

LAND REFORM (SCOTLAND) BILL

[AS AMENDED AT STAGE 2]

REVISED FINANCIAL MEMORANDUM

INTRODUCTION

1. As required under Rule 9.7.8B of the Parliament's Standing Orders, this Revised Financial Memorandum is published to accompany the Land Reform (Scotland) Bill (introduced in the Scottish Parliament on 22 June 2015) as amended at Stage 2. This Memorandum has been prepared by the Scottish Government. It does not form part of the Bill and has not been endorsed by the Parliament.

OVERVIEW

2. The core purpose of the Scottish Government 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. This will only be achieved by making the most of all the resources available in Scotland.

3. Land, both rural and urban, is one of Scotland's most fundamental and finite assets and is intimately linked to ideas of well-being, social justice, opportunity and identity and is key to both the success and development of its people and communities alike.

4. Scotland's land, and many of those that own and manage land in Scotland, are already delivering significant benefits. The Scottish Government's vision is for a stronger relationship between the people of Scotland and the land of Scotland, where ownership and use of the land delivers greater public benefits through a democratically accountable and transparent system of land rights.

5. The Scottish Government believes that on-going ambitious land reform will help to increase the contribution of Scotland's land to sustainable economic growth, which is at the heart of the Scottish Government's purpose. Land reform also has the potential to empower greater numbers of people and, over time, to change patterns of ownership in Scotland to ensure a greater diversity of ownership, greater diversity of investment and greater sustainable development.

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6. This Bill is the next step in this Government's programme of land reform and contains provisions that aim to:

- Ensure the development of an effective system of land governance and on-going commitment to land reform in Scotland;
- Improve the transparency and accountability of land ownership and address barriers to furthering sustainable development in relation to land; and
- Demonstrate commitment to effectively managing land and rights in land for the common good, through modernising and improving specific aspects of land ownership and rights over land.

7. The Bill's provisions cover a range of matters relating to land reform. A summary of the provisions is set out below:

Part 1: Land rights and responsibilities statement

- **Land rights and responsibilities statement:** to place a duty on the Scottish Ministers to publish and periodically review a land rights and responsibilities statement that sets out the Scottish Government's vision for land governance in Scotland, along with a set of principles to guide policy development relating to land rights and responsibilities.

Part 2: The Scottish Land Commission

- **Scottish Land Commission:** to establish a Scottish Land Commission 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.

Part 3: Information about control of land etc.

- **Information about persons of significant control in relation to proprietors of land** – amends section 2 of the Land Registration etc. (Scotland) Act 2012 to provide that where a person with significant control of a proprietor is a legal entity, or a party who owns land in a special capacity, then the name and description of the person of significant control should be entered in the proprietorship section of the Title Sheet.
- **Information relating to proprietors of land etc.** – to take regulation-making powers 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.

Part 4: Engaging communities in decisions relating to land

- **Guidance on 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.

Part 5: Right to buy land to further sustainable development

- **Right to buy land to further sustainable development:** to provide the 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.

Part 6: Entry in valuation roll of shootings and deer forests

- **Application of non-domestic rates to shootings and deer forests** - to remove the exemption from business rates for shootings and deer forests, in order to help fund local services and to place shooting and deerstalking businesses on a level playing field with other rate paying businesses.

Part 7: 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.

Part 8: 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 (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; 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 (the 1996 Act); and amend section 40 of the 1996 Act to insert a power to require a return on the number of deer planned to be killed.

Part 9: Access rights

- **Core paths plans** - amendments to Part 1 of the Land Reform (Scotland) 2003 Act to clarify and simplify the core path planning process and to expand current service requirements where an application to a sheriff court is made seeking a declaration as to whether a person has exercised access rights responsibly or not.

Part 10: 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.

- **Repairing tenancies** – this chapter was inserted into the Bill at Stage 2, and makes provision for a new type of lease that will have a minimum term of 35 years, and a “repairing period” of at least 5 years at the start of the tenancy.
- **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 the 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 tenant’s 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.
- **Assignment 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.
- **Voluntary relinquishment and assignment of 1991 Act tenancies** – new provisions to enable a tenant with a 1991 Act tenancy to give up his tenancy and either relinquish it to his landlord or assign it to a new tenant for value.
- **Amnesty for tenant’s improvements** – new provisions to amend the current provisions for compensation at waygo for secure 1991 Act tenancies, providing a three 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.
- **Diversification** – this chapter was inserted into the Bill at Stage 2 and makes changes to the Agricultural Holdings (Scotland) Act 2003 to make it easier for agricultural tenants to diversify their holdings for non-agricultural purposes.

8. These provisions span a number of policy objectives. To reflect this, this Financial Memorandum shows the costs for each part of the Bill in turn.

Topic and relevant paragraphs	Costs
Part 1 - Land rights and responsibilities statement (paragraphs 9 to 15)	<p><u>Costs on Scottish Administration</u> Costs of consultation process, these will be absorbed within existing budgets. Cost estimate - £24,500</p> <p><u>Costs on local authorities</u> Nil</p> <p><u>Costs on other bodies, individuals or businesses</u> Nil</p>
Part 2 - Scottish Land Commission (paragraphs 16 to 45)	<p><u>Costs on Scottish Administration</u> <u>Set up costs</u> Staff and Commissioners' salaries - £140,000 Expenses-£14,000 IT network - £76,000 Website -£100,000 TOTAL -£330,000</p> <p><u>Running costs</u> Staff - £963,861 Land commissioners and TFC salaries - £51,896 Research - £200,000 IT - £30,500 Website maintenance - £10,000 Travel expenses- £48,160 Other operational expenses - £150,000 TOTAL - £1,454,417</p> <p><u>Costs on local authorities</u> Nil</p> <p><u>Costs on other bodies, individuals or businesses</u> Nil</p>
Part 3 – Land Register of Scotland: information to be included in title sheet (paragraphs 46 to 53)	<p><u>Costs on Scottish Administration</u> Nil</p> <p><u>Costs on local authorities</u> Nil</p> <p><u>Costs on other bodies, individuals or businesses</u> <u>Marginal costs that would be absorbed of processing applications to Land Register.</u> <u>£3.6 million cost for titles already within the Land Register</u> <u>On-going marginal costs of updates of any changes in persons in significant control.</u></p>

Topic and relevant paragraphs	Costs
Part 3 - Information relating to proprietors of land etc. (paragraphs 54 to 60)	<p><u>Costs on Scottish Administration</u> Minor costs to Registers of Scotland of updating application forms and IT system costs</p> <p><u>Costs on local authorities</u> Nil</p> <p><u>Costs on other bodies, individuals or businesses</u> Estimated £129.80 to a business that volunteers to disclose information under the regulations</p>
Engaging communities in decisions relating to land (paragraphs 61 to 100)	<p><u>Costs on Scottish Administration</u> Preparation and review of guidance – £39,200 Annual promotion of guidance -£12,500</p> <p><u>Costs on local authorities</u> Guidance - As landowners, local authorities need to engage with communities.</p> <p><u>Costs on other bodies, individuals or businesses</u> Guidance -Costs associated with engaging with Scottish Ministers on the preparation of guidance. Small costs to landowners of implementation of the guidance. These costs will depend on the scale of landownership and proximity to communities.</p>
Right to buy land to further sustainable development (paragraphs 61 to 100)	<p><u>Costs on Scottish Administration</u> Annual cost for community ballots – £6,000 to £53,000 Staffing costs for team to deal with transfer process - £87,134. Establishment of Register of Land for Sustainable Development - £50,000 Annual maintenance of Register of Land for Sustainable Development - £10,000 Land purchases – to be met by community bodies but funding available. Valuations - £11,910 to £23,820 Appeals – dependent on level of required legal representation. Mediation - £100,000 per annum Compensation – unknown</p> <p><u>Costs on local authorities</u> Right to buy land to further sustainable development – perhaps some minor costs for requests for information.</p> <p><u>Costs on other bodies, individuals or businesses</u> Right to buy land to further sustainable development community ballots – between £1,040 to £5,353 per ballot. Legal advice costs in relation to landowners. These will vary from case to case. Costs to communities of having to set up a company, these are likely to be minimal. Legal agreements – for scenarios in which a community body identifies and works with a third party purchaser of land. Estimated cost of £2,000 per legal agreement. Cost to landowner of any appeal landowner. These will vary from case to case. Compensation to those who have incurred a loss or expense, this will vary from case to case.</p>

Topic and relevant paragraphs	Costs
Entry in valuation roll of shootings and deer forests (paragraphs 101 to 107)	<p><u>Costs on Scottish Administration</u> No costs are expected.</p> <p><u>Costs on local authorities</u> Small administration costs to local authorities with new entries on the roll.</p> <p><u>Costs on other bodies, individuals or businesses</u> Rateable occupiers of all the shootings and deer forests. The estimated annual gross liability is estimated to be £4 million, subject to rates relief.</p>
Common good land (paragraphs 108 to 111)	<p><u>Costs on Scottish Administration</u> No costs are expected.</p> <p><u>Costs on local authorities</u> Unlikely to have significant cost implications, and in time there may be savings.</p> <p><u>Costs on other bodies, individuals or businesses</u> Unlikely to have significant cost implications, and in time there may be savings.</p>
Deer management (paragraphs 112 to 115)	<p><u>Costs on Scottish Administration</u> No costs are expected.</p> <p><u>Costs on local authorities</u> No costs are expected.</p> <p><u>Costs on other bodies, individuals or businesses</u> There will be some additional costs on landowners who need to carry out deer management measures, but these cannot be quantified at this time.</p>
Access (paragraphs 116 to 120)	<p><u>Costs on Scottish Administration</u> No costs are expected.</p> <p><u>Costs on local authorities</u> Marginal costs of consultation</p> <p><u>Costs on other bodies, individuals or businesses</u> Costs on bodies and individuals if they choose to become involved in consultations or to seek judicial determinations.</p>
Agricultural Holdings (paragraphs 121 to 178)	<p><u>Costs on Scottish Administration</u> Compensation relating to enforced sale of land – not quantifiable Cost of developing regulations and modelling work in relation to the Rent Review £46,200</p> <p><u>Costs on local authorities</u> Nil</p> <p><u>Costs on other bodies, individuals or businesses</u> Purchase costs relating to enforced sale of land – not quantifiable The provisions in relation to amnesty at waygo, landlord improvements and succession conversion and assignation may result in costs on the parties involved, however these are not quantifiable Reduced income for RoS resulting from removal of requirement to register Right to Buy Agricultural Tenancy - £4,560pa Costs to tenants and landlords from the relinquishment and assignation of 1991 Act tenancies, costs to tenant are estimated at an average costs of £6000 per valuation. Costs to landlords for the compensation and to the incoming tenant of purchasing the tenancy are not possible to quantify as the final cost will be determined by the individual circumstances on the holding.</p>

Topic and relevant paragraphs	Costs
	<p>Costs to tenant and landlord for determination of rights and conflict resolution. Not possible to quantify the exact number of cases, however, an estimated 135 agricultural tenants per annum are likely to have a major dispute with their landlord, with between 35 and 63 going to court.</p> <p>The court fees depend on the court that will deal with the case, but the fees are small in comparison to the cost of hiring legal representation.</p>

PART 1 – LAND RIGHTS AND RESPONSIBILITIES STATEMENT

9. Part 1 of the Bill places a duty on Scottish Ministers to publish and periodically review a Land rights and responsibilities statement that sets out the Scottish Government’s vision for land governance in Scotland, along with a set of principles to guide policy development relating to land rights and responsibilities.

Costs on the Scottish Administration

10. The central cost associated with the preparation of the land rights and responsibilities statement will be the staff time required for refining the statement, and the administrative costs associated with further consultation. There has already been a consultation on a draft land rights and responsibilities statement as part of “A Consultation of the Future of Land Reform in Scotland” (the consultation). The Scottish Government anticipates running a further public consultation on the implementation of the Bill in the course of 2016.

11. Costs associated with a consultation include the publication of the consultation document itself, and the cost of the analysis. To illustrate, the recent consultation cost £2,500 to publish, and £22,000 to be independently analysed. All Scottish Government consultations require staff time and input at a level that will depend on the breadth of the consultation in question and this can be accommodated within existing staffing levels. The costs associated with the consultation on the implementation of the Bill will be met within existing Scottish Government budgets.

12. There will of course require to be further public consultations when the Scottish Ministers review the land rights and responsibilities statement at five year intervals, as per the requirements in sections 1(4) and 1(4D) of the Bill. At this stage, it is not possible to attribute a cost to a consultation exercise that is so far in the future, as it may be a relatively small consultation exercise on the statement itself, or it may be part of a wider consultation.

13. There is also a requirement for a report on the consultation process to be laid before the Scottish Parliament, together with the reasons why Scottish Ministers have considered it appropriate to revise or, as the case may be, to not revise the land rights and responsibilities statement. The preparation of this report is ancillary to the running of the consultation and will be undertaken within existing staffing levels and Scottish Government budgets.

Costs on local authorities

14. It is not anticipated that there will be any direct costs placed on to local authorities, other than costs associated with responding to the public consultation should they wish.

Costs on other bodies, individuals and businesses

15. There will not be any direct costs of this provision for bodies, individuals and businesses unless they choose to respond to the public consultation.

PART 2 - THE SCOTTISH LAND COMMISSION

16. Part 2 establishes a Scottish Land Commission 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.

Costs on the Scottish Administration

17. The central cost associated with this Bill is the establishment of the Scottish Land Commission (the Commission), which will include the office of the Tenant Farming Commissioner (TFC) and five Land Commissioners. The Land Commissioners will conduct studies and research into the effect of law, policies and practices on landownership in Scotland. This will help form the evidence base for further land reform measures in the future, and demonstrates the Scottish Government's commitment to taking forward a long term programme of land reform.

18. Establishing a statutory TFC is one of the key recommendations of the Agricultural Holdings Legislation Review¹. The TFC will have distinct functions. The TFC 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.

19. Currently, the Scottish Government seeks to minimise the establishment of new public bodies as far as possible. This is to ensure efficiencies and reduce costs overall. However, the responses to the consultation indicate overwhelming support for the establishment of a form of Commission to do further work in relation to land reform, with 79% of those who answered the relevant question agreeing that what was termed a "Scottish Land Reform Commission" in the consultation would help ensure Scotland continues to make progress on land reform and would have the ability to respond to emerging issues.

20. The independent analysis of the consultation highlights that the most common drawback identified by respondents was the "anticipated high cost" of establishing and operating the Commission, and the Scottish Government is of course mindful of the need to minimise the

¹ <http://www.gov.scot/Topics/farmingrural/Agriculture/agricultural-holdings/review-of-legislation>

running costs of the Commission. Consideration was given to not establishing a Commission on a statutory footing, as it would be possible to set up a comprehensive programme of work in relation to land reform within the Scottish Government, and to appoint land commissioners on a non-statutory basis. However, to do so would represent a missed opportunity to make further progress with land reform measures, and the Scottish Government wishes to ensure that land reform remains a priority not only for the current administration but for future administrations too.

21. The consultation responses indicate support for the Commission to be at arms' length from the Scottish Ministers and, whilst the current thinking is that the Commission will be constituted as an executive non-departmental public body and will be sponsored by a relevant Directorate within the Scottish Government when it is up and running, there are a number of processes built into the Bill to ensure that the Commission has a degree of independence from the Scottish Government, including Parliamentary approval of the appointment of the Land Commissioners and the ability for the Land Commissioners to lay their programme of work before the Parliament without the approval of Ministers.

22. To ensure that the costs are minimised however, the Scottish Government wishes to establish a single new public body, and that is why the Scottish Land Commission will comprise Land Commissioners and a TFC, each with their own functions.

23. The estimated costs associated with the Commission are broken down into set up costs, and running costs.

Set up costs

24. The set up costs will require to be met in the 2016-2017 budget, which, given timing of the Land Reform Bill will mean that there will require to be a revision to the 2016-2017 budget.

25. The Scottish Government anticipates establishing the Scottish Land Commission so that the public appointments process is complete and the Commissioners are appointed by 1 December 2016. Once appointed, there will be a period of four months for the Land Commissioners to devise a programme of work and lay the programme of work before the Scottish Parliament before the Land Commissioners can proceed with work when they become fully operational on 1 April 2017. Similarly, the TFC will have four months in which to begin and consult on a work plan to develop codes of practice before becoming operational on 1 April 2017.

26. During this four month period, the Land Commissioners and the TFC will be supported by a project team within the Scottish Government, and a newly appointed Chief Executive who will also set about appointing staff to the Commission so that they can be trained in time for the Commission to become fully operational on 1 April 2017.

27. The costs associated with the four month period, and the earlier work that will be required by the Scottish Government project team, are the staff costs of the project team, the Chief Executive, the fees for the Land Commissioners and the TFC. They will be directly met by the Scottish Government from existing budgets and are estimated to be £140,000. There may

also be further expenses to be paid, including travel, and we estimate that these will be approximately £14,000 for the 4 month period.

28. The other central set up cost will be that of establishing an internal IT network for the Commission, and an external website. Estimates for the network based on the costs of using the existing IT network used by the Scottish Government and other public bodies are £76,000 with annual running costs of approximately £30,500, following stage 2 of the Bill. We anticipate that a new website for the Commission would cost an absolute maximum of £100,000.

29. The total set up costs are anticipated to be £0.330 million.

Running costs

30. From 1 April 2017, we estimate that there will be annual running costs for the Commission of approximately £1.454 million a year. Depending on how the Commission organises itself when the Chief Executive, Land Commissioners and the TFC are all appointed, the central running costs are likely to be staff costs and salary costs for the Land Commissioners and TFC, the cost of research work to be conducted on behalf of the Land Commissioners, and other related expenses including travel, as well as on-going IT expenses and any additional IT development and support that is required.

31. The Scottish Government is mindful of the need to minimise running costs as much as possible, and therefore it is the intention that the Commission will be accommodated within the existing Scottish Government estate, and there will be no direct cost associated with doing so.

32. The main running costs are set out below.

Staff and salary costs

33. Whilst it will be for the Chief Executive, when appointed, to make decisions about staffing levels, the Scottish Government anticipates that approximately 18 full time equivalent staff will be required, as well as the Chief Executive. The staff will cover a range of functions, including research, administrative support, preparation of annual accounts, corporate reporting and IT system support.

34. In assessing the likely staffing requirements a major staffing need will be to support the on-going work of the TFC in considering applications and carrying out inquiries into breaches of the code of practice. It is not currently possible to fully quantify the likely volume of applications or resulting inquiries, however, in order to provide an illustration of potential referrals to the TFC, research conducted in 2014, found that 27% of tenant farmers who responded had experienced a major dispute with their landlord at some point in their tenancy.

35. On that basis, 1,816 tenant farmers will have experienced a major dispute with their landlord over the course of their relationship, and so there may be an initial backlog to clear. Going forward, based on the recent tenant farming survey evidence, 7% of tenants have had their tenancy for less than ten years. If an average of five years is assumed for them, and an average of 15 years for the remaining 93% who have long-term tenancies, it is calculated that 2% have a major dispute annually. This equates to 135 tenants. It is known that the volume of disputes

between crofters over apportionments is similar, with an eighth of those disputes being considered annually at hearings undertaken by the Crofting Commission. Therefore, the number of applications to be brought before the TFC is estimated to lie within the range of between 17 and 135 annually. Section 89A of the Bill, inserted during Stage 2, creates a process whereby 1991 Act tenants can relinquish or assign their tenancies. Those provisions create some additional functions – and therefore additional workload – for the Tenant Farming Commissioner.

36. Whilst the staff will not be civil servants, the pay and grading of staff within public bodies often mirrors that of the civil service. Therefore, to estimate the costs of the staff required, the Scottish Government considered a hypothetical staffing structure for the Commission, and attributed Scottish Government average staff costs for 2014-2015 to that structure. On that basis, it is estimated that approximately £963,861 will be needed to meet staff costs, and this may of course change in the future in accordance with Scottish Government Public Sector Pay Policy. There may also be some scope to make savings by using shared service agreements for some aspects of the Commission's work and corporate functions.

37. There will also be salary costs for the Land Commissioners and the TFC. In accordance with Public Sector Pay Policy for senior appointments, the Land Commissioners and the TFC will be paid a daily rate, the level of which is yet to be determined and will only be fully determined during the public appointments process. However, to illustrate, if the maximum of the current band 2 of the Daily Fee Framework was used, the daily fee would be £247. The time that will require to be input by the Land Commissioners and the TFC is not yet known. However, it would be reasonable to assume that land commissioners will work for approximately two days a month, and that the TFC will require to work more, considering the functions in relation to applications and inquiries into breaches of the codes of practice, most likely approximately eleven days a month for the first six months from 1 April 2017, though it is anticipated that this will drop off to around four days a month thereafter. This would bring the total annual salary cost of the Land Commissioners and the TFC for 2017-2018 to £51,896.

Non-staff costs

38. In addition to staff and salary costs, there will be non-staff costs that will include the cost of conducting research work to underpin the Land Commissioners' programme of work, and other costs such as on-going IT maintenance and other expenses such as communications, legal costs, audit costs, staff training and operational costs.

Research

39. It is anticipated that the Land Commissioners and the Commission staff will have expertise in matters relating to land, including land reform, finance, economic issues, planning and development and environmental issues, indeed section 9 of the Bill imposes a duty on the Scottish Ministers to have regard to the expertise and experience of the Land Commissioners when appointing them.

40. However, depending on what the Land Commissioners wish to include in their Programme of Work, it will likely be necessary for the Commission to externally commission research. It is considered prudent to set aside a notional research budget for the Commission when it is fully operational, and this could amount to £200,000 per annum. It will of course be up

to the Commission as to how it spends this money, and it may desire to have a smaller research budget and instead spend more on additional staff with the relevant expertise.

IT maintenance

41. Within the hypothetical staffing structure that the Scottish Government considered to estimate staff costs, there is staff resource for IT support. However, if the decision is made to use the existing IT network used by the Scottish Government, and some other public bodies, it is estimated that £30,500 will be required for IT running costs per annum, and a further £10,000 for external website maintenance.

Other operational expenses

42. At this stage, it is difficult to accurately determine what other operational expenses there will be. However, a reasonable basis is to look at an existing public body and what they have spent in the most recent financial year. The Scottish Government has considered the annual accounts of the Crofting Commission for 2013 and 2014, identified the cost headings that are most likely to be relevant to the Scottish Land Commission given the hypothetical staff structure used and, on the basis that the Scottish Land Commission has a smaller number of Commissioners and a smaller staff count, has halved the relevant expenses of the Crofting Commission and considers that the Scottish Land Commission will require £150,000 per annum for additional operational expenses.

43. The Scottish Government has also considered that there will be on-going travel and related expenses due to the nature of the work involved. It has estimated these using the Crofting Commission figures for similar expenses for both staff and Commissioners and pro-rated these for the smaller numbers involved in the Scottish Land Commission and on that basis estimates this expenditure to be approximately £48,160 per annum.

Costs on local authorities

44. There are no direct costs that will fall upon local authorities by establishing the Commission. There may be costs to local authorities in contributing to the work of the Commission further down the line, for instance in responding to consultations and participating in the work of the commission. However, these costs are not quantifiable, and any such participation will be at the discretion of individual local authorities.

Costs on other bodies, individuals and businesses

45. The Scottish Government does 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.

PART 3 – INFORMATION ABOUT CONTROL OF LAND ETC.

LAND REGISTER OF SCOTLAND: INFORMATION TO BE INCLUDED IN TITLE SHEET

46. Section 35A (inserted at stage 2) amends section 7 of the Land Registration etc. (Scotland) Act 2012 (the 2012 Ac) to provide that where a person with significant control of a proprietor is a legal entity, or a party who owns land in a special capacity, then the name and designation of the person of significant control should be entered in the proprietorship section of the Title Sheet.

Costs on the Scottish Administration

47. There will be no direct additional costs to the Scottish Administration

Costs on local authorities

48. There will be no additional costs on local authorities as result of these provisions.

Costs on other bodies, individuals and businesses

Costs to Registers of Scotland

49. In consultation with Registers of Scotland (RoS), we have estimated the likely costs of this amendment. As a basis, we have assumed that the process of updating the Land Register that would be required to enter the relevant information about persons with significant control would be an on line declaration system and controlling interest information is to be held on the Land Register. If the provisions only applied to accompany registration transactions on transfers of title and given that there would already be an application submitted in respect of the registration transaction, it is considered that these costs would be marginal and could be absorbed alongside the administrative costs of processing applications to the Land Register.

50. However, the amendment to the Bill would enable Scottish Ministers to make regulations to, within a timeframe yet to be determined require proprietors to notify the Keeper of the name and designation of any person with significant control in relation to the proprietor. In practice, this would generate changes to the Land Register that were freestanding from applications to accompany registration transactions, therefore the costs of this would be additional to RoS. The costs of administering registration applications are recovered via fees that are paid to RoS when an application is submitted to them. There are currently 1.6 million titles within the Land Register, and it is estimated that approximately 10% of those are held by non-natural persons.

51. On the basis that there would be additional costs to RoS in making IT provision for online applications out with regular Land Register transactions, in publicising the fact legal owners with a person of significant control are under a duty to disclose the name and designation of the person of significant control, contingent costs of administration of any non- digital returns, staff costs, and telephone and correspondence support for proprietors, it is estimated that the total cost of this would be approximately £3.6 million. The period of time over which this cost would fall would be dependent upon the period of time that was laid out in the regulations specified by Scottish Ministers under section 7(8) of the 2012 Act, and any decision as to that time period

would need to be subject to consultation and careful consideration, taking into account the resources available at RoS to conduct this work and to ensure that proprietors are given a reasonable period of time to provide the information.

52. Section 7(10) of the 2012 Act provides that the Keeper must be notified of any change to the name and designation of a person of significant control in relation to a proprietor. It is very difficult to estimate the likely costs of this, as it would be dependent on a number of factors, not least the definition of “significant control” under the regulations that would be made under section 7(4) of the 2012 Act. There will be certain legal entities that will have the same persons of significant control for long periods of time, for instance legal entities that own family farms. However, there may be some that have a more frequent turnover of persons with significant control, for instance where a property is owned by a company and the shareholders frequently change. The cost would clearly increase if it became apparent that there was a higher percentage of titles in which there is a change to the name and designation of a person of significant control in relation to a proprietor, and, the cost in the future would also change as there is increased Land Register coverage in Scotland, and it would also be dependent on operational costs at RoS.

Costs to proprietors making the disclosure about any person in significant control of the proprietor

53. There would also be costs to proprietors in making the disclosure about any person in significant control of the proprietor. It is estimated that this cost would be £129.80 per disclosure, our basis for this is the same as that in relation to the costs associated with the Bill’s provisions in Part 3 at introduction, please see paragraph 60 in this regard.

INFORMATION RELATING TO PROPRIETORS OF LAND ETC.

54. Section 36 provides a power for the Scottish Ministers to make regulations that enable the Keeper of the Registers of Scotland to request additional information relating to proprietors of land and other persons. The regulation-making power provides that this information can be added to the Land Register and published by the Keeper.

55. The intention of the regulation-making power is to obtain information about the category of the applicant who will become the person entered in the Land Register as proprietor. The regulations will set out the categories that will apply to applicants e.g. community body or a body with charitable status. The regulations can provide that information can be added to the register and published. Having this information will help provide consistent information about landowners and will allow analysis of the information to develop a greater understanding of land ownership patterns.

56. The power will also enable the Scottish Ministers to make regulations enabling the Keeper to request further information about the individuals that have a controlling interest in the legal owners of land.

Costs on the Scottish Administration

57. There will be no direct additional costs to the Scottish Administration from the regulations. The collation of this information will result in some additional costs for Registers of Scotland. There will be some minor costs incurred in amending the application forms to provide

that this information can be collected. There will also be some additional costs in updating IT systems to provide that this information can be added to the register. The cost of these changes will be minor and will be accommodated within Registers of Scotland's existing budget.

Costs on local authorities

58. There will be no additional costs on local authorities as result of these provisions.

Costs on other bodies, individuals and businesses

59. The information on the category of the proprietor of land, or indeed other person, will be information that the proprietor of land should already have in their knowledge when making their application to become the person entered as registered proprietor in the Land Register. They themselves will know if they are a UK company or a charity. As result the Scottish Government does not envisage there will be any additional costs incurred by applicants as a result of these provisions.

60. There will be additional costs for applicants who do disclose information about the individuals who have a controlling interest in the proprietors of land and leases of land. It is not anticipated that these costs would be any more than £129.80. The basis for this estimate is that 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. It is envisaged that the cost incurred by businesses in collating information for the purposes of establishing information about individuals with control will be similar to the costs incurred by businesses for collating information for that register, and it is envisaged that it would cost a business £129.80 to provide the relevant information in an individual case for the purposes of supplying information relating to proprietors of land.

PART 4 - ENGAGING COMMUNITIES IN DECISIONS RELATING TO LAND AND PART 5 – RIGHT TO BUY LAND TO FURTHER SUSTAINABLE DEVELOPMENT

61. Landowners are instrumental in promoting sustainable local development and supporting communities. However, in some instances the scale or pattern of land ownership, and the decisions of landowners, can be a barrier to sustainable development in an area. Providing mechanisms to address such situations could allow for potential barriers to sustainable local economic and social development to be overcome.

62. The purpose is to develop guidance which achieves more community involvement in land, and greater accountability by land owners towards communities where their decisions can affect communities. The objective is to influence the way that all landowners, both public and private, plan for, invest in, use and manage land in order to contribute to building a fairer and more prosperous Scotland.

63. Therefore, in developing proposals for this Bill, the intention is to provide a framework in which:

- communities are encouraged to plan for their own sustainable development;
- all owners of land are expected to engage with communities where their decisions relating to land could have a significant effect on communities; and

- where the transfer of land would be likely to provide a significant benefit and likely to prevent a significant harm to communities, would be likely to address a sustainable development need and be in the public interest, a community body will be able to apply to Ministers for the mandatory sale of land to the community body or a nominated third party.

Costs on the Scottish Administration

Guidance

64. Section 37 of the Bill places a duty on the Scottish Ministers to prepare guidance for land owners and tenants on working with and engaging with communities when taking land-based decisions. Development of this guidance will require involvement of stakeholders.

65. Ministers also intend to work with stakeholders to produce guidance for communities on planning for their own sustainable development. However, no requirement to do so is included in the Bill. Costs, if such guidance is produced, will therefore be met within existing budgets.

66. The estimated additional costs to the Scottish Ministers 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. This is based on an estimate of 0.3 FTE at B3 (£15,000) for external and internal stakeholder engagement, 0.3 FTE at B2 (£11,200) for drafting, plus £3000 for translation to Gaelic and £10,000 for publication and distribution of a short guide.

67. 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 based on 0.25 FTE at B3. The exact costs will depend on decisions taken in dialogue with stakeholders as part of the preparation of the guidance.

Right to buy land to further sustainable development

Initial request for transfer and community ballot

68. The costs in relation to the new right to buy land to further sustainable development are difficult to quantify at this stage. As it is intended to be a mechanism of last resort, it is not possible to know how many such applications there will be and the cost associated with each application will vary depending on the issues and complexities of each case.

69. As a result of the other options available to communities, and the use of guidance to encourage mutual collaboration between land owners and communities, it is hoped the number of cases to go through this route will be minimised, while still providing an effective tool and remedy to support communities. It is anticipated that around 5-10 applications under the provisions for a right to buy to further sustainable development per annum would be a realistic number.

70. Where a community body decides to make an application to the Scottish Ministers, the community body must have first approached the land owner and request to buy the land in question. Communities can only proceed where this request has been unsuccessful.

71. The Scottish Ministers may make regulations on the form and content of a community body's request to the owner of the land to transfer the land to the community body or the person named in the application. The cost of regulations will be covered under existing community right to buy costs (i.e. the right under Part 2 of the Land Reform (Scotland) Act 2003).

72. Before a community can make an application to the Scottish Ministers for a right to buy land to further sustainable development, the community body must ballot the members of the community. This ballot must be held within six months immediately before the date on which the application is made to the Scottish Ministers on whether the Part 4 community body or the third party purchaser should buy the land or the tenant's interest.

73. The Scottish Ministers will have powers to set out in regulations the requirements of the ballot. Costs of preparing regulations and consultation on them will be covered under existing staff costs.

74. The community body will be responsible for meeting the costs of the ballot. However, the Scottish Ministers may make provision in regulations for certain circumstances in which a community body may apply to them to seek reimbursement of the expense of conducting a ballot under this section. Cost of producing and consulting on regulations will be covered under existing staff costs.

75. Based on experience of the community right to buy under the Land Reform (Scotland) Act 2003, the average cost of each ballot would be between £1,040 and £5,353 depending on the approach used. Therefore, the costs of ballots for right to buy for sustainable development, on the basis of 5-10 cases per annum, will be between £5200 and £53,000.

Transfer process

i. Staffing costs

76. The Scottish Government currently provides advice to communities who seek to exercise their statutory community right to buy. On average, since 2005, 20 compliant community companies have contacted the Scottish Government each year, ranging from 11 to 37 per year over the period 2004-2015. In 2012-13, the Scottish Government staffing costs for community right to buy were in the region of £100,000, based on 389 staff days, and involved providing advice and support to 13 communities (this is an estimate because the team undertakes a range of other tasks, including supporting Ministers, publicity of community right to buy etc).

77. Application to the Scottish Ministers for the right to buy land to further sustainable development is intended to be an option of last resort only where alternative options have failed, and the case meets the necessary conditions. Due to the mandatory transfer involved in these cases, they might be more complex than the existing community right to buy applications under Part 2 of the Land Reform (Scotland) Act 2003 where there is a willing seller, and, therefore costs may be higher. On this basis, a figure for additional staffing costs of around £87,000 based

on 1 B3 (£49,689) and 1 B2 post (£37,445) (figures at 2014/15 rates) per annum could be anticipated and these will be met from existing budgets.

ii. Register of Land for Sustainable Development

78. The Bill provisions require the Keeper to set up and keep a register, to be known as the Register of Land for Sustainable Development. In line with the creation and maintenance of the register of applications for community right to buy, it might be expected that the creation of an accessible register could cost up to £50,000 in staff time and administrative resource. Thereafter, there will be on-going site maintenance and update costs which could be up to £10,000 per year.

iii. Costs of land purchase

79. In the cases where this mechanism is used, the cost of purchase of the land will be borne by the community and/or the third party purchaser. There are a number of public grants and funds available to support community land ownership, and the Scottish Government would anticipate that these funds may be accessible to community bodies. The Scottish Land Fund is available for communities exercising the community right to buy under the 2003 Act, and the Scottish Government has recently announced that funding has been increased to £10 million per year between 2016 and 2020, and this will continue to be kept under review. It is also anticipated that third parties would not be able to directly access the Scottish Land Fund, but they may be able to access or contribute additional sources of funding.

iv. Prohibited dealings

80. The Scottish Ministers may make regulations specifying transfers or dealings which are prohibited, or rights which may be suspended in relation to the land for which the body has made an application. The cost of producing and consulting on regulations will be covered under existing staff costs.

v. Valuation

81. The Scottish Ministers will pay for an independently conducted valuation once the Scottish Ministers approve that land should be sold. The average cost of the 38 valuations for the community right to buy under the Land Reform (Scotland) Act 2003 since 2005 has been £2,382. Between 5 and 10 valuations per year would lead to an average cost of between £11,910 and £23,820. The right for a landowner to make counter-representations may increase the costs associated with valuation.

vi. Compensation costs

82. The costs of the land purchase will be met by the party purchasing the land, namely the community body or the third party purchaser. However, there may be circumstances in which a landowner or tenant suffers loss if an application is withdrawn, and there will be costs for the landowner in complying with an application under Part 5. Generally, compensation to the landowner and tenant will be payable by the community body or the third party purchaser. However, in the event that the Scottish Ministers refuse an application, any loss or expense incurred in complying with the requirement of Part 5 following an application by a community body will be met by the Scottish Ministers. It is not anticipated that this will occur in very many cases. However, provision is made for community bodies and third party purchasers to apply to the 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, Ministers have received compensation claims totalling £2,125,279.09, against which they have paid £44,558.87 since 2005.

vii. Appeals

83. As the provisions will involve enforced sale, the Scottish Government anticipates 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. The Scottish Courts and Tribunals Service (SCTS) provides administrative support to the LTS. Arrangements for providing funding to the SCTS 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. The last recorded cases that the community right to buy policy team has for appeals that went to the sheriff court were in 2009. In total, since 2004 there have been six cases brought against decisions by the Scottish Ministers pertaining to the application process. Where the Scottish Ministers won an appeal, costs were covered from the appellant. In certain cases, where the appellant was unable to pay, this was taken into consideration by the Scottish Ministers. Where the Scottish Ministers lost an appeal, the costs were borne by them. Costs are entirely dependent on the level of legal representation required and a case's complexity and have varied between £3,000 and £20,000.

viii. Mediation

84. It is proposed to include an option for mediation between communities and land owners where relationships have broken down and where in Ministers' opinion this would be the best course of action. Mediation would be by an appointed body and with agreement of all parties. It is difficult at this stage to predict numbers, but an estimate of 10 per year might be reasonable and could be capped by the Scottish Ministers. Costs for mediation would be in the region of £5,000 - £20,000 per community so costs of £100,000 per annum could be anticipated.

85. Other administrative and legal costs will be dependent on any increase in demand.

Costs on local authorities

Guidance

86. There will be some costs on local authorities in engaging with the Scottish Ministers in the preparation and publication of the guidance. As land owners, local authorities will also be expected to consult with and engage with communities over their land holdings. However, there are already expectations on local authorities that they consult and engage with communities and that they work with the National Standards for Community Engagement². Any additional costs are expected to fit within or sit alongside their existing responsibilities, for example, with reference to the asset transfer provisions in the Community Empowerment (Scotland) Bill

² <http://www.scdc.org.uk/what/national-standards/>

(passed by the Parliament on 17 June 2015), or be achieved through existing mechanisms such as greenspace planning and local development planning.

Right to buy land to further sustainable development

87. There may be some costs on local authorities in relation to the new right to buy to further sustainable development in relation to land.

88. These would arise where information is requested on local policies such as planning, energy, waste, transport, access, community development etc. Any additional costs are expected to fit within or sit alongside their existing responsibilities, for example, with reference to the asset transfer provisions in the Community Empowerment (Scotland) Bill and normal activity in relation to community or development planning.

Costs on other bodies, individuals and businesses

Guidance

89. The Scottish Ministers will be required to produce guidance for land owners and tenants on engaging with communities when taking decisions relating to land.

90. 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. For public bodies, their level of engagement will depend on their potential contribution to delivering the policy objective. Any additional costs are expected to fit within or sit alongside their existing responsibilities, for example, with reference to community empowerment, land use and climate change.

91. Implementation of the guidance on land owners to engage with and consult communities will have some small costs to land owners. The cost will depend on the scale of land ownership, the proximity to communities and the potential for decisions in relation to land to affect communities. The guidance produced will provide clear guidelines to help landowners carry out proportionate and effective engagement on an on-going and case-specific basis tailored to the scale of land and the impact of any decisions. For many landowners there will be no cost as they already proactively promote community engagement in their land management activities.

Right to Buy Land to Further Sustainable Development

92. In exercising the right to buy land to further sustainable development, there are anticipated to be some costs on community bodies and others.

Community ballot

93. Community bodies will be required to carry out a ballot of the community before requesting intervention by the Scottish Ministers. Community bodies will make their own arrangements to ballot their community and are expected to carry the costs of such a ballot. Communities may apply to the Scottish Ministers for help with costs of ballots and Ministers may set out in regulations the circumstances where costs may be payable.

94. Over the period when the community right to buy has been used, there have been 40 ballots, in which 67,063 persons have been balloted. The average number of people being balloted in a single ballot is 1,677; the smallest ballot involved 43 persons (at Silverburn), the largest is 6,634 persons (Seton Fields).

95. The costs of this provision to the community will depend on the size of the community to be balloted in each case, and the approach adopted for the ballot. The average cost of each ballot would be between £1,040 and £5,353 depending on the approach used. It might also be expected that the number of people to be balloted in urban areas would be at the higher end of the scale, given that population concentration will be higher in any given defined community area.

Legal advice

96. 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 the right to buy land to further sustainable development.

Communities – legal entities

97. The Scottish Government anticipates there to be minimal additional costs in setting up a company limited by guarantee.

Legal Agreements

98. 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 £2,000 per legal agreement could be expected, depending on complexity.

Appeals

99. There are a number of appeals that can be made by the landowner, community body or another party throughout the provisions, including the appeal against the Scottish Ministers' decision on an application and appeal against the independent valuation. These appeals are made either to the sheriff court in the area where the land to be acquired is located or to the Lands Tribunal for Scotland, as set out in the provisions. Costs may have to be borne by a landowner, community body and/or third parties. Costs will vary depending on the case and its complexity.

Compensation costs

100. There is provision for those who have incurred a loss or expense under the provisions to be entitled to compensation. A landowner or tenant may have to pay costs in relation to complying with the requirements of an application by a community body, and may be entitled to recover the costs from a community body or third party purchaser. The costs will vary from case to case and it is not possible to quantify them at this stage, albeit they are not anticipated to be significant.

PART 6 – ENTRY IN VALUATION ROLL OF SHOOTINGS AND DEER FORESTS

101. Part 6 of the Bill will remove the exemption from business rates for shootings and deer forests.

Costs on the Scottish Administration

102. The Scottish Government would be liable for non-domestic rates for any shootings and deer forests for which it was deemed the rateable occupier, from the expected commencement of Part 6 on 1 April 2017. Shooting and deerstalking on land held by Scottish Government Rural Payments and Inspection Division and by Scottish Natural Heritage is currently let to tenants. No costs are expected on the Scottish Administration. The additional receipts from ratepayers will accrue to local authorities, and as such will be accounted for as receipts to the Scottish Consolidated Fund. The effect will be a corresponding reduction to the general revenue grant as part of these local authorities' finance settlement from the Scottish Government, thus enabling equivalent funding to be directed elsewhere within the Scottish Government's budget.

Costs on local authorities

103. The change proposed would increase local authorities' administration relating to rating (including billing, collection, enforcement and determination of rates relief), albeit unevenly across local authorities. Some authorities might have no additional cases, whereas others would face additional caseload. A high level of eligibility for rates relief under the Small Business Bonus Scheme (certain properties with lower rateable value) would be expected, given the anticipated number of small-scale shootings. It is, therefore, anticipated that there would be a small administrative cost to those local authorities with new entries on the valuation roll, for additional annual rating administration. The assessors would also face an administrative cost initially for making new entries to the valuation roll, and thereafter for maintaining these entries.

Costs on other bodies, individuals and businesses

104. Rateable occupiers of all the shootings and deer forests added to the valuation roll would be liable annually for non-domestic rates, subject to any rates relief, as of 1 April 2017, when this provision would come into force to coincide with the next revaluation. The total gross annual liability (before relief) is estimated at £4 million, but would be subject to considerable rates relief. In 1994, the last year in which non-domestic rates applied to shootings and deer forests, estimated income of £2 million was generated for Scottish councils. The estimate of £4 million is based on forward projection, and is in line with the overall rise in Scottish non-domestic rates income since 1994. A more accurate estimate, which would require detailed analysis, taking into account changes in the tax base and the impact of changes in reliefs, is not possible due to the absence of valuation data since 1995.

105. Some of this estimated gross liability may not be collected as revenue, due primarily to the potential extent of small-scale shoots (such as on farms) being eligible for rates relief through the Small Business Bonus Scheme, and also to other rates relief eligibility.

106. Some rateable occupiers might incur costs by obtaining professional advice (e.g. from rating agents), for example relating to valuation appeals.

107. The main public-sector liability is anticipated as relating to the National Forest Estate, with Forestry Commission Scotland liable for non-domestic rates for any shootings or deer forests for which it is deemed the rateable occupier. Forest Enterprise Scotland annually culls around a third (around 33,000) of the national total of deer culled, most of which is undertaken by either staff or contractors, as a land-management activity. A small proportion, around 9%, is recreational stalking; it is not possible to estimate the non-domestic rates liability for this ahead of the assessors' valuations.

PART 7 – COMMON GOOD LAND

108. Part 7 contains provisions that will 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. 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.

Costs on the Scottish Administration

109. It is not anticipated that there will be any direct costs on the Scottish Government.

Costs on local authorities

110. The Scottish Government anticipates that the proposed change to common good legislation is unlikely to have significant cost implications and should deliver savings. If such legislation had been in place at the time when development of the new High School in Portobello Park was first considered, it would have greatly reduced the time and monetary costs in delivering the new school. The Scottish Government, therefore, reasonably expects 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.

Costs on other bodies, individuals and businesses

111. The Scottish Government does not anticipate that there will be any direct costs on other bodies, individuals and businesses, and there may be savings and benefits. As stated above in relation to costs on local authorities, if such legislation had been in place at the time when development of the new High School in Portobello Park was first considered, it would have greatly reduced the time and monetary costs in delivering the new school.

PART 8 – DEER MANAGEMENT

112. Part 8 provides for additional use of existing deer panels to promote community involvement in local deer management; to provide a power for 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 (the 1996 Act); and amend section 40 of the 1996 Act to insert a power to require a return on the number of deer planned to be killed.

Costs on the Scottish Administration

113. There will be no direct costs on the Scottish Administration.

Costs on local authorities

114. There will be no direct costs on local authorities.

Costs on other bodies, individuals and businesses

115. The proposed measures will give SNH greater scope to intervene in the management of deer in the public interest. However, there will be additional costs to landowners who need to put in place additional deer management measures. It is not possible to quantify this at this stage as the provisions in the Bill are only to be used as a backstop where it is established that current deer management arrangements are failing.

PART 9 - ACCESS RIGHTS

116. Part 1 of the Land Reform (Scotland) Act 2003 establishes statutory public rights of access to land. Local authorities and national park authorities (access authorities) are charged with drawing up a plan for a system of paths (core paths) sufficient for the purpose of giving the public reasonable access throughout their area.

117. Part 9 of the Bill amends Part 1 of the Land Reform (Scotland) 2003 Act to clarify and simplify the core path planning process. It also expands current service requirements where an application to a sheriff court is made seeking a declaration as to whether a person has exercised access rights responsibly or not, so as to allow for notification of all relevant parties interested in exercising access rights.

Costs on the Scottish Administration

118. The proposals in relation to public access that aim to clarify the core paths planning process are likely to be cost neutral and it is not envisaged that there will be any significant costs on the Scottish Government.

Costs on local authorities

119. Local authorities may experience increased costs when undertaking additional consultation, but these costs are marginal.

Costs on other bodies, individuals and businesses

120. The Scottish Government does 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.

PART 10 – AGRICULTURAL HOLDINGS

121. 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 do not own land to get a start in farming. Landlords and tenant farmers also play an important role in the wider rural community.

122. The tenanted sector makes an invaluable 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 per annum, with mixed tenure farms producing an estimated £450 million. It is important that the framework governing these relationships is right to ensure that these businesses continue to contribute over £790 million of food production annually in Scotland.

123. 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.

Costs on the Scottish Administration

124. There are various costs on the Scottish Administration in relation to agricultural holdings.

Modern limited duration tenancies

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

Repairing tenancies

126. There are no financial costs the Scottish Administration in relation to repairing tenancies.

Tenant's right to buy

127. 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 to tenant or third party where landlord in breach of order or award

128. Section 81 is a key provision within the Bill and allows for the sale of land subject to a 1991 Act tenancy, in circumstances where a landlord consistently fails to meet their legal obligations. This is intended as a measure of last resort and it is not anticipated that this will occur in many circumstances.

129. The Bill provides for the 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 preparing regulations and any associated consultation will be covered under existing staff costs.

130. 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 for 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 regulations, subject to the affirmative procedure, made once the Bill is enacted.

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

132. The level of compensation will depend on the number of orders for sale granted by the Scottish Land Court. As there are 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 the 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 appeal 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 three enforced sale orders per year with associated estimated compensation costs of £7,426 per annum.

Rent review

133. The Scottish Government proposes 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.

134. The provisions provide a power for the Scottish Ministers to produce regulations on how the productive capacity of an agricultural holding is to be determined, and the information to be provided by the landlord and the tenant of a holding to the Land Court to enable the court to have regard to the productive capacity of the holding. It is also intended that the Scottish Government will carry out a range of modelling work over the summer to help inform the development of these regulations.

135. The estimated additional costs to the Scottish Ministers of preparing the regulations and carrying out the modelling work is estimated at £46,200. This is based on an estimate of 0.3 FTE at B3 (£15,000) on developing the regulations and carry 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.

136. It is also intended that the TFC will produce a code of practice to provide guidance on how to carry out rent reviews and setting out the steps parties should follow. Costs for the production of the codes and consideration of any possible breaches of these codes are factored into the overall costs for the TFC as set out above. Although the role of the TFC is not to determine rents for 1991 Act tenancies, it is hoped that additional guidance on the process to be followed will minimise the number of cases that are referred to the Scottish Land Court.

Assignment and succession to agricultural tenancies

137. The proposals contained in the Bill are intended to modernise the classes of person to whom a tenant can assign a tenancy and the classes of person who may succeed to a tenancy to reflect modern family structures, help support farming business remain within farming families, and in turn, make it easier for tenant farmers to retire while removing obstacles to those wishing to take up tenancies. Overall it is intended that the provisions will support the continuation of family farming businesses and support better succession planning in such businesses. This will have an overall positive impact on agricultural productivity and on local rural economies.

138. There are no direct costs for the Scottish Administration associated with widening succession and assignment rights for agricultural tenancies. It is anticipated that the TFC will work with the industry to develop a code of practice on succession, conversion and assignment. However, the costs for this are already built into the overall costs for the TFC.

Relinquishing and assignment of 1991 Act tenancies

139. There will be no additional costs to the Scottish Administration resulting from the provisions inserted at Stage 2 by section 89A of the Bill, as amended. However, there will be additional costs to the Tenant Farming Commissioner arising from processing papers. The Tenant Farming Commissioner will also be responsible for the procurement and appointment of valuers on behalf of the tenant farmer wishing to relinquish their 1991 Act tenancy. They will also require to recover valuation costs from the tenant farmer following completion of the valuation and process associated forms and paperwork for each relinquishment and assignment.

Amnesty for tenant's improvements

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

Landlord's improvements

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

Diversification

142. There will be no additional costs to the Scottish Administration resulting from provisions on diversification.

Costs on local authorities

143. 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

Modern limited duration tenancies

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

Repairing tenancies

145. There are will be minimal financial costs to tenants and landlords arising from provisions for repairing tenancies, at the start of the tenancy. These costs will be similar to costs which should arise at the start any agricultural tenancy and do not provide an additional burden on parties. It is not possible to quantify the actual costs to individuals of preparing contractual arrangements.

Rent review

146. 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.

147. 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 fewer rent cases being referred to the Scottish Land Court, resulting in savings to both parties.

148. Therefore, although there may be some increased familiarisation costs to landlords and tenants, it is anticipated that these will be minimised by the provision of clear regulations on considering the productive capacity of the holding and clear guidance from the TFC on rent review processes and there will be overall savings to both landlords and tenants over the longer term.

Tenant's right to buy

149. The Bill proposes 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. There will also be a further cost of £25 per application to renew their interest after every five years.

150. 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 Registers of Scotland.

Assignment of and succession to agricultural tenancies

151. 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.

152. 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. It is anticipated that codes of practice developed by the TFC will help minimise familiarisation costs for parties.

153. 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.

154. 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 waygo compensation or not making any provision for succession, in which case the executor will be entitled to claim waygo compensation for the tenant's estate. In principle there should be no differences in compensation at waygo 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 waygo value which would have passed onto the successor.

155. Further, tenants and landlords are still able to choose to agree to terminate the tenancy and agree compensation for waygo. 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.

156. As noted above, there are a range of potential decisions that can be taken by parties within the statutory framework that will affect 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 waygo and rights to regain vacant possession do not crystallise.

157. 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.

Relinquishing and assignment of 1991 Act tenancies

158. There will be valuation costs to the tenant farmer arising from the provisions inserted by Chapter 5A during stage 2. The average cost of the required valuation is estimated at around £6,000 (excluding VAT) per holding although this will vary according to individual

circumstances. This cost is to be met by the tenant farmer and paid to the Tenant Farming Commissioner; regardless of the tenant farmer deciding to continue with the resumption or not. If either the tenant farmer or the landlord object to the valuer, they must apply to the Scottish Land Court to appeal the choice of valuer and the court may decide to appoint a different valuer which will require to be paid for by the tenant farmer. The costs of the processing of the objection by the Scottish Land Court will require to be met by the party applying to the Land Court. Costs arising from processing applications for valuers and the appointment of valuers have been incorporated as part of revised costs in paragraphs 24 to 43.

159. There will be compensation costs payable by the landlord to the tenant farmer if the landlord chooses to purchase the tenancy prior to its assignation to a new tenant. The process for calculating the compensation payable is contained within section 32K. It is not possible to quantify the final costs of this activity as it will depend on a range of circumstances including items such as the vacant possession value of the holding, the tenants improvements, the depreciation of fixed equipment and the various elements required to be discounted from the valuation.

160. Where the landlord chooses not to purchase the tenancy any new tenant being assigned the tenancy will be required to pay the market value of the tenancy which will be arrived at from the information provided in the valuation. It is not possible to quantify the cost to the incoming tenant as each holding will be different and the circumstances of each tenancy will affect the price paid.

Amnesty for tenant's improvements

161. 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, in certain circumstances. This is necessary in a number of areas, such as determining rents and for assessing compensation at waygo.

162. 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.

163. 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 businesses caused by current uncertainties, and robust provisions are set out to ensure the outcome of the amnesty is fair and equitable on parties.

164. 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

165. Landlords are able to undertake improvements to the holding which lead to an associated rental increase for the holding. 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.

166. There may be some minimal 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.

Diversification

167. There will be reduced costs to landlords and tenants arising from provisions on diversification arising from less applications to court.

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

168. Civil actions are generally about resolving disputes between two private individuals and the general principle is that the parties, rather than the state, should bear the cost of civil action. 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.

169. 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.

170. 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. This may be the case for the proposed changes to succession, assignation and once the regulation-making power to provide for conversion of 1991 Act tenancies into 35-year MLDTs is taken forward.

171. 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, which are often sisted. Either party can ask the court to start the case up again if negotiations stall and there is no maximum length of time that the case can be sisted for.

Volume of cases

172. The tenant farming research conducted in 2014 found that 27% of tenant farmers and 38% of agricultural landlords who responded to the *Views of Tenant Farmers and Agricultural*

*Landlords Survey*³ had experienced a major dispute with their landlord or tenant at some point in their tenancy.

173. On that basis, using the current volume of agricultural tenancies, 1,816 tenant farmers will have experienced a major dispute with their landlord over the course of their relationship. Going forward, based on the recent tenant farming survey evidence, 7% of tenants have had their tenancy for less than ten years. So if an average of five years is assumed for them, and an average of 15 years for the remaining 93% who have long-term tenancies (based on the average of an assumed 30 years between generations), it is calculated that 2% have a major dispute annually.

174. This equates to 135 agricultural tenants likely to have a major dispute with their landlord annually in Scotland. There are a number of mediation and conflict resolution options available, including arbitration and application to the Scottish Land Court. It is not known how many of these cases are likely to take up options of arbitration or apply to the Land Court.

175. Between 2009 and 2013 there were between 35 and 63 cases taken to court annually, and the Scottish Government would anticipate an initial, short-term increase following the proposed changes as parties become familiar with and test changes and take advantage of new remedies.

³ Views of Tenant Farmers and Agricultural Landlords on Aspects of the Agricultural Tenancy System; <http://www.gov.scot/Publications/2014/11/8975/7>

Number of applications under the Agricultural Holdings Acts to the Scottish Land Court 2009 - 2013, broken down into type	2009	2010	2011	2012	2013
Rent review	43	25	19	33	18
Determination whether tenancy exists	3	4	7		3
Consent to operation of notice to quit	8	2		1	3
Declarator that tenancy at end & removal	5	1		6	3
Consent to assignation of lease	1	2			2
Waygoing	1	1	1	1	1
Certificate of bad husbandry	1	1		2	
Resumption			5		3
Approval for tenant's improvement				1	1
Appeal from arbiter		1	1		
Declarator re. section 72 of the 2003 Act (rights of persons where the tenant is a limited partnership)	1		2	1	
Payment of rent			1		
Order for landlord to carry out work				1	
Payment for sheep stock					1
Other declarator			1	3	
Total Number of Cases	63	37	37	49	35

Costs

176. In Scotland, court fees make up a very small percentage of the overall cost of appeals to litigants. For example, in the Scottish Land Court, most applications will incur an initial court fee of £145. Rent review cases do not incur an initial fee, but pay a fee of £80 if the case settles without a hearing (as happens in nearly all cases). If the Scottish Land Court has to determine the rent after a hearing, a fee is then payable on a scale calculated according to the amount of the rent fixed. Fees payable to the Court for a hearing are subsidised and are currently set at £120 a day. The costs of providing the Court are not subject to full recovery.

177. In the Court of Session, leave to appeal costs £202. There are then hearing fees per 30 minutes for a bench of one at £90, or a bench of three per 30 minutes at £225. In the sheriff court appeals are marked to sheriffs principal at different levels i.e. summary cause appeals are £56 and ordinary cause appeals are £107 (equivalent to the Court of Session fees). From 22 September 2015, there will be new arrangements for appeals formerly marked to sheriffs principal as they will go the Sheriff Appeal Court. The fees for that are in line with the previous fees for appeals to sheriffs principal.

178. In addition to the fees payable to the court, the major costs will be the costs of legal representation in litigation cases. This can be in the region of £200 to £250 per hour for a

specialist solicitor and counsel's fees can be in the range of £1,500 to £3,500 per day for court appearances, depending on experience and seniority of the advocate. The costs of each case are different and are determined by the complexity of the legal issue under question and how individuals choose to take the case forward. Recently the Thurso and the Roxburgh rent review cases⁴ have been heard in the Scottish Land Court and the costs associated with these were over £50,000 and £100,000 respectively.

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⁴ <http://www.scottish-land-court.org.uk/decisions/SLC.94.09.rub.html>.

LAND REFORM (SCOTLAND) BILL

[AS AMENDED AT STAGE 2]

REVISED FINANCIAL MEMORANDUM

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