Final - Business and Regulatory Impact Assessment

<table>
<thead>
<tr>
<th>Title of Proposal</th>
</tr>
</thead>
<tbody>
<tr>
<td>Land Reform (Scotland) Bill</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Purpose and intended effect</th>
</tr>
</thead>
<tbody>
<tr>
<td>• <strong>Background</strong></td>
</tr>
</tbody>
</table>

**Land Reform**

Scotland is rich in natural resources, most importantly land, which is part of our history and identity as a country and as a people.

Land, both rural and urban, is intimately linked to ideas of well-being, justice, economic opportunity and identity. Land is key to the success and development of our communities. Our relationship to land is, therefore, fundamental to our well-being and economic success as well as to achieving environmental sustainability and social justice.

The system and structure of land ownership and rights in land is a defining factor in this relationship. It can facilitate and promote development, but it can also act as a barrier. In this context, land reform has the capacity to contribute to sustainable economic growth, which is at the heart of the Scottish Government’s purpose.

Land is finite and fundamental to all nation states, and the suite of policies in any country governing land impact on its value accessibility, distribution and use. The policy context in Scotland is demanding a shift in the governance of land to be aligned with the aspiration for a fairer Scotland.

Land Reform has been the subject of discussion in Scotland for generations. A broad-ranging review by the Land Reform Policy Group, carried out in the late 1990s chaired by Lord Sewel, examined the policies and other measures needed to remove land-based barriers to the sustainable development of Scottish rural communities.

Two main outcomes for land reform were identified. First, to achieve more diverse ownership and a reduction in the concentration of ownership and management arrangements, at local level, to promote sustainable development. Second, to ensure increased community involvement in the way that land was owned and used so that local people were not excluded from decisions which affect them as individuals and as communities.

Since that report, there has been various and wide-ranging legislative and other measures put in place to deliver land reform across the Parliamentary terms to date. Many of these measures required the Scottish Parliament to pass new legislation such as the:
The Government established a Land Reform Review Group (LRRG) in July 2012, to establish that the measures that have been put in place since devolution are effective in delivering the desired objectives of;

1. achieving a more diverse ownership pattern to promote sustainable development, and
2. increasing community involvement in the way land is owned and used.

The review groups remit was to;

- Enable more people in rural and urban Scotland to have a stake in the ownership, governance, management and use of land, which will lead to a greater diversity of land ownership, and ownership types, in Scotland;
- Assist with the acquisition and management of land (and also land assets) by communities, to make stronger, more resilient, and independent communities which have an even greater stake in their development;
- Generate, support, promote, and deliver new relationships between land, people, economy and environment in Scotland.

The LRRG published their report *The Land of Scotland and the Common Good* in May 2014. This report contained 62 recommendations on how land reform should be progressed within Scotland. Some of these recommendations are being implemented by the Scottish Government through non-legislative means, such as the commitment to complete the Land Register of Scotland within 10 years which is being progressed by the Registers of Scotland. In addition some of the other recommendations are being further considered by the government. The Land Reform Bill brings forward some of the recommendations made by the LRRG that require a legislative solution.

**Agricultural Holdings**

The Scottish Government’s vision is for a Scottish tenant farming sector that is dynamic, getting the best from the land and the people farming it, and provides opportunities for new entrants, forming part of a sustainable future for Scottish farming. Agricultural tenancies are a critical part of Scottish agriculture and account for 23% of agricultural land, providing a route into farming and an opportunity for those who don’t own land to get a start in farming. Landlords and tenant farmers also play an important role in the wider rural community.
The tenanted sector makes a valuable contribution to ensuring Scotland’s place as a good food nation, with wholly rented farms generating an estimated £340 million of food production in Scotland, with mixed tenure farms producing an estimated £450 million. It is important that the framework governing land and tenant relationships are right to ensure these businesses continue to contribute over £790 million of food production in Scotland.

The Scottish Government believe that a vibrant agriculture tenanted sector is key to ensuring that we get the most from our land and the people farming it. However, since 1982 there has been a 44% decrease in the area of let land, resulting in Scotland now having one of the lowest proportions of rented land anywhere in Europe.

Despite, previous agricultural holding tenancy reforms, there is still an apparent lack of confidence in the sector and so the 2011 SNP manifesto committed to undertaking a legislative review within 18 months of the Agricultural Holdings (Amendment) (Scotland) 2012 Act coming into force.

The Agricultural Holding Legislation Review Group (AHLRG) was established in 2014 to undertake the review, under the chair of the Richard Lochhead, Cabinet Secretary for Rural Affairs, Food and the Environment. The aim of the AHLRG was to deliver a comprehensive package of recommendations for legislative change to achieve the Scottish Government’s vision for a vibrant and sustainable tenant farming sector.

The AHLRG published their final report in January 2015. This contained 43 specific recommendations. Most of these were directed at the Scottish Government, but some were for consideration by industry led organisations and professional bodies that the AHLRG believe have important roles to play.

The Scottish Government have identified a number of key recommendations requiring legislative change that it considers should be taken forward as a package within the Land Reform Bill, as part of the wider programme of work to take forward the AHLRG’s recommendations.

The overall aim of the proposals in relation to agricultural holdings is to restore confidence to the sector and promote a vibrant tenanted sector, and by extension the whole agricultural sector. Improvements should promote a number of financial benefits through greater agricultural productivity.

**Objective**

The main policy objectives of the Bill are:

- To ensure on-going consideration of land reform issues, resulting in continuing effective modern models of land governance in Scotland, by:

  1. Requiring the Scottish Ministers to publish a Land Rights and Responsibilities Statement. The first statement must be published and laid before the Scottish Parliament 12 months after commence of that art of the
Bill and must be updated every five years thereafter.

2. Establishing a Scottish Land Commission to support the work of five Land Commissioners, who will conduct research, gather evidence, consider and make recommendations on policies and laws relating to land in Scotland. The Land Commission will also support the work of a new Tenant Farming Commissioner to take on specific role in relation to agricultural tenancies;

- To provide **greater transparency of land ownership** in Scotland by;

3. (a) Taking a regulation making power that will allow person to apply for a requesting body to require the disclosure of certain information on a proprietor or tenant of land in Scotland, to be disclosed on a case by case basis, where the lack of the information can be shown to be having an adverse effect.
3. (b) Taking a regulation making power to allow for provision of additional powers to the Keeper of the Registers of Scotland to request disclosure of certain types of information relating to proprietors and tenants of land, including information on individuals with a controlling interest in land.

- To promote more local and community involvement in land, help ensure greater accountability of landowners towards communities where the decisions around land can affect those communities, and provide appropriate tools for intervention where this is necessary to address the needs of local communities and to further sustainable development, by:

4. Placing a duty on Scottish Ministers to provide for guidance for landowners and tenants on engaging communities in decisions relating to land.

5. Providing a Right to Buy Land to Further Sustainable Development: to provide Scottish Ministers with the power to consent to the transfer of land to a community body, or a nominated person, where the transfer is likely to deliver significant benefit, remove or prevent significant harm and further sustainable development, and where only the transfer of the land will resolve those issues.

- To address specific issues relating to the balance of rights and responsibilities over land, by:

6. To reintroduce non-domestic rates (referred to as business rates) on shootings and deer forests, so that they are related as per arrangements that apply to most other non-domestic properties. The measure will also raise additional revenue to support Scottish Government budgets.

7. Further modernise Common Good legislation by removing the need for private legislation where a council wishes to change the use of common good land, this will enable local authorities to ensure that common good land is put to the best use for local people.

8. To provide for a range of additional powers to Scottish National
Heritage to be available as interim measures to help ensure appropriate deer management, pending consideration of the conclusions of a further review scheduled in 2016. These powers would include: providing for an additional use of existing deer panels to promote community involvement in local deer management; providing a power for Scottish National Heritage (SNH) to require the production of a deer management plan where, in the view of SNH, the public interest in deer management is not being delivered in a particular area; and substantially increasing the level of fine for failing to comply with a deer control scheme imposed under section 8 of the Deer (Scotland) Act 1996. These provision allow included in the Bill would not be commenced until after the planned review into deed management in 2016.

9. Make further amendments to improve and clarify current provisions on public rights to access land, including to clarify and simplify the core path planning process and amend notification procedures for applications to the Sheriff Court to determine the existence and extent of access rights to allow for notification of all relevant parties interested in exercising access rights.

10. To take forward much needed reforms to Agricultural Holdings legislation, identified by the AHLRG, to improve relationships, re-dress imbalances, and to provide tools to help the industry begin to move forward by:

   o Modern Limited Duration Tenancies –providing a modern limited duration tenancy as an option for future agricultural tenancies to replace the existing limited duration tenancy option set out in the Agricultural Holdings (Scotland) Act 2003.

   o Conversion of 1991 Act tenancies into modern limited duration tenancies –taking regulation making powers to allow Scottish Ministers to make provision for a 1991 Act tenant farmer to convert their 1991 Act tenancy into a modern limited duration tenancy to be assigned on the open market.

   o Tenant’s Right to Buy – removing the requirement for a tenant to register their interest in purchasing their holding, with the Registers of Scotland, under the existing Right to Buy provisions in the Agricultural Holdings (Scotland) Act 2003. This right will now become automatic when a landlord decides to sell their land.

   o Sale to tenant or third party where landlord in breach of order or award – introducing new provision to the Agricultural Holdings (Scotland) Act 2003 to enable a tenant of a 1991 Act tenancy to apply to the Scottish Land Court to order the sale of the land comprising the holding, where the landlord is persistently failing to meet their obligations under the tenancy and where this is affecting the tenants ability to maintain the efficient agricultural productivity of the holding.
o Rent review – making amendments to simplify and improve the process for triggering and carrying out a rent review for certain agricultural tenancies and change the way the Scottish Land Court is required, on application, to determine rent for those tenancies by moving away from consideration based predominantly on an ‘open market’ calculation to one based on a ‘fair rent’ taking into account the agricultural productivity of the holding, based on the fixed equipment provided by the landlord, any surplus residential accommodation, and any diversified activity on the holding.

o Assignation of, and succession to, agricultural tenancies - to widen the class of people to whom a tenant farmer can assign their tenancy and to whom they can leave their tenancy upon death; to simplify the ways in which a landlord can object to a potential assignee or successor to the tenancy.

o Compensation for Tenant’s Improvements – new provisions to provide for an amnesty period during which a 1991 Act tenant may serve formal notice on the landlord of their intention that, specific items, not currently agreed as tenants improvements, are to be considered tenants improvement for the purposes of establishing the tenant’s right to compensation at eventual waygo.

o Improvements by Landlord – new provision to provide a right for tenants to object to any improvements proposed by the landlord if the tenant feels that it is not necessary for the agricultural productivity of the holding.

Rationale for Government intervention

The Scottish Government’s overarching purpose is “to focus government and public services on creating a more successful country, with opportunities for all of Scotland to flourish, through increasing sustainable economic growth”. The Bill is an important next step in a wider programme of land reform measures that will contribute to the Government's purpose by ensuring that the relationship between the people of Scotland and Scotland’s land deliver greater public benefit through a democratically accountable and transparent system of land rights that promotes fairness and social justice, environmental sustainability and economic prosperity.

The Bill will contribute to the following National Outcomes;

- We have tackled the significant inequalities in Scottish society.
- We have strong, resilient and supportive communities where people take responsibility for their own actions and how they affect others.
- We value and enjoy our built and natural environment and protect it and enhance it for future generations.

In terms of the polices contained in the Bill, the rationale for government intervention
is as follows:

**Land Rights and Responsibilities Statement**

In recent years there has been growing international understanding of the importance of all nations to exhibit good land governance. Every country’s circumstances are different, but there are common challenges. Scotland’s desire is to lead by example to address its complex and often emotive history. In this, the Scottish Government’s desire is to move from a reactive place of addressing historic issues to a proactive position where governance of land in Scotland is an on-going, long term process and land governance in Scotland is consistent with and supports the aspirations and outcomes desired in Scotland.

The land rights and responsibilities will provide a key reference point for the Scottish Ministers. It also provide reference for the planned Scottish Land Commission and the work of the Land Commissioners. It will also provide public agencies, the Scottish Parliament, communities and the private sector with a clearer understanding of the Scottish Government’s ambition and aims for the future of land reform in Scotland.

**Scottish Land Commission**

Both the Land Reform Policy Group in 2001, chaired by Lord Sewel, and the recent LRRG were clear that land reform is not an event but a process. Creating a Scottish Land Commission would provide a valuable level of oversight to ensure Scotland continued to make progress to address current and emergent issues of land reform. The aim of the land commission is to demonstrate long term commitment to land reform, providing the evidence base for further land reform measures and assessing the impact of existing policies.

**Provide greater transparency of land ownership;**

- Right of access to information about control of land
- Information relating to proprietors of land

In Scotland there has been a long held tradition that information about the ownership of land should be in the public domain. This dates back to the founding of the General Register of Sasines in 1617 which is recognised at the world’s first publically accessible national property register. As matter of public policy is of fundamental importance to know who owns land, who has the power to make decisions on how the land is managed and who is benefitting financially from land. For government to make sound evidence based policy decisions it is important to have accurate information.

The Scottish Government’s position is that clear and up-to-date information about land, its value and its ownership (in its widest context meaning control of and benefit from rights over land) provides the necessary basis for open, transparent and evidence based decision making in relation to our framework of land rights and responsibilities, ensuring they are promoting effective and sustainable land-based
decision making.

Within existing statutory parameters, decisions on use, access and development of land are ultimately influenced by those who control, and benefit from, the ownership of land. Understanding why people own land and the reasons for ownership is central to understanding the influences behind land based decision-making and why land is used in certain ways or not used. Better information on the legal owners of land, and on individuals that have control over land will be a vital and important first step.

**Furthering the sustainable development of land:**

- Engaging communities in decisions relating to land
- Right to buy land to further sustainable development

Communities in Scotland – both rural and urban – are making considerable efforts to determine their own futures and to take forward their own local sustainable development. Groups including community development trusts, Community Right to Buy groups, community companies, Community Councils, local action groups, Climate Challenge Fund and Lottery Fund recipients have all identified and expressed their aspirations for the development of their local area, considering their economic, social and environmental assets, opportunities, challenges and needs.

Sustainable development for communities often requires the use of physical assets including land, buildings or other property, which lie in private or other ownership. Availability of physical assets for sustainable development is determined by the willingness or ability of land and property owners to allow communities access to them.

There are many examples of land owners who have positively engaged with communities wishing to develop, and have supported their local communities by allowing sale, lease or use of land or buildings. Examples include land for housing, allotments, cycle paths, renewable energy generation, or buildings for community businesses such as community shops and social enterprises. It is in the public interest that communities across Scotland, wherever they may be, have a sustainable future and that patterns of land ownership and the decisions of landowners, should help and not hinder this process.

The best way for this to be achieved is for communities and land owners to work together to identify mutually beneficial solutions to local barriers to sustainable development. Dialogue between communities, in view of their needs and aspirations, and landowners, in view of their needs and business plans, can prove effective and result in partnerships which are positive and productive for both parties.

The objective of the proposals in this Bill is, therefore, to influence the way that all land owners, both public and private, plan for, invest in the use and management of land in order to contribute to building a fairer and more prosperous Scotland. The proposals in this part are intended to promote more local and community involvement in land, help ensure greater accountability by land owners towards communities where their decisions can affect communities, and provide the
appropriate tools to make changes where this is necessary to address the needs of local communities and overcome barriers to sustainable development. Such provisions are specifically relevant to those decisions made by land owners which are not currently subject to any public scrutiny or public interest test, and which could have an impact on communities.

**Entry in Valuation Roll of Shootings and Deer Forests**

Shootings and deer forests have since 1 April 1995 been statutorily excluded from the valuation roll and thus exempted from non-domestic rates (business rates).

Rates relief and exemptions forego revenue which could be used to fund public services, and therefore must be sufficiently aligned with Government objectives. The Scottish Government is no longer persuaded that the current exemption for shootings and deer forests is sufficiently aligned with its policy objectives.

**Common good land**

Section 75(2) of the Local Government (Scotland) Act 1973 provides that:

“Where a local authority desire to dispose of land forming part of the common good with respect to which land a question arises as to the right of the authority to alienate, they may apply to the Court of Session or the sheriff to authorise them to dispose of the land, and the Court or sheriff may, if they think fit, authorise the authority to dispose of the land subject to such conditions, if any, as they may impose, and the authority shall be entitled to dispose of the land accordingly.”

In 2012 the Inner House of the Court of Session held, in a case brought by objectors to a proposal by the City of Edinburgh Council to build a new school on common good land in Portobello Park, that while section 75(2) allows a local authority to seek authority from a court to dispose of common good land, there is no equivalent provision enabling a council to apply to a court for authorisation to use such land for another purpose than that for which it was originally intended. This meant that the only way for the Council to implement its proposal was to seek passage by the Parliament of a Private Bill giving the Council the power to use the proposed site in Portobello Park for educational purposes. This was done, and the Bill was passed in June 2014. The Bill only applied to the specific case of use of part of Portobello Park as the site for a new school: it did not make any change to the general law.

There is no policy reason for requiring councils to obtain passage of a Private Bill before changing the use of inalienable common good land, while allowing disposals of such land to take place after approval by a court. Ministers have agreed that the Bill should include provisions to address the issue by giving councils the same power to change the use of inalienable common good land as they currently have to dispose of such land.

The intention is to remove the need for councils to secure passage of a Private Bill to authorise appropriations, ie changes of use, of inalienable common good land.
Instead such appropriations should be able to take place on the same basis as disposals of such property, ie with the approval of the Sheriff or Court of Session.

**Deer management**

In 2011 the overall population of deer in Scotland was estimated by SNH to be over 750,000 – (very) approximately 400,000 red deer, 350,000 roe deer, 25,000 sika deer, and 2,000 fallow deer. The populations of all these species are increasing in number and expanding in range. Deer have no natural predators and the populations are usually “managed” by culling, with around 100,000 deer being culled each year at present. The current level of culling is not considered to be adequate in certain areas. Whilst deer are of significant value to the Scottish economy in some respects, it is recognised that – at current population levels - they are also causing damage to the natural environment (including to designated sites), agricultural crops and forestry, and they are a road safety hazard.

At present, deer management in Scotland is carried out on a largely voluntary basis. The Code of Practice on Deer Management states: “At the heart of the voluntary approach to deer management is that with this right to shoot or take deer on land goes a responsibility to safeguard their welfare and manage them sustainably” There is no statutory requirement upon owners and occupiers to control deer numbers, other than where a control scheme has been put in place under section 8 of the Deer (Scotland) Act 1996. Since the 1950s, deer management groups have been formed in some areas with the intention of promoting co-operation between land owners and improving the standards of local deer management. In 2013 SNH advised that there were forty two deer management groups in upland areas, and a further seven in lowland areas, although the number of deer management groups, and the categorisation of sub-groups, has varied over time.

Not all of these groups have deer management plans, and a large proportion of plans that are in existence are in need of updating (although there has been progress on that front over the last year). There is apparently a considerable degree of variation in the level of formality of these plans. There is no statutory basis for either deer management groups or deer management plans.

SNH have powers to intervene in the circumstances set out in section 7(1) of the 1996 Act, and may enter into a control agreement with relevant owners and occupiers of land under that section. Where it is not possible to secure a control agreement, or where that control agreement is not being carried out, under section 8 SNH may make a control scheme for the purposes of carrying out such measures as it considers necessary for these purposes. Where owners and occupiers fail to carry out these measures, SNH may carry out the relevant requirements (section 8(8)), and may recover the expenses of doing so (section 9).

The LRRG Report that the Scottish Parliament’s Rural Affairs, Climate Change and Environment Committee conducted a short inquiry into deer management last year. It was recognised that progress as regards the development and implementation of deer management plans has been too slow, and the Committee set a target that each deer management group should have a deer management plan for the area that it covers by the end of 2016. The Scottish Government agreed that the end of
2016 would be a suitable juncture to consider progress and to look to take action if the current voluntary system has not produced a step change in the delivery of effective deer management.

What is being proposed at present are essentially interim measures which could be brought into effect quickly following the conclusion of the review that is to take place at the end of 2016. The intention is that these interim measures would be in force throughout the period during which and additional measures were being developed.

**Access rights: core paths**

The National Access Forum, a voluntary association of different interest groups who provide advice on national access issues, identified these in their submission to the Review Group. All access authorities have prepared a core paths plan. Periodically, access authorities will undertake reviews of their core paths plan to ensure that it is sufficient for the purpose of giving the public reasonable access throughout the authority’s area.

**Agricultural Holdings legislation**

*Modern Limited Duration Tenancies*

Secure 1991 Act tenancies have served the industry well. However it has been recognised that there is a need for more modern and flexible tenancy vehicles in addition to 1991 Act tenancies and the Agricultural Holdings (Scotland) Act 2003 introduced two new letting vehicles, the Limited Duration Tenancy and Short Limited Duration Tenancy.

The AHLRG identified an on-going need for modern letting vehicles, suitable for the 21st century, that were sufficient term to encourage tenant farmers to invest in the agricultural holding and develop their agricultural business, while at the same time being short enough not to deter landlords from letting out their farmland.

Submissions to the Review were, in general, relatively supportive of the current LDT model, but there were a number of suggestions of improvements and further changes that could be made in order to ensure a vehicle that meets the needs of modern agriculture.

This Bill therefore makes provision to maintain the legislative framework for LDT’s already in existence and to provide a new model ‘modern limited duration tenancy’ (‘MLDT’). There are some limited differences aimed at offering increased flexibility to landlords and tenants to negotiate lease provisions in relation to fixed equipment, rent and purposes of the lease which meet their needs. They are also designed to encourage landlords to let to new entrants and encouraging new entrants to take up farming by offering MLDTs with 5 year break clauses.

Going forward, any new agricultural tenancy entered into for a term of not less than 10 years, other than a lease constituted as a 1991 Act Tenancy, will be a MLDT and any lease purporting to be for a term of more than 5 but less than 10 years will be considered to be an MLDT with a duration of 10 years. In addition, see section 5(4)
of the 2003 Act for a model.

Where a tenant remains in occupation on expiry of the original term of an existing LDT, the existing LDT should convert to a MLDT with a term of 10 years instead of continuing as an LDT as at present. Similarly, existing SLDTs that would under the current provisions convert to an LDT, will now convert to an MLDT.

Conversion of 1991 Act tenancies into MLDTs

The Bill introduces a regulation making power intended to enable the Scottish Ministers to take forward the AHLRG’s recommendation for new provision that will enable a tenant farmer to convert their 1991 Act tenancy into a new Modern Limited Duration Tenancy that the tenant will then be able to assign to anyone on the open market for value.

These new proposals will encourage new entrants into farming and eradicate some of the difficulties that occur at waygo regarding adequate compensation claims. Also, the new proposals could potentially help to address most of the factors that currently are inhibiting secure 1991 Act tenant farmers from retiring and provide a route into farming for new entrants.

Tenant’s Right to Buy

Currently in Part 2 of the Agricultural Holdings (Scotland) Act 2003, under a traditional secure 1991 Act tenancy, a tenant farmer has the pre-emptive right to buy their holding, if the holding is sold by the landlord, where the tenant has registered their interest in acquiring their holding in the Register of Community Interests in Land. As part of the process the landlord has ability to challenge the registration of the interest.

Although this has been in place since 2003, the number of registrations is low in comparison to the number of 1991 Act holdings. The LRRG and the AHLRG received anecdotal evidence that some tenants may be reluctant to register as it may impact negatively on relationships with their landlords. Other criticisms of the registration process have included complexity and claims that there are significant variations in the quality of data provided by applicants for registration in the register are significant, and that there was a need to renew registration every 5 years.

Both the LRRG and the AHLRG have recommended that the requirement on a 1991 Act tenant to register an interest in land, necessary to trigger the tenants’ pre-emptive right to buy under Part 2 of the 2003 Act should be removed.

The Bill removes that requirement. It is intended that this should result in an increase in the number of tenant farmers given the opportunity to purchase the land under their holding, should that land be put up for sale.

Sale where landlord is in breach

AHLRG report noted that under current legislation a landlord, having served a demand to remedy a breach of a term of the lease that has not been complied with,
may serve an incontestable notice to quit on the tenant. No such reciprocal provision exists that would enable a tenant to ‘dispossess’ a landlord.

A number of submissions to the Review alleged that failures by landlords to fulfil lease obligations are relatively common. Particular reference was made to renewal and replacement obligations relating to fixed equipment, and to inappropriate game management that conflicts unreasonably with the purpose of the lease.

Recommendation 21 of the AHLRG’s report is, therefore, for provision to be made to enable a 1991 Act tenant to request the Scottish Land Court to order the sale of holding where the landlord has persistently failed to fulfil their obligations under the tenancy, triggering the tenant’s right to buy.

While under section 15A of the 1991 Act, a tenant farmer may apply to the Land Court to withhold rent where a landlord is failing to meet their obligations, in many circumstances this is not an effective remedy as the value of the rent paid can be substantially less than the replacement costs of the defective fixed equipment required to farm efficiently on the holding. It may also be that the tenant faces the choice of paying potential costs of litigation or having the funds to remedy the landlord’s failing, necessary for the holding.

The Scottish Ministers consider that in order to help ensure the most productive use of our agricultural land and that the tenant should have further, more effective remedy in situations where a landlord’s failure to fulfil their obligations is adversely affecting the tenant’s ability to fulfil their obligations and to farm the holding in accordance with rules of good husbandry.

The Bill, therefore, contains a new provision to enable a tenant farmer to apply to the Land Court to order the sale of an agricultural holding where the landlord has failed to comply with obligations under a 1991 Act tenancy, has subsequently failed to comply with an order of the Land Court, or arbiter appointed under provisions of the 1991 Act, to fulfil the obligation(s) and the failure is adversely affecting the tenant’s ability to farm the holding in accordance with the rules of good husbandry.

In these circumstances, the Land Court will have the discretion to order the sale of the agricultural holding where greater hardship would be caused by not making the order than by making it, and in all the circumstances it is appropriate.

In the first instance the order for sale means an order that the tenant has the right to buy the land comprised in the holding. If the tenant does not choose to exercise the right to buy, the tenant can apply to the Land Court to order the sale of the land comprised in the holding to a third party.

The Scottish Ministers will, through regulations, set out the process to be followed where the Land Court orders sale of the land comprised of a holding to a third party, including setting out that certain people, namely the tenant farmer and the landlord’s immediate family will be prevented from purchasing the property. Other conditions are attached to the sale whether it is sold to the tenant or to a third party, including clawback provisions to protect the original landlord’s interests.
There is a limited supply of good agricultural land in Scotland. Where an enforced sale order is granted, it could enable important agricultural land to be released from a damaging landlord/tenant relationship in which the failures of the landlord were undermining agricultural productivity.

While there may be examples of absentee landlords or landlords with little interest in the welfare of their tenants or the productivity of the land, there will also be cases where landlords simply are not able or cannot afford to undertake the work required under the lease. The aim is not, therefore, to punish landlords but to ensure the land is brought back into productive use either through release into owner-occupation (if the tenant exercised a right to buy) or by transfer to a new landlord, who would take on the land with the sitting tenant (if the tenant applied for the land to be sold to a third party). Research indicates that both forms of tenure can be equally productive.

There will be potential costs on both parties in making or responding to any future applications to the Scottish Land Court necessary in exercising this remedy. Providing an effective remedy to tenants in cases where landlords are consistently failing to fulfil their obligations will help tenant farmers to overcome the costs and damage to their business caused by the landlord’s failure. Legal expenses incurred by parties will be considered in the usual way by the Land Court.

Where an order for sale is granted, then regardless of whether the tenant is the ultimate purchaser or a third party, then the purchase price of the land will be borne by the purchaser and the landlord will receive reasonable market value for the holding. Other conditions can also be attached to the sale, including clawback provisions to protect the original landlord’s interests.

Provision is also made to allow for any person, including an owner or former owner of land comprised in the lease of a 1991 Act tenancy, who has incurred loss or expenses in complying with the provisions in relation to the order for sale to recover the amount of that loss or expenses from the Scottish Ministers, in accordance with regulations to be developed in accordance with the regulation making power in section 38O(2) to be inserted into the 2003 Act

Rent Review

At present, the majority of tenanted land (around 80%) is under secure 1991 Act tenancies that are already subject to a legislative rent system. The requirement for a form of statutory control over tenancy arrangements reflects the fact that agricultural farm land is a finite resource of national importance, and one where demand for access to land and secure 1991 Act tenancies far exceed supply. If there was an absence of rent controls in these circumstances, this would tend to push up rents above levels that would be obtained in a more balanced market, where supply more closely matched demand. It is in the public interest to ensure that rents are controlled where this market imbalance prevails.

The AHRLG concluded that for the present, it is reasonable to continue to control rents for secure 1991 Act tenancies, but there was evidence of a need to change the manner in which rent reviews are undertaken, and the way in which the Scottish Land Court is required to determine rent on application by the tenant or landlord.
The current statutory formula that the Scottish Land Court is required to follow in order to determine rent for a secure 1991 Act tenancy, is primarily based on ‘open market rent’ and is not directly related to agricultural productivity. Although the underlying proposition that a rent should be fixed on an open market rent may be considered simple in principle, in practice it is difficult to apply accurately and fairly as there is in fact no open market in secure 1991 Act tenancies.

This necessitates rent being calculated on various comparators, such as rents obtained for Limited Duration Tenancies (LDTs) and this creates difficulties when adjusting for distortion. This complex method of calculating rent has on occasion led to some large rent increases in a short period of time. The AHLRG also heard evidence that there is a lack of clarity and transparency with the current model, and this can often lead to disputes between parties during the rent review process.

Recommendations 3, 4 and 6 of the AHLRG’s report, therefore, set out an alternative approach to calculating rent for agricultural tenancies. The proposals in the Bill will amend the current statutory formula for calculating rents and will move away from open market calculations to one based on a ‘fair rent’, taking into account the agricultural productivity of the holding.

Under the new test the Land Court in assessing fair rent must, among other things, have regard to: (1) the productive capacity of the holding (which is the income that can be generated from that particular holding with the landlord’s fixed equipment by a hypothetical tenant); (2) a proportion of the open market rent for any residential accommodation which exceeds the standard labour requirement of that particular holding (excluding the tenant’s primary accommodation); and (3) the open market rent for any land or fixed equipment or the holding which is used for a non-agricultural purpose. This will enable both parties to undertake a more structured, transparent and objective rent review, relevant to the agricultural purpose of the tenancy and narrow the scope for areas of dispute.

Assignation of and Succession to Agricultural Tenancies

Succession

The AHLRG received submissions proposing that current legislative provisions on succession and assignation for agricultural tenancies should be modernised. The submissions highlighted that changing social norms were in effect preventing family farms from passing to a close relative who might otherwise wish to take up the tenancy. A number of submissions also noted that current arrangements can have discriminatory consequences, and proposed that spouses should always have equal rights to their partner.

The AHLRG also identified the lack of an eligible successor as one of key factors that inhibit retirement amongst tenant farmers. A recent survey of tenant farmers identified that a large proportion of current tenants do not intend to retire, if at all, until 70 and a quarter could not say when they were going to retire. Around 20% of respondents to the tenant farmer survey said that they knew of a family member who wanted to succeed to their tenancy but who fell out with the current class of eligible
successor and, of those, half identified that person as a sibling and a third said it was a niece or nephew.

Some older tenants may have insufficient pension provision, having invested their spare cash directly into the holding. Many also have a deep sense of personal commitment to the farm and to the local community. For many tenants, giving up the tenancy therefore has both financial and emotional implications that may discourage retirement and work against the wider interests of a sector in need of more land released to newcomers. In circumstances of significant under supply of tenanted land, it is in the public interest as well as that of older tenants, that they should be encouraged to retire with dignity and confidence so as to release land to younger tenant farmers.

Current legislation in practice restricts succession to a ‘near relative’ of the tenant farmer; preventing succession in most cases to other members of the tenant farmer’s wider family, including siblings, cousins, nieces, nephews etc. Scottish Ministers wish to modernise the classes of successor to reflect modern family structures, and in turn, make it easier for tenant farmers to retire while removing obstacles to those wishing to take up tenancies.

The Bill extends the definition of ‘near relative’ so that tenant farmers can now leave their tenancy to a much wider class of person.

Assignation

Widening the class of assignee has also been identified as a way to get more new entrants into tenant farming, help tenanted businesses with succession planning and help side-step some of the issues around way-go compensation when a tenancy comes to an end.

Section 10A of the Agricultural Holdings (Scotland) Act 2003 enables a traditional secure tenant to assign his tenancy to any person entitled to succeed on his death, subject to the landlord’s consent. As a result of the new provisions in section 84 of the Bill, the tenant will be able to assign to a wider class of person where the landlord’s consent is received.

Compensation for improvements

The AHLRG report considered recent moves in the sector away from the traditional partnership model between landlord and tenant. Traditionally the partnership was one where the former contributes the fixed capital and the latter provides the working capital, management and labour. The development of capital intensity of farming over many decades has increased the proportion of working capital in the overall capital employed (excluding land value), and in addition a trend among landlords to limit their investment in fixed equipment, often as a response to low rents.

As a result many 1991 Act tenants now provide a significant fixed capital element. If a tenant carries out certain improvements during the course of his tenancy then he should be able to do so in the knowledge that the landlord must compensate him for such improvements on termination of the tenancy (compensation at waygo). This is
the underlying rational of current provisions in the 1991 Act and is to encourage tenants to invest in the holding and keep the holding in good condition, knowing that they will be adequately compensated.

However, before some improvements can qualify for compensation at waygo, (1) consent is required from the landlord before the improvement is carried out and (2) a notice is required to be served on the landlord before the improvement is carried out. This means that effective recording of, and agreement on, a tenant’s investment in improvements is central to fair compensation at waygo.

Effective recording of, and agreement to, a tenant farmer’s improvement is, therefore, central to providing fair and predictable compensation at waygo, enabling tenant farmers to leave their tenancy. Yet, from evidence provided to the AHLRG, it is apparent that many secure 1991 Act tenant farmers do not have an agreed and up to date record of improvements and may not have notified or received the correct consents in advance of carrying out improvements. As a result, the tenant farmer is unable to claim compensation for these improvements, despite potential significant costs and investment made which may have been necessary to maintain efficient agricultural production on the holding.

The AHLRG examined the available evidence in relation to inadequate compensation at waygo for improvements carried out by tenants and recommended that there is a time-limited amnesty period whereby tenants may serve notice in writing on the landlord that specific items are to be treated as if prior consent or notice had been given and, therefore, the improvement is treated as a tenant’s improvement capable of being compensated for at waygo.

The Bill amends the current provisions for compensation at waygo for secure 1991 Act tenancies, providing a two year amnesty period during which a tenant farmer may serve formal notice on the landlord of their intention that, in certain circumstances, specific items, not previously agreed by the landlord, may be treated as a tenant farmer’s improvement at waygo.

The effect of the provisions will be that a tenant can serve a notice on the landlord that an improvement previously carried out by the tenant is to attract compensation at waygo where: (a) a tenant met the requirements of the 1991 Act or the 2003 Act, which would enable the tenant to receive compensation at waygo, but does not possess a record that these requirements were met; or where (b) where consent was not sought; or (c) where no notice was given.

**Improvements by landlord**

Currently within the legislation, a landlord can enter onto a holding with a secure 1991 Act agricultural tenancy and make improvements to the unit without the agreement of the tenant farmer. This could potentially result in the tenant farmer paying an increased rent if the improvement enhances the rental value of the agricultural holding, regardless of whether it is desirable or necessary on agricultural grounds for the efficient management of the holding. Within the same relationship, the landlord has the right to object to an improvement notice from their tenant farmer and the ability to refuse to consent to the proposed improvement.
The Bill includes new provision that provides fairness to the tenant farmer by enabling them to object or refuse consent to an improvement by the landlord if the improvement is not reasonable or necessary on agricultural grounds in order to farm the holding in accordance with the rules of good husbandry.

## Consultation

- **Within Government**

This Bill is far reaching in its policy scope and has impact on across different policy areas across government. It has been necessary to consult across government to ensure that the Bill meets its policy objectives. To reflect this there has been substantial consultation across government. The following government departments have been consulted with and have contributed to the development of the polices in the Bill:

Justice Directorate – Civil law division  
Directorate for Local Government and Communities – Public bodies & Public Service Reform Division  
Directorate for Digital – Connectivity, Economy and Data  
Directorate for Local Government and Communities – Local Government division  
Directorate for Agriculture, Food and Rural Communities – Land Reform and tenancy unit  
Directorate for Environment and Forestry – Natural Resources Division  
Registers of Scotland  
Forestry Commission  
Scottish Natural Heritage

In additional all the proposals have been formulated in conjunction with the Scottish Government Legal Directorate.

The follow government departments and agencies responded to the Consultation on the Future of Land Reform;

Big Lottery Fund  
Cairngorms National Park Authority  
Crofting Commission  
Highlands and Islands Enterprise  
Loch Lomond & The Trossachs National Park Authority  
Network Rail Infrastructure Limited  
Ordnance Survey  
Scottish Charity Regulator  
Scottish Human Rights Commission  
Scottish Natural Heritage  
Scottish Water  
SportsScotland  
Valuation Office Agency - District Valuer Services
The following local authorities responded to the Consultation on the Future of Land reform:

Aberdeenshire Council  
Clackmannanshire Council  
Comhairle nan Eilean Siar  
East Ayrshire Council  
East Lothian Council Countryside Services Department  
Falkirk Council  
Highland Council  
Perth & Kinross Council  
Scottish Assessors Association  
Scottish Borders Council  
South Lanarkshire

In relation to the proposals to remove the exception in the valuation roll for shooting and deer forests local government, who are responsible for rating, and the Assessors, who are responsible for valuation for rating, have also been engaged for these interests.

- **Public Consultation**

The provisions that are being taken forward in the Bill are in part the Scottish Government's response to the LRRG report and is providing the necessary legislative vehicle some of the recommendation that required a legislation. The LRRG started its enquiry in September 2012 and undertook a public consultation as the first phase of its work. The LRRG issued a call for evidence to which it received 484 submissions. The LRRG also undertook a program of meetings and visits to gather views from a wide range of interest. The recommendations made by LRRG were influenced by this consultation.

In response to the recommendations of the LRRG, the Scottish Government committed in the Programme for Government 2014-2015 to introduce a Land Reform Bill within the 2011-2015 Parliamentary term, to take forward the next steps in land reform and ensure Scotland’s land reform debate focusses on how Scotland’s land can be best managed in the public interest to ensure it is of benefit to all of the people of Scotland.

On 02 December 2014 the Scottish Government published a consultation paper, on the Future of Land Reform that proposed legislative measures to further land reform in Scotland. The consultation closed on 10 February, although agreed late responses were received up until 25 February.

The consultation received a total of 1269 responses, including 214 responses from organisations, 951 responses from individual members of the public and a further 104 campaign responses. A link to the responses can be found here; [http://www.gov.scot/Topics/Environment/land-reform/consultation](http://www.gov.scot/Topics/Environment/land-reform/consultation).

All non-confidential responses were published on the Scottish Government website.

The analysis indicated a high level of public interest and support for land reform and how land works for the people of Scotland. Most proposals received over 70 per cent support with respondents giving a wide range of helpful detail on their reasoning for support or opposition.

**AHLRG Consultation**

The Review Group undertook extensive evidence gathering throughout the period of the Review, holding a total of 78 meetings with stakeholder organisations and private and public meetings across the length and breadth of Scotland.

All the Review Group’s meetings with stakeholders were minuted and have been analysed for the purposes of the BRIA:

- First stage of work during Spring 2014 where the Review Group members met with key stakeholder organisation (NFUS, STFA, SL&E, SAAVA and RICS)\(^1\) and conducted over 50 meetings and private sessions with tenant farmers, their landlords and professional intermediaries in: Islay, Oban, St Boswells, Dumfries, Turriff, Perth, Inverness, Stranraer, Ayr and Isle of Bute.

- Launch of the Review Group’s Interim Report at the Royal Highland Show in June 2014, where the Review Group held a further 16 private meetings with tenant farmers, their landlords and land agents.

- Second stage of work, during Summer/Autumn 2014, where the Review Group sense tested their emerging proposals in 12 meetings held with the main stakeholder organisations and well attended public meetings in Kelso, Inverurie, Bridge of Allan and Dumfries.

The 100 written submissions received by the Review Group have also been included in the BRIA analysis. From the total number of submissions received, 27 came from the key stakeholder organisations and 73 from individual tenant farmers, landowners and land agents.

**Consultation on the Future of Land Reform in Scotland**

The Consultation sought views on the proposal for the Scottish Government to take

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\(^1\) National Farmers Union Scotland (NFUS); Scottish Tenant Farmers Association (STFA); Scottish Land & Estates (SL&E); Scottish Agricultural Arbiters & Valuers Association (SAAVA); Royal Institution of Chartered Surveyors Scotland (RICS).
forward some of the recommendations of the AHLRG within the Land Reform Bill.

The majority (64%) of respondents to the question, agreed that the Government should take forward some of the recommendations of the AHLRG within the Bill. However, 88% of private landowner organisations disagreed.

Those supporting the proposal considered that the Land Reform Bill provided a vehicle for early establishment into statute of very important recommendations, and that including changes to agricultural holdings with other land reform measures would result in a more coherent, comprehensive and integrated package of land reform legislation that will foster greater public awareness of land reform issues.

Those against were concerned that taking the recommendations through in the Land Reform Bill could mean potentially rushing what was likely to be complex legislation, risking insufficient scrutiny and poor legislation. There were also some respondents who considered agricultural holdings to be a distinct issue from other land reform measures and some concern that provisions would be scattered across different legislative vehicles rather than part of a cohesive framework.

- Business

A number of businesses responded to the consultation on the Future of Land Reform. There were 54 responses from major private landowners, primarily estate landowners and businesses. In addition 39 responses were received from other private sector businesses and representatives bodies, including legal firms and land agents, a full list is available in annex 1 of the analysis of the consultation.

As part of the Scottish firms impact test the following businesses were interviewed; Remony Estates (Perthshire), Islay Estates and Dalhousie Estate, (Angus). The interviews took place at the Association of Deer Management Groups regional meeting held at Brina on the 17 June 2015. These businesses are private enterprises that encompass mixed estates that including agriculture, shooting and tourism.

In addition a telephone interview was carried with a representative form Stòras Uibhist that a 93,000 acrea mixed estate in Western Isles. Stòras Uibhist Estate is an estate in community ownership. It is home to over 850 tenant crofters and numerous businesses, in the aquaculture, agriculture, fishing, shooting, food processing, construction, tourism and service sectors.

As detailed above the AHLRG consulted with numerous agricultural and landowning business during their review and the views of those businesses have been taken into account when developing the polices contained in Bill. Therefore, further interviews with firms have not been carried out as part of this BRIA.

Options

The Scottish Government believes that on-going land reform will help to increase the contribution of Scotland’s land to sustainable economic growth, which is at the heart of the government’s purpose. Land reform has the potential to empower greater numbers of people, and over time, to change patterns of landownership to ensure a
greater diversity of ownership, greater diversity of investment and greater sustainable development. To underpin these aims the Bill includes the following measures:

**Land rights and responsibilities Statement** – the Bill provides that the Scottish Ministers must publish the first statement and lay it before the Scottish Parliament 12 Months after the that section of the Bill comes into force. The other option that was considered in relation to the statement was not publishing the statement. There was overwhelming support from the respondents for include the Bill a requirement for Scottish Ministers to publish statement. There are no costs or benefits attached to the option of not publishing the statement. Publishing the statement will provide a clear and definitive statement of the Scottish Government’s policy on the land reform and this will have to be reviewed every five years. This will give both the public and private sectors, communities and all landowners a clear understanding the government’s aims for the future of land reform in Scotland. The cost associated with this option is the cost of consulting on the proposed statement and it has been estimated that the costs will £24,500. There are no costs on any other sectors in pursuing this option other than costs associated with responding to the public consultation.

**Scottish Land Commission** – establish a Scottish Land Commission consisting of 5 Land Commissioners to carry out research and gather evidence relating land issues, review the effectiveness and impact of law and policies relating to land and make recommendations to inform future land reform. The Scottish Land Commission will also support the work of the Tenant Farming Commissioner who will prepare, promote and advise on the agricultural tenanted sector. Further details of the other options considered, the sectors affected and the benefits and cost of each option have been included in Annex A.

**Provide greater transparency of land ownership.** - to include in the Bill regulation making power that will provide;

- For a requesting body to require the disclosure of certain information on a proprietor or tenant of land in Scotland, to be disclosed on a case by case basis, where the lack of the information can be shown to be having an adverse effect.
- For provision of additional powers to the Keeper of the Registers of Scotland to request disclosure of certain types of information relating to proprietors and tenants of land, including information on individuals with a controlling interest in land.

Further details of the other options considered, the sectors affected and the benefits and cost of each option have been included in Annex B.

**Furthering the Sustainable Development of land**

- Engaging Communities in Decisions relating to land - to place a duty on Ministers to publish guidance directed at proprietors or tenants of land about engaging with communities on decisions relating to land that may affect those communities.
• Right to Buy land to further Sustainable Development - to provide Scottish Ministers with the power to consent to the transfer of land to a community body, or a nominated person, where the transfer is likely to deliver significant benefit, remove or prevent.

Further details of the other options considered, the sectors affected and the benefits and cost of each option have been included in Annex C.

**Entry in Valuation Roll of Shootings and Deer Forests**

• Application of non-domestic rates to shootings and deer forests: to bring shooting and deerstalking businesses back into with other ratepayers who help fund local services.

Further details of the other options considered, the sectors affected and the benefits and cost of each option have been included in Annex D.

**Common good land**

• Common Good: to further modernise the laws relating to common good assets by providing local authorities the same power to appropriate ‘inalienable common good land’ for other uses, as the local authority currently has to dispose of such land, removing the need for local authorities to secure passage by the Scottish Parliament of a Private Bill to authorise appropriation of such land.

Further details of the other options considered, the sectors affected and the benefits and cost of each option have been included in Annex E.

**Deer management**

• Functions of Deer panels, Deer management plans and Increase in penalty for failure to comply with control scheme: to provide for an additional use of existing deer panels to promote community involvement in local deer management; to provide a power for Scottish National Heritage to require the production of a deer management plan where, in the view of SNH, the public interest in deer management is not being delivered in a particular area; and to substantially increase the level of fine for failing to comply with a deer control scheme imposed under section 8 of the Deer (Scotland) Act 1996.

Further details of the other options considered, the sectors affected and the benefits and cost of each option have been included in Annex F.

**Access rights – core paths**

• Core paths plans: amendments to Part 1 of the Land Reform (Scotland) 2003 Act to clarify and simplify the core path planning process and amend notification procedures for applications to the Sheriff Court to determine the existence and extent of access rights to allow for notification of
all relevant parties interested in exercising access rights.

Further details of the other options considered, the sections affected and the benefits and cost of each option have been included in Annex G.

**Agricultural Holdings**

- **Modern Limited Duration Tenancies** – to provide a modern limited duration tenancy as an option for future agricultural tenancies to replace the existing limited duration tenancy option set out in the Agricultural Holdings (Scotland) Act 2003.

- **Conversion of 1991 Act tenancies into modern limited duration tenancies** – to take a regulation making power to allow Scottish Ministers to make provision for a 1991 Act tenant farmer to convert their 1991 Act tenancy into a modern limited duration tenancy and to then assign the converted tenancy on the open market.

- **Tenant’s Right to Buy** – remove the requirement for a tenant to register their interest in purchasing their holding, with the Registers of Scotland, under the existing Right to Buy provisions in the Agricultural Holdings (Scotland) Act 2003. This right will now become automatic when a landlord decides to sell their land.

- **Sale to tenant or third party where landlord in breach of order or award** – introduce new provision to the Agricultural Holdings (Scotland) Act 2003 to enable a tenant of a 1991 Act tenancy to apply to the Scottish Land Court to order the sale of the land comprising the holding, where the landlord is persistently failing to meet their obligations under the tenancy and where this is affecting the tenants ability to maintain the efficient agricultural productivity of the holding.

- **Rent review** – make amendments to simplify and improve the process for triggering and carrying out a rent review for certain agricultural tenancies and change the way the Scottish Land Court is required, on application, to determine rent for those tenancies by moving away from consideration based predominantly on an ‘open market’ calculation to one based on a ‘fair rent’ taking into account the agricultural productivity of the holding, based on the fixed equipment provided by the landlord, any surplus residential accommodation, and any diversified activity on the holding.

- **Assignation of and succession to agricultural tenancies** - to widen the class of people to whom a tenant farmer can assign their tenancy and to whom they can leave their tenancy upon death; to simplify the ways in which a landlord can object to a potential assignee or successor to the tenancy.

- **Amnesty for Tenant’s Improvements** – new provisions to amend the current provisions for compensation at waygo for secure 1991 Act tenancies, providing a two year amnesty period during which a tenant farmer may serve formal notice on the landlord of their intention that, in certain circumstances,
specific items, not previously agreed by the landlord, may be treated as a tenant farmer’s improvement at waygo.

- Improvements by Landlord – new provision to provide a right for tenants to object to any improvement proposed by the landlord if the tenant feels that it is unnecessary for the holding.

Further details of the other options considered, the sections affected and the benefits and cost of each option have been included in Annex H.

Scottish Firms Impact Test

The following assessment has been made of the effect the provisions in Bill will have on business;

Land rights and Responsibilities Statement

There will be no effect on business from the provisions in the Bill that will require the Scottish Ministers to publish a Land Rights and Responsibilities Statement.

Scottish Land Commission

The provision in the Bill for the setting up of a Scottish Land Commission will not have a significant effect on the business. The Land Commissioners remit will be to carry out review law and policy in relation to land, recommended changes to law and gather evidence and carry out research on land reform. The effect on businesses will be assessed and will form part of the reviews and research the land commissioners undertake.

Provide greater transparency of land ownership;

- Right of access to information about control of land
- Information relating to proprietors of land

Where a person makes a request to the request authority for information about individuals that have control of land, and that land is a business there may be a small administrative cost to provide the information. The details of how this process will operate will be determined in the regulations. It will only be possible to calculate any costs to business when the regulations are made.

To provide an indication of potential cost comparison with Part 7 of the Small Business, Enterprise and Employment Act 2015 includes provisions that will provide that UK companies will have to maintain a register of persons with significant control of the company may provide an indication of costs. It is envisaged that the cost incurred by businesses in collating information for the purposes of the establishing information about individuals with control will be similar to the costs incurred by businesses for collating information for that register. The table below taken from the Impact Assessment for the 2015 Act provides a summary of the costs that may be incurred by a company in providing information for that register, this provides an indication of the costs that a company may occur in providing this information to the
request authority.

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<td>Identification and collection</td>
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<td>9.1</td>
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<td>Collation, processing and storage</td>
<td>13.2</td>
<td>11.7</td>
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On this basis, we envisage that there could be a potential cost to a business would be £129.80 to provide the relevant information in an individual case.

**Entry in Valuation Roll of Shootings and Deer Forests**

The private estate businesses that were interviewed as part of this assessment indicated that without yet knowing the details of an additional rates that they may be liable for it would not be possible to give an accurate indication of the effect that the rates would have on their business. The representatives from the private estates interviewed did state that shootings, and deer stalking in particular, form only a part of their overall business and did not run at a profit. The representative from the Islay Estate described how shooting was used as the incentive to get people to come to the island and use other businesses, such as the hotel, owned by the estate. The deer stalking business may be run at a loss but the knock on effect on the other business enterprises run by the estates made deer stalking worthwhile.

The interviewees made the point that aspects of their businesses were economically marginal and that any increase in cost could have a significant effect on their business and act as a disincentive to invest. This could mean having to lay off members of staff or having to curtail the measures they undertake for environmental and wildlife management. Also, the rationale was queried as to why this exception was being ended, but not others, such as for agriculture.

The views that were provided in the interviews mirrored those provided by the private landlords that responded to the public consultation.

The representative from Stòras Uibhist indicated that they saw no reason why the business rates should not apply to businesses with shooting and deer stalking. The estate has to manage the deer on its land. As business it has to maximise the revenue streams that are available to it and as such it has to maximise the revenue from the deer herd. The representative did not foresee that the businesses would be adversely affected by the inclusion of shooting and deer forests in the valuation roll.

**Common Good Land**

These provisions in the Bill are providing a legislative change to the power of local authorities to appropriate ‘inalienable common good land. As such there will be no costs to business as a result of these provisions. There will be no additional cost or
cost savings as a result of these provisions.

Deer management

The provisions in Bill are to be interim measures that would be put in force throughout the period during which a new statutory scheme for deer management was being developed following the 2016 review of deer management. There will be no immediate cost to business as a result of these measures being included in the Bill as they will only be introduced following the 2016 review. If these measures were to be introduced there they be additional cost on land owning businesses that will have to put in place deer management procedures. It is not possible to quantify the costs at this time. These measures should not impose additional costs on land owning businesses that have successful deer management measures in place.

The representative from the Islay Estate did not foresee the proposal in the Bill for deer management having a significant effect on their businesses. They already take an active role in deer management groups and are putting in place new deer management plans. They were of the view that the proposals in the Bill would have a more significant effect on landowners where there was no active deer management group or plans in place.

The representative from Stòras Uibhist offered the view that involving Scottish Natural Heritage in deer management can sometimes be problematic. Stòras Uibhist carrys out deer managemnet in a way that works with their requirements as business and maximises the revenue avalible to the business from the herd. This can sometime conflict with the deer management approach of SNH. If the actions of SNH was to impact the revenue rasining potential from the managemet of the deer herd this could have an effect on their business. They also raised concerns of the approach of involving communities in deer management as in their case where the community owns the estate. They already take into account the views of the community when managing the deer.

Access rights: core paths

The provisions in the Bill make some amendments to the legislation governing core paths, and provide for the review of core paths plans. These provisions build on the existing legislation for core paths, will not have any additional effect on business, nor result in additional cost or cost savings.

Agricultural Holdings

One of the key policy aims of the provisions in the Bill for Agricultural Holdings is to enable the parties involved the agricultural tenancy sector to move their relationship forward onto a more business like footing while encouraging a reduction in conflict and halting further reductions in the loss of tenancies in Scotland. In additional they are designed to improve confidence and provide for a more vibrant sector, enabling new entrants to enter the sector, bringing new ideas and innovation into the industry.

The provisions will have an impact on agricultural businesses involved in the sector
including tenants and landlords. An assessment of the effect on the individual measures in the Bill is set out below;

**Modern Limited Duration Tenancies**

There will be no additional costs on any party resulting from the new provisions for a modern limited duration tenancies other than any costs associated with future decisions by parties to enter into such a tenancy.

**Conversion of 1991 Act tenancies into a limited duration tenancy**

These proposals will encourage new entrants into farming and eradicate some of the difficulties that occur at waygo regarding adequate compensation claims. These proposals could potentially help to address most of the factors that currently are inhibiting secure 1991 Act tenant farmers from retiring and provide a route into farming for new entrants.

It is not anticipated that there will be any significant direct costs to landlords or tenants resulting from the provisions to be introduced under the regulation making power taken in section 79 to allow for the conversion of 1991 Act tenancies into a limited duration tenancy that can be assigned on the open market. However, any potential impact will be depend on the detail of the regulations to be developed as these will set out the detail of how the process will operate. It will only be possible to calculate any costs to business when the regulations are made.

**Rent review**

At present landlords and tenants meet the cost of employing advisors to assist them in rent reviews and in any application to the Land Court for determination of rent. Although elements of the new rent test require a more complex assessment of the business, the more structured approach, with a longer notification process, should result in reduced scope for disputes between parties and reduced scope for protracted negotiations during rent reviews. This should provide greater transparency leading to less rent cases being referred to the Scottish Land Court. The cost of carrying our rent reviews will continue to be met by both parties but it is anticipated that the clearer and more defined procedure for conducting reviews should result in cost savings to both parties over the longer term.

**Tenants right to buy**

Removing the requirement for an agricultural tenant to register their inter acquiring land will result in minor cost saving in the registration fees, of £40 for the first registration and £25 to renew the interest after 5 years.

**Assignation of and Succession to Agricultural Tenancies**

In the majority of cases tenants already have eligible successors under the current legislative provisions, in which case the proposals will have no direct impact. The provisions in Bill will provide that a proportion of tenants will in the future have a suitable successor and choose to pass on their tenancy to a successor as opposed
to pro-actively terminating the tenancy and claiming way-go compensation or not making any provision for succession, in which case an executor would be entitled to claim way-go compensation for the tenant’s estate. In principle there should be no differences in compensation at way-go irrespective of whether the tenant has a successor, and it would be expected that an executor of a tenant would be able to claim same way-go value which would have passed onto the successor.

Tenants and landlords will still be able to choose to agree to terminate the tenancy and agree compensation for way-go. In these instances the value of vacant possession has to be balanced by the landlord against the cost of meeting the tenant’s claims for compensation at waygo and the loss of the rental return on the tenancy.

In all scenarios, the decisions taken by the parties will affect when compensation for waygo has to be paid and when tenancies are likely to come to an end. However, in all circumstances compensation for waygo can be claimed on the ending of the tenancy and landowners will still achieve vacant possession when the tenancy comes to an end. In the meantime the landlord will continue to receive rental income from the land.

It is not anticipated that there will be any significant direct costs to landlords and tenants resulting from the provisions widening the right of succession for agricultural tenants.

Amnesty for tenant’s improvements

The Bill's provision for an amnesty at waygo will enable tenants and landlords to agree their positions in relation to what constitutes a tenant’s improvement that will be eligible for compensation at waygo, in certain circumstances. This is necessary in a number of areas such as determining rents and for assessing compensation at waygo.

As each circumstance will be unique to that tenancy it is not possible to estimate the potential future costs to parties. However, the overall provisions aim to address the current costs to business caused by current uncertainties and robust provisions are set out to ensure the outcome of the amnesty is fair and equitable on parties. There will be familiarisation costs for landlords and tenants and potential costs associated with any application to the Land Court for a determination.

Landlord’s improvements

The Bill’s provisions will require landlords to notify the tenant of their intention, enabling the tenant to object to the improvement where it is not reasonable or desirable on agricultural grounds for the efficient management of the holding. This will ensure that tenant farmers are not required to pay increased rent for fixed equipment that is not relevant to the agricultural production being undertaken on the holding.

In the majority of cases, landlords will approach tenants to discuss improvements before they are made. These provisions are designed to protect tenants where these
discussion currently do not take place. As such this provision may result in some additional minor costs in carrying out these discussions between the landlord and tenant where this does not take place at present. As such any minor costs are considered proportionate and necessary.

**Competition Assessment**

It has been determined that the provisions in the Bill will not directly or indirectly limit the number or range of suppliers, will not limit the ability of suppliers to compete and will not reduce suppliers incentives to compete vigorously.

The Agricultural Holdings provisions in the Bill are designed to increase vibrancy within the agricultural sector. These should increase competition within the agricultural tenanted sector.

**Test run of business forms**

No new forms will introduced as on commencement of the bill. The Bill includes regulation making powers that may result in forms being prescribed. Any new forms will be test run before they are introduced.

**Legal Aid Impact Test**

The legal Aid team have assessed the Bill for the effect it will have on the legal aid fund. They consider that the impact on the legal aid fund will be minimal.

**Enforcement, sanctions and monitoring**

**Land Rights and Responsibilities Statement**

There are no enforcement, sanctions or monitoring require as result of the provisions included in the Bill for these provisions.

**Scottish Land Commission**

The provisions in the Bill for the Scottish land Commissioners do not set up any enforcement of sanctions. The Commission will be under an obligation to prepare an annual report setting out an assessment of the functions of the commission, the functions of the Land Commissioners and the Tenant Farming Commissioner. The report must be published and a copy of the report must be provided to the Scottish Ministers and a copy must be laid before the Scottish Parliament.

As part of the Tenant Farming Commissioners powers to inquire into alleged breaches of the codes of practice, the TFC will have the power to request information from relevant persons, and to impose a penalty if that information is not provided. The amount of the penalty will be determined by the TFC but is not to exceed £1,000. Any penalty imposed is to be paid to the Land Commission and can be recovered as a civil debt. The decision to issue notice of non-compliance penalty imposing the penalty can be appealed to the Land Court.
Provide greater transparency of land ownership;

- Right of access to information about control of land

The detail for the enforcement and sanctioning in relation to this policy area will be finalised when the regulations are made.

- Information relating to proprietors of land

The information relating to proprietors of land will be supplied to the Keeper of the Registers of Scotland, who will be responsible for collecting, analysing and in the circumstances provided for by regulations releasing or publishing the information.

Furthering the sustainable development of land;

- Engaging communities in decisions relating to land

There will be no enforcement or sanction as a result of these procedures. Once published the Scottish Government will keep the guidance under review.

- Right to buy land to further sustainable development

Communities will be able to apply to the Scottish Government for the right to buy land to further sustainable development. The Scottish Government will be responsible for processing and accepting or rejecting the applications. The decision of the Scottish Ministers to accept or refuse a right to buy can be appealed to the Sherriff Court by either the community or land owner. In addition the Bill includes appeals to the Land Tribunal of Scotland for certain matters relating to the process.

Entry in Valuation Roll of Shootings and Deer Forests

The Scottish Government will work with the Assessors, local authorities and other stakeholders to monitor the effects of the measure, particularly in respect of valuations and corresponding rating liabilities.

Local authorities are responsible for rating, which includes collection and enforcement, under existing arrangements.

Common good land

There are no enforcement, sanctions or monitoring require as result of the provisions included in the Bill for common good land.

Deer management

The Bill provides Scottish Natural Heritage with new powers of enforcement in relation to deer management. The monitoring and enforcement of the provisions will be carried out by SNH under those powers.

Access rights: core paths
Under the terms of the Bill local authorities will be responsible for reviewing core paths plans. When reviewing a core paths plan, the local authority is required to undertake a time-limited consultation on all amendments to the adopted plan. Consultation should include the local access forum, persons representative of those who live, work carry on business or engage in recreational activities on the land affected by the amendment to the core paths plan, SNH and such other persons the local authority think fit. Representations objecting to the plan can be made, and any unresolved objections will then be submitted to the DPEA. The local authority can only adopt the plan where directed to do so by Ministers.

**Agricultural Holdings**

The provisions in the Bill in relation to Agricultural Holdings are concerned with private leasing arrangements entered into between agricultural landlords and tenants. Such arrangements are enforceable contractually between the parties with recourse to the Scottish Land Court in event of dispute.

The impact of any increase in land made available to let on the agricultural lettings market resulting from the changes proposed in the Bill will be monitored through analysis of any changes in numbers of farm tenancies or total land area let shown in the June Agricultural Census (the annual census).

**Implementation and delivery plan**

The Bill is expected to proceed through Parliament by the end of March 2016 and receive Royal Assent thereafter, with implementation commencing in 2016-2017. The intention will be for the first commencement order to made in 2016. The implementation for the different policy areas within the Bill have been outlined blow;

**Land Rights and Responsibilities Statement**

It is the intention to commence these provisions in the first commencement order, that will be made when the first opportunity to commence sections of the Bill arises in 2016. Following commencement the Scottish Ministers will be under a duty to publish the statement within 12 months. It is the Scottish Ministers to consult on a draft statement ahead of publishing the final statement and laying it before the Scottish Parliament.

**Scottish Land Commission**

A full public appointments process will be required to be gone through before the Commission can become fully operational, and it is anticipated that the earliest this is likely to be is April 2017.

**Provide greater transparency of land ownership;**

- Right of access to information about control of land
• **Information relating to proprietors of land**

These measures will require regulations to be made before the provisions can be given effect. Regulations will be developed and it is intended these will be laid before the Scottish Parliament in 2016-2017, with the intention that these would then be brought into force over 2016-2017 to 2017-2018.

**Furthering the sustainable development of land;**

• **Engaging communities in decisions relating to land**

The Scottish Government intend to develop the guidance collaboratively, seeking the views of communities and landowners across Scotland about what works and what doesn’t and there is specific provision for Scottish Ministers to consult with stakeholders in producing the guidance. It is anticipated that the guidance will be developed and consulted upon over 2016-2017.

• **Right to buy land to further sustainable development**

These measures will require a series of regulations to be made before the provisions can be given effect. Following the passage of the Bill, it is intended that the regulations will be developed over 2016-2017.

**Entry in Valuation Roll of Shootings and Deer Forests**

The measure is proposed to come into effect at the next rating revaluation, which is statutorily scheduled for 1 April 2017. The Scottish Government will engage stakeholders in due course ahead of this date to inform implementation.

The Scottish Government is content to review the measure within 10 years of it taking effect.

**Common good land**

It is the intention to commence these provisions in the first commencement order, that will be made when the first opportunity to commence sections of the Bill arises in 2016.

**Deer management**

The Scottish Parliaments’ Rural Affairs Climate Change and Environment (RACCE) Committee conducted a short inquiry into deer management last year. It was recognised that progress as regards the development and implementation of deer management plans has been too slow, and the RACCE Committee set a target that each deer management group should have a deer management plan for the area that it covers by the end of 2016. The Scottish Government agreed that “the end of 2016” would be a suitable juncture to consider progress and to look to take action if the current voluntary system has not produced a step change in the delivery of effective deer management.
The provisions in Bill for deer management are interim measures that could be brought into effect quickly following conclusion of the review of deer management that is to take place at the end of 2016, if it is decided that more stringent measures are required at that point.

**Access rights: core paths**

It is the intention to commence these provisions in the first commencement order, that will be made when the first opportunity to commence sections of the Bill arises in 2016.

**Agricultural Holdings legislation**

Where the provisions in Bill do not require regulations to be made it is the intention to commence the provisions in the first commencement order. Provisions that require regulations to be made to become fully effective will not come into effect until after the regulations are made. It is anticipated that any regulations that are required will be made towards the end of 2016 and the beginning of 2017.

**Post-implementation review**

One of the purposes of the Bill is to put in place a framework that will help ensure land reform is an on-going process. Fundamental to this will be the establishment of the Scottish Land Commission and the appointment of 5 Land Commissioners. The function of the Land Commissioners will be to;

- to review the impact and effectiveness of any law or policy in relation to land;
- to recommend changes to law or policy;
- to gather evidence;
- to conduct research;
- to prepare reports and
- to provide information and guidance.

The Scottish Government will keep the implementation and impact of the provisions of the Bill, once passed, under Review. It is also anticipated that, in setting their work programme, the Land Commissioners may elect to, and potentially be asked by Scottish Ministers, to consider and review the impact and effectiveness of the Bill.

**Summary and recommendation**

The policy options that the Scottish Government will take forward on the Land Reforms Bill are set out in the Options section of this impact assessment. Taking forward these options will support one the key components of the Programme for Government for 2014 – 15 and the stated desire to pass power to our communities and people and tackling some of the key causes and consequences of inequality in Scotland. The benefits of taking forward the recommended options have been set out in annexes A – H.
Declaration and publication

I have read the Business and Regulatory Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs. I am satisfied that business impact has been assessed with the support of businesses in Scotland.

Signed: [Signature]

Date: 25 June 2015

Minister's name: AILEEN Mc'GO
Minister's title: ENVIRONMENT, CLIMATE CHANGE AND LAND REFORM

Scottish Government Contact point:

Matthew Smith
Land reform Team
B Spur Saughton House
Edinburgh
EH11 3XD
Tel: 0131 244 1971
Scottish Land Commission

Options

Option 1 – do nothing

Option 2 – Establish a Scottish Land Commission

Sectors and groups affected

Setting up a Scottish land Commission will have a limited direct effect on business. The Scottish Land Commission will consisting of five Land Commissioners who will carry out research and gather evidence relating to land, review the effectiveness and impact of laws and policies relating to land and make recommendations for changes to any law or policy relating to land in order to inform future land reform in Scotland; and a Tenant Farming Commissioner who will prepare, promote and advise upon codes of practice for the agricultural tenanted sector, consider claims of breaches of those codes; and work with the Land Commissioners on areas of their work relating to agriculture and agricultural tenancies.

<table>
<thead>
<tr>
<th>Option</th>
<th>Benefits</th>
<th>Costs</th>
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<tbody>
<tr>
<td>Option 1</td>
<td>There will be no benefits achieved from this option.</td>
<td>There would be no financial costs if this option was pursued. This option does not meet the policy objective. If this option was pursued it is likely to result in policy development on land reform over the longer term being carried out on an ad hoc manner and may result in the sustainable development of communities being harmed in the long term.</td>
</tr>
<tr>
<td>Option 2</td>
<td>The Scottish Government are of the view that land reform is an on-going process. The history of land reform demonstrates as there has been a series of reforms and legislation passed over the last 100 years that has progressed land reform. In recognition of the it is appropriate that a body is set up that can take a long term strategic view on land reform and develop polices, carry out studies and gather evidence that can underpin government</td>
<td>The costs of setting up the Scottish Land Commission will be borne by the Scottish Government. The estimated costs will be; Set up costs Staff and Commissioners salaries - £110,000 Expenses-£14,000 IT network - £75,000 Website -£100,000 TOTAL -£299,000 Annual Running costs Staff - £860,000 Land commissioners and Tenant Farming Commissioner salaries - £47,450 Research - £200,000</td>
</tr>
</tbody>
</table>
| policy. | IT - £28,500  
Website maintenance - £10,000  
Travel expenses - £43,000  
Other operational expenses - £133,000  
TOTAL - £1,321,950 |
Annex B

Provide greater transparency of land ownership.

Options

Option 1 – do nothing

Option 2 – Include in the Bill provisions that will provide that regulation include regulation making power that will;

1. Allow a person to ask a request Authority for information about individuals that may have control of certain legal entities that have a right of ownership or tenancy registered in Land Register of recorded in the Register of Sasines.
2. Allow the Keeper of the Registers of Scotland (RoS) to request that information about the category of the proprietor and about persons with a controlling interest in a proprietor is included in an application for registration in the land register.

Sectors and groups affected

These provision will impact on the Scottish Government and the RoS. The regulations that will allow persons to make request to the Request Authority for information about individuals that have control of a landowner and will require the Scottish Ministers to nominate a body to take the function of the Request Authority. At this time it is not known what public body will be given this role. RoS will be affected by the regulations that will allow the Keeper to request information about proprietors come into force.

Both the regulations when in force could affect any business that have a right of ownership or tenancy in land registered in the land register or recorded in the Register of Sasines. In addition law firms that advise clients in conveyancing transactions will be affected by the regulations that enable the Keeper to request information from applicants.

<table>
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<tr>
<th>Option</th>
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<tbody>
<tr>
<td>Option 1</td>
<td>There will be no benefits achieved from this option.</td>
<td>There will be no cost if this option was pursued.</td>
</tr>
<tr>
<td>No nothing</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Option 2</td>
<td>The benefits of implementing this option and making the regulation will be that information about the control of land will be made available. This will enable individuals, bodies and</td>
<td>If the Request Authority was to form part of the Scottish Government we have estimated that the cost of processing these requests this is likely to be £37,500 per annum, based on there being 200-300 applications per annum.</td>
</tr>
<tr>
<td>Legislative Change</td>
<td></td>
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</tr>
<tr>
<td>(This is the recommended)</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>option)</strong></td>
<td>groups to obtain information about individuals with control of land where they be having issues/problems associated with land. This could make dealing with these issues more straightforward and potentially there may be cost savings from this information being made available. It is not possible to quantify any costs savings at this time</td>
<td>It is estimated that the average cost that will be incurred by a business when it has to provide information to the request authority will be £129.80. In relation to disclosing additional information on the land register, it is anticipated there will only minor additional costs on RoS that will be absorbed into existing budgets. We do not anticipate that providing this information to RoS will result in any additional cost to persons submitting applications for registration. This is be information that should be readily available to applicants. Providing this information to the register will be entirely voluntary.</td>
</tr>
</tbody>
</table>
Annex C

Furthering the Sustainable Development of land

- Engaging Communities in Decisions relating to land
- Right to Buy land to further Sustainable Development

Options

Option 1 – do nothing

Option 2 - include in the Bill provisions that will;

1. Introduce a requirement on Ministers to produce guidance for landowners and tenants on engaging with communities on land-based decisions. The intention is that all land owners and those with a controlling interest in land, who have substantial land holdings or land close to communities, where their decisions in relation to land could affect communities should engage and/or consult with those communities over decisions.

2. Provide community bodies with a right to buy land to further sustainable development. Fundamental to this is the identification of significant harm which may affect the community together with likely significant benefit to the community if land is transferred to the community, and where only the transfer of the land will resolve those issues.

Sectors and groups affected

The obligation to produce guidance for landowners will fall mainly on the Scottish Government. There will be some costs on other bodies, individuals and businesses in engaging with the Scottish Ministers in the preparation and publication of the guidance. For business and individuals this will be voluntary depending on their willingness to engage.

The right to buy land to further sustainable development will have an effect on the Scottish Government in processing the applications made by communities. There will be an effect on community bodies that are looking to make an application to buy land to further sustainable development, as well as to any potential third party purchasers, and any businesses that own land that a community wants to purchase will incur some costs.

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<tr>
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<tbody>
<tr>
<td>Option 1</td>
<td>There will be no benefits achieved from this option.</td>
<td>There will be no financial costs to organisations and businesses if this option is pursued.</td>
</tr>
<tr>
<td>Do Nothing</td>
<td>If the option of doing nothing was pursued the issues and problems that communities are currently experiencing would</td>
<td>There are unquantifiable costs for communities as the benefits of being able to obtain land to further the</td>
</tr>
</tbody>
</table>
continue. sustainable development of the communities will not be realised

| Option 2 Legislative Change | How land is used in a local area can have significant impacts on local communities. Where communities have been unable to influence development decisions and cannot access land for their own development, this can have detrimental impacts. Examples show that this can result in: a lack of affordable housing or secure tenancies; lack of land for agricultural businesses; a lack of community business space or access to property for business opportunities; blight caused by declining appearance of buildings or land, or poor performance of local village/town centres; and a lack of land for local food growing, recreation and access developments, or other amenities such as parks or cemeteries. Bringing forward in the Bill the right to buy land to further sustainable development will allow those communities to flourish which in turn will have benefit for the whole of the county and society. |
| Costs on Scottish Government Guidance | The estimated costs to the Scottish Government of preparing and reviewing the guidance for landowners and tenants on engaging with communities on land-based decisions as required by section 37 of the Bill is £43,000. Alongside the preparation and publication of the guidance, the Scottish Ministers would also propose to support additional awareness raising activity. Costs of such activity are estimated to be approximately £12,500 per annum over the first four years from the effective date of the legislation. |
| Support of Communities | The Scottish Government will provide guidance to communities seeking to use the right to buy land to further sustainable development. It is estimates the staffing costs for providing this advice will be £87,000. |
| Register of Land for Sustainable development | The Bill provisions requires the Keeper to set up and keep a register, to be known as the Register of Land for Sustainable Development. It is estimated that the costs of setting up the register will be £50,000 and £10,000 per annum running costs. |
| Valuation | The Scottish Ministers will pay for an independently conducted valuation once the Scottish Ministers approve that land should be sold. Based on the costs of valuation under the existing community right to buy it is estimated that between 5 and 10 valuations per year would lead to an |
average cost of between £11,910 and £23,820.

**Compensation**
Where an application has been lodged and has failed, there is provision for the land owner to recover costs from the Scottish Ministers. Provision is made for community bodies and third party purchasers to apply to Scottish Ministers for a discretionary grant to help with compensation payments. It is expected that costs will vary from case to case. Under the current Community Right to Buy, since 2005 Ministers have received compensation claims totalling £2,125,279.09, against which they paid £44,558.87.

**Appeals**
As the provisions will involve enforced sale, we anticipate that there may be an increased number of appeals to the Sheriff Courts and to the Lands Tribunal for Scotland (LTS). The Scottish Government’s legal costs associated with appeals in relation to the Community Right to Buy for 2012-13 were £21,225 and will vary from year to year and case to case. Where the Scottish Ministers lost an appeal, the costs were borne by them. Costs are entirely dependent on level of legal representation required and a case’s complexity and have varied between £3,000 and £20,000.

The Scottish Tribunals Service (STS) provides administrative support to the LTS. Arrangements for providing funding to the STS for cases to the LTS will be provided on a case-by-case basis. It is envisaged that funds will be reimbursed as cases progress through the LTS. At this stage it is not possible to accurately estimate how many cases will progress to the LTS.
and the time needed for each case will vary on the complexity of the case in question.

**Costs of landowners, communities and third parties**

**Community Ballot**
Community bodies will be required to carry out a ballot of the community before requesting intervention by Scottish Ministers. Based on the costs of ballots that have been undertaken under the provisions in the Land Reform (Scotland) Act 2003 it is estimated that the average cost of a ballot will be between £1,040 and £5,353 depending on the approach used and number of people that have to be balloted. The costs of ballots for right to buy for sustainable development, on the basis of 5-10 cases per annum, will be between £6000 and £53,000

**Legal advice**
There may be costs to landowners in relation to conveyancing and other legal advice where land owners or tenants choose to instruct a solicitor in instances where Ministers allow communities to exercise their the right to buy land to further sustainable development. The costs of this will vary on a case by case and it is not possible to provide an estimate of these costs.

**Communities – legal entities:**
We anticipate there to be minimal additional costs in setting up a company limited by guarantee.

**Legal Agreements**
In circumstances where the community identifies and works with a third party purchaser of the land, there will need to be a legal agreement between the parties that identifies apportioning costs, liabilities
for compensation claims, liabilities for burdens or conditions, rights over land, delivery of identified benefits etc. An estimated cost of £2000 per legal agreement could be expected, depending on complexity. It is not possible to provide estimates of the number of agreements that will be required.

**Appeals**
There are a number of appeals that can be made by a landowner, community body or third party throughout the provisions in the Bill. These appeals can be made to either the Sheriff Court or the LTS. Costs will be borne by the landowner, community body or third party. The costs will vary depending the case and complexity. It is not possible to quantify these costs at this time.

**Compensation costs**
There is provision for those who have incurred a loss or expense under the provisions to be entitled to compensation. In some circumstances costs may have to be borne by a landowner, community body or 3rd party purchaser. It is expected that costs will vary from case to case.
**Entry in valuation roll of shootings and deer forests**

**Options**

**Option 1** - To end the current exclusion from the valuation roll, taking effect at the next revaluation in April 2017, would mean shootings and deer forests would be valued and entered on the roll by the Assessors and issued a rates bill by local authorities. The rating liability would be subject to any eligibility for available rates relief, such as the Small Business Bonus Scheme, by application to the local authority in question.

**Option 2** - ‘do nothing’, would mean that shootings and deer forests continued to be excluded from the valuation roll, and therefore from non-domestic rates liability, beyond March 2017.

**Option 3** - is to mitigate any policy conflict with the Scottish Government’s existing deer management policy, either by a new rates relief based on positive deer management, or by maintaining the current deer forests exemption and only ending the shootings one

**Sectors and groups affected**

Option 1 would affect proprietors and occupiers of shootings and deer forests, and will increase caseload for local authorities, Assessors and potentially the valuation appeals system.

Option 2 would have no direct impacts.

Option 3 would have the effects of Option 1 but with less or no direct impact for proprietors and occupiers of deer forests, and less caseload increase for local authorities, Assessors and potentially the valuation appeals system.

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<tr>
<th>Option</th>
<th>Benefits</th>
<th>Costs</th>
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<tr>
<td>Option 1 Legislative Change (This is the recommended option)</td>
<td>Would bring shootings and deer forests into line with other properties liable for non-domestic rates, ending a tax break no longer sufficiently aligned with Government objectives. It would also raise revenue to support Scottish Government budgets</td>
<td>Would render rateable occupiers of shootings and deer forests liable for non-domestic rates, subject to any rates relief, as of 1 April 2017. The total gross annual liability (before relief) is estimated at £4 million, but would be subject to considerable rates relief; for example, many small-scale shoots (such as on farms) are anticipated as being eligible for rates relief through the Small Business Bonus Scheme. The rates liability for individual rateable occupiers will not be known until the Assessors’ valuations are available. Some rateable occupiers might also incur costs by</td>
</tr>
</tbody>
</table>
obtaining professional advice from rating agents. There would be administrative cost for those local authorities and Assessors with new caseload.

<table>
<thead>
<tr>
<th>Option 2</th>
<th>Would continue existing public support, in the form of a tax break, for proprietors and occupiers of shootings and deer forests.</th>
<th>Would have no costs.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Do nothing</td>
<td></td>
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</tr>
<tr>
<td>Option 3</td>
<td>Would have the Option 1 benefits in relation to shootings, and (depending on the detail) could have some revenue and relief benefits in relation to deer forests</td>
<td>Would have costs as per Option 1 relating to shootings, and (depending on the detail) could have some costs in relation to deer forests</td>
</tr>
</tbody>
</table>
**Common good land**

**Options**

**Option 1 – Do nothing**

**Option 2 - Modernise the laws relating to common good assets by providing local authorities the same power to appropriate ‘inalienable common good land’ for other uses, as the local authority currently has to dispose of such land. This will remove the need for local authorities to secure passage by the Scottish Parliament of a Private Bill to authorise appropriation of such land**

**Sectors and groups affected**

These provisions will only have a direct effect on Local Authorities.

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<tbody>
<tr>
<td>Option 1</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Do nothing</td>
<td>There will be no benefits achieved from this option.</td>
<td>In cases where it would be required local authorities would still be liable for the cost of introducing a Bill to the Scottish Parliament to change the use of inalienable common good land.</td>
</tr>
<tr>
<td>Option 2</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Legislative Change</td>
<td>We anticipate that there would be a saving in time, and thus in opportunity costs, to councils where the proposed change of use and the associated project development could be delivered more quickly as a result of not going through a legislative process. Historically there have been very few such cases each being different, and it is anticipated that any costs that do arise will be marginal.</td>
<td>There are no costs associated with proceeding with this option.</td>
</tr>
</tbody>
</table>

(This is the recommended option)
Deer management

Options

**Option 1 – do nothing**

**Option 2 - Provide for additional use of existing deer panels to promote community involvement in local deer management; to provide a power for Scottish National Heritage (SNH) to require the production of a deer management plan in instances where, in the view of SNH, the public interest in deer management is not being delivered in a particular area; and to substantially increase the level of fine for failing to comply with a deer control scheme imposed under section 8 of the Deer (Scotland) Act 1996.**

Sectors and groups affected

The proposed measures will give SNH greater scope to intervene in the management of deer in the public interest. In addition the measures will have an effect on landowners who need to put in place additional deer management measures

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<tbody>
<tr>
<td><strong>Option 1</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Do Nothing</td>
<td>There will be no benefits achieved from this option.</td>
<td>There will be no cost if this option was pursued.</td>
</tr>
<tr>
<td><strong>Option 2</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Legislative Change</td>
<td>What is being proposed in the Bill are essentially interim measures which could be brought into effect quickly following upon the conclusion of the review of Deer Management that is to undertaken by the Scottish Government at the end of 2016, if it is decided that more stringent measures are required at that point. The intention is that these interim measures would be in force throughout the period during which the new statutory scheme was being developed following the 2016 review.</td>
<td>The proposed measures if introduced would result in additional costs to landowners who would need to put in place additional deer management measures. It is not possible to quantify these cost at this time as the provisions included in the Bill are only to be used as a backstop where it is established that current deer management arrangements are failing.</td>
</tr>
</tbody>
</table>
Access rights: core paths

Options

Option 1 – do nothing

Option 2 – Include in the Bill provisions that;

- Clarify the circumstances in which an access authority should review a core paths plan and make the distinction between review procedures for a full plan review and the procedures need for a minor ad hoc core path amendment.
- Set out, in the interests of transparency, the requirement for limited consultation on proposed modifications to core paths following objections and clarify notification requirements.
- Simplify the process for path amendments, so that the same process applies to path removal, diversion and addition of a new path

Sectors and groups affected

The provisions included in the Bill will have a limited affect the Scottish Government, local authorities and the national park authorities. They will be a limited effect on land owners that have existing core paths on their land.

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<tr>
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</thead>
<tbody>
<tr>
<td>Option 1</td>
<td>Do Nothing</td>
<td>There will be no cost if this option was pursued.</td>
</tr>
<tr>
<td>Option 2</td>
<td>Legislative Change</td>
<td>The proposals clarify the core paths planning process, so are likely to be cost neutral and we do not envisage any significant costs on the Scottish Government.</td>
</tr>
<tr>
<td>(This is the recommended option)</td>
<td>The LRRG view was that Part 1 of the Land Reform (Scotland) Act 2003 has delivered a progressive statutory framework for improved public access over land in Scotland. The amendments included in the Bill will clarify and improve some of the process measures in relation to core paths.</td>
<td>Local Authorities may experience increased costs when undertaking additional consultation, but these costs are marginal. We do not envisage that there will be major costs for bodies, individuals and businesses other than if they choose to become involved in consultations or if they were to seek to apply to a Sheriff Court for a judicial determination.</td>
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Agricultural Holdings legislation

Option 1 – Do nothing

Sectors and groups affected

The Agricultural Holdings Legislation provides a statutory framework for letting of agricultural land between landowners and tenant farmers. The provisions within the Land Reform (Scotland) Bill will primarily impact on tenants and landlords under the following types of farm tenancy arrangements:

- A secure "1991" Act tenancy is a long term heritable tenancy with security of tenure and a succession right;
- A grazing or mowing lease of not more than 364 days;
- A Short Limited Duration Tenancy (SLDT) of up to five years duration; and
- A Limited Duration Tenancy (LDT) for a minimum period of ten years.

In 2014, it is calculated that there were 4,993 secure 1991 Act tenancies; 835 Short Limited Duration Tenancies; and 528 Limited Duration Tenancies².

It is envisaged that the Agricultural Holdings provisions within the Bill will affect other secondary groups involved in the land market eg. land agents, agricultural valuers and surveyors. Supporting industries and broader rural communities will also be affected by changes in the tenant farming sector.

Benefits

If the Bill is not brought forward and nothing is changed there will be further decline in the amount of farm land being released on to the letting market in Scotland. This will result in lower investment in the tenant farming sector by landlords, affecting the growth potential of the sector and the vibrancy of the agricultural industry more generally. It will also re-inforce the long-term pattern of decline in the area of tenanted land in Scotland, which fell by 44% from 1982 to 2014.

This decline has affected all regions of Scotland. From 2000 to 2013 excluding crofts the amount of land rented fell by 44% in Tayside, 31% in the Highlands, 26% in Lothian and 25% in Ayrshire. There were lower declines in the amount of land rented in East Central (8%), Orkney (13%) and the North East (14%) regions.

Although the extent of further decline is difficult to quantify, all regions of Scotland have a tenant farming sector and those more rural regions which are most reliant on agriculture would be the most affected, resulting in less opportunity to invest and grow. These regions could also be negatively impacted upon by local population decreases.

Costs to the Scottish Government

If no legislative change was made, there would be no costs to the Scottish Administration as tenant farming is a private commercial arrangement between landlords and tenant farmers.

Costs to local authorities

The only costs to local authorities would be to those local authorities who are landlords and would be subject to the same costs as all other individual landlords.

Costs to the individual

Currently, in cases of dispute over succession or relating to rent reviews, the costs of taking a case to the Scottish Land Court for either party vary depending on the circumstances of each case. The Court currently charges a fee of £120 per day for a hearing in an agricultural holdings case, but the greatest element of the cost of a case will be the fees charged by the parties' legal advisers. These can be in the region of £200 to £250 per hour for a solicitor with specialist knowledge of agricultural law, while counsel's fees for appearing in court can be in the range of £1500 to £3500 per day depending on the experience and seniority of the advocate involved.

Option 2 – Legislative change - (This is the recommended option)

Sectors and groups affected

The Agricultural Holdings Legislation provides a framework for landowners letting their land to tenant farmers. The provisions within the Land Reform (Scotland) Bill will primarily impact on tenants and landlords under the following types of farm tenancy arrangements:

- A secure "1991" Act tenancy is a long term heritable tenancy with security of tenure and a succession right;
- A grazing or mowing lease of not more than 364 days;
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In 2014, it is calculated that there were 4,993 secure 1991 Act tenancies; 835 Short Limited Duration Tenancies; and 528 Limited Duration Tenancies³.

It is envisaged that the Agricultural Holdings provisions within the Bill will affect other secondary groups involved in the land market eg. land agents, agricultural valuers and surveyors. Supporting industries and broader rural communities will also be affected by changes in the tenant farming sector.

Benefits

The aim of this option is to take forward the Agricultural Holdings Legislation Group’s recommendations for legislative change through the Land Reform (Scotland) Bill. The AHLRG process was a robust investigation and consideration of all the issues facing the tenanted sector in Scotland. The recommendations were developed following intensive engagement and consultation with the industry. The advantages of this option over option 1 is that it will allow for the implementation of most of the recommendations for legislative change within this Parliamentary term, building on the consensus reached with the industry throughout the Review period, restoring confidence to the sector and promoting a vibrant tenant farming sector.

The tenanted sector makes an invaluable contribution to ensuring Scotland’s place as a good food nation, with wholly rented farms generated an estimated £340 million of food production in Scotland, with mixed tenure farms producing an estimated £450 million. It is important that the framework governing these relationships are right to ensure that these businesses continue to contribute over £790 million of food production annually in Scotland.

**Costs to the Scottish Administration**

There will be a number of costs on the Scottish Government in relation to agricultural holdings.

- **Modern Limited Duration Tenancies**

There are no financial costs to the Scottish Administration arising from the MLDT.

- **Conversion of 1991 Act Tenancies to a modern limited duration tenancy**

The Bill also provides for a regulation making power intended to enable the Scottish Ministers to take forward the AHLRG’s recommendation for a new provision that will enable a tenant farmer to convert their 1991 Act tenancy into a new Modern Limited Duration Tenancy, that can be assigned to anyone on the open market for value, subject to a landlord’s right to object to the proposed assignation on certain grounds. The costs of regulations and any associated consultation will be covered under existing staff costs.

- **Tenant’s Right to Buy**

There will be no additional costs to the Scottish Administration resulting from provisions removing the requirement to register for the existing tenant’s right to buy.

- **Sale of tenant or third party where landlord is in breach of order or award**

This is intended as a measure of last resort and it is not anticipated that this will occur in many circumstances.
The Bill provides for Scottish Ministers, by regulations, to make further provision about the sale of land in relation to which the Land Court has varied an order for sale to allow the land to be offered for sale on the open market. In such circumstances, it is anticipated that there may be costs to the Scottish Ministers resulting from the processes to be laid out in the regulations, such as requiring the Scottish Ministers to pay for any required valuation of the land. However, costs will be set out clearly when taking forward the regulations, which will be subject to affirmative procedure. Cost of regulations and any associated consultation will be covered under existing staff costs.

There will be some new costs arising for the Scottish Administration in providing adequate compensation to be paid to individuals, for certain categories of actual loss and expense arising as a consequence of an application for, or the grant of, an order of sale through these provisions. The manner in which loss is to be assessed and the extent of any compensation that is to be paid is to be specified in affirmative regulations made once the Bill is enacted.

The purchase price of the land will be borne by the purchaser.

The level of compensation will depend on the number of orders of sale granted by the Scottish Land Court, which is presently unknown. As we have no similar parallels to draw on, estimated costs are set out below based on the compensation costs which have arisen under the community right to buy process provided for within the Land Reform (Scotland) Act 2003. Since the enactment of Land Reform (Scotland) Act 2003 there have been 43 community buy outs across Scotland and six landlords have sought compensation from the Scottish Government (total value £2,125,279). To date, the Scottish Government has agreed to pay compensation of £44,559, in addition the six landlords have also sought £3,130 in appeals costs, that have not been paid. Using the volume of community buy outs and the associated compensation costs, it is estimated there could be up to 3 enforced sale orders per year with associated estimated compensation costs of £7,426 pa.

- Rent Review

The Scottish Government propose to change the current rent review system to simplify the rent review process and to change how rent is determined by the Land Court in circumstances where parties cannot agree the rent of a secure 1991 Act agricultural tenancy. At present the Land Court, on application by either party, is required to determine the rent to be payable on the holding based on the value that might reasonably be expected to reach if let on the open market by a willing landlord and a willing tenant. The proposed change will require the Land Court to determine the rent in accordance with a fair rent based on, amongst other criteria, the productive capacity of the holding.

The estimated additional costs to the Scottish Ministers of preparing the regulations and carrying out the modelling work associated with this proposal is estimated at £46,200. This is based on an estimate of 0.3 FTE at B3 (£15,000) on developing the regulations and carrying out further external and internal stakeholder engagement,
0.3 FTE at B2 (£11,200) to support drafting and administration, plus £10,000 to commission input from external advisers and £10,000 for associated publication and promotion costs.

- **Assignation and succession to Agricultural Tenancies**

There are no direct costs for the Scottish Administration associated with widening succession and assignation rights for agricultural tenancies. Overall, it is intended that these provisions will support the continuation of family farming business and support better succession planning in such businesses. This will have an overall positive impact on agricultural productivity and on local rural economies.

- **Compensation for Tenant's Improvements**

There will be no additional costs to the Scottish Administration resulting from provisions on amnesty for tenant’s improvements.

- **Landlord's Improvements**

There will be no additional costs to the Scottish Administration resulting from provisions on landlord's improvements.

**Costs on Local Authorities**

It is not anticipated that there will be any costs on local authorities other than in circumstances where local authorities let out land under agricultural tenancies. In these circumstances, costs will be similar to any identified for landlords.

**Costs on Other Bodies, Individuals and Businesses**

- **Tenant Farming Commissioner**

We do not anticipate that there will be any costs that will fall upon other bodies, individuals and businesses from the creation of the Commission. There may be costs in relation to responding to consultations and participating in the work of the commission. However, these costs are not quantifiable and will be at the discretion of relevant other bodies, individuals and businesses.

- **Modern Limited Duration Tenancies**

There will be no additional costs on any party resulting from the new provisions for a modern limited duration tenancies other than any costs associated with future decisions by parties to enter into such a tenancy.

- **Conversion of 1991 Act Tenancies to a modern limited duration tenancy**
It is not anticipated that there will be any significant direct costs to landlords or tenants resulting from the provisions to be introduced under the regulation making power taken in section 79 to allow for the conversion of 1991 Act tenancies into a MLDT that can be assigned on the open market.

A proportion of tenants without a successor may choose to convert it to a MLDT, and assign at open market value. Tenants and landlords are still able to choose to agree to terminate the tenancy and agree compensation for way-go. In these instances the value of vacant possession has to be balanced by the landlord against the cost of meeting the tenant’s claims for compensation at way go and the loss of the rental return on the tenancy.

There are a range of potential decisions that can be taken by parties within the statutory framework that will effect when a tenancy comes to an end. Until those decisions are taken, or certain events happen to bring the tenancy to an end, rights to compensation on way-go and rights to regain vacant possession do not crystallise.

- **Rent Review**

At present both the landlord and tenant can employ suitable individuals to assist them during rent reviews and in any application to the Land Court for the determination of rent. The costs associated with employment of individuals to assist parties when undertaking the new rent processes and in any application to the Land Court will continue to be met by both parties.

Although elements of the new rent test require a more complex assessment of the business, the more structured approach with a longer notification process, should result in reduced scope for disputes between parties and protracted negotiations during rent reviews, this should provide greater transparency leading to less rent cases being referred to the Scottish Land Court resulting in savings to both parties.

- **Tenant’s Right to Buy**

The legislative proposals removing the requirement to register a secure 1991 Act agricultural tenancy leading to the removal of the registration fee for those tenancies. This will provide a saving to tenant farmers with secure 1991 Act agricultural tenancies of £40 per initial registration by the tenant and £25 per application to renew their interest after 5 years.

There will be a loss of fee income to Registers of Scotland of £4,560 pa (based on the income received in the financial year 2014-15). The loss of income will be offset by savings on staff time and correspondence costs of dealing with disputed registration. The fees generated from the registration of agricultural tenants interests is a very small proportion of overall fee income for the Registers of Scotland.

- **Assignation and succession to Agricultural Tenancies**
It is not anticipated that there will be any significant direct costs to landlords or tenants resulting from the widening of rights to succeed and assign for agricultural tenancies.

There may be additional familiarisation costs to parties associated with seeking legal advice on the conversion. However, this will be at the discretion of the individual.

In the majority of cases tenants already have eligible successors under the current legislative provisions, in which case the proposals will have no direct impact.

There will be a proportion of tenants that find that they now have a suitable successor and choose to pass on their tenancy to a successor as opposed to either pro-actively terminating the tenancy and claiming way-go compensation or not making any provision for succession, in which case the executor will be entitled to claim way-go compensation for the tenant’s estate. In principle there should be no differences in compensation at way-go irrespective of whether the tenant has a successor, and it would be expected that an executor of a tenant would be able to claim same way-go value which would have passed onto the successor.

Further, tenants and landlords are still able to choose to agree to terminate the tenancy and agree compensation for way-go. In these instances the value of vacant possession has to be balanced by the landlord against the cost of meeting the tenant’s claims for compensation at way-go and the loss of the rental return on the tenancy.

As noted above, there are a range of potential decisions that can be taken by parties within the statutory framework that will effect when a tenancy comes to an end. Until those decisions are taken, or certain events happen to bring the tenancy to an end, rights to compensation on way-go and rights to regain vacant possession do not crystallise.

In all scenarios, the decisions taken by the parties will affect when compensation for way-go has to be paid and when tenancies are likely to come to an end. However, in all circumstances compensation for way-go can be claimed on the ending of the tenancy and landowners will still achieve vacant possession when the tenancy comes to an end. In the meantime the landlord will continue to receive rental income from their asset.

- Amnesty for Tenant’s Improvements

The legislative proposals for an amnesty at way-go will enable tenants and landlords to regulate positions in relation to what constitutes a tenant’s improvement, in certain circumstances. This is necessary in a number of areas such as determining rents and for assessing compensation at way-go.

In providing amnesty provisions to regulate the respective positions of parties it may be that a decision is taken that results in a landlord or tenant being liable to, or
entitled to, compensation for an improvement on the future termination of the tenancy that they would not otherwise have been liable for.

As each circumstance will be unique to that tenancy it is not possible to estimate the potential future costs to parties. However, the overall provisions aim to address the current costs to business caused by current uncertainties and robust provisions are set out to ensure the outcome of the amnesty is fair and equitable on parties.

There will be familiarisation costs for landlords and tenants and potential costs associated with any application to the Land Court for a determination.

- Landlords’ Improvements

Landlords are able to undertake improvements to the holding which lead to an associated rental increase for the holding. The legislative proposals will require landlords to notify the tenant of their intention, enabling the tenant to object to the improvement where it is not reasonable or desirable on agricultural grounds for the efficient management of the holding. This will ensure that tenant farmers are not required to pay increased rent for fixed equipment that is not relevant to the agricultural production being undertaken on the holding.

There may be some additional costs for landlords in seeking consent for improvements from the tenant prior to carrying these out. However, in the majority of cases it is anticipated that landlords would have approached tenants to discuss improvements and these proposals are intended to protect tenants where this would not be the case. As such any minor costs are considered proportionate and necessary.

- Costs to tenants and landowners for determination of rights and conflict resolution.

The changes proposed may in the short term result in an initial increase in the number of cases taken to the Scottish Land Court, however, the changes have been developed following engagement with the tenanted sector on how best to improve relationships and the balance of rights and responsibilities between parties, in order to minimise disputes and the need for conflict resolution, including applications to the Scottish Land Court.

The proposals on rent review make amendments to existing powers of the Scottish Land Court to determine rent between parties to agricultural tenancies. The proposal on sale where a landlord is in breach, adds a new potential remedy for tenants. The provision on a fixed period for amnesty for tenant’s improvements may well result in a number of additional applications to the Land Court during the amnesty period, though it is hoped in the majority of cases that parties will be able to agree issues within the amnesty period without needing to make application to the Land Court.
As with any changes to existing legislative frameworks, changes to the provisions on agricultural tenancies may result in an initial surge of cases while parties familiarise themselves with new legislation.

It is not possible to quantify the volume of cases which will be taken to the Courts or costs to individuals of going to Court. This is particularly relevant for rent review cases, as at present the majority of these are sisted, either party can ask the Court to start the case up again if the negotiations are stalling and there is no maximum length of time that the case can be sisted for.