

# **Small Landholdings Modernisation**

## **Consultation Paper**

**October 2022**

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# Ministerial Foreword



Small landholdings are a part of our Scottish agricultural and national heritage, and we are determined to have them as part of our future. We are fully committed to modernising their truly unique legislative status to ensure small landholders have comparable rights with other types of land tenure, and the opportunity to contribute to our wider objectives.

In recent years we have seen a series of global shocks that have had, and continue to have, an impact on global food security. While we deal with the short-term challenges, we must address the climate and biodiversity crises whilst reaching Net Zero by 2045.

Despite these challenges, we remain committed to realising our [Vision for agriculture](#) and we believe our small landholders, although few in number, can contribute to delivering this ambition. We know that many of Scotland's small scale producers are our innovators, and we are determined to support them by modernising the small landholdings legislation so they can play their part in helping Scottish agriculture address these twin crises.

Scotland's farmers, crofters and land-managers are vital to our ambition to make our nation fairer and greener, and small landholders are part of this farming ambition. I urge everyone to take the opportunity to share your views and engage with this process, and please encourage everyone you know to take part in this consultation as well.

I know many of you contributed to the Scottish Government's [Small landholdings in Scotland: legislation review](#) 2016, and this consultation builds on your responses to that review. Your responses to this consultation will give us a tremendous insight into how best we can begin modernising small landholdings.

**Mairi Gougeon**  
**Cabinet Secretary for Rural Affairs and Islands**

# Introduction

Small landholdings are a form of tenanted land located across Scotland, outside of the Crofting Counties. Some lie in the designated crofting areas: Arran, Bute, Moray, and parts of the Highlands, with the largest number, between 15-18 on Arran. Concentrations of small landholdings remain in Ayrshire, Aberdeenshire, Moray, Dumfriesshire, the Scottish Borders and east central Scotland. Following World War I, the UK Government brought forward legislation in Scotland to support the settlement of people on the land particularly war veterans from WWI and any previous wars.

[The Scottish Agricultural Census results](#) from June 2021 show that there are approximately 59 small landholders who have identified themselves in Scotland and they cover 5,360 acres (2,168 hectares) with over two-thirds of Small Landholding Act tenancies being less than 50 acres (approx 20 hectares).

The last Small Landholding Act was in 1931 and since then there has been no primary legislation for this form of land tenure. The legislation governing tenant farming (agricultural holdings), crofting and land tenure has not brought forward provisions to keep small landholdings in step with other forms of land tenure. As a result they have fallen behind the modernisation of crofting and tenant farming, which has resulted in small landholders lacking comparable rights to the other forms of land tenure. As a result the legal framework for small landholdings is still dealt with under Landholding Acts which have not been updated for over 80 years. These Acts are set out below:

- Crofters Holdings (Scotland) Act 1886 (the “1886 Act”)
- Crofters Common Grazings Regulation Act 1891 (the “1891 Act”)
- Congested Districts (Scotland) Act 1897 (the “1897 Act”)
- Crofters Common Grazings Regulation Act 1908 (the “1908 Act”)
- Small Landholders (Scotland) Act 1911 (the “1911 Act”)
- Small Holdings Colonies Acts of 1916 (the “1916 Act”)
- Small Holdings Colonies (Amendment) Act of 1918 (the “1918 Act”)
- Land Settlement (Scotland) Act 1919 (the “1919 Act”)
- Small Landholders and Agricultural Holdings (Scotland) Act 1931 (the “1931 Act”)

The Scottish Government gave a legal commitment to reviewing small landholding legislation in the Land Reform (Scotland) Act 2016, and between October and November 2016, the Scottish Government consulted on the [Review of Legislation Governing Small Landholdings](#).

The [Programme for Government](#) 2021-2022 followed on our commitment to taking the next step and to begin to modernise small landholdings legislation. In August 2021, the Scottish Government and the Scottish Green Party Parliamentary Group signed the [Bute House Agreement](#). In this agreement they committed to exploring to provide small landholders with the same pre-emptive right to buy as crofters and 1991 Act tenant farmers, and the treatment of the land under their houses.

The proposals set out in this document have been informed by the 2016 [consultation responses](#) and the Scottish Government commitments outlined above. They aim to bring greater policy coherence between small landholders and other forms of land tenure.

# Proposals

We propose a package of legislative reform measures relating to the following parts of small landholdings legislation:

1. Right to buy;
2. Diversification;
3. Assignment and succession; and
4. Access to an umbrella body.

These proposals seek to explore how best to modernise and update small landholdings legislation to give small landholders equality of opportunity compared to tenant farmers and crofters.

Responses to this consultation will help to: allow small landholders to take the right business decisions for them; help them to play their part in urgently tackling the climate and biodiversity crises; and help Scotland to reach Net Zero by 2045. These proposals aim to enable small landholdings to play a socio-economic role in supporting local rural communities to remain vibrant by encouraging population retention and enabling the next generation of small landholders to remain within their community.

## **1. Right to Buy**

In response to the 2016 consultation, some small landholders felt it was unfair that they did not have an absolute or pre-emptive right to buy their holding in the same way that crofters and tenant farmers did.

Small landholders wanted to either have the right to buy their small landholding or the right to buy the land under their home, which they or their ancestors had built. They felt that introducing an absolute right to buy the land under their homes would reduce their fears of their risk of becoming homeless due to the lack of local permanent residential housing provision, particularly for areas with high levels of tourism. Population decline is a real threat to the sustainability of many of Scotland's rural communities.

They also felt it was unfair that their tenanted land could change ownership without them being offered the opportunity to buy their small landholding. Some suggested this was potentially a contributory factor to challenging relationships between small landholders and their landlords.

## **How this compares to other forms of land tenure**

Tenant farming: The Agricultural Holdings (Scotland) Act 2003 ('the 2003 Act') gives tenant farmers with a secure 1991 Act agriculture tenancies the opportunity to buy the agricultural land if the landlord offers the land for sale (subject to the tenancy arrangement). This is known as a pre-emptive right to buy.

To exercise the pre-emptive right to buy, tenant farmers must register their interest in the Register of Community Interests in Land maintained by Registers of Scotland.

On receipt of the application, Registers of Scotland notify the landlord who has an opportunity to comment on the application. Provided the details of the tenant and the holding are accurate and reflect the contractual agreement between the landlord and tenant, the Registers of Scotland will add the tenant's interest to the Register of Community Rights in Land.

The Land Reform (Scotland) Act 2016 will remove the requirement for a tenant farmer to register their pre-emptive right to buy interest and ends the Register of Tenants' Interests. After this happens, the land owner will then need to give the tenant written notice of any proposed sale in advance.

Crofting: A crofter has an absolute right – a right which can be enforced against an unwilling landlord – to purchase their croft house and garden ground. Crofters are also entitled to make a request to purchase their croft land though the landlord is not obliged to agree to this. If a landlord is unwilling to negotiate the terms of the sale for the land, a crofter can apply to the Scottish Land Court for an order authorising the purchase. The Scottish Land Court may make an order authorising for the crofter to acquire the croft land or it can refuse the application. The Scottish Land Court cannot make an order authorising the conveyance of land to the crofter where it is satisfied that the sale would cause the landlord a substantial degree of hardship and/or be detrimental to the interests of sound management of the landlord's estate. The purchase price is fifteen times the annual rent currently paid by the crofter (unless a crofter makes an application for the fixing of a fair rent). We do not consider that this calculation is appropriate for small landholdings given that rents for smallholdings vary enormously and this could lead to wide disparities in valuation.

### **Relevant recommendations**

The Scottish Government appointed land reform groups in 2014 and 2015 to look at the question of a right to buy for small landholders. The Agricultural Holding Review Group's [Review of Agricultural Holdings Legislation Final Report 2015](#) recommended that further consideration should be given to providing small landholders with a pre-emptive right to buy their holdings, should they come up for sale. [The Land of Scotland and the Common Good: Report 2014](#) recommended that small landholders should, like crofters, be given a statutory right to buy their small landholdings, at fifteen times its annual rent.

### **The Scottish Government propose:**

In keeping with the Scottish Government's [Ambitious proposals for land reform 2022](#), we propose to introduce into legislation an absolute right to buy the land under the small landholder's house and garden along with a pre-emptive right to buy the remainder of the small landholding. This proposal will aim to provide small landholdings with a right to buy comparable to other forms of land tenure.

This would give small landholders security in their ownership over the house they live in and their home and garden. We consider the most appropriate and fair method for both small landholders and landholdings is that this valuation should be based on the valuation given by a valuer who is appointed having been agreed by both the small landholder and their landlord. Where the small landholder and landlord fail to agree the appointment we propose that the umbrella body (see proposal 4) should independently appoint a valuer.

We also propose that small landholders should have the right to buy the remainder of their small landholding tenancy if the landowner of their land gives notice and takes action (with the view of selling the land or a part of the land) to transfer the land containing their small landholding. As is the case with secure 1991 Act tenancies we consider that this offer should be at a price agreed between the small landholder and their landlord.

This proposal could provide wider benefits such as supporting domestic population retention in rural areas particularly in areas where there is a lack of housing and pressure from tourism such as on Arran, support community cohesion and encourage economic growth of small landholdings.

To ensure fairness for the landlord we propose to introduce an appropriate clawback provision. This would mean that once the small landholder purchases the land under their home and garden or their small landholding, if they then decide to sell on either of these within a certain timescale, they would have to pay their landlord a specific amount. This approach would support population retention and reduce onward sales for holiday homes.

## Questions

- A. Do you agree that providing small landholders with the right to buy the land under their homes and their gardens could give small landholders greater security and allow them to invest into their small landholding and business with confidence?
- Strongly agree
  - Agree
  - Neither
  - Disagree
  - Strongly disagree

Please give reasons for your answer:

- B. Do you agree that giving small landholders the right to buy the land under their homes and garden could be beneficial in reducing rural depopulation for the communities with small landholdings in them?
- Strongly agree
  - Agree
  - Neither



- Disagree
- Strongly disagree

Please give reasons for your answer:

C. Do you agree that small landholders should have the opportunity to purchase their small landholding if their landlord gives notice or takes action to transfer the land containing the small landholding for sale or transfer to another company or trust?

- Strongly agree
- Agree
- Neither
- Disagree
- Strongly disagree

Please give reasons for your answer:

D. Do you agree that a clawback provision should be introduced to ensure fairness for the landlord if a small landholder who previously purchased the land under their home and garden or their small landholding and subsequently sells either of these within a specific timeframe?

- Strongly agree
- Agree
- Neither
- Disagree
- Strongly disagree

E. How do you think this clawback should be calculated and what length of time should the clawback apply to?

Please give reasons for your answer:

F. Do you agree that the most appropriate and fair valuation for the right to buy the land under the home and garden should be decided by a valuer appointed in agreement by both the small landholder and their landlord, or failing both of them agreeing a valuer, one would be independently appointed? The small landholder will be legally required to meet the cost of the valuation.

- Strongly agree
- Agree

- Neither
- Disagree
- Strongly disagree

Please give reasons for your answer:

G. How should the valuation of the right to buy the land under the home and the garden site be calculated to provide fairness for both the small landholder and their landlord?

Please give reasons for your answer:

## **2. Diversification**

Small landholdings can be utilised for other occupations that the Scottish Land Court find reasonable so long as the occupation is not inconsistent with the landholding's cultivation.

Responses to the 2016 consultation found there was confusion amongst small landholders and landlords about whether diversification is possible. Some small landholders who responded to the 2016 consultation said they had found it difficult to develop viable small landholding businesses and all small landholders called for greater opportunity to diversify. It was also suggested by some small landholders that landlords could be resistant to diversification.

### **How this compares to other forms of land tenure**

Tenant farming: Agricultural leases are subject to statutory terms, but a tenant farmer and their landlord can, in some circumstances, reach private contractual agreements as well. Tenant farmers with a secure 1991 Act agricultural tenancy are required to seek their landlords permission in advance before diversifying into non-agricultural activity which is not set out in the terms of their lease. If landlord objections to the diversification and the tenant does not agree to the objection, the landlord has to go to the Land Court. The [agriculture bill consultation](#) contains proposals to further modernise tenant farming, with the introduction of a power for

Scottish Ministers to determine what is an acceptable diversification – which will also help to enable national biodiversity, climate change mitigation and adaptation needs to be met by tenant farmers.

Crofting: Tenant crofters are able to diversify with their landlord’s permission, or if this cannot be obtained, they can submit an application to the Crofting Commission. Diversification beyond cultivation has to be for ‘purposeful use’, which is described as ‘any planned or managed use of croft land, which does not adversely affect the croft, the public interest, the interests of the landlord or owner, or the use of adjacent land’.

**The Scottish Government propose:**

To introduce legislation to enable small landholders to diversify their current activities, and to modernise and adapt their business enterprise, in line with the options available to other tenants of agricultural land. This aims to allow small landholders to play their part in tackling the urgent climate and biodiversity crises. This could be delivered by implementing a similar approach as has been used in the crofting legislation.

This could help enable small landholdings to develop their business, and contribute more to their local community.

**Questions**

- H. Do you agree that small landholders should be able to diversify their activities on their landholdings?
  - Strongly agree
  - Agree
  - Neither
  - Disagree
  - Strongly disagree

Please give reasons for your answer:

- I. Should small landholders require their landlord’s permission in advance of diversifying their activities?
  - Yes
  - No
  - Don’t know

If yes, should that permission have a set timescale that a landlord is required to meet?

Please give reasons for your answer:

J. Do you agree that if the landlord does not consent to the small landholder's diversification the small landholder should have to go to the land court?

- Strongly agree
- Agree
- Neither
- Disagree
- Strongly disagree

If you disagree what alternative do you propose?

Please give reasons for your answer:

### **3. Assignment and succession**

The legislation about small landholdings succession and assignment rights is old and in the case of testate succession (where there is a will or other testimony writing) the legislation is from 1886. In response to the 2016 consultation, some small landholders felt the categories of eligible assignees and successors should be widened. Other respondents believed that the provisions on succession were unclear.

#### **How this compares to other forms of land tenure**

Tenant farming: Tenant farming legislation has been updated significantly to enable more people to be assigned or succeed a secure 1991 Act agricultural tenancy, taking account of the wide range of modern family arrangements and the practical nature of farming.

A landlord can object to either the assignment or succession if the person who the tenant farmer wants to assign their tenancy to:

- is not of good character;
- does not have sufficient resources to enable them to farm the holding with reasonable efficiency; or
- the person has neither sufficient training in agriculture or sufficient experience in the farming of land to enable them to farm the holding with reasonable efficiency.

Crofting: In terms of succession, a croft tenancy can be transferred to a person through succession. Crofts can be assigned by the crofter to any natural person (i.e. not a company). The assignment does not need to be to a family member – crofts can be exchanged on the open market. All transfers of a croft require the consent of the Crofting Commission.

## The Scottish Government propose:

To amend the legislation for small landholdings and update the assignation and succession provisions, so a small landholder can assign to the same classes of people as tenant farmers with secure 1991 Act agricultural tenancies in the Land Reform (Scotland) Act 2016.

This proposal aims to reflect modern family arrangements and brings small landholding legislation in line with the legislation for secure 1991 Act agricultural tenancies. This will make it easier for small landholders to retire and the small landholding to continue by it being assigned to a family member or for the small landholding to be retained by an suitable person within the wider family or the next generation, encouraging population retention and small scale economic activity within the local community.

Given that small landholdings are smaller than the average tenant farm, we consider that the landlord should be able to object to the person identified to be assigned or succeed the small landholding for the following reasons:

- if the person is not of good character;
- does not have sufficient resources to enable them to farm the small landholding with reasonable efficiency; or
- the person has insufficient training in agriculture or insufficient experience, unless the person is undertaking a suitable training course.

## Questions

K. Do you agree that the legislation setting out who can be assigned or succeed a small landholding should be updated to have similar succession and assignation rights as tenant farmers with secure 1991 Act tenancies?

- Strongly agree
- Agree
- Neither
- Disagree
- Strongly disagree

Please give reasons for your answer:

L. Do you agree that a landlord should be able to object to the person the small landholder wishes to be assigned the small landholding or to succeed it? If so what should those objection grounds be?

- Strongly agree
- Agree
- Neither

- Disagree
- Strongly disagree

Please give reasons for your answer:

#### **4. Access to an umbrella body**

During the 2016 consultation, some small landholders felt that they could benefit from having an organisation with over-arching responsibility for small landholders and their small landholdings. They felt that this approach would ensure that the current small landholding legislation is properly followed by both small landholders and their landlords. Some also felt that they might benefit from the establishment of a single organisation with responsibility for regulation of small landholders and their small landholdings.

Many small landholders felt that they did not understand the current legislation, given how old it was (last amended in 1931) and were unclear on where they could go to get advice on the interpretation of the current legislation. Although we are already proposing to update the legislation; an umbrella body will be able to help increase understanding of the legislation.

Both landlords and small landholders also expressed concerns about the Scottish Land Court and felt that reaching resolution could be extremely stressful, costly, complex, and onerous for all those involved. They felt these concerns could be mitigated by an umbrella body, which could provide small landholders and their landlords with an independent source of information. It could also provide a means to encourage good relations between small landholders and their landlords, although a body should not replace the Scottish Land Court.

#### **Other forms of land tenure**

Tenant farming: The Scottish Land Commission includes a Tenant Farming Commissioner (TFC). The TFC has a legal duty to promote and encourage good relations between landlords and tenants and has the ability to publish certain codes of practice. The TFC also has the power to investigate alleged breaches of the codes.

Crofting: The Crofting Commission has a wide range of functions to regulate and reorganise crofting, including investigating breaches of duty and taking enforcement action. In addition, crofters are required to apply for Commission approval in a number of situations such as when seeking to be absent from their croft for a period of time. All new crofting tenants require to be approved by the Commission including for assignation and succession. The Commission also promote the interests of crofting.

### The Scottish Government propose:

As there are only a small number of small landholdings it would not be justifiable to create a new body solely for small landholders and their landlords. It would be better value for money and more appropriate, for small landholdings to fall under the remit of an existing public body (such as the Scottish Land Commission). This would require the Scottish Government to amend their remit but would allow small landholders and their landlords access to support, and encourage good relationships.

As part of this, the organisation would promote and encourage good relations between small landlords and their landlords, publishing guidance and codes of practice. The organisation could also be given the power to investigate alleged breaches of codes of practice. This proposal would help to reduce confusion and tension while making small landholdings legislation more accessible.

### Questions

M. Do you agree that small landholders and their landlords should have access to a public body (in a similar way that tenant farmers and their landlords have for agricultural tenancies)?

- Strongly agree
- Agree
- Neither
- Disagree
- Strongly disagree

Please give reasons for your answer:

N. If a small landholder and their landlord have a disagreement should the body be able to mediate?

- Strongly agree
- Agree
- Neither
- Disagree
- Strongly disagree

Please give reasons for your answer:

## **5. Additional considerations**

This section of the consultation enables you to give us your views on anything else you think needs to be changed in the small landholding legislation to support small landholders and their landlords.

- O. Is there anything else you think should be changed in the current small landholding legislation to modernise small landholdings, so they can play their part helping to tackle the climate and biodiversity crises and for Scotland to reach Net Zero by 2045?

If yes, please use this text box to provide reasoning for your answer:



# Assessing the Impact

It is important that we understand in more detail the potential impacts of the proposals aiming to modernise the current small landholding legislation as set out in this consultation paper.

During the consultation period from 22 October 2022 to 14 January 2023, we plan to contact stakeholders and stakeholder organisations to discuss with them the potential positive and negative effects of the proposals contained in this consultation paper.

Please use the following questions to tell us your views on these issues.

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

- Yes
- No
- Don't know

If yes, please give reasons:

Q. Are you aware of any examples of potential impacts, either positive or negative, that you consider that any of the proposals in this consultation paper may have on the environment?

- Yes
- No
- Don't know

If yes, please give reasons:

R. Are you aware of any examples of particular current or future impacts, positive or negative, on young people, of any aspect of the proposals in this consultation paper?

- Yes
- No
- Don't know

If yes, please give reasons:

S. Could any improvements be made from a young person's perspective?

- Yes
- No
- Don't know

If yes, please give reasons:

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

- Yes
- No
- Don't know

If yes, please give reasons:

U. Are you aware of any examples of how the proposals in this consultation paper 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)?

- Yes
- No
- Don't know

If yes, please give reasons:

V. Are you aware of any examples of how the proposals in this consultation paper might have particular positive or negative impacts on groups or areas experiencing socioeconomic disadvantage?

- Yes
- No
- Don't know

If yes, please give reasons:

W. Please note these could be households with low incomes or few resources; families struggling to make ends meet; people who experienced poverty while growing up; or areas with few resources or opportunities compared with others.

- Yes
- No
- Don't know

If yes, please give reasons:

X. Are you aware of any examples of how the proposals in this consultation paper might impact, positively or negatively, on island communities in a way that is different from the impact on mainland areas?

- Yes
- No
- Don't know

If yes, please give reasons:

# How to Respond

We are inviting responses to this consultation paper by 14 January 2023.

We would like to hear your views on these proposals aiming to modernise the current small landholdings legislation.

Please respond to this consultation paper using the Scottish Government's consultation hub, Citizen Space [Scottish Government - Citizen Space \(consult.gov.scot\)](https://consult.gov.scot). Access and respond to this consultation paper online at <https://consult.gov.scot/agriculture-and-rural-economy/small-landholdings-modernisation>. You can save and return to your responses while the consultation exercise is still open. Please ensure that all consultation responses are submitted before the closing date of 14 January 2023.

If you are unable to respond using Citizen Space, please send your response, including the completed Respondent Information Form to:

By email: [SmallLandholdingsConsultation@gov.scot](mailto:SmallLandholdingsConsultation@gov.scot)

By post:

Small Landholdings Consultation  
Agriculture Support Policy Development  
Area D Spur  
Saughton House  
Broomhouse Drive  
Edinburgh  
EH11 3XD

We welcome your thoughts on the potential impacts, both positive and potentially negative, of any of the ideas in this consultation paper and nine questions have been included at the end of the consultation paper for this purpose.

The consultation runs until 14 January 2023. A 12 week consultation period will allow you sufficient time to ensure that your views are taken into account, in order for us to bring forth the number of amendments required to modernise the current small landholding legislation.

## Handling your response

If you respond using Citizen Space, 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 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. To find out how we handle your personal data, please see our privacy policy: [https:// www.gov.scot/privacy/](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 Citizen Space 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 relevant evidence to help us make decisions on how we modernise the current small landholding legislation. 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.

### **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 exercise 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.



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