Law Society of Scotland

Stage 3 Briefing

Land Reform (Scotland) Bill

October 2025

Photo: East Lothian

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Introduction

The Law Society of Scotland is the professional body for over 13,000 Scottish solicitors.

We are a regulator that sets and enforces standards for the solicitor profession which helps people in need and supports business in Scotland, the UK and overseas. We support solicitors and drive change to ensure Scotland has a strong, successful and diverse legal profession. We represent our members and wider society when speaking out on human rights and the rule of law. We also seek to influence changes to legislation and the operation of our justice system as part of our work towards a fairer and more just society.

The Land Reform (Scotland) Bill[1] ("the Bill") was introduced by Mairi Gougeon MSP, the Cabinet Secretary for Rural Affairs, Land Reform and Islands on 13 March 2024. We submitted written evidence,[2] and provided oral evidence in June 2024,[3] to the Net Zero, Energy and Transport Committee of the Scottish Parliament ("the lead committee") as part of its Stage 1 consideration of the Bill. We also wrote to the lead committee following our evidence session.[4] The Net Zero, Energy and Transport Committee Committee's Stage 1 Report on the Bill ("the Stage 1 Report")[5] was published on 19 March 2025. We issued a briefing to MSPs ahead of the Stage 1 debate on 26 March 2025.[6] We welcome the opportunity to consider and provide comment on the Bill ahead of the Stage 3 proceedings scheduled for 28-29 October and 4 November 2025. This briefing is in addition to the suggested amendments and amendments with reasons and effects which we issued to MSPs on 6 October 2025.

Our briefing includes the following key points:

- We highlight extensive legislative and policy reform within the wider agricultural and environmental legal landscape, and the importance of considering the interplay between such reforms to ensure a consistent approach which ensures certainty and legal clarity.
- We highlight the challenges arising from the use of framework legislation in this area, and stress the importance of there being appropriate levels of parliamentary scrutiny underpinning legislative and policy developments and of meaningful stakeholder consultation.
- We welcome the lead committee's recommendations that various regulation-making powers in the Bill be subject to a pre-laying procedure and further consultation requirements. We have suggested draft amendments to this effect.
- We make a number of specific comments on sections of the Bill, including areas where we consider the Bill could be further clarified, including by amendment.

[1] Land Reform (Scotland) Bill | Scottish Parliament Website
[2] Law Society of Scotland | Written evidence | Land Reform (Scotland) Bill
[3] Net Zero, Energy and Transport Committee | Scottish Parliament TV
[4] Law Society of Scotland | Letter to NZET Committee
[5] Stage 1 report on the Land Reform (Scotland) Bill
[6] Land Reform (Scotland) Bill Stage 1 Briefing

General Remarks

We welcome the introduction of the Bill. Our comments and engagement to date are limited to the proposed legislative changes and legal considerations, in line with the remit and expertise of our membership, and we do not look to comment on the underlying policy considerations of land reform in Scotland.

As an overarching comment, it is important to recognise the context of land ownership in Scotland, including: the reasons for Scotland's current pattern of land ownership; challenges around the use, quality, and value of land; and relevant economic factors such as economies of scale and the availability of public funding (both historically and in the future). In this regard, it is important to bear in mind the different character of land in Scotland from that in some other countries as well as the multiplicity of rights which can be held in the land.

The Bill covers four principal policy areas, the first of which concerns Land Reform. The Policy Memorandum states that proposals regarding the ongoing management and transfer of large landholdings are "based on recommendations of the Scottish Land Commission" and "are intended to be targeted and proportionate ways of addressing the risks" that it identified.[7] We note that one of the core issues identified in the Scottish Land Commission's investigation concerns the concentration of land ownership in Scotland, rather than the scale of land ownership per se. The use, nature, and impact on local communities of an area of land (for example 1000 hectares) can differ greatly across different geographies, including its proximity to towns and other settlements. We highlight that using scale as the determinative factor in the legislative proposals could result in a more limited and less tailored approach compared to a focus on concentration; and therefore detract from the policy intentions of the Bill. We note the Bill as amended at Stage 2 retains the 1000 hectare threshold for provisions related to lotting and introduces the same 1000 hectare threshold for provisions relating to a public interest test. We note the lead committee's recommendation that consideration should be given to adding a reporting requirement on the success (or otherwise) of these thresholds so that the Parliament and stakeholders can be updated on how provisions are operating and whether the Scottish Government is considering use of the power to alter these thresholds.[8] We note that in its response to the lead committee's report that the Scottish Government committed to considering how reporting requirements could assist with identifying the effectiveness of thresholds.[9]

More generally, we note the extensive ongoing and prospective legislative and policy reform within the wider agricultural and environmental legal landscape – including biodiversity matters, deer management, the recent passage of the Agricultural and Rural Communities (Scotland) Act 2024 and the Wildlife Management and Muirburn (Scotland) Act 2024. We also note that both the Natural Environment (Scotland) Bill and the Crofting and Scottish Land Court (Scotland) Bill will impact on these areas and are currently before Parliament for consideration. We therefore highlight the importance of considering the interplay and overlap between such reforms to ensure a consistent and aligned approach. It is important

[7] Policy Memorandum | Land Reform (Scotland) Bill , para 7
[8] Stage 1 report on the Land Reform (Scotland) Bill, para 285
[9] Scottish Government response to LRB Stage 1 report

that there is clarity as to how the land reform policy proposals are intended to align with other relevant areas of law and practice.

It is crucial to upholding the rule of law that the law is clear, comprehensible, and transparent so that requirements can be understood by those whom they will affect. There should be certainty and legal clarity for those owning or considering owning land as to the requirements of doing so.

As a general point, we note that the detail of many aspects of the proposals is to be set out in regulations. The ability of the proposals to fulfil such objectives will therefore be linked to the content of the regulations and wider practical considerations – points which at this stage are to some extent uncertain.

In this context we stress the importance of there being appropriate levels of parliamentary scrutiny underpinning legislative and policy developments, and meaningful stakeholder consultation, in relation to such regulations and the implementation of the proposals. We note that the lead committee's report notes the report of the Delegated Powers and Law Reform Committee, which considered that the Bill set out powers that allowed "unspecified changes to fundamental aspects of the Bill".[10] Following Stage 2, we reiterate the need for the Bill to be amended at Stage 3 to facilitate deeper and more meaningful parliamentary scrutiny and we therefore highlight and welcome the following amendments:

- Amendment 260 in the name of Bob Doris MSP
- Amendment 262 in the name of Bob Doris MSP
- Amendment 275 in the name of Rhoda Grant MSP
- Amendment 284 in the name of Rhoda Grant MSP
- Amendment 304 in the name of Rhoda Grant MSP
- Amendment 365 in the name of Mairi Gougeon MSP

Comments on Sections of the Bill

Part 1 - Large Land Holdings: Management and Transfer of Ownership

Section 1

Community Engagement

Section 1 amends Part 4 of the Land Reform (Scotland) Act 2016 ("the 2016 Act").

This section sets out enabling provisions for Scottish Ministers to make regulations imposing obligations about community engagement on the owners of land of a certain scale. The power is, to some extent, prescriptive, as the Scottish Ministers must "exercise it to impose obligations in accordance with sections 44B and 44C" (inserted section 44A(2)). However, a full assessment cannot yet be made of the obligations to be placed on landowners pursuant to this power until the detail of the regulations is clear.

Greater clarity on the scope of the term "community" and "communities" would be welcomed. Similarly, we would welcome more detail on the policy intention underpinning

[10] Stage 1 report on the Land Reform (Scotland) Bill, para 127

the proposals relating to community engagement – including the intended purpose and legal outcome – to better understand their likely impacts and legal implications. We note that section 44B was amended to provide a burden on the landowner to engage with "any tenants, crofters or small landholders with rights associated with the land on the development of, and significant changes to, the plan."[11]

We stress the need to consider the practical impact and processes behind the proposals to ensure that this step is meaningful and does not solely add cost, increased administrative burden, and delay to property transactions. We also suggest that this will merit an appropriate awareness-raising campaign so as to make stakeholders aware of the procedures and manage their expectations as to the purpose and outcome(s) of the engagement.

We note the requirement that before making regulations under inserted section 44A, the Scottish Ministers must consult the Land and Communities Commissioner (inserted section 44A(5)). We particularly stress the importance of robust and broad consultation on such secondary legislation, to provide an opportunity for scrutiny and critical comment from stakeholders on the details of the measures –and consider that the regulations should be consulted on more widely. We therefore welcome the recommendation in the Stage 1 Report of a pre-laying procedure that allows the Parliament to consider such regulations in draft and that the Bill should be amended to require the Scottish Government to consult before laying draft regulations under this section.[12] We consider this additional scrutiny appropriate and welcome amendment 275 in the name of Rhoda Grant MSP which aims to achieve this.[13] We would urge that MSPs support this amendment at Stage 3.

We note that the regulations made under the inserted section 44A are "to be informed by the land rights and responsibilities statement" (inserted section 44A (4)). Clarity would be welcomed on whether this reflects a policy intention to place compliance with the statement on a statutory footing, and a departure from the voluntary approach currently in place.

In relation to the community engagement aspects under a Land Management Plan (LMP), we highlight that there are many parallels with other areas of the law, for example, Planning Law. It is important that the requirements are proportionate to the intended aims, and where possible should avoid duplication with analogous engagement requirements applicable to the same land. We also note a potential tension with confidentiality considerations in relation to overlapping consultation requirements, for example for large developments.

LMP Consultation and Publication Requirements

We generally agree in principle in the interests of transparency, public interest, and engagement that owners of large landholdings should have a legal duty to consult on and publish LMPs. There should be clear expectations as to what is to be included in a LMP so that those subject to the duty may understand their responsibilities and guide their conduct

[11] Bill as amended, page 2
[12] Stage 1 report on the Land Reform (Scotland) Bill, para 207
[13] Revised Marshalled List of Amendments for Stage 3, amendment 275

accordingly. We consider that clear and comprehensible guidance, including examples, would therefore be of assistance to landowners in formulating their LMP. We also note the need to balance the required information with other considerations, including the need to exclude commercial and sensitive information. We therefore welcome amendment 269 in the name of Michael Matheson MSP which would require the Scottish Government to issue guidance about obligations imposed by regulations under the inserted section 44A.[14]

We highlight generally the usefulness of codes of practice in the current legal framework, those employed by the Tenant Farming Commissioner being an example, and note that there would be merit in a similar approach here especially given the intention in the Bill to establish the new Land and Communities Commissioner.

The inserted section 44B(3)(c)(iii) requires that a LMP must contain information relating to how "the owner is complying or intends to comply with … the code of practice on deer management in operation in pursuance of section 5A of the Deer (Scotland) Act 1996". We note that this, in effect, creates a compliance duty in relation to a voluntary code of practice. We also highlight the Scottish Government consultation *Managing deer for climate and nature*[15] and the Natural Environment (Scotland) Bill currently before MSPs for consideration which includes provisions to reform deer management legislation. There is an element of uncertainty in relation to what any prospective changes to the current legislative framework on deer management will comprise, and how the provisions in the Bill will interact with this.

We also highlight the range of other current and prospective analogous planning and reporting requirements that large landowners may be subject to – for example under the "30 by 30" proposals and in respect of muirburn. Consideration should be given to how such requirements could be aligned to avoid duplication and aid compliance.

Community Engagement Requirements - Compliance

We note that inserted sections 44E- 44L concern the consequences of noncompliance with the procedural elements of preparing a LMP; rather than non-compliance with its content. This could be seen as somewhat limited, given that a LMP could be published then not adhered to.

We consider, however, that there is a balance to be struck in this regard as it may not be feasible to carry out land management in line with a published LMP for a number of reasons. For example, for landowners who are landlords, what happens "on the ground" may be largely outwith their control. It may not be possible to adhere to the LMP for other reasons outwith the control of the landowner, for example, the weather.

We therefore welcomed the recommendation in the Stage 1 Report that the Scottish Government should consider how it can encourage the delivery of the plans, while leaving flexibility for landowners to respond to changing circumstances.[16] We would reiterate our request that the Scottish Government consider how it can best encourage the delivery of

[14] Revised Marshalled List of Amendments for Stage 3, amendment 269
[15] Law Society of Scotland | Managing Deer for climate and nature
[16] Law Society of Scotland | Stage 1 Briefing | Land Reform (Scotland) Bill, page 6

LMPs going forward, should the Bill pass Stage 3. We note that in its response to the lead committee's report the Scottish Government stating that it is considering approaches to support monitoring, and that this will be an ongoing consideration as the regulations for LMPs develop.[17]

We particularly highlight the need for clear communication and educational resources regarding the relevant procedures, and effects of investigations, for landowners and other stakeholders.

We note the list of persons referred to at inserted section 44E(2), in relation to who may submit a report of an alleged breach. There is the potential that some of these stakeholders may have alternative means of taking enforcement action, and we would welcome clarity on the extent to which their powers may overlap. We also note that it is important that there are appropriate resources and capacity to support the operation of these proposals. We previously noted the lead committee's recommendations regarding widening the list of those who can allege breaches of community engagement,[18] and providing the Land and Communities Commissioner with the power to pro-actively investigate potential breaches of community engagement obligations.[19] We note that amendments at Stage 2 widen the list of those who can allege breaches of community engagement obligations to include community councils, the Crofting Commission, Highland and Islands Enterprise, National Park authorities and South of Scotland Enterprise.[20] We further note the amendment made at Stage 2 to enable the Land and Communities Commissioner to pro-actively investigate potential breaches of community engagement obligations.[21]

We have no specific comments in relation to the level of the penalty other than to note that it should be reasonable in the circumstances and reflect the desire to ensure compliance.

Section 2

Section 2 amends the Land Reform (Scotland) Act 2003 ("the 2003 Act") in relation to community right to buy. Our comments concern the procedural aspects of the proposals, rather than the policy intention.

We welcome the Scottish Government's decision to amend the Bill at stage 2 to create a *de minimis* threshold to allow for transfers of small plots from a large landholding, as opposed to these proposals applying to all sales by a large landholding, as was previously the case prior to Stage 2.[22]

We further note the terms of the 2003 Act in relation to the community right to buy.

This does not contain a size threshold for the land to be within scope, and we note that these proposals represent a departure from this approach. We consider that consideration could instead be given to greater advertisement and increased public awareness of these existing mechanisms.

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[17] Scottish Government response to LRB Stage 1 report, para 210
[18] Law Society of Scotland | Stage 1 Briefing | Land Reform (Scotland) Bill, page 7
[19] Law Society of Scotland | Stage 1 Briefing | Land Reform (Scotland) Bill , page 7
[20] Bill as amended, page 5-6
[21] Bill as amended, page 6
[22] Bill as amended, page 19

We further note the recent Scottish Government consultation *Community Right to Buy: Review* and would highlight our response to this consultation.[23]

We previously noted the recommendation in the Stage 1 Report that regulations under inserted section 46L should be subject to a pre-laying procedure that allows the Parliament to consider a draft of the regulations, and that this power should also be subject to a statutory requirement to consult those potentially affected.[24] We consider this additional scrutiny appropriate and welcome amendment 284 in the name of Rhoda Grant MSP which aims to achieve this.[25] We would urge that MSPs support this amendment at Stage 3.

Section 3

Section 3 makes further modifications to existing legislation in connection with section 2.

We have no specific comments on this section.

Section 4

Section 4 amends the 2003 Act to add a new Part 2A relating to lotting of large landholdings. We anticipate that lotting could be a complex and lengthy exercise.

We welcome the Scottish Government's Stage 2 amendment to the inserted section 67Q which now provides that Ministers are required to make a lotting decision within six months from the date on which an application is received.[26] This provides a clear timescale for lotting procedures on the face of the Bill and provides much needed clarity.

Further, we highlight the range of legal steps involved in the conveyancing process for land subject to a lotting decision, which would require consideration at the outset of the process and in the context of the timescales for a prospective sale. It will be necessary for the parties to instruct legal and other specialist professional advice in order for the necessary steps to be completed as part of any sale. This would include, for example, ensuring any real burdens, reservations, access rights, services, utilities, and related matters in respect of the land are dealt with appropriately. Clarity on the position of these costs in the context of the compensation provisions, discussed below, would be welcomed.

We welcome the lead committee's recommendation that provision be added to the Bill requiring that independent, professional advice from suitably qualified people with experience of lotting be taken before the Scottish Ministers make a lotting decision.[27] We note that the Scottish Government considers that the Bill contains provisions to enable this under the inserted 67N(4) of the Bill, which sets out that Ministers may not make a lotting decision stating that land may only be transferred in lots without having requested, and taken into account, a report from the Land and Communities Commissioner in relation to the Land.[28] We further note amendment 68 in the name of Edward Mountain MSP which amends the inserted section 67R(7) to require the person that Ministers seek advice from

[23] Community right to buy review: consultation - gov.scot
[24] Law Society of Scotland | Stage 1 Briefing | Land Reform (Scotland) Bill , pages 7-8
[25] Revised Marshalled List of Amendments for Stage 3, amendment 284
[26] Bill as amended, page 26
[27] Stage 1 report on the Land Reform (Scotland) Bill, para 278
[28] Scottish Government response to LRB Stage 1 report, para 278

regarding a lotting decision under review to have knowledge of the land market in the local area.[29]

We note the provisions in relation to compensation at Chapter 5 of the inserted Part 2A of the 2003 Act. In particular, we highlight the compensation provisions at inserted section 67V, which give a right to compensation from Ministers to an owner of land or a creditor in a standard security having a right to sell land for loss and expense arising from various procedures introduced by the Bill. We anticipate that a key step in this process will concern the valuation of the land. Whilst this aspect pertains more to practical points, we highlight the need for there to be sufficient resources and capacity to allow for these procedures to operate effectively.

We previously noted the lead committee's recommendation that the Bill is amended to include a statutory requirement for the Scottish Ministers to consult before exercising the regulation-making powers in inserted sections 67S(6), 67V(4) and 67Y.[30] We also noted the lead committee's recommendation that the power in section 67Y (to modify various provisions relation to lotting decisions, including the land size thresholds) is subject to a pre-laying procedure so that the Parliament can consider draft regulations.[31] We consider this additional scrutiny appropriate and welcome the amendment 304 in the name of Rhoda Grant MSP which aims to achieve this.[32] We would urge that MSPs support this amendment at Stage 3.

Given that there is a risk of conflict if Ministers are to set out the valuation mechanism in regulations and also to appoint the valuer in relation to the compensation payable, we consider this additional scrutiny is appropriate. More generally, we consider that careful consideration should be given to the impact of the fragmentation of ownership through lotting and the potential impact of this detrimentally affecting large scale development or management for natural capital and biodiversity benefits, and other impacts across wider and legal policy areas.

Section 5

Section 5 makes further modifications to the 2003 Act in connection with section 4.

We have no specific comments on this section.

Section 6

Section 6 amends the 2016 Act to establish the Land and Communities Commissioner.

The Bill makes provision for the Land and Communities Commissioner to be integrated into the Scottish Land Commission (a non-departmental public body wholly funded by the Scottish Government), but with a remit and functions that are distinct from the existing Land Commissioners and Tenant Farming Commissioner.[33]

[29] Revised Marshalled List of Amendments for Stage 3, amendment 68
[30] Stage 1 report on the Land Reform (Scotland) Bill, para 282
[31] Stage 1 report on the Land Reform (Scotland) Bill, para 282
[32] Revised Marshalled List of Amendments for Stage 3, amendment 304
[33] Bill as amended, page 33

We welcome the creation of the new role of Land and Communities Commissioner. Members have noted the positive work and valuable role of the Land Commissioners and Tenant Farming Commissioner; and consider that there would be merit in creation of the new role of Land and Communities Commissioner in a similar vein.

In our written evidence to the lead committee, we suggested it would be appropriate for the Land and Communities Commissioner to have expertise or experience in land valuation, or to have the ability to commission evidence on such matters where relevant.[34] We therefore welcome amendment 307 in the name of Edward Mountain MSP[35] and amendment 309 in the name of Rhoda Grant MSP[36] which aim to insert these provisions into the Bill. We would urge MSPs support these amendments at Stage 3.

Part 2- Leasing Land

Section 7

Section 7 imposes an obligation on Scottish Ministers to make publicly available a model lease designed for letting land so that it can be used (wholly or partly) for an environmental purpose.

We note that this section was not subject to amendment at Stage 2.

We consider that greater clarity is required on the purpose, and necessity, of introducing a model lease for environmental purposes.

We note that there are already a number of commonly used model leases, which parties can tailor to take into account specific forms of use or related practical and commercial considerations.

Clarity would also be welcomed on whether the intention is for the proposed model lease to sit within the existing legal framework for agricultural holdings, including the Agricultural Holdings (Scotland) Acts of 1991, 2003, and 2012. We therefore welcomed the recommendation in the Stage 1 Report that the legal status of the model tenancy be clarified, in particular, to make clear that it sits outwith the agricultural holdings framework.[37] We note the Scottish Government's comments in its response to the lead committee's report that the model lease is a template for parties to use as they see fit and does not replace any regulated type of farm tenancy such as an agricultural holding.[38] We consider it appropriate that the Scottish Government publish non-statutory guidance regarding this, to further minimise any potential confusion regarding the proposed model lease.

We note that section 7 of the Bill could add an additional layer of complexity to this area of law and practice which may not be necessary. A simpler and more flexible approach may be to develop model clause(s) for inclusion in relevant leases addressing these points; as opposed to the creation of an entire model lease.

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[34] Law Society of Scotland | Written evidence | Land Reform (Scotland) Bill, page 7
[35] Revised Marshalled List of Amendments for Stage 3, amendment 307
[36] Revised Marshalled List of Amendments for Stage 3, amendment 309
[37] Stage 1 report on the Land Reform (Scotland) Bill, para 326
[38] Scottish Government response to LRB Stage 1 report, para 326

As a recurring comment, greater clarity and detail would be welcomed on the definition of "sustainable and regenerative agriculture" (section 7(4)(a); and elsewhere in the Bill). At present, the scope and content of this term is not evident on the face of the Bill.

We note the letter sent by the Cabinet Secretary for Rural Affairs, Land Reform and the Islands to the Convener of the Net Zero, Energy and Transport Committee (dated 14 May 2024) providing further information on aspects of the Bill,[39] in particular the discussion of this term. Whilst we welcome that the proposed Code of Practice on Sustainable and Regenerative Agriculture will be consulted on, the lack of detail on its content and meaning at this stage presents a challenge in assessing the references to, and effect of, the term within the context of the Bill. We therefore welcome the discussion on this point in the Stage 1 Report, and note the lead committee's recommendation that a definition of "sustainable and regenerative agriculture" is added to the Bill, or by cross-reference to the Code of Practice that will be produced under the Agriculture and Rural Communities (Scotland) Act to ensure a consistent reading across related legislation.[40] We note that the Scottish Government highlighted the Code of Practice on Sustainable and Regenerative Agriculture, established by Section 29 of the Agriculture and Rural Communities (Scotland) Act 2024, as providing an explanation of what Scottish Ministers consider to be sustainable and regenerative agriculture.[41]

See our further comments below regarding links to the Agriculture and Rural Communities (Scotland) Act 2024.

Sections 8 and 9

Sections 8 and 9 of the Bill relate to small landholdings. Section 8 introduces the schedule, which sets out a number of rights in respect of small landholdings.

We are broadly supportive of the provisions in the Bill extending certain rights to small landholders and greatly welcome the modernisation and consolidation of the law in this area. We note that the Stage 1 Report highlights the preference of small landholders to be aligned with 1991 Act tenancies.[42] Whilst we consider it desirable to align the law on small landholding with an existing statutory framework, we note that there are differing views on whether alignment with 1991 Act tenancies or the crofting framework is preferable. Agricultural tenancies including 1991 Act tenancies are to a large extent a matter of contract between landlord and tenant with a statutory overlay, and lack the security of tenure associated with crofts.

We support the extension of the Tenant Farming Commissioner's functions to include small landholders, and consider that the availability of a third party can be helpful in regulating discussions between relevant parties.

Section 10

This section repeals section 99 of the 2016 Act. We note that this section of the 2016 Act is yet to be brought into force.

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[39] Cabinet Secretary for Rural Affairs, Land Reform and Islands | Letter to NZET Committee
[40] Stage 1 report on the Land Reform (Scotland) Bill, para 308
[41] Scottish Government response to LRB Stage 1 report, para 437
[42] Stage 1 report on the Land Reform (Scotland) Bill, para 339

We welcome this approach for reasons of clarity if the Scottish Government does not intend for this section to be commenced in the future. However, more detailed information on the proposed changes to the registration process in future would be welcomed. We stress again in this context the importance of robust stakeholder engagement and consultation, and that any subsequent regulations are subject to appropriate parliamentary scrutiny.

We are supportive of the increased clarity and certainty that an entry in the Register of Community Interests in Land brings, for example in situations where a secure tenancy may have been created verbally. In the interests of certainty about the extent of land affected by the registration, we welcome the Committee's recommendation that the process should require a plan to be submitted at the point of registration of interest.[43] We note the Scottish Government's commitment made in its response to the lead committee's report that as part of the approach to the proposed regulations under section 10, the Scottish Government will work with Registers of Scotland and tenant farming stakeholders to enable appropriate geospatial information to form part of the pre-emptive right to buy registration process.[44]

Sections 11-13

These sections concern the proposed resumption provisions.

We note that the Cabinet Secretary brought forward several amendments at Stage 2.

We highlight concerns regarding these proposals, in particular that they would retrospectively affect existing arrangements. The legal and practical implications of these proposals require careful consideration.

Whatever the legislative position is for new leases agreed after any proposed changes enter into force, existing leases are reflective of commercial agreements and negotiations between the parties to the lease. We consider that these proposals will significantly impact existing arrangements, which are drafted on the basis that vacant possession can be given within the terms of the lease. These may, for example, reflect a shorter resumption period than in the proposals. The existing leases are also relevant to wider commercial arrangements entered into with other third parties. We stress the importance of legal clarity to allow for all parties to plan their affairs accordingly.

In the interests of clarity we welcomed the lead committee's request that the Scottish Government clarify how section 17 of the 2003 Act is intended to operate, as this has been a matter of uncertainty between practitioners.[45] We note that the Scottish Government does not consider that the Bill makes any alteration to the rules concerning the resumption of land under section 17 of the 2003 Act.[46]

Section 14

Section 14 modifies the Agricultural Holdings (Scotland) Act 1991 ("the 1991 Act")in respect of compensation for improvements.

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[43] Stage 1 report on the Land Reform (Scotland) Bill, para 340
[44] Scottish Government response to LRB Stage 1 report, para 376
[45] Law Society of Scotland | Land Reform (Scotland) Bill Stage 1 Briefing, page 13
[46] Scottish Government response to LRB Stage 1 report, para 409

We note the change from fixed lists of improvements requiring notice or consent to a principles-based approach. In order to reduce uncertainty, we welcome the Committee's request to Scottish Government to reflect on the content of the indicative lists to ensure they are comprehensive enough to provide sufficient clarity about improvements that emerge in future.[47]

We welcome the inclusion of a clear timescale for agreeing compensation, and note that this can encourage co-operation between parties.

We echo our comments above about the need for greater clarity on the definition of "sustainable and regenerative agriculture"; as the scope and content of this term are not evident on the face of the Bill.

We also consider that the link between the legislative proposals and how these will directly impact agricultural practices should be made clear by the Scottish Government.

We note a risk that a more prescriptive legislative framework could complicate discussions between parties. We consider there would be merit in also exploring how non-legislative measures could assist the policy aim, such as through other funding incentives and related support.

Sections 15-19

These sections concern changes in relation to diversification on tenant farms.

We generally note the need for clarity in the relevant definitions for these proposals; and in particular how these interact with those used in the argicultural holdings legislation and use of land for agricultural purposes.

Consistency would be preferable here, to avoid the risk of having two systems running concurrently. For example, it is unclear whether under the proposals a part-use of land for a non-agricultural purpose would mean that this falls wholly outwith the agricultural holdings legislation.

We also refer to our comments above in relation to the proposed environmental model lease, and a highlight a need to consider the interaction of this with these proposals.

Section 20

Section 20 replaces section 52 of the 1991 Act which deals with the compensation to be paid to the tenant of an agricultural holding where the tenant has sustained damage to their crops from game.

We anticipate that certain stakeholders, for example tenants, will welcome the inclusion of damage caused by "game management", rather than solely as a result of "game". Members note that issues relating to these points arise from time to time in practice.

We generally highlight the complexities in this area regarding deer management, and consider that legislative clarity would be welcomed. We note the interaction between the proposed LMPs and deer management, and other proposed legislative developments in this area (discussed at section 1, above). We stress the importance of considering the interplay

[47] Stage 1 report on the Land Reform (Scotland) Bill, para 424

and overlap between such reforms to ensure a consistent and aligned approach. The range of the legislative changes in this area may provide an opportunity for consolidation and coordination where appropriate.

There are other technical aspects which would benefit from clarity in the Bill, for example whether aspects like damage to grass are intended to be included.

Section 21

Section 21 amends the Agricultural Holdings (Scotland) Act 2003 to introduce a standard procedure for claiming compensation.

We note that this section was not subject to amendment at Stage 2.[48]

We welcome there being clear timescales in place, which can help encourage co-operation between the parties. We consider it is important that sufficient flexibility is built into the procedures should there be any delays or technical barriers in providing the relevant information. We note the lead committee's recommendation that consideration be given to a backstop date for payment that reflects that a full and accurate valuation cannot be established until the date of waygo itself.[49]

Greater clarity would be welcomed on the date from which interest is payable under inserted section 59C, particularly in the context of any delays to the valuation process provided for in inserted section 59B and Schedule 3 of the Agricultural Holdings (Scotland) Act 2003. We suggest that the relevant date could be linked to the backstop date referred to above.

Section 22

Section 22 modifies the Agricultural Holdings (Scotland) Act 2003 in respect of interest payable on compensation.

We have no specific comments to make for the purpose of this briefing.

Sections 23-25

Sections 23-25 make provision for rent review.

We note the lead committee's recommendation that an alternative method of dispute resolution is needed for the rent review provisions to avoid the time and expense of cases having to be resolved by the Land Court.[50] We would welcome further clarity on how such an alternative method of dispute resolution would operate in practice, and whether recourse to the court on a point of law would be preserved.

Sections 26-27

Sections 26 and 27 make provision for rules of good husbandry and estate management.

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[48] Bill as amended, page 69
[49] Stage 1 report on the Land Reform (Scotland) Bill, para 463
[50] Stage 1 report on the Land Reform (Scotland) Bill, para 482

In relation to the proposed changes to the rules of good husbandry, our members have highlighted that the existing rules of good husbandry operate as a low bar to overcome to show that one is demonstrating good husbandry; and therefore a high standard for anyone to prove that one is not. Any changes should therefore take into account the practical operation of the existing regime in this context.

Part 3 - Final Provisions

Sections 28-31

Part 3 of the Bill contains general provisions. We have no specific comments to make on Part 3 at this stage.

Further Remarks

Links to the Agriculture and Rural Communities (Scotland) Act 2024

Greater clarity would be welcomed on the interaction between 2024 Act and how its provisions will be linked to those in the Bill.

We refer to our written comments on the Agriculture and Rural Communities (Scotland) Bill.[51] We highlighted, in particular, that as the Act operates as a framework – which will in turn be supplemented by more detailed secondary legislation – it is difficult to fully understand and assess its likely impacts on those operating in the sector.

We similarly highlight that until the details of the various legislative proposals are more developed, it is difficult to assess these points at this stage. We note that the Delegated Powers and Law Reform Committee considers that the Bill is also a framework bill,[52] and that the use of delegated powers in the Bill as introduced creates challenges to ensuing effective parliamentary scrutiny.[53]

[51] Law Society of Scotland | Consultation response | Agriculture and Rural Communities (Scotland) Bill
[52] Delegated powers in the Land Reform (Scotland) Bill at Stage 1, para 13
[53] Delegated powers in the Land Reform (Scotland) Bill at Stage 1, para 19

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