# Land Reform in a Net Zero Nation

# Analysis of responses to the consultation exercise

## Analysis report

June 2023

Scottish Government
Riaghaltas na h-Alba

# Contents

# Executive Summary

This summary presents headline findings from an analysis of responses to a public consultation on Land Reform in a Net Zero Nation.

The consultation paper set out a number of proposals for inclusion in the Land Reform Bill and also invited respondents to give their views on other ideas and proposals, which may or may not be included in the Bill. It opened on 4 July 2022 and closed on 30 October 2022, asking a total of 51 questions.

In total, 537 responses were received, of which 162 were from groups or organisations and 375 from individual members of the public. Five in-person consultation events were also held across Scotland with a further event online.

**Large-scale landholdings:** the consultation sought views on three criteria for determining a large-scale holding. Respondents were relatively evenly divided on the criteria, with a small majority (55% of those answering) disagreeing with the use of a fixed threshold of 3,000 hectares. Most respondents who suggested an alternative threshold called for a lower figure, with comments including that the proposed hectarage would affect a relatively small number of landowners and so have limited impact.

Other respondents commented on the general direction of the proposals, with the most-frequently raised concern that there is little or no evidence that land ownership at scale has negative outcomes for communities or the environment.

Respondents were split evenly on a fixed percentage of a data zone or local authority ward(s) and a small majority (57% of those answering) supporting a specified minimum proportion of a permanently inhabited island.

**Strengthening the Land Rights and Responsibilities Statement (LRRS):** There was support (75% of those answering) for placing a duty on large-scale landowners to comply with the LRRS and its associated protocols. A majority (69% of those answering) also thought this would benefit local communities. However, some respondents argued that there is evidence to suggest that a voluntary, guidance-led approach is working for both landowners and communities.

**Compulsory Land Management Plans:** A majority (77% of those answering) agreed that there should be a duty on large-scale landowners to publish Management Plans. In terms of how often Management Plans should be published, the most frequent suggestion was every 5 years.

**A new public interest test:** A majority of respondents (72% of those answering) agreed with the application of a public interest test to transactions involving large-scale landholdings. However, some were of the view that the proposed threshold for large-scale landholdings is too high and would apply to very few land transactions each year. Other respondents saw a range of potential disadvantages associated with public interest test proposals, including the risk of interference with landowner rights.

A majority (63% of those answering) agreed that if a public interest test concluded there was a strong public interest in reducing scale/concentration of ownership, then the conditions placed on the sale of the land could include that the land in question should be split into lots. A slightly larger majority (68% of those answering) agreed that the land should be offered to constituted community bodies in the area. The most commonly raised issue was that lotting has the potential to have an impact on the viability and market value of landholdings.

**Receipt of public funding:** A majority (79% of those answering) the question, agreed that eligibility requirements for landowners to receive public funding from the Scottish Government for land-based activity should include that all land, regardless of size, must be registered in the Land Register of Scotland. A majority (74% of those answering) agreed that funding should require large-scale landowners being required to demonstrate compliance with the LRRS and having an up-to-date Land Management Plan in place.

Other raised concerns or sought clarity around the scope of the proposals, such as whether they would apply only to central government funds and also potential barriers to registration on the Land Register.

**Land Use Tenancy:** A majority (71% of those answering) agreed that there should be a Land Use Tenancy to allow people to undertake a range of land management activities. Those supporting the proposed approach frequently pointed to the importance of introducing greater flexibility in the way let land can be used, including a greater focus on activities contributing towards just transition to net zero, climate adaptation, biodiversity recovery and nature restoration, community wealth building and population retention and growth in areas within rural Scotland. Respondents who had disagreed with, or were not sure about, developing a Land Use Tenancy most frequently commented that the lack of detail on the proposal makes it difficult to form an opinion.

**Other issues covered:** The latter sections of the consultation sought initial views about whether the Scottish Government should explore who should be able to acquire large-scale landholdings in Scotland and other land related reforms. Coverage of these issues, along with a detailed analysis of views on the policy proposals summarised above, is provided in the main report.

# 1. Introduction

## Background

This report presents analysis of responses to a public consultation on Land Reform in a Net Zero Nation.

As a result of the Land Reform Acts of 2003 and 2016 and the passage of the Community Empowerment Act of 2015, Scotland has taken significant steps in supporting and enabling communities to have greater opportunity to own or to influence the use of the land on which they live. During this Parliament, the Land Reform Bill will continue a legislative journey of land reform and community ownership.

The Land Reform Bill will seek to address long-standing concerns about concentrated patterns of land ownership in rural areas of Scotland and to ensure that land is owned, managed, and used in ways that rise to the challenges of net zero, nature restoration, and a just transition. To bring about a just transition we need to have a framework of law and policy that ensures communities can make the most of these opportunities. This means that not only must we address questions of who owns land, who uses it, and how it is managed, we must also consider the issue of who is benefitting from land, and from investment in it.

## The consultation

The consultation contained several proposals for inclusion in the Land Reform Bill and also invited respondents to give their views on other ideas and proposals, which may or may not be included in the Bill. The consultation documents are available on the Scottish Government's consultation hub.

The first three proposals are aimed at tackling the issues associated with scale and concentration of land ownership in Scotland. The intention is that these proposals would apply only to large-scale landholdings and not in general to smaller landholdings and family farms. Views were sought on the criteria for defining 'large-scale' landholdings, along with proposals that this definition could relate to:

- Strengthening the Land Rights and Responsibilities Statement
- Compulsory Land Management Plans
- Measures to regulate the market in large-scale landholdings.

The consultation also asked respondents for views on other proposed measures relating to:

- New conditions on those in receipt of public funding for land-based activity
- A new land use tenancy for tenant farmers
- A future consultation on small landholdings
- Transparency about who owns, controls and benefits from Scotland's land
- A range of land related reforms.

The consultation opened on 4 July 2022 and closed on 30 October 2022. It asked a total of 51 questions within nine core sections.

### Profile of responses

In total 537 standard responses were received, of which 162 were from groups or organisations and 375 from individual members of the public. Where consent has been given to publish the response, it may be found on the on the Land Reform in a Net Zero Nation published responses page of the Scottish Government website.

Respondents were asked to identify whether they were responding as an individual or on behalf of a group or organisation. Group respondents were allocated to one of seven groups by the analysis team.

A breakdown of the number of responses received by respondent type is set out below, and a full list of group respondents appended to this report as Annex 1.

**Table 1 – Respondents by type**

| Type of respondent | Number |
|---|---|
| Organisations: | |
| Academic group or think tank | *4* |
| Community or local organisations and their representative bodies | *22* |
| Government and NDPB | *19* |
| Landowner | *34* |
| Private sector organisations | *17* |
| Representative bodies, institutions, associations or unions | *30* |
| Third sector or campaign group | *36* |
| **Organisations** | **162** |
| **Individuals** | **375** |
| **All respondents** | **537** |

Six consultation events were also held (five in person and one online event). The feedback from these events, which includes comments and questions from those attending, has also been included in the analysis.

### Analysis and reporting

The report presents a question-by-question analysis of answers to the closed questions and further comments at open questions. Both the proportion of respondents answering closed questions and the number commenting at open questions varied considerably from question to question. To reflect this differing level of response, tables are presented with different baselines, so the total shown in each case is the total number who answered that question.

A comment rate is also given at each open question. The number of respondents varied considerably, from 430 respondents at Question 9 to around 80 respondents at Question 51. In terms of the balance of those comments, those who disagreed with a proposal were slightly more likely to comment than other respondents. For example, at Question 2, 62% disagreed at the closed question and 67% of the comments were made by those who disagreed. At many questions, respondents who disagreed and went on to make a further comment also tended to make more extensive comments and/or raise more issues.

As with any public consultation exercise, it should be noted that those responding generally have a particular interest in the subject area. Therefore, the views they express cannot necessarily be seen as representative of wider public opinion.

# 2. Criteria for large-scale holdings

The consultation paper notes that the proposals relating to strengthening the Land Rights and Responsibilities Statement (LRRS), Compulsory Land Management Plans and a new Public Interest Test seek to tackle issues associated with scale and concentration of land ownership in Scotland.

The proposals seek to balance the interests of the general public and local communities with the interests and rights of individual property owners, with the Scottish Government of the view that it would be proportionate for the proposals to be applicable only to 'large-scale' landholdings.

The criteria the Scottish Government proposes to use to classify landholdings as 'large-scale' are as follows:

- A fixed threshold of 3,000 hectares.
- Land that accounts for more than a fixed percentage of a data zone (or adjacent data zones) or local authority ward(s) designated as an Accessible Rural Area or Remote Rural Area, through the Scottish Government's six-fold urban/rural classification scheme.[1]
- Land that accounts for more than a specified minimum proportion of a permanently inhabited island.

Meeting one or more of these criteria would mean that a landholding would be considered 'large-scale'.

**Question 1 –** Do you agree or disagree with the criteria proposed for classifying landholdings as 'large-scale'?

Please give some reasons for your answer and outline any additional criteria.

Around 390 respondents made a comment related to the criteria for large-scale holdings. Issues raised relating to the three criteria proposed, along with answers to the relevant closed questions, follow an analysis of more general comments made.

### Support for the general focus of the reforms

General comments included support for the general package of reforms set out in the consultation paper, with further points including that the combination of measures is an effective way to introduce systemic change and, by doing so, to increase the accountability of large-scale and concentrated landholdings, enable government to intervene in order to secure the public interest and to secure a just transition. It was also suggested that the proposals provide a proportionate way to regulate localised monopoly power in the public interest, recognising the critical role of land in meeting Scotland's public policy objectives in relation to the economy, net zero, a just transition and fulfilling human rights.

[1] Scottish Government Urban Rural Classification 2020 - gov.scot (www.gov.scot)

**Concerns about the focus on large-scale landholdings**

Some respondents commented on the general direction of the proposals overall, with the most-frequently made observation being that there is little or no evidence that land ownership at scale has negative outcomes for communities or the environment. In particular, it was suggested that it is not clear what benefit the approach would have on the journey to net zero and that, in fact, scale is often necessary to achieve the Scottish Government's net zero aims.

There were references to both a 2014 national landowner survey[2] which found that larger estates are more likely to be involved in conservation management, and to Scotland's environment web stating that landscape-scale conservation involves working at a large scale and that this is the scale at which there is often most opportunity to deliver real and lasting benefits.

It was also suggested that some rural land can only deliver positive climate and biodiversity outcomes as a result of consistent, stable management over long periods; the associated concern was that 'new' owners could have different needs and imperatives, and that influencing management on a number of smaller contiguous holdings is likely to result in additional cost to the public purse.

Specific suggestions around how those with larger landholdings may contribute to meeting net zero or biodiversity aims included that:

- Projects for carbon capture, storage and sequestration work most effectively as part of a wider landscape management plan; this integrated land management is something responsible large-scale landowners have taken onboard for many years.
- Effective deer management, including to encourage more forested areas, can be delivered by landowners working together to cover a larger area of ground. Scale can ease operation and have a quicker and more effective environmental impact.

There were also a number of references to specific larger-scale landholdings providing beneficial outcomes for both climate and nature. They included to the work of Cairngorms Connect, The East Cairngorms Moorland Partnership and the Monadhliath Deer Management Group.

Other suggestions as to how ownership at scale can offer positive outcomes included:

- Some large-scale landowners provide employment and business opportunities and support community involvement, with some very large estates investing huge sums of money back into local communities. It was suggested that community ownership does not provide such benefits.
- Providing housing, and by extension making a positive contribution to housing affordability in rural Scotland. There was reference to the work of Moray and

[2] Economic contribution of estates in Scotland: An economic assessment for Scottish Land and Estates.

Stracathro Estates as examples of when the scale of estates has enabled them to take a role in the provision of new housing.

There was also a view that the proposals do not balance the interests of the public and local communities with the interests and rights of individual landowners, especially at a time when rural businesses are already vulnerable. In terms of the interests of landowners, it was suggested that land based businesses need to be able to operate flexibly, and that further administrative burdens will take time and resources away from other activities and may stifle innovative projects, neighbour co-operation or investment in training the younger generation.

The consultation paper's reference to small-scale landholdings potentially being disadvantaged relative to larger landholdings was also challenged, and it was noted that having more staff is a function of business activities and does not equate to spare capacity. It was also suggested that there may be small-scale properties or family farms with more employees or a far higher turnover than their larger counterparts, and that they would be better placed to comply with the administrative burden the proposals would bring.

**Concerns about the sufficiency of the reforms**

While some respondents raised concerns about the broad approach being adopted, others noted their support for a framework that enables communities to take ownership and have a say on the use of land and the resultant benefits this brings. It was also suggested that land reform is a means of meeting in delivering wider societal benefits, including nature restoration, carbon sequestration, and sustainable economic development.

However, 'in principle' support was sometimes accompanied by concerns about the scope and likely impact of the current proposals and, in particular, that they are too limited. This was often connected to a concern that, in defining the threshold for a large-scale landholding, there is a risk that the legislation results in too narrow a focus on a small number of estates.

Further comments or suggestions sometimes related to strengthening specific proposals (covered further at the relevant question below), but also included more general calls for the reforms to address the impact of large-scale and concentrated land ownership on:

- Food and agriculture system and the environment. It was suggested that smaller-scale farms perform better than large-scale farms across a number of different indicators relating to ecology and healthy food supply. It was suggested that the increasing scale and concentration of farmland ownership is often linked to more capital-intensive forms of agriculture which are detrimental to our environment.
- The renewal of the agricultural workforce. Associated comments included that concentrated land ownership can lead to the loss of family farms and have an impact on local employment.

- Tackle the financial motivations for, and advantages of, large-scale land ownership. There was reference to a suggestion from the Scottish Land Commission (SLC) that realising the full benefits of Scotland's land resource will require more fundamental policy reform, probably including changes to the taxation system.[3]

### Definition of large-scale holding

A number of respondents, including amongst them those who agreed, disagreed or did not know about the fixed threshold of 3,000 hectares, commented on the importance of being clear about how a large-scale holding is to be defined. In terms of the current proposals, some respondents sought clarification regarding what the consultation paper means by 'landholdings', with comments including that it is not clear whether 'landholding':

- Is referring to an aggregate area of land, as in the Agricultural Holdings (Scotland) legislation and hence whether it applies to 'landholding' or total 'land ownership'?
- Refers to 'holdings' or 'titles'? It was noted that the Land Register covers titles, but one holding may cover several titles.
- May be contingent on geographical area, as apparently implied by the section on the Public Interest Test?[4]
- Is intended to exclude areas designated as settlements? There was a call for such areas to be included.

There was also a query about whether the extent of ownership is relevant, for example whether it applies to part ownership, or percentage of shares in a corporation and a suggestion that it may be more useful to classify landholdings as significant rather than large-scale.

### Single or aggregated landholding

Returning to the issue of total land ownership, understanding varied around whether any 'landholdings' threshold, including the 3,000 hectares covered at Question 1a, would only apply to single blocks of land or to aggregated landholdings.

For example, one Landowner respondent that owns many smaller parcels of land, with a total acreage which exceeds the proposed threshold, thought that they would be considered a large-scale landowner under the proposals as set out. This raised a range of management and financial concerns for this respondent. Other comments included that there is no clear rationale for why the aggregation of

[3] Scottish Land Commission (2021) Legislative proposals to address the impact of Scotland's concentration of land ownership: A discussion paper from the Scottish Land Commission

[4] Page 19 of the consultation paper reads "The SLC proposed to apply the public interest test to the prospective buyer of the land, on the basis that the purchase could exacerbate scale and concentration of land ownership if the buyer already held land in the area."

landholdings spread over potentially distant locations would support the intended outcomes of the reforms.

Others interpreted the current proposals as appearing to apply only to single landholdings, although often going on to call for any qualifying thresholds to be based on land ownership, covering all land in the same beneficial ownership wherever in Scotland. There was also reference to the aggregate of the land held by any one party with a significant financial interest.

Reasons given for supporting a threshold based on all land owned included a view that it would be more effective in addressing scale and concentration, and in delivering increased diversification of ownership. Specific points made included that:

- How title to land is held can vary, largely a result of previous ownership arrangements, and how each title is registered is not the most relevant factor.
- The aggregated approach would help prevent avoidance loopholes in the form of small sections of larger holdings being held under separate titles to effectively split large landholdings into separate smaller landholdings.

Other 'anti-avoidance' measures suggested included legislative safeguards to ensure that steps cannot be taken by landowners to circumnavigate the intention of the reforms by transferring parts of landholdings into different companies or trusts for ownership purposes.

There was also a suggestion that although thresholds should apply to aggregated ownership, the provisions relating to the LRRS and Land Management Plans should continue to apply separately to each landholding.

**Concentration of ownership and impact on the local community**

There were also a number of comments relating to concentration of land ownership, including that the SLC's 2021 discussion paper highlighted it as an issue and as potentially more significant than scale.

In particular, it was reported that the SLC's 2019 research[5] found that the concentration of social, economic, and decision-making power associated with land ownership is more significant than the scale of a landholding. It was also noted that the research report found that while many people equate concern about the scale and concentration of landholdings with hostility toward private ownership, the two issues are distinct, and the risks of concentrated power can apply regardless of the sector of ownership.

Further comments included that any impact(s) on neighbouring communities should be factored into the criteria used; it was suggested that even relatively small holdings – with an example given of fewer than 100 hectares if these totally

[5] Scottish Land Commission (March 2019) Investigation into the Issues Associated with Large scale and Concentrated Landownership in Scotland.

surround a rural community – can have a profound impact and exercise a significant influence over that community.

Conversely, it was suggested that many large-scale landholdings consist of extensive areas of upland with no-one living nearby and hence no community to be affected.

### Type of land and location

The other frequently-raised issue was that any approach should consider the type of land, with comments including that different types of land (productive land, land for building on, land for moorland, land for grazing, 'poor land', land in disadvantaged areas, uplands, and coastal areas) have different values and uses. Variables such as fertility, productivity, profitability, sustainability and ecological impact of land management practices, and the extent of community living on the land were also considered significant.

There was also reference to geographical differences, for example that 3,000 hectares (as at Question 1a) in the central belt is not comparable to 3,000 hectares in Sutherland, and it was reported that, in some areas, family farms can be larger than 3,000 hectares.

The geographic location of large landholdings was also seen as an important factor in assessing their impact on potentially vulnerable or marginalised populations. An example given was that some large estates in south-west Scotland are adjacent to deindustrialised or isolated communities that have greater socioeconomic need.

There was a call for a more area-specific approach to determine what counts as large-scale. An associated point was that, from an agricultural perspective, there is an argument in favour of distinguishing between upland and hill holdings (Regions 2 and 3 of the Basic Payment Entitlement Schemes) and lowland holdings (Region 1).

### How land is used and managed

How land is managed and used was also seen as important, including whether land use contributes to employment, economic and environmental sustainability, security of essential goods and services, a reduction in global greenhouse gases and improved biodiversity. It was also noted that many large landholdings involve mixed uses, but that a fixed threshold methodology could fail to reflect the divergence in impact on community and environment that different land uses can have.

From a local community perspective, there were reports that in parts of the south-west, communities are concerned about land-based activities being outside of the regulation of the planning system, with both commercial afforestation for carbon sequestration and timber production and intensification of dairy farming cited as of increasing concern. Again, there were calls for the reforms to provide options to such communities that are not based simply on scale.

In terms of how any way forward might be framed, it was suggested that lessons can be learnt from the approaches in other countries. For example, it was reported

that Germany and Austria regulate purchases of both agricultural and forestry land, Sweden regulates the purchase of land in sparsely populated areas and Prince Edward Island distinguishes between arable, non-arable, and shore frontage land, limiting ownership amounts of each. It was also reported that, in Sweden, the purchaser must consider employment and residency impacts – issues which were thought to be of relevance for sparsely populated areas in Scotland.

### Other considerations

Respondents also highlighted other issues or raised other queries about the use of criteria to classify landholdings.

### Assessing scale of ownership

The availability of reliable and complete information was one issue highlighted. Comments included that the land registry is far from complete; an associated suggestion was that the statistics on landholdings set out on in the consultation paper cover leases and other rights, as well as ownership, and thus do not give an accurate picture of the likely impact of the legislation.

A Government and NDPB respondent reported that from the Land Register, they could identify potential owners who meet the threshold but that it may be difficult to provide certainty. They also reported that:

- They are unable to identify if the owner holds land under different capacities, such as individually vs jointly with others or as part of a company.
- There will also be challenges in determining when the threshold is met where land is held by a single landholder across both the Land Register and the Sasine Register as that is not a map-based register.

#### *Occupation by a tenant*

There were a small number of queries regarding how the use of any criteria would be affected by a tenancy, and in particular a tenancy under the Agricultural Holdings (Scotland) Act 1991, being in place; it was suggested that, with the exception of the section on land use tenancy, the consultation paper does not clarify how the proposed measures would be implemented where the land in question is occupied by a tenant.

There was a query as to who would have the responsibility to comply with obligations on large-scale landholdings in the event of a long-term lease for forestry or for farming? One suggestion was that the proposals on Management Plans and registration and access to public funds will require accommodating measures to reflect tenancy arrangements.

It was also suggested that the Bill should address land ownership rather than landholdings, as the latter implies reference to tenanted land, whereas the Bill should address land ownership.

However, there was also a view that the existence of tenancy arrangements should not be used as a blanket exemption from the proposals and that to do so would

exclude a large proportion of rural Scotland and provide an obvious loophole for future avoidance.

### Use of the criteria, exceptions and variations

There were also queries around how the three criteria set out would be combined, or not, when classifying a landholding as large-scale. Specifically, whether a landholding only has to meet one criterion.

There were also queries around whether there would be any potential for exceptions to apply, for example if the land is owned by a charity, by a Public Body, or is in community ownership.

In terms of other possible exceptions, suggestions included that the legislation should give Ministers powers to designate a landholding as 'large-scale' where a persuasive case can be made, and that this might include:

- Where the land management has a significant and demonstrable impact on the community.
- Strategic assets such as critical infrastructure, community facilities or land with potential for housing.

There was also a suggestion that the qualifying thresholds for the criteria should vary, for example that lower thresholds could be appropriate for measures relating to prior notification of sales, especially in urban areas, and for measures relating to overseas ownership of land.

Whatever the threshold(s), it was suggested that they should be set out in regulations rather than the primary legislation itself. The expectation was that this would allow for the threshold to be amended more easily should this be required. It was also suggested that this approach could accommodate a progressive application of the thresholds over time.

There were also calls for guidance on whether and how criteria and thresholds can be changed; it was suggested that this guidance should set out a transparent process based on engagement and consultation with relevant sectors and bodies.

## Fixed threshold of 3,000 hectares

**Q1(a) A fixed threshold of 3,000 hectares**

The consultation paper suggests that 3,000 hectares would be a proportionate threshold and that using this threshold would avoid placing disproportionate duties on small-scale landholdings or family farms. The consultation paper also notes that the additional criteria for classifying large-scale landowners (covered at Questions 1(b) and 1(c) have been proposed to help tackle issues associated with concentrated land ownership.

**Table 2**

| **Question 1(a)** – Do you agree or disagree with the criteria proposed for classifying landholdings as 'large-scale': A fixed threshold of 3,000 hectares? | | | | |
|---|---|---|---|---|
| | **Agree** | **Disagree** | **Don't know** | **Total** |
| Organisations: | | | | |
| Academic group or think tank | 0 | 3 | 1 | 4 |
| Community or local organisations | 5 | 15 | 0 | 20 |
| Government and NDPB | 4 | 5 | 4 | 13 |
| Landowner | 3 | 29 | 2 | 34 |
| Private sector organisations | 1 | 8 | 4 | 13 |
| Representative bodies, associations or unions | 8 | 12 | 4 | 24 |
| Third sector or campaign group | 5 | 20 | 3 | 28 |
| | | | | |
| Total organisations | **26** | **92** | **18** | **136** |
| **% of organisations** | **19%** | **68%** | **13%** | |
| Individuals | **135** | **169** | **38** | **342** |
| **% of individuals** | **39%** | **49%** | **11%** | |
| All respondents | **161** | **261** | **56** | **478** |
| **% of all respondents** | **34%** | **55%** | **12%** | |

Percentages may not sum to 100% due to rounding

A majority of respondents, 55% of those answering the question, did not agree with the use of a fixed threshold of 3,000 hectares. Of the remaining respondents, 34% agreed with the proposed threshold and 12% did not know.

### Reasons for agreeing with the proposal

A number of those who agreed at Question 1(a) noted that they supported the general principle of including a fixed minimum threshold for what constitutes a large-scale landholding. Other reasons for agreeing included because the intention is to include only very large-scale landholdings or because a fixed threshold of 3,000 hectares would appear to be a reasonable figure. A threshold of 3,000 hectares was also described as fair and proportionate.

However, as noted below, a number of those who agreed also went on to suggest that the fixed threshold should be lower than the 3,000 hectares proposed.

### Reasons for disagreeing with the proposal

### No clear rationale or detail

Some of those who disagreed did so because (as outlined above) they disagreed with the focus on large-scale holdings and/or setting a fixed threshold. Those taking this view sometimes also noted that the figure seems arbitrary, with very little explanation or rationale behind why the figure of 3,000 hectares has been chosen.

An associated point was that any legislative change should be grounded in evidence but that no evidence which suggests that 3,000 hectares (or any other defined scale) provides a rationale for the legislation has been presented. It was also suggested that setting an arbitrary figure would lead to material prejudice and be disproportionate when applied to the owner of, for example, 3,001 hectares as opposed to the owner of 2,999 hectares. It was also noted that the reasoning for setting a threshold at a particular level will be particularly important if that threshold may be subject to challenge – for example based on whether there is a legal and ethical justification for it.

As above, the challenges associated with establishing whether a landholding falls within the greater than 3,000 hectares classification were also highlighted.

**Concerns about the impact on landowners**

In terms of possible risks associated with a 3,000 hectare threshold, it was suggested that it could severely dampen private sector natural capital investment into landscape-scale projects, including those seeking to address climate change and biodiversity loss. The associated suggestion was that investors need landscape-scale land parcels to create viable projects with maximum impact but that, in some areas, 3,000 hectares is relatively small scale.

The consultation paper's reference to not placing a disproportionate administrative burden on small-scale landholdings, particularly if this would disadvantage them relative to larger landholdings with more staff and capacity, was queried; it was suggested that a landholding of greater than 3,000 hectares may not be better placed to carry the administrative cost and burden, or the reporting and disclosure and compliance risk. There was specific reference to upland family farms which, it was suggested, could be larger than 3,000 hectares but be in an area where size does not necessarily equate to productivity or capital value.

In relation to whether a 3,000 hectare threshold would mean that most family farms would not be covered by the proposals, it was suggested that this cannot be judged without a clear definition of 'family farm' and that there are risks of unintended consequences, bearing in mind the different ownership and contractual arrangements which may be in place.

**The threshold should be lower**

A frequently made point, primarily but not exclusively raised by those who disagreed with a fixed threshold of 3,000 hectares, was that 3,000 hectares is too great an area.

Further comments included that a 3,000 hectare threshold would mean the proposals would affect a relatively small number of landowners, and hence would have limited impact. It was suggested that, in some parts of Scotland, the vast majority of landholdings would be excluded and that, in practice, the impact of the policy objectives and interventions would be limited to areas where there is concentration of large parcels – primarily some upland areas in the Highlands.

One public body respondent that is also a landowner reported that it considers its landholdings of around 2,300 and 1,400 hectares to be large and would expect both these holdings to qualify as a large-scale landholding in the legislation. Another landowner respondent reported that among their properties that would fall below the 3,000 hectare threshold is the nationally important Ben Nevis Estate.

There was an additional view that the aspirations of the proposals are also relevant to landholdings smaller than 3,000 hectares in the context of net zero, community wealth building, common good, and landowners' accountability and transparency aspirations. An associated point was that the proposals have the potential to deliver environmental benefits across a significant proportion of Scotland and that setting a lower threshold would help encourage nature restoration at the scale required across the whole of Scotland.

Other comments about the benefits of a lower threshold, or the problems associated with the 3,000 hectare threshold, included that:

- The use, management or ownership of land and buildings is often identified as a key means to communities, including disadvantaged communities, achieving their aims, and that it is mostly the control of small pieces of land or buildings that make the difference. A lower threshold would be likely to mean the reforms would apply to more of these smaller pieces of land.
- Community-led housing often involves acquiring small land plots, and communities attempting to acquire land for housing would not be enabled by a 3,000 hectare threshold.

In terms of specific alternatives, the most-frequently suggested was a threshold of 1,000 hectares. There was reference to the SLC recommending a 1,000 hectare threshold, with other reasons given for supporting this level including that:

- The consultation paper reports that a 1,000 hectare threshold would capture 5% of Integrated Administration and Control System (IACS) registered businesses in Scotland, equating to 964 businesses; it was suggested that a measure that captures the largest 5% of agricultural businesses is not excessive.
- It would exclude most family farms.
- Most people working in land would consider 1,000 hectares to be a large-scale holding.

Other comments on a possible 1,000 hectare threshold included that there should be a lower (than 1,000 hectares) threshold for land that is within 3 kilometres of rural settlements and crofting communities.

Other suggestions included that a 1,000 hectare threshold should be subject to review, and adjusted downwards in the future. An alternative suggestion was that a 1,000 hectare threshold could be the longer-term objective but that, for pragmatic reasons, it may be appropriate to start at 3,000 hectares. It was suggested that there may be resource issues associated with ensuring compliance and that the threshold could be lowered over time, allowing for a bedding-in of the legislation.

Other respondents thought that a minimum threshold of 1000 hectares is still too high to enable meaningful policy intervention to take place, with these respondents tending to suggest that the threshold should be set at 500 hectares. Further comments in support of choosing 500 hectares included that:

- By setting a hectarage threshold at, or closer to, 500 hectares, more landholdings will be impacted by the Bill and the need for a separate threshold proposed as part (b) will be significantly lessened.
- It would still exclude the vast majority of family farm holdings, including most lowland tenanted farms (which are typically less than 300 hectares in size).
- While a higher threshold might be appropriate for upland estates, 500 hectares could be more appropriate for landholdings used for more intensive farming or woodland located closer to settlements.

Other suggested thresholds included:

- 300 hectares, including because the average size of a farm in Scotland is 220 hectares.
- 2,000 hectares.

As above, there were also suggestions that any threshold should be adjustable over time and hence should be set out in either secondary legislation or regulation.

### Any threshold should be higher

Although most respondents who suggested an alternative threshold were calling for a lower figure, a small number of respondents suggested that, if there is to be a fixed threshold, it should be higher than 3,000 hectares. It was reported that the SLC discussed a higher threshold of 10,000 hectares,[6] albeit it was noted again that the SLC's discussion paper suggested that the focus should be on concentration rather than scale.

Other than noting the SLC's reference to 10,000 hectares, suggested alternative thresholds included 5,000 or 6,000 hectares.

### Variations on a fixed size-based criteria

There were also suggestions for additional or alternative criteria, some of which reflected earlier points about the general framing of the proposals. Suggestions included that:

- Any size threshold should be proportionate to the average landholding size for different regions.

[6] SLC's ' Legislative proposals to address the impact of Scotland's concentration of land ownership' (2021) states that: "It is suggested that the aim should be to establish a threshold that would ensure that family farms and small businesses would not fall in scope, but that modest estates that could pose risks would. It may be reasonable to expect that, for example, holdings over 10,000 ha would always be in scope, while those under 1,000 ha would always be exempt."

- There should be flexibility in setting thresholds to address more concentrated ownership and to address specific public outcomes.

## Data zones or local authority wards

**Q1(b) Land that accounts for more than a fixed percentage of a data zone (or adjacent data zones) or local authority ward(s) designated as an Accessible Rural Area or Remote Rural Area, through our six-fold urban/rural classification scheme.**

Responses to Question 1(b) by respondent type are set out in Table 3 below.

**Table 3**

**Question 1(b)** – Land that accounts for more than a fixed percentage of a data zone (or adjacent data zones) or local authority ward(s) designated as an Accessible Rural Area or Remote Rural Area, through our six-fold urban/rural classification scheme?

| | Agree | Disagree | Don't know | Total |
|---|---|---|---|---|
| Organisations: | | | | |
| Academic group or think tank | 1 | 1 | 2 | 4 |
| Community or local organisations | 10 | 4 | 5 | 19 |
| Government and NDPB | 5 | 2 | 5 | 12 |
| Landowner | 3 | 27 | 4 | 34 |
| Private sector organisations | 2 | 4 | 7 | 13 |
| Representative bodies, associations or unions | 7 | 6 | 10 | 23 |
| Third sector or campaign group | 9 | 3 | 11 | 23 |
| | | | | |
| Total organisations | **37** | **47** | **44** | **128** |
| **% of organisations** | **29%** | **37%** | **34%** | |
| Individuals | **196** | **75** | **64** | **335** |
| **% of individuals** | **59%** | **22%** | **19%** | |
| All respondents | **233** | **122** | **108** | **463** |
| **% of all respondents** | **50%** | **26%** | **23%** | |

Percentages may not sum to 100% due to rounding

Half of those answering the question agreed with using a criterion based on land that accounts for more than a fixed percentage of a data zone or local authority ward(s). Individual respondents were more likely to agree than organisations (59% and 29% of those responding respectively).

Those who agreed with the proposed criterion sometimes suggested that they agreed with the premise, or that it could provide a sensible approach, including because it could:

- Cover some significant lowland landholdings of under the 3,000 hectare threshold that may not otherwise be classed as 'large-scale'.

- Reflect the amount of power and control a landlord has over a specific area or population.

A number of respondents, including those who had agreed, disagreed or did not know at the closed question, commented that they needed further information about how this criterion would work. A frequent comment was that data zones in particular are not widely understood. An associated view was that landlords would be likely to require independent advice to determine whether this criterion applied to them and that this would come at a cost.

Other reservations included that applying a fixed percentage to geographic areas that vary considerably in size may result in undesirable anomalies. There were also occasional comments that, while the data zone proposal may have merits, the local authority ward suggestion does not. Specific concerns about local authority wards included not only that they can be of vastly different sizes but also that their boundaries will not usually map neatly onto patterns of land ownership, and landholdings may fall between two or more wards.

There was also a suggestion that in areas where the wards are larger in size – such as the Highlands – any landholding covering a significant percentage of a ward will already be captured by a fixed area threshold. A connected suggestion was that local authority wards may be more appropriate to large urban and other urban areas.

Concerns about the possible use of data zones included that their designations are based on populations, but that public interest is not just based on the number of people living in or near a data zone. It was also noted that population levels are fluid, and that this could change the scope of the data zone and, by extension, whether landholdings meet any threshold. It was also suggested that the approach would get more complex in areas close to settlements, where data zone areas are likely to be much smaller in area.

More generally, it was suggested that without knowing the fixed percentage(s) that would be applied it is difficult to comment on likely efficacy. It was noted that the percentage chosen would have influence whether this approach would be proportionate or not, and there were concerns that, as data zones and local authority wards vary considerably in scale, determining an appropriate fixed percentage to such a varied metric is likely to give anomalous or skewed results.

Nevertheless, a number of respondents suggested possible percentage thresholds, including 20% or 25% of the land area. There were also calls for local communities to be involved in setting appropriate thresholds for their area; it was suggested that Common Weal's policy paper on 'Development Councils' illustrates how such an approach could work in practice.

Other comments on how the criterion could or should be applied included that:

- It needs to be simple and readily understood by the public, not least in respect of the potential for reporting breaches of the LRRS. There were associated concerns that this might not be possible.

- Ministers should be careful to avoid setting criteria that would include relatively small landholdings because they happen to be in a small data zone, especially as the added duties could discourage investment and economic activity.
- Consideration should be given to how landholding area criteria and the concentration of ownership could be combined in any of the regional frameworks. This could be used to identify areas where large businesses are associated with concentration of ownership and where concentration of ownership occurs for landholdings below the area thresholds.
- The data zone approach could also provide a mechanism for urban and peri-urban areas. Further comments included that Scotland's most disadvantaged communities tend to be urban and, if land use and ownership is, as it should be, seen as a means of addressing inequality and disadvantage, then the criterion should not exclude towns and urban areas.

There were also a small number of comments about the use of the six-fold urban/rural classification scheme, including that there is no clarity on why this has been chosen over the eight-fold scheme also referenced in the consultation paper. It was also suggested that both schemes present anomalies in certain locations – for example, there may be an area classified as an 'accessible town' that is surrounded completely by a 'large urban area' yet is not included within the said large urban area.

## Proportion of a permanently inhabited island

**Q1(c) Land that accounts for more than a specified minimum proportion of a permanently inhabited island**

Responses to Question 1(c) by respondent type are set out in Table 4 below.

**Table 4**

| **Question 1(c)** – Land that accounts for more than a specified minimum proportion of a permanently inhabited island? | | | | |
|---|---|---|---|---|
| | **Agree** | **Disagree** | **Don't know** | **Total** |
| Organisations: | | | | |
| Academic group or think tank | 3 | 0 | 1 | 4 |
| Community or local organisations | 14 | 1 | 1 | 16 |
| Government and NDPB | 4 | 0 | 8 | 12 |
| Landowner | 4 | 22 | 8 | 34 |
| Private sector organisations | 2 | 3 | 8 | 13 |
| Representative bodies, associations or unions | 8 | 7 | 8 | 23 |
| Third sector or campaign group | 16 | 2 | 5 | 23 |
| | | | | |
| Total organisations | **51** | **35** | **39** | **125** |
| **% of organisations** | **41%** | **28%** | **31%** | |
| Individuals | **212** | **77** | **48** | **337** |
| **% of individuals** | **63%** | **23%** | **14%** | |
| All respondents | **263** | **112** | **87** | **462** |
| **% of all respondents** | **57%** | **24%** | **19%** | |

A majority of respondents, 57% of those answering the question, agreed with using a criterion of land that accounts for more than a specified minimum proportion of a permanently inhabited island. The proportion of individual of respondents who agreed was higher than for organisations (63% and 41% respectively).

Issues highlighted in support of the approach included that the ownership of a large proportion of the land on an island, and especially a small island, can lead to a disproportionate influence on the development of the island and the operation of the community.

As with data zones, the importance of the threshold set was highlighted, including because the difference in scale of islands would have an impact on the effectiveness of the approach. A number of respondents suggested a possible threshold, including:

- 20% of the land area. Further comments included that this threshold would support no landowner being able to monopolise land base resources and restrict access for other residents.

- 25% of the land area covered.

Also as with regard to data zones, there were calls for local communities to be involved in setting appropriate thresholds for their area.

In addition to comments relating to the level of any threshold, there were also a number of other suggestions relating to how any criterion should be framed. These included that:

- It should apply to all inhabited islands, no matter how small they are. However, it was also suggested that it may be worth considering defining qualifications around scale as some inhabited islands are very small and the proposals could apply to sole occupants of such islands. It was suggested that the question of minimum regional area needs to be considered and then how islands can be grouped as needed.
- It should also apply to uninhabited islands. A connection to the repopulation agenda was made, and it was noted that most Scottish islands were previously inhabited even if currently not.
- It could also consider the key economic assets on an island (such as a shop, transport hub, housing or potential for development and how the ownership and operation of these is affected by land ownership.
- Peninsulas and other geographically isolated communities should be included.

It was also suggested that detailed guidance would support open and transparent discussions between landowners and communities. There was also a suggestion that, if the majority of permanent inhabitants agree, the landowner should be exempt from increased duties on their land and that other exemptions could include the landowner meeting environmental guidelines.

Those who did not agree, and some of those who did not know, often noted that no information on the fixed threshold has been given. Other concerns included that there does not seem to be any rationale for treating an island differently to the mainland, and that the approach appears unjustified and discriminatory. It was also suggested that, given the difference in the size and location of Scotland's islands, any arbitrary percentage that was applied could have serious negative consequences for the landowners and communities involved.

## Additional criteria

Respondents were also asked if they had suggestions for additional criteria that could be used to determine whether a landholding should be classed as large-scale. The most frequently raised theme was the level of subsidy that a landowner receives. Reasons given for suggesting a subsidy-related criterion included that:

- It could help address the regional imbalance inherent in an area threshold, given that the significance and value of land varies greatly across the country.

- The rationale for basing the calculation on direct subsidies rather than rural development grants is that payment levels are broadly consistent from year to year.
- It would not disincentivise positive action to deliver net zero or enhance biodiversity.

There was specific reference to direct agricultural subsidy, including Basic and Greening payments and to those through the Less Favoured Area Support and Areas of Natural Constraints Schemes. There was also reference to the Scottish Land Fund and Pillar 1 Common Agricultural Policy payments. However, it was also suggested that one-off grant payments for specific activities such as woodland creation, agri-environment schemes and the LEADER programme[7] should not be taken into account. Beyond specific payments, an alternative suggestion was receipt of over a set amount, with a sliding cap, starting at £100,000, and reducing over a five year period.

There was also a suggestion that a subsidy-based approach could be administered through the Single Application Form system.

Suggestions for other criteria included:

- The financial value of land and/or built assets. In terms of capital value, it was suggested that a suitable threshold of value for classification as 'large-scale' might be £1 million, to be adjusted over time via secondary legislation. It was also suggested that turnover of any business activities for which the land is being used, and the current resale value of the land, should also be taken into account.
- The significance of local assets to communities. There was reference to strategic housing land accumulation, and situations where monopoly leads to undue influence and power. A specific suggestion was if an owner has more than 50% of potential development land around a village.

Finally, it was suggested that discretion should be reserved to Scottish Ministers to designate land as 'large-scale' on an exceptional basis.

## Family farms

The consultation paper suggests that by using a threshold of 3,000 hectares as one of the criteria for determining 'large-scale' landholdings, the proposals would not be placing disproportionate duties on small-scale landholdings or family farms.

**Question 2** – Do you agree or disagree that family farms should be exempt from the proposals outlined in Parts 5 to 7 even if they are classified as a 'large-scale' landholding?

[7] LEADER is a European funding programme which supports rural community and business projects. In Scotland it is delivered as part of the Scottish Rural Development Programme in partnership with Local Action Groups.

Responses to Question 2 by respondent type are set out in Table 5 below.

**Table 5**

| **Question 2** – Do you agree or disagree that family farms should be exempt from the proposals outlined in Parts 5 to 7 even if they are classified as a 'large-scale' landholding? | | | | |
|---|---|---|---|---|
| | **Agree** | **Disagree** | **Don't know** | **Total** |
| Organisations: | | | | |
| Academic group or think tank | 0 | 4 | 0 | 4 |
| Community or local organisations | 1 | 16 | 1 | 18 |
| Government and NDPB | 2 | 4 | 7 | 13 |
| Landowner | 4 | 21 | 9 | 34 |
| Private sector organisations | 2 | 7 | 5 | 14 |
| Representative bodies, associations or unions | 5 | 10 | 6 | 21 |
| Third sector or campaign group | 1 | 19 | 5 | 25 |
| | | | | |
| Total organisations | **15** | **81** | **33** | **129** |
| **% of organisations** | **12%** | **63%** | **26%** | |
| Individuals | **77** | **213** | **55** | **345** |
| **% of individuals** | **22%** | **62%** | **16%** | |
| All respondents | **92** | **294** | **88** | **474** |
| **% of all respondents** | **19%** | **62%** | **19%** | |

Percentages may not sum to 100% due to rounding

A majority of respondents, 62% of those answering the question, disagreed with the proposal that family farms should be exempt from the proposals outlined in Parts 5 to 7 even if they are classified as a 'large-scale' landholding. The remaining respondents were divided evenly between those who agreed and those who did not know.

**Please give some reasons for your answer.**

Around 360 respondents provided a comment at Question 2.

### Concerns about a family farm exemption

Those who disagreed or did not know sometimes pointed to the absence of a definition for what would be considered to be a 'family farm', with some also noting that creating a workable definition will be challenging. It was reported that:

- 'Family farm' is not formally defined in this Bill or in other legislation, and that, at present, it may be defined differently depending on the context.
- Many definitions agree that the majority of labour and management must be provided by family members, but others reference capital or size.

Nevertheless, there was also a concern that many of Scotland's largest estates could be considered to be family businesses.

In terms of issues that would need to be considered or addressed through any definition, there was reference to the considerable variations in possible circumstances, including: whether owner occupied or tenanted; how labour is organised on the farm; who has ownership and control over the land and business; how the business is legally constituted; how succession might be arranged; and who takes responsibility for business risk.

Some respondents thought that the challenges associated with defining a 'family farm' makes their exemption undesirable. Others saw no particular rationale for the proposed exemption, with some going on to comment that if it is to be applied to any it should be applied to all. There was also query as to why being classed as a family farm should mean the business is less able or resourced, or would have less impact.

Concerns were also voiced that, since many large businesses are family-owned, not including them potentially undermines the proposals' efforts to address concentrated land ownership. An associated point was that, given that land management is an underpinning factor in responding to the climate and nature crises, only limited exemptions should be made.

It was also argued that the proposed exemption appears to suggest that who owns land is more important than what they do with it, giving the impression that the Scottish Government are targeting a particular type of landowner. An associated point was that this may contravene Article 14 of the European Convention on Human Rights (ECHR).

There was also a query as to whether the exemption seeks to imply that family businesses are less likely to have adverse impacts than others operating at large-scale; if so, this premise was challenged, and it was reported that there are examples of large family farm businesses acting in a way that would be counter to the principles underpinning the current proposals. It was suggested that family ownership of a farm does not necessarily preclude monopolistic or environmentally harmful practices which can be detrimental to communities.

There was also a view that the responsibilities that come with owning larger amounts of land are important irrespective of whether they are family farms. For example, it was noted that family farms can and should have a role to play in addressing the climate emergency, supporting biodiversity and addressing inequalities in rural economies. It was also noted that a family farm could include a large estate in receipt of large amounts of public subsidy.

There were also concerns that the challenges associated with producing a definition for 'family farm' could introduce the potential for legal challenge, and that the exemption is likely to create loopholes in the legislation, which could be exploited. This was sometimes linked back to potential difficulties in creating a workable and legally robust definition of 'family farm'.

**Comments in support of an exemption**

A number of those supporting an exemption pointed to the role of family farms as the bedrock of Scottish agriculture, and it was suggested that they will only thrive if allowed to grow or contract based on economic drivers, rather than as a result of statute. It was also suggested that empowering communities to acquire land should not be at the expense of disempowering other members of the community – such as those owning family-run farms.

It was also noted that family farms are already subject to a range of rules, including cross-compliance measures, and there was reference to the range of existing management requirements, mainly associated with various support schemes. Given these existing arrangements, it was suggested that to include family farms within the scope of measures targeting large-scale holdings would equate to overkill. It was seen as important not to risk additional red tape or undue burdens on family farming businesses at this time of unprecedented issues within the agricultural industry.

There was also a view that, while the policy intention that most family farming units are not unduly burdened by the proposals is the correct one, this would be best achieved through the development of proportionate and transparent criteria, rather than seeking to define an exemption for a particular type of landholding or business.

Some of those who agreed that family farms should be exempt from the proposals also pointed to the absence of a definition of a family farm. It was seen as important that the Bill and accompanying guidance are clear on which large-scale landholdings are exempt, and that the definition of a family farm should:

- Include a size limitation, so as not to include large estates. This should be considered in association with the development of the agricultural policies connected to the consultation on 'Agricultural Transition in Scotland: first steps towards our national policy'.
- In contrast, not distinguish between family owned farms and estates of a similar size. It was suggested that, in many cases, it would be hard to distinguish between the difficulties and challenges facing estates and family-owned farms in the same setting and of similar land size.
- Consider residency on the holding, the occupier farming the land and the farm income as a proportion of the total family income.

Other comments included that, given the potential challenges in defining family farms, it would be clearer and more certain to exclude all farms from the scope of the proposals. It was suggested that this could be done on the basis of agriculture being the primary source of business.

Finally, and as at other questions, it was noted that tenancy and lease arrangements will need to be considered, including the potential for a family farm to be leasing a large area of land, perhaps from multiple owners.

## Urban context

**Question 3** – Do you think that the proposals considered in this consultation should be applied to the urban context?

Responses to Question 3 by respondent type are set out in Table 6 below.

**Table 6**

**Question 3** – Do you think that the proposals considered in this consultation should be applied to the urban context?

| | Yes | No | Don't know | Total |
|---|---|---|---|---|
| Organisations: | | | | |
| Academic group or think tank | 4 | 0 | 0 | 4 |
| Community or local organisations | 16 | 0 | 3 | 19 |
| Government and NDPB | 8 | 0 | 5 | 13 |
| Landowner | 25 | 4 | 5 | 34 |
| Private sector organisations | 7 | 1 | 4 | 12 |
| Representative bodies, associations or unions | 14 | 7 | 2 | 23 |
| Third sector or campaign group | 21 | 1 | 4 | 26 |
| | | | | |
| Total organisations | **95** | **13** | **23** | **131** |
| **% of organisations** | **73%** | **10%** | **18%** | |
| Individuals | **224** | **43** | **76** | **343** |
| **% of individuals** | **65%** | **13%** | **22%** | |
| All respondents | **319** | **56** | **99** | **474** |
| **% of all respondents** | **67%** | **12%** | **21%** | |

Percentages may not sum to 100% due to rounding

A majority of respondents, 67% of those answering the question, thought that the proposals considered in this consultation should be applied to the urban context. Of the remaining respondents, 12% did not think so and 21% did not know.

**Please give some reasons for your answer.**

Around 310 respondents provided a comment at Question 3.

### Reasons for supporting application to the urban context

Those who agreed with the proposal often commented that the need for land reform is as great in, or the proposals are as relevant to, an urban as a rural context.

Further comments included that, while land reform in Scotland has historically focused on rural land issues, the Scottish Government and Parliament have long recognised that land reform covers, and is necessary within, both rural and urban contexts. It was suggested that urban communities are indeed as likely to benefit

from the aims of the legislation as rural ones, and that some of Scotland's most deprived and unheard communities sit within these areas.

In terms of the particular issues or problems that urban-based land reform could help address, there was reference to concentration of ownership and power, including concentration of ownership of housing stock, business sites and amenities. There was also reference to a notable lack of transparency and accountability. Further comments included that:

- Large areas of undeveloped urban land are owned by developers, who then have the power to greatly shape neighbourhoods and affect the lives of many people.
- Urban land management, including for food and other crops, is very important for a just transition and where the proposals can be translated into an urban context, this should be done.

There was also a view, including among some who did not generally support the wider proposals, that there is no rationale for rural properties being subject to greater scrutiny, and that the same approach should be applied across different areas. It was also noted that the LRRS applies to all urban and rural land in Scotland, and it is not clear why these responsibilities should have a lower level of enforcement in urban areas. It was also suggested that it is not clear why urban communities should not benefit from a public interest test in the sale of large landholdings.

In terms of the best approach going forward, one perspective was that it may be better for all land reform measures to be contained within a single land reform bill, albeit that some accommodation of the existing proposals would be required to enable their application or exclusion in an urban context. An alternative view was that there may be a case for a different bill for the urban context.

Other suggestions for how any approach should be framed included that any thresholds will need to be adjusted to an urban context, including because there may be significant landholdings across multiple sites. There was a call for consideration of what 'large-scale landholdings' looks like in an urban context, and it was suggested that the focus should be on concentration of ownership rather than scale.

There was also specific reference to some of the possible additional criteria outlined at Question 1, including the financial value of the land/asset, its significance to the local community, and its heritage value.

Other comments or suggestions included that:

- Consideration should also be given to communities of interest as well as place.
- Land in the vicinity of urban areas affects many people, and so should be subject to high levels of scrutiny both in terms of land use and land transfer.

- Urban communities should also have Notification of Sale Rights, improved Community Right to Buy Rights, and the ability to address local concentrations of scale of ownership. They should be given a notice of intention to sell if land is to be sold in their neighbourhood regardless of whether or not they have previously registered an interest in it.
- A tailored approach, which targets the issues and does not duplicate or complicate existing mechanisms to regulate land use in urban areas, would be required.

There was also a query around whether existing planning measures might be sufficient to address issues in large urban areas; if this is so, it was suggested that it would be helpful if it could be properly evidenced.

**Reasons for not supporting application to the urban context**

Others disagreed with the proposals being applied to the urban context including in some cases because they disagreed with the proposals applying in any context. Other reasons for disagreeing with the application to an urban context included that the different context requires a different response. Reflecting the query raised above, it was also noted that urban developments are already subject to the planning process.

Other comments or suggestions included that:

- Given that urban landholdings are generally smaller, the approach seems unnecessarily intrusive.
- If covering large urban areas, the proposals could apply to Registered Social Landlords, the NHS and Local Authorities; given the aims underpinning the reforms, this would not seem appropriate.
- Rural Scotland needs to be considered first, and then consideration should be given to what is required in an urban context.

# 3. Strengthening the Land Rights and Responsibilities Statement

The LRRS consists of a vision and seven principles, supported by advisory notes, case study examples, and a series of good practice protocols developed by the SLC. The LRRS, and its associated advisory notes and protocols, is currently voluntary and relies on landowners and land managers engaging with it.

The consultation paper notes that although the Scottish Government recognises that many landowners are abiding by the LRRS, some are not, despite the clear public interest the LRRS provides. It therefore proposes to introduce measures which would place a legal duty on owners of large-scale landholdings to comply with the LRRS and its associated codes/protocols, accompanied by a statutory process to adjudicate on complaints about non-compliance and the response to a breach.

**Question 4** – We propose that there should be a duty on large-scale landowners to comply with the Land Rights and Responsibility Statement and its associated protocols. Do you agree or disagree with this proposal?

Responses to Question 4 by respondent type are set out in Table 7 below.

**Table 7**

**Question 4** – We propose that there should be a duty on large-scale landowners to comply with the Land Rights and Responsibility Statement and its associated protocols. Do you agree or disagree with this proposal?

| | Agree | Disagree | Don't know | Total |
|---|---|---|---|---|
| Organisations: | | | | |
| Academic group or think tank | 4 | 0 | 0 | 4 |
| Community or local organisations | 21 | 1 | 0 | 22 |
| Government and NDPB | 13 | 0 | 0 | 13 |
| Landowner | 5 | 23 | 6 | 34 |
| Private sector organisations | 7 | 6 | 0 | 13 |
| Representative bodies, associations or unions | 16 | 4 | 5 | 25 |
| Third sector or campaign group | 28 | 1 | 2 | 31 |
| | | | | |
| Total organisations | **94** | **35** | **13** | **142** |
| **% of organisations** | **66%** | **25%** | **9%** | |
| Individuals | **266** | **60** | **15** | **341** |
| **% of individuals** | **78%** | **18%** | **4%** | |
| All respondents | **360** | **95** | **28** | **483** |
| % of all respondents | **75%** | **20%** | **6%** | |

Percentages may not sum to 100% due to rounding

A majority of respondents, 75% of those answering the question, agreed that there should be a duty on large-scale landowners to comply with the LRRS and its associated protocols. Individual respondents were more likely to agree than organisational respondents at 78% and 66% respectively. Of the remaining respondents, 20% disagreed and 6% did not know.

Among organisations most groups showed a clear majority in agreement, with the exception of Landowner respondents where a substantial majority disagreed, and Private sector organisation respondents who were relatively evenly divided.

**Please give some reasons for your answer.**

Around 340 respondents provided a comment at Question 4.

### Creating a legal duty

#### Reasons there should be a legal duty

Although there was recognition that some large-scale landowners do comply with the LRRS and its protocols on a voluntary basis, it was argued that others do not and that it is right and fair that all should do so. It was also suggested that the majority of landowners would not have a problem as they are already adopting appropriate practices, or that it the duty would not add to the burden of landowners who already do so. Some respondents took the view that the voluntary approach has not been effective or simply expressed an opinion that a compulsory/statutory approach is needed. It was also noted that other legal duties such as those associated with the Community Empowerment (Scotland) Act have helped to focus attention on the importance of community engagement, partnership and empowerment.

Other reasoning in favour of creating a formal duty included that it would:

- Raise awareness across all stakeholders.
- Promote cultural change such that large-scale landowners see themselves as stewards and guardians of the land, with priorities to look after the natural environment, support local communities and protect the interests of future generations.
- Give landowners clarity with respect to their responsibilities.
- Be both in the community interest and benefit Scotland as a whole. Specific issues highlighted included allowing communities to plan their sustainable development and to have an input on large-scale transactions of land and subsequent land use change in relation to carbon markets or to windfarm development.
- Provide a mechanism to address incidents of poor practice.

#### Reasons there should not be a legal duty

It was also argued that, while no evidence has been presented to justify a move to a statutory approach, there is evidence to suggest the LRRS is working effectively

on a voluntary basis and that more landowners are becoming aware of and engaging with it. Information provided to stakeholders by the SLC Good Practice Advisory Service was reported to have shown both increased numbers of enquiries from landowners and that, where there had been direct dialogue with landowners or their agents, 'positive steps' had been taken to develop and improve engagement practices. Some respondents provided examples of their own activities in response to the LRRS. It was suggested that the proposed legal duty could undermine the existing positive, collaborative approach and could be counterproductive. It was also argued that, if the Scottish Government wishes to impose obligations on landowners, they should enact legislation to be scrutinised under parliamentary process.

Other points made in favour of retaining the current voluntary approach included that the LRRS:

- Was only published in 2017 and has not had sufficient time to bed in.
- Has not been promoted sufficiently.
- Is currently under review.

**Landholdings that should be covered by a legal duty**

While supporting the introduction of a legal duty, some respondents argued that this obligation should not be restricted to large-scale landowners but should apply more broadly, with arguments that any duty should apply to:

- All landowners, to smaller-scale landowners, or to landowners covered by 'right to roam' provisions under the Land Reform (Scotland) Act 2003. Some respondents who opposed the duty in principle felt that, if applied at all, it should not be restricted to large-scale landholdings as proposed.
- Landowners in receipt of public funds, with various suggestions with respect to a threshold that might be set.
- Urban landowners.
- Specific type of landowner including the Crown, Government/Public Agencies and charities.
- Specific assets of community significance.

These issues have already been discussed in the analysis at Question 1. With respect specifically to a duty to comply with the LRRS it was argued that, since the current voluntary arrangements apply to everyone, limiting a legal duty to large landowners could create a two-tier approach, risking creating confusion or giving the impression that smaller landholdings do not need to implement LRRS principles. It was also observed that the LRRS and its protocols applies to tenants and community bodies as well as land managers, and the proposed restriction does not seem to be in line with the spirit of the LRRS.

One suggestion was that while all landowners should have a duty to comply, smaller landholdings should be subject to an advisory process rather than statutory enforcement procedures. Another proposal was that the Scottish Government might

set a target date to broaden the scope of the requirement to cover all significant landholdings.

### Suitability of the LRRS and protocols as the basis for a legal duty

Some respondents focused on the nature of the LRRS and its associated protocols, arguing that these are not an appropriate set of documents on which to place a legal obligation. It was noted that these materials were produced for use as guidance, and it was suggested that their broad scope and potentially ambiguous language mean they are too open to subjective interpretation to be legally enforceable. Phrases such as ‘high standards’ and ‘should consider’ were highlighted as illustrating this point and it was argued that moving to a legislative approach would be difficult when rights and responsibilities are not quantifiably defined. There was also a suggestion that parts of the LRRS relate to matters that are not within the control of landowners.

There was also a view that, while the LRRS is an appropriate document on which to base a duty, more work will be required to ensure that it is suitable for purpose, or to clarify which elements would become obligatory. In particular, it was suggested that that there need to be clearly defined expectations of landowners, with clearly framed and proportionate requirements to provide certainty with respect to compliance. One Representative body respondent anticipated that setting out objective criteria to test compliance with the LRRS would require clarity as to what constitutes good land management. They suggested this should be linked to the Land Use Strategy and also wider issues affecting land, including food security.

It was also argued that requirements should be developed in an enabling manner to encourage positive land use management and uptake. One suggestion was for a supplementary document setting out clear compliance requirements, some of which could be universal with others specific to different land classifications.

A further issue raised was that the SLC’s intention to produce further protocols creates open-ended exposure to regulation without Parliamentary sanction.

### Other issues highlighted

Some respondents referenced the need for meaningful enforcement powers if a legal duty is to be effective. Others suggested that enforcement should be as light touch as possible or that, in some circumstances, providing incentives to comply might be a constructive approach.

It was also suggested that the process could be streamlined by integrating LRRS compliance with the proposal for a compulsory Land Management Plan, and so linking any enforcement aspects. LRRS enforcement is considered in detail at Question 5, and proposals for compulsory Land Management Plans are covered at Question 8.

Other issues raised in relation to a duty to comply with the LRRS included concerns that:

- Any legal obligations relating to crofting estates should be consistent with crofting rights and obligations. It was noted that where the substantial rights on an estate are with the crofters, a landowner might have difficulty discharging any legally enforceable LRRS obligations.
- Failure to comply with all LRRS principles might result in barriers to using land for important national objectives, including measures to address the climate emergency and nature crisis.
- Government grants to support tree planting targets might be reduced if the process to investigate alleged LRRS breaches is not protected from vexatious complaints.

**Strengthening the content of the LRRS**

Although beyond the scope of this consultation, some respondents referenced aspects of the LRRS that they would like to see strengthened. Briefly, these included:

- Reference to duties already placed on landowners under Section 3 of the Land Reform (Scotland) Act 2003.
- Reference to public access rights and provisions. It was argued that while the Scottish Outdoor Access Code is referenced, this provides guidance but no statutory requirements.
- Further strengthening with respect to net zero objectives, and on protecting and enhancing biodiversity.
- Embedding greater ecological understanding in the protocols.
- Recognising the finite nature and intrinsic value of Scotland's natural resources.
- Greater emphasis on nature restoration and rewilding.
- Addition of a requirement to undertake and publish Environmental Impact Assessments in relation to certain land use changes.

**Question 5** – If there was a legal duty on large-scale landowners to comply with the Land Rights and Responsibility Statement and its associated protocols, we propose that this should be enforced by having a formal procedure for raising complaints, and by making provisions for independent adjudication and enforcement.

**Q5(a)** Do you agree or disagree with the proposal above?

Responses to Question 5(a) by respondent type are set out in Table 8 below.

**Table 8**

**Question 5(a)** – Do you agree or disagree with the proposal above?

| | Agree | Disagree | Don't know | Total |
|---|---|---|---|---|
| Organisations: | | | | |
| Academic group or think tank | 4 | 0 | 0 | 4 |
| Community or local organisations | 18 | 0 | 2 | 20 |
| Government and NDPB | 10 | 0 | 1 | 11 |
| Landowner | 6 | 25 | 3 | 34 |
| Private sector organisations | 7 | 5 | 1 | 13 |
| Representative bodies, associations or unions | 16 | 4 | 2 | 22 |
| Third sector or campaign group | 27 | 1 | 2 | 30 |
| | | | | |
| Total organisations | **88** | **35** | **11** | **134** |
| **% of organisations** | **66%** | **26%** | **8%** | |
| Individuals | **275** | **51** | **15** | **341** |
| **% of individuals** | **81%** | **15%** | **4%** | |
| All respondents | **363** | **86** | **26** | **475** |
| **% of all respondents** | **76%** | **18%** | **5%** | |

Percentages may not sum to 100% due to rounding

A majority of respondents, 76% of those who answered the question, agreed that there should be a formal procedure for raising complaints, and provisions for independent adjudication and enforcement. Individual respondents were more likely to agree than organisational respondents at 81% and 66% respectively. Among organisations most groups showed a clear majority in agreement, with the exception of Landowner respondents where a substantial majority disagreed, and Private sector organisation respondents who were relatively evenly divided.

**Please give some reasons for your answer.**

Around 285 respondents provided a comment at Question 5(a).

### Reasons there should be a formal procedure

Some respondents argued that creating a legal duty would be pointless without an enforcement mechanism or that there will need to be a process for reporting and investigating complaints. It was suggested that:

- Voluntary approaches are not effective.
- Many participation requests have not led to outcomes that community participation bodies have been satisfied with.
- Community-oriented legislation that is legally enforceable or where appeals can be made is taken more seriously and has led to more positive outcomes than legislation which that is not.
- A formal procedure will both incentivise compliance and provide a mechanism for communities to raise issues without court action.

### Reasons there should not be a formal procedure

Other respondents reiterated a view that there should not be a legal duty to comply with the LRRS, or that this would be a disproportionate response when a guidance-led approach is already in place. Existing mechanisms for communities to raise concerns were noted, with the SLC's Good Practice Advisory Service often cited as a means whereby communities and landowners can seek advice on the LRRS. It was argued that, before considering further legislation, the Scottish Government should evaluate the effectiveness of this service and seek to improve it or raise its profile.

Concerns were also raised that a new, formal procedure could add to costs and administrative burden on rural land-based businesses and could prove counter-productive.

### Issues to clarify

As at Question 4, both respondents who supported placing a legal duty on landowners and those who did not argued that, in its present form, the LRRS and protocols are too subjective or open to interpretation to provide the basis for an effective regulatory framework. It was suggested that landowners may be unsure exactly what is required and that, if they are to be placed under a legal duty, there should be clear, succinct guidance and objective criteria to test compliance, preferably with criteria set out in legislation.

Some respondents noted that their ability to comment was limited by lack of detail in the consultation paper, or that they would wish to see proposals developed further before commenting on an enforcement procedure. These points were made both with respect to having clearly defined expectations of landowners as set out above, and in relation to the nature of the enforcement mechanism envisaged. Clarity was requested specifically in relation to:

- The proposed forum of adjudication and why the question refers to 'adjudication' but the consultation text refers to 'mediation'?
- What weighting complaints would have – for example whether a single complaint might result in enforcement action?

- Proposed timescales – for example whether there would there be time to appeal or rectify prior to enforcement?

**Features of a formal process**

Many respondents made points about how an enforcement process should work, most frequently that it must be independent and must be fair/transparent. Other suggested criteria included that the process should:

- Be adequately resourced or independent of resources. It was argued that there may be inequity of support between landowners and communities.
- Be simple and easy to understand and should provide free legal advice.
- Be timely/streamlined in operation.
- Include regular, random inspections of landowners to ensure compliance with the LRRS, rather than applying enforcement only following a complaint.
- Focus on early engagement and conflict resolution to avoid the need for a formal complaints procedure to come into force.
- Provide options for compensation, for example in terms of community wealth building or affordable housing.
- Take a proportionate response, enabling a range of actions in the event of non-compliance resulting from accidental oversight through to deliberate breaches. Consider setting a threshold of non-compliance that makes a complaint eligible for investigation.
- Guarantee anonymity for complainants who may fear reprisals.
- Include an appeal process.
- Include a mechanism to avoid spurious, malicious or frivolous complaints.

On the last point, concerns were raised that a compliance and complaint process could be hijacked for political or personal purposes, or that unfounded or self-interested complaints could have a negative impact on good work of landowners or occupiers. It was argued that an education programme for wider stakeholders should be considered to avoid false reporting.

**Views on the Tenant Farming Commissioner as a potential model**

As suggested in the consultation paper, some respondents saw the operation of the Tenant Farming Commissioner (TFC) and the TFC's codes of practice as providing a potential model for a system implementing LRRS compliance. It was suggested that similar implementation of the LRRS through codes, guidance and an ability to inquire into alleged breaches could achieve a wider cultural shift beyond use of formal legislative mechanisms.

However, it was also argued that the Scottish Government should avoid combining advisory and adjudication roles, as is currently the case with the TFC and it was argued that a system whereby a commissioner adjudicates on breaches of their own protocols does not provide appropriate independence. It was also observed

that there are no legal duties on landlords or tenants to comply with the TFCs' codes of practice.

A number of other bodies were highlighted either as a being suitable to administer a formal enforcement procedure or as providing a potential model that might be followed. Suggestions made at Question 5(b) are included in the analysis at Question 5(c) where this topic is considered in more detail.

**Other issues raised**

A small number of other points were raised with respect to enforcement of a duty to comply with the LRRS including that:

- Land use decisions which are necessary to carrying out statutory duties in relation to water and wastewater services should take precedence over compliance with the LRRS.
- The Scottish Government should consider the inter-relationship of the LRRS with wider regulatory processes affecting land. For example, it was suggested that projects such as large wind farm developments, already subject to scrutiny via the planning application process could be subject to further procedures if the LRRS protocols were invoked.

**Q5 (b)(i)** Do you agree or disagree that only constituted organisations that have a connection to the local area or the natural environment should be able to report breaches of the Land Rights and Responsibility Statement?

Responses to Question 5(b)(i) by respondent type are set out in Table 9 below.

**Table 9**

| **Question 5(b)(i)** – Do you agree or disagree that only constituted organisations that have a connection to the local area or the natural environment should be able to report breaches of the Land Rights and Responsibility Statement? | | | | |
|---|---|---|---|---|
| | **Agree** | **Disagree** | **Don't know** | **Total** |
| Organisations: | | | | |
| Academic group or think tank | 1 | 3 | 0 | 4 |
| Community or local organisations | 4 | 11 | 2 | 17 |
| Government and NDPB | 4 | 3 | 4 | 11 |
| Landowner | 7 | 17 | 5 | 29 |
| Private sector organisations | 5 | 5 | 4 | 14 |
| Representative bodies, associations or unions | 5 | 13 | 4 | 22 |
| Third sector or campaign group | 2 | 20 | 6 | 28 |
| | | | | |
| Total organisations | **28** | **72** | **25** | **125** |
| **% of organisations** | **22%** | **58%** | **20%** | |
| Individuals | **117** | **179** | **35** | **331** |
| **% of individuals** | **35%** | **54%** | **11%** | |
| All respondents | **145** | **251** | **60** | **456** |
| **% of all respondents** | **32%** | **55%** | **13%** | |

A majority of respondents, 55% of those answering the question, did not agree that only constituted organisations that have a connection to the local area, or the natural environment should be able to report breaches of the LRRS.

In their further comments, it was clear that some respondents disagreed because they thought that everyone should be able to report breaches of the LRRS, and others because they thought that the proposed list is too widely drawn. Respondents taking the former position tended to disagree at 5(b)(i) and then agree or not know at the following three questions. Respondents taking the latter view typically disagreed at all four elements of 5(b).

**Q5 (b)(ii)** Should these constituted organisations have a remit on:

- Community?
- Charity?
- Public service?

Responses to Question 5(b)(ii) by respondent type are set out in Tables 10 - 12 below.

**Table 10**

| **Question 5(b)(ii)** Should these constituted organisations have a remit on community? | | | | |
|---|---|---|---|---|
| | **Agree** | **Disagree** | **Don't know** | **Total** |
| Organisations: | | | | |
| Academic group or think tank | 3 | 1 | 0 | 4 |
| Community or local organisations | 10 | 1 | 1 | 12 |
| Government and NDPB | 6 | 1 | 2 | 9 |
| Landowner | 8 | 16 | 5 | 29 |
| Private sector organisations | 5 | 3 | 5 | 13 |
| Representative bodies, associations or unions | 8 | 6 | 4 | 18 |
| Third sector or campaign group | 15 | 1 | 5 | 21 |
| | | | | |
| Total organisations | **55** | **29** | **22** | **106** |
| **% of organisations** | **52%** | **27%** | **21%** | |
| Individuals | **213** | **42** | **33** | **288** |
| **% of individuals** | **74%** | **15%** | **11%** | |
| All respondents | **268** | **71** | **55** | **394** |
| **% of all respondents** | **68%** | **18%** | **14%** | |

**Table 11**

| **Question 5b(ii)** – Should these constituted organisations have a remit on charity? | | | | |
|---|---|---|---|---|
| | **Agree** | **Disagree** | **Don't know** | **Total** |
| Organisations: | | | | |
| Academic group or think tank | 3 | 1 | 0 | 4 |
| Community or local organisations | 10 | 1 | 1 | 12 |
| Government and NDPB | 4 | 2 | 3 | 9 |
| Landowner | 5 | 20 | 4 | 29 |
| Private sector organisations | 3 | 5 | 5 | 13 |
| Representative bodies, associations or unions | 6 | 8 | 4 | 18 |
| Third sector or campaign group | 15 | 1 | 5 | 21 |
| | | | | |
| Total organisations | **46** | **38** | **22** | **106** |
| **% of organisations** | **43%** | **36%** | **21%** | |
| Individuals | **164** | **57** | **58** | **279** |
| **% of individuals** | **59%** | **20%** | **21%** | |
| All respondents | **210** | **95** | **80** | **385** |
| **% of all respondents** | **55%** | **25%** | **21%** | |

Percentages may not sum to 100% due to rounding

**Table 12**

| **Question 5b(ii)** – Should these constituted organisations have a remit on public service? | | | | |
|---|---|---|---|---|
| | **Agree** | **Disagree** | **Don't know** | **Total** |
| Organisations: | | | | |
| Academic group or think tank | 3 | 1 | 0 | 4 |
| Community or local organisations | 10 | 1 | 1 | 12 |
| Government and NDPB | 5 | 1 | 3 | 9 |
| Landowner | 8 | 15 | 6 | 29 |
| Private sector organisations | 5 | 3 | 5 | 13 |
| Representative bodies, associations or unions | 7 | 5 | 5 | 17 |
| Third sector or campaign group | 15 | 1 | 5 | 21 |
| | | | | |
| Total organisations | **53** | **27** | **25** | **105** |
| **% of organisations** | **50%** | **26%** | **24%** | |
| Individuals | **184** | **45** | **50** | **279** |
| **% of individuals** | **66%** | **16%** | **18%** | |
| All respondents | **237** | **72** | **75** | **384** |
| **% of all respondents** | **62%** | **19%** | **20%** | |

Percentages may not sum to 100% due to rounding

With respect to the remit of constituted organisations, the level of agreement varied from 68% for communities, 62% for public sector, and 55% for charities. However, in a large majority of cases, respondents who answered all three elements gave the same answer in each case, with fewer than 1 in 5 respondents having mixed views on the different remits.

**Please provide some reasons for your answers and any additional suggestions**

Around 305 respondents provided a comment at Question 5(b).

General comments included that it will be important to set out the respective roles of a reporting body and the regulating body and to define lines of communication between them. Otherwise, it was suggested there is a risk that the reporting body could be seen as the regulator.

**Only constituted organisations that have a connection to the local area or the natural environment should be able to report breaches of the LRRS**

Some respondents found the phrase 'constituted organisations that have a connection to the local area or the natural environment' unclear and there were requests for more detailed explanation or examples with respect to:

- How a 'constituted organisation' would be defined?
- What 'connection to the local area' would mean in practice?

With reference to the former it was suggested that roles and relationships should be clearly defined in writing.

With reference to the latter, it was suggested a connection test must be both clear and certain – for example by reference to the domicile or registration address of an organisation with a connection to the local area.

**Constituted organisations**

**Reasons for limitation to constituted organisations**

Some respondents who thought that there should be no legal duty agreed that, if the Scottish Government *does* introduce such a duty, then only properly constituted organisations should be able to report an alleged breach.

It was also argued that restricting the ability to report breaches will be important to:

- Limit potential for vexatious complaints.
- Generate properly considered and collated complaints rather than more numerous individual ones.
- Ensure those making a complaint understand both the role of the LRRS and their own role in reporting a potential breach.

It was suggested that a concerned individual could approach an appropriate organisation to take a complaint forward on their behalf.

### Reasons against limitation to constituted organisations

Some respondents argued that the LRRS should remain on a voluntary basis and hence that nobody should report breaches.

A very different perspective was that there should be no restrictions on who can report a breach, with respondents arguing that anyone should be able to do so or specifying that this should include individuals, any interested bodies or any type of organisation. Reasons given in support of this position included that:

- The consultation document does not provide a justification for restricting complaints to constituted organisations.
- Those most impacted by breaches should be able to report them and that the proposed criteria could exclude many reasonable sources of complaint.
- A right for individuals to report breaches would avoid the need for members of community councils to get involved in local disputes and that bodies such as such as community councils can come under pressure from landowners not to take action.
- There may not be any constituted groups in the area or such organisations may either not have capacity or not consider a potential breach important enough to submit a report.
- A requirement to be a constituted organisation risks excluding many of the communities most impacted by irresponsible land management while well-organised, well-resourced communities may benefit from the legislation.
- Tenants, landlords and other landowners might also wish to report a breach but not be a member of an appropriate organisation.
- There may be an equalities issue if access to reporting of breaches is only available to organisation members.

Other suggestions included that reporting breaches should be open to individuals resident within the landholding, or within a defined geographical community adjacent to the landowning. If reporting were to be restricted to organisations, it was argued that a clear route should be provided such that individual complaints can be directed via appropriate bodies.

Some respondents argued that there should be a facility for reporting to be anonymous or for whistle-blower protections, citing concerns around potential repercussions or pressure not to report breaches.

### Addressing vexatious complaints

The possibility of vexatious complaints was addressed by a range of respondents who often tended to one of two positions, either:

- That, as noted above, limiting the parties able to report breaches would help to reduce frivolous or vexatious reports; or
- That rather than allowing only certain parties to report breaches, reporting should be evidence based, and that that the body responsible for investigating

complaints should have both procedures and resources to dismiss spurious or vexatious complaints.

It was also argued that a mechanism is needed to provide redress for a landowner subject to repeated, unjustified complaints.

### Connection to the local area

Comments on a requirement for a connection to the local area included that some parts of the country are home to more numerous or active community groups than others, with an implication that landowners in these areas may be subject to a greater number of complaints.

### Reasons in favour of limitation to the local area

Reasons in favour of a requirement for a local connection included that it seems fair that local complaints should be addressed by local organisations, which will be well placed to understand local issues.

### Reasons against limitation to the local area

Reasons against such a limitation included that wider communities of interest (for example those with an interest in the outdoor access code) would be excluded and that communities of place may find it difficult to make complaints about large landowners. It was also argued that:

- Many of the proposals in the consultation relate to land management in the national interest, so wider reporting would be appropriate.
- The capacity for land management practices to impact environmental conditions well beyond the immediate locality means that anyone who is aware of a breach should be able to pursue a complaint without needing to demonstrate a connection to the local area.

It was also suggested that there could be a role for a national organisation to work with or support local organisations if they are not constituted.

### Connection to the natural environment

### Reasons for a connection to the natural environment

There was agreement that a constituted organisation with a connection to the natural environment should be able to report breaches, and an assumption that this would include national environmental groups in the broadest sense. Reporting of breaches by natural environment stakeholders was also seen as fair in light of the requirement for land management in the national interest.

### Reasons against a connection to the natural environment

However, other respondents argued that this provision is too widely drawn or disproportionate, citing the implication that any national organisation with a connection to the natural environment would be free to report perceived LRRS breaches anywhere in the country. It was argued that this would be at odds with the previous requirement for a connection to the local area, and that complaints by

national organisations may not be in line with the objectives of the local community, with a risk that constituted community groups with a local interest could be side-lined.

Alternative suggestions included that organisations having only a connection to the natural environment should:

- Become involved solely at the request of local organisations.
- Report their concern to a public service organisation – such as the local authority – to decide whether a report is merited.

There were also views that the phrase 'connection to the natural environment' is vague and capable of wide interpretation and that it is unclear why such organisations should be privileged over other types of interest groups in terms of reporting breaches. It was also noted that it would be unusual to create a formal adjudication process where one type of campaigning group is given a standing that others do not have, and 'a constituted organisation with a sufficient interest in the matters complained of' was suggest as an alternative.

**A community remit**

Although constituted community organisations were seen well-placed to report breaches, it was also argued that rather than a limitation to constituted organisations, other community groups with an interest in land management should be able to report potential breaches. It was suggested that conditions similar to those that groups have to meet in order to be a 'community participation body' under the Community Empowerment (Scotland) Act could be used. Some respondents highlighted the importance of the views of the whole community being represented, with a suggestion that community groups should be provided with training in suitable processes to ensure that all voices are heard and that the will of the majority is not overridden by a minority. It was also argued that it would be preferable for only groups with an open membership structure to be eligible.

It was noted that some community groups do not have charitable status as they have a business development aim that precludes this.

Reasons that respondents thought community organisations should not be empowered to report LRRS breaches included that they may not be representative of the majority view. In addition, one respondent reported their own experience within a small community of multiple groups with differing aims and objectives, all purporting to represent the community.

Other potential concerns included that:

- Groups may have limited capacity or relevant knowledge.
- The role may conflict with an organisation's permitted remit (for example the status under which a community trust was licensed).
- Groups may be concerned that this responsibility could impact relationships with local landowners or may be reluctant to oppose the local landowner.

- Community led organisations may themselves be landowners and should not be exempt from scrutiny.

### A charity remit

Some respondents raised concerns about the specific agendas that some charities have, including arguments that these may run counter to legitimate land practices or may be to the detriment of the wider social or economic interests of the community. Other respondents, while supporting their involvement, argued charities should be moderated in some way or should have a lesser status than local community groups. It was also argued that many charities have 'single-tier' governance structures which do not require the Trustees to be accountable to anyone other than themselves.

There was also a view that charities could have an important role, particularly where rural communities feel unable to speak out against large landowners or, along with public bodies, could be involved in the case of remote estates with no associated communities.

### A public service remit

Relatively few respondents commented specifically on the option of a public service remit.

Points raised in support of a role in reporting LRRS breaches included that this seems logical in view of the policy focus on a just transition and delivery of public benefits. A small number of respondents argued that constituted organisations with a public service remit should be the only means of reporting complaints, or that other organisations should report complaints via a public sector body.

An alternative perspective was that public sector bodies already have protocols in place for controlling land management and should not have an alternative route for so doing, including because this could be used for political purposes.

### Types of organisation that are missing

As noted above, communities of interest rather than of place were highlighted as currently excluded and there were suggestions that organisations with interests in public access, Scottish bodies who are on the National Access Forum, and constituted recreational groups should be able to report breaches. Other suggested additions included:

- Constituted organisations with responsibilities to the historic environment.
- Housing associations, if they do not fall into one of the existing categories.
- Non-governmental organisations (NGOs), many of which are companies rather than charities. It was also noted that these may also be large landowners and that new powers should allow for this complexity. An alternative view was that, like charities, some NGOs have their own agendas that may run counter to some legitimate land practices.

**Q5(c)** Do you think the responsibility for investigating and dealing with complaints should sit with:

- The Scottish Government?
- A public body (such as the Scottish Land Commission)?

Responses to Question 5(c) by respondent type are set out in Tables 13 and 14 below.35

**Table 13**

**Question 5(c)** – Do you think the responsibility for investigating and dealing with complaints should sit with the Scottish Government?

| | Yes | No | Don't know | Total |
|---|---|---|---|---|
| Organisations: | | | | |
| Academic group or think tank | 0 | 1 | 2 | 3 |
| Community or local organisations | 2 | 8 | 5 | 15 |
| Government and NDPB | 0 | 5 | 3 | 8 |
| Landowner | 2 | 26 | 5 | 33 |
| Private sector organisations | 1 | 10 | 2 | 13 |
| Representative bodies, associations or unions | 4 | 15 | 4 | 23 |
| Third sector or campaign group | 3 | 12 | 8 | 23 |
| | | | | |
| Total organisations | **12** | **77** | **29** | **118** |
| **% of organisations** | **10%** | **65%** | **25%** | |
| Individuals | **96** | **125** | **59** | **280** |
| **% of individuals** | **34%** | **45%** | **21%** | |
| All respondents | **108** | **202** | **88** | **398** |
| **% of all respondents** | **27%** | **51%** | **22%** | |

A small majority of respondents, 51% of those answering the question, did not think the responsibility for investigating and dealing with complaints should sit with the Scottish Government. Of the remaining respondents, 27% thought responsibility should sit with the Scottish Government and 22% did not know.

**Table 14**

| **Question 5(c)** – Do you think the responsibility for investigating and dealing with complaints should sit with a public body (such as the Scottish Land Commission)? | | | | |
|---|---|---|---|---|
| | **Yes** | **No** | **Don't know** | **Total** |
| Organisations: | | | | |
| Academic group or think tank | 2 | 0 | 2 | 4 |
| Community or local organisations | 15 | 0 | 3 | 18 |
| Government and NDPB | 6 | 1 | 3 | 10 |
| Landowner | 4 | 23 | 5 | 32 |
| Private sector organisations | 4 | 7 | 2 | 13 |
| Representative bodies, associations or unions | 10 | 7 | 6 | 23 |
| Third sector or campaign group | 12 | 4 | 6 | 22 |
| | | | | |
| Total organisations | **53** | **42** | **27** | **122** |
| **% of organisations** | **43%** | **34%** | **22%** | |
| Individuals | **217** | **63** | **43** | **323** |
| **% of individuals** | **67%** | **20%** | **13%** | |
| All respondents | **270** | **105** | **70** | **445** |
| **% of all respondents** | **61%** | **24%** | **16%** | |

Percentages may not sum to 100% due to rounding

In contrast to the question about the Scottish Government, a majority, 61% of those answering the question thought responsibility should sit with a public body. Of the remaining respondents, 24% disagreed and 16% did not know. Landowners and Private sector organisations respondents were the only groups in which a majority disagreed.

A small number of respondents answered 'Yes' to both questions.

**Please provide some reasons for your answers and any additional suggestions.**

Around 320 respondents provided a comment at Question 5(c). In addition to these comments, the analysis below includes suggestions made at Question 5(a). Although the consultation paper does not say so, many respondents clearly expected that the 'public body' in question would be the SLC and framed their answer in this context.

### Reasons for responsibility to sit with the Scottish Government rather than a public body

As noted above, this was very much a minority position, particularly among organisational respondents. Reasons given in favour of the Scottish Government taking responsibility for investigating complaints included that, as an elected body, it is more accountable, and that a centralised approach would ensure consistency. It

was also argued that the Scottish government would have the necessary powers to enforce action. Some respondents suggested that although ultimate responsibility and oversight should rest with the Scottish Government, they would support delegation of responsibilities to an independent public body or ombudsman.

### Reasons for responsibility to sit with a public body rather than the Scottish Government

Reasons that respondents considered responsibility should sit with a public body included that distance should be maintained between legislator and enforcer and that, where Ministers have expressed policy objectives in respect of the proposed Bill, it would be difficult to overcome the perception of possible bias. It was also argued that:

- The Scottish Government might be the subject of a complaint in relation to land for which it is responsible.
- Enforcement by a public body would allow delegation upwards in an appeal process.

A small number of respondents noted that while supporting use of an existing public body, they would not support creation of a new public body to fulfil the role.

### Both, either and neither

Some respondents – largely Individuals – suggested that both the Scottish Government and a public body should be responsible for investigating complaints, potentially with some decisions being referred to the Scottish Government. Others indicated that either the Scottish Government or a public body would be acceptable, sometimes referencing what they saw as the important characteristics of any organisation fulfilling the role.

In contrast, a number of respondents including Landowner and Private sector respondents argued that neither the Scottish Government nor a public body should be responsible. Reasons given included fundamental opposition to the concept of a duty to comply with the LRRS, with a view that the proposed approach is disproportionate. Respondents taking this view often anticipated that the public body in question would be the SLC, and argued that neither Scottish Government nor SLC can be seen as independent, including because the SLC advises the Scottish Government on land reform and that it would not be appropriate for any organisation to both set the principles of land use and also be the arbiter of complaints – or to be ‘judge and jury’.

There was also a view that, since it is not yet clear what the body in question would be tasked with adjudicating or what its powers would be, it is not possible to know what sort of body would be appropriate.

### Characteristics of the organisation charged with investigating complaints

Irrespective of their answers at the closed questions, many respondents identified similar characteristics as important for any organisation made responsible for

investigating complaints, most frequently that it should be independent and should be fair or impartial.

Other aspects identified included that the organisation should be:

- Transparent and consistent.
- Accountable.
- Adequately resourced, including to provide decisions without undue delays.
- Given appropriate powers to enforce its judgements.
- Provided with staff who understand the importance of healthy ecosystems.
- Compliant with the right to a fair trial under ECHR Article 6.
- Required to make information on complaints/breaches available to other relevant public bodies.

Some respondents expressed views on how a body should be made up, including that it should include a range of interests with representation of landowners, farmers, environmental and community groups all suggested.

**Points raised with reference to the SLC**

As noted above, many respondents apparently expected that the SLC would be the relevant public body charged with investigating complaints, giving their reasons why this would be appropriate or otherwise.

**SLC would be an appropriate body**

A range of respondents including Community or local organisation, Representative body and Third sector respondents saw the SLC as the appropriate body to take responsibility for investigating complaints. Reasons for taking this view included that:

- Having set up the LRRS the SLC would be best placed to investigate complaints.
- It will have appropriate experience and expertise to handle complaints, including because it undertakes a similar role in relation to the work of the TFC.
- As a national body, it would be well positioned to take an overview and investigate alleged breaches in a consistent way.
- Responsibility for investigating complaints could be in a separate section within the SLC.

It was also suggested that, in order to fulfil such a role, the SLC would need both additional resources and an altered remit, with extended powers to enable enforcement. It was thought likely that this would require amending the SLC's founding legislation in the Land Reform (Scotland) Act 2016.

While seeing the SLC as the best choice to assume responsibility for investigating complaints respondents also suggested that:

- It might be appropriate for more severe enforcement actions (such as compulsory purchase of land) to be sanctioned by the Scottish Government.
- Environmental Standards Scotland should also have a statutory role in checking overall compliance mechanisms and undertaking periodic reviews of the system.

**SLC would not be an appropriate body**

Respondents who argued that the SLC should not investigate complaints included some Landowners, Private sector organisations, Representative bodies and Third sector respondents. Reasons for this position included that:

- The role of the SLC (as set out in Land Reform (Scotland) Act 2016) is to advise the Scottish Government, provide guidance and best practice notes, and to provide recommendation on law and policy, and that this would not be compatible with a regulatory role.
- An extension of SLC responsibilities to include investigation and enforcement would be a significant change and, without clear divisions of powers and responsibilities, the governance of land could become unnecessarily complex. It was suggested that before proceeding, the SLC would need to be restructured in a way that would retain the confidence of all stakeholders.
- The SLC is funded by the Scottish Government, and not sufficiently independent of the Scottish Government, and that some landowners do not have confidence its impartiality.
- The proposed change could have a negative impact on other work the SLC do with landowners, or that a regulatory role may reduce its ability to campaign effectively for policy change.

**Alternative suggestions**

While many respondents commented on the suitability, or otherwise, of the SLC as a body to enforce the LRRS, a range of other suggestions was also made.

**Other bodies that could be responsible for investigating complaints**

In terms of bodies that might assume the role or be part of the process, suggestions included:

- A new body that sits between the Scottish Government and the SLC.
- A dedicated, independent panel, with representation from across the different sectors to ensure an informed and balanced view is taken.
- The merged Scottish Land Court/ Lands Tribunal for Scotland, or an environmental court or tribunal with appropriate expertise which, some respondents suggested, could be created by expanding the jurisdiction of the Scottish Land Court.
- Community-level local democratic measures (such as municipal-scale Citizens' Assemblies) ultimately reaching a Scottish or international environmental court.

- Local authorities, with the advantage of being democratically accountable and where implementation of planning policy or the outdoor access code could be used as models. Specific suggestions included that after a local authority decision, an appeal could be made to the environmental court or tribunal, and that a right of planning appeal for community groups could be introduced with respect to land management permissions granted through the planning system. However, there was also a view that planning authorities should not be expected to commit to additional duties or that they would not have the capacity to do so without significant additional resources.
- The Reporters system could be adapted to deal with complaints.
- Other land-based public bodies with existing regulatory responsibilities. It was suggested NatureScot or SEPA could be strengthened, or the role of the Rural Payments and Inspections Division could be expanded.

**Other potential models**

With respect to other potential models for regulation, suggestions included the TFC Codes of Practice. It was noted that the TFC Codes of Practice provide an opportunity for both sides of a case to be heard and recommendations to be made, but without imposing fines, because of concerns that this would not be compatible with ECHR Article 6. It was argued that a mechanism similar to the TFC Codes of Practice would be a more proportionate approach should a duty to comply with the LRRS be introduced.

Other suggestions for potential models included:

- The Office of the Scottish Charity Regulator.
- Royal Institution of Chartered Surveyors (RICS) Dispute Resolution Service.
- Food Standards Scotland.

**Q5(d)** Should the potential outcome from an investigation of a breach be:

- Recommendation for a mediation process?
- Recommendation on how the landowner or governing body could comply with the Codes of Practice/protocols?
- A direction to the landowner or governing body to implement changes to operational and/or management practices?

Responses to Question 5(d) by respondent type are set out in Tables 15 - 17 below.

**Table 15**

**Question 5(d)** – Should the potential outcome from an investigation of a breach be Recommendation for a mediation process?

| | Yes | No | Don't know | Total |
|---|---|---|---|---|
| Organisations: | | | | |
| Academic group or think tank | 2 | 1 | 1 | 4 |
| Community or local organisations | 12 | 4 | 1 | 17 |
| Government and NDPB | 5 | 0 | 3 | 8 |
| Landowner | 27 | 4 | 2 | 33 |
| Private sector organisations | 7 | 3 | 3 | 13 |
| Representative bodies, associations or unions | 13 | 2 | 6 | 21 |
| Third sector or campaign group | 21 | 1 | 3 | 25 |
| | | | | |
| Total organisations | **87** | **15** | **19** | **121** |
| **% of organisations** | **72%** | **12%** | **16%** | |
| Individuals | **191** | **73** | **31** | **295** |
| **% of individuals** | **65%** | **25%** | **11%** | |
| All respondents | **278** | **88** | **50** | **416** |
| **% of all respondents** | **67%** | **21%** | **12%** | |

Percentages may not sum to 100% due to rounding

**Table 16**

| **Question 5(d)** – Should the potential outcome from an investigation of a breach be Recommendation on how the landowner or governing body could comply with the Codes of Practice/protocols? | | | | |
|---|---|---|---|---|
| | **Yes** | **No** | **Don't know** | **Total** |
| Organisations: | | | | |
| Academic group or think tank | 3 | 1 | 0 | 4 |
| Community or local organisations | 10 | 5 | 2 | 17 |
| Government and NDPB | 7 | 0 | 2 | 9 |
| Landowner | 28 | 3 | 2 | 33 |
| Private sector organisations | 9 | 3 | 1 | 13 |
| Representative bodies, associations or unions | 15 | 1 | 5 | 21 |
| Third sector or campaign group | 22 | 1 | 2 | 25 |
| | | | | |
| Total organisations | **94** | **14** | **14** | **122** |
| **% of organisations** | **77%** | **11%** | **11%** | |
| Individuals | **216** | **61** | **24** | **301** |
| **% of individuals** | **72%** | **20%** | **8%** | |
| All respondents | **310** | **75** | **38** | **423** |
| **% of all respondents** | **73%** | **18%** | **9%** | |

Percentages may not sum to 100% due to rounding

**Table 17**

| **Question 5(d)** – Should the potential outcome from an investigation of a breach be a direction to the landowner or governing body to implement changes to operational and/or management practices? | | | | |
|---|---|---|---|---|
| | **Yes** | **No** | **Don't know** | **Total** |
| Organisations: | | | | |
| Academic group or think tank | 4 | 0 | 0 | 4 |
| Community or local organisations | 17 | 0 | 1 | 18 |
| Government and NDPB | 5 | 1 | 2 | 8 |
| Landowner | 7 | 21 | 5 | 33 |
| Private sector organisations | 8 | 4 | 1 | 13 |
| Representative bodies, associations or unions | 8 | 5 | 8 | 21 |
| Third sector or campaign group | 19 | 1 | 4 | 24 |
| | | | | |
| Total organisations | **68** | **32** | **21** | **121** |
| **% of organisations** | **56%** | **26%** | **17%** | |
| Individuals | **266** | **47** | **17** | **330** |
| **% of individuals** | **81%** | **14%** | **5%** | |
| All respondents | **334** | **79** | **38** | **451** |
| **% of all respondents** | **74%** | **18%** | **8%** | |

Percentages may not sum to 100% due to rounding

A majority of those who answered the questions agreed with each of the three potential outcomes. Although overall approval levels were relatively similar between the three options, the patterns within each option were rather different:

- A recommendation for mediation had the lowest level of support overall with approval from 67% of respondents. Organisations were more likely to agree than individuals at 72% and 65% respectively, with a majority of all organisational groups in agreement.
- A recommendation on how to comply received higher overall support at 73% approval, again with greater agreement among organisations than individuals at 77% and 72% respectively, and again with a majority of each organisational group in agreement.
- A direction to implement change had the highest level of support overall, but saw the greatest divergence between views of individuals and organisations – only 56% of organisations agreed, in contrast to 81% of individual respondents. A majority of each organisational group agreed, with the exception of Landowner respondents where a clear majority disagreed.

**Please provide some reasons for your answers and any additional suggestions.**

Around 310 respondents provided a comment at Question 5(d), with some again stating their opposition to imposing a duty to comply with the LRRS in its current form and hence to any investigation.

Other general comments included that:

- There is often no single right answer to land management and a variety of models may be appropriate.
- Practical advice should be provided before moving to any enforcement measures.
- There should be no recommendation from an investigation of a breach, only from a finding of breach.
- Application of the various outcomes should be both transparent and consistent.
- The process must include a right of appeal.

The importance of effective co-ordination of statutory management obligations across Government departments was also highted, with references to alignment with requirements from NatureScot or SEPA and to interaction with other public permissions such as planning consents, forestry grants and agricultural payments.

With respect to the wording of the options, there were differing views on use of 'recommendations' – both at it this requires additional weight and should not be viewed as voluntary, and that 'recommendations' should not be enforced. One respondent noted that the legal consequences of failing to follow recommendations would have a direct bearing on their effectiveness and that, without information on what these consequences would be, they were unable to comment on the suitability of the process.

### Yes to all options

Around a third of respondents answered 'yes' to all three options, with comments including that these are useful, reasonable, or proportionate. Together, the three options were seen as providing for a flexible approach, with a range of outcomes available to deal with breaches of differing severity, and for one-off occurrences or more regular patterns of behaviour. It was also noted that they provide a staged process that can be escalated, although there were concerns about the time required to work through a number of stages of an investigation, with suggestions that further information on timescales is required or that fixed timescales should be set.

### No to all options

A small number of respondents answered 'no' to all three options, including because there should be no state intervention and no investigation, but also because more decisive penalties should be enforced. It was also suggested that, as

drafted, the outcomes suggest that the landowner will always be deemed to be in the wrong which does not give the impression the process is open-minded and fair.

### Recommendation for a mediation process

### Reasons in favour

Some respondents felt that mediation could be useful in some cases, for example if the issue relates to the relationship with the community or a neighbour, and that there should be an opportunity for alleged breaches to be resolved as amicably as possible before any escalation. It was also seen as a proportionate response and one that could also be used at an earlier stage, for example as part of the investigation process rather than an outcome to it.

The TFC mediation scheme for handling complaints and resolving disputes was cited as a potential model.

### Reasons against

However, it was also noted that, in many cases, there will be no obvious second party when a breach is alleged and that mediation would not be appropriate, for example, in the context of an alleged breach of a statutory duty. It was also suggested that mediation is less likely to be effective if the power lies predominantly with one party. Other concerns included that mediation seems too much like the existing voluntary approach to the LRRS and that it could be used as a delaying tactic, wasting both time and resources.

### Recommendation on how the landowner or governing body could comply with the Codes of Practice/protocols

### Reasons in favour

Some respondents saw advice or recommendations from a regulatory body and the opportunity to take corrective action as more proportionate than more penalties, with the TFC approach again referenced.

Other views included that recommendations on how to comply are likely to be appropriate for more minor or accidental breaches, that a recommendation should be sufficient for a responsible landowner to take appropriate action and that landowners would need to be given time to rectify the situation before moving to formal direction. As with mediation, there was a suggestion that advice on how to comply should be part of the investigation process rather than an outcome of the process.

### Reasons against

The possibility that advice may be ignored was the most frequent reason for opposing this option. Again, as with respect to mediation, there were views that providing advice seems too close to the existing voluntary approach and could result in time and resources being wasted. It was also suggested to be unenforceable.

### A direction to the landowner or governing body to implement changes to operational and/or management practices

General comments included that more clarity is needed on what a 'direction' would mean, with a view that such a direction should be made by a body with an appropriate level of ecological understanding. It was also suggested that:

- The potentially serious consequences arising from failure to comply with a direction provide a reason for careful consideration of the membership and training of any independent adjudication tribunal.
- Power to issue a direction should only be available to a properly constituted tribunal with judicial powers.
- Where a direction is made, the availability of grants or subsidies to assist compliance would be helpful.

### Reasons in favour

Some respondents who agreed with this option argued that it is necessary if the legislation is to have real effect or that, without 'teeth', there is a risk it will be ignored. Other views included that a direction to implement changes would be appropriate for more serious breaches or as a last resort when more constructive approaches have not worked and remedial action has not been taken.

Some respondents who favoured this option but not the other two argued that landowners should already know their responsibilities and that scope for quick enforcement action is now required. It was also noted that a landowner could be directed to one of the other two options – for example a direction to engage in mediation.

### Reasons against

Some respondents argued that the LRRS lacks clarity or is too subjective and poorly understood by land managers to underpin a direction to a landowner. Potential difficulties were also highlighted with respect to:

- Whether a regulatory body might be reluctant to use such powers.
- How a landowner could be forced to implement changes to operational or management practices if these were otherwise not illegal activities.
- Issues for a statutory undertaker if a direction conflicted with their statutory obligations, and for any landowner if the direction related to operational practices beyond their control or responsibility.

### Other suggested outcomes

It was noted that although the consultation paper suggests that the outcome of an investigation could be taken into account in any subsequent public interest test, views on this possibility are not being sought.

Respondents also suggested other potential outcomes including:

- That no breach has occurred, or that the complaint is without merit. It was argued that there must be powers to dismiss unsubstantiated complaints without full investigation.
- Advice from the regulatory authority, as in a TFC breach.
- Fines or application of a higher taxation rate.
- Disposal of assets by way of a Compulsory Sale Order with Ministerial sign-off.

Enforcement powers for a breach are discussed further at the next question.

**Q5(e)** Should the enforcement powers for a breach be:

- Financial penalties
- 'Cross-compliance' penalties

Responses to Question 5(e) by respondent type are set out in Tables 18 and 19 below.

**Table 18**

| **Question 5(e)** – Should the enforcement powers for a breach be financial penalties? | | | | |
|---|---|---|---|---|
| | **Yes** | **No** | **Don't know** | **Total** |
| Organisations: | | | | |
| Academic group or think tank | 2 | 1 | 1 | 4 |
| Community or local organisations | 16 | 0 | 2 | 18 |
| Government and NDPB | 6 | 1 | 2 | 9 |
| Landowner | 5 | 22 | 4 | 31 |
| Private sector organisations | 5 | 5 | 4 | 14 |
| Representative bodies, associations or unions | 8 | 7 | 6 | 21 |
| Third sector or campaign group | 15 | 2 | 8 | 25 |
| | | | | |
| Total organisations | **57** | **38** | **27** | **122** |
| **% of organisations** | **47%** | **31%** | **22%** | |
| Individuals | **235** | **58** | **33** | **326** |
| **% of individuals** | **72%** | **18%** | **10%** | |
| All respondents | **292** | **96** | **60** | **448** |
| **% of all respondents** | **65%** | **21%** | **13%** | |

Percentages may not sum to 100% due to rounding

A majority of respondents, 65% of those who answered the question, thought that enforcement powers for a breach should be financial penalties. However, while 72% of individual respondents agreed, this dropped to only 47% of organisations: while a clear majority of Community, Government and NDPB and Third sector

respondents agreed, a substantial majority of Landowner respondents were against the proposal, with both Private sector and Representative body respondents evenly divided.

**Table 19**

| **Question 5(e)** – Should the enforcement powers for a breach be 'cross-compliance' penalties? | | | | |
|---|---|---|---|---|
| | **Yes** | **No** | **Don't know** | **Total** |
| Organisations: | | | | |
| Academic group or think tank | 2 | 1 | 1 | 4 |
| Community or local organisations | 17 | 0 | 1 | 18 |
| Government and NDPB | 6 | 1 | 2 | 9 |
| Landowner | 6 | 24 | 2 | 32 |
| Private sector organisations | 4 | 5 | 5 | 14 |
| Representative bodies, associations or unions | 10 | 5 | 5 | 20 |
| Third sector or campaign group | 19 | 1 | 5 | 25 |
| | | | | |
| Total organisations | **64** | **37** | **21** | **122** |
| **% of organisations** | **52%** | **30%** | **17%** | |
| Individuals | **207** | **48** | **61** | **316** |
| **% of individuals** | **66%** | **15%** | **19%** | |
| All respondents | **271** | **85** | **82** | **438** |
| **% of all respondents** | **62%** | **19%** | **19%** | |

Percentages may not sum to 100% due to rounding

A majority of respondents, 62% of those who answering the question, agreed that there should be cross-compliance penalties, again with higher approval among individuals than organisational respondents, at 66% and 52% respectively. There was a similar pattern of agreement and disagreement between organisational groups as with respect to financial penalties, apart from a greater degree of support from Representative body respondents.

It should also be noted that a majority of respondents gave the same answer at both questions.

**Please provide some reasons for your answers and any additional suggestions.**

Around 295 respondents provided a comment at Question 5(e).

General comments included views that penalties should only be imposed with judicial authority or only as a last resort, after other approaches have failed, and that time to implement corrective measures should be allowed before penalties are imposed. Practical examples of where penalties might apply were requested.

### Agreement with either penalty

Some respondents took the view that either penalty is acceptable, or that whichever is more appropriate in a particular situation should be applied. For example, it was suggested that agricultural businesses could face cross-compliance penalties and non-agricultural businesses financial penalties.

Some respondents argued that the bar should be set high, with penalties applied in response to a flagrant breach, repeated breaches or where there is both lack of compliance and lack of effort to comply. Others suggested that serious and repeated breaches or breaches where financial penalties are of limited impact should attract additional penalties as outlined below.

### Opposition to any penalties

Respondents from the Landowner group were among those who argued that either penalty would be a disproportionate response for failing to adhere to the LRRS, particularly as the LRRS and protocols were produced as guidance documents and are open to differing interpretation. It was also suggested that:

- LRRS protocols continue to evolve, and later versions may present different recommendations, creating potential for misunderstanding and disputes.
- ECHR implications in relation to the imposition of financial penalties may lead to legal challenges.
- Investment and work in fragile communities could be impacted.
- Penalties that limit the ability to keep land in agricultural production may have unintended consequences.

### Financial penalties

### Reasons in favour

Reasons given in support of financial penalties included that this would be a simple option and that not all landowners are in receipt of subsidies.

The most frequently made point concerned the level at which such penalties should be set, and that this should be sufficiently high to act as a meaningful deterrent, to avoid a situation where wealthy landowners can view paying a fine as a cost of doing business. It was also suggested that the penalty should be proportionate to the severity of a breach, with serious penalties for persistent breaches. With respect to how fines might be calculated suggestions included that they should be:

- A percentage of business income.
- Proportionate to the value of land owned.
- Appropriate to an individual landowner’s circumstances.

A small number of respondents suggested uses for money raised via financial penalties, including that funds could be used to support the compliance process, or to benefit local communities.

### Reasons against

Although in principle supportive of financial penalties, some respondents expressed doubt whether these could be set at high enough levels to have a significant deterrent effect for large-scale landowners.

It was also suggested that imposing financial penalties may be seen as a confrontational approach and, as noted above, may be subject to legal challenge. The subjective nature of criteria such as 'good stewardship of land' was also highlighted as being open to local interpretation, with the potential that landowners doing the same things in different places might be treated differently in response to complaints. While it was thought there may be scope for failure to comply with a specific protocol to attract a penalty, it was argued that further detail is required in order to make a judgement.

Specific issues were also raised for trusts if penalties were to be imposed on individual trustees rather than the trust itself, including a suggestion that people could be reluctant to become trustees. It was argued that while some trusts owning large-scale landholdings are likely to have professional advisors, those classed as large-scale because of aggregation of relatively small areas of land may not have access to such advice.

### Cross-compliance penalties

### Reasons in favour

It was argued that cross-compliance penalties would be simpler to apply and that using removal of subsidies to incentivise certain activities would be the best or most effective way to drive compliance. It was observed that cross-compliance penalties might prove a greater deterrent to breaching the LRRS for large-scale landowners, who may be in receipt of substantial financial subsidies, and could provide a powerful incentive to comply while still leaving individual land managers to choose what to do. 'Significant breaches', 'repeated infringements' and 'persistent non-compliance' were all suggested as potential causes for non-compliance penalties to be imposed, and it was argued that access to subsidies should be restored after action is taken to address the breach.

Other suggestions included that:

- Power to withhold agricultural support payments as a sanction for failing to comply with LRRS should be taken forward in the forthcoming Agriculture Bill.
- Access rights should be included in the LRRS, and access authorities should be empowered to pass details of obstructions to grant awarding bodies to withhold payment until the matter is resolved.
- Applications for any form of public subsidy should require a statement that the owner is complying with the LRRS, in a manner analogous to Fair Work commitments.

It was also noted that cross-compliance, enforced by penalties including withdrawal of subsidies, has been standard practice in farming and crofting since introduced by the EU in 2003.

**Reasons against**

An alternative perspective was that the proposed use of cross-compliance penalties would be a significant divergence from the purpose for which cross-compliance was designed – agricultural support with links to animal welfare, environment and human health. It was suggested the implications could include:

- Funds granted for a specific purpose under a particular set of conditions being withheld or recovered for another.
- Direct recovery of penalties 'by the backdoor' if funds due to the penalised party, but not yet paid, are withheld.
- More inspections, creating additional work and stress for land managers.

It was also noted that, unless embedded in agricultural policy there is no recourse to induce a cross compliance penalty for failure to comply with the LRRS.

Other potential reasons that it was thought cross-compliance penalties may not be effective included that:

- The scheme depends upon the occupier and not necessarily the landowner.
- Some landowners will receive limited public funding and others none at all.
- Subsidies are paid to encourage actions believed to be for public good, so their removal could be counter-productive.

**Additional penalties suggested**

In addition to comments on the two penalties proposed in the consultation paper, respondents argued for alternative or additional sanctions that might be imposed, with disposal of assets and/or compulsory sale the most frequently suggested. Some respondents proposed that land should be confiscated in extreme cases.

Other suggestions included:

- A trigger for Community Right to Buy.
- Temporary appointment of a factor to ensure that remediation and compliance measures are undertaken.
- Withdrawal or suspension of other consents and licences – for example shooting licences, felling licences and livestock movement licences relating to the landowner's business.
- Making non-compliance visible and publicly-known.
- Criminal prosecution or disqualification from land ownership.
- Direct intervention – for example to remove barriers and signs if public access is being unlawfully prevented.

**Question 6** – Do you think the proposal to make the Land Rights and Responsibility Statement and its associated protocols a legal duty for large-scale landowners would benefit the local community?

Responses to Question 6 by respondent type are set out in Table 20 below.

**Table 20**

**Question 6** – Do you think the proposal to make the Land Rights and Responsibility Statement and its associated protocols a legal duty for large-scale landowners would benefit the local community?

| | Yes | No | Don't know | Total |
|---|---|---|---|---|
| Organisations: | | | | |
| Academic group or think tank | 4 | 0 | 0 | 4 |
| Community or local organisations | 19 | 0 | 0 | 19 |
| Government and NDPB | 6 | 0 | 5 | 11 |
| Landowner | 5 | 17 | 10 | 32 |
| Private sector organisations | 6 | 5 | 2 | 13 |
| Representative bodies, associations or unions | 13 | 3 | 8 | 24 |
| Third sector or campaign group | 23 | 0 | 6 | 29 |
| | | | | |
| Total organisations | **76** | **25** | **31** | **132** |
| **% of organisations** | **58%** | **19%** | **23%** | |
| Individuals | **244** | **63** | **27** | **334** |
| **% of individuals** | **73%** | **19%** | **8%** | |
| All respondents | **320** | **88** | **58** | **466** |
| **% of all respondents** | **69%** | **19%** | **12%** | |

A majority of respondents, 69% of those answering the question, thought that making the LRRS a legal duty for large-scale landowners would benefit local communities. Of the remaining respondents, 19% did not think so and 12% did not know. Individuals were more likely to think the proposal would benefit the community than organisations, at 73% and 58% respectively. Landowners were the only group in which a majority did not agree.

**Please give some reasons for your answer.**

Around 285 respondents provided a comment at Question 6.

General comments included a query with respect to how a 'local community' could be defined or identified, particularly in sparely populated areas.

### Reasons that the community might benefit

Respondents suggested a range of ways in which a legal duty on large landowners would or could benefit the local community including that, on a general level,

improved compliance with the LRRS principles relating to communities should benefit these communities. It was also suggested that a legal duty could send a signal to landowners that the LRRS must be taken seriously and that interaction with the local community needs to be part of estate management good practice. Further, the complaints process will provide a mechanism for communities to ensure protocols and codes are followed.

Some respondents noted potential caveats, for example that they expected benefits to the community as long as the process is fair, transparent, and properly enforced, or that benefits will depend on the LRRS and protocols being strong enough and implemented effectively. One suggestion was that proposals could be strengthened by consideration of the Place Principle.

Some respondents anticipated better outcomes arising from improved landowner engagement with the local community and from greater community involvement in decisions about land. It was suggested that National Standards for Community Engagement should be referenced in the legislation. A number of Individual respondents described issues in their surrounding area over which the community currently has no influence, for example in relation to increasing areas of plantation forestry or lack of opportunity for housing development. It was reported that, at present, it can be particularly difficult for communities to communicate with landowners who do not live locally.

Increased transparency and accountability were also seen both as potential benefits or, as noted above, necessary conditions for communities to benefit. It was suggested there could be benefits in providing clarity around land management activity and responsibilities that is currently not available to communities and in allowing the community to understand how the area is being managed.

Among other suggested benefits were:

- Respecting relevant human rights in relation to land.
- More opportunities for local communities to lease, use or own buildings and land that can contribute to the community's wellbeing or sustainability.
- Opportunities for small-scale, environmentally friendly food production, allowing communities to have ownership over their own food, and increasing food supply resilience.
- Opportunities to engage with landowners to make the case for the development of more affordable housing or to support community ownership and community-led housing outcomes.
- Opportunities for improving biodiversity and other ecosystem services.
- Contributing to improvements in biodiversity and use of green space in urban areas.
- Helping to safeguard public access rights.
- Benefits in terms of well-being and cultural association.

It was suggested further consideration should be given to whether a local community could benefit from land that is subject to crofting tenure and where the rights over the land lie largely with the crofters. It was acknowledged that where land is common grazings, some LRRS obligations could benefit the local community.

### Reasons that the community might not benefit

It was observed that the extent to which a community might benefit from a legal duty being imposed will depend on whether the landowner is already meeting LRRS requirements on a voluntary basis.

It was also suggested that potential benefits could be influenced by:

- Whether there are any large landowners nearby. It was noted that fewer communities will benefit if the threshold is set too high and some respondents argued the duty should not be restricted to large-scale landowners.
- Proposed restrictions on who can report breaches.
- Limitations to processes for local democracy and for communities to engage with the contents of the statement/protocols in a meaningful way. It was suggested Citizens' Assemblies around land use and planning could be beneficial in this respect.
- A risk that, for some organisations, a disproportionate burden on volunteer managers could discourage volunteering and diminish community involvement.

It was also suggested that there is no benchmark against which benefits for the local community can be judged.

### Reasons the community is unlikely to benefit

Some respondents argued that there is evidence to suggest that a voluntary, guidance-led approach is working for both landowners and communities, or that introducing a legal duty could lead to a breakdown in the relationship between landowner and local community or could alienate landowners. Broader objections to use of the LRRS as the basis for a legal duty were also referenced, and it was suggested that communities could be harmed if investment decisions are delayed as a result. It was also argued that communities could be disadvantaged if disagreements within them allowed projects favoured by a majority to be frustrated.

### Other issues raised

Other issues raised with respect to potential community benefits included that, rather than pursuing the proposed approach, the Scottish Government should provide greater support for existing opportunities for communities to engage or more effective implementation of existing legislative powers. In particular, it was suggested that better resourcing of communities to prepare Local Community Plans would do more for community participation in decision making about land use in and around their communities. It was also suggested that:

- It would be useful for the Scottish Government to generate evidence that demonstrates the extent of failings of compliance with the existing LRRS protocols, by all types of rural landowners.
- While the Land Reform (Scotland) Act 2016 already provides a legal route to ensuring community engagement, research indicates this does not tend to be prioritised by new landowners or those embarking on significant land use change[8]. New landowners (or generations of family ownership) appear to prioritise commercial interests and estate financial viability, rather than maintaining relationships with local community members.

**Question 7** – Do you have any other comments on the proposal to make the Land Rights and Responsibility Statement and its associated protocols a legal duty for large-scale landowners?

Around 195 respondents answered Question 7.

As at earlier questions, some respondents argued that there should not be a legal duty, that the LRRS is too open to interpretation to be suitable for statutory enforcement, or that the current, guidance-based approach is proving effective. Rather than introducing a potentially adversarial approach that could reverse such progress, it was proposed that the Scottish Government should do more to support and incentivise land management that is consistent with the LRRS and its protocols. Specific suggestions included both that Regional Land Use Partnerships (RLUPs) should be better resourced and allowed to bed in before further land reform legislation is brought forward, and that RLUPs must do more to engage with all stakeholders.

It was also suggested that the Scottish Government should delay the proposals until the current review of the LRRS is complete, or should raise awareness and understanding of the LRRS before making changes to the current voluntary arrangements.

Concerns were also raised that placing an additional burden on landowners who are also private sector landlords could exacerbate loss of private rented sector properties in rural areas. It was argued that regulations should support compliance and avoid an additional burden on private landlords who may already be in a difficult financial position.

Also as at earlier questions, a number of respondents (including some who agreed with the principle of a statutory duty and some who did not) argued that a duty to comply with the LRRS should not be restricted to large-scale landholdings. It was also suggested that legal application of the LRRS should be extended to all relevant landowners through a consistent regulatory approach, or that the principles

[8] Understanding the impact of scale and concentration of land ownership: community perspectives from the south of Scotland. Report for the Scottish Government. Available online: https://www.hutton.ac.uk/sites/default/files/files/research/srp2016-21/The-impact-of-scale-and-concentration-community-perspectives-from-South-Scotland-Daniels-Creasey-McKee-Hutton-July-2022.pdf

of the LRRS should be incorporated in a new land tenure system. Another suggestion was levying a land value tax, with incentives for adopting desired approaches.

The need for clarification was also suggested with respect to:

- The contribution of the LRRS to meeting net zero.
- Whether LRRS compliance would be entirely distinct from other public consenting systems or be a part of those systems.
- How decisions on land management taken by tenants or partners, rather than the landowner would be addressed.

Respondents also raised a range of additional issues that they would like to see included or addressed more prominently – again in some cases reiterating points made at earlier questions. There were calls to:

- Reference recreational use and access by the public, or to require compliance with the Scottish Outdoor Access Code. It was argued that public access can have economic benefits to both estates and their local communities.
- Recognise the value of local food production and its role in a just transition and climate change.
- Include nature restoration goals for large-scale landowners. However, it was also noted that, without associated land management, rewilding can have other consequences – for example in limiting public access or compromising food security.
- Apply the LRRS to urban areas.
- Include existing buildings and infrastructure as part of considerations around land management.
- Consider responsibilities to the wider historic environment.

# 4. Compulsory Land Management Plans

The consultation paper notes that some large-scale landowners prepare and publish plans that set out their intentions with regard to the use and management of their land, and how they will invest in its improvement. However, there is currently no legal requirement to do so. Going forward, it is proposed that a requirement for large-scale landholdings to prepare and publish a Land Management Plan should be introduced.

**Question 8** – We propose that there should be a duty on large-scale landowners to publish Management Plans. Do you agree or disagree with this proposal?

Responses to Question 6 by respondent type are set out in Table 21 below.

**Table 21**

**Question 8** – We propose that there should be a duty on large-scale landowners to publish Management Plans. Do you agree or disagree with this proposal?

| | Agree | Disagree | Don't know | Total |
|---|---|---|---|---|
| Organisations: | | | | |
| Academic group or think tank | 4 | 0 | 0 | 4 |
| Community or local organisations | 19 | 1 | 0 | 20 |
| Government and NDPB | 13 | 1 | 3 | 17 |
| Landowner | 10 | 19 | 5 | 34 |
| Private sector organisations | 7 | 5 | 1 | 13 |
| Representative bodies, associations or unions | 16 | 5 | 4 | 25 |
| Third sector or campaign group | 26 | 2 | 1 | 29 |
| | | | | |
| Total organisations | **95** | **33** | **14** | **142** |
| **% of organisations** | **67%** | **23%** | **10%** | |
| Individuals | **274** | **53** | **13** | **340** |
| **% of individuals** | **81%** | **16%** | **4%** | |
| All respondents | **369** | **86** | **27** | **482** |
| **% of all respondents** | **77%** | **18%** | **6%** | |

Percentages may not sum to 100% due to rounding

A majority of respondents, 77% of those answering the question, agreed that there should be a duty on large-scale landowners to publish Management Plans. Of the remaining respondents, 18% did not agree and 6% did not know. Individual respondents were more likely to agree than were organisational respondents at 81% and 67% respectively. A majority of all groups of organisations agreed, with the exception of Landowner respondents.

**Please give some reasons for your answer.**

Around 330 respondents provided a comment at Question 8.

### Reasons in support of a duty to publish Management Plans

Among reasons given in favour of publication of Management Plans, those cited most frequently were improved transparency and accountability in relation to land ownership. It was also suggested that publishing a plan would or could:

- Provide an effective way to ensure large-scale landowners comply with the LRRS, or for landowners to demonstrate that they are doing so.
- Support benchmarking, or provide criteria that can be used to assess whether the plan has been successful and to allow effective monitoring of progress.
- Promote landowner-community engagement and provide a platform for information sharing.
- Encourage landholdings to be more aware of the impacts of their activities, and provide an incentive for good practice.
- Help communities who are seeking to acquire land for woodland creation or rural housing.
- Help to overcome the impact of succession/landowner transition on community relationships.
- Generate higher quality quantitative and qualitative data that the Scottish Government and SLC can use to develop effective and targeted policies going forward.
- Highlight opportunities for collaboration with neighbouring areas. For example, allowing neighbouring landowners to identify positive habitat-based activity that can be extended, providing opportunities to improve habitat connectivity.
- Allow developers/investors to identify where there are opportunities for particular land uses.

It was noted that Management Plans are standard practice in the forestry/woodland sectors and that this experience could be shared with other sectors.

There was also a view that making a requirement for a Management Plan into an LRRS obligation would reduce statute requirement and provide flexibility for other changes.

In terms of the requirement to publish the plan it was suggested it should not just be made available online, but also in hard copy at a location accessible for members of the local community.

### Reasons there should not be duty to publish Management Plans

Some respondents noted that, while seeing the merit of Land Management Plans in principle, they did not agree with creating a statutory duty to produce one. It was argued that this would risk becoming a compliance exercise, generating little

information that is not already in the public domain – for example via estates' websites. Publication of plans was seen as making sense in some areas but being of no value in others, and it was argued that there is no evidence to suggest the requirement for a Management Plan as it currently exists under the Transparency of Ownership protocol is not working.

It was also argued that Management Plans may be of little value if too generic and high level or if a landowner's plans change over the plan period. A potential requirement to have an up-to-date plan to access public funding was seen as having the potential to discourage actions that Scottish Government is looking to promote.

### Scale of landholdings

As at other questions, some respondents made points with respect to the proposal that the duty should apply only to large-scale landowners, arguing that the requirement should apply to all landowners, to all landowners to whom access rights apply, or to all landowners receiving public support. In particular, it was argued that many landscapes that would benefit from management planning would fall below the proposed threshold for a large-scale landholding, including National Scenic Areas, historic battlefields, and Gardens and Designed Landscapes. A further suggestion was that the duty should be applied only to large-scale landholdings in the first instance, but then extended more widely as the process is developed and refined.

### Characteristics of Land Management Plans

General points on the nature of plans included that a one-size-fits-all approach would not be appropriate and that there should be flexibility to reflect different types of ownership, or to allow reaction to changes – for example to different financial circumstances or to unforeseen events, such as storm damage. It was also suggested that there could be proportionate application of the proposals for holdings of different sizes or according to the importance of the land held. Potential challenges were anticipated with respect to achieving some consistency in depth and quality of plans across a wide variety of land use types.

Other proposed criteria included that Management Plans should be simple, easily understood by all potential stakeholders and should include measurable objectives. It was also argued that the required content should be clearly specified, including with respect to review periods, and that landowners should be provided with guidance in formulating their plans. Existing SLC templates were suggested as providing good examples of what a plan should contain.

A further specification was that Management Plans should not be time-consuming to produce and should not require consultants to do so. Among a range of views expressed with respect to how onerous an undertaking the production and publication of a Management Plan would be were that:

- Completing the current SLC template is not a major undertaking.

- Producing Management Plans may be an onerous requirement against a background of diminishing resources.
- A duty to publish Management Plans represents an unnecessary burden on landowners.

**Suggested content**

With respect to topics that respondents wished to see included in Management Plans, requirements for community consultation/engagement were frequently cited, with some respondents expressing a view that this should extend to Management Plans being developed in participation with the local community or being agreed by the local community. However, there was also a view that proposals to 'publicly engage' on a Management Plan would be inappropriate, and that no corporation would be expected to engage customers on operational or management plans.

There were also calls to include:

- Information on public funding (both grants and tax emptions).
- Information on how a landowner will fulfil principles of agroecology and transition agriculture.
- Information on peatland restoration.
- Information on maintaining access in accordance with the Scottish Outdoor Access Code.
- Measures for landowners to diversify landholdings in terms of offering land to communities for their development purposes.
- Succession plans.
- Climate change mitigation/adaptation needs if there are known local climate change risks.
- Community Wealth Building Principles.
- Nature restoration targets.
- Meeting needs for affordable housing.
- Local repopulation.
- The principles of a just transition to net zero.

With respect to the last point, some respondents argued that it is unclear how increasing transparency would further achieving Net Zero.

**Potential concerns raised**

The concern raised most frequently was that some of the information required by Management Plans could be commercially sensitive. It was suggested that commercial and business sensitivity need to be respected and that a landowner should not be required to put potential management changes into the public domain prior to consultation with parties who may be affected – for example, their tenants. With respect to the language used in the consultation paper it was argued that it is not generally appropriate to ask a business to demonstrate how and where it is

investing its money: rather than asking landowners to ‘set out their plans for investing in their land’ it was suggested it would be more appropriate to ask landowners to ‘share their thinking’ about how they manage their land, for information purposes only.

Data protection issues and national security considerations were also suggested as reasons that not all information should be made public.

Concerns were also raised that:

- If not implemented appropriately, Management Plans could reduce the flexibility that land management requires.
- A proposed land use might be delayed because a Management Plans is not considered adequate, or a land manager penalised despite having made good efforts to produce their Plan.
- Any requirement for land to be used for a particular purpose, would require specific legislation and should not be part of the current proposals. It was suggested that human rights (including under ECHR Protocol 1, Article 1 in particular) could be impacted if the necessary provisions of Management Plans would have the effect of requiring certain things to be done with the land.

Issues in relation to potential financial costs associated with producing Management Plans were also raised, with suggestions that the Scottish Government should consider whether financial assistance may be required in specific circumstances (for example, for communities or environmental NGOs) or whether more general funding (such as that available for preparation of Long-Term Forest Plans) should be provided.

**Importance of alignment with other land management processes**

It was argued that it will be important for Management Plans to take account of any spatial strategies that are relevant to the landholding, with examples including NPF4, Local Development Plans (LDPs) and Local Place Plans, Open Space, Forest and Woodland, and Food Growing strategies, Local Authority climate or climate adaption plans, RLUPs and Frameworks, and Local Biodiversity Action Plans. It was also suggested that:

- The potential relationship between Management Plans and RLUPs should be clarified.
- Careful consideration should be given to how conflicting uses under the land management and planning systems can be avoided.

Some respondents noted the potential for duplication of effort or argued that it will be important for Management Plans to complement other mechanisms for land management and reporting. In the context of addressing potential duplication there were references to:

- Management Plans produced on a voluntary basis shortly before a legal requirement was introduced.

- Plans for Whole Farm plans under the forthcoming Agriculture Bill.
- The existing IACS form that provides farmland management information.
- Deer Management Plans.
- Long-Term Forest Plans.
- Existing business plans produced by community groups.
- Existing practice and reporting requirements relating to LDPs.

Respondents from across a range of respondent groups noted the Management Plans already produced by their own organisations. One Government and NDPB respondent observed that their own Plans already cover much of the content of the Management Plans proposed by the consultation paper, although at a higher level, querying whether additional plans would be needed or if there could be flexibility to determine how requirements outlined in the consultation are addressed.

Respondents also raised a number of issues for clarification around tenanted land, sporting-lease tenants and crofting tenure. It was argued that clarity will be required regarding specific responsibilities in developing and implementing the Plan, with one suggestion that both responsibility and administrative burden should lie with the landowner rather than the tenant. However, it was also argued that where tenants have an exclusive right to use the land, the landowner is not responsible for land management, and a Management Plan prepared by the landowner would be of no effect.

A requirement for Management Plans on a crofting estate to be consistent with crofting tenure and crofting rights and obligations was also noted. It was argued that, where the landowner owns croft land and common grazings and where some or all of the estate is a crofting estate, the landowner should be under a legal obligation to consult with the crofting community or crofting communities affected when drawing up the Land Management Plan.

**Potential penalties for non-compliance**

As suggested by the consultation paper, some respondents agreed that publishing a Management Plans should be a condition of receipt of public subsidy, with the requirement for Long-Term Forestry Plans noted as a potential model. How a landowner who is not receiving public funding could be made to comply was also queried.

Other points were raised with respect to the quality of the plans produced, including that the consultation paper does not make clear whether a requirement to submit, register or seek approval for a plan is envisaged, or whether there will be a process to check the accuracy of the information provided. It was argued both that there does need to be a mechanism to ensure that the Management Plans produced are fit for purpose, and that they should be assessed against the required objectives by a public body with relevant expertise. How monitoring of activity against the published Plan would operate and what, if any, recourse there would be if landowners did not act on their Plans was also thought to be unclear.

It was also suggested that the role for incentives to drive good practice should not be overlooked, with Wildlife Estates Accreditation suggested as an example.

**Question 9** – How frequently do you think Management Plans should be published?

Around 430 respondents answered Question 9. Some of these respondents restated that they did not support a requirement for Management Plans to be published.

Other comments addressed the factors that should be considered when deciding on an appropriate timeframe. In addition to general suggestions that Management Plans should be published as necessary, there was specific reference to:

- Information contained in the Plan becoming obsolete, for example because major changes or developments are planned, and these are not already covered.
- A change of ownership.

It was also suggested that any timeframe(s) could be similar to, or aligned with, the requirement to provide or publish information for other plans, or with applications for public funding or subsidies. Other suggestions included that:

- Any timeframes could vary according to the size of the landholding and/or the type of use(s) to which the land was being put.
- The approach could include timescales for review or the publication of statements of confirmation, as well as for full renewal.

Among respondents who proposed a specific timescale, the most frequent suggestion was that a Management Plan should be published every 5 years. The other frequently made suggestion was annually.

Other suggestions ranged from every 3 years through to every 10 years or more.

**Question 10** – Should Management Plans include information on:

- Land Rights and Responsibility Statement compliance?
- Community engagement?
- Emission reduction plans?
- Nature restoration?
- Revenue from carbon offsetting/carbon credits?
- Plans for developments/activities that will contribute to local and inclusive economic development or community wealth building?

Responses to Question 10 by respondent type are set out in Tables 22 - 27 below.

**Table 22**

| **Question 10** – Should Management Plans include information on Land Rights and Responsibility Statement compliance? | | | | |
|---|---|---|---|---|
| | **Yes** | **No** | **Don't Know** | **Total** |
| Organisations: | | | | |
| Academic group or think tank | 4 | 0 | 0 | 4 |
| Community or local organisations | 19 | 0 | 0 | 19 |
| Government and NDPB | 12 | 1 | 0 | 13 |
| Landowner | 12 | 17 | 3 | 32 |
| Private sector organisations | 10 | 1 | 2 | 13 |
| Representative bodies, associations or unions | 14 | 5 | 4 | 23 |
| Third sector or campaign group | 25 | 1 | 1 | 27 |
| | | | | |
| Total organisations | **96** | **25** | **10** | **131** |
| **% of organisations** | **73%** | **19%** | **8%** | |
| Individuals | **273** | **39** | **15** | **327** |
| **% of individuals** | **83%** | **12%** | **5%** | |
| All respondents | **369** | **64** | **25** | **458** |
| **% of all respondents** | **81%** | **14%** | **5%** | |

**Table 23**

| **Question 10** – Should Management Plans include information on community engagement? | | | | |
|---|---|---|---|---|
| | **Yes** | **No** | **Don't know** | **Total** |
| Organisations: | | | | |
| Academic group or think tank | 4 | 0 | 0 | 4 |
| Community or local organisations | 19 | 0 | 0 | 19 |
| Government and NDPB | 12 | 1 | 2 | 15 |
| Landowner | 25 | 8 | 0 | 33 |
| Private sector organisations | 9 | 1 | 3 | 13 |
| Representative bodies, associations or unions | 15 | 3 | 5 | 23 |
| Third sector or campaign group | 24 | 0 | 2 | 26 |
| | | | | |
| Total organisations | **108** | **13** | **12** | **133** |
| **% of organisations** | **81%** | **10%** | **9%** | |
| Individuals | **275** | **30** | **21** | **326** |
| **% of individuals** | **84%** | **9%** | **6%** | |
| All respondents | **383** | **43** | **33** | **459** |
| **% of all respondents** | **83%** | **9%** | **7%** | |

Percentages may not sum to 100% due to rounding

**Table 24**

| **Question 10** – Should Management Plans include information on emission reduction plans? | | | | |
|---|---|---|---|---|
| | **Yes** | **No** | **Don't know** | **Total** |
| Organisations: | | | | |
| Academic group or think tank | 4 | 0 | 0 | 4 |
| Community or local organisations | 18 | 0 | 1 | 19 |
| Government and NDPB | 12 | 1 | 1 | 14 |
| Landowner | 15 | 14 | 2 | 31 |
| Private sector organisations | 10 | 2 | 1 | 13 |
| Representative bodies, associations or unions | 13 | 4 | 6 | 23 |
| Third sector or campaign group | 25 | 0 | 2 | 27 |
| | | | | |
| Total organisations | **97** | **21** | **13** | **131** |
| **% of organisations** | **74%** | **16%** | **10%** | |
| Individuals | **264** | **34** | **27** | **325** |
| **% of individuals** | **81%** | **10%** | **8%** | |
| All respondents | **361** | **55** | **40** | **456** |
| **% of all respondents** | **79%** | **12%** | **9%** | |

**Table 25**

| **Question 10** – Should Management Plans include information on nature restoration? | | | | |
|---|---|---|---|---|
| | **Yes** | **No** | **Don't know** | **Total** |
| Organisations: | | | | |
| Academic group or think tank | 4 | 0 | 0 | 4 |
| Community or local organisations | 18 | 0 | 1 | 19 |
| Government and NDPB | 13 | 1 | 0 | 14 |
| Landowner | 22 | 10 | 0 | 32 |
| Private sector organisations | 8 | 2 | 3 | 13 |
| Representative bodies, associations or unions | 15 | 3 | 5 | 23 |
| Third sector or campaign group | 24 | 0 | 2 | 26 |
| | | | | |
| Total organisations | **104** | **16** | **11** | **131** |
| **% of organisations** | **79%** | **12%** | **8%** | |
| Individuals | **277** | **32** | **16** | **325** |
| **% of individuals** | **85%** | **10%** | **5%** | |
| All respondents | **381** | **48** | **27** | **456** |
| **% of all respondents** | **84%** | **11%** | **6%** | |

Percentages may not sum to 100% due to rounding

**Table 26**

| **Question 10** – Should Management Plans include information on revenue from carbon offsetting/carbon credits? | | | | |
|---|---|---|---|---|
| | **Yes** | **No** | **Don't Know** | **Total** |
| Organisations: | | | | |
| Academic group or think tank | 4 | 0 | 0 | 4 |
| Community or local organisations | 16 | 1 | 2 | 19 |
| Government and NDPB | 11 | 2 | 1 | 14 |
| Landowner | 6 | 24 | 1 | 31 |
| Private sector organisations | 6 | 6 | 1 | 13 |
| Representative bodies, associations or unions | 11 | 7 | 5 | 23 |
| Third sector or campaign group | 17 | 2 | 7 | 26 |
| | | | | |
| Total organisations | **71** | **42** | **17** | **130** |
| **% of organisations** | **55%** | **32%** | **13%** | |
| Individuals | **236** | **57** | **30** | **323** |
| **% of individuals** | **73%** | **18%** | **9%** | |
| All respondents | **307** | **99** | **47** | **453** |
| **% of all respondents** | **68%** | **22%** | **10%** | |

**Table 27**

| **Question 10** – Should Management Plans include information on plans for developments/ activities that will contribute to local and inclusive economic development or community wealth building? | | | | |
|---|---|---|---|---|
| | **Yes** | **No** | **Don't Know** | **Total** |
| Organisations: | | | | |
| Academic group or think tank | 4 | 0 | 0 | 4 |
| Community or local organisations | 19 | 0 | 0 | 19 |
| Government and NDPB | 14 | 0 | 0 | 14 |
| Landowner | 14 | 14 | 2 | 30 |
| Private sector organisations | 9 | 3 | 1 | 13 |
| Representative bodies, associations or unions | 12 | 4 | 7 | 23 |
| Third sector or campaign group | 22 | 0 | 4 | 26 |
| | | | | |
| Total organisations | **94** | **21** | **14** | **129** |
| **% of organisations** | **73%** | **16%** | **11%** | |
| Individuals | **265** | **34** | **28** | **327** |
| **% of individuals** | **81%** | **10%** | **9%** | |
| All respondents | **359** | **55** | **42** | **456** |
| **% of all respondents** | **79%** | **12%** | **9%** | |

A majority of those who answered the questions agreed with each of the six suggested elements of a Management Plan, with the level of support varying as follows:

- 84% of those answering the question thought that Management Plans should include information on nature restoration.
- 83% thought information on community engagement should be included.
- 81% thought that information on LRRS compliance should be included.
- 79% thought that information on emission reduction plans should be included.
- 79% thought that information on plans for developments/ activities that will contribute to local and inclusive economic development or community wealth building should be included.
- 68% thought that information on revenue from carbon offsetting/carbon credits should be included. In this case, those who did not agree included some who had agreed with all the other types of information being included.

**Please provide some reasons for your answers and any additional suggestions.**

Around 310 respondents made a comment at Question 10.

### General observations

In addition to specific comments about the six types of information that could be required, some respondents also made general observations about the value of including a range of information in Management Plans. Many of these comments reflected themes covered at Question 8, including the benefits of increased transparency, particularly for communities. There was also reference to the advantages of setting out all the information in a single plan, including to ensure that the overall approach taken by a landowner is cohesive. It was hoped that, taken together, it would provide a useful framework upon which Management Plans can be based.

It was also suggested that all of the information suggested is of key public interest, including in terms of a just transition and net zero, fulfilling Fairer Scotland obligations and ensuring community benefits. In terms of particular communities, it was thought that the information could be useful to the local crofting community and could help to inform the way that crofters engage with their landlord.

Other respondents raised reservations or concerns, including sometimes commenting that they had set out their reasons for disagreeing with compulsory Management Plans at earlier questions.

In terms of how any approach might be framed going forward, the importance of avoiding a 'tick box;' approach was highlighted, and it was suggested that each plan should be bespoke and tailored to the scale and type of land use proposed. It was also suggested that there has to be a balance between useful information and an over-heavy administrative burden and that requirements should be varied depending on an organisation's capacity to respond.

Respondents also commented that, with a number of plans and policies already addressing the themes covered, clarity around how Management Plans should relate and interact with other published documents would be helpful. It was also suggested that some of the themes – emission reductions plans, nature restoration and revenue from carbon – may be better covered through other existing or developing regimes, such as those in the Agriculture Bill.

It was also noted that the information referred to appears to go beyond that required to complete the template land management plan produced by the SLC and there was an associated query about what is actually proposed? Other comments included:

- If the listed information is required, it should be produced in a short, standard format that can be completed without the requirement to produce an in-depth plan. However, it was also suggested that this would raise questions about its value.
- Information which might be considered commercially confidential should not be required, possibly excepting receipts from public funds.

There was also a query as to whether content of the plan would be 'just for information', or if it is expected that an individual or organisation could raise a complaint based on this content?

Suggestions relating to how the proposals could or should be taken forward included that:

- A template format for Management Plans should be provided, along with guidance for landowners and land managers. This template should align with the information gathered for other purposes, for example through Whole Farm Plans and Woodland/Peatland Carbon Codes.
- It would be helpful for landowners to have access to examples of 'good Management Plans' to help to guide design and delivery.
- A standardised methodology for data recording and appropriate mechanisms for monitoring and evaluating whether progress has been made will be required.
- Landowners should receive financial support and other incentives for fulfilling this obligation; it was suggested that this would be helpful in them entering fully into the spirit of this task and attempting to do a worthwhile job of it.
- The legislation should require plans to be produced in collaboration with local communities and other relevant stakeholders.

### Land Rights and Responsibilities Statement (LRRS)

### Support for including information

Comments included that the principles within the LRRS should provide the framework for information to be included in Land Management Plans and that this should include sufficient detail to show how landowners are complying with the LRRS principles on their landholdings. Specific suggestions included that there should be a requirement to include information on:

- How the LRRS principles are being put into practice during the implementation cycle of the Plans.
- Local contextual factors of relevance to development activities.
- An acknowledgement of the landowner's duties, under Land Reform (Scotland) Act 2016, to responsibly manage land in a way which respects public access rights.

However, it was also noted that the extent to which landowners can report meaningfully on LRRS compliance will depend on the reworded statement and protocols.

### Reservations or concerns

Those who commented sometimes referred back to concerns they had raised about strengthening the LRRS. Given these concerns, it was suggested that the LRRS is not appropriate as a basis for legal compliance, particularly as its interpretation is so subjective. There was also a view that, from a practical perspective, it would be

an onerous and not entirely useful exercise for land managers to be asked to demonstrate compliance with relatively open ended and vague concepts.

### Community engagement

### Support for including information

Reasons for supporting this approach included that land reform is intended to give local communities a greater stake in the way land is used and that Management Plans should be clear on how the community's needs have been taken into account and where they might benefit from the landowner's plans. It was also suggested that engagement with communities should be underpinned by the Place Principle and developing a shared vision rather than simply seeking agreement. There was also reference to engaging with a range of local stakeholders, including the local Community Council, local business groups and organisations representing the land-based activity communities in which the landholding is involved.

Suggestions for particular information to be required included the SLC protocols that the landowner has considered in their community engagement efforts and the potential channels for engagement with the community.

### Reservations or concerns

Issues raised by those who had reservations or concerns included that while community engagement is appropriate for public land it may not be appropriate for private land. There was a view that committing to community engagement needs to remain the prerogative of the landowner.

It was also suggested that there is no evidence to suggest that existing protocols, guidance and arrangements are not proving effective. For example, it was noted that applicants are required to engage with communities for planning applications, so the Management Plan would simply be stating something which is a requirement already. It was also suggested that the level and nature of engagement will depend on the types of projects proposed and that approaches are constantly evolving.

### Emission reduction plans

### Support for including information

Comments tended to be brief but included that emissions reduction information will already be public knowledge from the land manager's agri-environment scheme. It was also noted that reporting on emission reduction plans assumes a well understood baseline.

In terms of the management Plan itself, further comments included that emission reductions plans should accompany data on revenue from carbon offsetting and credits (discussed further below) and that publishing and adhering to these plans would be helpful in ensuring we arrive at net zero as an entire nation, and that land managers do not over-sell carbon credits that they will need to offset their own remaining emissions.

Other comments or suggestions included that:

- The requirement could be variable and determined by setting thresholds, for example related to landholding size, value or type.
- Support should be provided for emission reduction plans to ensure they are meaningful, achievable and measurable through a standardised approach. This support could be financial or be in the form of advice.

**Reservations or concerns**

There were some concerns about land managers having the necessary understanding and resources to develop emission reduction plans, with comments on the plans themselves including that they are complex, business-centred and set out detailed actions – there was a view that this makes them unsuitable to be covered in Management Plans.

There was also a view that they should not be a requirement set out by legislation, especially given that, in some instances, measurements of success cannot be accurately defined or measured. There were also queries around acceptable targets and the consequences if targets are not met.

Other comments included that:

- Emissions reductions would seem to be a better fit with SEPA's consenting processes.
- The infrastructure does not exist in rural Scotland to support emission reduction plans and land managers cannot be held responsible for doing something that is beyond their control.
- If emission reduction targets are introduced, then it would be discriminatory to apply them to a large-scale landholding but not all landholdings and indeed all other forms of businesses in Scotland.

**Nature restoration**

**Support for including information**

Comments included that many traditional landowners are already undertaking significant nature restoration efforts and that these should be recognised, and land managers encouraged and supported to report on them. However, it was also suggested that this should be on a voluntary basis, with reasons given including that this aspect of land management may not apply to some landowners, such as religious organisations. There was also a suggestion that it may not be appropriate to require information on nature restoration from the outset, but that it could be included in due course.

Other comments addressed the type of information that should be provided, with an associated concern that referencing 'restoration' excludes the proactive and positive management of existing biodiversity, as well as potential for enhancement. In terms of specific content, there was reference to information on:

- Nature management, biodiversity net gain agreements and land that is part of a Nature network.

- Rewilding.
- Creation and financing of nature-based enterprises.

There was also a suggestion that any requirement should be tied in with Scotland's Biodiversity Strategy, with each Management Plan being an action plan for that strategy. There were also calls for links to Regional Land Use Frameworks, and alignment with other Scottish Government policy and guidance on nature restoration.

**Reservations or concerns**

As in relation to emission reduction plans, there were concerns about whether what qualifies as nature restoration, along with success, can be accurately defined or measured.

It was also noted that those with a large and diverse landholding, mainly occupied by tenants, are unlikely to be party to any agri-environment schemes that their tenants may be engaged in.

**Revenue from carbon offsetting/carbon credits**

As noted above, this was the proposal that attracted the lowest level of support.

**Support for including information**

Some of those commenting at this question raised concerns about selling carbon credits to offset current or future emissions, with views that the practice can perpetuate unsustainable practices elsewhere and remains vulnerable to fraud and misuse in carbon accounting practices. Given their concerns, some were keen to see the practice of carbon offsetting/carbon credits scrutinised under Management Plans.

It was also suggested that publishing data on revenue from carbon offsetting / credits is aligned with Scottish Government's ambition to establish a high-integrity, values-led carbon market in Scotland, and that transparency on schemes and revenue from carbon will help communities benefit from green finance.

In terms of the type of information that should be included, there was reference to how the revenue from carbon offsetting/carbon credits will be spent; this was linked to ensuring this meets with the community's approval, with funds being spent on relevant, sustainable, land-related expenditures.

Some of those supporting the approach, as well as some who were not sure, raised possible challenges relating to information provision. These included that:

- It is not entirely clear how revenue from carbon offsetting would be included given it is such a fast-moving marketplace. For example, it was reported that price may be set year-to-year, could change significantly within the period covered by a Management Plan, and may not be accurately predicted.

- A number of new institutional purchasers aim to use the land for 'insetting' their own corporate emissions rather than selling carbon credits through 'carbon credits'; this would mean no data would be publicly available.
- The significant challenges of, for example, peatland restoration is already coming to the attention of institutional buyers, and it is unclear how any compulsory Management Plan can be enforced where the intentions were appropriate but the reality on the ground means they are unachievable.

**Reservations or concerns**

A frequently made point, reflecting more general observations made at Question 8, was that the revenue from carbon offsetting and carbon credits is, or may be, commercially sensitive. An associated point was that other land-based outputs, such as income from sales of crops or livestock, rents and mineral royalties, are not expected to be reported in in this way, and that the consultation paper presents no policy rationale to explain why revenue from carbon offsetting/carbon credits should be different. It was also suggested that the public or environmental benefit case for requiring this information to be provided is not clear.

Other comments included that:

- Requiring publication could constitute interference with a private owner's right to peaceful enjoyment of their property according to ECHR Protocol 1.
- It may not be possible to publish this information if confidentiality arrangements are in place.
- The revenue position is only one side of the equation and any requirement to provide details of revenue without understanding the full picture is highly likely to be misleading and result in the wrong conclusions being drawn.
- The information is likely to change over the lifetime of a Plan.

There was also a concern that a consequence of requiring the information to be provided would be landowners declining to get involved with carbon schemes for fear of community complaints about revenue.

Some of those who did not agree with providing information about revenue did point to alternative information that could be relevant or appropriate. Suggestions included:

- Details of carbon and natural capital management activity, such as insetting, nature recovery without trading and carbon credit trading, and its purpose.
- If development involves the creation of carbon units.

**Plans for developments/ activities that will contribute to local and inclusive economic development or community wealth building**

**Support for including information**

In terms of the types of issues that this proposal might help address, it was reported that land is often not advertised on the open market, is effectively only available to large investment companies, and is sold before the local community is aware that it

is for sale. It was also noted that woodland creation does not require planning permission, and it was reported that the procedures for engaging with organisations like Scottish Woodlands and Scottish Forestry are neither clear nor transparent.

However, it was also argued that a requirement to include information on plans to contribute towards economic development or community wealth building should be clarified to ensure that landowners do not feel required to pursue development activity on land intended for use primarily for nature.

In terms of the scope of information to be provided, points raised included that Management Plans should include basic information on how the land will be used, including identification of the main anticipated land uses for each land parcel for the period of the Plan. It was also suggested that they should cover:

- Any proposed development projects or major changes in land use. This should be irrespective of whether it will contribute to local and inclusive economic development or community wealth building.
- Links to Local Place Plans, along with their relationship to LDPs and regional strategies. It was noted that plans for developments/activities are covered by LDPs, which are prepared by local authorities and subject to public scrutiny. It was also noted that Community Action Plans and Local Place Plans have the opportunity to influence the content of the LDP and local authorities have the ability to encourage/facilitate their preparation.

**Reservations or concerns**

Some respondents who did not support inclusion of information on plans for development/activities that will contribute to local and inclusive economic development or community wealth building also pointed to the role of existing plans, and questioned the value of duplicating information that is already publicly available. It was also noted that developments/activities will already be covered by other existing statutory planning mechanisms, and that planning regulations require disclosure and consultation of development plans and engagement with local community bodies. There was a concern that adding further to this burden would restrict economic activity.

Other concerns included that:

- If demonstrating compliance with national and local policy is included, the proposed plan would become a complex and challenging document to put together, and would not be user-friendly.
- There has been no comprehensive definition or guidance around community wealth building in rural areas and/or for private owners so it is unclear what this requirement would mean in practice.
- Publishing plans which imply the possibility for community wealth building may raise community expectations and lead to souring of relationships if the plans are subsequently shelved for perfectly good reasons.

### Additional suggestions

Respondents were also asked if they had suggestions for other information that should be included in a Management Plan. The most-frequent suggestion was how landowners intend to use and manage the land in the round. Associated points were that it should be possible to identify the main anticipated land uses for each land parcel for the period of the Plan, as well as any proposed development projects or major changes in land use. There was also reference to:

- Existing land management requirements, such as European designations, membership of Deer Management plans and any licences to undertake restricted activities held.
- An overview of the financial system of a landholding, including key income streams and outgoings.
- Funding received from the public purse, and any tax emptions. Any subsidies, what they are given for and how they were used.

Other suggestions, which sometimes reflected points made in connection with one of the types of information already identified, included that Plans should provide information on climate adaptation and resilience measures. There was reference to:

- Plans to manage climate risks and resources affecting community resilience such as water.
- Plans for securing nature restoration, and ecosystem services plans developed with other partners.
- Biodiversity net gain agreements.
- Land that is part of the Nature Network or linked to 30x30 ambitions.[9]
- Tackling threats such as Invasive Non-Native Species.
- Active participation in catchment and other landscape scale initiatives.

An audit of natural assets on the land was also suggested, including information on the extent and condition of native woodland assets, information on deer populations and plans to reduce deer impacts.

Other themes highlighted included:

- Local food systems and agroecological transitions, including how existing agricultural production could better serve the local area, how access to land for new entrant farmers could be improved, and how community food growing could be promoted. Specifically, the transition from land management based on large-scale farming of ‘domesticated’ animals to plant-based management.
- Within crofting areas, the potential for the creation of new crofts.
- Housing, including affordable housing. There was reference to the steps landowners are taking to meet local housing demand to buy and how they are

[9] 30x30 is the commitment to protect at least 30% of land and sea for nature by 2030.

upgrading their own housing stock. Also, information on opportunities to develop affordable housing either directly or by releasing land to others.

- Cultural heritage and the historic environment, including any protected areas or designated sites and how the use of land or other considerations interacts with the historic environment.
- Outdoor access and recreation, including recreational access features within the landholding. It was suggested that there should be a requirement to include detailed information on public access and also places where the landowner believes statutory rights do not apply.

**Question 11** – Do you think the responsibility for enforcing compulsory Land Management Plans should sit with:

- The Scottish Government?
- A public body (such as the Scottish Land Commission)?

Responses to Question 11 by respondent type are set out in Tables 28 - 29 below.

**Table 28**

**Question 11** – Do you think the responsibility for enforcing compulsory land management plans should sit with the Scottish Government?

| | Yes | No | Don't know | Total |
|---|---|---|---|---|
| Organisations: | | | | |
| Academic group or think tank | 1 | 0 | 2 | 3 |
| Community or local organisations | 2 | 4 | 7 | 13 |
| Government and NDPB | 0 | 5 | 4 | 9 |
| Landowner | 2 | 26 | 2 | 30 |
| Private sector organisations | 3 | 8 | 1 | 12 |
| Representative bodies, associations or unions | 2 | 12 | 7 | 21 |
| Third sector or campaign group | 3 | 9 | 9 | 21 |
| | | | | |
| Total organisations | **13** | **64** | **32** | **109** |
| **% of organisations** | **12%** | **59%** | **29%** | |
| Individuals | **105** | **117** | **47** | **269** |
| **% of individuals** | **39%** | **43%** | **17%** | |
| All respondents | **118** | **181** | **79** | **378** |
| **% of all respondents** | **31%** | **48%** | **21%** | |

Percentages may not sum to 100% due to rounding

**Table 29**

| **Question 11** – Do you think the responsibility for enforcing compulsory land management plans should sit with a public body (such as the Scottish Land Commission)? | | | | |
|---|---|---|---|---|
| | **Yes** | **No** | **Don't know** | **Total** |
| Organisations: | | | | |
| Academic group or think tank | 2 | 0 | 2 | 4 |
| Community or local organisations | 11 | 1 | 5 | 17 |
| Government and NDPB | 6 | 1 | 4 | 11 |
| Landowner | 4 | 21 | 5 | 30 |
| Private sector organisations | 4 | 8 | 1 | 13 |
| Representative bodies, associations or unions | 9 | 6 | 6 | 21 |
| Third sector or campaign group | 14 | 4 | 6 | 24 |
| | | | | |
| Total organisations | **50** | **41** | **29** | **120** |
| **% of organisations** | **42%** | **34%** | **24%** | |
| Individuals | **210** | **67** | **40** | **317** |
| **% of individuals** | **66%** | **21%** | **13%** | |
| All respondents | **260** | **108** | **69** | **437** |
| **% of all respondents** | **59%** | **25%** | **16%** | |

Among those who answered the question, only 31% of respondents thought that responsibility for enforcing compulsory Land Management Plans should sit with the Scottish Government. This dropped to just 12% of organisational respondents, where a majority of all but 'Academic' respondents disagreed.

In contrast, 59% of respondents though responsibility should sit with a public body. This rose to 66% of organisational respondents, where most groups agreed, the exceptions being 'Landowner' and 'Private sector organisation' respondents.

These responses followed a similar pattern to those at Question 5(c), where respondents were offered the same options with respect to where responsibility for investigating and dealing with complaints should sit.

**Please provide some reasons for your answers and any additional suggestions.**

Around 305 respondents provided a comment at Question 11.

Some respondents referred back to their answer at Question 5 or at Question 5(c) in particular and, in general, the arguments made at this question very much reflected those at Question 5(c).

Additional points raised here included that:

- The body responsible for enforcement in relation to Land Management Plans should be the same as that responsible for investigating and dealing with complaints with respect to the LRRS.
- What is meant by 'enforcing compulsory Land Management Plans' requires clarification – whether ensuring plans are produced, that they include certain information as outlined at Question 10, or that they are delivered once in place?
- How Management Plans would interact with the planning system may require consideration – for example, whether an existing Land Management Plan would stop a landowner applying for planning permission for development of land because it conflicted with the management proposals set out in the plan.

**Reasons for responsibility to sit with the Scottish Government**

A small number of respondents suggested parallels with the arrangements for Long-Term Forestry Plans where the relevant Scottish Government department has responsibility for enforcement. Other suggestions with respect to Land Management Plans included that:

- Responsibility should sit with the Scottish Government if cross-compliance penalties are envisaged.
- There should be a self-contained, specialist department within the Scottish Government.
- Responsibility must ultimately sit with the Scottish Government but could be delegated to a public body.

**Reasons for responsibility to sit with a public body**

As at Question 5(c) respondents who thought responsibility should sit with a public body often went on to argue that this should be the SLC, which was seen as having appropriate expertise and being well positioned for such a role, although also as requiring new powers. However, a concern was raised that the SLC's reputation for neutrality could be put at risk if required to operate as both advisor and enforcer.

It was also suggested that:

- While the SLC could have responsibility for enforcement, aspects of Land Management Plans should also be reviewed by appropriate statutory agencies and government directorates such as Scottish Forestry and NatureScot, with a possible role for Environmental Standards Scotland.
- Cases requiring serious enforcement action should be referred to the Scottish Government for enforcement action, after considering the SLC's recommendation.

Some respondents were clear they saw no case for creating a new body for the purpose of enforcing compulsory Land Management Plans.

**Both, either and neither**

A small number of respondents indicated that either or both options would be acceptable, or that their preference would depend on how plans develop. A larger

number argued that neither option should be pursued as Land Management Plans should not be made compulsory.

### Characteristics of the organisation charged with enforcement

Also as at Question 5(c), some respondents argued that any organisation charged with enforcement must be completely independent, impartial, transparent, and should ensure balance and proportionality. The importance of separating enforcement from advisory functions was also suggested, as were both that the organisation in question should not be swayed by political pressures and that it should not be dominated by vested interests.

Other features highlighted as important with respect to enforcement of Management Plans included that:

- The organisation in question should have clear ownership of land management plans and their enforcement.
- It should be provided with adequate resources and with appropriate powers and authority.
- There should be a right of appeal against its decisions, for example to the Scottish Land Court. This was seen as particularly important if a large landholding were to be prevented from accessing public funding opportunities available to all other landowning businesses.

### Additional suggestions

In terms of other bodies that might assume the role or be part of the process, the most frequent suggestions involved local authorities, although there was also a view that they would not have capacity to do this without additional resources. Other suggestions included:

- An independent, democratically elected panel.
- An existing body such as SEPA or NatureScot.
- The Scottish Land Court/ Lands Tribunal.
- A new Scottish Land Agency.
- An independent ombudsman.
- The Park Authority, with respect to landholdings in National Parks.

**Question 12** – Do you think the proposal to make Management Plans a legal duty for largescale landowners would benefit the local community?

Responses to Question 12 by respondent type are set out in Table 30 below.

**Table 30**

| **Question 12** – Do you think the proposal to make Management Plans a legal duty for large-scale landowners would benefit the local community? | | | | |
|---|---|---|---|---|
| | **Yes** | **No** | **Don't know** | **Total** |
| Organisations: | | | | |
| Academic group or think tank | 4 | 0 | 0 | 4 |
| Community or local organisations | 18 | 0 | 0 | 18 |
| Government and NDPB | 10 | 0 | 4 | 14 |
| Landowner | 8 | 20 | 5 | 33 |
| Private sector organisations | 5 | 4 | 4 | 13 |
| Representative bodies, associations or unions | 11 | 3 | 9 | 23 |
| Third sector or campaign group | 22 | 2 | 4 | 28 |
| | | | | |
| Total organisations | **78** | **29** | **26** | **133** |
| **% of organisations** | **59%** | **22%** | **20%** | |
| | | | | |
| Individuals | **240** | **56** | **33** | **329** |
| **% of individuals** | **73%** | **17%** | **10%** | |
| | | | | |
| All respondents | **318** | **85** | **59** | **462** |
| **% of all respondents** | **69%** | **18%** | **13%** | |

Percentages may not sum to 100% due to rounding

A majority of respondents, 69% of those answering the question, thought that the proposal to make Management Plans a legal duty for large-scale landowners would benefit the local community. Of the remaining respondents, 18% did not think so and 13% did not know.

These figures are very similar to those at Question 6 (on whether making the LRRS a legal duty would benefit communities) with a large majority of respondents giving the same answer at Questions 6 and 12.

**Please give some reasons for your answer.**

Around 285 respondents provided a comment at Question 12.

Some respondents expressed a view that it is difficult to know whether the community will benefit or that they would need more information in order to comment.

General points included that potential community benefits should have a clear, national definition which landowners' actions can be measured against, or that plans should be required to demonstrate impact on the local community. It was also

noted that effective management planning could provide benefits to both communities of place and communities of interest, as well as at national level.

### Reasons the local community might benefit

### Access to information

Better access to information and improved understanding of proposals for local land use were seen as having the potential to improve transparency and accountability around land use, providing communities with clarity on the direction of travel and scope for scrutiny of land use change. It was also suggested that:

- A community's ability to plan ahead, and negotiate with the landowner from an informed position, could allow more effective management of their own natural capital.
- Crofting communities may be able to engage with their landlord/ landowner in a more informed way.
- Communities could be alerted to possibilities for community purchase or partnership with a landowner to improve local facilities or infrastructure.

Issues relating to how and where Land Management Plans should be available are covered at Question 13.

### Community engagement

Opportunities for community consultation, engagement, involvement or participation were also cited as benefits, although some respondents were clear that benefits would be dependent on the extent to which a community is able to influence the development of the Land Management Plan. One respondent noted their own experience, as a landowner, that community consultation on management plans can be constructive for both parties, but that it is resource intensive to do well.

### Improved communication and better relationships

Opportunities for increased understanding, improved relationships or more constructive working between land managers and local communities were also suggested as potential benefits of Management Plans. One suggestion was that Plans could be particularly important during periods of ownership transition or where there is absentee land ownership. Other potential benefits that were highlighted included that Plans could provide:

- An opportunity for landowners to consider how their land use contributes to national priorities – for example with respect to net zero or sustainability.
- An opportunity for landowners to showcase work that they feel is not currently understood or appreciated.
- Information of interest to both public stakeholders and national bodies with a connection to the land.

### Other potential benefits

Among other potential benefits suggested as arising from a duty for large-scale landowners to publish Land Management Plans were:

- Safeguarding public access rights.
- Environmental benefits, including with respect to climate and biodiversity.
- Increased community volunteering.
- Opportunities for local housing, small-scale renewables and ecotourism.

**Reasons the local community might not benefit**

Some respondents noted that the extent to which individual communities benefit from Land Management Plans is likely to vary. It was suggested that the benefits experienced by communities will depend on:

- The scale at which the threshold is set and hence the number of landholdings to which the duty applies.
- Whether landowners already engage or are already operating with management strategies in which case additional benefits would be limited.
- The content and quality of plans, with a risk that their value could be reduced if plans become too formulaic.
- Whether the landowner is willing to engage or chooses to do only the minimum necessary to meet requirements and, as above, the extent to which communities have real opportunity to influence Management Plans.
- The capacity for individuals and communities to take part in engagement processes, potentially with respect to multiple Management Plans if an area is influenced by more than one large-scale landholding. It was suggested that both landowners and communities should be supported to ensure effective community engagement.

The absence of any clear mechanism to monitor implementation and the effectiveness of enforcement were also suggested as factors that could limit the benefits experienced by communities. It was also suggested that communities would need to be aware that there will be circumstances where matters are uncertain or are commercially sensitive, where projects evolve, or where timings change after a plan has been produced. These issues are discussed further at Question 13.

Specific situations where respondents thought benefits might be limited included:

- Where a proportion of a large-scale landholding is let on agricultural tenancy agreements that give landowners little control over land management.
- The local natural asset inventory, and the extent to which areas are nature-rich or depleted.

**Reasons the community is unlikely to benefit**

Some respondents argued – as in respect of a duty to comply with the LRRS – that there should be no duty to produce Management Plans, or that the duty should apply to all landholdings or to none at all. Also as with regard to the LRRS, it was argued that there would be no benefit to communities that are not near to large landholdings, and that large estates are often remote, with limited local

communities. It was also suggested that Management Plans are likely to be high-level and compliance-based and will lack detail.

### Potential negative impacts

Rather than seeing benefits, it was suggested a duty to publish Land Management Plans could have negative impacts including damaging relationships or creating confrontation, or by inhibiting investment and, potentially, inhibiting activity that would be in the public interest. There was also concern that requirements for detailed plans or specific consultation timescales could disrupt normal management and commercial activities. Instead of creating a compliance approach that could detract from more meaningful engagement it was argued that better outcomes would be achieved from retaining a voluntary approach.

In terms of the content of Management Plans, it was thought to be unclear what information might be included that is not already available to interested parties and it was argued that no evidence to indicate that the absence of a Land Management Plan has a detrimental effect has been presented.

### Extent of policy and existing mechanisms

Some respondents highlighted the large volume of policy in relation to land use in Scotland, arguing that it may be unrealistic to expect either land managers or communities to read and understand everything that might be relevant. Potential for confusion was suggested if different policy strands are, or appear, contradictory.

It was also observed that guidance already in place means landowners are expected to consult on land use change, and that planning procedures already provide opportunity for community input on a regular basis rather than at a single point when a Management Plan is being prepared. If looking to promote community involvement in local decision making, it was suggested the Scottish Government could do more to support communities in producing Community Plans and Local Place Plans

**Question 13** – Do you have any other comments on the proposal to make a legal duty for largescale landowners?

Around 200 respondents answered Question 13, although many of the issues raised have been covered at previous questions in this section, particularly at Question 8.

With respect to their title, it was suggested Land Management Plans should be called Sustainability Plans to emphasise importance of tackling the nature and climate emergencies.

### Complementing other processes

Complementing other land management plans and/or avoid duplicating other processes was seen as important, with suggestions that:

- Organisations that already have Management Plans in place should be allowed to use these to meet any new duty, as long as they are broadly compatible with the requirements imposed by a new duty.
- Existing plans should be reviewed on their usual cycle.
- There may be a requirement for such plans to be amended in future to better reflect LRRS principles in their formulation and implementation.

There were specific references to the importance of alignment of a duty to publish Land Management Plans with requirements under:

- NPF4.
- The Planning (Scotland) Act 2019, Local Place Plans and LDPs.
- The forthcoming Agriculture Bill.

It was also noted that a duty to publish Management Plans could be delivered through a standalone provision or alternatively through a duty to comply with a Code of Practice under a revised LRRS, with the latter option enabling close links to the LRRS and other associated Codes. It was also suggested this approach would aid proportionality and allow any requirement to evolve in line with the LRRS.

There were suggestions a duty to publish management plans should also apply to urban areas or to buildings and property on the land.

**Support and guidance**

Some respondents highlighted practical issues relating to the production of Land Management Plans, including that their presentation will need to be clear and accessible and that landowners will need support and guidance on content. Providing a template and guidance, seminars/workshops, and a range of example Land Management Plans were all suggested. Existing SLC templates were suggested to require further development in order to be suitable.

Although it was noted that the consultation paper highlights Forestry and Land Scotland's Land Management Planning process as a potential model for Land Management Plan development it was argued that this would not be a good choice, with variable implementation and often-poor community engagement both cited as reasons. Other suggestions for potential models included:

- Processes associated with production of Long-Term Forest Plans.
- The UK Woodland Assurance Standard (UKWAS).
- Guidance for developing Local Place Plans and LDPs.

It was also argued that an appropriate standard, drawn up in consultation with Scottish Land and Estates, could see best practice become the norm.

Some respondents addressed the potential resources associated with production of Land Management Plans, including that costs could be significant for large landholdings, and that the Scottish Government should ensure communities are

given sufficient resources to support the successful implementation of good Management Plans.

### Requirements

### Consultation

Some respondents highlighted the importance of meaningful engagement and consultation, with views that Management Plans should be subject to a formal consultation process or that, as a minimum, legislation should advise early engagement, in line with the National Standards for Community Engagement. Requirements to consult with adjacent properties or to consult tenants and crofters who will be affected were also proposed. However, it was also noted that several existing regimes provide routes for public consultation and engagement, and it was suggested that both how any new processes might sit alongside existing mechanisms and how to avoid consultation fatigue should be considered.

It was also suggested that, as well as the local community, there should be a mechanism to allow qualified independent experts to comment on the Management Plan or that Plans should be subject to independent assessment by scientists and ecologists with relevant land management expertise.

### Content

Suggested content for Land Management Plans included:

- Maps and work plans.
- A summary of likely impacts of management proposals and details around any appropriate mitigation.
- Views of the landowner on employing local people.
- Information on management of the historic environment, or on cultural heritage.
- Proposed actions to contribute to reaching net zero.
- Information on nature-focused management.
- Information on water and soil health actions, and on water resources.
- Information on existing local plans, particularly those that have been led by communities and reflect community priorities (for example community action plans) and a requirement for Land Management Plans to reflect the priorities and aims of such plans.
- Information on land released for housing.
- Details of the community/stakeholder consultation undertaken and an explanation of how comments have been addressed in the development and implementation of the Plan.
- At renewal, a report on compliance with the previous plan, its successes and failures, and actions being taken to address non-compliance.

It was also suggested that, if the duty to publish a Management Plan were to be extended to smaller landholdings, the scope and detail required should be proportionate to the scale of landholding.

**Publication arrangements**

Comments on publication of plans included calls for these to be:

- Publicly available online via a central portal, potentially administered by the SLC.
- Easy to find, with one suggestion for an interactive map.
- Presented in an accessible format including contact details for queries about the plan, and details of who is accountable for its implementation.
- Freely available to communities.

It was also suggested that published Management Plans may provide a valuable opportunity for gathering data on land management and land use objectives, and on how policy is being implemented or is influencing land management outcomes.

Specific issues were raised with respect to publication of Management Plans for Ministry of Defence land, including that some aspects of land management cannot be made publicly available for national security reasons. It was argued that each establishment will have to be assessed on a case-by-case basis, with significant implications in terms of time and resources, meaning that appropriate timeframes for compliance will be required.

**Enforcement**

The absence of any clear mechanism to monitor implementation and the effectiveness of enforcement were noted at Question 12 as reasons that some respondents thought communities might not benefit from the duty to publish a Land Management Plan. It was argued that there needs to be reporting and monitoring mechanisms, along with scope for appropriate and proportionate enforcement action in situations where Management Plans do not adhere to LRRS principles in practice. There were also calls for communities to have the opportunity to challenge a landowner's failure to deliver their Management Plan or for significant penalties for not developing and following adequate plans.

However, it was also noted that, although a duty only to publish a plan is rather limited, there may be legitimate reasons why it is not possible to comply with a published plan, including reasons outwith the control of the landowner. It was suggested that it would be burdensome for landowners to report on their adherence to the plan or for this to be subject to oversight and enforcement. Another view was that it should be accepted that a Management Plan provides a snapshot of intentions at the time it is prepared, but that businesses need to retain flexibility to respond to changes in circumstances or opportunities in ways that may not be reflected in the Plan.

**Arrangements regarding tenancies**

A number of respondents highlighted farming tenancies and crofting tenancies as requiring consideration if the legal duty to provide a management plan rests with the landowner. Points raised included that:

- Many land management decisions will be made by tenants and consideration should be given to how and when these land managers are brought into the process.
- Management Plans must reflect the rights of tenants/crofting tenants and should cover long-term planning for farm tenancies, including the future of fixed term tenancies.
- Management Plans should be produced in partnership with any crofting tenancies and should allow benefits from good management of peatland soils to be realised.

Whether a tenant would have the right to challenge a Land Management Plan was queried and, if so, who would make a decision.

# 5. Regulating the market in large-scale land transfers: a new Public Interest Test, and a requirement to notify an intention to sell

The consultation paper highlights diversification of ownership of land as a key focus of land reform proposals. It is also noted that the Bute House Agreement sets out the Scottish Government's aim to ensure the public interest is considered in transfers of large-scale landholdings, and the intention to introduce a pre-emption in favour of community buy-out where it is in the public interest. This section considers views on these aspects of land reform proposals.

## A public interest test for large-scale land transfers

The SLC has recommended that the forthcoming Land Reform Bill should include a public interest test at the point of transfer for significant landholdings, and the consultation paper proposes that:

- The test would apply to large-scale landholdings, or transfers which would create a large-scale landholding, as defined in Part 4 of the consultation paper.
- The seller would need to demonstrate whether the landholding fell within the scope of the test, and a test would also be applied to the buyer.

The Scottish Government's aim is that in order to meet its key policy objectives for the Bill, which include increasing diversity of land ownership, and improving opportunities for community groups, there are three potential outcomes of the test if it were to be conducted on the seller before sale:

i. The seller is permitted to sell the land where there is insufficient public interest to warrant interference.

ii. The sale can only proceed if the land is split into lots that cannot be acquired by one party as a whole unit.

iii. The sale can only proceed if the land is offered in whole or part to constituted community bodies.

**Question 14** – We propose that a public interest test should be applied to transactions of large-scale landholdings. Do you agree or disagree with this proposal?

Responses to Question 14 by respondent type are set out in Table 31 below.

**Table 31**

| **Question 14** – We propose that a public interest test should be applied to transactions of large-scale landholdings. Do you agree or disagree with this proposal? | | | | |
|---|---|---|---|---|
| | **Agree** | **Disagree** | **Don't know** | **Total** |
| Organisations: | | | | |
| Academic group or think tank | 4 | 0 | 0 | 4 |
| Community or local organisations | 20 | 1 | 0 | 21 |
| Government and NDPB | 9 | 0 | 6 | 15 |
| Landowner | 7 | 23 | 2 | 32 |
| Private sector organisations | 3 | 8 | 3 | 14 |
| Representative bodies, associations or unions | 13 | 8 | 4 | 25 |
| Third sector or campaign group | 19 | 3 | 3 | 25 |
| | | | | |
| Total organisations | **75** | **43** | **18** | **136** |
| **% of organisations** | **55%** | **32%** | **13%** | |
| Individuals | **259** | **59** | **11** | **329** |
| **% of individuals** | **79%** | **18%** | **3%** | |
| All respondents | **334** | **102** | **29** | **465** |
| **% of all respondents** | **72%** | **22%** | **6%** | |

The majority of respondents, 72% of those answering the question, agreed with the application of a public interest test to transactions involving large-scale landholdings. Of the remaining respondents, 22% disagreed and 6% did not know. The level of agreement was lower for organisations than individuals, primarily due to the majority of Landowner organisations disagreeing with the proposal.

**Please give some reasons for your answer**

Around 285 respondents provided a comment at Question 14.

### Support for the principle of a public interest test

Most of those commenting were in favour of the public interest test as set out in the consultation paper, and some noted that the test was a central recommendation of the SLC. It was suggested that it will be key to addressing issues around the scale and concentration of land ownership, increasing transparency and ensuring that the overall approach to land reform supports long-term public interest.

There were also references to the range of existing measures designed to support community rights; respondents described the public interest test as consistent with the focus of these measures in terms of supporting community empowerment and community wealth building. While some respondents felt that the public interest should be a guiding principle for all large landholdings, it was suggested that a specific test around land transactions will provide an opportunity to make progress against land reform objectives.

Comments in support of the public interest test also highlighted the potential impact of concentrated land ownership on local communities and how the benefits associated with land are shared. There was support for a public interest test as a means of preventing the potential negative effects of concentrated land ownership.

Respondents also highlighted a range of potential benefits that could flow from applying a public interest test, including some who felt that the rationale set out in the consultation paper is too narrowly focused on potential economic impacts. The most commonly suggested benefit was supporting the delivery of climate and nature policy objectives. There was specific reference to the relevance of the public interest test in assessing contributions to decarbonisation, biodiversity and nature restoration, and flood management, and there were calls for the test to be framed specifically around the climate and nature.

The potential to support community empowerment and community wealth building was also highlighted, along with possibilities around supporting the resilience and sustainability of communities, and delivering community-priorities (such as protecting natural or historic assets and housing).

Respondents also noted that a public interest test would bring the Scottish planning system in line with some European countries. Examples of overseas land regulation in the public interest were highlighted as potentially relevant resources to inform development of legislation.

**Concerns about the principle and design of a public interest test**

Some of those raising concerns about proposals for a public interest test repeated issues discussed earlier, including at Question 1, around the definition of 'large-scale' set out in the consultation paper. For example, it was suggested that the risk of excessive power associated with a landholding is dependent on more than the size of the holding. Some also wished to see the definition of 'large-scale' landholding take account of factors such as location in relation to local communities, and the financial and community value of built assets.

A number of respondents also questioned the specific targeting of large-scale landholdings and rurality of land. Some were of the view that the proposed threshold for large-scale landholdings is too high and suggested that, as currently defined, the public interest test would apply to very few land transactions each year. In this context, there were calls for the scope of the public interest test to be extended to include smaller landholdings, and it was suggested that aggregate holdings should also be included. Some respondents argued that the public interest test should be structured to enable its use in urban areas, where land ownership patterns could lead to excessive power acting against the public interest.

Others raised concerns that a single size threshold is too crude a measure to support a public interest test, and it was suggested that research around the impact of large-scale landholdings indicates that the size of holdings is not the most significant factor. Land use and management were identified by some as more relevant factors and there were calls for the regulatory framework to focus primarily on effective land use and management of large-scale landholdings.

In addition to concerns around the proposed approach to the public interest test, some respondents questioned the need for a test. This reflected a view – primarily from Landowners and Representative body respondents – that the consultation paper does not do enough to justify proposals that could have a significant impact on the ECHR property rights of those wishing to buy or sell land. There was reference to SLC research indicating that a balance can be found between unnecessary interference with property rights and the public interest. The risk of legal challenge to a public interest test on the basis of breach of ECHR was also highlighted as having potential to add to uncertainty for buyers and sellers of land.

Some of those opposed to a public interest test also suggested that existing powers and controls on land transactions and use are sufficient to make determinations in the public interest, particularly given proposals to strengthen LRRS and Land Management Plan regulations.

Concerns were also raised with respect to how a public interest test could impact the market for large-scale landholdings. For example, it was suggested that it could add to uncertainty for landowners and potential buyers around their ability to resell landholdings in the future. This was seen as having the potential to have an impact on land values, act as a barrier to investment, and lead to some landowners choosing not to sell. An associated point was that this could undermine the aims of the wider proposals by reducing opportunities to diversify land ownership. There were also calls for clarity around any compensation for loss of value, and for a more streamlined process to avoid excessive administrative burden.

There was also specific concern that a public interest test could disincentivise investment in larger-scale and longer-term projects – including those required to support the transition to net zero – for example, if landowners cannot be confident of their ability to pass on land to future generations.

**Defining public interest**

The definition and interpretation of ‘public interest’ was a particular issue for some respondents raising concerns around the proposed public interest test. It was suggested that further consideration is required around the definition and scope in terms of whether public interest should be interpreted at the local, regional or national level. A number of respondents – including a number of Landowners – highlighted the potential for conflict between local and national interests, sometimes citing examples of local community interests being at odds with national climate and carbon objectives. While some noted that the national interest would ordinarily be given priority over local interests, there was also a view that greater weight should be given to local community interest, given the focus of land reform proposals on community empowerment.

It was also suggested that changes in government can lead to a shift in policy priorities and what is considered in the national public interest, and that this could add to uncertainty for markets.

Some of those raising concerns around the interpretation of public interest commented that any measure would be subjective and open to interpretation. This

was a particular issue for some Landowner respondents who again highlighted the potential for a public interest test to add to uncertainty for buyers and sellers; they were looking for a strong evidence base to support any assessment of public interest.

### Applying the public interest test

Some respondents suggested that the consultation paper lacks sufficient detail on how the public interest test would be applied, particularly given concerns around the potential impact on landowners' rights. Some of these respondents felt unable to comment definitively on how a public interest test would operate, and the potential impacts.

There were also a number of queries about how the public interest test would be framed including:

- How 'public interest' is to be both defined and measured, including who will be responsible for the assessment?
- How a public interest test would support a just transition to net zero?
- How the process will ensure parties are not required to disclose commercially sensitive information, such as rental rates?

It was also stressed that a public interest test must not prevent public bodies from acquiring sufficient land to deliver statutory duties.

There were also queries about how and when the test would be applied. These included:

- How an open and transparent process will be achieved? This was sometimes connected to concerns about a public interest test being used to justify land transactions for carbon credits or carbon offsetting.
- What checks and balances will be put in place, and how any appeal process would operate?
- How the public interest test would operate alongside other measures, such as compulsory purchase provisions?
- Whether the intention is to take forward both the public interest test and prior notification to sell, and if so how these will work together?
- Whether the public interest test would apply to part-sale of large-scale landholdings, for example sale of land or other assets? Some wished to see these transactions included in the public interest test, for example if sales are above a minimum percentage or hectarage. Others felt that disposals and acquisitions should be treated differently, including suggestions that part disposal of assets can help to diversify land ownership and, as such, should not be within the scope of a public interest test.

**Question 15** – What do you think would be the advantages and/or disadvantages of applying a public interest test to transactions of large-scale landholdings?

Around 340 respondents answered Question 15.

A number of respondents, particularly Landowners, noted that the balance of advantages and disadvantages associated with the public interest test would depend on the detail of the proposed approach – including for example the criteria against which land transactions would be assessed. These respondents included some who felt unable to comment on the potential advantages or disadvantages without more detail on the proposals.

However, most of those who commented identified specific advantages and disadvantages associated with proposals for a public interest test.

**Advantages of a public interest test for large-scale landholdings**

The most commonly cited advantages reflected those set out in the consultation paper in relation to diversifying land ownership, increasing transparency and providing further support for community land ownership.

Some respondents – particularly Community, Government or NDPB, Third sector and Individual respondents – saw addressing adverse impacts associated with the scale and concentration of land ownership as a key focus for land reform proposals as a whole, and enabling new entrants to the land market was identified as a key advantage of application of a public interest test, particularly for rural areas.

Respondents also focused on increased transparency and accountability for land transactions and ownership, seeing the opportunity for public interest test-driven community engagement as especially important for improving transparency around land transactions. It was suggested that this could contribute to better decision-making around land ownership and management, helping to ensure that land ownership contributes to the wider public interest. Some also noted that a public interest test would provide an opportunity to assess the suitability of prospective buyers in terms of community interests.

Respondents also highlighted potential for a public interest test to further support community land ownership and noted that this has been a long-standing public policy objective. Again, opportunities for effective community engagement around land ownership were highlighted as an advantage of a public interest test. It was also suggested that proposals may be especially beneficial in circumstances where there is a clear need and plan for community-led development, with the public interest test ensuring that land is made available for this purpose.

Respondents also referred to the potential for wider advantages if a public interest test ensures that the management of landholdings contributes to other relevant government priorities. There was reference to:

- Tackling the climate and nature crises, and ensuring a just transition to net zero, including specific reference to opportunities to increase natural capital and enhance ecosystem services.

- Community wealth building and community empowerment, including specific reference to potential for a public interest test to support the community right to buy. Respondents also suggested that the public interest test would provide an opportunity to support community priorities such as housing supply, other community assets such as theatres and cinemas, and woodland and green spaces.
- Supporting rural regeneration and strengthening rural economies, including calls for an approach that ensures that rural economies are consistent with the principles of a just transition, community empowerment and community wealth building. There was specific support for the potential to realise new employment and economic development opportunities.
- Addressing the issue of vacant and derelict land, noted as a long-standing policy challenge in some areas.

**Disadvantages of a public interest test for large-scale landholdings**

Other respondents saw a range of potential disadvantages associated with public interest test proposals.

The risk of interference with landowner rights under ECHR was one of the most commonly referenced concerns. Landowners were particularly likely to raise such issues, with a suggestion that Article 1 of Protocol 1 (A1P1) rights and succession rights of family members could be affected. There was also concern that the proposals could be interpreted as discriminating based on the size of landholdings. It was suggested that a public interest test should maintain sufficient protection of rights under ECHR, while avoiding lack of clarity or uncertainty, and there was a concern that legal challenges to the public interest test could be likely if application of the test resulted in a loss of land value.

A number of respondents – primarily Landowners – highlighted the potential for the market for large-scale landholdings to be adversely affected if landowners and prospective buyers cannot be confident about their ability to sell landholdings in the future. There was an associated concern about the potential for the interpretation of the public interest to change over time, for example as government policy priorities change. There was a view that concerns about uncertainty could have an adverse impact on the value of large landholdings, and it was suggested that proposals may ‘skew’ the market by incentivising land transactions marginally below the definition of large-scale landholdings. However, some of those in favour of the proposals suggested that constraints on rising land prices could be in the public interest.

Respondents also suggested that the proposals would add to the legal complexity, administrative burden and timescales around large-scale land transactions, and suggested that this would result in increased costs. For example, it was noted that applying the public interest test process is likely to require input from professional advisors.

A number of respondents suggested that the disadvantages noted above – uncertainty in the market and increased costs – could disincentivise some land transactions and deter investment in land and rural economies. It was suggested

that this could undermine the policy aim of increasing diversification of land ownership, in addition to other potential impacts such as reducing Land and Buildings Transaction Tax income and increasing land prices (if supply of land is reduced). There were also concerns that the public interest test could be a barrier to the long-term investment required to support other national policy objectives, with respondents making specific reference net zero, nature recovery, renewable energy and strengthening rural economies.

Issues relating to the further development of the proposals were also highlighted. This reflected a view noted earlier that the consultation paper does not include sufficient detail on the approach to a public interest test. Specific concerns included:

- The complexity of developing and implementing the public interest test, and the resources required. This included a view that significant work will be required to clarify test criteria and processes, and it was suggested that aligning the test with wider planning system reform will be a challenge. However, others were of the view that a public interest test approach could require fewer planning authority resources than the current compulsory purchase order process.
- Balancing different aspects of the public interest will be challenging. Respondents highlighted specific concerns around the potential for conflict between national and local interests. It was suggested that the test must be based on an 'holistic' understanding of the public interest which balances the range of relevant policy considerations. This included specific concern around the potential for an emphasis on use of landholdings for carbon offsetting to have negative impacts on other aspects of the public interest. Some respondents noted that the consultation paper does not include any proposals for how these considerations would be balanced.

Respondents also highlighted some practical considerations that will need to be considered, including timescales and appeals processes. It was suggested that, when developed, these details could have a significant impact on the effectiveness (or otherwise) of a public interest test.

Other potential disadvantages highlighted by respondents included:

- Potential jobs losses if landowners are required to reduce the size of their landholdings.
- Weakening of the trust between landowner and communities, especially if engagement becomes a 'tick box' exercise.
- The potential for the public interest test to be misused by individuals or groups wishing to pursue their own interests.
- The potential for the benefits of a public interest test to be limited by a lack of community capacity to exercise a pre-emptive right to buy land – including in terms of human, financial and social capital.

**Question 16** – Do you think the public interest test should be applied to:

- The seller only
- The buyer only
- The seller and buyer
- Don't know

Responses to Question 16 by respondent type are set out in Table 32 below.

**Table 32**

**Question 16** – Do you think the public interest test should be applied to: The seller only / The buyer only / The seller and buyer / Don't know

| | Seller only | Buyer only | Seller & Buyer | Don't know | Total |
|---|---|---|---|---|---|
| Organisations: | | | | | |
| Academic group or think tank | 0 | 2 | 1 | 1 | 4 |
| Community or local organisations | 1 | 0 | 17 | 0 | 18 |
| Government and NDPB | 0 | 1 | 5 | 5 | 11 |
| Landowner | 0 | 9 | 6 | 14 | 29 |
| Private sector organisations | 0 | 3 | 3 | 5 | 11 |
| Representative bodies, associations or unions | 0 | 4 | 11 | 8 | 23 |
| Third sector or campaign group | 0 | 2 | 13 | 6 | 21 |
| | | | | | |
| Total organisations | **1** | **21** | **56** | **39** | **117** |
| **% of organisations** | **1%** | **18%** | **48%** | **33%** | |
| Individuals | **4** | **32** | **234** | **41** | **311** |
| **% of individuals** | **1%** | **10%** | **75%** | **13%** | |
| All respondents | **5** | **53** | **290** | **80** | **428** |
| **% of all respondents** | **1%** | **12%** | **68%** | **19%** | |

Percentages may not sum to 100% due to rounding

The majority of respondents, 68% of those answering the question, thought that the public interest test should be applied to both the seller and buyer for transactions involving large-scale landholdings. Of the remaining respondents, 12% favoured the buyer only option, just 1% the seller only and 19% did not know.

**Please give some reasons for your answer.**

Around 250 respondents provided a comment at Question 16, although some indicated that they had no strong view on the issue, or felt unable to offer a clear view due to a lack of detail on how proposals would work.

A number of respondents suggested that the public interest test should be applied to the land transaction rather than a specific party; these respondents highlighted what were seen as general principles for the public interest test, suggesting that the test should consider these principles to determine whether there is a public interest case for alternate ownership or management. Reference to specific principles or questions included how the landholding has been managed historically, how land management might change under new ownership, and how land management might compare under different potential owners.

**Reasons for applying a public interest test to the seller**

Other respondents felt that there are compelling arguments for both the seller and buyer to be subject to a public interest test and, reflecting the answers to the closed question, most of the points in favour of applying a test to the seller were from those who wished to see a public interest test applied to both parties.

Potential benefits identified by these respondents included the opportunity to assess the existing public interest value of a landholding, and highlight any existing concerns around whether the landholding is being managed in the public interest. Conversely, it was also suggested that a public interest test should be able to identify where a transaction is likely to lead to management approaches that are less beneficial to the public interest.

Respondents also suggested that a public interest test would ensure that both parties have fully considered the public interest implications of the transaction, and that any tenants are treated fairly and have had their voices heard as part of the transaction.

In terms of particular circumstances when it would be appropriate to apply a public interest test to the seller there was reference to the landowner being a public body and the sale resulting in land being lost to public use, to prevent profit in instances where the seller should not benefit from sales income, and where it may be appropriate for a proportion of any profits to be shared with the community.

However, it should be noted that some respondents expressed a view that the public interest test should still apply predominantly to the buyer, or that a different kind of public interest test should be applied to the seller - for example to identify sale options that would best serve the public interest. An associated view was that a public interest test is likely to deliver more limited benefits when applied to the seller.

**Reasons for not applying a public interest test to the seller**

Most of those referring to application of a public interest test to the seller raised concerns, with the rationale for moving away from the SLC recommendation of a public interest test applying only to the buyer questioned. It was noted that the consultation paper states that applying a test to the seller could be ‘more beneficial in meeting our land reform aims’ but does not expand on how these benefits would be realised. Some respondents were also unclear on the potential benefits of

applying a public interest test to the seller, noting that it is not possible to prevent an owner from selling their land.

Respondents also highlighted that landowners will have had to comply with a range of standards, such as the LRRS and Land Management Plans, to ensure their ownership is not contrary to the public interest. In this context, it was suggested that, if a landlord has been subject to a LRRS-based review, it would be inappropriate to then also subject them to a public interest test.

There was some concern that applying the public interest test to sellers could discourage owners from bringing large-scale landholdings to market. It was noted that this could undermine the policy objective of diversifying land ownership, in which respect it was suggested that a landowner choosing to sell a large-scale landholding would always be in the public interest in terms of diversifying land ownership.

There was also a view – primarily amongst Landowner respondents – that applying a public interest test to the seller is counter-intuitive as it would be in the public interest for the sale to proceed if the current owner was deemed unsuitable, and there would be no reason to prevent the sale. In this context, there was concern that additional administrative burden could be placed on sellers for no clear benefit.

Finally, respondents suggested that the application of a public interest test to the seller would involve further property rights considerations. This included some Government or NDPB and Representative body respondents who suggested that this would add to the risk of proposals breaching A1P1 rights under ECHR, for example if sellers are forced to sell landholdings without adequate compensation.

**Applying a public interest test to the buyer**

A number of respondents highlighted benefits associated with applying a public interest test to the buyer; respondents did not raise any significant concerns or opposition to the application of a public interest test to the buyer, other than those opposed to the principle of such a test.

Many of those commenting in support of a test for the buyer held a view that the land management intentions of the buyer, including as evidenced by their previous land management record, are most relevant to the public interest and whether LRRS responsibilities will be fulfilled. This included specific suggestions that applying conditions of acquisition to a buyer is more likely to make a positive contribution to net zero and other policy objectives than applying a public interest test to the seller.

Respondents also highlighted that applying a public interest test to the buyer will be essential in ensuring the transaction does not result in a further concentration of land ownership with potential for negative monopoly effects. There was also reference to the importance of transparency, with the public interest test seen as an opportunity to explore the prospective buyer's intentions, and to ensure clarity around expectations on the buyer.

**Question 17** – If the public interest test was applied to the seller, do you think the test should be considered as part of the conveyancing process?

Responses to Question 17 by respondent type are set out in Table 33 below.

**Table 33**

| **Question 17** – If the public interest test was applied to the seller, do you think the test should be considered as part of the conveyancing process? | | | | |
|---|---|---|---|---|
| | **Yes** | **No** | **Don't know** | **Total** |
| Organisations: | | | | |
| Academic group or think tank | 2 | 0 | 2 | 4 |
| Community or local organisations | 8 | 3 | 5 | 16 |
| Government and NDPB | 2 | 1 | 6 | 9 |
| Landowner | 7 | 13 | 9 | 29 |
| Private sector organisations | 2 | 8 | 3 | 13 |
| Representative bodies, associations or unions | 4 | 8 | 7 | 19 |
| Third sector or campaign group | 8 | 5 | 7 | 20 |
| | | | | |
| Total organisations | **33** | **38** | **39** | **110** |
| **% of organisations** | **30%** | **35%** | **35%** | |
| Individuals | **159** | **53** | **95** | **307** |
| **% of individuals** | **52%** | **17%** | **31%** | |
| All respondents | **192** | **91** | **134** | **417** |
| **% of all respondents** | **46%** | **22%** | **32%** | |

The largest proportion of respondents, 46% of those answering the question, agreed that, if applied to the seller, the public interest test should be considered as part of the conveyancing process. Of the remaining respondents, 22% disagreed and a relatively large proportion – 32% – did not know. Among organisational respondents, a majority of Landowners, Private sector organisations and Representative bodies disagreed with considering the public interest test as part of the conveyancing process.

**Please give some reasons for your answer.**

Around 175 respondents provided a comment at Question 17.

A number of respondents – including Landowner, Private sector and Individual respondents – repeated their opposition to applying a public interest test to the seller and highlighted some of the concerns discussed at Question 16. Others felt unable to offer a view on how the public interest test is applied without further detail on the test process, with some noting that they could not judge the extent to which the test would fit within the conveyancing process without further detail. There were

specific questions around how the test will be triggered, who will conduct the test, and expected timescales.

### Points in favour of a public interest test as part of conveyancing

Some respondents noted their support for the proposal to incorporate a public interest test as part of the conveyancing process. For some, this reflected a view that it would be logical for the public interest test to sit alongside the other compliance considerations that form part of the conveyancing process.

There was also reference to the potential for the public interest test to result in conditions on the sale that should be considered as part of the conveyancing process. In this context, it was suggested that incorporating the public interest test could further strengthen compliance around large-scale land transactions.

It was also noted that robust processes are already in place to support conveyancing around large-scale land transactions, and it was argued that incorporating the public interest test here would be the simplest approach and would avoid the creation of an additional statutory process. Including the test as part of conveyancing was also seen as a means of ensuring that the test is applied to all relevant transactions, with some referencing the potential for avoidance of the test.

Some of those expressing support for the proposal did see potential for it to add uncertainty and delays to the process, dependent on how the test is applied. It was suggested that the conveyancing process may require a facility for pre-clearance against the public interest test prior to conveyancing, and/or for buyers to seek advice in advance of conveyancing on the likelihood of meeting the public interest test.

### Concerns around incorporating a public interest test as part of conveyancing

Similar concerns were highlighted by those who objected to consideration of the test as part of the conveyancing process; it was suggested that the complexity of legal argument and the lack of existing case law could make the application of the public interest test a lengthy process. It was reported that, in any case, conveyancing for large-scale land transactions is a lengthy and expensive process, and the concern was that the test could result in further delays, uncertainty and cost. Some respondents suggested that both buyers and sellers require certainty from the outset before significant costs are incurred and that the test risks loss of sale value and/or transactions failing. An associated suggestion was that provision for compensation may be required.

There was also a view that key elements of the public interest test must be satisfied before the conveyancing process can begin. For example, it was noted that a public interest test may require lotting, impose other conditions or provide community bodies with the opportunity to buy land. A number of respondents suggested that the public interest test should therefore be considered in advance of the conveyancing process.

Some respondents recommended that the public interest test is conducted well in advance of conveyancing, including a suggestion that this should be prior to any marketing. It was also proposed that the test should be conducted at the point that the seller chooses a buyer (but prior to conveyancing).

As noted earlier, some respondents felt unable to comment on proposals without further detail on what a public interest test would involve. Several of those commenting on how the test should be incorporated in the transaction process also noted that the detail of the approach will require careful consideration. This included specific calls for clarity in relation to compliance, enforcement and sanctions. There was also concern that conveyancers may not have the skills and capacity to apply a public interest test.

**Question 18** – Do you think that all types of large-scale landholding transactions (including transfers of shares and transfers within or between trusts) should be in scope for a public interest test?

Responses to Question 18 by respondent type are set out in Table 34 below.

**Table 34**

| **Question 18** – Do you think that all types of large-scale landholding transactions (including transfers of shares and transfers within or between trusts) should be in scope for a public interest test? | | | | |
|---|---|---|---|---|
| | **Yes** | **No** | **Don't know** | **Total** |
| Organisations: | | | | |
| Academic group or think tank | 4 | 0 | 0 | 4 |
| Community or local organisations | 16 | 0 | 2 | 18 |
| Government and NDPB | 5 | 0 | 5 | 10 |
| Landowner | 6 | 25 | 0 | 31 |
| Private sector organisations | 4 | 6 | 3 | 13 |
| Representative bodies, associations or unions | 8 | 5 | 9 | 22 |
| Third sector or campaign group | 16 | 0 | 4 | 20 |
| | | | | |
| Total organisations | **59** | **36** | **23** | **118** |
| **% of organisations** | **50%** | **31%** | **19%** | |
| Individuals | **251** | **51** | **17** | **319** |
| **% of individuals** | **79%** | **16%** | **5%** | |
| All respondents | **310** | **87** | **40** | **437** |
| **% of all respondents** | **71%** | **20%** | **9%** | |

The majority of respondents, 71% of those answering the question, agreed that all types of large-scale landholding transactions should be in scope for a public interest test. The level of agreement was lower for organisations than individuals, at 50% and 79% respectively, with the majority of Landowners and Private sector organisations disagreeing with the proposal.

**Please give some reasons for your answer.**

Around 240 respondents provided a comment at Question 18.

### Rationale for including all types of large-scale transaction

Those supporting the inclusion of all types of large-scale landholding transaction sometimes commented on transactions involving transfer of shares and transfers within or between trusts, as well as on inheritance and changes of beneficial owner that do not involve shares. Respondents noted that these types of transaction can contribute to issues around the scale and concentration of land ownership, and have a bearing on the interests of local communities. It was suggested that application of the public interest test should reflect the potential impact of the transaction, rather than the model of land ownership.

It was also suggested that options agreements for developers to purchase land within a specified time period should be explored as a potential trigger for the public interest test, and it was noted that these were highlighted by the SLC as being unconducive to transparency in land transactions. Reflecting concern that information on options agreements is not publicly available, it was suggested that further research is required to explore the issue.

Support for the proposal also reflected a view that the test must be comprehensive if it is to be effective in delivering against policy objectives. Many of those commenting, including some Community respondents, were concerned that excluding some types of transaction could significantly weaken the effectiveness of proposals in terms of transparency, effective monitoring of large-scale land ownership and addressing concentration of land ownership. For example, it was noted that a substantial number of large-scale landholdings are currently held by trusts or companies, and some referred to ‘secrecy’ around trusts and similar land ownership models as a potential issue.

These comments were also linked to concern that excluding some types of transaction from the public interest test could provide an opportunity for landowners to avoid proper scrutiny of large-scale land transactions. For example, there was reference to the potential for landowners to transfer land to trusts or shareholder companies to avoid future public interest tests.

### Reserved powers

It was suggested that the devolution settlement does not permit the Scottish Government to make the necessary legislative changes to ensure these transactions are in scope for the public interest test. While there was support for the Scottish Government engaging with the UK government to resolve this issue, there was also concern around the likelihood that this engagement will be successful in making the necessary legislative changes. It was also noted that this process could add significant delay to introduction of the public interest test.

Others raised more significant concerns that key land reform measures are being proposed before the Scottish Government has the competencies to deliver them.

These respondents suggested it would be more appropriate to implement proposals once agreement with the UK government is reached. It was also suggested that, if the UK government refuses to ensure all transactions are in scope of the public interest test, proposals would result in discriminatory differences in how large-scale land transfers are treated dependent on the model of ownership.

**Other concerns or reservations**

A number of respondents, including some Landowner respondents, raised other issues and concerns about the proposal. They included that the Scottish Government has not provided evidence to justify applying the public interest test to all types of transaction, and that the approach is not compatible with the Scottish Government's Better Regulation agenda.

In terms of specific types of transaction, some respondents agreed that it could be appropriate to apply a public interest test where there is a change of control of a company, although it was suggested that transfer of shares would not necessarily affect the concentration of land ownership as the land would still be held by the company.

Similarly, a number of respondents suggested that land transfer through generational succession of ownership or change of trustees would not have a material impact on concentration of land ownership and should not be subject to a public interest test. Many of those expressing concern about the proposals suggested that applying the public interest test to these transactions could impinge on succession and inheritance rights under A1P1 of the ECHR. This was highlighted as a particular issue if the public interest test were to apply to transfers for no consideration between family members as part of legitimate succession planning.

There was also wider concern that proposals would introduce unnecessary uncertainty in succession of ownership, potentially impacting on investment in long-term projects if current landowners perceive there to be a risk to intergenerational land transfers. It was suggested that this could lead to increased complexity in land ownership structures to mitigate the impact of proposals; connected to this were concerns that the proposals could frustrate the internal reorganisations that are sometimes necessary for effective ongoing management of large-scale landholdings. This was seen as having potential to lead to a deterioration in management of landholdings.

In relation to trusts, there was a view that use of existing regulations would be a more appropriate approach to improving public scrutiny. There was specific reference to tax compliance regulations. There were also suggestions for circumstances when an exemption from the public interest test might be appropriate. These included a proposed grace period, for example for 12 months, following inheritance of land to allow time for a new Management Plan to be put in place. An exemption in the case of default on land mortgages where the lender must be able to take ownership and control of the land was also proposed.

Other issues or concerns raised included that:

- A public interest test would be disproportionate where the practical issue of concentration of ownership is not affected, and could add unnecessary administrative burden to the transaction process.
- Further detail is needed on how the test would be applied in practice. For example, it was also noted that transfers of shares and transfers within or between trusts are not typically recorded in the Land Register, meaning that this would not be available as an information source to support enforcement.

Some respondents also proposed measures to mitigate the practical impact of the public interest test, such as an initial review process to identify whether a full public interest test is required prior to transfer. It was also suggested that consideration be given to the potential need for support to ensure that the application of the test is not too onerous.

**Question 19** – We have proposed that if a public interest test applied to the seller concluded there was a strong public interest in reducing scale/concentration, then the conditions placed on the sale of the land could include:

i. The land in question should be split into lots and could not be sold to (or acquired by) one party as a whole unit

ii. The land, in whole, or in part, should be offered to constituted community bodies in the area, and the sale can only proceed if the bodies consulted, after a period of time, indicate that they do not wish to proceed with the sale

Do you agree or disagree with these conditions?

Responses to Question 19 by respondent type are set out in Tables 35 and 36 below.

**Table 35**

| **Question 19(i)** – The land in question should be split into lots and could not be sold to (or acquired by) one party as a whole unit. Do you agree or disagree with these conditions? | | | | |
|---|---|---|---|---|
| | **Agree** | **Disagree** | **Don't know** | **Total** |
| Organisations: | | | | |
| Academic group or think tank | 2 | 1 | 1 | 4 |
| Community or local organisations | 11 | 2 | 3 | 16 |
| Government and NDPB | 6 | 0 | 4 | 10 |
| Landowner | 5 | 24 | 2 | 31 |
| Private sector organisations | 3 | 6 | 2 | 11 |
| Representative bodies, associations or unions | 10 | 7 | 6 | 23 |
| Third sector or campaign group | 17 | 0 | 4 | 21 |
| | | | | |
| Total organisations | **54** | **40** | **22** | **116** |
| **% of organisations** | **47%** | **34%** | **19%** | |
| Individuals | **217** | **69** | **29** | **315** |
| **% of individuals** | **69%** | **22%** | **9%** | |
| All respondents | **271** | **109** | **51** | **431** |
| **% of all respondents** | **63%** | **25%** | **12%** | |

**Table 36**

| **Question 19(ii)** – The land, in whole, or in part, should be offered to constituted community bodies in the area, and the sale can only proceed if the bodies consulted, after a period of time, indicate that they do not wish to proceed with the sale. Do you agree or disagree with these conditions? | | | | |
|---|---|---|---|---|
| | **Agree** | **Disagree** | **Don't know** | **Total** |
| Organisations: | | | | |
| Academic group or think tank | 3 | 0 | 1 | 4 |
| Community or local organisations | 15 | 1 | 0 | 16 |
| Government and NDPB | 6 | 0 | 4 | 10 |
| Landowner | 6 | 24 | 1 | 31 |
| Private sector organisations | 3 | 5 | 4 | 12 |
| Representative bodies, associations or unions | 11 | 8 | 4 | 23 |
| Third sector or campaign group | 17 | 0 | 5 | 22 |
| | | | | |
| Total organisations | **61** | **38** | **19** | **118** |
| **% of organisations** | **52%** | **32%** | **16%** | |
| Individuals | **234** | **63** | **21** | **318** |
| **% of individuals** | **74%** | **20%** | **7%** | |
| All respondents | **295** | **101** | **40** | **436** |
| **% of all respondents** | **68%** | **23%** | **9%** | |

Percentages may not sum to 100% due to rounding

A majority, 63% of those answering the Question 19(i), agreed that if a public interest test applied to the seller concluded there was a strong public interest in reducing scale/concentration, then the conditions placed on the sale of the land could include that the land in question should be split into lots and could not be sold to one party as a whole unit. The level of agreement was lower among organisational respondents than Individuals, at 47% and 69% respectively.

A slightly larger majority, 68% of those answering Question 19(ii), agreed that the land, in whole or in part, should be offered to constituted community bodies in the area. Again, the level of agreement was lower among organisational respondents than Individuals, at 52% and 74% respectively.

At both 19(i) and (ii) a majority of Landowner and Private sector organisation respondents disagreed with the proposals.

**Please give some reasons for your answer and suggest any additional conditions.**

Around 260 respondents provided a comment at Question 19.

Some of these respondents expressed their general support for one or both of the proposed conditions, reflecting a view that both are beneficial to the public interest. It was also noted that both conditions are directly relevant to the stated objectives of the public interest test in terms of addressing the concentration of land ownership (Condition (i)) and supporting community land ownership (Condition (ii)). However, other respondents repeated concerns noted at earlier questions, particularly around potential for what was described as ‘significant interference’ in the land market to discourage capital investment in rural land and economies.

### Condition (i): Splitting landholdings into lots

The most commonly raised issue in relation to Condition (i) was concern that lotting has the potential to impact the viability and market value of landholdings, with potential for sellers to lose value on the land. This was a particular concern for Landowner, Private sector and some Representative body respondents. There was a view that it would be disproportionate to disadvantage landowners in this way based only on the scale of their landholding. Some Landowner respondents also suggested that significant loss of land value, without appropriate compensation, would increase the risk of breaching a landowner’s A1P1 property rights.

Some respondents also noted potential for Condition (i) to result in negative impacts associated with fragmentation of ownership. This included reference to the potential for lotting to undermine the economies of scale that may be essential to the financial viability of landholdings, and to result in deterioration in landscape-scale land management, creating the potential for biodiversity loss.

While some of those commenting had fundamental concerns about the application of Condition (i) to large-scale land transactions, others sought clarity or proposed amendments to ensure the proposal is effective. These included:

- How any lotting of landholdings will be determined, including a suggestion that this detail is required for respondents to provide a meaningful view on the proposals.
- The approach to lotting should seek to maximise the public benefit of land; it was noted that the basis for lotting will be a key factor in the success of Condition (i). Some respondents suggested that the process may be complex, requiring detailed knowledge of the landholding and surrounding area (including local economies and employment) and an assessment of how each lot would operate.

The scale of lots was also identified as particularly significant, including because the scale could determine a community group's capacity to purchase but also in terms of economic viability. It was also suggested that subdivision of landholdings may be more appropriate in some circumstances than others, for example dependent on landscape character.

Other points highlighted in relation to Condition (i) included:

- Lotting could be on the basis of an expression of interest exercise where local individuals, groups and businesses can register their interest in particular areas of land.
- Lotting would need to take account of and maintain the viability of any crofting tenancy.
- There is a need for safeguards to ensure that subdivided landholdings continue to comply with the LRRS and other relevant provisions.
- The approach must ensure that application of Condition (i) can prevent aggregated ownership of lots, including reference to potential for use of complex company arrangements to circumvent proposals.

**Condition (ii): Land is offered to constituted community bodies**

A number of those commenting on Condition (ii) – including Landowner, Private sector organisation and Representative body respondents – noted that there are already mechanisms in place to enable community bodies to register an interest and acquire land. While some noted that there may be scope for improvement to existing mechanisms, a number of respondents suggested that the consultation paper does not do enough to justify the need for additional legislation.

There were also concerns that community groups may lack the capacity or skills to take on large-scale landholdings. This was most commonly raised in relation to the initial land purchase, including a view that the market value of large-scale landholdings is likely to be beyond the means of most community organisations. An associated concern was this lack of capacity could add significant delays to the transaction process, with potential for loss for the seller.

Respondents also highlighted the importance of prospective landowners being in a position to manage and maintain the economic viability of the landholding. This included concern that community groups may lack the skills and experience to ensure rural landholdings contribute effectively to national policy objectives. Reference was also made to the capacity of community groups to manage funds realised from the land, and deal with the risk of litigation arising from management of the landholding.

Potential challenges were also highlighted in relation to assessment of the value of landholdings. The Land Court was cited as having expertise in dealing with issues around land valuation, and reference was made to the recruitment and training requirements of any other body required to adjudicate on land values. However, there was also a view that community groups should not be required to meet market prices for land where the public interest test has been failed and/or the purchase is to enable communities to live on the land. Some respondents suggested that a new approach to valuation of the landholding is required to ensure a fair price is paid where the buyer is acting in the public interest. This included a proposal that land valuation should take account of the impact of any mismanagement of landholdings on local communities.

In terms of ensuring application of Condition (ii) is effective and addresses the issues noted above, there were queries about the types of constituted community organisation that would be eligible and reference to other types of organisation that may be in a better position to purchase land on behalf of, or in collaboration with, community groups. This reflected concerns noted above around the likelihood of community groups being able to raise the funds to meet market values for large-scale landholdings. In this context, there were calls for communities to have the option to nominate a third party to purchase and manage the landholding on its behalf.

Respondents referred to several specific types of organisation as potential nominees. These were primarily public bodies or third sector organisations such as environmental bodies, local authorities, housing associations, conservation charities or other third sector organisations, and the Scottish Government. It was also suggested that it may be appropriate for a private company to take on a landholding, where arrangements are in place to ensure the community receives some or all of the benefits from the land.

Other comments around the design and operation of Condition (ii) included:

- There may be a need for community bodies to demonstrate they have the resources to effectively manage the landholding, before the transaction can proceed.
- Additional support – financial and otherwise – may be required by prospective community owners. Specific reference was made to challenges in areas where community engagement is less well established and/or local trusts are less effective. However, some respondents were of the view that many community groups would require support to take on landholdings. Respondents saw a need for specific support around raising funds (including

calls for additional funding via the Land Fund), and staff time to co-ordinate the process.

- Potential community buyers should be given sufficient time to undertake an appropriate appraisal of options, notify an intention to buy, negotiate terms and secure funds. Again this reflected points noted above around the challenges facing community bodies in securing required funds, and it was suggested that community groups should have the option to bid for smaller lots within the landholding. It was also suggested that 6 months is unlikely to be sufficient time for community groups to raise funds, and that community bodies may require more time where they are seeking to acquire part or parts of a landholding.
- There is the potential for conflict between community interest and a tenant's interest, and mediation may be required to resolve this.
- The approach must ensure that landowners cannot avoid application of Condition (ii) by inflating the asking price of the landholding beyond the means of any community buyer.

**Application of conditions**

Respondents also highlighted a range of other considerations around the practical approach to application of the conditions. This included a view that both conditions will require complex procedures requiring time and resources to implement effectively. This was most commonly in relation to how the two proposed conditions should be sequenced. For example, a number of respondents – including Community and Third sector respondents – proposed that options for community ownership (Condition (ii)) should be applied before lotting of land (Condition (i)) is considered. It was suggested that this would strengthen proposals in terms of supporting community land ownership, and that a similar approach is taken to surplus sales by Forestry and Land Scotland.

Queries were also raised in relation to how the proposed conditions would relate to other legislation and mechanisms. There was specific reference to the proposed prior notification of intention to sell, existing community rights to buy, and community-led plans such as Local Place Plans.

Some respondents saw a need for flexibility in the application of conditions, for example to take account of which condition may be most appropriate in light of local circumstances. Specific suggestions included taking account of potential loss of employment as a result of lotting of large-scale landholdings, and allowing sale of multiple lots to a single owner if other purchasers do not come forward.

**Other suggested conditions**

A number of other options or conditions were proposed if the public interest test has not been met. These included:

- Allowing the acquisition of landholdings (whole or in part) by an organisation acting on behalf of an eligible community body or to support delivery of specific activities in the public interest. This included specific reference to public or non-statutory bodies such as environmental organisations or housing

associations as potentially being better placed than some community groups to take on landholdings

- Enabling local authorities to take on landholdings for the common good, for example if constituted community groups invoke their right of first refusal.
- Government taking ownership of landholdings as an interim measure, to allow time for any lotting of land and/or to maximise the opportunity for community organisations or others to bid for land. It was suggested that this approach would be more effective in supporting diversification of land ownership by maximising opportunities for communities and others to take on landholdings, and would provide sellers with a greater degree of security.
- The landowner being required to create crofts within the landholding, with the number and size of crofts reflecting the outcome of the public interest test and land management in the area.
- Where there are tenanted farm holdings, land being offered for sale to the current tenants.
- In areas that have been substantially depopulated, offering landholdings to a constituted group that has registered interest to establish a new community.

**Question 20** – Do you think that a breach of the Lands Right and Responsibilities Statement should be taken into account when determining the outcome of a public interest test?

Responses to Question 20 by respondent type are set out in Table 37 below.

**Table 37**

| **Question 20** – Do you think that a breach of the Lands Right and Responsibilities Statement should be taken into account when determining the outcome of a public interest test? | | | | |
|---|---|---|---|---|
| | **Yes** | **No** | **Don't know** | **Total** |
| Organisations: | | | | |
| Academic group or think tank | 3 | 1 | 0 | 4 |
| Community or local organisations | 16 | 0 | 0 | 16 |
| Government and NDPB | 6 | 0 | 5 | 11 |
| Landowner | 5 | 24 | 2 | 31 |
| Private sector organisations | 6 | 6 | 1 | 13 |
| Representative bodies, associations or unions | 10 | 7 | 5 | 22 |
| Third sector or campaign group | 14 | 1 | 5 | 20 |
| | | | | |
| Total organisations | **60** | **39** | **18** | **117** |
| **% of organisations** | **51%** | **33%** | **15%** | |
| Individuals | **236** | **57** | **20** | **313** |
| **% of individuals** | **75%** | **18%** | **6%** | |
| All respondents | **296** | **96** | **38** | **430** |
| % of all respondents | **69%** | **22%** | **9%** | |

Percentages may not sum to 100% due to rounding

The majority of respondents, 69% of those answering the question, thought that a breach of the LRRS should be taken into account by the public interest test. Of the remaining respondents, 22% did not think so and 9% did not know.

**Please give some reasons for your answer.**

Around 210 respondents provided a comment at Question 20.

### Points for clarification

A number of respondents highlighted points requiring clarification around how LRRS breaches would be taken into account by the public interest test. This reflected a view – primarily from Landowner respondents – that the consultation paper provides very little detail on how the proposal would work in practice.

Some respondents sought clarity on whether the proposal would apply to LRRS breaches by the seller and/or the prospective buyer. One view was that LRRS breaches by the seller would not be relevant, with some noting that previous breaches by the seller would only add to the case for a change of ownership and would not have a bearing on the likelihood of a new owner breaching LRRS requirements.

Respondents also saw a need for further detail on the following points:

- How a breach of LRRS would be taken into account in practice by a public interest test?
- The timescales within which a breach would be considered relevant to the public interest test.
- Whether the LRRS breach would be linked to the landowner/manager or the landholding?

### Arguments for LRRS breaches being taken into account

Some respondents were of the view that prior breaches of the LRRS by the prospective buyer would be relevant. It was suggested that such breaches should raise concerns around the extent to which the prospective buyer would be an appropriate manager of the landholding under consideration, and would justify further scrutiny to determine the buyer's commitment to management of the landholding in the public interest.

It was also noted that taking account of LRRS breaches would be consistent with status of the LRRS as mechanisms for ensuring sustainable management of landholdings. Some suggested that taking account of breaches in this way could incentivise landowner compliance with LRRS, for example if the sale price for landholdings was reduced if the purchaser was required to remedy the seller's breach of the LRRS.

In terms of practical application of the proposal, it was suggested that clear definitions within legislation and guidance of what constitutes a breach of the LRRS would be required. Respondents also proposed that the weight ascribed to any LRRS breaches should reflect the number and severity of those breaches. There was an associated suggestion that the public interest test should only give significant weight to persistent and or serious breaches of LRRS. Some also wished to see the public interest test take account of the reasons for the breach**,** and any action taken by the landowner – for example whether this was remediation, mitigation, compensation or finding a solution to the breach.

### Arguments against LRRS breaches being taken into account

The most commonly cited argument against the proposal reflected a view discussed earlier at Question 4, that the LRRS should remain a set of voluntary principles, and compliance should not be made a legal duty. This was then connected to not being used in a public interest test. This view was expressed by a range of respondents including Landowners, Representative body, Private sector respondents and Individuals. These respondents also suggested that, as a set of principles, the LRRS is too ambiguous to support an objective assessment of a breach. There was an associated concern that the LRRS cannot support an objective assessment of the seriousness of any breach, for example to inform how much weight this should be given by the public interest test.

In this context, it was suggested that preventing a buyer from purchasing a landholding on the basis of a breach of LRRS principles would be disproportionate, especially if the breach was fully remedied. It was also suggested that that any

potential breaches could be subject to legal challenge, and could add significant delays to any process involving a public interest test.

In addition to these concerns about the suitability of the LRRS to inform a public interest test, there was also a view that the outcome of the public interest test should not be used to further penalise landlords for prior breaches of LRRS. It was argued that any breaches of LRRS should be dealt with separately from the public interest test.

**Question 21** – Do you think that a public interest test should take into account steps taken in the past by a seller to:

a) Diversify ownership

b) Use their Management Plan to engage with community bodies over opportunities to lease or acquire land

Responses to Question 21 by respondent type are set out in Tables 38 and 39 below.

**Table 38**

| **Question 21(a)** – Do you think that a public interest test should take into account steps taken in the past by a seller to diversify ownership | | | | |
|---|---|---|---|---|
| | **Yes** | **No** | **Don't know** | **Total** |
| Organisations: | | | | |
| Academic group or think tank | 1 | 3 | 0 | 4 |
| Community or local organisations | 11 | 4 | 1 | 16 |
| Government and NDPB | 7 | 1 | 3 | 11 |
| Landowner | 6 | 21 | 4 | 31 |
| Private sector organisations | 2 | 8 | 2 | 12 |
| Representative bodies, associations or unions | 8 | 9 | 5 | 22 |
| Third sector or campaign group | 9 | 3 | 8 | 20 |
| | | | | |
| Total organisations | **44** | **49** | **23** | **116** |
| **% of organisations** | **38%** | **42%** | **20%** | |
| Individuals | **195** | **76** | **42** | **313** |
| **% of individuals** | **62%** | **24%** | **13%** | |
| All respondents | **239** | **125** | **65** | **429** |
| **% of all respondents** | **56%** | **29%** | **15%** | |

Percentages may not sum to 100% due to rounding

**Table 39**

| **Question 21(b)** – Do you think that a public interest test should take into account steps taken in the past by a seller to use their Management Plan to engage with community bodies over opportunities to lease or acquire land | | | | |
|---|---|---|---|---|
| | **Yes** | **No** | **Don't know** | **Total** |
| Organisations: | | | | |
| Academic group or think tank | 1 | 3 | 0 | 4 |
| Community or local organisations | 11 | 4 | 1 | 16 |
| Government and NDPB | 8 | 1 | 2 | 11 |
| Landowner | 7 | 20 | 4 | 31 |
| Private sector organisations | 3 | 7 | 2 | 12 |
| Representative bodies, associations or unions | 9 | 8 | 5 | 22 |
| Third sector or campaign group | 9 | 3 | 7 | 19 |
| | | | | |
| Total organisations | **48** | **46** | **21** | **115** |
| **% of organisations** | **42%** | **40%** | **18%** | |
| Individuals | **215** | **67** | **29** | **311** |
| **% of individuals** | **69%** | **22%** | **9%** | |
| All respondents | **263** | **113** | **50** | **426** |
| **% of all respondents** | **62%** | **27%** | **12%** | |

Percentages may not sum to 100% due to rounding

A small majority of respondents, 56% of those answering the question, thought that the public interest test should take account of previous steps taken by the seller to diversify ownership. However, this fell to only 38% of organisational respondents.

A majority, 62% of those answering the question, thought a public interest test should take account of a seller's use of their Management Plan to engage with community bodies around leasing or acquisition of land. Again, the figure was lower among organisations, where only 42% agreed.

**Please give some reasons for your answer.**

Around 210 respondents provided a comment at Question 21.

### Taking account of a seller's prior behaviour

Many of those commenting referred to the principle of taking account of the seller's prior actions, in addition to comments around the specific actions (a) and (b).

A number of respondents noted their support for proposals to take into account the seller's prior behaviour. This reflected a view that good practice, such as taking steps to diversify ownership or engage with local communities, is a potential indicator of effective and sustainable land management practice and hence is relevant to the public interest. There was also a view that taking account of these factors in the public interest test could incentivise good practice from landowners

and help to create a culture of compliance. However, it was also suggested that the past behaviour of the seller is only relevant if it relates to the landholding under consideration, and that any activities in relation to other landholdings should not be taken into account.

Others disagreed with the principle of the public interest test taking account of the past actions of the seller. These respondents reiterated a view discussed at Question 20 that the public interest test should focus on future ownership of the landholding. It was also noted that the SLC's Land and Human Rights Forum has questioned the relevance of the sellers' record in assessing the risk that a transaction might add to a localised monopoly. There was also concern around potential for the proposals to add to the legislative burden on sellers for little benefit to the public interest. It was suggested that this could limit land sales and thus restrict opportunities to diversity ownership.

**Prior steps to diversify ownership**

Some respondents, including Community, Government and NDPB, Representative body and Individual respondents, thought that landowners taking steps to diversity ownership can be seen as a positive sign of effective and sustainable land management. However, others noted that selling land in the past may not have been appropriate or possible for the landowner, and there was a view that this should not be given weight by a public interest test. A number of Landowner respondents also expressed concern that using the public interest test to dictate if and when a seller should diversify their ownership represents undue interference, and would not be compatible with landowners' private property rights.

Other comments focused on the practical application of the proposal. They included that the public interest test should take account of efforts by landowners to diversify ownership, even if these have not been successful. In this context, it was noted that work to diversify ownership may not always be effective, for example where there is insufficient interest. It was also noted that this information could inform the outcomes of a public interest test; for example a lack of interest in the seller's previous attempts to sell small parcels of land could indicate that lotting might not be a suitable option.

In terms of other potential challenges for landowners in diversifying ownership, it was reported that it may be difficult to accurately assess a landowner's efforts in this area, and there was a suggestion that clear guidance would be required on what constitutes meaningful steps by a seller to diversify ownership. Respondents also sought clarification around what should be considered as diversified ownership. For example, it was suggested that steps to diversify land use, such as through leasing to community organisations or creation of tenanted holdings, should be taken into account even if they do not result in a change of land ownership.

**Prior steps to engage with community bodies**

Some respondents saw a landowner's prior engagement with community bodies as good practice in terms of effective and sustainable land management, and thus

relevant to the public interest. However, others highlighted potential challenges for the public interest test in taking account of prior engagement. For example, some respondents noted that landowner engagement with communities is encouraged where it is consistent with the effective management of the landholding, suggesting that the public interest test should not penalise landowners where this engagement would not have made business sense.

Respondents also raised issues around how a public interest test would determine that any prior engagement with community bodies was genuine and conducted appropriately. It was suggested that clear guidance would be required on what constitutes meaningful steps by a seller to engage with community bodies. This guidance was also noted as potentially useful for landowners, in terms of providing clarity on when they have been compliant with this measure.

It was also suggested that guidance will be required on the range of suitable community bodies for engagement by landowners, and a that all relevant community engagement should be taken into account irrespective of whether this was part of the Management Plan or other local mechanisms.

### Practical considerations

Respondents also raised several issues relating to the practical application of the proposal. These included that further detail is needed around how these factors would be balanced with other considerations in the public interest test. There was a specific concern that consideration of the past actions of the seller should not deflect from the importance of a proper assessment of the prospective buyer. As noted earlier, a number of those commenting were of the view that the prospective buyer's potential future management of the landholding is more relevant for the public interest test. It was suggested that prior behaviour of the seller should therefore be given only limited weight.

## c) What time period do you think this should cover?

Around 215 respondents answered Question 21(c).

Many of these respondents did not express a specific view on the time period but restated their opposition to the public interest test taking the seller's past behaviour into account. However, others identified a range of factors that should be taken into account when considering the appropriate time period for the assessment.

### Relevant factors

A number of respondents suggested that the time period should be linked to the length of the current land ownership. For some, this was associated with a concern that current landowners should not be judged on decisions made by previous generations. Others suggested that the assessment should be based on the time period of the Land Management Plan and LRRS.

In terms of other factors that should inform the time period, there was reference considering the seriousness and impact of any prior poor management by the

seller. Associated suggestions included that more recent issues should be weighted more heavily by the public interest test, and that any historical poor management should be given less weight if the seller can demonstrate that there have been improvements.

However, it was also noted that opportunities for sellers to diversify ownership or engage with community bodies around leasing or acquisition of land, may not arise often; there was an associated concern that a shorter time period could discriminate against sellers in areas with a limited history of community purchase and/or where community acquisition could take a longer period.

Some suggested that it may not be appropriate or possible to agree a definitive time period. There was a view that judgement should be used to determine an appropriate time period on a case-by-case basis, depending on the specific circumstances and history. For example, some of those suggesting shorter periods noted that it may be appropriate for the public interest test to consider any consistent ongoing processes that pre-date this period.

There was also a view that different time periods for diversification of ownership and community engagement would be appropriate, including a suggestion that consideration of prior engagement with community groups should be over a shorter timeframe.

A concern was also raised about the potential for sellers to challenge the public interest test, if the definition of an appropriate time period for the assessment is seen as subjective.

**Specific proposals**

Many of those commenting suggested specific times periods for consideration of sellers' prior behaviour. Reflecting the range of potentially relevant issues noted above, suggestions ranged widely from less than 6 months to more than 50 years.

Respondents were most likely to agree with the 5-year period proposed in the consultation document. Other respondents were split between those suggesting shorter time periods and those preferring a time period of 10 years or more.

Further comments from those proposing a shorter period included that circumstances affecting landowners' ability to diversify ownership and/or engage with community groups can change relatively quickly, and a specific suggestion that sellers should be encouraged to engage with community groups immediately prior to bringing a landholding to market.

Further comments from those proposing longer time periods (of 10 years or more) included a suggestion that a longer timeframe is necessary to identify the seller's 'pattern of behaviour' in relation to the landholding. Some respondents also wished to see the public interest test consider past actions over the whole period of the landholding, including the potential for the public interest test to consider 'historical harm'.

**Question 22** – Do you think the responsibility for administering the public interest test should sit with:

- The Scottish Government
- A public body (such as the Scottish Land Commission)

Responses to Question 22 by respondent type are set out in Tables 40 and 41 below.

**Table 40**

**Question 22** – Do you think the responsibility for administering the public interest test should sit with the Scottish Government?

| | **Yes** | **No** | **Don't know** | **Total** |
|---|---|---|---|---|
| Organisations: | | | | |
| Academic group or think tank | 1 | 1 | 1 | 3 |
| Community or local organisations | 2 | 5 | 6 | 13 |
| Government and NDPB | 0 | 4 | 4 | 8 |
| Landowner | 1 | 26 | 2 | 29 |
| Private sector organisations | 2 | 7 | 2 | 11 |
| Representative bodies, associations or unions | 2 | 12 | 7 | 21 |
| Third sector or campaign group | 2 | 10 | 7 | 19 |
| | | | | |
| Total organisations | **10** | **65** | **29** | **104** |
| **% of organisations** | **10%** | **63%** | **28%** | |
| Individuals | **98** | **111** | **43** | **252** |
| **% of individuals** | **39%** | **44%** | **17%** | |
| All respondents | **108** | **176** | **72** | **356** |
| **% of all respondents** | **30%** | **49%** | **20%** | |

Percentages may not sum to 100% due to rounding

**Table 41**

| **Question 22** – Do you think the responsibility for administering the public interest test should sit with a public body (such as the Scottish Land Commission)? | | | | |
|---|---|---|---|---|
| | **Yes** | **No** | **Don't know** | **Total** |
| Organisations: | | | | |
| Academic group or think tank | 2 | 1 | 1 | 4 |
| Community or local organisations | 12 | 0 | 3 | 15 |
| Government and NDPB | 4 | 0 | 5 | 9 |
| Landowner | 4 | 14 | 12 | 30 |
| Private sector organisations | 3 | 7 | 3 | 13 |
| Representative bodies, associations or unions | 7 | 8 | 6 | 21 |
| Third sector or campaign group | 10 | 4 | 5 | 19 |
| | | | | |
| Total organisations | **42** | **34** | **35** | **111** |
| **% of organisations** | **38%** | **31%** | **32%** | |
| Individuals | **204** | **54** | **42** | **300** |
| **% of individuals** | **68%** | **18%** | **14%** | |
| All respondents | **246** | **88** | **77** | **411** |
| **% of all respondents** | **60%** | **21%** | **19%** | |

Percentages may not sum to 100% due to rounding

Only 30% of those answering the question thought responsibility for the public interest test should sit with the Scottish Government. This figure dropped to only 10% support from organisations. In contrast, most respondents, 60% of those answering the question, thought that responsibility should sit with a public body such as the SLC.

**Please give some reasons for your answer and suggest any additional conditions.**

Around 240 respondents made a comment at Question 22.

Some of these respondents repeated their opposition to the principle of a public interest test, while others suggested that the consultation paper provides insufficient detail on what the test will involve for them to form a clear view.

A number of those commenting also raised issues covered at earlier questions, in relation to the kind of organisation that should be responsible for dealing with potential breaches of the LRRS (Question 5(c)) or enforcing compulsory Land Management Plans (Question 11).

### Reasons for responsibility to sit with the Scottish Government

As noted above, a minority of respondents supported the Scottish Government taking responsibility for the public interest test.

Specific reasoning provided in favour of this position included that the Scottish Government is democratically accountable in a way that other public bodies are not. Reference was also made to research indicating that land transaction approval is most effective when conducted at the national level, with appropriate support. In this context it was suggested that it may be beneficial for the Scottish Government to have access to advice and support from SLC.

Some also suggested that the Scottish Government could choose to delegate responsibility for the public interest test to another public body at a later date.

**Reasons for responsibility to sit with a public body such as SLC**

As at Questions 5(c) and 11, respondents who thought responsibility should sit with a public body often argued that this should be the SLC. Respondents referred to SLC's wider responsibilities in relation to land ownership, including specifically in relation to ensuring compliance with the LRRS and Land Management Plans, and suggested that administration of the public interest test would be consistent with this role. Some also highlighted SLC's independence from government as potentially significant for administration of the public interest test.

It was also noted that the SLC has the necessary experience and knowledge to undertake the public interest test. However, concerns were also highlighted around the need for additional resourcing to support this role. Further comments included that the SLC may benefit from working in collaboration with other relevant bodies, such as NatureScot and SEPA.

**Neither**

A small number of respondents felt unable to make a choice between the two options, including because this would depend on how plans develop.

Others suggested that neither Scottish Government nor the SLC would be suitable choices as they lack the independence required to ensure fair application of the public interest test. An associated view was that their involvement would in effect make these bodies 'judge and jury' of the process and that there would be potential for conflict of interest given the Scottish Government's responsibility for passing land reform legislation, and the SLC's role in providing recommendations to the Scottish Government around land reform. It was suggested that having taken public, pro-reform policy positions should disqualify either organisation from the process. Reference was also made to the Scottish Government as a large-scale landholder that could itself be subject to a public interest test.

It was also noted that, if Scottish Government were not involved in administration of the test, this would enable a final appeal process to Scottish Ministers.

**Characteristics of the organisation administering the test**

Those raising concerns around the independence of the SLC and the Scottish Government generally wished to see an impartial body, independent of government, take on administration of the public interest test. There was specific

reference to the need for the test to be administered in a way that balances public and private interests.

Respondents also highlighted the need for adequate resourcing of whichever organisation takes responsibility for the public interest test, with a suggestion that this is a more significant issue than which body takes on the responsibility. The importance of ensuring that the responsible organisation can support effective assessment against the public interest was highlighted, including specific concerns around the potential for delays to land transactions and for the administration of the public interest test to detract from the responsible body's other functions.

**Suggested additions and amendments**

Respondents referred to several alternatives for administration of the public interest test, reflecting some of the issues and concerns discussed above. The most frequent suggestion was for the local authority or other local body to take on this role. This was linked to a view that local knowledge may be relevant to the public interest test, and that a local body may be better placed to identify potential community group interest in acquiring land. There was also reference to the value of local democratic accountability. Some respondents proposed a role for RLUPs, noting that these partnerships (once operating) may also have the required local knowledge to administer the public interest test. However, there was also concern that local government may be unwilling to take on new duties in the context of ongoing pressures on their government budgets.

There was also a suggestion that the public interest test will require determinations of a judicial character, and that a non-judicial body taking on this role could increase the risk of decision being subject to legal challenge. It was also suggested that proposals may risk breach of A1P1 rights under the ECHR if the body with responsibility for the public interest test is not an independent, qualified tribunal. In this context, the Scottish Land Court was identified as a potentially appropriate body to take on the public interest test.

In addition to the above suggestions, some saw a need for an appeal process in relation to the public interest test. This included specific suggestions that this should be available via Scottish Ministers, the Scottish Land Court, or other judicial bodies.

**Question 23** – Do you think the proposal that a public interest test should be applied to transactions of large-scale landholdings would benefit the local community?

Responses to Question 23 by respondent type are set out in Table 42 below.

**Table 42**

| **Question 23** – Do you think the proposal that a public interest test should be applied to transactions of large-scale landholdings would benefit the local community? | | | | |
|---|---|---|---|---|
| | **Yes** | **No** | **Don't know** | **Total** |
| Organisations: | | | | |
| Academic group or think tank | 4 | 0 | 0 | 4 |
| Community or local organisations | 18 | 0 | 1 | 19 |
| Government and NDPB | 6 | 0 | 4 | 10 |
| Landowner | 5 | 17 | 7 | 29 |
| Private sector organisations | 4 | 5 | 4 | 13 |
| Representative bodies, associations or unions | 11 | 4 | 6 | 21 |
| Third sector or campaign group | 15 | 1 | 5 | 21 |
| | | | | |
| Total organisations | **63** | **27** | **27** | **117** |
| **% of organisations** | **54%** | **23%** | **23%** | |
| Individuals | **239** | **43** | **29** | **311** |
| **% of individuals** | **77%** | **14%** | **9%** | |
| All respondents | **302** | **70** | **56** | **428** |
| **% of all respondents** | **71%** | **16%** | **13%** | |

A majority of respondents, 71% of those who answering the question, thought that applying a public interest test to large-scale land transactions would benefit local communities. Individuals were more likely to think this than organisations at 77% and 54% respectively.

These figures are very similar to those at Questions 6 (on whether making the LRRS a legal duty would benefit communities) and 12 (whether making management plans a legal duty would benefit communities). A large majority of those who agreed that public interest test proposals would benefit local communities gave the same answer at Questions 6 and 12.

**Please give some reasons for your answer.**

Around 215 respondents made a comment at Question 23.

A number of respondents raised concerns about the lack of detail on how the public interest would operate, with some feeling unable to comment on potential benefits without this detail.

Some respondents noted that the potential for the public interest test to secure benefits for local communities will depend, in part, on the details concerning how the test is implemented. There was specific reference to the categorisation of large-scale landowners, triggers for disposal of landholdings, the level of engagement with local communities, how 'public interest' is defined, and how an 'objective' assessment will be ensured.

Others repeated their support for the proposal as a means of mitigating the impacts of large-scale and concentrated land ownership on local communities. There was reference to research evidencing the potential for large-scale landholdings to have adverse community impacts, especially in rural areas, and it was reported that other land reform legislation has demonstrated that public interest tests can act as a catalyst for action.

The importance of the test being framed around delivery of community benefits was highlighted, for example by supporting community access to land. It was also suggested that implementation must ensure that the public interest test provides an opportunity to identify potential community benefits. This reflected a view that potential benefits are likely to vary from case to case, and that negotiation may be required to identify and deliver these.

Other comments in relation to whether a public interest test would benefit the local community, reflected many of the issues highlighted at Questions 6 and 12, including in relation to community land ownership, engagement with local communities, how the public interest is defined, and the potential for negative impacts.

**How a public interest test may benefit the local community**

**Supporting community land ownership**

Enabling community land ownership was seen as the primary way in which the public interest test can deliver local community benefits. Respondents highlighted the potential for the test to support identification of opportunities for community purchase, both in terms of identifying potential community interest and capacity and highlighting opportunities where landholdings which may be suitable for community acquisition (in whole or part). There was specific reference to:

- The potential for lotting of landholdings to facilitate community purchase.
- First refusal for communities in relation to suitable landholdings.

**Community engagement**

Respondents also highlighted the importance of the public interest test mandating engagement with communities as part of large-scale land transactions. This was identified as particularly important in improving relationships between landowners and communities, especially if landowners are not resident locally.

**Access to information**

The public interest test's role in improving access to information was highlighted, with the test seen as having potential to contribute to transparency and accountability around land use and land transactions. There was specific reference to improving communities' understanding around land ownership and the opportunities available to them.

### Better land management

Some respondents noted that the public interest test may be an incentive for better land management practices. It was suggested that the local community would benefit if the public interest test can encourage more large-scale landowners to manage land in a way that is consistent with LRRS requirements and incorporates effective community engagement.

### How a public interest test may not benefit the local community

Respondents also highlighted a range of issues that may limit the extent to which a public interest test can deliver positive impacts for local communities.

This included concerns around the proposed threshold for large-scale landholdings, and a view that limiting the number of transactions to which the test applies will also limit the scope for community benefits. There were calls to apply the test to a wider range of land transactions, including aggregate holdings, and also to landholdings that are being offered for sale. It was noted that the latter may otherwise continue to be managed in a way that does not reflect the public interest.

However, others suggested that a public interest test is likely to offer limited additional benefit where landowners already have effective management strategies that comply with LRRS requirements and involve effective engagement with communities. This reflected a view that only a small number of landowners do not currently manage their landholdings effectively. It was also suggested that the consultation paper does not present evidence to link large-scale land ownership with adverse impacts on local communities.

There was also a view that the outcome of a public interest test may not align with the interests of the local community, for example where the test must also take account of a national public interest. This reflected wider concerns around challenges in defining the public interest, and the range of criteria that may be considered relevant. It was also noted that a public interest test may be required to take account of multiple local communities with different – and potentially incompatible – priorities or interests. Some also noted that the public interest test may not create significant benefits over and above existing mechanisms for community acquisition of land.

There was also some concern around the capacity for local communities to take advantage of the potential benefits offered by the public interest test. These included that communities are unlikely to fully understand the range of issues that effective land management must consider and also the extent to which communities are likely to have the capacity and desire to take on ownership of landholdings, in whole or part. There was also reference to the potential for communities to disagree with conditions imposed following a public interest test.

### Potential negative impacts

Respondents also noted the potential for a public interest test to have negative consequences for local communities. This was most commonly in relation to potential for a test to deter inward investment in large-scale landholdings, with a

knock-on negative impact on rural economies. It was also suggested that a public interest test could inhibit land management activity that would be in the public interest, including concern that application of the test could lead to the creation of many small, less economically viable landholdings.

There were specific concerns that the introduction of a public interest test could delay or deter the investment required to contribute to net zero targets, such as peatland and environmental restoration.

**Question 24** – Do you have any other comments on the proposal that a public interest test should be applied to transactions of large-scale landholdings?

Around 140 respondents made a comment at Question 24.

The majority of these respondents used the opportunity to reiterate issues considered at earlier questions. For example, reference was made to: the scope of a public interest test in terms of the types of transaction to which the test applies; how 'community' and 'public interest' are to be defined; potential outcomes of a public interest test in terms of the conditions placed on any sale of land and likely community capacity to take on landholdings; and the potential benefits of a public interest test.

Some respondents objected to the principle of a public interest test, raising concerns about the potential for such a test to have negative impacts, as well as the challenges of applying a test across a diverse range of large-scale landholdings. Respondents also highlighted questions around how a public interest test would operate alongside other land reform proposals, such as LRRS compliance and Land Management Plans.

The relevance of wider government policy objectives, particularly in relation to environmental and net zero targets, was also highlighted. Several international examples of public interest tests and other controls on land transactions were cited as demonstrating the potential for proposals to support land reform objectives.

In terms of 'new' issues raised, there was reference to oversight and monitoring of the public interest test. Some respondents saw a need for effective compliance systems 'with teeth'. There were associated concerns about the need for safeguards to ensure that the public interest test is applied in all relevant circumstances and that avoidance is prevented. It was also suggested that enforcement of the public interest test could require significant resourcing, and that further consideration should be given to how landowner compliance can be encouraged.

Other issues and suggestions provided at Question 24 included:

- Calls for the public interest test to be applied to land that is being held without transaction, for example where the Land Management Plan is updated.

- Calls for the public interest test to provide opportunities for other forms of land ownership, in addition to community acquisition. This included reference to small-scale land-based enterprises.
- Reference to other means of addressing concentration of land ownership, including reform of legislation around succession.
- A perceived need for further work to identify and share good practice examples to support implementation.
- The potential to introduce additional requirements for foreign purchasers.

## Prior notification of intention to sell

The consultation paper notes that further provision may be required to allow opportunity for the planning and fundraising that communities need to acquire land, particularly in the context of rising land values and increasing use of off-market transactions. It is therefore proposed that Land Management Plans should include a requirement for landowners to give prior notice to surrounding community bodies of any intended sale of land and that the community body or bodies would have 30 days to notify the landowner of whether they are interested in proceeding with a sale, and a further 6 months for negotiation of the sale.

This could include community bodies which are compliant with current Community Right to Buy requirements, and/or other community bodies whose aims are social or community benefit (for example, Registered Social Landlords).

**Question 25** – We propose that landowners selling large-scale landholdings should give notice to community bodies (and others listed on a register compiled for the purpose) that they intend to sell.

**Q25(a)** Do you agree or disagree with the proposal above?

Responses to Question 25(a) by respondent type are set out in Table 43 below.

**Table 43**

| **Question 25(a)** – We propose that landowners selling large-scale landholdings should give notice to community bodies (and others listed on a register compiled for the purpose) that they intend to sell. Do you agree or disagree with the proposal above? | | | | |
|---|---|---|---|---|
| | **Agree** | **Disagree** | **Don't know** | **Total** |
| Organisations: | | | | |
| Academic group or think tank | 4 | 0 | 0 | 4 |
| Community or local organisations | 21 | 0 | 0 | 21 |
| Government and NDPB | 9 | 0 | 3 | 12 |
| Landowner | 10 | 22 | 1 | 33 |
| Private sector organisations | 4 | 4 | 4 | 12 |
| Representative bodies, associations or unions | 17 | 3 | 4 | 24 |
| Third sector or campaign group | 20 | 2 | 3 | 25 |
| | | | | |
| Total organisations | **85** | **31** | **15** | **131** |
| **% of organisations** | **65%** | **24%** | **11%** | |
| | | | | |
| Individuals | **262** | **49** | **10** | **321** |
| **% of individuals** | **82%** | **15%** | **3%** | |
| | | | | |
| All respondents | **347** | **80** | **25** | **452** |
| **% of all respondents** | **77%** | **18%** | **6%** | |

Percentages may not sum to 100% due to rounding

A majority of respondents, 77% of those answering the question, agreed with the proposal for community bodies to be notified of intention to sell large-scale landholdings. Of the remaining respondents, 18% disagreed and 6% did not know

**Please give some reasons for your answer**

Around 250 respondents made a comment at Question 25(a).

### Reasons for supporting prior notification to sell

Comments from those supporting the proposal included that it has the potential to contribute to wider land reform, community empowerment and community wealth building policy priorities. It was also suggested that engagement with communities should be good practice for landowners considering a sale, with some noting that this is already part of their land management approach.

Respondents also identified a range of issues which limit the ability of communities to participate in the land market. These include rising land values and the 'pace' of the land market and, in particular, the prevalence of off-market sales. The SLC's Rural Land Market Insights Report was cited as identifying an increase in use of off-market sales in rural land markets. It was also suggested that rural communities are

often small and lack the resources to compete effectively in the land market, with these cited as further reasons in support of prior notification in these areas.

In terms of other potential barriers to communities accessing land ownership, it was suggested that the process can be frustrated where there are not clear lines of communication between the landowner and the community. It was also suggested that some communities have been reluctant to express interest in land via existing community right to buy provisions, due to fear that this could be detrimental to good relations with the landowner. It was also noted that communities may need to explore purchase options and raise funds, and that this may be more challenging when community groups have limited resources and expertise. These types of issues were thought to make it more difficult for communities to participate in the land market, undermining land market transparency and limiting community wealth building. Prior notification was seen as helping to address these issues, enabling community groups to engage more effectively with landowners and the land market.

Prior notification was also seen as a possible means of supporting positive relationships between landowners and the community, including by increasing opportunities for communities to negotiate with landowners where they have an interest in acquiring particular assets or areas of land. Land for housing was identified as being subject to particular pressure, and it was suggested that advance notification may help community bodies to be more competitive.

Some respondents felt that allowing communities to express interest in subdivisions of landholdings will be important in facilitating community ownership, and that a landowner's decisions about selling land could be influenced by knowledge of any such community interest. In this context, it was suggested that community groups with an interest in acquiring the landholding should be given the opportunity to put forward 'better use' plans for consideration by the public interest test.

Respondents also referred to other examples of prior notification across the planning system, including in relation to crofting. It was suggested that extending this requirement to owners of large-scale landholdings would improve equity and consistency of approach.

### Concerns about prior notification to sell

Those raising concerns about the proposal sometimes reiterated points made about the proposals for a public interest test on large-scale land transactions. For example, respondents raised concerns that prior notification could add further administrative burden, uncertainty and delays to land transactions. This was identified as a potential risk to capital investment and sale of large-scale landholdings. It was suggested that the focus should be on supporting rural economies and services, rather than seeking to break up large-scale landholdings.

Many of those raising concerns around prior notification highlighted the range of existing provisions to support community access to land ownership (such as the community right to buy, crofting right to buy and tenant farm pre-emptive right to buy) and it was argued that a need for additional provisions has not been demonstrated.

There were also questions about the likely take-up of any provisions, including because:

- The levels of increase in land values across many parts of Scotland may mean that few community groups are likely to have access to the funds required to participate in the land market.
- Many community organisations lack the organisational capacity, resources or expertise to engage effectively with the land market, such that there may be relatively few large-scale landholdings where a compliant community body is present.
- Relatively few community groups may be interested in the acquisition of large-scale land holdings – the limited take-up of existing opportunities for community land acquisition was cited as evidence of a potential lack of interest.

In the context of concerns around potential capacity for community land ownership, some respondents wished to see the proposals strengthened by expanding the range of eligible community organisations and/or giving community groups the right of first refusal. However, others felt that an additional mechanism to support community acquisition of large-scale landholdings would be unnecessary and disproportionate – particularly if proposals are likely to apply in a limited number of circumstances.

There was also a view that engagement with communities around significant land transactions, while good practice for landowners, should not be made a requirement. There was reference to LRRS protocols and the SLC's Good Practice and it was suggested that the focus should be on improving existing mechanisms to support community land ownership before new provisions are introduced. For example, it was proposed that the Register of Community Interests in Land could be made available for public inspection.

**Proposed amendments or alternative approaches**

Reflecting some of the issues and concerns noted above, respondents suggested specific amendments or alternatives to prior notification. Several respondents wished to see proposals extended to a broader range of cases including smaller rural landholdings, and landholdings in urban areas. This reflected concern that limiting prior notification to rural landholdings of 3,000 hectares or more could undermine the policy intention, and that community access could still be limited for a large number of substantial land transactions under the threshold of 3,000 hectares. Calls for proposals to be extended to urban areas included several urban-based community organisations. These respondents referred to potential for prior notification to support community acquisition of land for affordable housing. It was also suggested that urban and peri-urban communities are in particular need of support in terms of access to housing and amenities.

There were also calls to expand the range of eligible community organisations to be notified. In addition to support for proposals to include community bodies with social/community benefit purposes, respondents also wished to include

representative or intermediary bodies (such as Community Land Scotland and Development Trusts Association Scotland), environmental NGOs, and communities of interest (such as small farm membership organisations). Wide local advertisement of an intended sale was also proposed, reflecting a view that this could enable communities to form an appropriate body where a landholding may be of interest to them.

Other issues highlighted included that:

- Prior notification may also be useful for other types of large-scale land transaction, such as succession and other forms of transfer of ownership where a community organisation may wish to take ownership of a key asset or area of land.
- Prior notification should not cut across existing community right to buy legislation, with a suggestion that existing guidance could be updated to ensure the two provisions work in parallel.
- Landowners should be assisted, with access to expertise and support.

A number of queries were also raised including: whether prior notification would be limited to community bodies in the local area; how prior notification would sit alongside existing community right to buy; and whether the landowner would be prohibited from selling during the notice period for community bodies. There was also a request for confirmation that landowners cannot be compelled to sell.

**Q25(b)** Do you agree or disagree that there should be a notice period of 30 days for the community body or bodies to inform the landowner whether they are interested in purchasing the land?

Responses to Question 25(b) by respondent type are set out in Table 44 below.

**Table 44**

| **Question 25b)** Do you agree or disagree that there should be a notice period of 30 days for the community body or bodies to inform the landowner whether they are interested in purchasing the land? | | | | |
|---|---|---|---|---|
| | **Agree** | **Disagree** | **Don't know** | **Total** |
| Organisations: | | | | |
| Academic group or think tank | 1 | 2 | 1 | 4 |
| Community or local organisations | 4 | 13 | 2 | 19 |
| Government and NDPB | 4 | 3 | 5 | 12 |
| Landowner | 7 | 19 | 4 | 30 |
| Private sector organisations | 4 | 5 | 3 | 12 |
| Representative bodies, associations or unions | 12 | 8 | 4 | 24 |
| Third sector or campaign group | 4 | 12 | 6 | 22 |
| | | | | |
| Total organisations | **36** | **62** | **25** | **123** |
| **% of organisations** | **29%** | **50%** | **20%** | |
| Individuals | **153** | **133** | **25** | **311** |
| **% of individuals** | **49%** | **43%** | **8%** | |
| All respondents | **189** | **195** | **50** | **434** |
| **% of all respondents** | **44%** | **45%** | **12%** | |

Percentages may not sum to 100% due to rounding

Respondents were relatively evenly divided on the proposed 30-day notice period, with 44% of those answering the question agreeing, 45% disagreeing and the remaining 12% not knowing.

**Please give some reasons for your answer**

Around 275 respondents made a comment at Question 25(b).

### Comments in support of a 30-day notice period

Those expressing support for prior notification sometimes agreed with the need for a defined notice period to ensure community organisations have sufficient time to consider options and notify the landowner. It was noted that communities may wish to establish a new body or amend the governance of an existing body before noting an interest in acquiring a landholding. There was also support for a defined notice period to streamline the prior notification process and avoid unnecessary delays to land transactions.

In terms of the length of notice period, it was suggested that this may depend in part on the specific approach to notification. As noted earlier, some respondents expressed concern that the approach to notification must ensure that all community bodies are notified in a timely manner.

### Concerns raised with respect to a 30-day notice period

Some of those objecting to the proposed 30-day notice period indicated that they were opposed to the principle of prior notification. These respondents were sometimes concerned that any prior notification process will introduce delays and uncertainty to the transaction process, and potentially undermine investment in landholdings.

Others raised more specific practical concerns around the proposed 30-day period. These were most commonly linked to a view that 30 days is not enough time for community organisations to make the necessary decisions, especially for groups that may meet less often or in areas where a suitable body is not yet in place. There was reference to SLC research suggesting that communities can struggle to respond within this kind of timescale, and it was noted that community organisations typically rely on volunteers, and may have limited capacity to mobilise in response to short-turnaround requests. While it was acknowledged that existing community right to buy legislation uses a 30-day notification period, respondents highlighted that this legislation applies only to compliant community bodies where there has already been sufficient support to register an interest in land.

Respondents also noted that a significant amount of work may be required before a community organisation is able to make such a decision. For example, it was suggested that this may require consideration of options, work to meet Scottish Land Fund requirements, consultation with members, engagement to establish community buy-in, and development of land-use proposals.

Some respondents cited specific concerns around previous examples of such deadlines being extended to suit community bodies, and wished to see a limit on how many times deadlines can be extended.

### Alternatives and suggested amendments

A number of respondents suggested that the period over which community organisations can indicate their interest in purchasing land should be longer. Specific suggestions for the minimum period were typically in the range of 60 to 90 days, although some suggested longer periods of up to 6 months.

In contrast, a small number of respondents were of the view that 30 days should be the maximum period allowed, including some recommending a shorter period.

**25(c)** If the community body or bodies notifies the landowner that they wish to purchase the land during the notice period, then the community body or bodies should have 6 months to negotiate the terms of the purchase and secure funding. Do you agree or disagree with this proposal?

Responses to Question 25(c) by respondent type are set out in Table 45 below.

**Table 45**

**Question 25(c) –** If the community body or bodies notifies the landowner that they wish to purchase the land during the notice period, then the community body or bodies should have 6 months to negotiate the terms of the purchase and secure funding.
Do you agree or disagree with this proposal?

| | Agree | Disagree | Don't know | Total |
|---|---|---|---|---|
| Organisations: | | | | |
| Academic group or think tank | 1 | 2 | 1 | 4 |
| Community or local organisations | 5 | 12 | 2 | 19 |
| Government and NDPB | 4 | 4 | 4 | 12 |
| Landowner | 3 | 23 | 4 | 30 |
| Private sector organisations | 3 | 8 | 1 | 12 |
| Representative bodies, associations or unions | 6 | 15 | 3 | 24 |
| Third sector or campaign group | 7 | 10 | 4 | 21 |
| | | | | |
| Total organisations | **29** | **74** | **19** | **122** |
| **% of organisations** | **24%** | **61%** | **16%** | |
| Individuals | **156** | **118** | **35** | **309** |
| **% of individuals** | **50%** | **38%** | **11%** | |
| All respondents | **185** | **192** | **54** | **431** |
| **% of all respondents** | **43%** | **45%** | **13%** | |

Percentages may not sum to 100% due to rounding

Respondents were relatively evenly divided with respect to the proposed 6-month period to negotiate the purchase, with 43% of those answering the question agreeing and 45% disagreeing. The remaining 13% did not know. This balance of views is similar to that at Question 25(b) in relation to the proposed 30-day period for community organisations to indicate an intention to purchase.

**Please give some reasons for your answer**

Around 270 respondents provided a comment at Question 25(c).

Some respondents noted the need for a defined negotiation period, including to allow funds to be secured while avoiding unnecessary delays to the transaction, and a number suggested that 6 months offers a reasonable balance between the needs of communities and landowners.

However, many of those commenting raised concerns about the 6-month option, most commonly that it is unlikely to be sufficient time to complete a transaction. There were references to the potential complexity of the transaction process, and the due diligence likely to be required. In terms of specific activities, the time required to complete the tendering process, feasibility assessment, development of a business case, funding application(s) and negotiation of terms with the landowner were all highlighted. The voluntary nature of many community organisations was

also noted, and it was suggested that their more limited resources are likely to limit capacity to respond to usual commercial timescales.

It was also proposed that experience across previous community land purchase should be considered when setting an appropriate negotiation period. This included reference to research highlighting the lengthy processes and timescales involved in community purchase, and to direct experience of community purchase having required a year or more to complete. It was suggested that community groups would require substantial, publicly-funded support in order to meet the 6-month timescale.

Respondents also noted that the proposals give community bodies less time than under existing community right to buy legislation, which allows a total of 8 months. Reference was also made to the timescales required to secure funding through the Scottish Land Fund, including a suggestion that many community bodies are unable to secure and spend even Stage 1 funding (technical support to develop a purchase proposal) within this 8-month period.

However, others raised concerns around potential for the proposed negotiation period to add excessive delay to land transactions, without any guarantee of sale. It was suggested that the proposed 6-month negotiation period is longer than most landowners would expect a landholding to remain on the market, and would give community bodies an unfair advantage over other potential buyers. Concerns were also raised around the potential implication for landowners if transactions are delayed, particularly where the sale is to prevent bankruptcy, to support necessary investment in other land, or to meet health or care costs.

It was suggested that, to minimise the risk of transactions failing, community bodies should be required to demonstrate their capacity to complete the land transaction at the initial notification of interest stage. Some also sought clarity on how landowners will be compensated if delays caused by community bodies exploring potential purchase result in financial loss, for example if land values change or the landowner incurs costs.

**Alternatives and suggested amendments**

Reflecting some of the concerns above, a number of respondents suggested a longer negotiation period, including that this period should be flexible dependent on the scale and complexity of the transaction. Specific suggestions for the minimum period required by community organisations were typically in the range of 9-12 months, although some respondents suggested that 12 months would be the minimum period required. Others were of the view that a period of up to 2 years may be more realistic for community purchase of larger landholdings.

Other respondents proposed a shorter negotiation period, for example of 3-4 months, although it was argued that there should be scope for this to be extended if the community body can demonstrate substantive progress.

Some also questioned the value of a stipulated negotiation period, if the seller is free to choose a preferred bidder. These respondents sought clarity on whether the

proposed 6-month period would effectively form an exclusivity period for the community body and noted that giving community bodies first refusal of all large-scale landholdings would be a departure from current pre-emptive right to buy legislation.

Other amendments suggested by respondents included that:

- Negotiation timescales should be automatically extended if the community body has made sufficient progress within the 6-month period.
- Mediation may be required, for example if there is concern that the landowner may be delaying the process to avoid community purchase.
- The negotiation period for existing community right to buy provisions should be amended so as to be consistent with that set for these proposals.

**Question 26 –** Do you have any other comments on the proposal that landowners selling large-scale landholdings should give notice to community bodies that they intend to sell?

Around 185 respondents made a comment at Question 26.

Many of those commenting used the opportunity to reiterate some of the issues considered at earlier questions. This included support for, and opposition to, the role of prior notification in the context of wider land reform priorities, the potential capacity for community land purchase, and reference to practical considerations around the implementation of prior notification (such as flexibility in timescales and compensation for landowners in the event of any loss).

Other respondents commented on the purpose and scope of prior notification, with some questioning the evidence base. It was argued that research set out in the Rural Land Market Insights Report commissioned by the SLC[10] did not consider long-term trends and was conducted at the height of the pandemic, in market conditions that may not be representative of wider market trends. Respondents also highlighted the potential for the evidence of 'rapidly rising land values' cited in the consultation paper to have been affected by purchase of land for carbon credits in 2019; it was suggested that this demand may fall back as a result of changes to eligibility for carbon credits and improved scientific data around the potential scale of carbon sequestration. More recent evidence[11] was cited as suggesting that demand for carbon credits is unlikely to significantly influence land values going forward.

Some respondents wished to see the scope of prior notification expanded to include others who may face barriers to participating in the land market. It was suggested that including environmental NGOs, local businesses (especially those with an interest in using the land for public good), tenant farmers, individuals and

[10] https://www.landcommission.gov.scot/news-events/news/major-report-shows-scotlands-changing-rural-land-market

[11] BiGGAR Economics, 2022

others in the prior notification process could further support the diversification of land ownership. Some also wished to see the geographic scope of prior notification expanded to include wider communities of interest, particularly for landholdings where there are no suitable community groups in the local area.

It was noted that the consultation paper suggests circumstances where prior notification may not be possible, and some respondents expressed a view that the circumstances cited (sudden death or insolvency) should not merit exemption from prior notification. It was also suggested that there should be an exemption for landowners wishing to sell or gift land to registered charities where land is to be managed for the public good.

Other respondents made specific proposals for how prior notification should be implemented, including that the register of community bodies should be broader in scope than that currently used for registration of a community interest in land; it was argued that all incorporated bodies with a community membership, including all community councils should be included. It was also suggested that community bodies should be able to register without a change to their constitution, although that some changes may be required prior to any land transfer. Support should also be provided to help community bodies through the registration process.

Other points raised included that:

- Clarity is required around how the price to be paid by the community body should be determined, and whether landowners would be obliged to 'favour' any offer from a community group.
- Wider public dissemination of notices should be required in addition to direct communication with relevant community organisations.
- A standardised notification template should be developed, including details and a map of the landholding, a statement of community rights in relation to acquisition of land, timescales for a community response, and links to external support organisations.
- Community organisations will require additional support to engage in the land market including advice and guidance, case study examples, access to other community groups that manage land, and increased funding. This should be supported by a comprehensive communications strategy to ensure community bodies are aware of new rights, and the availability of information and support.
- Landowners should be required to provide evidence of effective notification or engagement with communities.
- A GIS-enabled open source database of notices could support transparency, monitoring and reporting.

# 6. New conditions on those in receipt of public funding for land-based activity

It is proposed that withdrawal of public funding should be one of the possible penalties for not adhering to the new LRRS and Land Management Plan requirements. The consultation also sought views on the potential for land-based public funding to be limited to land registered in the Land Register of Scotland, as a means of improving transparency of land ownership.

**Question 27 –** We propose the following eligibility requirements for landowners to receive public funding from the Scottish Government for land-based activity:

(i) All land, regardless of size, must be registered in the Land Register of Scotland.

(ii) Large-scale landowners must demonstrate they comply with the Land Rights and Responsibility Statement and have an up-to-date Land Management Plan.

Do you agree or disagree with these requirements?

Responses to Question 27 by respondent type are set out in Tables 46 and 47 below.

**Table 46**

**Question 27(i) –** All land, regardless of size, must be registered in the Land Register of Scotland. Do you agree or disagree with these requirements?

| | Agree | Disagree | Don't know | Total |
|---|---|---|---|---|
| Organisations: | | | | |
| Academic group or think tank | 3 | 0 | 1 | 4 |
| Community or local organisations | 14 | 0 | 2 | 16 |
| Government and NDPB | 9 | 2 | 4 | 15 |
| Landowner | 14 | 12 | 8 | 34 |
| Private sector organisations | 6 | 4 | 3 | 13 |
| Representative bodies, associations or unions | 14 | 8 | 1 | 23 |
| Third sector or campaign group | 19 | 3 | 6 | 28 |
| | | | | |
| Total organisations | **79** | **29** | **25** | **133** |
| **% of organisations** | **59%** | **22%** | **19%** | |
| Individuals | **285** | **34** | **8** | **327** |
| **% of individuals** | **87%** | **10%** | **2%** | |
| All respondents | **364** | **63** | **33** | **460** |
| **% of all respondents** | **79%** | **14%** | **7%** | |

Percentages may not sum to 100% due to rounding

A majority, 79% of those who answering the question, agreed that eligibility requirements for landowners to receive public funding from the Scottish Government for land-based

activity should include that all land, regardless of size, must be registered in the Land Register of Scotland.

**Table 47**

**Question 27(ii) –** Large-scale landowners must demonstrate they comply with the Land Rights and Responsibility Statement and have an up to date Land Management Plan. Do you agree or disagree with these requirements?

| | Agree | Disagree | Don't know | Total |
|---|---|---|---|---|
| Organisations: | | | | |
| Academic group or think tank | 3 | 0 | 1 | 4 |
| Community or local organisations | 14 | 1 | 1 | 16 |
| Government and NDPB | 11 | 0 | 3 | 14 |
| Landowner | 7 | 21 | 6 | 34 |
| Private sector organisations | 4 | 8 | 1 | 13 |
| Representative bodies, associations or unions | 14 | 4 | 5 | 23 |
| Third sector or campaign group | 24 | 3 | 1 | 28 |
| | | | | |
| Total organisations | **77** | **37** | **18** | **132** |
| **% of organisations** | **58%** | **28%** | **14%** | |
| Individuals | **259** | **55** | **11** | **325** |
| **% of individuals** | **80%** | **17%** | **3%** | |
| All respondents | **336** | **92** | **29** | **457** |
| % of all respondents | **74%** | **20%** | **6%** | |

A majority, 4% of those who answering the question, agreed that funding should require large-scale landowners being required to demonstrate compliance with the LRRS and having an up-to-date Land Management Plan in place. Again, individual respondents were more likely to agree than organisations at 80% and 58% respectively. A majority of Landowner and Private sector organisation respondents opposed these requirements.

**Please give some reasons for your answers:**

Around 270 respondents provided a comment at Question 27.

Some of these respondents expressed their broad support for the use of conditionality of public funding to support compliance with land reform requirements, including suggestions that proposals will be essential to support wider land reform proposals. Respondents saw proposals as a proportionate and effective means of ensuring that owners of large-scale landholdings are delivering the expected public benefit.

There was also support for proposals as a means of ensuring accountability and transparency in management of public funds, reflecting a view that those in receipt

of public funds should be expected to provide public benefits. Some noted that a similar approach is already used for some agricultural funding.

### Reasons given in favour of the requirements

Respondents cited a range of specific considerations in favour of the specific requirements.

### Requirement (i)

Support for registration on the Land Register was primarily linked to a view that this would improve transparency of land ownership and encourage completion of the Land Register. It was suggested that transparency of land ownership is currently limited by an incomplete Land Register, and by barriers to public access to information on land ownership.

### Requirement (ii)

Compliance with the LRRS and having an up-to-date Land Management Plan was seen as necessary to support proposals to make these a duty for owners of large-scale landholdings. This included reference to examples of similar measures being effective in supporting compliance across other policy areas, for example access to single farm payments being linked to compliance with the Birds Directive. There was also support for the proposal as a means of reducing the burden on authorities around monitoring and enforcement of LRRS and Land Management Plan duties.

### Issues and concerns raised

Respondents raised a range of potential concerns and points for clarification in relation to proposals, in terms of the principle of conditionality of public funding, and in relation to the specific proposed requirements. General issues and concerns included seeking clarity around the scope of proposals, for example in terms of whether they would apply only to central government funds, and whether all levels of funding would be included. Respondents also sought clarity around how funding applications from tenants are to be handled, given that there is no current mechanism for tenants to register land. Concerns were expressed that tenants and others with an interest in landholdings should not be excluded from public funding due to the actions of the landowner, although there was also a view that proposals should apply equally to funding applications from landowners and tenants.

There were also concerns that:

- Applying the proposal only to owners of large-scale landholdings may be disproportionate and inequitable, resulting in different parties being required to meet different criteria to access the same funds.
- The proposals may have unintended consequences, including leading to a reduction in land management activities that contribute to the public good. Specific reference was made to peatland restoration and tree planting, as activities that often require public subsidy.

Some respondents wished to see proposals go further to ensure provision of public funding is directly linked to delivery of meaningful public benefit. Some suggested

that proposals should be expanded to link conditionality of public funding with a wider range of compliance considerations including: compliance with the Scottish Outdoor Access Code; adherence to the Place Principle; compliance with the Fair Work Convention; wildlife crime or licence breaches; and future rural support under the Agriculture Bill. It was also suggested that landholders should be required to provide an equity share of the landholding in return for public funding, and/or be subject to a high carbon land tax if funds are not used to support net zero targets.

**Requirement (i)**

In relation to Requirement (i), concerns were often related to potential barriers to registration on the Land Register. Respondents noted that a substantial number of landholdings are not currently on the Land Register, and that there is a growing backlog of open cases. It was suggested that the cost and time required by the registration process is a factor in the proportion of landholdings currently on the Land Register, and some were of the view that the cost may be prohibitive for some landowners. This included a suggestion that, for some landholders, the cost of registration may account for a significant proportion of any expected public subsidy payments.

Concerns were also raised around the capacity of Registers of Scotland to support the proposal. Respondents referred to examples of the registration process requiring several years to complete, and there was a view that significant additional resources will be required if the Land Register is to be linked to public funding in the way proposed. Respondents wished to see these issues addressed before landholders are penalised for not being registered.

It was also suggested that:

- Proposals may apply across a wide range of public funds, each raising different considerations in terms of the information required for the Land Register. For example, these may range from payments relating to single dwellings to agricultural subsidy covering large areas of land. There was also concern that proposals may conflict with existing registration processes for crofting.
- Local authorities may seek to take a security over land for lower-level funding they issue to local community groups, if the land is required to be registered in the Land Register. It was noted that this would significantly add to the work required of community groups to access funding.

Reflecting the perceived challenges in achieving a more complete Land Register, it was suggested that the introduction of proposals should be phased over a period of time or linked to the date of application, to avoid landowners being disqualified from accessing funds while their registration is being processed. There were also calls for support to be made available to smaller landowners and others who may be disproportionately burdened by the requirement to register. It was suggested that use of data already in place on the Scottish Government Land Parcel Information System could be used to support the Land Register.

It was also argued that provisions are already in place to deliver a complete Land Register and strengthen transparency of land ownership and that the proposal is not required in order to achieve this. Why the proposal was not being applied to all landholdings, rather than being limited only to the large-scale holdings was also questioned.

**Requirement (ii)**

Some respondents repeated concerns with respect to making LRRS compliance and maintenance of a Land Management Plan a duty for large-scale landholders. This included suggestions that Land Management Plans in particular could result in significant duplication of work for landholders. There were also calls for clarity on the definition of 'large-scale', how landholders would be expected to demonstrate compliance with LRRS, and what would be considered an 'up-to-date' Land Management Plan. Reflecting points raised at Question 4, there was a view that the LRRS is currently working effectively as guidance and that the content of the LRRS is too subjective to support compliance. It was suggested that use of the LRRS in this way could give rise to legal challenge.

It was also suggested that:

- The proposals make it especially important that landowners have access to support to develop and maintain up-to-date Land Management Plans, if failure to do so may result in exclusion from public funding. As noted above, some also suggested that phased implementation may be required to allow landowners time to comply.
- The proposals could lead to compliance with the LRRS, and publication of Land Management Plans being seen as only a means to access public funding, rather than supporting a genuinely progressive approach to land management.

**Question 28 –** Do you have any other comments on the proposals outlined above?

Around 135 respondents answered Question 28.

Many of these respondents reiterated issues considered at earlier questions. This included discussion of issues such as how 'large-scale' landowners are to be defined, potential for tenants and crofters to be unfairly penalised by proposals, the need for greater transparency of land ownership in Scotland, and concern around potential for unintended adverse impacts. It was also argued that:

- Many landowners (especially agricultural businesses) are facing significant challenges in the current economic climate and that the Scottish Government should ensure that land reform proposals do not undermine the economic viability of these businesses.
- For landowners with multiple landholdings, any penalties for non-compliance should be site-specific, relating to the individual landholding.

Other points raised in relation to the proposals outlined included a suggestion that these should form part of wider reform of public funding for land-based activity, to

focus on delivery of specific public benefits. Related suggestions included: a requirement for landowners in receipt of a certain level of funding to provide evidence on delivery of public benefits; a mechanism for clawback of public funding where landowners have seen a significant above-inflation increase in land values; and review of the advantageous tax position of the forestry sector.

It was also suggested that further detail is required on the range of public funding to which proposals would apply, including a view that this should not be limited only to funding that supports net zero targets. Specific suggestions included that proposals should cover: Basic payments/Greening; Less Favoured Areas Support Loan Scheme/ Areas of Natural Constraints Scheme payments, Agri-Environment and Climate Scheme payments, and tax breaks.

In addition to the proposals set out in Requirements (i) and (ii), the consultation paper notes a further proposal that all recipients of Scottish Government land-based subsidies should be registered and liable to pay tax in the UK or EU. Some respondents questioned this provision, particularly whether public funding should be provided to landowners registered outwith the UK. Some respondents wished to see funding limited to those registered in Scotland only, although it was also suggested that the G7 may be an appropriate limit on non-UK registrations.

# 7. Land Use Tenancy

The Scottish Government is proposing a new form of flexible tenancy, called a 'Land Use Tenancy', which would help agricultural holdings, small landholding tenants and others to deliver multiple eligible land use activities within one tenancy. These activities could include woodland management, agroforestry, nature maintenance and restoration, peatland restoration, and agriculture. The legal framework of the Land Use Tenancy would set out the terms and conditions of the tenancy for a tenant and their landlord. This framework could include: the key elements that both a tenant and their landlord would agree to at the start of the tenancy; how benefits would be shared; the range of activities that would need to be considered throughout the tenancy; and the process for bringing the tenancy to an end.

It is proposed that tenant farmers and small landholders would be able to convert their tenancy into a Land Use Tenancy. This would allow them to undertake a range of diverse land management activities to deliver national climate and environmental objectives without leaving the landholding.

**Question 29** – Do you agree or disagree with our proposal that there should be a Land Use Tenancy to allow people to undertake a range of land management activities?

Responses to Question 29 by respondent type are set out in Table 48 below.

**Table 48**

**Question 29** – Do you agree or disagree with our proposal that there should be a Land Use Tenancy to allow people to undertake a range of land management activities?

| | Agree | Disagree | Don't know | Total |
|---|---|---|---|---|
| Organisations: | | | | |
| Academic group or think tank | 4 | 0 | 0 | 4 |
| Community or local organisations | 12 | 0 | 3 | 15 |
| Government and NDPB | 6 | 2 | 4 | 12 |
| Landowner | 8 | 2 | 20 | 30 |
| Private sector organisations | 7 | 0 | 4 | 11 |
| Representative bodies, associations or unions | 10 | 2 | 7 | 19 |
| Third sector or campaign group | 16 | 0 | 2 | 18 |
| | | | | |
| Total organisations | **63** | **6** | **40** | **109** |
| **% of organisations** | **58%** | **6%** | **37%** | |
| Individuals | **222** | **26** | **45** | **293** |
| **% of individuals** | **76%** | **9%** | **15%** | |
| All respondents | **285** | **32** | **85** | **402** |
| **% of all respondents** | **71%** | **8%** | **21%** | |

Percentages may not sum to 100% due to rounding

A majority of respondents, 71% of those answering the question, agreed that there should be a Land Use Tenancy to allow people to undertake a range of land management activities. Of the remaining respondents, 8% disagreed and 21% did not know, the latter group including the majority of Landowner respondents.

**Please give some reasons for your answers.**

Around 300 respondents made a comment at Question 29.

### Reasons for supporting a Land Use Tenancy

Those supporting the proposed approach frequently pointed to the importance of introducing greater flexibility in the way let land can be used. There was also support for a simpler approach and one which enables greater productive use of land by a greater number of people.

In terms of that productive use of land, enabling tenants and landlords to contribute to, and benefit from, wider public policy goals was seen as important. There was reference to moving away from food production as the primary focus for tenancy contracts, and to supporting a greater focus on activities that contribute towards a just transition to net zero, climate adaptation, biodiversity recovery and nature restoration, community wealth building and population retention and growth in areas within rural Scotland.

It was suggested that a Land Use Tenancy could helpfully address some of the barriers to tenants helping to deliver these objectives and benefiting from some of the associated opportunities, including emerging carbon and natural capital opportunities. Examples of current barriers included that:

- Tenant farmers are currently discouraged from natural capital enhancement projects, both because they are likely to require the landowner's permission and because the length of tenancy agreements can pose challenges; it was reported that minimum commitment periods make many projects inaccessible to many tenant farmers.
- Although tenants are entitled to compensation for major long- and short-term improvements, improved biodiversity and carbon storage are currently not considered in land value estimates.

It was hoped that enabling mixed activities, and the ability to bring new income streams, would help strengthen business viability, longevity and would help support resilient rural communities. It was also hoped that a new, modern form of tenancy that reflects new rural markets and needs, including by supporting the delivery of multiple land use activities within one tenancy, would support the changes in land use and management required to address the nature and climate emergencies.

However, it was also noted that there are barriers to diversification which go far beyond tenancy type, such as challenges with funding and planning mechanisms. Examples given included planning regulations often preventing the development of

small-scale farm shops on farmland and funding packages for woodland creation often not being well designed for smaller-scale farms.

In terms of specific areas of activity that could be enabled under a Land Use Tenancy, suggestions included small-scale renewables, small-scale rural housing and tourism. Opportunities for diversification are covered in greater detail at Question 31. Comments at this question relating to eligible land management activity included that a Land Use Tenancy could cover or enable:

- Agroecology and agroforestry.
- Innovative plant-based land management techniques.
- The repair and restoration of buildings.

More generally, there was support for an approach that equates to a freedom of contract lease similar to that allowed in England; it was suggested that this will allow both parties to negotiate personal terms that meet their specific requirements. An associated concern was that, if freedom of contract is not being proposed, then all the current issues with tenancies and letting land in Scotland will continue.

Although many of the supportive comments were focused on encouraging and supporting diversification, a different perspective was that, while recognising the benefits of some diversification, the main priority for tenancy reform should be an increase in overall tenancy provision; this was linked to ensuring that more land is available to increase the resilience of our food and farming system. There was a call for any new tenancy type be assessed thoroughly in terms of whether the intervention is likely to lead to a net gain in tenancies overall.

Further comments included that a wide range of models such as share farming, small holding agreements, allotments and community farms and gardens, and care farms could all be part of the solution considered under a new tenancy model.

**Reservations about a Land Use Tenancy**

Respondents who had disagreed with, or were not sure about, developing a Land Use Tenancy most frequently commented that the lack of detail on the proposal makes it difficult to form an opinion on a Land Use Tenancy.

Some of those making this point noted that they supported the concept of flexible arrangements for leasing land to undertake a range of land management activities, but were struggling to see what a Land Use Tenancy would add to what is currently available. Overall, there was a view, including from some landowner respondents, that a confusing number of agricultural leases are already on the statute books and that the consultation paper has not made the case for another. Further, it was noted that the process was recently reformed by the Land Reform (Scotland) Act 2016, and a Representative body respondent suggested that any detailed proposals brought forward should explain in detail why the current diversification provisions do not meet the stated policy aim of allowing a combination of agricultural and non-agricultural activities.

There was reference to agricultural tenancies under the Agricultural Holdings (Scotland) Act 1991 and it was also noted that the diversification measures introduced by the Agricultural Holdings (Scotland) Act 2003 (the 2003 Act) already permit tenants to undertake non-agricultural activity on an agricultural holding.

Further comments included that it is also open to the parties to remove part of the land from their agricultural tenancy and enter into a commercial lease in respect of the non-agricultural use. The parties are then free to negotiate a commercial lease for the non-agricultural use outside the remit of agricultural holdings legislation. However, it was noted that this does mean that the parties have two separate lease arrangements in place, and there were reports of situations where the parties have agreed a combined use which cannot be achieved easily within the current mechanisms.

In this context, one perspective was that a flexible arrangement which allowed for a combined use could simplify matters, and there was some support for a Land Use Tenancy that allowed for the hybrid use of land outwith agricultural holdings legislation, such that using some of the land for agriculture does not mean that the parties ability to contract freely is removed. However, a Representative body respondent also reported that, at present, their landowner members are not seeing much demand from agricultural tenants seeking to explore non-agricultural uses; they went on to suggest that the focus could be on raising awareness about the mechanisms for diversification that already exist.

The importance of any new tenancy model complementing rather than undermining existing tenancy arrangements was highlighted, with the risk that retrospective changes eroding the landowner's rights could undermine confidence in new arrangements also raised. It was suggested that if the current diversification provisions, and especially those introduced by the 2003 Act, are not sufficient, it would be most appropriate to review and revise the existing diversification measures to allow greater flexibility rather than create a new kind of tenancy. In this context, it was reported that croft tenancies allow for a large number of different sorts of activities and environmental schemes to be carried out, including agri-tourism and renewable energy.

It was noted that the proposals appear both within the bounds of the Land Reform and the Agriculture Bills; there was a view it would be better for all agriculture tenure proposals be dealt with in only one of the Bills. There was also a view that the forthcoming Agriculture Bill would be the better choice.

### Issues to be considered

Respondents also highlighted a number of issues that would need to be considered if a new Land Use Tenancy is being developed. These included:

- To what extent a Land Use Tenancy would be regulated. It was suggested that, to extend regulation under the 2003 Act to non-agricultural uses is a significant deviation from the position currently applying to commercial leases in Scotland.

- The process or procedures for converting one type of tenancy to another. It was noted that conversion could affect the security of tenure under existing tenancies.
- The minimum term for a Land Use Tenancy.
- How rent would be calculated.
- The taxation implications for both parties if the land is no longer being used for an agricultural purpose.

Suggestions concerning how a Land Use Tenancy and the associated processes should be framed included a number of landowners commenting that any conversion of an existing agricultural tenancy to a Land Use Tenancy must only be permissible by agreement. One of these Landowners went on to note that the use(s) envisaged could represent a permanent change in land use which could result in the landowner losing tax reliefs and being financially penalised.

Other suggestions included that:

- There should be a broad list of permissible activities applicable to Land Use Tenancies in general, with a specific list of permitted activities agreed and specified within the tenancy agreement. Any variation should require the agreement of both parties.
- A threshold level of permitted diversification could be determined on a per area basis, with 'land sparing' activities excluded from the calculation.
- Any land use changes requiring planning permission should be considered at the outset with further guidance required. This should include energy efficiency improvements to buildings covered by a Land Use Tenancy.
- For purposes of evaluating rent, a distinction could be made between activities which may be expected to produce a regular cash flow and those that occur as a one-off payoff when the investment is closed – as is the case for investments where land is taken from production and a carbon credit generated.

**Question 30** – Are there any land management activities you think should not be included within a Land Use Tenancy?

Around 220 respondents made a comment at Question 30.

The most frequent comment was that no land management activities should be excluded under a Land Use Tenancy. Further comments included that that a non-exhaustive list of positive land management activities may be helpful, with the monitoring body appointed using their discretion to decide what proposed land management activities are acceptable and are in the long-term interest of sustainable development of the land.

Others noted that no activities should be excluded provided that they are legal and agreed with the landowner. Further comments included that this tenancy type suggests freedom of contract, and it would be anticipated that the land use

specifications would be outlined in each individual lease. Reflecting comments at Question 29, there was also a view that some activities would be best covered by a lease specific to that use and not included in a mixed use tenancy.

In terms of other general issues to be taken into account, it was suggested that:

- Any approach should be consistent with crofting tenancies.
- Any changes that would become permanent, such as woodland, would need to be agreed before entering into a new lease.
- There may be a need to ensure that certain land management activities do not encroach too far on other rights. A Government and NDPB respondent gave an example of a rewilding project leading to limits being imposed on public access rights.

**Focus on net zero and environmental benefit**

The other frequently-made comment was that the Scottish Government needs to be clear if the proposed tenancy is targeted only at activities which further net zero, given the emphasis on net zero in the title of the consultation. Some respondents did suggest that only activities that contribute to meeting net zero, and/or that are sustainable and not detrimental to the environment, should be included. Similarly, there was reference to not including activities that are not directly related to nature and biodiversity restoration or that are non-sustainable or environmentally damaging. Specific activities cited included those which tend to degrade soil health, or which create toxic debris or which result in noise, air, water and ground pollution.

However, there was also a view that any environmental activity that could trigger conservation protections in coastal areas that might prevent future economic development should be excluded.

**Renewable energy**

There were some references to not including activities relating to energy generation, including renewable energy measures and the construction of renewable infrastructure. More specific suggestions included that:

- Renewable energy generation should be limited to that for consumption by the tenant only, with any further activity needing to be in partnership with, or with the consent of, the landowner.
- Installation of solar panels on land that could reasonably be used for agricultural activity should not be included.

**Forestry and woodland**

There were also a number of references to forestry, including that blanket forestry, commercial forestry, the planting of large tracts of non-native trees, or planting trees on productive agricultural land or peatland sites should not be included. There was also reference to any forestry options which are generally excluded from the standard range of agricultural tenancies in Scotland.

Specific suggestions included that the following should not be included:

- Woodland creation in excess of 5 hectares, due to the sterilisation of ground for alternative practices.
- Trees for commercial timber without a bond to cover the removal and disposal of roots on termination.
- Planting Invasive Non-Native Species for any reason.

There were also suggestions that any carbon credit or carbon offsetting activity should not be included and, specifically, activity which takes agricultural land out of production. However, an alternative view was that the Land Use Tenancy offers real opportunity to promote innovation and new approaches in this area. There was reference to ensuring Land Use Tenancies are flexible and able to accommodate new and emerging activities, and it was reported that carbon credits is a relatively recent opportunity that was less apparent a few years ago.

**Shooting**

There were also a number to references to excluding shooting, including hare shooting, hunting and fishing. There was specific reference to grouse moors and grouse shooting and the release of non-native species, such as pheasants and red-legged partridge.

**Other suggestions**

Other types of activity that some respondents thought should not be included were:

- Industrial or commercial extraction, including mineral extraction, fossil fuel extraction, mining and quarrying. Also fracking.
- Peat extraction.
- Sale of turf or topsoil.
- Waste disposal.
- Creation of golf courses and any sporting options which are generally excluded from the standard range of agricultural tenancies in Scotland.
- Chicken farms, and dairy or red meat farming, except in the context of an overall regenerative farming approach.
- Tourism activities, including glamping or the letting of farm cottages for holiday accommodation.
- Housing development or development of other buildings that do not have the landlord's prior consent.

There were also references to not including any activities which are contrary to the interest of local communities, including by disrupting their wellbeing and peace. Noise, air, water and ground pollution were cited.

Finally, the importance of not including activities that would interfere with Scottish Water's statutory obligations and duties in relation to water, wastewater and achieving their net zero targets were highlighted.

**Question 31** – Do you think that wider land use opportunities relating to diversification, such as renewable energy and agri-tourism, should be part of a Land Use Tenancy?

Responses to Question 31 by respondent type are set out in Table 49 below.

**Table 49**

**Question 31** – Do you think that wider land use opportunities relating to diversification, such as renewable energy and agri-tourism, should be part of a Land Use Tenancy?

| | Yes | No | Don't know | Total |
|---|---|---|---|---|
| Organisations: | | | | |
| Academic group or think tank | 3 | 0 | 1 | 4 |
| Community or local organisations | 9 | 1 | 2 | 12 |
| Government and NDPB | 5 | 0 | 5 | 10 |
| Landowner | 16 | 3 | 10 | 29 |
| Private sector organisations | 6 | 2 | 3 | 11 |
| Representative bodies, associations or unions | 11 | 1 | 5 | 17 |
| Third sector or campaign group | 12 | 0 | 5 | 17 |
| | | | | |
| Total organisations | **62** | **7** | **31** | **100** |
| **% of organisations** | **62%** | **7%** | **31%** | |
| Individuals | **210** | **27** | **49** | **286** |
| **% of individuals** | **73%** | **9%** | **17%** | |
| All respondents | **272** | **34** | **80** | **386** |
| **% of all respondents** | **70%** | **9%** | **21%** | |

A majority of respondents, 70% of those answering the question, thought that wider land use opportunities relating to diversification, such as renewable energy and agri-tourism, should be part of a Land Use Tenancy. Of the remaining respondents, 9% did not think so and 21% did not know.

**Please give some reasons for your answers.**

Around 300 respondents made a comment at Question 31.

General comments in support included that measures to diversify the rural economy are welcome and that diversifying may assist with more efficient land use and supporting stronger communities. It was also suggested that an approach based on agriculture alone is difficult to sustain and that there should be as few barriers as possible for tenant farmers wishing to diversify their land management activities. However, it was also noted that the specific activities identified can already be done by notice under existing structures, so there is no reason not to include them in a Land Use Tenancy. As at earlier questions, there was also a view that such uses should remain the subject of a separate lease.

There was specific reference to supporting tenant farmers to deliver key government policy, but also a query about the intended scope of the activities covered under a Land Use Tenancy; this was connected to a concern that as the policy driver for the Land Use Tenancy is natural capital, it would therefore be limited to land use which fits in with that policy.

In terms of how and if activities should be defined, one suggestion was that it may be useful to have a non-exclusive list of land management activities. The follow up point was that the monitoring body appointed could use their discretion to decide whether any proposed land management activities are sensible and are in the long-term interest of sustainable development of the land.

In terms of the range of land use opportunities that should be included, it was noted that those relating to renewable energy and agri-tourism would be similar to the types of activities included in crofting tenancy arrangements as 'purposeful use' of a croft; it was seen as logical to also include such provisions in the proposed land use tenancy. It was also noted that renewable energy and agri-tourism are examples of opportunities that could benefit the wider community.

Respondents also commented on the relationship between opportunities for diversification and farming; there was a view that activities should complement the primary function of agricultural activity and provide the farmer(s) with an opportunity to maintain dignified livelihood and carry out the farming activity in an ecologically sustainable manner that is of benefit to their local community and wider food system.

The importance of ensuring that diversification does not compromise, damage or remove existing assets and does not result in harm to biodiversity was also highlighted. There was also reference to the impact of diversification outwith the tenancy – for example on electrical infrastructure for renewables or conservation sites which will have increased activity through agrotourism. It was noted that there may be costs to others arising from diversification.

**Renewable energy**

There were a number of issues raised relating to renewable energy, including whether allowing for renewable energy within Land Use Tenancies would have implications for renewables developers and the wider sector. Other points raised included that:

- There would be a risk of dispersed development with minor benefits for economic returns and energy generation, but big impacts on landscapes and environments. Energy generation needs a national strategic approach, within which generation to support local communities could be a priority.
- Planning permission requirements should still apply, thereby ensuring responsible land use.

- There would likely need to be a limit in the scale of any development to avoid conflicts of opportunities or legal and financial complications particularly at waygo[12].

Finally, it was noted that renewable energy opportunities are likely to require considerable capital and different expertise.

### Tourism

The issue of expertise was also raised relation to tourism. In terms of issues that would need to be considered it was suggested that agri-tourism must be highly sensitive to protecting habitats, and the free-living animals which rely upon them. It was also described as a largely green land-use, with some local employment benefits.

### Other types of activity

There were also a small number of other suggestions for particular activities that should be permitted or encouraged, these included:

- Woodland expansion. It was suggested that Land Use Tenancies open new ground for woodland expansion and management other than related to agroforestry. There was a call for other types of woodland creation and management to be included.
- The restoration of culturally significant and/or historic buildings, designed landscapes and battlefield sites.

[12] waygo is the effective date or termination date on a notice of intention to quit or a notice to quit of an agricultural leasing arrangement.

**Question 32** – Do you agree or disagree that a tenant farmer or a small landholder should, with the agreement of their landlord, have the ability to move their agricultural tenancy into a new Land Use Tenancy without having to bring their current lease to an end?

Responses to Question 32 by respondent type are set out in Table 50 below.

**Table 50**

**Question 32** – Do you agree or disagree that a tenant farmer or a small landholder should, with the agreement of their landlord, have the ability to move their agricultural tenancy into a new Land Use Tenancy without having to bring their current lease to an end?

| | Agree | Disagree | Don't know | Total |
|---|---|---|---|---|
| Organisations: | | | | |
| Academic group or think tank | 2 | 0 | 2 | 4 |
| Community or local organisations | 6 | 1 | 4 | 11 |
| Government and NDPB | 5 | 1 | 3 | 9 |
| Landowner | 8 | 4 | 15 | 27 |
| Private sector organisations | 5 | 3 | 3 | 11 |
| Representative bodies, associations or unions | 7 | 1 | 7 | 15 |
| Third sector or campaign group | 11 | 1 | 3 | 15 |
| | | | | |
| Total organisations | **44** | **11** | **37** | **92** |
| **% of organisations** | **48%** | **12%** | **40%** | |
| Individuals | **190** | **39** | **55** | **284** |
| **% of individuals** | **67%** | **14%** | **19%** | |
| All respondents | **234** | **50** | **92** | **376** |
| **% of all respondents** | **62%** | **13%** | **24%** | |

Percentages may not sum to 100% due to rounding

A majority of respondents, 62% of those answering the question, agreed that a tenant farmer or a small landholder should, with the agreement of their landlord, have the ability to move their agricultural tenancy into a new Land Use Tenancy without having to bring their current lease to an end. Of the remaining respondents, 13% disagreed and 24% did not know.

**Please give some reasons for your answers.**

Around 300 respondents made a comment at Question 32.

General comments in support of the approach included that it is likely to accelerate positive change, and that it will be important for any new opportunities to be available to existing as well as new tenants. However, as at previous questions, a number of respondents also noted that their agreement was predicated on both parties having to consent to the change.

Others, including both those who agreed or disagreed with the proposal, thought that tenants should not require the agreement of their landlord to convert; it was suggested that this should be regarded as an update to tenancy law, such has been carried out by legislation in the past. Specifically, it was suggested that the proposal should be seen as a modernisation of tenancy law, just as Section 42 (tenant's right to timber) was in the Agricultural Holdings (Scotland) Act 2003.

Respondents also saw it as important to avoid any barriers to take up of a Land Use Tenancy; there was a concern that bringing a current lease to an end seems to offer too many opportunities for slowing or impeding a transition. However, it was also reported that it is common in the sector for landlords and tenants to change tenancy type by agreement and so the proposed approach would continue in the same vein.

There was also a view, as at other questions, that further detail is required. In particular, there was a query about the possible impact of a potential change of use. It was suggested that further clarity is needed on how the approach would work in practice so as to ensure that neither party is negatively impacted by the transition.

In terms of potential problems that need to be considered, issues raised included that:

- A tenant cannot be subject to more than one lease at a time on the same area of land. It was suggested that the existing lease needs to be terminated and a Land Use Tenancy entered into *in lieu*.
- Simply extending the terms of an existing tenancy to allow the diversified uses would be wholly inappropriate. As an illustration it was noted that the terms of a renewables lease are completely different to those of an agricultural lease, and the terms of an agricultural lease and of the Agricultural Holdings Acts are wholly incompatible with a renewables lease.

With regards to the rights of tenants, concerns included that landlords could reject a request by a tenant or small holder to convert their tenancy to a Land Use Tenancy. Conversely, there was a query as to whether a Land Use Tenancy could be imposed on a tenant by the landlord, for example during a period of tenancy review. There was also a concern that pressure could be applied to some secure tenants to agree to conversion to a Land Use Tenancy, thus losing their security of tenure.

It was also seen as hard to envisage that many, if any, holders of agricultural tenancies will want to transition to a Land Use Tenancy unless their current rights are protected in the new lease. An associated concern was that tenants could be offered a 'transition' by their landlord in return, for example, for additional land. There was a view that diminished rights should not be being offered as part of such negotiations.

**Question 33** – Do you agree or disagree that when a tenant farmer or small landholders' tenancy is due to come to an end that the tenant and their landlord should be able to change the tenancy into a Land Use Tenancy without going through the process of waygo, with parties retaining their rights?

Responses to Question 33 by respondent type are set out in Table 51 below.

**Table 51**

**Question 33** – Do you agree or disagree that when a tenant farmer or small landholders' tenancy is due to come to an end that the tenant and their landlord should be able to change the tenancy into a Land Use Tenancy without going through the process of waygo, with parties retaining their rights?

| | Agree | Disagree | Don't know | Total |
|---|---|---|---|---|
| Organisations: | | | | |
| Academic group or think tank | 0 | 0 | 4 | 4 |
| Community or local organisations | 5 | 0 | 7 | 12 |
| Government and NDPB | 1 | 0 | 5 | 6 |
| Landowner | 7 | 3 | 17 | 27 |
| Private sector organisations | 5 | 1 | 5 | 11 |
| Representative bodies, associations or unions | 5 | 0 | 9 | 14 |
| Third sector or campaign group | 9 | 0 | 5 | 14 |
| | | | | |
| Total organisations | **32** | **4** | **52** | **88** |
| **% of organisations** | **36%** | **5%** | **59%** | |
| Individuals | **143** | **34** | **107** | **284** |
| **% of individuals** | **50%** | **12%** | **38%** | |
| All respondents | **175** | **38** | **159** | **372** |
| **% of all respondents** | **47%** | **10%** | **43%** | |

The largest proportion of respondents, 47% of those answering the question, agreed that when a tenant farmer or small landholders' tenancy is due to come to an end that the tenant and their landlord should be able to change the tenancy into a Land Use Tenancy without going through the process of waygo, with parties retaining their rights. Of the remaining respondents, 10% disagreed and 43% did not know.

**Please give some reasons for your answers.**

Around 295 respondents made a comment at Question 33.

Comments tended to be brief, with reasons for agreeing including that it should make things easier, reduce the amount of red tape, and be a time saving measure. As at other questions, some noted that both parties must agree, and it was also suggested that rights must be retained, with an agreed record of conditions in place.

Also as at other questions, a number of those who did not feel able to take a view at this time were looking for further information or detail relating to what is proposed. In terms of issues to be taken into account, it was reported that, in the past, many tenants have lost their right to compensation for their improvements when their existing tenancy was converted into a new tenancy without going through the waygo process, and their improvements were not carried forward into the new lease; there was a concern that the same could happen here.

Queries raised included that it is not clear what is being asked since, if the tenancy is converted, it is not coming to an end and therefore waygo compensation is irrelevant. Associated comments included that it may be better to bring the tenancy to an end and deal with all waygo and landlord dilapidations. Were this to be the case, it was suggested that, if the landlord has to pay compensation to an agricultural tenant based on value to the incoming tenant, then the landlord should retain that asset.

There were also queries around:

- What would happen if there were no incoming tenant to an agricultural tenancy, including whether the waygo would roll into the new tenancy and whether the value would be to an incoming Land Use Tenancy tenant.
- The value to an incoming tenant of an agricultural improvement where the incomer is a Land Use Tenancy tenant with no need for the improvement.

Suggestions as to how changes of tenancy might best be taken forward included that it might be simplest for the basic legal framework of a Land Use Tenancy to include a provision akin to that of s.34(5) of the Agricultural Holdings (Scotland) Act 1991 so that such rights (but also to dilapidations) remained over successive tenancies, under whatever code of law. However, a practical problem relating to evidence was also highlighted, and it was suggested that the new tenancy agreement should record all such points.

Other suggestions included that provision should be made for the Land Use Tenancy to apply to part of a holding only with the remainder remaining under an agricultural lease.

Finally, a small number of comments were made by those disagreeing with the proposal. Their concerns included that the future use may be so different to the original agreement that the proposed approach seems imprudent. Reflecting some of the points and queries raised above, there was also a view that these are two separate forms of tenure; the associated suggestion was that the parties should treat the end of tenancy matters under the respective tenures and statutes.

**Question 34** – How do you think the rent for a Land Use Tenancy should be calculated?

Around 305 respondents made a comment at Question 34.

The most frequently made point was that the rent should be by agreement between parties. Landowner and Representative body respondents were particularly likely to take this view, which was often connected to a market rent approach being fair, transparent and providing certainty to both parties.

Some of the comments addressed possible challenges associated with calculating the rent for a Land Use Tenancy, albeit it was also noted that it is difficult to comment in detail without further detail on the structure, purpose and manageability of a Land Use Tenancy. In terms of particular points that could impact on the rental calculation, there was reference to whether:

- It is a rental for the duration of the different uses on a parcel land?
- Payments are tethered to any formal planning or land use rights? mechanism that could also attract additional costs, such as VAT and Rates?

There were concerns that it will be hard to find a fair, standardised mechanism to cover different rental situations, including because of different lease types and levels of investment. There was also a concern that tenant farmers might be exploited for introducing more productive uses of land and charged extortionate rent in return for such efforts.

In terms of issues to be taken into account, or not, as part of rent calculations, comments included that:

- A mechanism needs to be in place to ensure one party's cost liability is not then a transferable cost onto another party. Thought is needed on how these costs might be passed onto land users through methods such as increased market rental value for the land (reflecting its use), or additional rental / upfront one off 'consideration' payments.
- Comparison is needed of other land costs such as 'community benefit' payments to the council / community as part of planning conditions. Duplication of intent, benefit and right of use needs to be avoided.
- The rent should be for the whole holding, including any dwelling that might be in the tenancy.
- Consideration should be given to whether certain forms of investment would be better suited to being separately contracted as a joint venture.
- There should be regulations to ensure that tenants get a fair deal for their improvements. Serious consideration should be given to the potential value of future land uses in the context of historical land improvements. This should also be considered in the context of public land value capture.

In terms of existing models that could be looked at, it was noted that croft tenancies have a statutory mechanism for determining rent.

As noted above, the most frequently made point was that the rent should be by agreement between parties. Associated points included that a specific formula would be too complex and lead to further issues, and that it would be counterproductive to be too prescriptive with rent provisions if the rest of the tenancy is based on the ability of parties to agree based on circumstances and activities. Very much reflecting the focus on agreement between parties, respondents were most likely to suggest that any approach should be market led. It was suggested that this would make sure that the approach is fair, transparent and provides certainty to both parties.

Further comments included that the market rate would lead to negotiation between the parties and could take diversification and use into account. There was also reference to an open market rental value, as defined by RICS.

Further comments or suggestions relating to a market led approach included that:

- It should disregard a tenant's improvements and fixtures, save where they are an obligation of the tenancy agreement and to the extent that the landlord has funded or given benefit for them.
- It should disregard the fact of the tenant being in occupation and any extent to which the tenant has fallen short of the tenant's obligations, allowing the holding to deteriorate.
- Arrangements for regular reviews will be critical to support both tenants and landlords in agreeing to enter into a new lease arrangement. Specific suggestions included carrying forward a default, three-year minimum period for a review, although allowing the parties to agree otherwise.

In addition to general comments about the approach being market led, there were also a number of suggestions relating to the basis on which the rent could be agreed or set. It was noted that, in common with commercial leases, rent may be fixed or relate to turnover. There was reference to: percentage of income generated; percentage of profits; and discounted cash flow. Respondents also noted that rent levels would vary according to use, for example that they could be based on reasonable cost per acre for labour-based use, or a value of turnover for non-labour-based use, such as forestry or renewables.

Other suggestions included that rent could:

- Be an annual percentage of the capital value of the land, taking account of the initial agricultural value and also the commercial value according to the purpose to which the land is put.
- Reflect the quality of the land.
- Take non-profit-making activities and community development work into account.
- Reflect organic farm transition times, taking into account the extra demands of transition towards net zero-compatible techniques.
- Be means tested or capped. There was a view that, with Scotland's land ownership characterised by concentration and land monopolies, there should

be some form of statutory rent protection for the tenant to avoid inflated 'open market' rents.

- Take account of the capital impact or restoration position if the land management activity involves a permanent land use change.

The potential to make a distinction between activities which may be expected to produce a regular cash flow and those that occur as a one-off payoff when the investment is closed, as is the case for investments where land is taken from production and a carbon credit generated, was highlighted. However, it was also noted that such an approach could be challenging and that an alternative model may be for the landlord and tenant to enter into a joint venture, with the landlord forgoing rent for that activity and instead agreeing that each will receive a proportion of the proceeds where the investment is finally closed.

**Question 35** – Would you use a Land Use Tenancy if you had access to a similar range of future Scottish Government payments which other kinds of land managers may receive?

Responses to Question 35 by respondent type are set out in Table 52 below.

**Table 52**

**Question 35** – Would you use a Land Use Tenancy if you had access to a similar range of future Scottish Government payments which other kinds of land managers may receive?

| | Yes | No | Don't know | Total |
|---|---|---|---|---|
| Organisations: | | | | |
| Academic group or think tank | 2 | 0 | 1 | 3 |
| Community or local organisations | 3 | 0 | 5 | 8 |
| Government and NDPB | 1 | 1 | 4 | 6 |
| Landowner | 2 | 2 | 22 | 26 |
| Private sector organisations | 4 | 1 | 5 | 10 |
| Representative bodies, associations or unions | 0 | 1 | 13 | 14 |
| Third sector or campaign group | 3 | 0 | 6 | 9 |
| | | | | |
| Total organisations | **15** | **5** | **56** | **76** |
| **% of organisations** | **20%** | **7%** | **74%** | |
| Individuals | **81** | **33** | **151** | **265** |
| **% of individuals** | **31%** | **12%** | **57%** | |
| All respondents | **96** | **38** | **207** | **341** |
| **% of all respondents** | **28%** | **11%** | **61%** | |

Percentages may not sum to 100% due to rounding

A majority of respondents, 61% did not know if they would you use a Land Use Tenancy if they had access to a similar range of future Scottish Government

payments which other kinds of land managers may receive. Of the remaining respondents, 28% said they would and 11% that they would not.

**Please give some reasons for your answers.**

Around 120 respondents made a comment at Question 35.

The most frequent observation was that there is not enough detail, including to allow for informed comment. There was a particular query about the consultation paper's reference to tenants ending tenancies early because they are prevented from delivering range of environmental benefits; the Scottish Government was asked to share the evidence of this happening so that discussions on the Land Use tenancies can go forward on a more informed basis. It was also suggested that, in the interest of fairness, the Scottish Government should also be asking landlords whether they would grant a Land Use Tenancy.

There was also a suggestion that Question 35 is a leading question because it suggests that tenants of agricultural holdings might be excluded from future payments. Associated comments included that tenants not on a Land Use Tenancy should not be disadvantaged and that fairness and equity is important. Equally, it was noted that anyone on a Land Use Tenancy should have access to any relevant payments.

In direct answer to the question, a small number of (primarily Individual) respondents commented that they would potentially be interested in having a Land Use Tenancy, albeit they sometimes noted this would be dependent on the 'small print', and factors such as the commercial viability of any opportunities and the length of the tenancy on offer.

Others noted that they might have been interested in a Land Use Tenancy but that it is not relevant to their current circumstances, for example because they already own land or are retired. There were also a small number of references to crofting, including that a Land Use Tenancy would not be relevant to crofts or that the respondent might prefer to stick with crofting.

A small number of Landowners or Private sector organisation respondents also commented on whether they would be interested in using Land Use Tenancies. One said they would not be interested because they are considering entering Environmental or Land Use Partnerships with agricultural tenants to do the same thing. Others had reservations, including because they were likely to prefer the flexibility of a commercial lease.

However, some said they would be interested, especially if a Land Use Tenancy allowed enforceability of conservation management clauses, or if it was otherwise the most appropriate tenancy type.

As at other questions, respondents also highlighted a number of issues that could have an impact on take-up. In particular, it was suggested that take-up would be greater if more tenancies are made available and that a Land Use Tenancy which

replaces currently existing tenancies without increasing the overall availability of tenancies may be of limited benefit. The importance of both parties in the contractual agreement being in favour was noted again, as was the importance of simplicity and making the Land Use Tenancy an attractive option where it is appropriate.

**Question 36** – Do you think that there should be guidance to help a tenant and their landlord to agree and manage a Land Use Tenancy?

Responses to Question 36 by respondent type are set out in Table 53 below.

**Table 53**

**Question 36** – Do you think that there should be guidance to help a tenant and their landlord to agree and manage a Land Use Tenancy?

| | Yes | No | Don't know | Total |
|---|---|---|---|---|
| Organisations: | | | | |
| Academic group or think tank | 4 | 0 | 0 | 4 |
| Community or local organisations | 14 | 0 | 0 | 14 |
| Government and NDPB | 8 | 0 | 2 | 10 |
| Landowner | 24 | 0 | 5 | 29 |
| Private sector organisations | 9 | 2 | 0 | 11 |
| Representative bodies, associations or unions | 12 | 1 | 3 | 16 |
| Third sector or campaign group | 11 | 0 | 3 | 14 |
| | | | | |
| Total organisations | **82** | **3** | **13** | **98** |
| **% of organisations** | **84%** | **3%** | **13%** | |
| Individuals | **232** | **15** | **30** | **277** |
| **% of individuals** | **84%** | **5%** | **11%** | |
| All respondents | **314** | **18** | **43** | **375** |
| **% of all respondents** | **84%** | **5%** | **11%** | |

A large majority of respondents, 84% of those answering the question, thought that there should be guidance to help a tenant and their landlord to agree and manage a Land Use Tenancy. Of the remaining respondents, 5% disagreed and 11% did not know.

**Please give some reasons for your answers and outline who you think should be responsible for writing and managing the guidance.**

Around 300 respondents made a comment at Question 36.

It was suggested that lack of awareness or misinterpretation of legislation has been at the root of many of the disputes relating to existing forms of tenancy. In terms of the Land Use Tenancy itself, points raised included that there may be an be

complex issues with unexpected consequences, including because the conversion of an agricultural tenancy to a Land Use Tenancy has implications for both landlords and tenants. It was also noted that the approach would be consistent with those taken in relation to other aspects of land reform policy and practice, including the LRRS.

It was hoped that clear guidance would help standardise the process and that it would or should offer reassurance to the tenant that their aspirations for the land are supported for the long term; it was suggested that this should help encourage positive investment in, for example, improving the land to tackle climate change, reversing biodiversity loss and providing benefit to local communities.

Some respondents referenced existing approaches or specific pieces of guidance which they found helpful, including the TFC's Guide to General Statutory Compliance on Agricultural Holdings. However, some also suggested there remains room for improvement.

In terms of who should be responsible for writing and managing any guidance for Land Use Tenancies, respondents were most likely to suggest the SLC and/or the TFC, including because of their experience of doing so in other contexts. Other organisations referenced included the Tenant Farming Advisory Forum and the Scottish Agricultural University. There was also reference to the Social Farms and Gardens' Community Land Advisory Service, which provides one-to-one support for community organisations and landowners in all sectors.

Other suggestions or comments included that a mix of stakeholders – tenants, landowners and policy experts – should write the guidance. It was suggested that the best guidance has been co-produced by stakeholders but that this would require facilitation by an independent organisation with knowledge in the field of tenancy and community land use.

Suggestions relating to how the guidance should be developed included that:

- There should be legal input from a party representing the climate emergency.
- It should be subject to consultation with bodies with relevant expertise.
- It should be agreed between RICS, the Scottish Agricultural Arbiters' and Valuers' Association (SAAVA), the Scottish Tenant Farmers Association and the National Farmers Union of Scotland.

It was also noted that a number of organisations, including the Central Association of Agricultural Valuers and SAAVA, are likely to produce guidance and commentary to assist parties and their advisers.

There were also suggestions relating to the content of the guidance, including that the format of the TFC guidance (referenced above) could be expanded to encapsulate guidance to assist Land Use Tenancies. Suggestions around particular issues or topics to be covered in the guidance included:

- How the legal requirements and rights of all parties would be affected.

- Rental structures, calculations, and percentage of benefit. Specifically, a clear formula for rent charges.
- Ways of working together in partnership, including outlining how to establish shared goals and work towards these collaboratively.

In relation to what would not be required, there was reference to specific Codes of Practice; it was noted that Codes of Practice are intended to regulate processes and behaviours and it was thought that existing Codes which apply to specific aspects of agricultural tenancies would apply to Land Use Tenancies. It was also argued that any guidance that is produced should be non-binding and for information only. These issues were also raised by those who did not think that guidance should be produced or who had not answered the closed question. Other comments from those who had not thought guidance is required included that parties should be able to seek professional advice and agree their own personalised tenancy terms and conditions and that this is likely to negate the need for any guidance.

Finally, there were offers to support the dissemination of any guidance and to organise joint training for the sector. There was also reference to the need for a support line and legal advice for tenants.

**Question 37** – Do you think there should be a process to manage disputes between a tenant of a Land Use Tenancy and their landlord?

Responses to Question 37 by respondent type are set out in Table 54 below.

**Table 54**

| **Question 37** – Do you think there should be a process to manage disputes between a tenant of a Land Use Tenancy and their landlord? | | | | |
|---|---|---|---|---|
| | **Yes** | **No** | **Don't know** | **Total** |
| Organisations: | | | | |
| Academic group or think tank | 4 | 0 | 0 | 4 |
| Community or local organisations | 13 | 0 | 1 | 14 |
| Government and NDPB | 6 | 0 | 2 | 8 |
| Landowner | 24 | 1 | 4 | 29 |
| Private sector organisations | 8 | 3 | 0 | 11 |
| Representative bodies, associations or unions | 12 | 2 | 3 | 17 |
| Third sector or campaign group | 13 | 0 | 3 | 16 |
| | | | | |
| Total organisations | **80** | **6** | **13** | **99** |
| **% of organisations** | **81%** | **6%** | **13%** | |
| Individuals | **243** | **10** | **28** | **281** |
| **% of individuals** | **86%** | **4%** | **10%** | |
| All respondents | **323** | **16** | **41** | **380** |
| **% of all respondents** | **85%** | **4%** | **11%** | |

A large majority of respondents, 85% of those answering the question, thought there should be a process to manage disputes between a tenant of a Land Use Tenancy and their landlord. Of the remaining respondents, 4% did not think so and 11% did not know.

**Please give some reasons for your answers and outline how this process could be managed.**

Around 300 respondents made a comment at Question 37.

In addition to general statements of support, comments included that disputes are inevitable and that, without a dispute management process, issues will need to be resolved by agreement between the parties or, failing that, through the courts.

It was noted that the process would be consistent with that proposed in relation to the LRRS, and also that most commercial contractual agreements include dispute resolution measures. There was also a view that the Land Use Tenancies process should be broadly as is used to manage disputes under existing agricultural tenancies.

Other respondents noted that a freely negotiated lease would include appropriate dispute resolution arrangements, but thought that there is no reason why a particular dispute resolution process should be imposed on parties entering into a freely negotiated letting arrangement. It was argued that, to ensure freedom of contract, it will be important that Land Use Tenancies are not overburdened by prescriptive dispute resolution procedures.

In terms of how any future approach should be framed, there was reference to the current TFC dispute management process, with its appeal rights. It was suggested that the aim should be early, timely, cost-effective and impartial provision of answers that allow the parties to move on.

One perspective was that, if possible, mediation should be made a mandatory part of the resolution process, with the Civil Court only involved if this fails. A different perspective was that alternative dispute resolution should be an option for parties, rather than a mandatory process, as evidence suggests that outcomes are better for the former than the latter. It was also noted that some disputes involve complex issues of law, which are better resolved by a court determination, or would have a binary outcome (either a right or responsibility exists or not), for which alternative dispute resolution may not be the most appropriate approach.

Other suggestions about the best approach going forward included that:

- Each party should be able to refer a dispute to arbitration, with the framework for that provided by existing law and practice, ideally with the extension of the Arbitration (Scotland) Act 2010.
- The process should be affordable and accessible to different land users; it should be through appropriate professional bodies and should avoid becoming a costly and intensive legal process. There was also a suggestion that mediation should be government funded.

Respondents also referred to the importance of the process being managed by an impartial body, or that any approach should be led by a fully independent body which should develop new processes. However, and reflecting comments at the previous question, there was also reference to the outputs from the TFC having proved useful. The appropriate organisation to lead on dispute management is the focus of the next question.

**Question 38** – Do you agree or disagree that tenants of a Land Use Tenancy and their landlords should be able to resolve their legal disputes in relation to the tenancy through the Scottish Land Court?

Responses to Question 38 by respondent type are set out in Table 55 below.

**Table 55**

| **Question 38** – Do you agree or disagree that tenants of a Land Use Tenancy and their landlords should be able to resolve their legal disputes in relation to the tenancy through the Scottish Land Court? | | | | |
|---|---|---|---|---|
| | **Agree** | **Disagree** | **Don't know** | **Total** |
| Organisations: | | | | |
| Academic group or think tank | 3 | 0 | 1 | 4 |
| Community or local organisations | 4 | 1 | 7 | 12 |
| Government and NDPB | 3 | 0 | 5 | 8 |
| Landowner | 8 | 12 | 8 | 28 |
| Private sector organisations | 6 | 2 | 3 | 11 |
| Representative bodies, associations or unions | 7 | 2 | 8 | 17 |
| Third sector or campaign group | 8 | 0 | 7 | 15 |
| | | | | |
| Total organisations | **39** | **17** | **39** | **95** |
| **% of organisations** | **41%** | **18%** | **41%** | |
| Individuals | **193** | **30** | **56** | **279** |
| **% of individuals** | **69%** | **11%** | **20%** | |
| All respondents | **232** | **47** | **95** | **374** |
| **% of all respondents** | **62%** | **13%** | **25%** | |

A majority of respondents, 62% of those answering the question, agreed that tenants of a Land Use Tenancy and their landlords should be able to resolve their legal disputes in relation to the tenancy through the Scottish Land Court. Of the remaining respondents, 13% disagreed and 25% did not know.

**Please give some reasons for your answers and outline additional ways in which disputes could be resolved.**

Around 140 respondents made a comment at Question 38.

The importance of both parties having access to an appropriate judicial forum in which to resolve disputes was highlighted. General reasons for supporting the Scottish Land Court option included that it would be appropriate or reasonable, and that the Court has a wealth of experience.

While supporting the judicial route being available, some respondents argued that this should act operate as a backstop and not a first port of call. It was suggested alternative dispute resolution (ADR) can offer quicker and more cost-effective outcomes than court resolution, with a higher degree of satisfaction in the process and higher likelihood of successful enforcement of any outcome reached. There were differing views as to whether some form of ADR should be a required step. While some respondents thought options such as expert determination, mediation or arbitration should be tried before going to the Scottish Land Court, others

thought that ADR should be optional, since the evidence suggests that outcomes are better for an optional process rather than a mandatory one.

An alternative view was that ADR and other courts would be the better approach; it was suggested that the Scottish Land Court would not be the most appropriate body to deal with a dispute relating to commercial matters. Another suggestion was that parties should be free to specify the legal resort in the case of a dispute, and could be free to nominate the Scottish Land Court. However, it was noted that this could raise issues for the Court in terms of legal expertise.

Other suggestions included the use of local sheriff courts or of an Environmental Court, or for the SLC to have a role based on the approach adopted by the TFC.

Other issues raised about how any approach should work included that:

- Parties should be free to agree the dispute resolution approach which best suits their circumstances.
- Any approach should look to minimise legal costs to help ensure equality of access across all sectors.
- In terms of both ADR and recourse to the Scottish Land Court, expert advice regarding novel aspects of land use may be required.

**Question 39** – Do you have any other comments on our proposal for a Land Use Tenancy?

Around 110 respondents made a comment at Question 39.

Comments sometimes reiterated that more information or detail is required, or that the Land Use Tenancy would be better suited to being considered alongside the proposed changes to agricultural tenancies rather than in Land Reform legislation. One suggestion was that it should be dealt with under a single Bill – either the Land Reform Bill or the Agriculture Bill, but not both. There was also reference to the provisions proposed in each Bill being compatible and complementary.

Other general comments or suggestions included that the Scottish Government needs to consider what other models are already working and whether the Land Use Tenancy model offers more. If the proposals are to be taken forward, there was a call for any new tenancy, and the associated processes, to be kept simple and designed to offer a commercial option for willing parties.

Reflecting this issue of willing parties, some respondents queried the extent to which the legal framework will regulate what terms the parties can agree, and it was suggested that it would be helpful to set out what types of activities can be undertaken and the process for termination. In particular, it was noted that most agricultural leases do not include sporting rights, minerals, and rights outwith the farm, and this would need to be factored into a Land Use Tenancy that permitted the tenant to interfere with or have any right to interact with these normally reserved rights.

However, it was also suggested that the commercial arrangements on some alternative land uses might struggle to be encompassed within a single legal format, for example the future liability for reinstatement/fulfilment in relation to carbon credits or the impact of permanent land use change. There was also a query about how the long-term nature of activities such as forestry will affect rent.

Other issues highlighted included that some of the rights under the Agricultural Holdings Acts (such as succession and assignation rights, security of tenure and the test for a 'capable tenant') would not be appropriate in a mixed use or entirely commercial tenancy. It was suggested that it would be inappropriate for a Land Use Tenancy to be an agricultural lease, or otherwise subject to the Agricultural Holdings Legislation, and that a freely negotiated lease of land permitting a mixture of agricultural and non-agricultural uses would be most beneficial for all parties. However, there was an associated concern that the Agriculture Bill consultation includes a proposal to change the compensation payable on resumption, and that proposals do not give confidence that a freely negotiated lease would remain as negotiated.

Suggestions for other issues to be considered included:

- The impact of any new type of tenancy with the general law of leases.
- What would happen if land under the proposed tenancy type is permanently improved by the agreed activity, or conversely, is impacted detrimentally.
- Any possible impact if the proposed tenancies would bring new tenants within the definition of 'associate' in terms of the Register of Persons Holding a Controlled Interest in Land Regulations.
- To what extent any new tenancy would be regulated.

In relation to the latter point regarding regulation, it was reported that this area of law is already heavily regulated and that many landlords and tenants see this as a significant burden. It was also suggested that the extent of regulation has resulted in a reduction in the amount of land available to let in the sector, and that a further tenancy type with complex provisions and regulation risks even further reduction.

There were also concerns about the likely outcomes from introduction of a Land Use Tenancy, including that it could lead to agricultural land being taken out of food production. It was suggested that this would be in contradiction with many of the Scottish Government's other policies, such as the Local Food Strategy and the Good Food Nation Act. An associated suggestion was that large-scale landholdings should have a duty to offer tenancies for small-scale food production and mixed land use.

There was also reference to forest land and woodland, and woodlot licences, and to issues with tenant crofters and carbon income, as warranting further exploration and discussion with relevant stakeholders. More generally, there was a call for extensive stakeholder outreach to gauge landlord appetite to enter into Land Use Tenancies.

There was a concern that, given the volume and complexity of issues relating to Land Reform and Agriculture, legislating for a new type of tenancy may distract resources from other more important matters. The example given was the outstanding actions required for tenants and their families arising from Agricultural Holdings (Scotland) Act 2003 Remedial Order 2014 in light of the Salvesen Riddell judgement.

Although many of the comments raised concerns, the potential benefits of a Land Use Tenancy were also noted by some. For example, a Third sector respondent that owns land noted that they do not use current forms of agricultural tenancies because such arrangements permit and oblige the tenant to carry out agricultural practices, but conservation management is not covered; they would welcome being able to enter into longer term conservation management and land restoration tenancies with partners. They asked for consideration to be given to how Land Use Tenancies could be made to work as ‘conservation tenancies’ to help deliver conservation outcomes.

# 8. Small landholdings

The consultation paper notes that the Scottish Government is committed to modernising small landholding legislation and will be undertaking a separate public consultation that will form part of the consultation process for the Land Reform Bill.

**Question 40** asked respondents if they would like to be kept informed about the Small Landholding Consultation for the Land Reform Bill. Around 250 respondents said they would.

# 9. Transparency: Who owns, controls and benefits from Scotland's Land

The consultation paper highlights the Scottish Government's commitment to managing inward investment in Scotland's land in a responsible manner, ensuring transparency around who owns, controls and benefits from the land.

## Improving transparency to respond to contemporary challenges

Despite progress to date and ongoing work to improve transparency of land ownership, the Scottish Government considers that further consideration of issues around restricting the acquisition of land in Scotland is warranted to support land reform objectives. This reflects the extent to which these objectives require that those who live and work in Scotland share the benefits of wealth generated by land.

It is therefore proposed that Scottish Government should explore potential for a requirement that those seeking to acquire large-scale landholdings in Scotland must be registered in the UK or EU for tax purposes. This is considered to have potential to address issues of absenteeism, and ensure that income generated from Scotland's land is not at the expense of local communities. The proposal may be limited by the current devolved settlement, and will require consideration of complex legal issues, but the consultation paper notes that the Scottish Government is committed doing all it can within the current settlement.

**Question 41** – Do you agree or disagree with our proposal to explore:

- Who should be able to acquire large-scale landholdings in Scotland?
- The possibility of introducing a requirement that those seeking to acquire large-scale landholdings in Scotland need to be registered in an EU member state or in the UK for tax purposes?

Responses to Question 41 by respondent type are set out in Tables 56 and 57 below.

**Table 56**

| **Question 41** – Do you agree or disagree with our proposal to explore who should be able to acquire large-scale landholdings in Scotland? | | | | |
|---|---|---|---|---|
| | **Agree** | **Disagree** | **Don't know** | **Total** |
| Organisations: | | | | |
| Academic group or think tank | 4 | 0 | 0 | 4 |
| Community or local organisations | 16 | 0 | 0 | 16 |
| Government and NDPB | 8 | 0 | 4 | 12 |
| Landowner | 10 | 13 | 8 | 31 |
| Private sector organisations | 6 | 7 | 1 | 14 |
| Representative bodies, associations or unions | 10 | 2 | 8 | 20 |
| Third sector or campaign group | 19 | 1 | 4 | 24 |
| | | | | |
| Total organisations | **73** | **23** | **25** | **121** |
| **% of organisations** | **60%** | **19%** | **21%** | |
| Individuals | **273** | **42** | **11** | **326** |
| **% of individuals** | **84%** | **13%** | **3%** | |
| All respondents | **346** | **65** | **36** | **447** |
| **% of all respondents** | **77%** | **15%** | **8%** | |

**Table 57**

| **Question 41** – Do you agree or disagree with our proposal to explore the possibility of introducing a requirement that those seeking to acquire large-scale landholdings in Scotland need to be registered in an EU member state or in the UK for tax purposes? | | | | |
|---|---|---|---|---|
| | **Agree** | **Disagree** | **Don't know** | **Total** |
| Organisations: | | | | |
| Academic group or think tank | 2 | 1 | 1 | 4 |
| Community or local organisations | 12 | 1 | 3 | 16 |
| Government and NDPB | 6 | 0 | 7 | 13 |
| Landowner | 10 | 12 | 8 | 30 |
| Private sector organisations | 4 | 8 | 2 | 14 |
| Representative bodies, associations or unions | 5 | 7 | 8 | 20 |
| Third sector or campaign group | 14 | 4 | 5 | 23 |
| | | | | |
| Total organisations | **53** | **33** | **34** | **120** |
| **% of organisations** | **44%** | **28%** | **28%** | |
| Individuals | **248** | **62** | **16** | **326** |
| **% of individuals** | **76%** | **19%** | **5%** | |
| All respondents | **301** | **95** | **50** | **446** |
| **% of all respondents** | **67%** | **21%** | **11%** | |

Percentages may not sum to 100% due to rounding

A majority – 77% of those who answered the question – agreed that the Scottish Government should explore who should be able to acquire large-scale landholdings in Scotland. Individual respondents were more likely to agree than organisations, at 84% and 60% respectively. Landowner and Private sector organisation respondents were relatively evenly divided on this issue.

A smaller majority – 67% of those who answered the question – agreed with the proposal to explore potential for a requirement that those seeking to acquire large-scale landholdings in Scotland must be registered in the UK or EU for tax purposes. Again, individual respondents were more likely to agree than organisations at 76% and 44% respectively. Among organisations, Landowner respondents were again divided, and a majority of 'Private sector' and 'Representative body' respondents disagreed.

**Please give some reasons for your answers**

Around 285 respondents provided a comment at Question 41.

### Exploring who should be able to acquire large-scale landholdings in Scotland

Some respondents commented on the various issues that the proposals seek to address, in particular a lack of transparency around land ownership, absenteeism and community wealth building. These were acknowledged as significant issues requiring a policy response, especially in the context of increasing overseas interest in Scottish land market investments. It was also noted that these issues can be interlinked, for example the potential for reduced landowner absenteeism to support community wealth building, suggesting that resident landowners are more likely to engage positively with the local community.

There was also a view that land reform proposals have the potential to have a significant impact on these issues and that land ownership and management is integral to Scotland's culture, heritage, economy and wellbeing. It was argued that consideration should be given to who should be able to acquire large-scale landholdings, with a specific focus on ensuring that Scotland's land benefits the public interest and wider policy objectives such as net zero.

However, a range of respondents – including Landowners, Representative bodies, and Third sector respondents – questioned whether measures limiting land acquisition would be an effective means of addressing issues around transparency, absenteeism and community wealth building. For example, it was suggested that transparency around who owns land is not equivalent to restricting who should be able to acquire land. There was some scepticism on the extent to which such restrictions would make a significant contribution to transparency, including from some who opposed restrictions on land acquisition but supported other measures to improve transparency.

There was also a view that proposals would not necessarily address landowner absenteeism nor support community wealth building, – including from those who supported more restrictions on acquisition of landholdings. For example, it was

noted that registration for tax purposes is unrelated to domiciled status, and that a landholder may still be absent (and extract wealth to the detriment of local communities) even if they live and work in the UK.

Some respondents felt that placing restrictions on land acquisition is a 'blunt' approach to addressing issues around transparency, absenteeism and community wealth building, and may discourage foreign investment in Scotland's land. This included concerns around potential for restrictions to undermine the investment required to support net zero targets. Concerns that restrictions could lead to a reduction in land values, potentially increasing the risk of legal challenge from landowners were also highlighted.

In the context of these concerns, there was a view that the focus should be on ensuring responsible land management, rather than who owns land (and how much they own). There was also a call for a focus on ensuring that land management is supported by effective engagement to support community wealth building.

Other issues or concerns raised in relation to consideration of restrictions on who can acquire large-scale landholdings included a view that existing measures – such as the Register of Controlling Interests and Register of Overseas entities – should be sufficient to improve transparency of land ownership. It was suggested that a proper assessment of these provisions should be undertaken before any further measures are introduced. Other concerns raised included that:

- Any restriction on who owns, controls and benefits from Scotland's land must be underpinned by an effective transparency regime. Points discussed earlier around improving transparency of ownership, for example the value of ensuring a complete Land Register of Scotland were reiterated.
- Any consideration of this issue should be supported by full stakeholder engagement.
- A consistent approach across the UK would be beneficial, if this can be secured.

**Limiting acquisition of large-scale landholdings to those registered in the UK/EU for tax purposes**

In terms of the specific proposal to limit acquisition to those registered for tax in the UK or EU, some supported this as a means of improving transparency and accountability around land ownership. Respondents also saw potential for the proposal to prevent land being acquired through shell companies registered overseas, and to reduce potential for money laundering. It was also noted that similar controls are common internationally, including in EU territories, to protect legitimate public interests.

However, a range of respondents raised concerns around the extent to which the proposal is likely to achieve the anticipated policy objectives. This included comment from Landowners, Representative bodies, Government and NDPBs, Community organisations, and Third sector respondents.

Some respondents questioned how absenteeism would be addressed by restricting land ownership on the basis of tax registration rather than domicile and, while there was some support for a measure that would ensure tax income remains within the UK or EU, there was concern that landowners would still be able to practice absenteeism irrespective of where they are registered for tax. In this context, some respondents wished to see restrictions based on residency, and similar requirements currently placed on crofters were referenced. However, there were also concerns that restrictions based on nationality, country of origin or similar measures could be discriminatory, potentially breaching equalities legislation.

It was also argued that the proposal may not make a significant contribution to transparency of land ownership. A range of respondents questioned the logic of restricting land ownership to those registered in the EU, especially in the context of the UK's exit from the EU with some describing the proposed criteria as 'arbitrary'. It was suggested that any criteria for acquisition of land should be linked specifically to transparency of ownership and tax arrangements, with some noting that EU territories may still have limited transparency in tax registration. Clarity was also sought around what 'registering for tax' would mean in practice for landowners, with reference to different mechanisms for different UK taxes.

**Alternative proposals**

Reflecting some of the concerns and issues noted above, respondents suggested several alternatives to restricting large-scale landholdings to those registered for tax in the UK or EU.

Suggestions most commonly involved tighter restrictions on acquisition of large-scale landholdings, reflecting views that the proposed restriction will not be sufficient to effectively address absenteeism and support community wealth building. Specific proposals included that this should be limited to those registered in Scotland or the UK for tax purposes. It was noted that, in addition to addressing absenteeism, this would also ensure that tax revenue benefits the UK.

Other respondents went further, wishing to see ownership of large-scale landholdings limited to those who are resident in Scotland or the UK. Again, it was noted that this is a requirement in several other territories. Limiting acquisition to those on the electoral register in the relevant local authority area was also suggested.

There was also a call for restriction on acquisition of land apply to a wider range of landholdings, including by setting a lower landholding size threshold and for restrictions to apply to urban landholdings.

# 10. Other land related reforms

The consultation paper notes that the Scottish Government wishes to use the consultation as an opportunity to seek views on other measures that may be considered for inclusion in the Land Reform Bill, or that could be taken forward in other legislation.

## Fiscal and taxation

The SLC has recently considered the potential for taxation to contribute to land reform, and the consultation seeks views on the role that taxation might play in this regard.

**Question 42** – Do you have any views on what the future role of taxation could be to support land reform?

Around 305 respondents answered Question 42.

### The role of taxation to support land reform

A number of respondents referred to taxation as a potentially significant lever to support wider land reform objectives, with some expressing disappointment that the consultation paper did not include specific proposals for taxation of land. Several respondents suggested that large-scale landholders benefit from a range of grants, subsidies and tax exemptions, which some saw as having contributed to substantial increases in land values. It was also suggested that current taxation of land does not do enough to encourage good land management and support communities.

In terms of the potential role of taxation, there was specific support for the recommendations of the SLC to enhance the role of land in taxation, to tackle inequalities in the system and support productivity. There were also comments in favour of the role of taxation in supporting the investment required to achieve a just transition to net zero, reflecting concern around potential for this investment to exacerbate inequality without a progressive taxation approach.

Some respondents wished to see taxation reform include a specific focus on supporting public and community benefits, for example by encouraging sustainable land management and supporting a just transition, while stimulating productivity. Other specific issues where respondents wished to see consideration of the potential role of tax reform included: tackling excessive land value increases; absentee landlords; addressing concentration of land ownership; and limiting the size of large-scale landholdings. Some also wished to see a stronger role for communities in reform of taxation to support land reform objectives.

### Issues and concerns around use of taxation to support land reform

Some respondents – including Landowners, Private sector organisation and Representative body respondents – raised concerns about potential for taxation changes to have unintended negative consequences. These respondents saw potential for significant long-term impacts on land ownership and land values, reduction in investment in rural economies, limiting progress towards net zero, and discouraging agricultural lettings and new entrants to the farming market. Some highlighted these concerns specifically in relation to potential use of taxation to reduce large-scale landholdings and diversify land ownership. This included reference to the potential benefits of larger landholdings in terms of delivery of climate and environment policy targets.

Specific concerns around potential for tax reform to affect delivery of climate targets were linked to calls for Scottish Government to ensure that any changes to taxation should not disadvantage land managers in Scotland. The roles of land management in delivery of net zero targets, ensuring food security and supporting rural economies were highlighted.

Limits on Scottish Government powers in relation to taxation were also highlighted and the extent to which the devolved settlement provides sufficient powers to make the taxation changes required to have a significant impact on land reform objectives was questioned.

### Proposals for use of taxation to support land reform

Reflecting the mix of views noted above, responses included a range of specific proposals for taxation reform to support land reform. This included some who noted that taxation in relation to land in Scotland is a complex issue, with multiple tax mechanisms applying to income derived from land. There were calls for use of taxation to form part of a co-ordinated approach to land reform, alongside subsidies and regulation. Concern that any changes to taxation should be considered holistically included specific calls for full impact assessment of any proposed changes to taxation.

General points included that all landholdings should be brought onto the valuation roll and that the Scottish Government should build on the work of Registers of Scotland to integrate information on land ownership, use and value, using a cadastral approach.

### Forms of taxation that could be used

Types of taxation respondents thought could be used to support land reform included:

**Inheritance and capital gains tax:** It was suggested that dispensation from inheritance and capital gains taxes are drivers of land values, and that taxation on transfers of assets such as capital gains tax and inheritance tax could make a significant contribution to land reform objectives. There was a specific suggestion that exemptions on inheritance tax for land should be removed. It was noted that inheritance and capital gains tax are not devolved matters, but it was argued that

there is a strong case for their devolution to support devolved land and environment policy.

An alternative perspective was that changes to inheritance tax could have potential to break-up viable rural businesses and reduce investment in rural property.

**Land and Buildings Transactions Tax (LBTT):** It was suggested LBTT could be used to reflect high land values, with some noting that this would be within the powers provided under the devolved settlement. Specific proposals included a sliding scale supplement on land sales meeting specific criteria (the supplement to be directed to the Scottish Land Fund), and alignment of non-residential rates of LBTT with those for residential properties (with additional bands for higher values).

However, it was also noted that SLC considered that a surcharge on LBTT would be unlikely to significantly change patterns of land ownership, and there was a call for LBTT to be revoked to incentivise land transactions.

**Land value tax:** A progressive tax linked to the value and/or scale of landholdings was suggested by respondents across a range of respondent types including Community, Private sector organisation, Representative body, Third sector and Individual respondents. It was suggested that such a tax could incentivise the land sales required for land reform proposals to be effective. There were also calls for a land tax to be collected by local authorities to support local democracy, and for a land tax to replace income tax.

Concerns around a land value tax included suggestions that such taxes have been unpopular in other jurisdictions and did not replace other taxes.

**Reformed local taxes:** It was noted that reform of local taxes to include a land-based element would be within the devolved powers currently available to the Scottish Government. Phased re-introduction of non-domestic rates in relation to agriculture and forestry land was proposed to ensure equality with other rural businesses and to encourage better land management. This included proposals to split non-domestic valuations between land and improvements.

Other suggestions for local taxes included providing local capital gains tax powers, transferring LBTT to local authorities, and enabling local authorities to levy carbon and externalities taxes on land use.

### Activities that could be subject to taxation

Some respondents highlighted particular activities or sources of revenue that they would like to see subject to taxation. These included:

- Taxation of landholders making profit from natural capital projects in Scotland, including suggestions that tax benefits should be re-directed to the area in which the landholding sits. It was also suggested that tax breaks or incentives should be linked to the value of natural capital generated and/or ecosystem services provided.

- Taxation of profits from carbon credits and/or mechanisms to re-distribute a proportion of these profits to local communities, including via community wealth building funds.
- Taxation linked to carbon emissions, potentially administered by local authorities. Specific suggestions included a Carbon Emissions Land Tax to accelerate land-use change amongst traditional landowners, on the basis of a 'polluter pays' principle.

It was also suggested that there should be consideration of issues around:

- Forestry grant schemes and VAT, in light of the relatively large proportion of small landowners and crofters who are not registered for VAT.
- Landowners' use of Charitable Trusts for tax purposes, with a concern that these can be used to avoid scrutiny and transparency.

### Using taxation to support specific purposes

In order to incentivise improvements in housing stock and housing land availability it was suggested there should be non-domestic tax relief on formerly derelict properties or houses on formerly derelict sites. A modernised form of Business Premises Renovation Allowances was also suggested as a means to incentivise private investment in vacant premises.

There were also suggestions with respect to groups that could be supported by the taxation system including:

- Support for community wealth building by reforming taxation and subsidies around community purchase to provide additional support for communities acquiring land.
- Support for new entrants to the agricultural sector. Use of income tax relief for this purpose in the Republic of Ireland was highlighted and there was reference to stamp duty exemption for acquisition of land by young, trained farmers as a potential approach. However, there was also a view that agricultural holdings legislation is more relevant than taxation with respect to the fall in tenanted farmland in Scotland.
- Support for Scotland-based artists through tax incentives.

## Community benefits and natural capital

The consultation paper notes that private investment in natural capital will be essential to support delivery of climate change targets, and wider land use and environmental policy objectives. A set of Interim Principles for Responsible Investment in Natural Capital have been produced to ensure this investment in responsible, and the consultation seeks views on how the Scottish Government could maximise community benefits from investment in natural capital.

**Question 43** – How do you think the Scottish Government could use investment from natural capital to maximise:

a) community benefit

b) national benefit

Around 280 respondents answered Question 43.

**The potential role of investment from natural capital in maximising community benefit**

Some respondents who commented on maximising community benefit welcomed the commitment to use natural capital investment to maximise community interests. This reflected a view that community benefit should be a central consideration for all investment in natural capital, recognising that this will support stronger communities and local economies. In this context there was support for use of the Interim Principles for Responsible Investment produced by the Scottish Government.

While some respondents did not see a direct link between new land reform legislation and delivery of community benefits, there was a view that much can be achieved in terms of delivering community benefits without legislation. This included reference to the role of policy interventions and regulation, use of public funding, and sharing of good practice. There was also reference to ongoing work, building on LRRS principles, to identify how community benefits can best be derived from natural capital investment.

Other respondents – including some Landowners – raised concerns around the role of investment from natural capital in supporting community benefits. Further clarity was sought on the interpretation of 'natural capital', and a clearer definition of the kinds of community benefit that may be expected. There was also a view that the Interim Principles for Responsible Investment are relatively narrowly focused on carbon management, and a broader interpretation was recommended in order to encompass flora, fauna and natural scenic beauty, and to recognise potential to support land-based industries and activities. It was suggested that 'natural capital' is not yet a particularly meaningful term for communities, and that work may be required to identify how the priorities of communities can be supported by investment in natural capital.

The most significant concerns around the role of natural capital investment in delivery of community benefits were linked to a view that the consultation does not give sufficient recognition to the expenditure and future liabilities required to develop new income streams around natural capital. This included comments highlighting the extended timescales required to realise benefits from natural capital investments such as peatland restoration and forestry planting. There was also scepticism around the potential role of carbon markets, and a view that potential for natural capital investment to support carbon sequestration or emissions reduction has been exaggerated. In this context, it was suggested that it would be premature to burden 'fledgling markets' with additional taxation, and there was concern that

this could undermine the viability of natural capital investment, and slow delivery of net zero targets. It was also suggested that there is no justification for taxing net zero initiatives, but not income from other investment. A wider view was also expressed that allowing land managers to run their estates effectively will generate community benefits, for example through job creation, supporting rural economies, environmental improvements, and generation of tax receipts that can be directed by the Scottish Government.

It was also noted that proposals to strengthen requirements around the LRRS and Land Management Plans are likely to have a significant impact on the natural capital market, and that the impact of these proposals should be assessed before further action is taken.

### Potential community benefits associated with natural capital

As noted above, the Scottish Government was asked to provide clarification around the kind of community benefits they expect to be supported by investment in natural capital. Respondents also discussed a range of specific community benefits that could be supported by natural capital, and which they wished to be a particular focus. These included:

- Improving the sustainability and resilience of smaller communities. There was reference to greater use of natural resources and the products of natural resources to support local economies and deliver community benefits, including the role of natural capital in relation to food and drink, tourism, leisure activities and outdoor sports.
- Building the resilience of local economies, for example through use of natural capital investment to support skills development and local job creation.
- Supporting community wealth building.
- Improving mental and physical health and wellbeing.
- Improving the quality of and access to the environment.

### The overall approach to delivery of community benefits

In addition to specific suggestions for how natural capital investment could support community benefits, respondents also highlighted a range of considerations in relation to the overall approach to natural capital investment.

Some saw a need for an improved understanding of embodied carbon within landholdings, and potential for nature-based solutions to deliver community benefits. This included specific calls for work to improve public understanding of natural capital.

Respondents also highlighted the need for a meaningful role for communities in planning investment in natural capital, and how this can support community benefits. This was linked to a view that communities are best placed to identify potential benefits. It was also suggested that further work is required to identify existing tools and initiatives that could help to connect community priorities with investment in natural capital. This included reference to ongoing research and

evaluation around potential tools and approaches, including by RLUPs and by the NatureScot People and Places team.

There were specific calls for more use of community action planning, targeting of community development support to help disadvantaged communities have more influence on decisions about natural assets, and use of participatory budgeting to inform investment in natural capital (building on Scotland's Green PB initiative). Some saw a need for brokers or intermediaries and suggested that local authorities could take on this role, noting their links to communities of place, services such as planning and economic development and experience of linking local initiatives and priorities with national policy objectives.

### Specific proposals for use of investment from natural capital to support community benefits

Respondents set out a wide range of specific suggestions for how investment from natural capital could help to deliver community benefits. These are summarised below.

### Alternative models of land ownership

Respondents from across a range of respondent types expressed support for a focus on alternative models of land ownership in securing community benefits. This included specific reference to community ownership, collective private ownership and community-owned partnerships. It was suggested that support for these models of land ownership should include a focus on supporting community-based initiatives using natural capital to enhance sustainability, and address the climate and biodiversity crises. In addition to calls for funding to facilitate community buyouts, there were calls for additional funding for intermediaries to enable communities to engage in these ownership models, for example via RLUPs.

It was also suggested that public landowners should be encouraged to take a leadership role in use of land to maximise community benefits. This included proposals for development of more shared governance models to give communities a stronger role in ownership, control and decision making in relation to land. It was suggested that some of the barriers to communities accessing the land market could be addressed by public landowners acquiring landholdings with the intention of transferring some or all of the land to community ownership and/or management.

### Use of levies and taxation

Several respondents suggested use of levies on renewable and natural capital schemes and carbon offsetting receipts to deliver community benefits, and support wider climate and nature restoration priorities. This included specific proposals for a Community Wealth Fund to support community acquisition of land and other revenue-generating assets, and for use of revenues from natural capital taxation to support crofting and farming tenants. Wealth fund models (such as those used in Norway) and funds linked to wind farm development were suggested as potential approaches, although it was suggested that the timescales involved in natural capital schemes are significantly longer than for wind farms.

Some respondents wished to see the Scottish Government assess potential for local community benefit and/or natural capital funds to ensure benefits from natural capital investment are shared fairly between public, private and community interests. This included a suggestion that these funds could be co-ordinated across the UK to avoid distortion effects. As noted earlier, there were concerns around potential taxation of natural capital investment, but there was also a view that it should be possible to design funds that do not deter investment.

### Regulation and standards

Proposals for use of regulation and standards to encourage a stronger focus on delivery of community benefits reflected support for the Interim Principles for Responsible Investment produced by the Scottish Government. Specific suggestions included updating the LRRS to set out criteria that landowners should apply to nature-based investment to realise community benefits, and support for the SLC's protocol on Responsible Natural Capital and Carbon Management.

There were also specific calls for regulation of carbon markets to incorporate a focus on delivery of community benefits. This included calls for third party accreditation to ensure that only genuinely unavoidable emissions are offset, and reference to SLC recommendations for a Carbon Commissioner with powers to impose financial penalties for breaches of codes of practice. Improvements to carbon codes were also suggested in order to better address biodiversity and community benefits, including a proposed 'gold standard' accreditation scheme linked to public funding.

Guidance and training were also recommended to support better decision making for communities and improved understanding of potential for natural capital to support community benefit. Specific suggestions included training and guidelines for land managers to support community engagement (with reference to SLC guidelines for community engagement as a potential model).

### Other proposals

Other proposals with respect to supporting community benefits included:

- Use of Compulsory Sales Orders as proposed by the SLC, including new measures to improve land assembly. There was also support for measures to create a housing land bank controlled in the public interest.
- Legislative reform to enable Scotland's Common Good land to be used in a more dynamic way to underpin community wealth building, including reference to specific proposals identified by the SLC.
- Re-orienting of public funding to establish nature-based economies, including calls for improvement of green grant schemes to ensure they incentivise best practice in terms of delivery of community benefits.
- Encouraging private investment focused on business models that deliver nature recovery alongside community benefits, including a view that Scottish Government needs to go further in providing leadership around development of private investment. Specific proposals included locally-driven public investment vehicles to support small and medium sized nature-based

enterprises, and empowerment of local ‘anchor institutions’ to attract inward investment and ensure this benefits local economies.

- Requiring all natural capital projects to provide a clear demonstration of how they will create community benefits. It was suggested that Land Management Plans could demonstrate how natural capital investment with external financial support will deliver community benefits, and there were calls for use of community benefit clauses in any procurement contracts investing in natural capital.
- Use of development frameworks to ensure delivery of community benefits in locations where there are opportunities for private investment in natural capital.
- Supporting community benefits through investment in natural capital in urban areas, for example to support town centre regeneration, address issues around vacant and derelict sites, and take a more public interest-led approach to housing land supply.

**The potential role of investment from natural capital in maximising national benefit**

Some respondents expressed support for the role of investment from natural capital in delivering national benefit. This included respondents highlighting the national benefits inherent in any investment in natural capital, to the extent that natural capital will contribute to a just transition to net zero, and nature restoration. There was also reference to the Interim Principles for Responsible Investment in Natural Capital as having a potentially significant role in shaping investment in natural capital.

In terms of how national benefits might be delivered, many of those who commented referred back to issues around potential for natural capital to support community benefits. Some specifically highlighted that community and national benefits should not be mutually exclusive, and there was a view that community benefits can accrue to national benefits.

Some respondents argued that the current pattern of land ownership has been effective in maximising delivery of national benefits by Scotland’s land and natural capital. These respondents cited evidence around the proportion of Scotland’s natural capital stocks held by estates, and the contribution made to national outcomes by estates’ investment in natural capital. The role of this structure in delivering national benefit through tree planting, flood risk reduction, biodiversity and wildlife enhancement, and improved air and water quality was highlighted and it was suggested that estates and large-scale landholders should have a significant ongoing role in supporting the transition to net zero.

In this context, concern was expressed that pursuing more fragmented land ownership could reduce opportunities for natural capital investment at the scale required to deliver national benefits. Specific reference was made to the proposed public interest test for large-scale land transactions as threatening the continuity of

important natural capital projects, with the long periods required for returns on peatland restoration and management highlighted.

Other concerns raised around potential for investment from natural capital to support national benefit included a view that care will be required to ensure that any changes to sharing financial benefits from natural capital do not undermine investment to enhance biodiversity and support net zero targets. It was suggested that any proposed changes to the current pattern of land ownership must be based on sound evidence that changes will provide greater benefit.

There was also a perceived need to ensure that investment from natural capital is not dominated by carbon offsetting. There was concern that doing so could allow previous mistakes (such as planting of large-scale blocks of Sitka spruce) to be repeated, driven by the prospect of short-term gains. Clarity was also sought around taxation of carbon credits, and whether these are to be treated as assets or trading income. It was suggested that this could have a significant impact on potential for national benefits.

### Potential national benefits associated with natural capital

Specific national benefits that could be supported by investment in natural capital, were seen primarily as being related to the just transition to net zero. It was suggested that delivery of net zero targets will require 'extraordinary' levels of investment, and that much of this is expected to be from private sources. It was argued that there should be careful consideration to ensure that this investment reduces inequality.

Discussion of potential for natural capital investment to support a just transition included specific reference to climate mitigation and adaptation, nature restoration and biodiversity enhancement. This included some who wished to see a focus on carbon sequestration and ensuring that rural Scotland benefits from carbon markets.

However, others raised concerns around potential for carbon sequestration to contribute to land price inflation, and called for stronger regulation of carbon markets and support for 'high integrity nature-based carbon credits'. The need to expand the range of markets beyond carbon credits and to reflect other nature-based goods and services was thought necessary to diversify the range of potential motivations for investment in natural capital.

### Proposals for use of investment from natural capital to support national benefits

In terms of the overall approach to delivery of national benefits, it was suggested that a more holistic approach to ecosystem management is needed, identifying potential for natural capital to support multiple benefits for communities, investors and the national interest. Pilot RLUPs were highlighted as providing potential models for collective planning processes to support this type of holistic approach. Respondents also highlighted the role of communities and deliberative democracy in informing use of investment to support national benefits.

Proposals for use of investment from natural capital to support national benefits showed significant overlap with proposals for use of investment to support community-level benefits. Proposals made in relation to community benefits which were identified as having potential to support national benefit included use of fiscal mechanisms and taxation such as: levies on profit from natural capital and carbon markets; reform of inheritance and capital gains taxes; development of a land value tax; proposals for funds to support community and national benefits such as a Community Wealth Fund; strengthening of regulation including a particular focus on ensuring carbon markets support community and national benefits; and facilitating alternative ownership models to support community and national interests.

Other proposals for use of investment from natural capital to support national benefits included requiring natural capital projects to set out a clear account of how they will support national benefits, including specific reference to outcomes set out in Scotland's Biodiversity Strategy 2022-2045. The spatial strategy set out in the draft NPF4 was also identified as having potential to shape investment in natural capital.

There were also calls for improvement to monitoring and reporting of progress towards national climate and nature targets. This included proposals for a national reporting mechanism to collate local authority-level information on biodiversity enhancement and climate change, and the need for improved understanding of embodied carbon across Scotland was highlighted. There was also reference to biodiversity offsetting policy in England as a potential model for diversification of natural capital markets beyond carbon credits.

Other suggestions included:

- A requirement for new woodland projects for sequestration to include a fixed percentage of native species, with a minimum of 50% was proposed.
- Prioritisation of reduction in grazing pressures over fencing to allow natural regeneration.
- Use of investment to support ecological land management and nature restoration including regenerative and agroecological farming and local food infrastructure.

Approaches to encourage new entrants to nature-based sectors were also proposed, for example through joint venture mechanisms such as contract farming, partnerships, share farming, tenancies and leasing arrangements. Options to tackle barriers to tenants engaging in ecosystem markets were suggested, including through contracts allowing tenants to participate in natural capital schemes.

There was also support for potential fiscal mechanisms and use of levies/taxation to encourage diversification of land ownership: in addition to potential taxation reform discussed earlier in relation to potential community benefits, respondents proposed income tax relief for new entrants.

It was also suggested that investment from natural capital could be used to:

- Support investment in local traditional construction materials to enhance rural economies while supporting national low-carbon and sustainability outcomes. This included a suggestion that options for a Material Passport scheme should be explored.
- Address a need for retirement housing.

**Question 44** – Do you have any additional ideas or proposals for Land Reform in Scotland?

Around 270 respondents answered Question 44.

Topics already covered extensively at earlier questions are not repeated in the analysis here. Additionally, some respondents submitted their own publications as sources of additional proposals: these are beyond a brief review of this kind but are available to the Scottish Government policy team.

### Focus on land management rather than land ownership

Some respondents argued that the Scottish Government should focus on the quality of land management rather than its ownership, or that there should be greater recognition of the positive roles that many large-scale landowners play in achieving current policy objectives including ecosystem recovery. There was concern that measures focusing on land ownership could inhibit investment, innovation and structural change or that land fragmentation could result in loss of land-based employment, exacerbating rural depopulation, poverty, and unemployment.

It was argued that the Scottish Government should review existing legislation, mechanisms and structures that can help deliver their policy aims before introducing further legislation.

As an alternative to proposals outlined in the consultation paper, it was suggested that the Scottish Government should incentivise landowners to make desired changes – for example, by creating standards the adherence to which is encouraged through grant funding.

### Amend existing community rights to buy provisions

Others saw amending existing community rights to buy provisions as a priority, in order to make them fit for the purpose of bringing more land and built assets into community ownership.

Specific proposals included that the Land Reform Bill should:

- Amend requirements for registering an interest, potentially by making registration of community interest a two-stage process.
- Extend community timescales for more complex assets and particularly for larger landholdings.
- Enable a crofting community body to be deemed an eligible community body.

- Introduce a new community right to buy to address climate change.
- Consider an urban community right to buy.

With respect to the existing community right to buy for sustainable development, there was a query whether 'sustainable development' would encompass development of nature-depleted land into a flourishing ecosystem.

Some respondents referenced difficulties in raising funds for community purchases, and it was suggested there could be a bigger role for environmental NGOs to work with communities to buy land in the interest of both parties, or for greater collaboration including the public and/or private sectors. In particular it was argued that environmental NGOs and communities working together could generate a new wave of ownership diversification based on partnership acquisitions.

### Address issues relating to crofting

It was also suggested that the Land Reform Bill should specifically address issues relating to land under crofting tenure.

It was argued that consideration should be given to simplifying crofting community right to buy legislation, which was described as cumbersome and impractical, particularly in relation to mapping requirements. Further points in relation to crofting included that:

- Crofting areas should be expanded with policy that details criteria that must be fulfilled for a community to have crofting extended to it.
- Within existing crofting areas, the Scottish Government should use its own landholdings for the creation of crofts.
- A formula for the valuation of crofting estates is a priority for further community buy-outs to occur.
- The crofting register and Scottish land register should be amalgamated to prevent duplication of effort and make it easier for people to access information.

### Amend community asset transfer provisions

Accountability of public authorities to communities in relation to the implementation of Community Asset Transfer legislation was highlighted as an area some respondents thought should be strengthened, particularly in relation to timeframes for responses to community requests and the scope for removing assets from the scope of the legislation.

### Set an upper limit on private land ownership

A number of respondents argued in favour of introducing an upper limit on private land ownership, in some cases citing the recommendation of the Land Reform Review Group[13] that there should be 'an upper limit on the total amount of land in Scotland that can be held by a private landowner or a single beneficial interest'.

[13] The Land of Scotland and the Common Good (2014) Report of the Land Reform Review Group.

Other suggestions included disincentivising ownership of large land holdings by setting a cap on the amount any individual or land holding can receive in public support or by introducing a land tax based on the area owned.

### Take action on housing

### Regulate second homes and holiday lets

Suggested actions with respect to housing included introduction of a new planning system use-class to regulate second homes in areas where these are considered to be having a detrimental effect on sustainable development of local communities, or to be acting as a barrier to the 'rural repopulation' national outcome set out in the Fourth National Planning Framework (NPF4). Local authorities would be able to classify homes as primary residences, second homes or holiday lets and an owner would need planning permission to change a property's classification from a primary residence to a second home.

Other suggestions with respect to second homes and holiday lets included powers for:

- Local authorities to increase Council Tax rates for second homes or to apply to increase LBTT in specific areas in order to reduce prices.
- Licensing authorities to include an overprovision policy within the licensing regime for holiday lets.

### Improve transparency on land ownership by volume house builders

It was also argued that there needs to be greater transparency in respect of the concentration and pattern of land ownership by volume house builders in Scotland, including around strategic land and options. A public interest test was suggested before land is acquired to further strategic housing land banks.

### Take action on land values

It was noted that the consultation paper does not reference land valuations and it was argued that accepting 'open market' valuations will inhibit widespread progress on land reform in Scotland. It was suggested both that something must be done to regulate the market and prevent land values from continuing to inflate and that the Scottish Land Fund should be increased to help counter rapidly increasing land prices. One idea was that this should be financed by a land value tax.

### Clarify access rights

Issues relating to access rights were raised by a number of respondents, albeit from rather different perspectives.

Some respondents argued that it is important for the Land Reform Bill to reference the access rights and responsibilities established by the Land Reform (Scotland) Act 2003 with one view that the absence of any reference to access rights could give the impression that they are not significant and are unrelated to the current programme of land reform. It was suggested the Bill provides an opportunity to

ensure that those with large land holdings are taking their statutory responsibilities seriously. Proposals included:

- Setting out landowner duties and responsibilities relating to Scottish access in the legislation, together with the obligations of responsible access users.
- Inclusion of access rights and access provision in LRRS protocols and as a section of Land Management Plans.
- Giving local authorities greater powers to remove obstructions, such as locked gates and fences, and considering a legally binding arbitration process to address any landowner/local authority issues as a more effective way of maintaining free access.

It was also reported that landowner objections can stall progress on developing active travel routes. To avoid this, it was suggested that new Core Paths could be identified for active travel routes and their adoption achieved through the current Core Path Review process, although it was noted that new legislation would be required to give the local authority powers to upgrade Core Paths to standards suitable for active travel without having to first gain permission from landowners. It was also suggested that active travel routes should be given more backing in terms of compulsory purchase orders.

From a different perspective, a Representative body respondent noted that many of their members have reported significant business impacts caused by access problems. They argued that a full review of the Scottish Outdoor Access Code is long overdue and that, where access problems arise there is little currently or no help available to find solutions.

**Maintain consistency with other policy areas**

The importance of alignment of the Land Reform Bill with other legislation, including the Agriculture Bill, the Community Wealth Building Bill and the Human Rights Bill was emphasised. One suggestion was that legislation should be framed within an overarching policy framework for a Wellbeing Economy, working towards multiple policy agendas.

It was also suggested that the Bill may require amendment to other related areas of law, such as crofting, agricultural holdings, and community empowerment legislation.

A concern was raised that new legislation could undermine either deployment of onshore wind or other renewable energy projects, and the importance of coherence between the Land Reform Bill and existing renewable energy legislation and policies was highlighted. It was also argued that the consultation document does not demonstrate how further land reform will help Scotland achieve net zero, and that there should be action to support landowning businesses to help address climate change at landscape scale.

**Other suggestions**

Among a wide range of other proposals suggested by respondents, the one raised most frequently was reforming inheritance law so that estates are split equally amongst inheritors rather than passed whole to the eldest child.

Other suggestions included:

- Creating a National Land Policy to bring together the set of aims and objectives set by government for dealing with land issues.
- Reforming charity law to prevent charitable trusts being used to preserve control over land without paying taxes.
- Ensuring regulation is applied to off market sales.
- Ensuring community benefits are realised by making community benefit aspects a requirement of public funding or approval processes.
- Encouraging banks to prioritise productive lending.
- Introducing a residency requirement for landowners.
- Giving communities an automatic right to take ownership of the foreshore in their areas.
- Providing a community training/empowerment program.
- Extending Permitted Development rights and planning reform for port authorities.
- Supporting agroecological farming, including by identifying suitable land and facilitating ownership and tenancies that support increased agroecological holdings.
- Ensuring that sources of important traditional construction materials are not sterilised through development but can be utilised to benefit local communities. It was suggested this could include quarries, woodland and sources of traditional thatching materials.
- Considering how the Bill could help artists who make ‘site specific’ artworks within landscapes. It was suggested access to information on who owns land in a particular location, and having protocols to request permissions to make and site artworks within landscapes, will improve the paid opportunities for artists in this sector.

Queries were also raised with respect to:

- The anticipated role of local authorities and RLUPs in land reform?
- Whether Scottish Ministers have any plans for the commencement of section 99 (Tenant’s right to buy: removal of requirement to register) of the Land Reform (Scotland) Act 2016?

# 11. Assessing impact

The final section of the consultation paper asked a series of questions in relation to the impact of the proposed policy.

**Island communities**

**Question 45** – Are you aware of any examples of how the proposals in this consultation might impact, positively or negatively, on island communities in a way that is different from the impact on mainland areas?

Around 110 respondents made a comment at Question 45.

Some respondents observed that the inclusion of a classification of large-scale landholding that is specific to islands (i.e. land that accounts for more than a specified minimum proportion of a permanently inhabited island) should mean that the impact on island communities will broadly as for mainland Scotland. However, there was also a view that it is difficult to assess the likely impact on islands as a specific threshold has not been proposed.

General comments included that that the proposals should impact positively on island communities since large-scale land ownership can be a critical issue, with problems and challenges magnified. For example, it was reported that people who work for some estates are too dependent on them for housing and jobs and that this prevents them speaking up. It was hoped that the proposals will help improve landowner accountability, and could help address depopulation. Further comments included that islands need populations to survive, and that active community land ownership and management opens up opportunities to share wealth. There was also reference to improving opportunities to acquire land at a realistic value where it can be shown to be in the public interest and necessary for a sustainable community.

Comments and suggestions around maximising the positive impact of the reforms for island communities included that:

- Public and non-statutory bodies, such as NatureScot and the National Trust for Scotland, should be within the scope of the legislation. There was specific reference to the Isle of Rum and how NatureScot engages with communities.
- Qualifying criteria should include defined categories of key local assets, such as shops, harbours and land suitable for housing.
- There are instances, especially in smaller islands, where the ownership of a key piece of land that is required, for example, for harbour or housing development, can have a very significant impact, even if the piece of land in question is not very large. There should be provision to deal with such instances.
- The proposals should also consider crofting, including the hyper-inflation of the market around the sale of crofts, increased external investors and both houses and land becoming inaccessible to members of island communities.

It was also suggested that consideration should be given to island communities often depending on volunteers who have to interact with individuals and corporations with extensive resources at their disposal. There was thought to be a need for clear guidance and support to be made available to communities to enable them to challenge non-compliance or breaches of LRRS statutory duties.

In terms of possible negative impacts, comments tended to focus on possible economic impacts, including in relation to the loss of employment opportunities. It was noted that rural and island employment is fragile, and it was suggested that care should be taken to ensure there are no unintended consequences to legislation.

Further comments included that private estates employ many full and part time staff in agriculture, forestry and short-term holiday letting, and also support local businesses such as laundries, shops, and restaurants. There was also reference to the role of private estates/large landowners in wild deer management. The concern was that the proposals do nothing to encourage private landowners to invest. It was also suggested that the proposals could drive away private investment and make large estates unsaleable.

**Young people**

**Question 46** – Are you aware of any examples of particular current or future impacts, positive or negative, on young people, (children, pupils, and young adults up to the age of 26) of any aspect of the proposals in this consultation?

Around 150 respondents made a comment at Question 46.

In terms of the positive impacts on young people, respondents were most likely to reference the importance of young people having access to land. There was particular reference to young people having access to land for farming and to pursue land-based vocations, and to the need for support for new entrant farmers. It was also suggested that there is an urgent need to upskill, teach and train a workforce to deliver the aspirations underpinning land reform.

There was also reference to the need for affordable housing, including the opportunity to build homes on windfall land, with a connection made to allowing young people to remain in, or return to, rural communities and supporting those communities to thrive, for example by keeping the school age population at a level that keeps local schools open. It was also noted that local businesses, including land-based businesses, need a workforce that includes younger people, including because many of the employment opportunities are physically demanding.

Other potential positive impacts identified included that:

- The proposals, especially those relating to Land Management Plans, may help in building relationships between communities and landowners, including with local schools and other educational institutions.

- Most Community Trusts have a charitable duty to support opportunities for young people, and that the opportunity for community land ownership will enable more opportunities to be available.

Those commenting at this question included a small number of respondents who identified themselves as younger people or as having younger people in their family. They included a respondent who explained that they are currently living on a croft and are looking at how to live with the smallest environmental impact and the biggest positive impact on the landscape around them. They went on comment that it is important for young people to stay engaged and informed about policy decisions in this area, including because they are likely to actively affect them.

In the medium to longer term, respondents also referred to children and young people as being the ones for whom achieving net zero and tackling the biodiversity crisis will be most critical. Suggestions relating to taking the reforms forward included that those in government should work with young people on their ideas for the future, with a Rural and Island Youth Parliament and a Taskforce referenced. There was also a concern about how accessible a consultation process such as this one is for young people.

However, there was also a view that some of the reforms could add to the difficulty for young people of getting involved in farming. It was suggested that the right to buy legislation for Agricultural Holdings (Scotland) Act 1991 tenancies, coupled with the proposals set out in this consultation, are serving to close down all opportunities for new tenancies to be offered to new entrant or young farmers.

More generally, it was suggested that young people will be most affected by any negative impacts stemming from the proposed reforms, if these are long term in nature. This included a reference to the proposals being counterproductive to addressing climate change and a suggestion that, while the proposals will permanently remove land from food production, carbon sequestration by softwoods being planted now will largely come too late to significantly alter climate change.

There were also concerns that the proposals do not go far enough in terms of reversing unequal land ownership and tackling the entrenched social inequality that impacts on young people.

Other general comments included that it will be interesting to see how land reform interacts with Play Sufficiency assessments.

**Protected characteristics**

**Question 47** – Are you aware of any examples of how the proposals in this consultation may impact, either positively or negatively, on those with protected characteristics (age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation)?

Around 60 respondents made a comment at Question 47. General comments included that respondents were not aware of any likely impact, or that other legalisation already covers protected characteristics and the relevance to land

reform is not clear. Others commented that there is not likely to be any particular or specific impact on those with protected characteristics, including because the protection of the environment benefits everyone.

Some respondents did expect the proposals to have a specific impact on people with protected characteristics, including because disadvantaged and minority groups already experience any negative impacts more severely than the majority. It was noted, for example, that people who are marginalised on the basis of one or more protected characteristic are far more likely to also be economically disadvantaged and that this means they are less likely to be able to adapt to and mitigate the damaging consequences of climate change. It was suggested, therefore, that making the most of the Land Reform for Net Zero process could be of particular benefit to people marginalised on the basis of one or more protected characteristic.

There was an expectation that community ownership of land should have a positive impact on any issues involving equality and that facilitating more community-ownership, with the opportunity to create community businesses for local benefit, has the potential to have a positive impact on all people with protected characteristics.

Other comments included that farming is currently dominated by white, middle-aged men and that anything that can be done to diversify land use will be a good thing. It was reported that many land workers are part of protected groups, such as migrant communities, people of colour, women and people who are marginalised because of their gender, and generally have less access to land. Expanding the definition of 'community groups' to include people beyond those who already live in rural areas was seen as essential to ensuring increased diversity of land ownership and land use in Scotland.

Other comments about particular protected characteristics included that:

- The population of farmers and farmer tenants, and of rural communities more widely, is an ageing one.
- Ethical veganism is a protected philosophical belief under the Equality Act 2010. The expansion of plant-based land management and food production, free from the use of animals, is important to uphold the rights of vegans to practice their beliefs.
- The LGBTQ+ community is still being stigmatised in some rural areas, and that giving different groups of people the opportunity to live and work in rural areas could help bring about change.
- In some parts of Scotland, it is very unusual for women to be offered the opportunity to run estates or farms.

It was also noted that women have been structurally excluded from land ownership on an overwhelming scale and that succession law, inheritance practices and unequal access to income, wealth and power mean that women have been severely hampered in land ownership. There was also reference to those with less

access to inherited wealth, and a connection to the protected characteristics of race and religion. In terms of specific proposals, it was suggested that any special treatment of family farms would be likely to be discriminatory on grounds of race, religion and potentially also sex.

There were some concerns that the proposals do not go far enough to support land access for people with protected characteristics. It was argued that, as the proposals would only apply full regulation to 20% of Scotland, it is difficult to see how they will make a meaningful difference to the lack of diversity in Scottish land ownership. There was particular reference to the gender imbalance of land ownership.

Other issues or concerns raised included that:

- If landowners such as the Church of Scotland were to be considered to be large-scale, increased and disproportionate duties would be placed on local volunteers and result in a greater administrative burden on a charitable organisation with religious purposes. The proposals may also reduce income associated with the landholding and thus available for the support of the congregational ministry of the Church of Scotland.
- Little seems to be being done to encourage disabled people into land working, conservation or agriculture.
- The proposals seem to be actively targeting international capital and European and English landowners.

**Environmental impact**

**Question 48** – Are you aware of any examples of potential impacts, either positive or negative that you consider any of the proposals in this consultation may have on the environment?

Around 175 respondents made a comment at Question 48.

General comments included that any land reform proposals have the potential to have a major impact on the natural and built environment, with some respondents noting that they expected the proposals to have a positive impact. In terms of particular proposals, comments included that a well-executed LRRS should have a positive impact on the environment and that the requirement to produce Management Plans should ensure greater transparency in how the environment is being managed. There was also a view that the Land Use Tenancy, if properly designed, may enable positive environmental action by businesses.

In terms of the types of benefits respondents expected to see there was reference to: better land management for biodiversity; peatland restoration; soil improvement; carbon reduction and sequestration; natural reforestation; the uptake of forestry and woodland creation options; and an increase in mixed land use. There was also reference to reversing the decline of crofting, and its potential to reverse the decline of biodiversity. Other positive impacts suggested included that:

- A healthy environment is beneficial to the local community, attracts tourists and generally boosts the local economy.
- Greater involvement of communities in the environment around them – in managing it, benefiting from it, and actively engaging – is likely to lead to improvements in environmental quality and ecosystem service provision.
- Many of the proposals will assist with collaboration between communities and landowners in helping deliver net zero and environmental targets.

Other respondents were less optimistic about the environmental impact the proposals would have. Their concerns included that any approach which supports the drive to create forestry for carbon credits is likely to adversely affect ecosystems and reduce biodiversity rather than increase it. Associated comments included that the purchase of large areas of land by private companies for carbon offsetting is setting up a perfect formula for greenwashing and disempowering local communities.

Some respondents highlighted issues raised at previous questions relating to the environmental benefits of landscape-scale initiatives and the risks associated with the fragmentation of landholdings. There were concerns that changes in ownership, and any fragmentation of large-scale landholdings, could impede progress towards meeting Scotland's 2030 and 2045 net zero objectives, and could also have a detrimental impact on biodiversity and nature. In terms of biodiversity, there was reference to the benefit from scale of management. There was also reference to the potential for the cumulative negative impacts of some small-scale developments, such as renewables, to be missed by being included in Land Use Tenancies. It was argued that this is where RLUPs can have an overview.

Other comments and concerns included that:

- Access to substantial pools of capital for climate mitigation measures could be lost. Specifically, there were concerns that additional taxation, further constraint and restrictive protocols may lead to lack of investment in Scotland as other countries become more attractive alternatives.
- The proposals could act to frustrate large-scale investment and site assembly, for example for major wind farm investments, or the assembly of infrastructure that could be required to support new sustainable infrastructure and utilities that might be required on a national scale.
- Complicating the conveyancing process, imposing Land Management Plans and overcomplicating the ability to apply for support schemes would all be detrimental to net zero if applied incorrectly.
- Placing greater financial burdens on private landowners will ultimately lead to job losses. This could lead to a loss of skills and invaluable local knowledge. Taking land out of production, for example for landscape wide rewilding, could also lead to job losses and have an adverse impact on the rural economy.

In terms of how potential impacts could be assessed and/or positive impacts maximised, it was suggested that all approaches should be designed to ensure

environmental benefits, including by requiring steps to be taken to improve biodiversity levels, and that:

- The proposals should be run through the co-impact tool to look at impacts on social cohesion, health and wellbeing, the economy, the environment, and biodiversity.
- Land reform should take a place-based approach using nature-based solutions to create a climate adaptive and resilient place. It was suggested that a focus solely on economic outcomes will have unintended negative impacts.
- There must be clear guidance as to what is expected from landowners in helping to deliver national environmental targets when also being asked to take local views into account.
- Landowners should be held to Responsible Investment in Natural Capital as part of the LRRS.
- It will be important that the historic environment is also considered, particularly through the proposed Management Plans.
- The particular challenges presented by mining development should be considered, including so as to adequately protect Scotland from the significant environmental threats posed by the international mining sector.

It was also suggested that any potential positive or negative impacts on the environment should be included in the proposed Land Management Plans.

**Socioeconomic disadvantage**

**Question 49** – Are you aware of any examples of how the proposals in this consultation might impact, positively or negatively, on groups or areas at socioeconomic disadvantage (such as income, low wealth or area deprivation)?

Around 135 respondents made a comment at Question 49.

Some respondents noted the relatively high levels of economic disadvantage in many rural areas, including in island communities. There was specific reference to isolation being a particular factor for island communities when the ferries are unable to run.

An associated point was that any measures that retain money and jobs within rural and island communities will serve to benefit those experiencing hardship. It was also noted that those who are economically disadvantaged are less likely to be able to adapt to and mitigate the damaging consequences of climate change, and it was suggested that making the most of the Land Reform for Net Zero process could be of particular benefit to these people and their communities. There was specific reference to issues associated with mining development having the potential to impact negatively on remote, socially disadvantaged and economically vulnerable rural communities.

In terms of the current proposals, general comments included that they seem to offer a positive impact to groups or areas at socioeconomic disadvantage, or at least will not disadvantage them. There was reference to redistributing wealth to local areas and groups, and to benefiting areas of socioeconomic disadvantage through empowerment, innovation and community ownership.

Other possible benefits identified included that an increasing rural population makes a range of services, such as schools and public transport, more viable to the benefit of everyone. There was reference to opening up new opportunities for people to move into rural areas, with increased supply of affordable housing and greater employment prospects.

A number of respondents connected these types of potential benefit to increased levels of community ownership, including through seeing this as the route to ensuring that the needs of all groups within the community can be properly considered. Specifically, it was suggested that there is the potential for more employment for members of the community if land is community-owned. In relation to the benefits of community ownership, it was reported that increased community land ownership has proven to be transformational in areas of socio-economic disadvantage associated with rurality and higher than average living costs, especially on community owned islands.

However, it was also noted that deprivation may impact on a community's ability to generate enough social capital to progress a project in the first place, and the importance of making sure that processes are not overly burdensome for community organisations was highlighted. There was also a concern that proposals that rely on sufficient community capacity, such as reporting breaches to the LRRS, may disadvantage groups or areas at socio-economic disadvantage.

In terms of particular proposals, comments included that the Land Use Tenancy, if designed successfully, is the measure in this consultation most likely to assist by enabling a whole new approach to letting land. Other comments on Land Use tenancies included that, if they are affordable enough, they could really open doors for people on low incomes who have skills in land management or environmental work.

It was also suggested that preparing and publishing Land Management Plans should help focus attention on appropriate development which should, overall, have beneficial effects for groups or areas at socioeconomic disadvantage. It was suggested that income from investment in natural capital and renewable energy can be very beneficial, particularly where land is community-owned.

However, others raised concerns, or did not think the proposals would have a positive impact on groups or areas at socioeconomic disadvantage. The issues raised were similar to those highlighted in relation to the environment, including that some of the proposals could result in reduced investment in rural Scotland. Whilst it was acknowledged that, in some cases, a change of ownership may drive new activity, it was thought that in other cases the structures suggested may make it harder to raise finance or have the confidence to invest.

It was also noted that many rural areas are already relatively disadvantaged socio-economically and it was suggested that any measures that discouraging future investment risk further disadvantaging these communities. This was often connected to loss of employment opportunities, with one view that the cumulative impact of the reforms could be catastrophic for Scottish rural communities. Further comments included that the provision of jobs from large-scale landowners is often vital to rural communities, and that there is a real risk that the proposals will accelerate rural depopulation and deprivation, as a result of loss of livelihoods in remote and rural Scotland. It was suggested that the reforms equate to discrimination towards rural workers, something which was argued to permeate government policy.

It was also suggested that the proposals would have no impact on some of the most disadvantaged areas of Scotland as they are concerned only with rural issues. It was reported that, some of the most important impacts of good land management happen in urban and peri-urban areas.

With specific reference to community ownership, it was suggested that there is an assumption that community groups are active and available in all areas but that, in reality, more affluent or politically engaged areas will be keener on land reform than low income, low wealth areas. Reflecting a point also made by those who did think the proposals would have a positive impact, there was a view that making sure there is good access to accommodation, good services and work opportunities will be key. In this case, it was suggested that addressing these issues is more important than who owns the land.

For others, the concern was that the proposals do not go far enough or are not focused on benefiting the right groups. It was suggested that a disproportionate amount of funding and profit relating to the land reform and land use change this consultation touches upon will ultimately be fed through to those who are already wealthy. There was a call for the reforms to be focused on the bottom quartile of rural population by wealth in each region.

In terms of how potential impacts could be assessed and/or positive impacts maximised, it was suggested that communities need to have easier access to support in order to develop community ownership ideas. Further, support must be provided in a meaningful and effective way to help local communities to become involved with land ownership since bureaucracy, costs and the attitude of the professional classes to community land ownership can be barrier to socioeconomically disadvantaged groups.

Other suggestions for improving the positive impact of the proposals for socioeconomically disadvantaged groups or areas included:

- A mechanism for matching buyers with lenders prepared to lend money to communities.
- Setting up an urban development fund.
- Empowering and encouraging community councils to: acquire land to let as crofts; let land in units of not more than ten hectares on non-transferable, non-

heritable liferent; and take over the management of lands in the locality on which title has been surrendered.

It was suggested that it may be useful to undertake a robust assessment of the positives and negatives flowing from recent community purchases, and also that the Scottish Government should establish long term monitoring programmes in relation to land ownership, land values and wider land reform impacts. It was noted that the assessment framework established by Thomson et al can provide insights into the long term metrics that need to be assessed to consider impacts of land matters.

There was also reference to work by SSE around publishing a Just Transition Strategy, and a follow up report focused on moving from principles to action.

### Potential costs and burdens

**Question 50** – Are you aware of any potential costs and burdens that you think may arise as a result of the proposals within this consultation?

Around 165 respondents made a comment at Question 50.

A number of respondents noted that they did expect costs and burdens to arise as a result of the proposals, with further general comments including that there is potential for the costs to be significant. It was suggested that almost all the measures proposed would result in additional costs and regulatory burdens for businesses which are classed as large-scale.

### Costs to landowners

In terms of the types of costs to landowners, there was reference to time, administrative burden, legal costs, professional fees, registration costs and mapping costs. There was a concern about the potential duplication of land reform and planning procedures and regulations.

Comments about the costs associated with particular proposals included that landowners will incur significant costs through the need to implement Management Plans as well as reporting against LRRS. It was reported that a pilot of a voluntary LRRS process highlighted how much time this took.

In terms of particular activities, there was reference to costs associated with:

- The development and publication of Management Plans.
- Conveyancing fees associated with the public interest test.
- Dealing with disputes.
- The requirement for all land to be in the land register to receive public funds.

There was also a suggestion that the greatest cost incurred could be for those looking to sell if the sale of land falls through, including because of possible delays in carrying out a public interest test. The potential for the public interest test, and the regulation of large-scale land transfers, to add additional complexity and cost to

the sales process was highlighted, and it was suggested that this would be likely to hinder value. It was also suggested that any forced lotting could greatly reduce the overall value of the landholding. Associated points were that any measure which reduces the value of the land could be in breach of Human Rights and that any purchasers or sellers who suffer a loss may seek compensation from the Scottish Government.

Respondents also highlighted potential for the proposals to result in reduced or lost investment and that time and resources used to carry out land reform-related activities could otherwise be used to complete important land management operations and net zero contributions. It was argued that evolving natural capital markets present a potentially huge opportunity for rural Scotland but there was a concern that many of the proposals in this consultation put the required investment at risk.

Beyond the general issues relating to costs and burdens to large-scale landowners, there were also a small number of comments about specific landowners or types of landowner. These included that:

- Depending on the threshold(s) to be applied, the additional burdens and compliance requirements may very well apply to public sector landowners as well as those in the private sector.
- The inclusion of landowners such as the Church of Scotland in the definition of large-scale landowners would place vastly increased and disproportionate duties on local volunteers. Any increase in costs would result in decreased revenue being available to meet the cost of the local congregational ministry of the Church.

Although a number of respondents raised concerns about the cost implications of the proposals for landowners, others thought that any costs or burdens would be just and proportionate, or suggested that large-scale landowners are likely to be able to cover them through their own resources. There was also a view that one of the purposes of land reform should be to raise the cost and burden of owning a large estate while simultaneously reducing the cost and burden of returning that land to local communities.

In terms of specific proposals, it was suggested that although the LRRS proposals could have a financial cost for a landowner, this will be outweighed by the opportunities of identifying more effective use of the land as a whole and implementing this improved use. In relation to any regulation or licence type costs, it was suggested that these could be reduced through the use of mapping technology.

**Costs to the public purse**

Respondents also identified a number of ways in which the proposals could result in costs to the public sector or to government. These included that:

- A clear reporting and monitoring system for LRRS breaches and for enforcing Management Plans will need to be devised. Properly resourcing the SLC – or

whichever body is preferred – for enforcing Management Plans, investigating LRRS breaches and administering the public interest test will be vital.

- Landowning businesses will need to be equipped with the knowledge and understanding of the new requirements and some of the necessary support will need to come from the Scottish Government and SLC.
- There should be dedicated land reform officers for island communities.

In terms of costs to particular organisations or bodies, it was suggested that:

- Registers of Scotland would incur conveyancing and registration costs associated with community bodies requiring to be set up such as to be notified of intention to sell. There would be costs relating to building a new register and investigating a large-scale landholding to determine if it is within the scope of the duties.
- Local authorities could incur costs in collecting and collating data for the land registry, and in connection with any other duties stemming from the proposals.

In terms of public funding to support community land ownership, it was noted that this is already provided through the Scottish Land Fund. Others also commented on how communities would be supported, including that financial support for communities and lower income groups will be essential to ensure these groups are not disadvantaged and can take advantage of the opportunities which present themselves.

**Data protection or privacy**

**Question 51** – Are you aware of any impacts, positive or negative, of the proposals in this consultation on data protection or privacy?

Around 80 respondents made a comment at Question 51.

General observations included that there will be some data protection or privacy-related impact, including because landowners will be under more scrutiny and their details would be on a public register.

Other comments included that requiring more information to be held on the Land Registry and for private business plans to be made public is a breach of privacy. In terms of particular proposals, and reflecting issues raised at Question 10 in particular, some respondents noted their concern about any requirement to include commercially sensitive information in Management Plans. It was also suggested that extreme care needs to be taken in compelling businesses to reveal information which may be time sensitive.

It was also suggested that there could be privacy issues with any attempt to make public the ultimate beneficial owner of any given property. It was suggested that there are many reasons why it should be possible for this information to be kept private, if a person or company chooses to do so. There were also concerns about the privacy of those who live on the land and work there, including that privacy of home could be compromised.

However, others did not have any concerns, and suggested that any impacts would be positive, or that the data protection and privacy aspects are adequately dealt with in the proposals. An associated view was that information on the ownership of land, how it is to be used and the intention to sell it should all be publicly available. It was suggested that any calls to limit public information about estates should be resisted wherever possible and that full transparency of information should be considered one of the costs of being a large landowner.

Finally, it was noted that it will be important that management and participation in community right to buy is by properly constituted bodies that have data protection policies in place.

## Annex 1 - Organisations responding to the consultation

### Academic group or think tank (n = 4)

Forest Policy Group

James Hutton Institute

Scotland's Rural College (SRUC)

The Thriving Natural Capital Challenge Centre

Community or local organisations and their representative bodies (n = 22)

Action Porty

Bioregioning Tayside

Communities for Diverse Forestry uhh

Communities Housing Trust

Community Land Outer Hebrides

Development Trusts Association Scotland

Dumfries and Galloway Sustainable Food Partnership

Galloway and Southern Ayrshire UNESCO Biosphere

Glasgow Community Food Network

Isle of Rum Community Trust

Moray Local Outdoor Access Forum

North Edinburgh Arts

Northwest2045

Peebles Community Trust

Scottish Community Development Centre

Sleat Community Trust

Social Farms & Gardens Scotland, and members of the Community Growing Forum Scotland

South of Scotland Community Housing

Speyside Community Council

St John’s Town of Dalry Community Council

Stow Community Trust

Tiree Community Development Trust

**Government and NDPB (n = 19)**

Aberdeen City Council

Aberdeenshire Council

Architecture and Design Scotland

Bòrd na Gàidhlig

Cairngorms National Park Authority

Crofting Commission

Crown Estate Scotland

Dumfries and Galloway Council

Glasgow City Council

Heads of Planning Scotland (HOPS)

Highlands and Islands Enterprise

Historic Environment Scotland

Ministry of Defence

NatureScot

Registers of Scotland

Scottish Land Commission

Scottish Water

Stirling Council

The Highland Council

**Landowner (n = 34)**

Abercairny Estate Ltd

Abriachan Forest Trust

Allargue Estate Partnership

Alvie and Dalraddy Estates

Arran Estates

Ballogie Estate

Callendar No3 Trust

Colonsay Community Development Company

Dalhousie Estates

Dunecht Estates

Dupplin Trust 2000

Earlstoun and Sanquhar Trust

Fairburn Estate

Forrest Estate Ltd

Highlands Rewilding Limited

Hillhouse Estate Ltd

Hopetoun Estates

Isle of Eigg Heritage Trust

John Muir Trust

Logie Estate

Moray Estates

Mount Stuart Trust

Northumberland Estates

Seafield & Strathspey Estates

Strathbran Estate

The Applecross Trust

The Church of Scotland General Trustees

The Firm of Invercauld Estate

The John Dewar Lamberkin Trust

The Landmark Trust

The Macrobert Trust

The MDS Estates Limited (trading as “Buccleuch”)

The National Trust for Scotland

The Scottish Wildlife Trust

**Private sector organisations (n =17)**

Bidwells LLP

Brodies LLP

CSM & Co, Chartered Accountants

Eternal Mountain

Foresight Group LLP

Know Edge Ltd

Peter Graham & Associates

Savills

Scottish Power Renewables

Scottish Renewables

Scottish Woodlands Ltd

SSE Renewables

Society of Trust and Estate Practitioners (STEP)

The Food Life (Scotland) ltd

The Fruitful Forest

True North European Real Estate Partners

Turcan Connell

**Representative bodies, institutions, associations or unions (n = 30)**

Agricultural Law Association

British Association for Shooting and Conservation (Scotland)

British Ports Association

British Standards Institution

Built Environment Forum Scotland (BEFS)

Central Association of Agricultural Valuers (CAAV)

Chartered Institute of Ecology and Environmental Management (CIEEM)

Chartered Institute of Housing Scotland

Community Land Scotland

Community Woodlands Association

Confederation of Forest Industries

Faculty of Advocates

Institute of Chartered Accountants of Scotland (ICAS)

Landworkers' Alliance

Law Society of Scotland

Marine Protection Areas Scotland (MPAs)

The National Farmers Union of Scotland (NFUS)

Plunkett Foundation

Royal Institution of Chartered Surveyors (RICS)

Royal Town Planning Institute (RTPI) Scotland

Scottish Artists Union

Scottish Community Alliance

Scottish Crofting Federation

Scottish Gamekeepers Association

Scottish Land & Estates

Scottish Property Federation

Scottish Renewables

Scottish Tenant Farmers Association

Surf – Scotland's Regeneration Forum

The Association of Deer Management Groups

**Third sector or campaign group (n = 36)**

Common Weal

Cycling UK in Scotland

Environmental Rights Centre for Scotland

Fauna & Flora International

Food, Farming and Countryside Commission

Game & Wildlife Conservation Trust

Green Action Trust

Mountaineering Scotland

Na h-Eileanan an Iar Constituency Labour Party

National Access Forum

Nourish Scotland

Paths for All

Planning Democracy

Ramblers Scotland

Reforesting Scotland

Religious Society of Friends (Quakers in Scotland)

Revive: the coalition for grouse moor reform

Rewilding Britain

The Royal Society for the Protection of Birds (RSPB) Scotland

Scotland's Climate Assembly

Scotland's Landscape Alliance

Scottish Environment Link

Scottish Land Revenue Group

Scottish Orienteering Association

Scottish Rewilding Alliance

Scottish Rights of Way and Access Society (ScotWays)

Scottish Rural Action

Scottish Society for the Prevention of Cruelty to Animals (Scottish SPCA)

The Nationwide Foundation

The Scottish Woodlot Association

The Vegan Society

Third Sector Interface Network

Wellbeing Economy Alliance Scotland

Woodland Crofts Partnership

Woodland Trust Scotland

World Wildlife Federation Scotland

This publication is available at **www.gov.scot**

Any enquiries regarding this publication should be sent to us at

The Scottish Government
St Andrew's House
Edinburgh
EH1 3DG

ISBN: 978-1-80525-796-7 (web only)

Published by The Scottish Government, June 2023

Produced for The Scottish Government by APS Group Scotland, 21 Tennant Street, Edinburgh EH6 5NA
PPDAS1275362 (06/23)

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