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Scottish Affairs Committee

Land Reform in Scotland: Interim Report

Eighth Report of Session 2013–14

Report, together with formal minutes

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The Scottish Affairs Committee

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The Reports and evidence of the Committee are published by The Stationery Office by Order of the House. All publications of the Committee (including press notices) are on the internet at www.parliament.uk/scotaffcom. A list of Reports of the Committee in the present parliament is at the back of this volume. The Reports of the Committee, the formal minutes relating to that report, oral evidence taken and some or all written evidence are available in a printed volume. Additional written evidence may be published on the internet only.

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Summary

Who owns and controls land is a matter of legitimate political interest.

The first step in any meaningful strategy of land reform must be the creation of data on ownership and land values which is comprehensive and accessible.

Regrettably Scotland lags behind most comparable European countries in providing such data and we therefore call, at this early stage in our enquiry, for the Scottish and UK Governments to give priority to this matter.

Land information in Scotland should be of the same quality as that in Latvia, Georgia and Denmark to name but three, since no government which has any pretensions to land reform can avoid the need for full and clear information on its existing ownership patterns to be widely available. This must include beneficial ownership. We call on both the UK and the Scottish Governments to progress this as a matter of urgency.

The evidence we have received to date suggests that state policy on inheritance tax, business property relief, agricultural property relief, non-domestic rates and similar contributes considerably to the preservation of inherited wealth in landed estates and to driving up the price of land, which has become a speculative commodity as much as a productive asset.

Some witnesses have proposed an end to exemptions, subsidies and cosy tax deals, and we are seeking further evidence to clarify whether these are demonstrably to the public benefit.

Turning to state aid rules, we believe that while these are complex, those responsible for their administration have been overly risk averse and unnecessarily restrictive in their interpretation of what is permissible.

We wish to take further evidence and keep under review the current negotiations on state aid, the Scottish Government's Land Reform Review Group, and proposals for CAP implementation.

We remain strongly supportive of community land ownership but note that other public policies serve to make this less affordable by driving up land prices.

All the evidence that we have heard confirms that these are important, neglected and intensely political areas of public policy and we therefore intend to expand our areas of examination with a view to producing a more comprehensive report than we may have originally envisaged.

We have also identified topics for future consideration in this inquiry, and we would like further evidence on ownership of land both by charitable and by offshore companies.

Conclusions and recommendations

Informing the debate

1. The Committee believes that, in order to formulate a successful land reform policy, far greater transparency is needed over who owns what land. We recommend that information about the boundaries and ownership of parcels of land should be made publically available via a National Land Information System, with a searchable database, and the same data should be freely available for the public to analyse. (Paragraph 24)
2. We are surprised to learn of the lack of detailed, openly-accessible information on such topics as landownership, land values, land occupation and land use. (Paragraph 28)
3. We found it surprising to be told Scotland's land information systems are not as advanced as those of other countries, such as Turkey and Latvia. We recommend that all datasets relating to landownership, occupation, land values, land use and core reference geographies such as addresses be made freely available under an open data policy. We regard the availability of such information as a high priority and consider it doubtful as to whether the Scottish Government and civic society is in a position to develop a coherent land policy and programme of land reform in the absence of such information. (Paragraph 29)
4. We recommend that the Scottish and UK Governments consider using the World Bank's Land Governance Assessment Framework to assess whether Scotland's system of land governance is fit for purpose. (Paragraph 30)
5. We are concerned to hear that the Valuation Office Agency no longer publishes land price indices and recommend that this publication resume, in order to allow informed debate about public policy on land. (Paragraph 31)

Land Markets and Values

6. We would welcome further evidence on the case for the retention of a distinct Agricultural Property Relief. (Paragraph 46)
7. We would welcome further evidence on the case for the retention of the specific exemption of agricultural property, or sporting land, from non-domestic rates. (Paragraph 56)
8. We would welcome further evidence on whether the annual reports on undertakings under the Conditional Exemption Tax Incentive Scheme should be disclosed. (Paragraph 64)
9. We would welcome further evidence on whether the Government should publish the amount of tax foregone in exchange for the reliefs granted to the owners under the scheme. (Paragraph 65)

10. The Committee accepts the evidence that the system of landownership in Scotland is a direct consequence of choices made in the past in relation to the legal and fiscal framework within which land is held. These choices were political decisions in the past and they will continue to be in the future. (Paragraph 75)
11. The Committee has received evidence that questions the continuing justification for agricultural property relief, business property relief, business rollover relief and non-domestic rates exemption for agricultural and sporting property. (Paragraph 76)
12. We are concerned that tax reliefs and exemptions distort the market as well as pushing up prices. (Paragraph 77)
13. The Committee would be interested to hear further evidence on the continuing public interest in maintaining these reliefs and exemptions, and their impact on the market. We encourage further consultation on this topic. (Paragraph 78)
14. We recognise the apparent complexity of state aid rules and the frustration felt by community groups and others over their interpretation, which can be seen as over-cautious and risk-averse. We understand that discussions are ongoing to clarify and resolve the issues that have been raised with us and welcome these. (Paragraph 97)
15. In the course of the current State Aid Modernisation process we believe the Scottish and UK Governments should devise and secure agreement for a change in both the rules and the way they are interpreted, to allow community ownership of forests and other land to proceed in a clear and predictable manner. (Paragraph 98)
16. We will maintain an interest in how the State Aid Modernisation proceeds and review the matter in our final report. (Paragraph 99)
17. The Committee has identified the apparent contradiction of seeking to promote land reform by means of public money, through schemes like the Scottish Land Fund, when the price paid for the land is itself inflated through the reliefs and tax exemptions granted by Government. It would appear that taxpayer's money is being used to pay for land that another part of Government has rendered more expensive through tax policy. We will be able to form a settled view after receiving further evidence. (Paragraph 101)
18. We share the Scottish Government's desire to see both an expansion of forestry in Scotland and greater levels of community ownership of land. We are not clear that the support framework for community forestry is well aligned with that for the public sector and the private sector. In particular, we are keen to explore further the economics of public, private and community forestry in terms of the funds that are committed by public agencies to support state, community and private forestry and the funds that, through grants and tax reliefs, are provided to the private sector. (Paragraph 109)

Topics for future consideration

19. We would welcome further evidence on whether the ownership of estates through charitable companies set up by private owners is in the public interest and how governance of such organisations should be best organised. (Paragraph 111)
20. We would welcome further evidence on how the fiscal framework of agricultural land might be reformed to meet the concerns of tenant farmers. (Paragraph 112)
21. We would welcome further evidence on how the new CAP framework can best support farmers. (Paragraph 115)
22. We would welcome more evidence on the extent to which land is owned in offshore jurisdictions as part of individual and corporate tax planning. (Paragraph 119)

1 Introduction

1. On 11 July 2013 the Committee published a briefing paper, *432:50 – Towards a comprehensive land reform agenda for Scotland*, commissioned from four Scottish commentators, Michael Foxley, James Hunter, Peter Peacock, and Andy Wightman. The paper set out a compelling case for the need for an investigation into land reform in Scotland. According to the paper, Scotland has the most concentrated pattern of land ownership of any developed country.

2. In July 2012, the Scottish Government established an independent review group, the Land Reform Review Group to develop proposals for land reform. It is due to publish its final report by the end of April 2014. The *432:50* paper argued strongly that reserved matters, including the system of tax, tax relief and subsidies pertaining to agricultural land, play an important role in sustaining the highly concentrated pattern of land ownership in Scotland. The LRRG has written to us to welcome our inquiry, and has observed that “there should be a comprehensive approach to land reform in Scotland [...] the relationship between public funds and patterns of land ownership is an essential aspect to investigate. The LRRG recognises that the Scottish Affairs Committee is particularly well positioned to consider matters related to taxation.”¹

3. During this inquiry so far we have received and published over forty memoranda, as well as receiving a number of submissions which we were asked to keep confidential. We have also heard oral evidence from seven panels of witnesses, along with an informal launch session held in Inverness. Witnesses have included community land ownership groups, charities, tenants’ groups, government departments, unions and representative bodies. A large number of individuals have written in a private capacity. We are grateful to all those who have taken the time to submit evidence to our inquiry to date.

4. This report is an interim publication. It considers the relevant evidence we have received, gives our initial findings, and sets out areas for further consideration in the next phase of the inquiry. Some important issues have not yet been addressed, but we plan to return to them soon. In the meantime we would welcome further evidence.

1 <http://www.scotland.gov.uk/About/Review/land-reform/ArchiveNews>

2 Why Land Reform?

What is land reform?

5. Land reform is a term that can have a number of interpretations, and is capable of provoking strong feelings. According to the Collins English dictionary, land reform is defined as “the redistributing of large agricultural holdings among the landless”. Not everyone, however, would see this as the most relevant definition in the Scottish context. In 1997, the Land Reform Policy Group was established by the then Scottish Office under the Chairmanship of Lord Sewel. The Group did not offer a definition of the term but did state that “the objective for land reform is to remove the land-based barriers to the sustainable development of rural communities.”² This focus on rural communities has become a central feature of the discourse on land reform in Scotland, but we also heard evidence that it is important in urban areas.

6. Land reform remains a contested term. In evidence from Scottish Land and Estates, we were told:

Scottish Land & Estates contends that a modern land reform debate should focus on the best use of land and what the desired outcomes of land management should be, and then, how best these outcomes can be delivered to produce a range of primary and secondary outcomes, rather than simply on who owns the land.³

7. On the other hand, Community Land Scotland identifies the ownership of land as the key issue:

Scotland has the most concentrated land ownership patterns in Europe and much of rest of world and this acts against achieving greater social justice and the progressive realisation of human rights. The ownership patterns in Scotland should be regarded to be unacceptable and any matters which serve to re-enforce these patterns of ownership require to be addressed with a view to driving necessary change.⁴

Is there a need for land reform?

8. The 432:50 paper sets out suggestions for the way in which a comprehensive land reform agenda could be created. It argues for an investigation of the way that tax reliefs, exemptions and subsidies contribute to the concentrated pattern of land ownership in Scotland; greater clarity on who owns what land; increased support for acquisition of land by community groups, including action to tackle obstacles to the transfer of publicly owned land to such groups and a new approach to EU State Aid rules; an extension of the right to buy for tenant farmers; consideration of a land value tax; and a fresh look at the human rights arguments around land reform.

2 Scottish Office, 1999. Recommendations for Action. Final Report of the Land Reform Policy Group

3 Written evidence from Scottish Land and Estates

4 Written evidence from Community Land Scotland

9. Some witnesses to our inquiry have cast doubt on the need for a formal programme of land reform. Indeed, Scottish Land and Estates released a statement calling our inquiry “unwarranted”, “unnecessary” and “bizarre.”⁵ The Scottish Countryside Alliance told us that “as landowners are already determined to act responsibly within the regulatory framework, change and improvement can be best achieved through community engagement and the dissemination of innovative ideas and best practice, not more legislation.”⁶

10. In oral evidence, Sarah-Jane Laing, Director of Policy and Parliamentary Affairs, Scottish Land and Estates, told us:

[Landowners] can [...] be very driven by stewardship and environmental reasons [...] There is no denying that there are instances of bad practice by landowners in Scotland—we have never denied that—but, certainly, the picture which is painted of every landowner only out to get what they can from the landholding that they own is not reflective of the truth. The picture that is often painted of every community and landowner being at war or involved in some kind of tension is not the case. It is certainly not all rosy but it is certainly not all bad, and it is certainly not a spectrum where you have community owners at one end as a sort of utopia and the bad private landowners at the other end. It is a pattern of land ownership. There are benefits in all forms, and there is bad and there is good. My view is that there is definitely more good than bad. (Q692 4 Mar)

11. However, evidence we received from a range of witnesses supports the view that there is a need for land reform in Scotland. One tenant farmer told us that “[the tenant farmer system] needs to be abolished [...] It is thoroughly outdated [...] The current pattern is inhibiting development. It is not socially just [...] There are tax advantages for wealthy individuals to buy land, and this is bound to increase the price of land making it less available for genuine farmers [...] [Some] tenants feel under continuous threat.”⁷ The Scottish Tenant Farmers Association told us that “It is difficult to identify any benefits arising from the current pattern of land ownership in Scotland [...] The main disadvantages are prevention of repopulation of areas and stifling of investment. [...] The areas of Scotland which are characterised by concentrated land ownership cannot be described as socially just.”⁸

12. Oxfam Scotland told us that “the starting point for effective land reform needs to be a recognition that political and economic change in Scotland has delivered for the better off, but has simultaneously generated substantial poverty, an intensification of the way in which it is experienced and its concentration in particular localities.”⁹

5 This statement, from Luke Borwick Chairman of Scottish Land and Estates, was published on www.scottishlandandestates.co.uk on 11 July 2013 but it appears to have been recently removed. Its content was discussed at an oral evidence session with SLE, see oral evidence 4 March 2014, Q601-603.

6 Written evidence from Scottish Countryside Alliance

7 Written evidence from Mr James M G Grant

8 Written evidence from Scottish Tenant Farmers Association

9 Written evidence from Oxfam Scotland

13. The Forest Policy Group told us that private forestry ownership in Scotland is very concentrated in large holdings, whereas in most other European countries there are many more individual resident owners, farmers, co-operatives and municipalities who own forest areas. According to the Group, this “limited range of forest ownership types gives rise to a limited range of objectives and management regimes, which limits the outputs and benefits of forestry. This effectively “divorces” the majority of Scottish residents from effective participation in forestry and so forestry has become [...] external and largely irrelevant to the lives of most people.”¹⁰

14. One individual told us that the pattern of ownership limited the uses of land in Scotland: “The biggest threat to Scotland’s wonderfully diverse habitat is the legion of owners (both public and private) who believe Scotland is “naturally” a barren waste where nothing grows except heather moorland (for grouse shooting) and rows of tightly-packed, diversity-defeating conifers (for sale). Our land is capable of much, much more.”¹¹ Someone else observed similarly that “For vast areas of Scotland it is unknown who the actual owners are.”¹² Scottish Land and Estates told us that “land ownership and land management are intertwined.”¹³ It is clear from the evidence we received that concern about land ownership and use is widespread.

10 Written evidence from Forest Policy Group

11 Written evidence from Lesley Riddoch

12 Written evidence from Mr Robert F Fleet

13 Oral evidence heard on 4 March, Q607

3 Informing the debate

Information on land ownership

15. We heard evidence from a number of witnesses that there is a serious lack of data available to show exactly who owns which pieces of land, and that this lack inhibits an informed debate about land reform. In our first evidence session, Angus Robertson of Community Land Scotland told us that,

The thing we are looking for is about transparency and who owns the land. There are cases where we just do not know who owns some of these large estates, so there is no way we can approach individuals to get small parcels of it for local housing or what have you. We just do not know where these owners are. Some of them hide behind charitable status [and] have a board of trustees which has no local representation on it at all.¹⁴

16. The Committee heard that this problem is not confined to rural areas. Professor David Adams of the University of Glasgow told us that, “...there is almost 11,000 hectares of vacant and derelict land in Scotland. [...] According to the Scottish Government’s statistics, local authorities have no idea who owns 12% of the vacant and derelict land in Scotland. That is the kind of problem we face in trying to make land markets work.”¹⁵ Dr Cameron Easton of the University of Glasgow told us that he was “aware of local authorities that have sold land that did not belong to them because they did not know who owned it.”¹⁶

17. We heard that this lack of information can create problems for communities. Oxfam Scotland pointed to the case of Linwood in Renfrewshire, a town where Tesco’s plans to open a new store were opposed by some local residents. According to Oxfam, the local community was “hindered by a lack of clarity about who owns land and property”. Oxfam told us “[t]he lack of clarity concerning land ownership means that too often communities are left guessing who owns the land that they live, work and socialise in. The disparity of power means communities are beholden to benevolent land owners and large economic actors.”¹⁷

18. Both Dr Robert Barr, of Manchester Geomatics, and Robin McLaren, a consultant with the firm Know Edge Ltd, took the view that formulating land policy requires good quality accessible and transparent information. Dr Barr told us, “In my view, it [good quality accessible information] is vital. [...] Increasingly, in European countries [land information] is fully open. We have all the information but we choose not to make it open [...]” Robin McLaren told us: “I would argue that you cannot create a policy on land reform without first having a land policy for Scotland. Both those policies require good, comprehensive

14 Oral Evidence heard on 2 December 2013, Q470

15 Oral Evidence heard on 28 January 2014, Q349

16 Oral Evidence 12 February 2014 Q567

17 Written evidence from Oxfam Scotland

land information to drive the evidence for them. I do not think you can do it effectively without that information.”¹⁸

19. The Committee heard that there is not necessarily a lack of information on Scottish land ownership, but that it is not widely available. We were told that the Registers of Scotland hold a great deal of land information, but it is not in a format that can easily be accessed by the public nor analysed in aggregate. Information is held in a number of different places by different bodies. Access must also sometimes be paid for.¹⁹ This is not the case everywhere in the world. Dr Robert Barr described how, in the United States, “all the functions we are talking about are city or county functions and, a bit like Northern Ireland, you find that the tax register, the ownership register and the administrative register are all held together.”²⁰

20. We heard that some countries have a much more accessible database of land information. In Europe, Dr Barr cited the Netherlands and Denmark as “worth looking at because they have been through this journey. They had a complicated system of collecting data in many different ways. They have started reducing the number of ways in which data are held and they have also done it alongside open data policies. Those two countries are a long way along that journey.”²¹ Robin McLaren told us that Latvia was “a great example of a very efficient land registration and management system. It is highly automated, simple and liked by citizens.”²²

21. Mr McLaren also told us that the World Bank has produced a Land Governance Assessment Framework which is being used in a number of countries, including Georgia and Turkey. According to Mr McLaren, land transactions in these countries have become simple and straightforward, with no need for lawyers to become involved. He told us that Scotland was “miles behind” these countries where land transactions were concerned.²³

22. In 2012 the Land Registration (Scotland) Act was passed. According to the explanatory notes produced at the time:

The Act makes provision for land registration in Scotland and provides a new legislative basis for the Land Register. The Act also increases the number of events that will trigger the transfer of property from the General Register of Sasines to the Land Register. This will ensure the eventual completion of the Land Register. The Act makes provision for applications for voluntary registration of titles in the Land Register and a power for the Keeper of the Registers of Scotland (the Keeper) (who manages and controls the Land Register) to register a title without an application (a “Keeper-induced” registration) [...]

18 Oral Evidence 12 February 2014 Q503

19 Oral evidence 12 February Q503, Q515

20 Oral Evidence 12 February 2014 Q576

21 Oral Evidence 12 February 2014 Q562

22 Oral Evidence 12 February 2014, Q562

23 Oral Evidence 12 February 2014, Q555

Unfortunately, according to Robin McLaren and Dr Easton, the Act was “a wasted opportunity”.²⁴ in terms of improving transparency and access to data. Opportunities missed included “the idea of the citizen having easy, free access to information”. “Beneficial ownership [the inclusion of information about who is the ultimate owner of land held via one or more companies or trusts] was not changed” and “the requirement for public authorities to publish their ownership data in their holdings was not carried out”.²⁵

23. We heard that there have been a number of initiatives in the past with the aim of making land information more accessible, such as the Scottish Land Information Service project, but none has succeeded.²⁶ A recent EU Directive, the INSPIRE Directive, is designed “to promote, encourage and support data availability and sharing [...] outwith the public sector to citizens, the private sector and the academic sector so that it can be used.”²⁷ According to Dr Easton, one of the top ten priority datasets within the Directive is cadastre (landownership boundary) parcels, but “Registers of Scotland chose to implement the directive in the most minimalist way they could get away with, which was effectively to have a centre point and a reference number. That was the data that, technically speaking, fulfilled the requirements of the directive, because they were making available data about property parcels. As is blindingly obvious, that is not of any use to anybody but it fulfilled the minimum requirements of the directive.”²⁸ Again, it seems an opportunity may have been missed.

24. The Committee believes that, in order to formulate a successful land reform policy, far greater transparency is needed over who owns what land. We recommend that information about the boundaries and ownership of parcels of land should be made publically available via a National Land Information System, with a searchable database, and the same data should be freely available for the public to analyse.

Information on land values

25. As well as a lack of information on land ownership, we heard that there is a shortage of reliable data on the value of land. Witnesses argued that this information should be publically available. Professor Paul Cheshire of the London School of Economics commented:

Historically, Scotland has been much more open about price data for property than England, but there seems to me no reason at all why there should not be publicly accessible data on all transactions in land, including ownership, price and other characteristics of the land, particularly the exact geo-location of the land, because without that you cannot really assess the value of the land in terms of its composite characteristics.

[...]

24 Oral Evidence 12 February 2014 Q584

25 Oral Evidence 12 February 2014 Q588

26 Oral Evidence 12 February 2014 Q550

27 Oral Evidence 12 February 2014 Q581

28 Oral Evidence 12 February 2014 Q581

It is absolutely amazing that a modern, allegedly civilised, country does not have any public data on land prices or land ownership. If you think back to the banking crisis of 2007, part of that came out of a mis-valuation of real estate assets. It's - I'm lost for words.²⁹

26. We were concerned to hear of a relatively recent development which has reduced the amount of land information available in the UK. The Valuation Office Agency (VOA) is an executive agency of HMRC. The VOA “provides the government with the valuations and property advice required to support taxation and benefits”³⁰ Since 2011, the VOA has stopped collecting and publishing land price indices.

27. Professor Cheshire was one of seven signatories to a letter written in December 2013 to the Rt Hon Dr Vince Cable, Secretary of State for Business, Innovation and Skills, and the Rt Hon George Osborne, Chancellor of the Exchequer. The letter argued that this cessation was “deeply concerning”, and urged the government “to publish land values broken down at a regional and sub-regional level from 2014 onwards.”³¹

28. We are surprised to learn of the lack of detailed, openly-accessible information on such topics as landownership, land values, land occupation and land use.

29. We found it surprising to be told Scotland’s land information systems are not as advanced as those of other countries, such as Turkey and Latvia. We recommend that all datasets relating to landownership, occupation, land values, land use and core reference geographies such as addresses be made freely available under an open data policy. We regard the availability of such information as a high priority and consider it doubtful as to whether the Scottish Government and civic society is in a position to develop a coherent land policy and programme of land reform in the absence of such information.

30. We recommend that the Scottish and UK Governments consider using the World Bank’s Land Governance Assessment Framework to assess whether Scotland’s system of land governance is fit for purpose.

31. We are concerned to hear that the Valuation Office Agency no longer publishes land price indices and recommend that this publication resume, in order to allow informed debate about public policy on land.

29 Oral Evidence 28 January 2014 Q392-393

30 www.gov.uk/government/organisations/valuation-office-agency

31 http://spatial-economics.blogspot.co.uk/2013_12_01_archive.html

4 Land Markets and Values

The price of land

32. Land prices in Scotland are rising fast. The Knight Frank Scottish Farmland Index for Quarter 4 2013 notes that,

Scottish farmland reinforced its credentials as a solid investment in 2013 with prices rising on average by 7% to £4,262/acre in the latter half of the year, according to the Knight Frank Scottish Farmland Index.

Overall, values rose by 11% during the year. This takes 10-year growth to 220%, and means for the first time that the value of Scottish farmland has outpaced the rise of land (210%) south of the border. It also puts land in Scotland ahead of gold (212%), perceived by many as the ultimate safe-haven asset.³²

33. Several organisations identified this price inflation as a problem. It was argued by some of those who submitted evidence that the price of land bore little relation to its productive value, making it difficult for community groups to buy land. Highlands and Islands Enterprise said in their evidence that,

With respect to the purchase of large tracts of rural land (forestry, estates, islands) it is our experience that the contemporary value of such land is disproportionate to the return on investment that such assets typically generate. This could be shown as a direct legacy of the economic context and fiscal environment of land ownership over time in Scotland and a legacy which presents a barrier to diversified land ownership patterns in Scotland today.³³

34. The Development Trusts Association Scotland took a similar view, telling us that:

DTAS would not profess to have detailed knowledge of this area, but we believe that high and rising land values are not in the interests of local communities, nor the objectives of the Scottish Government, and our sense is that the current framework of taxation and public subsidy are a major factors contributing to this problem.³⁴

35. Some witnesses took the opposite view, and argued that high land prices contributed to a vibrant rural economy. Sarah-Jane Laing, representing Scottish Land and Estates, told us that in her local area:

I am not sure that I can think of direct impact on the community. There are some farmers who have sold their farms and who have made quite a lot of money. They have tended to retire and build their own house so there has been a knock-on impact in terms of small-scale construction firms. There have been others who have sold fields and have been able to invest in bigger sheds, better fencing, better

32 Knight Frank Scottish Farmland Index for Quarter 4 2013

33 Written Evidence from Highlands and Islands Enterprise

34 Written evidence from the Development Trusts Association Scotland

infrastructure. Where farming is strong, there is always a knock-on benefit for the rural economy [...] A buoyant agricultural sector is always going to benefit a rural area.³⁵

36. Michael Ireland, of Knight Frank LLP, thought that the rise in land prices was cyclical and not a cause for concern:

The interesting thing with regard to the growth in values is that it is more obvious, or it has become more of a public issue, because other property assets have not grown at that rate, if indeed they have grown at all. That 10-year period [quoted in the Knight Frank Scottish Farmland Index, above] throws up an interesting anomaly in the fact that other assets have not grown to that extent. If you take it over a different time scale, however [...] and if you look, for example, at prime agricultural land, which is perhaps £10,000 an acre in today's terms, the same or similar land was possibly £2,500 to £3,000 an acre in March 1982, so we are talking about a growth of three to four times, very roughly. If you take the same principle for residential property, we are talking about growth of nine or 10 times, so it depends on the time scale you look at in assessing the level of growth. Markets go up and they go down [...]³⁶

37. We have sought to investigate the factors behind this land price inflation and will be continuing to pursue this topic during the remainder of this inquiry. One reason was advanced by Professor Jim Gallagher of Nuffield College, Oxford:

One of the striking things about land—not in Scotland and not just agricultural land, but land in general—is that in the UK, for as long as I can remember, it has been a speculative asset. People buy land and buildings in order to have land and buildings because they think they are going to go up in value.³⁷

38. In this interim report we have focussed on the role fiscal policy plays in determining the price of land. Professor Paul Cheshire, Emeritus Professor of Economic Geography at the London School of Economics was clear in what he told us.

My basic message to you would be that all the work that I have done, and that an increasing number of scholars around the world have done, reinforces the conclusion that land markets are amazingly efficient at capitalising almost everything. By “capitalising,” I mean that the price of land reflects everything about its value and use [...]

If you try to help poor farmers by giving them subsidies, it gets capitalised into the price of land. If you give inheritance tax reliefs to farmers to try to keep family farms going, it gets capitalised into the price of land and squeezes family farmers out. If you give subsidies to farmers, it gets capitalised in the price of rural land. If you give planning permission with particular obligations, the expected value of those

35 Oral evidence heard on 4 March 2014, Q684

36 Oral evidence heard on 12 Feb, Q433)

37 Oral evidence heard on 4 March 2014, Q 755)

obligations—because it is always in the future—is again reflected in the price of land.³⁸

39. Professor David Adams added a note of caution, however, telling us the value of land is not always reflected in the price paid for it:

[...] the difference between price and value needs to be much clearer. For example, one of the issues is the huge difficulties in ascertaining what the value is, those difficulties often being the result of not enough price evidence - in other words, not enough transactions. In terms of the transactions in land and how the market works, we often find that a lot of the deals are done in a fairly closed way. Land is advertised to a very short list of people. It is not openly marketed; it is not an open competition; it is through contacts and networks. I would take what we call a much more institutional view of the land market than perhaps Professor Cheshire takes. For example, the big land agents in Scotland are very important in what one might call making the market and the way they lead people on, the way in which expectations are formed and the way in which behaviour is changed. You might put those two perspectives together because, if you take both of them, you might start to get towards the truth.³⁹

Fiscal measures that may affect the price of land

40. The main fiscal measures that relate to land are as follows: Council tax and non-domestic rates; inheritance tax; stamp duty land tax (which will be replaced in Scotland by the new land and buildings transaction tax from April 2015)⁴⁰; capital gains tax; inheritance tax reliefs for agricultural land, business, woodland, and national heritage. We will not discuss inheritance tax itself, or stamp duty land tax, in this report, but the other measures were the subject of some comment during this first phase of our inquiry. Professor Jim Gallagher told us:

One of the reasons—only one—that land and buildings go up in value is that they are, in my view, under taxed as a class. If they were taxed a bit more, they would not go up in value quite so much and there would be less of a temptation to use land and buildings as a speculative asset.⁴¹

Inheritance tax relief

41. We heard much evidence on the question of inheritance tax relief. Agricultural land can benefit from Agricultural Property Relief from inheritance tax. This applies only to the agricultural value of the property (hence it does not apply to the value of the land for development, or any extra sale value of a farmhouse due to its being a desirable country

38 Oral Evidence heard on 28 January 2014, Q292

39 Oral Evidence 28 January 2014 Q293

40 Scottish Parliament SPICe briefing no. 13/39, http://www.scottish.parliament.uk/ResearchBriefingsAndFactsheets/54/SB_13-39.pdf

41 Oral evidence heard on 4 March, Q 755

residence). It is set at either 50% or 100%, depending on whether or not the land is tenanted before the sale and the type of tenancy. According to the HMRC website:

Agricultural relief is available on the agricultural value of agricultural property which is transferred. The agricultural property can be owner-occupied or let. Relief is only due if the transferor has owned the property and it has been occupied for agricultural purposes for a minimum period. The relief operates in the same [way] as business relief by reducing the value transferred by a transfer of qualifying agricultural property.⁴²

42. The Historic Houses Association for Scotland (HHAS) told us in written evidence that:

Relief from Inheritance Tax (IHT) for agricultural land (APR) is provided in broadly the same way as Business Property Relief is provided for other businesses – in each case to enable those who have managed and built up a business, agricultural or otherwise, to pass it on to a successor without a significant portion being taken out of the business through IHT. Such reliefs from inheritance taxes for businesses are common in the developed world.⁴³

43. In some of our oral evidence we heard discussion of the Mirrlees review and its recommendations in the area of tax reliefs. The Mirrlees review was set up by the IFS to “identify the characteristics of a good tax system for any open developed economy in the 21st century, to assess the extent to which the UK tax system conforms to these ideals, and to recommend how it might realistically be reformed in that direction”.⁴⁴ It reported in 2011. In Chapter 15 of the Mirrlees Review, the authors make the following observation:

The current UK system does not stack up terribly well against any reasonable set of principles for the design of a tax on inherited wealth.

[...]

The UK is unusual in offering unlimited 100% relief on business assets—this is not available in France, Germany, or the US. These reliefs create just the sort of non-neutrality the tax system ought to try to avoid, pushing up the price of agricultural land and of certain offerings on the AIM market, and providing a large incentive to keep businesses going and in the family even if there are good financial reasons for disposing of them sooner. This is damaging economically.

[...]

by exempting business assets and agricultural land, IHT creates distortions that have no economic justification and promote avoidance among those who can engage in tax planning.⁴⁵

42 HMRC website, <http://www.hmrc.gov.uk/cto/customerguide/page17.htm#1>

43 Written evidence from Historic Houses Association for Scotland

44 <http://www.ifs.org.uk/mirrleesReview>

45 Mirrlees review, chapter 15

44. Professor Cheshire told us that inheritance tax relief for agricultural land in the UK was “an outlier” in international terms.⁴⁶ Stuart Adam of the IFS described the relief for agricultural land as “a fairly gaping invitation to tax avoidance.”⁴⁷

45. Several witnesses agreed that it was hard to justify a specific Agricultural Property Relief from inheritance tax, separate from Business Property Relief. Sarah Laing of Scottish Land and Estates told us: “If you are going to treat land-based businesses equally with other businesses, then I have to say personally I think it is very hard to argue for the continuation of a distinct APR from a BPR.”⁴⁸

46. We would welcome further evidence on the case for the retention of a distinct Agricultural Property Relief.

Council tax and non-domestic rates

47. The two recurrent annual taxes levied on land in Scotland are council tax (for domestic property) and non-domestic rates (for business property). The Mirrlees Review recommended abolishing both:

Council tax should be reformed to relate it more closely to actual property values - levied as a proportion of up-to-date values with no cap and no discount for unoccupied or single-occupancy properties. We have called this a housing services tax to reflect its underlying economic rationale as a tax on housing consumption to substitute for VAT [...] There is a strong case for introducing a land value tax. In the foreseeable future, this is likely to mean focusing on finding ways to replace the economically damaging business rates system with a land value tax.⁴⁹

48. In written evidence Professor Jim Gallagher observed that:

The present taxes on land and property in Scotland have grown rather than been designed. Council tax, applying to domestic properties, arose from the debacle of the poll tax essentially as a modified form of domestic rates. It embodies a number of pragmatic compromises, and is none the worse for that, but suffers from the increasing disability of the unwillingness of any Scottish government to sanction a revaluation. It is wholly absurd that the values on which council tax bandings are based still refer to 1991 property values. Something should be done about that, but such a change ought to be put in the context of a long term strategy.

Non-domestic, or business, rates do not suffer from the revaluation problem, but still have some serious defects. The most obvious is that they do not apply to most real property in Scotland, as agricultural land has been de-rated since the 1920s. Whatever the justification offered for that then, it certainly merits revision now.⁵⁰

46 Oral Evidence 28 January 2014 Q373

47 Oral evidence heard on 4 March, Q762

48 Oral evidence heard on 4 March, Q682

49 Mirrlees review, chapter 16, p404

50 Written evidence from Professor Jim Gallagher

49. Agricultural and sporting land is at present exempt from business rates. As the Scottish Government website explains:

Some types of property are exempt from entry in the Valuation Roll. This means that these properties are not liable to pay non-domestic rates. Some examples of exempt properties include: Agricultural land and buildings; Fish farms, fishing, and sporting rights (your local fishery board may request that the Assessor values salmon fishings but only for its own purpose) [...].⁵¹

50. However, the business exemption from inheritance tax can be applied to such land, as HMRC confirmed to us in written evidence.⁵²

51. Several of our witnesses thought that it was inconsistent for agricultural property to be exempt from non-domestic rates. Sarah-Jane Laing of Scottish Land and Estates told us:

I don't know why those exemptions were put in place and at present I don't have an argument as to why those exemptions should continue [...] you [as a farmer] are going to be able to access small business relief. The Scottish Government have a number of things. If you are going to access those, there should be equity. I will be honest—that might not be music to some of my members' ears, but, if you are going to be looking at estates as land-based businesses, then there does seem to be equity in treating them the same as other businesses.⁵³

52. In November 2012, the Scottish Government launched a public consultation on how the non-domestic rating and valuation appeals systems can support businesses and sustainable economic growth and on how to improve transparency and streamline the operation of the rating system.⁵⁴ As the analysis of consultation responses noted:

Agricultural land and sporting estates are exempt from business rates and the comments on this issue were mixed with some supporting the exemption because of the benefit to the rural economy, and others opposed because they felt all businesses should be treated in the same way.⁵⁵

53. In response to the consultation, the Scottish Government said that it had “committed to use the period until the next revaluation in 2017 to conduct a thorough and comprehensive review of the whole business rates system.” In relation to existing reliefs and exemptions, the consultation response said: “All rates reliefs will be kept under regular review to ensure that benefit is directed where it is most needed. Although views were mixed, the Scottish Government has on balance decided that all current exemptions provided, including to agriculture, should be retained.”⁵⁶

51 <http://www.scotland.gov.uk/Topics/Government/local-government/17999/11199/brief-guide/guide/>

52 Further written evidence from HMRC

53 Oral evidence heard on 4 March 2014, Q695-696

54 Scottish Government, 2012. Supporting Business - Promoting Growth, <http://www.scotland.gov.uk/Publications/2012/11/6551>

55 Fawcett, J. & Mulholland, S. 2013. Supporting Business - Promoting Growth. Business Rates Consultation. Analysis of Consultation Responses. Scottish Government Social Research.

56 Scottish Government, 2013. Supporting Business - Promoting Growth. Scottish Government Response.

54. Evidence in the Mirrlees Review and provided to us by Professor Cheshire and Professor Gallagher suggests, however, that there is a case for reviewing such exemptions in order to treat all land that is used for business purposes consistently in the tax system. Stuart Adam of the IFS told us: “To my mind, the principal argument for starting to levy business rates on [agricultural land], aside from just a general fairness thing as to why one particular sector should be favoured like that, is just the economic efficiency argument that taxing land put to residential use under council tax to commercial use under business rates and not taxing land put to, say, agricultural use, simply distorts patterns of land use.”⁵⁷ Mr Adam and Professor Jim Gallagher told us that they would recommend a slow introduction of non-domestic rates on agricultural land, with a low rate set at first to allow time to adjust.

55. Andrew Hamilton, a partner with the land agents Strutt and Parker, saw a logic to such an argument:

I could not say why agricultural land has more or less always been exempt from business rates, but it has. It must have been done for a policy reason, presumably to support farming. [...] But if you are suggesting a level playing field [...] it is difficult to fault the logic.”⁵⁸

56. We would welcome further evidence on the case for the retention of the specific exemption of agricultural property, or sporting land, from non-domestic rates.

Heritage Tax Relief

57. Exemption from inheritance tax and capital gains tax is also available under the Conditional Exemption Tax Incentive Scheme for a range of assets including land of outstanding historic interest, outstanding natural beauty and outstanding scientific interest. Scottish Natural Heritage are responsible for advising HMRC on whether any land should be considered for the scheme in the first place and advise on drawing up the undertakings to be met in exchange for the exemption.⁵⁹ There are 63 areas of land across Scotland that fall under the scheme.⁶⁰

58. Altyre Estate, for example undertakes to “take all reasonable steps for the maintenance of the property outlined in red on the map and the preservation of its character and for securing reasonable access for the public a set out below.” This includes “to permit informal access around Blair’s Loch and through Fairyhills Wood and such further areas as shall be agreed from time to time.”⁶¹

59. The owners of Invergeldie Estate undertakes “that reasonable steps will be taken for the maintenance of the property, preservation of its character and for securing reasonable access to the public.” Furthermore, with respect to the northern section of the land (the western slopes of Ben Chonzie), the owner undertakes to “ensure that the land be managed

57 Oral evidence heard on 4 March, Q752

58 Oral Evidence heard on 12 February, Q430

59 Written evidence from HMRC

60 www.hmrc.gov.uk/heritage/lbsearch.htm

61 www.visitUKheritage.gov.uk/servlet/com.eds.ir.cto.servlet.CtoLandPrinUnderServlet?ID=299

only in connection with the traditional land uses of hill farming, grouse-shooting or deer-stalking” and “not to encourage public access to this part of the property.”⁶²

60. The owners of Arran Estate undertakes to “take reasonable steps for its maintenance and the preservation of the character of the Arran Estate including abiding by the terms set out in the Heritage Management Plan” and “to secure reasonable access to the public and to publicise that access as outlined on the map.”⁶³

61. To ensure that the undertakings continue to be met, the owner is responsible for submitting an annual report to HMRC. This is sent to SNH who can provide comments. Periodically HMRC asks SNH to complete a site inspection to confirm that, in their opinion, the undertakings are continuing to be complied with. Public access is a statutory requirement of all Conditional Exemption Schemes.⁶⁴

62. Given that these undertakings are, in effect, being funded by the taxpayer (albeit through tax receipts foregone, rather than direct grants), we asked HMRC whether the public could have sight of these annual reports to satisfy themselves that the undertakings were continuing to be met and to provide accountability for public funds. HMRC told us that:

As annual reports are made by the owners concerning, effectively, their tax affairs, for reasons of taxpayer confidentiality these cannot be disclosed. The periodic monitoring reports that we ask SNH to prepare for us, also cannot be disclosed, as they are about individual taxpayers complying with their undertakings.⁶⁵

63. We are not persuaded that some of the undertakings made under the Conditional Exemption Tax Incentive Scheme represent value for money. In particular, although we understand that public access is a statutory requirement of the Conditional Exemption Scheme, statutory rights of responsible public access are enshrined in the Land Reform (Scotland) Act 2003. A key part of the justification for the scheme has, therefore, been superseded.

64. We would welcome further evidence on whether the annual reports on undertakings under the Conditional Exemption Tax Incentive Scheme should be disclosed.

65. We would welcome further evidence on whether the Government should publish the amount of tax foregone in exchange for the reliefs granted to the owners under the scheme.

62 www.visitUKheritage.gov.uk/servlet/com.eds.ir.cto.servlet.CtoLandPrinUnderServlet?ID=147

63 www.visitUKheritage.gov.uk/servlet/com.eds.ir.cto.servlet.CtoLandPrinUnderServlet?ID=609

64 Written evidence from HMRC

65 Written evidence from HMRC

Quantifying the effects

66. A number of witnesses in written evidence told us that the fiscal environment has a significant effect on land prices and on land markets. For example, the Community Woodlands Association believed that

the favourable tax regime for private landownership in Scotland significantly affects patterns of ownership. The existence of a significant land and business management industry focused on supporting private owners to minimise tax liabilities, while maximising grants and subsidies from public funds, is compelling evidence of the role that the tax regime plays, and of its contribution to inflating land values.⁶⁶

67. Several of the witnesses to whom we spoke had not made a specific study of Scottish land, but they told us about what they considered to be the usual effect of subsidies and tax reliefs on land prices. For instance, we were told by Professor Paul Cheshire that the inheritance tax exemption for agricultural land “has inflated the price of agricultural land in England quite substantially”, and that, although he had made no study of the specific area and was not aware of any such study, his guess would be that it would increase prices by a factor of four. He said he was “convinced” that the exemption made land of a similar productivity level much more expensive than in other countries that did not apply similar exemptions, such as France.⁶⁷

68. Whilst the precise impact of this capitalisation of reliefs and subsidies may not be clear, market research reveals that land continues to appreciate in capital value. We have already noted the capital growth in farmland. The Scottish Estate Benchmarking Survey is an annual survey of Scottish lowland estates conducted by the land agents Savills to determine levels of income, expenditure, investment etc. The 2013 Survey published in January 2014 found that,

Rural assets continue to outperform alternative assets and our survey again records a healthy investment performance. In the year to 5 April 2013, the average total return for all estates for all let property (agricultural and residential) was 10.8% comprising 1.3% net income return and capital growth of 9.5%.⁶⁸

69. We received evidence that high land prices are seen to contribute to the concentration of land in the hands of a small proportion of the population. As the next section explains, high prices also make it difficult for community groups to acquire land. The effects of government policy in this area do nothing to reduce the concentrated nature of Scottish landownership.

70. Our evidence suggested that a different set of policy decisions could produce a very different outcome. Professor Adams told us that “the way land markets in this country work is very directly conditioned by law and policy. It is possible for Parliament and the Government to make major changes to the operation of land markets by setting the context slightly differently. We should not think of land markets as something natural that

66 Written evidence from the Community Woodlands Association

67 Oral evidence heard on 28 January, Q 366

68 Savills, 2014. Scottish Estate Benchmarking 2013 Survey

appear from the sky like the weather. Land markets are constructed through social relationships but also through Government policy and legislation.” Professor Cheshire agreed: “Property rights are not given by God; they are defined by law, and exactly how they are defined is reflected in the prices people will pay in land markets.”⁶⁹

71. It seems clear, therefore, that policy decisions can have a strong effect on land prices and land markets; and that in doing so they can frustrate the aims of other government policies. Tax reliefs and exemptions are a long established and entirely legitimate means of pursuing public policy. However, it is important to be clear about why individual measures exist, what they are designed to achieve and whether they continue to be justified.

72. Stuart Adam of the IFS told us:

If you want to subsidise farming, there is still the question of what is the best way to do that. It is not obvious to me that a tax break that is, in effect, proportional to the rental value of the property occupied is actually the right way that we want to subsidise farming. [...] You would want to ask what precisely the reason is that you want to subsidise it. What precisely is the activity you would want to encourage, and then let’s subsidise that? If it is something about production, then subsidise farming production. If it is something about employment, then subsidise employment. If it is something about keeping the land in a nice condition by some definition, then subsidise that, but, whatever it is that you want to achieve, identify that carefully, define it and target that. It is not obvious to me that agricultural relief in business rates or inheritance tax is doing that.⁷⁰

73. However, if changes were to be made to the tax system in an effort to depress the price of land, this might cause serious difficulties for farmers and landowners. In written evidence, Scottish Land and Estates told us that:

It should be recognized that private landowners make a substantial contribution to HMRC. Typically an estate will pay numerous taxes in many forms and across a wide range of activities. In an increasingly global society we require a taxation environment which encourages rather than discourages inward investment. Tax reliefs and allowances are universally available and not simply the preserve of private landowners. There is generally a level playing field in relation to reliefs and this is regardless of size of landholding [...] Removal of reliefs and allowances may have the converse effect of making land ownership less available or accessible to both private individuals and community groups.⁷¹

74. In our evidence session with Stuart Adam and Professor Gallagher, there was discussion of the likely impact on farmers of the changes they proposed. Professor Gallagher told the Committee that he would recommend a slow introduction of non-domestic rates on agricultural property: “I don’t think anyone would suggest that you suddenly applied rates to the farming industry. Non-domestic rates run at 46p in the pound, is it, of rental value? No one would suggest that. Would a non-domestic rate of 1p

69 Oral Evidence heard on 28 January, Q400

70 Oral evidence heard on 4 March, Q796-7

71 Written evidence from Scottish Land and Estates

in the pound make that much difference to the industry? It is worth thinking about [...] over a prolonged period you could gradually increase them.” However, he admitted that farmers would be unhappy about such a change: “No tax is ever popular with the people who have to pay it.”⁷²

75. The Committee accepts the evidence that the system of landownership in Scotland is a direct consequence of choices made in the past in relation to the legal and fiscal framework within which land is held. These choices were political decisions in the past and they will continue to be in the future.

76. The Committee has received evidence that questions the continuing justification for agricultural property relief, business property relief, business rollover relief and non-domestic rates exemption for agricultural and sporting property.

77. We are concerned that tax reliefs and exemptions distort the market as well as pushing up prices.

78. The Committee would be interested to hear further evidence on the continuing public interest in maintaining these reliefs and exemptions, and their impact on the market. We encourage further consultation on this topic.

Community Land Ownership

79. Among those who told us that the present pattern of land ownership in Scotland was inequitable and needed to be reformed, most favoured greater Community Land Ownership as an important part of a solution.⁷³ This form of ownership has become more common in Scotland in recent years, partly as a result of the Land Reform (Scotland) Act 2003. This Act allows properly constituted community bodies to register an interest in specific pieces of land in their local area. They then have a pre-emptive right to buy if the owner subsequently wishes to sell. Famous examples of community land purchase include the Island of Gigha which was purchased by the local community in 2002 (before the passage of the Act). The Scottish Government has given strong support to increased Community Land Ownership. It recently announced a new target of an extra 500,000 acres of community-owned land in Scotland by 2020.⁷⁴

80. Supporters of Community Land Ownership argue that it has a number of benefits. They argue that much rural land in Scotland is either neglected or is not exploited to its full potential, so that if local people are enabled to own and manage it, they will be able to boost their local economies, create jobs and revive fragile rural communities.⁷⁵

72 Oral evidence heard on 4 March, Q792

73 See for example written evidence from Big Lottery Fund, Alastair McIntosh, Community Land Scotland, Derek W Loudon, Dan Bailey, Mr Robert F Fleet, Development Trusts Association Scotland, and others.

74 Speech made by First Minister Alex Salmond at Community Land Scotland Annual Conference 7 June 2013, see http://83.223.124.6/~communi1/images/uploads/First_Minister_address_-_Community_Land_Scotland_Annual_Conference_2013.pdf

75 See for example written evidence from Big Lottery Fund, Alastair McIntosh, Community Land Scotland, Derek W Loudon, Dan Bailey, Mr Robert F Fleet, Development Trusts Association Scotland, and others.

81. During our inquiry so far we have also heard from witnesses who are more cautious about Community Land Ownership. Some felt that the most important question about land is the way in which it is managed, not who owns it.⁷⁶ We were told by the Crown Estate that local management agreements can provide all the benefits of management by local communities without the need to take on the potential burden of ownership.⁷⁷ Other witnesses felt that, while Community Land Ownership might well bring benefits, it should not be seen as panacea. Community groups might lack capacity to manage an asset in the most productive way, or local interest might decline over time.⁷⁸ Another concern we heard was that, if community land ownership were to be promoted by means of extended powers of compulsory purchase, then private property rights might be undermined.⁷⁹

82. The Scottish Countryside Alliance told us that Community Land Ownership schemes often fail though the lack of a business plan.⁸⁰ Oxfam Scotland considered that communities should be able to have a say in the way in which land is used, without having ownership “imposed” on them.⁸¹

83. In the Committee’s view, Community Land Ownership offers significant benefits for Scotland. We recognise that policy in this area is largely devolved and we welcome the actions of the Scottish Government in promoting Community Land Ownership. However, we have identified a number of reserved or shared areas of policy which have an effect on the viability of Community Ownership. These include reserved areas of land taxation and State Aid rules, and broader forestry policy.

State Aid

84. We received a significant volume of written evidence on the issue of state aid. This term applies under EU law to funding which is given by a state which may have the effect of distorting competition. Except for certain exemptions, such funding is illegal. Article 107(1) of The Treaty on the functioning of the European Union states that:

Save as otherwise provided in the Treaties, any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the internal market.⁸²

85. Such aid is referred to as a state aid and public authorities of member states are legally bound to avoid granting such aid unless specifically authorised to do so. These rules are designed to prevent member states providing grants to companies and organisation which

76 For instance, written evidence from Scottish Land and Estates

77 Written evidence from the Crown Estate

78 Written evidence from Scottish Countryside Alliance

79 Written evidence from Historic Houses Association Scotland

80 Written evidence from Scottish Countryside Alliance

81 Written evidence from Oxfam Scotland

82 http://ec.europa.eu/competition/state_aid/legislation/compilation/a_01_03_11_en.pdf

would then have a commercial advantage as result. They are intended to ensure a fair and open market and a level playing field across the EU.

86. State aid rules applies to funding which meets all of the following four criteria: it is being provided by the state or through state resources; it favours particular undertakings or the production of certain goods; it affects tradeable activity between Member States; and it distorts competition, or has the potential to distort competition.⁸³

87. In the context of our inquiry, State Aid rules are important because they can prevent community groups from receiving state funding to help them to acquire land or other assets. The issue has become of significance in relation to the funding by the National Lottery through the Scottish Land Fund and Growing Community Assets Fund of community organisations that wish to acquire land. It seems that interpretation of the rules by the Scottish Government and by funding bodies may have tightened considerably over recent years, although the rules themselves have not altered. In particular, the issue has come into sharp focus around the question of acquiring forestry land since it is subject to specific state aid rules that preclude the use of state funds in support of commercial forestry.

88. As the Community Woodlands Association state in their written evidence,

The National Forest Land Scheme (NFLS) was introduced in 2005 by Forestry Commission Scotland to give community organisations, recognised non-governmental organisations (NGOs), and appropriate housing bodies the opportunity to buy or lease National Forest Land where they can provide increased public benefits [...] the operation of the NFLS has been increasingly inhibited by financial issues. Essentially communities have found themselves caught between FCS, who insist that the Scottish Public Finance Manual demands that transactions are at full market value, and the Big Lottery Fund/Highlands & Islands Enterprise, who have argued first that they cannot fund the acquisition of assets from the public sector, and then that any such state funding is constrained by state aid rules and limited to 20% of the purchase price.⁸⁴

89. All of those who provided evidence on this topic acknowledge that state aid rules exist, and for good reason. However, they are critical of how the rules are being interpreted. As the Community Woodlands Association put it in their written evidence:

The current interpretation of the rules is impacting negatively across a raft of Scottish Government policy areas, including: public service reform and the implementation of Christie Review recommendations, regeneration and community empowerment, land reform, rural transport networks, food and energy security, and the localised reduction, reuse and recycling of waste.⁸⁵

83 Department for Business, Innovation and Skills, "State Aid: A Beginner's Guide: Guidance Notes", June 2010, <http://www.bis.gov.uk/assets/biscore/consumer-issues/docs/10-951-state-aid-beginners-guide.pdf>

84 Written evidence from Community Woodlands Association

85 *ibid*

Rory Dutton of the Development Trusts Association told us of the frustration experienced by its members.

People have been unhappy generally, because this whole issue about state aid has appeared recently and is seen to be an obstacle to them realising their ambitions for their communities. I am not speaking specifically about HIE here. I am just speaking generically about the public sector when they are dealing with state aids and community groups. They do not feel they can have that one-to-one dialogue to progress the issues, talk round them and negotiate an agreed position, or if there is any scope to move [...] Generally there is an increasing number of phone calls I get [...] from people who are frustrated with state aid issues.⁸⁶

90. Peter Peacock of Community Land Scotland told us that,

I do not think there is any doubt that the community groups—not only community groups that are members of Community Land Scotland, but more widely, I know—are experiencing interpretations of state aid rules in Scotland, which appear on the face of it to be tightening all the time and becoming more and more difficult. It is not clear to our members, and I know to others, whether these are necessary tightenings or whether they are a risk-averse tightening. In other words, “To avoid the possibility of any criticism we will not do that,” and that therefore removes the possibility of criticism but it also prevents actual development on the ground the funds were intended for. [...] Therefore, I think the worry from our members is, is it necessary to interpret the rules in this way and to the extent that then requires you to go to Brussels for exemptions? I think our members are genuinely bemused by this and frustrated.”⁸⁷

91. Rory Dutton indicated, however, that the Scottish Government is revising its approach:

Things are changing there [within the state aid unit in the Scottish Government] now. We have done quite a lot of work with them recently, and they are revising their interpretation. I hope it is followed likewise by an awareness throughout the public sector. [...] My understanding is that at the senior level within the Scottish Government they are keen to have a more enabling role and a more mature attitude to risk and managing risk, etc.⁸⁸

92. Neil Ritch from the Big Lottery told us that there has been no reinterpretation of the rules but that the legal context in which they have been applied has changed over time: “I do not think I would go as far as to say it is a reinterpretation. [...] We have sought to act as effectively as we can within the advice we have. To that extent, we have always been aware of the basic state aid tests, and we apply them to the cases that we need to fund. [...] Sometimes the judgments you make in relation to those questions are different because case law emerges in relation to state aid. It is not always a precise area. It is not a piece of regulation that is well designed for the kind of business we are in, in terms of supporting

86 Oral Evidence heard on 21 January, Q260

87 Oral Evidence heard on 2 December 2013, Q464

88 Oral Evidence heard on 21 January, Q184

communities to buy land, so it does become pretty challenging to try and walk a very straight line on it.”⁸⁹

93. Rachel McCormack of Highlands and Islands Enterprise told us that

As all of the Committee will be aware, forestry is a primary activity under the legislation. As such, the state aid rules that apply are pretty clear and pretty well set out. Having said that, those rules apply to commercial forestry.⁹⁰

94. In 2012, the European Commission launched a State Aid Modernisation (SAM) programme of reform to the state aid regime with a view to fostering growth, focussing enforcement on cases with the biggest impact on the internal market and streamlining the rules to reach faster decisions.⁹¹ In 2013, the Commission conducted a consultation on Community Guidelines on state aid in the agriculture and forestry sector and on Block Exemption Regulations.⁹² In February 2014, the EC published draft guidelines for state aid in the agriculture and forestry sector. Paragraph 2 of the draft guidelines reads:

However, despite that general prohibition [Article 107(1)] State aid may be necessary to address market failures so as to ensure a well-functioning and equitable economy. Therefore, the Treaty leaves room for the granting of State aid in respect of several policy objectives.⁹³

The Guidelines then proceed to list 71 areas in which state aid can be given ranging from aid for agro-forestry schemes to aid for improving soil quality in the forestry sector.

95. State aid rules are complicated and it is clear that they are not easy either for government, funding bodies or community groups to interpret. We note that state aid regulations form part of the treaty obligations of EU member states and understand that these regulations exist for a legitimate purpose. However we are concerned that community bodies appear to be the victims of both the rules themselves and the manner in which they have been interpreted and communicated over some time.

96. Furthermore, it is clear that state aid rules are having an adverse impact on the realisation of the plans of many community bodies seeking to undertake projects which are in alignment with public policy.

97. We recognise the apparent complexity of state aid rules and the frustration felt by community groups and others over their interpretation, which can be seen as over-cautious and risk-averse. We understand that discussions are ongoing to clarify and resolve the issues that have been raised with us and welcome these.

98. In the course of the current State Aid Modernisation process we believe the Scottish and UK Governments should devise and secure agreement for a change in both the

89 Oral Evidence heard on 21 January, Q158

90 Oral Evidence heard on 21 January, Q147

91 http://ec.europa.eu/competition/state_aid/modernisation

92 http://ec.europa.eu/agriculture/stateaid/policy/consultation/contributions/gl-aber/registered-organisations/07_en.pdf; http://ec.europa.eu/agriculture/stateaid/policy/consultation-aber/index_en.htm

93 http://ec.europa.eu/agriculture/stateaid/policy/feedback-gl/draft-gl-2_en.pdf

rules and the way they are interpreted, to allow community ownership of forests and other land to proceed in a clear and predictable manner.

99. We will maintain an interest in how the State Aid Modernisation proceeds and review the matter in our final report.

High land prices

100. In a previous section, we reviewed the evidence which we have received that fiscal policy makes a strong contribution to high land prices. One reason why high land prices might be problematic is that, as noted above, the Scottish Government has set a target of increasing the amount of land in Community Ownership by 500,000 acres before 2020.⁹⁴ Substantial amounts of public money are devoted to the Scottish Land Fund to support the acquisition of land on behalf of communities. If it is indeed true that features of the tax system contribute to the high price of land, then this is an example of one public policy working to the detriment of another. As Professor Cheshire observed, “The money you are giving communities to buy the land is to compensate people for money you are already giving them through the tax break. It is a problem of policy failure rather than of market failure.”⁹⁵

101. The Committee has identified the apparent contradiction of seeking to promote land reform by means of public money, through schemes like the Scottish Land Fund, when the price paid for the land is itself inflated through the reliefs and tax exemptions granted by Government. It would appear that taxpayer’s money is being used to pay for land that another part of Government has rendered more expensive through tax policy. We will be able to form a settled view after receiving further evidence.

Forestry

102. We received evidence from a number of organisations with views on the future of forestry policy in relation to land reform. As already discussed, state aid was an issue but wider issues were raised in relation to the pattern of forest ownership and the future for community ownership. The Forest Policy Group told us of research it had conducted on the pattern of forest ownership in Scotland:

The first thing to note is that there is a lack of ownership information in Scotland. This is in complete contrast to the situation abroad, where the importance of the issue is underlined by the detailed level of information which is gathered and published. A good example of this is the Statistical Yearbook of Forestry produced by the Swedish Forest Agency. This devotes an entire chapter to ‘Estate & Ownership Structure’ breaking ownership down by age, sex, size of holding, county, etc. FPG’s research revealed that about 67% of Scotland’s forest area is privately owned (i.e. owned by private individuals, trusts, companies, charities, communities etc). Of these privately owned forests:

94 Speech made by First Minister Alex Salmond at Community Land Scotland Annual Conference 7 June 2013, cited above

95 Oral Evidence heard on 28 January, Q338

- 91% of the area is owned either by landed estates or by investment owners, leaving only 9 % for all other ownership types;
- 55% of the area is owned by absentees;
- amongst private owners, 32% live outside Scotland.

Scotland's forest resource is thus dominated by the state, landed estates and forestry investors. This contrasts with other European countries where a significant proportion is owned by individual resident owners, farmers, co-operatives, and municipalities.⁹⁶

103. The Forest Policy Group also drew our attention to the fact that over 44% of Scotland's privately-owned forests are held in holdings in excess of 100ha (representing 93% of the forest area). This contrasts with 0.7% of privately-owned forest holdings in nine European countries (Austria, Belgium, France, Hungary, Latvia, Lithuania, Norway, Poland and Slovakia). The Group argues that this limits the potential of Scottish forestry to realise its full potential and, in particular that "significant levels of absentee ownership mean that forestry is not a land use that is well-integrated into the rural economy, and has led to tensions with, for example, agricultural interests."⁹⁷

104. The FPG claims that "a more diverse ownership pattern would arguably be more likely to deliver far greater diversity in approaches and models of management leading to greater innovation, investment and commitment to local economies, in addition to greater resilience to external change. In particular, sectors currently under-represented such as community owners, small-scale individual owners, co-operatives and farmers and crofters could deliver wider benefits."⁹⁸

105. Scottish Land and Estates take a different view, telling us that:

while it is clearly the case that forest ownership is focused in specific sectors and that for a variety of historical reasons we do not have a culture of small-scale forest ownership, focusing on ownership and a desire to see a change in ownership structure is misplaced and potentially highly damaging. Forestry is first and foremost a commercial enterprise, but importantly, it is a commercial enterprise that delivers a wide range of public goods and Scottish Land & Estates believes that it is vital - if we want to see the continuation of those public goods - that the commercial sector is allowed to function.⁹⁹

106. We also received evidence on the operation of the National Forest Land Scheme (NFLS) which is designed to provide community groups with the opportunity to acquire parcels of the National Forest Estate that are deemed to be surplus to the requirements of the Forestry Commission. We heard from Angus Robertson who is the manager of Sleat Community Trust and a Director of Community Land Scotland. Sleat Community Trust

96 Written evidence from Forest Policy Group

97 *ibid*

98 *ibid*

99 Scottish Land and Estates, 2013. Response to the Scottish Government's Land Reform Review Group. pg 82

acquired the 1000 acre Tormore Forest under the NFLS. The Trust's Annual Review shows that the community has achieved significant progress, including the establishment of a biofuels business that is now supplying a college on Sleat.¹⁰⁰ The majority of the funding for the acquisition was raised privately through fundraising and commercial loans.

107. We heard that there is potential for such schemes to provide a positive return for the public money invested. Peter Peacock of Community Land Scotland told us that he was undertaking scoping work to find out how quickly these schemes could provide a return.¹⁰¹

108. The Community Woodlands Association raised a related point with us in relation to the process of placing a price on areas of forest land which are the subject of NFLS applications.

Notwithstanding the commitment to additional public benefit and the general alignment with the delivery of Scottish Government policy, acquisitions through the NFLS are required to be at "full market value", and this has proved a significant obstacle to the effectiveness of the scheme. Valuations are carried out, on a joint instruction basis, by the District Valuer, who may receive representations from both FCS and the community body, and then values the property on the basis of direct comparables. Because public assets are valued by comparison with private sector sales, public bodies such as Forestry Commission Scotland, who are not direct recipients of single farm payment or tax advantages, will still benefit from any uplift in land prices.¹⁰²

109. We share the Scottish Government's desire to see both an expansion of forestry in Scotland and greater levels of community ownership of land. We are not clear that the support framework for community forestry is well aligned with that for the public sector and the private sector. In particular, we are keen to explore further the economics of public, private and community forestry in terms of the funds that are committed by public agencies to support state, community and private forestry and the funds that, through grants and tax reliefs, are provided to the private sector.

100 Sleat Community Trust, 2012. Seven Year Review and Evaluation 2004-2011, see http://s3.spanglefish.com/s/4109/documents/seven-year-review-documents/sleat_community_trust_review_final_report_formatted_160412.pdf

101 Oral Evidence 2 December 2013 Q532

102 Written evidence from Community Woodlands Association

5 Topics for future consideration

110. The issues covered in this Interim Report reflect those that we have explored since the beginning of the inquiry. In the coming months we will be exploring these and other topics raised by those who have provided evidence. In particular, we will be looking at the following areas.

Charitable Status

111. A number of estates in Scotland are owned by charitable companies set up by private owners. **We would welcome further evidence on whether the ownership of estates through charitable companies set up by private owners is in the public interest and how governance of such organisations should be best organised.**

Tenant Farming

112. We have received a significant amount of evidence from tenant farmers, much of it in confidence. We recognise that both the Scottish Government's Land Reform Review Group and the Review of Agricultural Holdings Legislation are considering matters relating to agricultural tenancies. After the report of the Land Reform Review Group has been published, we will return to this topic, and will consider issues including how the concerns of tenant farmers can be met through reform of the fiscal framework of agricultural land. **We would welcome further evidence on how the fiscal framework of agricultural land might be reformed to meet the concerns of tenant farmers.**

Grants and Subsidies

113. The agricultural journalist and former MSP, Andrew Arbuckle has calculated that somewhere between £50 million and £100 million per year, or almost 20% of the total amount of subsidy paid to Scottish agriculture has been “oozing out of the system” to those he would categorise as “non-active” farmers.¹⁰³ We note the determination by the Scottish Government and the farming industry to prevent this happening in the new agricultural support regime from 2015.

114. At the same time we are aware that there are many large landholdings, some of which are owned in offshore tax-havens, that are registered as agricultural holdings and potentially eligible for substantial sums of area payments over and above that which they have claimed to date under the agricultural support regime from 2015.

115. We have heard evidence, discussed above, that both the tax system and the availability of grants and subsidies are key elements of land values and the land market. As arrangements for the agricultural support from 2015 are developed, we will pay close attention to the extent to which the framework that is developed promotes greater equity and opportunities for farmers of all types to receive a fair share of future subsidies. **We**

¹⁰³ <http://www.scotsman.com/business/food-drink-agriculture/andrew-arbuckle-something-for-nothing-culture-has-to-be-brought-to-end-1-2167021>

would welcome further evidence on how the new CAP framework can best support farmers.

Tax Planning and offshore jurisdictions

116. On 3 June 2013, the following exchange took place in the House of Commons Chamber between Scottish Affairs Committee Chair Ian Davidson MP and the Prime Minister, following a statement on the EU Council of May 2013:

Mr Ian Davidson (Glasgow South West) (Lab/Co-op): I welcome the statement from the European Council and the Government, which says that proper information on 'who really controls every company' will be provided. Will the Government cooperate with the Scottish Affairs Committee in establishing who owns and controls the great landed estates in Scotland, in order that they can minimise both tax avoidance and subsidy milking?

The Prime Minister: That is the intention of this move. Having all countries sign up to an action plan for putting together registers of beneficial ownership by companies and the rest of it will help tax authorities make sure that people are paying tax appropriately. That is a debate that we are leading at the G8 and in the European Union.¹⁰⁴

117. On 15 July 2013, on the same day that this inquiry was launched, the UK Government published a consultation paper "Transparency and trust: enhancing the transparency of UK company ownership and increasing trust in UK business".¹⁰⁵ This consultation deals only with UK registered companies and we will be undertaking further inquiries into the role played by companies registered in offshore jurisdictions in the ownership of land in Scotland.

118. During the course of our inquiry several witnesses expressed support for the idea of a clear register of the real owners of Scottish Land. Scottish Land and Estates told us "we would support visibility and transparency of ownership."

119. We would welcome more evidence on the extent to which land is owned in offshore jurisdictions as part of individual and corporate tax planning.

104 Official Report, 3 June 2013, Col 1254

105 www.gov.uk/government/uploads/system/uploads/attachment_data/file/212079/bis-13-959-transparency-and-trust-enhancing-the-transparency-of-uk-company-ownership-and-increasing-trust-in-uk-business.pdf

Formal Minutes

Tuesday 18 March 2013

Members present:

Mr Ian Davidson, in the Chair

Mike Crockart	Sir Jim Paice
Jim McGovern	Simon Reeve
Graeme Morrice	Mr Alan Reid
Pamela Nash	Lindsay Roy

Draft Report (*Land Reform in Scotland: Interim Report*), proposed by the Chair, brought up and read.

Ordered, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 119 read and agreed to.

Summary agreed to.

Resolved, That the Report be the Eighth Report of the Committee to the House.

Ordered, That the Chair make the Report to the House.

Ordered, That embargoed copies of the Report be made available, in accordance with the provisions of Standing Order No. 134.

[Adjourned till Wednesday 19 March at 2.30 pm

Witnesses

The following witnesses gave evidence. The transcripts can be viewed on the Committee's inquiry page at www.parliament.uk/scotaffcom.

Monday 2 December 2013

Question number

Peter Peacock, Community Land Scotland, **Angus Robertson**, Community Land Scotland, and **Councillor Angus Campbell**, Comhairle nan Eilean Siar, Islands Councils

[Q1 - 136](#)

Tuesday 21 January 2014

Question number

Andrew Leaver, Aigas Community Forest, **Rory Dutton**, Development Officer, Development Trusts Association Scotland, **Eric Samuel**, Senior Policy and Learning Manager, Big Lottery Fund, **Neil Ritch**, Deputy Director, Big Lottery Fund, **Rachael McCormack**, Strengthening Communities Director, HIE and **Sandra Dunbar**, Head of Business Improvement and Internal Audit, HIE

[Q137 - 290](#)

Tuesday 28 January 2014

Question number

Professor David Adams, Glasgow University, and **Professor Paul Cheshire**, London School of Economics

[Q291 - 400](#)

Wednesday 12 February 2014

Question number

Andrew Hamilton, Strutt and Parker LLP, Royal Institution of Chartered Surveyors, and **Michael Ireland**, Knight Frank LLP; **Robin McLaren**, Know Edge, **Professor Robert Barr**, University of Manchester, and **Dr Cameron Easton**, University of Glasgow

[Q401 - 599](#)

Tuesday 4 March 2014

Question number

Sarah-Jane Laing, Director of Policy and Parliamentary Affairs, Scottish Land and Estates, and **Nick Way**, Director General, Historic Houses Association; **Stuart Adam**, Institute for Fiscal Studies, and **Jim Gallagher**, Nuffield College, University of Oxford.

[Q600 - 815](#)

List of published written evidence

The following written evidence was received and can be viewed on the Committee's inquiry web page at www.parliament.uk/scotaffcom.

- 1 [Iain Thomson](#)
- 2 [Lesley Riddoch](#)
- 3 [NFU Scotland](#)
- 4 [Oxfam Scotland](#)
- 5 [Robin McLaren](#)
- 6 [Knoydart Forest Trust](#)
- 7 [Laura Brickell](#)
- 8 [The Crown Estate](#)
- 9 [Scottish Tenant Farmers Association](#)
- 10 [Carnegie UK Trust](#)
- 11 [Community Woodlands Association](#)
- 12 [Portree Area Community Turst](#)
- 13 [Neil King](#)
- 14 [Scottish Countryside Alliance](#)
- 15 [Historic Houses Association Scotland](#)
- 16 [David Mackenzie](#)
- 17 [Forest Policy Group](#)
- 18 [Highlands And Islands Enterprise](#)
- 19 [Scottish Environment Link](#)
- 20 [Nourish Scotland](#)
- 21 [Development Trusts Association Scotland](#)
- 22 [Mr Robert F Fleet](#)
- 23 [Dan Bailey](#)
- 24 [Derek W Loudon](#)
- 25 [STAG, \(Scottish Tenants Action Group\)](#)
- 26 [Ian Mckerron Begg](#)
- 27 [Community Land Scotland](#)
- 28 [Linda Elizabeth Taylor](#)
- 29 [Jim Gallagher](#)
- 30 [Bill Ritchie](#)
- 31 [Alastair McIntosh](#)
- 32 [Malcolm M Combe](#)
- 33 [Big Lottery Fund](#)
- 34 [Aigas Community Forest](#)
- 35 [Lucy Mackenzie](#)
- 36 [Scottish Community Alliance](#)
- 37 [Dr Reginald Melton](#)
- 38 [James M G Grant](#)
- 39 [Anonymous](#)
- 40 [Anonymous](#)

- 41 [Scottish Land And Estates](#)
- 42 [HMRC](#)
- 43 [Further HMRC](#)
- 44 [Highlands And Islands Enterprise](#)

List of Reports from the Committee during the current Parliament

The reference number of the Government's response to each Report is printed in brackets after the HC printing number.

Session 2010–12

First Report	Postal Services in Scotland	HC 669 (HC 884)
Second Report	Video Games Industry in Scotland	HC 500 (Cm 8067)
Third Report	UK Border Agency and Glasgow City Council	HC 733
Fourth Report	The Scotland Bill	HC 775
Fifth Report	Student Immigration System in Scotland	HC 912 (Cm 8192)
Sixth Report	The Referendum on Separation for Scotland: Unanswered Questions	HC 1806
Seventh Report	The Crown Estate in Scotland	HC 1117
Eighth Report	The Referendum on Separation for Scotland: Do you agree this is a biased question?	HC 1942

Session 2012–13

First Report	A Robust Grid for 21 st Century Scotland	HC 499
Second Report	The Referendum on Separation for Scotland: making the process legal	HC 542
Third Report	The Referendum on Separation for Scotland: a multi-option question?	HC 543
Fourth Report	The Referendum on Separation for Scotland: Terminating Trident—Days or Decades?	HC 676 (HC 861)
Fifth Report	The Future of HM Coastguard in Scotland	HC 583
Sixth Report	The Referendum on Separation for Scotland: The proposed section 30 Order—Can a player also be the referee?	HC 863
Seventh Report	The Referendum on Separation for Scotland: Separation shuts shipyards	HC 892
Eighth Report	The Referendum on Separation for Scotland: How would Separation affect jobs in the Scottish Defence Industry?	HC 957 (HC 257)

Session 2013–14

First Report	Remploy Marine Fife	HC 454
Second Report	The Referendum on Separation for Scotland: The Need for Truth	HC 828
Third Report	The Referendum on Separation for Scotland: A Defence Force for Scotland—A Conspiracy of Optimism?	HC 842
Fourth Report	The impact of the Bedroom Tax in Scotland: Interim Report	HC 288
Fifth Report	The Crown Estate in Scotland: follow up	HC 889
Sixth Report	Blacklisting in Employment: addressing the crimes of the past, moving towards best practice	HC 543
Seventh Report	The Referendum on Separation for Scotland: the impact on higher education, research and tuition fees	HC 1144