

Strategic Environmental Assessment of Agricultural Tenancies, Small Landholdings and Land Use Tenancy Proposals: Consultation

October 2023

Introduction

The Scottish Government's [Vision for Agriculture](#), published in March 2022, outlines our long term vision to transform how we support farming and food production in Scotland to become a global leader in sustainable and regenerative agriculture. As outlined in the [Agricultural Reform Route Map](#), the Scottish Government is committed to ensuring that tenant farmers, smallholders, crofters, new entrants and land managers are effectively enabled to exercise their essential role in making our Vision for Agriculture a reality.

This *Strategic Environmental Assessment of Agricultural Tenancies, Small Landholdings, and Land Use Tenancy Proposals* tests the proposals and considers opportunities to enhance the environmental impact of the proposals while avoiding or reducing significant adverse effects on the environment. Impact Assessments, including a Strategic Environmental Assessment, are important tools in ensuring the suitability of the policy.

This consultation provides you with the opportunity to examine the environmental impact of our proposed changes to agricultural tenancies, small landholdings, and the new land use tenancy in the context of this Strategic Environmental Assessment. The proposals deliver:

- Our Programme for Government 2021-22 commitment to “ensure tenant farmers and smallholders have the same access to climate change and mitigation measures”.
- Our Bute House Agreement commitment to “continue to improve the rights of tenant farmers and smallholders so they are not disadvantaged from actively participating in climate change mitigation and adaptation”.

Tenant farmers, smallholders and land managers are hugely important to farming and food production in Scotland. Our proposals have been developed to ensure that tenant farmers and small landholders are supported to meet more of our food needs sustainably and to farm and croft with nature. They will ensure that tenant farmers and small landholders are given greater opportunities to contribute to addressing the twin crises. As part of delivering this commitment a detailed environmental report has been prepared on the proposals (**Annex B** and **Annex C**).

Wider Context

The proposals, set out below and developed to help Scottish farmers, crofters and land managers, will play a key role in tackling twin crisis of climate change and biodiversity while delivering against legally binding commitments:

- As set out in the Environment Strategy for Scotland, the Scottish Government is committed to addressing the twin crises of climate change and biodiversity loss: to create a fairer and greener Scotland. The Climate Change (Emissions Reductions Targets) (Scotland) Act 2019 created an obligation to reach our legally binding target for net zero emissions across the economy as a whole by 2045 in a just way.
- To meet its envelope under the 'Update to the Climate Change Plan 2018 – 2032', agriculture needs to reduce its emissions by 31% from 2019 to 2032. Scotland's Climate Change Adaptation Programme also outlines a range of policy responses to increase agricultural resilience to the impacts of climate change.

The [Scottish Agricultural Census of June 2021](#) demonstrates that 22% of our agricultural land is tenanted. The majority of agricultural tenancies are secure 1991 Act agricultural tenancies (3,821). This type of tenancy is passed on through generations within the same tenant farming family. The remainder of agricultural tenancies are broken down into:

- 368 Limited Partnerships,
- 175 Modern Limited Duration Tenancies (MLDTs),
- 743 Limited Duration Tenancies (LDTs) and
- 1,258 Short Limited Duration Tenancies (SLDTs).¹

The Scottish Agricultural Census results also identified 59 small landholders in Scotland, and these cover 5,360 acres (2,168 hectares) with over two-thirds of Small Landholding Act tenancies being less than 50 acres (approx 20 hectares) in size.

All of these land tenure tenancy arrangements have the potential to contribute towards delivering our Vision for Agriculture.

The proposals on modernising tenant farming legislation were consulted on as part of the Agriculture Bill consultation, which opened on 29 August 2022 and closed on 5 December 2022. The analysis of this consultation can be found here: [Agriculture Bill: consultation analysis - gov.scot \(www.gov.scot\)](#). The agricultural tenancy proposals were consulted on as part of the Agriculture Bill consultation which held several in-person and online engagement events which were attended by approximately 600 people.

The consultation on small landholdings modernisation opened on 22 October 2022 and closed on 14 January 2023. The analysis of the consultation can be found here: [6. Conclusion - Small landholdings modernisation: consultation analysis - gov.scot \(www.gov.scot\)](#). Officials also held a workshop on the Isle of Arran and organised individual meetings with landlords.

The Land Use Tenancy was consulted on as part of the Land Reform Bill consultation on the Bill which opened on 4 July 2022 and closed on 30 October 2022. The analysis of the consultation can be found here: [Land reform in a Net Zero nation: consultation analysis - gov.scot \(www.gov.scot\)](#). The Land Use Tenancy has been subjected to extensive stakeholder engagement with environmental NGOs and agricultural stakeholders.

All these proposals will be brought forward as part of the Land Reform Bill.

As required under 5(4) of the Environmental Assessment (Scotland) Act, the Scottish Government consulted the Strategic Environmental Assessment Consultation Authorities (Nature Scot, Scottish Environmental Protection Agency, and Historic Environment Scotland) who consider that the proposals fall and that there is a likelihood of significant environmental effects.

¹ There are also a number of grazing lets which are where the tenant farmer rents agricultural or farm land for the purpose of grazing livestock on it or for taking a silage crop from it. Any livestock present must be removed for 1 whole calendar day in every 12 month period. Agricultural tenancy arrangements without housing or supporting buildings are called 'bare land' lets.

The Consultation Authorities believe the proposals should be subjected to an 8 week consultation to ensure that the environmental impact of the proposals is subjected to detailed examination. This consultation meets that requirement and runs from 10 October 2023 and will close on 05 December 2023.

The Consultation Authorities consider that the proposals potentially have significant environmental effects on climate factors, biodiversity, habitats, flora and fauna; although their significance will depend on factors such as location, scale and individual practices. This consultation examines those potential environmental impacts.

All of the tenant farming proposals have been subjected to extensive and detailed co-development with the [Tenant Farming Advisory Forum](#) which includes a range of industry bodies:

- Scottish Tenant Farming Association;
- Scottish Land & Estates;
- National Farmers Union Scotland;
- Scottish Agricultural Arbiters & Valuers Association;
- Royal Institution of Chartered Surveyors; and
- Agricultural Law Association.

Examining the Environmental Impact

Agricultural Tenancies

The PfG committed to “modernise tenant farming”, “bring forward a revised approach to rent reviews”, “consider how valuation for resumption should be assessed”, and “ensure tenant farmers and smallholders have the same access to climate change adaptation and mitigation measures”. The Bute House Agreement committed to “continue to improve the rights of tenant farmers and small holders so they are not disadvantaged from actively participating in climate change mitigation and adaptation”.

To meet these commitments, the Agriculture Bill consultation included agricultural holding proposals on:

- Diversification;
- Agricultural Improvements;
- Rent Review;
- The Rules of Good Husbandry and Estate Management;
- Waygo; and
- Resumption

Diversification (for non-agricultural activities)

The aim of the proposal is to enable tenant farmers greater opportunity to diversify and undertake non-agricultural activities which help address the twin crises of climate change and biodiversity loss, whilst also supporting their business and profitability;

The diversification proposal builds on the existing provisions contained within Part 3 of the Agricultural Holdings (Scotland) Act 2003, which in most cases allows a tenant

farmer to seek the consent of their landlord for a non-agricultural activity on their holding. Tenant farmers with Short Limited Duration Tenancies are not able to undertake diversification in this manner.

The principal amendments include a requirement for the tenant to disclose any environmental benefit which will be delivered as part of their proposal to diversify part of their holding. When assessing the tenant's proposal the landlord is required to consider it in the context of the impact it will have across the whole of the tenant's holding, rather than simply the effect it will have on the part of the holding where the diversified activity will take place.

The grounds upon which a landlord can object to the diversification will be modified to reflect the changes. A landlord will be required to provide more detailed reasons should they object to the proposed activity. This will enable the tenant to consider if the proposal can be modified to remove any concern, and so be agreed. A tenant would be entitled to serve a "suspension notice" which would pause the approval process for a thirty day period of negotiation between landlord and tenant, creating an opportunity for a modified proposal to be agreed.

The Land Court will, if asked to consider whether an objection to the proposed activity is reasonable, be able to take account of any environmental benefit.

The Tenant Farming Commissioner (TFC) will prepare a separate Code of Practice to provide practical guidance on the use of the tenant's holding for non-agricultural purposes.

Questions

1. Climate factors: will this policy proposal contribute to either reducing existing and avoiding new Greenhouse Gas emissions and/or increase agricultural resilience to the impacts of climate change?
 Yes
 No
 Don't know

Please give reasons for your answer.

2. Biodiversity, flora and fauna: will the policy proposals contribute to enhancing biodiversity, habitats, flora and fauna, and will they help in meeting the Scottish Government's commitments?
 Yes
 No
 Don't know

Please give reasons for your answer.

3. Landscape and historic environment: will this policy proposal contribute to enhancing the landscape and historic environment?

- Yes
- No
- Don't know

Please give reasons for your answer.

Agricultural Improvements (Schedule 5)

The aim of the proposal is to give tenant farmers greater flexibility to implement agricultural improvements, whilst contributing to delivering the Vision in respect of sustainable and regenerative agriculture.

Schedule 5 of the 1991 Act has three Parts:

- Part 1 lists improvements that need consent,
- Part 2 lists improvements that need notice, and
- Part 3 lists improvements that need neither consent nor notice.

An activity if not listed is not considered as an improvement. The current lists are not flexible enough to support the new farming practices needed to tackle the twin climate and biodiversity crises.

The tenant may be entitled to compensation for the relevant improvement at the termination of the tenancy.

The existing lists will be modernised to take a principles-based approach, where an activity in Part 1 or 2 will be regarded as an improvement if it is compatible with an over-arching principle. The existing activities across the three Parts, will be retained with some modifications to update them. The lists would then provide examples of the types of eligible activities which could be undertaken under the overarching principle.

The changes will enable activities such as organic farming, planting of hedgerows, renewables, creation of silvo-arable and silvo-pasture systems; the creation of hydroponics, glass houses, vertical farming, and other innovative agricultural practices.

In addition, a new Part 4 will be added to the Schedule providing for improvements that promote sustainable and regenerative agriculture. The tenant can ask for consent to such an improvement in the same way as under the current law. This will promote on-farm activities which support sustainable and regenerative activities, including climate change mitigation and biodiversity enhancement on a whole farm basis. For example, activities such as organics, tree planting, habitat creation and renewable energy which may be ancillary to the agricultural purpose of the holding will be able both to support food production and deliver nature and climate benefits.

Measures are proposed to be introduced to ensure that where a landlord is required to give their consent to an improvement before a tenant is able to carry it out, the landlord cannot delay their response to the request.

Further detail can be found in Annex B.

4. Climate factors: will the policy proposals contribute to reducing existing and avoiding new Greenhouse Gas emissions and/or increase agricultural resilience to the impacts of climate change?

- Yes
- No
- Don't know

Please give reasons for your answer.

5. Biodiversity, flora and fauna: will the policy proposals contribute to enhancing biodiversity, habitats, flora and fauna and will they help in meeting the Scottish Government's commitments?

- Yes
- No
- Don't know

Please give reasons for your answer.

6. Landscape and historic environment: will this policy proposal contribute to enhancing the landscape and historic environment?

- Yes
- No
- Don't know

Please give reasons for your answer.

Rules of Good Husbandry and Estate Management

The aim of this proposal is to shift the current focus of the rules of good estate management and good husbandry from 'efficient production' to placing a greater emphasis on sustainable and regenerative agricultural activities. This looks to ensure that tenant farmers can do less efficient activities such as leaving uncropped field margins.

The Rules of Good Husbandry applying to tenant farmers, and the Rules of Good Estate Management applying to landlords, were defined in the Agricultural Holdings (Scotland) Act 1948.

The Rules are currently framed towards 'efficient production' and need to be adapted to be part of the Scottish Government's Vision for Agriculture.

The rules will be redefined so that a tenant will be expected to farm in a way to achieve both efficient production and sustainable and regenerative production. A landlord will have fulfilled the rules of good estate management if they manage the estate in such a way to enable the tenant to achieve efficient production and sustainable and regenerative production.

7. Climate factors: will this policy proposal contribute to reducing existing and avoiding new Greenhouse Gas emissions and/or increase agricultural resilience to the impacts of climate change?

- Yes
- No
- Don't know

Please give reasons for your answer.

8. Biodiversity, flora and fauna: will the policy proposals contribute to enhancing biodiversity, habitats, flora and fauna? Will they help in meeting the Scottish Government's commitments?

- Yes
- No
- Don't know

Please give reasons for your answer.

9. Landscape and historic environment: will this policy proposal contribute to enhancing the landscape and historic environment?

- Yes
- No
- Don't know

Please give reasons for your answer.

If you have any further comments and evidence on climate factors; biodiversity, flora and fauna; and landscape and historic environment regarding more process driven proposals to modernise agricultural tenancies, which were contained in the [Delivering our Vision for Scottish Agriculture: Proposals for a new Agriculture Bill](#), including:

- **Waygo:** The proposal aims to provide a clear timescale around the process for waygo to better enable tenants and landlords to settle waygo claims timeously, and move forward with the next stage of their life. Currently waygo claims are not subject to uniform timescale. In the majority of cases the waygo claim can come months after the date of termination of the lease, and there is often significant delay between the date of lease termination and the date when the claimant will receive any compensation due.
- The proposal is to insert a timeframe for parties to adhere to, following a notice being served to end the tenancy. They also require that a valuer should be appointed nine months prior to the termination of the tenancy. In the event that parties cannot agree the appointment of a valuer, then they can approach the Tenant Farming Commissioner to appoint one. The valuer will produce an interim valuation report providing a valuation of the heads of claim being sought by either party. The interim valuation report will be provided six months prior to the termination of the tenancy. Three months prior to the termination of the tenancy an updated valuation report will be provided, taking into account any changes in the circumstances in the tenancy and providing a valuation for any new claims arising.
- The valuation report is not the final word on the amount which the claimant is entitled to claim against the other party, but it should be used as the basis for the respective claims for compensation submitted by the claimant against the other party. Parties will intimate their claim for compensation against the other party two months prior to the termination of the tenancy. Should any new claims arise less than two months prior to the end of the tenancy, where parties dispute the valuation, then either party can apply to the Land Tribunal.
- **Rent Review:** It is proposed to reform those parts of the 2016 Act rent review provisions which were identified as being difficult to translate into robust practical procedures. The proposal draws on the work of the Tenant Farming Commissioner and engagement with the Tenant Farming Advisory Forum to create a flexible system of rent review which enables the parties to provide evidence from a number of different sources and places an increased emphasis on negotiation.

- The new rent review system will be based around a non-exhaustive and non-hierarchical list of factors, which should be taken into account when calculating rent. This will mean that parties should consider:
 - Comparable rental information
 - The productive capacity of the holding; and
 - The prevailing economic conditions and factors reasonably foreseeable over a 3 year period.
- In default of agreement between the parties on the rent payable, parties will be able to access Tenant Farming Commissioner mediation which will be encouraged by guidance. Failure to agree rent, will result in an application to the Land Court to fix rent in accordance with those factors.
- Agricultural Holdings (Scotland) Act 2003 agricultural tenancies will follow a similar approach.
- **Game Damage Compensation:** The proposals aim to modernise the compensation for game damage provisions to clarify elements and enable tenant farmers to claim compensation for losses other than damage to crops. This will amend section 52 of the Agricultural Holdings (Scotland) Act 1991.
- Game is defined as deer, pheasants, partridges, grouse and black game (that is, black grouse) within section 52. The proposals will remove black game from the definition of game, acknowledging their declining population.
- Currently the tenant is only entitled to compensation where there is crop damage. The proposals will also enable tenants to claim compensation for damage to their fodder crops, grass for livestock grazing, damage to livestock, damage to trees for the purposes of short-rotation cropping, damage to trees which are planted for sustainable and regenerative agriculture, damage to trees planted for non-agricultural purposes, and damage to fixed equipment.
- The proposals will also remove an antiquated threshold that the tenant is only entitled to compensation if crop damage exceeds 12 pence per hectare of area.
- Currently a landlord is given a 'reasonable opportunity' to inspect the damage. Stakeholders sought clarity on what that would be. It is however impossible to specify a "reasonable" timescale given that in some cases extreme urgency will be required (e.g. injured livestock or crops ready to harvest) and in others not. An updated Code of Practice from the Tenant Farming Commissioner will therefore provide further guidance to parties on this point.
- **Resumption:** The aim of the resumption provision is to promote a thriving tenant farming sector, and to enable tenant farmers to plan with business certainty. This proposal aims allow this to happen.
- Currently, a landlord has the right to resume if there is a written lease which contains a resumption clause. This clause will likely make clear the purposes

for which the right can be exercised. We are not changing that, so there will be no automatic right to resume land.

- The 1991 Act provides that where resumption is for non-agricultural activity the landlord must give notice of the resumption at least 12 months before it is due to take place, otherwise it will be invalid. It also must not constitute a fraud on the lease. However, when the resumption clause is for agricultural use, then the tenant can treat this as a notice to quit and the tenant can serve counter notice.
- The proposals aim to make these procedures consistent given the effect of the resumption is the same, and that the tenant has no interest in the subsequent use of the land.
- The provisions aim to modernise the compensation provisions to ensure that the tenant is provided with fair compensation for their loss. The provisions will allow the tenant to claim compensation on a reduction in rent, a disturbance payment, and an additional reorganisation payment.

Please identify and describe any environmental impacts associated with each of the agricultural tenancy proposals briefly outlined above:

Small Landholdings

The PfG committed to “modernise small landholding legislation” and the Bute House Agreement committed to “explore providing small landholders with the same pre-emptive right to buy as crofters and Agricultural Holdings (Scotland) Act 1991 (“1991 Act”) tenant farmers, and the treatment of the land under their houses”. To meet these commitments, the [Small Landholdings Modernisation](#) consultation included proposals to modernise small landholdings legislation on:

- Right to Buy;
- Diversification;
- Succession and Assignment; and
- An Umbrella Body.

Diversification (non-cultivated activities)

The diversification proposal for small landholdings seeks to enable small landholders greater opportunity to diversify their business, support profitability, and help address the twin crises of climate change and biodiversity loss.

Currently small landholdings may only be used for cultivated purposes. Cultivation is defined as being used for “horticulture or for any purpose of husbandry, inclusive of the keeping or breeding of livestock, poultry, or bees, and the growth of fruit, vegetables, and the like” or other occupations that the Scottish Land Court find reasonable, so long as the occupation is not inconsistent with the small landholding’s cultivation.

This provision will enable a small landholder to use the small landholding for a purpose other than for ‘cultivation’. This will align with agricultural holdings diversification provisions set out in Part 3 of the Agricultural Holdings (Scotland) Act 2003.

Notice must be given in writing by the small landholder to their landlord not less than 70 days before commencing the new diversified activity and the notice must include the following information:

- What the non-cultivation purpose is;
- The land which would be used for that purpose (identifiable on an OS map);
- Any changes that the small landholder plans to make to that land for the proposed purpose;
- The date on which the small landholder proposes to begin using the land for the non-cultivation activity; and
- Any environmental benefit connected with the proposal.

On receipt of a “notice of diversification”, the landlord will be able to request further relevant information within 30 days. The landlord will then be able to either object to the diversification or consent/consent with conditions within set timeframes. The landlord may object on certain specified grounds, namely where the proposal would:

- Lessen significantly the amenity of the land or the surrounding area;
- Substantially prejudice the use of the whole small holding for cultivation purposes in the future;
- Be substantially detrimental to the sound management of the estate of which the small landholding consists or forms part; or
- Cause the landlord to suffer undue hardship.

When a landlord objects, they must explain and justify their reasons in order to encourage negotiation and dialogue between the parties. The onus is on the landlord to apply to the Land Court for a determination that the objection is reasonable. If they fail to make an application within the timeframe then the small landholder can proceed with the diversification.

10. Climate factors: will the policy proposals contribute to reducing existing and avoiding new Greenhouse Gas emissions and/or increase agricultural resilience to the impacts of climate change?

- Yes
- No
- Don't know

Please give reasons for your answer.

11. Biodiversity, flora and fauna: will the policy proposals contribute to enhancing biodiversity, habitats, flora and fauna and will they help in meeting the Scottish Government's commitments?

- Yes
- No
- Don't know

Please give reasons for your answer.

12. Landscape and historic environment: will this policy proposal contribute to enhancing the landscape and historic environment?

- Yes
- No
- Don't know

Please give reasons for your answer.

Right to Buy

It is intended that the pre-emptive right to buy proposal for small landholders will follow that given to secure 1991 Act tenant farmers with minor alterations. The proposal aims to remove barriers to sustainable rural development by providing small landholders with greater certainty over their smallholding, thereby encouraging them to invest in their small landholdings.

It is intended that the small landholder will initiate the process by providing a written notice to the landlord. It is intended that this notice will include a plan/map together with a detailed description of the land which the small landholder considers to form the smallholding. On receipt of the written notice from the small landholder, the landlord is to respond to the small landholder within 30 days confirming whether they agree or not with the notice describing the extent of the lease.

It is hoped that the process of seeking to clarify the extent of the lease would encourage dialogue between the small landholder and landlord to see if an agreement could be reached on the extent of the small landholding. Mediation may also be an option at this point and this could be something which the Tenant Farming Commissioner provides guidance on (the pre-emptive right to buy process is one of the areas proposed to be covered by Tenant Farming Commissioner guidance). The small landholder would have the option to take the matter to the Land Court.

Following the serving of notice, a pre-emptive right to buy is triggered in two situations: where the owner of a small landholding or creditor gives the small landholder notice of a proposal to transfer the land; or where the owner or creditor takes action with a view to transferring the land or any part of it.

'Takes action' means that the land is advertised or exposed for sale, negotiations are entered into, or any proceedings are further taken with the proposed transfer of the land. After the landlord or creditor 'takes action' then the small landholder can make an offer and agree the price of the smallholding with the landlord or creditor in a standard security.

Where parties fail to agree then a valuer may be appointed by agreement between the seller and the landlord. Where they fail to agree the appointment of a valuer then one may be appointed by the Land Court. The valuer should take into account value that is likely to be agreed between a reasonable seller and buyer; any factor whereby a person may want to buy the land at a price higher due to the characteristics of the land; the date of likely recovering vacant possession; terms or conditions of leases; or any moveable property.

The small landholder, landlord or other persons who have an interest in the estate can make written representations to the valuer. The expenses of the valuer will be met by the small landholder or shared equally between the small landholders (where more than one small landholder is exercising their right to buy in relation to the seller's land). Within 6 weeks of being appointed the valuer must send seller and small landholder notice of the price. Where parties do not agree with the valuer's assessment then the seller or small landholder can appeal the valuation to the Lands Tribunal within 21 days of the valuer's notice being given. At the end of the process the small landholder will be able to purchase the whole of their small landholding.

13. Climate factors: will the policy proposals contribute to reducing existing and avoiding new Greenhouse Gas emissions and/or increase agricultural resilience to the impacts of climate change?

- Yes
- No
- Don't know

Please give reasons for your answer.

14. Biodiversity, flora and fauna: will the policy proposals contribute to enhancing biodiversity, habitats, flora and fauna and will they help in meeting the Scottish Government's commitments?

- Yes
- No
- Don't know

Please give reasons for your answer.

15. Landscape and historic environment: will this policy proposal contribute to enhancing the landscape and historic environment?

- Yes
- No
- Don't know

Please give reasons for your answer.

If you have any further comments and evidence on climate factors; biodiversity, flora and fauna; and landscape and historic environment, regarding more process driven proposals in the [Small Landholdings Modernisation Consultation](#) including:

- **Succession and assignation** - The proposal aims to enable small landholders to assign their tenancy to the same classes of people as tenant farmers with secure 1991 Act agricultural tenancies can through the Land Reform (Scotland) Act 2016. It aims to encourage investment and growth; enabling wider family members to take over, provide older small landholders greater ability to retire at an earlier stage, while opening up opportunities for new entrants and future generations of young farmers.
- The provisions modernise the range of family members who can succeed a small landholding by amending the legislation for testate succession in the Crofters Holdings (Scotland) Act 1886 (which significantly limits the range of eligible individuals, compared to modern family arrangements).
- **Umbrella body** – The proposal aims to allow landlords and small landholders to have access to the Tenant Farming Commissioner (TFC) and intends for the Tenant Farming Commissioner to have similar functions for small landholdings as those currently set out for agricultural holdings in Chapter 3 of the Land Reform (Scotland) Act 2016.
- The Tenant Farming Commissioner would promote and encourage good relations between small landholders and their landlords, publishing guidance and codes of practice. The Tenant Farming Commissioner would also be given the power to investigate alleged breaches of codes of practice. This proposal would help to reduce confusion and tension while making small landholdings legislation more accessible.
- The Tenant Farming Commissioner would be able to produce small landholding guidance on:
 - negotiating rent

- diversification
- negotiating the fulfilment of the obligations of landlords and small landholders
- the right to buy process
- the process of succession and assignation
- guide for landlords on the creation of small landholdings
- conversion to crofting; and
- determining compensation at removal.

Please identify and describe any environmental impacts associated with each of the small landholding proposals briefly outlined above:

Land Use Tenancy

We will support the development of a new model of lease, which we are calling a 'Land Use Tenancy'. The Land Use Tenancy will aim to support people to use and manage land in a way that meets their and indeed, the nation's needs and interests in the 21st Century.

Stakeholders have asked for help in developing new types of agreement that can be adopted by landlords and tenants to enable a wider range of activities on land that will both promote our climate and nature objectives and model new ways of working with and on land.

A Land Use Tenancy will complement existing types of lease, rather than replace them. In particular, it should not have an adverse effect on farm leases under agricultural holdings legislation. Officials will therefore continue to work with stakeholders, and we will consider whether any further measures are needed in that respect at stage 2.

This proposal will place a duty for Ministers to publish a Land Use Tenancy template, and to consult with key stakeholders for that purpose.

This duty will seek to ensure that the template is developed in a way to enable individuals to undertake a range of land use activities in a way that supports:

- climate change mitigation and adaption;
- nature restoration and enhancement;
- other diverse land use opportunities; and
- food producers.

This letting template will be published on the Scottish Government's website. It could for example also be recorded in the Books of Council and Session to give

parties confidence that they can rely on the terms when entering into an agreement. Stakeholders are currently not utilising a commercial lease for hybrid land use they don't have 'confidence' in them.

It is intended that the Tenant Farming Commissioner will produce guidance on entering into to a Land Use Tenancy.

16. Climate factors: will the policy proposals contribute to reducing existing and avoiding new Greenhouse Gas emissions and/or increase agricultural resilience to the impacts of climate change?

- Yes
- No
- Don't know

Please give reasons for your answer.

17. Biodiversity, flora and fauna: will the policy proposals contribute to enhancing biodiversity, habitats, flora and fauna and will they help in meeting the Scottish Government's commitments?

- Yes
- No
- Don't know

Please give reasons for your answer.

18. Landscape and historic environment: will this policy proposal contribute to enhancing the landscape and historic environment?

- Yes
- No
- Don't know

Please give reasons for your answer.

Annex A

We are proposing to reshuffle Schedule 5 to better enable tenants to undertake activities which are sustainable and regenerative. We are proposing to add a fourth part, which focuses on improvements which further the “sustainable and regenerative productive agricultural capacity of the whole holding” including climate change mitigation and biodiversity enhancement items (such as tree planting, habitat creation and renewable energy) that are ancillary to agriculture, support food production, and also add value to the land. **Blue** indicates additional improvements added, while other colours indicate that the improvement has moved between the parts.

Parts 1, 2, and 4 would be principle based and supplemented by an open-ended list (including but not limited to those activities). Part 3 is to remain a complete list of specific improvement. eligible for compensation, so it is certain what activities the tenant may carry out without serving notice or receiving the consent of the landlord. Broadly speaking, these activities are categorised by Lord Gill as ‘incidental to the tillage’² and, as a result, do not require that notice or consent.

This table is purely illustrative to give an indication of the policy intention so as to inform the SEA.

Part 1 - Principle 1	Part 2 - Principle 2:	Part 3	NEW Part 4
Long term or major impact on the holding such that the land affected is unlikely to return to former agricultural activity.	improvements that relate to capital infrastructure or land management changes and which do not have a long term or major impact on the management of the holding	Complete list of specific improvements	Improvements which benefit the sustainable and regenerative agriculture capacity of the whole holding
Laying down of permanent pasture.	Land drainage.	Protecting fruit trees against animals.	Laying down of permanent pasture
Making of water-meadows or works of irrigation.	Construction of silos.	Clay burning.	Making of water-meadows.
Making of gardens.	Making or improvement of farm access or service roads, bridges and fords.	Claying of land.	Warping or weiring of land or rewetting and creation of wetlands.

² Lord Gill, Agricultural Tenancies, Forth Edition, Volume 1, 591.

Planting of orchards or fruit bushes.	Making or improvement of watercourses, ponds or wells, or of works for the application of water power for agricultural or domestic purposes or for the supply of water for such purposes.	Liming (including chalking) of land.	Creation of species rich pasture.
Warping or weiring of land.	Making or removal of permanent fences, including hedges, stone dykes and gates.	Marling of land.	Creation of silvo-pasture and silvo-arable systems
Making of embankments and sluices against floods.	Reclaiming of waste land.	Eradication of bracken, whins or broom growing on the holding at the commencement of the tenancy.	Habitat creation
Making or planting of osier beds.	Renewal of embankments and sluices against floods. Making of embankments, sluices, and other floods prevention measures.	Removal of tree roots, boulders, stones or other similar obstacles to cultivation from arable land or from permanent grass land.	Peatland restoration
Haulage or other work done by the tenant in aid of the carrying out of any improvement made by the landlord for which the tenant is liable to pay increased rent.	Provision of stells, fanks, folds, dippers, pens and bughts necessary for the proper conduct of the holding.	Application to land of soil improvers, conditioners, digestates, manure or fertiliser, whether organic or inorganic.	Erection, alteration or enlargement of buildings or structures that create or store renewable energy for consumption on the holding
Making or planting of short rotation coppicing.	Installation, provision, distribution or storage of electricity, gas, power, heat or light.	Consumption on the holding of corn (whether produced on the holding or not) or of cake or other feeding stuff not produced on the	Provision of Pollinator or Bird friendly crops with beetle banks and conservation headlands.

		holding by horses, cattle, sheep, pigs. or poultry.	
	Erection, alteration. or enlargement of buildings, making or improvement of permanent yards, loading banks and stocks.	Laying down temporary pasture with clover, grass, lucerne, sainfoin, or other seeds, sown more than 2 years prior to the termination of the tenancy, in so far as the value of the temporary pasture on the holding at the time of quitting exceeds the value of the temporary pasture on the holding at the commencement of the tenancy for which the tenant did not pay compensation.	Conversion to organic farming (where done in accordance with the lease) up to the point at which the holding or part thereof has been accredited for organic farming.
	Erection of hay or sheaf sheds, sheaf or grain drying racks, and implement sheds.	Making hedges.	
	Provision of fixed threshing mills, barn machinery and fixed dairying plant.	Improvement of permanent pasture by cultivation and re-seeding.	
	Improvement of permanent pasture by cultivation and re-seeding.	Improvement of soil health (soil carbon included).	
	Provision of means of sewage, waste or pollutant disposal, or provision of means of managing water on land.	Creating and managing uncropped field margins to provide habitat breeding, feeding and cover for farmland birds, insects, pollinators.	
	Repairs to fixed equipment, being	Creating and managing field	

	equipment reasonably required for the efficient farming of the holding, other than repairs which the tenant is under an obligation to carry out.	margins to provide or improve wild habitats.	
	Erection of structures for the management or storage of slurries or manures.		
	Provision of means of storing silage.		
	Works to dwellings .		
	Making of gardens.		
	Planting of orchards or fruit bushes vineyards or other specialist commercial crops.		
	Planting of shelterbelts.		
	Land irrigation		
	Erection, alteration. or enlargement of buildings for closed loop production in a controlled environment including hydroponics, glass houses, and vertical farming		
	Erection, alteration or enlargement of buildings, facilities for processing agricultural products from the holding or the business of which the holding forms a part.		

	Making or improvement of interventions for the purposes of natural flood risk management		
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Annex B – Environmental Report 1

[Strategic Environmental Assessment \(SEA\) for the Agricultural Tenancies proposals](#)

Annex C – Environmental Report 2

[Strategic Environmental Assessment \(SEA\) for Small Landholdings and Land Use Tenancy proposals](#)

How to Respond

We are inviting responses to this *Strategic Environmental Assessment of Agricultural Tenancies, Small Landholdings and Land Use Tenancy Proposals* by 05 December 2023. We would like to hear your views on the environmental impacts of these proposals.

Please send your response, including the completed Respondent Information Form to:

By email: TenantFarmingQueries@gov.scot

By post:

Strategic Environmental Assessment of Agricultural Tenancies, Small Landholdings
and Land Use Tenancy Proposals
D Spur
Saughton House
Broomhouse Drive
Edinburgh
EH11 3XD

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