

LAND REFORM (SCOTLAND) BILL

EXPLANATORY NOTES (AND OTHER ACCOMPANYING DOCUMENTS)

CONTENTS

As required under Rule 9.3 of the Parliament's Standing Orders, the following documents are published to accompany the Land Reform (Scotland) Bill introduced in the Scottish Parliament on 22 June 2015:

- Explanatory Notes;
- a Financial Memorandum;
- a Scottish Government statement on legislative competence; and
- the Presiding Officer's statement on legislative competence.

A Policy Memorandum is published separately as SP Bill 76–PM.

EXPLANATORY NOTES

INTRODUCTION

1. These Explanatory Notes have been prepared by the Scottish Government in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by the Parliament.
2. The Notes should be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a section or schedule, or a part of a section or schedule, does not seem to require any explanation or comment, none is given.

COMMENTARY ON SECTIONS

PART 1 – LAND RIGHTS AND RESPONSIBILITIES STATEMENT

Section 1 - Land rights and responsibilities statement

3. Section 1 imposes a duty on the Scottish Ministers to prepare and publish a land rights and responsibilities statement setting out the Scottish Ministers' objectives for land reform (subsection (2)) within 12 months of commencement of the section (subsection (3)). The statement must be reviewed at least every five years (subsection (4)). The statement must be laid before the Scottish Parliament when first published (subsection (3)) and following each review (subsection (5)).

PART 2 – THE SCOTTISH LAND COMMISSION

CHAPTER 1 – THE COMMISSION

Establishment

Section 2 - The Scottish Land Commission

4. This section establishes the Scottish Land Commission as a body corporate with its own legal personality (subsection (3)). The Scottish Land Commission's Gaelic name (Coimisean Fearainn na h-Alba) has equal legal status. The Commission will consist of a total of six members, comprising five Land Commissioners and the Tenant Farming Commissioner. The Commission will provide staff to support the Land Commissioners and the Tenant Farming Commissioner by virtue of section 4(a).

5. Subsection (5) contains a delegated power to allow the Scottish Ministers to make regulations changing the number of Land Commissioners in the future.

Section 3 - Status

6. This section provides that the Commission is not a servant or agent of the Crown, that it does not enjoy any status, immunity or privilege of the Crown, and that its property neither belongs to the Crown nor is held on behalf of the Crown. Subsection (4) sets out that its

members and staff are not servants or agents of the Crown, that they have no status, immunity of privilege of the Crown and that the staff of the Commission are not to be regarded as civil servants.

Functions of the Commission

Section 4 - Functions of the Commission

7. Section 4 sets out the functions of the Commission, which are to provide property, staff and services to the Land Commissioners and the Tenant Farming Commissioner and to ensure that arrangements are in place to co-ordinate the performance of their functions.

Section 5 - General powers

8. Subsection (1) states that the Commission can do anything which it considers necessary or expedient for the exercise of the functions of the Commission, the Land Commissioners and the Tenant Farming Commissioner. Subsection (2) sets out a list of particular powers of the Commission, namely the power to enter into contracts, acquire and dispose of land, co-operate with any person and obtain advice or assistance from certain persons and pay that person fees, remunerations or allowances.

Strategic plan and programme of work

Section 6 - Strategic plan

9. To provide for proper corporate governance within the Commission, section 6 imposes a duty on the Commission to regularly set out in a strategic plan how it, the Land Commissioners and the Tenant Farming Commissioner plan to exercise their functions.

10. Subsection (2) requires the Commission to include in each strategic plan the objectives and priorities of the Commission, the Land Commissioners and the Tenant Farming Commissioner, and cost estimates for the exercise of their respective functions. Subsections (3) to (7) set out the required time frames and procedure for the preparation of each strategic plan. In particular, the strategic plan must be submitted to the Scottish Ministers under subsection (3) and, following the approval of the plan, it must be published and laid before the Scottish Parliament under subsection (5). The Scottish Ministers may reject the strategic plan and direct the Commission to submit a revised strategic plan (subsection (4)(c)).

Section 7 - Programme of work

11. In addition to the strategic plan required under section 6, section 7 imposes a duty on the Land Commissioners to prepare a programme of work to set out information on the proposed reviews into the impact and effectiveness of any law or policy under section 20(1)(a), information about other activities being undertaken by the Land Commissioners and the timetable for the programme of work. The programme of work must be submitted to the Scottish Ministers by the Commission on behalf of the Land Commissioners at the same time as the strategic plan, but the Scottish Ministers cannot reject the programme of work. There is no duty on Scottish Ministers to comment upon the programme of work and no duty on the

Commissioners to take into account any direction or comment made by the Scottish Ministers. The Commission must then publish the programme of work and lay a copy before the Scottish Parliament.

Membership

Section 8 - Membership

12. Section 2(4) of the Bill provides that the members of the Commission are to be five Land Commissioners and one Tenant Farming Commissioner. Section 8 sets out the procedure for the appointment of the members of the Commission.

13. Under subsection (2), the Scottish Parliament has to approve the appointment of the members. Section 9(3) sets out that when an appointment is referred to the Scottish Parliament, the Scottish Ministers must lay a statement before the Scottish Parliament as to how they have complied with the appointment duties set out in section 9. The Scottish Ministers will determine the appointment period for each member and the appointment can last up to five years (subsection (3)). Sections 9 to 11 contain particular conditions regarding the appointment of members, but otherwise the Commission, with the approval of the Scottish Ministers, is free to determine the terms and conditions of appointment under subsection (4). Subsection (5) allows the Scottish Ministers to re-appoint an existing or previous member and subsection (6) places a duty on the Scottish Ministers to select one of the Land Commissioners to chair the Commission.

Section 9 - Eligibility for appointment

14. Land matters are complex and multi-faceted. Therefore, to ensure that there is a range of expertise in the Commission, subsection (1) places a duty on the Scottish Ministers to have regard to the overall expertise of the members of the Commission in:-

- Land reform
- Law
- Finance
- Economic issues
- Planning and development
- Environmental issues

15. Subsection (1)(b) requires the Scottish Ministers to encourage equal opportunities and the observance of the equal opportunity requirements.

16. Subsection (2) requires Ministers to ensure that the Tenant Farming Commissioner has the necessary expertise or experience in relation to agriculture.

Section 10 - Disqualification from membership

17. Subsection (1) prevents persons from being appointed as a member of the Commission if they have been in office within a relevant category listed in (a) to (f) within the previous 12 months. For instance, a person who was either a Member of Parliament or a Member of the

Scottish Parliament in the last 12 months would be ineligible for appointment as a member of the Commission.

18. Subsection (2) excludes a person who is either a landlord or tenant in a “relevant tenancy” as defined in subsection (3) from being appointed as the Tenant Farming Commissioner. A “relevant tenancy” is a 1991 Act tenancy, a short limited duration tenancy, a limited duration tenancy or a modern limited duration tenancy (for which see Part 10, Chapter 1 of the Bill).

19. Subsection (4) provides that any member of the Commission who becomes one of the persons listed in subsection (1)(a) to (f) will cease to be a member of the Commission.

20. Similarly, subsection (5) provides that the appointment of the Tenant Farming Commissioner ceases if subsection (2) applies and the Commissioner becomes a landlord or tenant in a “relevant tenancy” under subsection (3).

Section 11 - Resignation and removal

21. Subsection (1) allows a member of the Commission to resign by serving notice in writing to the Scottish Ministers.

22. Subsection (2) sets out the circumstances in which the Scottish Ministers can revoke the appointment of a member of the Commission, for instance insolvency of a member will allow the Scottish Ministers to use their discretion to end an appointment.

23. Subsection (3) defines insolvency for the purposes of subsection (2)(a).

Remuneration and staff

Section 12 - Remuneration, allowances and pensions

24. Section 12 permits the Commission to pay its members and employees remuneration and expenses. Subsection (1)(a) sets out that remuneration is to be determined by the Commission with the approval of the Scottish Ministers. Subsection (2) provides that the Commission may also make payment of pensions, allowances or gratuities as the Commission determines, but with the approval of the Scottish Ministers. Subsection (3) allows for pensions, allowances and gratuities to be paid to staff and members in compensation for any loss of office.

Section 13 - Staff

25. Subsection (1) provides that the Commission must employ a person as a chief executive. The first appointment will be made by the Scottish Ministers (subsection (2)), with subsequent appointments being made by the Commission with the approval of the Scottish Ministers (subsection (3)).

26. Subsection (4) allows the Commission to employ other staff, and subsection (5) sets out that the Commission are to determine the terms and conditions for staff, with the approval of the Scottish Ministers.

Operational matters

Section 14 - Validity of things done

27. To ensure that the Commission is always able to perform its functions, section 14 provides that the validity of any of its actions is not adversely impacted by a vacancy of membership, a defect in the appointment of a member or any resignation or removal under section 11 of the Bill.

Section 15 - Committees

28. Subsection (1) allows the Commission to set up committees for any purpose relating to the functions of the Commission, the Land Commissioners or the Tenant Farming Commissioner. Section 21(1)(a) authorises the Land Commissioners to delegate the exercise of their functions to any committee and section 23(1)(b) authorises the Tenant Farming Commissioner to delegate the exercise of the Tenant Farming Commissioner's functions to any committee. Subsection (2) authorises the Commission to delegate the exercise of its functions to any committee. The Commission will remain responsible for the exercise of its functions notwithstanding any delegation of the exercise of its functions to a committee (subsection (3)).

29. Subsection (4) enables persons who are not members of the Commission to be appointed to be a member of any committee established.

30. Subsection (5) allows for the payment of remuneration or allowances to any person who is not a member of the Commission who is appointed to be a member of any committee established.

31. Subsection (6) provides that any committee established must comply with any directions given to it by the Commission.

Section 16 - Regulation of procedure

32. Subsection (1) imposes a duty on the Commission to establish and maintain a register of interests for its members. Subsection (2) clarifies that, with the exception of the duty in subsection (1), the Commission is free to regulate its own internal procedures.

Accounts and annual report

Section 17 - Accounts

33. Subsection (1) imposes a duty on the Commission to keep proper accounts and accounting records, and prepare a statement of accounts for each financial year.

34. Subsection (2) requires the Commission to send accounts to the Scottish Ministers and subsection (3) provides that the Commission must comply with any direction from the Scottish Ministers regarding the preparation of the accounts under subsection (1).

35. Subsection (4) places a further duty on the Commission to ensure that an audited statement of accounts and accounting records is made available for public inspection.

Section 18 - Annual report

36. Subsection (1) places a duty on the Commission to prepare an annual report shortly after the end of each financial year, with an assessment of its performance in carrying out its functions, of the performance of Land Commissioners and the Tenant Farming Commissioner in carrying out their functions, an assessment of the performance of the Commission and its members in achieving their main objectives set out in the most recent strategic plan and an assessment of the performance of the Land Commissioners in relation to their most recently published programme of work.

37. Subsection (2) imposes procedural duties on the Commission to ensure that the annual report is published, sent to the Scottish Ministers and laid before the Scottish Parliament.

38. Subsection (3) enables the Commission to publish other reports and information in relation to its functions, and where it does do, it is under a duty to lay the report before the Scottish Parliament.

Application of public bodies legislation

Section 19 - Application of legislation relating to public bodies

39. This section makes a number of consequential amendments to other primary legislation in relation to public bodies so that Acts, like the Freedom of Information (Scotland) Act 2002, apply to the Commission.

CHAPTER 2 – THE LAND COMMISSIONERS

Functions of the Land Commissioners

Section 20 - Functions of the Land Commissioners

40. Subsection (1) sets out the functions of the Land Commissioners, which generally concern matters relating to land in Scotland.

41. Subsection (2) imposes a duty upon the Land Commissioners to consider any matter referred to them by the Scottish Ministers.

42. Subsection (3)(a) lists a number of matters that the Land Commissioners must have regard to when exercising their functions, including the land rights and responsibilities statement to be published by the Scottish Ministers under section 1. Subsection 3(b) provides that the Land Commissioners must work with the Tenant Farming Commissioner in exercising their functions.

43. Subsection (4) provides that the Land Commissioners must have regard to the exercise of the Tenant Farming Commissioner's functions under section 22 when the Land Commissioners exercise their functions in relation to agriculture and agricultural holdings.

44. Subsection (5) defines "matters in relation to land in Scotland" for the purposes of subsection (1).

Land Commissioners: delegation of functions

Section 21 - Land Commissioners: delegation of functions

45. Subsection (1) allows the Land Commissioners to delegate their functions to a committee established by the Commission under section 15, any employee of the Commission or any other person. The Land Commissioners cannot delegate their functions to the Tenant Farming Commissioner. Subsection (2) makes it clear that any delegation under subsection (1) does not affect the responsibility of the Land Commissioners for the exercise of the functions delegated.

CHAPTER 3 – THE TENANT FARMING COMMISSIONER

Functions of the Tenant Farming Commissioner

Section 22 - Functions of the Tenant Farming Commissioner

46. This section makes provision about the functions of the Tenant Farming Commissioner.

47. Subsection (1) sets out the functions of the Tenant Farming Commissioner

48. Subsection (2) places a duty on the Scottish Ministers to review the functions of the Tenant Farming Commissioner and to publish the findings of the review

49. Subsection (3) gives the Scottish Ministers the power to make regulations to amend, remove or add to the functions of the Tenant Farming Commissioner.

Section 23 - Tenant Farming Commissioner: delegation of functions

50. Section 23 makes provision for when the Tenant Farming Commissioner can delegate functions and to whom those functions can be delegated.

51. Subsection (1) gives the Tenant Farming Commissioner the power to authorise another person to exercise some, part of or all of the Tenant Farming Commissioner's functions. This includes the Land Commissioners, a committee of the Commission, and an employee of the Commission.

52. Subsection (2) sets out an exception to subsection (1) and makes clear that the Tenant Farming Commissioner cannot delegate the power under section 22(1)(d) and section 34 to refer for the opinion of the Land Court any question of law relating to agricultural holdings.

53. Subsection (3) makes clear that the Tenant Farming Commissioner remains responsible for the exercise of the Commissioner's functions, even if some, or part of those functions are delegated to another person.

Section 24 - Acting Tenant Farming Commissioner

54. Section 24 makes provision for the Scottish Ministers to appoint an acting Tenant Farming Commissioner, to carry out all of the functions of the Tenant Farming Commissioner, when there is a vacancy.

55. Subsection (2) makes clear that if a person has been disqualified for appointment as a Tenant Farming Commissioner, then that person is also disqualified from appointment as the acting Tenant Farming Commissioner. The circumstances under which a person can become disqualified are set out in section 10.

56. Subsection (3) sets out specific provision for when the acting Tenant Farming Commissioner can resign or be removed, and allows the Scottish Ministers to otherwise determine the terms and conditions of the acting Tenant Farming Commissioner's appointment.

57. Subsection (4) makes clear that an acting Tenant Farming Commissioner is to be treated the same as the Tenant Farming Commissioner, except for the terms under which the Commissioner can resign, be removed or remunerated. For an appointed Tenant Farming Commissioner, provision is made for resignation and removal in section 11 and provision for remuneration, allowances and pensions in section 12. Subsection (3) of this section provides the equivalent of these sections for an acting Tenant Farming Commissioner.

Tenant Farming Commissioner: codes of practice

Section 25 - Tenant Farming Commissioner: codes of practice

58. Section 25 places a duty on the Commissioner to prepare and publish codes of practice for the purpose of providing guidance to landlords and tenants of agricultural holdings.

59. Subsection (2) provides an indicative list of the issues relating to agricultural holdings that the codes of practice may cover.

60. Subsection (3) requires the Commissioner to review the codes of practice and revise the codes if appropriate. There is no set period in which a review must be carried out.

61. Subsection (4) provides that the Commissioner must consult on a draft code with persons appearing to have an interest before publishing any code of practice.

62. Subsection (5) requires the Commissioner to lay a copy of the code before the Scottish Parliament when the code is published. There is no prescribed form for a code and a code can be published in any form the Commissioner considers appropriate.

63. Subsection (7) confirms that any published code of practice can be admitted as evidence in any proceedings before the Scottish Land Court.

64. Subsection (8) requires the Scottish Land Court to take into account any part of a code of practice that may be relevant to any proceedings before the Court.

65. Subsection (9) confirms that a published code of practice can also be admitted, and should also where relevant be taken into account, as part of any arbitration proceedings under the 1991 and 2003 Agricultural Holdings Acts.

Section 26 - Tenant Farming Commissioner: promotion of codes of practice

66. Section 26 places a duty on the Tenant Farming Commissioner to promote the observance of codes of practice published under section 25, in accordance with the Tenant Farming Commissioner's function under section 22(1)(b), and sets out a list of ways in which this could be done.

Tenant Farming Commissioner: inquiry function

Section 27 - Application to inquire into breach of code of practice

67. Section 27, along with sections 28 to 33, makes provision about the exercise of the Tenant Farming Commissioner's function to inquire into alleged breaches of the codes of practice under section 22(1)(c). Section 27 sets out the process for a person with an interest in the tenancy, or who would have an interest but for an alleged breach, to apply to the Tenant Farming Commissioner to inquire into an alleged breach of a code of practice, published under section 25.

68. Subsection (2) sets out what any application under subsection (1) must contain.

69. Subsection (3) provides that an application must be accompanied by the appropriate fee, unless the Commissioner waives the need to pay the fee under subsection (5).

70. Subsection (4) requires the Commissioner, when setting the fee for the application, to consider the likely impact that the amount of the fee might have on the number of applications.

71. Subsection (5) sets out the circumstances in which the Commissioner can waive the fee for an application under subsection (1).

72. Subsection (6) makes clear that any application under subsection (1) does not affect any time limits for proceedings before the Scottish Land Court.

Section 28 - Procedure for inquiry

73. Section 28 provides for the process of an inquiry into an alleged breach of a code of practice, following receipt of an application under section 27, by setting out the conditions that

must be satisfied in order for the Tenant Farming Commissioner to inquire into an alleged breach; what the Commissioner may do in cases where those conditions are met; and in cases where those conditions are not met.

74. Subsection (1) sets out the conditions that must be satisfied in order for the Tenant Farming Commissioner to inquire into an alleged breach of a code of practice.

75. Subsection (2) provides that, where the Commissioner is not satisfied that the application contains sufficient information to proceed with an inquiry, the Commissioner can require the applicant to provide any additional information that is considered appropriate within a specified period.

76. Subsection (3) sets out the circumstances under which the Commissioner may dismiss an application.

77. Subsection (4) sets out what the Commissioner must do when satisfied that an application meets the conditions in subsection (1).

Section 29 - Enforcement powers

78. Section 29 makes provisions for requests by the Tenant Farming Commissioner for information for the purposes of applications and inquiries relating to alleged breaches of published codes of practice, and for the imposition of non-compliance penalties.

79. Subsection (1) gives the Commissioner a general power to make a request during an inquiry for any person to provide information appropriate for the purposes of that inquiry.

80. Subsection (2) provides that the Commissioner may impose a non-compliance penalty where: an applicant has failed to provide additional appropriate information where requested under section 28(2) where the Commissioner is not satisfied the application contains sufficient information; a person had failed to provide a response to an application, where the Commissioner is satisfied the application meets the relevant conditions, within the period specified following a request under section 28(4)(c); or a person has failed to provide information for the purposes of an inquiry requested under subsection (1).

81. Subsection (3) sets out that the Commissioner must set the amount of the non-compliance penalty, and sets out the maximum for such a penalty.

82. Subsection (4) provides that any non-compliance penalty imposed must be paid to the Commission.

83. Subsection (5) gives the Commission the power to recover any non-compliance penalty that is not paid as a civil debt.

Section 30 - Notice of non-compliance penalty

84. Section 30 makes provision about the content of a notice of a non-compliance penalty given by the Tenant Farming Commissioner under section 29(2) and provides a right of appeal for any person in receipt of such a notice.

85. Subsection (1) sets out the information that must be included in a notice of a non-compliance penalty.

86. Subsection (2) provides that a person served with a notice has the right to appeal to the Scottish Land Court against the notice and sets out the permitted grounds for any appeal.

87. Subsection (3) requires any appeal under subsection (2) to be made within 28 days of the day the notice of non-compliance was received.

88. Subsection (4) provides that, where a non-compliance notice is appealed, the penalty is suspended from the day the appeal is made until the appeal is determined or withdrawn.

89. Subsection (5) confirms that the Scottish Land Court can overturn, confirm or vary any notice of non-compliance that is appealed.

Section 31 - Report on inquiry

90. Section 31 makes provision for the production and publication by the Tenant Farming Commissioner of a report following an inquiry into an alleged breach of the codes of practice.

91. Subsection (1) provides that the Commissioner must publish a report as soon as practicable after the completion of an inquiry and sets out the information the report must contain where (a) there is sufficient information to reach a decision and (b) where there is not sufficient information to reach a decision.

92. Subsection (2) confirms that any report published can be admitted as evidence in any proceedings before the Scottish Land Court.

93. Subsection (3) requires the Scottish Land Court to take into account any part of a report that may be relevant to any proceedings before the Court.

94. Subsection (4) confirms that any report published can also be admitted as evidence, and should also where relevant be taken into account, as part of any arbitration proceedings under the 1991 and 2003 Agricultural Holdings Acts.

Section 32 - Tenant Farming Commissioner: confidentiality of information

95. Section 32 makes provision about the confidentiality of information obtained by or on behalf of the Tenant Farming Commissioner for the purposes of an inquiry into the breach of a code of practice.

96. Subsection (1) prohibits any relevant person, as set out in subsection (6), from disclosing any information obtained for the purposes of an inquiry into the breach of a code of practice unless authorised to do so under subsection (2)

97. Subsection (2) sets out the limited circumstances under which a relevant person can disclose any information obtained for the purposes of an inquiry into the breach of a code of practice.

98. Subsection (3) provides that any person who knowingly discloses any information obtained for the purposes of an inquiry into the breach of a code of practice where they are not authorised to do so under subsection (2), will be committing an offence.

99. Subsection (4) sets out the potential liability of a person found to be guilty of committing an offence under subsection (3).

100. Subsection (5) sets out the defences available to a person charged with an offence under subsection (3).

101. Subsection (6) sets out who is to be considered a relevant person for the purposes of subsection (1).

Section 33 - Protection from actions for defamation

102. Section 33 provides that, for the purposes of the law of defamation, any statement made by the Tenant Farming Commissioner as part of the exercise of the Commissioner's function under section 22(1)(c) to inquire into alleged breaches of the codes of practice, is to have qualified privilege.

Tenant Farming Commissioner: power to refer questions of law to Land Court

Section 34 - Referral of questions of law by Tenant Farming Commissioner to Land Court

103. Under section 22(1)(d), the Tenant Farming Commissioner has the function of referring for the opinion of the Scottish Land Court any question of law relating to agricultural holdings, and this section provides the Commissioner with the power to make such a reference where the question of law is one which may be competently determined by the Scottish Land Court.

PART 3 – INFORMATION ABOUT CONTROL OF LAND ETC.

Right of access to information on persons in control of land

Section 35 - Right of access to information about persons in control of land

104. Subsection (1) makes provision for regulations to be made by the Scottish Ministers about accessing information about persons in control of land. Regulations may only provide for persons affected by that land to access the information.

105. Subsection (2) sets out matters that the regulations made under subsection (1) may include. This list is not exhaustive.

106. Subsection (2)(a) provides that the regulations may define what is meant by persons in control of land. For example, a person in control of land could be defined as a person with a specified level of shareholding in a company that owns land where that shareholding would give an individual control over the decisions the owner makes in respect of land.

107. Subsection (2)(b) provides that the regulations may define what is meant by a person affected by the land. For example, a person who has a right of access over an area of land but is being denied access to that land could be a person affected by that land.

108. Subsection (2)(c) will allow the regulations to specify when the information about a person with control can be requested. For example, where a person affected by land can show that information about persons in control of the land will likely to be of assistance in resolving an issue that the person requesting the information has with that land. The regulations could also provide that a request could only be made where the information is not readily accessible by other means.

109. Subsection (2)(d) will allow the regulations to specify the form of the request and what information it should contain. For example, an application form for requests could be set out in regulations.

110. Subsection (2)(e) provides that the regulations may specify fees to be paid by the requester for requesting the information.

111. Subsection (2)(f) provides that the regulations may set out who the requests for information will be made to and so who will deal with those requests. This is referred to as the “request authority”. Regulations can provide for the functions of the request authority to be delegated to other persons.

112. Subsection (2)(g) provides that the regulations may set out the powers of the request authority to require information on persons in control of land. This can include the circumstances when information need not be provided. For example, the regulations may make provision about information not needing to be provided where this would result in the person the information relates to being put at risk if the information were disclosed.

113. Subsection (2)(h) provides that the regulations may make provision for the request authority to require information from third parties rather than requiring information from a person in control of the land.

114. Subsection (2)(i) provides that the regulations may set out circumstances in which the request authority need not provide the information obtained about persons in control of land to the person requesting that information. For example, the regulations could provide that, where information has been provided to the request authority about persons in control of land, but the person to whom that information relates can demonstrate good reasons why that information

should not be disclosed, the request authority need not disclose that information to the person requesting it.

115. Subsection (2)(j) provides that the regulations may make provision for appeals against decisions made by the request authority. For example, regulations could provide that an appeal could be made to a particular court.

116. Subsection (3) provides that regulations under subsection (1) may make provision for civil penalties and offences for failure to comply with requirements that are imposed under the regulations. For example, the regulations could provide that a person may be liable to a civil penalty or subject to the offence if the person fails, without good reason, to respond to a request from the request authority for the information.

117. Subsection (4) provides that, if the regulations made under subsection (1) make provision for civil penalties, the regulations must make provision for appeals against the imposition of such civil penalties.

118. Subsection (5)(b) provides that, if the regulations make provision imposing criminal offences, the maximum penalty that can be imposed in relation to those offences is a fine not exceeding level 3 on the standard scale. Currently this is set at £1,000.

119. Subsection (6) places a duty on the Scottish Ministers to consult before laying draft regulations before the Scottish Parliament.

120. Subsection (7) provides that regulations under this section may modify any enactment (including this Bill).

Information relating to proprietors of land etc.

Section 36 – Power of Keeper to request information relating to proprietors of land etc.

121. This section amends the Land Registration etc. (Scotland) Act 2012 to insert a new section 48A that provides a power for the Scottish Ministers to make regulations that will allow that the Keeper of the Registers of Scotland to request certain information.

122. The inserted section 48A(1) provides a power for the Scottish Ministers to make regulations that may allow the Keeper to request information relating to certain proprietors of land. .

123. The inserted section 48A(2) sets out matters that the regulations made under section 48(1) may include. This is not an exhaustive list.

124. Inserted section 48A(2)(a) provides that regulations may make provision enabling the Keeper to request information about the category of person or body into which a proprietor falls. For example, provision could be made for the Keeper to request information from proprietors as

to where they are a community body or charity (or equivalent). Section 48A(2)(b) may make provision for this information to be provided by the proprietor or on behalf of a proprietor.

125. Inserted section 48A(2)(c) and (d) provides that regulations may be made enabling the Keeper to request information about persons with a controlling interest in proprietors of plots of land and leases and set out what is meant by a “controlling interest”. For example, regulations may enable the Keeper to request that a proprietor provides information about any individuals with a specified level of shareholding in the proprietor.

126. Inserted section 48A(2)(e) provides that regulations may set out when information that has been disclosed under regulations made under section 48A(1) can be corrected or updated. For example, where a proprietor provides information that it is a community body and then it ceases to be so, the regulations may set out how the proprietor can notify the Keeper of this change.

127. Inserted section 48A(2)(f) provides that regulations may set out when the Keeper could provide information obtained under regulations made under section 48(1) to other persons.

128. Inserted section 48A(2)(g) provides that regulations may set out when the information obtained under the regulations made under subsection (1) can be published including when the information can be entered in the Land Register. For example, the regulations may provide that information that the Keeper obtains about a person with a controlling interest in a proprietor may only be entered on the Land Register if the person about whom that information relates has consented to the information being published in this way

129. Inserted section 48A(2)(h) provides that regulations may set out the fees to be payable to the Keeper for providing, correcting or updating the information that is requested under the regulations.

130. Inserted section 48A(3) sets out that “proprietor” for the purposes of inserted section 48A(1) and (2) includes a person whose name is to be entered as proprietor in the Land Register.

131. Inserted section 48A(4) provides that, before the regulations are made or laid in draft before the Scottish Parliament, depending on whether the negative or affirmative procedure applies, the Scottish Ministers must consult the Keeper.

132. Inserted section 48A(5) and (6) are self-explanatory.

133. Subsection (3) amends section 116 of the Land Registration etc. (Scotland) Act 2012. This provides that the affirmative procedure will apply to the first regulations under the new section 48A(1) and any regulations under this section which amend primary legislation. In all other cases the negative procedure will apply to regulations under new section 48A(1).

PART 4 – ENGAGING COMMUNITIES IN DECISIONS RELATING TO LAND

Section 37 – Guidance on engaging communities in decisions relating to land

134. Subsection (1) imposes a duty on Ministers to produce guidance about engagement with communities in decisions relating to land that may affect communities.

135. Subsection (2) requires the Scottish Ministers, in producing guidance, to have regard to the desirability of furthering the achievement of sustainable development in relation to land.

136. Subsection (3) sets out certain information that must be included in the guidance.

137. Subsection (4) requires the Scottish Ministers to consult prior to issuing the guidance.

PART 5 – RIGHT TO BUY LAND TO FURTHER SUSTAINABLE DEVELOPMENT

Key terms

Section 38 - Meaning of “land”

138. Subsection (1) provides that land for the purposes of Part 5 includes bridges and other structures built on or over land, inland waters, canals, and the foreshore (which is the land between the high and low water marks of ordinary spring tides).

139. It also provides land for the purposes of Part 5 includes salmon fishings in inland waters or mineral rights that are owned separately from the land in respect of which they are exigible but that land also does not include any other separate tenements owned separately from the land in respect of which they are exigible.

140. Subsection (2) sets out that “mineral rights” does not include rights to oil, coal, gas, gold or silver.

141. Subsection (3) sets out the meaning of “inland waters” in Part 5.

Section 39 – Eligible land

142. This section defines the land which is to be classed as eligible for the purposes of the right to buy in Part 5.

143. Subsection (1) provides that all land is eligible for the purposes of Part 5 except for land which is defined as “excluded land”.

144. Subsection (2) sets out the meaning of “excluded land”. Excluded land includes: land on which there is an individual’s home, except where the home is occupied by an individual under a tenancy; land pertaining to an individual’s home as may be set out in regulations; croft land (as defined in section 68 of the Land Reform (Scotland) Act 2003); land which is owned by the Crown by virtue of it having vested as *bona vacantia* (because no owner exists or can be

identified) or it having fallen to the Crown as *ultimus haeres* (because no heir to the previous owner exists or can be identified); and land of such other descriptions that Ministers may set out in regulations.

145. Subsection (3) provides that Ministers may make regulations setting out the buildings or structures that are or are to be treated as an individual's home and the types of occupation and possession that are or are to be treated as a tenancy.

Section 40 – Eligible land: salmon fishings and mineral rights

146. Subsection (1) sets out circumstances in which a Part 5 community body may apply to buy eligible land consisting of salmon fishings or mineral rights only. This can only be done where the Part 5 community body is also applying, or has applied, to buy the land to which the fishings or minerals relate, or the application is made during the relevant period.

147. Subsection (2) sets out that an application can only be made during the relevant period if the Part 5 community body has applied to buy the land that in respect of which the salmon fishings and mineral rights are exigible and the Part 5 community body, or third party purchaser nominated by the Part 5 community body, has confirmed its intention to proceed with buying that land or has already bought and retained the land in accordance with Part 5.

148. Subsection (3) sets out the meaning of “relevant period”. This is defined as beginning with the date on which the Scottish Ministers approved the application for the Part 5 right to buy. It ends either with the date the Part 5 community body, or third party purchaser where relevant, has indicated it is withdrawing its confirmation of intention to proceed, or where the Part 5 community body, or third party purchaser where relevant, has bought the land in respect of which the salmon fishings or mineral rights are exigible, within one year for land consisting of salmon fishings, or within five years for land consisting of minerals right.

Section 41 – Eligible land: tenant's interests

149. This section sets out the circumstances in which the right to buy may be exercised in relation to the interest of a tenant over tenanted land.

150. Subsection (1) states that the provisions about a tenant's interest apply where a tenancy has been created over land at least part of which is eligible land provided that it is not a croft tenancy, tenancy of a dwelling-house or such other type of tenancy that the Scottish Ministers may set out in regulations.

151. Subsection (2) specifies definitions of “principal subjects” and “tenanted land”.

152. Subsection (3) specifies the situations in which a Part 5 community body may apply to buy a tenant's interest in land. An application may be made if the Part 5 community body has made a simultaneous application to buy the land, or part of the land, to which the tenancy relates, it has made a prior application to buy the land on which Ministers have not yet made a decision or the application is made during the relevant period (and certain conditions are met).

153. Subsection (4) provides that the interest that the Part 5 community body may apply to buy under section 45 is the interest of the tenant over so much of the tenanted land as is comprised within the principal subjects.

154. Subsection (5) specifies the conditions under which the Part 5 community body can apply to purchase a tenant's interest during the relevant period. The conditions are that the Part 5 community body, or third party purchaser who was nominated by a Part 5 community body has confirmed to Scottish Ministers its intention to proceed to buy the land, or part of it, to which the tenancy relates or has already bought and retained that land in accordance with Part 5.

155. Subsection (6) defines the "relevant period". This is defined as beginning with the date on which Scottish Ministers approved the application for the Part 5 right to buy in relation to the land, or part of it, to which the tenancy relates. It ends either with the date the Part 5 community body, or third party purchaser where relevant, indicated that it is withdrawing its confirmation of intention to proceed, or five years from the date where the Part 5 community body, or third party purchaser where relevant, has bought the land.

156. Subsection (7) specifies that reference to a tenant includes sub-tenant.

Section 42 – Part 5 community bodies

157. Subsection (1) sets out the meaning of a Part 5 community body. Where a body applies under section 45 to exercise the right to buy itself then a Part 5 community body is a body that falls within subsection (2), (3) or (4). Where a body applies under section 45 but nominates a third party purchaser to exercise the right to buy then a Part 5 community body is a body falling within subsection (5). Ministers may also make regulations setting out additional descriptions of bodies that are to be Part 5 community body.

158. Subsection (2) sets out that a company limited by guarantee whose articles of association meet certain requirements may be a Part 5 community body for the purpose of subsection (1)(a).

159. Subsection (3) sets out that a Scottish charitable incorporated organisation whose constitution meets certain requirements may be a Part 5 community body for the purpose of subsection (1)(a).

160. Subsection (4) sets out that a community benefit society whose registered rules meets certain requirements may be a Part 5 community body for the purpose of subsection (1)(a).

161. Subsection (5) specifies that a body corporate whose written constitution meets certain requirements may be a Part 5 community body for the purpose of subsection (1)(b).

162. Subsection (6) provides that, in terms of subsection (2), (3) and (4), Ministers may dis-apply the requirement that there must be not fewer than 10 members.

163. Subsection (7) provides that a body is not a Part 5 community body until Scottish Ministers have confirmed in writing that the main purpose of the body is consistent with furthering the achievement of sustainable development.

164. Subsection (8) provides that the Scottish Ministers may by regulations modify subsections (2), (3), (4), (5) and (6).

165. Subsection (9)(a) sets out that the community of a body is defined by reference to a postcode unit (or units) or a type of area which Ministers set out in regulation. A community may also be defined with reference to both of these things. Subsection (9)(b) provides that the community includes people who are resident in that postcode unit or in one of the postcode units or other areas set out by Ministers in regulations. In addition to being resident, members of the community must also be entitled to vote at local government elections in a polling district that encompasses that postcode unit or postcode units or the alternative areas set out by Ministers in regulations. The Scottish Ministers may make regulations specifying unit or type of area included.

166. Subsection (10) provides that a Part 5 community body which is a company limited by guarantee may specify in its articles of association that, if the company is winding up, its property may only pass to another person if that person is a charity.

167. Subsection (11) provides definitions relevant to section 42.

Section 43 – Provisions supplementary to section 42

168. Section 43 sets out the constraints which apply to a Part 5 community body after it has acquired land under Part 5.

169. Subsection (1) provides that a Part 5 community body cannot change its memorandum, articles of association, constitution or registered rules without prior consent from Ministers in writing, while the land bought under Part 5 remains in its ownership.

170. Subsection (2) allows Ministers to acquire the land compulsorily if a Part 5 community body, which has bought land under Part 5, would no longer be entitled to buy the land.

171. Subsection (3) provides that Ministers cannot exercise their powers under subsection (2) to acquire the land compulsorily on the basis that the land is no longer eligible land.

172. Subsections (4) and (5) provide that Ministers may set out in regulations provisions relating to the compulsory acquisition of land under this section.

Register of Land for Sustainable Development

Section 44 – Register of Land for Sustainable Development

173. Section 44(1) provides for the creation of a Register of Land for Sustainable Development (the “Part 5 Register”) to be set up and kept by the Keeper of the Registers of Scotland (the “Keeper”).

174. Subsection (2) specifies the information and documents which must be kept in the Part 5 Register and provides that these must be kept in a form convenient for public inspection.

175. Subsection (3) requires that any person providing information or making a decision that requires to be registered in the Part 5 Register must give it or a copy of it to the Keeper to be as soon as reasonably practicable.

176. Subsections (4) and (5) allow a Part 5 community body when registering an application to require that information or documentation which relates to the raising or expenditure of money to allow land to which the application relates to be used should be withheld from public inspection and is to be kept separately by the Scottish Ministers. Such information or documentation will not be entered in the Part 5 Register. Subsection (6) states that nothing in subsections (4) and (5) empowers Ministers to require a Part 5 community body or third party purchaser to provide such information or documentation.

177. Subsection (7) confers powers on Ministers to make regulations to amend the information that is to be made publicly available in the Part 5 Register, to amend the provision about the Part 5 community body requesting that certain information can be withheld from the Register and amending the type of information that may be withheld.

178. Subsection (8) and (9) requires the Part 5 community body to notify the Keeper of changes to its name, registered office address or principal office address.

179. Subsection (10) sets out the duties which are imposed on the Keeper. The Keeper must make the Register available at all reasonable times for inspection free of charge, ensure that members of the public are able to request copies of the entries on payment of a charge as may be set out by Ministers in regulations, and that if anyone requests a true copy of the original document this will be supplied on payment of such a charge. Subsection (11) confirms that a certified extract is allowable as evidence.

180. Subsection (12) provides that the Keeper means the Keeper of the Registers of Scotland or such person as Ministers appoint to carry out the Keeper’s functions and subsection (13) allows for the appointment of different person for different persons.

Applications for consent

Section 45 – Right to buy: application for consent

181. Section 45 sets out the process a Part 5 community body must undertake in submitting an application to exercise the right to buy.

182. Subsection (1) specifies that the right can be exercised by a Part 5 community body or by a third party purchaser which is nominated by the Part 5 community body in its application.

183. Subsection (2) specifies that the right to buy can only be exercised with Ministers' consent on the written application of the Part 5 community body.

184. Subsection (3) provides that a right to buy land can be exercised in relation to more than one holding of land or more than one tenancy, but separate applications must have been made for each holding of land or tenancy. Subsection (4) defines "holding" of land and "tenancy". Ministers may make different decisions in relation to each separate application.

185. Subsection (5) specifies that an application must set out who the owner of the land is and, where the application is for a tenant's interest in land, who the tenant is, and identify any creditor in a standard security with a right to sell the land or any part of it. Ministers may set out the required form of the application in regulations. The application must also include or be accompanied by information of the kind specified by Ministers in regulations.

186. Subsection (6) lists the matters which the Part 5 community body must include in the application or which must accompany the application. These include the reasons why the Part 5 community body considers that its proposals for the land satisfy the sustainable development conditions set out in section 47(2), the location and boundaries of the land, all rights and interests in the land known to the Part 5 community body and the proposed use, development and management of the land.

187. Subsection (7)(a) specifies that at the same time as the Part 5 community body applies to Ministers, it must send a copy of its application form (including the associated material) to the owner of the land.

188. Subsection (7)(b) specifies that where the application is for a tenant's interest, the Part 5 community body must send a copy of its application form (including the accompanying material) to the tenant.

189. Subsection (7)(c) specifies that, where the Part 5 community body nominates a third party purchaser, at the same time as the Part 5 community body applies to Ministers, it must send a copy of its application form (including the accompanying information) to the third party purchaser.

190. Subsections (7)(d) and (8) require the Part 5 community body to send a copy of the application to any known creditor in a standard security over the land and invite the creditor to notify, within 60 days, the Part 5 community body and Ministers of circumstances in which a

calling-up notice has been served by the creditor, a notice of default has been served, a notice of default has been upheld or varied or where the court has granted the creditor a warrant under section 24 of the Conveyancing and Feudal Reform (Scotland) Act 1970.

Section 46 – Right to buy: application procedure

191. Subsection (1) provides that upon receiving the application under section 45, Scottish Ministers must invite: the owner of the land; where the application is to buy a tenant's interest, the tenant; any creditor in a standard security; where the application includes a third party purchaser, the third party; and any other person that may have an interest in the application, to send written comments on the application to Scottish Ministers within 60 days of the Ministers' invitation. Ministers must also take reasonable steps to invite comments from owners of land adjacent to the land to which the application relates. The community body must be sent copies of the invitations.

192. Subsection (2) specifies matters which the invitation to a landowner and, where the application is to buy a tenant's interest, the tenant, must invite the landowner or tenant to provide comment on.

193. Subsection (3) provides that Ministers must give public notice of receipt of the application as soon as practicably possible and invite views within 60 days of the publication of the notice, and subsection (4) provides that the public notice is to be given by advertisement in such manner as specified in regulations.

194. Subsection (5) provides that Ministers must pass all views received on an application to the Part 5 community body and invite them to respond to these views within 60 days of Ministers sending the invitation.

195. Subsection (6) provides that when considering whether or not to give consent to the application, Ministers must have regard to all views received in answer and responses to those views to the invitation sent under section 46.

196. Subsection (7) provides that Ministers must decline to consider an application that does not comply with the requirements of section 46, is otherwise incomplete or otherwise indicates that it is one which the Scottish Ministers would be bound to reject.

197. Subsection (8) sets constraints on the timing of the Ministers' decision on an application. It provides that Ministers must not make any decision on the application before the end of the 60-day period within which a Part 5 community body may respond to an invitation by Ministers under subsection (5) to provide responses to the comments on an application. Alternatively, if by the date of 60 days after the date on which the Part 5 community body may provide Ministers with a response to an invitation sent under subsection (5), the Lands Tribunal has not notified Ministers of any finding under section 62, Ministers must not make a decision until the date on which the Lands Tribunal provides Ministers with that finding.

198. Subsection (9) provides that, where requested by the Part 5 community body or third party purchaser where relevant, the Scottish Ministers must treat as confidential any information or document relating to the financial aspects of the application.

Section 47 – Right to buy: Ministers’ decision on application

199. Subsection (1) sets out that Ministers must not consent to an application to buy land under section 45 unless they are satisfied that application meets the sustainable development conditions and the procedural requirements have been complied with.

200. Subsection (2) sets out the sustainable development conditions. All conditions must be met for Ministers to consent to an application. These conditions are that the transfer of land is likely to further the achievement of sustainable development in relation to the land, that the transfer is in the public interest, that the transfer of land is likely to result in significant benefit to the community and is the only practicable way of achieving that benefit, and that not granting consent to the transfer is likely to result in significant harm to the community.

201. Subsection (3) sets out the procedural requirements. These include that the community body has, at least six months prior to the application being made, submitted a written request to the owner of the land to transfer the land to the community body or person named in the application and the owner has not responded or agreed to the request. They also include a requirement that land is eligible land, the owner and any creditor in standard security is correctly identified, where a third party purchaser is nominated, that the party is correctly identified and shown to consent to the application and that the owner is not prevented from selling the land or subject to any enforceable personal obligation. In a significant number of the members of the community have a connection with the land, that the land is sufficiently near to land with which those members of the community have a connection or that the land is in or sufficiently near to the area comprising that community. The community must have approved the exercise of the right to buy and Part 5 community body must comply with the provision of section 42.

202. Subsection (4) provides that, where an application relates to land which consists of salmon fishings or mineral rights only, Ministers must in addition be satisfied that the application complies with the requirements of section 40. That section contains provision requiring the Part 5 community body or third party purchaser to have already purchased the land, under Part 5, which the salmon fishings or mineral rights relate to, or to be in the process of applying to buy that land under Part 5.

203. Subsection (5) sets out that, where an application includes a request to buy a tenant’s interest, the Scottish Ministers must be satisfied that the sustainable development conditions under subsection (2) are met in respect of the tenants’ interest, and that the procedural requirements set out in subsection (6) have been complied with.

204. Subsection (6) sets out the procedural requirements that must be complied with in respect of an application to buy a tenant’s interest. These require that, at least six months prior to making the application, the Part 5 community body has submitted a written request to the tenant to transfer the tenant’s interest to the community body or person named in the application. They also require that the tenant, owner and any creditor in standard security is correctly identified,

where a third party purchaser is nominated, that the party is correctly identified and is shown to consent to the application and that the application complies with the requirements of section 41. The requirements also include that a significant number of the members of the community have a connection with the land, that the land is sufficiently near to land with which those members of the community have a connection or that the land is in or sufficiently near to the area comprising that community. Also, the community must have approved the exercise of the right to buy and the Part 5 community body must comply with the provisions of section 42.

205. Subsection (7) provides that in considering whether the application meets the sustainable development criteria, the Scottish Ministers must take into account any information provided in any related application under section 45 to buy land to which the tenancy relates.

206. Subsection (9) defines “relevant community”.

207. Subsection (10) provides that, in determining what constitutes significant benefit or significant harm to a community, the Scottish Ministers must consider the likely effect of granting or refusing consent to the transfer of land or tenant’s interest, including the likely effect on the economic development, regeneration, public health, social wellbeing and environmental wellbeing on the lives of the persons comprising that community.

Section 48 – Ballot to indicate approval for purposes of section 47

208. Section 48 sets out the requirements for a ballot to establish that a right to buy application by a Part 5 community body, or the third party purchaser where relevant, has the support of its community.

209. Subsection (1) provides that a proposal by a Part 5 community body to exercise a right to buy, with a third party purchaser where relevant, will be deemed to have been approved by the relevant community, if, firstly, the ballot takes place within the six-month period immediately preceding the date of the right to buy application; secondly, that at least half of the community voted in the ballot or where fewer than half of the members of the community voted, the proportion that voted is sufficient to justify the community body proceeding to purchase the land; and finally, that the majority of the votes cast were in favour of the proposal to buy the land or tenant’s interest.

210. Subsection (2) provides that the ballot must be conducted as may be set out in regulations made by the Scottish Ministers. Subsection (3) sets out matters which must be included in those regulations.

211. Subsection (4) provides that if the ballot is not conducted as specified by regulations the right to buy under the application is extinguished.

212. Subsection (5) specifies that the Part 5 community body must notify Ministers of the result within 21 days of the ballot or, where the application is made before the expiry of that 21-day period, at the same time as the application is submitted. This subsection also sets out what information about the ballot the Part 5 community body must provide to Ministers.

213. Subsection (6) provides that Ministers may require a Part 5 community body to provide further information about the ballot or any consultation that the community body may have held undertaken.

214. Subsection (7) provides that the Part 5 community body is responsible for the expense of conducting the ballot.

215. Subsection (8) provides that Scottish Ministers may set out in regulations circumstances in which the Part 5 community body may seek reimbursement for the expense of conducting a ballot from the Scottish Ministers.

216. Subsection (9) provides that Ministers may set out in regulations details about the circumstances, method, criteria and procedure for reimbursement of expenses for conducting a ballot. In particular subsection (9)(d) to (f) provides that regulations may make provision regarding the procedure to be followed when appealing a decision made by the Scottish Ministers in respect of the expenses of conducting the ballot, the persons who may consider an appeal and the powers of such persons.

Section 49 – Right to buy same land exercisable by only one Part 5 community body

217. Section 49 deals with the situation where there is more than one Part 5 community body applying to buying the same land or tenant's interest.

218. Subsection (1) provides that only one Part 5 community body may apply under Part 5 in relation to the same land or tenant's interest.

219. Subsection (2) provides that, where more than one Part 5 community body submits an application seeking to buy the same land or tenant's interest, Ministers have to decide which application is to proceed.

220. Subsection (3) provides that Ministers must not take any decision on any of the applications relating to the same land or tenant's interest before they have considered all views and responses related to each application which they have received in answer to invitations under section 46.

221. Subsection (4) provides that, once Ministers have decided which Part 5 community body's application is to be allowed to proceed, the other Part 5 community body's right to buy shall be extinguished. It also specifies that Ministers must notify the decision to the owner of land, the tenant where the application is to buy a tenant's interest, the Part 5 community body and a third party purchaser, where relevant, and any person invited under section 46(1)(a) to send views on the application.

Section 50 – Consent conditions

222. Section 50 provides that Ministers may impose conditions on their consent to an application under section 45 to exercise the right to buy.

Section 51 – Notification of Ministers’ decision on application

223. Section 51 sets out how Ministers must notify the relevant parties of their decision to consent to or refuse an application.

224. Subsection (1) provides that Ministers must give notice in writing of their decision, and their reasons for it, to consent to or refuse an application under section 45, and sets out that notice must be given to the owner of land, the tenant where the application is to buy a tenant’s interest, the Part 5 community body and a third party purchaser where relevant, the Keeper and every other person who was invited to send views on the application under section 46(1)(a). The form of the notice is to be set out in regulations.

225. Subsection (2) provides that the notice must set out the land, or where relevant, the tenant’s interest to which the decision relates, must set out to whom the land is to be transferred or the tenant’s interest assigned and, where consent is given, must set out any conditions imposed by Ministers. It further specifies that the notice must contain information about the consequences of the decision and the date on which the consent is given or refused.

Procedure following consent

Section 52 – Effect of Ministers’ decision on right to buy

226. Subsection (1) gives Ministers power to make regulations prohibiting certain persons from transferring or otherwise dealing with the land, or tenant’s interest where appropriate, in respect of which an application under section 45 has been made.

227. Subsection (2) sets out matters that the regulations under subsection (1) may include.

228. Subsection (3) provides that Ministers may make regulations to suspend rights over land in respect of which a Part 5 application has been made.

229. Subsection (4) sets out that these regulations may provide for rights which will not be suspended, as well as rights which will not be suspended in certain circumstances.

230. Subsection (5) provides that nothing in Part 5 prejudices the position of creditors seeking to prevent the disposal of heritable property by a debtor by means of inhibition, action of adjudication or any other diligence.

Section 53 – Confirmation of intention to proceed with purchase and withdrawal

231. Section 53 sets out the procedure which follows the consent by Ministers to the exercise of a right to buy.

232. Subsection (1) provides that, where an application made under section 45 does not nominate a third party purchaser, the right to buy can only be exercised by the Part 5 community body if that body notifies the Scottish Ministers, the owner of the land and, where the application

is to buy the tenant's interest, the tenant, of its intention to proceed within 21 days of receiving the notice of the valuation under section 56(13).

233. Subsection (2) provides that, where an application made under section 45 nominates a third party purchaser, the third party's right to buy can only be exercised if both the Part 5 community body and the third party purchaser notify the Scottish Ministers, the owner of the land and, where the application is to buy the tenant's interest, the tenant, of intention to proceed within 21 days of receiving the notice of the valuation under section 56(13).

234. Subsection (3)(a) provides that where a Part 5 community body does not nominate a third party purchaser, the Part 5 community body may withdraw its right to buy application at any time up to receipt of the valuation, by notice in writing to Ministers. Subsection (3)(b) allows the Part 5 community body to withdraw a confirmation of intention to proceed it has previously given, by giving notice in writing to Ministers.

235. Subsection (4) provides that, where an application nominates a third party purchaser, up until receipt of the valuation only the Part 5 body may withdraw the application. After receipt of the valuation, either the Part 5 body or the third party purchaser may withdraw a confirmation of intention to proceed it has previously given, by giving notice in writing to Ministers.

236. Subsection (5) provides that the Scottish Ministers must acknowledge receipt of a notice withdrawing an application, a notice of intention to proceed or a notice withdrawing the intention to proceed and send a copy of the acknowledgement to the Keeper, the owner of the land and, where the application is to buy a tenant's interest, the tenant.

Section 54 – Completion of purchase

237. Section 54 deals with the purchase of land following Ministers giving consent to a Part 5 right to buy application.

238. Subsection (1) provides that the Part 5 community body, or third party purchaser where relevant, is responsible for preparing the documents necessary to effect the transfer of the land or assignation of the tenant's interest, for ensuring that the land or interest transferred or assigned is the same as that specified in the application and for ensuring that the transfer or assignation is undertaken in accordance with any conditions specified in the consent given by Ministers.

239. Subsection (2) provides that, where the Part 5 community body, or third party purchaser where relevant, cannot comply with its duty regarding the land or tenant's interest to be conveyed, due to the fact that all or part of the land or tenancy covered by the consent to the application is not owned or tenanted by the person named as owner or tenant in the application, then it must refer this matter to Ministers.

240. Subsection (3) provides that where a reference is made to Ministers under subsection (2) then Ministers must direct that the right to buy is extinguished.

241. Subsection (4) requires the owner of the land subject to the Part 5 right to buy to make title deeds and other documents available to, and transfer title to, the Part 5 community body, or third party purchaser where relevant.

242. Subsection (5) provides that if, within six weeks of Ministers consenting to the application to buy the land, the owner refuses or fails to make these deeds available, or if they cannot be found, the Part 5 community body, or third party purchaser where relevant, can apply to the Lands Tribunal for an order requiring the production of those documents.

243. Subsection (6) provides that the Part 5 community body may apply to the Lands Tribunal to authorise its clerk to effect the transfer of title where the owner refuses, or for other reasons fails, to do so. Where the clerk to the Tribunal does so the effect will be the same as if it were done by the owner.

244. Subsection (7) applies where the application is to buy a tenant's interest and requires the tenant of the land subject to the Part 5 right to buy to make deeds and other documents available to and assign the interest to the Part 5 community body, or third party purchaser where relevant.

245. Subsection (8) provides that if, within six weeks of Ministers consenting to the application to buy the tenant's interest, the tenant refuses or fails to make these deeds available, or if they cannot be found, the Part 5 community body, or third party purchaser where relevant, can apply to the Lands Tribunal for an order requiring the production of those documents.

246. Subsection (9) provides that the Part 5 community body may apply, or third party purchaser where relevant, to the Lands Tribunal to authorise its clerk to effect the assignation where the tenant refuses, or for other reasons fails, to do so. Where the clerk to the Tribunal does so the effect will be the same as if it were done by the tenant.

Section 55 – completion of transfer

247. Section 55 sets out the process for completing the transfer or assignation of a tenant's interest.

248. Subsection (1) provides that the consideration payable for the land or tenant's interest in respect of which the Part 5 right to buy is exercised is the value of that land or interest as assessed under section 56 by the valuer appointed by Ministers.

249. Subsection (2) provides that, subject to subsections (3) to (5), the consideration i be paid not later than six months after the date on which Ministers consented to the right to buy application under section 45.

250. Subsection (3) specifies circumstances where either this payment deadline will not apply or where an alternative deadline will apply. In particular, it allows the landowner, or tenant where the application is to buy a tenant's interest, and the Part 5 community body, or third party purchaser where relevant, to agree an alternative payment date. It provides that, where the assessment of the valuation of the land, tenant's interest or determination under section 57 as the

case may be, has not been completed within four months of the date that the Scottish Ministers consent to the application, then payment must be made within two months of the completion of the assessment. Finally, it provides for deferral of payment when the valuation or determination under section 57 is subject to an appeal.

251. Subsection (4) specifies circumstances where Scottish Ministers may extend the final settlement date on application of any of the parties. This can be done where there is an appeal of a decision or determination in relation to a related application under section 45.

252. Subsection (5) specifies that, where the owner is unable to grant a good and marketable title to the Part 5 community body, or third party purchaser where relevant, by the date of payment, or, where relevant, the tenant is not able to assign the tenant's interest to the Part 5 community body, or third party purchaser, as appropriate, then payment is to be made to and held by the Lands Tribunal pending either title is granted or the assignation effected or notification to the Lands Tribunal by the Part 5 community body, or third party purchaser where relevant, that it has decided not to complete the transaction.

253. Subsection (6) provides that the Scottish Ministers must within seven days acknowledge receipt of notice not to proceed under subsection (5), copying acknowledgement to the Keeper, the owner of the land, where the application is to buy a tenant's interest, the tenant, and the Part 5 community body or, as the case may be, the third party purchaser.

254. Subsection (7) specifies that, if the consideration is not paid by the Part 5 community body, or third party purchaser where relevant, by the due date, then confirmation of intention to proceed is treated as withdrawn and so the right to buy will no longer be able to be exercised (this subsection does not apply where subsection (5) applies).

255. Subsection (8) provides that, when the Part 5 community body, or third party purchaser is granted title to the land or is assigned the tenant's interest, any heritable security which burdened the title or assignation immediately before granting of title or assignation will cease to do so once the interest of the Part 5 community body or third party purchaser is registered in the Land Register of Scotland.

256. Subsection (9) provides that a heritable security that related to land or a tenant's interest other than that acquired through the Part 5 right to buy will continue to apply to that other land or interest.

257. Subsection (10) provides that where land is disburdened of a heritable security on purchase of the land or assignation of a tenant's interest, then unless the creditors otherwise agree, the Part 5 community body, or third party purchaser where relevant, must pay the creditors under that heritable security whatever sums are due to them.

258. Subsection (11) provides that the Part 5 community body, or third party purchaser where relevant, must deduct any sums paid to a heritable creditor under the provisions of subsection (10) from the amount that the body is due to pay the owner or the tenant. In effect, the landowner

or tenant will receive a sum for the land or tenant's interest which will take account of the sum required to clear any securities.

Section 56 – Assessment of value of land etc.

259. Section 56 sets out the procedure for valuation of the land or tenant's interest in respect of which a Part 5 community body, or third party purchaser where relevant, is exercising its right to buy.

260. Subsection (1) requires that the Scottish Ministers, where they have consented to a Part 5 right to buy application, must appoint a valuer to assess the value of that land or tenant's interest within 7 days of that consent.

261. Subsection (2) provides that the validity of anything done under this section will not be affected by any failure by the Scottish Ministers' to comply with the time limit specified in subsection (1).

262. Subsection (3) sets out the role of the valuer.

263. Subsection (4) specifies that the value of the land or tenant's interest to be ascertained is the market value at the date Ministers consented to the application to exercise the right to buy.

264. Subsection (5) defines market value as the sum of the open market value if the sale were between a willing seller and willing buyer, plus any depreciation in the value of other land and interests belonging to the seller or tenant as a result of the transfer of land or assignation of tenant's interest, plus any disturbance to the seller or tenant resulting from the transfer or assignation.

265. Subsection (6) specifies that in arriving at the open market value for the purposes of subsection (5)(a), account may be taken of the known existence of a potential purchaser with a special interest in the property (other than the Part 5 community body or third party purchaser where relevant). It also specifies that no account shall be taken of the fact that no time was allowed for marketing the property or of the depreciation of other land or interests or disturbance.

266. Subsection (7) states that the Scottish Ministers will pay for the valuation under this section.

267. Subsection (8) requires the valuer to ask both the owner, or tenant, and the Part 5 community body, or third party purchaser where relevant, for their views in writing on the value of the land or tenant's interest and to take these representations into account in arriving at the valuation.

268. Subsection (9) requires that where the valuer receives views from the owner, or tenant, then the Part 5 community body, or third party purchaser where relevant, must be invited to send their views to the valuer. Similarly, that where the valuer receives views from the Part 5

community body, or third party purchaser where relevant, then the owner, or tenant, must be invited to send their views to the valuer.

269. Subsection (10) requires the valuer to consider any views sent under subsection (9)

270. Subsection (11) specifies that where the Part 5 community body, or third party purchaser where relevant, and the owner have agreed the valuation, they must notify the valuer in writing of that valuation.

271. Subsection (12) specifies that where the Part 5 community body, or third party purchaser where relevant, and the tenant have agreed the valuation, they must notify the valuer in writing of that valuation.

272. Subsections (13) and (14) provides the parties the appointed valuer must notify of the valuation. This must be done within eight weeks of the valuer being appointed or within a longer period set by Ministers, as requested by the valuer.

273. Subsection (15) sets out that the validity of anything done under Part 5 is not affected by a failure by the valuer to comply with the time limit.

Section 57 – Acquisition of interest of tenant over land: allocation of rents etc.

274. Section 57 sets out the implications of the exercise of the right to buy where the application to purchase a tenant's interest does not apply to the entirety of the land that the tenancy relates to.

275. Subsection (1) specifies that the valuer will consider and determine any questions as to the allocation of rents or rights and obligations generally payable or receivable under the tenancy.

276. Subsection (2) provides that the determination will be as the valuer considers to be equitable in all the circumstances.

277. Subsection (3) provides that the valuer must notify the Part 5 community body, the third party purchaser where relevant, and the tenant of the valuer's determination.

Compensation

Section 58 – Compensation

278. Section 58 provides for payment of compensation in connection with an application to exercise the Part 5 right to buy. It provides that the compensation will be payable by the Part 5 community body or third party purchaser, except where Ministers have refused the application, in which case the compensation due to the owner of land, or tenant, will be paid by Ministers.

279. Subsection (1) specifies the circumstances in which eligibility for compensation will arise in circumstances where there is no third party purchaser and provides that this compensation will be payable by the Part 5 community body.

280. Subsection (2) specifies the circumstances in which eligibility for compensation will arise in circumstances where there is a third party purchaser and provides that this compensation will be payable by the third party purchaser or, in some circumstances, the Part 5 community body.

281. Subsection (3) provides that the Part 5 community body, third party purchaser where relevant, will not be liable to pay compensation when a Part 5 right to buy application is made but is not approved by Ministers.

282. Subsection (4) provides that where an application has been refused, an owner of land, or where relevant, a tenant, is entitled to recover certain losses or expenses from the Scottish Ministers.

283. Subsection (5) provides that the Scottish Ministers may set out in regulations further detail on the amounts payable in respect of loss or expense, who is liable to pay those amounts, and how any compensation is to be claimed.

284. Subsection (6) provides that, where the amount of compensation has not been settled by the parties within the timescale set out in regulations, either party can refer the question to the Lands Tribunal.

285. Subsection (7) provides that where parties refer compensation to the Lands Tribunal the party making the referral must notify the Scottish Ministers of the reference and its date (this doesn't apply where it is the Scottish Ministers who make the referral).

286. Subsection (8) requires the Lands Tribunal to send a copy of its findings on a question referred to it under subsection (6) to the Scottish Ministers.

287. Subsection (9) provides that failure to comply with subsections (7) or (8) has no effect on the right to buy or the validity of the reference under subsection (6).

Section 59 – Grants towards liabilities to pay compensation

288. Subsection (1) provides that the Scottish Ministers may, in certain circumstances, pay a grant to a Part 5 community body or, where relevant, a third party purchaser to assist it in meeting the compensation it has to pay in connection with its exercise of a right to buy.

289. Subsection (2) specifies the circumstances in which payment of such a grant is permitted and subsection (3) makes it clear that Ministers are not bound to pay a grant even if all the circumstances specified arise.

290. Subsection (4) provides that payment of a grant may be subject to conditions including conditions relating to repayment in the event of a breach.

291. Subsection (5) provides that a grant may be paid only if the Part 5 community body, or third party purchaser where relevant, applies for it, and subsection (6) provides that Ministers may set out in regulations the form of the application and the application procedure.

292. Subsection (7) provides that Ministers must issue their decision on an application for a grant in writing and, where that decision is to refuse to pay a grant, include the reasons for that refusal. Subsection (8) provides that Ministers' decision on whether to pay a grant or not is final.

Appeals and references

Section 60 – Appeals to sheriff

293. Section 60 sets out rights of appeal in connection with decisions of the Scottish Ministers on an application under section 45.

294. Subsections (1), (2), (5) and (6) provide that the owner of land, the tenant where the application relates to a tenant's interest, a person who is a member of the community to which a Part 5 community body relates and a creditor in a standard security with a right to sell land to which an application relates may appeal against the Scottish Ministers' decision to consent to an application made under section 45.

295. Subsection (3) allows the Part 5 community body to appeal against a decision by the Scottish Ministers to refuse an application. Where there is more than one Part 5 community body wishing to purchase the land, subsection (4) provides that Ministers' decision on which community body's application will proceed is final and cannot be appealed to the sheriff.

296. Subsection (7) specifies the timeframe within which an appeal may be made.

297. Subsection (8) specifies that the sheriff court with the jurisdiction to hear an appeal is the sheriffdom in which the land which is the subject of the application (or as the case may be, over which the tenancy has been created) is located.

298. Subsection (9) specifies who each appellant must inform when an appeal is made.

299. Subsection (10) provides that the sheriff's decision is final, may require rectification of the Register of Land for Sustainable Development and may impose conditions on the appellant.

Section 61 – Appeals to Lands Tribunal: valuation

300. Subsection (1) sets out the persons that may appeal the valuation under section 56 to the Lands Tribunal.

301. Subsection (2) identifies which persons may appeal a determination of allocation of tenant's interest under section 57 to the Lands Tribunal.

302. Subsection (3) requires an appeal under section 61 to state the grounds of the appeal and that it be lodged within 21 days of valuation being notified under section 56(13).

303. Subsection (4) provides that the Lands Tribunal may reassess the valuation of the land or, as the case may be, tenant's interest and may substitute its own determination for any determination under section 57.

304. Subsection (5) provides that the valuer may be a witness in the appeal proceedings.

305. Subsections (6) and (7) provide that the Lands Tribunal must give reasons for its decision on an appeal and issue a written statement of these reasons. They also specify the timescales within which the Lands Tribunal must issue the written statement of its reasons.

306. Subsection (8) provides that the validity of anything done under Part 5 is not affected by any failure of the Lands Tribunal to issue a written statement by the date required in subsection (6) or (7).

307. Subsection (9) requires the person making the appeal to notify Scottish Ministers within 7 days of the making of the appeal and also notify the date of the making of the appeal.

308. Subsection (10) requires the Lands Tribunal to send a copy of the written statement of reasons issued under subsection (6) to Scottish Ministers.

309. Subsection (11) provides that failure to comply with subsection (9) or (10) does not affect the right to buy or the validity of the appeal.

310. Subsection (12) provides that Ministers are not competent parties to any appeal by reason only that they appointed the valuer.

311. Subsection (13) provides that Ministers' powers under the Lands Tribunal Act 1949 to make rules are extended so that Ministers can make any rules necessary or expedient in connection with Part 5.

Section 62 – Reference to Lands Tribunal of questions on applications

312. Section 62 sets out rights to refer questions relating to the Part 5 application to the Lands Tribunal.

313. Subsection (1) identifies the persons that can refer a question on application to the Lands Tribunal.

314. Subsection (2) identifies the persons whose representations the Lands Tribunal may consider in determining a reference.

315. Subsection (3) provides that the Lands Tribunal must inform Ministers of its findings on any of the questions referred to it and may, by order, provide for Ministers to consent to an application only if they impose certain conditions under section 50, as directed by the Lands Tribunal.

316. Subsection (4) provides that, if the Lands Tribunal finds that the question on the application is not relevant to the Ministers' decision, the Lands Tribunal may decide not to consider the question further and find accordingly.

317. Subsection (5) provides that the person referring a question to the Lands Tribunal must notify the Scottish Ministers of the reference and the date of reference within seven days of referring it.

318. Subsection (6) provides that failure to comply with subsections (3)(a) or (5) has no effect on the validity of the application, the right to buy or the validity of the reference under this section.

Section 63 – Agreement as to matters appealed

319. Section 63 provides that parties to the Part 5 application are not prevented from settling or agreeing a matter which is subject to an appeal under sections 60 or 61 between or among them.

Mediation

Section 64 – Mediation

320. Subsection (1) provides that the Scottish Ministers may arrange or facilitate mediation in relation to a proposed exercise of the Part 5 right to buy.

321. Subsection (2) sets out the persons who may request mediation under subsection (1).

322. Subsection (3) identifies steps the Scottish Ministers may take in arranging or facilitating mediation.

Interpretation of Part 5

Section 65 – Interpretation of Part 5

323. Section 65 sets out some matters of interpretation.

324. Subsection (1) provides that any reference to “Lands Tribunal” means the Lands Tribunal for Scotland.

325. Subsection (2) provides that any reference to a creditor in a standard security with a right to sell land is a reference to a creditor who has such rights under section 20(2) or 23(2) of the

Conveyancing and Feudal Reform (Scotland) Act 1970, or a warrant granted under section 24(1) of that Act.

326. Subsections (3) and (4) provide that public or local holidays should not be taken into account when calculating time periods in Part 5, except for the six-month period of completion for the right to buy, the 28-day period for a right of appeal to the sheriff and the 21-day period for a right of appeal to the Lands Tribunal on the valuation or section 57 determination.

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

327. This Part provides for valuation of shootings and deer forests by the assessors (who are statutorily appointed by local authorities to undertake valuation of properties, including for the purposes of levying non-domestic rates) and corresponding entries in the valuation rolls.

Section 66 - Repeal of exclusion of shootings and deer forests from valuation roll

328. Shootings and deer forests are each specified as lands and heritages in section 42 of the Lands Valuation (Scotland) Act 1854 but have been excluded from valuation rolls (and thereby exempted from non-domestic rates) since 1 April 1995, as provided for by section 151 of the Local Government etc. (Scotland) Act 1994 (the 1994 Act). Schedule 14 of that Act also repealed the Sporting Lands Rating (Scotland) Act 1886, provisions of which related to valuation of shooting and deer forests. Section 66 repeals the exclusion of shootings and deer forests from valuation rolls by amending the 1994 Act to repeal the words “shootings, deer forests” from section 151(1) of that Act.

Section 67 - Valuation of shootings and deer forests

329. Section 67 requires separate entries in the valuation rolls for any shootings and any deer forests within the corresponding valuation area, when the assessors are making up or altering valuation rolls.

330. Once the exclusion has been repealed, section 7 of the Local Government (Scotland) Act 1975 applies to the new entries, and these shootings and deer forests will be liable to non-domestic rates, based on the assessors’ valuations, subject to any eligibility for rates relief.

PART 7 – COMMON GOOD LAND

Section 68 - Change of use of land forming part of the common good

331. At present, where there is a question as to the right of a local authority to take land out of the common good the authority can dispose of such land but only after obtaining the consent of the Court of Session or the sheriff. By amending section 75 of the Local Government (Scotland) Act 1973, this section extends this power to cases where an authority wishes to use such land for a different purpose without disposing of it. As with the existing power, the Court of Session or the sheriff will be able to impose conditions on any consent that may be granted.

PART 8 – DEER MANAGEMENT

Section 69 - Functions of deer panels

332. This section provides for further functions to be conferred on deer panels. Deer panels are appointed by Scottish Natural Heritage (SNH) under Section 4 of the Deer (Scotland) Act 1996 (the 1996 Act), subject to the approval of the Scottish Ministers. Deer panels are appointed for the purpose of providing advice to SNH on the subject of deer management. This section inserts new subsections into section 4 of the 1996 Act to enable the Scottish Ministers to make regulations conferring new functions on deer panels, including encouraging engagement of the local community in deer management; communicating issues regarding deer management to the local community; and, communicating the views of the local community to those involved in deer management.

Section 70 - Deer management plans

333. This section provides for a new power for Scottish Natural Heritage (SNH) to require a land owner or occupier to produce a deer management plan. SNH can approve or reject the plan and failure to develop or implement a plan would be grounds for SNH to move to the development of a deer control agreement under section 7 of the 1996 Act. SNH already has the power, where a section 7 agreement fails, or where it is not possible to reach agreement, to proceed to a deer control scheme under section 8 of the 1996 Act.

334. Subsections (1) and (2) provide that section 5A(2)(c) of the 1996 Act is amended to specify that the code of practice on deer management may set out examples of circumstances where SNH may require a deer management plan to be produced. Subsection (3) makes a textual amendment to the italic cross heading before section 6 of the 1996 Act.

335. New section 6A is inserted into the 1996 Act by section 70(4) of the Bill. New section 6A provides for two sets of conditions (A and B) to be met before SNH, having had regard to the code of practice on deer management, can require an owner or occupier of land to produce a deer management plan.

336. Subsection (1)(a) specifies that the plan should set out the measures that those owners and occupiers consider should be taken, the time limit for taking those measures, who is to take those measures, and any other matters which appear to SNH to be necessary. Subsection (1)(b) provides that the plan is to be submitted to SNH for approval.

337. Subsection (2) sets out that condition A is met where deer or deer management or the lack of deer management have caused, are causing, or are likely to cause damage, including to woodland, to agricultural production, including any crops or foodstuffs, to livestock, to the welfare of deer to the natural heritage generally, to public interests of a social, economic or environmental nature, or where they have become a danger to public safety.

338. Subsection (3) sets out that condition B is met if management of deer is required to prevent further damage, remedy damage or prevent danger.

339. Subsection (4) provides that, in subsection (2)(a)(i), “the natural heritage” has the same meaning as in section 7(2) of the 1996 Act. Subsection (5) provides that a deer management plan must be submitted to SNH within 12 months unless a later date is specified by SNH. Subsections (6) and (7) provide that SNH may approve or reject a deer management plan and that the plan can be amended until SNH decides to approve or reject it. There is no power for SNH to make modifications before approving a plan.

340. New subsections (4A) and (4B) are inserted in section 7 (control agreements) of the 1996 Act. Subsection (4A) provides that subsection (4) applies where new subsection (4B) applies. Section 7(4) of the 1996 Act provides for SNH, after giving notice to owners and occupiers it considers to be substantially interested in SNH forming a preliminary view on damage caused by deer, to consult with those owners or occupiers on what measures are to be taken, on the time limit for those measures to be taken, and on who is to carry out such measures. New subsection (4B) applies where SNH has given notice under the new section 6A(1) that a deer management plan is required and either the date has passed and a plan has not been submitted, or the plan has been submitted but rejected, or the plan has been approved but the measures set out have not been taken, and in addition where SNH is satisfied that conditions A and B in section 6A(1) continue to be met.

Section 71 - Increase in penalty for failure to comply with control scheme

341. Schedule 3 of the 1996 Act is amended so that the maximum fine for the offence of failing to comply with a control scheme is increased from level 4 on the standard scale to £40,000.

PART 9 – ACCESS RIGHTS

Core paths

Section 72 - Core paths plans

342. Subsection (1) provides that the Land Reform (Scotland) Act 2003 is to be amended. Some minor amendments are made to section 18 by subsection (2). A number of textual amendments are made to section 20 of the Land Reform (Scotland) Act 2003, which provides for the review and amendment of the core paths plan. Inserted section 20(1) provides that two alternative circumstances (which are not required simultaneously) may activate a review. The local authority may review their plan when they consider it appropriate to do so. Alternatively, they must review their plan where Ministers require them to do so. Subsection (4) of the Bill inserts new sections 20A to 20D into the Land Reform (Scotland) Act 2003.

343. Inserted section 20A sets out the procedure to be followed when amending a core paths plan following a review. Subsection (1) sets out notification and consultation requirements. Subsection (2) provides that where there are no objections (or where any objection made is withdrawn), the local authority must adopt the amended plan. However, where there are unwithdrawn objections, the local authority must not adopt the amended plan unless Ministers direct them to do so (subsection (3)). Subsection (4) provides that, where the local authority modifies the amended plan following the notification and consultation carried out under subsection (1) (which could be done for example to resolve an objection or to respond to a

change in circumstances), it must notify and consult such persons as they consider appropriate on that modification. Where an objection remains unwithdrawn, Ministers cannot make a direction without a local inquiry first being held into whether the amended plan will, if adopted, fulfil the purpose in section 17(1), namely whether the system of paths set out in the plan will be sufficient for the purpose of giving the public reasonable access throughout the local authority's area (subsection (5)). In accordance with subsection (8), following the publication of the report by the person appointed to hold the inquiry, Ministers may (but need not) direct the local authority to adopt the amended plan. Subsection (9) sets out the procedure to be followed by the local authority following adoption of the amended plan, and subsections (10) and (11) make provision for circumstances where Ministers decline to make a direction under subsection (8).

344. Inserted section 20B provides for the service of a written notice on the owners and occupiers of land which is to be included in a core paths plan for the first time following a review. Such a notice is to be served at the same time the local authority complies with section 20A(1). The notice is to explain the potential effect of the amended plan on the land in question, set out where the original core paths plan and the amended plan may be inspected, and specify the period for objections and representations to be made. Subsection (3) provides for the form of notification to be given under section 20B where it has not been possible to identify the owner or occupier of the land.

345. Inserted section 20C provides that a single amendment may be made in between full core paths plan reviews where the local authority consider this would be appropriate. The local authority must carry out such consultation on and notification of the proposal as it thinks fit, inviting objections and representations within a specified period.

346. Inserted section 20D sets out the considerations that the local authority must take into account when adding, removing or diverting a core path under section 20C, and applies much of the procedure used in a full core paths plan review (e.g. service of notice under section 20B, referral to a local inquiry where there are unwithdrawn objections) to a single amendment under that section.

Court applications

Section 73 - Access rights: service of court applications

347. Section 73 amends section 28 of the Land Reform (Scotland) Act 2003 (judicial determination of existence and extent of access rights and rights of way) to expand upon current notification requirements when an application to the sheriff court is made. In making an application for a declaration under section 28(1)(b)(i) as to whether a person who has exercised, or purported to exercise access rights, has exercised those rights responsibly for the purposes of section 2 of that Act, the amendment provides that the person seeking the declaration must serve the application on the person whose exercise of access rights (or purported exercise of access rights) is in question. This is additional to the existing requirement in section 28(4) to serve the application on the local authority, and in section 28(7) to serve the application on the owner of the land (if the person seeking the declaration is not the land owner).

PART 10 – AGRICULTURAL HOLDINGS

CHAPTER 1– MODERN LIMITED DURATION TENANCIES

Modern limited duration tenancies

Section 74 - Modern limited duration tenancies: creation

348. Section 74 of the Bill amends the Agricultural Holdings (Scotland) Act 2003 (“the 2003 Act”), repealing section 5 which provided for the creation of limited duration tenancies (LDTs). Subsection (3) inserts section 5A into the 2003 Act, which provides for the creation of modern limited duration tenancies (MLDTs) for a length of 10 years or more, and enabling short limited duration tenancies (SLDTs) to be converted into MLDTs where the lease has expired and the tenant has remained in place with the consent of the landlord, or where the lease purports to be for a length of more than five years.

349. Section 74 also introduces section 5B which permits a break clause after five years of an MLDT, where the tenant farmer is a new entrant. Section 5B, subsection (3) provides a regulation-making power for the Scottish Ministers to make further provision on who new entrants are for the purposes of section 5B.

Section 75 – Modern limited duration tenancies: subletting

350. Section 75 amends the 2003 Act by inserting a new section 7A after section 7 (assignment and subletting of limited duration tenancies), enabling an MLDT to be sublet if the lease for the MLDT explicitly allows it.

Section 76 – Modern limited duration tenancies: termination and continuation

351. Section 76 amends the 2003 Act by inserting new sections 8A, 8B, 8C, 8D and 8E after section 8 (continuation and termination of limited duration tenancies). Section 8A enables an MLDT to be terminated when the landlord and tenant agree to the termination in writing, the agreement to terminate is made after the tenancy has started, and provision is made for compensation to be paid to both parties.

352. Section 8B enables a landlord to terminate an MLDT at the end of the tenancy term, when the landlord has provided written notice to the tenant of the landlord’s intention to end the tenancy at the end of its term at least one year but no longer than two years before the expiry of the term. Subsection (3) provides that the termination notice will have no effect unless the landlord has provided written confirmation to the tenant of the landlord’s intention to terminate the tenancy at least two years but no more than three years before the expiry of the term of the tenancy.

353. Section 8C enables a tenant to terminate an MLDT at the expiry of the term of the tenancy by giving notice to the landlord confirming that the tenant intends to quit the land at the expiry of the term. Such notice must be provided between one and two years before the expiry date of the tenancy.

354. Section 8D sets out the notice process to be used for tenants and landlords when applying the break clause for MLDTs (as inserted in the 2003 Act by section 74 of this Bill) which enables a tenancy to be terminated after five years. Subsections (6) and (7) set out the grounds on which a landlord can give notice, in cases when the new entrant is not using the land in accordance with the rules of good husbandry or failing to comply with other terms of the MLDT lease.

355. Section 8E provides that an MLDT is extended for a further ten year period unless terminated in accordance with section 8A, 8B or 8C and also provides the ability for a landlord and tenant to extend the term of the MLDT by agreement in writing.

Section 77 – Modern limited duration tenancies: fixed equipment

356. Section 77 amends the 2003 Act by inserting a new section 16A after section 16 (leases not terminated by variation of terms, etc). Section 16A provides for the regulation of fixed equipment in relation to MLDTs. Subsection (1) requires a landlord, within six months of the lease starting, to provide such fixed equipment to enable the tenant to maintain efficient agricultural production for the land as specified by the terms of the lease, and to put the fixed equipment present on the holding into the condition specified in the schedule of fixed equipment. Subsection (2) specifies the information to be provided in the schedule of fixed equipment. Subsection (3) requires that the schedule of fixed equipment must be agreed within ninety days of the tenancy starting and subsection (4) enables the schedule to be varied or substituted if both parties are in agreement.

357. Subsection (5) implies a default term into every lease for an MLDT, in the absence of express provision to the contrary, that a landlord is required to renew or replace the fixed equipment as necessary due to natural decay or fair wear and tear. It also confirms that the tenant's liability for fixed equipment extends only to the condition the equipment was in at the time of the completion of the schedule of fixed equipment or its condition following its improvement, provision, renewal or replacement during the tenancy.

358. Subsection (6) sets out that costs associated with compiling the schedule must be covered equally by the landlord and the tenant, unless agreed otherwise. Subsection (7) states that any agreement which requires the tenant to accept the expense of works that a landlord is required to execute to fulfil a landlord's obligations will have no effect. Subsection (8) confirms that any MLDT lease requiring a tenant to pay all or part of a premium for fire insurance for fixed equipment will be of no effect.

Section 78 – Modern limited duration tenancies: irritancy

359. Section 78 amends the 2003 Act by inserting a new section 18A after section 18 (tenant's right to remove fixtures and buildings). Section 18A(1) enables a tenant and landlord to agree, in the absence of any rule to the contrary, what the grounds for irritancy of an MLDT lease will be. Subsection (2) states that any terms within a lease which provide for irritancy solely on the grounds that the tenant is not resident is to have no effect. Subsection (3) states that where a lease may be irritated on the grounds that the tenant is not using the land in accordance with the rules of good husbandry, subject to subsections (4) and (5), the definition of good husbandry can be found in schedule 6 of the Agriculture (Scotland) Act 1945.

360. Subsection (4) provides that conservation activities are to be treated as being in accordance with the rules of good husbandry if carried out in accordance with any agreement entered into by the tenant under any Act, or if carried out in accordance with the conditions of a grant for any activities paid out of the Scottish Consolidated Fund or any other public grant which the Scottish Ministers may specify by regulations. Subsection (5) requires use of the land, or a change to the land, for a non-agricultural purpose permitted under sections 40 and 41 of the 2003 Act (diversification) to be treated as being use in accordance with the rules of good husbandry.

361. Subsection (6) sets out the process to be followed by a landlord if the landlord intends to irritate the lease, stating that a landlord must confirm in writing to the tenant the timescale for the tenant to remedy the breach, which cannot be less than a year from the date of the notice. Subsection (7) enables the notice served under subsection (6) to be extended by agreement of both the parties or by the Land Court.

362. Subsection (8) provides that a landlord cannot enforce their right to remove the tenant on grounds of irritancy unless the period of the notice or any extension to that notice has expired, the tenant has not remedied the breach, and the landlord has given notice to the tenant of the landlord's intention to enforce the right to remove the tenant at least two months before the date on which the landlord plans to do so.

Conversion of 1991 Act tenancies

Section 79 – Conversion of 1991 Act tenancies into modern limited duration tenancies

363. Section 79 of the Bill enables the Scottish Ministers to make regulations for the conversion of 1991 Act tenancies into MLDTs. Subsection (3) states that regulations may include provision about the procedure and the effects of the conversion, including the terms of the lease and the effect of conversion on any entitlement to compensation under Parts 4 and 5 of the Agricultural Holdings (Scotland) Act 1991 (“the 1991 Act”). Regulations under this section are subject to the affirmative procedure (see section 99(3)).

CHAPTER 2 – TENANT’S RIGHT TO BUY

Section 80 – Tenant’s right to buy: removal of requirement to register

364. Sections 24 to 28 of the 2003 Act require a tenant farmer with a 1991 Act tenancy (as defined in section 1(4) of the 2003 Act) to apply to the Keeper of the Registers of Scotland to register their interest in purchasing their holding in the Register of Community Interests in Land (“RCIL”) before the tenant can exercise the pre-emptive right to buy. The provisions in section 80 amend Part 2 of the 2003 Act to remove the requirement for 1991 Act tenants to pre-register in the RCIL before they can exercise the pre-emptive right to buy.

365. Section 80(2) of the Bill repeals sections 24 and 25 of the 2003 Act so that tenants will no longer be required to register their interest in purchasing the land comprised in their lease with the Keeper.

366. Subsection (3) inserts a new italic heading “the right to buy” before section 26 of the 2003 Act.

367. Subsection (4) amends section 26 of the 2003 Act, so that the 1991 Act tenant is no longer required to register interest in order to receive notice from the owner or creditor of intention to sell the land or part of it. It also removes the requirement on the owner or creditor to inform the Keeper of intention to sell the land or part of it. A new subsection (3) is inserted after section 26(2) of the 2003 Act which defines “tenant” for the purpose of Part 2 of the 2003 Act as meaning multiple tenants where there are multiple tenants and as not including a sub-tenant. This definition was previously contained in section 25(2) of the 2003 Act, which is being repealed by section 80(2) of the Bill.

368. Section 27 of the 2003 Act sets out a number of scenarios where the owner is not obliged to provide notice of intention to transfer land. Section 80(5) of the Bill repeals subsection (1)(g)(v) of section 27, which states that no notice is required with a transfer where missives have been concluded and where no notice of interest had been registered in the land under section 25. As section 25 is being repealed, this provision is no longer applicable.

369. Subsection (6) amends section 28(1) and (3) of the 2003 Act by removing references to land being registered under section 25. As section 25 is being repealed, these references are no longer applicable.

370. Subsection (7) repeals section 29(7) of the 2003 Act, removing the requirement on the tenant farmer to send a copy of any notice of intention to exercise the right to buy given under section 29 to the Keeper.

CHAPTER 3 – SALE WHERE LANDLORD IN BREACH

Section 81 – Sale to tenant or third party where landlord in breach of order or award

371. Section 81 inserts a new Part 2A into the 2003 Act. This enables the tenant to apply to the Land Court for an order for sale of the holding where the landlord is in breach of obligations under the tenancy and this is affecting the tenant’s ability to farm in accordance with the rules of good husbandry.

372. Section 38A sets out the circumstances when the tenant can make an application to the Land Court for order for sale.

373. Subsections (1) and (2) of inserted section 38A provide that a tenant can apply to the Land Court for an order for sale if the landlord has failed to comply with a previous order by the Land Court under section 84(1)(b) of the 2003 Act to remedy a breach of obligations to the tenant, or failed to comply with an equivalent arbitral award. The breach in question must be material and the landlord must not have complied with the order or award by the date specified.

374. Inserted section 38A(4) states that the tenant must give notice of the application for the order for sale to the landlord and to any creditor who holds a heritable security over an interest in the land and to anyone else that the Scottish Ministers may prescribe by regulations.

375. Section 38A(5) states that, where a tenant acquired the pre-emptive right to buy under section 28 of the 2003 Act and this right to buy was subsequently extinguished, the tenant may not apply for an order for sale until after the period of 12 months has elapsed from the date the right to buy was extinguished.

376. Inserted section 38B sets out the test which the Land Court is to apply when deciding an application for an order for sale.

377. Subsection (1) of section 38B provides that if the landlord has failed to comply with the order or award issued by the Land Court, then the Land Court has the power to order the sale if it is satisfied that the breach is material; that the order or award has not been complied with within the specified period; that the breach is adversely affecting the tenant's ability to farm in accordance with the rules of good husbandry; that greater hardship would be caused by not making the order than by making it; and that in all circumstances the order for sale is appropriate.

378. Subsection (2) of section 38B provides the Land Court with the power to make an order for sale despite the fact that the owner has a legal incapacity or disability (for instance, minority or a mental disorder) that would affect the owner's ability to transfer ownership.

379. Subsection (3) states that where the owner is already obliged to transfer ownership to a person other than the tenant – for example, where missives have already been concluded for the sale of the land – the Land Court may not make an order for sale. However, the Land Court can make the order for sale where the transfer is one set out in subsection (4) and where this transfer is or forms part of a scheme or arrangement, or a series of transfers, and the main purpose or effect, or one of the main purposes or effects, of which is the avoidance of the making of an order for sale. The transfers set out in subsection (4) are: if the transfer is not for value; if the transfer is between spouses after they have ceased living together; if the transfer is between companies in the same group; if the transfer is as a result of assumption, resignation or death of one or more of the partners in a partnership, or the assumption, resignation or death of one or more of the trustees of a trust

380. Subsection (5) states when it is considered that companies form part of the same group for the purposes of subsection (4)(c).

381. Subsection (6) states that the Land Court must give notice of the order for sale to the Keeper of the Registers of Scotland, the landlord, the owner, any creditor, and any other person whom the Scottish Ministers may prescribe by regulations.

382. Subsection (7) states that the definition of good husbandry, for the purposes of subsection (1)(b), is in schedule 6 of the Agriculture (Scotland) Act 1948.

383. Subsection (8) defines owner in this new Part of the 2003 Act as including persons in whom the land is vested for the insolvency and other purposes listed in paragraph (a) or for the purposes for which a person would be appointed as a judicial factor under paragraph (b).

384. Inserted section 38C provides the Scottish Ministers with the power to make regulations prohibiting the transfer of ownership of the land which has been subject to an order for sale by the Land Court. These regulations may specify, among other things, exactly what transfers or dealings are allowable and which are prohibited, who is prohibited and for what period; and may also make provision for the inclusion and the removal of certain information in the deeds relating to the land.

385. Section 38D (1) provides that when an order for sale has been made by the Land Court, any pre-emption, redemption or reversion rights or any other rights deriving from any other option to purchase, exercisable over the land to which the order for sale relates, will be suspended from the date when the Land Court makes the order. These rights will be revived when the transfer of the land is completed or if the transfer is not completed before the end of the period set out in subsection (2) – or , if the order for sale ceases to have effect, on the end of that period, or on the order ceasing to have effect, whichever occurs first. Subsections (4) and (5) of section 38D give the Scottish Ministers the power to make regulations to further provide for the suspension and revival of other rights in or over land in respect of which an order for sale has been made. The regulations may among other things specify the rights to which the regulations do and don't apply, the period that these rights are suspended for and the circumstances in which the rights are revived.

386. Section 38E(1) provides that, where the Land Court has ordered the sale of the land and where an appeal by the owner has been brought and dismissed, or the period in which to lodge an appeal has elapsed, the tenant has the right to buy the land.

387. Subsections (2) and (3) state that the tenant must give notice of intention to buy the land to the following people: the owner, the Land Court and the Keeper of the Registers of Scotland.

388. Subsection (4) states that this notice must be given within 28 days of the day after the appeal was dismissed or the day after the last day on which an appeal could be lodged.

389. Subsections (5) and (6) state that, if at any stage the tenant decides not to proceed with the purchase, notice must be given to the same group of people listed above. If the tenant does not give notice of intention to purchase within 28 days or if notice is given that the tenant does not wish to proceed, the tenant's right to buy is extinguished.

390. Inserted section 38F outlines the procedure for the tenant buying the land.

391. Subsection (2) provides for the tenant to make an offer to buy the land at a price agreed between the tenant and the seller, or where no such agreement is available, at the price assessed by an independent valuer or the price determined by an appeal against such an independent valuation.

392. Subsections (3) and (4) state that the offer must specify the date of entry and the date of payment of the price, and when these dates should occur.

393. Subsection (5) states that the offer to buy may also include any conditions which are necessary or expedient to achieve completion of the transfer of the land.

394. Subsection (6) places an obligation on the seller to provide the tenant with deeds and other documents that the tenant needs to complete title and transfer ownership of the land, and a consequent obligation to transfer title.

395. Inserted section 38G makes provision for the process for the appointment of the valuer and valuation of the land where the tenant and the landlord cannot agree a price.

396. Sections 33 to 36 of the 2003 Act deal with the appointment of a valuer and the valuation procedures in relation to a tenant's right to buy under Part 2 of that Act. These sections will apply, subject to certain modifications set out in section 38G, when the Land Court orders sale of the land, as outlined in inserted section 38B and the tenant exercises the right to buy.

397. Section 33 of the 2003 Act provides for the appointment of a valuer where a price is not agreed between a landlord and a tenant, section 34 provides for the procedure for the valuation of the land, and section 35 covers special provision where the buyer is a general partner in a limited partnership. These provisions will apply when the court orders sale of the land, with slight modifications as outlined in section 38G(2)(a) to (c). In particular section 33(5), which provides for the requirement of two valuers and an oversman, does not apply here.

398. Section 36 of the 2003 Act contains further provisions for valuation procedures and these are to apply when the court orders sale of the land, with slight modifications as outlined in subsection (2)(d). A new subsection is inserted after section 36(6) which states that, if the Land Court has made an order requiring the seller to complete the sale and the seller complies with this order but the tenant does not proceed with the purchase, the tenant is then liable for any expenses of the valuer met by the seller under section 36(5).

399. Section 37, regarding appeals to the Lands Tribunal against valuation, and section 38, regarding referral of certain matters by the Lands Tribunal to the Land Court, apply when the court orders sale of the land, with slight modifications.

400. Inserted section 38H sets out the procedure if a seller fails to complete a transaction to transfer ownership of the land.

401. Subsections (1) and (2) provide that, if the seller has not, within the period fixed or agreed, supplied the tenant with the documents necessary to enable the tenant to complete the transfer of ownership, or has not concluded the missives or taken all the steps which the seller could reasonably have taken to conclude the missives, the tenant may under subsection (3) apply to the Land Court for an order directing the seller to carry out the necessary actions required to complete the sale, within such period as specified by the order.

402. Subsection (4) provides the Land Court with the power to authorise its principal clerk to complete and deliver the necessary documents to enable the transfer of ownership if the seller does not comply with the order to conclude missives or transfer the ownership of land.

403. Inserted section 38I sets out the procedure if a tenant fails to complete a transaction to transfer ownership.

404. Subsections (1) and (2) provide that, if a tenant has not, within the period fixed or agreed, concluded the missives or taken all the steps which the tenant could reasonably have taken in the time available to conclude the missives, the seller may under subsection (3) apply to the Land Court for an order directing the tenant to carry out the necessary actions required to complete the sale within such period as specified by the order.

405. Subsection (4) provides that the tenant's right to buy is extinguished if the tenant fails to comply with an order by the Land Court to take the necessary steps to complete the transfer of ownership or if the Land Court had not issued an order for either party to conclude missives and they have not been concluded, either within a 12 month period from when the tenant first gave notice of intention to buy or within the extended period granted by the Land Court in response to an application by the tenant.

406. Inserted section 38J sets out the procedure for completion of sale to the tenant

407. Subsections (1) and (2) state that the price to be paid for the land should be made by the final settlement date, which is a date that has been agreed or specified by an order of the Land Court.

408. Subsection (3) states that if, on the final settlement date, the seller is not able to transfer ownership of the land to the tenant, the price, or the sum fixed by the valuer, is to be entrusted to the Land Court, until title is transferred, or the tenant gives notice that the tenant does not want to proceed with the transaction, or the Land Court orders its release.

409. Subsection (4) provides that, if the tenant has not paid the price for the land by the final settlement date, then the right to buy is extinguished.

410. Subsection (5) provides that any security that burdened the land prior to the transfer of ownership to the tenant ceases to have effect after the transfer of ownership has occurred and title to the land is registered in the Land Register of Scotland.

411. Subsections (7) and (8) provide that the tenant is required to pay any outstanding amount due to any creditors who have an interest in the land, and this amount will be deducted from the price the tenant gives to the seller.

412. Subsection (9) provides that the validity of a title passed to a tenant under new Part 2A is unaffected by any legal incapacity or disability of the previous owner.

413. Inserted section 38K sets out the effect of extinguishing the right to buy.

414. Where the tenant's right to buy is extinguished under the new order for sale provisions, the tenant may exercise the pre-emptive right to buy under section 28 of the 2003 Act, providing

that 12 months has elapsed since the right to buy is extinguished under the new order for sale provisions.

415. Inserted section 38L outlines the circumstances in which sale to a third party may arise.

416. Subsections (1), (2) and (3) provide that, where a tenant's right to buy has been extinguished, the tenant may within 28 days of that date make an application to the Land Court to order sale of the land on the open market.

417. Subsection (4) requires the tenant to give notice of the application for sale to the owner, any creditor with an interest in the land and any other persons that the Scottish Ministers prescribe by regulations.

418. Subsection (5) gives the Land Court the power, upon consideration of all the circumstances, to vary order the sale to allow sale of the land on the open market.

419. Subsection (6) states that the original order for sale ceases to have effect where no application has been made by the tenant under subsection (2) for the Land Court to vary the order for sale to allow sale of the land on the open market, or where such an application has been made and is refused by the Land Court.

420. Inserted section 38M outlines the procedure for sale to a third party.

421. Subsection (1) enables the Scottish Ministers to make further provision by regulations about the sale of land on the open market to a third party.

422. Subsection (2) sets out a list of the matters that these regulations may make provision for.

423. Inserted section 38N makes provision for payment by the tenant or third party who has bought the land to the former owner where the land is sold within 10 years.

424. Subsections (1) and (2) provide that if, before the end of 10 years after acquiring the land following an order for sale by the Land Court, the tenant or third party who bought the land on the open market (the original buyer) sells the land on at a price higher than the price paid to the person from whom the land was bought (the original seller), then the original buyer must pay to the original seller a proportion of the difference between what the original buyer paid the original seller for the land and the price at which the original buyer subsequently sells the land.

425. Subsection (3) sets out what the proportion of the difference that must be paid to the original seller should be. This percentage varies depending at what stage within the 10 year period the land is sold.

426. Subsection (4) provides the Scottish Ministers with the power to make further provision by regulations about the amount that the original buyer must make to the original seller, including circumstances where no payment is required.

427. Inserted section 38O sets out compensation provisions.

428. Subsection (1) provides that any person who has incurred a loss or expense as a result of complying with their obligations under Part 2A of the 2003 Act (as inserted by section 81 of this Bill), or as a result of the failure of the tenant to complete the purchase after giving notice of intention to buy the land, may apply to the Scottish Ministers for compensation.

429. Subsection (2) provides the Scottish Ministers with the power to make, by regulations, provision about, among other things, what losses and expenses will be covered by the compensation provisions and the amount of compensation payable.

430. Subsection (3) provides for a reference to be made to the Lands Tribunal for Scotland on whether and what amount of compensation is payable.

CHAPTER 4 – RENT REVIEW

1991 Act tenancies: rent review

Section 82 – 1991 Act tenancies: rent review

431. Section 13 of the the 1991 Act provides the basis for the fixing of rent for a 1991 Act tenancy (as defined in section 1(4) of the 2003 Act).

432. Section 82 amends section 13 of the 1991 Act by introducing a new schedule, schedule 1A, which sets out the new rent review procedures for 1991 Act tenancies.

433. Paragraph 1 of schedule 1A sets out the initiation process of the rent review notice.

434. Subparagraphs (1) and (2) set out that the notice must be in writing and can be initiated by either the tenant or the landlord.

435. Sub-paragraph (3) states that a notice initiating a review of rent is called a “rent review notice”.

436. Sub-paragraph (4) states that the provisions are applicable to all 1991 Act tenancies. This is any lease of an agricultural holding which was entered into before 27 November 2003, the date of the commencement of section 1 of the 2003 Act, or which was entered into in writing on or after that date but prior to the commencement of the tenancy and which expressly states that the 1991 Act is to apply in relation to the tenancy.

437. Paragraph 2 of schedule 1A sets out provisions for the form and content of the rent review notice.

438. Sub-paragraph (1) sets out the information that is required in the rent review notice, being the names and designations of the parties, the name and address of the holding, the current and proposed rent payable, the date by which the landlord and tenant must agree the rent (“rent

agreement date”) and the date from which the rent is to be payable following the rent review, whether the amount has been varied or not (“effective date”). The effective date is no longer tied to a date on which a notice to quit or a notice of intention to quit can be served. Instead it is to be the day after the rent agreement date as set out in sub-paragraph (3) and subject to the requirements in paragraph 3.

439. Sub-paragraph (2) provides that the rent review notice must be accompanied by information in writing which explains how the proposed rental figure was calculated.

440. Sub-paragraph (3)(a) sets out that the rent agreement date must be either Whitsunday (28th May) or Martinmas (28th November). Sub-paragraph (3)(b) ensures that the rent agreement date cannot fall earlier than 12 months or later than two years from the date on which the rent review notice is served.

441. Sub-paragraphs (4) and (5) create a power for the Scottish Ministers, by regulations, to make further provision about the form and content of rent review notices and the information that must or may accompany them.

442. Paragraph 3 of schedule 1A provides details around the timing of the rent review notice

443. Sub-paragraph (1) provides that a rent review notice can be served only if the rent agreement date is three years after the beginning of the tenancy; three years after the date from which any previous variation in rent took effect; and three years after the date of any ruling by the Land Court that the rent should remain unchanged.

444. Sub-paragraph (2) lists a number of exceptions where a rent review can take place within three years from a date on which a previous variation in rent took effect. These are variations of rent under section 14, 15(1) or 31 of the 1991 Act. It also includes; variations arising either under the exercise or revocation of an option to tax under schedule 10 of the Value Added Tax Act 1994 or from a change in the rate of value added tax applicable to grants of interests in or rights over land in respect of which such an option has effect.

445. Paragraph 4 of schedule 1A details the circumstances when a rent review notice can be withdrawn.

446. Subparagraph (1) states that, when a notice has been served and no agreement has been reached between the parties as to the new rent payable, and the Land Court has not made a determination as to what rent is payable, then the person who served the rent review notice may withdraw it, but only with the consent of the other party.

447. Paragraph 5 of schedule 1A states that a rent review notice ceases to have effect on the earliest of the following: the date it is withdrawn; the date the parties reach agreement as to rent payable; 14 days after the rent agreement date if there is no referral made to the Land Court or, if a referral is made to the Land Court, the date on which it determines what the rent payable should be.

448. Paragraph 6 of schedule 1A provides for the ability of parties to refer the determination of the rent to the Land Court after a rent review notice has been issued and where they cannot reach agreement.

449. Sub-paragraphs (2) and (3) state that either party can refer the matter to the Land Court upon receipt of the rent review notice but may not do so after the end of the period of 14 days after the rent agreement date.

450. Paragraph 7 of schedule 1A sets out the powers of the Land Court upon referral by either the tenant or landlord for determination of the rent.

451. Sub-paragraph (2) states that upon referral to the Land Court, a determination can be made to either vary the rent payable or leave it unchanged.

452. Sub-paragraph (3) sets out the new rent review test whereby the Land Court determines a fair rent taking account of all the circumstances.

453. Sub-paragraph (4) sets out the specific factors that the Land Court must have regard to when determining the fair rent for the holding. These are the productive capacity of the holding, the rent at which surplus residential accommodation might be let on the open market, and the rent at which the landlord's fixed equipment and land, used for non-agricultural purposes, might be let on the open market.

454. Paragraph 8 of schedule 1A creates a power for the Scottish Ministers, by regulations, to make further provision about how productive capacity is to be determined and which information should be provided to the Land Court to make such determination.

455. Paragraph 9 of schedule 1A provides further detail on the definition of the surplus residential accommodation on the holding and what the Land Court needs to consider when determining it.

456. Sub-paragraph (1) states that residential accommodation on the holding is considered surplus if it exceeds the accommodation required for the standard labour requirement ("SLR") of the holding.

457. Sub-paragraphs (6) and (7) provide a power for the Scottish Ministers, by regulations, to make provision about the SLR of the holding, including how the SLR is to be determined and what information is required from the parties to enable the Land Court to do this.

458. Sub-paragraph (2) states that in determining whether the accommodation is surplus, the Land Court may take into account whether the SLR varies (to take account of seasonal workers for example), and must disregard both the sole farmhouse occupied by the tenant and any accommodation that the tenant is prohibited from subletting, subject to sub-paragraph (3).

459. Sub-paragraph (3) provides that where, in the face of a prohibition against sub-letting, a tenant has relied on section 39(3) of the 2003 Act to sublet the accommodation then such accommodation may be considered to be surplus accommodation by the Land Court, notwithstanding the prohibition.

460. Sub-paragraph (4) provides that, when having regard to the open market rent for surplus accommodation for the purposes of assessing fair rent, the Land Court must take into account all the circumstances including the condition and location of the property. It must also take into account whether the accommodation is occupied by a retired agricultural worker at a rent that is lower than what the open market rent for that accommodation would otherwise be. Where the accommodation is not currently let, the Land Court must disregard this fact.

461. Sub-paragraph (5) sets out that if, when determining fair rent, the Land Court has regard to the open market rent for surplus accommodation under paragraph 7(4)(b), then such accommodation is not also to be taken into account as fixed equipment or land under paragraph 7(4)(c).

462. Paragraph 10 of schedule 1A provides that, for the purposes of determining the open market rent for any surplus residential accommodation or any fixed equipment or land used for diversification for rent calculation purposes, “open market rent” means that which would be expected in an open market between a willing landlord and a willing tenant.

463. Paragraph 11 of schedule 1A gives the Land Court the power to phase in the rent over a 3 year period if the new rent is to be 30% or more higher than the current rent payable and it considers that full payment of the rental increase would cause undue hardship to the tenant. For example, if X is the difference between the new rent and the current rent:

Year 1 – current rent plus 1/3 of X
Year 2 – current plus 2/3 of X
Year 3 – new rent (i.e. current rent plus X).

464. Paragraph 12 of schedule 1A contains interpretation provisions for the schedule.

Limited duration tenancies and modern limited duration tenancies: rent review

Section 83 – Limited duration tenancies and modern limited duration tenancies: rent review

465. Section 9 of the 2003 Act provides the basis for the fixing of rent for a LDT. Section 83 amends section 9 of the 2003 Act in relation to rent reviews for LDTs and also makes provision for the new letting vehicles MLDTs. The title of the section is also amended to reflect the inclusion of MLDTs.

466. Subsection (2) amends section 9(A1) and (1) of the 2003 Act by including provisions for MLDTs. Subsections (2) to (8) of section 9 are substituted with new subsections (2), (3) and (4). These state that the notice to review rent is called the “rent review notice” and can be initiated by either the landlord or the tenant in writing.

467. Subsection (3) inserts new sections 9A to 9C, after section 9, which set out the new rent review procedures for LDTs and MLDTs.

468. Inserted section 9A sets out requirements for the form and content of the rent review notice. Subsection (1) provides that the rent review notice must be dated and sets out the information that is required in the rent review notice, being the names and designations of the parties, the name and address of the land, the current and proposed rent payable, and the date by which the landlord and tenant must agree the rent (“rent agreement date”).

469. Subsection (2) provides that the rent review notice must be accompanied by information in writing which explains how the proposed rental figure was calculated.

470. Subsections (3) provides a power for the Scottish Ministers, by regulations, to make further provision about the form and content of rent review notices and the information that must or may accompany them.

471. Inserted section 9B sets out how the rent is to be determined.

472. Subsection (1) states that, on review, the rent payable is the fair rent for the tenancy taking account of all the circumstances and having particular regard to the productive capacity of the land, the rent at which surplus residential accommodation might be let, and the rent at which the landlord’s fixed equipment or land which is used for non-agricultural purposes might be let.

473. Subsection (2) provides that for the purposes of determining the open market rent for any surplus residential accommodation or any fixed equipment or land used for diversification for rent calculation purposes, “open market rent” means that which would be expected in an open market by a willing landlord to a willing tenant.

474. Subsection (3) contains a power for the Scottish Ministers, by regulations, to make further provision about the productive capacity of land, including how it is to be calculated.

475. Subsection (4) states that the rent determined is to be payable from the “rent agreement date” as defined in section 9A(1)(e).

476. Inserted section 9C explains what is meant by surplus residential accommodation and how this is to be determined.

477. Subsection (1) states that residential accommodation on land comprised in the lease of an LDT or an MLDT is considered surplus if it exceeds the accommodation required for the standard labour requirement (SLR) of the land.

478. Subsection (2) states that in determining whether the accommodation is surplus, consideration may be given as to whether the SLR varies (to take account of seasonal workers for example), and both the sole farmhouse occupied by the tenant and any accommodation that

the tenant is prohibited from subletting by the terms of the lease or otherwise (subject to subsection (3)) must be disregarded.

479. Subsection (3) provides that where, in the face of a prohibition against subletting, a tenant has relied on section 39(3) of the 2003 Act to sublet the accommodation then such accommodation may be considered to be surplus accommodation notwithstanding the prohibition on subletting.

480. Subsection (4) provides that, when having regard to the open market rent for surplus accommodation for the purposes of assessing the fair rent, account must be taken of all the circumstances including the condition and location of the property. Where the accommodation is occupied by a retired agricultural worker at a rent that is lower than what the open market rent for that accommodation would otherwise be, then this should also be taken into account. Where the accommodation is not currently let, this must be disregarded.

481. Subsection (5) provides that if, when determining fair rent, regard is given to the open market rent for surplus accommodation under section 9B(1)(b), then such accommodation is not also to be taken into account as fixed equipment or land under section 9B(1)(c).

482. Subsection (6) provides a power for the Scottish Ministers, by regulations, to make provision about the standard labour requirement of land comprised in the lease of an LDT or an MLDT including how the SLR is to be determined.

CHAPTER 5 – ASSIGNATION OF AND SUCCESSION TO AGRICULTURAL TENANCIES

Assignment

Section 84 – Assignment of 1991 Act tenancies

483. Section 84 makes provision about the persons to whom a 1991 Act tenancy may be assigned.

484. Section 10A of the 1991 Act makes provision for the assignation of 1991 Act tenancies. Under the current legislation, the tenant can assign the tenancy to any of the persons who would be entitled to succeed to the tenant's estate on intestacy by virtue of the Succession (Scotland) Act 1964.

485. Section 84 amends section 10A of the 1991 Act by inserting a new subsection (1A), which extends the class of person that a tenancy can be assigned to. Subsection (3) sets out the people to whom, under the new subsection (1A), the tenant can assign the tenancy. Those that are already entitled to be assigned the tenancy under the Succession Act as mentioned above still remain so. However, this Bill extends the right to a number of additional people as set out in subsection (1A)(b) to (n).

486. Currently, under section 10A(3), the landlord can withhold consent to the proposed assignee, if there are reasonable grounds for doing so. Section 84(5) and (6) of the Bill amends

section 10A so that, while the landlord can still withhold consent for a person who is *not* a near relative if there are reasonable grounds, the Bill limits the grounds for objecting to a near relative. The inserted subsection (3A) removes reasonable grounds as a valid reason for objection so that the only grounds on which a landlord can withhold consent to assignation to a near relative are the following: that the person is not of good character, that the person does not have sufficient resources to enable the person to farm the holding efficiently, or that the person does not have adequate training or expertise in agriculture to enable the person to farm with reasonable efficiency.

487. Subsection (6) inserts a new subsection (6) into section 10A to define “near relative” for the purposes of new subsections (3A) and (3B).

488. The inserted subsection (3B) provides that this last ground of objection does not apply where the person is engaged or intending to enrol, within a specified period, in a course of relevant agricultural training that must be completed within four years of the date notice was given of the intention to assign. That person is also required to have made arrangements for the holding to be farmed efficiently while the person completes the course.

Section 85 – Assignation of limited duration tenancies

489. Subsection (2) amends section 7 of the 2003 Act by inserting new subsections (3A), (3B) and (5A).

490. Currently, under section 7(3), the landlord can withhold consent to the proposed assignee if there are reasonable grounds for doing so.

491. Section 85(2) amends section 7 of the 2003 Act so that, while the landlord can still withhold consent for a person who is *not* a near relative if there are reasonable grounds, the Bill limits the grounds for objecting to a near relative. The inserted subsection (3A) removes reasonable grounds as a valid reason for objection so that the only grounds on which a landlord can withhold consent to assignation to a near relative are the following: that the person is not of good character, that the person does not have sufficient resources to enable the person to farm the holding efficiently, or that the person does not have adequate training or expertise in agriculture to enable the person to farm with reasonable efficiency.

492. The inserted subsection (3B) provides that this last ground of objection does not apply where the person is engaged or intending to enrol, within a specified period, in a course of relevant agricultural training that must be completed within four years of the date notice was given of the intention to assign. The person is also required to have made arrangements for the holding to be farmed efficiently while the person completes the course.

493. Section 85(2)(c) inserts a new subsection (5A) into section 7 which defines “near relative” for the purposes of new subsections (3A) and (3B).

Section 86 - Assignment of modern limited duration tenancies

494. Section 86 amends the 2003 Act by making provision for the assignment of MLDTs, inserting a new section 7B into the 2003 Act.

495. Subsection (1) of the inserted section 7B provides for an assignment of an MLDT tenancy if the landlord provides consent after receiving written notice from the tenant.

496. Subsection (2) provides that the tenant must provide the landlord with written notice of intention to assign an MLDT. The notice must contain details of the proposed assignee, the terms of the assignment and the date from which it is to take effect.

497. Subsections (3) and (4) provide that if the proposed assignee is not a near relative, then the landlord can withhold consent on any reasonable grounds. If the proposed assignee is a near relative then the landlord's grounds for objection are limited to three circumstances. These are: that the person is not of good character, that the person does not have sufficient resources to enable the person to farm the holding efficiently, and that the person does not have adequate training or expertise in agriculture to enable the person to farm with reasonable efficiency.

498. Subsection (5) provides that this last ground of objection does not apply where the person is engaged or intending to enrol, within a specified period, in a course of relevant agricultural training that must be completed within four years. The person is also required to have made arrangements for the holding to be farmed efficiently while the person completes the course.

499. Subsection (6) requires the landlord to give written notice to the tenant indicating withholding of consent within 30 days of receiving the tenant's notice of intention to assign. If no such notice is provided by the landlord, it is taken that consent has been given.

500. Subsection (7) defines "good husbandry" by reference to schedule 6 of the Agriculture (Scotland) Act 1948.

501. Subsection (8) defines "near relative" of the tenant for the purposes of subsection (4).

Succession

Section 87 – Bequest of 1991 Act tenancies

502. Section 11 of the 1991 Act sets out the procedure for bequest of 1991 Act tenancies, including entitlement and procedure for the landlord to object to the bequest. Under the current legislation, the tenant can bequeath the tenancy to any of the persons who would be entitled to succeed to their estate on intestacy by virtue of the Succession (Scotland) Act 1964 and to the tenant's son- or daughter-in-law. Section 87 amends section 11 by inserting a new subsection (1A), which expands the class of person who is entitled to be the beneficiary of a bequest.

503. Section 87 sets out the people to whom the tenant, under the new subsection (1A), can bequeath the tenancy. Those that are already entitled to be the beneficiary under the Succession Act as mentioned above still remain so, as does the tenant's son- and daughter-in-law. However,

this right has been extended to a number of additional people as set out in subsection (1A)(b) to (n).

Section 88 - Limited duration tenancies and modern limited duration tenancies: succession

504. Section 88 outlines the provisions for succession to LDTs and MLDTs.

505. Subsection (1) amends section 16 of the Succession (Scotland) Act 1964 to make provision for the new letting vehicle, MLDTs. Modifications are made for the relevant sections that reference LDTs to incorporate MLDTs.

506. Subsection (3) amends section 21 of the 2003 Act by making provision for MLDTs and by inserting a new subsection (1A) which expands the class of person who is entitled to be the beneficiary of a bequest of an LDT and MLDT.

Landlord's objection to tenant's successor

Section 89 – Objection by landlord to legatee or acquirer on intestacy

507. Section 89 sets out a new objection process by a landlord to a legatee or acquirer.

508. Section 11 of the 1991 Act sets out the provisions for bequest of leases for 1991 Act tenancies, including the objection process. Section 12 of the 1991 Act outlines the right of the landlord to object to an acquirer of a lease under a 1991 Act tenancy on intestacy.

509. Section 89 amends sections 11 and 12 of the 1991 Act by repealing the relevant subsections which deal with the objection process and by inserting, after section 12, new sections 12A, 12B and 12C, which outline the procedures that the landlord is required to follow if the landlord wishes to object to a legatee or an acquirer under a 1991 Act tenancy.

510. Section 12 of the 1991 Act is renamed by the Bill “Transfer of lease on intestacy”.

511. Inserted section 12A outlines the procedure when the landlord is objecting to a near relative (legatee or acquirer) of the deceased tenant. The Bill limits the grounds that the landlord has when objecting to a near relative.

512. Subsections (1) and (2) provide that, if a legatee or an acquirer who is a near relative of the deceased tenant gives notice to the landlord of intention to take on the tenancy, the landlord is entitled, within one month, to serve a counter-notice to that person stating that the landlord objects to receiving the person as a tenant under the lease.

513. Subsection (3) states that the landlord's grounds of objection to a near relative are limited to three circumstances. The three grounds available to the landlord for objection are: that the person is not of good character, that the person does not have sufficient resources to enable the person to farm the holding efficiently, or that the person does not have adequate training or expertise in agriculture to enable the person to farm with reasonable efficiency.

514. Subsection (4) states that this last ground of objection does not apply where the person is engaged in a course of relevant agricultural training, or will begin such training before the end of the period of six months beginning with the date on which notice was given to the landlord of the acquisition, and also states that the training must be completed within four years of that date. That person is also required to have made arrangements for the holding to be farmed efficiently while the person completes the course.

515. Subsection (5) provides that the landlord has one month after serving the counter-notice to apply to the Land Court for an order, in the case of a legatee, declaring the bequest to be null and void or, in the case of an acquirer, terminating the lease.

516. Subsection (6) states that, if any of the grounds of objection available to the landlord are upheld, the Land Court is required to make an order, in the case of a legatee, declaring the bequest to be null and void and, in the case of an acquirer, terminating the lease, effective from either Whitsunday or Martinmas, as the court specifies.

517. Subsection (7) provides that, if the grounds of objection are not upheld, the Land Court must make an order declaring that the legatee or the acquirer is the new tenant under the lease and the lease is binding on the landlord from the date of death of the deceased tenant.

518. Subsection (8) states that, where the landlord does not make such an application to the Land Court within the one month period, the counter-notice becomes invalid and the lease is binding on the landlord and the legatee or acquirer from the date of the deceased tenant's death.

519. Section 12B sets out the procedure for objection by the landlord when the legatee or the acquirer is not a near relative of the deceased tenant.

520. Subsections (1) and (2) provide that, if a legatee or an acquirer who is not a near relative of the deceased tenant gives notice to the landlord of intention to take on the tenancy, the landlord is entitled, within one month, to serve a counter-notice to that person stating that the landlord objects to receiving the person as a tenant under the lease. The landlord has the power in the case of a legatee to declare the bequest to be null and void, and, in the case of an acquirer, to terminate the lease with effect from Whitsunday or Martinmas as the landlord specifies, but which must be at least one year and not more than two years from the date of the counter-notice.

521. Subsection (3) provides that the legatee or acquirer may make an appeal to the Land Court, within one month of receiving the counter-notice.

522. Subsections (4) and (5) state that if the legatee or acquirer can establish on any reasonable ground, to the satisfaction of the Land Court, why the bequest should not be null and void or why the lease should not be terminated, the Land Court must make an order quashing the counter-notice. If not, the Land Court must make an order confirming the counter-notice.

523. Inserted section 12C sets out supplementary provisions for landlord's objection.

524. Subsections (1) and (2) provide that the legatee or acquirer is to have possession of the holding, pending the outcome of any objection by the landlord under section 12A or 12B. The legatee or the acquirer must have received consent from the executor and there must be no order from the Land Court directing otherwise.

525. Subsection (3) provides that, in the case of a legatee, if the bequest is declared null and void, the right to the lease is to be treated as part of the intestate estate of the deceased tenant in accordance with the Succession (Scotland) Act 1964.

526. Subsection (4) provides that, in the case of an acquirer, if the lease is terminated, that termination is to be treated as termination of the acquirer's tenancy of the holding. Section (5) also states that the enquirer is not entitled to compensation for disturbance.

527. Subsection (5) of the Bill repeals section 25 of the 1991 Act relating to the termination of tenancies acquired by succession. The ability of the landlord to object to an incoming tenant who has succeeded to the tenancy on the death of the previous tenant is replaced by the objection procedure in new sections 12A to 12B. Paragraph 13 of the schedule also contains other amendments and repeals consequential on this change, including the repeal of schedule 2 of the 1991 Act (which contained the grounds on which a landlord could object to a near relative under section 25).

CHAPTER 6 – COMPENSATION FOR TENANT'S IMPROVEMENTS

Amnesty for tenant's improvements

Section 90 – Amnesty for certain improvements by tenant

528. This Chapter provides for an amnesty for certain improvements carried out by the tenant of an agricultural holding to be capable of attracting compensation at waygo in certain circumstances notwithstanding historic anomalies. The amnesty period is two years from the date of section 90 coming into force. During the amnesty, a tenant who intends to claim compensation at the end of the tenancy (at "waygo") for certain improvements which have been carried out may give notice of this to the landlord in certain circumstances. A tenant may then be able to claim compensation at waygo for that improvement despite a previous failure to meet certain statutory procedures in relation to the improvement, or where paperwork showing that those procedures were followed has been lost, if the landlord does not object to the amnesty notice or if the Land Court considers that in all of the circumstances it is just and equitable for compensation to be payable for the improvement at waygo.

529. This Chapter also provides that a tenant and landlord may enter into an agreement during the amnesty period that an improvement will attract compensation at waygo despite certain previous failures to meet statutory procedures (see section 95). Agreements can relate to improvements in relation to which amnesty notices cannot be given as well as to ones that can.

530. Section 90 sets out which improvements the amnesty may apply to. Subsection (1) states that the provisions apply to relevant improvements which a tenant intends to claim compensation for under section 34 of the 1991 Act (1991 Act tenants) or section 45 of the 2003 Act (tenants of SLDTs, LDTs or MLDTs).

531. Subsections (2) and (3) provide that a relevant improvement is a Part 1, Part 2 or Part 3 improvement, as defined in subsection (7), which has been completed before the beginning of the “amnesty period”, being the period of two years from when section 90 comes into force.

532. Subsection (4) enables the tenant to give notice of the relevant improvement to the landlord under section 92.

533. Subsection (5) details the circumstances in which the tenant is not entitled to use the amnesty provisions. Subsection 5(a) excludes improvements where the tenant has previously sought consent for the improvement under section 37 of the 1991 Act or section 48 of the 2003 Act and this has either not been provided by the landlord or has been provided but the tenant carried out the improvement in a different manner to the consent. Subsection 5(b) excludes improvements where the tenant had given notice under the relevant sections of the 1991 Act or the 2003 Act: but the tenant carried out the improvement in a manner different to that proposed in the notice; the landlord objected to the improvement upon receipt of the notice; or the tenant carried out the improvement in breach of a decision by the Land Court.

534. Subsection (6) provides that the amnesty is not to affect the extent to which compensation is recoverable for an improvement under custom or agreement, as permitted by the 1991 Act or 2003 Act, in lieu of any compensation under this section. This would include, for example, a pre-existing agreement between landlord and tenant as to the compensation payable in respect of an improvement carried out before 1948, as permitted by section 34(4)(a) of the 1991 Act.

535. Subsection (7) explains what is meant by a Part 1, Part 2 and Part 3 improvement by referring to the relevant paragraphs and Parts of the schedules of the 1991 Act.

Section 91 – Amendment of the Agricultural Holdings (Scotland) Acts

536. Section 91 inserts additional sections into the 1991 Act and the 2003 Act to provide for the operation of the amnesty.

537. Subsections (1) and (2) insert new sections 34A, and 45A after sections 34 and 45 (the right to compensation for improvements) of the 1991 Act and the 2003 Act respectively. These new sections are entitled “Amnesty under the Land Reform (Scotland) Act 2015” and enable compensation to be payable under section 34 of the 1991 Act and section 45 the 2003 Act when the amnesty provisions are applicable.

Section 92 – Amnesty notice

538. Section 92 sets out the requirements for the amnesty notice.

539. Subsections (2) and (3) provide that the amnesty notice must be given to the landlord within the amnesty period as set out in section 90(3), be in writing, be dated, and contain the following information: the names of the tenant and the landlord; the name and address of the holding; details of the relevant improvement; and the tenant’s reasons as to why it is fair and equitable for compensation to be payable for the improvement at waygo.

540. For the purposes of this Chapter, subsection (4) defines “holding” in the case of an SLDT, LDT or MLDT as meaning the land comprised in the lease.

Objection to amnesty notice and referral to Land Court

Section 93 – Objection by landlord

541. Section 93 sets out the objection process for the landlord.

542. Subsection (1) provides that within two months of receiving the amnesty notice from the tenant, the landlord can object on certain grounds to the relevant improvement by giving written notice to the tenant. Compensation is then not payable to the tenant unless the improvement is approved by the Land Court under section 94.

543. Subsection (2) states that the written notice must be dated and must state the landlord’s reasons for objecting to the relevant improvement.

544. Subsection (3) provides that the objection by the landlord must be on one or more of three grounds. These are: that it is not fair and equitable for compensation to be payable at way-go for the relevant improvement; that the landlord carried out the improvement in whole or in part; or that the landlord gave or allowed a benefit to the tenant, in return for the tenant carrying out the improvement, regardless of whether or not the landlord agreed such benefit in writing. Such benefit need not necessarily be a financial contribution but it must be measurable in financial terms e.g. the supply of materials.

Section 94 – Referral to Land Court

545. Section 94 sets out the procedure for referral of the improvement to the Land Court.

546. Subsection (1) enables the tenant, within two months of receiving the notice of objection from the landlord, to make an application to the Land Court for approval of the relevant improvement for the purposes of compensation under section 34 of the 1991 Act or section 45 of the 2003 Act.

547. Subsection (2) gives the Land Court the power to withhold approval of the relevant improvement or approve it either unconditionally or under specific terms.

548. Subsection (3) provides that, for the Land Court to approve a relevant improvement, it must be satisfied that the landlord has benefitted or would benefit from the improvement and that it is fair and equitable in all the circumstances for the landlord to be liable to pay compensation for the relevant improvement at waygo.

549. Subsection (4) states that no compensation is payable to the extent that the Land Court determines that the landlord carried out the improvement; or that the tenant received a benefit in return for carrying out the improvement, regardless of whether or not the landlord agreed such benefit in writing. Such a benefit may have been monetary or non-monetary but must be measurable in financial terms e.g. the supply of materials. Otherwise the amount of

compensation for the improvement will be determined by section 36 of the 1991 Act or, as the case may be, by section 47 of the 2003 Act: the operation of those sections flows from the application of section 34 of the 1991 Act and of section 45 of the 2003 Act.

Agreements made during amnesty period

Section 95 – Amnesty agreements

550. Section 95 sets out that a landlord and tenant may enter into agreements during the amnesty period setting out that certain improvements carried out by the tenant before the amnesty are to attract compensation at waygo.

551. Subsection (1) states that if no compensation is payable at waygo in respect of a relevant improvement under section 34 of the 1991 Act or section 45 of the 2003 Act because certain statutory requirements have not been met (subsection (4) defining these requirements), but the parties consider that despite this it would be fair and equitable for the tenant to be compensated for the improvement at waygo, then the landlord and tenant may enter into a written agreement during the two year amnesty period setting out that the landlord will pay compensation to the tenant at waygo for the improvement.

552. Section 53 of the 1991 Act and section 59 of the 2003 Act set out that, unless those Acts explicitly state otherwise, where they make provision for compensation to be paid then a tenant shall not be entitled to compensation except under that provision. Therefore landlords and tenants may enter into agreements as to compensation at waygo other than as set out in statute but these may not be enforceable. The effect of subsection (2) of section 95 of this Bill is that “amnesty agreements” are to be valid notwithstanding section 53 of the 1991 Act and section 59 of the 2003 Act. This means that parties can enter into written agreements during the amnesty period that compensation at waygo would be fair and equitable notwithstanding that statutory procedures have not been followed and parties can conduct their affairs in the knowledge that these agreements can be relied upon at waygo. Agreements can relate to improvements in relation to which amnesty notices cannot be given as well as to ones in relation to which notices can be given.

553. Subsection (3) of section 95 provides that the amount of compensation to be agreed as payable under an “amnesty agreement” must be as set out in section 36 of the 1991 Act or, as the case may be, under section 47 of the 2003 Act. It may not be any amount as agreed between parties.

554. Subsection (4) defines a “relevant requirement” for the purposes of subsection (1) as one imposed by virtue of Part 4 of the 1991 Act or by virtue of Chapter 1 of Part 4 of the 2003 Act which must ordinarily be complied with in order for the tenant to be entitled to compensation for an improvement under those Acts.

CHAPTER 7 – IMPROVEMENTS BY LANDLORD

Section 96 – Notice required for certain improvements by landlord

555. Section 96(1)-(2) amends the 1991 Act by inserting new sections 14A to 14F after section 14 to provide for a formal process of notice and objection when landlords of agricultural holdings intend to carry out certain improvements.

556. Inserted section 14A states that the section applies to a relevant improvement which is any improvement set out in schedule 5 of the 1991 Act which is not intended to be carried out: at the request or in agreement with the tenant; in pursuance of an undertaking given by a landlord to carry out the improvement following its approval by the Land Court; nor required by the Scottish Ministers.

557. Subsections (3) and (4) of section 14A require the landlord to give written notice (“landlord improvement notice”) to the tenant before carrying out a relevant improvement, the exception being in the case of an emergency improvement.

558. Subsection (5) of section 14A states that a landlord improvement notice must be dated and contain the following information: the names of the tenant and the landlord, the address of the holding, details of the intended improvement and the landlord’s reasons as to why the improvement is necessary to enable the tenant to farm in accordance with the rules of good husbandry.

559. Inserted section 14B sets out the objection process available to the tenant. The tenant may object to the proposed improvement within two months of receiving the landlord improvement notice, by giving written notice to the landlord. This notice must be dated and state the tenant’s reasons as to why the improvement is not necessary to enable the tenant to farm in accordance with the rules of good husbandry.

560. Inserted section 14C provides that, within two months of receiving the written objection from the tenant, the landlord may apply to the Land Court to approve the proposed improvement. The Land Court may withhold its approval or may approve the improvement unconditionally or with certain terms attached. Before approving a relevant improvement, the Land Court must be satisfied that it is necessary to enable the tenant to farm in accordance with the rules of good husbandry.

561. Inserted section 14D requires the landlord to give written notice to the tenant stating when the landlord intends to carry out the improvement, which, unless the tenant and landlord agree otherwise, should not be earlier than two weeks before the landlord intends to start carrying out the improvement. This notice requirement applies where the landlord is intending to carry out an improvement: carried out at the request or in agreement with the tenant; in pursuance of an undertaking given by a landlord to carry out the improvement himself following its approval by the Land Court; required by the Scottish Ministers; or to be undertaken after the landlord has issued a landlord improvement notice and the tenant has not objected, or the tenant’s objection has been dismissed by the Land Court.

562. Subsection (4) of section 14D allows the landlord to serve a new notice where the improvement has not already begun to be carried out and there is a good reason for the postponement of the improvement.

563. Subsections (5) and (6) of section 14D state that where the landlord has given notice of an improvement and work has started on the improvement, the landlord may, at any time before the expiry of the date given in the notice, extend the period during which the improvement is carried out by giving notice in writing to the tenant, if the landlord has a good reason for extending this period.

564. Subsection (7) of section 14D indicates the effect of section 14F: that these notice procedures do not apply where the improvement is an emergency one.

565. Inserted section 14E states that where a landlord has carried out an improvement and a notice under section 14A was not given to the tenant (and the improvement was not an emergency improvement), the tenant objected to the improvement and the Land Court has not approved the improvement, or the improvement was in breach of any decision by the Land Court, then any such improvement is to be disregarded in any subsequent rent review and in assessing the tenant's responsibilities in relation to good husbandry, and in relation to fixed equipment under section 5(2)(b)(ii) of the 1991 Act.

566. Inserted section 14F provides that, where a landlord or tenant considers that an emergency improvement is required, the requirements set out in sections 14A(3), and 14D(2), (3) (5) and (6) do not apply. Subsection (2)(a)-(e) outlines which improvements are to be classified as emergency improvements: for instance, improvements which are necessary for preventing the spread of disease among livestock, as per the requirements of the Animal Health and Welfare (Scotland) Act 2006.

567. Section 96(3)-(4) amends the 2003 Act by inserting new sections 10A to 10F after section 10 to provide for a formal process of notice and objection when landlords of agricultural holdings intend to carry out certain improvements.

568. Subsection (1) of section 10A states that the section applies where the landlord of an SLDT, LDT or MLDT intends to carry out a relevant improvement.

569. Subsection (2) of section 10A states that the section applies to a relevant improvement which is an improvement set out in schedule 5 of the 1991 Act and which is not intended to be carried out: at the request or in agreement with the tenant; in pursuance of an undertaking given by a landlord to carry out the improvement following its approval by the Land Court; nor required by the Scottish Ministers.

570. Subsection (3) and (4) of section 10A require the landlord to give written notice (landlord improvement notice) to the tenant before carrying out a relevant improvement, the exception being in the case of an emergency improvement.

571. Subsection (5) of section 10A states that a landlord improvement notice must be dated and contain the following information: the names of the tenant and the landlord, the address of the holding, details of the intended improvement and the landlord's reasons as to why the improvement is necessary to enable the tenant to farm in accordance with the rules of good husbandry.

572. Inserted section 10B sets out the objection process available to the tenant. The tenant may object to the proposed improvement within two months of receiving the landlord improvement notice, by giving written notice to the landlord. This notice must be dated and state the tenant's reasons as to why the improvement is not necessary to enable the tenant to farm in accordance with the rules of good husbandry.

573. Inserted section 10C provides that, within two months of receiving the written objection from the tenant, the landlord may apply to the Land Court to approve the proposed improvement. The Land Court may withhold its approval or may approve the improvement unconditionally or with certain terms attached. Before approving a relevant improvement, the Land Court must be satisfied that it is necessary to enable the tenant to farm in accordance with the rules of good husbandry.

574. Inserted section 10D requires the landlord to give written notice to the tenant stating when the landlord intends to carry out the improvement, which, unless the tenant and landlord agree otherwise, should not be earlier than two weeks before the landlord intends to start carrying out the improvement. This notice requirement applies where the landlord is intending to carry out an improvement: carried out at the request or in agreement with the tenant; in pursuance of an undertaking given by a landlord to carry out the improvement following approval of it by the Land Court; required by the Scottish Ministers; or, to be undertaken after the landlord has issued a landlord improvement notice and the tenant has not objected, or the tenant's objection has been dismissed by the Land Court. Such notice is not required for an emergency improvements.

575. Subsection (4) of section 10D allows the landlord to serve a new notice where the improvement has not already begun to be carried out and there is a good reason for the postponement of the improvement.

576. Subsections (5) and (6) of section 10D state that where the landlord has given notice of an improvement and work has started on the improvement, the landlord may, at any time before the expiry of the date given in the notice, extend the period during which the improvement is carried out by giving notice in writing to the tenant, if the landlord has a good reason for extending this period.

577. Subsection (7) of section 10D indicates the effect of section 10F: that these notice procedures do not apply where the improvement is an emergency one.

578. Inserted section 10E states that where a landlord has carried out an improvement and a notice under section 10A was not given to the tenant (and the improvement was not an emergency improvement), the tenant objected to the improvement and the Land Court has not approved the improvement, or the improvement was in breach of any decision by the Land

Court, then any such improvement is to be disregarded in any subsequent rent review and in assessing the tenant's responsibilities in relation to good husbandry, and in relation to fixed equipment under section 16(4)(b) (for SLDTs and LDTs) and section 16A(5)(b)(ii) (for MLDTs) of the 2003 Act.

579. Inserted section 10F provides that, where a landlord or tenant considers that an emergency improvement is required, the requirements of sections 10A(3) and 10D(2), (3), (5) and (6) do not apply. Subsection (2)(a)-(e) outlines which improvements are classified as an emergency: for instance, improvements which are necessary for preventing the spread of disease among livestock, as per the requirements of the Animal Health and Welfare (Scotland) Act 2006.

Section 97 – Rent increase for certain improvements by landlord

580. Section 97(1) to (3) amends section 15 of the 1991 Act by inserting a new subsection (d) which enables a landlord to increase the rent prior to the next rent review for improvements undertaken by serving notice on the tenant within six months from the completion of the improvement if, upon receipt of the landlord improvement notice, the tenant does not object to the improvement, or, if the tenant does object, the Land Court approves the improvement.

581. Section 97(4) to (6) amends section 10 of the 2003 Act by inserting a new section (d) which enables a landlord to increase the rent prior to the next rent review for improvements undertaken by serving notice on the tenant within six months from the completion of the improvement if, upon receipt of the landlord improvement notice, the tenant does not object to the improvement, or, if the tenant does object, the Land Court approves the improvement.

PART 11 – GENERAL AND MISCELLANEOUS

Section 98 – General interpretation

582. This section expands the short references used in the Act, for economy of space, to give their full citations: “the 1991 Act” for the Agricultural Holdings (Scotland) Act 1991; “the 2003 Act” for the Agricultural Holdings (Scotland) Act 2003; and “Land Court” for the Scottish Land Court.

Section 99– Subordinate legislation

583. Subsection (1) allows the Scottish Ministers to make regulations under the Bill for different purposes and to make incidental, supplementary, consequential, transitory, transitional or saving provision as needed.

584. Subsection (2) lists the delegated powers in the Bill that are subject to negative procedure.

585. Subsection (3) lists the delegated powers in the Bill that are subject to affirmative procedure.

586. Subsection (4) excludes regulations made under section 103(2) from the application of section 98.

Section 100 – Ancillary provision

587. Subsection (1) confers powers on the Scottish Ministers enabling them to make such incidental, supplementary, consequential, transitional, transitory or saving provision as they consider appropriate for the purpose of giving full effect to this Bill or any of its provisions.

588. Subsection (2) states that any regulations made under the powers of subsection (1) may modify any enactment (including this Bill).

Section 101 - Crown application

589. By virtue of section 20 of the Interpretation and Legislative Reform (Scotland) Act 2010, the Bill applies to the Crown in Scotland. However, subsection (1) absolves the Crown of any criminal liability, should it be in contravention of regulations made under section 35, on right of access to information on persons in control of land. Instead, subsection (2) provides for the Court of Session to declare such an act to be unlawful.

590. Amendments and insertions into the Agricultural Holdings Acts 1991 and 2003 also apply to the Crown in Scotland by virtue of section 79 of the 1991 Act and section 95 of the 2003 Act respectively.

Section 102 – Minor and consequential modifications

591. This section introduces the schedule, which makes minor and consequential amendments to existing legislation in consequence of changes made in the Bill to agricultural holdings legislation.

Section 103 - Commencement

592. Subsection (1) provides that, upon Royal Assent, sections 98, 99, 100, 103 and 104 come into effect and subsection (2) allows for commencement by regulation for the remaining sections.

Section 104 - Short title

593. This section provides for this Bill, once enacted, to be referred to as the Land Reform (Scotland) Act 2015.

SCHEDULE

This schedule is introduced by section 102 and contains minor and consequential amendments to existing legislation in consequence of changes made in the Bill to agricultural holdings legislation.

FINANCIAL MEMORANDUM

INTRODUCTION

1. This Financial Memorandum has been prepared by the Scottish Government to satisfy Rule 9.3.2 of the Parliament's Standing Orders. 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.

CONTENTS

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 objectives 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.

- **Right of access to information on persons in control of land** – to take regulation-making powers that allow for a requesting body to require the disclosure of certain information on a proprietor or tenant of land in Scotland, to be disclosed on a case by case basis, where the lack of the information can be shown to be having an adverse effect.
- **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; 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.

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.
- **Conversion of 1991 Act tenancies into modern limited duration tenancies** – to take a regulation-making power to allow the Scottish Ministers to make provision for a 1991 Act tenant farmer to convert a 1991 Act tenancy into a modern limited duration tenancy and to then assign the converted tenancy on the open market.
- **Tenant's right to buy** – remove the requirement for a tenant to register their interest in purchasing their holding, with the Registers of Scotland, under the existing right to

buy provisions in the Agricultural Holdings (Scotland) Act 2003. This right will now become automatic when a landlord decides to sell 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.
- **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.

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 9-14)	<u>Costs on Scottish Administration</u> Costs of consultation process, these will be absorbed within existing budgets. Cost estimate - £24,500 <u>Costs on local authorities</u> Nil <u>Costs on other bodies, individuals or businesses</u> Nil
Part 2 - Scottish Land Commission (paragraphs	<u>Costs on Scottish Administration</u> <u>Set up costs</u> Staff and Commissioners' salaries - £110,000 Expenses-£14,000

15-44)	<p>IT network - £75,000 Website -£100,000 TOTAL -£299,000 <u>Running costs</u> Staff - £860,000 Land commissioners and TFC salaries - £47,450 Research - £200,000 IT - £28,500 Website maintenance - £10,000 Travel expenses- £43,000 Other operational expenses - £133,000 TOTAL - £1,321,950 <u>Costs on local authorities</u> Nil <u>Costs on other bodies, individuals or businesses</u> Nil</p>
Part 3 – Right of access to information on persons in control of land (paragraphs 45 – 62)	<p><u>Costs on Scottish Administration</u> Staff costs of processing applications to the requesting authority - £37,500 per annum <u>Costs on local authorities</u> Nil <u>Costs on other bodies, individuals or businesses</u> Estimated costs of £129.80 for disclosure of information for businesses that are required to disclose information on individuals that have controlling interests under these regulations.</p>
Part 3 - Information relating to proprietors of land etc. (paragraphs 45 - 62)	<p><u>Costs on Scottish Administration</u> Minor costs to Registers of Scotland of updating application forms and IT system costs <u>Costs on local authorities</u> Nil <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 63 - 102)	<p><u>Costs on Scottish Administration</u> Preparation and review of guidance – £39,200 Annual promotion of guidance -£12,500 <u>Costs on local authorities</u> Guidance - As landowners, local authorities need to engage with communities. <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 63 – 102)	<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</p>

	<p>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 <u>Costs on local authorities</u> Right to buy land to further sustainable development – perhaps some minor costs for requests for information. <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>
Entry in valuation roll of shootings and deer forests (paragraphs 103 - 109)	<p><u>Costs on Scottish Administration</u> No costs are expected. <u>Costs on local authorities</u> Small administration costs to local authorities with new entries on the roll. <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 110 - 113)	<p><u>Costs on Scottish Administration</u> No costs are expected. <u>Costs on local authorities</u> Unlikely to have significant cost implications, and in time there may be savings. <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 114-117)	<p><u>Costs on Scottish Administration</u> No costs are expected. <u>Costs on local authorities</u> No costs are expected. <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 118 - 122)	<p><u>Costs on Scottish Administration</u> No costs are expected. <u>Costs on local authorities</u> Marginal costs of consultation <u>Costs on other bodies, individuals or businesses</u> Costs on bodies and individuals if they choose to become involved in</p>

	consultations or to seek judicial determinations.
Agricultural Holdings (paragraphs 123 - 179)	<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 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. 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 requirement in section 1(4) 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.

Costs on local authorities

13. 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

14. 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

15. 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

16. 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.

17. 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.

18. 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.

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

19. 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 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.

20. 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.

21. 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.

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

Set up costs

23. 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.

24. 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.

25. 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.

26. 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 £110,000. 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.

27. 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 £75,000 with annual running costs of approximately £28,500. We anticipate that a new website for the Commission would cost an absolute maximum of £100,000.

28. The total set up costs are anticipated to be £0.3 million.

Running costs

29. From 1 April 2017, we estimate that there will be annual running costs for the Commission of approximately £1.3 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.

30. 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.

31. The main running costs are set out below.

Staff and salary costs

32. 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.

33. 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.

34. 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.

35. 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 £860,000 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.

36. 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 eight 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 £47,450.

Non-staff costs

37. 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

38. 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.

39. 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

40. 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 £28,500 will be required for IT running costs per annum, and a further £10,000 for external website maintenance.

Other operational expenses

41. 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 £133,000 per annum for additional operational expenses.

42. 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 £43,000 per annum.

Costs on local authorities

43. 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

44. 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.

RIGHT OF ACCESS TO INFORMATION ON PERSONS IN CONTROL OF LAND

45. In order to increase the transparency and accountability of landownership in Scotland, the Bill includes a power that will allow the Scottish Ministers to make regulations that will provide interested parties, e.g. individuals or groups, the right to request access to information about individuals that have control of land but are not the legal owner.

46. These provisions will provide a power for the Scottish Ministers to make regulations that will provide in certain circumstances that a person can apply, to “the request authority”, for information about individuals that may have control over land. The individuals will have an element of control though their relationship with a trust, company or other legal entity that has a right of property or tenancy registered in the Land Register or the General Register of Sasines.

47. When the person applies for information, that person will have to demonstrate that there is a justifiable reason for requiring the information, such as land owned by the person is suffering some kind of harm, e.g. flooding, from land owned by the person they are interested in. Further consideration will be given to the appropriate public body to take on the functions of the request authority. It is anticipated that the request authority will be an existing public body or the functions will be carried out by a department within the Scottish Government. It is not intended, and no power is taken, to establish a new public body to carry out this function.

48. The Scottish Government will work through the detail of the process of making an application for information when developing the draft regulations, in consultation with key stakeholders, but at this stage it is envisaged that the process should be—

- A person will make an application to the request authority providing the name and contact details of the proprietor/tenant and evidence why the person requires this information.
- If the information provided is in order the request authority will send a notification to the proprietor/tenant asking for the information (if the information is insufficient the application will be rejected).
- The proprietor/tenant will collate the information and return this to the request authority.
- The request authority will send the information to the applicant or inform the applicant that there is no person that meets the criteria for having control of the land.

Costs on the Scottish Administration

49. At present the number of cases where people are having practical issues that could be resolved by having information about a person with control of the land is unknown. This information would only be required where land is owned by a legal entity where there may be an individual behind that legal entity exercising control. It will not be required where land is owned by individuals.

50. The regulations are unlikely to come into force until after Part 7 of the Small Business, Enterprise and Employment Act 2015 (UK Parliament legislation) comes into force. This Act provides that companies registered with Companies House must maintain a register of persons with significant control. This should mean that information will not be required to be sought for UK companies. In the main, it is envisaged that the regulations made under the Bill will only need to be used where information requires to be obtained about land owned by trusts or non UK companies².

51. To estimate the costs that may be incurred the Scottish Government is working on the assumption that the request authority may receive around 200-300 applicants a year for this information. The request authority will have an administrative function in processing the applications and sending requests to the persons identified in the application. Using this figure equates to about four to six applications per week, it is anticipated that these would be processed using staff resource that is estimated to cost £37,500. This will be met within existing budgets. The processing of these applications will not require any additional IT expenditure other than the setting up of confidential files and developing pro forma letters.

Costs on local authorities

52. The Scottish Government does not anticipate that there will be any costs placed directly on local authorities, as they will not require to reveal any information under these regulations. However, local authorities may well wish to use the regulations to find out about individuals in control of land in their area. However, the cost of using the regulations will be at the discretion of the local authority.

Costs on other bodies, individuals and businesses

53. Businesses that are companies or hold property in the name of a trust that have a right of ownership or tenancy registered in the Land Register (or recorded in the Register of Sasines) may incur costs associated with obtaining information about individuals that have a controlling interest in them and providing this to the request authority. It is anticipated that these businesses should be aware of the names of any individual that should be disclosed. Where the information is known, the business will incur some additional administrative cost in providing this information to the requesting authority. Where the information is not known there may some costs incurred in obtaining it.

54. 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. The table below taken from the Impact Assessment³ for the 2015 Act provides a summary of the costs that may be incurred by a company in providing information for that register. This provides an

² Figures received from the Registers of Scotland indicate that there are currently 13143 title sheets where the proprietor is based overseas.

³ <http://www.parliament.uk/documents/impact-assessments/IA14-14E.pdf>

indication of the costs that a company may incur in providing this information to the request authority.

	Best estimates – adjusted mean wage costs per company £	Best estimates - Adjusted mean additional cost per company £
One –off cost		
Familiarisation costs	55.9	35.6
Identification and collection	4.3	9.1
Collation, processing and storage	13.2	11.7

55. On this basis, it is envisaged that it would cost a business £129.80 to provide the relevant information in an individual case.

INFORMATION RELATING TO PROPRIETORS OF LAND ETC.

56. 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.

57. 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.

58. 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

59. 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

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

Costs on other bodies, individuals and businesses

61. 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.

62. 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 the £129.80 estimated to provide the relevant information in an individual case where an applicant is seeking information about persons in control of land under section 35 of the Bill.

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

63. 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.

64. 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.

65. 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

66. 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.

67. 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.

68. 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.

69. 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

70. 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.

71. 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.

72. 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.

73. 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).

74. 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.

75. 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.

76. 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.

77. 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

78. 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).

79. 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

80. 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

81. 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

82. 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

83. 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

84. 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

85. 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

86. 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.

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

Costs on local authorities

Guidance

88. 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 Engagement⁴. 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

⁴ <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

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

90. 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

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

92. 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.

93. 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

94. 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

95. 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.

96. 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).

97. 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

98. 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

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

Legal Agreements

100. 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

101. 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

102. 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

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

Costs on the scottish administration

103. 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

104. 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

105. 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.

106. 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.

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

108. 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

109. 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

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

Costs on local authorities

111. 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

112. 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

113. 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.

Costs on the Scottish Administration

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

Costs on local authorities

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

Costs on other bodies, individuals and businesses

116. The proposed measures will give SN H 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

117. 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.

118. 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

119. 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

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

Costs on other bodies, individuals and businesses

121. 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

122. 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.

123. 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.

124. 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

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

Modern limited duration tenancies

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

Conversion of 1991 Act tenancies to a modern limited duration tenancies

127. The Bill also provides for a regulation-making power intended to enable the Scottish Ministers to take forward the AHLRG's recommendation for a new provision that will enable a tenant farmer to convert a 1991 Act tenancy into a new modern limited duration tenancy (MLDT).

128. The tenant will then be able to assign to anyone on the open market for value, subject to a landlord's right to object to the proposed assignation on certain grounds.

129. The costs of regulations and any associated consultation will be covered under existing staff costs.

Tenant's right to buy

130. 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

131. 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.

132. 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.

133. 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.

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

135. 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

136. 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.

137. 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.

138. 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.

139. 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

140. 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.

141. 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.

Amnesty for tenant's improvements

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

Landlord's improvements

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

Costs on local authorities

144. 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

145. 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.

Conversion of 1991 Act tenancies into modern limited duration tenancy

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

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

148. A proportion of tenants without a successor may choose to convert a 1991 Act tenancy MLDT and assign at open market value. Tenants and landlords are still able to choose to agree to terminate the tenancy and agree compensation for 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.

149. 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.

Rent review

150. 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.

151. 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.

152. 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

153. 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.

154. 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

155. 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.

156. 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.

157. 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.

158. 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.

159. 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.

160. 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.

161. 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.

Amnesty for tenant's improvements

162. 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.

163. 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.

164. 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.

165. 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

166. 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.

167. 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.

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*⁵ 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

⁵ Views of Tenant Farmers and Agricultural Landlords on Aspects of the Agricultural Tenancy System; <http://www.gov.scot/Publications/2014/11/8975/7>

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.

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 cases⁶ have been heard in the Scottish Land Court and the costs associated with these were over £50,000 and £100,000 respectively.

⁶ <http://www.scottish-land-court.org.uk/decisions/SLC.94.09.rub.html>.

SCOTTISH GOVERNMENT STATEMENT ON LEGISLATIVE COMPETENCE

On 22 June 2015, the Cabinet Secretary for Rural Affairs, Food and Environment (Richard Lochhead MSP) made the following statement:

“In my view, the provisions of the Land Reform (Scotland) Bill would be within the legislative competence of the Scottish Parliament.”

PRESIDING OFFICER’S STATEMENT ON LEGISLATIVE COMPETENCE

On 22 June 2015, the Presiding Officer (Rt Hon Tricia Marwick MSP) made the following statement:

“In my view, the provisions of the Land Reform (Scotland) Bill would be within the legislative competence of the Scottish Parliament.”

These documents relate to the Land Reform (Scotland) Bill (SP Bill 76) as introduced in the Scottish Parliament on 22 June 2015

LAND REFORM (SCOTLAND) BILL

EXPLANATORY NOTES (AND OTHER ACCOMPANYING DOCUMENTS)

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