureaucracy, and more work for consultants, but would be more likely to frustrate both landowners and rural communities than to lead to positive outcomes. Long time land reform campaigners Peter Peacock and Andy Wightman said the Bill should not pass in its current form. [47] Peter Peacock stated: "The Government has a lot of work to do. I am perplexed that that work has not been done already—I do not understand how we have got to this point". Andy Wightman advised against making sections 2 to 6 law, as the principles and mechanisms they set out would not deliver the Scottish Government's intended outcomes. He said it would be:

> "… irresponsible of Parliament to impose new, complex, legalistic and bureaucratic mechanisms on the people of Scotland that will not deliver the outcomes that ministers say that they will. That is just making bad law".

134. These themes will be returned to throughout the detailed discussion on the provisions in Part 1 of the Bill below.

Community Engagement Obligations

135. Section 1 of the Bill confers a regulation-making power on the Scottish Ministers to enable them to impose obligations on the owner of land for the purpose of promoting community engagement in relation to land, and makes a number of provisions in further of this power. It does so by inserting a number of new sections (sections 44A-44M) into the 2016 Act.

136. There are two specific obligations set out in the Bill that the Scottish Ministers must use this power to impose:

- That (after engagement with communities) they must produce a land management plan (LMP); and
- that they must consider any reasonable requests from community bodies to lease land.

137. The Bill says a plan must be reviewed and, where appropriate revised, every 5 years. It must also include:

- details of the land to which the LMP relates, including how the ownership is structured;
- the owner's long-term vision and objectives for managing the land, including its potential sale;
- how the owner is complying or intends to comply with—
  - the specific obligations that have been set out in the regulations,
  - the Scottish Outdoor Access Code,
  - the code of practice on deer management;
- how the owner is managing or intends to manage the land in a way that contributes towards—
  - achieving the net-zero emissions target,
  - adapting to climate change,
  - increasing or sustaining biodiversity.

138. The Bill requires anyone making an LMP, or making significant changes to an existing LMP, to engage with the community about it.

139. Any breach of the community engagement obligations these regulations impose can be reported to the new Land and Communities Commissioner (see further below), but only by a specified list of persons:

- A body that has registered an interest, or is eligible to register an interest, under Part 2 of the Land Reform (Scotland) Act 2003 in the land to which the report of the alleged breach relates;

- Historic Environment Scotland;
- The relevant local authority;
- The Scottish Environment Protection Agency;
- Scottish Natural Heritage.

140. The Commissioner can impose a fine of up to £5,000 for a breach.

141. Regulations made under section 44A are to apply to all holdings of over 3,000 hectares or, in the case of an inhabited island, holdings comprising over 1,000 hectares and more than 25% of its land area. (These parameters may be adjusted by regulations).

142. Most respondents favoured the principle of more and better community engagement.[48] However, views split on whether section 1 took the right approach, and those who felt that it did still had concerns about some of its detailed provision.

Approach to Community Engagement Obligations

143. A number of landowners told the Committee that they already engaged with communities and already made and published land management plans. Some stakeholders were concerned that creating a list of statutory requirements could result in "tick box exercises"[49] and the loss of existing good practice. The National Farmers Union Scotland (NFUS) said:

> formalising community engagement could have an impact on informal practices that have taken place for generations, which would be a significant loss to local communities. [50]

144. For this reason, a number of stakeholders, principally large landholders and their representatives, favoured community engagement remaining voluntary.[51] SLE said that “further improvements in community engagement would be best achieved through support and inspiration than obligation which can result in the reduction of innovation and good practice”. [52]

145. Others disagreed.[53] Dr Jill Robbie said that while community engagement was already “very much recommended practice” a statutory obligation would be an important “step-up in Scotland’s land reform process”. Community representatives that we met in Aberfeldy felt large landowners often did not engage or appear to listen or held low-value consultations that felt like a "box-ticking exercise". It was not that all landowners are "bad neighbours" but the power imbalance between large estates and the community meant there was sometimes no incentive for large estates to listen. They had a passive power of not enabling change. Community representatives welcomed the requirement in the Bill to produce LMPs precisely because they would draw owners into talking to communities about local needs.

146. A number of stakeholders said the Bill was not clear about what the community engagement obligations would amount to in practice.[54] As noted, there are two

broad obligations on the face of the Bill (LMPs and the duty to consider a relevant request to lease land) – but there is also a more general power to impose others. Concerns were raised that all three lacked specificity and left too much detail to secondary legislation.[55]

147. Some stakeholders suggested amending the regulation-making power in section 1 to frame it in terms of advancing the public interest.[56] Community Land Scotland (CLS) suggested adding to the provision a list of matters for the Scottish Ministers to take account of when using the power under this section:

- The desirability of progressively achieving a more diverse ownership of land
- Achieving relevant human rights;
- Furthering sustainable development;
- Securing a just transition to net zero;
- Advancing community wealth building;
- Maintaining or restoring biodiversity;
- Increasing community agency on matters seen as important to them;
- The delivery of an adequate supply of affordable social housing, and of workspace for employment;
- The appropriate repopulation or settlement of land;
- The creation of new land and agricultural tenancies, for example crofts and farms/smallholdings;
- Adherence to the terms of the Land Rights and Responsibilities Statement.[57]

148. There were similar suggestions from other organisations; for instance “croft creation, affordable housing and making farming tenancies available”.[58] The community's need for affordable housing was the key issue raised on our visit to Aberfeldy, where large estates own land up to the edges of the town and even small strips to build on are hard to find. Sarah Madden (Scottish Environment LINK) was among witnesses to mention the need to strike a balance in drafting legislation effectively, in terms of balancing the detail on the face of the Bill versus what is best left to secondary legislation or guidance.[59]

149. The Delegated Powers and Law Reform (DPLR) Committee made comments on the section 1 regulation-making powers.[60] In relation to both the power in inserted section 44A to impose obligations on the owner of land and the power in inserted section 44M to modify community-engagement obligations, the Committee recommended that these be amended to require the Scottish Ministers to consult before exercising either power.

150. The DPLR Committee made further observations in respect of the new section 44M power. It highlighted that the power includes the ability to alter both who can allege a breach of obligations and who the obligations apply to (i.e. by amending the land

size thresholds). The Scottish Government had told the DPLR Committee that it was important for it to have the flexibility to adjust the threshold if future monitoring indicates that the objectives behind the provisions in section 1 are not being met. But the DPLR Committee was concerned that the discretion was a wide one, noting "the potential for these powers to increase the impact on additional landowners/ creditors and the land market in Scotland".

151. The DPLR Committee passed this issue onto us as lead Committee, suggesting that if we are content that the powers are appropriate, then additional scrutiny should be attached to the secondary legislation, "whereby the instrument is laid in draft for consultation with Parliament". Some stakeholders we heard from at Stage 1 supported these powers, agreeing with the Scottish Government's argument that it would be important to be able to adjust the threshold in the light of experience after the Bill is enacted, and regulations under section 1 are laid. [61]

Land Management Plans

152. There was broad support, across a wide spectrum of interests, for the principle of larger estates making LMPs and these being available to the local community and indeed the wider public. [62] The Scottish Rewilding Alliance said LMPs "could be a useful tool, encouraging an open discussion with those who actively manage and work land". [63] Andy Wightman said the provisions on LMPs were "the only part of part 1 that is worth pursuing, because it will bring a little more transparency by making owners accountable for what they plan to do with very large areas of land". [64] Max Wiszniewski (REVIVE Coalition) called LMPs "the most crucial intervention that can be made in the bill" stating that the stronger these obligations were, the greater likelihood of the Bill achieving its aims. [65]

153. As already alluded to, the consensus around LMPs erodes somewhat in relation to how prescriptive any legal rules about them should be: in terms of both how they must be made and what they must contain. SLE advocated, overall, a "light touch" approach that would not require commercially sensitive information to be divulged. [66] This was also a concern of Turcan Connell who provided the example of a plan setting out any intentions to sell. [67] They said that public knowledge of intention to sell in the near future could have a number of effects on the business, including making it more difficult to secure staff.

154. Turcan Connell also said that the duty under section 1 to require consultation on changes to an LMP appeared onerous. They said the duty should be balanced against the fundamental right to enjoyment of private property and the need for businesses to be flexible. Turcan Connell said the section 1 powers are likely to lead to a duplication of information in the public domain about any estate caught by the powers. In relation to the duty to state how the estate is contributing to net zero and climate change measures, they said:

> It seems unlikely that a statement from an owner confirming that they do not intend to take any steps will be acceptable, and this could in turn result in a "back door" statutory duty on the owner of a large landholding to promote net-zero and climate change.

155. Concerns have also been raised about the duty to consult communities on LMPs. As discussed above, there was a view that consultation should be encouraged, not legally required. In the context of LMPs specifically, there was a concern about "raising expectations of communities as to the extent of influence" as the LMPs should not be "used as a tool to stifle development". [68] Buccleuch Estate said the requirement "could lead to confrontation if it is not possible to implement suggestions from members of the local community who may not all share the same views". [69] SLE agreed that in many cases there is not a "unified community voice" and the different aspirations within a community may be in conflict. [70] Therefore, while communities can be made aware, have a chance to comment, and have a landowner "give due consideration to all those voices", the landowner must ultimately make decisions according to "their own legitimate objectives".

156. Dr Jill Robbie, on the other hand, thought that community expectations could be managed and though a community may not get what it wants, the process of discussion would be beneficial and may allow compromise. [71] So while she acknowledged that conflicts may arise, she considered that was not necessarily negative "as there is a process to work them out".

157. The SLC recommended that the Bill should be amended to include a duty on the landowner to demonstrate how community engagement has informed the LMP to "help ensure and demonstrate that community engagement is meaningful, with clear influence". [72] They proposed this to avoid community engagement becoming a formulaic process.

158. The SLC also recommended an amendment to require clear guidance on LMPs to be produced. They thought they themselves would be well-placed to provide this guidance. SLE supported this. They said any such guidance "should align with the good practice on community engagement which the SLC has already developed with stakeholders". [73]

159. An issue brought up several times in evidence, as well as on the Committee's visits was the relationship between LMPs and local place plans (LPPs). The discussion was as to the extent to which there was complementarity or even duplication in relation to what these documents (and the process leading to their creation) are for, and what they should set out.

160. LPPs are a relatively new element of Scottish planning law. They allow communities rather than planning authorities (i.e. councils or national parks) to make proposals for the development and use of land and, through the plan, to feed into the planning system with grassroots ideas and proposals. As was noted on our visits, there was sometimes an underlying view that the impetus for land reform was in part a response to perceived weaknesses in the planning system at a community level in rural areas, including under-used compulsory purchase powers and the lack of a compulsory sales power. On our visit to Highland Perthshire, there was also some support for aligning LMPs with LPPs or local development plans (a plan produced by a planning authority relating to the needs of the area, which LPPs can feed into). Atholl Estates considered that good local development plans, used properly, are the way to address local issues. However, they felt that at the moment these plans were formulaic and developed without much community engagement. They considered that strengthening local development plans would address most local issues better

than requiring an LMP would.

161. LPPs were highlighted as potentially useful for identifying community objectives.[74] Many hoped local place plans and land management plans could be more "joined up".[75] We also heard views from landowners that rolling out more LPPs across rural areas might solve many of the issues that are behind the introduction of LPPs and that planning departments should be resourced to support this.[76] Andy Wightman doubted the relevance of LPPs to land management planning and the merits of bringing the two processes together on the ground that "rural land" is excluded from town and country planning.[77] Sarah Madden (Scottish Environment LINK) said that "only the communities that have the capacity, the will or the funding get around to creating a local place plan", which may exclude more disadvantaged areas.[78]

162. Several stakeholders raised communities' capacity to engage collectively and in an organised way with an engagement exercise, which will vary considerably. In most cases, any such work will be heavily volunteer-led. Some communities may have built up strong institutional capacity for this sort of activity over years or even generations, and feel confident in doing it. In others, capacity may be more ad hoc, and more dependent on a small number of informed and energetic individuals. Other communities may not even have this, increasing the risk that the opportunity for more meaningful and influential engagement that the Bill aims to create could be lost.

163. A number of witnesses raised the related risk of "engagement fatigue" or of communities being "consulted to death".[79] In a discussion on whether LMPs should be linked to LPPs, Josh Doble (CLS) said "We do not want to create a number of different statutory mechanisms for communities to proactively engage with, because that will burn out their capacity".[80]

164. The SLC recommended in its advice to Ministers on Part 1 that the Bill should include a duty to refer to LPPs in LMPs, showing how the landowner's land management will contribute to delivering the LPP.[81]

165. The Cabinet Secretary for Rural Affairs, Land Reform and Islands said that LMPs and LPPs had different aims and purposes.[82] She agreed that LPPs are important in identifying local needs but said that providing an express link to them in the Bill could be problematic, as LPPs are not universal. She suggested that ensuring LMPs took account of a relevant LLP would be more appropriately addressed in secondary legislation or guidance than included on the face of the Bill.

Detail to be included

166. Views were split on the level of detail that should be set out in a LMP. Some considered that the value of an LMP is in increasing transparency and awareness of land management practices and did not think it necessary to provide granular detail to serve that aim.[83] Some specific elements on the face of the Bill were questioned. Both SLE and Andrew Howard (Moray Estates) questioned the inclusion of the outdoor access code. Andrew Howard was unsure of the purpose of having to comment on compliance with existing requirements: "Clearly, we are required to comply with, for instance, the outdoor access code, and we do. I am not sure why

we need to state that, because we are required to do that". [84] He said such requirements risked LMPs being too onerous: "they need to be proportionate and must deal with things that are of material interest to communities".

167. Other stakeholders considered that a detailed plan is necessary for the community to be able to understand and challenge a landowner's intentions, though they agreed that each LMP would be different and that its content should reflect the land it covers and the interests of the local communities.[85] As already noted, some stakeholders therefore felt regulations should not be too prescriptive.[86] Others said there should be a general requirement to consider the public interest when preparing a LMP.[87] Potential public interest considerations that were suggested to the Committee were:

> achieving more diverse ownership of land; furthering sustainable development; advancing community wealth building; increasing community agency, which could be picked up through the community engagement obligations; meeting repopulation or resettlement criteria; and adequate supply of social housing[88]

168. Josh Doble (CLS) said that to avoid excessive prescriptiveness, leading to a "pro forma" approach to LMPs, "a clear statement about public interest considerations" could be set out in the Bill. [89] The detail could then be set out in extensive guidance, taking account of the differences in landowners, land use, and community aspirations.

169. Peter Peacock, however, thought it would be better for the Bill to be relatively prescriptive or, alternatively, for there to be a requirement to consult the Parliament on the relevant regulations in draft. [90] (As discussed at paragraphs 149-151, the DPLR Committee had made a suggestion along similar lines in respect of the power in inserted section 44M).

170. The Committee asked the Cabinet Secretary whether the right amount of detail about the contents of LMPs had been set out in the Bill. She responded:

> It comes back to striking the right balance—not being too prescriptive and allowing for some flexibility—because we recognise that land will be very different across Scotland. However, ultimately, we want to achieve a number of high-level outcomes, such as tackling the climate and nature crises, delivering our vision for agriculture in Scotland and being a global leader in sustainable and regenerative agriculture. [91]

171. She referred to guidance that would be issued on LMPs and indicated there would be further consultation on what would be included in them. She said she would reflect on the evidence and the Committee's own conclusions but that "we hope that the high-level overview of our ultimate ambitions strikes the right balance".

Enforcing Land Management Plans

172. Many stakeholders highlighted that the Bill only appears to require landowners to make an LMP (and to consult the community in doing so). There is no apparent obligation to put the plan into effect or deliver on it. This was described as a "major weakness", which could frustrate communities who had engaged in good faith in

helping create the plan.[92] Laurie Macfarlane said plans should not just be "nice words" but have "mechanisms of accountability as well as some process for ensuring that they are happening". [93]

173. Others said having a formal obligation to deliver a plan did not take account of the realities of running an estate business and could backfire. They stressed the importance of landowners needing to be nimble in adapting to change, including business setbacks.[94] SLE said that making plans enforceable:

> "would lead to bland LMPs lacking aspiration in order to avoid any repercussions for non-compliance, which would not be of benefit to communities". [95]

174. We also explored with witnesses whether, if plans were to be binding, this should carry forward if the estate is sold. There was some support for this: it was seen as consistent with crofting assignations, long-term management plans for forestry, and natural capital projects, amongst others.[96] In our evidence sessions with land reform researchers and commentators, we explored views on whether, where an estate is sold, the LMP should pass automatically to the new owner. There was general agreement that the new landowner should at least be bound by the "basics", retaining the ability to change the detail.

175. However, other witnesses raised concerns that such a provision would be "unusual". Dennis Overton (Ardtornish Estate) stated: "the practicalities of it are difficult and it would have a chilling effect on the land market". [97] Our panel of legal experts raised concerns that such a provision would be "against the general principles of property law".[98]

Time period

176. The Committee also considered the appropriate time period for the LMP to cover. The Bill sets out that the plan should be updated every 5 years. This was considered short by many witnesses.[99] Plans of 10 or 20 years were suggested as more appropriate but with some highlighting that while the plans should look further ahead, they should be required to be updated if there are changes.[100] On this basis Peter Peacock stated he was "less worried about whether it is a 10- year plan or a 15 or 20-year plan than I am about having proper monitoring, whatever the length of time". [101] Hamish Trench (SLC) commented that the plan should look longer term but considered 5 years "a reasonable timescale for a review period". [102]

177. In her evidence to the Committee the Cabinet Secretary highlighted that it would be important to ensure longer term plans did not become out of date. [103] She indicated she was "keen to hear whether the committee has any particular recommendations" but did feel that the existing proposal struck the right balance.

Cost of producing

178. The Committee also explored the cost of producing LMPs. The Financial Memorandum provides an estimate of around £20,000 per plan. [104] The evidence

we received on this varied, but there was a general consensus that the cost would vary, potentially significantly, depending on the size and complexity of the landholding and the size and nature of the community to be consulted.[105]

179. Andrew Howard (Moray Estates) considered that a plan for a sparsely populated area with a small community and straightforward land use, which would require only a narrow range of issues to be considered and a simpler engagement process, may cost a few thousand pounds but if the land is next to a busy community the £20,000 estimate is not unreasonable. [106] He said: "if you want the engagement process to be a genuine one rather than someone publishing their plan and saying, "Here you are—what do you think?" there is a real risk of underestimating the cost".

180. We heard from investors that they would expect even a "basic" plan to cost more than £10,000.[107] Rob Carlow (Gresham House) considered that £10,000 would be the cost of a plan for an area of land about half the size of the limit set out in the Bill. Stakeholders did express concerns about the "significant amount of money" that could be involved.[108] However, Jon Hollingdale (Scottish Community Alliance) was more optimistic that a process could be found that worked for everyone, stating that: "I do not think that we should exaggerate this as creating a complete festival for external consultants, unless the process is designed to make it that way". [109] This returns us to the lack of detail in the Bill itself – when it is not known what exactly the nature of community engagement should be, it is difficult to know what it will cost.

181. Coigach Community Development Company said their last community engagement exercise had cost £6,315 but that £10,000 would be a "more comfortable figure" for engagement under the Bill. [110] They stressed that consultation with communities is already a core role for them, estimating that around 50% of their working time is spent on community engagement. This was a point made by other rural community bodies. Megan MacInnes (Applecross Community Company) said that they "have no objective other than to respond to the community's needs and deliver development objectives in response to those needs". [111] She therefore considered that community development trusts work with the community in a different way than other landowners and that "a lot could be learned from that local member-led approach that could be useful for developing land management plans".

182. A number of stakeholders suggested that large landowners may already be producing land management plans.[112] There was a suggestion that this goes hand in hand with "responsible" ownership of land of that size.[113] Jon Hollingdale (Scottish Community Alliance) told the Committee:

> perhaps I am being very naive, but I assume that most, if not all, large-scale landowners already have some sort of plan. They do not get up in the morning and do stuff on a whim: they have fairly worked-out plans that are probably more detailed than the bill expects. What they are being asked to do is consult on the plans and do them in a particular format. I assume that they already do a great deal of planning. If they do not, one might suggest that they are not very responsible landowners of thousands of hectares. [114]

183. However, Sarah-Jane Laing (SLE) stated that very few SLE members produce

"something that they would tag as a land management plan in line with the provisions in this bill" though said that a large proportion do produce "a future vision and plan" that will link in to things like forestry plans and local development plans. [115]

184. We explored in our oral evidence session with landowners the nature of the consultation they already undertake with communities and they all described ongoing formal and informal processes of engaging with communities. [116] On our visits to large landowners Atholl Estates and Buccleuch we also heard about their community engagement and the land management planning they undertake. Some stakeholders also highlighted the other forms of plans that are being created by landowners. [117] Jon Hollingdale (Scottish Community Alliance) discussed forest plans as an example which is "well understood", works "reasonably well", and "probably goes into much more detail than we are expecting in land management plans". [118] These practices are clearly being undertaken by some large landowners already, but the Bill requires clarification as to whether LMPs are intended to be a substantial new undertaking on large landowners or whether, at least for those already undertaking this work, they require the more modest tailoring of their existing planning and consultation into the format set out.

185. In our evidence session with the Cabinet Secretary she acknowledged that costs would vary with the landholding and guidance was highlighted as a way of supporting land managers to make the process as straightforward as possible. [119] She referenced the evidence the Committee had heard that landowners are engaging in this work anyway and stated that she "would not expect the costs for them to be considerably higher than they already are".

Community Request to Lease Land

186. We received comparatively little evidence specifically on the obligation to consider community requests to lease land. CLS did make some comment on this provision, stating that it is "unnecessary in its current form" as "the provisions, as drafted, will not change anything". [120] They pointed out that anyone can request a lease and "it is unclear what an obligation to consider a request looks like". They proposed a change in the Bill to:

- Specify a process for assessment of a request to lease land;
- Specify grounds for rejection of a request to lease land, with an appropriate penalty for failing to properly consider a request;
- Widen the scope of eligible community bodies beyond "a community body within the meaning of section 34 of the Land Reform (Scotland) Act 2003";
- Specify that refusal to consider a valid request to lease should feature as a material consideration within any future Community Right to Buy decisions by Scottish Ministers.

CLS also say that it is unclear "why there should not also be an obligation to consider a request to buy land".

Thresholds

187. Views on the appropriate land size threshold to trigger the community engagement obligations were split among stakeholders. Other than one suggestion of a 10,000 hectares [121] threshold, those wanting change generally favoured lowering it (though many considered that any threshold would be arbitrary [122]).

188. There was strong support for harmonising thresholds across that Bill rather than having a 3,000 hectares threshold for the community engagement obligations and 1,000 hectares for the other provisions in the Bill. [123] There was some support for a 1,000 hectares threshold across the board [124] and this was the recommendation of the SLC. [125]

189. Some witnesses supported a lower threshold of 500 hectares. [126] Peter Peacock stated that this would exclude all individual crofts and 97% of all farm enterprises. [127] The Scottish Crofting Federation also highlighted that 96.4% of agricultural holdings in Scotland are under 500 hectares so considered the argument that a 500 hectares threshold would unduly affect "family farms" not to be credible. [128]

190. CLS proposed a different approach affecting "significant" rather than "large" landholdings. "Significant landholdings" would be land over 500 hectares (and land that comprises 25% of a permanently inhabited island), in line with recommendations from other stakeholders, but would also be "sites of community significance" – land that a designated public body can agree is of significance to any applying community. [129] CLS suggested this test for every element of Part 1 of the Bill and it received more support from others in the context of the other provisions, so is discussed in more detail below. CLS considered this definition should apply across the Bill to "ensure urban and peri-urban sites are not excluded". They consider that many of the landholdings which would be caught by the lower 500 hectares threshold (over 2,000 rather than c420 if the 3,000 hectares threshold was retained) will already be producing LMPs, "as is already good practice amongst conservation organisations, public forestry, responsible private landowners and community landowners".

191. When the question of thresholds was raised with the Cabinet Secretary, she explained that 3,000 hectares had been proposed as it would capture about 40 per cent of the land area in Scotland. She explained: "We are trying to get the balance right when considering the burden that we are putting on landholdings in relation to the land management plan, obligations for community engagement and associated costs" though added that she was considering the evidence and the recommendations made by the SLC. [130]

Single, composite and contiguous

192. A separate concern raised in relation to land caught by the provisions is that only "single, composite and contiguous" holdings are included. This means the provisions will not apply to landowners with fragmented landholdings each under the relevant threshold. Some suggested the Bill should be amended to remove "contiguous" and ensure the Bill extends to "aggregated, corporate landholdings".

[131] CLS provided the example of Gresham House, saying that the funds it manages makes it the third largest private landowner in Scotland, owning more that 53,000 hectares, but it would not be caught by this provision because the holdings are fragmented, with no single holding over 3,000 hectares.[vi]

193. However, Sarah-Jane Laing (SLE) pointed out the need to consider the individual circumstances of ownership and whether the landholdings are managed as individual businesses or a consolidated ownership in different elements. [132] The SLC proposed a "proportionate approach to determining how linked and/or discontiguous holdings should be treated". [133] They stated that consideration of contiguity is necessary in establishing whether titles are controlled and managed as a single composite holding and that, given the complexities in this issue, it is best addressed by guidance. However, they did suggest clarifying that severance by railway or other public infrastructure ownership should be disregarded for the purpose of determining contiguity.

194. When questioned on this point the Cabinet Secretary explained that, while she was open to considering the point:

> the bill focuses on how communities are impacted by a high concentration of land ownership in an area, which would be harder to evidence if we were looking at overall ownership, which could be in other parts of the country, too. Bringing aggregate land holdings into the bill might not be appropriate to meet that aim and we would have to give that greater consideration. [134]

Reporting a breach

195. There was broad support among stakeholders for expanding who can report a breach of the community engagement obligations.[135] Some considered that further bodies should be added to the list, others suggested that any member of the public should be able to report. [136] Those favouring a restricted list thought this would reduce the risk of vexatious complaints and prevent landowners having to worry about where the next complaint might come from. [137] The SLC recommended that the list be expanded to include community councils, enterprise agencies, national park authorities and the Crofting Commission. [138]

196. The SLC also recommended the new Land and Communities Commissioner (LCC) under the Bill be given the ability to instigate an investigation into a potential breach in the absence of an allegation "where there are reasonable grounds to do so". There was support for this in our evidence gathering [139], though some highlighted that a process for weeding vexatious complaints would be needed "so that the LCC is not reacting to every anonymous complaint". [140]

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vi Gresham House dispute claims that they are Scotland's third largest landowner. They state that while they manage investments on around 120,000 hectares, they only own around 200 hectares. Supplementary briefing following evidence session

197. The Cabinet Secretary explained in her evidence that the list had been kept limited so that those alleging breaches "have some experience in relation to land management and working with communities on the ground" and "to guard against, and deal with, the potential for vexatious complaints". [141] She also highlighted the delegated power that is available to add bodies to the list if this was considered necessary. Again, she referred to the evidence the Committee had heard and stated that she was "open to hearing the committee's recommendations".

Anonymity

198. The SLC raised a concern about the Bill requiring sharing of full reports with the landowner. The SLC stated that in their experience "this can be problematic for some communities who may fear repercussions" and recommend that there should be provision for removing identifying details. [142] There was support for this suggestion in the evidence we have received, with community bodies in particular highlighting previous experience where anonymity has been required to ensure no negative consequences for those making allegations. [143]

199. The Cabinet Secretary again indicated she was happy to consider the views of the Committee on this point. [144]

Penalties

200. As discussed above, some stakeholders preferred a voluntary approach to community engagement so were against any legal penalties. Again, the issue arose about the lack of detail in the Bill as to what the community obligations would be. Sarah-Jane Laing (SLE) told the Committee: "Until we know exactly what is in a land management plan, it may be difficult for us to say what level of compliance would have to sit alongside it". [145] Similarly, the Scottish Countryside Alliance stated that: "ScotGov need to concentrate on furnishing stakeholders with the correct detail to begin with rather than what will happen to them should they fail to meet certain undefined scenarios". [146]

201. Among those who were supportive of the legal obligation, fines were generally considered to be too low, with concerns this would be viewed as a "non-compliance fee". [147] As was set out in the discussion on costs above, the cost of producing an LMP is likely to be more than the maximum fine so it was not considered to act as a sufficient deterrent when a landowner could potentially save money by non-complying. Others considered the existing fine appropriate, and comparisons with similar sanctions were highlighted. [148]

202. Many suggested that, whether the fine itself is at the right level or not, a one-off fine is insufficient deterrent. They suggested either repeat fines or a system of escalating penalties, potentially using cross-compliance. [149] CLS set out a "staged escalation process" in their written submission:

- Stage 1 escalation – a fine of "considerably more than £5000";

- Stage 2 escalation – LCC can impose a LMP Order creating an obligation to produce a LMP, with failure to act leading to a public report from the LCC and the LCC being able to initiate action to impact landowner's entitlement to public funds;
- Stage 3 escalation – continued breach reported as a criminal offence or LCC given powers to order the sale of the land. [150]

203. Cross-compliance was considered a useful tool by a number of stakeholders.[151] The SLC recommended utilising cross-compliance penalties when a landowner is in breach of an obligation, including restricting access to public financial support such as agricultural payments or forestry grants. [152] Don Macleod (Turcan Connell) suggested cross-compliance "makes a lot of sense": "If the state is paying out money to farmers or estate owners to do something, that is good, but if that person is not fulfilling their contract or other things that the state requires them to do, it makes a lot of sense for them not to get public money". [153]

204. When asked about how the £5,000 penalty had been arrived at, the Cabinet Secretary told the Committee that "the fines are set at a level that broadly mirrors the penalties in relation to the register of persons holding a controlling interest in land". [154] Though that is a criminal penalty rather than civil, the maximum amount is £5,000. She stated that "the question always comes back to the point about balance and ensuring that the fine will have the desired effect and act as a deterrent, so we want to consider the committee's views and any recommendations that members might have".

Recommendations

205. The Committee supports the general principle behind section 1, of allowing the Scottish Ministers to impose community engagement obligations on large landowners.

206. We also support the specific requirement to produce land management plans (LMPs) which have potential to deliver essential increases in transparency about land ownership and use in Scotland. The Committee recognises that some land managers are already producing good quality public LMPs. Some of what estates will be required to set out in the plan may already be in the public domain, although it may not always be easy for most people to locate. By contrast, LMPs have the potential to be an accessible "one stop shop" for information about large parcels of rural land, improving transparency around land ownership and use in Scotland, and performing a useful community purpose. They may also add to the general understanding of what large estates do, including their engagement with the local community.

207. The Committee accepts that much of the detail relating to LMPs, and to any other community engagement obligation created under the Bill, is best left to secondary legislation, to allow greater flexibility to adjust the requirements as these new

provisions bed in and we learn from experience. However, the relevant regulations (under inserted section 44M) should be subject to a pre-laying procedure that allows the Parliament to consider them in draft. We also recommend a pre-laying procedure for regulations under inserted section 44A (the more general power to place community engagement obligations on larger landowners) to ensure that these too can be considered in draft by the Parliament. The Bill should be amended to also require the Scottish Government to consult before laying either draft.

208. We recommend an amendment to require a landowner preparing an LMP to consider the local place plan (LPP) for the area, if one exists. An LPP is a potentially important and useful statement of community ambition that could help shape an LMP positively.

209. We also recommend that LMPs should be required to set out how the prior community engagement that was undertaken has impacted the plan. This "nudge" in legislation may make it more likely that engagement will be meaningful and less likely that it will be a "tick-box exercise".

210. The Committee considers it important that not only are LMPs created, but the plans set out in them are actually taken forward. The Scottish Government should consider how it can encourage the delivery of the plans, while leaving flexibility for landowners to respond to changing circumstances. We request further information on how the implementation of LMPs will be encouraged and monitored to ensure that they have a tangible impact.

211. We understand why the Bill has made provision for LMPs to be regularly reviewed. In choosing to set 5-year review cycles, it has sought to strike a balance between ensuring plans remain current and not imposing unrealistic or unhelpful obligations on landowners. We do consider it important that LMPs are opportunities for long-term thinking about land management, including responding to the climate and nature emergencies. Guidance on the length of management plans and other matters would assist landowners in preparing their LMPs.

212. The Committee sees some merit in aligning the land size thresholds operating across the Bill for reasons of policy cohesion and clarity for stakeholders. We have heard varying evidence as to what that threshold should be, with many suggesting the current 3,000 hectare limit in relation to community engagement obligations is too high. We note that there is a power in the Bill to vary thresholds. We have also heard that reference to "sites of community significance" rather than a threshold based on scale may be more appropriate. We recommend that the Scottish Government reflect on whether the threshold in section 1 of the Bill should be reduced ahead of Stage 2.[vii]

213. The Committee recommends that, if the Bill passes, whatever thresholds are set out should be subject to ongoing monitoring and review. We note that there is

[vii] Douglas Lumsden and Edward Mountain dissented from the last sentence of this recommendation.

already a delegated power in the Bill to amend these thresholds. Consideration should be given to adding a reporting requirement on the success (or otherwise) of these thresholds so that the Parliament and stakeholders can be updated on how provisions are operating and whether the Scottish Government is considering use of the power to alter these thresholds.

214. We also suggest that the Scottish Government addresses the potential loophole created by the Bill's application to only contiguous holdings. We recommend that it should be clarified in the Bill that land split by a road, railway or similar, should be treated as contiguous. Otherwise, how linked holdings are, in terms of their management and their use, should be considered in determining any adjustments needed to the provision. There is an additional challenge in relation to individuals or business entities using separate legal vehicles for ownership of two or more landholdings. We ask the Scottish Government to clarify whether the Register of Controlling Interests provides an answer in such cases.

215. The Committee considers that a fixed list of those who can allege breaches of community engagement obligations (with the ability to update this list) is a sensible approach to ensure claims are validated. However, we consider that the list of those who can allege breaches of community engagement should be wider than currently in the Bill. The additions suggested by the Scottish Land Commission are a good starting point. We ask the Scottish Government to reflect further on who to add to this list to help ensure compliance.

216. The Committee recommends that the Bill be amended to provide the Land and Communities Commissioner with the power to pro-actively investigate potential breaches of community engagement obligations.

217. The Committee recommends that provision be made in the Bill to allow removal of identifying details from reports of breaches of community engagement obligations before these are shared with the landowner when the Land and Communities Commissioner considers that there are good reasons to do so.

218. The Committee is concerned that a one-off fine of up to £5,000 is insufficient deterrent for breach of community engagement obligations, especially given the Scottish Government's own estimate that preparing an LMP would on average cost more than this. We ask the Scottish Government to clarify whether the Bill allows recurring fines for continuing failure to comply with an obligation, such as preparing an LMP. If not, clarification by way of amendment would appear necessary. Additionally, there should be implications for the landowner in terms of cross-compliance (e.g. future eligibility for agricultural support).

Community Right to Buy: Registration of Interest

219. Section 2 of the Bill provides an extended opportunity for communities to register an interest in land. Where a community registers an interest in buying land, that land cannot be sold until notice has been given to the community. The community is then able to seek to purchase the land under its right to buy. The Bill extends the opportunity for communities to register by requiring a prior notification of intention to sell so that communities have an enhanced opportunity to make a late application under existing right to buy legislation.

220. Whether for or against strengthening a community right to buy in principle, stakeholders have been critical of this provision. Those who agree with the principle describe this provision as modest and consider that much more is needed to make any real difference. Others highlight that there is already provision for communities to engage and consider no more is needed.

221. A more general criticism has been made that Part 1 of the Bill may be too focussed on community ownership as the solution to the problems the Scottish Government is trying to solve around concentration of land ownership. Peter Peacock, while "a huge advocate and fan of community ownership", is critical of this approach to achieving land reform:

> one of the weaknesses of the bill, and the weakness of the argument about land reform in the round, is the equating of such reform with community ownership. I do not see it that way. I want to see hundreds more private owners as well as community owners. It is a question of how you diversify ownership and widen opportunity in land, and I do not see that as purely a community thing. [155]

222. Concerns have also been raised about specific details of the provision (principally the minimum sale thresholds and timescales involved). These points of detail are considered below but the more fundamental question for the Parliament is whether any iteration of these provisions is what is needed right now to support the Government's aim of strengthening community bodies' opportunity to buy.

Off-market sales

223. Several stakeholders highlighted that these provisions might help address the problem of a high number of off-market sales – where land is sold by private negotiation without ever coming on the market, so without anyone being aware of the sale. [156] The Community Woodlands Association told us that 64% of sales in 2021 were off-market, "making it very difficult for communities to have the chance to buy the land and contributing to an overall lack of transparency". [157] Dr Jill Robbie highlighted that natural capital markets were impacting on this as "there are just a few buyers who are phoned up, and it is that closed group of people who know about the sale". [158] Peter Peacock also raised concerns about an increasing trend towards "a dark market" of land sales in Scotland as well as the fact that a lot of land in Scotland never comes onto the market at all, leading to a lack of

transparency, lack of public scrutiny and “disempowered communities”. [159] It was also the perception of the Langholm Initiative, who the Committee visited, that major buy-outs frequently happen over the heads of communities and they considered there was a need for this to change. While their purchase of Langholm Moor was a "good news story" they highlighted the huge effort involved and identified community registration of interest as an area where improvement was needed.

224. However, other stakeholders questioned whether off-market sales are a significant issue or questioned this provision in principle. SLE stated: “The implication that there is a culture of “secret” sales conducted in this way by wealthy people to sidestep communities is […] unfounded”. [160] Andy Wightman suggested that an alternative approach to capturing off-market sales of large estates would simply be to make a public notification system. [161] He stated there was no need to adjust the community right to buy provisions to achieve this purpose and that this provision creates obligations that the late registration of community interest was not designed for.

Existing Right to Buy Provisions

225. Some stakeholders suggested that the existing community right to buy was sufficient.[162] Among those who felt more was needed, there was a very common view that the provisions do not significantly strengthen the existing mechanisms.[163] The Scottish Community Alliance stated that the provision does not strengthen the existing community right to buy “but simply extends the late registration provision to land which might otherwise have been sold off-market”. [164] They considered that this would have a “severely limited” impact. Peter Peacock highlighted the complexity of the provisions, “designed for the very limited circumstances where a community can demonstrate it has been actively considering a normal Registration of Interest in the land, when the land suddenly came on the market before they had completed their registration”. [165] He considered this “all but valueless for most practical purposes” explaining:

> Much land in Scotland has not been transferred for often hundreds of years. It is unreasonable to expect communities to be blessed with the prescience in such circumstances to anticipate when the land may come on the market… The alternative to possessing such prescience, is that in order to, at any point in the future avail themselves of a Right to Buy, they would have either to have registered an interest in the land and maintained renewing that for generations in the off chance the land would come on the market, or show that while they have not yet registered an interest, they have maintained a state of readiness to do so for potentially decades. This defies common sense.

Review of Right to Buy

226. The ongoing review of right to buy legislation was frequently highlighted by stakeholders. There was a general concern that the existing community right to buy legislation was not working as intended, so layering another element on top of that flawed process was problematic. Stakeholders questioned whether the changes set out in the Bill would have been better considered alongside any outcomes of the

review.[166] Several pointed out that recommendations may come out of the review that require legislative changes, meaning these provisions may need altered again.[167] They considered it would have been preferable to have "managed the whole thing in the round".[168]

227. The Cabinet Secretary reflected on the view that community right to buy should have been included in the Bill.[169] She explained that the provisions in this Bill do not change the existing community right to buy. All the Bill does is add another route to using the existing community right to buy. She outlined the significance of the review that is ongoing and said that if legislative change was recommended as a result: "that would serve only to improve the provisions that we have with regard to accessibility of the community right to buy".

Timescales

228. The timescales set out in this provision were considered too tight for communities to take the required action.[170] As the Bill is currently drafted, a community body will have 30 days from being notified to express an interest in making a late application and a further 40 days thereafter to prepare an application under the right to buy procedure.

229. The Development Trusts Association Scotland highlighted that the timeline was particularly tight in cases where there is not already an eligible community body to take forward an application.[171] Similarly, the Scottish Crofting Federation highlighted that the provision seems to have been drafted on the "unrealistic" assumption that community bodies establish themselves as community bodies "just in case some piece of land will be put up for sale in future".[172] If a community body is not already established, they would have to establish themselves within the initial 30 days that are available to express an interest.

230. The SLC's advice to Ministers on Part 1 of the Bill recommended a change to timescales so that rather than the 30 days plus 40 days, there is a single 90-day period.[173] They also recommended that it be set out in statute that "section 34 letters" under community right to buy legislation (establishing a group as a "community" for the purposes of the legislation) will be issued within 28 days of receipt of a valid application. They stated that these amendments "would mean that this route as envisaged by the Bill becomes a workable option for those communities seeking to use it". CLS welcomed these recommendations but considered a single universal 120-day prohibition on sale rather than 90 days would be preferable.[174] They highlighted that community right to buy processes currently take "many months", and while a 28-day time frame for section 34 letters will help, "a longer prohibition of sale will allow time for communities to do the administrative and fundraising work necessary".

231. The Cabinet Secretary acknowledged that it has "come through quite strongly in the evidence that people feel that the time allowed is generally not enough" and stated that she was considering the evidence and will consider any recommendations the

Committee might make. [175] She explained that the provisions were drafted to: "strike a balance, because you do not want to withhold a sale for longer than is necessary".

Thresholds

232. As with the section 1 provisions, the land size thresholds set out in this part of the Bill was the subject of a lot of discussion. Views varied considerably. Some were supportive of the proposed 1000 hectare threshold [176], others considered it too high, [177] others too low. [178] Those who favoured a lower threshold often coalesced around 500 hectares. [179] CLS calculated that the 500 hectare threshold would likely impact 17 transactions a year and stated that this "cannot be regarded as being an excessive number". [180]

233. However, there is a common view that basing this provision on the size of a landholding is a "blunt instrument" with any threshold being "arbitrary". [181] SLE state that this approach: "is trying to use scale to tackle the problem of concentration". [182] Individual estates also highlighted that size was an "odd metric" as "appropriate sizes change by geography, local culture, opportunities and finances available." [183] They highlighted that from the perspective of community interest there is a huge difference between 1000 hectares of "productive arable farm near towns and cities with good access" and 1000 hectares of "upland hill with very limited access". [184]

234. As set out previously, CLS proposed that the term "significant landholdings" should be used instead of "large landholdings" and the following criteria applied:

- land of 500 hectares or more
- land that comprises 25% of a permanently inhabited island
- a "site of community significance" – land that a designated public body can agree is of significance to any applying community. [185]

235. This could bring some urban and peri-urban communities within the scope of the Bill. The concept of "sites of community significance" garnered a lot of support in the context of these provisions. [186] Sarah-Jane Laing (SLE) favoured this approach (or that land was identified through the local place plan process or through "some form of light registration for a community right to buy") as it would "give everybody certainty" and will exclude "the hundreds of routine sales of small bits of land that are used to facilitate renewables and house building. I do not think that those are the ones that we should be capturing". [187] Some of the participants at the Committee's community event in Aberfeldy also felt that a threshold based on size could be a red herring, preferring that the criteria should relate to whether the land owned is key to a community's everyday functioning.

De minimis exemption

236. As highlighted in the quotation from SLE above, concerns about capturing small-scale, routine sales were raised by a number of stakeholders.[188] Gemma Cooper (NFUS) provided the example: "We have one member who made 180 small transactions over a two-year period. They would all be caught by the proposals and slowed down". [189] Andy Wightman provided the example of a cottage on an estate that the tenant and landlord have negotiated over for years for the tenant to buy, which would then be caught by this provision. The whole community would first have to be notified, potentially risking the sale to the tenant. [190] Don Macleod (Turcan Connell) considered the provision "bizarre" adding the example of someone trying to buy the greenhouse they use which is on estate land. [191] He stated this was common in estate conveyancing but this provision in the Bill would prevent the owner from discussing this with the person until they had notified the Government (and then had the sale publicised) "all for a piece of ground that somebody needs in order to rectify a title anomaly in relation to a greenhouse. It is totally unworkable". Sarah Madden (Scottish Environment LINK) also highlighted that some charities might find it difficult if every small transfer triggers the requirement saying it would become a "bureaucratic nightmare" to get rid of small parcels of land. [192]

237. The Committee explored whether a "de minimis" exemption to capture some of these transactions and include them from the prior notification process would be beneficial. This received support from witnesses[193], though Malcolm Combe suggested this should be "subject to the relevant community also having the chance to say, "Actually—no. While you think it might be de minimis, we really like that bit of land. That site could be strategically important"". [194] Community members we met with in Aberfeldy said freeing up small parcels of useful land could make a huge difference and unlock new economic opportunities and social benefits, like having a small strip of land for a community orchard or affordable housing for workers. This suggests that even small parcels of land can be important to communities.

238. The SLC recommended that de minimis considerations should be reflected in the Bill, with the details to be set out in secondary legislation. [195] They also recommend the inclusion of an ability to designate land/assets of community significance that are subject to prior notification where they would otherwise have been considered de minimis. SLE described these recommendations as "a sensible way to plug one of the deficiencies in this part of the Bill" but considered that additional exemptions might be needed than those that could currently be identified as "de minimis" and stated "we do not underestimate the difficulty in using secondary legislation to capture all those affected and therefore avoid unintended consequences". [196]

239. The Cabinet Secretary reflected on this in her evidence session with the Committee: "I recognise the concerns and the quite universal call for some sort of de minimis provision in the bill to exclude certain transactions that need not be controversial". [197] She explained that the rationale behind the existing provisions was based on the vast majority of areas communities are interested in being less than a hectare and she did not want to exclude these. She did however say that she would be happy to consider further the evidence the Committee had heard and the subsequent recommendations from the SLC on the issue, and that she wanted to address the issue if possible.

Power to amend

240. The DPLR Committee raised concerns about the power in inserted section 46L to amend both the period during which the prohibition on transfer of large land holdings applies and the land to which the prohibition applies. [198] The DPLR Committee was concerned by "the undefined extent" of the power which could be used to modify the land to which the prohibition on transfer applies and the resulting potential for these powers "to increase the impact on additional landowners/ creditors and the land market in Scotland". As discussed in relation to a comparable power in section 1 (see paragraph 151), stakeholders have expressed support for the Scottish Government to be able to reflect on what land is caught by the provisions in Part 1. The DPLR Committee stated that if we consider these powers are appropriate, additional scrutiny should be attached, "whereby the instrument is laid in draft for consultation with Parliament" with a statutory requirement to consult before exercising the powers "including a requirement to lay consultation documents or reports on any consultation carried out alongside regulations made under this power".

Recommendations

241. The Committee welcomes the extension of communities' ability to register an interest in relation to large landholdings but notes that the provision is unlikely to be successful in meeting the Government's aim of increasing community ownership as currently drafted so will need significant revision at Stage 2. Specifically, the Committee recommends that the timescales need to be adjusted to allow communities more time to note their interest and prepare an application. We note the Scottish Land Commission's suggestion of a 90 day period.

242. We also note the ongoing review of community right to buy. The change set out in the Bill seems, at best, a small piece in a larger puzzle, unlikely to have much impact alone. It is therefore disappointing that we are not able to consider an overall package of reform in this area, including the results of the review, that might collectively have had a real impact.

243. The Committee heard varying evidence about what the land size threshold should be for this provision. There was some support for the existing 1,000 hectare threshold, for a lower threshold of 500 hectares, and for an approach based not entirely on scale that includes consideration of "sites of community significance". The Committee has mixed views on the appropriate threshold but agrees that the Scottish Government should amend the Bill at Stage 2 to exempt small scale, uncontroversial land transfers.

244. As with the different threshold the Bill sets for community engagement and Land Management Plans, we recommend that whatever threshold is set out should be subject to ongoing monitoring and review, if the Bill becomes law, with the option to use the power in the Bill to change it. Consideration should be given to adding a reporting requirement on the success (or otherwise) of these thresholds so that the Parliament and stakeholders can be updated on how provisions are operating and whether the Scottish Government is considering use of the power.

245. The Committee recommends, in line with the Delegated Power and Law Reform

Committee's recommendation, that regulations under inserted section 46L should be subject to a pre-laying procedure that allows the parliament to consider a draft of the regulations, and that this power should also be subject to a statutory requirement to consult those potentially affected.

Lotting of Large Landholdings

246. Section 4 of the Bill allows the Scottish Ministers to make a “lotting decision” – a decision about whether certain land is only permitted to be transferred in lots, each to a different person. It does this by prohibiting land from being transferred unless a lotting decision has been made. If the lotting decision states that land should only be transferred in lots, it prohibits land from being sold except in the lots specified.

247. Ministers may make a lotting decision requiring land to be transferred in lots “only if they are satisfied that ownership of the land being transferred in accordance with the decision would be more likely to lead to its being used (in whole or in part) in ways that might make a community more sustainable than would be the case if all of the land were transferred to the same person” (new section 67N). This is known as the “transfer test”.

248. This provision intends to address the concentration of landownership in Scotland which the Scottish Government considers can have detrimental effects of rural development outcomes.

249. Views on the principle of lotting were mixed. Some considered this a useful means of addressing concentration of ownership.[199] The SLC stated that lotting “provides a direct means to contribute to the objectives of the Bill through reducing the concentration of ownership in specific circumstances” as it “provides a mechanism to take action in the public interest that goes beyond a reliance on community ownership as the alternative”. [200] The Landworkers' Alliance supported the provision if it could be used to break up "monopoly landholdings" and secure land for local people to use in the public interest. [201] Others opposed the provisions on the basis that they were an interference with private property rights or because the benefits of scale would be lost (for example in relation to tackling the twin climate and biodiversity crises) and investment in land in Scotland would be at risk.[202] These potential consequences are explored further below.

250. Even those who support opportunities for breaking up large estates to diversify ownership have questioned these proposals for being “too timid” and have raised issues with the methodology proposed in the Bill (in particular, the proposed transfer test). Stakeholders in this group question whether these provisions will meet their intended aims.[203]

Benefits of scale

251. Some stakeholders did not support the principle of lotting on the basis that the benefits of scale would be lost.[204] SLE cited their research into the role estates currently play in delivering for the wellbeing economy. [205] They consider that the Bill puts these benefits at risk and appears to be “in conflict with wider aims and statutory obligations of the Scottish Government” including tackling climate change, developing renewables and enhancing biodiversity. RSPB Scotland was also concerned lotting could “in some situations, reduce the potential for landscape scale conservation or make it more difficult to achieve in practice”. [206]

252. Gresham House was opposed to "the fragmentation of land that is being used on a commercial basis", providing this example to demonstrate why it is problematic:

> A 50ha community block within a large forestry complex will likely be unable to support the considerable capex costs in relation to sustainable forest management. Furthermore, the likelihood of negative environmental consequence greatly increases with 20 owners with differing objectives within a single forest [207]

253. Gresham House recommend that forestry and agriculture should be excluded from the legislation as it would "inevitably damage these rural practices". The Woodland Trust Scotland raised a similar concern in relation to woodland: "lotting in this manner could also have adverse impacts for the need to manage land at scale for woodland creation and protection". [208]

254. However, we heard from others that large landholdings are not the only way to achieve these benefits, with smaller landholdings able to work together.[209] Josh Doble (CLS) stated that when this collaboration happens "you also get a greater degree of local democracy and more voices in the room. Those projects deliver social, economic and cultural benefits, as well as environmental outcomes". [210] Andy Wightman also highlighted the ability of smaller landholdings to co-operate and noted the role that Government intervention can play in saying: "Look, we need to restore peatlands of over 10,000 hectares. It doesn't really matter how many landowners there are. We are going to do it, and these are your obligations". [211] He described the idea that you need scale of ownership to achieve scale of management as "a complete red herring", citing examples of small landowners effectively working together in the public interest in Finland, Sweden and France. Laurie Macfarlane also highlighted that if scale was the means of accomplishing nature restoration, Scotland would be at an advantage over other European countries with a more diverse pattern of land ownership in delivering nature restoration – which is not supported by the evidence. [212]

255. The Cabinet Secretary told us there were examples of both large estates and smaller landholdings doing "incredible work" and that it does not need to be "one or the other in order to meet the Government's objectives— indeed, I do not think that that is the case elsewhere, when we consider international comparisons". [213] The Cabinet Secretary confirmed that she did not think that that provisions in the Bill would slow down or reduce the scale of the delivery of climate mitigation.

Risk to Investment

256. Some stakeholders were also concerned that lotting provisions could harm investment in Scottish land.[214] SLE highlighted that there was no specified timescale for the Ministers to make a lotting decision "which will inevitably slow down the sales of land in Scotland, which in turn could stifle investment in land […] due to the complexity and uncertainty of the buying process". [215] Others highlighted that private investment was needed to meet climate change and biodiversity targets so considered these targets at risk if there were barriers to investment.[216] Rob

Carlow (Gresham House) considered that this risk of discouraging investment was not theoretical; investment was already being discouraged: "We have examples of people who have been investing in the Scottish rural economy for the past five years now saying that even the discussion around further reformation of land in Scotland is enough". [217]

257. At our meeting with Gresham House, James Jones and Sons and Buccleuch Estates (all large landowners in the Langholm area who we met on our visit there), particular concerns were raised about the timber sector. Gresham House and James Jones and Sons told the Committee that demand for timber massively outstrips supply in the UK, with over 80% imported (with China being the single biggest importer). They considered that strong domestic timber production reduces dependency on foreign partners and aids a just transition to net zero, which aligns with government aims. In that context, they thought the Bill felt incoherent.

258. The SLC on the other hand did not consider that private investment would be discouraged. [218] Michael Russell told us: "The Bill should not frighten anyone. The Bill is redolent with opportunity". Hamish Trench expanded that:

> we have seen over the past couple of years a shift where corporates and financial institutions are less interested in buying land directly in Scotland for those purposes. Of course, to invest, they do not need to acquire and own land. They are also seeking to invest through existing land managers, partnerships with communities and other ways. Therefore, there is no automatic impact there.

259. The Cabinet Secretary told the Committee:

> We recognise the role and importance of private investment, because the public purse will never have enough funding to enable all the activity that we need to see to meet our climate and nature targets. However, we must try to tackle the issues that we have with the scale and concentration of land ownership, and the impact that that has on communities. [219]

Skills for Lotting

260. Stakeholders also questioned whether the Scottish Ministers or the LCC (who must produce a report to inform a lotting decision of the Scottish Ministers) have the necessary skills and knowledge to make lotting decisions. [220] Several stakeholders highlighted that there was no provision requiring the LCC or Ministers to seek professional advice. [221] Stakeholders suggested that any lotting should be carried out by a qualified, independent professional with the necessary knowledge and experience. [222]

Process for making a lotting decision

261. The process set out in the Bill for lotting decisions was considered by some to be

"cumbersome" or otherwise unworkable.[223] Some stakeholders also highlight the lack of clarity about the process, considering the provisions "underdeveloped".[224] The Scottish Community Alliance considered it to be "unclear what objectives the proposed lotting process is intended to deliver, or how it will operate in practice".[225] The SLC also considered that, "as a point of fairness, all parties involved require a reasonable degree of clarity about the circumstances in which lotting will be required and the criteria which will be considered".[226] They stated that "significant further consideration" is needed on "the approach to lotting, the criteria and impacts to be taken into account" in order to "shape the approach to be taken by the Land and Communities Commissioner".

262. As currently drafted, the transfer test is the only thing in the Bill that gives any indication of what will be taken into account in making a lotting decision and, whether stakeholders were for or against lotting in principle, there was little support for the proposed transfer test. Turcan Connell considered the test "extremely wide", pointing out that it only needs to be "more likely" that lotting will lead to land being used in ways that "might" make the community "more sustainable".[227] They suggested that the provision "needs to be reviewed and re-drafted to ensure clarity and certainty".

263. Stakeholders have also highlighted a "loophole" in the Bill that there is a lack of any mechanism to prevent buyers of lots then selling them on to the same person, re-joining the lots.[228] Hamish Trench (SLC) told the Committee that this:

> comes back to the question of proportionality and where the bill is looking to intervene. It partly comes back to why we proposed a public interest test on acquisition. The question is whether it is possible and reasonable to control what happens beyond the initial transfer at lotting.[229]

264. Stakeholders also had views on what ought to be considered when making lotting decisions. Gresham House highlighted that there is "no consideration given to consequence of fragmentation, nor of any individual community's ability to deliver on the aspirations of ownership".[230] SLE considered that Ministers should have to take into account current land use and any negative impact a change to use or management would have.[231] They highlighted that the interest of communities is taken into account but not the wider public interest and that there are "potential conflicts with this approach, particularly for environmental and biodiversity which are widely regarded to benefit from landscape scale management". The importance of taking account of environmental issues was raised by other stakeholders including the Rewilding Alliance who recommend that "responding to the dual climate and nature emergencies should be a consideration in lotting decisions" and Dr Jill Robbie who criticised the transfer test as not "comprehensive" as it does not mention "public interest, human rights considerations or environmental issues".[232]

Public Interest Test

265. The original land reform consultation the Scottish Government undertook included proposals for a public interest test, which 72% of respondents supported. The SLC set out the key differences between this and the transfer test set out in the Bill:

> The fundamental difference is that the transfer test is applied to a seller of land prior to sale, whereas our proposal is for a public interest test to be applied at the point of transfer, with the ability to place conditions on the future ownership of the land holding. [233]

266. The Committee heard a lot of support for a public interest test, or other means of including public interest considerations in the context of lotting. Stakeholders pointed out that "the public interest" was a well understood concept whereas the terminology used in the transfer test ("community sustainability") is new and "not very well defined". [234] We also heard concerns that moving away from a public interest test "not only weakens the mechanism but opens it up to further legal challenge" [235] as the "public interest" is "the primary rationale and legal basis for intervening in property rights as set out under A1P1[viii] of ECHR". [236] On this basis the SLC recommended that the Bill be amended to include specific reference to "the public interest" "alongside, and as the framing for, community sustainability". [237] They considered this would provide "a clearer, longstanding, and well understood frame of reference for the transfer test".

267. The interaction of these proposals with the ECHR arose throughout evidence gathering with a lot of reference being made to international experience which indicates that Scotland is unusual in its limited regulation of the land market. [238] Hamish Trench (SLC) told us that it is "quite common to have reasonable interventions at the point of sale to make sure that land is structured in a way that will help deliver opportunities". [239] While acknowledging that no model could be lifted wholesale into the Scottish system, he stated that 18 out of 22 countries the SLC has considered as part of their international research had mechanisms in place "to manage how much land someone can own". Josh Doble (CLS), highlighting research by Dr Kirsteen Shields, described Scotland as "the anomaly in Europe in not having more robust oversight". [240]

268. However, stakeholders such as NFUS and SLE remained concerned about the balance of rights in the measures proposed in the Bill. SLE were concerned that comparisons with other countries may be unhelpful as interventions have to be considered "alongside the current pattern of land ownership, the current policy drivers and the current public interest". [241] They considered that the measures in the Bill, when applied in a Scottish context, would infringe on property rights. Sarah-Jane Laing (SLE) also highlighted that there are a number of tests that must be passed to determine if something is compatible with the ECHR. [242] Proportionality (often the primary focus of the discussion) is just one of these and she highlighted that though a measure may be proportionate, it could be that it does not "meet the tests on policy rationale and the public interest" and is incompatible with the ECHR on that basis. It is essentially on this basis that some stakeholders have favoured a public interest test over the transfer test – considering that the policy rationale and public interest behind interfering with A1P1 must be very clear to ensure ECHR compatibility.

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viii "A1P1" refers to Article 1 of the first protocol of the ECHR which protects the right to peaceful enjoyment of property.

269. Peter Peacock recommended a specific list of public interest considerations that Scottish Ministers should be obliged to take into account in making a lotting decision (which is similar to suggestions from other stakeholders, notably, the list provided by Borders Community Action):

> Whether the land in question, if lotted, would be likely to increase the opportunity:
>
> - To build community wealth;
> - To achieve a just transition to net zero;
> - Of providing greater scope and choice in developing local use housing;
> - To increase the offer of additional land tenancy arrangements;
> - To increase participation in and the delivery of greater biodiversity;
> - To improve plurality in the way the land is utilised;
> - For community purchase of land;
> - To repopulate the land. [243]

270. CLS considered that having the public interest included on the face of the Bill is important but thought a full public interest test is needed. [244] They set out a suggestion for the outcomes of a public interest test:

> 1. Transfer/sale progresses without conditions;
>
> 2. Transfer/sale progresses with lotting burden in the first six months to meet public interest;
>
> 3. Proactive public sector acquisition of the entire landholding or lots during the ‘test’ for public interest concerns;
>
> 4. Test is failed and sale/transfer does not go ahead due to public interest concerns – another buyer is assessed, or public sector acquisition operates as a final backstop as set out in the Financial Memorandum.

271. A key difference between the transfer test in the Bill and the public interest test consulted on is the transfer test’s failure to scrutinise the person buying the land. This was highlighted as problematic by many stakeholders. [245] The Jimmy Reid Foundation described the transfer test as “a pale shadow of the broad range of measures considered in the 2022 consultation under the banner of a public interest test”. [246] They consider, in line with the view of other stakeholders, that, because it focussed only on the seller of land, there is little in the Bill to ensure that lotting will actually make communities more sustainable. The Landworkers' Alliance raised concerns that without "significant oversight" of who buys lots, it could result in sales to other large landowners or holding companies for large landowners, "which would not increase the diversity of land ownership". [247]

272. When the Cabinet Secretary was asked why the transfer test was adopted in place

of the SLC's proposed public interest test, she responded that:

> the transfer test is a public interest test. It does not use those exact two words, but that is what the transfer test is: it will ensure that we take the public interest into consideration when a land transfer involves more than 1,000 hectares. Various proposals emerged about where the test should fall, whether it could fall on the buyer and the different ways in which it could work. However, the transfer test has been introduced on the basis of the evidence that we have and our ability to implement it, because the only way that we can implement a public interest test is by doing a test at the point of transfer of land. [248]

273. She referred to the need consider "the evidence, the basis of what we are doing, the proportionality of what we are introducing and the aim of the measure" when introducing a public interest test and expanded: "We have introduced the transfer test and the lotting procedures as we have because we could not identify an option that would allow lotting to be applied where the test was on the buyer. That is why lotting will apply before that point". It was confirmed in the evidence session that this was a policy choice and there was nothing to prohibit the inclusion of the sort of public interest test that stakeholders envision.

Delegated Powers Provisions

274. The DPLR Committee raised concerns about the power in inserted section 67S(6) to make further provision about buying land under inserted section 67P, including about how land is to be valued. [249] The Committee recommended adding a statutory power to consult before this power can be exercised: "Given that these regulations will determine when an offer to buy land subject to a lotting decision can be made, how land is to be valued, the price to be offered for the land and an appeal process regarding the price to be offered for the land". The DPLR Committee made the same recommendation in respect of the power in inserted section 67V(4) to make further provision about compensation: "Given that these regulations will make further provision about compensation, including how claims are to be made and how the amount payable is to be determined". They also recommended making this power subject to the affirmative procedure, rather than the negative procedure, "given the impact on landowners, creditors and the public purse it is the Committee's view that the affirmative procedure is more appropriate". This would align with the power to modify the compensation payable in respect of small landholdings.

275. The DPLR Committee raised more significant concerns about the power in inserted section 67Y to modify what constitutes an exempt transfer; the land to which the prohibition on transfer without a lotting decision applies; the duration of the lotting decision; and the period to make an application for review of a lotting decision. The DPLR Committee were concerned by the undefined extent of these powers to modify the land to which the prohibition on transfer without a lotting decision applies which could result in an increased impact on additional landowners/creditors and the land market in Scotland. As discussed above in relation to comparable powers to alter thresholds in other sections of the Bill, stakeholders have expressed support for a delegated power to make changes to thresholds after monitoring and review of how these provisions are operating. The DPLR Committee suggested that, if we are content that these powers are appropriate, they should be subject to additional scrutiny, whereby the instrument is laid in draft for consultation with Parliament.

They also suggested requiring consultation before exercising these powers, including a requirement to lay consultation documents or reports on any consultation carried out alongside regulations made under this power.

Thresholds

276. The issue of appropriate thresholds again arose in the context of lotting decisions. Again, in relation to this threshold some stakeholders criticised the focus on scale rather than concentration. [250] Others supported the 1,000 hectare threshold proposed. [251] Others were concerned this was too high, with a large subset specifically proposing 500 hectares as an alternative. [252] The Religious Society of Friends (Quakers) General Meeting for Scotland pointed out that the "global norm for "large-scale land acquisition" (LSLA) is just 200 hectares" believing therefore that any limit of more than 500 hectares "would suggest a lack of regulatory seriousness". [253] SLC evidence found that that a 1000 hectare threshold was likely to affect 5-15 transfers per year and a 500 hectare threshold would bring in another 5-15. Looking at a 3-year average, 1,000 hectare would leave 96% of transfers unaffected and 500 hectare would leave 93% unaffected. [254]

Recommendations

277. The Committee supports the principle of allowing the Scottish Ministers to make lotting decisions in respect of large landholdings.

278. The Committee has heard evidence that lotting is complex, requiring skills, knowledge and experience. We therefore recommend that provision be added to the Bill requiring that independent, professional advice from suitably qualified people with experience of lotting, be taken before the Scottish Ministers make a lotting decision.

279. The Committee considers that the transfer test, as drafted, will not meet the aims of the Scottish Government as it does not sufficiently take account of the public interest and does not scrutinise the buyer of lotted land. We recommend these provisions are revised to provide a more robust test that might actually serve the purpose of diversifying land ownership in Scotland and ensuring that land is used in the public interest.

280. The Committee notes a potential loophole in the Bill that subsequent sales could be used to recombine lots, undermining the intention of these provisions. We recommend the Scottish Government consider this issue and how best to ensure this does not happen.

281. The lack of a timeframe for the Scottish Government to make a lotting decision appears hard to justify, with the potential to leave sellers and other interested parties in a sale in limbo, uncertain of what, if anything, is happening next. The

Committee asks the Scottish Government to address this by amendment if the Bill proceeds past Stage 1.

282. The Committee recommends adding a statutory requirement for the Scottish Ministers to consult before exercising the regulation-making powers in inserted sections 67S(6), 67V(4) and 67Y. In respect of the power in section 67Y (to modify various provisions relation to lotting decisions, including the land size thresholds) we also recommend adding a pre-laying procedure so that the Parliament can consider draft regulations.

283. The Scottish Government says in its Policy Memorandum that the transfer test combined with the pre-notification requirements in section 2 amount in tandem to a public interest test. Many stakeholders doubted this and felt that, without a clear public interest test on the face of the Bill, lotting decisions would be more open to challenge in court. We recommend that the Scottish Government consider having a more express public interest test on the face of the Bill, including reference to proportionality and the need for a policy rationale. There should be guidance on the public interest test, providing more clarity about the circumstances in which Scottish Ministers would (or would not) expect to make a lotting decision.

284. As well as strengthening the Bill to ensure decisions are taken in the public interest, the Committee highlights the importance of ensuring that a balanced approach is taken in respect of lotting to ensure the interference with property rights is proportionate to achieving the public interest goal.

285. As with other provisions in Part 1, the Committee heard different views about what the threshold for lotting should be. There was support for the proposed 1,000 hectare threshold, views it should be 500 hectares, and views that it should catch "sites of community significance". The Committee does not have a single shared view on lotting thresholds and again recommends this should be kept under review if the Bill passes, with the option to change the threshold again available via a delegated power in the Bill. Again, there should be consideration of a reporting requirement so that the Parliament, and wider stakeholders, can apprise the effectiveness of current thresholds and recommend change where appropriate.

Land and Communities Commissioner

286. Section 6 of the Bill establishes a Land and Communities Commissioner (LCC). The Commissioner would be part of the Scottish Land Commission but with separate remit and functions from the Land Commissioners and the Tenant Farming Commissioner.

287. Those functions are enforcing the community engagement obligations in section 1 of the Bill and preparing a report to inform lotting decisions (see section 2 of the Bill).

288. This provision got a fairly mixed response. Some were completely opposed to the role either on the basis that the powers themselves were unnecessary or that the role was "a complete waste of time and money". [255] Others expressed support for the role that the Bill sets out, though questions were raised about why a bespoke role was needed rather than vesting these powers with the existing Land Commissioners. The lack of clarity around the interaction between the LCC and the SLC was also raised as an issue.

Powers of the role

289. Concerns about the role itself were expressed by some stakeholders who considered that the powers being given were too significant, going beyond that of other Land Commissioners and were "unnecessary" or "disproportionate". [256] SLE was concerned about the amount of discretion the Commissioner will have. Gresham House considered it would "introduce an element of personal bias" that may result in "prejudice, simply because of the opinion of the individual". [257]

290. Scottish Woodlands considered that the role "appears to emphasize powers over responsibilities". [258] In a similar vein SLE stated that the role puts "concentration on the "stick" and not any mention of a "carrot"". [259] They expressed concern that, rather than it being and advisory and encouraging role, it would be set up to police matters, contrasting this with the role of the Tenant Farming Commissioner: "where the Tenant Farming Commissioner has been successful has been the ability to use guidance and discussion to solve issues where there was the potential for relationships to fall down." SLE wanted to see the new LCC role operating in a way more similar to the Tenant Farming Commissioner, with the production of codes and guidance.

291. On the other hand, some stakeholders suggested that the Commissioner's powers should be widened. REVIVE Coalition suggested broadening the Commissioner's remit "to allow them to play a role in supporting and encouraging community buyouts". [260] They suggested creating a duty on the Commissioner to "find opportunities to act in support of communities". The Royal Society of Edinburgh considered the Commissioner's role to be "narrow and focused on procedural aspects rather than broader environmental and social implications". [261] Dr Jill Robbie stated that it would be beneficial for the Commissioner to have "a greater range of powers in relation to the land management plans". [262] As discussed

above (see paragraph 196), there was also support among many stakeholders for the idea that the Commissioner should have the power to investigate potential breaches of community engagement obligations at their own instigation rather than only when a breach was reported.

292. The skills and knowledge the LCC will require was also something the Committee considered. As discussed at paragraph 260, concerns around the skills needed to advise on lotting decisions were particularly significant. The Scottish Countryside Alliance emphasised more generally that "professional qualifications and experience in the sector would be required in this role". [263] Sarah-Jane Laing (SLE) indicated that the Commissioner ought to have expertise on: "land valuation, land management and all aspects of lotting" as those are "technical" matters that trained professionals are generally used for. She considered that if the LCC does not have that expertise, they should be required to access it. [264]

293. We also explored the specific exclusion in the Bill on large landholders holding the position of LCC. Some stakeholder raised concerns that that this was not justified as it "single[s] out one specific interest type". [265] Don Macleod (Turcan Connell) described the exclusion as "a bit bizarre", stating:

> No other appointment in the Commission is subject to the same exclusion. There are many large landholders in Scotland who would be very good as a land and communities commissioner. Just because they are large landholders does not mean that they always think that large landholding is the only way, or that they are against community ownership. There is a missed opportunity there. [266]

294. However, other stakeholders were supportive of the exclusion as "the purpose of the land and communities commissioner is to investigate where there are problems with large-scale landholders" [267] so if the LCC was a large-scale landowner they would be investigating themselves – which would be "a massive conflict of interest". [268] The same concern, about conflicts of interest, was raised in relation to the Scottish Ministers. The Scottish Ministers own 10% of land in Scotland and if they want to sell their large landholdings, they have to notify themselves. [269]

Financial implications

295. The Financial Memorandum for the Bill sets out that the costs of the new LCC would be partially met through existing funding to the SLC by reducing their current activities. [270] This has been highlighted as a concern by SLE, Jon Hollingdale (Scottish Community Alliance) and the SLC itself. In their submission to the Finance and Public Administration (FPA) Committee the SLC explained that meeting some of the cost through existing funding would mean cutting delivery of policy research and advice, with implications for existing functions. [271] They also considered that the staffing assumptions in the Financial Memorandum are the minimum needed and additional costs would be expected in relation to IT and professional advice. Hamish Trench (SLC) raised this with us directly, stating:

> I should be clear that we cannot deliver the new functions that are proposed for the land and communities commissioner within our existing resources without significantly changing what we currently deliver. The choice is that we would either reduce the advice that we give on policy, legislation and practice and/or reduce the good practice advice. Over the years, we have seen a growing demand for the advice that we provide on practice to support people to make change happen on the ground, and we would expect that to continue to grow. That would be the choice facing the commission if we did not have additional resource commensurate with the burden of the functions coming in. [272]

296. The FPA Committee also highlighted their recent report, *Scotland's Commissioner Landscape: A Strategic Approach*. They indicated that this inquiry focused specifically on bodies supported by the Scottish Parliamentary Corporate Body but considered many of their findings to be relevant to the creation of other types of Commissions and Commissioners, and public bodies more generally. The report concluded that the current model of SPCB-supported bodies "is no longer fit-for-purpose and that, in the absence of a clear and coherent framework underpinning how the overall landscape should operate, it has developed in an 'ad hoc' way with individual proposals being agreed on a case-by-case basis. This approach has led to a disjointed landscape comprised of a collection of individual bodies, with varying functions and powers". The FPA Committee state:

> While the above conclusions and recommendations do not directly apply to the Scottish Land Commission and its Commissioners, we would invite you to consider these issues in the context of the Bill. In particular, we would encourage your Committee to seek clarification from the Scottish Government on how it has satisfied itself that another Commissioner, with the additional costs that this would bring, is required and how it is ensuring there will be no overlap and duplication in activities [273]

Clarity of relationship with the Scottish Land Commission

297. The relationship the new Commissioner would have with the SLC was raised as a point of confusion by several stakeholders. CLS would have preferred to see the LCC's powers sitting with the SLC and the existing Land Commissioners "albeit with the LCC taking the lead on behalf of the Commission" and considered that the arrangement in the Bill is "unlikely to be conducive to good governance overall". [274]

298. Peter Peacock also suggested the Bill should be amended to "secure a greater corporate connection between the Commissioner and the Commission" and to update the Commission's functions to reflect the new responsibilities. [275] The Scottish Community Alliance also suggested the role should be "more closely aligned to the wider Commission" and should be more accountable, highlighting that "It appears the effectiveness of powers given to the LCC will be dependent on the individual appointed, rather than building upon the considerable expertise, experience and wider accountability of the Commission". [276] A number of stakeholders have suggested a requirement be added to the Bill that the LCC must

consult with the Commission before making decisions.[277] The addition of such a consultation requirement was suggested in the SLC's recommendations to Ministers on Part 1 of the Bill.[278]

299. The Cabinet Secretary explained in her oral evidence why the LCC was set up in this way:

> We set out a separate power to rest with a specific commissioner in the commission because the commission has had a largely advisory role. If we provide powers that create a regulatory function, it is important that those powers sit with an individual, notwithstanding the point that there can be further collaboration with other members of the commission, as needed. We have tried to achieve that balance, but we are open to considering the issue to ensure that we get that right.[279]

300. The Committee supports the creation of a Land and Communities Commissioner.

301. The Committee does not consider that large landowners should be immediately disqualified from being appointed Land and Communities Commissioner.

Part 2

Sustainable and Regenerative Agriculture

302. One of the main aims behind the diverse provisions of Part 2 is to promote sustainable and regenerative agriculture. We sought views on this. Many had doubts, seeing legal reforms of the sort promoted by the Bill, while potentially helpful, as relatively minor in the wider scheme of things, which included matters reserved to Westminster and global economic trends. Some other factors mentioned were post-CAP funding, accessibility of funding schemes and the amount of funding available. Other factors included tax, the changing cost of land, and changes in the way income can be generated from different uses of land. [280] Hamish Lean said "what will mostly motivate tenants who are looking to diversify is the generation of additional income from their use of the holding". [281] The Scottish Wildlife Trust highlighted training and knowledge-sharing opportunities for tenants. [282] The Central Association for Agricultural Valuers/Scottish Agricultural Arbiters' & Valuers' Association (CAAV/SAAVA) characterised measures in the Bill as "signals marginally favouring such an approach [ie sustainable and regenerative agriculture], rather than the removal of real obstacles". [283]

303. Bob McIntosh (outgoing Tenant Farming Commissioner) was more positive. Looking at the Bill, he thought the Part 2 provisions had “done a pretty good job” in making a just transition to net zero in agriculture easier and helping tenant farmers play a fuller role in this. [284] As an example, he cited how the Bill would change the rules on good husbandry (discussed further below).

304. One of the main concerns raised by stakeholders was uncertainty about what the Bill meant when it referred to "sustainable and regenerative agriculture". [285] Some stakeholders were dubious about using the term in the Bill. It was described as "a bit of a buzzword" or "a catchphrase". [286] It was not that there was no such thing but instead (they felt) that sustainable, regenerative farming was mainstream, everyday, traditional farming for most Scottish farmers. Andrew Wood (Bidwells) said "...some new husbandry methods are coming forward that are flagged as sustainable and regenerative, but they are just farming". Tom Oates (Oates Rural) said sustainable farming:

> ... is a way of utilising the soil and the natural goods to be more productive with less cost. That is practical farming, so is it a bit nonsensical to call it sustainable and regenerative farming? If there is no clear definition, it is confusing.

305. Others were not necessarily opposed to the term but said that to be meaningful it required further definition or explanation. The Royal Society of Edinburgh said that the success or otherwise of the Bill in this area would depend heavily on how the Scottish Government articulated this term. [287] Some suggested making a link in the Bill to the Code of Practice arising from the new Agriculture and Rural Communities (Scotland) Act. [288] Jeremy Moody (CAAV/SAAVA) stated:

> As I recall from the debates on the Agriculture and Rural Communities (Scotland) Bill, the extraordinary difficulty of defining "sustainable and regenerative agriculture" is the reason why that bill does not provide a definition of that but leaves it to be discussed in general terms in a code of practice. In a sense, what the code of practice will provide will not be a definition; it will be an illustration or a guide. I think that we are dealing with concepts that are impossible to define on a sustainable medium-term basis. [289]

306. The Cabinet Secretary also referred to the importance of the code of practice under the new Act. [290] She said work on it was underway and that it would be likely to include "a wide variety—a basket—of measures that can be used". She said she had not yet decided whether it would be necessary for the Bill to refer to the new code.

307. The Committee recognises the Bill's intention to support sustainable and regenerative agriculture but notes evidence that other factors are relevant and other means of support are needed. We expect these are issues the Rural Affairs and Islands Committee will be pursuing with the Scottish Government as the Agriculture and Rural Communities (Scotland) Act is rolled out in the coming months.

308. The Committee asks the Scottish Government to respond to views that there needs to be a clearer understanding of what "sustainable and regenerative agriculture" actually means in practice if Part 2 of the Bill is to have maximum impact. We recommend a definition is added to the Bill, or a cross-reference to the Code of Practice that will be produced under the Agriculture and Rural Communities (Scotland) Act to ensure a consistent reading across related legislation.

Disincentivising letting of land

309. A key theme of evidence has been the need to reverse the tenanted sector's continued decline. The Part 2 provisions, broadly speaking, seek to improve the position of tenants. However, concerns have been raised about shifting the balance too far in this direction.

310. There are also concerns about the principle of making retrospective changes to contractual arrangements, which in turn follow on from other such changes made to agricultural tenancy law in the last two decades. There is a view that this could make landlords see letting land as increasingly risky. Bob McIntosh told us:

> We have to consider this against the backdrop in which the total area of tenanted land is declining in Scotland and it will only stop declining if landlords have sufficient incentive to lease land and to make land available for tenancies. We have to be careful not to disincentivise landlords from doing so. [291]

311. He said the Bill should be looked at through two lenses: “Does it help existing tenants, and what does it do to landlords’ willingness to let land?”. He said the Bill "by and large" struck the right balance, with some reservations on the resumption provisions (discussed further below).

312. Many key stakeholders doubted that Part 2, as currently drafted, would create more agricultural tenancies. [292] The NFUS, RICS, and various businesses working in the rural economy agreed that on its own it would not. Jackie McCreery (SLE) said it would "strengthen the cocoon" for 1991 Act tenancies but not facilitate new tenancies. Jeremy Moody (CAAV/SAAVA):

> The only hope for the Bill is if something more positive and stronger is done with the land use tenancy to create a new start for lettings. Otherwise, it is just part of the palliative care for a decaying sector.

313. Christopher Nicholson (STFA) said the Bill would not stop the decline but it would "help preserve" the existing tenanted sector. [293] He said that the “usual story” that using the law to rewrite existing tenancies was the main cause of the sector's decline was untrue. He said the “real barrier” is tax. Letting out land means losing various tax advantages (e.g. reliefs for capital gains tax and inheritance tax). He said this had led landowners to prefer contract farming, grazing licenses and cropping licenses: these arrangements let the landowner remain the "active farmer" on the land. With this in mind he did not consider that this Bill would fix the tenancy sector as it does not address the tax framework.

314. The Committee is deeply concerned by key stakeholder views that, while the Bill may improve the position of secure tenants, it is unlikely on its own to arrest long-term decline in the number of agricultural tenancies. We support the intention in the Bill to ensure an improved position for tenants but this is undermined if tenancies are not being offered in the first place.

Model Lease for Environmental Purposes

315. Section 7 of the Bill requires the Scottish Ministers to publish a model lease for letting land so that it can be used (wholly or partly) for an environmental purpose. The Scottish Government's Policy Memorandum states that this is "intended to support people to use and manage land in a way that will help develop the new types of land use that will help us to address the climate change and nature loss challenges". [294]

316. There was mixed support for this proposal among stakeholders. Some considered that a new lease for environmental purposes could be beneficial. [295] The SLC stated they saw "some merit" in a new form of lease for land uses "contributing to enhancement of biodiversity or to climate change objectives". [296] In oral evidence, Bob McIntosh (Tenant Farming Commissioner) expanded that something new is needed in"recognition that letting land for more than agriculture will be a bigger thing in the future with all the natural capital, forestry and so on". [297]

317. However, there was concern among stakeholders that there was a lack of clarity around the legal status of the model tenancy, particularly in respect of whether it would fall within the current agricultural holdings legislation. [298] The evidence the Committee heard on this issue indicated that the preference of most stakeholders was to keep the new lease separate from the agricultural holdings legislation. [299] Jeremy Moody (CAAV/SAAVA) stated: "If what is in play is to be made useful, the very basic requirement is that there be an additional section in the bill that excludes such leases from the 1991 and 2003 Acts". [300]

318. The SLC made a number of recommendations on Part 2 of the Bill, one of which was that it should be made clear that the new form of lease does not fall within the agricultural holdings legislation and that "subject to the inclusion of such model clauses as may be determined by consultation with the sector, landlords and tenants have freedom to negotiate the terms of such leases". [301]

319. Some stakeholders also highlighted that the provision was not as strong as the Scottish Government's consultation proposal to create a new statutory land management tenancy. [302] The Scottish Community Alliance called the provision in the Bill "watered down" and highlighted that 71% of respondents to the consultation had supported the version consulted on. [303] Jeremy Moody (CAAV/SAAVA) also considered that adopting the approach consulted on "would have been more beneficial", stating: “what is in the Bill is not even a new form of tenancy. It is simply offering a draft agreement. That is all that it is. It does not create anything new with legal or statutory force”. [304]

320. Andy Wightman and the Faculty of Advocates made similar points, highlighting that making this provision in legislation was unnecessary as the Scottish Government may prepare a model lease for any purpose without requiring primary legislation giving them permission to do so. [305] Fergus Colquhoun (Faculty of Advocates) expanded on this in oral evidence: "If the Scottish Government wants to prepare a draft commercial lease that is focused on environmental uses of land, we were

unable to think of any reason why it could not do that already—at which point, we questioned the purpose of section 7". [306]

321. Assuming this to be correct, the Committee questions the benefit of making this provision in primary legislation when the Government could simply produce a model lease without this. We would urge the Scottish Government not to unnecessarily add to the high volume of referred work committees have to consider by making unnecessary legislative provision.

322. The Committee explored the likely uptake of the model lease in an oral evidence session with a range of agricultural practitioners. [307] Martin Hall (Davidson and Robertson) indicated that he thought it would be used and stated: "we need to move forward as a sector, and this is an important flag towards that changing environment." However, the other participants (Hamish Lean of Shepherd and Wedderburn LLP, Tom Oates of Oates Rural and Andrew Wood of Bidwells) indicated they did not consider there would be much uptake. Gemma Cooper (NFUS) made a similar point in oral evidence: "we think that it will not be used and it is not needed. [308] There is already potential to create commercial leases, which do not have to be complicated and do not have to be expensive to prepare." She therefore considered that the provision was "superfluous", would not meet the Scottish Government's aim and would cause confusion.

323. Similar views were expressed from a panel of legal experts. Grierson Dunlop (Turcan Connell) stated: "we do not, with the greatest respect, need the Government to draft a model lease for us". [309] He expressed support for the principle of an environmental lease but considered that "the same thing could be done under a commercial lease" so did not consider the provision necessary. In fact, he considered that is would add complexity: "Mixing an environmental lease with agricultural holdings would further complicate what is already one of the most complicated areas of law."

324. Other potential disadvantages of the lease were highlighted to the Committee. The Scottish Crofting Federation were concerned that crofting and rural communities would be disadvantaged by the provision as "environmental leases lock in long-term land use changes, potentially not in the interest of future generations". The STFA raised concerns that the lease might put pressure on secure tenants to relinquish their existing secure tenancy. [310] Christopher Nicholson (STFA) expanded on this in oral evidence: "there is a worry among tenants that the focus might now be on encouraging tenants to use this new lease rather than making sure that existing leases are fit for purpose in a changing world". [311] The STFA would "prefer to see greater flexibility for all agricultural tenancies". Gemma Cooper of NFUS expressed the same concern in oral evidence that the lease "might be a competitor to traditional agricultural leases". [312]

325. The Committee welcomes the intention behind section 7 of the Bill but is not clear why the Scottish Government considered it was necessary to include it in the Bill. The act of publishing a model lease is not, in itself, a guarantee that it will be widely used. We ask the Scottish Government to explain what action they will take, and what incentives will be made available, to ensure take-up of the lease

by both landlords and tenants.

326. We also recommend that the legal status of the model tenancy be clarified, in particular, to make clear that it sits outwith the agricultural holdings framework.

Small Landholdings

327. Various changes to the law relating to small landholdings are provided for in Chapter 2 of Part 2 of the Bill. Most of the substantive changes are set out in the schedule and the content is very broad, including provisions on rent, diversification, succession, compensation and right to buy. The Scottish Government set out in the Policy Memorandum that these measures are to "provide small landholders with a modernised legal framework which is more comparable to the rules for crofting and agricultural holdings". [313]

328. The current "Landholders Acts" that govern small landholdings are:

Crofters Holdings (Scotland) Act 1886

Crofters Common Grazings Regulation Act 1891

Congested Districts (Scotland) Act 1897

Crofters Common Grazings Regulation Act 1908

Small Landholders (Scotland) Act 1911

Small Holdings Colonies Acts of 1916

Small Holdings Colonies (Amendment) Act of 1918

Land Settlement (Scotland) Act 1919

Small Landholders and Agricultural Holdings (Scotland) Act 1931

329. Most respondents agreed that it was time to modernise and consolidate this legislation. However, concerns have been raised about the mix of rights being conferred, as well as the existing "fragmentation" of the law on small landholdings. [314] Fergus Colquhoun (Faculty of Advocates) stated:

> Broadly speaking, the legislative provisions make sense, but they are scattered here and there. The changes in the bill add to the problem, because they would add a fourth main source of law relating to small landholdings, rather than either adding provisions to the existing legislation or codifying the existing legislation into a new scheme that got rid of the 1886, 1911 and 1931 acts. [315]

330. In terms of the mix of rights being conferred, the majority seemed to favour the approach of aligning the legislation with 1991 Act tenancies rather than crofting. [316] Notably, Christopher Nicholson (STFA) told the Committee that among the small landholders he had spoken to "there is far more appetite for coming under agricultural holdings legislation than the crofting option". [317] Martin Hall (Davidson and Robertson) also supported this approach based on his experience: "I feel quite strongly that the bill is heading in the right direction, in that it has moved towards agricultural holdings rather than crofting. I advise some small landholders, and they are generally in the lowlands of Scotland and just would not fit with crofting". [318]

331. Providing further support for this position, Jeremy Moody (CAAV/SAAVA), amongst other witnesses[319], highlighted that there is a larger pool of advisors for 1991 Act tenancies than for crofting (outside of the crofting counties) so smallholders would have better access to a ”professional infrastructure” to advise them if they are aligned with 1991 Act tenancies.

332. When asked for his view on where small landholders ought to sit in the landscape, outgoing Tenant Farming Commissioner (TFC) Bob McIntosh stated that aligning them with crofting or mainstream agricultural holdings were equally valid. He considered that the Scottish Government’s proposal would “bring a lot more clarity to smallholders and their landlords about who can do what and how they react together. That is a positive thing”. [320] In the SLC's recommendations on Part 2 of the Bill, they stated: "We support the intention to improve the position of small landholders and to align their rights and opportunities with those of mainstream agricultural tenants". [321]

333. There was a minority view that small landholdings should be brought within the crofting framework.[322] The Scottish Crofting Federation questioned why small landholders were not instead being converted to crofts. They stated that the changes in relation to small landholdings should not "reinvent the wheel and add layers of complexity by combining different tenancy models" and instead should follow the "trialled and tested framework for protection of small-scale tenants" that already exists with crofting law.

334. The Cabinet Secretary wrote to the Committee on 26 July and indicated that the Scottish Government plans to bring amendments at Stage 2 to "consolidate small landholding legislation to make it more accessible". [323] The letter added:

> To ensure consistency for small landholders, further amendments to the Bill provisions on small landholdings will be needed in order to align with tenant farming legislation on matters including pre-emptive right-to-buy, diversification, succession and assignation.

335. In our evidence session with the Cabinet Secretary, she explained that the provisions in the Bill were based on consultation with small landholders so reflect what they want: “their preference was to be aligned more with the agricultural holdings legislation rather than to become crofts. Applications can already be made by the landowner to the Crofting Commission in the crofting counties, should they wish that to take place”. [324]

336. The Cabinet Secretary also highlighted that legislation will be introduced “to address the key issues that have been identified for crofters”. She stated: “It is important that we deal with that and address those issues through that legislation before we take any further steps”.

337. A point of detail on these provisions was raised by the Registers of Scotland who highlighted that the provision giving a landowner the ability to challenge a small landholder's registration of an interest in buying the land replicates a provision in the Agricultural Holdings (Scotland) Act 2003 for landlords to challenge registration by agricultural tenants. [325] They said that the existing 2003 Act provision does not work well as "the Keeper's skill set is in interpreting land deeds for legal effect, it is

not in acting as an arbiter in a legal or factual dispute between owner and small landholder".

338. There was broad support for extending the role of the TFC to cover small landholdings. However, stakeholders highlighted the requirement for the TFC to appoint a valuer to determine compensation payable. SLC stated this is "not normal practice in relation to other forms of tenancy" where an agent, agreed by both parties, would be appointed instead. They did not consider it necessary in respect of small landholders either, "other than in cases where the parties are unable to agree on the compensation or on the appointment of an agent". [326]

339. The Committee supports modernising the law on small landholdings and we note the preference of small landholders to be aligned with 1991 Act tenancies. We agree that it makes sense to take the opportunity of the Bill to consolidate the scattered and complex law in this area, but are disappointed this was not done in the Bill as introduced as this would have allowed more time for changes to be considered than will be possible if consolidation takes place by way of amendment. We ask the Scottish Government to seek to ensure small landholders and other affected stakeholders have as much time as possible to consider a draft of the relevant amendment.

340. We highlight the issue raised by the Registers of Scotland in respect of the Keeper's role in relation to challenges to registration of interest. We recommend the Scottish Government give consideration to whether it is appropriate for the Keeper to act as arbiter in these circumstances.

341. The Committee supports bringing small landholders within the remit of the Tenant Farming Commissioner but recommends that the suggested role of the Commissioner in appointing an agent to value compensation should be limited only to cases where the parties cannot agree.

Delegated Powers Concerns

342. The DPLR Committee raised a number of concerns about delegated powers provisions in the schedule on small landholdings. [327]

343. Paragraph 40 of the schedule deals with the assessment of compensation by a valuer appointed by the TFC. Sub-paragraph 4 confers power on the Scottish Ministers to specify the basis on which the valuer is to assess the compensation payable and the consideration to be given to certain matters by the valuer in doing so. The DPLR Committee considered that there is very little detail about this on the face of the Bill "so the type of provision that may be made is not clear and a significant level of discretion on the exercise of this power lies with Ministers".

344. The DPLR Committee highlighted comparable powers in sections 11 and 12 of the Bill to amend what valuers are to have regard to in relation to resumed land. These sections set out information on the face of the Bill about what a valuer should have regard to, with a power to be able to add, vary and remove.

345. The DPLR Committee considered that the power in paragraph 40 "will be able to be exercised in a way that can make significant policy change and have a huge impact

on stakeholders." They consider it "too wide" and therefore unacceptable. They recommend that further detail should be provided on the face of the Bill. If this further detail is not provided the DPLR Committee recommends that the power should be reframed more narrowly and that there should be a requirement to consult before exercising this power.

346. The Committee recommends providing more information on the face of the Bill about the power set out in paragraph 40 (compensation awarded by valuer) in the schedule to the Bill so as to set clearer parameters as to the limits of this power.

347. We also recommend that the Scottish Ministers should have to consult before exercising this power, given the potentially significant impact the valuer's assessment could have on stakeholders.

348. Paragraph 49 of the schedule was also highlighted by the DPLR Committee. This paragraph sets out which transfers of land do not require notice to be given (and so avoid triggering the right to buy). Paragraph 49(5) confers power on the Scottish Ministers to modify the exemptions to requiring notice to be given. The DPLR Committee considers this power to be wide and highlights that it can be exercised without any consultation to potentially significant effect.

349. When the Committee raised this power with the Scottish Government the Cabinet Secretary highlighted that this is worded the same as the power in section 27(5) of the Agricultural Holdings (Scotland) Act 2003 "for consistency and to ensure changes can be made as a package". However, the DPLR Committee highlight that this power has never been used though it has been in force for over 20 years, leading them "to have reservations about the necessity of this power and whether such fundamental changes should be made through subordinate legislation". They recommend that if the power is considered necessary there should be a requirement to consult before exercising it.

350. Paragraphs 50(3) and 50(4) of the schedule raise very similar issues. These provisions define when an owner or eligible creditor is taking steps with a view to transferring land that will trigger the right to buy. Paragraph 50(7) of the schedule confers power on the Scottish Ministers to modify those sub-paragraphs. Again, the DPLR Committee consider that this could have a significant effect as it could change the circumstances which give rise to a pre-emptive right to buy.

351. The Scottish Government's response to the Committee's questions again refers to this mirroring the wording of a comparable power in the Agricultural Holdings (Scotland) Act 2003 (section 28) "for consistency and to ensure changes can be made as a package" Again, this power has not been used in the 20 years that it has been in force, leading the DPLR Committee "to have reservations about the necessity of this power" and to recommend that if it is considered necessary, there should be a requirement to consult before exercising it.

352. The Committee asks the Scottish Government to clarify whether it considers the powers in paragraphs 49 and 50 of the schedule are necessary given that similar powers in other legislation have never been exercised.

353. We recommend that if these powers are retained in the Bill, a consultation requirement is added so that relevant stakeholders are able to input into the changes given the significance of the right to buy provisions.

354. The DPLR Committee also highlighted paragraph 59 of the schedule which relates to the registration of small landholder's interest in acquiring land. The power allows the Scottish Ministers to make regulations for, or in connection with, the registration of small landholder's interests in acquiring the land. It allows for modification of paragraphs 44-50 of the schedule on a small landholder's right to buy and consequential provision if it is considered necessary or expedient.

355. The DPLR Committee highlighted that "The Bill itself does not specify any aspect of the process of registering an interest in land. It only provides non-exhaustive lists of some things which may be done through regulations". They stated that, despite their request for further information, there was "still little to indicate what future regulations might make provision for and how the registration process will operate as those discussions have not yet taken place". They considered that this "creates obvious challenges for this Committee to fully assess the scope of the powers". They highlighted the powers are widely drafted and that they "could be exercised in any number of ways which may not be anticipated by the Parliament at this time". They recommended that the powers should be more narrowly drafted.

356. The Committee recommends, in line with the Delegated Power and Law Reform Committee's view, that the power in paragraph 59 of the schedule (registration of a small landholder's interest in acquiring land) should be more narrowly drafted to give a clearer sense of what this power will be used for rather than granting a catch-all power for any provision related to the registration of a small landholder's interest in land.

Agricultural Holdings

357. Chapter 3 of Part 2 makes provision about agricultural tenancies, also known as agricultural holdings. As with the provision on small landholdings, this covers a wide range of topics: right to buy, resumption, compensation for improvements, diversification, game damage, a standard claim procedure for compensation, rent review, and rules of good husbandry and estate management.

358. According to the Policy Memorandum, these provisions will "provide greater equality of opportunity for tenant farmers, and enable them to play a full part in delivering the Scottish Government's Vision for Agriculture". [328] This was published in March 2025, and outlined an ambition to "become a global leader in sustainable and regenerative agriculture".

359. Running through the evidence on the provisions in this chapter of the Bill are concerns that, as drafted,they do not meet these aims. Particular concerns have been raised that the provisions may disincentivise the letting of land, weakening the tenanted sector.

Tenant's Right to Buy

360. Section 10 of the Bill repeals section 99 of the 2016 Act, which has never been brought into force. Section 99 removes the requirement for tenants with 1991 Act tenancies to register their interest in buying land - it is this registration that triggers the right to buy process. In other words, section 99 automatically puts all tenants on the first step of the process. The Scottish Government consulted further on it after the 2016 Act was passed. There were views that leaving out the registration process would increase the risk of disputes and contested sales, for instance in relation to the boundaries of tenanted land, which is meant to be settled during the registration process. The Scottish Government paused commencing section 99. Section 10 of the Bill now clarifies that the Scottish Government has no intent to make section 99 law.

Should registration of interest be necessary?

361. Written evidence expressing a view on the proposal to repeal section 99 was generally supportive. [329] CAAV/SAAVA described the 2016 provisions as "unimplementable" believing that "registration brings some certainty for planning". The Law Society of Scotland said repealing section 99 would increase "clarity and certainty to all parties concerned". [330] In this connection, we note that when we heard directly from tenant farmers, they told us that there was some confusion about the current legal position, with some tenants believing that section 99 was now law and there was no need for them to register.

362. The panel of practitioners with expertise on agricultural tenancies agreed with the repeal of section 99. [331] Hamish Lean said that the registration process:

> "... gave quite a lot of confidence to the market in respect of a purchaser buying a farm, given that one of the standard checks as part of the due diligence would be to check the register of community interests to see whether a pre-emptive right to buy had been registered".

363. However, the STFA wants section 99 to be retained and commenced. [332] They argue that the original right-to-buy provisions for tenants were modelled on community right-to-buy provisions, which also required registration of the interest. But they say these are not comparable situations: landowners may not be aware of the interests of community groups whereas landlords are aware of their farm tenants. The STFA said it was also relevant to take into account the landlord-tenant relationship. Christopher Nicholson told us:

> Tenants are easily deterred from registering. Some landlords are not very keen to see tenants register and will simply say something along the lines of, "If any tenants on this estate register, they will be treated in a different way to those who do not". That is enough to put off an entire estate from registering. [333]

364. When the Committee heard directly from tenant farmers some of them confirmed this evidence. Whilst there were views that the process itself was relatively straightforward, we heard that tenants were sometimes reluctant to register, in case it signalled "aggression" or that they were "troublemakers".

365. The Cabinet Secretary in her evidence to the Committee stated that commencing section 99 would have created "a lack of clarity on how the process would operate" and that there was "a general consensus" that there should be registration but that the process could be improved. [334] She emphasised that the industry would be consulted on what the process would look like to ensure this improvement.

The process of registering an interest

366. The Bill gives Ministers the power to modify the current registration process by regulations. The Policy Memorandum notes views that the process is currently unduly burdensome and indicates there will be further consultation on reform.

367. The SLC commented that "The current registration process is variously regarded as appropriate or over prescriptive and it would be helpful to develop a process which has broader support within the sector". [335] This seems a reasonable summary of views at Stage 1. Some of the tenant farmers we met online said they had not found the process all that complex. Greirson Dunlop (Turcan Connell) said "I have done it for clients, and it is not difficult. People have to fill out a form and submit a map". [336] For the NFUS, Gemma Cooper said there was not "any significant evidence" they knew of of tenants being discouraged from registration but that "Our tenants have said to us that if there is a notice it should be a simple as possible". [337]

368. Many others disagreed the process was as simple as it ought to be, including a number of individual respondents to our call for views. Christopher Nicholson of the STFA said the lack of registrations over the last 20 years was proof that the process was too onerous. [338] He singled out having to submit a plan of land boundaries:

> Modern mapping requires detailed discussion about where a particular boundary is. The maps that you see attached to leases—most 1991 act leases date from before the 1960s—usually look like something that a child has done with a felt-tip pen on a very large-scale map. When you look at them, one mark of a felt-tip pen is maybe 40 metres wide around the edge of the holding. The next obstacle for tenants is to agree the extent of the boundary. We have lots of members who have tried to register their pre-emptive right to buy but they have got nowhere because the landlord keeps objecting to the detail of the mapping. I think that mapping is largely irrelevant because I know of no tenant who has bought his farm and where it has followed the exact boundary of the tenancy. There is always a bit of negotiating—there will be bits that the landlord wants to retain and bits that the landlord does not want, for example islands of woodland within the tenancy that the landlord does not want to hang on to. I am not aware of any mapping issues preventing a tenant from buying their farm. However, it is a problem for registration.

369. Other stakeholders felt having a clear, agreed map was key to having a smooth and successful process and queried how heavy a burden this was. [339] The Agricultural Law Association said the cost of a plan was around £500, which did not seem unreasonable. [340] Jackie McCreery (SLE) said the right-to-buy process could mean made a tenant getting a farm at "a severely discounted price". [341] Given this, having to first get an accurate plan of the property boundaries did not seem too much to ask. Jeremy Moody (CAA/ SAAVA) said:

> "The question of mapping is about when you choose to have your argument. Is it when you are negotiating or when you are starting at the beginning? That seems to me to be something that people can debate". [342]

370. In their evidence session, the Scottish Government told us that their intention in any right-to-buy registration process would be to require the tenant to set out up front what they wish to buy. [343]

Scope of the regulation-making power

371. There has been some concern about the use of delegated powers in relation to the tenant's right to buy provisions. Andy Wightman said:

> It is poor legislative practice to ask Parliament to agree to abolishing an existing provision (the 2003 registration process) but not setting out how it is to be achieved. This is compounded by then proposing the repeal of the abolition provisions because they could not be made to work and replacing them with further powers for Ministers to do something different. Ministers have had over a decade to decide what they wish to do in this area and we are no further forward. Such proposals should be set out clearly in primary legislation. [344]

372. The DPLR Committee highlighted the section 10 power on the basis of its broad scope. [345] The power as drafted is to make regulations for, or in connection with, the registration by 1991 Act tenants of their interests in acquiring the land

comprised in their leases. There is a non-exhaustive list of things that may be done by regulations, including making provision about the effect of registration, functions of the Keeper of the Register and the procedure to register an interest.

373. The DPLR Committee highlighted that the Bill does not specify any aspect of the process of registering an interest in land and that the Scottish Government's answers to their questions lacked detail. They explained that "This creates obvious challenges for this Committee to fully assess the scope of the powers" and pointed out that "given how widely the powers are currently drafted they could be exercised in any number of ways which may not be anticipated by the Parliament at this time". They therefore recommended that they should be more narrowly drafted.

374. Jackie McCreery (SLE) told us she agreed with the DPLR Committee's concerns. [346] She stated: "as long as those powers are defined enough and we know that the purpose simply relates to the process of registration, that will be fine".

375. The Committee supports the repeal of uncommenced section 99 of the Land Reform (Scotland) Act 2016. This clarifies the current legal position that tenants of 1991 Act tenancies must register an interest in a right to buy, rather than this being automatic. Given the evidence we have received that some tenants were unaware that section 99 had never come into force, we ask the Scottish Government to clarify how it will make the sector widely aware of the correct legal position on registration.

376. We also recommend that the process should require that a plan be submitted at the point of registration of interest.

377. The Committee is concerned about the reliance on secondary legislation in respect of provision about a tenant's registration of interest. This was the approach in the 2016 Act and is the approach again now. This does not give any certainty to tenants or landlords about how registration will work in practice. We consider the power as drafted to be broad and recommend that this should be framed more narrowly, with more detail on the face of the Bill about its parameters.

Resumption

378. Resumption is where a landlord takes back land forming part of a tenant's holding. To take back the whole holding, a "notice to quit" must be served. In respect of 1991 Act tenancies, land can only be resumed if there is a clause in the lease permitting resumption. In respect of 2003 Act tenancies, land can be resumed if planning permission is obtained by the landlord in respect of that land. (There is a lack of clarity as to whether land can also be resumed under a 2003 Act tenancy on the basis of a clause in the lease or whether obtaining planning permission is the only route to resumption - see discussion at paragraph 401 below).

379. The Bill updates compensation to be paid on resumption (most notably to include a share of the capital value of the lease) and , the minimum notice requirement before resumption (one year notice in writing). It also requires the Tenant Farming

Commissioner to appoint a valuer for working out compensation. The methodology for calculating the compensation is based on the methodology used for relinquishment – where a 1991 Act tenant offers to relinquish the whole tenancy in exchange for payment.

380. This has been one of the more criticised areas of Part 2 of the Bill. Given the degree of concern about these provisions, the SLC (while also making specific recommendations about the detail, which are set out below) recommended that no changes are made in this Bill, but that a delegated power is provided to amend the resumption compensation provisions by regulations, "following consultation with the sector on the scope of the provisions and on an appropriate methodology for assessing the compensation due". [347]

381. The main exception to the view that these provisions needed substantial revision was the STFA who stated: "This is a current problem for tenants, modernisation of the statutory compensation is long overdue, and it would not be acceptable to delay further". [348] They said that a proposal was made to members of the Tenant Farming Advisory Forum (TFAF) in January 2021 suggesting the methodology set out in the Bill (using the same methodology as for relinquishment, see paragraph 379) and that: "In the intervening 4 year period STFA are not aware of any alternative compensation arrangements proposed or discussed by other stakeholders at TFAF meetings and believe calls for further consultation are only delaying tactics".

382. The Cabinet Secretary made a similar point in a letter to the Committee. [349] In respect of application to 2003 Act tenancies specifically (discussed further below), she stated that TFAF members "were asked to come up with alternative proposals and were unable to agree on alternative valuation approaches for these". She states that she was "willing to receive further views from TFAF if it is possible to reach an alternative view that works for all TFAF members".

Compensation methodology

383. There was a lot of agreement among stakeholders that in principle resumption compensation should be reviewed. [350] SLE considered the current approach of receiving a multiplier of rent (currently 5 times the rent) to be problematic as 1991 Act tenancy rents "are accepted as being below "open market" and are generally low". [351] However, several concerns were raised about the specific methodology. Bob McIntosh stated that the proposed provisions "bring in a method of valuing the compensation that was designed for another purpose. That would very significantly increase the compensation". [352] He stated that while tenants may consider that justified, landlords may consider it too much. The concern arising from that is that it may put landlords off from offering new tenancies. He said that when looking at this provision through the two lenses of helping existing tenants and the impact on landlords' willingness to let land "it is perhaps swinging slightly too far towards disincentivising landlords".

384. The particular issue that some stakeholders found unacceptable was that the tenant's compensation would reflect the capital value of the lease. [353] Turcan Connell considered this provision "unjust" and raised concerns that: "reducing the value of a resumption clause by reducing the value to the landlord in exercising the

right, will lead to upward pressure on rents". [354]

385. Other methods of determining compensation that do not give the tenant any share of the capital value were highlighted. Grierson Dunlop (Turcan Connell) suggested there could be an increased multiplier to appease some of the concerns. [355] Gemma Cooper (NFUS) suggested that a multiplier of 10 times the rent "would balance things". [356] An alternative suggestion from Turcan Connell was to add different land into the lease in exchange for the resumed land. [357]

Compensation for value other than agricultural value

386. Stakeholders also suggested there was a lack of clarity as to whether the compensation to be paid to the tenant for a resumption will take into account value attached to the land other than agricultural value.[358] SLE stated that in voluntary negotiations some valuers "attempted to include "hope" or development uplift where land might have development potential". [359] They described this as an "area of ambiguity" in the 2016 Act, though their interpretation is that the statutory compensation provision in the 2016 Act "should only reflect the use permitted by the lease". They state that when a case involves "development value" if that is included in the valuation it is "almost certain to be challenged in the Land Court". They call for clarity to avoid this as "litigation of this sort can only be damaging for the whole sector". CAAV/SAAVA shared the view that "hope value" should be excluded but "if there is any doubt about that, it must be firmly and clearly answered". They also "strongly emphasise" that "it is the tenant's interest in the tenancy of land being resumed that should be compensated. This is compensation for loss, not anything more... The tenant has no right to any of the landlord's value in alternative uses". [360] Turcan Connell similarly state: "It is patently wrong to include matters outwith the lease in the assessment of the value of the lease". [361]

387. In our evidence session with the Cabinet Secretary these concerns were acknowledged but a Scottish Government official set out that:

> valuation methodologies and systems are very clear when it comes to how it all works. If you say that hope value is excluded from the provisions, will that take account of every single scenario that arises? Will we have to define "hope value" legally in the Bill? Yes, we probably will. Will we get it right? No, probably not. There is a risk of interfering with standard valuation methodologies that are used by professionals in the industry in order to try to solve a problem that might not be there, because it is not actually referred to in the bill. After all, we do not talk about hope value in the Bill—we are silent on it. [362]

Application to 2003 Act tenancies

388. The Committee also heard concerns about the application of these provisions not just to 1991 Act tenancies but to 2003 Act tenancies.[363] NFUS highlighted that when the process in the 2016 Act was agreed (for use in relinquishment) it was

agreed that it would apply to 1991 Act tenancies only. Concerns were raised about the "retrospective tinkering with the fixed term tenancies created by the 2003 Act". [364] SLE stated that these tenancies "were hailed as being "safe" from this kind of interference and were to be the recommended leasing vehicle for landowners to use" and that the provision "has not received the level of consultation required for such a significant retrospective change to existing leases". SLE considered this "risks reducing the supply of fixed duration tenancies". [365] NFUS were also concerned that retrospective adjustment to 2003 Act tenancies "sends a strong and damaging message to the sector" and "acts as a disincentive to let land in the future". [366]

389. The panel of Part 2 practitioners the Committee heard from were also agreed that these provisions should not be extended to the 2003 Act. [367] Andrew Wood (Bidwells) stated:

> It is hard enough to persuade a landlord to let any land at all at the moment, because of the frameworks that they would have to operate under. Further meddling with the 2003 act will completely undermine confidence in using that legislation, so I urge you not to change that… if there is any sniff that they would have to give up capital value to a future tenant by giving them a 2003 act tenancy, they will not let it, and they will opt for contract farming or for an annual agreement.

390. Hamish Lean considered the provisions to be unnecessary in relation to 1991 Act tenancies and, similarly to others, in relation to 2003 Act tenancies considered that they "operate as a powerful disincentive to let out land". [368] In relation to 1991 Act tenancies he highlights common law restrictions that are already in place and that "the greater the scope of the proposed resumption, the easier it is for the tenant to challenge it". He gives the example:

> for a tenant on the edge of a town where half the farm is suitable for commercial or residential development, the resumption clause in the lease will not allow the resumption to take place, because the tenant can oppose it given the materially prejudicial effect on the remainder of the farm. If the resumption happens at all, it is only on the basis that the tenant will be able to negotiate favourable terms.

391. In relation to 2003 Act tenancies he considered the disincentive to let land would be particularly strong where the land has development potential. He explained that under the current law, if the landlord obtains planning permission, section 17 of the 2003 Act allows them to serve a resumption notice. So a landlord could let land, knowing they later plan to develop on it, on the basis that they would be able to rely on section 17 to resume the land when they need to. He believed this provision in the Bill would mean the land would never be let when a development is planned as the landlord would now have to pay a substantial amount of compensation.

392. The SLC, as discussed above, recommended a wider review before any changes are made in respect of resumption compensation. They suggested that if this is not accepted by Ministers, "a compromise" might be reached where the proposed methodology applies only to 1991 Act tenancies. [369] STFA on the other hand "do not see any good reason not to use the provisions for the 2003 Act tenancies". They

did however state that they are "prepared to be pragmatic and look at alternatives for the 2003 Act tenancies providing the Bill provisions apply to secure 1991 Act tenancies for both resumption and incontestable notices to quit". [370]

Application to notices to quit

393. Several stakeholders suggested that the review of compensation arrangements should apply to notices to quit as well as to resumption.[371] This point was made even by those who opposed the compensation provision in the Bill (but agreed in principle that it needed to be re-evaluated). Bob McIntosh set out the impact of not extending the provision to notices to quit:

> we could end up in the strange situation in which a tenant who loses a small part of his land [on resumption] might get more compensation than a tenant who loses the whole of his holding [under a notice to quit] and his business and livelihood. [372]

394. The SLC therefore recommended that the "method of calculation of compensation payable in the case of an Incontestable Notice to Quit is aligned with that which will apply to 1991 Act tenancies where resumption takes place". [373]

395. During our evidence session with the Cabinet Secretary, a Scottish Government official stated that there were ongoing discussions with the Tenant Farming Advisory Forum on the resumption provisions, including on treatment if a whole holding is resumed through an incontestable notice to quit and that the issue was "still under active consideration". [374]

Process

396. There were concerns among stakeholders that the statutory process was "cumbersome".[375] There was support for the suggestion that the statutory process should only apply as a backstop when the landlord and tenant cannot reach agreement.[376] Andrew Wood (Bidwells) highlighted: "The majority of resumptions and surrenders are dealt with through negotiation perfectly amicably, and a commercial position is agreed". [377] Having to follow statutory process in such cases may be unnecessary and potentially unhelpful.

397. A particular element of the process that was viewed as "overkill"[378] was the role set out for the Tenant Farming Commissioner. The SLC stated that they do not consider it necessary for the TFC to appoint an agent to assess the compensation due, other than in cases where the parties involved cannot agree on the amount or on the appointment of an agent. [379] Tom Oates (Oates Rural) did not see any need to involve the TFC, explaining: "A lot of these negotiations happen over the kitchen table, and the ability to have that negotiation will be removed if the immediate default is for the TFC to appoint an independent valuer. Actually, it is a bit of an insult to the industry to remove valuers and negotiators from that position". [380]

398. Others have pointed out the implication on resources if the TFC has to be involved in every case.[381] Jeremy Moody (CAAV/SAAVA) suggested: “The Commissioner could be used as a last resort if necessary, but the poor man cannot possibly want the amount of work that would be involved here, which has been massively underestimated”. [382] The Cabinet Secretary said in a letter to the Committee that she will consider whether changes are required in relation to this concern. [383]

399. Concerns were also raised with the Committee about the timescales proposed under this process, which sets out a 1-year notice period for resumption.[384] Under the current law, the minimum notice period required for resumption is 2 months for 1991 Act tenancies. SLE highlighted that landowners may have entered into other contracts in expectation of a 2 or 3 month resumption period. The Church of Scotland highlighted that a 1-year period may prevent micro transactions or adjustments and suggested an exemption for small areas of land. [385]

400. CAAV/SAAVA raised a further practical point about the timings in the process highlighting that the 8 weeks deadline to produce a valuer’s report has been problematic in relinquishment cases so is likely to also be here. [386] They suggest 10 weeks is more appropriate, with power given to vary this by regulations. They also suggest provision be made for what happens when the deadline is not met.

Clarity on contractual resumption

401. Some stakeholders pointed out the lack of clarity in the existing legislation about whether section 17 of the 2003 Act prevents contractual resumption. [387] Section 17 provides that resumption from a limited duration tenancy can take place if the landlord has received planning permission over the land. However, stakeholders pointed out that it is not clear if section 17 is the only way that land can be resumed, or merely if it is the only statutory route (with a separate contractual route remaining). A contractual route existing alongside the statutory route would mean a landlord and a tenant are free to agree a resumption clause in a lease that would apply to circumstances other than those provided for in section 17. Hamish Lean shared his view that a contractual clause is possible but recognised others may take a different view, describing it as "an unresolved question whether or not a contractual resumption clause in a fixed duration tenancy has effect". [388]

402. The SLC recommended that this Bill be used as an opportunity to clarify the policy intention behind section 17. [389] Responses to the SLC’s recommendations from SLE and STFA both expressed support for this recommendation. [390]

Power to vary the factors regard is to be had to in valuation of resumed land

403. A power is provided in inserted schedule 2A to add, remove or vary the description of the matters that an appointed valuer must have regard to, and what they must not take account of, when valuing the resumed land. The DPLR Committee

highlighted this power and that changes made under it could have significant consequences for those involved. [391] The DPLR Committee therefore recommended adding to the Bill a statutory requirement to consult before exercising these powers.

404. The Committee considers that the compensation payable on resumption, particularly in respect of 1991 Act tenancies, requires review and we are supportive of significantly increasing the amount to be paid. However, in light of the significant criticism of the proposed methodology for doing this, we recommend that the Scottish Government gives further consideration to how best to proceed. We note the Scottish Land Commission's recommendation of a wider review before any changes are made, but also note the concerns of the Scottish Tenant Farmers Association about the impact of delay. The Scottish Government should reflect on the evidence we have gathered on these provisions and try to find a route forward that avoids the issues identified. In particular, consideration should be given as to whether making these changes in respect of 2003 Act tenancies is appropriate.

405. We also highlight that clarity is needed around compensation for value other than agricultural value (for example, hope value). We note concerns that this issue is likely to lead to disputes in the Land Court so urge the Scottish Government to clarify if and how non-agricultural value is to be assessed in respect of resumption.[ix]

406. The Committee recommends that changes made in relation to resumption should equally apply to notices to quit.

407. Given the evidence the Committee has heard that more resumptions are agreed without conflict, and concerns that the proposed statutory process may be cumbersome, we recommend this process be a “fallback position” when parties cannot reach agreement rather than having to be used in all cases.

408. The Committee recommends the Scottish Government reconsiders whether the one year notice period for resumption required under the Bill is appropriate. We note that this is a considerable jump from a 2 month notice period and suggest that, if the current time period has been assessed as unsuitable, a middle ground between the two might alleviate concerns.

409. We also request that the Scottish Government clarifies how section 17 of the 2003 Act is intended to operate – is this intended to be the only means of resumption in relation to 2003 Act tenancies, or is contractual resumption also possible?

410. In line with the Delegated Powers and Law Reform Committee, we recommend that a statutory requirement for the Scottish Ministers to consult before exercising the power in inserted schedule 2A be added to the Bill.

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ix Edward Mountain dissents from this recommendation.

Compensation for Improvements

411. Section 14 of the Bill makes provision about compensation to be paid to a tenant at the end of an agricultural tenancy for improvements made by the tenant during the tenancy. It amends Part IV of the Agricultural Holdings (Scotland) Act 1991 and replaces schedule 5 of that Act. Schedule 5 lists activities that are considered "improvements".

412. It also moves to a model that is "principles- based" and provides indicative lists of improvements rather than fixed lists. The principles are:

- An improvement will now require the consent of the landlord where it makes a change to land or fixed equipment on the holding that—
  - means that the land or fixed equipment affected by the change cannot, or is unlikely to, return to its former agricultural use, or
  - otherwise, has a long term or significant impact on the management of holding (as a whole);
- An improvement will now require to be notified if it makes a change to land or fixed equipment on the holding that does not have a long term or significant impact on the management of the holding (as a whole).

413. The replaced schedule 5 provides the indicative lists of improvements that will fall within these categories, as well as a fixed list of improvements that require neither consent nor notification. New schedule 5 also adds a fourth category - improvements that are presumed to facilitate sustainable and regenerative agriculture. These improvements, set out in Part 4 of the schedule, may require consent or notice.

414. The Scottish Government's Explanatory Notes set out that the changes mean that "only the most significant improvements, those which take land out of agricultural use or which have a significant impact on the holding or its management will require consent". [392] The Policy Memorandum explains that the changes in this section are to ensure flexibility, with the old provisions being "no longer flexible enough to support activities that must now take place if tenant farmers are to play their part in tackling the twin climate and biodiversity crises". [393]

415. Stakeholders were generally agreed that there was a need for modernisation in this area. Many welcomed the flexibility that the principles approach offers. [394] Jeremy Moody (CAAV/SAAVA) told us:

> From 1949 until 2019, we lived with a list that was unchanged and increasingly outdated. We managed interim changes in 2019, but the world is moving so fast with so many changes in technology and other things happening. The principles-based approach, supported by examples, works well in those circumstances. [395]

416. Some comments were made on the content of the illustrative lists with some support for the addition of environmental improvements. [396] However, the STFA

highlighted a possible omission of soil carbon. [397] They were concerned that if there is no mention of this then landlords may argue that soil carbon is a mineral reserved to the landlord, not for tenants to benefit from.

417. Other stakeholders raised more fundamental concerns that the illustrative list approach may lead to a lack of certainty. [398] SLE stated: "The risk from this is that a tenant could undertake work which they deem to only require notice, when in fact it should have required consent, and then faces not being compensated if there is any value in the improvement at the end of the tenancy". [399]

418. SLE and Turcan Connell suggested that more regular updating of provisions may be preferable to avoid lists becoming out of date but also avoid having to "trot off to the Scottish Land Court in years to come to work out whether a particular improvement qualifies". [400]

419. In their final recommendations to the Committee on Part 2 of the Bill, the SLC recognised the potential for Part 1 and Part 2 improvements to lead to "some disputes over what constitutes an eligible improvement" but "support the introduction of principles based improvement schedules for Part 1 and Part 2 improvements and a list based schedule for Part 3 improvements". [401]

420. Whether stakeholders were for or against the change of approach in general, many were concerned about Part 4 of new schedule 5 being potentially confusing. [402] Part 4 lists improvements which facilitate or enhance sustainable or regenerative agricultural production. These improvements may require either consent or notice to be given. Concerns were raised about this as it would not be clear to a tenant whether an improvement listed required consent or notice. There was a common suggestion that this part should be split into improvements that require notice and those which require consent. [403] NFUS questioned the need for Part 4, suggesting: "it would be less confusing to retain three parts and for the Tenant Farming Commissioner to produce guidance". [404] This mirrors the recommendation SLC made on this provision towards the end of Stage 1 that the improvements in Part 4 should be allocated to whichever of the other they are considered to fall within and that accompanying guidance is produced. [405]

421. The Cabinet Secretary acknowledged the concerns of stakeholders about Part 4 when she wrote to the Committee. [406] She stated that she was listening to proposals about how this could be done differently.

422. Some stakeholders raised a more general point that, irrespective of the examples provided in the schedule, the value is assessed on the basis of the value to an incoming tenant. Therefore, while something may be eligible for compensation, that does not mean it will necessarily have value. [407] SLE stated that including items on the schedule may raise the expectation it will have value to the tenant when "the opposite could be the case and the tenant may in fact face a dilapidations claim". [408] Jeremy Moody of CAAV/SAAVA highlighted that this was particularly an issue in relation to Part 4 improvements where:

> everybody retreats to saying either that they are nascent markets or the wild west. Some of those things may not have value; they may simply be what is expected under terms of leases or other farming, rules of good husbandry and the rest. Part 4 has a slight air of being a gesture and making a statement, but it is a distraction from real practical purpose. [409]

423. The DPLR Committee highlighted the regulation-making power being granted in this section to modify new schedule 5 to add, amend or remove improvements. [410] Regulations made under this power are currently subject to the negative procedure. The DPLR Committee stated that they consider this power to be "more than minor or administrative and as such the level of parliamentary scrutiny being applied should reflect that". They were content with the power in principle but recommended that it should be subject to the affirmative procedure.

424. The Committee supports a principles-based approach to compensation for improvements, to allow the law to keep up with modern agriculture. However, we do recognise concerns that this may create less certainty than a fixed lists approach and ask the Scottish Government to reflect on the contents of the new indicative lists to ensure these are comprehensive enough to provide sufficient clarity about improvements that emerge in future.

425. The Committee recommends that the Scottish Government reconsiders Part 4 of schedule 5 which seems likely to cause confusion and does not help tenants in identifying whether their improvements require consent or notice.

426. The Committee also supports the recommendation of the Delegated Powers and Law Reform Committee that the power to modify the lists of improvements in schedule 5 should be subject to the higher level of parliamentary scrutiny that would be afforded by the affirmative procedure.

Diversification

427. The Policy Memorandum explains that the amendments the Bill makes in sections 15 to 19 are aimed at promoting "the development of sustainable and regenerative agriculture in Scotland". [411] The changes proposed by the Bill reform the basis on which a landlord can consent (or not) to proposed diversification "in order to ensure that environmental considerations are considered at all stages of the process" and to help ensure "that improvements in the value of the land that deliver benefits of that kind can be compensated".

428. Changes include encouraging the tenant farmer to consider the environmental benefit of any diversification and requiring the landlord to provide more detailed information and reasons if they object to the proposal. 1991 Act tenants will also be able to claim compensation if diversification still enables the land to be used for sustainable and regenerative agriculture by an incoming tenant farmer.

429. The Committee heard support for the principle of allowing greater diversification. The SLC supports the changes proposed in the Bill:

> It is important that tenants are able to engage in activities which support wider government policy on nature and climate change mitigation or which involve non-agricultural business activity. That must be balanced with the right of the landlord to have a say in the way in which their land is used, particularly where the proposed diversification involved a significant or permanent change in land use. On balance, we consider that the proposals are proportionate and appropriate. [412]

430. The NFUS also considered that the right balance has been struck and the STFA were supportive, highlighting that diversification is increasingly important for farm incomes. [413] The STFA did consider that "strong guidance and intervention from the TFC is likely to be required to enable the tenants to compete fairly with owner occupiers". They recommended a statutory process with the Tenant Farming Commissioner appointing a valuer, arbiter or mediator to avoid having to take disputes to the land court which is costly so leads tenants to abandoning diversification. They also raised the need to address compensation arrangements when tenants who have diversified quit the holding and landlords can claim for loss of agricultural value.

431. In their recommendations on Part 2 of the Bill, the SLC was positive about this provision, with one caveat relating to tree planting. [414] Section 45A of the 2003 Agricultural Holdings (Scotland) Act prescribes how compensation for tree planting by a tenant is dealt with at the end of the lease. The SLC described the ability of the landlord to claim compensation for this, including the cost of returning the land to agriculture, as "a big disincentive to any tenant considering planting trees". They recommended that section 45A be repealed so that compensation for tree planting would be based on the same principles as other diversifications. i.e. compensation would depend on whether the tree planting has increased or decreased the value of the holding.

432. The STFA supported this recommendation from the SLC but SLE did not agree "that tenant farmers should be able to permanently change the land use without appropriate compensation being payable to the owner at the end of the tenancy". [415] They believe this sort of land use change is something tenants and owners should have to come to an agreement on, with terms that are "fair and appropriate for both parties".

433. Barriers to agroforestry and woodland were raised as an issue by a number of other stakeholders during stage 1. [416] SLE also discussed the problem of woodland creation, recognising that the requirement to return land to agricultural use or compensate the landlord "is a major barrier to woodland creation by tenant farmers". [417] However, SLE "equally understand that those protections are necessary for the landlord". They suggest land falling into this category be removed from the agricultural tenancy and entered into another form of tenancy that is more suitable.

434. A number of stakeholders suggested that if diversification was undertaken, land no longer being used for agriculture should be removed from the agricultural lease. [418] SLE stated there is "no logic that non-agricultural activity must happen inside the cocoon of the 1991 Act agricultural tenancy which was never intended to be used

for this purpose". [419] They suggest commercial, non-agricultural, purposes are taken out of the agricultural tenancy and put into a commercial lease. If they are to stay in the agricultural holdings regime, SLE believes this should be limited to uses that do not make long-term or permanent changes to the land, unless parties agree to new terms.

435. While not objecting to the principle of tenants diversifying, SLE and Turcan Connell considered these proposals "a material interference with a landlords ability to choose how the land they own is used". [420] Grierson Dunlop (Turcan Connell) expanded on this in oral evidence. He agreed with the principle but was concerned the balance may not be correct between meeting environmental needs though diversification and the right of the landlord to retain their land in its current form. [421]

436. Andy Wightman, on the other hand, suggested the Bill's proposals should go further, stating that it is: "long past time that we tried to accommodate evolving land use practice in tenancy agreements which have their origins in a different era. Instead, the Bill should be amended to provide tenant farmers in Scotland with a right to buy their farms at any time". [422]

437. The Committee welcomes the intention of provisions to encourage consideration of environmental benefits of diversification, but reiterates our concerns about the lack of clarity in what is meant by "sustainable and regenerative agriculture" (see our recommendation at paragraph 308).

438. We also recommend that compensation for tree planting should be subject to the same principles as other diversifications to avoid disincentivising tenants from planting trees.

Game Damage

439. The Bill's provisions on game damage widen what tenants can be compensated for, extending this beyond just damage to crops to include damage to fodder, grass for livestock grazing, disease impact on livestock, damage to trees for various purposes, and damage to fixed equipment. It also extends compensation not just to game damage but also damage from game management as well as both direct and indirect damage, including costs arising from vermin, pests and animal diseases associated with intensive game shoots. The Policy Memorandum states that "it is intended that tenants should be placed in a position that is no better or worse than before the game damage occurred". [423]

440. There have been mixed views on these provisions. Those supporting the wider grounds for claims [424] frequently cite the degree of damage that can be caused by deer, which we heard described as “enormous” with those affected being “massively affected". [425] This was also emphasised by the tenant farmers the Committee heard from directly. Hamish Lean expressed support and highlighted that, while deer damage is an important problem, it is not the only problem being caused by game, citing the damage that can be caused by pheasants and “the manner in which

shoots are conducted, with drives going through fields that contain livestock and causing disturbance to livestock and so on". [426] Again, this issue arose in our session with tenant farmers.

441. Those who are opposed to the provisions highlight that what can be claimed for is "very wide" and question the fairness of requiring a landlord to compensate a tenant for damage over which they have no control. [427] A further concern raised was that there "appears to be no onus on tenants to show any evidence at all nor take any step themselves to prevent damage by what are wild animals in most cases". [428] SLE suggest edtenants should be expected to use their rights under the Deer Act to "protect their own assets before claiming from the landlord". [429]

442. The STFA on the other hand considered that the Bill should be amended to ensure tenants can claim in spite of their right to control deer. [430] They explain that the tenant only has the right to kill deer on improved grassland and cropping land. Under the Bill as drafted they were concerned this right might prevent the tenant from claiming, as the section only applies where "neither the tenant or other person with a right in the holding deriving from the tenant has the right to kill and take game". Christopher Nicholson provided further explanation of this concern in oral evidence:

> Take an example of a tenant farmer with a field of forage rape that might be completely destroyed by marauding deer at night, while during the day those deer are in woods or on hill ground that may or may not be part of the tenancy. The tenant has no right to control deer on that ground. An analogy would be that it is a bit like telling Police Scotland that they can only arrest or interview a suspect if they are caught at the scene of the crime, and that they cannot talk to suspects once they have returned home. It is incredibly limiting. [431]

443. The STFA also argude that tenants may be trying to control deer on their land but find "their efforts will be in vain if a sporting tenant, or a landlord with a sporting interest, is seeking to maintain or increase deer numbers". Andy Wightman suggested again that the Bill should go further and allow tenant farmers the right to buy out the sporting rights over their tenancy. [432]

444. When asked if tenants would be precluded from claiming compensation for deer damage if they have a limited right to control deer on their land, the Cabinet Secretary told us: "That is one of the things that would depend on individual circumstances and whether a tenant has been given rights by the landowner to control the deer". [433]

445. The SLC and STFA highlighted a lack of methodology in the Bill for quantifying and evaluating the damage. [434] The SLC suggested that guidance on this will be necessary. The STFA recommended "a statutory process under the umbrella of the Tenant Farming Commissioner which allows for the appointment of an expert to determine the level of game damage". They suggested that the process in section 21 of this Bill (discussed below) could be used as a legal backstop where parties cannot reach agreement. They had concerns about disputes ending up in the Land Court and suggest this may prevent that. CAAV/SAAVA also highlighted that the Land Court was not a "practical recourse" for disputes over game damage, as the

Bill proposes. They said they would favour "arbitration or expert determination as more accessible". [435]

446. In her oral evidence to the Committee, when asked about a methodology for assessing game damage, the Cabinet Secretary highlighted that “NatureScot already assesses damage that has been done by geese, for example, so we have experience that we can use to address the issue, but that work is on-going”. [436] She mentioned working with “the Tenant Farming Commissioner and wider stakeholders—including NatureScot and organisations such as the British Association for Shooting and Conservation and the Game and Wildlife Conservation Trust”.

447. The SLC's recommendations on Part 2 of the Bill stated that they "support the intention to add to the tenant’s existing rights to compensation for game damage" in recognition of "the wider impacts of intensive game rearing and the increasing occurrence of damage of various types by deer". [437] They addressed the concern outlined above about the interaction with the rights of tenants to control deer, when they may not be practically able to do so, stating that rather than trying to solve that issue in this Bill "We believe that such complex circumstances are best dealt with by NatureScot using their powers of intervention under the Deer (Scotland) Act".

448. The Committee supports the expansion of compensation for game damage as provided for in the Bill.

449. We request that the Scottish Government clarifies how the compensation provisions interact with a tenant's right to control deer. In particular, reflecting on concerns that the tenant's right is of a limited nature, what action is required from a tenant to enable them to claim compensation?

450. We highlight concerns about game damage disputes ending up in the Land Court and recommend that the Scottish Government reflect on how best to avoid this. In particular, consideration should be given to whether some form of arbitration or standard claim procedure would improve the process of assessing and being compensated for game damage.

Standard Claim Procedure

451. Section 21 of the Bill provides for a standard claim procedure for waygo. Waygo is the process tenant farmers and landlords go through at the end of a tenancy. It includes determining any compensation that is due to be paid. The Policy Memorandum explains that "it can be difficult for a tenant to progress in farming or to fully retire until a claim is settled" and that some cases take "months or even years to be agreed, or paid when agreed". [438] The aim of the process set out in the Bill is "to ensure that waygo claims are settled in good time, and in a manner that is fair to both the tenant and the landlord".

452. The standard claim procedure in the Bill provides that claims must be made 9 months before they fall due and then paid within 2 months of that date. It provides

for interest to be added to late payments. A valuer is to be appointed 9 months before termination of tenancy and an interim valuation report produced 5 months before the due date. Three months before that date it gets updated. If a valuer cannot be agreed between the parties one can be appointed by the TFC, with right of appeal to the Land Court.

453. There was agreement among stakeholders with the principle that claims on waygo should be settled in good time. However, there were mixed views about whether a statutory claim procedure was a helpful way to ensure that. A number of stakeholders suggested procedure was too onerous and should only be used as a backstop if parties cannot reach agreement between themselves.[439] The SLC suggested it may be unsuitable for smaller or uncontroversial claims.

454. STFA were supportive of "a strong, statutory process".[440] Christopher Nicholson (STFA) considered that just having a process for what happens if parties cannot agree encourages them "to agree around the table without following the statutory process". He suggested that a statutory process "provides a steer to the agreement". Jackie McCreery (SLE) agreed with this position stating "we should have a backstop in the legislation. I think that it is helpful for parties to focus their minds and start the process a bit earlier".[441] Outgoing TFC Bob McIntosh also emphasised the importance of starting the process early, as not doing so is often the reason for the "too many occasions in which a tenant who might have left his tenancy six months ago is still arguing with the landlord about what waygo settlement he will have".[442]

455. The most significant concern raised about the procedure was in relation to the timescales proposed. Many stakeholders highlighted that some aspects of a compensation claim can only be determined in the last weeks of a tenancy.[443] The Agricultural Law Association and SLE both mentioned game damage as an example of a claim that will not be foreseeable 9 months before it happens. The NFUS provided the example of standing crops. CAAV/SAAVA highlighted that: "The structure of waygo compensation is to reward those last actions for the good of the incomer as much as the older work".[444] They also flagged that events can happen to disrupt plans, for example storm or flood damage. They suggested an alternative process whereby if there is no agreement 2 months after the waygo date the TFC can be asked to appoint a valuer to determine outstanding issues.

456. It was the timescales involved that raised concerns for the panel of practitioners the Committee heard from on Part 2 of the Bill.[445] Martin Hall (Davidson and Robertson) considered that making assessments 5 months ahead of waygo was not practical as things such as growing crops and fodder need to be assessed as close to waygo as possible, though he did agree that "the principle of front loading is generally a good one".

457. The other witnesses agreed both with the principle that there should be "long-stop dates on things" and with the concerns about the specific timescales being proposed. Hamish Lean also considered the provisions "cumbersome". He highlighted that the procedure will require a lot of information to be provided in the preliminary notice, which will most often be served by a tenant, and considered "it would be next to impossible for a tenant to be able to negotiate those provisions without engaging professional advice at a very early stage" and that "adds costs

and burdens to the tenant". He agreed with quicker determination of claims but was "worried that the provisions in the bill are too prescriptive and unnecessary, and that they will make it more rather than less difficult for tenants to navigate their way through waygo claims at the end of the tenancy".

458. In oral evidence Christopher Nicholson (STFA) reflected: "I know that there was quite a bit of comment from agents about some of the timelines. I accept that, but there is no harm in starting the negotiations earlier". [446] He stated that the "big arguments tend to be about large items of fixed equipment such as buildings, which are unlikely to change much in value over the course of six months". Jeremy Moody (CAAV/SAAVA) responded:

> The problem—we keep coming back to it—is that it is a valuation as at waygo. That is the date. I am entirely happy with Christopher Nicholson's notion that we enter into earlier discussions, but if the buildings have burned down five days before waygo, the buildings have burned down five days before waygo and they are not there to be taken to.

459. The SLC's advice on Part 2 of the Bill welcomed the intention to "improve the waygo process by ensuring that the timetable for the start of waygo negotiations provides sufficient time for the process to be finalised by the end date of the tenancy". [447] It stated that a standard claim procedure "may have merit but expect that further work will be required to ensure that it is appropriate in all circumstances. As currently proposed, it is only applicable to circumstances that can be anticipated".

460. The Cabinet Secretary stated that she would give further consideration to the concerns that have been raised about the timescales for valuation but said: "It is nonetheless only right and fair that waygo comes to an end sufficiently quickly for end users, and it is not a process that should be excessively drawn out leading to significant professional expenses". [448]

461. There were mixed views on the provision to apply a rate of interest of 1.5% above the Bank of England base rate to outstanding claims. The STFA and CAAV/SAAVA supported this provision, with CAAV/SAAVA stating that this "provides a discipline that may more effectively concentrate minds than the burdensome procedure and timeline proposed". [449] They suggested a higher rate, of 8% above base rate, could be used, explaining this would be consistent with late commercial payments under the Late Payments of Commercial Debts (Interest) Act 1998. SLE on the other hand considered a rate above base rate "punitive" but stated that whatever the rate is should "reflect the usual practice for this type of claim process". [450] The NFUS and Turcan Connell questioned whether interest should be applied where the delay is the fault of the other party. [451]

462. The Committee is broadly supportive of the standard claim procedure set out in the Bill. We consider it important to encourage early engagement ahead of waygo and quick settlement at waygo. However, we recognise that there are some cases where this process is negotiated without issue between parties, so consider the statutory process in the Bill should be a backstop for when parties cannot reach agreement, rather than something that must be followed in all

cases.

463. The Committee recommends that the Scottish Government reconsider the timescales set out in the standard claim procedure. It is important to ensure claims be settled as quickly as possible, but this needs to be balanced with the practical reality that valuations cannot be accurately completed until late in the day. We recommend consideration is given to a backstop date for payment that reflects that a full and accurate valuation cannot be established until the date of waygo itself.

464. The Committee endorses the level of interest to be paid on outstanding compensation claims that is set out in the Bill.

Rent Review

465. The Bill makes provision to replace the matters to which the Land Court must have regard when determining the fair rent of a holding. Section 23 does this in respect of 1991 Act tenancies and section 24 does it in respect of 2003 Act tenancies. The Policy Memorandum explains that these provisions draw on the work of the TFC and engagement with the Tenant Farming Advisory Forum and that the changes "ensure that the new process will indeed provide a flexible and proportionate system". [452]

466. Under the current law, rent reviews are considered on the basis of the rent charged on “comparable holdings”. It focusses on "open market rent" which is now considered unworkable due to the lack of an open market for secure tenancies. The 2016 Act included provision to change the basis of rent reviews to productive capacity but this was never brought into force as it was considered too difficult to implement in practice. The system proposed by the Bill is based on a non-exhaustive, non-hierarchical list of factors which should be included in calculating rent. One of these is productive capacity, as proposed by the 2016 Act, but that sits alongside other factors such as the rent payable on similar holdings.

467. Some of the tenant farmers the Committee heard from directly described bad experiences of rent reviews, with landlords aggressively seeking big increases. The confrontational approach of some land agents was viewed as part of the problem, with some agents seen as "hired guns" for the landlord, not trusted intermediaries who could settle things sensibly at the kitchen table - one participant said this latter image reflected an outdated view of agents. The Tenant Farming Commissioner was considered to have done great work to make reviews fairer but this was considered to be hampered by not having "teeth" so his guidance could ultimately be ignored. The Bill was viewed as an opportunity to improve the rent review processes and stop misuses.

Inclusion of productive capacity

468. Stakeholders were generally positive about the inclusion of productive capacity as one factor in rent reviews.[453] The STFA supported the proposals, highlighting that

the existing law, based on open market rent of other holdings, is now unworkable due to that lack of an open market for 1991 Act tenancies. Christopher Nicholson said the new provisions had been "fairly thoroughly studied" and he was "confident that they will work". [454] The SLC also considered the current approach of considering rent on comparable holdings "very difficult" with the addition of productive capacity "much to be welcomed" as "another factor that can be used as evidence in a rent negotiation. It is based on an assessment of how much the holding can earn in relation to how much rent it can pay". [455]

469. Grierson Dunlop (Turcan Connell) was less enthusiastic about the proposals but accepted them in principle and stated "what is proposed is, subject to a bit of tinkering, better than other parts of the Bill". [456]

470. The SLC set out in their recommendations on Part 2 of the Bill that they "support the intention to add productive capacity as one of the factors to be taken into account by the Land Court in dealing with rent disputes". [457] They considered that productive capacity and comparable rents can "act as a sense check on each other" and "provide a broader basis on which to conduct rent negotiations".

Related earnings capacity

471. Some stakeholders made suggestions about further additions to the list of factors to be taken into account. The STFA encouraged the addition of "related earnings capacity" to what should be considered alongside productive capacity. They point out that this is the test used in England so there is case law to draw from. They considered this "more in line with the TFC's recommendations and the consultation" and highlighted that too much emphasis on "productive capacity" was one of the reasons 2016 Act provisions were considered unworkable. Christopher Nicholson stated that this did not work as it focussed purely on output and "Rent is paid out of profit, not out of output". He considered that if the Bill does not also refer to "related earnings capacity" then "the focus is on the wrong part of a budget. The focus should be on the divisible surplus after all the associated farming costs". [458]

472. Martin Hall (Davidson and Robertson) made a similar suggestion that "earning potential" should be taken into account. He and Tom Oates (Oates Rural) both expressed reservations about "productive capacity". [459] Tom Oates stated:

> production is only one part of it. That is the output, not the profit. You can ramp up the output, and there are occasions when landlords will look simply at the output and then try to charge a percentage of output as a rent. That is a very dangerous situation, because output is not real.

Method of dispute resolution

473. Another matter raised in respect of these provisions was that a method of alternative dispute resolution for rent reviews would be helpful rather than relying on the Land Court. [460] Bob McIntosh suggested this in oral evidence: "I had rather hoped that the Bill might have included provision to look at that through secondary

legislation, because there is a need for a cheaper and simpler way of resolving rent disputes than does not necessarily involve the Scottish Land Court". [461]

Missing elements from the 1991 Act

474. Another issue highlighted to the Committee was that some key elements of section 13 of the 1991 Act had not been carried over into these rent review provisions. Section 13 of the 1991 Act specifies certain matters to have regard to, or to disregard, in assessing rental value. One particular example highlighted by the STFA was the requirement to disregard the effect on rent of a tenant being in occupation of the holding. Another example, highlighted by the SLC, is the requirement not to take account of any increase in rental value resulting from improvements by the tenant. Stakeholders called for these regards and disregards from the 1991 Act to be incorporated into the new provisions in the Bill to ensure a fair review process. [462] Christopher Nicholson stated that he thought the absence of these in the Bill was "just an omission" as he did not consider this a controversial or difficult amendment to make. [463]

475. This recommendation is also made by the SLC in their advice on Part 2 of the Bill, which states: "the proposed legislation does not carry forward some of the important provisions currently included in s.13 of the 91 Act such as those relating to regards and disregards and recommend that these are included in any new provisions". [464]

476. The Cabinet Secretary's response to questions on this point was that: "Parliament has of course already agreed the changes made by the 2016 Act. I consider that it is better to build on those changes rather than roll back to section 13 of the 1991 Act". [465] She did however state that she would consider the points raised about regards and disregards.

Clarity of terms

477. Some questions have been raised around the wording used in the rent review provisions. SLE, CAAV/SAAVA and SLC question the use of the wording "similar holding" rather than "comparable holding" as used in the 1991 Act. [466] They are concerned that this restricts what holdings can be used as a comparison.

478. In their final recommendations to the Committee on Part 2 the SLC recommend that, as this phrase"may be capable of a narrower interpretation of the rents that can be used as comparables", the term "comparable holding" should be retained. [467] The STFA, however, support the use of the term “similar holding” in the Bill instead of the “comparable holding” used in the 1991 Act, stating that: “One of the main problems with current rent reviews is the use of comparable holdings which are not similar, resulting in large adjustments with a significant margin of error which are difficult to agree on. Disputes will be narrowed by the use of ‘similar holdings’”. [468]

479. In our evidence session with the Cabinet Secretary a Scottish Government official

described this as “a drafting choice” and confirmed: “We are not looking to achieve a different effect and we think that the phrases are functionally the same… Perhaps the Committee will have a view on that, which it may want to express”. [469] In a subsequent letter the Cabinet Secretary confirmed that she is happy to consider concerns about this wording ahead of Stage 2.

480. The Law Society also highlighted the need for clarity and definitions, mentioning "productive capacity" as an example. [470] The SLC also stated in their recommendations on the Bill that guidance will be required on the definition and assessment of "productive capacity". [471]

481. The Committee supports the provision the Bill makes on rent reviews. In particular, we support including productive capacity within the number of considerations to be taken into account in a rent review. We also recommend that the Scottish Government considers including "earnings capacity" - which may not always align with productive capacity- within those factors.

482. The Committee considers that an alternative method of dispute resolution is needed for the rent review provisions to avoid the time and expense of cases having to be resolved by the Land Court. We ask that the Scottish Government undertake development of such a process, perhaps adding to the Bill a requirement that regulations, subject to the affirmative procedure, must be brought to introduce this.

483. The Committee recommends that amendments are brought forward at Stage 2 to take account of the regards and disregards that are set out in section 13 of the 1991 Act but have not been incorporated in the Bill.

484. We also recommend that the term "comparable holding" be retained rather than changing this to "similar holding". This is a well-understood term in the current law on rent reviews and a change in wording risks having unintended legal consequences.

485. We consider that guidance will be necessary in relation to the meaning and assessment of "productive capacity" and therefore recommend the Scottish Government considers whether a statutory requirement to produce such guidance would be a helpful addition to the Bill.

Rules of Good Husbandry and Estate Management

486. Section 26 of the Bill amends the rules of good estate management so that a landlord is considered to fulfil this if land is managed in a way that enables tenant to maintain "efficient, sustainable and regenerative production". Section 27 amends the rules of good husbandry so that the tenant fulfils this if they maintain "efficient, sustainable and regenerative production". The Scottish Government's Explanatory Notes explain "this means that the need for production to be "efficient" has to be balanced against the need for the production to also be “sustainable and regenerative". [472]

487. There was some support among stakeholders [473] for these changes, with the SLC considering them "essential to ensure that tenants are able to engage in sustainable and regenerative agriculture without fear of breaching their lease conditions". Hamish Lean provided an example of a case he had been involved in that exemplified the issues with the existing law and welcomed the update to these rules:

> I was involved in a case in which, according to one view, the tenant was guilty of bad husbandry and, according to another, was practising sustainable and regenerative agriculture. If we are attempting to encourage tenants to farm in a sustainable and regenerative way for the benefit of the wider environment, that change to the rules of good husbandry is welcome, because it would allow tenants to do so without their being at risk of challenge under a set of bad husbandry rules that were promulgated at the end of the second world war, when the circumstances in society were very different. [474]

488. However, the STFA highlighted to the Committee that the consequences for breaching the rules are imbalanced. Tenants breaching rules on good husbandry can be served a notice to quit. There is no equivalent penalty for landlords. The 2016 Act provided for a forced sale when the landlord was in breach but this was never commenced. Christopher Nicholson called for this to be commenced stating that it "was not designed to force landlords to sell; it was designed to ensure that landlords meet their obligations under the terms of the lease" and that if it was commenced "we would see much better behaviour and much better relationships in the tenanted sector". [475] Gemma Cooper (NFUS) agreed the forced sale was only intended “to be used in a worst case scenario” and reflected that there were ECHR concerns about the provision. She stated: “If the Scottish Government is looking at implementing that provision, a lot of work and a lot more thinking will need to be done before that happens”.

489. Some stakeholders expressed concerns about the meaning of these provisions. Andrew Wood (Bidwells) stated that "Defining good husbandry is incredibly subjective, and we practitioners have all been struggling with it for many years" and that it is "extremely difficult to deal with the matter in a practical context. We need to continue to discuss the issue, but I am not sure that the bill quite gets there". [476] SLE said that to facilitate "efficient, sustainable and regenerative" production requires a clearer understanding of "the compatibility between efficient production and sustainable and regenerative farming". [477] Naomi Beingessner also raised that:

> there is a risk of differences in opinion about the balance between managing for efficiency and managing sustainably or regeneratively... There may be fear amongst tenant farmers that their actions for sustainability may not be valued by everyone in the same way. [478]

490. The Committee is supportive of expanding the meaning of good husbandry and good estate management so that it is not solely focussed on efficient production.

491. We recommend that consideration is given to having penalties for breach of rules of good estate management, which would harmonise the position with breaching rules of good husbandry.

492. The Committee considers that disputes may still arise under these rules about where the correct balance lies between “efficient” production and “sustainable and regenerative” farming. We recommend that guidance is produced to clarify this. The Scottish Government should consider whether it is useful to add a provision to the Bill to make this statutory guidance that landlords and tenants must act in accordance with.

Conclusions on general principles of the Bill

493. The Committee recommends to the Parliament that it supports the general principles of the Land Reform (Scotland) Bill.[x]

x By majority (Yes: Bob Doris, Monica Lennon, Michael Matheson, Mark Ruskell, Kevin Stewart. No: Douglas Lumsden, Edward Mountain)

1 Land Reform (Scotland) Bill and accompanying documents

2 SPICe, *Routes to further land reform – the origins of current Scottish Government proposals* , (15 December 2023); SPICe, *Land Reform at 20 – What does a post-feudal era look like?* (20 December 2019)

3 Scottish Land Commission, *Review of Scale and Concentration of Land Ownership: Report to the Scottish Ministers* (20 March 2019)

4 Andy Wightman, *Global learnings for land reform in Scotland: Towards more radical solutions* , Land Matters (2 October 2024)

5 Andy Wightman, *Global learnings for land reform in Scotland: Towards more radical solutions* , Land Matters (2 October 2024)

6 Scottish Land Commission, *Review of Scale and Concentration of Land Ownership: Report to the Scottish Ministers* (20 March 2019)

7 SPICe, *Routes to further land reform – the origins of current Scottish Government proposals* , (15 December 2023); SPICe, *Land Reform at 20 – What does a post-feudal era look like?* (20 December 2019)

8 Bob McIntosh, Scottish Land Commission, *Has the Introduction of the Fixed Duration Tenancy Saved the Tenanted Sector in Scotland?* (June 2022)

9 Bob McIntosh, Scottish Land Commission, *Has the Introduction of the Fixed Duration Tenancy Saved the Tenanted Sector in Scotland?* (June 2022)

10 Scottish Government, *Agricultural Census* , June 2021

11 Policy Memorandum, pages 2 and 3

12 SPICe Briefing, Land Reform (Scotland) Bill, 5 June 2024

13 Scottish Land Commission, Scale and Concentration of Land Ownership: Report to the Scottish Ministers, 20 March 2019

14 Land Reform in a Net Zero Nation - Scottish Government consultation - Citizen Space

15 Scottish Government, Land reform in a Net Zero nation: consultation analysis, 2 June 2022

16 SPICe briefing, Land Reform (Scotland) Bill, 5 June 2024 , pages 26 to 43

17 Policy Memorandum, paragraph 162

18 SPICe briefing, Land Reform (Scotland) Bill, 5 June 2024 , pages 10 and 11

19 Crofters Holdings (Scotland) Act 1886, Crofters Common Grazings Regulation Act 1891, Congested Districts (Scotland) Act 1897, Crofters Common Grazings Regulation Act 1908, Small Landholders (Scotland) Act 1911, Small Holdings Colonies Acts of 1916, Small Holdings Colonies (Amendment) Act of 1918, Land Settlement (Scotland) Act 1919, Small Landholders and Agricultural Holdings (Scotland) Act 1931

20 The Crofting Reform etc. Act 2007 made provision allowing small landholders to convert their holding into a croft. However, the legislation governing small landholdings themselves was unchanged.

21 The Land of Scotland and the Common Good - Report of the Land Reform Review Group , page 194

22 Review of Agricultural Holdings Legislation Final Report

23 Review of Legislation Governing Small Landholdings in Scotland

24 Review of Legislation Governing Small Landholdings in Scotland, page 37

25 Small Landholdings Modernisation: Consultation - Scottish Government consultations - Citizen Space

26 Scottish Government, Small landholdings modernisation: consultation analysis, 2 June 2023

27 SPICe briefing, Land Reform (Scotland) Bill, 5 June 2024 , pages 16 and 17

28 SPICe briefing, Land Reform (Scotland) Bill, 5 June 2024 , page 17

29 SPICe briefing, Land Reform (Scotland) Bill, 5 June 2024 , page 21

30 Scottish Government, Sustainable and regenerative farming - next steps: statement, 2 March 2022

31 Policy Memorandum, page 3

32 Scottish Government, Delivering our vision for Scottish agriculture - proposals for a new Agriculture Bill: consultation, 29 August 2022

33 Scottish Government, Land reform in a Net Zero Nation: consultation paper, 4 July 2022

34 Scottish Government, Agriculture Bill: consultation analysis, 22 June 2023

35 SPICe briefing, Land Reform (Scotland) Bill, 5 June 2024 , pages 22 to 26

36 Policy Memorandum, page 2

37 Policy Memorandum, page 3

38 Published responses for Call for Views on the Land Reform (Scotland) Bill - Scottish Parliament - Citizen Space

39 Land Reform (Scotland) Bill | Scottish Parliament Website

40 Delegated powers in the Land Reform (Scotland) Bill at Stage 1 | Scottish Parliament

41 Published responses for Land Reform (Scotland) Bill: Financial Memorandum - Scottish Parliament - Citizen Space

42 Letter from the Convener of the Finance and Public Administration Committee to the Convener of the Net Zero, Energy and Transport Committee, 28 October 2024

43 Net Zero, Energy and Transport Committee, *Official Report, 11 June 2024, col 3*

44 Written submission of Scottish Land and Estates

45 61% no, 32% not answered - analysis of responses to the Committee's Call for Views

46 Written submission of Scottish Land Commission

47 Net Zero, Energy and Transport Committee, *Official Report, 3 December 2024,* col 64

48 Written responses including Community Land Scotland, Malcolm Combe, WWF Scotland, Landworkers' Alliance, Scottish Wildlife Trust, Naomi Beingessner, National Trust for Scotland, Scottish Environment LINK, Crofting Commission, Scottish Crofting Federation, Church of Scotland, Centre for Local Economic Strategies

49 A phrase used in a number of written submissions and in oral evidence, e.g. Atholl Estates, Naomi Beingessner

50 Written submission of NFU Scotland

51 Written submissions including Scottish Land and Estates, National Farmers Union Scotland, Turcan Connell, Buccleuch Estate, Dunecht Estate, Drummond Estate, Atholl Estates, Association of Deer Management Groups, Bellheil Farm, Spynie Kirk Farmers

52 Written submission of Scottish Land and Estates

53 Written submissions including Jill Robbie, Malcolm Combe, WWF Scotland, Landworkers' Alliance, Scottish Wildlife Trust, Naomi Beingessner, National Trust for Scotland, Scottish Environment LINK, Crofting Commission, Scottish Crofting Federation, Church of Scotland, Centre for Local Economic Strategies, Community Land Scotland

54 Written submissions including Buccleuch Estates, Scottish Countryside Alliance, Scottish Land and Estates, Turcan Connell

55 Written submissions including Turcan Connell, Community Land Scotland, Landworkers' Alliance, Scottish Crofting Federation, Crofting Commission

56 Written submissions including Scottish Environment LINK, REVIVE Coalition, John Muir Trust, Landworkers' Alliance, Community Land Scotland

57 Written submission of Community Land Scotland

58 Net Zero, Energy and Transport Committee, *Official Report, 4 February 2025* , col 8

59 Net Zero, Energy and Transport Committee, *Official Report, 4 February 2025* , cols 12-14;

60 Delegated Powers and Law Reform Committee, *Delegated powers in the Land Reform (Scotland) Bill at Stage 1* , 17 January 2025

61 Written submissions including Scottish Tenant Farmers Association, Community Land Scotland, Highlands and Islands Enterprise

62 Written submissions including Development Trusts Association Scotland, Scottish Rewilding Alliance, Scottish Community Alliance, Assynt Foundation, Atholl Estates, MacRobert Trust; Net Zero, Energy and Transport Committee, *Official Report, 3 December 2024* , cols 16-19; Net Zero, Energy and Transport Committee, *Official Report, 4 February 2025* , col 14

63 Written submission of Scottish Rewilding Alliance

64 Net Zero, Energy and Transport Committee, *Official Report, 3 December 2024* , col 16

65 Net Zero, Energy and Transport Committee, *Official Report, 4 February 2025* , col 14

66 Written submission of Scottish Land and Estates

67 Written submission of Turcan Connell

68 Quote written submission of MacRobert Trust. Similar points raised in written evidence of Ardtaraig Farming Company and Scottish Woodlands

69 Written submission of Buccleuch Estates

70 Written submission of Scottish Land and Estates

71 Written submission of Jill Robbie

72 Scottish Land Commission, *The Land Reform Bill - Part 1: Advice to Ministers* (January 2025)

73 Scottish Land and Estates, *Response to Scottish Land Commission's advice to Ministers* , 11 February 2025

74 Net Zero, Energy and Transport Committee, *Official Report, 28 January 2025* , cols 12, 16, 21

75 Net Zero, Energy and Transport Committee, *Official Report, 28 January 2025* , cols 12, 16, 21; Net Zero, Energy and Transport Committee, *Official Report, 5 November 2024* , cols 13-14; Net Zero, Energy and Transport Committee, *Official Report, 4 February 2025* , cols 5-6; Net Zero, Energy and Transport Committee, *Official Report, 3 December 2024* , cols 27-30

76 Buccleuch Estates and Atholl Estates on Committee visits

77 Net Zero, Energy and Transport Committee, *Official Report, 3 December 2024* , col 27

78 Net Zero, Energy and Transport Committee, *Official Report, 4 February 2025* , col 6

79 Net Zero, Energy and Transport Committee, *Official Report, 3 December 2024* , cols 20 Net Zero, Energy and Transport Committee, *Official Report, 19 November 2024* , cols

80 Net Zero, Energy and Transport Committee, *Official Report, 5 November 2024* , col 14

81 Scottish Land Commission, *The Land Reform Bill - Part 1: Advice to Ministers* (January 2025)

82 Net Zero, Energy and Transport Committee, *Official Report, 18 February 2025* , col 19

83 Net Zero, Energy and Transport Committee, *Official Report, 19 November 2024* , cols 26, 27

84 Net Zero, Energy and Transport Committee, *Official Report, 28 January 2025* , col 15

85 Net Zero, Energy and Transport Committee, *Official Report, 28 January 2025* col *17,* and written submissions including Community Woodlands Association

86 Net Zero, Energy and Transport Committee, *Official Report, 19 November 2024* , cols 20, 21, 22, 23, 27, 51;

87 Net Zero, Energy and Transport Committee, *Official Report, 5 November 2024* , cols; 3, 4, 5, 16, 32, 34, 35, 37, 40; Net Zero, Energy and Transport Committee, *Official Report, 3 December 2024* , cols 17-18; Net Zero, Energy and Transport Committee, *Official Report, 4 February 2025* , cols 3-7

88 Net Zero, Energy and Transport Committee, *Official Report, 5 November 2024* , col 6;

89 Net Zero, Energy and Transport Committee, *Official Report, 5 November 2024* , col 8;

90 Net Zero, Energy and Transport Committee, *Official Report, 3 December 2024* , col 17

91 Net Zero, Energy and Transport Committee, *Official Report, 18 February 2025* , cols 14-15

92 Net Zero, Energy and Transport Committee, *Official Report, 3 December 2024* , col 21

93 Net Zero, Energy and Transport Committee, *Official Report, 3 December 2024* , col 19

94 Net Zero, Energy and Transport Committee, *Official Report, 19 November 2024* , col 27; and written submissions including Scottish Land and Estates

95 Scottish Land and Estates, *Response to Scottish Land Commission's advice to Ministers* , 11 February 2025

96 Net Zero, Energy and Transport Committee, *Official Report, 28 January 2025* , cols 31-32; Net Zero, Energy and Transport Committee, *Official Report, 5 November 2024 2024*, cols

97 Net Zero, Energy and Transport Committee, *Official Report, 28 January 2025* , col 31

98 Net Zero, Energy and Transport Committee, *Official Report, 26 November 2024* , col 45

99 Net Zero, Energy and Transport Committee, *Official Report, 19 November 2024* , cols 28-30; Net Zero, Energy and Transport Committee, *Official Report, 3 December 2024* , col 24; Net Zero, Energy and Transport Committee, *Official Report, 28 January 2025* , col 22

100 Net Zero, Energy and Transport Committee, *Official Report, 19 November 2024* , col 28; Net Zero, Energy and Transport Committee, *Official Report, 3 December 2024* , col 24

101 Net Zero, Energy and Transport Committee, *Official Report, 3 December 2024* , col 24

102 Net Zero, Energy and Transport Committee, *Official Report, 11 June 2024* , col 14

103 Net Zero, Energy and Transport Committee, *Official Report, 18 February 2025* , col 17

104 Financial Memorandum, page 18-19

105 Net Zero, Energy and Transport Committee, *Official Report, 5 November 2024*, cols 18, 21, 27; Net Zero, Energy and Transport Committee, *Official Report, 19 November 2024*, cols 24, 28; Net Zero, Energy and Transport Committee, *Official Report, 28 January 2025* , cols 23-25; Net Zero, Energy and Transport Committee, *Official Report, 4 February 2025,* col 16, 48-50

106 Net Zero, Energy and Transport Committee, *Official Report, 28 January 2025* , col 24

107 Net Zero, Energy and Transport Committee, *Official Report, 4 February 2025* , col 50

108 Net Zero, Energy and Transport Committee, *Official Report, 19 November 2024*, col 8; 18; Net Zero, Energy and Transport Committee, *Official Report, 4 February 2025* , cols 48-50

109 Net Zero, Energy and Transport Committee, *Official Report, 5 November 2024* , col 9:

110 Letter from Coigach Community Development Company, *Follow up figure on cost of community consultations and information from North West 2045* , 21 February 2025

111 Net Zero, Energy and Transport Committee, *Official Report, 28 January 2025* , cols 12-13

112 Net Zero, Energy and Transport Committee, *Official Report, 5 November 2024* , col 8; Net Zero, Energy and Transport Committee, *Official Report, 28 January 2025* , col 20

113 Net Zero, Energy and Transport Committee, *Official Report, 5 November 2024* , col 8; Net Zero, Energy and Transport Committee, *Official Report, 28 January 2025* , col 20

114 Net Zero, Energy and Transport Committee, *Official Report, 5 November 2024* , col 8;

115 Net Zero, Energy and Transport Committee, *Official Report, 19 November 2024* , col 23;

116 Net Zero, Energy and Transport Committee, *Official Report, 28 January 2025*

117 Net Zero, Energy and Transport Committee, *Official Report, 5 November 2024* , cols 8, 9; Net Zero, Energy and Transport Committee, *Official Report, 3 December 2024* , col 16

118 Net Zero, Energy and Transport Committee, *Official Report, 5 November 2024* , col 9;

119 Net Zero, Energy and Transport Committee, *Official Report, 18 February 2025* , col 21

120 Written submission of Community Land Scotland

121 Written submission of the MacRobert Trust

122 Written submissions including Scottish Land and Estates, National Farmers Union Scotland and Turcan Connell

123 Net Zero, Energy and Transport Committee, *Official Report, 5 November 2024* , col 16, 34, 47; Net Zero, Energy and Transport Committee, *Official Report, 26 November 2024* , cols 40-41; Net Zero, Energy and Transport Committee, *Official Report, 3 December 2024* , col 31

124 Written submissions including WWF Scotland, Assynt Foundation.

125 Scottish Land Commission, *The Land Reform Bill - Part 1: Advice to Ministers* (January 2025)

126 Written submissions including Scottish Crofting Federation, Scottish Community Alliance, Development Trusts Association Scotland and Peter Peacock

127 Written submission of Peter Peacock

128 Written submission of Scottish Crofting Federation

129 Written submission of Community Land Scotland

130 Net Zero, Energy and Transport Committee, *Official Report, 18 February 2025* , col 13

131 Net Zero, Energy and Transport Committee, *Official Report, 5 November 2024* , col 18:

132 Net Zero, Energy and Transport Committee, *Official Report, 19 November 2024*, col 34:

133 Scottish Land Commission, *The Land Reform Bill - Part 1: Advice to Ministers* (January 2025)

134 Net Zero, Energy and Transport Committee, *Official Report, 18 February 2025* , col 18

135 Net Zero, Energy and Transport Committee, *Official Report, 5 November 2024* , cols 12, 18, 19; Net Zero, Energy and Transport Committee, *Official Report, 4 February 2025* , cols 20-23; and written submissions including Scottish Land Commission, Development Trusts Association Scotland, Wellbeing Economy Alliance Scotland, Borders Community Action, Community Land Scotland

136 Those thinking it should extend to individuals being able to report included Community Land Scotland and Borders Community Action.

137 Net Zero, Energy and Transport Committee, *Official Report, 19 November 2024* , cols 39; Net Zero, Energy and Transport Committee, *Official Report, 28 January 2025* , cols 26-28

138 Scottish Land Commission, *The Land Reform Bill - Part 1: Advice to Ministers* (January 2025)

139 Net Zero, Energy and Transport Committee, *Official Report, 5 November 2024* , cols 7, 8, 19; Net Zero, Energy and Transport Committee, *Official Report, 26 November 2024* , col 52; Net Zero, Energy and Transport Committee, *Official Report, 28 January 2025, cols 26-28*

140 Net Zero, Energy and Transport Committee, *Official Report, 19 November 2024* , col 9; Net Zero, Energy and Transport Committee, *Official Report, 28 January 2025* , cols 26-28

141 Net Zero, Energy and Transport Committee, *Official Report, 18 February 2025* , col 23

142 Scottish Land Commission, *The Land Reform Bill - Part 1: Advice to Ministers* (January 2025)

143 Net Zero, Energy and Transport Committee, *Official Report, 5 November 2024* , col 9; Net Zero, Energy and Transport Committee, *Official Report, 28 January 2025* , cols 27 and 30; Net Zero, Energy and Transport Committee, *Official Report, 4 February 2025* , col 21 and written submissions including Community Land Outer Hebrides

144 Net Zero, Energy and Transport Committee, *Official Report, 18 February 2025* , col 23

145 Net Zero, Energy and Transport Committee, *Official Report, 19 November 2024* , col 38;

146 Written submission of Scottish Community Alliance

147 Written submissions including Community Land Outer Hebrides, Borders Community Action, Scottish Crofting Federation, Cosaig Growers, Wellbeing Economy Alliance Scotland, REVIVE Coalition

148 Written submissions including Andy Wightman, Faculty of Advocates, Turcan Connell

149 Written submissions including Andy Wightman, Development Trusts Association Scotland, Cosaig Growers, Wellbeing Economy Alliance Scotland

150 Written submission of Community Land Scotland

151 Net Zero, Energy and Transport Committee, *Official Report, 18 June 2024* , cols 13-14; Net Zero, Energy and Transport Committee, *Official Report, 5 November 2024* , cols 18, 28, 42; Net Zero, Energy and Transport Committee, *Official Report, 26 November 2024* , col 49

152 Scottish Land Commission, *The Land Reform Bill - Part 1: Advice to Ministers* (January 2025)

153 Net Zero, Energy and Transport Committee, *Official Report, 18 June 2024* , col 13

154 Net Zero, Energy and Transport Committee, *Official Report, 18 February 2025* , col 22

155 Net Zero, Energy and Transport Committee, *Official Report, 3 December 2024* , col 53

156 Written submissions including Development Trusts Association Scotland, Scottish Community Alliance, Community Woodlands Association, Dr Jill Robbie, Andy Wightman

157 Written submission of Community Woodlands Association

158 Written submission of Dr Jill Robbie

159 Written submission of Peter Peacock

160 Written submission of Scottish Land and Estates

161 Net Zero, Energy and Transport Committee, *Official Report, 3 December 2024* , col 43

162 Written submissions including Scottish Land and Estates, Mar Estate, Ardtaraig Farming Company

163 Written submissions including Paths for All, Andy Wightman, Calum Macleod, Scottish Community Alliance

164 Written submission of Scottish Community Alliance

165 Written submission of Peter Peacock

166 Net Zero, Energy and Transport Committee, *Official Report, 5 November 2024* , col 32; Net Zero, Energy and Transport Committee, *Official Report, 3 December 2024* , col 59; Net Zero, Energy and Transport Committee, *Official Report, 28 January 2025* , col 35; written submissions including National Farmers Union Scotland and Turcan Connell

167 Net Zero, Energy and Transport Committee, *Official Report, 18 June 2024* , cols 5-6; Net Zero, Energy and Transport Committee, *Official Report, 5 November 2024* , cols 32, 33;

168 Jon Hollingdale, Net Zero, Energy and Transport Committee, *Official Report, 5 November 2024* , col 33;

169 Net Zero, Energy and Transport Committee, *Official Report, 18 February 2025* , col 25

170 Net Zero, Energy and Transport Committee, *Official Report, 28 January 2025* , col 4; Written submissions including Naomi Beingessner, Scottish Community Alliance, Community Woodlands Association, Malcolm Combe, Landworkers' Alliance, Development Trusts Association Scotland, Scottish Crofting Federation, Assynt Foundation, Scottish Land and Estates

171 Written submission of Development Trusts Association Scotland

172 Written submission of Scottish Crofting Federation

173 Scottish Land Commission, *The Land Reform Bill - Part 1: Advice to Ministers* (January 2025)

174 Community Land Scotland, *Response to the Scottish Land Commission Advice on Part 1 of the Bill* , 13 February 2025

175 Net Zero, Energy and Transport Committee, *Official Report, 18 February 2025* , col 37

176 Written submissions of John Muir Trust, Centre for Local Economic Strategies, Scottish Environment LINK, Naomi Beingessner

177 Written submissions of The Common Weal, Scottish Crofting Federation, Community Land Scotland, Peter Peacock

178 Written submissions of MacRobert Trust, RH Gladstone and co

179 Written submissions of Scottish Crofting Federation, Borders Community Action, Jimmy Reid Foundation, Development Trusts Association Scotland

180 Written submission of Community Land Scotland

181 Written submissions including Scottish Land and Estates, Andy Wightman, Forest Policy Group, Strathbran Estate, Merkland Estate, Jill Robbie, Turcan Connell

182 Written submission of Scottish Land and Estates

183 Written submission of Strathbran Estate

184 Written submission of Merkland Estate

185 Written submission of Community Land Scotland

186 Net Zero, Energy and Transport Committee, *Official Report, 5 November 2024* , cols 5, 13, 14, 15, 24, 25, 45; Net Zero, Energy and Transport Committee, *Official Report, 19 November 2024* , cols 42, 43; Net Zero, Energy and Transport Committee, *Official Report, 28 January 2025* , cols 40-42

187 Net Zero, Energy and Transport Committee, *Official Report, 19 November 2024* , col 42;

188 Net Zero, Energy and Transport Committee, *Official Report, 19 November 2024* , col 42; Net Zero, Energy and Transport Committee, *Official Report, 3 December 2024* , col 38 Written submissions including National Farmers Union Scotland, Turcan Connell, Scottish Land and Estates

189 Net Zero, Energy and Transport Committee, *Official Report, 19 November 2024* , col 42;

190 Net Zero, Energy and Transport Committee, *Official Report, 3 December 2024* , col 38

191 Net Zero, Energy and Transport Committee, *Official Report, 18 June 2024* , col 25

192 Net Zero, Energy and Transport Committee, *Official Report, 4 February 2025* , col 25

193 Net Zero, Energy and Transport Committee, *Official Report, 28 January 2025* , col 34; Net Zero, Energy and Transport Committee, *Official Report, 4 February 2025* , cols 25 and 58;

194 Net Zero, Energy and Transport Committee, *Official Report, 26 November 2024* , col 54

195 Scottish Land Commission, *The Land Reform Bill - Part 1: Advice to Ministers* (January 2025)

196 Scottish Land and Estates, *Response to Scottish Land Commission's advice to Ministers* , 11 February 2025

197 Net Zero, Energy and Transport Committee, *Official Report, 18 February 2025*, col 26

198 Delegated Powers and Law Reform Committee, *Delegated powers in the Land Reform (Scotland) Bill at Stage 1* , 17 January 2025

199 Written submissions including Scottish Land Commission, Development Trusts Association Scotland, Centre for Local Economic Strategies, Scottish Rewilding Alliance, REVIVE Coalition

200 Written submission of Scottish Land Commission

201 Written submission of the Landworkers' Alliance

202 Written submissions including Ardtaraig Farming Company, Invercauld Estate, Suisgill Estate, Scottish Land and Estates, Turcan Connell

203 Net Zero, Energy and Transport Committee, *Official Report, 3 December 2024* , col 44-47

204 Net Zero, Energy and Transport Committee, *Official Report, 19 November 2024* , cols 13< 48, 49, 50, 51; Written submissions including Gresham House, Scottish Land and Estates, Buccleuch Estates and Atholl Estates

205 Written submission of Scottish Land and Estates

206 Written submission of RSPB Scotland

207 Written submission of Gresham House

208 Written submission of Woodland Trust Scotland

209 Net Zero, Energy and Transport Committee, *Official Report, 5 November 2024* , col 38; Net Zero, Energy and Transport Committee, *Official Report, 3 December 2024* , cols 49-51

210 Net Zero, Energy and Transport Committee, *Official Report, 5 November 2024* , col 38;

211 Net Zero, Energy and Transport Committee, *Official Report, 3 December 2024* , col 50

212 Net Zero, Energy and Transport Committee, *Official Report, 3 December 2024* , cols 50-51

213 Net Zero, Energy and Transport Committee, *Official Report, 18 February 2025* , cols 33-34

214 Net Zero, Energy and Transport Committee, *Official Report, 4 February 2025* , cols 60-61 and written submissions including Association of Deer Management Groups, The Suisgill Estate Partnership, Scottish Land and Estates, Gresham House

215 Written submission of Scottish Land and Estates

216 Net Zero, Energy and Transport Committee, *Official Report, 5 November 2024* , col 38; and written submissions including Association of Deer Management Groups, Gresham House

217 Net Zero, Energy and Transport Committee, *Official Report, 4 February 2025* , col 60

218 Net Zero, Energy and Transport Committee, *Official Report, 11 June 2024* , col 25

219 Net Zero, Energy and Transport Committee, *Official Report, 18 February 2025* , col 34

220 Written submissions including Historic Houses Scotland, Scottish Land and Estates, Scottish Countryside Alliance, Scottish Woodlands, Turcan Connelland Buccleuch Estates

221 E.g. Written submission from Historic Houses Scotland

222 Written submissions including Turcan Connell and Scottish Countryside Alliance

223 Net Zero, Energy and Transport Committee, *Official Report, 19 November 2024* , col 50; written submissions including David Cameron (former CLS chair), RSPB Scotland, NFU Scotland

224 Written submissions including Scottish Land and Estates and Scottish Community Alliance

225 Written submission of Scottish Community Alliance

226 Written submission of Scottish Land Commission

227 Written submission of Turcan Connell

228 Written submissions including Scottish Land and Estates, REVIVE Coalition, Andy Wightman

229 Net Zero, Energy and Transport Committee, *Official Report, 11 June 2024* , col 20

230 Written submission of Gresham House

231 Written submission of Scottish Land and Estates

232 Written submissions of Scottish Rewilding Alliance and Dr Jill Robbie

233 Written submission of Scottish Land and Estates

234 Quote Laurie Macfarlane Net Zero, Energy and Transport Committee, *Official Report, 3 December 2024* , col 10 (see similar points made at col 14)

235 Quote Josh Doble Net Zero, Energy and Transport Committee, *Official Report, 5 November 2024* , cols

236 Quote Scottish Land Commission, *The Land Reform Bill - Part 1: Advice to Ministers* (January 2025). Similar concerns raised in evidence, see Net Zero, Energy and Transport Committee, *Official Report, 3 December 2024* , cols 10, 12, 46; 5 Nov

237 Scottish Land Commission, *The Land Reform Bill - Part 1: Advice to Ministers* (January 2025)

238 Net Zero, Energy and Transport Committee, *Official Report, 5 November 2024* , col 35, 39; Net Zero, Energy and Transport Committee, *Official Report, 3 December 2024* , col 9

239 Net Zero, Energy and Transport Committee, *Official Report, 11 June 2024* , col 4

240 Net Zero, Energy and Transport Committee, *Official Report, 5 November 2024* , col 39

241 Written submission of Scottish Land and Estates

242 Net Zero, Energy and Transport Committee, *Official Report, 19 November 2024* , col 56;

243 Written submission of Peter Peacock

244 Written submission of Community Land Scotland

245 Net Zero, Energy and Transport Committee, *Official Report, 5 November 2024* , cols 16, 35; Net Zero, Energy and Transport Committee, *Official Report, 4 February 2025* , cols 28-29; Written submissions including John Muir Trust, Scottish Crofting Federation, Dr Jill Robbie, Landworkers' Alliance, Woodland Trust Scotland, Scottish Tenant Farmers Association

246 Written submisison of the Jimmy Reid Foundation

247 Written submission of the Landworkers' Alliance

248 Net Zero, Energy and Transport Committee, *Official Report, 18 February 2025* , col 28

249 Delegated Powers and Law Reform Committee, *Delegated powers in the Land Reform (Scotland) Bill at Stage 1* , 17 January 2025

250 Written submissions including Scottish Land and Estates, Buccleuch Estates, Association of Deer Management Groups, Scottish Countryside Alliance

251 Written submissions including Fauna & Flora, Scottish Environment LINK, John Muir Trust, Highlands and Islands Enterprise, Scottish Wildlife Trust

252 Written submissions including Peter Peacock, REVIVE Coalition, Religious Society of Friends (Quakers) General Meeting for Scotland

253 Written submission of the Religious Society of Friends (Quakers) General Meeting for Scotland

254 Written submission of Scottish Land Commission

255 Written submission of Spynie Kirk Farmers

256 Written submissions including Scottish Land and Estates, Gresham House, Scottish Countryside Alliance, Association of Deer Management Groups, Scottish Woodlands

257 Written submissions of Scottish Land and Estates and Gresham House

258 Written submission of Scottish Woodlands

259 Written submission of Scottish Land and Estates

260 Written submission of REVIVE Coalition

261 Written submission of the Royal Society of Edinburgh

262 Written submission of Dr Jill Robbie

263 Written submission of the Scottish Countryside Alliance

264 Net Zero, Energy and Transport Committee, *Official Report, 19 November 2024* , col 59;

265 Net Zero, Energy and Transport Committee, *Official Report, 19 November 2024* , col 60;

266 Net Zero, Energy and Transport Committee, *Official Report, 18 June 2024* , col 30

267 Written submission of Dr Jill Robbie

268 Net Zero, Energy and Transport Committee, *Official Report, 3 December 2024* , col 57; Net Zero, Energy and Transport Committee, *Official Report, 5 November 2024* , cols 43-44;

269 Net Zero, Energy and Transport Committee, *Official Report, 3 December 2024* , col 56-57

270 Financial Memorandum, pages 11-12

271 Written submission of the Scottish Land Commissionto the Finance and Public Administration Committee

272 Net Zero, Energy and Transport Committee, *Official Report, 11 June 2024* , col 24

273 Letter from Finance and Public Administration Committee, *Land Reform (Scotland) Bill Financial Memorandum* , 28 October 2024

274 Written submission of Community Land Scotland

275 Written submission of Peter Peacock

276 Written submission of Scottish Community Alliance

277 Written submissions including Scottish Land and Estates and Scottish Community Alliance

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279 Net Zero, Energy and Transport Committee, *Official Report, 18 February 2025* , col 35

280 Written submissions including Woodland Trust Scotland, RSPB Scotland, WWF Scotland, National Trust for Scotland

281 Net Zero, Energy and Transport Committee, *Official Report, 17 December 2024* , col 43

282 Written submission of Scottish Wildlife Trust

283 Written submission of CAAV/SAAVA

284 Net Zero, Energy and Transport Committee, *Official Report, 11 June 2024* , col 29

285 Net Zero, Energy and Transport Committee, *Official Report, 25 June 2024* , cols 42-43; Net Zero, Energy and Transport Committee, *Official Report, Official Report, 17 December 2024* , cols 42-43; Written submissions including Scottish Land and Estates, Turcan Connell, Law Society of Scotland, Scottish Environment LINK, Scottish Woodlands, Scottish Countryside Alliance,Scottish Wildlife Trust

286 Net Zero, Energy and Transport Committee, *Official Report, 17 December 2024* , cols 42-43

287 Written submission of the Royal Society of Edinburgh

288 Net Zero, Energy and Transport Committee, *Official Report, 25 June 2024* , cols 42-43; Written submissions of RSPB Scotland and CAAV/SAAVA

289 Net Zero, Energy and Transport Committee, *Official Report, 25 June 2024* , col 43

290 Net Zero, Energy and Transport Committee, *Official Report, 18 February 2025* , col 53

291 Net Zero, Energy and Transport Committee, *Official Report, 11 June 2024* , col 32

292 Net Zero, Energy and Transport Committee, *Official Report, 25 June 2024* , cols 2-3; Net Zero, Energy and Transport Committee, *Official Report, 17 December 2024* , col 58

293 Net Zero, Energy and Transport Committee, *Official Report, 25 June 2024* , col 2

294 Policy Memorandum, page 9

295 Net Zero, Energy and Transport Committee, *Official Report, 17 December 2024* , col 30; written submissions of the Scottish Land Commission and Naomi Beingessner

296 Scottish Land Commission, *Advice on Part 2 of the Land Reform Bill* , 4 February 2025

297 Net Zero, Energy and Transport Committee, *Official Report, 11 June 2024* , col 28

298 Net Zero, Energy and Transport Committee, *Official Report, 25 June 2024* , cols 3-5; Net Zero, Energy and Transport Committee, *Official Report, 17 December 2024* , cols 30-32;

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301 Scottish Land Commission, *Advice on Part 2 of the Land Reform Bill* , 4 February 2025

302 *Official Report, 25 June 2024* , cols 3-5; Net Zero, Energy and Transport Committee, *Official Report, 17 December 2024* , col 32; written submissions including Scottish Community Alliance and Andy Wightman

303 Written submission of Scottish Community Alliance

304 Net Zero, Energy and Transport Committee, *Official Report, 25 June 2024* , col 3

305 Written submissions of Andy Wightman and the Faculty of Advocates

306 Net Zero, Energy and Transport Committee, *Official Report, 18 June 2024* , col 35

307 Net Zero, Energy and Transport Committee, *Official Report, 17 December 2024* , cols 30-32

308 Net Zero, Energy and Transport Committee, *Official Report, 25 June 2024* , col 3

309 Net Zero, Energy and Transport Committee, *Official Report, 18 June 2024* , col 36

310 Written submissions of Scottish Crofting Federation and Scottish Tenant Farmers Association

311 Net Zero, Energy and Transport Committee, *Official Report, 25 June 2024* , col 3

312 Net Zero, Energy and Transport Committee, *Official Report, 25 June 2024* , col 5

313 Policy Memorandum, page 10

314 Written submissions of Agricultural Law Association , Scottish Land and Estates, Faculty of Advocates

315 Net Zero, Energy and Transport Committee, *Official Report, 18 June 2024* , col 37

316 Net Zero, Energy and Transport Committee, *Official Report, 18 June 2024* , cols 37-38; Net Zero, Energy and Transport Committee, *Official Report, 25 June 2024* , cols 7-8; Net Zero, Energy and Transport Committee, *Official Report, 17 December 2024* , col 33;

317 Net Zero, Energy and Transport Committee, *Official Report, 25 June 2024* , col 7

318 Net Zero, Energy and Transport Committee, *Official Report, 17 December 2024* , col 33

319 Net Zero, Energy and Transport Committee, *Official Report, 25 June 2024* , col 7

320 Net Zero, Energy and Transport Committee, *Official Report, 11 June 2024* , cols 30-31

321 Scottish Land Commission, *Advice on Part 2 of the Land Reform Bill* , 4 February 2025

322 Net Zero, Energy and Transport Committee, *Official Report, 10 December 2024* , col 23; written submissions of Scottish Crofting Federation, Landworkers' Alliance

323 Letter from Cabinet Secretary for Rural Affairs, Land Reform and Islands, *Stage 2 Government amendments to Part 2 of the Land Reform (Scotland) Bill* , 26 July 2024

324 Net Zero, Energy and Transport Committee, *Official Report, 18 February 2025* , col 40

325 Written submission of the Registers of Scotland

326 Scottish Land Commission, *Advice on Part 2 of the Land Reform Bill* , 4 February 2025

327 Delegated Powers and Law Reform Committee, *Delegated powers in the Land Reform (Scotland) Bill at Stage 1* , 17 January 2025

328 Policy Memorandum, page 11

329 Written submissions including Scottish Land and Estates, NFU Scotland, Law Society of Scotland, Church of Scotland, Registers of Scotland

330 Written submissions of CAAV/SAAVA and the Law Society of Scotland

331 Net Zero, Energy and Transport Committee, *Official Report, 17 December 2024* , cols 34-35

332 Written submission of Scottish Tenant Farmers Association

333 Net Zero, Energy and Transport Committee, *Official Report, 25 June 2024* , col 9

334 Net Zero, Energy and Transport Committee, *Official Report, 18 February 2025* , col 42

335 Scottish Land Commission, *Advice on Part 2 of the Land Reform Bill* , 4 February 2025

336 Net Zero, Energy and Transport Committee, *Official Report, 18 June 2024* , col 39

337 Net Zero, Energy and Transport Committee, *Official Report, 25 June 2024* , col 12

338 Net Zero, Energy and Transport Committee, *Official Report, 25 June 2024* , col 11

339 Written submissions including Turcan Connell, Registers of Scotland, Scottish Land and Estates, Agricultural Law Association

340 Written submission of the Agricultural Law Association

341 Net Zero, Energy and Transport Committee, *Official Report, 25 June 2024* , col 9

342 Net Zero, Energy and Transport Committee, *Official Report, 25 June 2024* , col 12

343 Net Zero, Energy and Transport Committee, *Official Report, 18 February 2025* , col 44

344 Written submission of Andy Wightman

345 Delegated Powers and Law Reform Committee, *Delegated powers in the Land Reform (Scotland) Bill at Stage 1* , 17 January 2025

346 Net Zero, Energy and Transport Committee, *Official Report, 25 June 2024* , col 9

347 Scottish Land Commission, *Advice on Part 2 of the Land Reform Bill* , 4 February 2025

348 Scottish Tenant Farmers Association, *Response to the Scottish Land Commission's advice on Part 1 and Part 2 of the Land Reform Bill* , 17 February 2025; Scottish Land and Estates, *Response to the Scottish Land Commission's additional advice on part 2 of the Land Reform (Scotland) Bill* , 14 February 2025

349 Letter from Cabinet Secretary for Rural Affairs, Land Reform and Islands, *Land Reform (Scotland) Bill evidence session follow up* , 28 February 2025

350 Net Zero, Energy and Transport Committee, *Official Report, 25 June 2024* , cols 12-19; written submissions including Scottish Tenant Farmers Association, NFU Scotland, CAAV/SAAVA, Scottish Land Commission

351 Written submission of Scottish Land and Estates

352 Net Zero, Energy and Transport Committee, *Official Report, 11 June 2024* , col 32

353 Net Zero, Energy and Transport Committee, *Official Report, 18 June 2024* , cols 40-43; Net Zero, Energy and Transport Committee, *Official Report, 25 June 2024* , cols 12-19; Net Zero, Energy and Transport Committee, *Official Report, 17 December 2024* , cols 35-41;

354 Written submission of Turcan Connell

355 Net Zero, Energy and Transport Committee, *Official Report, 18 June 2024* , col 41

356 Net Zero, Energy and Transport Committee, *Official Report, 25 June 2024* , col 18

357 Written submission of Turcan Connell

358 Net Zero, Energy and Transport Committee, *Official Report, 18 June 2024* , cols 40-43; Net Zero, Energy and Transport Committee, *Official Report, 25 June 2024* , cols 20-21; Net Zero, Energy and Transport Committee, *Official Report, 17 December 2024* , cols 35-41; Written submissions including Turcan Connell, Scottish Land and Estates, CAAV/SAAVA, Church of Scotland

359 Written submission of Scottish Land and Estates

360 Written submission of CAAV/SAAVA

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362 Net Zero, Energy and Transport Committee, *Official Report, 18 February 2025* , col 46

363 Net Zero, Energy and Transport Committee, *Official Report, 18 June 2024* , cols 40-43; Net Zero, Energy and Transport Committee, *Official Report, 25 June 2024* , cols 12-19; Net Zero, Energy and Transport Committee, *Official Report, 17 December 2024* , cols 35-41;

364 Quote written submission of Scottish Land and Estates. See also Law Society of Scotland and Turcan Connell and Net Zero, Energy and Transport Committee, *Official Report, 18 June 2024* , cols 40-43

365 Written submission of Scottish Land and Estates

366 Written submission of NFU Scotland

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368 Written submission of Hamish Lean

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370 Scottish Tenant Farmers Association, *Response to the Scottish Land Commission's advice on Part 1 and Part 2 of the Land Reform Bill* , 17 February 2025

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372 Net Zero, Energy and Transport Committee, *Official Report, 11 June 2024* , col 39

373 Scottish Land Commission, *Advice on Part 2 of the Land Reform Bill* , 4 February 2025

374 Net Zero, Energy and Transport Committee, *Official Report, 18 February 2025* , col 54

375 Net Zero, Energy and Transport Committee, *Official Report, 17 December 2024* , cols 35-41

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383 Letter from Cabinet Secretary for Rural Affairs, Land Reform and Islands, *Land Reform (Scotland) Bill evidence session follow up* , 28 February 2025

384 Written submissions of Turcan Connell, Scottish Land and Estates, Church of Scotland, CAAV/SAAVA

385 Written submissions of Scottish Land and Estates and Church of Scotland

386 Written submission of CAAV/SAAVA

387 Written submissions of Scottish Land and Estates, Scottish Tenant Farmers Association, Scottish Land Commission, Hamish Lean

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389 Scottish Land Commission, *Advice on Part 2 of the Land Reform Bill* , 4 February 2025

390 Scottish Tenant Farmers Association, *Response to the Scottish Land Commission's advice on Part 1 and Part 2 of the Land Reform Bill* , 17 February 2025; Scottish Land and Estates, *Response to the Scottish Land Commission's additional advice on part 2 of the Land Reform (Scotland) Bill* , 14 February 2025

391 Delegated Powers and Law Reform Committee, *Delegated powers in the Land Reform (Scotland) Bill at Stage 1* , 17 January 2025

392 Explanatory Notes, page 29

393 Policy Memorandum, page 45

394 Net Zero, Energy and Transport Committee, *Official Report, 25 June 2024* , cols; 21-24; Net Zero, Energy and Transport Committee, *Official Report, 17 December 2024* , cols 42-43

395 Net Zero, Energy and Transport Committee, *Official Report, 25 June 2024* , col 21

396 E.g. Written submission of the Scottish Wildlife Trust

397 Written submission of the Scottish Tenant Farmers Association

398 Written submissions including Scottish Land and Estates and Turcan Connell

399 Written submission of Scottish Land and Estates

400 Net Zero, Energy and Transport Committee, *Official Report, 18 June 2024* , col 45

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403 Net Zero, Energy and Transport Committee, *Official Report, 25 June 2024* , cols 21-24; Net Zero, Energy and Transport Committee, *Official Report, 17 December 2024* , cols 42-43

404 Written submission of NFU Scotland

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410 Delegated Powers and Law Reform Committee, *Delegated powers in the Land Reform (Scotland) Bill at Stage 1* , 17 January 2025

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412 Written submission of Scottish Land Commission

413 Written submissions of NFU Scotland and Scottish Tenant Farmers Association

414 Scottish Land Commission, *Advice on Part 2 of the Land Reform Bill* , 4 February 2025

415 Scottish Tenant Farmers Association, *Response to the Scottish Land Commission's advice on Part 1 and Part 2 of the Land Reform Bill* , 17 February 2025; Scottish Land and Estates, *Response to the Scottish Land Commission's additional advice on part 2 of the Land Reform (Scotland) Bill* , 14 February 2025

416 E.g. Written submission of the Soil Association Scotland, tenant farmers at our online event

417 Written submission of Scottish Land and Estates

418 Written submissions including Scottish Land and Estates, the Agricultural Law Association, Scottish Woodlands and Turcan Connell

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420 Written submissions of Scottish Land and Estates and Turcan Connell

421 Net Zero, Energy and Transport Committee, *Official Report, 18 June 2024* , col 48

422 Written submission of Andy Wightman

423 Policy Memorandum, page 48

424 Written submissions including NFU Scotland, Scottish Wildlife Trust, Scottish Tenant Farmers Association, CAAV/SAAVA

425 Net Zero, Energy and Transport Committee, *Official Report, 17 December 2024* , col 44

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427 Written submissions including Scottish Countryside Alliance, the Association of Deer Management Groups, Turcan Connell

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429 Written submission of Scottish Land and Estates

430 Written submission of Scottish Tenant Farmers Association

431 Net Zero, Energy and Transport Committee, *Official Report, 25 June 2024* , col 26

432 Written submission of Andy Wightman

433 Net Zero, Energy and Transport Committee, *Official Report, 18 February 2025* , col 50

434 Written submissions of the Scottish Land Commission and Scottish Tenant Farmers Association

435 Written submission of CAAV/SAAVA

436 Net Zero, Energy and Transport Committee, *Official Report, 18 February 2025* , col 49

437 Scottish Land Commission, *Advice on Part 2 of the Land Reform Bill* , 4 February 2025

438 Policy Memorandum, page 49

439 Written submissions including Turcan Connell and NFU Scotland

440 Written submission of Scottish Tenant Farmers Association and Net Zero, Energy and Transport Committee, *Official Report, 25 June 2024* , col 28

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442 Net Zero, Energy and Transport Committee, *Official Report, 11 June 2024* , col 33

443 Net Zero, Energy and Transport Committee, *Official Report, 25 June 2024* , cols 28-31; Net Zero, Energy and Transport Committee, *Official Report, 17 December 2024* , cols 47-49; Written submissions of Turcan Connell, Scottish Countryside Alliance, Scottish Land and Estates, NFU Scotland, CAAV/SAAVA, Agricultural Law Association

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447 Scottish Land Commission, *Advice on Part 2 of the Land Reform Bill* , 4 February 2025

448 Letter from Cabinet Secretary for Rural Affairs, Land Reform and Islands, *Land Reform (Scotland) Bill evidence session follow up* , 28 February 2025

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450 Written submission of Scottish Land and Estates

451 Written submissions of NFU Scotland and Turcan Connell

452 Policy Memorandum, page 50

453 Net Zero, Energy and Transport Committee, *Official Report, 25 June 2024* , cols 32-33; Net Zero, Energy and Transport Committee, *Official Report, 17 December 2024* , cols 50-51

454 Net Zero, Energy and Transport Committee, *Official Report, 25 June 2024* , col 32; and written submission of the Scottish Tenant Farmers Association

455 Written submission of the Scottish Land Commission

456 Net Zero, Energy and Transport Committee, *Official Report, 18 June 2024* , col 58

457 Scottish Land Commission, *Advice on Part 2 of the Land Reform Bill* , 4 February 2025

458 Net Zero, Energy and Transport Committee, *Official Report, 25 June 2024* , cols 33 and written submission of Scottish Tenant Farmers Association

459 Net Zero, Energy and Transport Committee, *Official Report, 17 December 2024* , col 51

460 Net Zero, Energy and Transport Committee, *Official Report, 25 June 2024* , col 32; Written submissions including Scottish Tenant Farmers Association and Scottish Land Commission

461 Net Zero, Energy and Transport Committee, *Official Report, 11 June 2024* , col 35

462 Net Zero, Energy and Transport Committee, *Official Report, 25 June 2024* , cols 33-36; Net Zero, Energy and Transport Committee, *Official Report, 17 December 2024* , col 51

463 Net Zero, Energy and Transport Committee, *Official Report, 25 June 2024* , col 33

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466 Written submission of Scottish Land and Estates, CAAV/SAAVA, Scottish Land Commission

467 Scottish Land Commission, *Advice on Part 2 of the Land Reform Bill* , 4 February 2025

468 Written submission of the Scottish Tenant Farmers Association

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470 Written submission of the Law Society of Scotland

471 Scottish Land Commission, *Advice on Part 2 of the Land Reform Bill* , 4 February 2025

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473 Written submissions of NFU Scotland, Scottish Tenant Farmers Association, Scottish Land Commission

474 Net Zero, Energy and Transport Committee, *Official Report, 17 December 2024* , col 53

475 Net Zero, Energy and Transport Committee, *Official Report, 25 June 2024* , col 41; written submission of Scottish Tenant Farmers Association

476 Net Zero, Energy and Transport Committee, *Official Report, 17 December 2024* , col 52

477 Written submission of Scottish Land and Estates

478 Written submission of Naomi Beingessner