

## **Annex - Reasons for not providing information**

### **Exemptions under s.38(1)(b) (Personal data relating to third party)**

Exemptions under section s.38(1)(b) (Personal data relating to third party) of FOISA applies to some of the information you have requested, specifically to where it relates to the names and contact information of Scottish Government staff.

In this case, these exemptions are not subject to the 'public interest test', so we are not required to consider if the public interest in disclosing the information outweighs the public interest in applying the exemptions.

### **Exemption under s.25(1) (Information otherwise accessible)**

An exemption under s.25(1) (Information otherwise accessible) applies to some of the information you have requested. This relates to your request for speaking notes, where the final speeches are available to read as part of the minutes of the Land Reform (Scotland) Bill Stage 3 sessions at the links provided in the response letter.

This exemption is subject to the 'public interest test'. Therefore, taking account of all the circumstances of this case, we have considered if the public interest in disclosing the information outweighs the public interest in applying the exemption. We have found that, on balance, the public interest lies in favour of upholding the exemption given the information is already freely available.

### **Exemptions under s.29(1)(a) (Formulation or development of Scottish Government policy), s. 30(b) (Free and frank provision of advice or exchange of views), s. 30(c) (Effective conduct of public affairs) and s. 36 (Confidentiality of legal advice)**

Exemptions under section s.29(1)(a) (Formulation or development of Scottish Government policy), s. 30(b) (Free and frank provision of advice or exchange of views), s. 30(c) (Effective conduct of public affairs) and s. 36 (Confidentiality of legal advice) of FOISA applies to some of the information you have requested.

These exemptions apply to the Background note, Consultation, and in some cases parts of the Purpose and Effect sections of the Briefing documents.

The exemption under section s.29(1)(a) (Formulation or development of Scottish Government policy) has been applied as these sections contain preliminary advice for Ministers on secondary legislation following the Bill, and impacts of amendments on this.

The exemptions under s. 30(b) (Free and frank provision of advice or exchange of views) and s. 30(c) (Effective conduct of public affairs) have been applied as the sections include advice to Ministers on amendments prepared rapidly due to parliamentary scheduling and which includes sensitive information and preliminary stakeholder views.

The exemption under and s. 36 (Confidentiality of legal advice) has been applied because the sections redacted include legal advice on amendments.

These exemptions are subject to the 'public interest test'. Therefore, taking account of all the circumstances of this case, we have considered if the public interest in disclosing the information outweighs the public interest in applying the exemption. We have found that, on balance, the public interest lies in favour of upholding the exemption.

We recognise that there is some public interest in release because of the general benefits of a transparent approach to government. However, this is outweighed by the public interest of enabling effective conduct of public affairs and avoiding the release of legally confidential information, preliminary stakeholder views and frank policy advice.

# Land Reform (Scotland) Bill: Stage 3 Briefing

## Group 1: Public rights of way

<b><u>Amendment number(s)</u></b> – 232, 234, 264, 321
<b>Subject – Public rights of way</b>
<b>Speaking Order</b>
Group will be led by <b>David Torrance</b> , who will speak first to amendments 232, 321.  Mark Ruskell will speak to amendments 234, 264.  The Presiding Officer will then ask other MSPs to speak, and the Cabinet Secretary will be asked to respond.  <b>David Torrance</b> will close the discussion.
<b>Government position</b>
[REDACTED]
<b>Text of amendment(s)</b>
<b>David Torrance</b> <b>232</b> In section 1, page 1, line 20, at end insert <(including without prejudice to the foregoing, the establishment of any asserted public right of way over the owner’s land and the proper exercise of that right)>  <b>Mark Ruskell</b> <b>234</b> In section 1, page 1, line 23, after <44C> insert < and 44CC>  <b>Mark Ruskell</b> <b>264</b> In section 1, page 4, line 9, at end insert— <b>&lt;44CC Regulations to include obligation to establish public rights of way</b> <ol style="list-style-type: none"><li>(1) Regulations under section 44A must require the owner of land to— (a) establish asserted public rights of way over the owner’s land, (b) ensure the proper exercise of those rights.</li><li>(2) The owner of land must engage with communities on the rights to be established under subsection (1).&gt;</li></ol>

**David Torrance**

**321** After section 6, insert—

**<PART**

**PLACES OF PUBLIC RESORT AND PUBLIC RIGHT OF WAY>**

**<Places of public resort and public right of way**

- (1) The Land Reform (Scotland) Act 2003 is modified as follows.
- (2) After section 30 insert—

**“30A Places of public resort and public right of way**

- (1) The Scottish Ministers must by regulations establish places of public resort and public right of way in respect of land at Burntisland Harbour.
- (2) In this section “Burntisland Harbour” means the area of land in Burntisland, south of the main line railway line, lying between the railway to the north and the River Forth to the south, extending to approximately 10 hectares, between the Burntisland Western Breakwater in the west and Lammerlaws Road in the east lying entirely within an imaginary rectangle commencing at a point at NT 29630 55000, via points NT38250 58000, NT 38810 56000 and NT 30800 52000.”
- (3) In section 98, in subsection (5), after second “section” insert “30A(1)”.>

**Purpose and Effect**

**Amendment 232 (David Torrance)**

The **purpose** and **effect** of this amendment are unclear. The intended purpose may be for landowners to set out in land management plans any asserted rights of way and ensure there are no barriers to their use. However the amendment would not have this effect.

**Amendment 234 and 264 (Mark Ruskell)**

The **purpose** of these amendments appears similar to that of amendment 232; amendment 264 explicitly requires regulations made under section 44A(1) to include provision requiring landowners to establish asserted rights of way on their land and ensure their proper exercise.

The **effect** of this amendment is not immediately clear, but would require Ministers to place a duty on owners to “establish asserted rights of way” and “ensure the proper exercise of those rights”. However, as with amendment 232, there are uncertainties as to what this means. There is no definition of “establish” and therefore it is not clear what particular requirement it is intended should be placed on the owner in future regulations.

Amendment 234 is consequential to amendment 264. This amendment adds a reference to the new section 44CC to section 44A(2), to ensure that when making regulations under section 44A(1), Ministers must not only impose obligations in accordance with sections 44B and 44C but also in accordance with the new section 44CC.

**Amendment 321 (David Torrance)**

The **purpose** of this amendment is to modify the Land Reform (Scotland) Act 2003 to allow Ministers to establish places of public resort and right of way at Burntisland Harbour (the area of land defined is in the amendment).

The **effect** is that Ministers would be required to make regulations which would establish places of public resort and public rights of way in respect of the land at Burntisland Harbour. However, the intended effect for such future regulations is unclear as there is no definition of “place of public resort”.

**Background note(s)**

[REDACTED]

**Consultation**

**Contact** – [REDACTED]

## **Speaking Note – Group 1**

[REDACTED]

# Land Reform (Scotland) Bill: Stage 3 Briefing

## Group 2: Obligations to consider the public interest

<b>Amendment number(s)</b> – 115, 233, 129, 261, 43, 44, 45, 15, 76, 76A
<b>Subject – Obligations to consider the public interest</b>
<b>Speaking Order</b>
Group will be led by <b>Rhoda Grant</b> , who will speak first to amendments 115, 233, 129, 261.  Edward Mountain will speak to amendments 43, 44, 45. Ariane Burgess will speak to amendment 15. Mercedes Villalba will speak to amendments 76 and 76A.  The Presiding Officer will then ask other MSPs to speak, and the Cabinet Secretary will be asked to respond.  <b>Rhoda Grant</b> will close the discussion.
<b>Government position</b>
[REDACTED]
<b>Text of amendment(s)</b>
<b>Rhoda Grant</b> <b>115</b> In section 1, page 1, line 23, after <44B> insert <, 44BB>
<b>Rhoda Grant</b> <b>233</b> In section 1, page 1, line 23, after <44B> insert <, 44BC>
<b>Rhoda Grant</b> <b>129</b> In section 1, page 3, line 37, at end insert—  <b>&lt;44BB Regulations to include obligation to have regard to the public interest when preparing a land management plan</b>  (1) Regulations under section 44A must require a landowner to have regard to the public interest in land ownership when preparing the land management plan.  (2) In this section, the “public interest” includes the desirability of—  (a) achieving a more diverse ownership of land, including more community ownership of land,  (b) furthering sustainable development,  (c) securing a greater proportion of community owned energy,  (d) advancing community wealth building,

- (e) increasing community agency on matters seen as important to them,
  - (f) ensuring an adequate supply of affordable housing and of workspace for employment,
  - (g) enabling the repopulation or settlement of land,
  - (h) enabling the creation of new crofts, and land and agricultural tenancies,
  - (i) ensuring adherence to the terms of the Land Rights and Responsibilities Statement (published under the Land Reform (Scotland) Act 2016).
- (3) The Scottish Ministers must publish and lay before the Scottish Parliament guidance setting out, in detail, how the public interest matters referred to in subsection (2) are to be addressed in land management plans.
- (4) The Scottish Ministers must, before laying guidance under subsection (3) before the Scottish Parliament—
- (a) lay a draft of the guidance before the Parliament for a period of 120 days, of which no fewer than 60 must be days on which the Parliament is not dissolved or in recess,
  - (b) request the views of such persons as they consider appropriate with—
    - (i) knowledge of international law or policy relating to land reform and the public interest,
    - (ii) knowledge or experience of land reform in relation to securing the public interest,
    - (iii) technical knowledge of land reform in relation to securing the public interest, and
  - (c) have regard to—
    - (i) any representations on the draft guidance made to them,
    - (ii) any views on the draft guidance made by a person whose views were requested under paragraph (b),
    - (iii) any motion relating to the draft guidance agreed by the Parliament, and
    - (iv) any report relating to the draft guidance published by any committee of the Parliament for the time being appointed by virtue of standing orders.
- (5) The Scottish Ministers must publish a response to any—
- (a) motion mentioned in subsection (4)(c)(iii),
  - (b) report mentioned in subsection 4(c)(iv),

before the expiry of the period of 3 months beginning with the day on which the motion is agreed to or (as the case may be) the report is published.

- (6) The duty under subsection (5) may be fulfilled by laying a statement before the Scottish Parliament in accordance with subsection (7).
- (7) The Scottish Ministers must, when laying the guidance under subsection (3) before the Parliament, lay a statement setting out—
  - (a) details of any representations, views, motions or reports mentioned in subsection (4)(c),
  - (b) the changes (if any) they have made to the guidance in response to those representations, views, motions or reports, (c) the reasons—
    - (i) for any such changes, or
    - (ii) why no changes have been made.
- (8) The Scottish Ministers may delegate to the Scottish Land Commission the tasks of drafting and consulting on the guidance.>

### **Rhoda Grant**

**261** In section 1, page 3, line 37, at end insert—

**<44BC Regulations to include obligation to have regard to the public interest when preparing a land management plan**

- (1) Regulations under section 44A must require a landowner to have regard to the public interest in land ownership when preparing the land management plan.
- (2) In this section, the “public interest” includes the desirability of—
  - (a) achieving a more diverse ownership of land, including more community ownership of land,
  - (b) furthering sustainable development,
  - (c) securing a greater proportion of community owned energy,
  - (d) advancing community wealth building,
  - (e) increasing community agency on matters seen as important to them,
  - (f) ensuring an adequate supply of affordable housing and of workspace for employment,
  - (g) enabling the repopulation or settlement of land,
  - (h) enabling the creation of new crofts, and land and agricultural tenancies,

- (i) ensuring adherence to the terms of the Land Rights and Responsibilities Statement (published under the Land Reform (Scotland) Act 2016).
- (3) The Scottish Ministers must publish and lay before the Scottish Parliament guidance setting out, in detail, how the public interest matters referred to in subsection (2) are to be addressed in land management plans.>

#### **Edward Mountain**

**43** In section 2, page 17, line 18, at end insert—

<(1A) Ministers must disapply the prohibition under section 46B(1), or a prohibition imposed under section 46F(1), in relation to any area of land if they are satisfied that it would not be in the public interest to continue to apply the prohibition.>

#### **Edward Mountain**

**44** In section 2, page 17, line 20 after <(1)> insert <or (1A)>

#### **Edward Mountain**

**45** In section 2, page 17, line 24, after <(1)> insert <or (1A)>

#### **Ariane Burgess**

**15** After section 4, insert—

##### **<Public interest test in relation to buyer of large land holding**

(1) The Land Reform (Scotland) Act 2003 is modified as follows.

(2) After Part 2 insert—

##### **“PART 2B**

##### **APPLYING A PUBLIC INTEREST TEST TO A PROPOSED NEW BUYER IN RELATION TO TRANSFERS OF LARGE LAND HOLDINGS**

##### **67Z Ministers to consider public interest considerations in relation to buyers of large land holdings**

(1) A purported transfer of land by the owner, or a creditor in a standard security having a right to sell the land, is of no effect if the Scottish Ministers consider that the purported transfer would not be in the public interest and—

(a) section 67G applies to the land, or

(b) a lotting decision under section 67N applies to the land.

(2) In considering whether the purported transfer would be in the public interest, the Scottish Ministers must have regard to the

identity and management proposals of the person to whom the land is proposed to be transferred, including—

- (a) the extent and location of any other land in Scotland for which the person holds a controlling interest,
  - (b) where the person is resident for tax purposes,
  - (c) any plans or proposals the person has for—
    - (i) the future management of the land,
    - (ii) meeting any obligations imposed by regulations under section 44A, and
  - (d) any agreements the person has proposed or entered into in relation to the future sale of the land (in whole or in part).
- (3) The Scottish Ministers must conclude that the purported transfer is not in the public interest if—
- (a) the person to whom the land is proposed to be transferred holds a controlling interest in land in Scotland that exceeds 500 hectares in area, and
  - (b) the Scottish Ministers do not consider that the purported transfer would be likely to—
    - (i) have an environmental benefit, or
    - (ii) make a community more sustainable than would be the case if the land was not transferred.
- (4) The Scottish Ministers must—
- (a) prepare guidance on how the matters referred to in subsection (2) will be considered in exercising the duty under subsection (1), and
  - (b) publish and lay the guidance before the Scottish Parliament.
- (5) The Scottish Ministers may delegate the duty under subsection (4)(a) to the Scottish Land Commission.”.>

**Mercedes Villalba**

**76** After section 4, insert—

**<Public interest test in relation to buyer of large land holding**

- (1) The Land Reform (Scotland) Act 2003 is modified as follows.
- (2) After Part 2 insert—

**“PART 2B**

APPLYING A PUBLIC INTEREST TEST TO A PROPOSED NEW BUYER IN  
RELATION TO TRANSFERS OF LARGE LANDHOLDINGS

**67Z Ministers to consider public interest considerations in relation to  
buyers of large land holdings**

- (1) A purported transfer of land by the owner, or a creditor in a standard security having a right to sell the land, is of no effect if, the Scottish Ministers consider that the purported transfer would not be in the public interest, and—
- (a) section 67G applies to the land, or
  - (b) a lotting decision under section 67N applies to the land.
- (2) In considering whether the purported transfer would be in the public interest, the Scottish Ministers must have regard to the identity and management proposals of the person to whom the land is proposed to be transferred, including—
- (a) the extent and location of any other land in Scotland for which they hold a controlling interest,
  - (b) any plans or proposals they have
    - for— (i) the future management of the land,
    - (ii) meeting any obligations imposed by regulations under section 44A, and
  - (c) any agreements they have proposed or entered into in relation to the future sale of the land (in whole or in part).
- (3) The Scottish Ministers must—
- (a) prepare guidance on how the matters referred to in subsection (2) will be considered in exercising the duty under subsection (1), and
  - (b) publish and lay the guidance before the Scottish Parliament.
- (4) The Scottish Ministers may delegate duties under subsection (3)(a) to the Scottish Land Commission.”.>

**Mercedes Villalba**

**76A** As an amendment to amendment 76, line 25, at end insert—

- <(2A) The Scottish Ministers must conclude that the purported transfer is not in the public interest if—
- (a) the person to whom the land is proposed to be transferred holds a controlling interest in land in Scotland that exceeds 500 hectares in area, and
  - (b) the Scottish Ministers do not consider that the purported transfer would be likely to—
    - (i) have an environmental benefit,

- (ii) make a community more sustainable than would be the case if the land was not transferred,
- (iii) otherwise promote the public interest.>

### **Purpose and Effect**

#### **Amendment 129 and 115 (Rhoda Grant)**

The **purpose** of these amendments are to require landowners to have regard to ‘the public interest in landownership’ when preparing LMPs.

The **effect** of Amendment 129 is to insert a new section 44BB into the Land Reform (Scotland) Act 2016 which would stipulate that regulations made under 44A require landowners to have regard to the public interest in the ownership of land. Subsection (2) specifies that the “public interest” includes the factors set out in paragraphs (a) to (i), including for example “achieving a more diverse ownership of land”, “furthering sustainable development” and “advancing community wealth building”. Subsection (3) imposes a duty on Ministers to publish and lay before Parliament guidance on how these public interest matters are to be addressed in LMPs. Subsections (4) to (7) set out extensive parliamentary and consultation procedures for this guidance. Subsection (8) allows Ministers to delegate guidance duties to the SLC.

Amendment 115 is consequential to 129, and the **effect** of this amendment is to add a reference to section 44BB (inserted by Amendment 129) to section 44A(2) to clarify that Ministers must exercise regulation making powers to impose obligations as set out in 44BB.

#### **Amendment 261 and 233 (Rhoda Grant)**

The **purpose** and **effect** of these amendments are the same as 129 and 115, however Amendment 261 does not include the procedural requirements set out at subsections (4) to (8) of amendment 115. Amendment 261 is a consequential amendment with the same purpose as 115.

#### **Amendment 43 (Edward Mountain)**

The **purpose** of this amendment is to place a duty on Ministers to disapply either of the pre-notification prohibition periods if it would be in the public interest to do so.

The **effect** of this amendment is to insert a new subsection (1A) to inserted section 46I of the Land Reform (Scotland) Act 2003, which relates to Ministers lifting pre-notification prohibitions in exceptional circumstances where financial hardship can be demonstrated by the landowner. The new subsection (1A) would require Ministers to disapply a prohibition if satisfied that it would not be in the public interest for it to continue to apply.

#### **Amendment 44 (Edward Mountain)**

The **purpose** of this amendment is to specify that Ministers may only disapply pre-notification prohibitions on the basis of the rule in amendment 43 if a request has been made by the landowner. The **effect** is to add a reference to the new subsection (1A) to section 46I(2).

### **Amendment 45 (Edward Mountain)**

The **purpose** of this amendment is to specify that the disapplication of the pre-notification prohibitions on the basis of the rule in amendment 43 would begin when the owner of land receives a notice from Ministers notifying them it has been disappplied and ends on a date specified in the notice. The **effect** is to add a reference to the new subsection (1A) to section 46I(3).

### **Amendment 15 (Ariane Burgess)**

The **purpose** of this amendment is to introduce a “public interest test” whereby transfer of land would automatically be rendered of no effect upon Ministers considering that that the transfer would not be in the public interest. This would apply to transfers subject to the requirement for a lotting decision, or transfers of land already covered by a previous lotting decision.

The intention appears to be to prevent transactions from proceeding on public interest grounds including (but not limited to) the extent of other land for which the proposed buyer holds a controlling interest, tax residency, and future plans for management and sale of the land.

Subsection 3 of the amendment places a duty on Ministers to conclude that the transfer is not in the public interest where the proposed buyer has a controlling interest in land in Scotland that exceeds 500ha and where Ministers don't consider that the transfer would have environmental or community benefit. The amendment also places guidance making duties on Ministers in relation to these powers, and allows the guidance to be delegated to the SLC.

The **effect** of Amendment 15 is to insert a new section after section 4 of the Bill, which inserts a new Part 2B containing the “public interest test” into the Land Reform (Scotland) Act 2003 (as a new section 67Z). This new mechanism for preventing transfers of land would be additional to the existing transfer test and the underlying prohibitions on transfer found in the Bill as introduced, although the interaction with them is not addressed by the amendment. The ultimate **effect** of new Part 2B is uncertain due to the various contradictions within it. It is presented as a rule which would operate to invalidate a transfer at any point after it has taken place, but some of the matters that Ministers are required to consider are only relevant if the transfer has not yet taken place.

The effect of section 67Z(3) would be to render a transfer of no effect if the person to whom land is proposed to be transferred holds a controlling interest in land anywhere in Scotland that exceeds 500 hectares in area and, in the consideration of Ministers, it would not be likely to have an environmental benefit or make a community more sustainable. For example, a company which had a controlling interest in a forest of over 500 hectares would not be able to acquire land which is subject to the transfer test if there was no benefit for the environment or community sustainability. This would exclude acquisition for business reasons where such benefits cannot be denied. Amongst various other unexplained features of section 67Z, it is unclear why the amendment considers other land in which a person has a controlling interest but not land directly owned by them.

**Amendment 76 (Mercedes Villalba)**

The **purpose** and **effect** of this amendment is the same as Amendment 15 other than it does not include the duty on Ministers (applicable where an person has a controlling interest in land which exceeds 500 ha) found in section 67Z(3) of Ariane Burgess's version of the measure.

**Amendment 76A (Mercedes Villalba)**

The **purpose** of this amendment (which amends Amendment 76) is to introduce a duty on Ministers similar to that found in section 67Z(3) of Ariane Burgess's amendment, which Mercedes Villalba has described as a 'presumed limit on the amount of land that can be transferred'. The **effect** is to insert subsection 2A into section 67Z (proposed to be inserted by Amendment 76). This new subsection would automatically render a transfer of no effect if the person to whom land is proposed to be transferred holds a controlling interest in land anywhere in Scotland that exceeds 500 hectares in area and, in the consideration of Ministers, it would not be likely to have an environmental benefit, make a community more sustainable, or otherwise promote the "public interest".

**Background note(s)**

[REDACTED]

**Consultation**

[REDACTED]

**Contact – [REDACTED]**

## **Speaking Note – Group 2**

[REDACTED]

## Land Reform (Scotland) Bill: Stage 3 Briefing

### Group 3: Power to impose obligations in relation to large land holdings

<b><u>Amendment number(s)</u></b> – 116, 117, 16, 118, 132, 263, 133, 269.
<b>Subject – Power to impose obligations in relation to large land holdings</b>
<b>Speaking Order</b>
Group will be led by <b>Ariane Burgess</b> , who will speak first to amendments 116, 132,  Rhoda Grant will speak to amendments 117, 263, 133. Edward Mountain will speak to amendments 16, 118. Michael Matheson will speak to amendment 269.  The Presiding Officer will then ask other MSPs to speak, and the Cabinet Secretary will be asked to respond.  <b>Ariane Burgess</b> will close the discussion.
<b>Government position</b>
[REDACTED]
<b>Text of amendment(s)</b>
<b>Ariane Burgess</b> <b>116</b> In section 1, page 1, line 23, after <44C> insert <and 44CA>
<b>Rhoda Grant</b> <b>117</b> In section 1, page 1, line 23, after <44C> insert <and 44CB>
<b>Edward Mountain</b> <b>16</b> In section 1, page 2, line 2, at end insert— <(4A) In making regulations under this section, the Scottish Ministers must ensure the obligations imposed are proportionate with reference to— (a) the size of the land holding, (b) the number of communities involved, (c) the size of the communities involved,

(d) any other factor the Scottish Ministers consider to be relevant.>

### **Edward Mountain**

**118** In section 1, page 2, line 2, at end insert—

<(4A) Regulations under this section must only require engagement to the extent that it is reasonable and proportionate having regard to all the circumstances, including—

- (a) the number of communities in the vicinity of the land holding,
- (b) the size of those communities,
- (c) the size of the land holding, and
- (d) the resources available to the owner.>

### **Ariane Burgess**

**132** In section 1, page 4, line 9, at end insert—

#### **<44CA Regulations to include obligation to register ownership details of large land holdings**

Regulations under section 44A must require the owner of land to ensure that details relating to the ownership of the land to which section 44D applies are registered in the Land Register of Scotland.>

### **Rhoda Grant**

**263** In section 1, page 4, line 9, at end insert—

#### **<44CB Regulations to include obligation to consider crofting request**

- (1) Regulations under section 44A must require the owner of land to give consideration to a reasonable request from a community body for the landowner to apply under section 3A(1) of the 1993 Act to have constituted as a croft—
  - (a) the whole of the land (provided it is all in a crofting area), or
  - (b) any part of the land that is in a crofting area.
- (2) Subsection (1) does not require the obligation it describes to be imposed in connection with all land to which section 44D applies.
- (3) In this section—
  - “1993 Act” means the Crofters (Scotland) Act 1993,
  - “community body” means—
    - (a) a community body within the meaning of section 34 of the Land Reform (Scotland) Act 2003, or

(b) a crofting community body within the meaning of section 71 of that Act,

“crofting area” means—

(a) any of the crofting counties within the meaning of section 61 of the 1993 Act, or

(b) any area designated by virtue of section 3A(1)(b) of that Act.>

### **Rhoda Grant**

**133** In section 1, page 4, line 9, at end insert—

#### **<44CB Regulations to include obligation to consider community request to constitute land as a croft**

(1) Regulations under section 44A must require the owner of land situated—

(a) in the crofting counties, or

(b) in an area designated by order under section 3A(1)(b) of the Crofters (Scotland) Act 1993,

to give consideration to a reasonable request from a community body for the owner to apply to constitute the land or any part of it as a croft under section 3A of the Crofters (Scotland) Act 1993.

(2) Subsection (1) does not require the obligation it describes to be imposed in connection with all land to which section 44D applies.

(3) In this section—

“community body” means a community body within the meaning of section 34 of the Land Reform (Scotland) Act 2003,

“crofting counties” is to be construed in accordance with section 61(1) of the Crofters (Scotland) Act 1993.>

### **Michael Matheson**

**269** In section 1, page 5, line 12, at end insert—

#### **<44DA Guidance about obligations imposed under section 44A**

(1) The Scottish Ministers must issue guidance about obligations imposed by regulations under section 44A.

(2) Before issuing guidance under subsection (1), the Scottish Ministers must consult—

(a) the Land and Communities Commissioner, and

(b) such other persons as they consider appropriate.

- (3) The Scottish Ministers must make publicly available the latest version of any guidance issued under subsection (1) as soon as practicable after issuing it.>

### **Purpose and Effect**

#### **Amendment 16 (Edward Mountain)**

The **purpose** of this amendment is to attach conditions to the exercise of the power to impose community engagement obligations on owners of land regarding the proportionality of the obligations with reference to the land and communities affected.

The **effect** of this amendment is to insert new sub-section (4A) into section 44A, which gives Ministers the power to make regulations to impose community engagement obligations on the owner of land. This amendment requires that Ministers ensure that the obligations imposed are proportionate with respect to the size of the landholding, number of communities involved, size of communities involved, and any other factor that Ministers consider relevant.

This is an alternative amendment to amendment 118, below. Whereas 16 requires only the factors described above to be considered, 118 also requires Ministers to consider the resources available to the landowner.

#### **Amendment 118 (Edward Mountain)**

The **purpose** of this amendment is to attach conditions to the exercise of the power to impose community engagement obligations on owners of land regarding the proportionality of the obligations with reference to the land and communities affected.

The **effect** of this is to insert new sub-section (4A) into section 44A, which gives Ministers powers to make regulations to impose community engagement obligations on the owner of land. This amendment requires that Ministers ensure that the obligations imposed only require engagement to the extent that it is reasonable and proportionate having regard to all the circumstances, including: a) number of communities in the vicinity of the land holding, b) size of those communities, c) size of the landholding, d) resources available to the owner.

This is an alternative amendment to amendment 16, above.

#### **Amendments 116 (Ariane Burgess)**

The **purpose** of the amendment is related to amendment 132, which inserts section 44CA into the Land Reform (Scotland) Act 2016 (“the 2016 Act “). The **effect** of this amendment is to insert reference to section 44CA into section 44A(2) of the 2016 Act.

#### **Amendment 132 (Ariane Burgess)**

The **purpose** of amendment 132 is to stipulate that community engagement obligations must require the owner of a large land holding to ensure that details

relating to ownership of the land are registered in the Land Register. The amendment does not specify the details which the owner must be required to register in the Land Register, but it is assumed that this is a measure intended to improve access to information about ownership of land and is accordingly intended to be used to require owners to register in the Land Register title to land which is currently registered in the Register of Sasines.

The **effect** of this amendment is to insert new section 44CA into the Land Reform (Scotland) Act 2016, which stipulates that Ministers, when making regulations under section 44A, must require landowners to ensure that the details of their ownership of the land are registered in the Land Register. Unlike other stipulations in the Bill about what must be contained in regulations made under section 44A, there is no supplementary provision specifying that the regulations need not impose the requirement in relation to all land to which section 44D applies. This means that the requirement would need to be imposed in relation to all large land holdings.

#### **Amendment 117 (Rhoda Grant)**

The **purpose** of the amendment is related to amendment 263, which inserts section 44CB into the Land Reform (Scotland) Act 2016 (“the 2016 Act”). The **effect** of amendment 117 is to insert reference to section 44CB into section 44A(2) of the 2016 Act.

#### **Amendment 263 (Rhoda Grant) [REDACTED]**

The **purpose** of this amendment is to stipulate that Ministers, when imposing community engagement regulations by way of regulations, must require owners of land to give consideration to a reasonable request from a community body for the owner to apply to have land constituted as a croft.

The **effect** of the amendment is to insert a new section 44CB into the 2016 Act. Inserted section 44CB would stipulate that Ministers, when making regulations under section 44A, must require the owner of land to give consideration to a reasonable request from a community body for the owner to apply under section 3A(1) of the Crofters (Scotland) Act 1993 to have constituted as a croft the whole of the land (provided that it is a crofting area) or any part of the land that is in a crofting area. Ministers would not need to impose the requirement in relation to all land which section 44D applies. A “community body” is defined as meaning both a community body under section 34 of the Land Reform (Scotland) Act 2003 and a crofting community body under section 71 of that Act.

#### **Amendment 133 (Rhoda Grant)**

Similar to amendment 263, the **purpose** of this amendment is to stipulate that Ministers, when imposing community engagement regulations by way of regulations, must require an owner of land to give consideration to a reasonable request from a community body for the owner to apply to have land constituted as a croft. [REDACTED]

The amendment has the same **effect** as amendment 263, other than the following features: it has a narrower definition of the crofting land to which the duty must apply; the definition of “community body” does not include a crofting community body within the meaning of section 71 of that Land Reform (Scotland) Act 2003; and it is unclear about whether the requirement must be imposed in relation to land that partly lies in a crofting area.

[REDACTED]. Amendment 117 is a consequential amendment. Both amendments 133 and 263 create a new section titled ‘44CB’, so whichever of these amendments is passed will link to this provision.

**Amendment 269 (Michael Matheson) – [REDACTED].**

The **purpose** of this amendment is to require Ministers to issue guidance about community engagement obligations. It does this by inserting new section 44DA.

The **effect** of the amendment is to insert a new section 44DA into the Land Reform (Scotland) Act 2016, which places a duty on Ministers to issue guidance about obligations imposed by regulations under section 44A. It also requires Ministers to consult with the LCC and such other people as they consider appropriate before issuing the guidance. Lastly, it also requires Ministers to make the latest version of guidance publicly available as soon as practicable after they have issued it.

**Background note(s)**

[REDACTED]

**Consultation**

[REDACTED]

**Contact [REDACTED]**

## **Speaking Note – Group 3**

[REDACTED]

# Land Reform (Scotland) Bill: Stage 3 Briefing

## Group 4: Land Management Plans

**Amendment number(s)** – 235, 236, 237, 119, 238, 17, 18, 239, 120, 121, 240, 241, 242, 243, 244, 19, 122, 20, 245, 246, 247, 248, 21, 123, 124, 249, 125, 250, 251, 253, 254, 255, 256, 257, 258, 126, 127, 127A, 128, 260, 22, 130, 131, 262, 276, 40, 308

### *Notes on amendments in this group*

Amendment 241 pre-empts amendment 242

Amendment 19 pre-empts amendment 122

Amendment 247 pre-empts amendment 248

Amendment 21 pre-empts amendment 123

Amendment 130 pre-empts amendment 131

### **Subject – Land Management Plans**

### **Speaking Order**

Group will be led by **Bob Doris**, who will speak first to amendments 235, 239, 256, 257, 258, 260, 262 and 276.

Rhoda Grant will speak to amendments 236, 237, 243, 244, 250, 131.

Ariane Burgess will speak to amendments 119, 123, 124.

Mark Ruskell will speak to amendment 238.

Edward Mountain will speak to amendments 17, 18, 120, 242, 19, 122, 20, 245, 246, 248, 21, 125, 128, 22, 40, 308

Tim Eagle will speak to amendments 121, 241, 247, 127, 127A.

Douglas Lumsden will speak to amendments 240, 249, 251, 253, 254 and 255.

The Cabinet Secretary will speak to amendments 126 and 130, and respond to other amendments in the group.

The Presiding Officer will then invite other MSPs to speak.

**Bob Doris** will close the discussion and move amendment 235.

### **Government position**

[REDACTED]

### **Text of amendment(s)**

#### **Bob Doris**

**235** In section 1, page 2, line 6, at end insert—

#### **<44AA Power to make further provision about obligations imposed by virtue of section 44A**

- (1) The Scottish Ministers may by regulations make further provision in connection with obligations imposed by virtue of section 44A.

- (2) The further provision that may be made under subsection (1) includes—
  - (a) the conferral of functions on public bodies,
  - (b) provision requiring the payment of reasonable fees.
- (3) The Scottish Ministers must, before laying a draft of any regulations under this section, consult—
  - (a) the Land and Communities Commissioner, and
  - (b) such other persons as they consider appropriate.>

**Rhoda Grant**

**236** In section 1, page 2, line 11, after <communities> insert <and tenants (including, where relevant, crofters and small landholders)>

**Rhoda Grant**

**237** In section 1, page 2, leave out lines 13 to 15

**Ariane Burgess**

**119** In section 1, page 2, line 15, at end insert—

<(bb) there is an annual progress report submitted to the Land and Communities Commissioner on the implementation of the plan,>

**Mark Ruskell**

**238** In section 1, page 2, line 15, at end insert—

<(bb) there is engagement with communities as to the existence, assertion and exercise of public rights of way affecting the land owned by the owner of the land,>

**Edward Mountain**

**17** In section 1, page 2, line 17, leave out <5> and insert <10>

**Edward Mountain**

**18** In section 1, page 2, line 18, at end insert—

<(1A) Regulations under section 44A must require the owner and the persons mentioned in subsection (1)(ba) to, so far as is reasonably practicable, work together in relation to the development of, and significant changes to, the plan.>

**Bob Doris**

**239** In section 1, page 2, leave out lines 21 to 25

**Edward Mountain**

**120** In section 1, page 2, line 25, at end insert—

<(2B) For the purposes of subsection (1), engagement is only required to the extent that it is reasonable and proportionate having regard to all the circumstances, including—

- (a) the number of communities in the vicinity of the land holding,
- (b) the size of the communities,
- (c) the size of the land holding, and
- (d) the resources available to the owner.>

**Tim Eagle**

**121** In section 1, page 2, line 26, at beginning insert <Subject to subsection (6),>

**Douglas Lumsden**

**240** In section 1, page 2, line 29, at end insert—

<(ab) a map of the land that identifies high quality agricultural land,>

**Tim Eagle**

**241** In section 1, page 2, leave out line 31

**Edward Mountain**

**242** In section 1, page 2, line 31, after <sale> insert <(only insofar as such information is not commercially sensitive)>

**Rhoda Grant**

**243** In section 1, page 2, line 32, after <communities> insert <and tenants (including, where relevant, crofters and small landholders)>

**Rhoda Grant**

**244** In section 1, page 2, line 34, leave out <the owner's engagement with communities> and insert <that engagement>

**Edward Mountain**

**19** In section 1, page 2, leave out lines 39 and 40

**Edward Mountain**

**122** In section 1, page 2, line 40, after <2003> insert <, insofar as it imposes duties upon the owner>

**Edward Mountain**

**20** In section 1, page 3, leave out lines 1 and 2

**Edward Mountain**

**245** In section 1, page 3, leave out lines 1 and 2 and insert—

<(ca) the extent to which (if at all) the owner's deer management procedures on the land are aligned with the code of practice on deer management in operation in pursuance of section 5A of the Deer (Scotland) Act 1996,>

**Edward Mountain**

**246** In section 1, page 3, line 3, leave out <how> and insert <the extent to which>

**Tim Eagle**

**247** In section 1, page 3, leave out lines 5 and 6

**Edward Mountain**

**248** In section 1, page 3, line 5, leave out <achieving> and insert <the achievement by Ministers of>

**Edward Mountain**

**21** In section 1, page 3, leave out line 8

**Ariane Burgess**

**123** In section 1, page 3, line 8, leave out <or sustaining>

**Ariane Burgess**

**124** In section 1, page 3, line 8, at end insert—

<(iv) achieving any biodiversity targets set under the Nature Conservation (Scotland) Act 2004,>

**Douglas Lumsden**

**249** In section 1, page 3, line 8, at end insert—

<(iv) protecting productive land and rural livelihoods, in particular by ensuring any high quality agricultural land identified under paragraph (ab) is not used for major energy infrastructure.>

**Edward Mountain**

**125** In section 1, page 3, line 9, leave out <how> and insert <the extent to which>

**Rhoda Grant**

**250** In section 1, page 3, leave out lines 13 to 15

**Douglas Lumsden**

**251** In section 1, page 3, line 15, at end insert—

<(g) whether the owner intends to enter into any agreement to allow the construction of pylons on the land.>

**Douglas Lumsden**

**253** In section 1, page 3, line 15, at end insert—

<(3A) Regulations under section 44A must provide that, where a land management plan indicates that the landowner intends to enter into an agreement to allow the construction of pylons on the land, the plan must set out how the landowner has taken into account the cumulative impact of existing pylons and other energy infrastructure in the surrounding area.>

**Douglas Lumsden**

**254** In section 1, page 3, line 15, at end insert—

<(3A) Regulations under section 44A must provide that, where a land management plan indicates that the landowner intends to enter into an agreement to allow the construction of pylons on the land, the plan must set out the local impacts and mitigations associated with this construction.

(3B) In identifying the local impacts and mitigations mentioned in subsection (3B), the landowner must consult with—

- a. an independent expert with knowledge of the impacts of pylon construction,
- b. the local community.>

**Douglas Lumsden**

**255** In section 1, page 3, line 15, at end insert—

<(3A) Regulations under section 44A must provide that, where a land management plan indicates that the landowner intends to enter into an agreement to allow the construction of pylons on the land, the plan must set out why buried cables do not offer an appropriate alternative.>

**Bob Doris**

**256** In section 1, page 3, line 17, leave out <which the owner of land may,>

**Bob Doris**

**257** In section 1, page 3, line 18, after <land> insert <may or>

**Bob Doris**

**258** In section 1, page 3, line 18, leave out from second <the> to end of line 19 and insert <obligations imposed in accordance with subsection (1), for example—

- a. provision requiring the owner to ensure that a land management plan is given to another person in order that all land management plans can be published on a single website,
- b. provision about the timescales for compliance in circumstances where ownership of land is transferred.>

**Mairi Gougeon**

**126** In section 1, page 3, leave out lines 20 to 22

**Tim Eagle**

**127** In section 1, page 3, line 22, at end insert—

- <(6) Regulations under section 44A must set out that, in relation to land which is mainly used for hill sheep farming, a land management plan is to contain only—
  - a. details of the land to which the plan relates, including how the ownership is structured,
  - b. the owner’s long-term vision and objectives for managing the land, including its potential sale.>

**Tim Eagle**

**127A** As an amendment to amendment 127, line 6, leave out <, including its potential sale>

**Edward Mountain**

**128** In section 1, page 3, line 22, at end insert—

- <(6) Regulations under section 44A must ensure that the costs of producing land management plans are proportionate to the size of the holding.
- (7) Regulations under section 44A must be accompanied by a statement setting out how the requirement in subsection (6)

has been taken into account in the drafting of the regulations and, in particular, how it has been ensured that owners—

- (a) of holdings of less than 2,500 hectares do not have to seek professional guidance on preparing a plan, and
- (b) do not face financial difficulties as a result of the costs of preparing a plan.>

**Bob Doris**

**260** In section 1, page 3, line 22, at end insert— <(6)

Subsection (7) applies where—

(a) in accordance with section 29(2) of the Interpretation and Legislative Reform (Scotland) Act 2010 a draft Scottish statutory instrument is laid before the Scottish Parliament containing either—

- (i) regulations imposing the obligation described in subsection (1), or
  - (ii) regulations modifying the obligation imposed in accordance with that subsection, and
- (b) the effect of those regulations would be that the obligation imposed in accordance with subsection (1) would not apply in relation to all of the land to which section 44D applies.

(7) At the same time as laying the draft instrument mentioned in subsection (6) before the Parliament, the Scottish Ministers must also lay before the Parliament a statement of their reasons for not imposing the obligation described in subsection (1) in relation to all of the land to which section 44D applies.>

**Edward Mountain**

**22** In section 1, page 3, line 22, at end insert—

**<44ZBA Duty to establish database for land management plans**

- (1) The Scottish Ministers must establish an online database for the publication of land management plans as required under regulations under section 44A.
- (2) The Scottish Ministers may, by regulations, make further provision about the establishment of an online database under this section.>

**Mairi Gougeon**

**130** In section 1, page 3, leave out lines 23 to 37

**Rhoda Grant**

**131** In section 1, page 3, line 28, after <holdings> insert <totalling 500 hectares or more>

**Bob Doris**

**262** In section 1, page 4, line 7, at end insert—

<(2A) Subsection (2B) applies where—

(a) in accordance with section 29(2) of the Interpretation and Legislative Reform (Scotland) Act 2010 a draft Scottish statutory instrument is laid before the Scottish Parliament containing either—

(i) regulations imposing the obligation described in subsection (1), or

(ii) regulations modifying the obligation imposed in accordance with that subsection, and

(b) the effect of those regulations would be that the obligation imposed in accordance with subsection (1) would not apply in relation to all of the land to which section 44D applies.

(2B) At the same time as laying the draft instrument mentioned in subsection (2A) before the Parliament, the Scottish Ministers must also lay before the Parliament a statement of their reasons for not imposing the obligation described in subsection (1) in relation to all of the land to which section 44D applies.>

**Bob Doris**

**276** In section 1, page 12, line 19, at end insert—

<(baa) section 44AA,>

**Edward Mountain**

**40** In section 1, page 12, line 19, at end insert—

<(baa) section 44ZBA,>

**Edward Mountain**

**308** In section 6, page 33, line 28, at end insert—

<(bb) maintain the online database established under section 44ZBA,>

**Purpose and Effect**

**Amendment 235 and 276 (Bob Doris) [REDACTED]**

The **purpose** of these amendments is to enable Ministers to make provision in connection with community engagement obligations. For example, this power would

allow Ministers to require a public body to publish land management plans in a single place.

The **effect** of Amendment 235 is to insert a new section 44AA into the Land Reform (Scotland) Act 2016 (“the 2016 Act”) conferring a power on Ministers to make regulations which make further provision in connection with obligations imposed by virtue of inserted section 44A of the 2016 Act. The power expressly includes the power to give functions to public bodies and to require the payment of reasonable fees. Consultation requirements are set out in line with other regulation making powers in the Bill.

The **effect** of Amendment 276 is to insert a reference to the new section 44AA into inserted section 126(3) of the Land Reform Act 2016, meaning that the power is subject to affirmative procedure.

#### **Amendment 236 and 237 (Rhoda Grant) [REDACTED]**

The **purpose** of these amendments is to tidy a number of Stage 2 amendments relating to engagement with communities and tenants.

The **effect** of Amendment 236 is to modify inserted section 44B(1)(b) of the Bill which already stipulates that regulations under section 44A must require that the land holder ensure that there is engagement with communities. The amendment expands that provision to stipulate that the regulations must require landowners to ensure that there is engagement with tenants (including where relevant crofters and small landholders). The meaning of “tenant”, “crofters” and “small landholders” can be specified in the regulations imposing the obligations.

The **effect** of Amendment 237 is to remove section 44B(1)(ba) which was a separate subsection requiring engagement with “any tenants, crofters or small landholders with rights associated with the land” on the development of, and significant changes to an LMP, as the purpose of section 44B(1)(ba) would be served by section 44B(1)(b) as amended by Amendment 236

#### **Amendment 119 (Ariane Burgess)**

The **purpose** and **effect** of this amendment is to require that regulations imposing community engagement obligations require the landowner to ensure that an annual progress report is submitted to the LCC on the implementation of the plan. This is achieved by adding an item (bb) to the list of obligations in inserted section 44B(1) of the 2016 Act.

#### **Amendment 238 (Mark Ruskell)**

The **purpose** and **effect** of this amendment is to stipulate that regulations imposing community engagement obligations must require the land owner to ensure that there is engagement with communities as to the existence, assertion and exercise of public rights of way affecting the land. This is achieved by inserting item (bb) into the list of obligations in inserted 44B(1) of the 2016 Act.

#### **Amendment 17 (Edward Mountain)**

Inserted section 44B(1)(c) of the 2016 Act stipulates that regulations imposing community engagement obligations must require the land owner to ensure that the land management plan is reviewed and, where appropriate revised, before the end of each period of 5 years beginning with the day on which the latest version of it was made publicly available. The **purpose** and **effect** of this is to increase the review period specified in section 44B(1)(c) from 5 to 10 years.

**Amendment 18 (Edward Mountain)**

The **purpose** and **effect** of this is to stipulate that regulations imposing community engagement obligations must require the land owner and persons mentioned in section 44B(1)(ba) (being tenants, crofters and small landholders) to insofar as possible work together in relation to the development of, and significant changes to, the land management plan.

**Amendment 239 (Bob Doris) [REDACTED]**

This **purpose** and **effect** of this amendment is to omit inserted section 44B(2A) of the 2016 Act, which was introduced as an amendment at Stage 2. Section 44B(2A) required that, where regulations under section 44A provide that land to which section 44D applies is not to be subject to the obligations, Ministers must when laying the regulations publish a statement setting out their reasons for not imposing the obligations on the land. Amendment 260 proposes an alternative duty on Ministers in place of the duty being omitted.

**Amendment 120 (Edward Mountain)**

The **purpose** and **effect** of this amendment is to caveat that the community engagement obligations under section 44A is only required to the extent that it is reasonable and proportionate with regard to circumstances including the number and size of communities in the vicinity of the landholding, as well as the size of the landholding and resources available to the owner. This is achieved by inserting a new subsection into inserted section 44B of the 2016 Act.

**Amendment 121 (Tim Eagle)**

This amendment is consequential to Amendment 127 (Tim Eagle). The **purpose** and **effect** is to add a reference to the new subsection (6) of inserted 44B of the 2016 Act (which is added by Amendment 127).

**Amendment 240 and 249, 251, 253, 254 and 255 (Douglas Lumsden)**

The **purpose** of these amendments is to ensure that high quality agricultural land is not used for major energy infrastructure. Further information provided in background section – but several of these amendments would only be relevant in situations where the landowner has come to a voluntary agreement to lease their land for energy infrastructure, rather than a compulsory acquisition by an electricity license holder.

NOTE: Amendments 253, 254 and 255 appear to be direct alternatives.

The **effect** of amendment **240** is to stipulate that regulations imposing community engagement obligations must require that the land management plan include a map of the land, identifying high quality agricultural land, must be included in a land management plan.

The **effect** of amendment **249** is to amend section 44B(3)(d) to add a fourth paragraph stipulating that regulations must require the land management plan include details of how the owner is managing or intends to manage the land in a way that contributes towards “protecting productive land and rural livelihoods, in particular by ensuring that any high quality agricultural land identified under paragraph (ab) is not used for major energy infrastructure.” Paragraph (ab) mentioned is inserted by amendment 240 (above) which would require the LMP to include a map of the land that identifies high quality agricultural land.

The **effect** of amendment **251** this is to insert section 44B(3)(g), to require that regulations imposing community engagement obligation require the LMP to include information about “whether the owner intends to enter into any agreement to allow the construction of pylons on the land”.

The **effect** of amendment **253** is to insert a section 44B(3A), to require that regulations imposing community engagement obligations provide that, where an LMP indicates that an owner intends to enter into an agreement to allow the construction of pylons on the land (per amendment 251 above), the LMP must set how the land owner has taken into account the cumulative impact of existing pylons and other energy infrastructure in the surrounding area.

The **effect** of amendment **254** is to insert new sub-sections (3A) and (3B) into section 44B(3) of the 2016 Act Subsection (3A) requires that regulations imposing community engagement obligations must provide that, where an LMP indicates that the owner intends to enter into an agreement to allow the construction of pylons on the land (per amendment 251 above), the plan must set out the local impacts and mitigations associated with the construction. Subsection (3B) provides for consultation requirements when identifying such local impacts and mitigations.

The **effect** of amendment **255** is to insert an alternative section 44B(3A), to require that regulations imposing community engagement obligations require that, where an LMP indicates that an owner intends to enter into an agreement to allow the construction of pylons on the land (per amendment 251 above) that the LMP set out why buried cables do not offer an appropriate alternative.

**Amendment 241 (Tim Eagle)**

The **purpose** and **effect** of this is to remove the specific requirement that regulations require that the LMP include information about a landholding's potential sale. This is achieved by deleting the words “including its potential sale” from section 44B(3)(b).

**Amendment 242 (Edward Mountain)**

The **purpose** and **effect** of this is to caveat the specific requirement, in inserted section 44B(3)(b) of the 2016 Act, that regulations require that the LMP include information about the owner's long-term vision and objectives for managing the land, including its potential sale. The caveat is that that the information need only be required to the extent it is not commercially sensitive.

**Amendment 243, 244 and 250 (Rhoda Grant) [REDACTED]**

The **purpose** of these amendments is to replace inserted section 44B(3)(f), inserted by amendment at Stage 2, which requires regulations imposing community engagement obligations to require that the LMP include information about how engagement with tenants and crofters with rights associated with the land, has informed the development of or significant changes to the LMP. Section 44B(3)(f) is replaced by consolidating it within another paragraph in section 44B(3).

The **effect** of amendment **243** is to modify inserted 44B(3)(ba), which already specified that the LMP to set out the steps taken to engage communities in relation to the development of the plan, to clarify that the reference to communities includes (where relevant) crofters and small landholders

The **effect** of amendment **244** is to clarify that the reference in section 44B(3)(bb) to engagement refers to the engagement mentioned in the preceding paragraph.

The **effect** of amendment **250** is to remove inserted 44B(3)(bb) which was added by amendment at Stage 2 and which had the same purpose as the provisions resulting from amendments 243 and 244.

**Amendment 19 (Edward Mountain)**

The **purpose** and **effect** of this is to remove the stipulation that future regulations require the LMP to include information about how the owner is complying, or intend to comply, with the Scottish Outdoor Access Code. This is achieved by omitting inserted section 44B(3)(c)(ii) of the 2016 Act.

**Amendment 122 (Edward Mountain)**

This is an alternative to amendment 19. The **purpose** and **effect** of this is to qualify the stipulation that future regulations must require the LMP to include information about how the owner is complying, or intend to comply, with the Scottish Outdoor Access Code. The qualification is that the information about compliance with the Outdoor Access Code is only required to the extent that the compliance is with duties imposed on the owner by the Code. This is achieved by modifying inserted section 44B(3)(c)(ii) of the 2016 Act.

**Amendment 20 (Edward Mountain)**

The **purpose** and **effect** of this is to remove the stipulation that future regulations must require the LMP to include information about how the owner is complying, or intend to comply, with the code of practice on deer management in operation in pursuance of section 5A of the Deer (Scotland) Act 1996. This is achieved by omitting inserted section 44B(3)(c)(iii) of the 2016 Act.

**Amendment 245 (Edward Mountain)**

This is an alternative to amendment 20. The **purpose** and **effect** is to replace inserted section 44B(3)(c)(iii) with a reformulated stipulation that regulations must require the LMP to include information about the “extent to which (if at all) the owner’s deer management procedures on the land are aligned with the code of practice on deer management in operation in pursuance of section 5A of the Deer (Scotland) Act 1996”. This expressly qualifies the requirement so that it applies only to the extent to which (if at all) the landowner’s deer management procedures align with the code.

**Amendment 246 (Edward Mountain)**

The **purpose** of this is to weaken the stipulation that regulations require the LMP to contain information about how the owner is managing or intending to manage the land in a way that contributes to the objectives listed in inserted section 44B(3)(d). The **effect** is to qualify that stipulation by providing that only information about the “extent to which”, rather than “how”, the owner is complying/ intending to manage the land in such a way need be included in the LMP. The amendment has little, if any, effect on the obligation.

**Amendment 247 (Tim Eagle)**

The **purpose** and **effect** of this is to remove the stipulation that future regulations require the LMP to contain information about how the owner is managing or intending to manage the land in a way that contributes to “achieving the net-zero emissions target set by section A1 of the Climate Change (Scotland) Act 2009”. This is achieved by omitting section 44B(3)(d)(i).

**Amendment 248 (Edward Mountain)**

The **purpose** of this amendment is seemingly to avoid any suggestion arising under future regulations that land owners, rather than Ministers, have responsibility for achieving the of the net zero emissions target. The **effect** is to amend section 44B(3)(d)(i) so that it expressly stipulates that the future regulations require the LMP to contain information about how the owner is managing or intending to manage the land in a way that contributes to “the achievement by Ministers” of the net-zero target. However, the amendment is unnecessary as community engagement obligations could not alter the duties which exist under the Climate Change (Scotland) Act 2009.

**Amendment 21 (Edward Mountain)**

The **purpose** and **effect** of this is to remove the stipulation that future regulations require the LMP to contain information about how the owner is managing or intending to manage the land in a way that contributes to “increasing or sustaining biodiversity”. This is achieved by omitting section 44B(3)(d)(iii).

**Amendment 123 (Ariane Burgess)**

The **purpose** and **effect** of this amendment is to modify the stipulation that future regulations require the LMP to contain information about how the owner is managing or intending to manage the land in a way that contributes to “increasing or sustaining biodiversity” so that the stipulation only applies in relation to inclusion of information about how the owner is managing or intending to manage the land in a way that contributes to “increasing biodiversity”. The amendment only changes the information that **must** be required to be included in an LMP; Ministers could choose to also require information on action taken to increase biodiversity when making future regulations.

**Amendment 124 (Ariane Burgess)**

The **purpose** and **effect** is to add a stipulation as to the information that future regulations must require the LMP to contain. The added stipulation is that future regulations require the LMP to contain information about how the owner is managing or intending to manage the land in a way that contributes towards achieving any biodiversity targets set under the Nature Conservation (Scotland) Act 2004. This is achieved by inserting the stipulation as section 44B(3)(d)(iv).

**Amendment 125 (Edward Mountain)**

The **purpose** of this is to weaken the stipulation that regulations require the LMP to contain information about how the owner is having regard to, or intends to have regard to, any local place plan in relation to the land (in whole or in part) registered with a planning authority in accordance with schedule 19 of the Town and Country Planning (Scotland) Act 1997.

The amendment qualifies that stipulation by providing that only information about the “extent to which”, rather than “how”, the owner is so having regard. The amendment has little, if any, effect on the obligation.

**Amendment 256 and 257 (Bob Doris) [REDACTED]**

The **purpose** of these amendments is to ensure that Ministers have flexibility to make provision about the manner in which the owner may and must comply with regulations imposing community engagement obligations. The **effect** of these amendments is to amend section 44B(4) to clarify that regulations under section 44A may, in particular, include provision about the manner in which, and the period of time within which, the owner of land may or must, comply with the obligations in relation to land management plans which must be imposed in the regulations. This will make sure that Ministers may provide for alternative means by which land owners may comply with obligations described in section 44A(1) as well as prescribing a particular method of complying with such obligations.

**Amendment 258 (Bob Doris) [REDACTED]**

The **purpose** and **effect** of this amendment is to clarify that regulations imposing community engagement obligations may make provision requiring the owner to ensure that a land management plan is given to another person in order that all land management plans can be published on a single website.

**Amendment 126 (Mairi Gougeon) – SG amendment**

The **purpose** and **effect** of this is to remove section 44B(5), which requires regulations imposing community engagement obligation to include provision, in relation to crofting estates, for the appointment an independent person to fulfil the obligations imposed in relation to LMPs. Section 44B(5) was inserted by an amendment lodged by Rhoda Grant at Stage 2.

**Amendment 127 and 127A (Tim Eagle)**

The **purpose** of 127 and 127A is to require less information in LMPs which are relating to land mainly used for hill sheep farming.

The **effect** of amendment **127** is to add a new sub-section (1) to section 44B, requiring that regulations under section 44A must set out that in relation to land mainly used for hill sheep farming, an LMP should contain only

- a) details of the land to which the plan relates, including how the ownership is structured
- b) the owner’s long-term vision and objectives for managing the land, including it’s potential sale.

The **effect** of amendment **127A** is to remove the wording “including its potential sale” from sub-section (b) as noted in amendment 127.

**Amendment 128 (Edward Mountain)**

The **purpose** of this is to ensure that the cost of producing LMPs are proportionate to the landholding size and do not create financial difficulties for landowners. It also seeks to introduce a ministerial statement to accompany the regulations made under section 44B, which should set out how the following aspects have been considered in the drafting of regulations, and how it has been ensured that owners:

- a) of holdings of less than 2500 hectares do not have to seek professional guidance on preparing a plan
- b) do not face financial difficulties as a result of the costs of preparing a plan.

The **effect** is to add new sub-sections (6) and (7) to section 44B – to require that regulations made under section 44A address these conditions.

**Amendment 260 (Bob Doris) [REDACTED]**

The **purpose** of this amendment is to require Ministers to publish a statement setting out reasons when laying regulations that exclude land from the land management plan obligations described in section 44B(1). This delivers the policy intention of Bob Doris’s Stage 2 amendment that is removed by amendment 239.

The **effect** is to insert a new subsection (6) into inserted 44B of the 2016 Act requiring that Ministers make such a statement. The subsection clarifies that this requirement will apply to regulations imposing the LMP obligations or amending such regulations but not generally when the power to make regulations under section 44A is otherwise exercises. This is an improvement on the provision being removed by amendment by amendment 239, which requires the statement to be given whenever the power in section 44A but land is excluded The inserted subsection (6) specifies that publication

must be in the form of a statement being laid before the parliament by Ministers at the same time as laying the draft regulations.

**Amendment 22, 40, 308 (Edward Mountain)**

The **purpose** of these amendments is to create a duty on Ministers to establish and maintain a database for the publication of LMPs.

The **effect** of amendment **22** is to insert a new section 44ZBA into the 2016 Act which places a duty on Ministers to establish an online database for the publication of land management plans. The new section includes a power for Ministers to make further provision about establishing the register by regulations.

The **effect** of amendment **40** is to insert reference to inserted section 44ZBA into the section 126 of the 2016 Act. This makes the power to make regulations conferred by section 44ZBA (proposed to be inserted by amendment 22) subject to affirmative procedure.

The **effect** of amendment **308** is to insert a duty into inserted section 38A of the 2016 Act, which sets out the functions of the LCC, to require the LCC to maintain the online database established by amendment 22.

**Amendment 130 (Mairi Gougeon) – SG amendment**

The **purpose** and **effect** of this amendment is remove inserted 44BA of the 2016 Act, which was introduced by a Labour Stage 2 amendment. Section 44BA was intended to allow the LCC to direct landowners how to approach land management and community engagement obligations when they have multiple landholdings but has serious drafting issues.

**Amendment 131 (Rhoda Grant)**

The **purpose** of this amendment is unclear and may simply be to provide consistency with other Labour amendments to reduce thresholds to 500 hectares. The **effect** is to modify inserted section 44BA(1)(b) of the 2016 Act to specify that section 44BA only applies where land is held as two or more holdings by the same owner which total 500 hectares or more. Government amendment 130 proposes removal of section 44BA in its entirety.

**Amendment 262 (Bob Doris) [REDACTED]**

The **purpose** of this amendment is to require Ministers to publish a statement setting out reasons when laying regulations that exclude land from the obligations to consider community requests to lease land described in inserted section 44C(1) of the 2016 Act. This requirement is the same as that which is imposed in relation to the obligations described in section 44A(1), proposed to be inserted by amendment 260.

The **effect** is to insert a new subsection 2A into inserted 44C of the 2016 Act requiring that Ministers make such a statement. The subsection clarifies that this requirement will apply both to initial and amending regulations imposing 44C obligations. It specifies that publication must be in the form of a statement being laid before the parliament by Ministers at the same time as laying the draft regulations.

**Background note(s)**

[REDACTED]

**Consultation**

[REDACTED]

**Contact – [REDACTED]**

## **Speaking Note – Group 4**

[REDACTED]

## Land Reform (Scotland) Bill: Stage 3 Briefing

### Group 5: Obligations relating to land owned by community bodies

<b><u>Amendment number(s)</u></b> – 252, 259, 277, 366
<b>Subject</b> – Obligations relating to land owned by community bodies
<b>Speaking Order</b>
Group will be led by <b>Brian Whittle</b> , who will speak to amendments 252, 259, 277, 366 (i.e. all the amendments in the group).  The Presiding Officer will then ask other MSPs to speak, and the Cabinet Secretary will be asked to respond.  <b>Brian Whittle</b> will close the discussion.
<b>Government position</b>
[REDACTED]
<b>Text of amendment(s)</b>
<b>Brian Whittle</b> <b>252</b> In section 1, page 3, line 15, at end insert—  <(g) where the plan relates to land to which section 44DA applies, the steps taken by the community body in relation to organisational succession planning to ensure that the plan is implemented.>  <b>Brian Whittle</b> <b>259</b> In section 1, page 3, line 19, at end insert— <(4A) Regulations under subsection 44A must provide that, where a community body— (a) was notified about a possible transfer of land under section 46D(2)(b) of the Land Reform (Scotland) Act 2003, and (b) purchased an area of that land that exceeds 50 hectares, the community body must adopt the land management plan until such time as the plan is reviewed, and where appropriate,

revised (which must be no later than 2 years after the land is purchased by the community body).>

**Brian Whittle**

**277** After section 1, insert—

**<Land management plans: land owned by community body**

- (1) The Land Reform (Scotland) Act 2016 is modified as follows.
- (2) In section 44A (inserted by section 1), in subsection (3), after “44D” insert or “44DA”.
- (3) In section 44B (inserted by section 1), in subsection (2), after “44D” insert or “44DA”.
- (4) After section 44D (inserted by section 1), insert—

**“44DA Land in relation to which obligations may be imposed:  
land owned by community body**

This section applies to land that is—

- (a) owned by a community body,
- (b) exceeds 50 hectares in area.”.>

**Brian Whittle**

**366** In section 30, page 85, line 6, at end insert—

<( ) Section (*Land management plans: land owned by community body*) comes into force at the expiry of the period of 5 years, beginning with the day of Royal Assent.>

**Purpose and Effect**

**Amendment 252**

The **purpose** of this is to add another factor which Ministers must require by regulations to be set out by the landowner in an LMP. This amendment links specifically to Mr Whittle’s amendment 277, which brings community-owned land exceeding 50 hectares into scope of the community engagement and LMP obligations.

The **effect** of this is to require that any LMP being produced by community bodies owning more than 50 hectares of land (as set out in section 44DA), must include steps taken by the community body in relation to organisational succession planning to ensure that the plan is implemented.

**Amendment 259**

The **purpose** is to require communities who received a notification about a potential transfer of land (under pre-notification), who then go on to buy an area of that land greater than 50 hectares, to adopt and retain the LMP until it is reviewed and revised. It must also be reviewed and revised no later than 2 years after the purchase of land.

The **effect** is to place a duty on Ministers to ensure that when making regulations under section 44A, they provide that where a community body has received notification under section 46D(2)(b) of the Land Reform Act 2003 and has then purchased an area of that land exceeding 50 hectares, that regulations must require the community body to adopt the LMP, until such time as the LMP is reviewed and revised. Regulations must also require the LMP to be reviewed and where appropriate, revised, within 2 years of the purchase. This creates a contradiction with the review period specified in section 44B(1)(c).

#### **Amendment 277**

The **purpose** of this amendment is to require that community engagement and LMP obligations will also apply to any land which is a) owned by a community body and b) over 50 hectares in area.

The **effect** of this is to insert new section 44DA, to widen the scope of land in relation to which obligations may be imposed. The amendment also inserts references into section 44A (power to impose obligations) and section 44B (regulations to include obligation to have LMP) – to ensure that these sections will apply to the new definition of land described in section 44DA.

#### **Amendment 366**

The **purpose** of this amendment is unclear. The **effect** of the amendment is to defer commencement of the section inserted into the Bill by amendment 277 until five years after the Bill receives Royal Assent. This means the ability of Ministers to impose community engagement obligations in relation to the new category of land (land over 50 hectares owned by community bodies) will not arise until the period of 5 years elapses. At that point, Ministers would need to ensure that the requirements regarding the content of LMPs specified in section 44B(3) be imposed in relation to such land and the additional requirements stipulated in amendment 252 and 259 be imposed.

#### **Background note(s)**

[REDACTED]

#### **Consultation**

[REDACTED]

**Contact** – [REDACTED]

## **Speaking Note – Group 5**

[REDACTED]

# Land Reform (Scotland) Bill: Stage 3 Briefing

## Group 6: Land to which Part 1 of the Bill applies

<b>Amendment number(s)</b> – 6, 23, 1, 24, 265, 25, 134, 135, 26, 27, 136, 266, 137, 138, 267, 139, 140, 141, 268, 151, 153, 7, 46, 47, 48, 159, 160, 49, 50, 281, 161, 282, 162, 163, 164, 283, 166, 52, 8, 53, 9, 176, 54, 10, 177, 11, 55, 56, 178, 179, 57, 58, 12, 180, 287, 181, 182, 288, 183, 289, 184, 194, 198, 231
<b>Subject – Land to which Part 1 of the Bill applies</b>
<b>Speaking Order</b>
Group will be led by <b>Mercedes Villalba</b> who will speak first to amendments 6, 24, 25, 26, 27, 7, 47, 48, 49, 50, 52, 8, 53, 9, 54, 10, 11, 55, 56, 57, 58 and 12.  Edward Mountain will speak to amendments 23, 136, 137, 46, 177, 180, 181. Tim Eagle will speak to amendment 1. Douglas Lumsden will speak to amendment 265. Cabinet Secretary will speak to amendments 134, 135, 138, 139, 140, 141, 151, 153, 159, 160, 161, 162, 163, 164, 166, 176, 178, 179, 182, 183, 184, 194, 198 and 231. Mark Ruskell will speak to amendments 266, 267, 268, 281, 282, 283, 287, 288 and 289.  The Presiding Officer may then invite other MSPs to speak.  Mercedes Villalba will close the discussion and move amendment 6 (unless she has been persuaded not to do so).
<b>Government position</b>
[REDACTED]
<b>Text of amendment(s)</b>
<b>Mercedes Villalba</b> <b>Supported by: Ariane Burgess</b>  <b>6</b> In section 1, page 4, line 14, leave out <1,000> and insert <500>  <b>Edward Mountain</b>  <b>23</b> In section 1, page 4, line 14, leave out <1,000> and insert <2,000>  <b>Tim Eagle</b>  <b>1</b> In section 1, page 4, line 14, leave out <1,000> and insert <3,000>  <b>Mercedes Villalba</b>

**24** In section 1, page 4, line 16 leave out <a contiguous area of> and insert <the>

**Douglas Lumsden**

**265** In section 1, page 4, line 19, at end insert—

<(c) a single holding forms part of a composite holding with another if it is one holding of 30 or more holdings that are—

(i) used for the purposes of electricity infrastructure, and

(ii) owned by the same licence holder,>

**Mercedes Villalba**

**25** In section 1, page 4, leave out lines 21 and 22

**Mairi Gougeon**

**134** In section 1, page 4, leave out lines 21 and 22 and insert—

<(a) each of the single holdings in question is contiguous with at least one of the others, and>

**Mairi Gougeon**

**135** In section 1, page 4, line 24, after <is> insert <an owner, or>

**Mercedes Villalba**

**26** In section 1, page 4, line 25, leave out <with which holding A is contiguous>

**Mercedes Villalba**

**27** In section 1, page 4, leave out lines 28 to 37

**Edward Mountain**

**136** In section 1, page 4, line 30, after <if> insert <—

(i)>

**Mark Ruskell**

**266** In section 1, page 4, line 30, leave out <250 metres of> and insert <the same or adjoining electoral ward as>

**Edward Mountain**

**137** In section 1, page 4, line 31, after <other,> insert <or

(ii) it can be shown that the areas of land are managed as a single business having regard to all the circumstances including—

- (A) legal status,
- (B) economic structure and organisation,
- (C) commercial management, and
- (D) operational arrangements,>

**Mairi Gougeon**

**138** In section 1, page 4, leave out line 32 and insert—

<(5B) For the purposes of subsection (5)—>

**Mark Ruskell**

**267** In section 1, page 4, line 36, leave out <250 metres of> and insert <the same or adjoining electoral ward as>

**Mairi Gougeon**

**139** In section 1, page 4, line 37, at end insert—

<(c) references to the owner of a holding, in a case where the holding is owned by more than one person (whether jointly or in common), are to be read as references to an owner of the holding,

(d) whether a person is connected to another is to be determined in accordance with schedule A1.>

**Mairi Gougeon**

**140** In section 1, page 5, leave out lines 1 to 12

**Mairi Gougeon**

**141** In section 1, page 5, line 12, at end insert—

<(7) In this section, “land” includes—

- (a) the foreshore, being the land between the high and low water marks of ordinary spring tides, and
- (b) other land covered with water except the seabed.>

**Mark Ruskell**

**268** In section 1, page 5, line 12, at end insert—

<(7) In this section, “electoral ward” has the meaning given by section 1 of the Local

**Mairi Gougeon**

**151** In section 1, page 12, line 9, after <Chapter> insert <and schedule A1>

**Mairi Gougeon**

**153** In section 1, page 12, line 20,

at end insert— <(6) Insert—

(a) the following before schedule 1 as schedule A1—

“SCHEDULE A1  
(introduced by section 44D)

MEANING OF CONNECTED PERSON IN  
CHAPTER 2 OF PART 4

1 This schedule makes provision for determining whether one person is connected to another for the purposes of section 44D(5)(b).”,

(b) after paragraph 1 of schedule A1, the text set out in schedule (*Meaning of connected person*).>

**Mercedes Villalba**

**Supported by: Ariane Burgess**

**7** In section 2, page 18, line 9, leave out <1,000> and insert <500>

**Edward Mountain**

**46** In section 2, page 18, line 9, leave out <1,000> and insert <2,000>

**Mercedes Villalba**

**47** In section 2, page 18, line 11, leave out <a contiguous area of> and insert <the>

**Mercedes Villalba**

**48** In section 2, page 18, leave out lines 16 and 17

**Mairi Gougeon**

**159** In section 2, page 18, leave out lines 16 and 17 and insert—

<(a) each of the single holdings in question is contiguous with at least one of the others, and>

**Mairi Gougeon**

**160** In section 2, page 18, line 19, after <is> insert <an owner, or>

**Mercedes Villalba**

**49** In section 2, page 18, line 20, leave out <with which holding A is contiguous>

**Mercedes Villalba**

**50** In section 2, page 18, leave out lines 23 to 32

**Mark Ruskell**

**281** In section 2, page 18, line 25, leave out <250 metres of> and insert <as the same or adjoining electoral ward>

**Mairi Gougeon**

**161** In section 2, page 18, leave out line 27 and insert—  
<(4B) For the purposes of subsection (4)—>

**Mark Ruskell**

**282** In section 2, page 18, line 31, leave out <250 metres of> and insert <as the same or adjoining electoral ward>

**Mairi Gougeon**

**162** In section 2, page 18, line 32, at end insert—  
<(c) references to the owner of a holding, in a case where the holding is owned by more than one person (whether jointly or in common), are to be read as references to an owner of the holding,  
(d) whether a person is connected to another is to be determined in accordance with schedule 1A.>

**Mairi Gougeon**

**163** In section 2, page 18, line 33, leave out from beginning to end of line 6 on page 19

**Mairi Gougeon**

**164** In section 2, page 19, line 6, at end insert—  
<(6) In this section, “land” includes—

- (a) the foreshore, that is to say, the land between the high and low water marks of ordinary spring tides, and
- (b) other land covered with water except the seabed.>

**Mark Ruskell**

**283** In section 2, page 19, line 6, at end insert—

<(6) In this section, “electoral ward” has the meaning given by section 1 of the Local Governance (Scotland) Act 2004.>

**Mairi Gougeon**

**166** In section 2, page 19, line 29, after <Chapter> insert <and schedule 1A>

**Mercedes Villalba**

**52** In section 4, page 22, line 23, after <(2)> insert <, (2A)>

**Mercedes Villalba**

**Supported by: Ariane Burgess**

**8** In section 4, page 22, line 24, leave out <1,000> and insert <500>

**Mercedes Villalba**

**53** In section 4, page 22, line 24 at end insert—

<(2A) This subsection

applies to land if—

(a) it exceeds 500

hectares in area, and

(b) it forms part of a large holding of land.>

**Mercedes Villalba**

**Supported by: Ariane Burgess**

**9** In section 4, page 22, line 30, leave out <1,000> and insert <500>

**Mairi Gougeon**

**176** In section 4, page 22, line 37, after <section> insert <—

“land” includes—

(a) the foreshore, that is to say, the land between the high and low water marks of ordinary spring tides, and

(b) other land covered with water except the seabed,>

**Mercedes Villalba**

**54** In section 4, page 23, line 2, leave out <67G(3)> and insert <67G(2A) and (3)>

**Mercedes Villalba**

**Supported by: Ariane Burgess**

**10** In section 4, page 23, line 5, leave out <1,000> and insert <500>

**Edward Mountain**

**177** In section 4, page 23, line 5, leave out <1,000> and insert <2,000>

**Mercedes Villalba**

**Supported by: Ariane Burgess**

**11** In section 4, page 23, line 5, at end insert—

<(1A) In section 67G(3), a “large holding of land” also means land that—

- (a) forms part of an inhabited island, and
- (b) is a single holding or composite holding that—
  - (i) exceeds 500 hectares in area, and
  - (ii) constitutes more than 25% of the land forming the island.>

**Mercedes Villalba**

**55** In section 4, page 23, line 7, leave out <a contiguous area of> and insert <the>

**Mercedes Villalba**

**56** In section 4, page 23, leave out lines 12 and 13

**Mairi Gougeon**

**178** In section 4, page 23, leave out lines 12 and 13 and insert—

<(a) each of the single holdings in question is contiguous with at least one of the others, and>

**Mairi Gougeon**

**179** In section 4, page 23, line 15, after insert

**Mercedes Villalba**

**57** In section 4, page 23, line 16, leave out <with which holding A is contiguous>

**Mercedes Villalba**

**58** In section 4, page 23, leave out lines 19 to 28

**Mercedes Villalba**

**Supported by: Ariane Burgess**

**12** In section 4, page 23, line 19, at end insert—

<( ) subsection (1A), the reference to an inhabited island is to be construed in accordance with section 1 of the Islands (Scotland) Act 2018,>

**Edward Mountain**

**180** In section 4, page 23, line 21, after <if> insert <—

(i)>

**Mark Ruskell**

**287** In section 4, page 23, line 21, leave out <250 metres of> and insert <as the same or adjoining electoral ward>

**Edward Mountain**

**181** In section 4, page 23, line 22, after <other,> insert <or

(ii) it can be shown that the areas of land are managed as a single business having regard to all the circumstances including—

(A) legal status,

(B) economic structure and organisation,

(C) commercial management, and

(D) operational arrangements,>

**Mairi Gougeon**

**182** In section 4, page 23, leave out line 23 and insert—

<(5) For the purposes of subsection (3)—>

**Mark Ruskell**

**288** In section 4, page 23, line 27, leave out <250 metres of> and insert <as the same or adjoining electoral ward>

**Mairi Gougeon**

**183** In section 4, page 23, line 28, at end insert—

<(c) references to the owner of a holding, in a case where the holding is owned by more than one person (whether jointly or in common), are to be read as references to an owner of the holding.>

**Mark Ruskell**

**289** In section 4, page 23, line 28, at end insert—

<(5) In this section, “electoral ward” has the meaning given by section 1 of the Local

Governance (Scotland) Act 2004.>

**Mairi Gougeon**

**184** In section 4, page 23, line 30, leave out from beginning to end of line 4 on page 24 and insert—

<(1) Whether a person is connected to another for the purposes of the provisions mentioned in subsection (2) is to be determined in accordance with schedule 1A.

(2) The provisions referred to in subsection (1) are sections 67D(1)(c), 67F(4) and 67H(3)(b).>

**Mairi Gougeon**

**194** In section 4, page 31, line 18, after <Part> insert <and schedule 1A>

**Mairi Gougeon**

**198** After section 5, insert—

**<Modifications in connection with sections 2 and 4**

(1) The Land Reform (Scotland) Act 2003 is modified as follows. (2) After

schedule 1 insert the following as schedule 1A—

“SCHEDULE 1A  
(introduced by sections 46K and 67I)

MEANING OF CONNECTED PERSON IN THE  
RELEVANT PROVISIONS

*Purpose of schedule*

1 This schedule makes provision for determining whether one person is connected to another for the purposes of the relevant provisions.”.

- a. If, in the title of schedule 1A, the words “the relevant provisions”— (a) appear, then for those words—
  - (i) in paragraph 1 of the schedule substitute “section 46K(4)(b)”,
  - (ii) in the title of the schedule substitute “Chapter 2A of Part 2A”, (b) do not appear, then—
    - (i) in paragraph 1 of the schedule after “of” insert “section 46K(4)(b) and”, (ii) in the title of the schedule after “in” insert “Chapter 2A of Part 2 and”.
- b. If, in the title of schedule 1A, the words “the relevant provisions”— (a) appear, then for those words—
  - (i) in paragraph 1 of the schedule substitute “the provisions mentioned in section 67I(2)”,
  - (ii) in the title of the schedule substitute “Part 2A”, (b) do not appear, then—
    - (i) in paragraph 1 of the schedule after “46K(4)(b)” insert “and the provisions mentioned in section 67I(2)”,
    - (ii) in the title of the schedule after “Chapter 2A of Part 2A” insert “and Part 2A”.
- c. After paragraph 1 of schedule 1A insert the text set out in schedule (*Meaning of connected person*).>

## **Mairi Gougeon**

**231** Before the schedule, insert—

### <SCHEDULE

*(introduced by sections 1(6) and (Modifications in connection with sections 2 and 4))*

#### MEANING OF CONNECTED PERSON

The following is the text referred to in sections 1(6) and (*Modifications in connection with sections 2 and 4*)(5)—

*“Persons connected through relationships described by the table*

- 2 (1) A person of a kind described in column 1 of the table is connected to a person described by the same row in column 2 (column 3 contains rules about the interpretation of expressions used in each row).
- (2) For the avoidance of doubt—
  - (a) more than one row in the table may be applicable to a person,

(b) where a person described in column 1 of the table is connected to a person described by column 2, that also means the person described by column 2 is connected to the person described in column 1.

*Persons connected by reason of having a common connected person*

3 Where a person is connected to two or more other persons by reason of being a person described by column 2 of the table in relation to each of them (whether or not the other persons are all of a kind described in the same row of column 1), all of those persons are connected.

*The table referred to in paragraphs 2 and 3*

4 The following table is the one referred to in paragraphs 2 and 3.

1: Kind of person	2: Person connected	3: Interpretation
A person that requires to be registered on account of being an owner of land in a public register kept in accordance with the Regulations	A person having a controlling interest in the person	<ul style="list-style-type: none"> <li>• one person (“person A”) has a controlling interest in another person (“person B”) if the Regulations provide that person A is to be treated as having a controlling interest in person B</li> <li>• “the Regulations” means the Land Reform (Scotland) Act 2016 (Register of Persons Holding a Controlled Interest in Land) Regulations 2021 (S.S.I. 2021/85)</li> </ul>
A company	Another company in the same group	<ul style="list-style-type: none"> <li>• “company” has the meaning given in section 288 of the Taxation of Chargeable Gains Act 1992</li> <li>• companies are in the same group if they are, or are included in a number of, companies which, by virtue of section 170 of that Act, together form part of a group for the purposes of sections 171 to 181 of that Act</li> </ul>
A company that is required by section 790M of the Act to keep a register of people with significant control over the company	<p>(a) a registerable person in relation to the company</p> <p>(b) a registerable relevant legal entity in relation to the company</p>	<ul style="list-style-type: none"> <li>• “company” has the meaning given in section 1 of the Act</li> <li>• “registerable person” and “registerable relevant legal entity” in relation to the company are to be construed in accordance with Part 21A of the Act (see in particular section 790C)</li> <li>• “the Act” means the Companies Act 2006</li> </ul>
An unregistered company that, by virtue of the Regulations, is required to keep a register of people with significant control over the company	<p>(a) a registerable person in relation to the company</p> <p>(b) a registerable relevant legal entity in</p>	<ul style="list-style-type: none"> <li>• “registerable person” and “registerable relevant legal entity” in relation to the company are to be construed in accordance with Part 21A of the Companies Act 2006, as modified by the Regulations</li> </ul>

1: Kind of person	2: Person connected	3: Interpretation
	relation to the company	<ul style="list-style-type: none"> <li>• “unregistered company” has the meaning given by regulation 2 of the Regulations</li> <li>• “the Regulations” means the Unregistered Companies Regulations 2009 (S.I. 2009/2436)</li> </ul>
A limited liability partnership (“LLP”) that, by virtue of the Regulations, is required to keep a register of people with significant control over the LLP	(a) a registerable person in relation to the LLP (b) a registerable relevant legal entity in relation to the LLP	<ul style="list-style-type: none"> <li>• “registerable person” and “registerable relevant legal entity” in relation to the LLP are to be construed in accordance with Part 21A of the Companies Act 2006, as modified by the Regulations</li> <li>• “limited liability partnership” has the same meaning as in regulation 3(1) of the Regulations</li> <li>• “the Regulations” means the Limited Liability Partnerships (Application of Companies Act 2006) Regulations 2009 (S.I. 2009/1804)</li> </ul>
An eligible Scottish partnership	(a) a registerable person in relation to the partnership (b) a registerable relevant legal entity in relation to the partnership	<ul style="list-style-type: none"> <li>• “eligible Scottish partnership”, and “registerable person” and “registerable relevant legal entity” in relation to the partnership, are to be construed in accordance with the Regulations (see in particular regulation 3)</li> <li>• “the Regulations” means the Scottish Partnerships (Register of People with Significant Control) Regulations 2017 (S.I. 2017/694).&gt;</li> </ul>

**Purpose and Effect**

**Amendment 6 (Mercedes Villalba)**

The **purpose** and **effect** is to lower the threshold in relation to the land to which the community engagement obligations may be imposed from 1,000ha to 500ha. This is achieved by replacing the reference to “1,000” in inserted section 44D(2) of the 2016 Act with “500”.

**Amendment 23 (Edward Mountain)**

The **purpose** and **effect** is to raise the threshold in relation to the land to which the community engagement obligations may be imposed from 1,000ha to 2,000ha. This is achieved by replacing the reference to “1,000” in inserted section 44D(2) of the 2016 Act with “2,000”.

### **Amendment 1 (Tim Eagle)**

The **purpose** and **effect** is to raise the threshold in relation to the land to which the community engagement obligations may be imposed from 1,000ha to 3,000ha. This is achieved by replacing the reference to “1,000” in inserted section 44D(2) of the 2016 Act to “3,000”.

### **Amendments 24, 25, 26 and 27 (Mercedes Villalba)**

The **purpose** and **effect** of the amendments is to remove the requirement that the land in relation to which community engagement obligations may be imposed be contiguous. This is achieved by removing references to contiguous land and related drafting from inserted section 44D(4)(a) and (5)(b)(i) of the 2016 Act and omission of inserted section 44D(5)(a) and (5A) of the 2016 Act.

### **Amendment 265 (Douglas Lumsden)**

The **purpose** is to add a further definition of “composite holding” within the definition of the land in relation to which community engagement obligations may be imposed which is specifically related to land used for the purposes of electricity infrastructure. The **effect** is to insert a new subsection (4)(c) into inserted section 44D of the 2016 Act providing that a single holding forms part of a “composite holding” if it is one holding of 30 or more holdings that are— (i) used for the purposes of electricity infrastructure, and (ii) owned by the same licence holder. This would appear to mean that any 30 or more single holdings used for the purpose of electricity infrastructure would count towards the 1,000 hectare threshold if owned by the same person, regardless of the location of those holdings. The term “licence holder” is not defined.

### **Amendments 134 and 135 (Mairi Gougeon)**

The **purpose** of these amendments is to improve the definition of “composite holding” used for the purposes of defining the land in relation to which community engagement obligations may be imposed.

The **effect** of amendment 134 is to replace the first condition for formation of a “composite holding”, which is found in inserted section 44D(4)(a) of the Land Reform (Scotland) Act 2016 (“the 2016 Act”) and is currently drafted as follows: “each single is contiguous with at least one other single holding”. This is replaced with a condition that requires that “each of the single holdings in question is contiguous with at least one of the others”. This is less ambiguous.

The **effect** of amendment 135 is to provide that a composite holding may form by virtue of co-ownership (for example, where holding A is owned by person X and holding B is owned by person X and Y as joint or common property). This is achieved by insertion of the words “an owner, or” at the outset of inserted section 44D(5)(b)(i) of the 2016 Act.

The combined effect of amendments 134 and 135 is to amend the definition of “composite holding” so that it reads as follows—

“(5) The conditions referred to in subsection (4)(b) are that—

- (a) each of the single holdings in question is contiguous with at least one of the others, and
- (b) the owner of one single holding (“holding A”)—
  - i. is an owner, or connected to the owner of another single holding (“holding B”) with which holding A is contiguous,
  - ii. where there are more than two single holdings, is also the owner of, or connected to the owner of, every other single holding”.

### **Amendments 138 and 139 (Mairi Gougeon)**

The **purpose** of these amendments is to add further provisions regarding the meaning of inserted section 44D(5) of the Land Reform (Scotland) Act 2016 (“the 2016 Act”), which contains the definition of “composite holding”.

The first effect of amendment 139 is to insert the interpretive provision that “references to the owner of a holding, in a case where the holding is owned by more than one person (whether jointly or in common), are to be read as references to an owner of the holding”. This is considered necessary in light of the modification of inserted section 44D of the 2016 Act by amendment 135. It will serve to clarify that a “composite holding” may form by virtue of the sole owner of holding A and a co-owner of holding B being connected persons or a co-owner of holding A and a co-owner of holding B being connected persons.

The second effect of amendment 139 is to insert the interpretive provision that “whether a person is connected to another is to be determined in accordance with schedule A1”. This is considered necessary due to the changes made to inserted section 44D by amendments 140 and 153.

The **effect** of amendment 138 is to modify, and renumber as inserted section 44D(5B), inserted section 44D(5)(b) so that it can accommodate the interpretive provisions inserted by amendment 139.

### **Amendments 140 and 153 (Mairi Gougeon)**

The **purpose** and **effect** of amendments 140 and 153 is to reformat the definition of “connected person” referred to in the definition of “composite holding” used for the purposes of defining the land in relation to which community engagement obligations may be imposed. Amendment 140 omits the current definition of “connected person” in section 44D(6). Amendment 153 inserts schedule A1 into the Land Reform (Scotland) Act 2016, for the purpose of defining “connected person” for the purpose of inserted section 44D.

### **Amendments 151 (Mairi Gougeon)**

The **purpose** and **effect** of amendment 151 is to modify the heading of inserted section 44M (powers to modify Chapter) of the Land Reform (Scotland) Act 2016 in consequence of the insertion of schedule A1 by amendment 153.

### **Amendments 159 and 160 (Mairi Gougeon)**

The **purpose** of these amendments is to improve the definition of “composite holding” used for the purposes of defining the land affected by the prohibitions which underpin the extended opportunity to register a community interest afforded by the provisions inserted in to the Land Reform (Scotland) Act 2003 (“the 2003 Act”) by section 2(4) of the Bill.

The **effect** of amendment 159 is to replace the first condition for formation of a “composite holding”, which is found in inserted section 46K(4)(a) of the 2003 Act and is currently drafted as follows: “each single is contiguous with at least one other single holding”. This is replaced with a condition that requires that “each of the single holdings in question is contiguous with at least one of the others”. This is considered to be less ambiguous.

The **effect** of amendment 160 is to provide that a composite holding may form by virtue of co-ownership (for example, where holding A is owned by person X and holding B is owned by person X and Y as joint or common property). This is achieved by insertion of the words “an owner, or” at the outset of inserted section 46K(4)(b)(i) of the 2003 Act.

The combined effect of amendments 159 and 160 is to amend the definition of “composite holding” so that it reads as follows—

“(4) The conditions referred to in subsection (3)(b) are that—

- (a) each of the single holdings in question is contiguous with at least one of the others, and
- (b) the owner of one single holding (“holding A”)—
  - i. is an owner, or connected to the owner of another single holding (“holding B”) with which holding A is contiguous,
  - ii. where there are more than two single holdings, is also the owner of, or connected to the owner of, every other single holding”.

### **Amendments 161 and 162 (Mairi Gougeon)**

The purpose of these amendments is to add further provisions regarding the meaning of inserted section 46K(4) of the Land Reform (Scotland) Act 2003 (“the 2003 Act”), which contains the definition of “composite holding”.

The first effect of amendment 162 is to insert the interpretive provision that “references to the owner of a holding, in a case where the holding is owned by more than one person (whether jointly or in common), are to be read as references to an owner of the holding”. This is considered necessary in light of the modification of inserted section 46K of the 2003 Act by amendment 160. It will serve to clarify that a “composite holding” may form by virtue of the sole owner of holding A and a co-owner of holding B being connected persons or a co-owner of holding A and a co-owner of holding B being connected persons.

The second effect of amendment 162 is to insert the interpretive provision that “whether a person is connected to another is to be determined in accordance with schedule 1A”. This is considered necessary due to the changes made to inserted section 46K by amendment 163 (which omits inserted section 46K(5)) and amendment 198 (which inserts schedule 1A into the 2003 Act).

The effect of amendment 161 is to modify, and renumber as inserted section 46K(4B), inserted section 46K(4A)(b) so that it can accommodate the interpretive provisions inserted by amendment 162.

### **Amendments 163 and 198 (Mairi Gougeon)**

The **purpose** and **effect** of amendments 163 and 198 is to reformat the definition of “connected person” referred to in the definition of “composite holding” used for the purposes of defining the land in relation to the land affected by the prohibition. Amendment 163 omits the current definition of “connected person” in section 46K(5) in consequence of amendment 198 (which inserts schedule 1A into the 2003 Act).

### **Amendment 166 (Mairi Gougeon)**

The purpose and effect of amendment 166 is to modify the heading of inserted section 46L (powers to modify Chapter) of the Land Reform (Scotland) Act 2003 in consequence of the insertion of schedule 1A by amendment 198.

### **Amendments 178 and 179 (Mairi Gougeon)**

The **purpose** of these amendments is to improve the definition of “composite holding” used for the purposes of defining the land affected by the prohibition which underpins the lotting provisions inserted into the Land Reform (Scotland) Act 2003 (“the 2003 Act”) by section 4(2) of the Bill.

The **effect** of amendment 178 is to replace the first condition for formation of a “composite holding”, which is found in inserted section 67H(3)(a) of the 2003 Act and is currently drafted as follows: “each single is contiguous with at least one other single holding”. This is replaced with a condition that requires that “each of the single holdings in question is contiguous with at least one of the others”. This reduces ambiguity.

The **effect** of amendment 179 is to provide that a composite holding may form by virtue of shared ownership (for example, where holding A is owned by person X and holding B is owned by person X and Y as joint or common property). This is achieved by insertion of the words “an owner, or” at the outset of inserted section 67H(3)(b)(i) of the 2003 Act.

The combined effect of amendments 178 and 179 is to amend the definition of “composite holding” so that it reads as follows—

“(3) The conditions referred to in subsection (2)(b) are that—

- (c) each of the single holdings in question is contiguous with at least one of the others, and
- (d) the owner of one single holding (“holding A”)—
  - iii. is an owner, or connected to the owner of another single holding (“holding B”) with which holding A is contiguous,
  - iv. where there are more than two single holdings, is also the owner of, or connected to the owner of, every other single holding”.

### **Amendments 182 and 183 (Mairi Gougeon)**

The purpose of these amendments is to add a further provision regarding the meaning of inserted section 67H(3) of the Land Reform (Scotland) Act 2003 (“the 2003 Act”), which contains the definition of “composite holding”.

The effect of amendment 183 is to insert the interpretive provision that “references to the owner of a holding, in a case where the holding is owned by more than one person (whether jointly or in common), are to be read as references to an owner of the holding”. This is considered necessary in light of the modification of inserted section 67H of the 2003 Act by amendment 179. It will serve to clarify that a “composite holding” may form by virtue of the sole owner of holding A and a co-owner of holding B being connected persons or a co-owner of holding A and a co-owner of holding B being connected persons.

The effect of amendment 182 is to modify, and renumber as inserted section 67H(5), inserted section 67H(4)(b) so that it can accommodate the interpretive provisions inserted by amendment 183.

### **Amendment 184 (Mairi Gougeon)**

The **purpose** and **effect** of amendment 184 (together with amendment 198) is to reformat the definition of “connected person” referred to in the definition of “composite holding” used for the purposes of defining the land in relation to the land affected by the prohibition. Amendment 184 replaces the current definition of “connected person” in section 67I with a definition which reference to schedule 1A of the 2003 Act. This is in consequence of amendment 198 (which inserts schedule 1A into the 2003 Act).

### **Amendment 194 (Mairi Gougeon)**

The purpose and effect of amendment 166 is to modify the heading of inserted section 46L (powers to modify Chapter) of the Land Reform (Scotland) Act 2003 in consequence of the insertion of schedule 1A by amendment 198.

### **Amendment 231 (Mairi Gougeon)**

The **purpose** of this amendment is to expand the definition of “connected person”, with the result that it recognises connections disclosed by existing people with significant control (“PSC”) regimes, for the purposes of the definitions of the land subject to the three main elements of Part 1 of the Bill: the power to impose community engagement obligation, the extended opportunity to register a community interest in land, and the lotting provisions.

The **effect** is to create a definition of “connected person” with the following features—

- a definition which utilises a table to set out a different category of relationship between the persons in the first and second columns for each row of the table,
- a definition which clarifies that, where a person is connected to two or more other persons by virtue of the table, all of those persons are connected,
- a definition which gives rise to “connected person” status where—
  - one person (person A) requires to be registered on account of being an owner of land in a public register kept in accordance with the Land Reform (Scotland) Act 2016 (Register of Persons Holding a Controlled Interest in Land Regulations 2021 (“the RCI Regulations”) and other person has a controlling interest in that person (as defined in the RCI Regulations),
  - one person is a company (as defined in section 288 of the Taxation of Chargeable Gains Act 1992) and the other person is another company in the same group (i.e. where the companies are, or are included in a number of, companies which together form part of a group for the purposes of sections 171 to 181 of the Taxation of Chargeable Gains Act 1992 by virtue of section 170 of that Act,
  - one person (person A) is a company that is required by section 790M of the Companies Act 2006 to keep a register of people with significant control over the company and the other person is a registerable person in relation to person A or is registerable relevant legal entity in relation to person A; the terms “company” , “registerable person” and “registerable relevant legal entity” are defined in the table,
  - one person (person A) is an unregistered company that, by virtue of the Unregistered Companies Regulations 2009, is required to keep a register of people with significant control over the company and the other person is a registerable person in relation to person A or is registerable relevant legal entity in relation to person A; the terms “registerable person” and “registerable relevant legal entity” and “unregistered company” are defined in the table,
  - one person (person A) is a limited liability partnership (“LLP”) that, by virtue of the Limited Liability Partnerships (Application of Companies Act 2006) Regulations 2009, is required to keep a register of people with significant control over the LLP and the other person is a registerable person in relation to person A or is registerable relevant legal entity in relation to person A; the terms “registerable person” and “registerable relevant legal entity” and “LLP” are defined in the table,

- one person (person A) is “an eligible Scottish partnership” (as construed in accordance with the Scottish Partnerships (Register of People with Significant Control) Regulations 2017) and the other person is a registerable person in relation to person A or is registerable relevant legal entity in relation to person A; the terms “registerable person” and “registerable relevant legal entity” are defined in the table.

The above effects are achieved by inserting a new schedule into the Bill, which sets out the substantive content to be included in the following provisions:

- inserted schedule A1 of the Land Reform (Scotland) Act 2016 (meaning of “connected person” for the purposes of the community engagement obligation provisions),
- inserted schedule 1A of the Land Reform (Scotland) Act 2003 (meaning of “connected person” for the purposes of the extended opportunity to register a community interest in land and the lotting provisions).

#### **Amendments 136 and 137 (Edward Mountain)**

The **purpose** of these amendments appears to be to ensure that land counts towards the threshold of 1,000 hectares if it can be shown that the areas of land satisfy a “single business rule”: i.e. if they are managed as a single business having regard to the circumstances, including “legal status”, “economic structure and organisation”, “commercial management” and “optional arrangements”. This would be with a view to allowing Ministers to impose community engagement obligations in relation to such land. However, these amendments do not have any bearing on the formation of “composite holdings” (i.e. one where the ownership is not the same but connected); they are only relevant to whether land is treated as contiguous for the purposes of formation of single holdings.

The **effect** of the amendments is limited to allowing for land to be treated as contiguous through operation of the “single business” rule by modifying inserted section 44D(5A)(b)(i) of the 2016 Act. The land could be anywhere in Scotland but would need to be in the same ownership.

#### **Amendments 266, 267 and 268 (Mark Ruskell)**

The **purpose** and **effect** of these amendments is to replace the existing provision about when land is to be treated as contiguous for the purposes of formation of a “composite holding” used within definition of the land in relation to which community engagement obligations may be imposed. The existing provision (that land must be within 250 metres) is replaced with a rule that land must be in the same, or an adjoining, electoral ward. This is achieved by modifying inserted section 44D(5A)(a) and (b)(ii) of the 2016 Act and inserting a new subsection within inserted section 44D which defines “electoral ward” as having the meaning given by section 1 of the Local Governance (Scotland) Act 2004.

**Amendment 141 (Mairi Gougeon)**

The **purpose** and **effect** is to provide that the definition of “land” in relation to which community obligations may be imposed, which is found in inserted section 44D of the 2016 Act, includes the foreshore and other land covered by water but not the seabed. This clarifies that holdings wholly or partly comprising the foreshore or other land covered by water (except the seabed) may count towards the 1,000 hectare threshold and that, if the threshold is met, Ministers may impose community engagement obligations in relation to such land.

**Amendment 7 (Mercedes Villalba)**

The **purpose** and **effect** is to lower the threshold in relation to the land affected by the pre-notification provisions from 1,000ha to 500ha. This is achieved by replacing the reference to “1,000” in inserted section 46K(2) of the 2003 Act with “500”.

**Amendment 46 (Edward Mountain)**

The **purpose** and **effect** is to raise the threshold in relation to the land to the land affected by the pre-notification provisions from 1,000ha to 2,000ha. This is achieved by replacing the reference to “1,000” in inserted section 46K(2) of the 2003 Act with “2,000”.

**Amendments 47, 48, 49 and 50 (Mercedes Villalba)**

The **purpose** and **effect** of the amendments is to remove the requirement that the land to which pre-notification provisions apply be contiguous. This is achieved by removing references to contiguous land and related drafting from inserted section 46K(3)(a) and (4)(b)(i) of the 2003 Act and omission of inserted section 44D(4)(a) and (4A) of the 2003 Act.

**Amendments 281, 282 and 283 (Mark Ruskell)**

The **purpose** and **effect** of these amendments is to replace the existing provision about when land is to be treated as contiguous for the purposes of formation of a “composite holding” used within definition of the land to which the pre-notification provisions apply. The existing provision (that land must be within 250 metres) is replaced with a rule that land must be in the same, or an adjoining, electoral ward. This is achieved by modifying inserted section 46K(4A)(a) and (b)(ii) of the 2003 Act and inserting a new subsection within inserted section 46K which defines “electoral ward” as having the meaning given by section 1 of the Local Governance (Scotland) Act 2004.

### **Amendment 164 (Mairi Gougeon)**

The **purpose** and **effect** is to provide that references to “land” within the definition of the land to which the pre-notification provisions apply, which is found in inserted section 46K of the 2016 Act, include the foreshore and other land covered by water but not the seabed. This clarifies that holdings wholly or partly comprising the foreshore or other land covered by water (except the seabed) may count towards the 1,000 hectare threshold and that, if the threshold is met, the prohibitions specified in sections 46B and 46F will apply (unless any exemptions are engaged).

### **Amendments 8, 9 and 10 (Mercedes Villalba)**

The **purpose** of these amendments is to lower the threshold in relation to land that is affected by the lotting provisions, so that current references to 1,000 hectares in the relevant definitions are replaced with references to 500 hectares. The **effect** is to allow for two scenarios in which a transfer of land will be prohibited unless a lotting decision has been obtained:

- the land exceeds 500 hectares,
- the land exceeds 50 hectares, it forms part of a large holding (a single or composite landholding that exceeds 500 hectares), notice of intention to transfer another part, or parts, of the large holding has been given, and the total area of the the following exceeds 500 hectares:
  - the land in question, and
  - the other parts of the large holding in respect of which notice of intention to transfer has been given.

The first bullet point is achieved by modifying section 67G(2) (amendment 8). The second bullet point is achieved by modifying section 67G(3)(d) and section 67H(1) by replacing the references to “1,000” with “500” (respectively amendments 9 and 10).

### **Amendments 52, 53 and 54 (Mercedes Villalba)**

The apparent **purpose** of these amendments is to introduce a further category of land which is affected by the lotting provision. This amendment may have been prepared as an alternative to amendments 8, 9, 10 (the effects of which are described above). The **effect** is to prohibit transfer, without obtaining a lotting decision, of land exceeding 500 hectares in area and forming part of a large holding of land. This achieved by inserted a new subsection (2A) into inserted section 67G of the 2003 Act and making related modifications to inserted section 67G(1) and inserted section 67H(1) of that Act.

**Amendment 176 (Mairi Gougeon)**

The **purpose** and **effect** is to provide that references to “land” within the definition of the land to which the lotting provisions apply, which is found in inserted section 67G, include the foreshore and other land covered by water but not the seabed. This clarifies that holdings wholly or partly comprising the foreshore or other land covered by water (except the seabed) may count towards the thresholds and that, if a threshold is met, the prohibition specified in section 67C will apply (unless any exemptions are engaged).

**Amendment 177 (Edward Mountain)**

In the Bill as currently drafted there are two categories of land that will be subject to the lotting provisions. The first of those categories is land which exceeds 1,000 hectares in area. The **purpose** and **effect** is to modify inserted section 67G(2) of the 2003 Act to change the first category, so that land will be subject to the lotting provisions if it exceeds 2,000 hectares. The amendment does not modify the second category of land subject to the lotting provisions, which is described in inserted section 67G(3).

**Amendments 11 and 12 (Mercedes Villalba)**

The **purpose** of the amendments is to extend the lotting provisions to transfers of land on islands where the land constitutes a specified percentage of an island and specified hectarage.

The **effect** of amendment 11 is to add a second definition of “large holding of land” similar to that used in relation to community engagement provisions (in the Bill as introduced) but with a lower hectarage. This would bring land holdings that are 500ha in size and which constitute more than 25% of the island within the definition of “large holding of land” used in section 67G(3). But it would not affect the other category of land which is subject to the lotting provisions set out in section 67G(2). This means that this islands criteria would only be of relevance in relation to a series of transfers subject to lotting provisions under section 67G(3) but would have no relevance to a single transfer under 67G(2). Amendment 12 would add a new subsection to 67H(4) to provide that the meaning of “an inhabited island” is to be construed in accordance with section 1 of the Islands (Scotland) Act 2018.

**Amendments 55, 56, 57 and 58 (Mercedes Villalba)**

The **purpose and effect** of the amendments is to remove from the definition of a “large holding of land”, used in the definition of the land that is subject to the lotting provisions, the requirement that it be contiguous. This is achieved by removing references to contiguous land and related drafting from inserted section 67H(2)(a) and (3)(b)(i) of the 2003 Act and omission of inserted section 67H(3)(a) and (4) of the 2003 Act.

**Amendments 180 and 181 (Edward Mountain)**

The **purpose** of these amendments appears to be to ensure that land counts towards the 1,000 hectares referred to in the definition of “large holding of land”, which is relevant to one of the two categories of land subject to the lotting provisions, if it can be shown that the areas of land satisfy a “single business rule”. However, these amendments do not have any bearing on the formation of “composite holdings”; they are only relevant to whether land is treated as contiguous for the purposes of formation of single holdings.

The **effect** of the amendments is limited to allowing for land to be treated as contiguous through operation of the “single business” rule by modifying inserted section 67H(4)(a) of the 2003 Act. The land could be anywhere in Scotland but would need to be in the same ownership.

**Amendments 287, 288 and 289 (Mark Ruskell)**

The **purpose** and **effect** of these amendments is to replace the existing provision about when land is to be treated as contiguous for the purposes of formation of a “composite holding” used within definition of “large holding of land”, which is relevant to one of the two categories of land subject to the lotting provisions. The existing provision (that land must be within 250 metres) is replaced with a rule that land must be in the same, or an adjoining, electoral ward. This is achieved by modifying inserted section 67H(4)(a) and (b)(ii) of the 2003 Act and inserting a new subsection within inserted section 67H which defines “electoral ward” as having the meaning given by section 1 of the Local Governance (Scotland) Act 2004.

**Background note(s)**

[REDACTED]

**Consultation**

[REDACTED]

**Contact** [REDACTED]

## **Speaking Note – Group 6**

[REDACTED]

# Land Reform (Scotland) Bill: Stage 3 Briefing

## Group 7: Enforcement of Obligations

<b>Amendment number(s)</b> – 142, 143, 144, 270, 28, 29, 30, 31, 32, 33, 34, 145, 35, 36, 146, 147, 37, 148, 271, 272, 149, 38, 150, 273, 274
<b>Subject – Enforcement of Obligations</b>
<b>Speaking Order</b>
Group will be led by <b>Rhoda Grant</b> who will speak first to amendments 142, 144, 270.  <b>Cabinet Secretary</b> will speak to amendment 143 and all the other amendments in the group. Edward Mountain will speak to amendments 28, 29, 30, 31, 32, 33, 34, 145, 35, 36, 146, 147, 37, 149 and 38. Tim Eagle will speak to amendments 148, 271, 272, 150, 273 and 274.  The Presiding Officer will then invite other MSPs to speak.  <b>Rhoda Grant</b> will close the discussion.
<b>Government position</b>
[REDACTED]
<b>Text of amendment(s)</b>
<b>Rhoda Grant</b> <b>142</b> In section 1, page 5, line 21, at end insert— <p style="margin-left: 40px;">&lt;(aza) a community body, including—</p> <ul style="list-style-type: none"><li>(i) a community controlled body (as defined in section 19 of the Community Empowerment (Scotland) Act 2015),</li><li>(ii) a development trust,&gt;</li></ul>
<b>Mairi Gougeon</b> <b>143</b> In section 1, page 5, line 22, leave out <where> and insert <if>
<b>Rhoda Grant</b> <b>144</b> In section 1, page 5, line 27, at end insert— <p style="margin-left: 40px;">&lt;(aba) a grazings committee appointed under section 47 of Crofters (Scotland) Act 1993, if the land to which</p>

the report of the alleged breach relates falls wholly or partly within its area,>

**Rhoda Grant**

**270** In section 1, page 5, line 27, at end insert—

<(aba) a grazings committee or a grazings constable, if the land to which the report of the alleged breach relates falls (wholly or partly) within the common grazing in relation to which the committee or, as the case may be, the constable is appointed under section 47 of the Crofters (Scotland) Act 1993,>

**Edward Mountain**

**28** In section 1, page 6, line 23, after <must> insert <only>

**Edward Mountain**

**29** In section 1, page 6, line 31, leave out <from the same person>

**Edward Mountain**

**30** In section 1, page 6, line 31, after <person> insert <, and

(c) that the report has been submitted by a person permitted to do so under section 44E(2)>

**Edward Mountain**

**31** In section 1, page 6, line 36, after <specify> insert <(but which must not exceed 28 days)>

**Edward Mountain**

**32** In section 1, page 6, line 36, at end insert—

<(2A) The Commissioner must decline to investigate a report of an alleged breach by giving notice in writing to the person that submitted the report where the conditions in subsection (1) are not met.>

**Edward Mountain**

**33** In section 1, page 6, line 39, after <(1)(b)> insert <or (1)(c)>

**Edward Mountain**

**34** In section 1, page 7, line 14, at beginning insert <no later than 28 days after the day on which the Commissioner has decided to investigate the alleged breach,>

**Edward Mountain**

**145** In section 1, page 7, line 14, at beginning insert <at the same time as giving notice under subsection (4)(a),>

**Edward Mountain**

**35** In section 1, page 7, line 17, after <Commissioner> insert <(but which must not exceed a period of 6 weeks)>

**Edward Mountain**

**36** In section 1, page 7, line 31, at beginning insert <no later than 28 days after the day on which the Commissioner has decided to investigate the alleged breach,>

**Edward Mountain**

**146** In section 1, page 7, line 34, after <Commissioner> insert <(which must be reasonable having regard to all the circumstances and must not exceed 6 weeks)>

**Edward Mountain**

**147** In section 1, page 7, line 41, after <identified> insert <if, in the view of the Commissioner, this could adversely affect a commercial business>

**Edward Mountain**

**37** In section 1, page 8, line 26, leave out <£40,000> and insert <£20,000>

**Tim Eagle**

**148** In section 1, page 8, line 26, leave out <£40,000> and insert <£5,000>

**Tim Eagle**

**271** In section 1, page 8, line 26, after <£40,000> insert <for repeated offences>

**Tim Eagle**

**272** In section 1, page 8, line 26, after <£40,000> insert <, and must only be used in full for repeat offences>

**Edward Mountain**

**149** In section 1, page 8, line 26, at end insert—

**<44HA Guidance as to use of sanctions**

The Commissioner must, before the expiry of the period of 6 months beginning with the day of Royal Assent of the Land Reform (Scotland) Act 2025, publish guidance on—

- (a) the scale that will be used for fines under this Chapter,
- (b) the enforcement of fines under this Chapter.>

**Edward Mountain**

**38** In section 1, page 9, line 32, after second <must> insert <be reasonable in all the circumstances and>

**Tim Eagle**

**150** In section 1, page 10, line 4, leave out <£40,000> and insert <£5,000>

**Tim Eagle**

**273** In section 1, page 10, line 4, after <£40,000> insert <for repeated offences>

**Tim Eagle**

**274** In section 1, page 10, line 4, after <£40,000> insert <, and must only be used in full for repeat offences>

**Purpose and Effect**

**Amendment 142, 144 and 270 (Rhoda Grant)**

These all have the **purpose** and **effect** of amending inserted section 44E(2) of the Land Reform (Scotland) Act 2016 (“the 2016 Act”) to expand the list of bodies who may submit a report of an alleged breach of a community engagement obligation to the LCC. They each add different bodies as set out below.

**Amendment 142** – “community bodies” including but not limited to community controlled bodies (as defined in section 19 of the Community Empowerment (Scotland) Act 2015) and development trusts.

**Amendments 144** – includes grazings committees only. It requires that breaches be committed wholly or partly within the grazing area. Grazings committees are defined by reference to section 47 of the Crofters (Scotland) Act 1993.

**Amendment 270 [REDACTED]**

– included both grazings committees and grazing constables. It requires that breaches be committed wholly or partly within the grazing area. Grazings committee and grazings constables are defined by reference to section 47 of the Crofters (Scotland) Act 1993.

#### **Amendment 143 (Mairi Gougeon)**

The **purpose** of this amendment is to address a minor drafting error in inserted section 44E(2)(aa) of the 2016 Act. The Stage 2 amendment stated that a community council may only report a breach ‘where the land to which the report of the alleged breach relates falls wholly or partly within its area’. This amendment changes ‘where’ to ‘if’ for consistency with the drafting of the rest of section 44E. This amendment is purely stylistic and has no **effect**.

#### **Amendment 28, 32 (Edward Mountain)**

The **purpose** of these amendments is to prevent the LCC from investigating a reported breach if the conditions set out in inserted 44F(1) of the 2016 Act are not met. This is a change from the current drafting which places a duty on the LCC to investigate a breach where the conditions are met but does not prevent them from investigating if they are not.

The **effect** of Amendment 28 is to add “only” to 44F(1) so that it now reads “The Land and Communities Commissioner must **only** investigate....”.

The **effect** of amendment 32 is to add a new subsection 2A to 44F which sets out that the Commissioner must decline to investigate a report by giving notice in writing to the person that submitted the report when the conditions in 44F(1) are not met.

#### **Amendment 29 (Edward Mountain)**

The **purpose** of this amendment is to change the current protection against repeated reports from the same person on the same issue set out at 44B(1)(b) into a wider block against consideration of the same issue being reported by **any person**. This **effect** is to amend inserted 44F(1)(b) to remove the qualification that a previous report was from the same person.

#### **Amendment 30 and 33 (Edward Mountain)**

The **purpose** of these amendments is to require that the LCC must be satisfied that a report has been submitted by a person permitted to do so under 44E(2) before they can investigate a breach.

Amendment 30 adds a new list item (c) to inserted 44F(1) of the 2016 Act which sets this condition. This amendment has no **effect** as it duplicates 44E(1).

Amendment 33 is a consequential amendment with the **effect** of adding a reference to the new subsection (1)(c) to inserted 44F(3), which sets out where the Commissioner may decline to investigate a report.

#### **Amendment 31 (Edward Mountain)**

This **purpose** of this amendment is to require that when the Commissioner requires further information from a person who reported a breach, the period they specify for this information being provided must not exceed 28 days. The **effect** is to amend inserted 44F(2) of the 2016 Act.

**Amendment 34 (Edward Mountain)**

The **purpose** and **effect** of this amendment is to amend 44F(4) to establish a 28 day time limit, for the LCC sharing a copy of a report alleging breach with the person alleged to have committed the breach, from the date they decide to investigate a breach.

**Amendment 145 (Edward Mountain)**

The **purpose** and **effect** of this amendment is to amend 44F(4) to require that, once the LCC decides to investigate a breach, they must share information with the person alleged to have committed the breach at the same time as giving notice to the person that submitted the breach report. This is an alternate amendment to 34 above.

**Amendment 35 and 146 (Edward Mountain)**

The **purpose** and **effect** of these amendments is to require that, when the LCC requests a response from the person alleged to have committed the breach, the period they specify for this response must not exceed 6 weeks.

The **effect** of Amendment 35 is to amend inserted 44F(4)(b)(ii) of the 2016 Act to set this time limit for investigation of a breach reported under 44E.

The **effect** of Amendment 146 is to amend inserted 44F(6)(b)(ii) of the 2016 Act to sets this time limit where the LCC has decided to investigate an alleged breach without a report.

**Amendment 36 (Edward Mountain)**

The **purpose** and **effect** of this amendment is to amend 44F(6) to require that, when the LCC decides to investigate an alleged breach without a report from a reporting body, they must send their own report setting out details alleging breach and a request for response no later than 28 days after deciding to investigate.

**Amendment 147 (Edward Mountain)**

The **purpose** of this amendment is to only allow the Commissioner to redact information in a breach report when they view the disclosure could result in someone being identified and that identification could adversely affect a commercial business. The **effect** is to add this new requirement to those set out in inserted 44F(7).

**Amendment 37 (Edward Mountain)**

The **purpose** and **effect** of this is to lower the amount of fine that the LCC can impose on a person for a breach of obligations from £40,000 to £20,000.

**Amendment 148 and 150 (Tim Eagle)**

The **purpose** of these amendments is to lower the amount of fine that the LCC can impose on a person for a breach of obligations from £40,000 to £5,000.

Amendment 148 has the **effect** of updating this value for sanctions under inserted 44H(3) of the 2016 Act.

Amendment 150 has the **effect** of updating this value for sanctions under inserted 44IA(5) of the 2016 Act (sanctions following issue of an enforcement notice issued where a person remains in breach after the initial sanction under 44H).

**Amendment 271 and 273 (Tim Eagle)**

The **purpose** of these amendments is to limit the ability to issue a fine of £40,000 to only repeat breaches. However the **effect** is simply that the maximum amount for an initial breach would be unstated.

Amendment 271 applies to sanctions under 44H, and amends inserted subsection 44H(3).

Amendment 273 applies to sanctions under 44IA and amends inserted subsection 44IA(5)

**Amendment 272 and 274 (Tim Eagle)**

The **purpose** of these amendments are the same as Amendments 271 and 273, however the wording of this version is clearer in specifying that the £40,000 limit must only be used in full for repeat breaches. The **effect** of this amendment would be that the full fine amount of £40,000 could not be issued for an initial breach.

Amendment 272 applies to sanctions under 44H, and amends inserted subsection 44H(3).

Amendment 274 applies to sanctions under 44IA and amends inserted subsection 44IA(5)

**Amendment 149 (Edward Mountain)**

The **purpose** and **effect** of this amendment is to add a new section 44HA to the Bill, requiring that the LCC must publish guidance on the scale and enforcement of fines within 6 months of Royal Assent of the Act.

**Amendment 38 (Edward Mountain)**

The **purpose** of this amendment is to clarify that when the LCC are setting a period within which steps must be taken to remedy a breach as part of an enforcement notice, this period must 'be reasonable in all the circumstances' as well as being no less than 28 days. This amendment adds this wording to inserted 44IA of the 2016 Act but has little **effect**.

**Background note(s)**

[REDACTED]

**Consultation**

[REDACTED]

**Contact** – [REDACTED]

## **Speaking Note – Group 7**

[REDACTED]

# Land Reform (Scotland) Bill: Stage 3 Briefing

## Group 8: Powers to Modify

<b>Amendment number(s)</b> – 152, 39, 275, 156, 158, 165, 167, 168, 51, 284, 170, 171, 172, 173, 174, 195, 75, 304, 113, 114
<b>Subject – Powers to Modify</b>
<b>Speaking Order</b>
Group will be led by the <b>Cabinet Secretary</b> who will speak first to amendments 152, 156, 158, 165, 167, 168, 170, 171, 172, 173, 174 and 195 (and all then all the other amendments in the group).  Edward Mountain will speak to amendments 39, 51, 75, 113 and 114. Rhoda Grant will speak to amendments 275, 284 and 304.  The Presiding Officer may then invite other MSPs to speak.  The <b>Cabinet Secretary</b> will close the discussion.
<b>Government position</b>
[REDACTED]
<b>Text of amendment(s)</b>
<b>Mairi Gougeon</b> <b>152</b> In section 1, page 12, line 10, after <change> insert <(or clarify)>
<b>Edward Mountain</b> <b>39</b> In section 1, page 12, line 17 after <section> insert <— (a) lay a copy of the draft regulations before the Scottish Parliament for a period of 90 days, of which no fewer than 30 days must be days which the Scottish Parliament is not dissolved or in recess, (b) seek the views of a committee of the Scottish Parliament whose remit includes matters relating to land reform for the time being appointed by virtue of the standing orders, and (c)>
<b>Rhoda Grant</b> <b>275</b> In section 1, page 12, line 17, at end insert— <b>&lt;44N Subordinate legislation: pre-laying procedure</b>

- (1) This section applies where the Scottish Ministers propose to lay before the Scottish Parliament a draft of a statutory instrument containing regulations made under section 44M.
- (2) The Scottish Ministers must, before doing so, lay before the Parliament—
  - (a) a copy of the proposed regulations,
  - (b) a statement setting out their reasons for proposing to make those regulations, and
  - (c) in the case of regulations mentioned in section 44M(1)(a), a statement setting out whether the proposed limit is consistent with the most up-to-date advice they have received from the relevant body.
- (3) The Scottish Ministers must, when laying such a copy, specify a period (the “representation period”) during which representations on the proposed regulations may be made to them.
- (4) The representation period must be at least 90 days, of which no fewer than 30 must be days on which the Parliament is not dissolved or in recess.
- (5) The Scottish Ministers must, as soon as reasonably practicable after laying a copy of the proposed regulations, publicise them in such manner as they consider appropriate.
- (6) The Scottish Ministers must, before laying the proposed regulations before the Parliament, have regard to—
  - (a) any representations on the proposed regulations made to them,
  - (b) any resolution relating to those regulations passed by the Parliament, and
  - (c) any report relating to those regulations published by any committee of the Parliament for the time being appointed by virtue of standing orders, before the expiry of the representation period.
- (7) The Scottish Ministers must, when laying such proposed regulations, lay a statement setting out—
  - (a) details of any representations, resolutions or reports mentioned in subsection (6),
  - (b) the changes (if any) they have made to the proposed regulations in response to such representations, resolutions or reports and the reasons for those changes, and

(c) in the case of regulations mentioned in section 44M(1)(a), whether the proposed limit is consistent with the most up-to-date advice they have received from the relevant body.

(8) In this section, “proposed regulations” means a draft of a statutory instrument to which subsection (1) applies.>

**Mairi Gougeon**

**156** In section 2, page 17, line 6, at end insert—

<(c) a transfer of a kind exempted by section 46L(1A).>

**Mairi Gougeon**

**158** In section 2, page 18, leave out lines 4 and 5

**Mairi Gougeon**

**165** In section 2, page 19, leave out lines 7 to 26

**Mairi Gougeon**

**167** In section 2, page 19, line 29, after <change> insert <(or clarify)>

**Mairi Gougeon**

**168** In section 2, page 19, line 31, at end insert—

<(1A) Ministers may by regulations—

- a. specify transfers of land to which section 46B(1) and a prohibition imposed under section 46F(1) do not apply, and
- b. in consequence of provision made by paragraph (a), modify sections 46ZJ and 46J.>

**Edward Mountain**

**51** In section 2, page 19, line 32, after <section> insert <—

- (a) lay a copy of the draft regulations before the Scottish Parliament for a period of 90 days, of which no fewer than 30 days must be days which the Scottish Parliament is not dissolved or in recess,
- (b) seek the views of a committee of the Scottish Parliament whose remit includes matters relating to land reform for the time being appointed by virtue of the standing orders, and
- (c)>

**Rhoda Grant**

**284** In section 2, page 19, line 33, at end insert—

**<46M Subordinate legislation: pre-laying procedure**

- (1) This section applies where the Scottish Ministers propose to lay before the Scottish Parliament a draft of a statutory instrument containing regulations made under section 46L.
- (2) The Scottish Ministers must, before doing so, lay before the Parliament—
  - (a) a copy of the proposed regulations,
  - (b) a statement setting out their reasons for proposing to make those regulations, and
  - (c) in the case of regulations mentioned in section 46L(1)(b), a statement setting out whether the proposed limit is consistent with the most up-to-date advice they have received from the relevant body.
- (3) The Scottish Ministers must, when laying such a copy, specify a period (the “representation period”) during which representations on the proposed regulations may be made to them.
- (4) The representation period must be at least 90 days, of which no fewer than 30 must be days on which the Parliament is not dissolved or in recess.
- (5) The Scottish Ministers must, as soon as reasonably practicable after laying a copy of the proposed regulations, publicise them in such manner as they consider appropriate.
- (6) The Scottish Ministers must, before laying the proposed regulations before the Parliament, have regard to—
  - (a) any representations on the proposed regulations made to them,
  - (b) any resolution relating to those regulations passed by the Parliament, and
  - (c) any report relating to those regulations published by any committee of the Parliament for the time being appointed by virtue of standing orders, before the expiry of the representation period.
- (7) The Scottish Ministers must, when laying such proposed regulations, lay a statement setting out—
  - (a) details of any representations, resolutions or reports mentioned in subsection (6),
  - (b) the changes (if any) they have made to the proposed regulations in response to such representations,

resolutions or reports and the reasons for those changes, and

- (c) in the case of regulations mentioned in section 46L(1)(b), whether the proposed limit is consistent with the most up-to-date advice they have received from the relevant body.
- (8) In this section, “proposed regulations” means a draft of a statutory instrument to which subsection (1) applies.>

**Mairi Gougeon**

**170** In section 3, page 20, line 4, leave out <(4)> and insert <(3A)>

**Mairi Gougeon**

**171** In section 3, page 20, line 4, leave out <(6)> and insert <(7)>

**Mairi Gougeon**

**172** In section 3, page 20, line 4, at end insert—

<(3A) In section 36 (register of community interests in land), after subsection (6) insert— “(6A) Ministers may by regulations—

- (a) modify this section to change the information and documents required to be in the Register,
- (b) modify this Part to impose duties on themselves to provide information and documents to the Keeper for the purposes of entering them in the Register.”.>

**Mairi Gougeon**

**173** In section 3, page 20, line 14, after <(5)> insert <—

( ) for “36” substitute “36(6)”,  
( ) after “(4B),” in the first place in which it appears, insert “36(6A),”, ( )>

**Mairi Gougeon**

**174** In section 3, page 20, line 14, leave out <46KA,>

**Mairi Gougeon**

**195** In section 4, page 31, line 18, after <change> insert <(or clarify)>

**Edward Mountain**

**75** In section 4, page 31, line 26, after <section> insert <—

- (a) lay a copy of the draft regulations before the Scottish Parliament for a period of 90 days, of which no fewer than 30 days must be days which the Scottish Parliament is not dissolved or in recess,
- (b) seek the views of a committee of the Scottish Parliament whose remit includes matters relating to land reform for the time being appointed by virtue of the standing orders, and
- (c)>

**Rhoda Grant**

**304** In section 4, page 31, line 27, at end insert—

**<67Z Subordinate legislation: pre-laying procedure**

- (1) This section applies where the Scottish Ministers propose to lay before the Scottish Parliament a draft of a statutory instrument containing regulations made under section 67Y.
- (2) The Scottish Ministers must, before doing so, lay before the Parliament—
  - (a) a copy of the proposed regulations,
  - (b) a statement setting out their reasons for proposing to make those regulations, and
  - (c) in the case of regulations mentioned in section 67Y(1)(b), a statement setting out whether the proposed limit is consistent with the most up-to-date advice they have received from the relevant body.
- (3) The Scottish Ministers must, when laying such a copy, specify a period (the “representation period”) during which representations on the proposed regulations may be made to them.
- (4) The representation period must be at least 90 days, of which no fewer than 30 must be days on which the Parliament is not dissolved or in recess.
- (5) The Scottish Ministers must, as soon as reasonably practicable after laying a copy of the proposed regulations, publicise them in such manner as they consider appropriate.
- (6) The Scottish Ministers must, before laying the proposed regulations before the Parliament, have regard to—
  - (a) any representations on the proposed regulations made to them,

- (b) any resolution relating to those regulations passed by the Parliament, and
  - (c) any report relating to those regulations published by any committee of the Parliament for the time being appointed by virtue of standing orders, before the expiry of the representation period.
- (7) The Scottish Ministers must, when laying such proposed regulations, lay a statement setting out—
- (a) details of any representations, resolutions or reports mentioned in subsection (6),
  - (b) the changes (if any) they have made to the proposed regulations in response to such representations, resolutions or reports and the reasons for those changes, and
  - (c) in the case of regulations mentioned in section 67Y(1)(b), whether the proposed limit is consistent with the most up-to-date advice they have received from the relevant body.
- (8) In this section, “proposed regulations” means a draft of a statutory instrument to which subsection (1) applies.>

**Edward Mountain**

**113** In section 29, page 84, line 33, after <procedure:> insert <section 28, and>

**Edward Mountain**

**114** In section 29, page 85, line 1, leave out subsection (4)

**Purpose and Effect**

**Amendments 152, 167 and 195 (Mairi Gougeon)**

The **purpose** and **effect** of these amendments is to make clear that powers to modify provisions in the community engagement obligations, pre-notification or the transfer test can also be used to clarify the provisions. This is achieved by adding the text ‘or clarify’ to inserted section 44M(1) of the Land Reform (Scotland) Act 2016, and inserted sections 46L(1) and 67Y(1) of the Land Reform (Scotland) Act 2003.

**Amendments 39, 51 and 75 (Edward Mountain)**

The **purpose** and **effect** of the amendments is to add pre-laying procedures (often known as super-affirmative procedures) to the powers to modify the community engagement obligations, pre-notification and transfer test provisions in the Bill. This doesn't affect the procedures applicable to the various other regulation making powers in inserted Chapter 2 of the Land Reform (Scotland) Act 2016 ("the 2016 Act"), inserted Chapter 2A of the Land Reform (Scotland) Act 2003 ("the 2003 Act") and inserted Part 2A of the 2003 Act; the pre-laying procedures are applied to the powers in sections 44M(2), 46L(2) and 67Y(2) to modify the provisions of the Bill itself, such as the definitions of the land affected by the provisions (including the thresholds and the definitions of contiguous holdings and connected persons)The procedures would require a draft of the regulations to be laid before Parliament for 90 days (of which no fewer than 30 days must be when the Parliament is not dissolved or in recess) and for the Scottish Ministers to seek the views of the most relevant committee.

#### **Amendments 275, 284 and 304 (Rhoda Grant)**

Similar to the Edward Mountain amendments listed above, the **purpose** and **effect** of the amendments is to add pre-laying procedures to the powers to modify the community engagement obligations, pre-notification and transfer test provisions in the Bill. The amendments also require a draft of the regulations to be laid before Parliament for 90 days (of which no fewer than 30 days must be when the Parliament is not dissolved or in recess) for each use of the powers in sections 44M, 46L and 67Y. The requirements placed on Ministers are much more onerous than those involved in Edward Mountain's amendments as they include additional requirements to publish, make detailed statements and to have regard to any representations made as part of the pre-laying process.

The above is achieved by inserting section 44N into the 2016 Act, and sections 46M and 67Z into the 2003 Act, with each new section outlining the pre-laying procedure to be followed.

#### **Amendment 156 (Mairi Gougeon)**

The **purpose** of this amendment is to make provision related to amendment 168, which confers a power on Ministers to by regulations specify transfers of land which are not subject to the prohibitions which underpin the extended opportunity to register a community interest in land conferred by inserted Chapter 2A of the Land Reform (Scotland) Act 2003 ("the 2003 Act"). The **effect** is to clarify that the prohibitions do not apply to a transfer exempted by regulations and to signpost to the possibility of such exemption existing. This is achieved by modifying inserted section 46H(2).

#### **Amendments 158, 165 and 174 (Mairi Gougeon)**

Given the proposed change to allow types of transfer, as well as specified areas of land, to be exempted from the pre-notification requirements in the Bill under regulations made under the power proposed in amendment 168, the **purpose** and **effect** of amendment 165 is to remove inserted section 46KA from the Land Reform (Scotland) Act 2003 ("the 2003 Act"). Section 46KA allows for exemption in narrower circumstances than the exemptions that would be possible to prescribe under the provision inserted by amendment

168. The **purpose** and **effect** of amendment 158 is to remove inserted section 46K(2) of the 2003 Act, which makes provision relating to section 46KA. The purpose and effect of amendment 174 is to remove reference to section 46KA from section 3(6)(b) of the Bill. Both amendments 158 and 174 are consequential to amendment 165.

**Amendment 168 (Mairi Gougeon)**

The **purpose** and **effect** is to confer a power on Ministers to specify transfers of land to which the prohibitions which underpin the extended opportunity to register a community interest in land conferred by inserted Chapter 2A of the Land Reform (Scotland) Act 2003 (“the 2003 Act”) do not apply. This would allow for Ministers to impose exemptions in wider circumstances than the exemption provided for in inserted section 46KA of the 2003 Act. The proposed power would allow types of transfer, rather than simply transfers of specified areas of land, to be exempted from the prohibitions.

The above effect is achieved by inserting a new subsection (1A) into section 46L containing the power to make regulations, together with a power to modify sections 46ZJ and 46J in consequence of such regulations.

**Amendments 170, 171, 172 and 173 (Mairi Gougeon)**

The Register of Community Interests in Land (“the Register”) was established by section 36(1) of the Land Reform (Scotland) Act 2003 (“the 2003 Act”). Section 36(2) of the 2003 Act specifies the information and documents that must be included in the Register.

The **purpose** and **effect** of **amendment 172** is to confer a power on Ministers to change the information and documents required to be in the Register, and to impose duties on themselves to provide information and documents to the Keeper for inclusion in the Register. Ministers anticipate use of such a power to facilitate and require registration of information about the taking of procedural steps under inserted Chapter 2A of the 2003 Act (the extended opportunity to register a community interest in land). The above **effect** achieved by inserting section 36(6A) into the 2003 Act. The regulation making power is subject to

**Amendment 170** makes a related amendment arising from amendment 172 while **amendment 173** modifies section 3(6)(b) of the Bill so that section 98(5) of the 2003 Act refers to the new section 36(6A). This has the effect of making regulations under section 36(6A) subject to affirmative procedure.

**Amendment 171 is not to be moved.** It related to a previous iteration of amendments which has been superseded. It is therefore no longer required (and would cause confusion if moved and agreed to).

**Amendment 113 and 114 (Edward Mountain)**

The **purpose** of these amendments is to require that regulations under section 28(1) of the Bill (Ancillary provision) are subject to the affirmative procedure.

Section 28 enables the Scottish Ministers to make, by regulations, ancillary provision for the purposes of, in connection with, or to give full effect to the Act

(i.e. the Bill once enacted) or any provision made under it. Regulations under section 28(1) may modify any enactment (including the Bill once enacted).

Section 29(4) provides that such regulations are subject to the affirmative procedure if they textually amend an Act of the Scottish Parliament or the UK Parliament, but are otherwise subject to the negative procedure.

**Amendment 113** amends section 29(2) of the Bill – which provides that the affirmative procedure is to apply to regulations under the provisions specified – to include reference to section 28. **Amendment 114** makes a consequential amendment to remove section 29(4) of the Bill.

The **effect** is that any regulations under section 28(1) would be subject to the affirmative procedure (whether or not the regulations textually amend an Act).

**Background note(s)**

[REDACTED]

**Consultation**

[REDACTED]

**Contact** – [REDACTED]

## **Speaking Note – Group 8**

[REDACTED]

# Land Reform (Scotland) Bill: Stage 3 Briefing

## Group 9: Community rights to buy

<b><u>Amendment number(s)</u></b> – 278,154,41,279,42,280,155,157,169,285,286
<b>Subject – Community rights to buy</b>
<b>Speaking Order</b>
Group will be led by <b>Rhoda Grant</b> , who will speak first to amendments 278, 285.  Cabinet Secretary, you will speak to amendments 154, 157 (and all the other amendments in the group). Edward Mountain will speak to amendments 41, 42, 155, 169. Michael Matheson will speak to amendments 279, 280. Mark Ruskell will speak to amendment 286.  The Presiding Officer will then invite other MSPs to speak. If there are particular points addressed to the Cabinet Secretary you may be invited to respond if time allows.  <b>Rhoda Grant</b> will close the discussion.
<b>Government position</b>
[REDACTED]
<b>Text of amendment(s)</b>
<b>Rhoda Grant</b> <b>278</b> In section 2, page 14, line 12, at end insert—  <(4) Ministers must issue guidance in relation to the making of a request under subsection (2). (5) Ministers must make publicly available the latest version of any guidance issued under subsection (4) as soon as practicable after issuing it.>
<b>Mairi Gougeon</b> <b>154</b> In section 2, page 14, line 20, after <lifted> insert <(but see section 46H(2))>
<b>Edward Mountain</b> <b>41</b> In section 2, page 14, line 32, leave out <Having received> and insert <As soon as reasonably practicable and not more than 14 days after receiving>

**Michael Matheson**

**279** In section 2, page 15, line 23, leave out from <until—> to end of line 26 and insert <until they have decided whether they are or are not required to impose such a prohibition.

- (3) If Ministers decide that they are required to impose a prohibition on the transfer of the land under section 46F they must not give notice under subsection (1) before giving notice under section 46F(2) intimating the imposition of that prohibition.
- (4) The giving of notice under subsection (1) is not to be delayed by virtue of subsection (2) beyond the period of 60 days beginning with the day that Ministers fulfilled their duty under section 46D to publicise the possible transfer of the land.
- (5) Any failure to comply with the time limit specified in subsection (4) does not affect the validity of anything done under this section.>

**Edward Mountain**

**42** In section 2, page 15, line 26, at end insert—

<(3) Ministers must give notice under subsection (1) or, as the case may be, section 46F(2)(a), within the period of 28 days beginning with the day on which the period specified in subsection (1) expires.>

**Michael Matheson**

**280** In section 2, page 15, line 36, leave out <the person receives notice from Ministers> and insert <Ministers give notice>

**Edward Mountain**

**155** In section 2, page 16, line 18, at end insert—

<(iii) there is a reasonable prospect of sufficient funds being raised for the purchase of the land if the community interest in the land was to be registered.>

**Mairi Gougeon**

**157** In section 2, page 17, line 28, at end insert—

**<46ZJ Requirement for declaration of compliance with Chapter**

- (1) Where land to which section 46K applies is being transferred, the transferor is to incorporate in the deed giving effect to the transfer a declaration in prescribed form confirming that the transfer is not in contravention of any prohibition under this Chapter.

- (2) A declaration under subsection (1) is not required if a declaration under section 46J is required in relation to the land being transferred.>

### **Edward Mountain**

**169** After section 2, insert—

#### **<Community right to buy: registration of interest and securing funds**

- (1) The Land Reform (Scotland) Act 2003 is modified as follows.
- (2) In section 37 (registration of interest in land), in subsection (1) after second “land” insert “and how the community body expects to raise the necessary funds for purchase of the land”.
- (3) In section 38 (criteria for registration), in subsection (1), after paragraph (c) insert—

“(ca) that there is a reasonable chance that the community body would be able to raise sufficient funds to purchase the land;”>

### **Rhoda Grant**

**285** After section 3, insert—

#### **<Duty to promote community ownership**

- (1) The Land Reform (Scotland) Act 2003 is modified as follows.
- (2) After section 67B, insert—

##### **1.1.1 “Duty to promote community ownership**

- (1) The Scottish Ministers must promote genuine community ownership of land, in particular through—
  - (a) co-operatives,
  - (b) community benefit societies,
  - (c) community interest companies.
- (2) The Scottish Ministers must report to the Parliament annually on—
  - (a) how they have fulfilled the duty in subsection (1), and
  - (b) progress towards increasing the amount of land owned by co-operatives, community benefit societies a community interest companies.”.>

**Mark Ruskell**

**286** After section 3, insert—

**<Community right to buy: abandoned, neglected or detrimental land**

- (1) The Land Reform (Scotland) Act 2003 is modified as follows.
- (2) In section 97C (right to buy eligible land), after subsection (2) insert—

“(2A) For the purposes of subsection (2)(a), land is to be considered wholly or mainly abandoned or neglected if less than 25% of the land is frequently used.”.
- (3) In section 97G (right to buy: application for consent), after subsection (10) insert—

“(10A) When the owner of the land receives an invitation under subsection (9)(a)(i), the owner is precluded from making any changes to the land until the Scottish Ministers have decided whether or not to consent to the application under this section.”.>

**Purpose and Effect**

**Amendment 278 (Rhoda Grant) [REDACTED]**

The **purpose** is to require Ministers to issue guidance on pre-notification, specifically on the steps that a person must take to add, change or remove their information from the list of people to be notified.

The **effect** is to place a duty on Ministers to issue guidance in relation to the making of a request (under inserted section 46A(2) of the Land Reform (Scotland) Act 2003) to add, remove or change details on the list of people who must be notified of possible land transfers. Ministers will also be required to make the latest guidance publicly available as soon as practicable after issuing it.

**Amendment 154 (Mairi Gougeon)**

The **purpose** and **effect** is to introduce a legislative reference within inserted section 46B(1) (prohibition on transfer to allow time for interest to be registered). The reference is to section 46H(2). The purpose is to signpost the exemptions to the prohibitions imposed by section 46B(1) found in section 46H(2).

**Amendment 41 (Edward Mountain)**

The **purpose** is to create a deadline of 14 days, running from the day Ministers receive notice from a landowner of intention to transfer land, for taking the necessary steps to publicise the landowner’s intention to transfer land.

The **effect** is to amend section 46D, which sets out the procedure for Ministers to follow having received a notice under section 46C or 48 of an intention to transfer land which is in scope. The amendment imposes a duty on Ministers to publicise the matters listed in section 46D(1) as soon as reasonably practicable and not more than 14 days after receiving the notification. This means that Ministers would need to take all the steps described in section 46D(2) within that period.

**Amendment 279 (Michael Matheson) [REDACTED]**

The pre-notification provisions rely upon two different periods of prohibition on transferring land and taking action with a view to transfer land: an initial period lasting a minimum of 30 days; and a further period of 70 days which may be imposed if certain conditions are met.

The Bill as amended at Stage 2 allows Ministers to lift the initial prohibition after a period of 30 days has elapsed, such period beginning with the day Ministers fulfilled their duty to publicise the possible transfer of land. However, there is no requirement to issue such a notice lifting the prohibition immediately upon expiry of that 30 day period.

The **purpose** of this amendment is to specify a further period of 30 days within which Ministers are required to issue the notice lifting the initial prohibition. This is achieved by requiring Ministers to give notice that the initial prohibition under section 46B(1) no later than 60 after the day Ministers fulfilled their duty to publicise the possible transfer of land. This equates to a period of 30 days within which Ministers must issue the notice, because the ability to lift the prohibition arises 30 days after the same date. The amendment also makes other related modifications to section 46B.

The **effect** of this amendment is to modify section 46E(2) to replace the existing rule about when a notice may be given under section 46E(1) to lift the prohibition on transferring land under section 46B(1) and to insert other related provisions into section 46E. The new rule in section 46E(2) proposed by this amendment is that if, when the minimum period of 30 days expires, Ministers are considering whether to impose a prohibition on the transfer of land under section 46F(1), they are not to give notice under section 46E until they have decided whether they are required to impose such a prohibition.

A new subsection (3) is inserted into section 46E which provides that Ministers must not give notice under section 46E(1) lifting the initial prohibition before giving notice under section 46F to impose a further period of prohibition if Ministers decide that they are required to impose such a prohibition.

A new subsection (4) is inserted into section 46E which provides that the giving of a notice lifting the initial prohibition under section 46E is not to be delayed by virtue of subsection (2) beyond the period of 60 days beginning with the day that Ministers fulfilled their duty under section 46D to publicise the possible transfer of the land.

A new subsection (5) is inserted into section 46E which provides that any failure to comply with the time limit specified in subsection (4) does not affect the validity of anything done by Ministers under section 46E.

The combined effect of the modifications to section 46E made by this amendment is that, once the minimum duration of the initial period of prohibition of 30 days has elapsed, Ministers have a further period of 30 days to either lift the prohibition without imposing a further period of prohibition under section 46F or, alternatively, to replace the initial prohibition with a further period of prohibition under section 46F.

**Amendment 42 (Edward Mountain)**

The **purpose** of this is to create a time limit of 28 days for Ministers to decide whether to give notice lifting the initial prohibition period or to give notice applying the second prohibition period, after the minimum duration (30 days) of the initial prohibition period has expired.

However, the **effect** of the amendment is uncertain as it refers to imposition of the second prohibition period and the lifting of the initial prohibition period as alternatives, whilst in fact both steps would be required if the second prohibition period were to be imposed. It does not make any provision about the sequencing of the two notices that would be required when imposing the second period of prohibition. It does not make any provision about the consequences of failure to comply with the time limit imposed.

**Amendment 280 (Michael Matheson) [REDACTED]**

The **purpose** and **effect** is to provide that the second prohibition period under section 46F is imposed when Ministers give notice. This is a change to the existing provision that the second prohibition period is imposed when the notice is received. This amendment will assist Ministers in complying with the time limit imposed by amendment 279 and will enable the notice imposing the second prohibition period and the notice lifting the initial prohibition period to be combined in single document.

**Amendment 155 (Edward Mountain)**

The **purpose** of this is to add a further condition which must be met before Ministers may apply the second pre-notification prohibition period. The condition is that Ministers must be satisfied that there is a reasonable prospect of sufficient funds being raised for the purchase of land if the community interest was to be registered.

The **effect** is to modify section 46F(3), which sets out the circumstances in which Ministers must impose the second prohibition period by inserting a paragraph containing a further circumstance that must be exist.

**Amendment 157 (Mairi Gougeon)**

The **purpose** and **effect** of this amendment is to insert section 46ZJ into the Land Reform (Scotland) Act 2003 (“the 2003 Act”) which requires, when land to which section 46K applies (i.e. land which is subject to the pre-notification provisions) is transferred, the transferor needs to include a declaration in the deed of transfer. The declaration must be in a form prescribed by Ministers and must confirm that the transfer is not in contravention of any prohibition under Chapter 2A of the 2003 Act. The declaration is not required where a declaration under existing section 46J is required. The form of the declaration is to be prescribed in regulations made by Ministers subject to negative procedure. This will help RoS to be sure that procedures have been followed before they register a deed.

#### **Amendment 169 (Edward Mountain)**

The **purpose** and **effect** of this this amendment is to require information from a community body about its plans for raising the funds for purchase of the land as part of an application to register a community interest in land under Part 2 of the Land Reform (Scotland) Act 2003 and to make it a condition for registration of such a community interest that Ministers are satisfied that “there is a reasonable chance that the community body would be able to raise sufficient funds to purchase the land”. This is achieved by modifying sections 37 and 38 of the 2003 Act.

#### **Amendment 285 (Rhoda Grant)**

The **purpose** of this is to introduce an obligation on Scottish Ministers to promote community ownership. The **effect** of this is to insert a duty on Ministers into the Land Reform (Scotland) Act 2003, to require them to “promote genuine community ownership of land”, in particular through “co-operatives”, “community benefit societies” and “community interest companies”. It also imposes a requirement on Ministers to report to the Parliament annually on how they have fulfilled the duty and progress made “towards increasing the amount of land owned by co-operatives, community benefit societies a [sic] community interest companies”.

#### **Amendment 286 (Mark Ruskell)**

The **purpose** and **effect** of this is to introduce two additional provisions about the operation of the community right to buy in Part 3A of the 2003 Act (regarding abandoned, neglected or detrimental land). Land is only eligible for that community right to buy if, in the opinion of Ministers, it is either (a) wholly or mainly abandoned or neglected or (b) the use or management of the land is such that it results in or causes harm to the environmental wellbeing of a community. The first provision added by the amendment is a rule that, for the purposes of establishing whether land falls into the first category of eligible land, land is to be considered wholly or mainly abandoned or neglected if less than 25% of it is frequently used.

The second provision added by the amendment places restrictions on what an owner can do on that land while Ministers consider an application under Part 3A of the 2003 Act. More specifically, the restriction is that, when the owner of land has received an invitation to send Ministers views in writing on the application, the owner is precluded from “making any changes to the land” until Ministers have decided whether to consent to the application. “Making changes to the land” is not defined.

The above effects are respectively achieved by inserting a new subsection into section 97C and adding a new subsection to section 97G of the Land Reform (Scotland) Act 2003, to further specify that land is to be considered wholly or mainly abandoned or neglected if less than 25% of the land is frequently used. It also inserts a restriction that, when the owner of the land receives an invitation from Ministers inviting the owner's views on a community right to buy application, the owner is precluding from making any changes to the land until Ministers have decided whether to consent to the application under Part 3A of the 2003 Act.

**Background note(s)**

[REDACTED]

**Consultation**

**Contact** – [REDACTED]

## **Speaking Note – Group 9**

[REDACTED]

# Land Reform (Scotland) Bill: Stage 3 Briefing

## Group 10: Lotting decisions

<b>Amendment number(s)</b> – 175, 59, 60, 185, 290, 61, 291, 62, 186, 63, 64, 292, 392, 65, 293, 294, 187, 188, 189, 190, 66, 191, 67, 68, 69, 70, 192, 71, 72, 193, 73, 74, 295, 296, 297, 14, 298, 299, 300, 301, 302, 303, 2, 77, 306, 3
<b>Subject</b> – Lotting decisions
<b>Speaking Order</b>
Group will be led by <b>Cabinet Secretary</b> who will speak first to amendments 175, 188 and 191.  Edward Mountain will speak to amendments 59, 60, 185, 61, 291, 62, 186, 63, 64, 66, 67-72, 193, 73, 74 and 77. Tim Eagle will speak to amendments 290, 189, 190, 192, 296, 14, 2 and 3. Douglas Lumsden will speak to amendments 292, 295, 297 and 306. Ariane Burgess will speak to amendments 392, 293, 294, 299 and 302. Rhoda Grant will speak to amendments 65 and 187. Michael Matheson will speak to amendments 298, 300, 301, 303.  The Presiding Officer will then invite other MSPs to speak.  <b>Cabinet Secretary</b> will close the discussion <b>and move amendment 175.</b>
<b>Government position</b>
[REDACTED]
<b>Text of amendment(s)</b>
<b>Mairi Gougeon</b> <b>175</b> In section 4, page 21, line 18, at end insert— <b>&lt;67ZE Requirement for declaration of compliance with Part</b> (1) Where land to which section 67G applies is being transferred, the transferor is to incorporate in the deed giving effect to the transfer a declaration in prescribed form confirming that the transfer is not in contravention of any prohibition under this Part. (2) A declaration under subsection (1) is not required if a declaration under section 67E is required in relation to the land being transferred.>
<b>Edward Mountain</b> <b>59</b> In section 4, page 24, line 28, at end insert—

<(3) When making a valid application under this section, the applicant may include a plan setting out proposed lots in which the land could be transferred.>

**Edward Mountain**

**60** In section 4, page 25, line 12, leave out <may> and insert <must>

**Edward Mountain**

**185** In section 4, page 25, line 20, after <Ministers> insert <, with the help of a qualified Land Management specialist who has experience in the local area,>

**Tim Eagle**

**290** In section 4, page 25, line 31, at beginning insert <Without prejudice to the generality of subsection (A1),>

**Edward Mountain**

**61** In section 4, page 25, line 33, after <would> insert <—  
(a)>

**Edward Mountain**

**291** In section 4, page 25, line 35, after <sustainable> insert <, and  
(b) not reduce the ability to achieve the net-zero emissions target set by section A1 of the Climate Change (Scotland) Act 2009,>

**Edward Mountain**

**62** In section 4, page 26, line 2, at end insert—  
<(2A) In specifying lots under subsection (2)(a), Ministers must have regard to any plan submitted under section 67K(3).>

**Edward Mountain**

**186** In section 4, page 26, line 5, at end insert—  
<(3A) Ministers may decide that land need not be transferred in lots if—  
(a) no significant factors which would require the land to be divided into lots in order to improve the sustainability of any communities in the vicinity of the land are identified in—  
(i) any land management plan in relation to the land (in whole or in part) required under regulations under section 44A of the Land Reform (Scotland) Act 2016, or

(ii) any local place plan in relation to the land (in whole or in part) registered with a planning authority in accordance with schedule 19 of the Town and Country Planning (Scotland) Act 1997,

(b) any other requirements as are prescribed in regulations are met.>

**Edward Mountain**

**63** In section 4, page 26, line 14, leave out <6> and insert <3>

**Edward Mountain**

**64** In section 4, page 26, leave out lines 16 and 17

**Douglas Lumsden**

**292** In section 4, page 26, line 17, at end insert—

**<67NA Consequences of lotting decisions**

- (1) Ministers are liable for any costs incurred to an employer arising from the employer's staff being made redundant as a result of a lotting decision under section 67N stating that land may only be transferred in lots.
- (2) Ministers may by regulations make further provision for the purposes of subsection  
(1).>

**Ariane Burgess**

**392\*** In section 4, page 26, line 30, after <decision> insert <, and

<(c) any community body that the Commissioner considers might have an interest in purchasing lots of the land to which the report relates>

**Rhoda Grant**

**65** In section 4, page 26, line 40, at end insert—

<(ab) how Ministers will take land being occupied as a croft or a tenancy for agricultural or cultivational purposes into consideration in making a lotting decision,>

**Ariane Burgess**

**293** In section 4, page 27, line 6, at end insert—

<(d) how the Commissioner will identify community bodies for the purposes of section 67O(3)(c).>

**Ariane Burgess**

**294** In section 4, page 27, line 6, at end insert—

<(d) how Ministers will identify community bodies for the purposes of section 67W(b).>

**Rhoda Grant**

**187** In section 4, page 27, line 6, at end insert—

- <(2A) In preparing guidance under subsection (1), Ministers must have regard to the public interest.
- (2B) For the purposes of subsection (2A), “the public interest” includes the desirability of—
  - (a) achieving a more diverse ownership of land, including more community ownership of land,
  - (b) furthering sustainable development,
  - (c) securing a greater proportion of community owned energy,
  - (d) advancing community wealth building,
  - (e) ensuring an adequate supply of affordable housing and of workspace for employment.>

**Mairi Gougeon**

**188** In section 4, page 27, leave out lines 10 to 13 and insert—

<(4) Ministers must make publicly available the latest version of any guidance issued under subsection (1) as soon as practicable after issuing it.>

**Tim Eagle**

**189** In section 4, page 27, line 20, after <must> insert <, before the expiry of the period of 3 months beginning with the day the application asking for the review was received,>

**Tim Eagle**

**190** In section 4, page 27, line 25, at end insert—

<(2A) Any failure to comply with the time limit specified in subsection (2)(a) does not affect the validity of anything done by Ministers under this section or section 67R.>

**Edward Mountain**

**66** In section 4, page 27, line 34, at end insert—

<(4) When making a valid application under this section, the applicant may include a plan setting out proposed lots in which the land could be transferred.>

**Mairi Gougeon**

**191** In section 4, page 28, line 24, leave out from beginning to <sought> in line 25 and insert <Before making a lotting decision under this section, Ministers are to consider whether it would be appropriate to seek>

**Edward Mountain**

**67** In section 4, page 28, line 25, leave out <appears to them to be> and insert <is>

**Edward Mountain**

**68** In section 4, page 28, line 26, after <independent> insert <, has knowledge of the land market in the local area,>

**Edward Mountain**

**69** In section 4, page 28, line 26, leave out <to have> and insert <has>

**Edward Mountain**

**70** In section 4, page 28, line 27, at end insert—

<(7A) Ministers may not make a lotting decision under this section without having regard to any plan submitted under section 67P(4).>

**Tim Eagle**

**192** In section 4, page 28, leave out lines 28 to 32

**Edward Mountain**

**71** In section 4, page 28, line 34, leave out <may> and insert <must>

**Edward Mountain**

**72** In section 4, page 28, line 35, leave out <only>

**Edward Mountain**

**193** In section 4, page 29, line 2, leave out <price> and insert <open market value as>

**Edward Mountain**

**73** In section 4, page 30, line 11, at end insert—

<(2A) In determining what is unreasonable for the purposes of subsection (2)(c), the Court must have regard to all circumstances, including whether any lotting plan submitted by the appellant in connection with an application under 67K(2) would have provided a reasonable alternative to the lotting decision made by Ministers.>

**Edward Mountain**

**74** In section 4, page 30, line 16, at end insert—

<(aa) if a plan setting out proposed lots has been included in an application in accordance with section 67K(3) or section 67P(4), replace the lotting decision with a decision that the land be transferred in those lots,>

**Douglas Lumsden**

**295** In section 4, page 30, line 18, at end insert—

<(c) have regard to any failure by Ministers to comply with the time limit set out in section 67N(6), 67P(3) or 67R(8).>

**Tim Eagle**

**296** In section 4, page 30, line 28, leave out from <stating> to end of line 29

**Douglas Lumsden**

**297** In section 4, page 30, line 29, at end insert—

<(1A) In determining whether compensation is payable under this section Ministers or the Lands Tribunal as the case may be must have regard, amongst other things, to any failure by Ministers to comply with the time limit set out in section 67N(6), 67P(3) or 67R(8).>

**Tim Eagle**

**14** In section 4, page 30, line 37, leave out <21> and insert <28>

**Michael Matheson**

**298** In section 4, page 31, line 11, after <must> insert <—  
(a)>

**Ariane Burgess**

**299** In section 4, page 31, line 11, after <to> insert <—  
<(a)>

**Michael Matheson**

**300** In section 4, page 31, line 11, after <to> insert <—  
(i)>

**Michael Matheson**

**301** In section 4, page 31, line 12, after <and> insert—  
<(ii)>

**Ariane Burgess**

**302** In section 4, page 31, line 13, after <land> insert <, and  
<(b) any community body that Ministers consider might  
have an interest in purchasing lots of the land to  
which the decision relates>

**Michael Matheson**

**303** In section 4, page 31, line 13, at end insert—  
<(b) inform of the decision any person whose wish to be  
notified of possible transfers of the land (or any area  
it wholly or partly subsumes or is subsumed by) is  
recorded in the list kept in accordance with section  
46A.>

**Tim Eagle**

**2** Leave out section 4

**Edward Mountain**

**77** In section 5, page 31, line 31, after <insert> insert <“67N(3A)(b)>

**Douglas Lumsden**

**306** In section 5, page 31, line 31, after <insert > insert <"67NA, >

**Tim Eagle**

**3** Leave out section 5

**Purpose and Effect****Amendment 175 (Mairi Gougeon)**

The **purpose** and **effect** of this amendment is to insert section 67ZE into the Land Reform (Scotland) Act 2003 ("the 2003 Act") which requires, when land to which lotting provisions apply (land defined in inserted section 67G) is transferred, the transferor needs to include a declaration in the deed of transfer. The declaration must be in a form prescribed by Ministers and must confirm that the transfer is not in contravention of any prohibition under inserted Part 2A of the 2003 Act. The form of declaration is to be prescribed in regulations made by Ministers subject to negative procedure.

**Amendment 59 (Edward Mountain)**

The **purpose** is to allow the owner or creditor looking to sell land the opportunity to propose their own plan for lotting in relation to the land as part of an application for a lotting decision. The **effect** is to add a new subsection (3) to inserted section 67K of the 2003 Act.

**Amendment 60 (Edward Mountain)**

The **purpose** and **effect** of this amendment is to require that Ministers decide not to require lotting lot if they are satisfied in respect of the financial hardship conditions set out at 67M(1)(a) and (b) (they have discretion in the Bill as introduced). This is achieved by replacing "may" with "must" in inserted section 67M(1) of the 2003 Act.

**Amendment 185 (Edward Mountain)**

The **purpose** of this amendment may be to require that Ministers need to seek advice from a qualified land management specialist with experience in the local area before they could make an expedited lotting decision where the owner facing financial hardship. The **effect** of this amendment is to insert text into inserted section 67M(3) of the 2003 Act, which relates to Ministers instructing the LCC to stop a report they are producing. This amendment would mean that Ministers needed advice from a land management specialist before instructing the LCC to stop preparing their report (it wouldn't require this advice for the decision itself).

**Amendment 290 (Tim Eagle)**

The **purpose** of this amendment is to add additional text at the start of inserted section 67N(1) to note that the community sustainability test set out in that subsection does not prevent Ministers from considering wider public interest considerations as part of a lotting decision. This amendment has no actual **effect** as the existing drafting of section 67N allows such wider public interest considerations to be taken into consideration.

#### **Amendment 291 (Edward Mountain)**

The **purpose** of this amendment is to prevent Ministers deciding that land must be transferred in lots unless they are satisfied that this would not reduce the ability to achieve the net-zero emissions target in the Climate Change (Scotland) Act 2009. The **effect** of this amendment is to amend subsection (1) of the Ministerial test for a lotting decision set out in inserted 67N of the 2003 Act to add this additional requirement.

#### **Amendment 61 (Edward Mountain)**

This amendment is a consequential amendment to 291.

#### **Amendment 62 (Edward Mountain)**

The **purpose** of this amendment is to require that, if the landowner or creditor has provided a proposed plan for lotting as part of their application for a lotting decision (as set out in Amendment 59), then Ministers must have regard to this. The **effect** is to add a new subsection (2A) to inserted 67N of the 2003 Act.

#### **Amendment 186 and 77 (Edward Mountain)**

The **purpose** of these amendments is to set out grounds on which Ministers may decide that land need not be transferred in lots and allow further grounds to be set out in regulations. As the wording of this amendment is that Ministers ‘may’ decide that land need not be transferred in lots, it would not require ministers to do so, however the likely intention would be to make it more difficult for Ministers to require land to be lotted.

The **effect** of **Amendment 186** is to add a new subsection (3A) to inserted 67N of the 2003 Act to specify that Ministers may decide not to require lotting if factors relating to the sustainability of communities were not set out in a land management plan or local place plan, or if other requirements prescribed in regulations are met.

The **effect** of **Amendment 77** is to specify that these regulations are subject to affirmative procedure.

#### **Amendment 63 (Edward Mountain)**

The **purpose** and **effect** of this amendment is to amend subsection (6) of inserted 67N of the 2003 Act to require that Ministers must make a lotting decision in 3 months rather than 6.

#### **Amendment 64 (Edward Mountain)**

The **purpose** and **effect** of this amendment is to remove subsection 7 of inserted 67N of the 2003 Act, which currently provides that failure to comply with the time limit specified in subsection 6 does not affect the validity of the lotting decision. This would create uncertainty regarding the effect of failure to comply with the time limit, with the possibility that a court may interpret such failure as the basis for invalidating a lotting decision.

**Amendment 292 and 306 (Douglas Lumsden)**

The **purpose** of this amendment is to require Ministers to take liability for any costs incurred to an employer in cases where an employee is made redundant as a result of a lotting decision.

The **effect** of **Amendment 292** is to insert a new section 67NA into the 2003 Act. The amendment includes a power which allows Ministers to set out further detail in regulations. The **effect** of **Amendment 306** is to require that these regulations are subject to affirmative procedure.

**Amendment 392 (Ariane Burgess)**

The **purpose** is to require the Land and Communities Commissioner (LCC) to send a copy of their report for Ministers to any community body that the Commissioner considers might have an interest in purchasing lots of the land to which the report relates. The **effect** of Amendment 392 is to update the list of persons that the LCC must send their report to as set out at inserted 67O(3) of the 2003 Act.

**Amendment 293 (Ariane Burgess)**

Amendment 293 is consequential to 392 and has the **purpose** and **effect** of requiring that that guidance on lotting decisions made under 67OA include information on how the LCC will identify the community bodies referenced in amendment 392.

**Amendment 65 (Rhoda Grant) [REDACTED]**

The **purpose** and **effect** of this amendment is to update section 67OA (guidance on lotting decisions) to require that guidance made under section 67OA(1) must include information on how Ministers will take land being occupied as a croft or a tenancy for agricultural or cultivational purposes into consideration in making a lotting decision.

**Amendments 294 (Ariane Burgess)**

This amendment is consequential to 299 and 302 considered below. The **purpose** and **effect** is to require guidance on lotting decisions made under 67OA to include information on how Ministers will identify the community bodies to which they are to provide a copy of the lotting decision.

**Amendment 187 (Rhoda Grant)**

Based on CLS briefing on this amendment, the **purpose** appears to be to require that further detail on the public interest factors listed are set out in guidance made under 67OA. However, the **effect** is actually to place a duty on Ministers to have regard to these considerations when making the guidance.

#### **Amendment 188 (Mairi Gougeon)**

The **purpose** and **effect** of this amendment is to make a minor drafting correction to inserted 67OA(5) to change a reference to ‘guidance (including revised guidance)’ to ‘the latest version of any guidance’.

#### **Amendment 189, 190 and 192 (Tim Eagle) – [REDACTED]**

These **purpose** of these amendments is to set a 3 month timescale for Ministers either confirming their original lotting decision or issuing a new lotting decision following an application for a review of a decision. This replaces the 6 month period for making a replacement lotting decision that was introduced at Stage 2 of the Bill. A failure to meet this time period does not affect the validity of a decision. The amendments resolve an inconsistency with the Bill as amended at Stage 2, which placed a time limit on the process of making a replacement decision but did not actually place any limit on the previous stage of conducting the review of the original lotting decision.

The **effect** of amendment 189 is to insert, into section 67P(2)(a) of the Land Reform (Scotland) Act 2003, a duty on Ministers to complete a review of lotting decision within a period of 3 months from the day the application for review is received by either (A) confirming the lotting decision or (B) withdrawing the lotting decision and making a replacement lotting decision. The effect of amendment 190 is to provide that any failure to comply with the duty does not affect the validity of anything done by Ministers under section 67P or section 67R. The effect of amendment 192 is to omit subsections (8) and (9) of sections 67R, which will become redundant if amendments 189 and 190 are accepted.

#### **Amendment 66 (Edward Mountain)**

The **purpose** is to allow the owner or creditor looking to sell land the opportunity to propose their own plan for lotting in relation to the land as part of an application for a review of a lotting decision. The **effect** is to add a new subsection (4) to inserted 67P of the 2003 Act.

#### **Amendment 191 (Mairi Gougeon)**

The **purpose** and **effect** of this amendment is to update inserted 67R(7) of the 2003 Act to remove the requirement for Ministers to seek expert advice before making a lotting decision as part of a review, replacing this with a duty on Ministers to consider whether it would be appropriate to seek such advice.

#### **Amendment 67, 68, 69 (Edward Mountain)**

The **purpose** and **effect** of these amendments is to amend inserted 67R(7) of the 2003 Act so that advice to inform a review decision must be sought from “a person who **is** suitably qualified, independent, **has knowledge of the land market in the local area**, and **has** knowledge and experience of the transfer of land of a kind which is similar to the land to which the lotting decision would relate.” (key changes in bold).

**Amendment 70 (Edward Mountain)**

The **purpose** of this amendment is to require that, if the landowner or creditor has provided a proposed plan for lotting as part of their application for a review of a lotting decision (as set out in Amendment 66), then Ministers must have regard to this when making a lotting decision. The **effect** is to add a new subsection (7A) to inserted 67R(7) of the 2003 Act.

**Amendment 71 and 72 (Edward Mountain)**

The **purpose** of these amendments is to require Ministers to offer to buy land subject to a lotting decision after a review of that decision if Ministers believe the lot hasn't been sold due to the commercial impact of the original lotting decision. Currently Ministers have a discretion to offer to buy the lot in those circumstances but are not required to.

The **effect** of **amendment 71** is to change the wording of inserted section 67S(1) so that instead of starting "Ministers may offer to buy land" it instead starts "Ministers must offer to buy land". The effect of **amendment 72** is to change "only if" to "if". Together these amendments will create an obligation on Ministers to offer to buy the lot.

**Amendment 193 (Edward Mountain)**

The **purpose** of this amendment is to specify that Ministers may only offer to buy land at the "open market value". The **effect** is to replace the word "price" in inserted 67S(2) of the 2003 Act with "open market value".

**Amendment 73 (Edward Mountain)**

The **purpose** of this amendment is to require that the Court of Session, when considering if a lotting decision is unreasonable, to have regard to whether any lotting plan submitted by the landowner would have provided a reasonable alternative to the decision. The **effect** is to add a new subsection (2A) to inserted 67U of the 2003 Act.

**Amendment 74 (Edward Mountain)**

The **purpose** and **effect** of this amendment is to allow the Court of Session to replace a lotting decision with a plan for lotting, submitted by the landowner the context of an application for a lotting decision or an application for review, in an appeal against a lotting decision under inserted section 67U of the 2003 Act. This is achieved by inserting a section 67U(4)(c) into the 2003 Act.

**Amendment 295 (Douglas Lumsden)**

The **purpose** and **effect** of this amendment is to allow the Court of Session to have regard to any failure for Ministers to comply with time limits for lotting decisions in the context of an appeal against a lotting decision under section 67U. This is achieved by inserting a section 67U(4)(c) into the 2003 Act.

**Amendment 296 (Tim Eagle)**

The **purpose** of this amendment is to clarify that an owner may be entitled to compensation even where a lotting decision is that land should not be lotted. It seeks to achieve this by omitting the words “stating that the land may be only transferred in lots” from the reference to compensation attributable to a lotting decision, where the grounds for compensation are stated in inserted section 67V(1) of the 2003 Act. This amendment would have **no effect** as such a category of compensation is already captured in the first category of compensation listed in section 67V(1).

**Amendment 297 (Douglas Lumsden)**

The **purpose** of this amendment is to require Ministers or the Land Tribunal to have regard to failure by Ministers to comply with time limits for lotting decisions when determining whether compensation is payable, by adding a new subsection to inserted 67V of the 2003 Act.

Given that Ministers would already need to take delays into account when considering compensation, the **effect** of this amendment is uncertain as it does not specify any further relevance for the fact of delay in the award of compensation.

**Amendment 14 (Tim Eagle) [REDACTED]**

The **purpose** and **effect** of this amendment is to increase the period for a landowner (or a creditor in a standard security with a right to sell) to make an appeal against a determination by Ministers regarding the amount of compensation payable, in relation to lotting, under inserted section 67V of the Land Reform (Scotland) Act. The period is changed from 21 to 28 days (beginning with the day that the appellant receives Ministers’ determination. This is achieved by amending inserted section 67V(3) of the Land Reform (Scotland) Act 2003.

**Amendment 298 , 300, 301 and 303 (Michael Matheson) – [REDACTED]**

The **purpose** of these amendments is to ensure those people who may intend to set up community body, may be in the process of doing so, or may have recently done so, are given early notice of a lotting decision. This is achieved by requiring Ministers to give information about lotting decisions to any person who has recorded an interest in being notified of possible transfers of land under pre-notification provisions. This is in addition to giving a copy of the lotting decision to the owner of creditor.

The **effect** of Amendment 303 is to add the new duty to inserted section 67W of the Land Reform (Scotland) 2003 Act. The duty is to information about the lotting decision to any person recorded in the list kept in accordance with section 46A of the 2003 Act. Only persons who have recorded interest, under section 46A, in being notified in relation the land that is subject to the lotting decision (or any area wholly or partly within it) are required to be notified. Amendments 298, 300 and 301 make changes to the formatting and structure of section 67W to accommodate the duty inserted by Amendment 303.

**Amendment 299 and 302 (Ariane Burgess)**

The **purpose** and **effect** of these amendments is also to allow local community bodies to be notified of lotting decisions through amending 67W, however it differs from Michael Mathesons amendments in that:

- a) instead of a general duty to inform persons of the decision, this amendment requires a copy of the lotting decision itself to be shared,
- b) instead of using the pre-notification list, this amendment simply states that Ministers must inform any community body that Ministers ‘consider might have an interest in purchasing lots to which the decision relates’.

Ariane Burgess Amendment 294 (considered above) sets out that further information on how community bodies are to be identified would be set out in guidance.

**Amendment 2 (Tim Eagle)**

The **purpose** and **effect** of this is to remove the transfer test provisions in the Bill by removing the entirety of section 4 (‘Lotting of large land holdings’).

**Amendment 3 (Tim Eagle)**

The **purpose** and **effect** is to remove the entirety of section 5 which sets out general and supplementary provisions relating to delegated powers for transfer test provisions.

**Background note(s)**

[REDACTED]

**Consultation**

[REDACTED]

**Contact** – [REDACTED]

## **Speaking Note – Group 10**

[REDACTED]

## Land Reform (Scotland) Bill: Stage 3 Briefing Group 11: Energy and Land Use

<b><u>Amendment number(s)</u></b> – 305, 207, 318, 319, 322
<b>Subject – Energy and Land Use</b>
<b>Speaking Order</b>
<p><b>Group will be led by Douglas Lumsden</b>, who will speak first to amendment 305, followed by 318, 319 and 322.</p> <p>Ariane Burgess will speak to amendment 207.</p> <p>The Presiding Officer will then invite other MSPs to speak, and the Cabinet Secretary will be asked to respond.</p> <p>Douglas Lumsden will then close.</p>
<b>Government position</b>
[REDACTED]
<b>Text of amendment(s)</b>
<p><b>Douglas Lumsden</b></p> <p><b>305</b> After section 4, insert—</p> <p style="text-align: center;"><b>&lt;Transfer of large landholdings in the public interest</b></p> <p>(1) The Land Reform (Scotland) Act 2003 is modified as follows. (2)</p> <p>After Part 2 insert—</p> <p style="text-align: center;"><b>“PART 2B</b></p> <p>PROHIBITIONS ON TRANSFER OF LAND FOR ELECTRICITY INFRASTRUCTURE</p> <p><b>67Z Prohibition on transfer where there is community objection</b></p> <p>(1) A purported transfer of land by the owner, or a creditor in a standard security having a right to sell the land, is of no effect if—</p> <p>(a) the new owner intends to use that land to construct electricity infrastructure, and</p> <p>(b) the local community objects to the transfer.</p>

- (2) The owner, or creditor in a standard security, must take reasonable steps to publicise the purported transfer to the local community.”.>

**Ariane Burgess**

**207** After section 6, insert—

**<PART**

**PRIORITY ACCESS TO LAND FOR COMMUNITY ENERGY**

**Priority access to land for community energy**

- (1) The Community Empowerment (Scotland) Act 2015 is modified by subsections (2) and (3).

- (2) In section 82 (asset transfer requests: decisions), after subsection (4), insert—

“(4A) When the authority wishes to lease land to develop, operate or re-power renewable energy or energy storage, and receives an asset transfer request from a community transfer body for that lease, the authority must exercise the function under subsection (2) in a manner which prioritises community ownership of such leases over private ownership.”

- (3) After section 97, insert—

**“PART 5A**

**PRIORITY ACCESS TO LAND FOR COMMUNITY ENERGY**

**97A Priority access to land for community energy**

- (1) Publicly-owned land must not be offered for lease unless—
- (a) reasonable steps have been taken to identify any local community body (including development trusts, community councils and community energy groups) that wishes to develop, operate or re-power renewable energy on the land,
  - (b) any local community body identified under paragraph (a) is notified of the intention to offer the land for lease and invited to express interest in leasing the land, and
  - (c) a period of no less than 6 months has expired since notification has been given under paragraph (b).
- (2) If any expressions of interest from a community transfer body or bodies are received under subsection (1)(b), the land must be leased to one or more of those bodies provided that the body—

- (a) meets the requirements set out in section 34 (in relation to a community body) or section 71 (in relation to a crofting community body) of the Land Reform (Scotland) Act 2003,
  - (b) can demonstrate that the body is working with appropriate partners or consultants to provide the necessary expertise in relation to energy generation or energy storage projects,
  - (c) has a financial plan which demonstrates the body will be able to pay rent to the public body which owns the land at—
    - (i) a competitive rate, or
    - (ii) the level proposed by a district valuer.
- (3) The Scottish Ministers must prepare and publish guidance on how a community body can demonstrate that it meets the requirements in subsection (2).”>

**Douglas Lumsden**

**318** After section 6, insert—

**<PART**

**1. ENERGY AND LAND USE STRATEGY>**

**<Energy and Land Use Strategy**

- (1) Scottish Ministers must, within 40 weeks of Royal Assent, publish an Energy and Land Use Strategy.
- (2) The Strategy must set out—
  - (a) the proportion of land used or proposed to be used for energy developments, disaggregated by technology (overhead line, substation, underground cable, battery energy storage system, onshore solar, ancillary works),
  - (b) the number, capacity and footprint of existing, consented and proposed developments, by local authority area and grid zone,
  - (c) a national constraints map identifying designated and sensitive areas (including National Scenic Areas, Wild Land Areas, National Parks, peatland, prime agricultural land, historic environment assets, and flood risk areas),
  - (d) identification of strategic corridors and areas of search, including opportunities to reuse or widen existing corridors before creating new ones,

- (e) a dataset of proximity to settlements (including schools, hospitals and care homes) and to core paths, rights of way and popular recreation areas,
- (f) objectives including—
  - (i) minimising land take, habitat loss, visual intrusion and community harm, (ii) securing community benefit.
- (g) the impact of the energy developments on—
  - (i) biodiversity net gain (and an avoidance hierarchy and compensatory measures),
  - (ii) peat, soils and carbon (including whole-life embodied carbon and carbon payback),
  - (iii) water environment (drainage, flood risk, pollution prevention, fire-water containment for BESS),
  - (iv) agriculture and forestry, including prime agricultural land loss (and compensatory planting policy),
  - (v) cultural heritage and archaeology,
  - (vi) public access, recreation and tourism (core paths, rights of way, cycle routes, wild land use),
  - (vii) community enjoyment of land and open-space quality.
- (3) Before publishing the Strategy, the Scottish Ministers must consult—
  - (a) communities,
  - (b) planning authorities,
  - (c) the Land and Communities Commissioner,
  - (d) statutory nature and heritage bodies,
  - (e) emergency services, and
  - (f) such other persons as they consider appropriate.
- (4) The Scottish Ministers must publish a consultation report setting out—
  - (a) a summary of representations made by those consulted under subsection (3), (b) how those views have informed the preparation of the Strategy.
- (5) The Scottish Ministers must publish annual monitoring reports on progress being made towards the objectives of the Strategy.
- (6) The Strategy must be reviewed and revised as considered necessary by the Scottish Ministers (but after no longer a period than 3 years after the publication of the previous strategy).

- (7) The Scottish Ministers must lay before the Parliament a copy of—
  - (a) the Strategy under subsection (1),
  - (b) any revised Strategy under subsection (6),
  - (c) consultation reports under subsection (4), (d) monitoring reports under subsection (5).
- (8) Public authorities and the Land and Communities Commissioner must have regard to the Strategy in carrying out the duties conferred on them by this Act.
- (9) Scottish Ministers must publish guidance on how landowners are to demonstrate consistency with the Strategy in any agreement conferring rights to develop energy infrastructure.
- (10) Subsections (2), (3), (4), (5) and (8) apply to a revised strategy under subsection (6) as they do to the first strategy.
- (11) In this section, “energy infrastructure” includes (without limitation) electricity transmission and distribution works (overhead or underground, including towers, poles, lines, substations and converter stations), battery energy storage systems and associated plant, access and land reasonably required for construction, operation, maintenance or decommissioning.>

**Douglas Lumsden**

**319** After section 6, insert—

**<PART**

**COMPULSORY ACQUISITION**

**Compulsory acquisition: limitation on acquiring farmland**

- (1) The Town and Country Planning (Scotland) Act 1997 is modified as follows.
- (2) In section 189 (compulsory acquisition of land in connection with development and for other planning purposes), after subsection (2A) insert—
  - “(2AA) The Scottish Ministers must not authorise the acquisition of any interest in land used for farming for the purposes of developing energy infrastructure unless they have determined that no suitable alternative is offered by— (a) acquiring alternative land that is not used for farming,
  - (b) underground options for energy infrastructure.”>

**Douglas Lumsden**

**322** After section 7, insert—

**<CHAPTER**

**TENANT'S CONSENT FOR OVERHEAD LINES**

**Consent required for overhead lines: consent of tenants**

- (1) The Electricity Act 1989 is modified as follows.
- (2) In section 37, in subsection (3), after paragraph (a) insert—

“(ab) must not be granted without the consent of any tenant with a lease of the land on which the electric line is to be installed or kept installed;”>

**Purpose and Effect**

**Amendment 305 (Douglas Lumsden)**

The **purpose** of this amendment is to give local communities a veto over transfers of land for energy infrastructure development.

The **effect** is to create a prohibition on the transfer by the owner of land (or a creditor) where the new owner intends to use that land to construct electricity infrastructure and the local community objects to the transfer. Any such transfer would be of no effect. This amendment exists independently of the other provisions in the Bill and would apply to all land (not just in relation to large land holdings). No provision is made about how objection by a local community is determined. The inserted provision does not address certain transfers of land under legislation (e.g. compulsory purchase), meaning that the application of the prohibition to such a context is not certain.

**Amendment 207 (Ariane Burgess)**

The **purpose** is to facilitate the use by community bodies of public land for ‘green’ energy purposes.

The **effect** is to insert a new Part into the Bill which amends the Community Empowerment (Scotland) Act 2015 (“the 2015 Act”) in respect of asset transfer requests and access to land for community energy. This requires the relevant authority to exercise the function under section 82(2) of the 2015 Act (i.e. the decision to agree to or refuse the asset transfer request) in a manner which prioritises community ownership of green energy leases over private ownership. The effect of this provision is unclear, even in the case of applications that relate to some extent to energy matters.

The amendment also inserts a new section into the 2015 Act which prohibits the offering for lease of publicly-owned land unless “reasonable steps” have been taken to identify “local community bodies” that wish to develop or operate renewable energy on the land, notification has been given to such bodies and 6 months have passed since that notification. There would be a duty to lease the land to “one or more of those bodies” provided upon receipt of any “expressions of interest from a community transfer body or bodies” provided that certain conditions are met.

The amendment also obliges the Scottish Ministers to prepare and publish guidance on how a community body can demonstrate the expertise in energy generation.

**Amendment 318 (Douglas Lumsden)**

The **purpose** and **effect** is to require Scottish Ministers to, within 40 weeks of Royal Assent, publish an Energy and Land Use Strategy, to guide energy infrastructure development across Scotland in a manner that balances energy needs with environmental, community, and land-use considerations. The amendment prescribes in detail what the strategy must include (e.g. the proportion of land used or proposed to be used for energy developments).

**Amendment 319 (Douglas Lumsden)**

The **purpose** is to protect agricultural land by placing additional restrictions on the acquisition of farmland for the provision of above-ground energy infrastructure, thereby incentivising such infrastructure to be developed on non-agricultural land and/or placed underground.

However, the **effect** is that the provisions would only apply to compulsory purchase orders (CPOs) made by local authorities under the Town and Country Planning (Scotland) Act 1997. The restrictions would not apply to the acquisition of land (including necessary wayleaves) by electricity licence holders under powers at Schedules 3 and 4 of the Electricity Act 1989, which are generally used for the purposes of providing energy infrastructure including for renewable energy generation over 50MW. Nor would they apply where land is leased or where it is acquired by agreement.

**Amendment 322 (Douglas Lumsden)**

The **purpose** of the amendment is to prevent a powerline from being installed or maintained without the agreement of a tenant of the land on which the line will be on or over.

The **effect** is that section 37 of the Electricity Act 1989 is modified so that consent must not be granted for an electric line to be installed or kept installed above ground without the consent of any tenant with a lease of the land on which the electric line is to be installed or kept installed.

It purports to modify the functions of the Secretary of State in that respect. It can however only have an effect so far as would be within legislative competence, and the transmission of electricity is a reserved matter (as per paragraph D1 of Schedule 5 to the Scotland Act 1998).

**Background note(s)**

[REDACTED]

**Consultation**

[REDACTED]

**Contact [REDACTED]**

## **Speaking Note – Group 11**

[REDACTED]



### **Review of Part**

- (1) The Land Commissioners must, in pursuance of their function under section 22(1)(a) of the Land Reform (Scotland) Act 2016, review the impact and effectiveness of this Part.
- (2) The review must be completed no later than 5 years after the day on which this section comes into force.
- (3) As soon as reasonably practicable after completing the review, the Land Commissioners must—
  - (a) prepare a report of the review’s findings,
  - (b) lay a copy of the report before the Scottish Parliament, and
  - (c) make the report publicly available.
- (4) Within 1 year of a report being laid before the Parliament in accordance with subsection (3)(b), the Scottish Ministers must—
  - (a) prepare a response to the report which includes—
    - (i) a statement of any action the Scottish Ministers intend to take as a result of the review’s findings, and
    - (ii) where the Scottish Ministers do not intend to take any action, a statement of their reasons for that,
  - (b) lay a copy of the response before the Parliament, and
  - (c) make the response publicly available.>

### **Rhoda Grant**

**89C** As an amendment to amendment 89, line 6, after <Part> insert <in respect of each review period>

### **Ariane Burgess**

**89A** As an amendment to amendment 89, line 6, at end insert—

<( ) The review must evaluate the impact and effect of this Part on islands and island communities (within the meaning of the Islands (Scotland) Act 2018).>

### **Mercedes Villalba**

**89D** As an amendment to amendment 89, line 6, at end insert—

<( ) The review must consider the appropriateness of the Part’s application to land as described in section 44D of the Land Reform (Scotland) Act 2016 and sections 46K and 67G of the Land Reform (Scotland) Act 2003, having particular regard to the size of the areas of land, and whether the size of the areas need to be reduced.>

**Mercedes Villalba**

**89B** As an amendment to amendment 89, line 6, at end insert—  
<( ) The review must consider the appropriateness of the Part’s application to land as described in section 44D of the Land Reform (Scotland) Act 2016 and sections 46K and 67G of the Land Reform (Scotland) Act 2003, having particular regard to the size of the areas of land.>

**Mark Ruskell**

**89E** As an amendment to amendment 89, line 6, at end insert—  
<( ) The review must consider the appropriateness of the Part’s application to land as described in section 44D of the Land Reform (Scotland) Act 2016 and sections 46K and 67G of the Land Reform (Scotland) Act 2003, having particular regard to what land is to be treated as contiguous and what land forms a composite holding.>

**Rhoda Grant**

**89F** As an amendment to amendment 89, line 6, at end insert—  
<( ) The review must consider—

- (a) whether there is greater transparency of land ownership and management as a result of this Part,
- (b) whether communities are experiencing greater involvement in decisions about the land on which they live and work as a result of this Part,
- (c) any impact that this Part has had on the amount of land purchased by community bodies,
- (d) whether there is a greater diversification of land ownership as a result of this Part and, if so, the impact this has had on community sustainability,
- (e) whether the thresholds for the land to which section 44D of the 2016 Act and sections 46K and 67G of the 2003 Act apply should be amended,
- (f) whether there are any loopholes that have been identified in the application of this Part,
- (g) any negative unintended consequences of this Part.>

**Rhoda Grant**

**89G** As an amendment to amendment 89, leave out lines 7 and 8 and insert—  
<( ) For the purposes of this section, “review period” means—

- (a) the period of 5 years beginning with the day of Royal Assent,
- (b) each subsequent period of 3 years.>

**Purpose and Effect**

**Amendment 196 (Edward Mountain)**

The **purpose** of this amendment is to place a time limit on the pre-notification and transfer test provisions of the Bill so that the relevant provisions cease to have effect 5 years after coming into force. The **effect** is to insert after section 5 a new section (a sunset clause) which provides that the modifications made to the Land Reform (Scotland) Act 2003 by sections 2 (community right to buy: registration of interest in large land holding), 3 (modifications in connection with section 2), 4 (lotting of large land holding) and 5 (modifications in connection with section 4) will cease to have effect 5 years after they come into force. There is no proposed review mechanism connected to the amendment.

**Amendment 197 (Edward Mountain)**

The **purpose** of this amendment is the same as for amendment 196 above, except that the sunset clause applies only to the transfer test provisions of the Bill so that the relevant provisions cease to have effect 5 years after coming into force. The **effect** is to insert after section 5 a new section (a sunset clause) which provides that the modifications made to the Land Reform (Scotland) Act 2003 by sections 4 (lotting of large land holding) and 5 (modifications in connection with section 4) will cease to have effect 5 years after they come into force. Again, there is no proposed review mechanism connected to this amendment.

**Amendment 89 (Martin Whitfield) [REDACTED]**

The **purpose** of this amendment is to impose a statutory duty on the Land Commissioners to review the impact and effectiveness of Part 1 of the Bill, and a duty on the Scottish Ministers to respond to the Land Commissioners' report of the review's findings. The **effect** of the amendment is to insert a new section at the end of Part 1 requiring a review to be completed no later than 5 years after the section comes into force. The Land Commissioners must, as soon as reasonably practicable, prepare a report of the review's findings, which report is to be laid before Parliament and be made publicly available. Within 1 year of the report being laid before Parliament the Scottish Ministers must prepare a response to the report stating any actions to be taken as a result of the review's findings or, where no action is to be taken, reasons for that.

**Amendment 89C and 89G (Rhoda Grant)**

The **purpose** of these amendments is to shorten the deadline by which the Land Commissioners' review of Part 1 (see Martin Whitfield's amendment 89) must be completed (i.e. to specify within 5 years beginning with the day of Royal Assent rather than the day of commencement) and to require a subsequent review every 3 years. The **effect** is to add the phrase 'in respect of each review period' to the end of subsection (1) of amendment 89, remove subsection (2) and replace it with a new subsection which defines the term 'review period' as (a) the period of 5 years beginning with the day of Royal Assent, and (b) each subsequent period of 3 years.

**Amendment 89A (Ariane Burgess) [REDACTED]**

The **purpose** and **effect** of this amendment is to make an express provision in amendment 89 that the review carried out by the Land Commissioners must evaluate the impact and effect of Part 1 of the Bill on islands and island communities (within the meaning of the Islands (Scotland) Act 2018). This is achieved by inserting a new subsection into amendment 89.

**Amendment 89D (Mercedes Villalba)**

The **purpose** and **effect** of this amendment is to make an express provision in amendment 89 that the review carried out by the Land Commissioners must consider the appropriateness of Part 1's application to land as described in inserted section 44D of the Land Reform (Scotland) Act 2016 (the community engagement obligations), and inserted sections 46K (pre-notification) and 67G (transfer test) of the Land Reform (Scotland) Act 2003. The review must have particular regard to the size of the areas of land, and whether the size of the areas need to be reduced. This is achieved by inserting a new subsection into amendment 89.

**Amendment 89B (Mercedes Villalba) [REDACTED]**

The **purpose** and **effect** of this amendment is to make an express provision in amendment 89 that the review carried out by the Land Commissioners must consider the appropriateness of Part 1's application to land as described in section 44D of the Land Reform (Scotland) Act 2016 (the community engagement obligations), and sections 46K (pre-notification) and 67G (transfer test) of the Land Reform (Scotland) Act 2003, having particular regard to the size of the areas of land. Unlike with amendment 89D above, it does not require the review to pay particular regard to whether the size of the areas of land need to be reduced. This is achieved by inserting a new subsection into amendment 89.

**Amendment 89E (Mark Ruskell) [REDACTED]**

The **purpose** and **effect** of this amendment is to make an express provision in amendment 89 that the review carried out by the Land Commissioners must consider the appropriateness of Part 1's application to land as described in section 44D of the Land Reform (Scotland) Act 2016 (the community engagement obligations), and sections 46K (pre-notification) and 67G (transfer test) of the Land Reform (Scotland) Act 2003, having particular regard to what land is to be treated as contiguous and what land forms a composite holding. This is achieved by inserting a new subsection into amendment 89.

**Amendment 89F (Rhoda Grant)**

The **purpose** is to set out what the Land Commissioners must consider as part of their review of the impact and effectiveness of Part 1, including whether there is greater transparency of land ownership and management as a result of Part 1, and any impact that Part 1 has had on the amount of land purchased by community bodies. There is also overlap with other amendments to amendment 89, specifically whether the thresholds for the land should be amended. The **effect** is to add a new subsection containing nine paragraphs.

**Background note(s)**

[REDACTED]

**Consultation**

[REDACTED]

**Contact – [REDACTED]**

## **Speaking Note – Group 12**

[REDACTED]

# Land Reform (Scotland) Bill: Stage 3 Briefing

## Group 13: Land and Communities Commissioner

<p><b>Amendment number(s)</b> – 307, 4, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 199, 200, 5, 88, 201, 309, 202, 310</p> <p><i>Notes on amendments in this group</i> Amendment 4 pre-empts amendments 78, 79, 80, 81, 82, 83, 84, 85, 86, 87 and 199</p>
<p><b>Subject – Land and Communities Commissioner Functions</b></p>
<p><b>Speaking Order</b></p> <p><b>Group will be led by Edward Mountain</b>, who will speak first to amendment 307, followed by 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 199.</p> <p>Tim Eagle will follow and speak to amendments 4, 5, 201 and 202 Rhoda Grant will speak to 200 and 309 Finally, Michael Matheson will speak to 310</p> <p>The Presiding Officer will then invite other MSPs to speak, and the Cabinet Secretary will be asked to respond.</p> <p>Edward Mountain will then close.</p>
<p><b>Government position</b></p> <p>[REDACTED]</p>
<p><b>Text of amendment(s)</b></p> <p><b>Edward Mountain</b></p> <p><b>307</b> In section 6, page 32, line 27, after &lt;empowerment&gt; insert &lt;, and (c) land valuation&gt;</p> <p><b>Tim Eagle</b></p> <p><b>4</b> In section 6, page 32, line 28, leave out subsection (7)</p> <p><b>Edward Mountain</b></p> <p><b>78</b> In section 6, page 32, line 33, after &lt;applies.&gt; insert— &lt;(2B) A person may not be appointed as the Land and Communities Commissioner if that person is or, within the two years preceding the date on which the appointment is to take effect, has been a tenant or occupier of one or more agricultural holdings together exceeding 1,000 hectares in area.&gt;</p>

**Edward Mountain**

**79** In section 6, page 32, line 33, after <applies.> insert—

<(2B) A person may not be appointed as the Land and Communities Commissioner if that person is or, within the two years preceding the date on which the appointment is to take effect, has been a crofter whose croft or crofts (including apportionments of common grazings), as defined by section 3 of the Crofters (Scotland) Act 1993, together exceeds 1,000 hectares in area.>

**Edward Mountain**

**80** In section 6, page 32, line 33, after <applies.> insert <—

<(2B) A person may not be appointed as the Land and Communities Commissioner if that person is or, within the two years preceding the date on which the appointment is to take effect, has been a Scottish Minister.>

**Edward Mountain**

**81** In section 6, page 32, line 33, after <applies.> insert—

<(2B) A person may not be appointed as the Land and Communities Commissioner if that person is or, within the two years preceding the date on which the appointment is to take effect, has been a board member of Scottish Land & Estates Limited (registered company number SC257726).>

**Edward Mountain**

**82** In section 6, page 32, line 33, after <applies.> insert—

<(2B) A person may not be appointed as the Land and Communities Commissioner if that person is or, within the two years preceding the date on which the appointment is to take effect, has been a board member of Community Land Scotland (registered company number SC385572 and registered Scottish charity number SC041864).>

**Edward Mountain**

**83** In section 6, page 32, line 33, after <applies.> insert—

<(2B) A person may not be appointed as the Land and Communities Commissioner if that person is or, within the two years preceding the date on which the appointment is to take effect, has been a board member of Scottish Natural Heritage.>

**Edward Mountain**

**84** In section 6, page 32, line 33, after <applies.> insert <—

<(2B) A person may not be appointed as the Land and Communities Commissioner if that person is or, within the two years preceding the date on which the appointment is to take effect, has been a special adviser, as defined by section 15 of the Constitutional Reform and Governance Act 2010.>

**Edward Mountain**

**85** In section 6, page 32, line 33, after <applies.> insert—

<(2B) A person may not be appointed as the Land and Communities Commissioner if that person is or, within the two years preceding the date on which the appointment is to take effect, has been a member of the Crofting Commission appointed under paragraph 3 of schedule 1 of the Crofters (Scotland) Act 1993.>

**Edward Mountain**

**86** In section 6, page 32, line 33, after <applies.> insert <—

<(2B) A person may not be appointed as the Land and Communities Commissioner if that person is or, within the two years preceding the date on which the appointment is to take effect, has been a member of, or has held a senior position in, a non-departmental public body.>

**Edward Mountain**

**87** In section 6, page 32, line 33, after <applies.> insert—

<(2B) A person may not be appointed as the Land and Communities Commissioner if that person is or, within the two years preceding the date on which the appointment is to take effect, has been a member of the Scottish Crofting Federation (registered Scottish Charity number SC031919).>

**Edward Mountain**

**199** In section 6, page 32, line 33, after <applies.> insert—

<(2B) A person may not be appointed as the Land and Communities Commissioner if that person is or, within the two years preceding the date on which the appointment is to take effect, has been a board member of the National Farmers Union, Scotland (registered company number SC214564).>

**Rhoda Grant**

**200** In section 6, page 33, line 24, at end insert—

<(aa) where land or crofting estates are owned by the Scottish Ministers, to report on Scottish Ministers' compliance with the obligations imposed by regulations under section 44A,>

**Tim Eagle**

**5** In section 6, page 33, leave out lines 25 and 26

**Edward Mountain**

**88** In section 6, page 33, leave out lines 27 and 28

**Tim Eagle**

**201** In section 6, page 33, line 31, at end insert—

- <(ca) to work with the Scottish Ministers to ensure that landowners and communities are properly supported to manage wildfires,
- (cb) to make any recommendations that the Commissioner considers appropriate to improve the support for landowners and communities in managing wildfires.>

**Rhoda Grant**

**309** In section 6, page 33, line 31, at end insert—

- <(ca) commissioning research into—
  - (i) land management,
  - (ii) community empowerment, and
  - (iii) land valuation.>

**Tim Eagle**

**202** In section 6, page 33, line 33, at end insert—

- <(2) The Land and Communities Commissioner must exercise the Commissioner’s functions with a view to promoting engagement between landowners and communities.>

**Michael Matheson**

**310** In section 6, page 33, line 33, at end insert—

**<38AA Functions of the Land and Communities Commissioner: further provisions**

In exercising the functions under section 38A, the Land and Communities Commissioner—

- (a) may hold public meetings or undertake other such consultations as the Commissioner considers appropriate,
- (b) must have regard to the policies of the Commission and act in ways which are consistent with those policies,

(c) must have regard to any considerations the Commission must have regard to.>

### **Purpose and Effect**

#### **Amendment 307 (Edward Mountain)**

The **purpose** and **effect** is to require Scottish Ministers to ensure that the individual appointed as the Land and Communities Commissioner (“LCC”) has experience or expertise in land valuation. This is achieved by inserting an additional requirement into the list in inserted subsection (3A) in section 11 of the Land Reform (Scotland) Act 2016 (“the 2016 Act”).

#### **Amendment 4 (Tim Eagle)**

The **purpose** and **effect** is to remove the disqualification that the person appointed as the LCC cannot be the owner of land that could be in scope of a lotting decision within one year of being appointed as LCC or during their time as the LCC. This is achieved by removing section 6(7) from the Bill.

#### **Amendment 78 (Edward Mountain)**

The **purpose** and **effect** is to disqualify an individual from being appointed as the LCC who, within two years of being appointed, has been a tenant or occupier of one or more agricultural holdings together exceeding 1,000 hectares in area. This is achieved by adding a new disqualification from the LLC role to section 12 of the 2016 Act.

#### **Amendment 79 (Edward Mountain)**

The **purpose** and **effect** is to disqualify an individual from being appointed as the LCC who, within two years of being appointed, has been a crofter whose croft or crofts (including apportionments of common grazings), as defined by section 3 of the Crofters (Scotland) Act 1993, together exceeds 1,000 hectares in area. This is achieved by adding a new disqualification from the LLC role to section 12 of the 2016 Act.

#### **Amendment 80 (Edward Mountain)**

The **purpose** and **effect** is to disqualify an individual from being appointed as the LCC who, within two years of being appointed, has been a Scottish Minister. This is achieved by adding a new disqualification from the LLC role to section 12 of the 2016 Act.

#### **Amendment 81 (Edward Mountain)**

The **purpose** and **effect** is to disqualify an individual from being appointed as the LCC who, within two years of being appointed, has been a board member of Scottish Land & Estates Limited. This is achieved by adding a new disqualification from the LLC role to section 12 of the 2016 Act.

#### **Amendment 82 (Edward Mountain)**

The **purpose** and **effect** is to disqualify an individual from being appointed as the LCC who, within two years of being appointed, has been a board member of Community Land Scotland. This is achieved by adding a new disqualification from the LLC role to section 12 of the 2016 Act.

**Amendment 83 (Edward Mountain)**

The **purpose** and **effect** is to disqualify an individual from being appointed as the LCC who, within two years of being appointed, has been a board member of Scottish Natural Heritage. This is achieved by adding a new disqualification from the LLC role to section 12 of the 2016 Act.

**Amendment 84 (Edward Mountain)**

The **purpose** and **effect** is to disqualify an individual from being appointed as the LCC who, within two years of being appointed, has been a special adviser, as defined by section 15 of the Constitutional Reform and Governance Act 2010. This is achieved by adding a new disqualification from the LLC role to section 12 of the 2016 Act.

**Amendment 85 (Edward Mountain)**

The **purpose** and **effect** is to disqualify an individual from being appointed as the LCC who, within two years of being appointed, has been a member of the Crofting Commission appointed under paragraph 3 of schedule 1 of the Crofters (Scotland) Act 1993. This is achieved by adding a new disqualification from the LLC role to section 12 of the 2016 Act.

**Amendment 86 (Edward Mountain)**

The **purpose** and **effect** is to disqualify an individual from being appointed as the LCC who, within two years of being appointed, has been a member of, or has held a senior position in, a non-departmental public body. This is achieved by adding a new disqualification from the LLC role to section 12 of the 2016 Act.

**Amendment 87 (Edward Mountain)**

The **purpose** and **effect** is to disqualify an individual from being appointed as the LCC who, within two years of being appointed, has been a member of the Scottish Crofting Federation. This is achieved by adding a new disqualification from the LLC role to section 12 of the 2016 Act.

**Amendment 199 (Edward Mountain)**

The **purpose** and **effect** is to disqualify an individual from being appointed as the LCC who, within two years of being appointed, has been a board member of the National Farmers Union, Scotland. This is achieved by adding a new disqualification from the LLC role to section 12 of the 2016 Act.

**Amendment 200 (Rhoda Grant)**

The **purpose** and **effect** is to require the LCC to report on Scottish Ministers' compliance with the community engagement obligations imposed under section 44A, in relation to land or crofting estates are owned by the Scottish Ministers. This is achieved by adding a new function in the list of functions in inserted section 38A of the 2016 Act.

**Amendment 5 (Tim Eagle)**

The **purpose** and **effect** is to remove the LCC's functions in respect of lotting decisions, such as preparing a report for Scottish Ministers to inform a lotting decision. This would prevent the operation of the lotting provisions. The effect is achieved by removing paragraph (b) from inserted section 38A of the 2016 Act.

**Amendment 88 (Edward Mountain)**

The **purpose** and **effect** is to remove the requirement for the LCC to keep emerging problems in the operation of natural capital markets under review. This is achieved by removing inserted section 38A(ba) from the 2016 Act.

**Amendment 201 (Tim Eagle)**

The **purpose** and **effect** is to add functions, of working with the Scottish Ministers to ensure that landowners and communities are supported to manage wildfires and of making any recommendations the LCC considers appropriate to improve that support, to the functions of the LCC. This is achieved by inserting a new function into the list of functions in section 38A of the 2016 Act.

**Amendment 309 (Rhoda Grant)**

The **purpose** and **effect** is to add functions, of commissioning research into land management, community empowerment and land valuation, to the functions of the LCC.. This is achieved by inserting a new function into the list of functions in section 38A of the 2016 Act.

**Amendment 202 (Tim Eagle)**

The **purpose** and **effect** is to require the LCC exercise their functions with a view to promoting engagement between landowners and communities. This is achieved by inserting a new subsection (2) into inserted section 38A of the 2016 Act.

**Amendment 310 (Michael Matheson)**

The **purpose** and **effect** is to require the LCC to have regard to the Scottish Land Commission's (SLC) policies and considerations the SLC must have regard to, and act in ways consistent with them, and allow the LCC to hold public meetings or other such consultation as the LCC considers appropriate. This is achieved by inserting a new subsection (2) into inserted section 38A of the 2016 Act.

**Background note(s)**

[REDACTED]

[REDACTED]

[REDACTED]

**Contact** – [REDACTED]

## **Speaking Note – Group 13**

[REDACTED]

# Land Reform (Scotland) Bill: Stage 3 Briefing

## Group 14: Taxation and rates to be paid on land

<b><u>Amendment number(s)</u></b> – 311, 314, 315, 316
<b>Subject</b> – Taxation and rates to be paid on land
<b>Speaking Order</b>
<b>Group will be led by Ross Greer</b> , who will speak to amendments 311, 314, 315 and then 316.  The Presiding Officer will then invite other MSPs to speak, and the Cabinet Secretary will be asked to respond.  Ross Greer will then close.
<b>Government position</b>
[REDACTED]
<b>Text of amendment(s)</b>
<b>Ross Greer</b> <b>311</b> After section 6, insert—  <b>&lt;Land and buildings transaction tax</b>  (1) The Land and Buildings Transaction Tax (Scotland) Act 2013 is modified as follows.  (2) After section 26A (additional amount: transactions relating to second homes etc.) insert—  <b>“26B Additional amount: transactions relating to large land holdings</b> (1) The Scottish Ministers must, by regulations, make provision to increase the amount of tax chargeable in respect of transactions, the subject-matter of which consists of or includes the acquisition of ownership of a large holding of land, by the additional amount mentioned in subsection (2).  (2) The additional amount is an amount prescribed by the Scottish Ministers in regulations under subsection (1) exceeding the amount specified in paragraph 4(2) of schedule 2A.  (3) In subsection (1), a “large holding of land” means— (a) a single holding, or (b) a composite holding,

that exceeds 1,000 hectares in area.

- (4) For the purposes of this section—
  - (a) a single holding is the whole of a contiguous area of land in the ownership of one person or set of persons,
  - (b) two or more single holdings form a composite holding if the conditions in subsection (5) are met.
- (5) The conditions referred to in subsection (4)(b) are that—
  - (a) each single holding is contiguous with at least one other single holding, and
  - (b) the owner of one single holding (“holding A”)—
    - (i) is connected to the owner of another single holding (“holding B”) with which holding A is contiguous, and
    - (ii) where there are more than two single holdings, is also the owner of, or connected to the owner of, every other single holding.
- (6) For the purposes—
  - (a) subsection (4)(a), an area of land is to be treated as being contiguous with another if any part of the area is within 250 metres of any part of the other,
  - (b) subsection (5)—
    - (i) a holding is contiguous with another if a boundary of the holding is (wholly or partly) contiguous with a boundary of the other, and
    - (ii) a boundary of a holding is to be treated as being contiguous with a boundary of another if any part of the boundary is within 250 metres of the other.
- (7) For the purposes of subsection (5)(b)—
  - (a) one person is connected to another person if—
    - (i) they are both companies in the same group,
    - (ii) one has a controlling interest in the other, or
    - (iii) a person holds a controlling interest in them both,
  - (b) companies are in the same group if they are, or are included in a number of, companies which, by virtue of section 170 of the Taxation and Chargeable Gains Act 1992, together form part of a group for  
the purposes of sections 171 to 181 of that Act,
  - (c) one person (“person A”) has a controlling interest in another (“person B”) if regulations under section 39

provide that person A is to be treated as having a controlling interest in person B.

- (8) Regulations under subsection (1) may modify— (a) this Act, (b) the additional amount in subsection (2), (c) the definition of “large holding of land” in subsection (3).”.

(3) In section 68 (subordinate legislation), in subsection (3), after paragraph (a) insert—

“(aa) section 26B(1),”.>

**Ross Greer**

**314** After section 6, insert—

**<PART**

**RATES TO BE LEVIED ON LAND**

**Valuation of crofts**

- (1) The Local Government (Scotland) Act 1975 is modified as follows.
- (2) In section 1A (valuation of shootings and deer forests), after paragraph (b) insert— “(c) crofts, in so far as situated in,”.
- (3) The title of section 1A becomes “**Valuation of shootings, deer forests, and crofts**”.>

**Ross Greer**

**315** After section 6, insert—

**<PART**

**RATES TO BE LEVIED ON LAND**

**Eligibility for relief from non-domestic rates: shootings**

- (1) The Non-Domestic Rates (Scotland) Act 2020 is modified as follows.
- (2) After section 20, insert—

**“20A Eligibility for relief from non-domestic rates: shootings**

Any land holding which is entered separately on the valuation roll as a shooting under section 1A(a) of the Local Government (Scotland) Act 1975 is not eligible for any relief from the payment of non-domestic rates.”.>

**Ross Greer**

**316** After section 6, insert—

**<PART**

**RATES TO BE LEVIED ON LAND**

### **Additional surcharge: vacant land**

- (1) The Local Government (Scotland) Act 1966 is modified as follows.
- (2) After section 24B (certain lands to be treated as unoccupied), insert—

#### **“24C Additional surcharge: vacant land**

- (1) If it appears to the rating authority that part of any land holding included in the valuation roll is vacant, the authority may levy a rate greater than that which would ordinarily be levied.
- (2) For the avoidance of doubt, in determining whether part of a land holding is vacant, the rating authority may have regard to the same matters it has regard to when determining whether a property is unoccupied for the purposes of rating.”.>

### **Purpose and Effect**

#### **Amendment 311**

The **purpose** of the amendment is to require that Ministers bring forward regulations to levy an additional rate of tax on the purchase of large landholdings, those being single or composite holdings of land exceeding 1000ha. The **effect** of this amendment is to insert new section 26B to the Land and Buildings Transaction Tax (Scotland) Act 2013.

#### **Amendment 314**

The **purpose** is to amend the Local Government (Scotland) Act 1975 to require the assessor for each valuation area, when making up or altering a valuation roll, to enter any crofts in that area (onto the roll). From discussion of the identical amendment, when brought forward at Stage 2, it seems that the purpose is to ensure that non-domestic rates reliefs can continue to be available to crofts if they are removed from shootings. There may, though, be unintended consequences. The **effect** is unclear as all non-domestic properties that are not otherwise exempt from being rated, are already rateable. Some crofts are currently not rateable due to the exemption from rating for agricultural lands and buildings, so in practice this change could potentially make those crofts rateable. It would not change the position for any crofts that are already rateable.

#### **Amendment 315**

The **purpose** and **effect** is to amend the Non-Domestic Rates (Scotland) Act 2020 to make shootings (i.e. the ‘right to shoot’ in a particular location regardless of whether that right is being exercised) ineligible for any non-domestic rates relief.

#### **Amendment 316**

The **purpose** and **effect** is to allow local authorities to levy a greater non-domestic rate than that which would ordinarily be levied (i.e. the rate set by Scottish Ministers) on any “land holding”, if it appears to the local authority that part of the landholding is vacant. This is almost identical to an amendment lodged at stage 2, other than that there is this time a ‘for the avoidance of doubt’ provision that when determining whether a property is vacant, a rating authority must take account of the same factors as are to be considered in working out if a property is unoccupied for rating purposes.

**Background note(s)**

[REDACTED]

**Consultation**

[REDACTED]

**Contact** [REDACTED]

## **Speaking Note – Group 14**

[REDACTED]

# Land Reform (Scotland) Bill: Stage 3 Briefing

## Group 15: Functions of the Land Commissioners

<b>Amendment number(s)</b> – 312, 313.
<b>Subject – Functions of the Land Commissioners</b>
<b>Speaking Order</b>
<b>Group will be led by Ariane Burgess</b> , who will speak first to amendment 312.  Michael Matheson will speak to amendment 313.  The Presiding Officer will then invite other MSPs to speak, and the Cabinet Secretary will be invited to respond.  Ariane Burgess will then wind up.
<b>Government position</b>
[REDACTED]
<b>Text of amendment(s)</b>
<b>Ariane Burgess</b> <b>312</b> After section 6, insert— <p style="text-align: center;"><b>&lt;CHAPTER</b> <b>FUNCTIONS OF THE LAND COMMISSIONERS</b> <b>Functions of the Land Commissioners: natural capital markets</b></p> (1) The Land Reform (Scotland) Act 2016 is modified as follows. (2) In section 22 (functions of the Land Commissioners)— <ul style="list-style-type: none"><li>(a) in subsection (5), after paragraph (d) insert “, (e) the effects of natural capital markets in relation to other matters relating to land in Scotland.”,</li><li>(b) after subsection (5) insert— “(6) In subsection (5) “natural capital market” means the trading of units or credits which are generated through a registration scheme for projects to restore or improve the natural environment.”.&gt;</li></ul>
<b>Michael Matheson</b> <b>313</b> After section 6, insert— <p style="text-align: center;"><b>&lt;Functions of the Land Commissioners: further provisions</b></p>

- (1) The Land Reform (Scotland) Act 2016 is modified as follows.
- (2) In section 22 (functions of the Land Commissioners), in subsection (5), after paragraph (d) insert—
- “(e) the relationship between scale and concentrations of land holdings and local economic development,
  - (g) the desirability of achieving a more diverse pattern of landownership comprising more landowners and different types of landowners, and
  - (h) measures to prevent depopulation and support the repopulation of land and the sustainability of communities.”.>

**Purpose and Effect**

**Amendment 312 (Ariane Burgess)**

The functions of the Land Commissioners may be exercised regarding “any matter relating to Scotland”. The **purpose** is to clarify that the impact of natural capital markets on land in Scotland is a “matter relating to land” and therefore falls within the Land Commissioners’ functions. The **effect** of this amendment is to insert an additional paragraph into section 22(5) of the Land Reform (Scotland) Act 2016 (the “2016 Act”), which defines the term “matters relating to land in Scotland”. This will provide that the term includes the effects of natural capital markets in relation to other matters relating to land in Scotland. A definition of “natural capital market” is also inserted.

**Amendment 313 (Michael Matheson)**

The **purpose** is to specify functions of the Land Commissioners within the existing remit of the Scottish Land Commission (the “SLC”). The **effect** of this amendment is to expand the list of specific examples of matters relating to land in Scotland, to which the functions of the Land Commissioners relate, so that they include “the relationship between scale and concentrations of land holdings and local economic development”, “the desirability of achieving a more diverse pattern of landownership comprising more landowners and different types of landowners” and “measures to prevent depopulation and support the repopulation of land and the sustainability of communities.”.> .

**Background note(s)**

[REDACTED]

**Consultation**

[REDACTED]

**Contact –** [REDACTED]

## **Speaking Note – Group 15**

[REDACTED]

# Land Reform (Scotland) Bill: Stage 3 Briefing

## Group 16: Muirburn

<b>Amendment number(s)</b> – 204, 205, 206
<b>Subject</b> – Muirburn
<b>Speaking Order</b>
<b>Group will be led by Tim Eagle</b> , who will speak first to amendments 204 and 205.  Ariane Burgess will speak to amendment 206.  The Presiding Officer will then invite other MSPs to speak, and the Cabinet Secretary will be asked to respond.  Tim Eagle will then wind up.
<b>Government position</b>
[REDACTED]
<b>Text of amendment(s)</b>
<b>Tim Eagle</b> <b>204</b> After section 6, insert—  <p style="text-align: center;"><b>&lt;PART MUIRBURN</b></p> <p style="text-align: center;"><b>Repeal of Muirburn licensing scheme</b></p> <ol style="list-style-type: none"><li>(1) The Wildlife Management and Muirburn (Scotland) Act 2024 is modified as follows.</li><li>(2) Part 2 is repealed.</li><li>(3) In section 24—<ol style="list-style-type: none"><li>(a) in subsection (1)(a)(i), for “, 3 or 12” substitute “or 3”, (b) in subsection (1)(a)(ii), for “, 3 or 12” substitute “or 3”, (c) in subsection (5)(c), for “, 3 or 12” substitute “or 3”.</li></ol></li><li>(4) In section 29, in subsection (1)(a), the words “or Part 2” are repealed.</li><li>(5) In section 32, in subsection (1), paragraph (d) is repealed. &gt;</li></ol> <b>Tim Eagle</b> <b>205</b> After section 6, insert—  <p style="text-align: center;"><b>&lt;Muirburn licensing scheme: grant of muirburn licence</b></p> <ol style="list-style-type: none"><li>(1) The Wildlife Management and Muirburn (Scotland) Act 2024 is modified as follows.</li></ol>

(2) In section 14 (grant of muirburn licence), in subsection (1), paragraph (b) is repealed.>

**Ariane Burgess**

**206** After section 6, insert—

**<PART**

**MUIRBURN**

**Definition of peatland**

- (1) The Wildlife and Muirburn (Scotland) Act 2024 is modified as follows.
- (2) In section 22 (interpretation of part), in the definition of “peatland”, for “40” substitute “30”.>

**Purpose and Effect**

**Amendment 204 (Tim Eagle)**

The **purpose** of this amendment is to repeal the muirburn licensing provisions of the Wildlife Management and Muirburn (Scotland) Act 2024 (“the Act”).

The **effect** of this amendment is that this would remove the entire muirburn licensing regime, which was introduced to regulate the controlled burning of vegetation (muirburn) on moorlands, crofting areas, farmland, and conservation land. Part 2 of the Act requires a licence for muirburn at any time of year, restricts muirburn on peatland, mandates training, and enforces adherence to a Muirburn Code.

**Amendment 205 (Tim Eagle)**

The **purpose** of this amendment is to remove the requirement for the licensing authority before granting a muirburn licence to undertake muirburn on peatlands:

- to ensure the making of muirburn is necessary for the specified purpose, and that no other method of vegetation control is practicable.

The **effect** of this amendment is that the tests for undertaking muirburn on peatlands are reduced which will allow the licensing authority (NatureScot) to issue licences for muirburn on peatlands without satisfying the two requirements that the muirburn is necessary and no other method of vegetation control such as cutting or grazing would be practicable.

**Amendment 206 (Ariane Burgess)**

The **purpose** of this amendment is to expand the legal definition of peatland in relation to muirburn to include land with shallower peat layers—specifically, those with peat depths greater than 30 cm (rather than 40 cm as is currently required).

The **effect** of this amendment is that more land would be classified as peatland under the Act. This would increase the area subject to muirburn restrictions or licensing conditions, especially if muirburn on peatland is limited or prohibited.

Applicants for muirburn licences would need to survey and account for more areas as peatland, potentially requiring more detailed peat depth assessments. This has the potential to enhance environmental protection, as even shallower peat stores carbon and supports biodiversity.

**Background note(s)**

[REDACTED]

**Consultation**

**Contact –** [REDACTED]

## **Speaking Note – Group 16**

[REDACTED]

# Land Reform (Scotland) Bill: Stage 3 Briefing

## Group 17: Private Purpose Trusts

<b><u>Amendment number(s)</u></b> – 208
<b>Subject</b> – Private Purpose Trusts
<b>Speaking Order</b>
<b>Group will be led by Rhoda Grant</b> , who will speak to amendment 208.  The Presiding Officer will then invite other MSPs to speak, and the Cabinet Secretary will be asked to respond.  Rhoda Grant will then close.
<b>Government position</b>
[REDACTED]
<b>Text of amendment(s)</b>
<b>Rhoda Grant</b>  <b>208</b> After section 6, insert—  <p style="text-align: center;"><b>&lt;PART</b></p> <p style="text-align: center;"><b>LAND OWNERSHIP: PRIVATE PURPOSE TRUSTS</b></p> <p style="text-align: center;"><b>Land ownership: private purpose trusts</b></p> <ol style="list-style-type: none"><li>(1) The Trusts and Succession (Scotland) Act 2024 is modified as follows.</li><li>(2) In section 46 (private purpose trusts: general), in subsection (1), after paragraph (a) insert— <p style="text-align: center;">“(aa) the trust property is not land, and”.&gt;</p></li></ol>
<b>Purpose and Effect</b>
The <b>purpose</b> of Amendment 208 is to amend section 46 of the Trusts and Succession (Scotland) Act 2024, which is not yet in force, to remove <i>trust property which is land</i> from the definition of “private purpose trust”.  The <b>effect</b> is that, if and when, Part 6 of the 2024 Act comes into force, the statutory definition of private purpose trusts will not include trusts whose trust property is or includes land. “Land” is not defined.

<b>Background note(s)</b>
[REDACTED]
<b>Consultation</b>
N/A
<b>Contact – [REDACTED]</b>

## **Speaking Note – Group 17**

[REDACTED]

## Land Reform (Scotland) Bill: Stage 3 Briefing

### Group 18: Licensing: land on which certain birds may be killed or taken

<b><u>Amendment number(s)</u></b> – 317
<b>Subject</b> – Licensing: land on which certain birds may be killed or taken
<b>Speaking Order</b>
<b>Group will be led by Mark Ruskell</b> , who will speak first to amendment 317.  The Presiding Officer will then invite other MSPs to speak, and the Cabinet Secretary will be asked to respond.  Mark Ruskell will then wind up.
<b>Government position</b>
[REDACTED]
<b>Text of amendment(s)</b>
<b>Mark Ruskell</b> <b>317</b> After section 6, insert—  <p style="text-align: center;"><b>&lt;PART</b></p> <p style="text-align: center;">LICENSING: LAND ON WHICH CERTAIN BIRDS MAY BE KILLED OR TAKEN</p> <p><b>Section 16AA licences: land to be covered by licences and code of practice</b></p> <p>(1) The Wildlife and Countryside Act 1981 is modified as follows.</p> <p>(2) In section 16AA (licensing: land on which certain birds may be killed or taken Scotland), after subsection (6) insert—</p> <p>“(6A) Subject to subsection (6B), the area of land identified under subsection (6)(a)(ii) must include—</p> <p style="padding-left: 2em;">(a) land over which the killing or taking of any type of bird included in Part 1B of Schedule 2 takes place, and</p> <p style="padding-left: 2em;">(b) any other land, within the ownership or occupation of the applicant, that is—</p> <p style="padding-left: 4em;">(i) contiguous with the land referred to in paragraph (a), and</p> <p style="padding-left: 4em;">(ii) where either management activities related to the killing or taking of the that bird could take place or where any relevant offences could be committed, caused or permitted.</p> <p>(6B) For the purposes of subsection (6A)(b)(i)—</p> <p style="padding-left: 2em;">(a) land is contiguous with other land if the boundary of the land is (wholly or partly) contiguous with a boundary of the other land,</p>

(b) a boundary of land is to be treated as being contiguous with the boundary of other land if any part of the boundary is within 250 metres of the other.

(6C) Subsection (6A) does not apply where the area of land mentioned in that subsection is subject to—

- (a) a shooting tenancy conferring the right to shoot red grouse, and
- (b) a separate licence, or application for a licence, under this section.”.>

### **Purpose and Effect**

#### **Amendment 317 (Mark Ruskell)**

The **purpose** is to ensure that the land over which grouse licences relate includes not only the land over which the killing or taking of certain birds is licensed to take place but also a wider area of land owned by the person applying for a licence or land being occupied by the applicant where management activities related to the killing of birds could take place or where any relevant offences could be committed.

The **effect** is to allow grouse licences to be suspended or revoked if offences occur on the land on which the killing or taking of red grouse takes place or surrounding contiguous land owned or occupied by the applicant or a person connected to them. It will require NatureScot to automatically include bordering land on which a relevant offence could be committed as part of the licence. This leaves no scope for NatureScot to exercise discretion as to the area of land which should be subject to the licence.

### **Background note(s)**

[REDACTED]

### **Consultation**

[REDACTED]

**Contact** – [REDACTED]

## **Speaking Note – Group 18**

[REDACTED]

# Land Reform (Scotland) Bill: Stage 3 Briefing

## Group 19: Moorlands

<b><u>Amendment number(s)</u></b> – 320
<b>Subject – Moorlands</b>
<b>Speaking Order</b>
<b>Group will be led by Rachael Hamilton</b> , who will speak first to amendment 320.  The Presiding Officer will then ask other MSPs to speak, and the Cabinet Secretary will be asked to respond.  Rachael Hamilton will then wind up.
<b>Government position</b>
[REDACTED]
<b>Text of amendment(s)</b>
<b>Rachael Hamilton</b>  <b>320</b> After section 6, insert—  <p style="text-align: center;"><b>&lt;PART MOORLANDS</b></p> <p><b>Report on moorlands</b></p> <p>The Scottish Ministers must, before the expiry of 2 years beginning with the day of Royal Assent, publish a report on—</p> <ol style="list-style-type: none"><li>a) what proportion of land in Scotland is moorland,</li><li>b) the rate of moorland habitat loss, broken down by region,</li><li>c) the land uses that are replacing moorlands,</li><li>d) the consequences of moorlands being replaced with other land uses.&gt;</li></ol>
<b>Purpose and Effect</b>
<b>Amendment 320 (Rachael Hamilton)</b> The <b>purpose</b> and <b>effect</b> of this amendment is to require Scottish Ministers to publish a report that sets out what proportion of land in Scotland is moorland, the rate of moorland habitat loss with a regional breakdown, land uses that are replacing moorlands, and the consequences of other land uses replacing moorland, within 2 years of the Bill gaining Royal Assent.
<b>Background note(s)</b>
[REDACTED]
<b>Consultation</b>

[REDACTED]

**Contact** – [REDACTED]

## **Speaking Note – Group 19**

[REDACTED]

# Land Reform (Scotland) Bill: Stage 3 Briefing

## Group 20: Hutting

<b><u>Amendment number</u></b> – 323
<b>Subject</b> – Hutting
<b>Speaking Order</b>
Group will be led by Arianne Burgess who will speak to amendment 323.  The Presiding Officer may then ask other MSPs to speak, and the Cabinet Secretary will be asked to respond.  Arianne Burgess will then wind up.
<b>Government position</b>
[REDACTED]
<b>Text of amendment(s)</b>
After section 7, insert—  <CHAPTER MODEL LEASE FOR HUTTING  Duty to publish model lease  (1) The Scottish Ministers are to make publicly available a model lease designed for letting public land so that it can be used for the purpose of building or occupying huts.  (2) The Scottish Ministers must fulfil their duty under this section before the end of the period of 3 years beginning with the day that the Bill for this Act receives Royal Assent.  (3) The Scottish Ministers may by regulations modify subsection (2) to change the date by which their duty under this section is to be fulfilled.  (4) For the purpose of this section, a hut—  (a) is a simple building used intermittently as recreational accommodation,  (b) has an internal floor area of no more than 30m <sup>2</sup> ,  (c) is constructed from low impact materials,  (d) generally not connected to mains water, electricity or sewerage,  (e) built in such a way that it is removable with little or no trace at the end of its life.>

<b>Purpose and Effect</b>
<p>This amendment is modelled on section 7 of the Bill. The <b>purpose</b> is to provide for a duty on the Scottish Ministers to make publicly available a model lease for letting public land so that it can be used for the purpose of building or occupying 'huts'.</p> <p>The amendment does not define 'public land', and is therefore capable of having a wide meaning. It might for example include land to which the public have access that is owned by a private person such as a trust.</p> <p>The amendment would not however require any person to use the model lease if they were contemplating letting land for hutting, whether as defined in the amendment or otherwise.</p> <p>The <b>effect</b> is that a model hutting lease would need to be published within 3 years of the Bill for this Act receiving Royal Assent, unless that date is modified by 'no procedure' regulations made by the Scottish Ministers.</p>
<b>Background note(s)</b>
[REDACTED]
<b>Consultation</b>
[REDACTED]
<b>Contact – [REDACTED]</b>

## **Speaking Note – Group 20**

[REDACTED]

# Land Reform (Scotland) Bill: Stage 3 Briefing

## Group 21: Small Landholdings

<b>Amendment number(s)</b> – 209, 210, 211, 212, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391
<b>Subject – Small Landholdings</b>
<b>Speaking Order</b>
<p><b>You, Cabinet Secretary, will lead the group.</b> You will speak first to all of the amendments in the group in your name (and then to amendments 373-376), and move amendment 209.</p> <p><b>Tim Eagle</b> will speak to amendments 373, 374, 375, and 376 and the other amendments in the group.</p> <p>The Presiding Officer may invite contributions from other members.</p> <p>You, Cabinet Secretary, will then wind up and press amendment 209.</p>
<b>Government position</b>
[REDACTED]
<b>Text of amendment(s)</b>
<p><b>Mairi Gougeon</b> <b>209</b> In section 9, page 35, line 37, leave out &lt;sub-paragraph (i) or (ii)&gt; and insert &lt;paragraph (a) or (b)&gt;</p> <p><b>Mairi Gougeon</b> <b>210</b> In section 9, page 36, leave out line 13</p> <p><b>Mairi Gougeon</b> <b>211</b> In section 9, page 36, line 15, at end insert— &lt;(d) paragraph 60ZA of the schedule of the Land Reform (Scotland) Act 2025."&gt;</p> <p><b>Mairi Gougeon</b> <b>212</b> In section 9, page 36, line 27, at end insert— &lt;( ) In section 33 (report on inquiry), in subsection (4)— (a) for “section 61 of the 1991 Act or section 78 of the 2003 Act” substitute “the following provisions”, (b) after “proceedings” insert “— (a) section 61 of the 1991 Act, (b) section 78 of the 2003 Act, (c) paragraph 60ZA of the schedule of the Land Reform (Scotland) Act 2025.”&gt;</p>

**Mairi Gougeon**

**367** In the schedule, page 86, line 15, leave out <or>

**Mairi Gougeon**

**368** In the schedule, page 86, line 18, at end insert <, or  
( ) the lease is one to which this schedule applies by virtue of section 32(11) of the Small Landholders (Scotland) Act 1911 (provisions as to statutory small tenants) or section 14 of the Small Landholders and Agricultural Holdings (Scotland) Act 1931 (option to statutory small tenant to become landholder).>

**Mairi Gougeon**

**369** In the schedule, page 87, line 31, at end insert—  
<Duration of lease of small landholding  
(1) A lease of a small landholding—  
(a) subsists until it is terminated in accordance with this schedule, and  
(b) may not be terminated other than in accordance with this schedule.  
(2) Any term (whether express or implied) of a lease of a small landholding which provides for—  
(a) an ish, or  
(b) the lease to end other than in accordance with this schedule, is of no effect.  
(3) The absence of an ish does not affect the validity of a lease of small landholding.>

**Mairi Gougeon**

**370** In the schedule, page 91, line 24, leave out <(with the exception of holiday lets)>

**Mairi Gougeon**

**371** In the schedule, page 94, line 15, leave out <tenant> and insert <landholder>

**Mairi Gougeon**

**372** In the schedule, page 110, line 26, leave out <(with the exception of holiday lets)>

**Tim Eagle**

**373** In the schedule, page 119, line 28, at end insert—  
<( ) Before laying a draft of a Scottish statutory instrument containing regulations under sub-paragraph (4) before the Scottish Parliament, the Scottish Ministers must consult such persons as they consider appropriate.>

**Tim Eagle**

**374** In the schedule, page 125, line 15, at end insert—  
<( ) Before laying a draft of a Scottish statutory instrument containing regulations under sub-paragraph (5) before the Scottish Parliament, the Scottish Ministers must consult such persons as they consider appropriate.>

**Tim Eagle**

**375** In the schedule, page 126, line 8, at end insert—  
<( ) Before laying a draft of a Scottish statutory instrument containing regulations under sub-paragraph (7) before the Scottish Parliament, the Scottish Ministers must consult such persons as they consider appropriate.>

**Tim Eagle**

**376** In the schedule, page 133, line 24, at end insert—

<( ) such persons as the Scottish Ministers consider representative of the interests of small landholders and their landlords,>

**Mairi Gougeon**

**377** In the schedule, page 133, line 33, at end insert—

<PART

ALTERNATIVE DISPUTE RESOLUTION

Agreement to resolve matters other than by application to Land Court

60ZA (1) Where this schedule makes provision for any matter to be determined by the Land Court, the matter may, if the landlord and small landholder agree at or after the time when the matter arises, instead be determined by another method of resolving the matter (including arbitration).

(2) Sub-paragraph (1) does not apply in relation to any matter which may be determined by the Land Court—

(a) in pursuance of—

(i) paragraph 5A(4) (whether a subsidiary or auxiliary purpose is reasonable and not inconsistent with the cultivation of the holding),

(ii) any question or difference between the landlord and landholder arising in relation to Part 3 (disposal of holding by the landholder: renunciation, assignation or succession),

(iii) any question or difference between the landlord and landholder arising in relation to Part 3A (removal of the landholder: breach of lease conditions, resumption by landlord),

(iv) paragraph 65 (whether a contract term or agreement contracting out of a provision of this schedule is to be approved), or

(b) on appeal.

Arbitration: procedure etc

60ZB (1) This paragraph applies to any arbitration to which a matter is referred by the landlord and small landholder under paragraph 60ZA(1).

(2) The agreement of the parties to refer the matter to arbitration has the effect of depriving

each party of the right to—

(a) have the matter heard (or any issue in relation to the matter determined) by the Land

Court (other than on appeal), and

(b) agree under paragraph 60ZA(1) to another method of resolving the matter.

(3) The landlord and landholder are to agree whether the arbitration is conducted by—

(a) a single arbitrator, or

(b) two arbitrators (with or without an overseer), and the arbitrator or, as the case may be, each arbitrator, may be appointed by the parties or by a person nominated by them.

(4) The procedure to be followed at arbitration (including any matters to be taken into account by the arbitrator and the matters to be contained in the award) are, subject to sub-paragraph

(5), to be as the parties agree or, in the absence of such agreement, as the arbitrator considers appropriate.

(5) Any provision of this schedule that would apply to the Land Court as respects its consideration or determination of any matter had the matter not been referred to arbitration applies as respects the consideration or determination of the matter by arbitration.

(6) Any party to the arbitration may appeal to the Land Court against the arbitrator's award on a question of law within 28 days of the award.

(7) In an appeal under sub-paragraph (6) the Court may—

(a) quash, confirm or vary the award or any part of it, and

(b) where the Court quashes the award or any part of it—

(i) remit the case to the arbitrator for further procedure, and

(ii) direct the arbitrator on any question of law relevant to the case.

Conduct of arbitrator and setting aside of arbitrator's award

60ZC (1) Any person with an interest in a matter determined by an arbitration to which paragraph

60ZB applies that has reasonable grounds for believing that—

(a) there has been material misconduct by the arbitrator, or

(b) the arbitration has been improperly procured, may make an application to the Land Court for an order under sub-paragraph (2).

(2) Where, on such an application, the Land Court is satisfied that—

(a) there has been material misconduct by the arbitrator, or the arbitration has been improperly procured, it may make an order setting aside the arbitrator's award,

(b) there has been material misconduct by the arbitrator, it may make an order removing the arbitrator.>

### **Mairi Gougeon**

**378** In the schedule, page 134, line 6, leave out from <5> to end of line 11 and insert <33>

### **Mairi Gougeon**

**379** In the schedule, page 134, leave out line 15

### **Mairi Gougeon**

**380** In the schedule, page 134, leave out line 21 and insert—

<( ) sections 12 and 13,>

### **Mairi Gougeon**

**381** In the schedule, page 134, line 22, leave out from <19> to end of line 23 and insert <23>

### **Mairi Gougeon**

**382** In the schedule, page 134, line 23, at end insert—

<( ) section 26(4) to (6), (8) and (9),>

### **Mairi Gougeon**

**383** In the schedule, page 134, line 24, at end insert—

<( ) in section 31, the definition of "statutory successors",>

### **Mairi Gougeon**

**384** In the schedule, page 134, leave out line 31 and insert—

<( ) sections 15 and 16,>

**Mairi Gougeon**

**385** In the schedule, page 134, line 33, leave out from <8> to end of line 34 and insert <12>

**Mairi Gougeon**

**386** In the schedule, page 135, line 2, leave out from <and 20> to end of line 3 and insert <to 22>

**Mairi Gougeon**

**387** In the schedule, page 135, line 4, at end insert—  
<( ) in section 26, the definitions of “the Act of 1886”, “the Act of 1919” and “the Landholders Acts”.>

**Mairi Gougeon**

**388** In the schedule, page 135, leave out lines 7 to 13

**Mairi Gougeon**

**389** In the schedule, page 135, line 24, at end insert—  
<Crofters Holdings (Scotland) Act 1887  
60B (1) The Crofters Holdings (Scotland) Act 1887 is modified as follows.  
(2) In section 2 (stay of proceedings for sale of crofter’s effects), the words from “The powers” to the end are repealed.  
Small Landholders (Scotland) Act 1911  
60C (1) The Small Landholders (Scotland) Act 1911 is modified as follows.  
(2) In section 14 (adjustment of rights by Land Court)—  
(a) the existing words become subsection (1),  
(b) in that subsection—  
(i) for the words “resumption by the landlord, or in the case of an existing yearly tenant or a qualified leaseholder or” substitute “the lease of a”,  
(ii) for the words “a landholder” in the first place they appear substitute “a lease of a small landholding”,  
(iii) after “as” in the second place it appears insert “at”,  
(iv) for the words “such tenant or leaseholder becomes a landholder, as the case may be,” substitute “the lease becomes a lease of a small landholding”,  
(c) after that subsection insert—  
“(2) For the purposes of subsection (1), a lease of a small landholding is a lease to which the schedule of the Land Reform (Scotland) Act 2025 (small landholdings) applies.”.  
(3) In section 32 (provisions as to statutory small tenants)—  
(a) in subsection (1), for the words “section sixteen of the Act of 1886” substitute “paragraph 21(2) and (3) of the schedule of the 2025 Act”,  
(b) in subsection (11), for the words from “the tenant shall” to the end substitute “the lease giving rise to the tenancy will become, from the date specified in the finding, a lease to which the schedule of the 2025 Act applies”,  
(c) in subsection (14)—  
(i) the words “Subsection (4) of section six, section and section twenty of the Act of 1886, section 2 of the Act of 1887 down to the word “summarily,” and” and “section twelve, section twenty-five” are repealed,  
(ii) for the word “apply” in the last place it appears substitute “applied”,

(d) after subsection (14) insert—

“(14A)

landholders and small landholdings within the meaning of paragraph 66 of that schedule, subject to the following modifications—

(a) in paragraph 3(7) for the words “the rent under sub-paragraph (1)” substitute “an equitable rent under section 32(7) of the Small Landholders(Scotland) Act 1911”,

(b) in paragraph 60ZA—

(i) in sub-paragraph (1), for the words “this schedule makes” substitute “the Small Landholders (Scotland) Acts 1886 to 1931 make”,

(ii) for sub-paragraph (2)(a) substitute—

“(a) in pursuance of—

(i) section 32(4) of the Small Landholders (Scotland)

Act 1911 (dispute about renewal of statutory small tenancy),

(ii) section 32(11) of that Act (landlord’s failure to provide or maintain buildings or permanent improvements: whether lease is to become one to which this schedule applies),

(iii) section 32(13) of that Act (whether a person is a statutory small tenant),

(iv) section 32(15) of that Act (authorisation of resumption by landlord),”.

(e) in subsection (15), for the words “section nineteen of this Act” substitute “paragraph 25C(2) of the schedule of the 2025 Act”,

(f) after subsection (15) insert—

“(16) In this section—

“2025 Act” means the Land Reform (Scotland) Act 2025, “permanent improvements” has the meaning given by paragraph 27(3) of the schedule of the 2025 Act.”.

Small Landholders and Agricultural Holdings (Scotland) Act 1931

60D (1) The Small Landholders and Agricultural Holdings (Scotland) Act 1931 is modified as follows.

(2) For section 14 substitute—

“14 Option to statutory small tenant to become small landholder

(1) The lease which gives rise to a statutory small tenancy becomes a lease of a small landholding if—

(a) not later than one month before the end of the period of the tenancy, the statutory small tenant gives the landlord written notice that the tenant wishes the lease to become a lease of a small landholding, and

(b) the landlord does not, before the expiry of the period of one month beginning with the day on which the notice is given, give the tenant a counter-notice stating that paragraph 27 of that schedule (in relation to rights to compensation for permanent improvements) is to apply as if the lease were a lease of a small landholding.

(2) Where a lease becomes a lease of a small landholding by virtue of subsection

(1), it does so on the expiry of the period of the tenancy current when the notice mentioned in subsection (1)(a) is given.

(3) Where the landlord gives the tenant a counter-notice referred to in subsection (1)(b), paragraph 27 of the schedule of the Land Reform (Scotland) Act 2025 (in relation to rights to compensation for permanent improvements) applies to the lease of the statutory small tenancy as if the lease were a lease of a small landholding.

(4) For the purposes of this section, a lease of a small landholding is a lease to which the schedule of the Land Reform (Scotland) Act 2025 (small landholdings) applies.”.>

### **Mairi Gougeon**

**390** In the schedule, page 136, line 27, at end insert—

<Scottish Land Court Act 1993

64B (1) The Scottish Land Court Act 1993 is modified as follows.

(2) In section 1 (the Land Court), in subsection (6), for the words “or the Small Landholders (Scotland) Acts 1886 to 1931” substitute “, the Small Landholders (Scotland) Acts 1886 to 1931 or the schedule of the Land Reform (Scotland) Act 2025 (small landholdings)”.>

### **Mairi Gougeon**

**391** In the schedule, page 136, line 33, at end insert—

<Provision in lease or agreement as to resolution of disputes

65A Any term of—

(a) a lease to which this schedule applies, or

(b) any agreement in connection with such a lease (other than an agreement under paragraph 60ZA(1)), that makes provision restricting any right of the landlord or small landholder to apply to the Land Court by virtue of this schedule to have a matter determined by the Court is, so far as it makes that provision, of no effect.>

## **Purpose and Effect**

### **Amendment 209 Mairi Gougeon**

The **purpose** and **effect** of the amendment is to make a technical drafting change to section 9(6)(a) of the Bill, to correct a referencing error in the substituted section 27(1)(c) of the Land Reform (Scotland) Act 2016. The substituted text will refer to “paragraph (a) and (b)”, rather than “sub-paragraph (i) or (ii)”.

### **Amendment 210 Mairi Gougeon**

The **purpose** of the amendment is to make a consequential amendment to section 9 of the Bill, in connection with amendments 211 and 377, to remove the current reference to the arbitration provisions in the Crofters Holdings (Scotland) Act 1886, which is being modernised and repealed by other amendments in the group.

The **effect** is that section 9(6)(c)(ii) of the Bill is modified to remove what would be section 27(9)(a) of the 2016 Act, as inserted by the Bill.

### **Amendment 211 Mairi Gougeon**

The **purpose** of the amendment is to include reference to paragraph 60ZA of the schedule to the Bill – i.e. the modernised alternative dispute resolution provisions for small landholders – in section 27(9) of the 2016 Act.

This amendment is related to amendments 210 and 377.

The **effect** is that the text inserted into section 27(9) of the 2016 Act by section 9(6)(c)(ii) of the Bill is modified to refer to paragraph 60ZA of the schedule; and sections 27(7) and (8) of the 2016 Act will apply to arbitration proceedings under paragraph 60ZA as they apply to Land Court proceedings. These provisions concern the admissibility of codes of practice in Land Court proceedings, and the requirement for the Land Court to take into account relevant provisions in a code of practice during proceedings.

#### **Amendment 212 Mairi Gougeon**

The **purpose** of the amendment is to provide that a report on an alleged breach of a code of practice published by the Tenant Farming Commissioner is admissible as evidence, and must also be taken into account (where relevant), in arbitration proceedings regarding matters arising under the schedule of the Bill.

These amendments make equivalent provision to the changes to section 27(9) of the 2016 Act by section 9(6)(c)(ii) of the Bill (as modified by amendments 210 and 211).

The **effect** is that the Bill amends section 33(4) of the 2016 Act, to provide that subsections (2) and (3) apply to arbitration proceedings under the relevant provisions in the agricultural holdings and small landholdings legislation as they apply to Land Court proceedings. Those provisions concern the admissibility of such a report in Land Court proceedings, and the requirement for the Land Court to take into account the report where relevant to proceedings.

#### **Amendment 367 Mairi Gougeon**

The **purpose** and **effect** of the amendment is to make a consequential amendment to paragraph A1(2)(a)(iii) to remove the word “or”. This amendment is related to amendment 368.

#### **Amendment 368 Mairi Gougeon**

The **purpose** of the amendment is to modify the leases to which the schedule applies, include when a statutory small tenancy becomes a lease of a small landholding by virtue of section 32(11) of the 1911 Act, or section 14 of the 1931 Act.

These sections (as modified by amendment 389) enable a statutory small tenant to become a landholder under the schedule in the scenarios provided for.

The **effect** is that an additional head is inserted into paragraph A1(2) to refer to a lease that the schedule applies to by virtue of those provisions; and the schedule will apply to such tenancies in accordance with the modified provisions.

#### **Amendment 369 Mairi Gougeon**

The **purpose** of the amendment is to make further provision in connection with the creation of new small landholding tenancies and the ‘security of tenure’ of a small landholder, to clarify the interaction between the provisions enabling the creation of new tenancies and those regarding the termination of a tenancy (including Part 3A of the schedule).

The **effect** is to insert a new paragraph into the schedule, which provides that: (a) a small landholder’s tenancy can only be terminated in accordance with the schedule; (b) any term of a lease of a small landholding that provides for a termination date or allows for the lease to be terminated other than in accordance with the schedule is of no effect; and (c) a lease of a small landholding is not invalid as a result of not including a termination date.

#### **Amendment 370 Mairi Gougeon**

The **purpose** of the amendment is to amend the statutory condition of let concerning a landholder sub-letting the holding, to remove the exception relating to sub-letting for the purposes of operating a holiday let.

The **effect** is that paragraph 5A(2)(h) of the schedule is modified to remove the reference to holiday lets being excluded from requiring landlord’s consent, meaning that the sub-letting requirements would apply to any sub-letting of the holding by the tenant.

Amendment 372 makes the equivalent amendment to the corresponding ground for removal of the small landholder from the holding for breaching the statutory conditions of use.

#### **Amendment 371 Mairi Gougeon**

The **purpose** of the amendment is to replace a reference to “tenant” with “landholder”, for drafting consistency.

The **effect** is that paragraph 5E(3)(b)(v) of the schedule will refer to “the landholder” as opposed to “the tenant”, consistent with the terminology used in the schedule.

#### **Amendment 372 Mairi Gougeon**

The **purpose** of the amendment is to make a consequential amendment to the grounds on which a small landholder can be removed from the holding, in connection with amendment 370. The grounds for removal of a small landholder in paragraph 25B(2) for breaching a statutory condition of let correspond with the conditions set out in paragraph 5A(2)(h).

The **effect** is that paragraph 25B(2)(h) of the schedule is modified for consistency with the revised statutory condition of let in paragraph 5A(2)(h) of the schedule, by removing the reference to holiday lets.

#### **Amendment 373 Tim Eagle [REDACTED]**

The **purpose** of the amendment is to require Scottish Ministers to consult with persons they consider appropriate before making regulations under paragraph 40(4) of the schedule to the Bill.

Paragraph 40(4) enables Scottish Ministers to modify paragraph 40 to specify the basis upon which a valuer appointed by the Tenant Farming Commissioner is to assess the compensation payable and the consideration that is to be given to certain factors.

The **effect** is that a new sub-paragraph is inserted following paragraph 40(4) of the schedule to the Bill, and the Scottish Ministers will be required to consult accordingly.

**Amendment 374 Tim Eagle [REDACTED]**

The **purpose** of the amendment is to require Scottish Ministers to consult with persons they consider appropriate before making regulations under paragraph 49(5) of the schedule to the Bill.

Paragraph 49(5) enables Scottish Ministers to modify the list of exempt transfers that do not require notice to be given to a small landholder with a registered right to buy.

The **effect** is that a new sub-paragraph is inserted following paragraph 49(5) of the schedule to the Bill, and the Scottish Ministers will be required to consult accordingly.

**Amendment 375 Tim Eagle [REDACTED]**

The **purpose** of the amendment is to require Scottish Ministers to consult with persons they consider appropriate before making regulations under paragraph 50(7) of the schedule to the Bill.

Paragraph 50(7) enables Scottish Ministers to modify the list of steps taken “with a view to a transfer of land” which, if taken by an owner or eligible creditor, would trigger a small landholder’s right to buy.

The **effect** is that a new sub-paragraph is inserted following paragraph 50(7) of the schedule to the Bill, and the Scottish Ministers will be required to consult accordingly.

**Amendment 376 Tim Eagle [REDACTED]**

The **purpose** of the amendment is to include an express requirement for Scottish Ministers to consult persons representative of small landholders and their landlords before making regulations under paragraph 59(1) of the schedule to the Bill.

Paragraph 59(1) enables Scottish Ministers to make provision for the registration of small landholders’ interests in buying the land comprised in their landholdings.

The **effect** is that the current list of persons that the Scottish Ministers require to consult in paragraph 59(3) is expanded, and the Scottish Ministers will be required to consult accordingly.

#### **Amendment 377 Mairi Gougeon**

The **purpose** of the amendment is to modernise the alternative dispute resolution provisions in relation to small landholders.

The Bill currently applies section 30 of the Crofters Holdings (Scotland) Act 1886 to small landholdings under the schedule, which relates to the determination of matters by arbitration (instead of the Land Court). This section is repealed by amendment 378, and the provisions applying section 30 to small landholdings under the schedule are removed from the Bill by amendment 388.

The amendment inserts three paragraphs into the schedule.

Paragraph 60ZA enables a small landholder and their landlord to agree, where the schedule makes provision for a matter to be determined by the Land Court, to instead determine it by another method. Sub-paragraph (2) provides for certain exceptions, meaning that the Land Court is the sole forum for determining such matters.

Paragraph 60ZB concerns procedural aspects of an arbitration to which a matter is referred under paragraph 60ZA(1). Provision is made in relation to: (a) the effect of an agreement to refer a matter to arbitration, (b) the number of arbitrators to be appointed, and the procedure to be followed at arbitration, (c) confirming that provisions which would have applied to the Land Court in respect of its consideration or determination of a matter apply in respect of the arbitration, and (d) appeals to the Land Court against an arbitrator's award, and the powers of the Land Court in determining such an appeal.

Paragraph 60ZC enables any person with an interest in a matter determined by an arbitration under paragraph 60ZB to apply to the Land Court to set aside an arbitrator's award or remove the arbitrator, when there has been material misconduct by the arbitrator, or the arbitration has been improperly procured.

The **effect** is that the modernised alternative dispute resolution provisions will apply to small landholdings under the schedule, and small landholders and their landlords can agree to resolve disputes in accordance with these provisions.

#### **Amendment 378 Mairi Gougeon**

The **purpose** and **effect** of the amendment is to modify the repeals made by paragraph 60A(1)(a) of the schedule to the Crofters Holdings (Scotland) Act 1886, to repeal sections 1 to 33 of the Act.

#### **Amendment 379 Mairi Gougeon**

The **purpose** and **effect** of the amendment is to modify the repeals made by paragraph 60A(1)(c) of the schedule to the Small Landholders (Scotland) Act 1911 to remove the reference to, and consequently no longer repeal, section 1 of the Act.

#### **Amendment 380 Mairi Gougeon**

The **purpose** and **effect** of the amendment is to modify the repeals made by paragraph 60A(1)(c) of the schedule to the Small Landholders (Scotland) Act 1911, to repeal section 12 of the Act.

#### **Amendment 381 Mairi Gougeon**

The **purpose** and **effect** of the amendment is to modify the repeals made by paragraph 60A(1)(c) of the schedule to the Small Landholders (Scotland) Act 1911, to repeal section 20 of the Act.

#### **Amendment 382 Mairi Gougeon**

The **purpose** and **effect** of the amendment is to modify the repeals made by paragraph 60A(1)(c) of the schedule to the Small Landholders (Scotland) Act 1911, to repeal subsections (4), (5), (6), (8), and (9) of section 26 of the Act.

#### **Amendment 383 Mairi Gougeon**

The **purpose** and **effect** of the amendment is to modify the repeals made by paragraph 60A(1)(c) of the schedule to the Small Landholders (Scotland) Act 1911, to repeal the definition of “statutory successors” in section 31 of the Act.

#### **Amendment 384 Mairi Gougeon**

The **purpose** and **effect** of the amendment is to modify the repeals made by paragraph 60A(1)(d) of the schedule to the Land Settlement (Scotland) Act 1919, to repeal section 16 of the Act.

#### **Amendment 385 Mairi Gougeon**

The **purpose** and **effect** of the amendment is to modify the repeals made by paragraph 60A(1)(e) of the schedule to the Small Landholders and Agricultural Holdings (Scotland) Act 1931, to repeal section 9 of the Act.

#### **Amendment 386 Mairi Gougeon**

The **purpose** and **effect** of the amendment is to modify the repeals made by paragraph 60A(1)(e) of the schedule to the Small Landholders and Agricultural Holdings (Scotland) Act 1931, to repeal section 21 of the Act.

#### **Amendment 387 Mairi Gougeon**

The **purpose** and **effect** of the amendment is to modify the repeals made by paragraph 60A(1)(e) of the schedule to the Small Landholders and Agricultural Holdings (Scotland) Act 1931, to repeal various definitions included in section 26 of the Act.

#### **Amendment 388 Mairi Gougeon**

The **purpose** of the amendment is to remove from the Bill the provisions applying section 30 of the Crofters Holdings (Scotland) Act 1886 to small landholdings under the schedule.

This is a consequential amendment linked to amendments 377 and 378, in connection with the modernised alternative dispute resolution provisions for small landholding tenancies.

The **effect** is that paragraph 60A(3) is removed from the schedule to the Bill.

#### **Amendment 389 Mairi Gougeon**

The **purpose** of the amendment is to further modify the Landholders Acts, primarily to ensure the provisions regarding statutory small tenants operate in conjunction with those in the schedule of the Bill.

Paragraph 60B(1) partially section 2 of the Crofters Holdings (Scotland) Act 1887.

Paragraph 60C amends the Small Landholders (Scotland) Act 1911.

Paragraph 60C(2) makes consequential amendments to section 14 of the Small Landholders (Scotland) Act 1911 to operate alongside the modernised small landholdings provisions in the schedule. Section 14, as amended, enables the Land Court to adjust the rights of persons affected when a statutory small tenant becomes a small landholder under the schedule (as opposed to a “landholder” under the 1911 Act).

Paragraph 60C(3) modifies section 32 of the Small Landholders (Scotland) Act 1911, which sets out the provisions in the Landholders Acts that apply to statutory small tenants. These changes: (a) apply, where relevant and subject to modifications, the corresponding modernised provisions in the schedule rather than the current provisions in Landholders Acts (including the alternative dispute resolution provisions inserted by amendment 377); (b) modify section 32(11) (in connection with amendment 368), which enables the conversion of a statutory small tenancy to a small landholding tenancy in the circumstances set out; and (c) make other consequential amendments connected to the operation of the schedule and the 1911 Act.

Paragraph 60D modifies section 14 of Small Landholders and Agricultural Holdings (Scotland) Act 1931, to modernise the existing provision enabling statutory small tenants to become small landholders, provided that the conditions in the section are met. These changes are likewise connected to amendment 368.

The **effect** is that the provisions in the Landholders Acts retained for the purposes of statutory small tenancies are modified as detailed above in order to interoperate with the modernised landholdings provisions in the schedule.

#### **Amendment 390 Mairi Gougeon**

The **purpose** of the amendment is to extend the jurisdiction of the Scottish Land Court to matters of law and fact arising under the schedule to the Bill.

The **effect** is that a new paragraph is inserted into the schedule which amends section 1(6) of the Scottish Land Court Act 1993, which provides for the Court's jurisdiction to hear matters of law and fact arising under the legislation referred to. The modified section 1(6) will include reference to the schedule of the Act.

#### **Amendment 391 Mairi Gougeon**

The **purpose** of the amendment is to introduce an anti-avoidance measure to prevent small landholders or their landlords contracting-out of having a matter determined by the Land Court. This amendment is related to amendment 377.

The **effect** is that the parties to a lease of a small landholding are prevented from restricting their right to refer relevant disputes to the Land Court for determination. Any contractual provision that attempts to do so, except a valid reference to another method of determination under paragraph 60ZA of the schedule (as inserted by amendment 377), is of no effect.

#### **Background note(s)**

[REDACTED]

#### **Consultation**

[REDACTED]

**Contact** – [REDACTED]

## **Speaking Note – Group 21**

[REDACTED]

# Land Reform (Scotland) Bill: Stage 3 Briefing

## Group 22: Tenant Farmer Advisory Forum

<b><u>Amendment number(s)</u> – 213</b>
<b>Subject – Tenant Farmer Advisory Forum</b>
<b>Speaking Order</b>
<p><b>Group will be led by Rhoda Grant</b> who will speak to amendment 213 and then move the amendment.</p> <p>The Presiding Officer may invite other members to contribute.</p> <p>You, Cabinet Secretary, will then speak to the amendment in the group.</p> <p>Rhoda Grant will then wind up.</p>
<b>Government position</b>
[REDACTED]
<b>Text of amendment(s)</b>
<p><b>Rhoda Grant</b> <b>213</b> After section 9 insert—</p> <p>&lt;CHAPTER</p> <p>DUTY TO ESTABLISH A TENANT FARMING ADVISORY FORUM</p> <p>Duty to establish a Tenant Farming Advisory Forum</p> <p>(1) The Land Reform (Scotland) Act 2016 is modified as follows.</p> <p>(2) In section 24 (Functions of the Tenant Farming Commissioner)—</p> <p>(a) in subsection (1), after paragraph (g) insert—</p> <p>“(ga) to establish and chair a Tenant Farming Advisory Forum,”</p> <p>(b) after subsection (1) insert—</p> <p>“(1A) The Tenant Farming Commissioner must ensure that membership of the Tenant Farming Advisory Forum established under subsection (1)(ga) is selected on the ability of members to contribute to Scotland’s land reform journey in a positive and constructive manner without showing bias to vested interests.”&gt;</p>
<b>Purpose and Effect</b>
<b>Amendment 213</b>

The amendment modifies section 24 of the Land Reform (S) Act 2016, which provides for the functions of the Tenant Farming Commissioner.

The **purpose** of the amendment is to modify the statutory functions of the Tenant Farming Commissioner (**TFC**) to add the function of establishing and chairing a “Tenant Farming Advisory Forum”, and to require the TFC to ‘ensure’ the membership of the Forum is selected in the manner set out in the amendment.

The **effect** would be to amend the Bill to include a new section modifying the Land Reform (Scotland) Act 2016 to add a new function establishing the Forum on a statutory footing in the 2016 Act.

**Background note(s)**

[REDACTED]

**Consultation**

[REDACTED]

[REDACTED]

## **Speaking Note – Group 22**

[REDACTED]

# Land Reform (Scotland) Bill: Stage 3 Briefing

## Group 23: Changes to Agricultural Tenancies

<b>Amendment number(s)</b> – 90, 91, 92, 93, 94, 95, 97, 98, 100, 101, 102, 103, 104, 106, 107, 108, 109, 110, 111, 112
<b>Subject</b> – Changes to agricultural tenancies
<b>Speaking Order</b>
<b>Edward Mountain MSP will lead the group.</b> He will speak to all of the amendments in the group, and move amendment 90.  The Presiding Officer may invite contributions from other members.  You, Cabinet Secretary, will speak to all of the amendments in the group.  Edward Mountain MSP will then wind up.
<b>Government position</b>
[REDACTED]
<b>Text of amendment(s)</b>
<b>Edward Mountain</b> <b>Amendment 90</b> - Before section 10, insert— <Application of chapter to existing tenancies Application of chapter to existing tenancies. The modifications made by this Chapter have no effect where, in respect of a tenancy of an agricultural holding, the lease is entered into before the day of Royal Assent.>
<b>Edward Mountain</b> <b>Amendment 91</b> - Leave out section 10A
<b>Edward Mountain</b> <b>Amendment 92</b> - Leave out section 10B
<b>Edward Mountain</b> <b>Amendment 93</b> - Leave out section 10C
<b>Edward Mountain</b> <b>Amendment 94</b> - Leave out section 10D
<b>Edward Mountain</b> <b>Amendment 95</b> - Leave out section 11
<b>Edward Mountain</b> <b>Amendment 97</b> - Leave out section 12
<b>Edward Mountain</b>

**Amendment 98** - Leave out section 13

**Edward Mountain**

**Amendment 100** - Leave out section 14

**Edward Mountain**

**Amendment 101** - Leave out section 15

**Edward Mountain**

**Amendment 102** - Leave out section 16

**Edward Mountain**

**Amendment 103** - Leave out section 17

**Edward Mountain**

**Amendment 104** - Leave out section 18

**Edward Mountain**

**Amendment 106** - Leave out section 23

**Edward Mountain**

**107** Leave out section 24

**Edward Mountain**

**108** Leave out section 25

**Edward Mountain**

**109** Leave out section 27A

**Edward Mountain**

**110** Leave out section 27B

**Edward Mountain**

**111** Leave out section 27C

**Edward Mountain**

**112** Leave out section 27D

### **Purpose and Effect**

#### **Amendment 90**

The **purpose** of the amendment is to provide that the provisions in Chapter 3 of the Bill (Agricultural Holdings) only apply in respect of agricultural tenancies entered into after the Bill receives Royal Assent.

The **effect** is that a new section is inserted into the Bill which provides that the provisions in Chapter 3, which modify the agricultural holdings legislation, would not apply in to leases entered into before the Bill receives Royal Assent.

### **Amendment 91**

The **purpose** of the amendment is to remove from the Bill the modifications of the Agricultural Holdings (Scotland) Act 1991 in respect of the assignation of 1991 Act tenancies made by section 10A.

The **effect** of the amendment is to remove section 10A (Assignation of tenancy) from the Bill.

### **Amendment 92**

The **purpose** of the amendment is to remove from the Bill the modifications of the Agricultural Holdings (Scotland) Act 2003 in relation to the assignation of limited duration tenancies under that Act made by section 10B.

The **effect** of the amendment is to remove section 10B (Assignation of limited duration tenancy) from the Bill.

### **Amendment 93**

The **purpose** of the amendment is to remove from the Bill the modifications of the Agricultural Holdings (Scotland) Act 2003 in relation to the assignation of modern limited duration tenancies under that Act made by section 10C.

The **effect** of the amendment is to remove section 10C (Assignation of modern limited duration tenancy) from the Bill.

### **Amendment 94**

The **purpose** of the amendment is to remove from the Bill the modifications to the Agricultural Holdings (Scotland) Act 2003 in relation to the assignation of repairing tenancies under that Act made by section 10D.

The **effect** of the amendment is to remove section 10D (Assignation of limited duration tenancy) from the Bill.

### **Amendment 95**

The **purpose** of the amendment is to remove from the Bill the provisions on resumption in respect of 1991 Act tenancies.

The **effect** of the amendment is to remove section 11 (Resumption in relation to 1991 Act tenancies) from the Bill.

### **Amendment 97**

The **purpose** of the amendment is to remove from the Bill the provisions on resumption in respect of limited duration and repairing tenancies under the Agricultural Holdings (Scotland) Act 2003.

The **effect** of the amendment is to remove section 12 (Resumption in respect of limited duration tenancies and repairing tenancies) from the Bill.

#### **Amendment 98**

The **purpose** of the amendment is to remove from the Bill the provisions modifying the compensation payable to a tenant for disturbance when land is resumed by their landlord.

The **effect** of the amendment is to remove section 13 (Compensation for disturbance on resumption) from the Bill.

#### **Amendment 100**

The **purpose** of the amendment is to remove from the Bill the provisions modifying the process for a tenant to carry out improvements to the holding for which they are entitled to compensation in respect of at the end of the tenancy.

The **effect** of the amendment is to remove section 14 (Compensation for improvements) from the Bill.

This is an alternative to amendment 99.

#### **Amendment 101**

The **purpose** of the amendment is to remove from the Bill the provisions modifying the process for a tenant to notify their landlord of a proposed diversification, and for the landlord to object to the proposed diversification.

The **effect** of the amendment is to remove section 15 (Notice of and objection to diversification) from the Bill.

#### **Amendment 102**

The **purpose** of the amendment is to remove from the Bill the provisions, in connection with the diversification process, allowing a tenant to give an extension notice to the landlord at any time prior the landlord making an application notice to the Land Court to determine whether their objection was reasonable.

The **effect** of the amendment is to remove section 16 (Tenant extension notice) from the Bill.

#### **Amendment 103**

The **purpose** of the amendment is to remove from the Bill the provisions modifying the procedure of the Land Court when determining whether or not it is reasonable for the landlord to object to a notice of diversification or impose conditions.

The **effect** of the amendment is to remove section 17 (Determinations by Land Court) from the Bill.

#### **Amendment 104**

The **purpose** of the amendment is to remove from the Bill the provisions providing that, where the value of an agricultural holding has increased from the use of the land by the tenant for a non-agricultural purpose, the tenant's right to compensation is lost only if the use of the whole of the land comprised in the holding for the purposes of sustainable and regenerative agriculture by an incoming tenant has been substantially prejudiced.

The **effect** of the amendment is to remove section 18 (Compensation arising as a result of diversification) from the Bill.

#### **Amendment 106**

The **purpose** of the amendment is to remove from the Bill the provisions modifying how the rent of a 1991 Act tenancy is to be reviewed by the Land Court.

The **effect** of the amendment is to remove section 23 (Rent review: 1991 Act tenancies) from the Bill.

#### **Amendment 107**

The **purpose** of the amendment is to remove from the Bill the provisions modifying how the rent of certain tenancies under the 2003 Act is to be reviewed by the Land Court.

The **effect** of the amendment is to remove section 24 (Rent review: limited duration tenancies) from the Bill.

#### **Amendment 108**

The **purpose** of the amendment is to remove from the Bill the provisions concerning when the rent of repairing tenancies under the 2003 Act can be reviewed.

The **effect** of the amendment is to remove section 25 (Rent review: repairing tenancies) from the Bill.

#### **Amendment 109**

The **purpose** of the amendment is to remove from the Bill the provisions modernising the description of the persons who can succeed to a 1991 Act tenancy, and making other related procedural changes.

The **effect** of the amendment is to remove section 27A (Notice requirements: lease of 1991 Act holding) from the Bill.

#### **Amendment 110**

The **purpose** of the amendment is to remove from the Bill provisions making various procedural modifications to the succession provisions for 1991 Act tenancies.

The **effect** of the amendment is to remove section 27B (Landlord's objection to legatee or acquirer on intestacy: near relatives and other persons) from the Bill.

**Amendment 111**

The **purpose** of the amendment is to remove from the Bill provisions making various procedural modifications to the succession provisions for 1991 Act tenancies.

The **effect** of the amendment is to remove section 27C (Legatee or acquirer on intestacy: supplementary provision) from the Bill.

**Amendment 112**

The **purpose** of the amendment is to remove from the Bill the provisions modernising the description of the persons who can succeed to tenancies under the 2003 Act, and making other related procedural changes.

The **effect** of the amendment is to remove section 27D (Succession to tenancy) from the Bill.

**Background note(s)**

[REDACTED]

**Consultation**

[REDACTED]

**Contact –** [REDACTED]

## **Speaking Note – Group 23**

[REDACTED]

# Land Reform (Scotland) Bill: Stage 3 Briefing

## Group 24: Agricultural Holdings: Right to Buy

<b><u>Amendment number(s)</u></b> – 324, 325, 326, 327, 214
<b>Subject – Agricultural Holdings: Right to Buy</b>
<b>Speaking Order</b>
<p><b>Group will be led by Tim Eagle.</b> He will speak to the amendments in the group and move amendment 324.</p> <p>The Presiding Officer may invite contributions from other members.</p> <p>You, Cabinet Secretary, will then speak to all the amendments in the group.</p> <p>Tim Eagle will then wind up.</p>
<b>Government position</b>
[REDACTED]
<b>Text of amendment(s)</b>
<p><b>Tim Eagle</b> <b>324</b> In section 10, page 37, line 11, after &lt;notice&gt; insert &lt;— ( )&gt;</p> <p><b>Tim Eagle</b> <b>325</b> In section 10, page 37, line 12, at end insert— &lt;( ) after subsection (5) insert— “(6) Before laying a draft of a Scottish statutory instrument containing an order under subsection (5) before the Scottish Parliament, the Scottish Ministers must consult such persons as they consider appropriate.”.&gt;</p> <p><b>Tim Eagle</b> <b>326</b> In section 10, page 37, line 12, at end insert— &lt;( ) In section 28 (right to buy), after subsection (5) insert— “(6) Before laying a draft of a Scottish statutory instrument containing an order under subsection (5) before the Scottish Parliament, the Scottish Ministers must consult such persons as they consider appropriate.”.&gt;</p> <p><b>Tim Eagle</b> <b>327</b> In section 10, page 38, line 21, at end insert—</p>

<(aa) such persons as the Scottish Ministers consider representative of the interests of tenants of 1991 Act tenancies and their landlords,>

### **Mairi Gougeon**

**214** In section 10, page 38, line 33, after <regulations> insert <—

( ) in subsection (3)(a), after “18(4)(b)(ii),” insert “25(7),”,

( ) in subsection (3)(b), after “18A(4)(b)(ii),” insert “25(3),”,

( )>

## **Purpose and Effect**

### **Amendment 324**

Section 10(1B) of the Bill modifies section 27 (transfers not requiring notice) of the 2003 Act.

The **purpose** of the amendment is to make a technical drafting modification to section 10(1B) in connection with amendment 325.

The **effect** is that section 10(1B) will comprise two paragraphs, one in relation to the modification to section 27(1)(c) of the 2003 Act as introduced, and the other in relation to the new section 27(6) of the 2003 Act inserted by amendment 325.

### **Amendment 325**

The **purpose** is to require Scottish Ministers to consult with persons they consider appropriate before making an order under section 27(5) of the 2003 Act.

Section 27(5) enables Scottish Ministers to modify the list of exempt transfers that do not require notice to be given to a tenant with a registered right to buy.

The **effect** is that a new subsection (6) is inserted into section 27 of the 2003 Act, and the Scottish Ministers will in addition be required to consult accordingly.

### **Amendment 326**

Section 28 of the 2003 Act provides for the tenant’s right to buy their holding.

The **purpose** is to require Scottish Ministers to consult with persons they consider appropriate before making an order under section 28(5) of the 2003 Act.

Section 28(5) enables Scottish Ministers to modify the list of actions “taken with a view to a transfer of land” which, if taken by an owner or creditor, would trigger a tenant’s right to buy.

The **effect** is that a new subsection (6) is inserted into section 28 of the 2003 Act, and the Scottish Ministers will in addition be required to consult accordingly.

**Amendment 327**

Section 31A(3) of the 2003 Act as inserted by section 10(2) of the Bill provides for the Scottish Ministers to consult the Keeper and such other persons as the Scottish Ministers consider are likely to have an interest in the registration of interests to acquire land before making regulations under section 31A.

The **purpose** of this amendment is to provide for an additional requirement to consult such persons as the Scottish Ministers consider to be representative of the interests of tenants of 1991 Act tenancies and their landlords before making regulations.

The **effect** is that the list of persons that the Scottish Ministers require to consult before making regulations under section 31A is expanded.

**Amendment 214**

The **purpose** of the amendment is to provide for the parliamentary procedure for Scottish Statutory Instruments made under sections 25(3) and 25(7) of the 2003 Act.

The **effect** is that the Bill modifies section 91(3) of the 2003 Act to provide that an order specifying fees that the Keeper may charge under section 25(7), and regulations specifying the form of notice of interest under section 25(3), are subject to the negative procedure.

**Background note(s)**

[REDACTED]

**Consultation**

[REDACTED]

**Contact** – [REDACTED]

## **Speaking Note – Group 24**

[REDACTED]

# Land Reform (Scotland) Bill: Stage 3 Briefing

## Group 25: Resumption and Termination

<b>Amendment number(s)</b> – 328, 329, 330, 331, 332, 333, 334, 335, 336, 215, 216, 337, 338, 217, 218, 219, 339, 340, 341, 342, 343, 344, 96, 345, 346, 347, 363, 364, 365
<b>Subject</b> – Resumption and termination
<b>Speaking Order</b>
<b>Group will be led by Tim Eagle.</b> He will speak first to amendments 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344 and all others in the group.  You will then speak to amendments 345, 346, 363, 364 and 365 and all the amendments in the group.  Edward Mountain will speak to amendments 215, 216, 217, 218 and 219.  Emma Harper will speak to amendment 347.  Tim Eagle will then wind up.
<b>Government position</b>
[REDACTED]
<b>Text of amendment(s)</b>
<b>Tim Eagle</b> <b>Amendment 328</b> - In section 11, page 42, line 29, at beginning insert <except where otherwise agreed in writing by the landlord and tenant,>
<b>Tim Eagle</b> <b>Amendment 329</b> - In section 11, page 42, leave out lines 32 to 37
<b>Tim Eagle</b> <b>Amendment 330</b> - In section 11, page 43, leave out lines 1 and 2
<b>Tim Eagle</b> <b>Amendment 331</b> - In section 11, page 43, line 6, leave out <or an additional payment under Part 6>
<b>Tim Eagle</b> <b>Amendment 332</b> - In section 11, page 43, line 9, leave out <tenant's interest in the value of the land> and insert <value of the tenant's interest in the part of the lease>

**Tim Eagle**

**Amendment 333** - In section 11, page 44, leave out line 3 and insert <APPOINTMENT OF VALUER AND DETERMINATION OF RESUMPTION COMPENSATION>

**Tim Eagle**

**Amendment 334** - In section 11, page 45, leave out lines 34 and 35 and insert—  
<(i) the value of a tenant's interest in a lease of agricultural land, and>

**Tim Eagle**

**Amendment 335** - In section 11, page 46, line 32, leave out <land> and insert <tenant's interest>

**Tim Eagle**

**Amendment 336** - In section 11, page 46, line 33, leave out <land> and insert <tenant's interest in the part of the lease>

**Edward Mountain**

**Amendment 215** - In section 11, page 46, line 34, after <possession> insert <and for its existing use>

**Edward Mountain**

**Amendment 216** - In section 11, page 46, line 35, after <occupation> insert <for its existing use>

**Tim Eagle**

**Amendment 337** - In section 11, page 47, line 1, leave out <land> and insert <tenant's interest>

**Tim Eagle**

**Amendment 338** - In section 11, page 47, leave out lines 2 to 39 and insert <is to ensure that compensation is fair in all the circumstances and that the tenant is left no worse off and no better off than if the resumption did not take place.>

**Edward Mountain**

**Amendment 217**

- In section 11, page 47, line 3, after <land> insert <under its existing use>

**Edward Mountain**

**Amendment 218** - In section 11, page 47, line 28 at end insert—

<(vii) the hope value of the land.>

**Edward Mountain**

**Amendment 219** - In section 11, page 47, line 28, at end insert—

<(vii) any potential developments on the land.>

**Tim Eagle**

**Amendment 339** - In section 11, page 47, line 40, leave out <sub-paragraphs (2) and (3)> and insert <sub-paragraph (2)>

**Tim Eagle**

**Amendment 340** - In section 11, page 48, line 26, leave out from <land> to end of line 30 and insert <tenant's interest in the part of the lease being resumed is to be the amount assessed under paragraph 4(1) or, as the case may be, 8(3)(a).>

**Tim Eagle**

**Amendment 341**- In section 11, page 49, line 9, leave out from <of> to end of line 11

**Tim Eagle**

**Amendment 342**- In section 11, page 49, line 14, leave out <land> and insert <tenant's interest in the part of the lease>

**Tim Eagle**

**Amendment 343** - In section 11, page 49, line 17, leave out <each of the values> and insert <the value>

**Tim Eagle**

**Amendment 344** - In section 11, page 49, line 19, leave out <each of the values> and insert <that value>

**Edward Mountain**

**Amendment 96** - In section 12, page 50, line 20, leave out <appears to the landlord to meet the requirements to be a valuer mentioned in paragraph 1(4) of schedule 2> and insert <is qualified to determine the open market value as defined by the Royal Institute of Chartered Surveyors>

**Mairi Gougeon**

**Amendment 345** - After section 13, insert—

<Compensation on termination and resumption

Power to make provision about compensation on termination

(1) The Scottish Ministers may by regulations modify the enactment specified in column 1 of the table below for a purpose specified in column 2.

1: enactment	2: purpose
The Agricultural Holdings (Scotland) Act 1991 (“the 1991 Act”)	<ol style="list-style-type: none"> <li>1. Creating an entitlement to compensation for a tenant (which is additional to any other entitlement to compensation the tenant may have under the 1991 Act) where— <ol style="list-style-type: none"> <li>(a) the tenant’s 1991 Act tenancy (as defined by section 1(4) of the Agricultural Holdings (Scotland) Act 2003) is terminated by reason of a notice to quit given by the landlord, and</li> <li>(b) the notice to quit is given solely on the ground mentioned in section 22(2)(b) of the 1991 Act</li> </ol> </li> <li>2. Changing or clarifying the method for determining the amount of that additional compensation</li> </ol>

(2) Without prejudice to its generality, the power under subsection (1) may be exercised for the first of the purposes specified in it to make any provision of a kind contained in schedule 2A of the 1991 Act (as inserted, or to be inserted, by section 11(4) of this Act).

(3) Section (Further procedure for regulations under sections (Power to make provision about compensation on termination) and (Power to make provision about compensation on resumption)) applies in relation to the first regulations to be made under subsection (1).

(4) No regulations may be made under subsection (1) after the end of the period of 5 years beginning with the day after Royal Assent.>

**Mairi Gougeon**

**Amendment 346** - After section 13, insert—

<Power to make provision about compensation on resumption

(1) The Scottish Ministers may by regulations modify the enactment specified in column 1 of the table below for the purpose specified in column 2.

1: enactment	2: purpose
The Agricultural Holdings (Scotland) Act 2003 (“the 2003 Act”), schedule 2 as inserted by section 12(5) of this Act)	Changing or clarifying the method for determining the additional amount of compensation payable to a tenant under section 17(4A) of the 2003 Act (as inserted, or to be inserted, by section 12(2)(b) of this Act)

(2) Regulations under subsection (1) may be made before section 12 of this Act comes into force so that the modifications the regulations make to schedule 2 of the 2003 Act come into force at the same time as section 12 of this Act inserts that schedule.

(3) Section (Further procedure for regulations under sections (Power to make provision about compensation on termination) and (Power to make provision about compensation on resumption)) applies in relation to the first regulations to be made under subsection (1).

(4) No regulations may be made under subsection (1) after the end of the period of 5 years beginning with the day after Royal Assent.>.

**Emma Harper**

**Amendment 347** - After section 18, insert—

<Tenant Farming Commissioner: codes of practice

Resumption and termination of relevant tenancies and small landholdings

(1) The Land Reform (Scotland) Act 2016 is modified as follows.

(2) In section 27(2) (Tenant Farming Commissioner: codes of practice), after paragraph (ea) as inserted by section 10(5)) insert—

“(eb) the process for resuming land comprised in a lease constituting a relevant tenancy or comprising a small landholding,

(ec) the process for terminating a tenancy to which the 1991 Act applies where a notice to quit has been served which the tenant cannot contest through the counter-notice process under section 22(1) of that Act.”.>

**Mairi Gougeon**

**Amendment 363** - In section 29, page 84, line 33, after <procedure:> insert

<section (Power to make provision about compensation on termination)(1) (see also sections (Power to make provision about compensation on termination)(3) and (Further procedure for regulations under sections (Power to make provision about compensation on termination) and (Power to make provision about compensation on resumption)) and>

**Mairi Gougeon**

**Amendment 364** - In section 29, page 84, line 33, after <procedure:> insert

<section (Power to make provision about compensation on resumption) (see also sections (Power to make provision about compensation on resumption)(3) and (Further procedure for regulations under sections (Power to make provision about compensation on termination) and (Power to make provision about compensation on resumption)) and,>

**Mairi Gougeon**

**Amendment 365** - After section 29, insert—

<Further procedure for regulations under sections (Power to make provision about compensation on termination) and (Power to make provision about compensation on resumption)

(1) The Scottish Ministers may not lay before the Scottish Parliament for approval by resolution a draft Scottish statutory instrument containing regulations in relation to which this section applies—

(a) until they have consulted on proposals for the regulations in accordance with subsection (4) for the 60 day period described by subsection (5), and

(b) without laying before the Parliament, at the same time as the draft instrument, an explanatory document fulfilling the requirements set out in subsection (7).

(2) For the purposes of subsection (2)(a), proposals for regulations must take the form of—

(a) a draft of the regulations, and

(b) an explanatory document containing reasons for the draft regulations' content.

(3) To consult on proposals for regulations, the Scottish Ministers must—

(a) lay the proposals before the Scottish Parliament, and

(b) send a copy of them to any other person they consider it appropriate to consult.

(4) The 60 day period referred to in subsection (2)(a) begins with the day that the Scottish Ministers lay the proposals before the Parliament in accordance with subsection (4)(a).

(5) In calculating the 60 day period, no account is to be taken of any time during which the Parliament is dissolved or is in recess for more than 4 days.

(6) The requirements for the explanatory document referred to in subsection (2)(b) are that the document contain—

(a) reasons for the provisions contained in the draft instrument alongside which the document is laid before the Parliament,

(b) details of what was done to consult in relation to the proposals for the regulations,

(c) details of the representations received in relation to the proposals for the regulations during the 60 day period described by subsection (5),

(d) details of what changes (if any) were made as a result of those representations in turning the draft of the regulations that comprised the proposals into the regulations contained in the draft instrument.

(7) In complying with subsection (7)(c), the Scottish Ministers must not disclose—

(a) representations received from a person who has not consented to their being disclosed,

(b) information about a person ("person A") contained in representations received from another person if and to the extent that—

(i) it appears to the Scottish Ministers that disclosure of the information could adversely affect the interests of person A, and

(ii) the Scottish Ministers have been unable to obtain person A's consent to the disclosure of the information.>

## **Purpose and Effect**

### **Amendment 328 (Tim Eagle)**

This amendment modifies new section 32ZA (resumption: notice, compensation and reversion) of the 1991 Act, as inserted by section 11(2) of the Bill.

The **purpose** is to enable the parties to the lease to contract out of the minimum one-year notice of resumption under new section 32ZA(3)(b).

The **effect** is to modify subsection (3)(b) by inserting reference to such an agreement.

#### **Amendment 329 (Tim Eagle)**

This amendment modifies new section 32ZA (resumption: notice, compensation and reversion) of the 1991 Act, as inserted by section 11(2) of the Bill.

The **purpose** is to prevent a tenant from terminating the tenancy in response to a notice of resumption of the part of the land let by the landlord.

The **effect** is to omit section 32AZ(4).

#### **Amendment 330 (Tim Eagle)**

This amendment modifies new section 32ZA as inserted by section 11(2) of the Bill. It is consequential on amendment 329.

The **purpose** is to remove the provision providing for the date of the termination of the lease following a counter-notice by the tenant in response to a notice of resumption.

The **effect** is to omit section 32AZ(5).

#### **Amendment 331 (Tim Eagle)**

This amendment modifies new section 32ZA of the 1991 Act, as inserted by section 11(2) of the Bill.

It modifies subsection (6) of section 32ZA which provides first for the payment of the compensation determined in accordance with new schedule 2A, and second that this compensation is to be paid in a reduction in rent and to any claim for compensation under Part 4, Part 5 or Part 6 of the 1991 Act.

It omits the reference to Part 6 from subsection (6). Part 6 provides that for additional compensation, and in particular provides for:

- where compensation for disturbance is payable to the tenant, for the payment of 'reorganisation' compensation equal to four times the annual rent,

- where land is resumed, for the payment of compensation to the tenant equal to the value of the additional benefit (if any) which would have accrued to the tenant if the land had, instead of being resumed at the date of resumption, been resumed at the expiry of 12 months from the end of the current year of the tenancy.

The **purpose** of this amendment is to limit the amount of additional compensation payable to the tenant as determined under new schedule 2A.

The **effect** is unclear, but it might be argued to be that the compensation determined under schedule 2A falls to be reduced by the amount of any additional compensation payable to the tenant under Part 6 of the 1991 Act.

#### **Amendment 332 (Tim Eagle)**

This amendment modifies subsection (6) of new section 32ZA of the 1991 Act, as inserted by section 11(2) of the Bill.

Subsection (6) provides for the payment of the compensation determined in accordance with new schedule 2A, as compensation for the tenant's interest in the value of the land being resumed.

The **purpose** of this amendment is to change the basis on which compensated is determined, and it is thought to reduce the amount paid to the tenant.

The **effect** is that the amount would instead be determined by reference to the value of the tenant's interest in the part of the lease being resumed.

#### **Amendment 333 (Tim Eagle)**

This **purpose** of this amendment is to change the heading of new schedule 2A as inserted into the 1991 Act by section 11(4) of the Bill.

This amendment is consequential on other amendments by Tim Eagle MSP in this Group.

The **effect** is to change the title from 'Determination of compensation for value of resumed land' to 'Appointment of valuer and determination of resumption compensation'.

#### **Amendment 334**

This amendment modifies paragraph 1 of new schedule 2A of the 1991 Act, which provides for the appointment of a valuer by the Tenant Farming Commissioner. The person appointed must meet the requirements specified paragraph 1(4) of the schedule.

The **purpose** of this amendment is to provide for the valuer to possess qualifications etc. suitable for assessing the value of a tenant's interest in a lease.

The **effect** is to substitute the current requirement that the valuer should possess qualifications suitable for assessing the value of agricultural land,

#### **Amendment 335 (Tim Eagle)**

This amendment is consequential on other amendments by Tim Eagle MSP in this Group.

The **purpose** and **effect** is to amend the heading of paragraph 4 of new schedule 2A.

#### **Amendment 336 (Tim Eagle)**

This amendment is consequential on other amendments by Tim Eagle MSP in this Group.

The **purpose** is to provide for a valuation of the tenant's interest in the lease as opposed to a valuation of the land.

The **effect** is to substitute the reference to 'land' in paragraph 4(1) of new schedule 2A with a reference to the tenant's interest.

#### **Amendment 215 (Edward Mountain)**

The **purpose** of this amendment is to provide that the value of the land for the purposes of determining compensation under paragraph 4(1)(a) of new schedule 2A is to be assumed to the value if sold with vacant possession but limited to its current use.

The **effect** is to modify paragraph 4(1)(a) of the schedule, which provides for the valuation of the land.

#### **Amendment 216 (Edward Mountain)**

This amendment makes a comparable change to that in amendment 215.

The **purpose** of this amendment is to provide that the value of the land for the purposes of determining compensation under paragraph 4(1)(b) of new schedule 2A is to be assumed to the value if sold with the tenant still in possession for its current use but limited to its current use.

The **effect** is to modify paragraph 4(1)(a) of the schedule, which provides for the valuation of the land, but it is not clear if this changes the legal effect of that paragraph.

#### **Amendment 337 (Edward Mountain)**

This is a consequential amendment to the other amendments by Tim Eagle MSP in this Group.

The **purpose** and **effect** are to substitute a reference to 'land' in paragraph 4(2) of new schedule 2A (assessment of value of land) to a reference to the 'tenant's interest'.

#### **Amendment 338 (Tim Eagle)**

This amendment modifies paragraph 4(2) and (3) of new schedule 2A, which provides for the matters to which the valuer is when valuing land to have regard, to take into account, or to take no account of.

It also modifies paragraph 4(4), which provides for the valuer to calculate in accordance with paragraph (6) of the schedule the amount to be payable by the landlord to the tenant as compensation.

The **purpose** of the amendment is thought to be connected with the other amendments by Tim Eagle MSP in this Group, and the intended alternative approach which requires valuing the tenant's interest in the lease rather than the land.

The amendment has the effect that in assessing the value of the tenant's interest the valuer is to ensure that compensation is fair in all the circumstances and that the tenant is left no worse off and no better off than if the resumption did not take place.

It removes all the matters to which a valuer must have regard etc., and to calculate the amount payable by way of compensation.

#### **Amendment 217 (Edward Mountain)**

This amendment modifies paragraph 4(2)(a) of new schedule 2A of the 1991 Act, as inserted by section 11(4) of the Bill.

Paragraph 4 provides for the matters to which a valuer is to have regard etc. When assessing the value of the land.

The **purpose** of this amendment is thought to be to ensure that the valuer does not have regard to any uses to which the land might be put other than the existing use.

The **effect** is unclear a paragraph 4(2)(c)(v) already provides that the valuer is to take no account of the use of the land for a purpose that is not one permitted by the lease.

#### **Amendment 218 (Edward Mountain)**

This amendment modifies paragraph 4(2)(c) of new schedule 2A of the 1991 Act, as inserted by section 11(4) of the Bill.

Subparagraph (c) provides for the matters to which a valuer is to take no account of when assessing the value of the land.

The **purpose** of this amendment is to provide that the valuer is to take no account of the hope value of the land being resumed.

The **effect** is unclear as 'hope value' is not defined, and paragraph 4(2)(c)(v) already provides that the valuer is to take no account of the use of the land for a purpose that is not one permitted by the lease.

#### **Amendment 219 (Edward Mountain)**

- In section 11, page 47, line 28, at end insert—

<(vii) any potential developments on the land.>

This amendment modifies paragraph 4(2)(c) of new schedule 2A of the 1991 Act, as inserted by section 11(4) of the Bill.

Subparagraph (c) provides for the matters to which a valuer is to take no account of when assessing the value of the land.

The **purpose** of this amendment is to provide that the valuer is to take no account of any potential developments on the land.

The **effect** is unclear as 'developments' is not defined, and paragraph 4(2)(c)(v) already provides that the valuer is to take no account of the use of the land for a purpose that is not one permitted by the lease.

#### **Amendment 339 (Tim Eagle)**

This amendment modifies paragraph 4(5) of new schedule 2A of the 1991 Act, as inserted by section 11(4) of the Bill.

Subparagraph (5) provides for Ministers to be able by regulations to amend:

- subparagraph (2), which provides for matters to which a valuer is to have regard etc., and
- subparagraph (3), which provides for the meanings of improvement and 'high farming' for the purposes of not taking into account any increase in the value of the land resulting from improvements which can be compensated.

The **purpose** and **effect** of this amendment is to ensure that the Scottish Ministers are unable to modify the meanings of improvement or high farming for the purpose specified in subparagraph (3).

#### **Amendment 340 (Tim Eagle)**

This amendment modifies paragraph 6 of new schedule 2A of the 1991 Act, as inserted by section 11(4) of the Bill.

Paragraph 6 provides for the amount payable by the landlord as compensation to be one half of the difference between the value of the land being resumed if sold with vacant possession and if sold with the tenant still in possession.

The **purpose** and **effect** of this amendment is that the amount payable is instead to be the value of the tenant's interest in the part of the lease being resumed.

#### **Amendment 341 (Tim Eagle)**

This amendment modifies paragraph 6 of new schedule 2A of the 1991 Act, as inserted by section 11(4) of the Bill.

Paragraph 6 provides for the amount payable by the landlord as compensation to be one half of the difference between the value of the land being resumed if sold with vacant possession and if sold with the tenant still in possession.

The **purpose** and **effect** of this amendment is that the amount payable is instead to be the value of the tenant's interest in the part of the lease being resumed.

#### **Amendment 342 (Tim Eagle)**

This amendment modifies subparagraph (3) of paragraph 7 of new schedule 2A of the 1991 Act, as inserted by section 11(4) of the Bill.

Subparagraph (3) provides for the matters the valuer is to specify in a notice of assessment served on the tenant and the landlord, as described in respect of amendment 341.

The **purpose** and **effect** of this amendment is that the notice will relate the value of the tenant's interest in the part of the lease rather than the value of the land being resumed.

#### **Amendment 343 (Tim Eagle)**

This amendment modifies subparagraph (4) of paragraph 7 of new schedule 2A of the 1991 Act, as inserted by section 11(4) of the Bill.

It is consequential on the other amendments by Tim Eagle MSP in this Group.

The **purpose** and **effect** are that the notice of assessment should not refer to the date of valuation of each of the values of the land, but only to the date of valuation of the value.

#### **Amendment 344 (Tim Eagle)**

This amendment modifies subparagraph (4) of paragraph 7 of new schedule 2A of the 1991 Act, as inserted by section 11(4) of the Bill.

It is consequential on the other amendments by Tim Eagle MSP in this Group.

The **purpose** and **effect** are that the notice of assessment should not refer to the date of valuation of each of the values of the land, but only to the date of valuation of the value.

#### **Amendment 96 (Edward Mountain)**

This amendment is an alternative to amendment 97 by Edward Mountain MSP, which would omit the entire section of the Bill.

This **purpose** is to remove the requirement for the landlord to nominate a person who appears to the landlord to meet the requirements to be a valuer mentioned in paragraph 1(4) of schedule 2.

Those requirements are, broadly, that the person possesses the qualifications, knowledge and experience suitable for assessing the value of agricultural land. It does not however modify those requirements which will continue to apply to the valuer.

The **effect** is that the landlord must instead nominate a person qualified to determine the open market value as defined by the RICS. It is not clear that the amendment has any additional effect as the specified requirements will still need to be met.

#### **Amendment 345 (Mairi Gougeon)**

This amendment inserts a new section into the Bill.

The **purpose** is to enable the Scottish Ministers to make provision for the additional compensation payable to the tenant by the landlord in respect of an incontestable notice to quit the holding.

The **effect** is that Ministers may by 'super-affirmative' regulations create, change or clarify an entitlement to compensation as described.

See also amendments 363 and 365.

#### **Amendment 346 (Mairi Gougeon)**

This amendment inserts a new section into the Bill.

The **purpose** is to enable the Scottish Ministers to make provision for the additional compensation payable to the tenant by the landlord in respect of the resumption by the landlord of land held under a 2003 Act tenancy (limited duration tenancies).

The **effect** is that Ministers may by 'super-affirmative' regulations change or clarify an entitlement to compensation as described.

See also amendments 364 and 365.

#### **Amendment 347 (Emma Harper [REDACTED]**

)

The **purpose** of the amendment is to modify the illustrative list of matters in section 27(2) of the Land Reform (Scotland) Act 2016 which the Tenant Farming Commissioner may make provision about in a code of practice, to include the process for a landlord to resume leased land, or bring a 1991 Act tenancy to an end through an “incontestable notice to quit”.

The **effect** is that a new section is inserted into the Bill, which modifies section 27(2) of the 2016 Act to include two additional paragraphs in relation to these matters.

**Amendment 363 (Mairi Gougeon)**

This amendment is consequential on amendment 345, and the **purpose** and **effect** are to provide that regulations made under the new section are subject to affirmative procedure.

**Amendment 364 (Mairi Gougeon)**

This amendment is consequential on amendment 346, and the **purpose** and **effect** are to provide that regulations made under the new section are subject to affirmative procedure.

**Amendment 365 (Mairi Gougeon)**

This amendment inserts a new section into the Bill, the **purpose** and **effect** of which is to provide for the further procedure that is to apply to regulations made under the powers inserted by amendments 345 and 346.

**Background note(s)**

[REDACTED]

**Consultation**

[REDACTED]

**Contact –**

[REDACTED]

## **Speaking Note – Group 25**

[REDACTED]

# Land Reform (Scotland) Bill: Stage 3 Briefing

## Group 26: Compensation for Improvements

<b>Amendment number(s)</b> – 220, 221, 222, 223, 224, 225, 226, 227, 99
<b>Subject</b> – Compensation for Improvements
<b>Speaking Order</b>
<b>Edward Mountain MSP will lead the group.</b> He will speak to amendments 220, 221, 222, 223, 225 and 99, and move amendment 220.  You, Cabinet Secretary, will speak to amendments 224, 226 and 227 in your name and all of the other amendments in the group.  The Presiding Officer may invite other members to contribute.  Edward Mountain will close the discussion.
<b>Government position</b>
[REDACTED]
<b>Text of amendment(s)</b>
<b>Edward Mountain</b> <b>Amendment 220</b> - In section 14, page 59, line 14, leave out <consented to the improvement unconditionally> and insert <refused consent>  <b>Edward Mountain</b> <b>Amendment 221</b> - In section 14, page 59, leave out lines 16 to 18  <b>Edward Mountain</b> <b>Amendment 222</b> - In section 14, page 59, line 19, leave out from <within> to <period> on line 21 and insert <the landlord must, if a request is made by the tenant, within a reasonable time frame>  <b>Edward Mountain</b> <b>Amendment 223</b> - In section 14, page 59, line 26, after <consent> insert <, or is deemed to have refused consent under subsection (1C),>  <b>Mairi Gougeon</b> <b>Amendment 224</b> - In section 14, page 60, line 7, leave out <condition> and insert <conditional>  <b>Edward Mountain</b>

**Amendment 225** - In section 14, page 60, line 27, leave out from beginning to end of line 5 on page 61, and insert—  
<(2B) Scottish Ministers must by regulations make provision for how sustainable and regenerative agricultural production is to be defined for the purposes of subsection (2AA)(a)(ii). (2C) Regulations under subsection (2B) are subject to the affirmative procedure.>

**Mairi Gougeon**

**Amendment 226** - In section 14, page 60, leave out line 33

**Mairi Gougeon**

**Amendment 227** - In section 14, page 60, leave out lines 36 to 38

**Edward Mountain**

**Amendment 99** - In section 14, page 61, line 36, leave out <may> and insert <must>

### **Purpose and Effect**

#### **Amendment 220**

This amendment modifies subsection (1C) of section 37 of the 1991 Act, as inserted by section 14(5)(b) of the Bill.

Subsection (1C) has the effect that a landlord is deemed to have consented unconditionally to an improvement if the landlord has not responded within the period of 70 days beginning with the day on which the notice is given.

The consent being sought is consent to an improvement of a kind referred to in paragraph 1 of schedule 5 of the 1991 Act (as substituted by section 14(9) of the Bill).

The **purpose** of the amendment is reverse the effect of subsection (1C), so that a landlord who does not respond is deemed to have refused consent to the proposed improvement.

The **effect** is that section 14(5) is amended to change the effect of section 37(1C) of the 1991 as detailed above.

#### **Amendment 221**

The **purpose** of the amendment is to remove the requirement for a landlord, when refusing their consent for a tenant to carry out a relevant improvement, to provide written reasons explaining why they are refusing their consent.

The **effect** is that section 37(1D) of the 1991 Act, inserted by section 14(5)(b) of the Bill, is removed.

#### **Amendment 222**

The **purpose** of the amendment is to modify the current requirement in the Bill for a landlord, if the landlord and tenant cannot agree the terms on which the landlord consents to the improvement, to provide as soon as reasonably practicable written reasons explaining the basis for not granting consent.

Instead, the landlord would only require to provide written reasons if asked, and only then to do so within a reasonable timeframe.

The **effect** is to modify section 37(1DA) of the 1991 Act inserted by section 14(5)(b) of the Bill.

### **Amendment 223**

The **purpose** of the amendment is to enable the tenant to apply to the Land Court for approval to carry out an improvement when the landlord has been deemed to have refused their consent under section 37(1C) of the 1991 Act (as inserted by the Bill).

This amendment is connected to amendment 220, and is drafted on the basis of section 37(1C) being amended by that amendment as described above.

The **effect** is that section 37(1E) (a) of the 1991 Act, as inserted by section 14(5)(b) of the Bill, is amended to include an express reference to deemed consents.

It is not thought that this is necessary, as either an express or a deemed refusal is a refusal to consent for the purposes of section 37 of the 1991 Act,

### **Amendment 224**

The **purpose** of the amendment is to correct a drafting error in the parenthetical reference to the topic of schedule 5 of the 1991 Act at section 14(7) of the Bill.

The **effect** is that the opening text of section 14(7) is amended to replace the word “condition” with “conditional”.

### **Amendment 225**

The **purpose** of the amendment is:

(a) to remove the list of improvements that are presumed to facilitate or enhance sustainable or regenerative agricultural production (unless the contrary is shown), for the purposes of the Land Court’s determination of whether to approve a relevant improvement, and

(b) require Scottish Ministers to make regulations (subject to the affirmative procedure) on how “sustainable and regenerative agricultural production” is defined for these purposes.

The **effect** is that section 39(2B) of the 1991 Act, as would be inserted by section 14(7)(b) of the Bill, is removed; and is replaced by new subsections (2B) and (2C), which place the duty on Scottish Ministers to make regulations including such provision, and providing that those regulations would be subject to the affirmative procedure.

The Bill already includes at section 14(8)(a) a power by negative regulations to modify both section 29(2B) and paragraphs 2, 4 and 5 of new schedule 5A to the 1991 Act.

### **Amendment 226**

The **purpose** of this amendment is to remove “creating species-rich pasture” from the list of improvements that are presumed to facilitate or enhance sustainable or regenerative agricultural production (unless the contrary is shown), for the purposes of the Land Court’s determination of whether to approve a relevant improvement.

Its inclusion in the list is redundant as the improvement is listed in Part 3 of schedule 5 of the 1991 Act (as substituted by section 14(9)), meaning that the Land Court would not be required to approve it.

The **effect** is that section 39(2B)(e) of the 1991 Act, as would be inserted by section 14(7)(b) of the Bill, is removed from the Bill.

### **Amendment 227**

The **purpose** of this amendment is to remove the following improvement from the list of improvements that are presumed to facilitate or enhance sustainable or regenerative agricultural production (unless the contrary is shown), for the purposes of the Land Court’s determination of whether to approve a relevant improvement:

“converting the holding (or a significant part of it) to a standard of organic farming that is capable of being accredited by a recognised accreditation organisation”.

Its inclusion in the list is redundant as the improvement is listed in Part 3 of schedule 5 of the 1991 Act (as substituted by section 14(9)), meaning that the Land Court would not be required to approve it.

The **effect** is that section 39(2B)(h) of the 1991 Act, as would be inserted by section 14(7)(b) of the Bill, is removed from the Bill.

### **Amendment 99**

The **purpose** of the amendment is to modify the illustrative list of improvements that may require the consent of the landlord in order for compensation to be payable, to instead provide that landlord consent is required for these improvements.

As drafted, the Bill requires the landlord's consent in respect of an improvement that meets the criteria set out in paragraph 1 of schedule 5 of the 1991 Act (as substituted by section 14(9)), and paragraph 2 sets out a list of *examples* of improvements which are *likely* to require consent, given that they are likely to meet the criteria in paragraph 1.

The **effect** is that the word 'may' in paragraph 2 of Part 1 of schedule 5 of the 1991 Act (as substituted by section 14(9)) is replaced by 'must'. It follows that any change described in that list will require consent even if it does not meet the test of significance set out paragraph 1 of that Part.

**Background note(s)**

[REDACTED]

**Consultation**

[REDACTED]

**Contact –**

[REDACTED]

## **Speaking Note – Group 26**

[REDACTED]

# Land Reform (Scotland) Bill: Stage 3 Briefing

## Group 27: Diversification

<b>Amendment number(s) – 228</b>
<b>Subject – Diversification</b>
<b>Speaking Order</b>
<b>The group will be led by you, Cabinet Secretary.</b> You will speak to, and move, amendment 228. The Presiding Officer may allow other members to contribute, and if so, you will then wind up afterwards.
<b>Government position</b>
[REDACTED]
<b>Text of amendment(s)</b>
<b>Mairi Gougeon</b> <b>228</b> In section 15, page 65, line 16, after <explain> insert <, in that notification,>
<b>Purpose and Effect</b>
<b>Amendment 228</b>  The <b>purpose</b> of the amendment is to make a minor drafting change to clarify that when a landlord notifies the tenant of their objection to a diversification notice, or imposes any conditions in relation to the diversification, the explanation as to why the objection or conditions are reasonable is to be given in that notification (rather than separately).  The <b>effect</b> is that section 15(2)(e) of the Bill is modified to amend the text inserted into section 40(11) of the 2003 Act to clarify this.
<b>Background note(s)</b>
[REDACTED]
<b>Consultation</b>
[REDACTED]
<b>Contact –</b> [REDACTED]

## **Speaking Note – Group 27**

[REDACTED]

# Land Reform (Scotland) Bill: Stage 3 Briefing

## Group 28: Game Damage

<b><u>Amendment number(s)</u></b> – 105, 348
<b>Subject – Game Damage</b>
<b>Speaking Order</b>
<b>Group will be led by Edward Mountain.</b> He will speak to amendments 105 and 348.  The Presiding Officer may invite other members to contribute.  You, Cabinet Secretary, will then speak to all the amendments in the group.  Edward Mountain will then wind up.
<b>Government position</b>
[REDACTED]
<b>Text of amendment(s)</b>
<b>Edward Mountain</b> <b>105</b> In section 20, page 67, leave out line 25  <b>Edward Mountain</b> <b>348</b> In section 20, page 68, line 31, leave out <, partridges and grouse> and insert <and partridges>
<b>Purpose and Effect</b>
<b>Amendment 105 Edward Mountain</b> [REDACTED]  This amendment modifies new section 52(2) of the 1991 Act, as substituted by section 20(2) of the Bill. The new section provides for compensation for damage by game.  The purpose of the amendment is to omit paragraph (d) of new section 52(2).  The effect is that a tenant will not be entitled to be compensated by the landlord where game or game management have caused the tenant to sustain damage to livestock (whether directly or indirectly).

**Amendment 348 Edward Mountain [REDACTED]**

This amendment modifies new section 52(7) of the 1991 Act, as substituted by section 20(2) of the Bill. Subsection (7) defines terms used in the new section, including 'game'.

The purpose of the amendment is to remove grouse from that definition.

The effect is that the tenant is only entitled to be compensated for damage caused by or in connection with the management of deer, pheasants and partridges.

**Background note(s)**

[REDACTED]

**Consultation**

[REDACTED]

**Contact –**

[REDACTED]

## **Speaking Note – Group 28**

[REDACTED]

# Land Reform (Scotland) Bill: Stage 3 Briefing

## Group 29: Rent Reviews

<b>Amendment number(s)</b> – 349, 350, 351, 352, 353, 354, 355, 229, 356, 357, 358, 359, 360, 361, 362, 230
<b>Subject – Rent reviews</b>
<b>Speaking Order</b>
<p><b>The group will be led by Douglas Lumsden MSP.</b> He will speak first to amendment 349 and the others in the group, and move amendment 349.</p> <p>You, Cabinet Secretary, will then speak to amendments 229 and 230 in your name and all the other amendments in the group.</p> <p>The Presiding Officer may invite other members to contribute.</p> <p>Douglas Lumsden will then wind up.</p>
<b>Government position</b>
[REDACTED]
<b>Text of amendment(s)</b>
<p><b>Douglas Lumsden</b> <b>349</b> - In section 23, page 76, line 33, after &lt;landlord&gt; insert &lt;that is used&gt;</p> <p><b>Douglas Lumsden</b> <b>350</b> - In section 23, page 77, line 2, after &lt;account&gt; insert &lt;of&gt;</p> <p><b>Douglas Lumsden</b> <b>351</b> - In section 23, page 77, leave out lines 3 and 4 and insert— &lt;(a) the amount by which the rental value of the holding has been increased by improvements to the extent determined in accordance with sub-paragraph (7),&gt;</p> <p><b>Douglas Lumsden</b> <b>352</b> - In section 23, page 77, line 5, leave out first &lt;of&gt;</p> <p><b>Douglas Lumsden</b> <b>353</b> - In section 23, page 77, line 7, leave out from beginning to &lt;account of&gt; in line 8 and insert &lt;(c)&gt;</p> <p><b>Douglas Lumsden</b> <b>354</b> - In section 23, page 77, leave out lines 26 to 35 and insert—</p>

<(7) The amount of increase in the rental value of the holding caused by an improvement that is to be disregarded in accordance with sub-paragraph (4A) (a) is the proportional amount of the increase corresponding to—

(a) the proportion of the cost of carrying out the improvement that was met at the tenant's expense (see sub-paragraph (7A)), and

(b) the proportion of the cost of carrying out the improvement—

(i) that was met at the landlord's expense, and

(ii) in respect of which the landlord has received, or will receive, a grant.

(7A) For the purposes of sub-paragraph (7)(a)—

(a) an improvement is to be regarded as having been carried out at the tenant's expense (wholly or partly as the case may) regardless of whether the tenant has been, or will be, reimbursed for the expense incurred by a grant,

(b) an improvement is not to be regarded as having been carried out at the tenant's expense (wholly or partly)—

(i) if the tenant has, in respect of the expense incurred in carrying out the improvement, been made or given an equivalent allowance or benefit by the landlord,

(ii) if the improvement was carried out under an obligation imposed on the tenant by the terms of the lease.>

**Douglas Lumsden**

**355** - In section 23, page 77, line 42, leave out <by the tenant> and insert <carried out wholly at the tenant's expense>

**Mairi Gougeon**

**229** - In section 23, page 78, line 11, leave out <making regulations under this paragraph> and insert <laying any draft Scottish statutory instrument containing regulations under this paragraph before the Scottish Parliament>

**Douglas Lumsden**

**356** - In section 24, page 78, line 25, after <landlord> insert <that is used>

**Douglas Lumsden**

**357** - In section 24, page 78, line 32, after <taken> insert <of>

**Douglas Lumsden**

**358** - In section 24, page 78, leave out lines 33 and 34 and insert—

<(a) the amount by which the rental value of the land has been increased by improvements to the extent determined in accordance with subsection (4A),>

**Douglas Lumsden**

**359** - In section 24, page 78, line 35, leave out first <of>

**Douglas Lumsden**

**360** - In section 24, page 78, line 37, leave out from beginning to <of> and insert <(c)>

**Douglas Lumsden**

**361** - In section 24, page 79, leave out lines 17 to 26 and insert—

<(4A) The amount of increase in the rental value of the land caused by an improvement that is to be disregarded in accordance with subsection (2A)(a) is the proportional amount of the increase corresponding to—

(a) the proportion of the cost of carrying out the improvement that was met at the tenant's expense (see subsection (4B)), and

(b) the proportion of the cost of carrying out the improvement—

(i) that was met at the landlord's expense, and

(ii) in respect of which the landlord has received, or will receive, a grant.

(4B) For the purposes of subsection (4A)—

(a) an improvement is to be regarded as having been carried out at the tenant's expense (wholly or partly as the case may) regardless of whether the tenant has been, or will be, reimbursed for the expense incurred by a grant,

(b) an improvement is not to be regarded as having been carried out at the tenant's expense (wholly or partly)—

(i) if the tenant has, in respect of the expense incurred in carrying out the improvement, been made or given an equivalent allowance or benefit by the landlord,

(ii) if the improvement was carried out under an obligation imposed on the tenant by the terms of the lease.>

**Douglas Lumsden**

**362** - In section 24, page 79, line 34, leave out <by the tenant> and insert <carried out wholly at the tenant's expense>

**Mairi Gougeon**

**230** - In section 24, page 80, line 6, leave out <making regulations under this section> and insert <laying any draft Scottish statutory instrument containing regulations under this section before the Scottish Parliament>

**Purpose and Effect**

These amendments make equivalent modifications to the rent review provisions in section 23 of the Bill (concerning 1991 Act tenancies) and section 24 (concerning certain limited duration tenancies under the 2003 Act). Amendments 349 to 229 relate to the former; and amendments 356 to 230 relate to the latter.

**Amendment 349 Douglas Lumsden [REDACTED]**

The **purpose** of the amendment is to modify the matters the Land Court must have regard to in determining the fair rent of the holding, to include the open market rent of any fixed equipment provided by the landlord *that is used* for a non-agricultural purpose. This is to clarify that the fixed equipment does not require to have been provided by the landlord *for a non-agricultural purpose* for the Land Court to have regard to its open market rental value, and it is its use by the tenant in this way that brings it within scope.

The **effect** of the amendment is to modify paragraph 7(4)(b) of schedule 1A of the 1991 Act (as substituted by section 23(2)(a) of the Bill) to include the words “that is used”, meaning that the Land Court must have regard to such equipment used for these purposes, whether or not the landlord provided the equipment for agricultural or non-agricultural purposes.

#### **Amendment 350 Douglas Lumsden [REDACTED]**

The **purpose** of the amendment is to make a consequential drafting amendment in connection with amendments 351, 352, and 353.

The **effect** is that the opening text of paragraph 7(4A) of schedule 1A of the 1991 Act (as substituted by section 23(2)(a) of the Bill) will end in the word “of”, for drafting reasons when read alongside heads (a), (b), and (c) of paragraph 7(4A) (as modified by amendments 351, 352, and 353).

#### **Amendment 351 Douglas Lumsden [REDACTED]**

The **purpose** of the amendment is to modify the cross reference to the rental value increases caused by certain improvements that are not to be taken into account by the Land Court when determining the fair rent for the holding, in accordance with paragraph 7(7) of schedule 1A of the 1991 Act (as substituted by section 23(2)(a) of the Bill, and as modified by amendment 354).

The **effect** is that paragraph 7(4A)(a) of schedule 1A of the 1991 Act (as substituted by section 23(2)(a) of the Bill) is substituted by the revised text.

#### **Amendment 352 Douglas Lumsden [REDACTED]**

The **purpose** of the amendment is to make a consequential drafting amendment in connection to amendment 350.

The **effect** is that the word “of” is removed from paragraph 7(4A)(b) of schedule 1A of the 1991 Act (as substituted by section 23(2)(a) of the Bill), as this word will be included in the opening text instead (see amendment 350).

#### **Amendment 353 Douglas Lumsden [REDACTED]**

The **purpose** of the amendment is to streamline the drafting of paragraphs 7(4A) and (4B) of schedule 1A of the 1991 Act (as substituted by section 23(2)(a) of the Bill) by combining them into one sub-paragraph.

Paragraph 7(4A) directs the Land Court to take no account of certain increases, or reductions in the rental value of the holding, when determining the fair rent of the holding. Paragraph 7(4B) analogously directs the Land Court to take no account of any effect on the rent of the tenant being in occupation of the holding.

The **effect** is that the current paragraph 7(4B) is removed from the Bill, and integrated into paragraph 7(4A) to become paragraph 7(4A)(c). This also means that the extant provision in the Bill for Scottish Ministers to make further provision by regulations for the purposes of paragraph 7(4A) (paragraph 9 of schedule 1A of the 1991 Act, substituted by section 23(2)(b) of the Bill) would extend to paragraph 7(4A)(c).

#### **Amendment 354 Douglas Lumsden [REDACTED]**

The **purpose** of the amendment is provide for the amount of the increase in the rental value of the holding caused by an improvement that is to be disregarded by the Land Court when determining the fair rent for the holding, in accordance with paragraph 7(4A)(a) of schedule 1A (as substituted by section 23(2)(a) of the Bill, and as modified by amendment 351).

Modified paragraph 7(7) of schedule 1A provides that the amount to be disregarded is the proportional amount of the increase corresponding to the proportion of the cost of carrying out the improvement: (a) at the tenant's expense, and (b) at the landlord's expense, for which the landlord has received, or will receive, a grant.

New paragraph 7(7A) of schedule 1A makes further provision for the purposes of paragraph 7(7)(a), in relation to what is regarded as having been carried out at the tenant's expense.

The **effect** is to replace paragraph 7(7), and insert a new paragraph 7(7A), of schedule 1A (as substituted by section 23(2)(a) of the Bill); and the amount of rental value increase which the Land Court is not to take into account is calculated in accordance with these provisions.

#### **Amendment 355 Douglas Lumsden [REDACTED]**

The **purpose** of the amendment is to make a consequential amendment to paragraph 7(8) of schedule 1A (as substituted by section 23(2)(a) of the Bill) in connection with amendment 354. This provides that an improvement of a kind described in paragraph 7(8) is to be considered to be an improvement carried out wholly at the expense of the tenant, for the purposes of paragraph 7(7)(a) of schedule 1A (as amended by amendment 354). Paragraph 7(8) relates to the adoption of higher farming standards by the tenant.

The **effect** is that the closing text of paragraph 7(8) of schedule 1A (as substituted by section 23(2)(a) of the Bill) is modified to align with the revised paragraph 7(7)(a); and the adoption of such higher farming standards are considered as an improvement wholly at the tenant's expense and consequentially not taken into account by the Land Court when determining the fair rent for the holding.

### **Amendment 229 Mairi Gougeon**

The **purpose** of the amendment is to modify the description of the consultation requirement on Scottish Ministers when making regulations under paragraph 9 of schedule 1A of the 1991 Act, substituted by section 23(2)(b) of the Bill, for reasons of drafting consistency. Paragraph 9 enables Scottish Ministers to make further provision for the purposes of the matters the Land Court is to have regard to, or take no account of, in determining the fair rent for the holding.

The **effect** is that paragraph 9(2) of schedule 1A of the 1991 Act is modified to provide that Scottish Ministers are to consult in accordance with sub-paragraph (2) prior to laying the draft instrument before the Scottish Parliament.

### **Amendment 356 Douglas Lumsden [REDACTED]**

The **purpose** of the amendment is to modify the matters the Land Court must have regard to in determining the fair rent of the holding, to include the open market rent of any fixed equipment provided by the landlord *that is used* for a non-agricultural purpose. This is to clarify that the fixed equipment does not require to have been provided by the landlord *for a non-agricultural purpose* for the Land Court to have regard to its open market rental value, and it is its use by the tenant in this way that brings it within scope.

The **effect** of the amendment is to modify section 9B(2)(b) of the 2003 Act (as substituted by section 24(2) of the Bill) to include the words “that is used”, meaning that the Land Court must have regard to such equipment used for these purposes, whether or not the landlord provided the equipment for agricultural or non-agricultural purposes.

### **Amendment 357 Douglas Lumsden [REDACTED]**

The **purpose** of the amendment is to make a consequential drafting amendment in connection with amendments 358, 359, and 360.

The **effect** is that the opening text of section 9B(2A) of the 2003 Act (as substituted by section 24(2) of the Bill) will end in the word “of”, for drafting reasons when read alongside paragraphs (a), (b), and (c) of section 9B(2A) (as modified by amendments 358, 359, and 360).

### **Amendment 358 Douglas Lumsden [REDACTED]**

The **purpose** of the amendment is to modify the cross reference to the rental value increases caused by certain improvements that are not to be taken into account by the Land Court when determining the fair rent for the holding, in accordance with section 9B(4A) of the 2003 Act (as substituted by section 24(2) of the Bill, and as modified by amendment 361).

The **effect** is that section 9B(2A)(a) of the 2003 Act (as substituted by section 24(2) of the Bill) is substituted by the revised text.

#### **Amendment 359 Douglas Lumsden [REDACTED]**

The **purpose** of the amendment is to make a consequential drafting amendment in connection to amendment 357.

The **effect** is that the word “of” is removed from section 9B(2A)(b) of the 2003 Act (as substituted by section 24(2) of the Bill), as this word will be included in the opening text instead (see amendment 357).

#### **Amendment 360 Douglas Lumsden [REDACTED]**

The **purpose** of the amendment is to streamline the drafting of sections 9B(2A) and 9B(2B) of the 2003 Act (as substituted by section 24(2) of the Bill) by combining them into one sub-section.

Section 9B(2A) directs the Land Court to take no account of certain increases, or reductions in the rental value of the holding, when determining the fair rent of the holding. Section 9B(2B) analogously directs the Land Court to take no account of any effect on the rent of the tenant being in occupation of the holding.

The **effect** is that the current section 9B(2B) is removed from the Bill, and integrated into section 9B(2A) to become section 9B(2A)(c). This also means that the extant provision in the Bill for Scottish Ministers to make further provision by regulations for the purposes of section 9B(2A) (section 9BA of the 2003 Act, substituted by section 24(2) of the Bill) would extend to section 9B(2A)(c).

#### **Amendment 361 Douglas Lumsden [REDACTED]**

The **purpose** of the amendment is provide for the amount of the increase in the rental value of the holding caused by an improvement that is to be disregarded by the Land Court when determining the fair rent for the holding, in accordance with section 9B(2A)(a) of the 2003 Act (as substituted by section 24(2) of the Bill, and as modified by amendment 358).

Modified section 9B(4A) provides that the amount to be disregarded is the proportional amount of the increase corresponding to the proportion of the cost of carrying out the improvement: (a) at the tenant’s expense, and (b) at the landlord’s expense, for which the landlord has received, or will receive, a grant.

New section 9B(4B) makes further provision for the purposes of section 9B(4A), in relation to what is regarded as having been carried out at the tenant’s expense.

The **effect** is to replace section 9B(4A), and insert an additional section 9B(4B) into the 2003 Act (as substituted by section 24(2) of the Bill); and the amount of rental value increase which the Land Court is not to take into account is calculated in accordance with these provisions.

#### **Amendment 362 Douglas Lumsden [REDACTED]**

The **purpose** of the amendment is to make a consequential amendment to section 9B(4B) of the 2003 Act (as currently substituted by section 24(2) of the Bill) in connection with amendment 361. This provides that an improvement of a kind described in section 9B(4B) of the Bill is to be considered to be an improvement carried out wholly at the expense of the tenant, for the purposes of section 9B(4A)(a) (as amended by amendment 361). Section 9B(4B) of the Bill relates to the adoption of higher farming standards by the tenant.

The **effect** is that the closing text of 9B(4B) of the 2003 Act (as currently substituted by section 24(2) of the Bill) is modified to align with the revised section 9B(4A)(a); and the adoption of such higher farming standards are considered as an improvement wholly at the tenant's expense and consequentially not taken into account by the Land Court when determining the fair rent for the holding.

### **Amendment 230 Mairi Gougeon**

The **purpose** of the amendment is to modify the description of the consultation requirement on Scottish Ministers when making regulations under section 9BA of the 2003 Act, substituted by section 24(2) of the Bill, for reasons of drafting consistency. Section 9BA enables Scottish Ministers to make further provision for the purposes of the matters the Land Court is to have regard to, or take no account of, in determining the fair rent for the holding.

The **effect** is that section 9BA(2) is modified to provide that Scottish Ministers are to consult in accordance with sub-section (2) prior to laying the draft instrument before the Scottish Parliament.

#### **Background note(s)**

[REDACTED]

#### **Consultation**

[REDACTED]

#### **Contact**

[REDACTED]

## **Speaking Note – Group 29**

[REDACTED]