

Land Reform in a Net Zero Nation

Consultation Paper

July 2022

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Ministerial Foreword



The use and ownership of Scotland's land is one of the central issues for the future of our environment, our society and our economy.

Addressing the historical position of large parts of Scotland being owned and used in ways determined not by communities that live on them, but by landowners, often based outwith Scotland, has been a theme of devolution since the first Parliament.

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 forward in supporting and enabling communities to have greater opportunity to own or to influence the use of the land on which they live.

I am proud of Scotland's record of progressive and innovative reform. But the journey is not complete.

It is now time to take the next steps in this journey of land reform and to respond to the social, environmental and economic issues we now face.

Over this Parliament, first the Land Reform Bill, and then a Community Wealth Building Bill, will continue the legislative journey of land reform and community ownership.

The core aims of the Scottish Government's land reform policy are set out clearly in our Land Rights and Responsibilities Statement, they are:

- to increase diversity of landownership;
- to bring about changes in land use; and
- to create more opportunities for communities to engage in decision making about the land around them, and share in the benefits it brings.

Land is a vital resource that underpins the wealth, and the well-being, of our nation as a whole. Private ownership of land – particularly at scale – has in the past conferred significant prestige, associated with for example hereditary titles, status and ability to influence policy and law. While many aspects of society have become more equitable, the privilege associated with the ownership of land at scale remains, and takes new forms.

The Scottish Government is committed to strengthening the role of communities via land reform, because we know that transparency, ownership, and being involved in decisions about land, can sustain and enhance the wellbeing and resilience of local people.

This consultation therefore takes forward the legislative proposals from the Land Commission to address the impact of scale and concentration of land ownership.

But as we continue in Scotland's land reform journey, addressing historical inequalities, we must also be alive to new and emerging challenges with an eye to the future.

Scotland's natural environment or 'Natural Capital' has become more valuable than ever due to its potential to support Scotland and the wider world's journey to "net zero" and nature gain.

Both public and private investment in our natural environment will be essential in tackling the climate and ecological crises.

This presents a substantial opportunity for Scotland and our people which we must be prepared to seize. However, the risk, increasingly understood among rural communities, is that investment could lead to an unwelcome change whereby people are secondary to large, often corporate, projects which are remote from communities, imposed on them and from which they do not benefit. This is contrary to our vision for the future of Scotland's land and its communities and to the principles of a just transition.

We must ensure our communities are engaged in and benefit from nature based developments. Proposals from the Land Commission to strengthen the land rights and responsibilities statement, to use land management plans and importantly to introduce a public interest test all have a role to play in supporting our vision and they are addressed in this consultation. This consultation goes further, opening questions on how we ensure fairness in natural capital projects, as well as whether our tax system appropriately recognises the wealth being generated and transferred through this market.

My vision, which I know most people share, is of a net zero Scotland with thriving (and growing) rural and island communities and where more, not less, people live and work sustainably on our land.

Reflecting in part another contemporary challenge, namely concerns exacerbated by the unlawful invasion of Ukraine by Russia, this consultation also looks at ways in which we can further improve transparency of land ownership including asking who can and should receive public subsidy, how we might restrict the purchase of land and provision of subsidy to only those registered in the UK and EU for tax purposes, and asking what tests should be applied prior to the purchasing of large scale land holdings.

In this way, we are driving forward reform to historically iniquitous patterns of land ownership, but doing so with an eye to contemporary challenges and future opportunities.

There will be a wide range of views on our proposals: I welcome this. The measures put forward in this consultation document honour commitments made in our election manifesto and as part of our agreement with the Scottish Green Party. They align with the priorities for the economy, the environment, and society that are set out in our Programme for Government.

As we take the next steps on our national land reform journey I hope we can move forward based on consensus as to the best interests of the country as a whole, striking a balance between rights and responsibilities, while respecting the diverse interests and aspirations of all those with an interest in Scotland's land and the human rights of all.

Thank you for taking time to consider these important proposals. I look forward to considering carefully all responses to the questions posed in this document, as we take further steps on the road to reform.

A handwritten signature in black ink, appearing to read 'Màiri McAllan', with a long horizontal flourish extending to the right.

Màiri McAllan MSP

Minister for Environment and Land Reform

Part 1: The road to reform

Land Reform in the early years of devolution

On 1 July 1999, the Scottish Parliament was reconvened and from that date the Parliament assumed its power to make laws for Scotland on devolved matters. Since then, the Scottish Parliament has implemented a number of land reform measures. One of the Parliament's first Acts was the Abolition of Feudal Tenure etc. (Scotland) Act 2000. This Act introduced a simplified and modernised system of property ownership, and brought to an end the old system of feudal tenure which had existed in Scotland for more than 800 years.

A consistent feature of land reform in Scotland has been government support for community ownership. Prior to 2000, the Scottish Office had provided financial support for a land unit in Highlands and Islands Enterprise, which supported community buy-outs in the Highlands. In 2000 the Scottish Land Fund was established, with the support of the then Scottish Executive. Initially funded by the National Lottery, its purpose was to provide grants to communities to enable them to buy land. It was re-launched in its current form in 2012. The Scottish Government currently provides funding of £10m a year for the Fund and has committed to doubling this by the end of this Parliament.

Recognising the need to develop a legal framework to support and encourage more communities to buy land, the Scottish Government introduced the Land Reform (Scotland) Act 2003. It included the following measures:

- a statutory right of responsible (non-motorised) access over most land;
- a community 'right to buy' which gave eligible community bodies the right to apply to register an interest in rural land, as well as a right to apply to exercise a 'pre-emptive' right to buy (effectively the right of first refusal if/when the property is put up for sale); and
- the crofting community right to buy, whereby crofting community bodies may register an interest in land held under crofting tenure, and purchase that land (regardless of whether the owner wishes to sell), subject to approval by Scottish Ministers.

The 2003 Act has been used by communities to buy approximately 57,000 acres of rural land since 2003. In addition it has helped bring about many community buyouts through negotiation, rather than by use of the legislation.

The 2014 Land Reform Review Group Report, and the 2016 Land Reform Act

In 2012 the Scottish Government established the independent Land Reform Review Group. This group was given the task of developing 'innovative and radical proposals on land reform that will contribute to the success of Scotland for future generations'. These proposals were published by the Land Reform Review Group in their May 2014 report.

In response to the 2014 Land Reform Review Report, the Scottish Government introduced further significant legislation through the Community Empowerment Act (Scotland) 2015 and the Land Reform (Scotland) Act 2016. In addition, the Scottish Government tasked the Register of Scotland with the significant undertaking of completing the Land Register to bring a new level of transparency to land ownership in Scotland.

The Community Empowerment Act introduced:

- measures to simplify the Community Right to Buy process, and extend it to urban as well as rural Scotland;
- a new Right to Buy Abandoned, Neglected and Detrimental Land;
- measures to support community bodies taking ownership or control of assets from the Scottish Government, public bodies such as Forest and Land Scotland and health boards, and from local authorities; and
- measures to ensure that decisions taken about public services take account of community needs and views.

The Land Reform (Scotland) Act 2016 introduced measures including:

- a requirement for the development of a Scottish Land Rights and Responsibilities Statement (LRRS) to improve the relationship between the land and people of Scotland, where rights and responsibilities in relation to land are fully recognised and fulfilled;
- the establishment of the Scottish Land Commission to review the effectiveness and impact of current and potential future laws and policies relating to land;
- powers for Scottish Ministers to compel the disclosure of information about controlling interests in land and to provide for the establishment of a public Register of Controlling Interests in Land (RCI); and
- a new Right to Buy Land to Further Sustainable Development.

The Land Rights and Responsibilities Statement was published in 2017. The Statement highlights the Scottish Government's commitment to more diverse landownership. This commitment is articulated in the following principles of the Land Rights and Responsibilities Statement:

“There should be ...more opportunities for citizens to own, lease and have access to land” - and

“More local communities should have the opportunity to own, lease or use buildings and land which can contribute to their community's wellbeing and future development”.

Taken together, the measures introduced through the Acts passed since 2000 have helped to achieve a better, fairer balance of power between communities and landowners in all sectors. The Land Rights and Responsibilities Statement has also helped to normalise expectations of community engagement in decision making about the land that surrounds them.

Part 2: The next step: Land Reform in a Net Zero Nation – the forthcoming Bill

The next Land Reform Bill will build on the Land Reform Acts of 2003 and 2016 to help us reach the goals we have set in a number of policy areas.

The Scottish Land Commission was established as a public body by the Scottish Government on 1 April 2017 to address issues relating to the ownership of land, land rights, management of land, and use of land. The commission incorporates the work of the Tenant Farming Commissioner. Their remit also includes land taxation, and the effective use of land for the common good.

One of their first tasks was to investigate issues connected with the scale and concentration of landownership in Scotland. Since 2000 a series of reports, including a [briefing paper](#) for the House of Commons Scottish Affairs Committee and a [2019 report](#) by the Scottish Land Commission, have demonstrated that Scotland has an exceptionally high concentration of landownership by international standards. It is also unusual in having no constraints on who can own land, or how much they can own. In 2018, the Commission launched a discussion paper and call for evidence on this. In the following year they submitted their 2019 report to Scottish Ministers detailing their findings and recommendations.

Scottish Ministers responded to the 2019 report by asking the Scottish Land Commission to develop some of their recommendations further. In February 2021, the Scottish Land Commission published a [discussion paper](#) on ‘Legislative proposals to address the impact of Scotland’s concentration of landownership’. Additional information on this discussion paper can be found on the Scottish Land Commission [website](#). The discussion paper put forward three key recommendations for changes in legislation:

- the requirement for significant land holdings to engage on, and publish, a Management Plan;
- a Land Rights and Responsibilities Review process, to take effect where there is evidence of adverse impacts; and
- a new Public Interest Test that would determine whether significant land transfers or acquisitions are in the public interest.

In her response, the then Cabinet Secretary for the Environment, Climate Change, and Land Reform, noted that:

“We will of course give this due consideration, and remain committed to working with partners to develop potential policy and legislative responses at the appropriate time, given the ongoing public health emergency we face. It is also imperative that any proposals taken forward are compliant with the European Convention on Human Rights and the devolved settlement.”

The Scottish Government remains committed to tackling any adverse effects of scale and concentration of landownership in the next Land Reform Bill. Much has changed, however, since the Scottish Land Commission made their initial

recommendations to Scottish Ministers in 2019. The next Land Reform Bill also needs to respond to a wider set of drivers of public policy, particularly in relation to the legal obligations to deliver a just transition to net zero.

The Programme for Government 2021-2022 committed to taking forward a new Land Reform Bill that would 'address the concentration of landownership in Scotland, including a public interest test'.

In August 2021 the Scottish Government and the Scottish Green Party Parliamentary Group reached an agreement on a shared draft policy programme – the [Bute House Agreement](#). The agreement sets out the following commitment:

“The new Land Reform Bill will aim to ensure that the public interest is considered on transfers of particularly large-scale land holdings, and we will aim to introduce a pre-emption in favour of community buy-out where the public interest test applies, and where it is appropriate to do so. Our proposals will complement existing community right to buy mechanisms”.

These commitments, together with the Scottish Land Commission's recommendations, provide the starting point for this consultation seeking views on proposals for the next Land Reform Bill.

As well as meeting the objectives set out in the Land Rights and Responsibilities Statement, we must take every opportunity to bring about a just transition to net zero, and tackle the biodiversity crisis. Land has a fundamental role to play in how we respond to the climate crisis and biodiversity crisis. Its potential to contribute to our national priorities of a just transition to net zero, and to nature restoration, can hardly be overstated. Central to the 'just transition' concept is that communities and the wider public must be supported in the transition. An important aspect of this is ensuring that communities can benefit from investment in Scotland's natural capital, whether directly through ownership, or through engagement and co-operation with landowners. Actions taken in pursuit of tackling climate change and increasing biodiversity must not have the effect of displacing people from the land.

Much of the discussion of land reform has focussed on Community ownership which has an important role to play in bringing about a greater diversity of landownership, as well as in making sure that the benefits of landownership are shared fairly. The Scottish Government has given, and continues to give, substantial support to programmes aimed at building the capacity of communities to take on the land and assets they need to thrive. We do this through a wide range of programmes administered by the Scottish Government, its agencies, third sector partners and local authorities. Many communities have been supported by our Scottish Land Fund, which provides grants, both to help identify community needs and to contribute to the purchase of assets. Community ownership is one option, but a range of other formal and informal partnerships can also bring benefit to communities. It is for communities to decide what approach best suits their aspirations: our aim is to open up the opportunities available to them.

This Bill will focus on land ownership and use in rural Scotland. We recognise that there are of course many land-related issues in urban parts of the country. We see

opportunities to address some of these in our forthcoming Community Wealth Building Bill.

New measures in the Bill will of course be fully compatible with human rights legislation and within devolved powers.

Subject to the views expressed in response to this consultation, this bill will:

- Strengthen the Land Rights and Responsibilities Statement;
- Introduce compulsory management plans;
- Ensure the public interest is considered on transfers of large-scale landholdings;
- Introduce new requirements to access public funding for land-based activity;
- Introduce a new Land Use Tenancy;
- Modernise small landholders legislation;
- Increase transparency in relation to land ownership and land use.

The Scottish Government also wants to use the development of this Bill to consider wider issues emerging from the growth in natural capital markets. This consultation therefore opens questions of potential fiscal measures and community benefit. Subject to the responses, proposals could be included in this legislation, although different procedures apply to the passage of any new taxation measures.

This Bill will also modernise small holding legislation as part of our programme of land reform.

This area of legislation is complex, has not been altered since the early 20th Century and relates to a small number of individual holdings mostly clustered in specific parts of Scotland. We will be undertaking a separate public consultation with the group of individuals and stakeholders affected by proposed changes; this will form part of the consultation process for the Land Reform Bill, though it is not part of the main Bill consultation.

Issues around the reform of compulsory purchase orders will be taken forward in the Community Wealth Building Bill later in this Parliament.

Part 3: Overview

This consultation contains several proposals for inclusion in the next Bill. In addition, we also invite respondents to give us views on other ideas and proposals, which may or may not be included in the Bill.

The first three proposals we put forward are aimed at tackling the issues associated with scale and concentration of land ownership in Scotland. **It is our intention that these proposals would apply to large-scale landholdings, and in general, would not apply to smaller landholdings and family farms.** We therefore seek views on the criteria for defining 'large-scale' landholdings in Part 4 of this consultation, and then consider the following three proposals this definition could relate to:

- Strengthening the Land Rights and Responsibilities Statement (Part 5);
- Compulsory Land Management Plans (Part 6); and
- Measures to regulate the market in large-scale landholdings (Part 7).

The Scottish Government is firmly committed to bringing about “net zero” carbon emissions via a just transition. This will mean making changes in the use of land, and taking action on nature restoration and biodiversity. We need to ensure that those in receipt of public money meet public expectations in relation to these goals.

We aim to ensure that those with the broadest shoulders bear the greatest burden, in relation to achieving these goals. We have a longstanding commitment to ensure that tenant farmers in particular are not disadvantaged by our efforts to tackle these issues. We are therefore proposing to include in the Bill the following measures:

- New conditions on those in receipt of public funding for land based activity (Part 8); and
- A new land use tenancy for tenant farmers (Part 9).

In part 10 we ask respondents whether they wish to be involved in a future consultation on small landholdings. In Part 11 we discuss transparency about who owns, controls and benefits from Scotland's land, and explore whether more can be done. Finally, in Part 12 we seek views on a range of land related reforms.

Part 4: Criteria for large-scale landholdings

The proposals outlined in Parts 5 to 7 seek to tackle issues associated with scale and concentration of landownership 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.

We do not wish to place disproportionate duties on those with small-scale landholdings, or family farms, particularly if this administrative burden would disadvantage them relative to larger landholdings with more staff and capacity. We consider that it would be proportionate for the proposals outlined in Parts 5 to 7 to be applicable only to 'large-scale' landholdings.

There are a number of issues associated with defining 'large-scale' landholdings. It is not as simple as only applying the proposals to landholdings over a certain size. Taking this approach may exclude situations where there is a concentration of landownership, such as a landowner who owns the majority of land on an island. The criteria we propose to use to classify landholdings as 'large-scale' are as follows:

- a) A fixed threshold of 3,000 hectares
- 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](#)
- c) 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'. In the interest of simplicity, we propose that the same criteria(s) be used to determine whether a landholding is 'large-scale' for the purpose of all the proposals set out in Parts 5 to 7.

We propose that 3,000 hectares would be a proportionate threshold for the first criteria listed above. This threshold has been informed by data held on land and property titles by the Registers of Scotland (RoS). All property titles that have been transferred for a consideration (such as a change in the title due to the property being sold) since 1 April 2003 should be in the Land Register.

As of May 2022, the Land Register contained title information on 48.9% of Scotland's total land mass. The Land Register will be considered to be 'functionally complete' when all land and property that transacts regularly has been registered. Currently, 86.9% of land and property that is expected to transact regularly is included in the register. Social housing and some large land and estates are not included in the calculation of this statistic as they rarely or never sell. Although the Land Register is not yet fully complete, it is the most comprehensive, up to date record we have on land and property ownership in Scotland.

As of May 2022, RoS data indicates that 386 of the 1.86 million titles in the Land Register of Scotland had a total land area of over 3,000 hectares. These titles cover 1.62 million hectares of land, equating to 20.2% of Scotland's total land mass. Note

that these figures are not solely based on the ownership of land and include e.g. rights of access and shared ownership. It is therefore possible that the figures are slightly overestimated.

96.8% of the 1.62 million hectares of land that had titles with a land area of over 3,000 hectares in the Land Register was classified as rural, whereas less than 0.05% was classified as urban according to our [two-fold urban rural classification scheme](#). Note that under the two-fold classification scheme accessible small towns and remote small towns are included in the urban classification. The remaining land not classified as either rural or urban fell outside of the two-fold classification scheme boundaries.

Since the Land Register is currently incomplete, and there are some limitations on the data on the titles of large land and estates, we have also considered the impact of using a 3,000 hectares threshold using data held by the Integrated Administration and Control System (IACS). IACS records data on all businesses with agricultural and non-agricultural land in Scotland that receive public subsidies. There are currently 19,292 IACS registered businesses with landholdings that cover 70% of the land in Scotland. Of the 19,292 IACS registered businesses, 255 (1.3%) have landholdings greater than 3,000 hectares, whilst 95% have landholdings below 1,000 hectares.

The data from the Land Register and IACS help to demonstrate that using a threshold of 3,000 hectares as one of the criteria for determining 'large-scale' landholdings would be a proportionate measure. By using this threshold, we would not be placing disproportionate duties on small-scale landholdings or family farms. Instead, the requirement to abide by the proposals outlined in Parts 5 to 7 would lie with landholdings that own a significant proportion of the total land mass in Scotland and already benefit from the land. The additional criteria for classifying large-scale landowners have been proposed to help tackle issues associated with concentrated landownership.

Questions

Q1. Do you agree or disagree with the criteria proposed for classifying landholdings as 'large-scale':

- | | |
|---|-------------------------------|
| a) A fixed threshold of 3,000 hectares | Agree / Disagree / Don't know |
| 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 |
| c) Land that accounts for more than a specified minimum proportion of a permanently inhabited island | Agree / Disagree / Don't know |

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

Q2. 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

Please give some reasons for your answer:

Q3. Do you think that the proposals considered in this consultation should be applied to the urban context?

Yes / No / Don't know

Please give some reasons for your answer:

Part 5: Strengthening the Land Rights and Responsibilities Statement

The Land Rights and Responsibilities Statement

Part 1 of the 2016 Land Reform Act placed a requirement on Scottish Ministers to publish a statement on land rights and responsibilities.

The [Land Rights and Responsibilities Statement](#) (LRRS) was published in 2017, consisting of a vision and six principles. The Statement is also supported by advisory notes, case study examples, and a series of good practice [protocols](#) developed more recently by the Scottish Land Commission (SLC).

The aims of the LRRS are to:

- inform the development of Scottish Government policy in relation to land;
- encourage and support others with significant responsibilities over land, such as local authorities and large private landowners, to consider how their decision-making powers could contribute to realising the vision in the Statement; and
- encourage all of us to recognise our responsibilities as well as our rights in relation to land.

The LRRS, and its associated advisory notes and protocols, is currently voluntary. It relies on landowners and land managers engaging with it.

The SLC's series of [protocols](#) provide practical advice on how landowners, land managers and communities can work together to make better and fairer decisions about land use. The protocols were developed in conjunction with key stakeholders, including the SLC's Good Practice Advisory Group. This Group identifies and discusses good practice that may help support the implementation and promotion of the LRRS.

Through the Good Practice Programme in 2019-2020 the SLC provided support to over 150 landowners and communities to help them put the protocols into practice in both rural and urban Scotland. Participants included private landowners, public bodies, community landowners, environmental non-government organisations and faith organisations.

The LRRS is subject to a review process by the Scottish Government every five years. A consultation on the first review was launched on 5 November 2021 and closed on 28 January 2022. The review is due to be completed by September 2022, by which date Scottish Ministers must lay before the Scottish Parliament either their proposals for amendment, or their reasons for not making any changes to the LRRS. When asked for suggestions that could further the adoption of the LRRS, a number of respondents expressed the view that there was a need for Scottish Ministers to have more power of oversight in relation to compliance with the LRRS.

What we propose

The Good Practice Advisory Group is successfully promoting the LRRS, however, the voluntary approach does have limitations. We recognise that many landowners are abiding by the LRRS, but there are some landowners who are not, despite the clear public interest the LRRS provides.

We propose 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. This would be accompanied by a statutory process to adjudicate on complaints about non-compliance and the response to a breach. It would be underpinned by statutory Codes of Practice/protocols on relevant issues, similar to the model of the Tenant Farming Commissioner Codes of Practice. There would be an ability for defined parties to report potential breaches of the codes/protocols and for a Commissioner to investigate and report publicly on their findings. We do not envisage members of the general public being able to report breaches of the LRRS: “defined parties” would be limited to constituted organisations with one of the following remits: community, charitable or public service. They would also have to have a connection to the local area.

Where an investigation into a breach is conducted, we propose that there could be one or more of the following outcomes:

- 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
- The outcome could be taken into account in any subsequent public interest test

In terms of enforcement powers, this could include:

- Financial penalties
- ‘Cross-compliance’ penalties (considered in more detail in Part 8): this would mean that an owner found to be in breach of the LRRS and any of its associated codes/protocols could be prevented from accessing Scottish Government land-based subsidies

Why we are proposing this

We would like to see the demonstrable benefits that have come about through the LRRS protocols, and the work of the Good Practice Advisory Group to be universal. A requirement on large-scale landowners to comply with the LRRS would provide benefits to Scotland on a number of levels. On a national level, it would contribute to our ‘Just Transition to net zero’ mission. On a local level, it would contribute to our approach to [Community Wealth Building](#), and improve relationships between

landowners and communities. It could also provide economic benefits at both national and local level.

Compliance with the LRRS would provide assurance to the public and to government that landowners are playing their part in delivering government policy objectives for net zero, biodiversity and a just transition, whilst also abiding by other codes, such as the Tenant Farming Code.

Questions

Q4. 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

Please give some reasons for your answer:

Q5. 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.

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

Agree / Disagree / Don't know

Please give some reasons for your answer:

b) 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

Should these constituted organisations have a remit on:

- | | |
|------------------|-------------------------------|
| • Community | Agree / Disagree / Don't know |
| • Charity | Agree / Disagree / Don't know |
| • Public service | Agree / Disagree / Don't know |

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

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

- | | |
|---------------------------|-----------------------|
| • the Scottish Government | Yes / No / Don't know |
|---------------------------|-----------------------|

- a public body (such as the Scottish Land Commission) Yes / No / Don't know

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

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

- Recommendation for a mediation process Yes / No / Don't know
- Recommendation on how the landowner or governing body could comply with the Codes of Practice/protocols Yes / No / Don't know
- A direction to the landowner or governing body to implement changes to operational and/or management practices Yes / No / Don't know

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

e) Should the enforcement powers for a breach be:

- Financial penalties Yes / No / Don't know
- 'Cross-compliance' penalties Yes / No / Don't know

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

Q6. 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

Please give some reasons for your answer:

Q7. 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?

Part 6: Compulsory Land Management Plans

Land management plans

Irrespective of the scale of a landholding, there is currently no legal requirement on landowners to make available to the public information on their medium to long-term management plans for their land. Despite this, some large-scale landowners across all sectors do prepare and publish plans which set out the landowners intentions with regard to the use and management of their land, and how they will invest in its improvement.

To promote and facilitate this Good Practice, the Scottish Land Commission has produced [templates for Land Management Plans](#). As well as giving information about who owns and manages the land, the template has sections that summarise the main objectives of land management alongside key activities and priorities. The template aims to help landowners and managers compile relevant information that can be made available online to the local community.

What we propose

Some landowners already proactively publish plans and strategy documents, however, this is not universal practice. We consider that it is a reasonable expectation that any large-scale landholding should prepare and publish a management plan. The purpose of the plan is to:

- demonstrate how the owner will implement the principles set out in the Land Rights and Responsibilities Statement (LRRS);
- demonstrate how land will be used and managed so as to meet requirements (to be set out in LRRS codes/protocols) for sustainable management, contributing to net zero and nature restoration goals;
- set out their plans for how they will engage with local communities in line with the Scottish Government's Guidance on Engaging Communities in Decisions Relating to Land;
- offer the opportunity to owners to increase the transparency of their objectives and operations; and
- set out how these connect with local priorities, opportunities, and public policy.

We propose that the plans should show how the management of the landholding contributes to relevant land use, economic and community development priorities and opportunities, as set out in community plans, regional land use strategies, and national policy.

Plans could potentially provide a means not only of demonstrating how the use and management of land will contribute to carbon emission reduction and/or nature restoration, but also a mechanism for monitoring this. Plans could be required to contain information on land to be used for purposes that would generate revenue from carbon offsetting/carbon credits.

We propose that the requirement to publish management plans should be enforced by way of a range of cross compliance mechanisms, such as being a pre-requisite to

receive public funding for land based activity. Under this approach, landowners would have to demonstrate that they have an up to date Management Plan to be eligible for public funding. This proposal is considered in more detail in Part 8.

To avoid unnecessary duplication, we will explore the potential to consolidate any requirement for Management Plans introduced via this Bill, with any Plans that may be required for the purposes of securing grants and subsidies.

Why we are proposing this

We consider that the requirement for large-scale landholdings to make public their plans for the management of their land encourages transparency and a recognition that land needs to be managed for public interest, as well as private objectives. It will provide a basis for local community engagement and enable the public to understand how land is being used now and how it will be used in future. It will mitigate some of the risks associated with concentration of landownership/ ownership of land at scale. Plans would be high-level/strategic in nature, reviewed and updated periodically, for example every five years, or in the event of a significant change.

The publication of plans will provide an opportunity for landowners to set out their plans for investing in their land so that it contributes the most it can to public policy objectives, such as net zero, renewable energy, nature restoration, just transition and community benefit. Landowners will benefit from being able to demonstrate that they are responsible stewards of their lands.

One example of management plans for particularly large-scale land holdings in the public sector has been developed by Forestry and Land Scotland (FLS), who publish and consult on plans for their forests at national, regional and local levels. FLS has over 300 local Land Management Plans and regularly reviews and consults on these with communities and other stakeholders. Each local plan reflects the framework set out in Scotland's [Forestry Strategy 2019 to 2029](#) and meets the requirements of the UK Woodland Assurance Standard, the independent certification standard for verifying sustainable woodland management in the UK.

FLS use their Strategy and local plans to keep the national forests and land as a whole under review, including identifying land and assets that are no longer delivering on strategic objectives. Before disposing of any assets, FLS notifies the communities and many have benefited from having access to this information to acquire land under FLS' Community Asset Transfer Scheme. FLS also have around 90 formal leases and agreements with communities, and many community activities are carried out under Scottish Outdoor Access Code. Relatively few communities take forward plans for large-scale forest land acquisition, but many benefit from having the opportunity to develop small-scale amenity use schemes such as forest trails, community hubs or small-scale rural housing developments.

We recognise that due to the public accountability required of it, and its diverse remit and activities, that FLS has access to significant resources to support these processes of planning and engagement. Not all landowners have access to resources on this scale and this would be taken into account in setting out what was

required in terms of the level of detail the plans were required to contain, as well as requirements in relation to community engagement.

Questions

Q8. 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

Please give some reasons for your answer:

Q9. How frequently do you think Management Plans should be published?

Q10. Should Management Plans include information on:

- Land Rights and Responsibility Statement compliance Yes / No / Don't know
- Community engagement Yes / No / Don't know
- Emission reduction plans Yes / No / Don't know
- Nature restoration Yes / No / Don't know
- Revenue from carbon offsetting/carbon credits Yes / No / Don't know
- Plans for developments/activities that will contribute to local and inclusive economic development or community wealth building Yes / No / Don't know

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

Q11. Do you think the responsibility for enforcing compulsory land management plans should sit with:

- the Scottish Government Yes / No / Don't know
- a public body (such as the Scottish Land Commission) Yes / No / Don't know

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

Q12. 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

Please give some reasons for your answer:

Q13. Do you have any other comments on the proposal to make Management Plans a legal duty for large-scale landowners?

Part 7: Regulating the market in large-scale land transfers: a new Public Interest Test, and a requirement to notify an intention to sell

i. Provision for a Public Interest Test

The proposals set out above in parts 5 and 6 will provide greater transparency and accountability in relation to the plans and activities of large-scale landowners. They will drive up standards of community engagement and sustainable land management to the levels already seen on some estates. We are also committed to making reforms that will contribute to the diversification of ownership of land in Scotland. The Bute House Agreement set out our aim to ensure that the public interest is considered on transfers of particularly large-scale landholdings, and our aim to introduce a pre-emption in favour of community buy-out where the public interest test applies, and where it is appropriate to do so.

We have been clear that new proposals must be compatible with the existing suite of statutory right to buy mechanisms available to communities, not least the seminal pre-emptive right to buy introduced by the Scottish Executive in 2003 (known as “part 2 registration”).

In the [discussion paper](#) published in February 2021, ‘Legislative proposals to address the impact of Scotland's concentration of landownership’, the Scottish Land Commission (SLC) recommended that the forthcoming Bill should include “a public interest test for significant land acquisition, at the point of transfer, to test whether there is a risk arising from the creation or continuation of a situation in which excessive power acts against the public interest.”

What we propose: (1) – a Public Interest Test for large-scale land transfers

We propose to take forward the recommendation of the Scottish Land Commission for a Public Interest Test (PIT). In doing so there will be a number of complex issues to resolve. In particular, as with previous land reform legislation, it is imperative that any proposals are fully compliant with the European Convention on Human Rights (ECHR). The ECHR requires a strong justification for interference in the rights it accords to property owners.

We have set out initial proposals below, which will be developed further following the response to this consultation.

What would be the purpose of the Public Interest Test?

The purpose of the test would be to assess whether, at the point of transfer of a large-scale landholding, a risk would arise from the creation or continuation of a situation in which excessive power acts against the public interest.

What types of land holding would be in scope for a public interest test?

We propose that the Test would be applicable to large-scale landholdings or where a large scale land holding would be created. As noted above, however, there are numerous ways in which landholdings could be classified as 'large-scale'. The criteria we propose to use to determine whether or not a transaction could be subject to a Test are set out in Part 4 above. A 'large-scale' landholding may be one that is about to be sold, but it could also be brought about as a result of acquisition of land e.g. by neighbouring owners. These land transactions could create new issues associated with scale of landownership and concentration of power, while others may have no such issues. We agree with the Scottish Land Commission that rurality, as well as scale, can be a risk factor in terms of adverse consequences of a concentration of ownership. We remain open to considering whether other criteria can be developed to define 'concentration' around communities. It is, however, essential that the criteria are clear, transparent and able to be applied consistently.

Process, and the types of transfer or transaction that would be within scope

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 landownership if the buyer already held land in the area. We consider that in many situations applying the test to the seller may be more beneficial in meeting our land reform aims. We therefore propose a dual approach.

We propose that the seller would need to demonstrate that they were able to proceed with selling the land. This could potentially be managed as part of the conveyancing process, with information about whether or not the property fell within the scope of the test.

In order to avoid creating new issues of concentration, a test would also need to be applied to the buyer, who may already have other land holdings.

Our aim is to ensure that all types of transactions involving large-scale landholdings are brought in scope of the public interest test, but this is challenging. A test that constituted part of the formal conveyancing process, or was a requirement for Land Registration in Scotland will not capture transfers that are not subject to formal conveyancing such as a the sale of shares in a company. We cannot, within the current devolved settlement, make legislative changes that would require modifications to companies law. We will therefore seek to engage with the UK Government to ensure that all transactions involving large-scale land transfers – including those involving company shares – fall within scope of the public interest test.

In developing the process for the public interest test, we will give due regard to any potential avenue that may lead to avoidance of the test. Furthermore, we will also seek to ensure that large-scale landholdings held by way of trusts are brought within the scope of the public interest test.

Outcomes

The Scottish Government considers that in order to meet our key policy objectives for the Bill, which include increasing diversity of landownership, 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. These are:

- There is insufficient public interest to warrant interference in the sale, and the land in question could be sold as the seller wishes; or
- There is sufficiently strong public interest in reducing scale/concentration that the sale can only proceed subject to specific conditions (which would reflect the reason that the sale was not considered to be in the public interest).

Conditions could include:

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

We intend that the Public Interest Test should take into account any steps taken in the past (over a defined period – proposed to be 5 years) by a seller to diversify ownership, and/or who has used their Management Plans to engage with community bodies over opportunities to lease or acquire land.

A test could have an outcome that placed specific conditions on the buyer, such as a requirement to include in their Management Plan provisions to restore degraded peatland or to make part of their holding available to local compliant community bodies.

The issue of whether an acquirer should be subject to a PIT, and decisions on whether they could proceed and if so with what conditions, could also take account of the outcome of any Land Rights and Responsibilities review that had previously been carried out in relation to land already held by the acquirer.

Questions

Q14. 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

Please give some reasons for your answer:

Q15. What do you think would be the advantages and/or disadvantages of applying a public interest test to transactions of large-scale landholdings?

Q16. Do you think the public interest test should be applied to:

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

Please give some reasons for your answer:

Q17. 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

Please give some reasons for your answer:

Q18. 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

Please give some reasons for your answer:

Q19. 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?

- Condition i. Agree / Disagree / Don't know
- Condition ii. Agree / Disagree / Don't know

Please give some reasons for your answer and suggest any additional conditions:

Q20. 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

Please give some reasons for your answer:

Q21. Do you think that a public interest test should take into account steps taken in the past by a seller to:

a) Diversify ownership Yes / No / Don't know

b) Use their Management Plan to engage with community bodies over opportunities to lease or acquire land Yes / No / Don't know

Please give some reasons for your answers:

c) What time period do you think this should cover?

Q22. Do you think the responsibility for administering the public interest test should sit with:

- the Scottish Government Yes / No / Don't know
- a public body (such as the Scottish Land Commission) Yes / No / Don't know

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

Q23. 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

Please give some reasons for your answer:

Q24. Do you have any other comments on the proposal that a public interest test should be applied to transactions of large-scale landholdings?

What we propose – (2) - prior notification of intention to sell

We recognise that there will be a wide divergence of views on the proposal above and we are keen to explore and obtain views on an additional mechanism which could bring about greater diversity of ownership (where scale and concentration is identified as having potentially adverse effects).

Existing Community Right to Buy legislation enables a community body (whose constitution must be approved to ensure it complies with specified requirements) to apply to register a pre-emptive right of purchase over land that they have a particular interest in. If Scottish Ministers approve the application, when the land is put up for sale the community body must be notified.

If the right to buy is activated and the community body decides to proceed, the Scottish Government's Community Right to Buy team will take the group through the right to buy process. As part of this, Ministers will appoint and pay for an independent valuer to determine the market value of the land, and an independent balloter to conduct a ballot of the defined community, to ensure that a majority of local people favour the proposed acquisition. The results of this form part of the right

to buy application, along with any evidence provided to support the proposals, such as a business plan or feasibility study, with details of any funding secured. Should Ministers give consent to proceed, the community body has eight months from the date they confirmed they wished to proceed (or longer if agreed between both parties) to conclude the transfer of the land.

Our proposals in this consultation build on those existing rights and suggest further ways in which communities can engage with the land on which they live.

Whether through the existing legislation, or negotiation, the best and most sustainable outcomes are achieved when community groups and landowners work together to engage on potential sales as early as possible. Early engagement greatly improves the Community Body's chances of ensuring that they have funding and that they can meet the landowner's deadlines. There are a number of examples of where this has happened in Scotland. To build on this approach, we consider that the proposals for land management plans set out in Part 5 could include the following additional requirements:

- information about areas of land for which landowners would consider negotiating either a transfer or ownership or leasing to a community group;
- information about future ownership intentions; and
- to give prior notice to surrounding community bodies about intended sales.

In order that this "prior notice" proposal delivers the policy objective of ensuring that communities have a pre-emptive right, complements the existing community right to buy, and respects the rights of the landowner to be able to freely dispose of their land holding, it is imperative that we strike a balance with the time period that we require the "prior notice" to be given.

Currently, where there is a part 2 pre-emptive right to buy in place, the Community Body has 8 months from the point that they confirm that they wish to proceed with the right to buy to exercise their right, secure funding and take ownership. The landowner will be aware of this, as they will have been consulted as part of the registration process and will be in receipt of a Decision Notice when the community body's right is registered. If the Community body determine that they will not proceed with the acquisition, the landowner is free to sell the land in question on the open market. The Scottish Government remains committed to part 2, and we are considering ways of promoting part 2 registrations as part of the commitment to double the Scottish Land Fund by the end of this Parliament.

Where there is not a part 2 registration in place, we propose that landowners should be under a duty to give notice to community bodies in the surrounding area which are compliant with Community Right to Buy requirements, and/or such other community bodies whose aims are social/community benefit (such as Registered Social Landlords), that they intend to sell when the public interest test criteria are met. We propose that there should be 30 days for the community body or bodies to inform the landowner whether they are interested in proceeding with the sale.

This would require the establishment of a register of bodies to whom the obligation for the owner to give notice would apply. At this stage, we consider that the

community body should be able to register their interest with Scottish Ministers under a new statutory mechanism, and that there should be a further six month period for the community body and the landowner to negotiate the terms of the purchase and for the community body to secure funding.

We appreciate that there will be circumstances when a “prior notice” would not be possible, for instance in the event of sudden death or insolvency situations, for which exemptions to the duty will be required. Nevertheless, even if not comprehensive, we consider that this proposal could be developed to expand the available options for communities beyond the existing right to buy framework.

Why we are proposing this

This proposal responds to concerns that a combination of rapidly rising land values, and a rise in off-market transactions, is in effect excluding communities from access to ownership of large-scale landholdings. We recognise that not all communities wish to acquire and manage large estates: some will decide that their needs are best met by smaller parcels of land, for example, for housing, or community projects. We would like to offer communities more time and opportunity to put in hand the planning and fundraising needed to do this. This is because we recognise that it can be difficult for local people to invest time and energy in planning the acquisition of land, when there is no certainty about whether, or when, it will be put on the market.

The Scottish Government also recognises that in some situations, there can be benefits associated with large scale landownership. In many instances, such landowners deliver public benefits including jobs, opportunities for communities, and their land holdings often help mitigate climate change. The Scottish Government also recognises that private investment in our natural capital is necessary to meet our climate change targets and that some of this investment will involve acquisitions of large-scale land holdings.

As we have set out in our [Interim Principles for Responsible Investment in Natural Capital](#) that we are committed to ensuring that such investment and decision making is conducted in a responsible manner, benefitting our local communities and wider society. Nevertheless, we consider that it would be beneficial to place community bodies in a better position to take advantage of opportunities to acquire more land, particularly where such groups can demonstrate a track record of successful ownership of land and land assets in the local area.

Questions

Q25. 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.

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

Agree / Disagree / Don't know

Please give some reasons for your answer:

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?

Agree / Disagree / Don't know

Please give some reasons for your answer:

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

Please give some reasons for your answer:

Q26. 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?

Part 8: New conditions on those in receipt of public funding for land based activity

Public funding

The Scottish Government and related public bodies administer funding to parties for specific purposes to further the Scottish Government's policy objectives such as tree planting and peatland restoration. Each grant or subsidy have requirements to ensure that public money is spent on the activity that support the Scottish Government objective.

Over recent years, there has been an increased interest in who is in receipt of public funds. The recent invasion of Ukraine by Russia has seen this issue come into the spotlight again. In addition, we know that we need private inward investment to support public funding to achieve our climate change objectives.

A further concern related to transparency is the extent to which profit from land investment (which may have had the benefit of public subsidy) is finding its way out of the country. We seek views in this consultation on whether all those seeking to acquire land in Scotland, and all recipients of Scottish Government land-based subsidy, should be registered and liable to pay tax in the UK or EU. We set out some considerations in relation to this in Part 11, below.

What we propose

In this consultation, we have set out proposals to strengthen the LRRS and for Compulsory Land Management Plans. One of the possible penalties for not adhering to these requirements is the withdrawal of public funding. In addition, we would like to explore whether there are any additional requirements for land based public funds that could be placed on future awards, such as a requirement that the land related to the claim is registered in the Land Register of Scotland.

We also propose that all recipients of Scottish Government land-based subsidies should be registered and liable to pay tax in the UK or EU.

Why we are proposing this

The requirement for large-scale landowners to demonstrate they comply with the LRRS and have an up to date Management Plan coincides with the policies introduced in Parts 5 and 6 of this consultation and will be used as enforcement powers by the relevant bodies.

We recognise that many land-holdings in receipt of land based subsidy will already be registered in the Land Register of Scotland. We also recognise that there will be a cost for those who are not already on the Register. Placing this requirement to register on those who are not in the Land Register will increase registration, supporting the delivery of greater transparency of ownership information and a complete Land Register.

Questions

Q27. 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?

a) Requirement i. Agree / Disagree / Don't know

b) Requirement ii. Agree / Disagree / Don't know

Please give some reasons for your answers:

Q28. Do you have any other comments on the proposals outlined above?

Part 9: Land Use Tenancy

The Scottish Government is committed to addressing the twin crises of climate change and biodiversity. To address these challenges, the legal framework surrounding agricultural holding and small landholding tenancies should be adapted to allow tenant farmers and others to undertake a combination of agricultural and non-agricultural activities. These activities could support climate change mitigation and help to restore and preserve nature.

The current system of agricultural and small landholding tenancies creates a number of barriers to those who want to undertake a combination of agricultural and non-agricultural activity within a tenancy. One barrier is the inability for some tenants to undertake certain forms of non-agricultural activity on a holding. This can prevent tenants from delivering a range of environmental benefits, and may result in them ending their tenancy early.

What we propose

We propose 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 legal 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.

We propose 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.

Why we are proposing this

A legal framework of this kind would provide a transparent system and would encourage better use of land. It would also aid retention of people in rural areas and local communities, contributing to our goal of a just transition. This structured framework for managing land use change would provide certainty to people wishing to rent land to undertake this type of land management. It could also create new opportunities for people wishing to engage in other forms of land management, allowing people to develop the range of skills required to deliver the land-use change Scotland needs to be more adaptive and resilient.

The Land Use Tenancy would provide landlords with a transparent framework for creating a hybrid of agricultural and non-agricultural land use within a tenancy arrangement. It would also offer landowners greater certainty and confidence when letting their land to new individuals.

Questions

Q29. 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

Please give some reasons for your answers:

Q30. Are there any land management activities you think should not be included within a Land Use Tenancy?

Q31. 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

Please give some reasons for your answers:

Q32. 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

Please give some reasons for your answers:

Q33. 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

Please give some reasons for your answers:

Q34. How do you think the rent for a Land Use Tenancy should be calculated?

Q35. 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

Please give some reasons for your answers:

Q36. 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

Please give some reasons for your answers and outline who you think should be responsible for writing and managing the guidance:

Q37. 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

Please give some reasons for your answers and outline how this process could be managed:

Q38. 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

Please give some reasons for your answers and outline additional ways in which disputes could be resolved:

Q39. Do you have any other comments on our proposal for a Land Use Tenancy?

Yes / No / Don't know

Please give some reasons for your answers:

Part 10: Small landholdings

There is a Programme for Government commitment to modernise small landholding legislation. This area of legislation is complex. It has not been altered since the early 20th Century and relates to a small number of individuals, mostly clustered in specific parts of Scotland.

We will be undertaking a separate public consultation with this group of individuals and stakeholders; this will form part of the consultation process for the Land Reform Bill, though it is not part of the main Bill consultation.

Question

Q40. Would you like to be kept informed about the Small Landholding Consultation for the Land Reform Bill?

Yes / No

If yes, please provide your email details here:

Part 11: Transparency: Who owns, controls and benefits from Scotland's Land

The importance of understanding who owns, controls and benefits from Scotland's Land

Scotland, and Scotland's land, represent attractive opportunities for investors within Scotland, from UK, the EU and beyond. The Scottish Government is committed to ensuring that inward investment in Scotland's land is conducted in a responsible manner, and we are committed to ensuring transparency of land ownership so that the public can have a real understanding of who owns, controls and benefits from Scotland's land. This understanding is vital to land reform objectives and the achievement of social justice, to ensure that our nation's land benefits all who choose to live and work in Scotland. In addition, we are also committed to Community Wealth Building, which seeks to ensure that economic benefits from all investment activity are shared at a local level.

Transparency improvements in recent years

In 2014, the Land Reform Review Group recommended that it should be incompetent for any legal entity not registered in a member state of the European Union to register title to land in the Land Register of Scotland, to improve traceability and accountability in the public interest. The Scottish Government consulted on this proposal, however, it was not included in the Land Reform (Scotland) Act 2016 because the proposal was found to not be capable of delivering the desired transparency.

As an alternative, the Scottish Government, in conjunction with Registers of Scotland, has taken forward the development of the Register of Persons Holding a Controlled Interest in Land. In addition, the UK Government (UKG) brought forward emergency legislation in response to the invasion of Ukraine to bring forward a Register of Overseas Entities.

Improving transparency to respond to contemporary challenges

Despite the legislative improvements to the transparency of land ownership in Scotland, and indeed the ongoing work of the Registers of Scotland to complete the Land Register of Scotland, the Scottish Government considers that the increased inward investment in our land and natural capital, coupled with the heightened public interest in the transparency of companies, legal entities and land ownership as a result of the invasion of Ukraine, merits a reconsideration of the issues associated with restricting the acquisition of land in Scotland.

Transparency of land ownership is critical to land reform objectives. It is not the transparency alone that is critical, so too is ensuring that wealth generated in Scotland benefits those that chose to live and work here. That is why we consider that we should explore again the issue of who should be able to acquire large-scale landholdings in Scotland. This matter was considered in some depth during deliberations on land reform measures in 2015. The context for this discussion has

however changed significantly following the UK's exit from the EU, and we would now need to consider a slightly different option.

Instead of restricting ownership to only legal entities registered in a Member State of the European Union, we would like to explore the potential introduction of 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. We consider that this requirement could help deal with instances of absenteeism, and help to ensure social justice and that income generated by the ownership of Scotland's land and buildings is not extrapolated by wealthy individuals to the detriment of local communities.

The current devolved settlement may limit our ability to take this proposal forward, and there are a number of complex legal issues to consider. We are seeking engagement with the UKG to press them to introduce a similar requirement on a pan-UK basis, however, we will consider doing all we can within the confines of the current devolved settlement following the responses to this consultation.

Questions

Q41. 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

- 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

Please give some reasons for your answers:

Part 12: Other land related reforms

In this consultation, we have set out a number of proposals for inclusion in the forthcoming Land Reform Bill that we committed to introducing by the end of 2023. Land reform is wide-ranging, and many people the length and breadth of Scotland will have their own ideas and experiences. We are keen to engage with the public over the summer months, to hear first-hand ideas, aspirations and proposals for land reform.

In addition, we would like to make use of the opportunity of this consultation to seek views on additional measures that could be considered for possible inclusion in the Bill, or that could be taken forward in other more appropriate bills. Furthermore, not all measures necessarily require legislation to take them forward.

Fiscal and taxation

Part 2 of this consultation sets out the role of the Scottish Land Commission in land reform, and notes that their remit includes consideration of land related policy matters. They have recently considered the potential role of taxation in respect of land reform. The Scottish Government would welcome views on the potential future role of taxation in supporting land reform, including with regard to the recommendations set out in the [SLC's advice to Scottish Ministers](#) of January 2022 and in the context of the [Scottish Government's Framework for Tax](#).

Views will need to be considered within the context of current devolved settlement, but where that may limit our ability to take forward any proposals, we would seek to engage with the UK Government.

Q42. Do you have any views on what the future role of taxation could be to support land reform?

Community benefits and natural capital

Responsible private investment in natural capital will be essential to meet the pace and scale of the challenge of delivering on our climate change targets and wider land use and environmental policy objectives. We recognise that this private investment needs to be responsible, which is why in March 2022 the Scottish Government published a set of Interim Principles for Responsible Investment in Natural Capital. We are committed to the development of a high-integrity, values-led natural capital market where communities are empowered and benefit from investment. We would like to seek views on how we can maximise community benefits from investment in natural capital.

Q43. How do you think the Scottish Government could use investment from natural capital to maximise:

- a) community benefit
- b) national benefit

Q44. Do you have any additional ideas or proposals for Land Reform in Scotland?

Part 13: Assessing impact

The final section of this consultation is dedicated to questions around the impact of policy, and we encourage anyone who has relevant information to contribute to our call for evidence.

Questions

Q45. 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?

Q46. 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?

Q47. 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)?

Q48. 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?

Q49. 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)?

Q50. Are you aware of any potential costs and burdens that you think may arise as a result of the proposals within this consultation?

Q51. Are you aware of any impacts, positive or negative, of the proposals in this consultation on data protection or privacy?

Part 14: Key terms

Agri-tourism - A tourism or leisure activity on a working farm, croft or estate which produces food.

Biodiversity - The variety of life on earth, essential for sustaining the ecosystem that provide us with food, fuel, health, wealth, and other vital services.

Carbon credits - A permit which allows a country or organisation to produce a certain amount of carbon emissions, and which can be traded if the full allowance is not used.

Carbon offsetting - The action or process of compensating for carbon dioxide emissions arising from industrial or human activity, by participating in schemes designed to make equivalent reductions of carbon dioxide in the atmosphere.

Common good land - Common good is property owned by a local authority which has been passed down, through local government reorganisation, from former burghs. Those burghs would have received it as a gift or purchased it. It includes land and buildings, and moveable items such as furniture and art.

Community body - A community organisation whose constitution or articles of association are compliant with the requirements of the Land Reform (Scotland) Act 2003.

Community Wealth Building - A people-centred approach to local economic development, which redirects wealth back into the local economy, and places control and benefits into the hands of local people.

Conveyancing - The legal process that transfers ownership of land/land assets/buildings from the seller to the buyer.

Cross-compliance - Cross Compliance is a mandatory set of requirements and standards that land managers have to meet in order to receive support scheme payments.

Independent adjudication - A process where a neutral and independent person/organisation looks at information about a disagreement, and decides what action the parties should take to resolve it.

Independent enforcement - A process where a neutral and independent person/organisation uses civil, criminal or regulatory powers to compel parties to a dispute to take steps to resolve it.

Just transition - The Climate Change Act 2019 embeds the principles of a just transition; this means as we reduce our emissions and respond to a changing climate, our journey is fair and creates a better future for everyone – regardless of where they live, what they do, and who they are.

Landholding - An area of land that is owned or held by a person or organisation.

Small Landholding - Small Landholdings and Statutory Small Tenancies (SST) are tenanted holdings, subject to the Small Landholders (Scotland) Acts 1886 to 1931 (“the Landholders Act”) that only exist in Scotland outwith the Crofting Counties.

Mediation - A means of exploring, resolving or reducing disagreement between persons involving an impartial person that Scottish Ministers consider appropriate.

Nature gain - An approach to development and/or land management that aims to leave the natural environment in a measurably better state than it was beforehand.

Natural capital - The world’s stock of natural resources. This includes air, water, minerals and all living things.

Net zero - The balance between the amount of greenhouse gas produced and the amount removed from the atmosphere. We reach net zero when the amount we add is no more than the amount taken away.

Off-market sales - A property that is sold without any public advertising.

Registered Social Landlord - A housing association or other organisation registered with the Scottish Housing Regulator.

Renewable Energy - Energy from a source that is not depleted when used, such as wind or solar power.

Part 15: Responses and next steps

Responding to this Consultation

We are inviting responses to this consultation by 30 October 2022.

Please respond to this consultation using the Scottish Government's consultation hub, Citizen Space (<http://consult.gov.scot>). Access and respond to this consultation online at <https://consult.gov.scot/agriculture-and-rural-economy/land-reform-net-zero-scotland/>. You can save and return to your responses while the consultation is still open. Please ensure that consultation responses are submitted before the closing date of 30 October 2022.

If you are unable to respond using our consultation hub, please complete the Respondent Information Form, and send it with your response:

By email to: LRconsultation@gov.scot

Or by post to:
Land Reform Consultation
Land Reform Policy and Legislation
Area 3G South
Victoria Quay
Edinburgh
EH6 6QQ

Handling your response

If you respond using the consultation hub, you will be directed to the About You page before submitting your response. Please indicate how you wish your response to be handled and, in particular, whether you are content for your response to be published. If you ask for your response not to be published, we will regard it as confidential, and we will treat it accordingly.

All respondents should be aware that the Scottish Government is subject to the provisions of the Freedom of Information (Scotland) Act 2002 and would therefore have to consider any request made to it under the Act for information relating to responses made to this consultation exercise.

If you are unable to respond via Citizen Space, please complete and return the Respondent Information Form included in this document.

To find out how we handle your personal data, please see our privacy policy: <https://www.gov.scot/privacy/>

Next steps in the process

Where respondents have given permission for their response to be made public, and after we have checked that they contain no potentially defamatory material,

responses will be made available to the public at <http://consult.gov.scot>. If you use the consultation hub to respond, you will receive a copy of your response via email.

Following the closing date, all responses will be analysed and considered along with any other available evidence to help us. Responses will be published where we have been given permission to do so. An analysis report will also be made available.

Comments and complaints

If you have any comments about how this consultation exercise has been conducted, please send them to the contact address above or at LRconsultation@gov.scot.

Scottish Government consultation process

Consultation is an essential part of the policymaking process. It gives us the opportunity to consider your opinion and expertise on a proposed area of work.

You can find all our consultations online: <http://consult.gov.scot>. Each consultation details the issues under consideration, as well as a way for you to give us your views, either online, by email or by post.

Responses will be analysed and used as part of the decision making process, along with a range of other available information and evidence. We will publish a report of this analysis for every consultation. Depending on the nature of the consultation exercise the responses received may:

- indicate the need for policy development or review;
- inform the development of a particular policy
- help decisions to be made between alternative policy proposals
- be used to finalise legislation before it is implemented

While details of particular circumstances described in a response to a consultation exercise may usefully inform the policy process, consultation exercises cannot address individual concerns and comments, which should be directed to the relevant public body.



Part 16: Respondent Information Form

Please Note this form **must** be completed and returned with your response.

To find out how we handle your personal data, please see our privacy policy:
<https://www.gov.scot/privacy/>

Are you responding as an individual or an organisation?

- Individual
- Organisation

Full name or organisation's name

Phone number

Address

Postcode

Email Address

The Scottish Government would like your permission to publish your consultation response. Please indicate your publishing preference:

- Publish response with name
- Publish response only (without name)
- Do not publish response

Information for organisations:

The option 'Publish response only (without name)' is available for individual respondents only. If this option is selected, the organisation name will still be published.

If you choose the option 'Do not publish response', your organisation name may still be listed as having responded to the consultation in, for example, the analysis report.

We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

Yes

No



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Riaghaltas na h-Alba
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