



The Scottish Parliament
Pàrlamaid na h-Alba

RURAL AFFAIRS, CLIMATE CHANGE AND ENVIRONMENT COMMITTEE

AGENDA

12th Meeting, 2015 (Session 4)

Wednesday 25 March 2015

The Committee will meet at 9.30 am in the Robert Burns Room (CR1).

1. **Scottish Government's Biodiversity Strategy:** The Committee will take evidence from—

Aileen McLeod, Minister for Environment, Climate Change and Land Reform, Keith Connal, Deputy Director, Natural Resources, and Sally Thomas, Land Use and Biodiversity Team Leader, Scottish Government;

Professor Des Thompson, Principal Adviser on Biodiversity, Scottish Natural Heritage.

2. **Review of Agricultural Holdings Legislation Final Report:** The Committee will take evidence from—

Scott Walker, Chief Executive, National Farmers Union Scotland;

Stuart Young, Chair of Scottish Land and Estates' Agricultural Holdings Strategy Group, Dunecht Estates;

Ken Bowlt, Royal Institution of Chartered Surveyors;

Martin Hall, Scottish Agricultural Arbiters and Valuers (SAAVA) representative on Tenant Farming Forum and former SAAVA President, SAAVA;

Mike Gascoigne, Convener of the Rural Affairs Committee, Law Society of Scotland;

Christopher Nicholson, Chairman, Scottish Tenant Farmers Association.

3. **Parliament Day Kirkwall (in private):** The Committee will consider its approach to its meeting and engagement activities in Orkney as part of Parliament Day Kirkwall in June.

4. **Scottish Government's Wild Fisheries Review (in private):** The Committee will consider a draft letter to the Scottish Government.

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The papers for this meeting are as follows—

Agenda item 1

Biodiversity cover note	RACCE/S4/15/12/1
PRIVATE PAPER	RACCE/S4/15/12/2 (P)

Agenda item 2

Agricultural Holdings cover note	RACCE/S4/15/12/3
PRIVATE PAPER	RACCE/S4/15/12/4 (P)

Agenda item 3

PRIVATE PAPER	RACCE/S4/15/12/5 (P)
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Agenda item 4

PRIVATE PAPER	RACCE/S4/15/12/6 (P)
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Scottish Government's Biodiversity Strategy

Background

1. In 2001 the European Union (EU) Heads of State or Government to halt the decline of biodiversity in the EU by 2010 and to restore habitats and natural systems. In 2002, they also joined 130 world leaders as Parties to the Convention on Biological Diversity¹, in agreeing to significantly reduce the rate of biodiversity loss globally by 2010. Scotland is signed up to international and EU targets on halting the loss of biodiversity.

2. SNH published a comprehensive assessment of Scotland's performance against the 2010 targets in Scotland's wildlife. An assessment of biodiversity in 2010². This states that (p 11) –

“Scotland's biodiversity indicators, the condition of notified habitats and species on protected areas, and progress towards meeting Scotland's biodiversity targets demonstrate that biodiversity loss has not yet been halted and will require renewed and sustained effort over a longer period.”

3. Internationally, the 2010 targets were also missed. This led to the UN Convention on Biological Diversity setting new targets for 2020, the Aichi Targets. In addition new 2020 targets were set for the EU and a new European Biodiversity Strategy was published in 2011. The new international targets call for a step change in efforts to halt the loss of biodiversity and to restore essential services that a healthy natural environment provides.

4. The Scottish response was the launch in 2013 of the 2020 Challenge for Scotland's³ Biodiversity. This complements Scotland's Biodiversity: It's In Your Hands⁴ from 2004. Together they make up the Scottish Biodiversity Strategy.

Committee consideration

5. At its meetings on 30 January 2013⁵ and 20 February 2013⁶ the Committee heard evidence from stakeholders and the Minister for Environment and Climate

¹ Convention on Biological Diversity, Aichi Biodiversity Targets. Available at: <http://www.cbd.int/sp/targets/>.

² Scottish Natural Heritage, *Scotland's wildlife. An assessment of biodiversity in 2010*. Available at: <http://www.snh.gov.uk/docs/B811968.pdf>

³ Scottish Government, *2020 Challenge for Scotland's Biodiversity*. Available at: <http://www.gov.scot/Resource/0042/00425276.pdf>.

⁴ Scottish Government, *Scotland's Biodiversity: It's In Your Hands*, 2004. Available at: <http://www.gov.scot/Resource/Doc/25954/0014583.pdf>.

⁵ Scottish Parliament Rural Affairs, Climate Change and Environment Committee, *Official Report* 30 January 2013. Available at: <http://www.scottish.parliament.uk/parliamentarybusiness/28862.aspx?r=7871&mode=pdf>.

⁶ Scottish Parliament Rural Affairs, Climate Change and Environment Committee, *Official Report* 20 February 2013. Available at: <http://www.scottish.parliament.uk/parliamentarybusiness/28862.aspx?r=7841&mode=pdf>.

Change on the Scottish Government's draft biodiversity strategy. It then wrote⁷ to the Minister on 18 March 2013 setting out its views to inform the final strategy. The response⁸ from the Minister to the Committee is available online.

6. The Committee agreed to take evidence on the implementation of the Scottish Government's Biodiversity Strategy as part of its work programme⁹ discussion on 17 December 2014. Written evidence submitted can be found in the Annexe to this paper.

7. On 19 March 2015 the Minister for Environment , Climate Change and Land Reform wrote to the Committee providing a pre-publication draft of the Scottish Government's Biodiversity Route Map to 2020, which can also be found in the Annexe.

Evidence sessions

8. The Committee took evidence from stakeholders in a roundtable discussion at its meeting on 18 March 2015¹⁰ and will take evidence from the Minister for Environment, Climate Change and Land Reform at its meeting on 25 March 2015.

9. The Committee will agree its response to the Minister at a future meeting after the Easter recess.

Clerks

Rural Affairs, Climate Change and Environment Committee

⁷ Letter to Minister for Environment and Climate Change.

http://www.scottish.parliament.uk/S4_RuralAffairsClimateChangeandEnvironmentCommittee/General%20Documents/2013.03.18_RACCE_Convener_to_Minister_on_Biodiversity.pdf

⁸ Letter from Minister for Environment and Climate Change.

http://www.scottish.parliament.uk/S4_RuralAffairsClimateChangeandEnvironmentCommittee/General%20Documents/letter_to_rob_gibson.pdf

⁹ Scottish Parliament Rural Affairs, Climate Change and Environment Committee. *Work Programme*.

http://www.scottish.parliament.uk/S4_RuralAffairsClimateChangeandEnvironmentCommittee/General%20Documents/RACCE_-_web_work_prog_-_Dec_2014.pdf

¹⁰ Scottish Parliament Rural Affairs, Climate Change and Environment Committee, *Official Report* 18 March 2015. Available at:

<http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/29878.aspx>

Annexe

Letter from Minister for Environment, Climate Change and Land Reform [inc route map]

16 March 2015

Dear Rob

In advance of the Rural Affairs, Climate Change and Environment Committee's consideration of biodiversity this month, I am pleased to attach a final pre-publication draft of 'Scotland's Biodiversity – a Route Map to 2020'. This document complements the '2020 Challenge for Biodiversity' and sets out the priority projects which the Scottish Government and a wide range of partners are taking forward to help deliver the Challenge and to continue the work to improve the state of nature in Scotland.

The Route Map identifies six 'Big Steps for Nature' and a number of priority projects which focus on collaborative work which will deliver benefits for biodiversity and help towards meeting the Aichi goals and targets. The document has been prepared by Scottish Natural Heritage as lead author, with input from a range of organisations which are members of the Delivery and Monitoring Group (which reports to the Scottish Biodiversity Committee which I chair). The document will be updated to record progress and capture new activities as these are developed.

In view of the Committee's consideration of this topic, I felt it would be helpful to share the document with you prior to publication, to help inform your evidence sessions and to offer the Committee an opportunity to provide comments before I publish the Route Map early in April.

I am looking forward to discussing the 2020 Challenge and the Route Map when I meet the Committee later this month.

Kind regards

AILEEN MCLEOD

Final pre-publication draft

Scotland's Biodiversity – a Route Map to 2020

1 Introduction

In 2013, we published [*The 2020 Challenge for Scotland's Biodiversity*](#). It updated and complements the Scottish Biodiversity Strategy, [*It's in Our Hands*](#) (2004), to take account of the Aichi goals and targets and to set out the major steps we need to take in order to improve the state of nature in Scotland.

Our awareness of the importance, value and fragility of nature is growing year on year. Through an impressive body of evidence we are building up a clearer picture

of what needs to be done to care for and restore biodiversity. The work needed to improve matters is complex and challenging. The Route Map intentionally is not a catalogue of all activity that is underway or planned, but rather it sets out 6 'Big Steps for Nature' and a number of priority projects which focus on collaborative work which the Scottish Government and a wide range of partners are taking forward to help deliver the 2020 Challenge and to improve the state of nature in Scotland.

Many of our habitats and wildlife are internationally important. Scotland's peatlands, mountain landscapes, coastal cliffs and seas, machair and a diversity of woodland ecosystems are exceptional by European standards. These support a fantastic range of species, as well as being key assets for public health and wellbeing. We want to improve the state of nature across Scotland and to ensure that many more people draw on its many benefits.

As set out in the 2020 Challenge, our well-being and prosperity depends on the benefits that biodiversity provides. Forests, meadows, rivers, saltmarshes and bogs in healthy condition provide clean water, food, fuel, storm protection, minerals and flood control. Nature underpins all of this, and of course is important in its own right. Regular contact with wildlife provides many health benefits, enables our children to enjoy learning, and helps bring people together. We need to protect and enhance nature to secure these benefits now and into the future.

[Scotland's Economic Strategy \(2015\)](#) states that '*Protecting and enhancing this stock of natural capital, which includes our air, land, water, soil and biodiversity and geological resources is fundamental to a healthy and resilient economy*'.

The [Natural Capital Asset Index](#) provides an overview of the state of Scotland's natural assets (based on seven broad ecosystems), and is founded on an assessment of their area and quality. Between the 1950s and 1990s there was a decline in Scotland's natural capital, with the greatest rate of decline between the 1960s and 1970s. Since 1990 there has been a slight recovery, with freshwaters, woodland, coast and urban greenspace showing the greatest improvement. Moorland, grassland and cropland have not fared so well, primarily due to changes in forestry and farming practices.

Understanding the decline in the natural capital of Scotland, alongside an analysis of biodiversity action undertaken to [2010, has allowed us to identify action needed to improve matters. We have devised a range of](#) biodiversity trends and indicators which provide us with the evidence base on the pressures biodiversity is facing, and specific work required.

Government policy and actions are critical, including the [Common Agricultural Policy \(CAP\) reform](#), the greening of Pillar 1 and the agri-environment measures on offer through the next [Scottish Rural Development Programme](#) (SRDP), which are targeted to benefit priority species in greatest need of conservation action. These provide opportunities for improved farming for the environment and for biodiversity. The [Climate Change Adaptation Programme](#), the [National Performance Framework 3](#), and the [Land Use Strategy](#) also provide clear policy guidance on biodiversity matters. Other important strategies include the [Scottish Soil Framework](#), which aims to promote the sustainable management and protection of soils consistent with

economic, social and environmental needs. The [Water Framework Directive](#) and [River Basin Management Plans](#) provide an important basis for multi-benefit coordinated action.

Much valuable work is already underway and is planned by Scotland's National Parks, NGOs, public agencies, Local Biodiversity Action Partnerships, Local Authorities (through Local Biodiversity Action Plans), businesses, land managers and committed individuals. Much of this work is undertaken on a partnership and collaborative basis, which we wish to deepen through some of the priority projects highlighted in this Route Map.

Many landscape scale projects, which involve communities, land managers and other partners, are already working to address biodiversity issues and to deliver socio-economic benefits. This work operates across much of Scotland; from projects in our National Parks to Coigach-Assynt in the far north, and from the Inner Forth and the Central Scotland Green Network (CSGN) in the central belt to the Galloway and South Ayrshire Biosphere. Beyond this, there are many important urban-based projects supporting biodiversity in our towns and cities as well as work focused at a catchment scale.

Some of the key work is concentrated on particular habitats and species. There is a huge range of exciting work on species conservation, involving waders, black grouse, red squirrels, wildcats and freshwater pearl mussels, to name a few. The special communities of mosses, liverworts, fungi and lichens are getting more attention, which is appropriate given their international importance. Indeed, across Scotland thousands of projects are underway, ranging in scale from restoration of tiny raised bogs and ponds through to ambitious woodland and river restoration schemes. Research projects, many involving hundreds of volunteers, provide a wealth of data on almost every part of Scotland, with basking sharks, seabird colonies, birds of prey, amphibians and reptiles, rare plants and fungi and literally hundreds of species figuring prominently in reports.

All of this work provides more places and opportunities for increasing numbers of people to experience and enjoy biodiversity. In 2014, over 10 million people visited the two Scottish National Parks, and more than 12,000 young people were involved in practical biodiversity conservation in Scotland through the John Muir Award. RSPB has 1,700 active volunteers helping look after nature on their reserves, and 9,000 school children experienced outdoor learning. These are impressive statistics.

Much of the action underway across Scotland to tackle the decline in biodiversity is being captured in Biodiversity Duty reports and the Biodiversity Delivery Agreements that many organisations are currently developing.

This is the first version of the Route Map. We shall update it to report on progress and to set out further work that is underway or planned. We have [governance structures in place](#), with the Ministerially-chaired Scottish Biodiversity Committee providing leadership and the Delivery and Monitoring Group driving delivery and monitoring progress.

2 The key pressures on biodiversity

Work at the global, European, national and regional levels is clarifying the [pressures](#) we have to deal with in relation to biodiversity loss, we have identified the following seven as the most critical for Scotland:

- **Pollution** – from industry, agriculture and road traffic, which impacts on waterways, uplands, air quality and sensitive habitats across Scotland;
- **Land use intensification and modification** – leads to a reduction of diversity, quality and connectivity of landscapes and habitats. Across the uplands this results from increased grazing pressure, and in the past, forestry; in the lowlands it is primarily through agricultural intensification, and more recently increased grazing, with housing development a significant localised pressure in some areas;
- **Spread of invasive species and wildlife disease** – much of this has arisen from a growing global trade of plants and animals;
- **Lack of recognition of the value of nature** – Currently, the vital benefits that healthy stocks of nature, or ‘natural capital’, provide to society are not fully recognised or appreciated and therefore are not sufficiently considered in decision making;
- **Disconnection with nature** – many people in society are disconnected with nature and therefore undervalue its contribution to their well-being and prosperity, and to wider society;
- **Climate change** – is causing a shift in weather patterns which are affecting nature across Scotland. In the seas warming, acidification and sea level rise are becoming evident, and wetter conditions on land, especially in the west are predicted; and
- **Marine exploitation** – mainly in the form of some commercial fisheries and fishing, which have profoundly changed the abundance and resilience of some species, such as cod, and altered marine habitats.

We recognise the importance of working to address these pressures, including the need to adopt an ecosystem approach. This involves bringing the stocks of natural capital into good health, and appreciating the services provided by nature in order to improve management through collaborative work.

3 Organising and prioritising work

[The 2020 Challenge for Scotland's Biodiversity](#) set out Outcomes and Key Steps for each of its seven chapters. These are best met through taking six ‘Big Steps for Nature’. Under each of these we have identified a suite of priority projects. These focus on delivering benefits for biodiversity on the ground – they are practical, collaborative and readily understood.

3.1 *Six Big Steps for Nature*

The six steps are as follows:

1. **Ecosystem restoration** – to reverse historical losses of habitats and ecosystems, to meet the Aichi target of restoring 15% of degraded ecosystems;
2. **Investment in natural capital** – to ensure the benefits which nature provides are better understood and appreciated, leading to better management of our renewable and non-renewable natural assets.
3. **Quality greenspace for health and education benefits** – to ensure that the majority of people derive increased benefits from contact with nature where they live and work;
4. **Conserving wildlife in Scotland** – to secure the future of priority habitats and species;
5. **Sustainable management of land and freshwater** – to ensure that environmental, social and economic elements are well balanced; and
6. **Sustainable management of marine and coastal ecosystems** – to secure a healthy balance between environmental, social and economic elements.

3.2 *Priority projects*

We have identified Priority Projects under each of the big steps, though some could sit under several of these. These projects require collaborative, partnership working, and are part of a rolling programme which will be updated annually.

Big Steps for Nature and Priority Projects.

BIG STEP 1: Ecosystem Restoration

2020 Challenge Outcome: Scotland's ecosystems are restored to good ecological health so that they provide robust ecosystem services and build our natural capital

Priority Project 1: Restoration of Peatlands

Aim: Restore peatland condition and function in order to generate benefits through ecosystem services; carbon sequestration, carbon storage, water quality, flood management and more abundant nature.

Target: Ambitious peatland restoration programme underway, contributing to the EU 15% ecosystem restoration target.

On-going work

- Restore peatland and sequester carbon through 107 peatland management agreements and grants awarded across Scotland covering 5,100 ha.
- Flow Country Peatland Restoration - establish an international benchmark for good practice.

Planned work

- *National Peatland Plan* published in 2015 and implementation begun.
- Peatland restoration demonstration - 15 events for land managers and communities across Scotland.

Priority Project 2: Restoration of native woodland

Aim: Improve the condition and extent of existing native woodlands and further increase new woodland planting.

Target:

- Increase the amount of native woodland in good condition (upwards from 46% as identified by the Native Woodland Survey of Scotland).
- 3,000 to 5,000ha of new woodland creation per year.
- Restore approximately 10,000 ha of native woodland into satisfactory condition in partnership with private woodland owners through Deer Management Plans.

On-going work

- Provision of grants, information, promotional events and training
- Conservation management on the National Forest Estate.
- Development of Deer Management Plans with public interest targets to contribute to the overall aim of native woodland restoration.

Planned work

- Implement *Scotland's Wild Deer: A National Approach*.
- Establish further mechanisms for lowland deer management.
- Atlantic Woodland Restoration - through rhododendron removal and conservation management (Life funding bid in progress).

Priority project 3: Restoration of Freshwaters

Aim: To secure good ecological status for more rivers and lakes in Scotland and thereby secure biodiversity gains and a range of ecosystem services; through addressing diffuse pollution, invasive non-native species, physical modifications as well as riparian and wider-catchment land management issues.

Target: Achieve agreed ecological water quality objectives under the Water Framework Directive of river and lake water bodies and to contribute to meeting conservation objectives (including Natura 2000 sites) through scoping improvements to physical modifications.

On-going work

- Development and implementation of two River Basin Management Plans for the 2nd cycle (2015-2021) – delivering Water Framework Directive objectives and associated biodiversity benefits.

- Physical restoration of rivers in priority catchments as part of the 'Pearls in Peril' Life Project will deliver substantial biodiversity benefits and restore river function.

Planned work

- Develop a community-based, riparian invasive non-native species (INNS) project over approximately 29,500 square km of Northern Scotland. Development of catchment scale long-term control with a focus on freshwaters will reduce the economic, social and environmental impacts of INNS in the long term (HLF stage 1 bid submitted).
- Focused measures on priority catchments for diffuse pollution with associated biodiversity benefits.
- Physical restoration of 4 pilot catchments with associated biodiversity benefits.
- Contribute to IUCN *River Restoration and Biodiversity* project.

BIG STEP 2 – Investment in Natural Capital

2020 Challenge Outcome: Natural resources contribute to stronger sustainable growth in Scotland, and we increase our natural capital to pass on to the next generation

Priority Project 4: Securing economic and social benefits from, and investment in, natural capital.

Aim: Economic and social benefits from improving Scotland's natural capital are demonstrated, and investment secured through new or existing instruments.

Target: Businesses are more aware of their reliance on Scotland's natural capital, and more investment is being made in building natural capital.

On-going work:

- Promoting the Woodland Carbon Code to attract investment in woodland creation.
- Developing the Peatland Code as a framework for investing in peatland restoration.
- Developing the Natural Capital Asset Index (NCAI) as a means of assessing Scotland's natural capital and the sustainability of the Scottish economy.

Planned work:

- Identify opportunities for new investment by business in green infrastructure, especially in the CSGN area.

BIG STEP 3 - Quality greenspace for health and education benefits

2020 Challenge Outcome: Improved health and quality of life for the people of Scotland, through investment in the care of green space, nature and landscapes.

Priority Project 5: More people experiencing and enjoying nature

Aim: Improve levels of regular participation in outdoor recreation, volunteering and learning by all of Scotland's people.

Target: Increase regular visits and active travel in greenspace through improved infrastructure, information, and campaigns, and the provision of activities and events.

On-going work

- Supporting the better provision and quality of greenspace through development planning and place-making.
- Delivering national and local participation campaigns, events and activities and outreach work targeted at under-represented groups.
- Developing more opportunities for the public to engage in volunteering and citizen science through Scotland Counts and SEWeb.

Planned work

- Better provision of information on opportunities to enjoy the outdoors, including the development of a national web portal to the natural environment.
- Improve provision of greenspace in disadvantaged areas of urban Scotland through green infrastructure projects funded through the Scotland's 2014-2020 Structural Funds Programme (funding bid in progress).
- Delivering the National Walking and Cycling Network and promoting its use by the public.

Priority Project 6: Taking Learning Outdoors

Aim: Increase Secondary and Primary schools' access to greenspace and nature for outdoor learning.

Target: 100 schools in the 20% most disadvantaged areas across Scotland have access to quality greenspace for outdoor learning.

On-going work

- Providing outdoor learning information and opportunities in National, Regional and Local Parks, Nature Reserves, and the National Forest Estate.
- Supporting teachers through Teaching in Nature, Forest Schools and similar programmes to ensure they are able to deliver outdoor learning to children and young people.
- Develop and improve greenspace provision and opportunities for outdoor learning close to schools.

Planned work

- Develop and improve greenspace provision and opportunities for outdoor learning close to schools in the most disadvantaged communities in Scotland.

Priority Project 7: Developing Scotland's *natural* health service

Aim: NHS Health Boards to promote health benefits from physical outdoors activity and contact with nature, with green exercise routinely prescribed by health professionals as part of the physical activity pathway.

Target: Improve greenspace quality and use on at least one hospital or health care facility in each NHS health board in mainland Scotland.

On-going work

- Developing and promoting a green exercise tool-kit for use by the health and environment sectors.
- Delivering a NHS Greenspace Demonstration Project; providing quality greenspace for use by patients, visitors and staff for treatment, recovery, recreation and relaxation.

Planned work

- Deliver 2nd phase of the NHS Greenspace Demonstration Project to complete mainstreaming of greenspace provision and use on the NHS estate.
- Support better mapping, provision and use of green exercise opportunities as part of three area-based initiatives with health boards and local authorities to increase physical activity levels, improve mental health and tackle health inequalities.

BIG STEP 4 – Conserving wildlife in Scotland

2020 Challenge Outcome: The special value and international importance of Scotland's nature and geodiversity is assured, wildlife is faring well and we have a highly effective network of protected places

Priority Project 8: Protected Areas in good condition

Aim: Ensure protected sites are under good conservation management.

Target: At least 80% of designated 'features' in favourable condition by 2016.

On-going work

- Focusing action on those sites that are in most need of effective conservation management.
- Undertake work to ensure that at least 18% of land and freshwater is under conservation designation.

Planned work

- Work towards improving the condition of protected sites in the longer term.

Priority Project 9: Conservation of priority species

Aim: Deliver focused action for priority species in Scotland.

Target: Six high profile wildlife projects underway in 2015, with a further suite of projects to be developed (e.g. concerned with restoring populations of curlew, corncrake, corn bunting, water vole, pearl-bordered fritillary, great yellow bumblebee).

On-going work

- Freshwater pearl mussel conservation: protecting, restoring and securing populations in 19 SACs in Scotland (and one each in England and Wales).
- Langholm Moorland Demonstration Project – sustainable management of red grouse, habitat, hen harriers and other wildlife.
- Increasing abundance of ground nesting birds through the eradication of North American mink on the Outer Hebrides.
- Removing black rats, and other remedial work, on Shiant islands to improve success of breeding seabirds.
- Under PAWS (Partnership Against Wildlife Crime Scotland), implement action plan for hen harriers involving intelligence sharing, enforcement and awareness raising to combat wildlife crime.
- Saving Scotland's Red Squirrels Project – collaborative work with many landowners to safeguard the red squirrel population in stronghold ranges.

Planned work

- South Scotland golden eagle reinforcement project initiated in 2015.
- Wildcat action plan implemented.
- Publish and implement a species framework for Scotland, enabling the setting of conservation and management priorities.
- Publish Pollinator Strategy for Scotland.
- Publish Plant Health Strategy for Scotland.

BIG STEP 5 – Sustainable management of land and freshwater

2020 Challenge Outcome: Nature is faring well and ecosystems are resilient as a result of sustainable land and water management

Priority Project 10: Improving ecological connection

Aim: Improve habitat and species resilience, contribute to wider ecosystem services (such as improved natural flood management and reducing diffuse pollution) and contribute to the socio-economics of central Scotland.

Target: Improve connectivity between habitats and ecosystems.

On-going work

- Habitat management to support connections for eight sites within the CSGN area through EcoCo Life project.

Planned work

- Develop a national ecological network to enable characterisation of the nature

of Scotland, and to help with the identification of priority areas for action on habitat restoration, creation and protection.

- Develop integrated habitat 'opportunity' mapping for central Scotland and identify delivery mechanisms.
- Provision of green infrastructure in central Scotland through Scotland's 2014-2020 Structural Funds Programme (ERDF application in progress).

Project Priority 11: Sustainable land management

Aim: Support sustainable land management under the Common Agricultural Policy (CAP) and establish a network of demonstration sites in which ecosystem health is improved alongside agricultural production.

Target: Promotion of measures to support biodiversity under CAP. A suite of sites demonstrating good practice aimed at supporting wildlife.

On-going work.

- Targeted support for sustainable land management practices under SRDP Agri-Environment Climate and Forestry Grant Schemes.
- Support for biodiversity on arable farms through the Ecological Focus Areas CAP greening requirement, and increased protection for hedgerows and watercourses under cross compliance.
- The Wildlife Estates Scotland (WES) Initiative – encouraging best practice and demonstrating how sustainable game and wildlife management can deliver multiple benefits, including wildlife conservation, and wide society and rural community benefits.
- Demonstration Farms - including Leaf Farms and Climate Change focus Farms, plus research and teaching farms run by Scotland's Rural College (SRUC) and James Hutton Institute (JHI).

Planned work

- Support for landscape-scale agri-environment management under the new SRDP Environmental Cooperation Action Fund.
- Promotion of agri-environment and sustainable farming practices through the SRDP Farm Advisory Service and Scottish Rural Network.
- Seeking EC approval to implement CAP greening through a certification scheme from 2016, including new nutrient efficiency measures on grassland farms.
- Expand network of demonstration farms which support biodiversity.
- Develop a network of arable farms to demonstrate ways in which farming can sustain multiple benefits, and reverse the declines in vascular plants and specialist groups of invertebrates and birds.

BIG STEP 6 - Marine and Coastal ecosystems restored

2020 Challenge Outcome: Scotland's marine and coastal environments are clean, healthy, safe, productive and biologically diverse, meeting the long-term needs of the people and nature

Priority Project 12: Increase environmental status of our seas

Aim: establish effective protection and management of nature in Marine Protected Areas and safeguard priority marine features.

Target: 10% of Scotland's seas to be incorporated in nature conservation Marine Protected Areas.

On-going work

- Developing the evidence base through setting and delivering surveillance/monitoring strategy that will allow authoritative reporting of state and progress.
- Completing the suite of MPAs (including the additional NATURA sites) and agreeing and delivering measures for their effective management.
- Putting in place Regional Marine Plans that incorporate provision for decision making that promotes ecological coherence between protected areas and safeguards priority marine features.

Table 1 summarises the priority projects that are underway and their contributions to the Big Steps for Nature, the Scottish Biodiversity Strategy outcomes and key steps, to addressing pressures, and to delivering against the Aichi targets.

3.3 Supporting Work

Work is needed to support these projects, improving knowledge and effectiveness through gathering and presenting information to aid decision making. This is being undertaken across agencies, NGOs and businesses, and examples include:

- **Natural Capital Asset index (NCAi)** used to inform decision making;
- **Ecosystem Health Indicators** published on Scotland Environment website (SE Web) to inform local decision making and help set targets and priorities for action;
- **A new habitat map** of Scotland based on the pan-European EUNIS-Annex I classification by 2019;
- **Citizen science:** an increase by 10% in the number of people providing data and information on the state of nature and awareness-raising of nature benefits;
- **Carbon rich soil map** published in 2015 to help inform decision making;
- **INNS prevention:** Preventing the introduction and spread of INNS by improving biosecurity and surveillance, and responding quickly to control new outbreaks;
- Raising **awareness amongst businesses** through the Scottish Forum on Natural Capital and exploring new opportunities for investment; and

- With [Young Scot](#) explore opportunities to **engage young people** in delivery of the 2020 Challenge.

Geographically-focused work

A range of biodiversity-related work focussed on particular places and areas in Scotland, often working at a landscape scale and on a collaborative basis, has been in place for many years and will continue to be important. Examples include the work of Scotland's National Parks (through Cairngorms Nature and Wild Park 2020), on Scotland's National Forest Estate, the Royal Society for the Protection of Birds' (RSPB) 'Futurescapes', the Scottish Wildlife Trust's (SWT) 'Living Landscapes' and the Galloway and South Ayrshire Biosphere. Other relevant initiatives include the early work to pilot collaboration on priority catchments where a focus of activity, particularly by government agencies, could deliver multiple benefits; and the Land Use Strategy Pilots in the Scottish Borders and Aberdeenshire.

Examples of focused action on priority species and habitats include:

- Cairngorms National Park: wading birds, invertebrates, Scottish wildcats and Capercaillie, peatland restoration, and native woodland, peatland and moorland management;
- Loch Lomond and The Trossachs National Park: red squirrel, black grouse, peatlands, woodlands and focused action on invasive non-native species such as rhododendron, Japanese knotweed and American Skunk cabbage.
- National Forest Estate: protecting and conserving priority habitats, tackling invasive species and monitoring key species.
- National Nature Reserves: management and restoration of peatlands, native woodlands and freshwaters; work on priority species; and conserving a wide range of rare and special places for people to enjoy.

4 Measuring and reporting on progress

The 2020 Challenge sets out how Scotland will contribute to the global Aichi targets. Tracking work being done towards 2020 can provide assurance of progress, highlight concerns and inform action. **Annex 1** illustrates how the Scotland and UK biodiversity indicator sets measure progress towards the Aichi targets.

4.1 Scotland's biodiversity indicators

Scotland's Biodiversity Indicators have been developed to monitor changes in our nature and landscapes. They provide evidence of progress towards policy objectives and demonstrate what is actually happening.

Scotland's indicators include a set which link to the 2020 Challenge, these are known as [Scotland's biodiversity strategy indicators](#). These are divided into two sets:

- [Scotland's Biodiversity State Indicators](#) and
- [Scotland's Biodiversity Engagement Indicators](#).

[Scotland's National Performance Framework](#) also provides a measure of biodiversity through the following indicators:

Visits to the outdoors - [Increase people's use of Scotland's outdoors](#)
 Conditions of Protected Sites - [Improve the condition of protected nature sites](#)
 Breeding Birds - [Biodiversity: increase the index of abundance of terrestrial breeding birds](#)

Together these provide the evidence that illustrates Scotland's contribution to the global objectives set out in the Aichi targets.

4.2 UK Biodiversity Indicators

The [UK Biodiversity Indicators](#) also provide a measure of Scotland's contribution to global targets. Many of the indicators can be disaggregated to Scotland level. The overall indicator set has been developed to measure the UK's progress towards the Aichi targets. These are also set out in **Annex 1**.

4.3 Scotland Rural Development Programme and CAP Greening

The recently launched SRDP contributes to the delivery and aims of the 2020 Challenge and global biodiversity targets. Projects to measure the impact of SRDP agri-environment measures and CAP greening requirements are currently being developed.

4.4 Measuring the contribution of 2020 Challenge Priority Projects

Priority projects described in the Route Map highlight vital and practical targeted action, for which discrete output/outcome measures will be specified. We will track progress under the auspices of the Delivery and Monitoring Group.

4.5 Ecosystem Health Indicators

A set of [Ecosystem Health Indicators](#) is currently under development to characterise conditions relevant to regional and local-scale delivery, such as at the catchment scale. These will also inform our contribution to some of the global Aichi targets.






In addition to the indicators; and projects detailed above, the growing contribution to knowledge from [SEWeb](#), the National Biodiversity Network ([NBN](#)) and Biodiversity Action Reporting System ([BARS](#)) will help to monitor progress. Much of this draws on research and survey work by organisations such as the JHI, SRUC, the Royal Botanic Garden Edinburgh, our Universities, and NGOs with a strong research and survey base such as the British Trust for Ornithology, Scottish Ornithologists' Club, Botanical Society for the British Isles and Plantlife Scotland.



Scotland's [2010 assessment](#) concluded that very considerable progress had been made by many people and organisations in caring for and enjoying nature. We have begun work to prepare an annual '2020 Challenge: state of nature' report, which will provide a stock-take on how nature is faring. This will incorporate the results of survey, monitoring and analyses set out under Annex 1. It will draw on a wide range of inputs from those delivering the Route Map, and will provide a one-stop account of progress being made.





This Route Map will guide the collaborative work which will help meet the aims of the 2020 Challenge and the Aichi targets over the next five years.






Annex 1. Convention on Biological Diversity – Aichi Targets and Indicators

This summary of the current status of indicator development is a mix of metrics developed at the UK and, where data permit, the Scotland scales.

	Awareness increased <i>By 2020, at the latest, people are aware of the values of biodiversity and the steps they can take to conserve and use it sustainably.</i>	
	UK	A1 Awareness understanding and support for conservation A2 Taking action for nature: volunteer time spent in conservation
	Scotland	E1 Attitudes to biodiversity E3 Visits to the outdoors
	Biodiversity values integrated <i>By 2020, at the latest, biodiversity values have been integrated into national and local development and poverty reduction strategies and planning processes and are being incorporated into national accounting, as appropriate, and reporting systems.</i>	
	UK	A3 Value of biodiversity integrated into decision making – under development
	Incentives reformed <i>By 2020, at the latest, incentives, including subsidies, harmful to biodiversity are eliminated, phased out or reformed in order to minimize or avoid negative impacts, and positive incentives for the conservation and sustainable use of biodiversity are developed and applied, consistent and in harmony with the Convention and other relevant international obligations, taking into account national socio economic conditions.</i>	
	UK	B1a Area of land in agri-environment schemes B1b Agriculture and forest area under environmental management schemes
	Scotland	N7 Land and sea of recognised natural heritage importance
	Sustainable consumption and production <i>By 2020, at the latest, Governments, business and stakeholders at all levels have taken steps to achieve or have implemented plans for sustainable production and consumption and have kept the impacts of use of natural resources well within safe ecological limits.</i>	
	UK	A3 Value of biodiversity integrated into decision making – under development A4 Global biodiversity impacts of UK economic activity/ sustainable consumption A5 Integration of biodiversity considerations into business activity – under development
	Habitat loss halved or reduced <i>By 2020, the rate of loss of all natural habitats, including forests, is at least halved and where feasible brought close to zero, and degradation and fragmentation is significantly reduced.</i>	
	UK	C3a Status of habitats of European importance C5 Birds of the countryside and at sea
	Scotland	S03 Abundance of terrestrial breeding birds S04 Abundance of wintering waterbirds

		S05 Abundance and productivity of breeding seabirds S11 Condition of notified habitats
	Sustainable management of marine living resources <i>By 2020 all fish and invertebrate stocks and aquatic plants are managed and harvested sustainably, legally and applying ecosystem based approaches, so that overfishing is avoided, recovery plans and measures are in place for all depleted species, fisheries have no significant adverse impacts on threatened species and vulnerable ecosystems and the impacts of fisheries on stocks, species and ecosystems are within safe ecological limits.</i>	
	UK	B2 Sustainable fisheries (to be replaced)
	Scotland	NPI Improve the state of Scotland's marine environment (to be replaced)
	Sustainable agriculture, aquaculture and forestry <i>By 2020 areas under agriculture, aquaculture and forestry are managed sustainably, ensuring conservation of biodiversity.</i>	
	UK	B1a Area of land in agri-environment schemes B1b Agriculture and forest area under environmental management schemes
	Scotland	N7 Land and sea of recognised natural heritage importance
	Pollution reduced <i>By 2020, pollution, including from excess nutrients, has been brought to levels that are not detrimental to ecosystem function and biodiversity.</i>	
	UK	B5a Pressure from air pollution B5b Marine pollution B7 Surface water status
	Scotland	
	Invasive alien species prevented and controlled <i>By 2020, invasive alien species and pathways are identified and prioritized, priority species are controlled or eradicated, and measures are in place to manage pathways to prevent their introduction and establishment</i>	
	UK	B6 Pressure from invasive species
	Scotland	S17 Invasive non-native species 1950s – 2001
	Pressures on vulnerable ecosystems reduced <i>By 2015, the multiple anthropogenic pressures on coral reefs, and other vulnerable ecosystems impacted by climate change or ocean acidification are minimized, so as to maintain their integrity and functioning.</i>	
	UK	B3 Climate change adaptation – under development B4 Pressure from climate change – spring index B5b – Marine pollution
	Scotland	N4 Timing of seasonal events
	Protected areas increased and improved <i>By 2020, at least 17 per cent of terrestrial and inland water, and 10 per cent of coastal and marine areas, especially areas of particular importance for biodiversity and ecosystem services, are conserved through effectively and equitably managed, ecologically representative and well-connected systems of protected areas and other effective area-based conservation measures, and integrated into the wider landscapes and seascapes.</i>	
	UK	C1 Protected areas

	Scotland	S10 Condition of notified species S11 Condition of notified habitats N7 Land and sea of recognised natural heritage importance
	Extinction prevented <i>By 2020 the extinction of known threatened species has been prevented and their conservation status, particularly of those most in decline, has been improved and sustained.</i>	
	UK	C3b Status of UK species of European importance C4 Priority species C5 Birds of the countryside and at sea C6 Insects of the countryside – butterflies C7 Plants of the wider countryside C8 Mammals of the wider countryside – bats
	Scotland	S03 Abundance of terrestrial breeding birds S04 Abundance of wintering waterbirds S05 Abundance and productivity of breeding seabirds S06 Vascular plant diversity S08 Terrestrial insect abundance – butterflies S09 Terrestrial insect abundance – moths S10 Condition of notified species S12 Otter
	Genetic diversity maintained <i>By 2020, the genetic diversity of cultivated plants and farmed and domesticated animals and of wild relatives, including other socio-economically as well as culturally valuable species, is maintained, and strategies have been developed and implemented for minimizing genetic erosion and safeguarding their genetic diversity.</i>	
	UK	C9a Animal genetic resources C9b Plant genetic resources
	Ecosystems and essential services safeguarded <i>By 2020, ecosystems that provide essential services, including services related to water, and contribute to health, livelihoods and well-being, are restored and safeguarded, taking into account the needs of women, indigenous and local communities, and the poor and vulnerable.</i>	
	UK	Biodiversity and ecosystem services D1a Fish size classes in the North Sea D1b Removal of greenhouse gases by UK forests D1c Pollinating insects
	Ecosystems restored and resilience enhanced <i>By 2020, ecosystem resilience and the contribution of biodiversity to carbon stocks has been enhanced, through conservation and restoration, including restoration of at least 15 per cent of degraded ecosystems, thereby contributing to climate change mitigation and adaptation and to combating desertification.</i>	
	UK	Biodiversity and ecosystem services D1a Fish size classes in the North Sea D1b Removal of greenhouse gases by UK forests D1c Pollinating insects

	Nagoya protocol in force and operational <i>By 2015, the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization is in force and operational, consistent with national legislation.</i> Not yet developed.
	National Biodiversity Strategy and Action Plans adopted as a policy instrument <i>By 2015 each Party has developed, adopted as a policy instrument, and has commenced implementing an effective, participatory and updated national biodiversity strategy and action plan.</i> Scotland 2020 Challenge for Scotland's biodiversity
	Traditional knowledge respected <i>By 2020, the traditional knowledge, innovations and practices of indigenous and local communities relevant for the conservation and sustainable use of biodiversity, and their customary use of biological resources, are respected, subject to national legislation and relevant international obligations, and fully integrated and reflected in the implementation of the Convention with the full and effective participation of indigenous and local communities, at all relevant levels.</i> Not yet developed
	Knowledge, improved shared and applied <i>By 2020, knowledge, the science base and technologies relating to biodiversity, its values, functioning, status and trends, and the consequences of its loss, are improved, widely shared and transferred, and applied.</i> UK E1 Biodiversity for decision making Scotland N1 Information provision
	Financial resources from all sources increased <i>By 2020, at the latest, the mobilization of financial resources for effectively implementing the Strategic Plan for Biodiversity 2011-2020 from all sources, and in accordance with the consolidated and agreed process in the Strategy for Resource Mobilization, should increase substantially from the current levels. This target will be subject to changes contingent to resource needs assessments to be developed and reported by Parties.</i> UK E2 Expenditure on UK and international biodiversity

The species indicators are relevant to several Aichi Targets








      	
Relevant targets	
UK	C5 Birds of the countryside and at sea
Scotland	S03 Abundance of terrestrial breeding birds S04 Abundance of wintering waterbirds S05 Abundance and productivity of breeding seabirds
UK	C6 Insects of the countryside
Scotland	S08 Terrestrial insect abundance – butterflies S09 Terrestrial insect abundance – moths
UK	C7 Plants of the wider countryside
Scotland	S06 Vascular plant diversity
UK	C8 Mammals of the wider countryside – bats
Scotland	S12 Otter

Table 1 – SBS Route Map – SBS aims, Big Steps for Nature, Priority Projects, SBS outcomes, pressures addressed and Aichi targets.

Aims		Big steps for nature		Priority projects – on-going work		SBS Outcomes & key steps ¹		Pressures addressed		Aichi targets ²	
Biodiversity loss halted	Ecosystem Restoration	Priority Project 1 - Restoration of peatlands				Outcome 1 – key step 1, 3 & 4 Outcome 2 – key step 3 Outcome 4 – key step 1, 3, 5 Outcome 5 – key step 1, 4, 5, 6 & 7		Land-use intensification Value of nature Climate change		1, 5, 12, 14, 15, 19	
		Priority Project 2 - Restoration of native woodlands				Outcome 1 – key step 1, 3 & 4 Outcome 3 – key step 5 Outcome 4 – key step 1, 2 & 3 Outcome 5 – key step 1, 4, 5 & 7		Land-use intensification Value of nature Climate change INNS ³		1, 5, 7, 12, 14, 15	
		Priority Project 3 - Restoration of fresh waters				Outcome 1 – key step 1, 3 & 4 Outcome 3 – key step 5 Outcome 4 – key step 1, 2 & 3 Outcome 5 – key step 1, 4, 5, 6 & 7		Pollution Land-use intensification Value of nature Disconnection with nature INNS Climate Change		1, 5, 8, 12, 14	
People connected with nature	Investment in Natural Capital	Priority Project 4 - Investment in natural capital				Outcome 1 – key step 1 & 4 Outcome 2 – key step 1, 2 & 3		Land-use intensification Value of nature Climate change		2, 3, 4, 7	
		Priority Project 5 - More people experiencing and enjoying nature				Outcome 3 – key step 1, 2 & 5 Outcome 4 – key step 1 & 5 Outcome 7 – key step 2		Land-use intensification Value of nature Disconnection with nature INNS Climate change		1, 9, 14	
		Priority Project 6 - Taking learning outdoors				Outcome 1 – key step 1 Outcome 3 – key step 1 & 4		Land-use intensification INNS Disconnection with nature Climate change		14	
Benefits for Scotland	Quality greenspace for health and education benefits	Priority project 7 - Developing Scotland's Natural health service				Outcome 3 – key step 1		Land-use INNS Disconnection with nature		14	
		Priority Project 8 - Protected Areas ⁴ in good condition				Outcome 1 – key step 3 Outcome 4 – key step 1, 2 Outcome 5 – key step 4 & 7		Pollution Land-use intensification INNS Climate change		9, 11, 12	
		Priority Project 9 - Conservation of priority species				Outcome 1 – key step 1, 3, and 4 Outcome 4 – key step 1, 2, 3 & 4 Outcome 5 – key step 4 & 7		Pollution Land-use intensification INNS Value of nature Disconnection with nature Climate change		9, 12, 19	
	Conserving wildlife in Scotland	Priority Project 10 - Improving ecological connection				Outcome 1 – key step 1, 2, 3 & 4 Outcome 4 – key step 1 & 3 Outcome 5 – key step 1, 5, 6 & 7		Pollution, Land-use intensification, INNS, Disconnection, Climate change		9, 15	
		Priority Project 11 - Sustainable land management				Outcome 1 – key step 1 & 4 Outcome 2 – key step 3 Outcome 3 – key step 1 & 5 Outcome 4 – key step 1, 2, 3 & 4 Outcome 5 – key step 1, 2, 3, 4, 5, 6 & 7		Pollution Land-use intensification INNS Value of nature Climate change		3, 5, 7, 8, 9, 12, 14, 15, 19 (4), (13)	
		Priority project 12 - Increase environmental status of our seas				Outcome 6 – key step 1, 2, 3, 4, 5 & 6		Pollution INNS Climate change Exploitation		11, 12	
	Sustainable management of land and freshwater										
	Marine and Coastal ecosystems restored										

<http://www.scotland.gov.uk/Publications/2013/06/5538>

¹ Convention on Biological diversity Aichi Targets <http://www.cbd.int/sp/targets/> Note: numbers in brackets indicate partial contribution to the target.

¹ INNS – Invasive non-Native Species

¹ PAWS – Partnership for Action Against Wildlife Crime Scotland

Note: Aichi Target 17 has been achieved through adoption and delivery of the 2020 Challenge for Scotland's Biodiversity (2013).
Aichi Target 19 will be achieved through various mechanisms to ensure knowledge transfer and its application including RESAS, CAMERAS and other knowledge -sharing programmes.
Aichi Target 20 will be achieved through securing additional funding such as Life nature and Heritage Lottery Funding as well as efficiencies derived from more collaborative working.

Written submission from RSPB

Summary

Since the Scottish Parliament was re-established in 1999, Scottish biodiversity has continued to decline under successive Scottish Governments. Scotland failed to meet the 2010 commitments to halt biodiversity loss. In order to meet the international 'Aichi' targets of halting biodiversity loss by 2020, a considerable effort is required by the Scottish Government to reverse the trends of many species groups, such as seabirds and wading birds.

RSPB works across its network of reserves to enhance Scotland's biodiversity and works to with other land managers promote wildlife across the rest of the country. RSPB Scotland supports a meaningful 'step change' in the Scottish Government's efforts to halt biodiversity loss in Scotland. In order to do this, the government needs to do more than the existing projects that it has committed to. Unfortunately, too many of the projects outlined in the 2020 route map are already work in progress.

Targets

RSPB Scotland welcomes the specific targets for peatland and native woodland restoration that are included in the new Biodiversity Route Map. Alongside these objectives, all other commitments and projects, both ongoing and new, require targets and measurable outcomes by 2020 to support Aichi commitments. For example, the Route Map includes the commitment "to support the work of the PAWS 'Heads up for Hen Harriers' initiative." In order to reverse the population decline of hen harriers in the eastern and central Highlands, a population of at least 50 successful breeding pairs in these areas by 2020 is required. Alongside tangible figures such as these, the SBS should illustrate cross-departmental action to enhance populations on issues such as wildlife crime.

Funding for wildlife

The 2020 Challenge for Scotland's Biodiversity included a commitment to "put in place a programme for priority farmland species, recognising that some of these are in a parlous state." We note in this regard the over-reliance on the SRDP and the agri-environment measures within it, which pay land managers to undertake work for biodiversity and which are chronically underfunded. Scottish Government did not boost the SRDP budget as much as it could have done from Pillar 1 funding and has chosen to apply only 27% of the SRDP budget to the agri-environment measures. This contrasts with over 60% of the equivalent budget in England, where faster progress on SSSI condition is being made as a result.¹¹

Only small a proportion of the SRDP budget is being allocated to agri-environment measures to support biodiversity leaving little scope for enhancement.

Consequently, RSPB recommends that SNH and Scottish Government commit to new dedicated funding for biodiversity projects that contribute to delivering SBS

¹¹ 27% on ag-envt spending in Scotland versus 72% on ag-envt spending in England.

outcomes, especially for farmland wildlife in a parlous state such as breeding waders and Corn Bunting.¹²

Marine

There are no new targeted priority projects for the conservation of Scotland's internationally important marine environment. Scotland is the most important area in the EU for seabirds, and we know that a high proportion of species have suffered massive population declines. Moreover, we understand that climate change and other pressures are likely to further impact these populations in future. It is imperative that we build the resilience of our seabird populations in the face of these pressures, in the expectation that food chains adapt and stabilise in the long term. To do this we must build on progress to date on marine protected areas, and we must maximise the availability of suitable breeding sites, primarily through a programme of strategic island restoration. The omission of such new projects, with clear 2020 outcomes, is a major shortcoming of the 2020 Route Map.

Designated sites

Designated sites are the most important areas for Scotland's biodiversity. An unacceptable number are in unfavourable condition, primarily due to agricultural intensification, diffuse agricultural pollution, loss of habitat and deer damage. The target to have 80 percent of the features of these sites in favourable condition by 2016 is unacceptably weak given we have c70% in 'Favourable Conservation Status' now. A more ambitious target for the condition of Scotland's designated sites is required in order to meet the 2020 Challenge.

Research and monitoring

It is essential that the diagnosis of species and habitat declines and deterioration continues in order to identify workable, evidence based programmes to address the problems. Failure to do so will seriously hamper conservation effort, and thus the effectiveness of Scottish Biodiversity Strategy delivery. Scottish Government should strengthen the commitment from 'RESAS to fund important biodiversity research and monitoring which contributes to the outcomes of the SBS Delivery Plan and the measurement of progress in achieving those outcomes.

Curlew

We would like to see specific mention of support for a curlew conservation programme. Scotland has an internationally important population of this species. The UK holds c 16-24% of the global population of curlews, with approximately 65% of these in Scotland. Only Russia and Finland have more. This is the most important terrestrial bird species (apart from the endemic Scottish crossbill) that we have, yet is declining across much of its range, including in Scotland by 55% since 1995, due to land use and agricultural change. A recovery plan is under international discussion. We call on the Scottish Government and SNH to support RSPB's leadership of a national programme of conservation work to halt and reverse the national decline of this species in Scotland by 2020.

¹² Corn Buntings have declined by 90% between 1970-2011

Written submission from Scottish Environment Link

Delivering the Scottish Biodiversity Strategy in Scotland: 2015

LINK's Wildlife Forum has been engaged in the delivery process for the Scottish Biodiversity Strategy since its publication in 2004. Forum members have also been closely engaged in the 2020 Challenge document. Our suggestions on monitoring the success of 2020 challenge were laid out in our benchmarking paper in June 2013. This document is available on the LINK website: <http://www.scotlink.org/public-documents/scotlands-challenge-2020-a-benchmark/>

The key issue for Scotland's biodiversity is **coordinating and delivering effective action for biodiversity in order to meet the 2020 target to halt the loss of biodiversity in Scotland**. Efforts to date have focussed on process rather than delivery outcomes. We have pressed for the new route map to provide the vision and strategic direction to enable all Scotland's stakeholders to act effectively to halt the loss of biodiversity within the next 5 years.

In our view, the Biodiversity route map needs to:

- Deliver a step change in process so that real change is achieved on the ground
- Provide strategic direction to coordinate all stakeholders so that effort is focussed and effective
- Identify responsible lead bodies to coordinate action and provide leadership
- Allocate sufficient resources to support action so that effective delivery can be achieved.

In order to do this the route map must:

- Provide a strategic vision on why halting the loss of biodiversity is so key to Scotland's future and clearly show what steps need to be taken to meet our targets, including the Aichii targets by 2020.
- The biodiversity strategy needs to add value to actions that are already being delivered by stakeholders. If it lists projects that are already ongoing, it fails to add value.

The 'Six big steps' for nature:

The new Biodiversity route map outlines six 'big steps' that are required to meet the 2020 targets, loosely based on the chapters from the 2020 challenge document. It is questionable whether the rewrite adds any clarity and there is no evidence of strategic thinking behind how the actions have been selected. Therefore, we consider the rewriting of the chapter aims unnecessary and could lead to further confusion. We also remained to be convinced of where the added value behind these suggested projects is. Although these projects are all important but taken together are unlikely to meet the Aichii targets. **Given this fact, we would like to**

see a gap analysis and a route map that includes a strategy to fill these gaps with appropriate action over the next 5 years.

The fourth and fifth big steps, 'conserving wildlife in Scotland' and 'sustainable management of land and freshwater', are particularly weak. They show no evidence of strategic vision and it is not sufficiently shown how the listed projects listed will meet the intended outcome to meet the 2020 challenge. **We cannot see how the projects listed here can achieve this outcome on their own.**

Ecological Network should be an important element of the fifth step section but action is limited to developing and helping to identify priority areas for action. We would suggest that we need to be seeing action on the ground within 5 years rather than limiting the vision to the process.

We also have concerns about how we can measure the success of any measures under CAP in supporting biodiversity. It is unclear how success can be identified in this case.

What happens next?

We only have 5 years left to deliver our Challenge 2020 outcomes and targets. There are a very large number and range of stakeholders who are in a position to deliver action towards these outcomes and they need clear strategic visions, leadership to coordinate their work and to ensure progress towards the outcomes. It is difficult to see how the route map proposed can deliver the step change required to meet the 2020 Challenge outcomes.

The Scottish Government's Agricultural Holdings Legislation Review

Background

1. Earlier in this session (in 2011/12) the Committee scrutinised the Agricultural Holdings (Amendment) (Scotland) Bill¹ at stages one and two. The Bill made three changes to agricultural holdings law: to amend the definition of “near relative” (being the class of successors who are entitled to serve a counter notice to a notice to quit) who may succeed to a secure agricultural tenancy to include grandchildren; to prevent certain restrictions for rent reviews in limited duration tenancies; and to disapply VAT rate changes and options to tax from being variations in rent which prevent rent reviews. The Bill was passed by Parliament and received Royal Assent on 12 July 2012.

2. The Committee continued its scrutiny of agricultural holdings issues throughout 2012 and 2013, which included taking evidence on the work of the Tenant Farming Forum in that period, and in particular the Rent Review Working Group, and, in May 2012, a delegation of the Committee visiting Bute to hold fact-finding meetings with agricultural landlords and tenants.

3. In late 2013/early 2014 the Committee considered both a proposed draft Agricultural Holdings (Scotland) Act 2003 Remedial Order, and then a final draft Order.² The Order resulted from the UK Supreme Court's ruling on the *Salvesen v Riddell* court case which found that part of the Agricultural Holdings (Scotland) Act 2003 was incompatible with the European Convention of Human Rights. The Court ruling was suspended for 12 months to allow the defect to be corrected. The Order was passed by the Scottish Parliament in 26 March 2014.

4. In November 2013 the Scottish Government announced details of a review of agricultural holdings legislation.³ The review was chaired by the Cabinet Secretary for Rural Affairs, Food and the Environment, Richard Lochhead MSP. The Cabinet Secretary was supported by six Review Group members, appointed by Ministers: Andrew Thin; Hamish Lean; Sir Crispin Agnew; Professor Jeff Maxwell; Barbara Brown; and Iain Mackay.

Interim report and RACCE scrutiny

5. The Review Group published its interim report⁴ on 20 June 2014, which was accompanied by a summary document.⁵

¹ Scottish Parliament Rural Affairs, Climate Change and Environment Committee. Consideration of the Agricultural Holdings (Amendment) (Scotland) Bill. Available at:

<http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/43962.aspx>.

² Scottish Parliament Rural Affairs, Climate Change and Environment Committee. Consideration of the Agricultural Holdings (Scotland) Act 2003 Remedial Order 2014. Available at:

<http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/70960.aspx>.

³ Scottish Government's Review of Agricultural Holdings Legislation. Details available at:

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

⁴ Scottish Government (2014). *Review of Agricultural Holdings Legislation Interim Report*. Available at: <http://www.scotland.gov.uk/Publications/2014/07/5054>.

⁵ Scottish Government (2014). *Review of Agricultural Holdings Legislation Interim Report – Summary Document*. Available at: <http://www.scotland.gov.uk/Publications/2014/06/8591>.

6. The Committee took evidence⁶ on the interim report from stakeholders on 6 August 2014. On 20 August 2014 the Committee took evidence⁷ from the Cabinet Secretary and members of the review group. Written evidence submitted to the Committee on the interim report can be found on the Committee's webpage.⁸

Land reform consultation

7. On 2 December 2014, the Scottish Government published its consultation on the future of land reform in Scotland⁹, which closed on 10 February 2015. Proposal 9¹⁰ in the consultation concerned agricultural holdings and asked respondents to comment on whether the Scottish Government should take forward some of the recommendations of the Agricultural Holdings Legislation Review Group within the proposed land reform bill, and what the potential advantages and/or disadvantages of that may be.

8. The questions in the land reform consultation regarding agricultural holdings were first issued before the final report of the Agricultural Holdings Legislation Review had been published; however there was overlap between the publication and the end of the consultation period.

Final report and RACCE scrutiny

9. On 27 January 2015 the Review Group published its final report.¹¹ The Report included 49 recommendations which were listed in Annexe H¹² to the Report and have been reproduced at **Annexe A**.

10. Written evidence submitted to the Committee on the group's final report is attached at **Annexe B**.

11. The Committee has agreed to take evidence from stakeholders, on 25 March 2015, and then from the Cabinet Secretary and several Review Group members on 1 April 2015, before writing to the Scottish Government with its views on the Review Group's report.

Clerks, Rural Affairs, Climate Change and Environment Committee

⁶ Scottish Parliament Rural Affairs, Climate Change and Environment Committee. Official Report, 6 August 2014. Available at:

<http://www.scottish.parliament.uk/parliamentarybusiness/28862.aspx?r=9440&mode=pdf>.

⁷ Scottish Parliament Rural Affairs, Climate Change and Environment Committee. Official Report, 20 August 2014. Available at:

<http://www.scottish.parliament.uk/parliamentarybusiness/28862.aspx?r=9505&mode=pdf>.

⁸ Written evidence to the Rural Affairs, Climate Change and Environment Committee on the Scottish Government's Review of Agricultural Holdings Legislation Interim Report. Available here:

<http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/60396.aspx>.

⁹ Scottish Government (2014). *A Consultation on the Future of Land Reform in Scotland*. Available at: <http://www.gov.scot/Publications/2014/12/9659/0>.

¹⁰ Scottish Government (2014). *A Consultation on the Future of Land Reform in Scotland. Chapter 3, Proposal 9*. Available at: <http://www.gov.scot/Publications/2014/12/9659/5>.

¹¹ Scottish Government (2015). *Review of Agricultural Holdings Legislation Final Report*. Available at: <http://www.gov.scot/Publications/2015/01/5605/0>.

¹² Scottish Government (2015). *Appendix H - List of Recommendations of the Agricultural Holding Legislation Review Group*. Available at: <http://www.gov.scot/Publications/2015/01/5605/22>.

Annexe A

List of Recommendations of the Agricultural Holding Legislation Review Group

Recommendations on Landlord/Tenant Relationships

Recommendation 1 - The Scottish Government should facilitate, support and strongly encourage the efforts of industry leaders to improve landlord/tenant relationships through effective self-regulation and other industry led initiatives.

Recommendation 2 - A new office of Tenant Farming Commissioner should be established to promote and secure effective landlord/tenant relationships and behaviours across the agricultural tenanted sector underpinned by robust codes of practice.

Recommendations on Rent and Rent Reviews

Recommendation 3 - Legislative provisions on rents for secure 1991 Act agricultural tenancies should be amended so that rents are determined on the basis of the productive capacity of the holding, farmed by a hypothetical tenant (who is an efficient and experienced farmer of adequate resources who will make best use of the land) using the fixed equipment provided by the landlord, taking account of the budget for the holding, and including the contribution from non-agricultural diversified activity.

Recommendation 4 - Legislative provisions for regulating rent reviews and determinations of rent for agricultural holdings should enable rent to be paid for non-agricultural activity on a holding that reflect a fair market rate for the landlord's assets being used for the activity.

Recommendation 5 - If objecting to a diversified activity on a tenanted holding, the process should be limited to only one notice of objection by the landlord and to create a presumption that if planning permission has been granted for the diversified activity, that the activity is allowed unless the landlord can demonstrate that objections under section 40 subsection 9 of the 2003 Act apply.

Recommendation 6 - In considering the appropriate rent for an agricultural holding, provision should be made for any housing provided on a holding in excess of that reasonably required for the labour requirements associated with that holding.

Recommendation 7 - The Government should encourage and support industry bodies, including those representing professional intermediaries, to maintain publicly available information on model budgets and rent calculations to assist where relevant with the negotiated settlement of rents within the tenant farming sector.

Recommendations on Investment, Improvements, Compensation and Way-go

Recommendation 8 - The Government should consider how to test the detail of the Review's proposals on rent review, in order to ensure that the provisions work effectively in practice, potentially in association with industry bodies.

Recommendation 9 - Allowing the registration of secure 1991 Act agricultural tenancies in the Land Register, should be considered further to determine what impact this would have on a tenant's ability to offer the lease for the purpose of granting a standard security over it.

Recommendation 10 - Provision should be made for a three year amnesty during which a tenant farmer may serve formal notice on the landlord to the effect that specified items not previously agreed may be treated as tenant's improvements at way-go, including any claim that might be made under existing provisions for improvements where no notice has been given, but which involve equipment that the landlord should have provided at the commencement of the lease.

Recommendation 11 - Provision should be made to require a landlord to notify a tenant farmer of any proposed improvement to the holding and the tenant should be able to object, if the improvement is not necessary for the maintenance of efficient agricultural production on the holding.

Recommendation 12 - Further work should be undertaken, with relevant industry bodies, to revise the current list of improvements that can be eligible for compensation set out in Schedule 5 and section 17 of the 1991 Act.

Recommendations on Retirement, Succession and Assignment

Recommendation 13 - Current legislation should be amended to allow secure 1991 Act tenancies and LDTs to be: assigned by the tenant farmer in their lifetime; bequeathed where this is permitted in the lease; or transferred by a tenant's executors on death, to any living parent, or any living descendant of a parent, or spouse or civil partner of any living descendant of a parent of the tenant or of the tenant's spouse or civil partner.

Recommendation 14 - Current legislation should be amended to remove a landlord's ability to object to the lifetime assignment or the succession of a tenancy on the grounds that that the agricultural holding is not a "viable unit" and the landlord intends to amalgamate it with another holding.

Recommendation 15 - Provision should be made to enable any secure 1991 Act tenant to convert the tenancy into a new long duration modern LDT with a minimum term of 35 years and then be able to transfer that agricultural tenancy to anyone on the open market for value.

Recommendation 16 - Further consideration should be given to ensuring national planning policy and guidelines and allow where possible for measures designed to encourage landlords to provide, on a lifetime lease, nearby retirement housing for outgoing agricultural tenants.

Recommendations on the Role of a Right to Buy

Recommendation 17 - Existing provisions on the pre-emptive right to buy for 1991 Act tenants should be amended to remove the need to register a notice of interest so that all 1991 Act tenants have an automatic statutory pre-emptive right to buy their agricultural holding, should it come up for sale.

Recommendation 18 - Further consideration should be given to when the pre-emptive right to buy the agricultural holding should be triggered, for example when the land is advertised or otherwise exposed for sale, or (if not previously advertised or otherwise exposed) when negotiations are successfully concluded with another person with a view to the transfer of the land.

Recommendation 19 - Further consideration should be given to ways to ensure the effectiveness of a 1991 Act tenant's pre-emptive right to buy in circumstances where a company owns a farm tenanted on a secure 1991 Act tenancy, and a transfer of the interest in a holding can be effected through the transfer of some or all of the shares in the company rather than the sale of the land.

Recommendation 20 - Further consideration should be given to the potential need to introduce an amendment to Part 2 of the 2003 Act to make clear that where there is an interposed lease and the landowner takes steps to transfer the land, the pre-emptive right to buy for any 1991 Act tenant sitting under the interposed lease is still triggered.

Recommendation 21 - Provision should be made to enable a 1991 Act tenant to request the Scottish Land Court to order the sale of a holding where the landlord has persistently failed to fulfil their obligations under the tenancy, triggering the tenant's right to buy. The Scottish Land Court will have discretion to order the sale, taking into consideration the respective rights and interests of both parties.

Recommendation 22 - The potential for proposals in the current consultation on Land Reform to address situations where the way land is being managed is impacting upon tenant farming communities and agricultural productivity, creating a barrier to local sustainable development, should be considered further.

Recommendation 23 - Further consideration should be given to providing small landholders with an automatic pre-emptive right to buy their holdings, should they come up for sale.

Recommendations on Letting Vehicles for the 21st Century

Recommendation 24 - A new "modern LDT" with a minimum 10 year term should be developed to enable landlords and tenants greater freedom in agreeing terms relevant to the type, duration and purpose of the holding and lease. An optional break at 5 years should be available where the tenant is a new entrant.

Recommendation 25 - Provision should be made to allow for a modern "full repairing" LDT, where a tenant takes full responsibility for all repair, renewal and replacement of fixed equipment on the holding in return for a minimum term of 35

years and mandatory application of the new rent review provisions recommended in Section 5 of this Report.

Recommendation 26 - Rent provisions in relation to a new modern LDT should be agreed at the start of the lease by the contracting parties, taking into consideration the provisions of a new statutory code on negotiating rent reviews, or if the lease is silent on the issue then the rent provisions should be as set out in Section 5 of this Report for 1991 Act tenancies. In the case of a full repairing lease the rent controls set out in Section 5 should apply in all cases.

Recommendation 27 - Parties to a "modernised LDT" should be able to negotiate fixed equipment arrangements subject to the provisos that fixed equipment provided by the landlord is sufficient to allow the tenant to farm for the purposes set out in the lease, details are specified in the lease along with a record of condition, and responsibility for maintenance is clearly stated.

Recommendation 28 - Modern LDTs should be assignable within the duration of the lease at market value, subject to the landlord having the same grounds for objection as in the 1991 and 2003 Acts (finance, ability, character, etc).

Recommendation 29 - Modern LDTs should include a requirement for landlords to give written notice of intent to terminate not less than two and not more than three years before the expiry of a modern LDT, failing which the lease will continue on tacit relocation for one year at a time subject to termination on the same notice period. (Section 12.2 of this Report).

Recommendation 30 - Modern LDTs should include robust arrangements for compensation and way-go in order to give tenants the confidence to invest on what are (potentially) quite short duration terms. These should be modelled on those in the 2003 Act with some simplification of process where practicable. The overriding aim should be to ensure that tenants are able to invest with confidence in this type of tenancy.

Recommendation 31 - The option of allowing such leases to be extended by the landlord and then sold with improvements on the open market by the tenant (thereby avoiding formal way-go) should also be considered, especially with regard to full repairing leases.

Recommendation 32 - Provision should be made to enable land to be let for a period of up to one year, which will end without notice, for the purpose of grazing, mowing or cropping. Such leases should include a requirement for a declaration to be made to the incoming seasonal tenant to the effect that defined minimum soil nutrient and organic matter status are met, and by the outgoing seasonal tenant confirming that this has been maintained.

Recommendation 33 - Further consideration should be given to allowing an approved environmental charity to let land under the modern LDT arrangements which include reasonable environmental conditions as to the management of the land.

Recommendation 34 - Every encouragement and support should be given to the NFUS, SL&E and STFA to develop a new Joint Initiative on Limited Partnerships setting out clear guidelines as to how and on what basis those landlords and general partners remaining in these arrangements should negotiate their conversion into a modern LDT on appropriate terms.

Recommendations on New Entrants and Reducing Barriers to Entry

Recommendation 35 - Provision should be made to allow tenants who wish to assign an LDT (including one arising from converting a secure 1991 Act tenancy) to a new entrant to do so through a contractually based staged assignation process that facilitates appropriate apprenticeship arrangements and includes effective protection for the assignor, the assignee and the landlord.

Recommendation 36 - The Scottish Government should further consider the potential capacity to provide starter units on publicly owned land, including through the acquisition of additional land where practicable.

Recommendation 37 - The Scottish Government should also enter into direct dialogue with the larger private owners of agricultural land in Scotland with a view to encouraging them to provide starter units. The Scottish Government should also consider future opportunities to encourage the provision of starter farms through appropriate financial and any available tax incentives.

Recommendation 38 - Existing financial incentives available to agriculture, and more generally to business through other parts of Government, should be reviewed in order to facilitate effective financial support for new entrants. This should include, where possible, measures to cap the level of incentives made to larger established operators so that funds can be targeted to optimal effect.

Recommendations on Taxation, the CAP and Other Fiscal Incentives

Recommendation 39 - Scottish Government should work with the UK Government on any future review of the terms of Agricultural Property Relief, Business Property Relief, and Entrepreneurs' Relief, to consider whether disincentives to the letting of land might be removed. Consideration should also be given to the potential to structure reliefs to deliberately incentivise the letting of land on larger agricultural estates by capping the availability of reliefs for land farmed in hand.

Recommendation 40 - In any future review of Income Tax or Value Added Tax, the Scottish Government should work with the UK Government to consider the case for re-categorising income from let land as trading income for tax purposes, particularly if it is reinvested in that land, and whether the current exemption from VAT that applies to the letting of land should remain.

Recommendation 41 - The Review Group has noted the on-going review of non-domestic rates ahead of the 2017 revaluation and the recommendation of the Land Reform Review Group in relation to Land Value Taxation. Any further deliberation of these issues should consider the potential to provide an incentive for the long term letting of agricultural land.

Recommendation 42 - When reviewing the impact of the new Land and Buildings Transaction Tax, the impact, if any, on the decisions by landowners and tenants to let land or enter into share farming agreements should be considered.

Recommendation 43 - In order to facilitate fair rent reviews, the values of each of the regional step changes arising from convergence should be published in advance so that landlords and tenants are able to take account of the revised value of Basic Payments. In addition, the following issues should be considered in relation to any relevant review during the new programme period of CAP:

- The ability to cap the amount of Basic Payments that any one individual can claim in order to discourage landowners from taking tenanted land back in hand or simply holding land to increase their Basic Payment claim;
- To enable more funding to be available to all active Scottish farmers and to be sufficient funds available to meet new and expanded tenant farms there may be a need to tighten the negative list;
- Address any funding anomalies regarding access to Direct Payments arising from the latest CAP reform in consultation with stakeholders;
- Assessing the impact upon smaller tenant farmers, including any impact from insufficient Direct Payments to cover all their eligible acres;
- Ensure sufficient budget allocation should be retained, possibly by top slicing the revised ceiling budget, so as to ensure that new entrants to tenant farming are not placed at a fiscal disadvantage;
- Assess the costs and benefits of the siphon on entitlements without land, and consider including exemptions for new entrants to tenant farming.

Recommendation 44 - Government should consider making the following provisions in relation to the new SRDP:

- Sufficient funding should be made available in each year to ensure that new entrants are not disadvantaged by lack of budget availability;
- If funding for the Small Farm Scheme is constrained, mechanisms should be developed to ensure new entrants and tenant farmers are not disadvantaged;
- The Whole Farm Review Scheme and its successor; the integrated land management scheme and the one to one advisory service, should give prioritisation to new entrants and be available to small tenant farmers;
- Business development plans submitted as part of a SRDP application should take full account of costs specifically associated with tenant farming, including rents;
- If funding becomes constrained within SRDP, priority should if possible be given to new entrants to tenant farming whether via a LDT, repairing lease or other suitable lease.

Recommendations on Miscellaneous Legislative Amendments

Recommendation 45 - Further consideration should be given to ensuring that any agricultural tenancy under the 1991 and 2003 Acts going forward, except a short term grazing or cropping tenancy, can only be terminated at their end date or, when they are running on tacit relocation, at the anniversary thereof by a notice to quit given not less than two years nor more than three years before the end date of the lease or any anniversary thereof.

Recommendation 46 - Consideration should be given to amending the current provisions for succession, or assignation of, existing SLDTs and LDTs to more closely match those being proposed for the new letting vehicles.

Recommendation 47 - Further consideration should be given to amending the 2003 Act, so that in any agricultural tenancy, with the exception of short grazing or cropping leases, a claim can be made by a tenant for loss and damage arising from the exercise of the sporting rights in a manner that was not in the contemplation of the parties at the commencement of the lease.

Recommendation 48 - Further consideration should be given to amending current provisions on the service of notices for 1991 Act tenancies, SLDTs, LDTs and make provision for new letting vehicles so that any notice that requires to be served by anyone under the Acts on the landlord may be served on the original landlord unless notice was given to the tenant of the new landlord and to provide that anything that is required or authorised to be done by, to or in respect of the landlord or tenant may be done by, or to or in respect of any agent of the landlord or tenant.

Recommendation 49 - Further consideration should be given to incorporating the miscellaneous changes set out in Appendix F and G of this Report and consideration should be given to consolidating the Agricultural Holdings (Scotland) Acts, though it is not anticipated this should be done within this Parliamentary term.

Annexe B

Written submission from NFUS

1. NFUS welcomes the opportunity to provide comment to the RACCE Committee on the final report of the Agricultural Holdings Review Group final report.
2. NFUS considers that this report forms a good framework, and basis for the industry to move forward. NFUS recognises that the return of confidence and stability in the sector is vital for the future of the industry. For this reason, it is vital that the recommendations of the Group are progressed in this parliamentary term.
3. NFUS has indicated that it is preferable that the recommendations made by the Group would be best served by a standalone bill, as opposed to being a portion of the Land Reform Bill. There is some recognition within the industry that from a presentational perspective, including the reconditions within the Land Reform Bill will leave it indelibly tainted. However, there is also a recognition that it is vital that issues are remedied as soon as possible. Tied in with this, is a concern that

including the Agricultural Holdings recommendations with Land Reform will not leave enough time to ensure that they receive adequate scrutiny of what is an incredibly detailed subject.

4. For this reason, NFUS considers that it would be most appropriate for Scottish Government to delay the Land Reform Bill and focus instead on delivery of a prompt and well considered Agricultural Holdings Bill. NFUS feels that this would ensure widespread industry confidence in the resulting legislation, and thus a broad level of support. This would then provide a solid framework for the tenanted sector going forward.

5. NFUS fully supports the concept of a Tenant Farming Commissioner, and feels that it is vital that this is instigated as soon as possible. NFUS understands that the aspiration of the AHLRG is to form key codes, however NFUS also feels that the Commissioner should assist in dealing with areas of dispute where they arise.

6. NFUS welcomes the Group's recommendation of a new rental system based on productive capacity and underpinned by budgets. This area is the source of most disputes within the sector, and finding a remedy to this as soon as possible should be a priority. NFUS thinks that it is key that the terms of this system are framed as soon as possible.

7. NFUS notes the recommendations relating to assignation of secure tenancies. NFUS recommended that secure tenancies were assignable for a period of 25 years, but this limited to a certain class of assignees. NFUS considers that this term balances the interests of both landowner and tenant, as well as ensuring that the next generation is taken into consideration.

8. NFUS welcomes the recommendation in relation to tenant's pre-emptive right to buy their holding. NFUS considers that this will remove one of the key trigger points for disputes within the industry, however has concerns over the definition of when this is triggered.

9. Limited Partnership Tenants are not included in this report, and many function well. However, some are now operating within agreements which are subject to tacit relocation from year to year. NFUS believes that it would be in the interests of parties concerned to sit down and negotiate a fixed term on such agreements. NFUS would also like to take this opportunity to invite other stakeholders to discuss such tenancies, with a view as to decide how the industry can best progress with the issues outlined.

10. NFUS is confused as to how cropping lets for periods of more than a year will be catered for. Some members have concerns over the lack of a letting vehicle between one year and ten years in duration. This could encourage landowners to default to using contract farming agreements, in order to escape use of a ten year period.

Written submission from the Law Society of Scotland

Recommendations 1 and 2 - We consider these to be positive developments, certainly in theory. However, further detail is necessary on how the Tenant Farming Commissioner will operate in practice including its powers and resources.

We suggest that the Private Housing Rent Panel could be used as a model. This has the benefit of direct government funding and is generally regarded as a success.

Recommendations 3 and 4 – These are an improvement on the 1991 Act where the open market test has been problematic (because there is no open market). However, in relation to the recommendation to take account the budget for the holdings, we would caution that whilst budgets can be helpful they can still result in a lot of landlord and tenant disagreement.

Recommendation 5 – We support this recommendation.

Recommendation 6 – We support this recommendation.

Recommendation 7 – Whilst having data publically available is to be welcomed, we recommend that the Scottish Government, rather than industry, is responsible for maintaining the information. This could involve a single new question on the annual IACS Form and would allow for one centralised table and avoid the situation of each professional body having their own separate table. We also believe that the information should be accessible free of charge.

Recommendation 8 – We suggest that the Tenant Farming Commissioner would be best placed to take this forward. Perhaps a working group could be convened to consider how this will operate in practice.

Recommendation 9 - We are unconvinced that the recommendation will result in a significant increase in the ability of tenants to obtain finance. However, we acknowledge that implementing the recommendation may be a further factor that forms part of the lender's consideration on whether to offer lending (e.g. alongside whether the lending proposal is likely make money, lending history, etc). We also seek further detail on step-in rights regarding how insolvencies will be handled. More detail on the procedure for the bank converting the tenancy to a LDT to then assign this if they called up the security is also necessary.

Recommendation 10 – We support this recommendation.

Recommendation 11 – We support the recommendation but suspect that it is not an issue that frequently arises. We also recommend that the existing right of a landlord to oppose inappropriate developments by a tenant should be retained.

Recommendation 12 – We support the recommendation and would advise that the current list of improvements should be revised not only to add new items but also to remove historical ones.

Recommendation 13 – The recommendation widens the class of person to whom the tenancy can be assigned, bequeathed or transferred. This is appropriate. We

have some reservations about extending this so wide to include "any living descendant of a parent". However, the ability to object and the rigorous timescales for applications should protect against abuse. Furthermore, we appreciate that a more distant relative could find difficulty satisfying the necessary "skills and experience" test. We consider it essential that this test attaches to the individual applicant and not his/her managing agent (we understand that the intention is for it to attach to the individual).

Recommendation 14 – We have no objection to the recommendation on the basis that a right of objection exists where a tenant already farms viable land and the provisions allowing termination where the tenant is not able to efficiently farm the holding are retained, both in accordance with paragraphs 168 and 169 of the Report.

Recommendation 15 – We have no objection to the recommendation other than to advise that we think the assignation should be "to any suitable person", rather than simply to anyone.

Recommendation 16 – We strongly support this recommendation.

Recommendations 17 & 18 – We see merit in the proposal to remove the need to register a notice of interest. The register is seen as somewhat bureaucratic plus we are aware of situations where tenants have resisted registering their interest due to fear that this could negatively impact their relationship with the landlord. However, means to object will require further consideration and required to be maintained, for example in the situation where there is a disagreement about land boundaries.

Recommendations 19 & 20 – We agree that further consideration should be given to these recommendations. We anticipate that fulfilling the recommendations will prove challenging in practice.

Recommendation 21 – We see merit in the recommendation. Further consideration regarding any conditions on how the landlord would be required to sell the land would be worthy of further consideration. For example, one clear condition should be that he puts right breaches or has the cost of remedying such breaches deducted from the sale price.

Recommendation 22– We agree with the recommendation.

Recommendation 23 - We agree with this recommendation.

Recommendation 24 – The recommendation leaves the position with respect to leases of an intended length of more than 365 days but less than 10 years unclear. We understand that in this situation, the intention is for the landlord and tenant to create a series of one year leases (including grazing and cropping leases) but clarity is required. If this is the intention, we do not understand the rationale in abolishing SLDT nor do we support the abolition of SLDT as these provide extra flexibility.

We support the proposal to introduce an optional break at 5 years where the tenant is a new entrant. This will allow the tenant to dip its "toe into the water" as the Report states.

Recommendation 25 – We agree with the recommendation.

Recommendation 26 – We agree with the recommendation.

Recommendation 27 – We agree with the recommendation.

Recommendation 28 – We agree with the recommendation.

Recommendation 29 – Although not entirely clear, our understanding of the recommendation is that the lease itself must state the notice requirements (which at present they don't as the statute applies). We assume that it is not suggesting that the existing double notice to terminate mechanisms are to be retained (this ties with recommendation 45 which appears to propose abolishing the double notice but to increase the notice period of all tenancies) but rather that LDTs would be terminated by 1 notice giving at least 2 and no more than 3 years notice. Whilst we support moves to remove the double notice requirements, we believe that the proposed notice periods are too long.

Recommendation 30 – We agree that tenants should be confident in their investment. However, landlords should also have confidence. One potential issue is that the money invested by an outgoing tenant on an improvement may not reflect the same value to the incoming tenant (e.g. through the passage of time or because the old tenant has installed very specialised equipment that is of no use to the new tenant).

We suggest that the level of compensation should already be agreed if parties fulfil the objectives outlined at recommendation 27 of the report.

Recommendation 31 - We agree with the recommendation.

Recommendation 32 – We do not have an issue with this recommendation per se but problems in relation to this will result from the abolition of SLDT flowing from recommendation 24.

Introducing a soil nutrient and organic matter analysis test are positive developments in principle. However, we anticipate that finding a workable test will be complex and difficult in practice.

Recommendation 33 – We do not believe that this recommendation should be limited to approved environmental charities but should be extended to include any landowner who wants to let under reasonable environmental conditions as to the management of the land (albeit only where such conditions form part of the negotiations for a new lease).

Recommendation 34 – The effect of the recommendation would be to force those who have mutually agreed to continue the lease on a year to year basis to change this at their expense. We do not support this. This would result in the Scottish Government interfering with parties' contractual intentions. As a result, we anticipate potential grounds of argument similar to *Salvesen v Riddell* if such a recommendation was enacted.

Recommendation 35 – We have no objection to this in theory but we do not anticipate many parties taking up the proposed option.

Recommendation 36 - We agree with the recommendation.

Recommendation 37 - We agree with the recommendation but do not think that it should be limited to just “larger” private owners of agricultural land.

Recommendation 38 – We agree with some of the sentiment of the recommendation. For example, the small firms’ loan guarantee scheme is excluded in an agricultural context and extending it would be welcomed. Nevertheless, it is difficult to see how the recommendation could be implemented in practice without penalising the owner-occupier (given that the proposal is designed to encourage them to let land.)

We would warn against creating a divided fiscal system which would potentially result by treating businesses differently, in fiscal terms, depending on whether they are classified as urban or rural (i.e. whether the business falls within the 30 mph limit). Fairness and a level playing field should apply across all businesses irrespective of the urban or rural context.

Recommendation 39 – Again we suggest that it is undesirable to create a divided fiscal system. Capping the availability of reliefs for larger units may not necessarily be desirable e.g. sometimes larger units are best placed in relation to large scale food production.

Recommendation 40 – A knock on effect of this recommendation would be that all let property would become trading income for tax purposes. This would have inheritance tax implications.

Recommendation 41 – Again an urban/rural fiscal division is a potential consequence of this recommendation.

Recommendation 42 – We do not have any objection to the recommendation but would note that most agricultural units will not have any Land and Buildings Transaction Tax implications.

Recommendation 43 – The recommendation second guesses the EU CAP. We therefore do not support this.

Recommendation 44 – We welcome that the recommendation proposes that there will be sufficient allocation of funding to the new SRDP.

Recommendation 45 – It seems to us that this recommendation, together with recommendation 29, proposals are that all leases, except short term grazing/cropping leases, are to be terminated by the same form of notice to quit by one notice giving not less than 2 and no more than 3 years. Whilst the same procedure to terminate SLDT, LDTs and 1991 Act tenancies seems sensible, we believe that the proposed period is too long and would have unintended consequences. For example, this would presumably have a consequential effect on section 13 of 1991 Act (rent reviews) in that notice of intention to review rent would

have to be given at least 2 years' before a date a notional notice to quit could take effect.

Recommendation 46 – We do not support the recommendation. Instead of making changes to the current provisions, we suggest that efforts should be concentrated on making the new regime attractive so that parties change voluntarily.

Recommendation 47 – We understand that the recommendation was made following one particular dispute rather than a general desire for reform. We also anticipate potential difficulties establishing what was “not in the contemplation of the parties at the commencement of the lease”.

Recommendation 48 - We agree with the recommendation.

Recommendation 49 – We would strongly urge consolidation of the legislation in this area, although we appreciate that the appetite for this appears to be lacking.

Written submission from RICS

Background

The Scottish National Party made a manifesto commitment in the 2011 Scottish Parliamentary Election to undertake a legislative review within 18 months of the Agricultural Holdings (Amendment) (Scotland) Act 2012 coming into force; the Review of Agricultural Holdings Legislation met this manifesto commitment.

Review Approach

The Review was led by Richard Lochhead MSP - Cabinet Secretary for Rural Affairs and the Environment - and the appointed Agricultural Holdings Legislation Review Group (AHLRG), supported by a secretariat, undertook a programme of research and held regular stakeholder discussions as part of the evidence gathering process.

Overarching aims of the Review

The Scottish Government's vision is for a Scottish tenant farming sector that is dynamic, getting the best from the land and the people farming it, and provides opportunities for new entrants, forming part of a sustainable future for Scottish farming. RICS concurs with vision.

The overarching aim of the Review Group was to determine the barriers to attaining the Scottish Government's vision for the tenant farming sector, and make well-informed policy recommendations that would solve them.

Review - Interim Report

An interim review report was published in May 2014. This interim report comprised draft recommendations and RICS, like other stakeholders, was invited to provide views and comments.

RICS in Scotland

A global organisation, the Royal Institution of Chartered Surveyors (RICS) is the principal body representing professionals employed in the land, property and construction sectors. In Scotland, the Institution represents over 11,800 members comprising chartered surveyors (MRICS or FRICS), Associate surveyors (AssocRICS), trainees and students.

RICS members are bound by a strict code of conduct to which they must adhere. RICS is committed to setting and upholding the highest standards of excellence and integrity – providing impartial, authoritative advice on key issues affecting business and society. RICS is a regulator of both its members and member firms, enabling it to maintain the highest standards and providing the basis for unparalleled client confidence. RICS members represent both landlords and tenants, and their impartiality, and avoidance of a conflict of interest, which forms part of the code of conduct, is beyond contestation.

Additionally, our regulatory measures ensure that members provide an accessible and coherent complaints handling procedure to allow clients, who feel that our members have acted inappropriately or in breach of our code of conduct, to seek appropriate redress.

RICS actively encourage anyone who feels that any of our members have acted inappropriately, or are in breach of our rules of conduct, to report them to RICS.

Additionally, RICS is an organisation with a Royal Charter and a duty to protect the interests of the public, and is therefore in a unique position to provide a balanced, apolitical perspective on issues of importance to the land, property and construction sectors.

We are committed to ensuring that our members play a positive and active role in shaping and maintaining a healthy and vibrant tenanted farming sector in Scotland.

Agricultural Holdings Legislation - Next Steps

RICS understands that due to parliamentary timetabling, the Scottish Government wishes to use the Land Reform Bill as the vehicle to progress the AHLRG recommendations through the Parliamentary process.

RICS believes that agricultural holdings is a substantive and complicated matter, and to draw it into the Land Reform Bill would lead to unnecessary confusion. In addition, agricultural holdings legislation has been reviewed under an entirely separate process to land reform, with different objectives and public consultation. Furthermore, in considering their coupling and parliamentary timetable, RICS has concerns that the Land reform Bill and agricultural holdings policy could be rushed, and may not be as coherent and robust as they could be.

RICS believes that AHLRG recommendations should be seen as a package in its own right; one that requires its own Bill, with separate Parliamentary scrutiny with the objective of sustainable agricultural productivity.

Agricultural Holdings: RICS Overview

As outlined previously, RICS concurs with the Scottish Government's vision to create a "tenant farming sector that is dynamic getting the best from the land and the people farming it, and provides opportunities for new entrants, forming part of a sustainable future for Scottish farming"

Sector statistics indicate that the tenancy figures in Scotland have been in steady decline over the last 30 years, with the Review Report indicating that 42% of tenanted farming land has been lost since 1982; a poignant statistic. This compares with the situation in England where the number of agricultural tenancies is stable and where there is greater freedom of contract between landlords and tenants.

There is a diverse array of factors behind this decline, but the statistics are not a reflection on the quality of land management. Whilst there may be fewer tenancies, there will be land farmed through other arrangements, including tenants buying their farms or by contract farming. The statistics imply however that those owning land are not inclined at present to let land in Scotland.

RICS does not support more or less tenancies; RICS supports a farming sector that is inclusive, open, and operates in a way that allows new entrants to farm. We do not believe that tenant farming is the panacea for the farming sector and, specifically, enabling new entrants.

RICS supports policy that encourages new entrants to enter into farming – whether they choose to let, or not let, the farm they wish to manage and operate.

Tenant Farming Forum

The Tenant Farming Forum (TFF) was set up as an apolitical body with a remit "to help to promote a healthy farm tenanted sector in Scotland." RICS would like to emphasise that the TFF was intended to be independent from Scottish Government; it was initiated by the industry, and provides elements of self-regulation.

As a member of the TFF, RICS supports, and works to realise, this principal remit, as long as the remit is to promote a healthy tenant farming sector, not preserve existing arrangements. By this we mean to encourage a tenanted farming sector, but where the encouragement stops short of influencing the market, and its promotion is not to the detriment of other farming options.

RICS believes that the tenanted sector should not receive any additional or special treatment, and should be susceptible to market forces like other farming sector participants. The influence of the market is vital to ensure that farming is undertaken efficiently to ensure security of food supplies, the original reason behind the introduction of agricultural tenancy legislation. RICS operates to ensure that the farming sector is open and accessible to new entrants – whether they do so via a tenancy or another means.

The TFF has already produced a Guide to Good Practice, and we ask where this sector-approved guidance will feed into the forthcoming Codes of Practice.

Review of Agricultural Holdings: The Demand for Legislation

RICS is a member of the TFF, and is representative of the all sector participants. RICS was involved in the evidence gathering and scrutiny stages of the Public Services Reform (Scotland) Act 2010. The provisions of this Act introduced an amendment to the length of a Limited Duration Tenancy (LDT) and changes to the recording of fixed equipment, amongst others. We feel that these policies have not been given sufficient time to work, nor have an effect on the sector before the Agricultural Holdings Review was announced. We are of the impression that few, if any, stakeholders called for a review.

Review of Agricultural Holdings Legislation Final Report: RICS Overview

RICS in Scotland recognises the importance of agricultural holdings policy to the agricultural sector as a whole. We also recognise the vital role that rural practice surveyors play in the delivery of agricultural holdings policy across Scotland. The views and suggestions in this assessment paper have been developed by members acting for all interests in the sector – this includes (but is not restricted to) both landlords and tenants.

RICS recognises the considerable efforts made by the Cabinet Secretary, Review Group membership and stakeholders – all of whom participated in the debate to revitalise the tenanted sector, and we welcome a number of the positive proposals. However, as the professional body for chartered surveyors (formally qualified land agents who represent both landlords and tenants), we have concerns that a number of the recommendations will be difficult to implement. Whilst any review of agricultural holdings legislation could bring a degree of uncertainty, we feel that this package of recommendations could potentially upset the balance in the vital relationship between landlords and tenants, by prejudicing the interest of landlords.

Furthermore, our interpretation of this Review Report is that the tenanted sector needs more support than others and needs to expand. As mentioned previously, RICS members in Scotland do not necessarily agree with this notion – they do not condone facilitating development for one farming option over another. We believe that the tenanted sector may not necessarily be in the best interests of all sector participants.

In terms of overarching content, RICS is convinced that the recommendations, if taken forward as legislation, will not achieve the stimulation of the tenanted sector in Scotland the Cabinet Secretary wishes to see, but in fact will result in the opposite. There are many recommendations that would add to the bureaucratic burden on the sector which could weaken landlords' confidence in letting land. In short, many of the recommendations could result in the tenant farming sector taking a step back. A full break down of the recommendations is available later in this paper.

Agricultural Holdings: Key Recommendations

The opening remarks of the Review Report indicate a number of key recommendations. RICS has provided an analysis of all the recommendations under the 'Recommendation Assessment' section of this paper. However, we feel it is important that we look specifically at the key recommendations, in turn, first.

Creating a Tenant Farming Commissioner

This recommendation looks to establish a Tenant Farming Commissioner (TFC) to “promote and secure effective landlord/tenant relationships and behaviours across the agricultural tenanted sector underpinned by robust codes of practice”.

RICS welcomes the proposal to appoint a TFC, as this may improve the landlord-tenant relationship. As an apolitical organisation, we volunteer our expertise to assist with the creation of the new body and the development of the Codes of Practice where appropriate.

However, we have to raise the issue that land agents who are members of RICS, already operate under the Institution’s strict guidelines and Codes of Practice. This report effectively proposes superimposing a new Commissioner’s code over and above the use, roles and behaviour of intermediaries, such as RICS members.

Any appointment to the TFC would require knowledge and expertise to ensure there has to be a clear distinction between a complaint about practice and failure to agree a matter of dispute. RICS concurs that financial penalties should only occur as a last resort – once all other efforts to entice compliance with any Code or obligations have been exhausted.

RICS seeks clarity on a number of issues regarding this recommendation – particularly around the format and framework of the TFC.

Firstly, the report does not indicate the composition of the TFC, nor its relationship to the Scottish Government. RICS believes that the Commission should be a Board of experts (as opposed to an individual); the Board members should not be politically appointed, and should be arms-length from Scottish Government. This will ensure consistency which, in turn, develops confidence in the sector.

We would suggest the TFC Board comprise established experts from a range of sector stakeholders; such as RICS, TFF, SAAVA, NFU and SLE, and the Law Society of Scotland (for legal input) and representation from the Scottish Land Court. It would be this grouping that would formulate unbiased Codes of Practice, and we would suggest the use of the Tenant Farming Forum’s Good Practice Guide as a template, if not the actual, Code of Practice.

Secondly, the creation of the TFC, and sector Codes of Practice will, undoubtedly, have an impact on RICS and its members. RICS members are already open to scrutiny as they are already properly, and strictly, regulated. However, it became quite apparent during the AHLRG evidence gathering stage, that not all land agents are RICS qualified (and are therefore not subject to RICS ethical standards), and we believe that this could lead to the application of different rules and levels of scrutiny of sector participants.

Whilst RICS members are content with the establishment of the TFC and Codes of Practice, we question the need for these two new sector entities - particularly in considering that our members are already regulated and the potential for a duplication of practice guidance, and regulatory compliance and enforcement.

RICS is also keen for the Scottish Government to establish, as soon as possible, the legal status of the TFC i.e. will the Commission be a statutory body that may, effectively, conflict or duplicate the work of the Scottish Land Court?

Widening succession rights and improving how rent is set;

Throughout this Review Report, there are contractual concerns for RICS, such as the widening of succession, and a lack of 'Freedom of Contract'. Contract and leases play a pivotal role in tenant farming, and whilst we were pleased to see elements of flexibility in contractual negotiations between landlord and tenant through the development of a new 'modern LDT', we were disappointed to see that the Review Report had not provided a recommendation to permit a tenant to take a tenancy for a period of between 12 months and 10 years.

Freedom of Contract

RICS believes that flexibility and choice are crucial to creating a fair and vibrant tenanted farming sector – much in line with the Scottish Government's vision, and we strongly advocate the notion of 'Freedom of Contract'. Freedom of Contract would provide the involved two parties – the landlord and tenant – freedom to devise their own contractual responsibilities and obligations; mediated, if necessary, by an experienced RICS rural practice surveyor.

We believe that the introduction of more Freedom of Contract, when used in the creation of new farm tenancies, would result in additional security for both landlord and tenant, and provide the biggest single injection of confidence into the sector as has been seen in England following the introduction of Farm Business Tenancies.

In regard to rent setting, RICS feels the recommendations could further complicate issues, and we have approached these in the "Recommendations Assessment".

Supporting innovation and opportunities for new entrants by creating apprenticeships through share farm arrangements;

RICS agrees with the proposals on creating apprenticeships, as this would provide greater opportunity for new entrants.

However, in regard to share farm arrangements and the forthcoming Land and Buildings Transaction Tax (LBTT), we are keen to establish matters involving taxation in regard to the selling of a farm house, which has commercial land as part of the asset.

Providing longer term, more flexible letting vehicles to encourage the release of more land into the sector;

RICS supports greater flexibility, and we believe this proposal to be reasonable. However, there are a number of recommendations in this report relating to letting vehicles; some of which will work, and some of which will require greater consideration. We have indicated our views on the specific recommendations under the "Recommendation Assessment" section of this paper.

Changes to 1991 Act Tenancies - Scottish Ministers consider:

- **Strengthening the pre-emptive right to buy by removing the requirement to register;**
- **Enabling 1991 Act tenants, where a landlord does not or is unable to meet their obligations, to apply to the Scottish Land Court to force the sale of the holding; and**
- **For any proposals taken forward in a Land Reform Bill to address barriers to the sustainable development of communities, how these could assist in addressing issues impacting tenant farming communities.**

RICS was pleased to see that the group recommended that an absolute right to buy (ARTB) for secure 1991 tenancies is not introduced. RICS has historically been opposed to ARTB on the proviso that it will damage the quantity and quality of farms to let.

RICS has previously surveyed members in Scotland to ascertain the views of the membership. The key emerging theme from the survey results indicated that the membership believed that ARTB policy would have a negative effect across the farming sector in Scotland. ARTB would result in there being fewer 'good quality farms' being available to let for those who may or may not be able to purchase a farm, decreasing the number of farms available to rent, and further limiting the number of opportunities for new entrants to farming in Scotland.

Taking into account the view of RICS, and its members, one underlying concern is that the ARTB policy is not off the long term agenda. ARTB has been considered before; in this instance we note the evidence gathering period in the Scottish Parliament leading up to what became the Agricultural Holdings (Scotland) Act 2003. The pre-emptive Right to Buy was introduced by that Bill, where a tenant could have first call to buy a farm if the landlord wishes to sell. Eleven years on, this legislative review has resulted in this policy resurfacing. RICS believes that current ARTB policy will be reassessed in a similar timeframe i.e. 10 years. We do not believe that the possibility of ARTB being revisited, and potentially rematerialising, will assist sector confidence.

We would recommend the Scottish Government explores providing an incentive, e.g. tax relief, that would encourage landlords to assist new tenants – particularly when 1991 Act tenancies come to an end. There are more policy recommendations relating to ARTB, and we have commented on each in subsequent pages of this report.

We cover further issues relating to 1991 Act tenancies in greater detail under the "Recommendation Assessment" section of this paper.

Recommendations on Landlord/Tenant Relationships	
<p>Recommendation 1 - The Scottish Government should facilitate, support and strongly encourage the efforts of industry leaders to improve landlord/tenant relationships through effective self-regulation and other industry led initiatives</p>	<p>RICS agrees with this recommendation.</p> <p>However, we ask where this recommendation ties in with the Tenant Farming Forum (TFF), particularly as it already has the most relevant sector participants represented on it.</p> <p>We assume that this recommendation will lead to the Scottish Government providing more support to the TFF.</p>
<p>Recommendation 2 - A new office of Tenant Farming Commissioner should be established to promote and secure effective landlord/tenant relationships and behaviours across the agricultural tenanted sector underpinned by robust codes of practice.</p>	<p>Our views on the Tenant Farming Commissioner and Codes of Practice have been indicated earlier in this paper.</p>
Recommendations on Rent and Rent Reviews	
<p>Recommendation 3 – Legislative provisions on rents for secure 1991 Act agricultural tenancies should be amended so that rents are determined on the basis of the productive capacity of the holding, farmed by a hypothetical tenant (who is an efficient and experienced farmer of adequate resources who will make best use of the land) using the fixed equipment provided by the landlord, taking account of the budget for the holding, and including the contribution from non-agricultural diversified activity.</p>	<p>RICS agrees that the current system requires fine-tuning to improve efficiency and effectivity – particularly as comparable rental evidence can produce rents that are in excess of the productive capacity of the holding. At the same time, in being based on farm productivity, there could be a substantial increase in rents. The potential for a negative bottom line before rent also has to be addressed.</p> <p>As valuers, RICS members believe it would be unusual and bad practice to set a “fair rent” without considering market evidence; other forms of commercial rents are set this way.</p> <p>However, the budgetary system, involving a hypothetical tenant, will need to take into account a number of variables that require to be agreed (these will vary from farm to farm, and region to region), as well as a certain level of forecasting.</p>

	<p>Forecasting has varying levels of complexity depending on the farming system and location. Both of these issues could lead to a greater possibility for dispute.</p> <p>We believe, therefore, that in considering the limited availability of market evidence, there is a role for RICS rural practice members, or the TFF, to make the rent review process more transparent by initiating a register of rents, as this will enhance comparables and transparency. This proposal would require assistance, and buy-in, from all sector participants.</p> <p>RICS would suggest that any new system is extensively trialled before any “full roll out”.</p>
<p>Recommendation 4 – Legislative provisions for regulating rent reviews and determinations of rent for agricultural holdings should enable rent to be paid for non-agricultural activity on a holding that reflect a fair market rate for the landlord’s assets being used for the activity.</p>	<p>See above.</p>
<p>Recommendation 5 – If objecting to a diversified activity on a tenanted holding, the process should be limited to only one notice of objection by the landlord and to create a presumption that if planning permission has been granted for the diversified activity, that the activity is allowed unless the landlord can demonstrate that objections under section 40 subsection 9 of the 2003 Act apply.</p>	<p>RICS believes that the protection afforded by this recommendation would need to encompass all farm leases, otherwise farmers would have an unfair advantage over other market participants.</p> <p>To further explain our views on this, we use the hypothetical situation where a farmer opens a farm shop, and is in receipt of a better arrangement than another aspiring, or established shopkeeper, within close proximity, who wishes to sell similar produce.</p> <p>RICS believes that legislation may not be necessary for this recommendation to be realised; however, it is important to distinguish between agricultural leases and non-farming leases.</p>

	<p>Furthermore, granting planning permission may not necessarily be in the best interests of a landlord's wider policies or ambitions for his property.</p> <p>RICS believes that there needs to be additional legislative provision to this recommendation that would allow compensation to the landlord if s/he can demonstrate a loss of value to the property that arises from the planning consent to the diversified activity.</p>
Recommendation 6 – In considering the appropriate rent for an agricultural holding, provision should be made for any housing provided on a holding in excess of that reasonably required for the labour requirements associated with that holding.	RICS sees no reasons of principle to oppose this recommendation
Recommendation 7 – The Government should encourage and support industry bodies, including those representing professional intermediaries, to maintain publicly available information on model budgets and rent calculations to assist where relevant with the negotiated settlement of rents within the tenant farming sector.	<p>RICS agrees with this recommendation in theory, as we believe that the creation of a rent register would go some way to providing essential assistance to rent reviews and transparency.</p> <p>However, we believe this recommendation contradicts our interpretation of recommendation 3 (involving a budget system), by not allowing market evidence to guide rent calculations.</p>
Recommendations on Investment, Improvements, Compensation and Way-go	
Recommendation 8 – The Government should consider how to test the detail of the Review's proposals on rent review, in order to ensure that the provisions work effectively in practice, potentially in association with industry bodies.	RICS agrees that any new system is extensively trialled before any full roll out. That said, in considering the parliamentary timetabling, any trial could delay the production of the necessary legislation - the provision of a satisfactory amount of time to fully trial any new system should take priority.

<p>Recommendation 9 – Allowing the registration of secure 1991 Act agricultural tenancies in the Land Register, should be considered further to determine what impact this would have on a tenant's ability to offer the lease for the purpose of granting a standard security over it.</p>	<p>RICS does not see this recommendation as a barrier, but believe it requires further consideration, as we do not see any value in securitising an entity that is not tradable.</p>
<p>Recommendation 10 – Provision should be made for a three year amnesty during which a tenant farmer may serve formal notice on the landlord to the effect that specified items not previously agreed may be treated as tenant's improvements at way-go, including any claim that might be made under existing provisions for improvements where no notice has been given, but which involve equipment that the landlord should have provided at the commencement of the lease.</p>	<p>RICS believes this recommendation requires further consideration. Primarily because the suggested three year amnesty period is too long; two years should be more than sufficient.</p> <p>Whilst a three year amnesty could regularise the system, it would certainly lead to more disagreements between the parties and, subsequently, more court cases.</p> <p>We interpret this recommendation as making assumptions that, within the amnesty period in which notice is to be given, it is not necessary to prove that the equipment should have been provided at the commencement of the lease; rather, that it is a matter of negotiation for the termination of the lease, assuming that the equipment is still there and still of value.</p> <p>RICS is of the opinion that works done under a Post Lease Agreement (PLA) would seem to qualify for the amnesty also; this could lead to a breach of contract. As detailed in the report, a tenant normally paid a lower rent due to the fact s/he was taking on a landlord's obligation.</p>
<p>Recommendation 11 – Provision should be made to require a landlord to notify a tenant farmer of any proposed improvement to the holding and the tenant should be able to object, if the improvement is not necessary for the maintenance of efficient agricultural production on the holding.</p>	<p>RICS agrees with this recommendation, but we ask under what circumstances a landlord would want to carry out an improvement if the tenant did not want it.</p>

<p>Recommendation 12 – Further work should be undertaken, with relevant industry bodies, to revise the current list of improvements that can be eligible for compensation set out in Schedule 5 and section 17 of the 1991 Act.</p>	<p>RICS agrees with this provision and would welcome the opportunity to work with sector partners to revise Schedule 5.</p>
<p>Recommendations on Retirement, Succession and Assignment</p>	
<p>Recommendation 13 – Current legislation should be amended to allow secure 1991 Act tenancies and LDTs to be:</p> <ul style="list-style-type: none"> • assigned by the tenant farmer in their lifetime; • bequeathed where this is permitted in the lease; or • transferred by a tenant's executors on death, to any living parent, or any living descendant of a parent, or spouse or civil partner of any living descendant of a parent of the tenant or of the tenant's spouse or civil partner. 	<p>RICS does not support the extension of assignation and believes it to be unnecessary, removing opportunity for new entrants.</p> <p>RICS members in Scotland believe this recommendation is geared towards giving tenants more security, and may prevent a landlord's opportunity to end a secure tenancy. This in turn will make the land concerned unavailable to a new entrant or other farmer on a tenancy or to be farmed on some other basis.</p> <p>As a neutral organisation, we see this recommendation as contradictory to the interests of landlords as it means they can be 'locked' into a tenancy arrangement that they may deem as unfit or unwanted. It is also contrary to the principles of <i>delectus personae</i>.</p> <p>Furthermore, we believe this policy could have a negative effect on new entrants. Whilst we do not suggest this recommendation evokes a degree of nepotism, taking all tenancy transferal options into account should this policy be taken forward, it appears that the only way into farming would be to have a relative that already has a tenancy.</p>

<p>Recommendation 14 - Current legislation should be amended to remove a landlord's ability to object to the lifetime assignation or the succession of a tenancy on the grounds that that the agricultural holding is not a "viable unit" and the landlord intends to amalgamate it with another holding.</p>	<p>This proposal appears to be weighted against the landlord. The 'viable unit' provision was only introduced in the Public Services Reform (Agricultural Holdings) (Scotland) Order 2011 and hence has been in place for less than four years. RICS believes there is insufficient evidence to remove this provision after such a short period. Whilst part-time units form part of the new entrant "ladder", unviable units are not necessarily in the interests of a strong tenanted sector.</p>
<p>Recommendation 15 - Provision should be made to enable any secure 1991 Act tenant to convert the tenancy into a new long duration modern LDT with a minimum term of 35 years and then be able to transfer that agricultural tenancy to anyone on the open market for value.</p>	<p>To a degree, RICS agrees with this recommendation, but we have concerns that creating a market for 1991 Act tenancies in this way may reduce the number of tenancies that come to a natural expiry and be re-let (at no premium). Consequently, this could act as an additional barrier to new entrants entering the farming sector who will be less likely to be able to raise the necessary capital to purchase a tenancy than, for example, a well-established neighbouring farmer.</p> <p>If such a measure is to be introduced, RICS believes 35 years - which in some instances can be the entire length of a farming career - is too long a period. We feel that 25 years would be more reasonable.</p> <p>We also assume that there would be compensatory mechanisms for a landlord should there be a diminution in value of the asset arising from any such conversion.</p>
<p>Recommendation 16 - Further consideration should be given to ensuring national planning policy and guidelines and allow where possible for measures designed to encourage landlords to provide, on a lifetime lease, nearby retirement housing for outgoing agricultural tenants.</p>	<p>RICS agrees with this recommendation.</p>

Recommendations on the Role of a Right to Buy	
<p>Recommendation 17 – Existing provisions on the pre-emptive right to buy for 1991 Act tenants should be amended to remove the need to register a notice of interest so that all 1991 Act tenants have an automatic statutory pre-emptive right to buy their agricultural holding, should it come up for sale.</p>	<p>This recommendation is considered unnecessary and it could upset the landlord/tenant balance. If a tenant wishes to buy his/her holding, the process of registering an interest is currently very straightforward.</p> <p>On the flip side, if the tenant doesn't register, there is potential for the landlord to the sell same piece of land without the tenant's knowing. There can also be instances where there is a disagreement between a landlord and tenant over the extent of a holding. The current system provides an opportunity for this to be addressed in advance of any potential right to buy being triggered.</p>
<p>Recommendation 18 – Further consideration should be given to when the pre-emptive right to buy the agricultural holding should be triggered, for example when the land is advertised or otherwise exposed for sale, or (if not previously advertised or otherwise exposed) when negotiations are successfully concluded with another person with a view to the transfer of the land.</p>	<p>RICS believes the provisions of this recommendation are not necessarily in participants' interests.</p> <p>Furthermore, the report does not indicate what the trigger points are. It is imperative that these are established.</p>
<p>Recommendation 19 – Further consideration should be given to ways to ensure the effectiveness of a 1991 Act tenant's pre-emptive right to buy in circumstances where a company owns a farm tenanted on a secure 1991 Act tenancy, and a transfer of the interest in a holding can be effected through the transfer of some or all of the shares in the company rather than the sale of the land.</p>	<p>RICS believes that there is a legal drafting issue to this recommendation and is not in a position to comment.</p> <p>However, on the practical side, we assume the trigger would depend on whether the shareholders of the selling and purchasing company were the same. This could become difficult with larger companies.</p>

<p>Recommendation 20 - Further consideration should be given to the potential need to introduce an amendment to Part 2 of the 2003 Act to make clear that where there is an interposed lease and the landowner takes steps to transfer the land, the pre-emptive right to buy for any 1991 Act tenant sitting under the interposed lease is still triggered.</p>	<p>RICS believes this recommendation to be reasonable.</p>
<p>Recommendation 21 – Provision should be made to enable a 1991 Act tenant to request the Scottish Land Court to order the sale of a holding where the landlord has persistently failed to fulfil their obligations under the tenancy, triggering the tenant's right to buy. The Scottish Land Court will have discretion to order the sale, taking into consideration the respective rights and interests of both parties.</p>	<p>RICS members, who represent both landlords and tenants, interpret this recommendation as upsetting the landlord/tenant balance by discarding the interests of the landlord.</p> <p>RICS believes that to impose a condition like this on a sector participant is unreasonable.</p> <p>We believe that should a landlord not fulfil his/her obligations, then the tenant has an existing right, appropriately, to take action by seeking redress in the courts. In addition to the ability for a tenant to seek an order from a court to have a landlord implement an obligation, section 64 of the 2003 Act provides an additional remedy of the right to withhold rent. The RICS is not aware of either of these remedies being problematic.</p> <p>It is important to note that this recommendation could have compensatory implications on the Scottish Government if it is taken forward in legislation.</p>
<p>Recommendation 22 – The potential for proposals in the current consultation on Land Reform to address situations where the way land is being managed is impacting upon tenant farming communities and agricultural productivity, creating a barrier to local sustainable development, should be considered further.</p>	<p>RICS does not approve of Ministerial intervention. Government administrations change, and with that political ideologies. The agricultural sector needs consistency to encourage confidence.</p> <p>We believe this recommendation has long term considerations that cannot be enshrined in, relatively, immediate legislation.</p>

<p>Recommendation 23 – Further consideration should be given to providing small landholders with an automatic pre-emptive right to buy their holdings, should they come up for sale.</p>	<p>In the experience of RICS members in Scotland, a small landholder is the most likely purchaser of a small landholding due to the “crofting” nature of their tenure, in addition to the fact that they are probably owners of all the fixed equipment.</p> <p>Whilst we believe it would make sense that they should have the same pre-emptive right to buy as a 1991 Act tenant, we believe that this recommendation will not necessarily advance the position.</p>
<p>Recommendations on Letting Vehicles for the 21st Century</p>	
<p>Recommendation 24 – A new “modern LDT” with a minimum 10 year term should be developed to enable landlords and tenants greater freedom in agreeing terms relevant to the type, duration and purpose of the holding and lease. An optional break at 5 years should be available where the tenant is a new entrant.</p>	<p>RICS does not wholly agree with this recommendation.</p> <p>The minimum ten year LDT, with a break at 5 years for new entrants, is sensible. However, there is now an uncomfortable gap that is not being filled between a seasonal grazing or cropping agreement and the proposed 10 year modern LDT.</p> <p>We interpret this report as seeing the modern LDT as a useful addition. If that is the case, we strongly recommend that there should be a two year seasonal agreement (to allow for certain winter cereal cropping and carrot lets for example), an SLDT as at present, and a modernised LDT substitution of what currently exists at the moment.</p>
<p>Recommendation 25 – Provision should be made to allow for a modern “full repairing” LDT, where a tenant takes full responsibility for all repair, renewal and replacement of fixed equipment on the holding in return for a minimum term of 35 years and mandatory application of the new rent review provisions recommended in Section 5 of this Report.</p>	<p>RICS believes that prospective tenants will look on this recommendation favourably.</p> <p>In accordance with RICS’ strong belief that freedom of contract is preferable, the duration should be down to agreement between the parties or, at worst, limited to no more than 25 years, as we would FRI lease terms, to optimise take up.</p>

<p>Recommendation 26 - Rent provisions in relation to a new modern LDT should be agreed at the start of the lease by the contracting parties, taking into consideration the provisions of a new statutory code on negotiating rent reviews, or if the lease is silent on the issue then</p> <p>the rent provisions should be as set out in Section 5 of this Report for 1991 Act tenancies.</p> <p>In the case of a full repairing lease the rent controls set out in Section 5 should apply in all cases.</p>	<p>RICS would agree with this recommendation, subject to the minimum term being reduced to, at most, 25 years and FRI Lease terms.</p>
<p>Recommendation 27 - Parties to a “modernised LDT” should be able to negotiate fixed equipment arrangements subject to the provisos that fixed equipment provided by the landlord is sufficient to allow the tenant to farm for the purposes set out in the lease, details are specified in the lease along with a record of condition, and responsibility for maintenance is clearly stated.</p>	<p>RICS agrees with this recommendation, on the proviso that all arrangements are stated in the lease.</p>
<p>Recommendation 28 – Modern LDTs should be assignable within the duration of the lease at market value, subject to the landlord having the same grounds for objection as in the 1991 and 2003 Acts (finance, ability, character, etc).</p>	<p>RICS agrees with this recommendation</p>

<p>Recommendation 29 – Modern LDTs should include a requirement for landlords to give written notice of intent to terminate not less than two and not more than three years before the expiry of a modern LDT, failing which the lease will continue on tacit relocation for one year at a time subject to termination on the same notice period. (Section 12.2 of this Report).</p>	<p>RICS can see no reason to oppose this recommendation</p>
<p>Recommendation 30 - Modern LDTs should include robust arrangements for compensation and way-go in order to give tenants the confidence to invest on what are (potentially) quite short duration terms. These should be modelled on those in the 2003 Act with some simplification of process where practicable. The overriding aim should be to ensure that tenants are able to invest with confidence in this type of tenancy.</p>	<p>RICS agrees with this recommendation</p>
<p>Recommendation 31 - The option of allowing such leases to be extended by the landlord and then sold with improvements on the open market by the tenant (thereby avoiding formal way-go) should also be considered, especially with regard to full repairing leases.</p>	<p>RICS agrees with this recommendation.</p>

<p>Recommendation 32 – Provision should be made to enable land to be let for a period of up to one year, which will end without notice, for the purpose of grazing, mowing or cropping. Such leases should include a requirement for a declaration to be made to the incoming seasonal tenant to the effect that defined minimum soil nutrient and organic matter status are met, and by the outgoing seasonal tenant confirming that this has been maintained.</p>	<p>RICS believes this recommendation requires further consideration as a number of issues require clarification.</p> <p>Firstly, the sale of a crop of grass falls under a different taxation grading – they do not apply to a lease of land for cropping.</p> <p>Secondly, there also needs to be clarity over the minimum soil nutrition given the wide variety of qualities of land licensed or let currently. This measure could also result in a reduction in the amount of land made available in this way on the market due to more stringent regulation (compare with the steady reduction in the amount of let agricultural land as regulation has increased).</p> <p>RICS cannot provide a definitive comment on this recommendation however as Schedule A and Schedule D taxation considerations have not been considered in its drafting.</p>
<p>Recommendation 33 – Further consideration should be given to allowing an approved environmental charity to let land under the modern LDT arrangements which include reasonable environmental conditions as to the management of the land.</p>	<p>RICS agrees with this recommendation but believes this right should be extended to any landlord.</p>
<p>Recommendation 34 - Every encouragement and support should be given to the NFUS, SL&E and STFA to develop a new Joint Initiative on Limited Partnerships setting out clear guidelines as to how and on what basis those landlords and general partners remaining in these arrangements should negotiate their conversion into a modern LDT on appropriate terms.</p>	<p>RICS will work with the aforementioned stakeholders in moving this recommendation forward.</p> <p>RICS members represent both landlord and tenant, and are therefore very well placed to strike a balance between both parties.</p>
<p>Recommendations on New Entrants and Reducing Barriers to Entry</p>	

<p>Recommendation 35 – Provision should be made to allow tenants who wish to assign an LDT (including one arising from converting a secure 1991 Act tenancy) to a new entrant to do so through a contractually based staged assignation process that facilitates appropriate apprenticeship arrangements and includes effective protection for the assignor, the assignee and the landlord.</p>	<p>RICS agrees with this recommendation.</p>
<p>Recommendation 36 – The Scottish Government should further consider the potential capacity to provide starter units on publicly owned land, including through the acquisition of additional land where practicable.</p>	<p>This recommendation has cost implications for the Scottish Government i.e. through the use of a Compulsory Purchase Order (CPO).</p> <p>We believe this recommendation makes assumptions that tenant farming is best for the farming sector and not necessarily owner-occupiers. As stated previously, RICS does not favour one farming option over the other as we believe the market should be permitted to find the most efficient solution.</p>
<p>Recommendation 37 – The Scottish Government should also enter into direct dialogue with the larger private owners of agricultural land in Scotland with a view to encouraging them to provide starter units. The Scottish Government should also consider future opportunities to encourage the provision of starter farms through appropriate financial and any available tax incentives.</p>	<p>RICS agrees with this recommendation.</p>

<p>Recommendation 38 – Existing financial incentives available to agriculture, and more generally to business through other parts of Government, should be reviewed in order to facilitate effective financial support for new entrants. This should include, where possible, measures to cap the level of incentives made to larger established operators so that funds can be targeted to optimal effect.</p>	<p>Whilst we agree with this recommendation in principle; in considering the current, and forthcoming, taxation powers of the Scottish Government, RICS do not believe that this proposal is possible.</p>
<p>Recommendations on Taxation, the CAP and Other Fiscal Incentives</p>	
<p>Recommendation 39 – Scottish Government should work with the UK Government on any future review of the terms of Agricultural Property Relief, Business Property Relief, and Entrepreneurs' Relief, to consider whether disincentives to the letting of land might be removed. Consideration should also be given to the potential to structure reliefs to deliberately incentivise the letting of land on larger agricultural estates by capping the availability of reliefs for land farmed in hand.</p>	<p>RICS supports closer working ties between the Scottish and UK Governments to assist in providing necessary support for the sector.</p> <p>We also support a review, which would unpack the advantages and disadvantages of each relief scheme and their impact on the tenant farming sector.</p>
<p>Recommendation 40 – In any future review of Income Tax or Value Added Tax, the Scottish Government should work with the UK Government to consider the case for recategorising income from let land as trading income for tax purposes, particularly if it is reinvested in that land, and whether</p>	<p>RICS can see no reason to oppose this recommendation, but we would welcome a move to reclassify rental income as trading rather than investment income.</p> <p>However, we can see no logical reason for altering the VAT regulations. We believe that it is entirely up to a landowner as to whether or not s/he wishes to opt to tax - that is a business decision.</p>

the current exemption from VAT that applies to the letting of land should remain.	
Recommendation 41 - The Review Group has noted the on-going review of non-domestic rates ahead of the 2017 revaluation and the recommendation of the Land Reform Review Group in relation to Land Value Taxation. Any further deliberation of these issues should consider the potential to provide an incentive for the long term letting of agricultural land.	<p>Agricultural land is relieved from rates and must remain so.</p> <p>Additionally, RICS believes that the tenant should be responsible for paying rates, and not the landlord.</p>
Recommendation 42 – When reviewing the impact of the new Land and Buildings Transaction Tax, the impact, if any, on the decisions by landowners and tenants to let land or enter into share farming agreements should be considered.	RICS agrees with this recommendation.
<p>Recommendation 43 – In order to facilitate fair rent reviews, the values of each of the regional step changes arising from convergence should be published in advance so that landlords and tenants are able to take account of the revised value of Basic Payments. In addition, the following issues should be considered in relation to any relevant review during the new programme period of CAP:</p> <ul style="list-style-type: none"> • The ability to cap the amount of Basic 	<p>RICS members indicated that they have not seen evidence that would indicate landlords have taken land back in hand to increase the amount of Basic Payment Scheme entitlements that they may obtain.</p> <p>That said, there are, of course, evidenced instances where a landlord has acquired Single Farm Payment (SFP) entitlements, only to rent out the hectares shortly after. Fortunately, these claimants are being taken out of the system.</p> <p>RICS does not see why land should be added to the negative list to increase the funding; funding and land are limited entities. It is the opinion of our members that</p>

<p>Payments that any one individual can claim in order to discourage landowners from taking tenanted land back in hand or simply holding land to increase their Basic Payment claim;</p> <ul style="list-style-type: none"> • To enable more funding to be available to all active Scottish farmers and to be sufficient funds available to meet new and expanded tenant farms there may be a need to tighten the negative list; • Address any funding anomalies regarding access to Direct Payments arising from the latest CAP reform in consultation with stakeholders; • Assessing the impact upon smaller tenant farmers, including any impact from insufficient Direct Payments to cover all their eligible acres; • Ensure sufficient budget allocation should be retained, possibly by top slicing the revised ceiling budget, so as to ensure that new entrants to tenant farming are not placed at a fiscal disadvantage; • Assess the costs and benefits of the siphon on entitlements without land, and consider including exemptions 	<p>there is little, if any, need to further assist new entrants above and beyond what is already available to them under the current CAP Reform proposals.</p>
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<p>for new entrants to tenant farming.</p>	
<p>Recommendation 44 – Government should consider making the following provisions in relation to the new SRDP:</p> <ul style="list-style-type: none"> • Sufficient funding should be made available in each year to ensure that new entrants are not disadvantaged by lack of budget availability; • If funding for the Small Farm Scheme is constrained, mechanisms should be developed to ensure new entrants and tenant farmers are not disadvantaged; • The Whole Farm Review Scheme and its successor; the integrated land management scheme and the one to one advisory service, should give prioritisation to new entrants and be available to small tenant farmers; • Business development plans submitted as part of a SRDP application should take full account of costs specifically associated with tenant farming, including rents; • If funding becomes constrained within 	<p>RICS interprets this recommendation as supporting tenant farmers over other farmers.</p> <p>On many occasions throughout this paper, RICS has stated that it does not favour one farming option over another. We believe that the market drives the best option for farmers – particularly new entrants.</p> <p>Therefore, these recommendations should apply to all new entrants regardless of whether they are owner-occupiers or tenants.</p> <p>Furthermore, there are a number of owner-occupiers who also rent land; therefore, these farmers would also have an advantage over those who are solely owner-occupiers.</p>

<p>SRDP, priority should if possible be given to new entrants to tenant farming whether via a LDT, repairing lease or other suitable lease.</p>	
<p>Recommendations on Miscellaneous Legislative Amendments</p>	
<p>Recommendation 45 - Further consideration should be given to ensuring that any agricultural tenancy under the 1991 and 2003 Acts going forward, except a short term grazing or cropping tenancy, can only be terminated at their end date or, when they are running on tacit relocation, at the anniversary thereof by a notice to quit given not less than two years nor more than three years before the end date of the lease or any anniversary thereof.</p>	<p>Whilst we agree that there should only be one notice period and one notice required, it is not clear whether this applies to tenants and landlords.</p> <p>If this proposal does apply to both parties, RICS would agree with this recommendation.</p>
<p>Recommendation 46 - Consideration should be given to amending the current provisions for succession, or assignation of, existing SLDTs and LDTs to more closely match those being proposed for the new letting vehicles.</p>	<p>RICS believes there is an element of retrospective legislation to the recommendation which may be complicated and delicate to manoeuvre.</p>
<p>Recommendation 47 - Further consideration should be given to amending the 2003 Act, so that in any agricultural tenancy, with the exception of short grazing or cropping leases, a claim can be made by a tenant for loss and damage arising from the exercise of the sporting rights in a</p>	<p>RICS interprets this recommendation as a means to upset the landlord/tenant relationship, in favour of the tenant. It would appear that the recommendation is removing the right of a landlord and offering it to the tenant. Furthermore, RICS members are of the impression that sporting rights are reserved to a landlord and are not subject to a lease; they therefore cannot be transferred.</p> <p>Other considerations include: the annual damage to crops etc., which is currently</p>

<p>manner that was not in the contemplation of the parties at the commencement of the lease.</p>	<p>covered by a claim under the Ground Game Acts, and where useful sporting purposes have intensified and the annual rental value (the potential output) of the holding has been affected.</p> <p>In the latter case, that would, we suggest, be an adjustment to the rental value of the holding rather than an annual claim for crop damage.</p>
<p>Recommendation 48 - Further consideration should be given to amending current provisions on the service of notices for 1991 Act tenancies, SLDTs, LDTs and make provision for new letting vehicles so that any notice that requires to be served by anyone under the Acts on the landlord may be served on the original landlord unless notice was given to the tenant of the new landlord and to provide that anything that is required or authorised to be done by, to or in respect of the landlord or tenant may be done by, or to or in respect of any agent of the landlord or tenant.</p>	<p>RICS believes this recommendation is reasonable.</p>
<p>Recommendation 49 – Further consideration should be given to incorporating the miscellaneous changes set out in Appendix F and G of this Report and consideration should be given to consolidating the Agricultural Holdings (Scotland) Acts, though it is not anticipated this should be done within this Parliamentary term.</p>	<p>As stated previously, RICS does not share the urgency that the Scottish Government has placed on progressing the Land Reform Bill (incorporating changes to agricultural holdings legislation) through this Parliamentary session. Agricultural Holdings are an extensive, significant and intricate collection of issues which need to balance the rights and responsibilities of all participants. We believe that any legislative change arises from its own separate Parliamentary process, and is not rushed to ensure all matters (and recommendations) are given an appropriate amount of consideration and public scrutiny.</p>

Written submission from Scottish Tenant Farmers Association

Review of Agricultural Holdings

Submission to Rural Affairs, Climate Change and Environment Committee

1. Background

1.1 STFA is the only organisation dedicated to serving the tenanted sector in Scotland and, as such, welcomes the opportunity to give evidence to the RACCE committee on the Agricultural Holdings Legislation Group's (AHLRG) report on what may potentially be the most far-reaching reform to agricultural holdings legislation since 1948.

1.2 The tenanted sector in Scotland is highly regulated and complex as a direct consequence of Scotland's land tenure structure where much of the tenanted land is tied up in large estates that exert a significant influence on the letting of land. STFA considers that continued regulation will be necessary to mitigate the imbalance of power between landlord and tenant and is pleased that the AHLRG has rejected calls for the introduction of Freedom of Contract in letting land.

1.3 STFA supports the general thrust of the AHLRG report and has commented on areas where it believes the recommendations could be strengthened. STFA does not, however, share the AHLRG's apparent view that 1991 "secure" tenancies are not suited to modern circumstances and should be allowed to decline. STFA believes, to the contrary, secure tenants' rights should be strengthened by placing greater emphasis on stimulating investment in tenanted farms, encouraging older tenants to retire by widening assignation and guaranteeing fairer end of tenancy compensation and providing opportunities for new tenants to gain access to secure tenancies.

2. Tenant Farming Commissioner:

2.1 STFA welcomes the AHLRG report's recommendation for the establishment of a strong Tenant Farming Commissioner and regards it as key to the future operation of the tenanted sector and to improved relationships between landlords and tenants.

2.2 The Tenant Farming Commissioner should be a statutory body and part of a wider Lands Commission with a remit to advise, monitor and regulate the performance of the tenanted sector. It should have statutory powers enabling it to investigate bad practice, intervene and levy sanctions where necessary. The office should be responsible for establishing and overseeing codes of practice, many of which will have to have a statutory basis.

2.3 Future self-regulation will be dependent on improved relationships within the sector but will only be effective if underpinned by statutory codes of practice under the supervision of the Commissioner who should consult with landlord and tenant representatives, such as Scottish Lands and Estates, NFUS and STFA. Some consideration should be given to incorporating some functions of the French "Safer" in the Commission to ensure that transfers of land are done in the best public interest.

2.4 Conduct and quality control of land agents could be monitored by an audit process. It is clear that tenants will be reluctant to make a formal complaint against

their landlord's agent for fear of reprisals and souring future relationships, and a different approach is required which does not rely on a complaints process.

2.5 STFA believes an interim Commissioner should be appointed in the meantime to see fair play and monitor behaviour in the sector during the transitional period before a full time Tenant Farming Commissioner is created.

3. Rent reviews

3.1 STFA agrees with the principle that a new system of rent assessment should be based on the productive capacity and earnings capability of the holding with reference to objective criteria such as budgets, standard industry figures and economic conditions.

3.2 STFA agrees that the holding should continue to be rented on the basis of the hypothetical tenant of average ability pursuing a similar system of agriculture commonly practised in the area. Secondly, the tenant should only pay rent on the land and fixed equipment provided by the landlord. All tenant's improvements and fixtures must be removed from the rental calculation whether or not they are subject to agreement or eligible for compensation at way-go.

3.3 STFA has expressed concern over the proposition in Appendix D Para 6 of the report which seeks to mitigate landlords obligations if the rent derived from the productive capacity of the holding does not give the landlord a reasonable return on his investment and adequately cover the costs of fulfilling statutory responsibilities. STFA believes it is unreasonable to attempt to guarantee a landlord a return on his investment from rent, particularly when he already enjoys an annual uplift in capital value from his asset of at least 6-8%.

3.4 STFA understands that it is now proposed to develop a rental calculation formula which would calculate a fair division of the "surplus before rent" which would ensure a reasonable return to the tenant for his labours and for reinvestment in the farming business.

3.5 **Diversification** – STFA accepts that a landlord should receive a fair rent for the use of his assets for non-agricultural purposes but would point out that diversification activities are already invariably subject to a rental agreement as a condition of consent and this should be taken into account when recalculating the new rent.

3.6 The principle behind the proposal that landlord's ability to object to a diversification project be curtailed if planning permission is granted sounds is acceptable, but at present a landlord can serve a Notice to Quit on any tenanted land where planning permission has been granted. This has been pointed to SG.

3.7 **Housing** - STFA questions the need for Recommendation 6. Generally speaking, most surplus housing will already either have been resumed or will be the subject of an agreement between landlord and tenant, introducing a statutory requirement to incorporate surplus cottages in to the rental calculation will only add complication and lead to another area of potential conflict.

4. Dispute resolution in rent reviews

4.1 The report has been mainly silent on the operation of the Land Court in resolving rental disputes. The development of robust codes of practice overseen by a Tenant Farming Commissioner combined with a more objective method of calculating rent should enable most rent reviews to be concluded satisfactorily. However, situations will always arise where formal resolution will be necessary and professional advisers have already warned that the legislation is likely to be challenged.

4.2 The current system of rental dispute resolution through the Land Court is not delivering “a better quality of justice; dealing with disputes expeditiously; and as economically as possible with the minimum of expense” (*Scottish Law Commission Report 2000*)., The small percentage of rent review cases coming before Land Court is more a reflection of a rent dispute resolution system that is not working rather than one where few disputes arise. The cost, time and stress involved in the three rent cases to have been determined by the Land Court have been a salutary warning of the risks involved. The Moonzie and Roxburghe cases, for example, took 4 -5 years each to resolve, involving a total of 27 days in court at a total cost to all parties in excess of £500K. It is small wonder that tenants feel they have no option but to agree to rent increases even if considered unreasonable.

4.3 Alternative methods of dispute resolution should be made available but training and development are needed to create a panel of arbitrators capable of delivering a fair rent and gaining the confidence of both parties. Arbitration has had a long history and works well in England but Scotland lacks the experience and expertise to instil the confidence necessary for success.

4.4 It is likely that any dispute resolution system will focus on the Scottish Land Court and STFA hopes that the new Land Court rules announced last year will give the Court a much more “hands on” role in applications and allow the Court a more interventionist role which will reduce delay and cut down on expense. STFA believes that the Court should be enabled so it can develop procedures to deliver a fast track and low cost approach to dealing with what should be relatively simple disputes over rental valuation. (see appendix A)

5. Investment, Improvements, Compensation and Way-go

5.1 STFA agrees with the AHLRG’s findings that evolving investment patterns, resulting from the increasing fixed capital requirements of farming over many decades, mean that secure tenants are now providing significant amounts of fixed capital invested in farm infrastructure.

5.2 This pattern of increasing tenant investment requirements is likely to continue, since landlords are only required to provide the fixed equipment considered necessary at the start of the lease. Given that most of STFA’s membership have leases over 50 years old, the requirement for landlords to provide modern fixed equipment is minimal, and the investment burden falls to the tenant.

5.3 However, with the removal of open assignation of secure tenancies from the Final Report, STFA does not believe that the AHLRG’s recommendations are sufficient to address the lack of investment in the tenanted sector. Open assignation

would have addressed two key obstacles to tenant investment by firstly allowing the tenant's lease and improvements to be used as standard security with a bank which would have realisable value, and secondly providing an alternative to the unsatisfactory process of way-go compensation.

5.4 Suggestion that a registered 1991 Act tenancy could be used as collateral for the purpose of granting a standard security over it, must be viewed with suspicion when its only realisable value is through conversion to a 35 year LDT. AHLRG's proposition is not borne out by evidence from lenders, unless leases become tradable. Experience has shown that the use of a fixed asset for security requires ownership of the land underneath the asset or at least a long lease of over the land. (see Appendix)

5.5 Most modern farm improvements have a life expectancy of over 75 years, and when subject to an LDT lease of only 35 years will be significantly devalued. Without a means of realising fair value for secure leases and their associated tenant's improvements, investment from tenants and from third parties, ie. banks, will be limited.

5.6 For specific diversification projects agreements can be made with the landlord to remove the part of the farm in question from the lease, either for sale to the tenant or for the purpose of granting a commercial lease for a specified period to cover the mortgage period before reverting to the tenancy. There are examples of such tenant diversifications, either through the tenant's purchase of the site, or through the granting of a long term (over 90 years) lease of the site to the tenant, however this requires a willing landlord.

5.7 **Amnesty on improvements:** STFA welcomes this idea, but subject to clarification and stipulation that all improvements and investments by the tenant and his predecessors should be covered providing:

- it was carried out by the tenant or his predecessors, even where they has been in on the holding for two or more tenancies,
- it was required to maintain efficient production,
- any contribution by the land landlord in cash or kind is taken into account,
- it adds to the capital value of the holding.

5.8 **Improvements to housing:** it is important that improvements to farmhouses and cottages are subject to way-go compensation. At present they can be excluded by the "value to the incoming tenant" principle.

Lord Gill states: *"In assessing the improvement the valuer must first determine whether it is such that the hypothetical tenant would find it of value at all. The hypothetical tenant is interested in the improvement only to the extent it increases the productive capacity of the holding. An improvement, while qualifying under the appropriate schedule may nevertheless be an unsuitable extravagance indulged in by the outgoing tenant. The value of the improvement must therefore be assessed by the addition of value which it effects to the holding as a whole."*

5.9 This principle is plainly a recipe for an argument excluding compensation for improvements such as double-glazing, central heating, fitted kitchens and all the other accoutrements demanded by 21st century standards.

5.10 Agricultural holdings legislation is silent on housing provision by the landlord. Farmhouses are exempt from landlord's registration as are tied cottages. Responsibility of sublet cottages lies with the farm tenant. This is plainly an area which needs to be tied into housing regulations and SG officials have said they will investigate with Housing colleagues.

5.11 **Valuation of improvements:** the valuation principle of value to incoming tenant, determined by the extent it increases the productive capacity of the holding, leads to uncertainty at the way-go valuation for the many modern improvements which, though not leading directly to increased productivity, are nevertheless required to meet modern standards for animal welfare, appropriate working environments, and health and safety requirements. STFA considers that waygo valuation should also take into account the increase in the capital value of the holding made by the improvement.

5.12 **Amnesty and dispute resolution:** If consent is not granted for an improvement under the amnesty, para 140 makes provision for reference to the Land Court failing mediation or negotiation. Arbitration is currently not an option for disputes over improvements under s39 of the 1991 Act. This will clearly deter tenants from contesting refused improvement and even from taking advantage of the amnesty. This will be particularly pertinent for those on Limited Partnership tenancies, hoping to extend their leases where landlords will be bound to try and minimise their way-go compensation, especially if it is imminent.

5.13 STFA would recommend amendment to s 39 of the 1991 Act to allow disputes over tenants' improvements to be resolved by arbitration and would also recommend that the Tenant Farming Commission set up a statutory arbitration or expert determination service to assess to adjudicate over landlords' refusal of consent or objection to notices.

5.14 STFA considers Para 141 contrary to tenants' property rights. Inevitably there will be a number of tenants who, for one reason or another will not take advantage of the amnesty and will be disadvantaged by the suggestion that following the amnesty period, all improvements, not agreed as the tenants be assumed as belonging to the landlord.

5.15 STFA considers Para 141 as plainly unfair, unjust and contrary to tenants' property rights and should be struck out:

- as above, it discriminates against tenants who do not take advantage of amnesty
- an abiding principle of rental valuation is that tenants should not be rented on their improvements, whether eligible for compensation or not, therefore tenants investment in the holding should be recognised in a record of condition and taken account of in assessing rent.

- Such a move will encourage landlords to object to tenants notifications of improvements

5.16 Post Lease Agreements (PLA). Clarity is required over the position of pre-1949 leases subject to post lease agreements. Possibly a third or more of secure tenancies are pre-1949 leases, many of which are subject to a PLA. Section 5 of the 1991 Act allows a tenant to have a PLA removed, but since Section 5 does not apply to pre-1949 leases there remains uncertainty over the position of PLAs attached to these older leases

5.17 Way-go compensation:

Tenants frequently experience difficulty in realising fair way-go compensation. No changes to the waygo process have been recommended by the AHLRG other than to provide the possible alternative in the form of conversion to an assignable 35 year minimum term LTD. However, assignation of a 35 year LTD is unlikely to provide for fair compensation in situations where there are significant levels of tenant's improvements.

At present the tenant has to serve an irreversible notice to quit the holding before any agreements are made over either what items will attract way-go compensation or what the value will be.

- STFA proposes a two stage notice procedure:
- Notice of Intention to Quit served one year in advance subject to agreement on way-go compensation being reached six months before end of tenancy.
- Confirmation of Notice to Quit following agreement of way-go valuations. Vacation of holding following payment of valuations.

5.18 Valuation of tenancy

The lease of a tenanted holding has a notional value as recognized in s55 of the 2003 Act which makes provision for parties to agree compensation for yielding vacant possession either when the landlord wishes to sell the farm or when the tenant wishes to quit. The value of a lease has also been recognised by the Inland Revenue (*Baird's Executors v Commissioners of Inland Revenue* 1991) and is used by HMRC to value a tenancy for the purposes of taxation etc. In the absence of APR, IHT would be levied on this basis, but since secure tenancies are not freely assignable, and s55 is not mandatory, a tenant has no means to realise the value if needed to meet possible IHT liability.

5.19 STFA considers tenant's property rights may be breached under ECHR where the tenant is unable to realise value through the sale of an asset (the lease), even though his interest in that asset may give rise to a liability, including tax liabilities. STFA considers that if s55 was mandatory, tenants would be encouraged to retire earlier and moreover, many landlords might opt to permit the assignation of a secure tenancy to in order to avoid the s55 obligation.

6. Retirement, Succession and assignation

6.1 STFA supports widening of family assignation and it is worth remembering that prior to 1958 a tenant could bequeath his lease to any person. This has steadily been narrowed down to a family member, then to a near relative. Widening family succession is only adjusting the balance back the other way, but not as far as back to the pre 1958 situation. STFA also agrees that family assignation should be brought in line with succession.

6.2 **Viable unit:** STFA has always been opposed to the viable unit test which emerged as a compromise solution to the removal of the “Two Man Rule”. The proposal to remove the viable unit as grounds for landlord’s objection to succession or assignation is therefore welcome.

6.3 Whilst recognising the public policy argument for retaining the other side of the viable unit test (where the prospective successor is already in possession of a viable unit) STFA advocates this be removed also, especially where the addition of a further unit is natural, sensible and prudent. Retaining this aspect of the viable unit test will just lead to dispute. In the case of assignation to a non-relative there may be an argument for limiting the class of assignee to those not already in possession of a viable unit.

6.4 **Open assignation:**

Extending assignation of 1991 leases to non-family members was initially identified by the AHLRG as a flagship policy providing an ideal solution to most of the problems that the Group identified during the evidence gathering phase of the review. STFA understands that the AHLRG decided against recommending the adoption of open assignation due to concerns over the implications of such a move on landlord’s property rights. However, STFA believes that the opportunities assignation would create and the multiple benefits it would bring to the sector will outweigh any concerns over property rights which can be safeguarded, if necessary with the provision of landlords’ right of pre-emption

6.5 STFA believes that assignation of 1991 tenancies should be reintroduced as part of the tenancy reform package to deliver key benefits:

- **Retirement:** open assignation would provide an attractive exit route to encourage older farmers nearing retirement age to make way for the next generation.
- **New entrants:** open assignation would provide missing rungs in the farming ladder and ensure a supply of secure tenancies of varying types and sizes to meet the demand from new entrants and other tenants seeking to upsize their holdings. Opportunities for share farming or for apprenticeships would also be created allowing new tenants to work their way into existing tenancies whilst helping older tenants to retire.
- **Investment:** It is acknowledged that the lease of a 1991 tenancy has a value, as expressed in s55 of the 2003 Act. Currently the tenant is unable to realise the value of his lease without the co-operation of his landlord. The lease may also be seen as having a value and therefore a taxable asset by the Inland Revenue. Allowing open assignation would create a means whereby the tenant could realise the value of the lease and provide

an asset which could be used as standard security against a loan, thus encouraging investment.

- **Reduced landlord obligations:** From the landlord's perspective assignation could potentially reduce his contractual obligations regarding fixed equipment, especially at waygo. He would have the option to either take the farm back in hand by offering to purchase the lease himself or to retain it as a stable long term investment delivering a reliable income stream.
- **Preservation of area of tenanted land:** Above all, extending assignation of 1991 tenancies to non-family members will help maintain and preserve the area of securely tenanted land and provide access opportunities for other tenant farmers to secure tenancies. This must be to the ultimate benefit of Scottish agriculture, whilst also providing social capital and inter-generational continuity to rural communities.
- **Limited partnership tenants:** as noted elsewhere, the 400 tenants remaining in limited partnership tenancies face a bleak future to whom the opportunity to receive the assignation of a 1991 tenancy would be seen as a lifeline.

6.6 Scottish government statistics show an annual loss of around 120 secure tenancies to the sector. Most of this land, if re-let will be let out on short term arrangements usually to established farmers. If only a quarter of these farms were available for assignation to new entrants the demand for land by new entrants would soon be satisfied. This is a missed opportunity, STFA is aware of a number of small farms without family successors which would be suitable as assignable tenancies to new entrants. Furthermore, assignable tenancies will also create scope for share farming arrangements where a retiring farmer can take a new entrant into the business with a view to assigning the lease at a later stage.

6.7 Whilst STFA supports the concept of assignable secure tenancies, control measures will be essential to guard against unintended consequences and ensure that the proposed assignation will be in the interest of the agricultural and rural community. STFA would propose that assignations should be subject to the approval of a Tenancy Commission as is the case in crofting assignations.

6.8 **Conversion to LDT:** STFA does not believe that making provision for the conversion of a 1991 tenancy to a long (35 year) LDT before assignation to a third party will be an effective means of achieving any of the above benefits of open assignation. In particular the ability to assign following conversion is unlikely to be viewed by lenders as a sound basis on which to place a standard security for a loan unless the term length is in excess of 80 years.

6.9 Moreover, assignation to a 35 yr LDT will not allow most tenants to realise sufficient value for their lease and investment in the holding and provide an incentive for a new tenant to continue to invest when subject to such a relatively short lease.

6.10 The conversion to an LDT route is viewed by STFA as a second-best option with limited appeal and one which will need to be carefully drafted to avoid many unintended consequences.

7. Right to Buy

7.1 A right to buy played a large part in the AHLRG's initial discussions. However little consideration was given to the wider picture of land reform and the wider benefit that owner-occupation gives to the rural community and Scottish agriculture as a whole.

7.2 The Group saw the call for ARTB largely as a reflection of the breakdown in relationships between landlord and tenant. However, most tenants looked towards ownership either to give them the confidence and security to invest in and grow their businesses, or in response to a deep seated desire to reform the land tenure structure of Scotland. Very few regarded ARTB as an opportunity to buy farms cheaply and resell. In fact bargain farms are a misconception.

7.3 Para 200 which contends that the group did not see evidence that ownership stimulates investment and leads to greater productivity than on an equivalent tenanted unit is totally inaccurate and supporting evidence can be found on numerous farms and areas of Scotland, from Caithness to Wigtownshire. STFA is pleased to learn that the Scottish Government is now proposing to conduct research into the differences in investment levels between owner-occupied and tenanted holdings, and whether there are wider benefits of owner-occupation.

7.4 Open assignation of 1991 tenancies is widely regarded as a practical way of achieving most of the benefits of ownership and if adopted would go a long way towards satisfying the demand for a right to buy.

7.5 **Pre-emptive right to buy:** STFA welcomes the proposal to remove the requirement for tenants to register an interest in buying their land but has concerns over the proposed changes to the timing of triggers for PRTB. Recommendation 18 suggests that the tenant's rights of pre-emption would only be triggered once a deal had virtually been concluded with the prospective buyer and the valuation set. The understanding should be that the tenant has the right of first refusal rather than one of a last minute pre-emption. STFA would further propose that that a tenant, having declined the statutory valuation should retain his pre-emptive right should the open market value be significantly lower than the statutory valuation.

7.6 STFA welcomes extension of PRTB to tenants where there is an interposed lease or the landlord is a limited company.

7.7 **Conditional right to enforce sale:** This is an extension to the right to withhold rent and although this will be a method of last resort with few tenants prepared to run the gauntlet of a Land Court procedure to enforce the sale of a holding, STFA views it as an ultimate sanction which should encourage landlords to fulfil their statutory obligations.

7.8 **Right of Ministers to intervene:** This measure is intended to work on same basis as Land Reform measure and is designed to operate in community context to safeguard ECHR concerns. STFA regards it not only as a useful tool in the island context and will be easier to use than right to enforce sale but also in areas in the mainland which are dominated by a monopoly of land ownership. STFA would like to see a wider definition of "community" to encompass a community of interest. In most

cases it must be recognised that the buy-in of the local community will be necessary.

7.9 Small Landholdings: Small landholding tenants have been disappointed that, once again their plight has been largely ignored by a review of agricultural holdings. The AHLRG report recommends the introduction of a Pre-emptive Right to Buy, in line with agricultural tenants, but this will do little to advance their situation which STFA believes could be remedied by a statutory right to buy (similar to that enjoyed by crofting) or an automatic right to convert to crofts.

7.10 STFA is pleased to learn that the Scottish Government is now to conduct a survey of Small Landholders to assess the scale of issue and canvass their views.

8. Letting vehicles for 21st century:

8.1 STFA is pleased that the AHLRG has rejected the use of freedom of contract in new letting vehicles and furthermore believes existing SLDTs and LDTs should be fit for purpose with some minor adjustments to period lengths and provision of fixed equipment.

8.2 STFA believes there are a number contributory factors leading to the poor uptake of new style tenancies. The initial burst of LDT lettings were mainly conversions from LP tenancies with very few rented out on open market. Economic factors including considerations over CAP reform will have been major factors in decisions on letting land. Recently landlords have preferred to rent out on seasonal grazings or the use of contract farming rather than formal tenancy arrangements in order to protect their positions regarding CAP reform.

8.3 The scarcity of land to let and competition from existing farmers for Limited duration and then capital cost of equipping the farm business will be formidable obstacles for new entrants and those climbing then farming ladder.

8.4 The opportunity to purchase then assignation of a secure tenancies would allow an aspiring tenant entry to a farm whilst also providing him with a tradable asset. Historically, successful new entrants have developed their business with a secure base, either using security of tenure on tenanted land in the post war period, or opportunities to purchase freehold during times of low land values, eg 1930's and post war. With the withdrawal of open assignation of secure tenancies, and with fiscal measures supporting high land prices, neither of these options are available for a new entrant.

10. Limited partnership tenancies:

10.1 From the 1980s onwards Limited Partnership tenancies were virtually the only letting vehicle available. Most were term tenancies which continued no tacit relocation (annually), giving the tenant very little security although in most cases the tenancies were viewed as semi-permanent. There are still 400 tenancies still in operation, some as old as 30+ years. These tenants, now in mid-career, are yesterday's new entrants. They will have stock, capital and experience and many will now have families who are keen to pursue a career in farming, but they will have nowhere to go should their leases be brought to an end.

10.2 STFA believes it is essential to put some measure in place to afford these tenants greater protection before solutions can be found to give them a stable and secure future, possibly by granting a right to convert their tenancies to LDTs.

11. New Entrants

11.1 STFA supports the creation of a modern “full repairing” LDT as an affordable entry point, providing the rent was based on the productive capacity of the holding and the tenant was able to receive compensation for all improvements carried out during his period of tenure.

11.2 It is unclear how tendering process would work with lease being exposed to market forces. Full repairing lease may have some attraction, but important that term length not reduced and rent review provisions not changed.

11.3 STFA has long supported the concept of share farming or an apprenticeship scheme. Much will depend on willingness and interest of outgoing tenant and the handover arrangements.

11.4 Starter units have been a success and there will be potential for creating further units on publicly owned land, including that currently managed by the Crown Estate Commissioners. However, thought has to be given to the next rung on the farming ladder. This again highlights the benefits of assignable 1991 tenancies in allowing movement in through and out of the tenanted sector.

Appendix A:

Suggested amendments to Land Court procedure:

- Joint referral to Court to arbitrate over quantum of rent – use of Court for expert determination
- Unilateral referral – full statement of act case required before Land Court application accepted. Essential to move away from the current practice of submitting a skeletal statement of case to the Court before applying before a list, in effect treating a Court referral as another step in the rent negotiation process. If Practitioner’s Guide adhered to and correct steps followed a statement of case should be available in adequate.
- Revival of Early Neutral Evaluation as suggested some years ago by Lord McGhie – a suggestion that a member of the Court could meet informally with parties to identify issues and suggest a remedy for the dispute (a Tenancy Commission could perform a similar role).
- Court pre-hearing to identify issues and isolate disputes for legal debate if necessary.
- Preference to be given for written evidence and requirement for facts to be agreed with a time limit imposed on Court hearings.
- Supplementary or fresh evidence should not be introduced once the Land Court hearing has commenced except under exceptional circumstances.

- Each party to bear their own expenses unless proof of mal-practice

Codes of practice should enshrine certain timelines. Rent reviews must be concluded within the year. Only genuine disputes should be referred to the Land Court, and referral must not be treated as another step in the negotiating procedure. If rent review has not been settled by the term date or the Land Court notified of a formal dispute, the review should be abandoned.

Appendix B:

Evidence form the commercial and residential leasehold sectors with regard to mortgages (standard securities).

If the problem of lack of investment in the tenanted sector is to be addressed, tenants need to be able to obtain mortgages on their improvements and leases to facilitate investment. Without this ability to mortgage improvements and leases, investment in the tenanted sector will remain at a disadvantage compared with the owner occupied sector.

The AHLRG have recommended that the registration of secure 1991 Act leases in the Land Registry should be considered to determine what impact this would have on a tenant's ability to offer the lease for the purpose of granting a standard security (mortgage) over it. (Recommendation 9)

However, lenders are only likely to grant a mortgage over a lease if there is the ability to realise the value of the lease and associated tenant's improvements. Since the AHLRG have ruled out open assignation for secure tenancies, the only means to realise value is through their proposed conversion to an assignable LDT of 35 years minimum. Such a short-term lease will significantly limit the realisable value of a secure tenancy, and hence limit its ability to be mortgaged.

Looking to the commercial and residential sectors for evidence of mortgages obtained on leases, it is clear that it is difficult to obtain a mortgage on a lease of less than 80 years, because once the lease reduces in length to less than 80 years its value starts to fall rapidly.

Based on the evidence of the commercial and residential sectors, in the absence of the ability to assign openly a secure 1991 Act lease, the conversion to an assignable LDT would require a minimum term length of at least 80 years to allow secure leases to be used for meaningful mortgage purposes and facilitate increased investment in the secure tenanted sector.