

LAND REFORM BILL – DELEGATED POWERS AND LAW REFORM COMMITTEE

Item 1

Cabinet Secretary Sponsorship Meeting with Scottish Land Commission 10 October 2024 | Q1.04 Scottish Parliament | Note

Attendees

Mairi Gougeon, Cabinet Secretary for Rural Affairs, Land Reform and Islands
Michael Russell, Chair, Scottish Land Commission (SLC)
Hamish Trench, CEO, Scottish Land Commission
Kate Higgins, Special Adviser
[REDACTED] – Private Office
[REDACTED] – Land Reform Bill Team

Update on SLC's non-Bill work

Tax

SLC are working with officials on tax work. Looking to refresh advice published in 2022, and thinking about how to take forward better taxation of land. Noted that better data is needed for taxation of land to be effective, and options open up if the Land Register is completed. [REDACTED]

Housing

SLC are preparing to publish a report on housing, noting a national housing agency would be the ideal approach but if that was not possible, than a regional approach would be helpful.

Vacant and Derelict Land

Recently published an update on progress made since the publication of recommendations 4 years ago. Good progress, but noted that the current economic and financial circumstances make addressing VDL more challenging.

Website

SLC raised that the website is not as accessible as it could be and it is challenging to find information. MR would like to address this issue, but this will need to wait until next year given budget considerations.

SLC recommendations on the Land Reform Bill

MR noted that the recommendations are the SLC's but that they recognised that it was the Cabinet Secretary's decision as to which to take forward. Noted that the recommendations broadly divide into two groups: those with a minimal impact but that would be noticed and appreciated; and those that would be more challenging to take forward but that would be beneficial.

[REDACTED]

Item 2

Land Reform Bill – Update on Part 1 Measures Officials and Cabinet Secretary

SPEAKING NOTE

Minute | 2 September 2024

Attendees

Mairi Gougeon, Cabinet Secretary for Rural Affairs, Land Reform and Islands
[REDACTED], Private Secretary
[REDACTED], Depute Private Secretary
Kate Higgins, Special Advisor, (SpAd)
[REDACTED], Head of Land Reform
[REDACTED] – Land Reform Bill Team
[REDACTED] – SGLD

[REDACTED]

Item 3

From [REDACTED] @gov.scot>
To Kate Higgins <Kate.Higgins@gov.scot>; Colin McAllister
<Colin.McAllister@gov.scot>
Cc [REDACTED] @gov.scot>; [REDACTED] @gov.scot>; [REDACTED]
@gov.scot>; [REDACTED] @gov.scot>; [REDACTED] @gov.scot>; [REDACTED]
@gov.scot>; [REDACTED] @gov.scot>; Fiona Harrison <Fiona.Harrison@gov.scot>;
Deputy Director for Land Reform, Rural and Islands Policy
<DeputyDirectorLandReformRuralAndIslandsPolicy@gov.scot>; [REDACTED]
@gov.scot>; [REDACTED] @gov.scot>; [REDACTED] @gov.scot>; [REDACTED]
@gov.scot>; [REDACTED] @gov.scot>; [REDACTED] @gov.scot>
Subject: RE: FOR FM CLEARANCE // Comms - FM at AgriScot - Weds 13 Nov
Hi Colin, Kate,

[REDACTED]

[REDACTED]

[REDACTED] (he/him) | Head of Land Reform | Directorate for Agriculture and Rural
Economy | Scottish Government | [REDACTED]

Item 4

From [REDACTED] @gov.scot>
To Kate Higgins <Kate.Higgins@gov.scot>; [REDACTED] @gov.scot>; Cabinet
Secretary for Rural Affairs, Land Reform & Islands 2024
<CabSecforRALRI@gov.scot>
Cc Fiona Harrison <Fiona.Harrison@gov.scot>; [REDACTED] @gov.scot>; George
Burgess <George.Burgess@gov.scot>; [REDACTED] @gov.scot> [REDACTED]
@gov.scot>; [REDACTED] @gov.scot>; [REDACTED] @gov.scot>; [REDACTED]
@gov.scot>; [REDACTED] @gov.scot>; Colin McAllister
<Colin.McAllister@gov.scot>
Subject: RE: Recommendations for appointment to the Scottish Land Commission -
CONFIDENTIAL

SPEAKING NOTE

Hi Kate,

[REDACTED]

[REDACTED]

[REDACTED] (he/him) | Head of Land Reform | Directorate for Agriculture and Rural Economy | Scottish Government | [REDACTED]

From: Kate Higgins <Kate.Higgins@gov.scot>

Sent: Friday, October 18, 2024 9:46 AM

To: [REDACTED] @gov.scot>; Cabinet Secretary for Rural Affairs, Land Reform & Islands 2024 <CabSecforRALRI@gov.scot>

Cc: Fiona Harrison <Fiona.Harrison@gov.scot>; [REDACTED] @gov.scot>; George Burgess <George.Burgess@gov.scot>; [REDACTED] @gov.scot>; [REDACTED] @gov.scot>; [REDACTED] @gov.scot>; [REDACTED] @gov.scot>; [REDACTED] @gov.scot>; Colin McAllister <Colin.McAllister@gov.scot>

Subject: RE: Recommendations for appointment to the Scottish Land Commission - CONFIDENTIAL

[REDACTED]

[REDACTED]

Kate Higgins
Special Advisor to the First Minister
[REDACTED]

Scottish Government
St Andrew's House, 2 Regent Road, Edinburgh, EH1 3DG
Scottish Ministers, Special advisers and the Permanent Secretary to the Scottish Government are covered by the terms of the Lobbying (Scotland) Act 2016. See www.lobbying.scot.

From: [REDACTED] @gov.scot>

Sent: Thursday, October 17, 2024 12:09 PM

To: Cabinet Secretary for Rural Affairs, Land Reform & Islands 2024 <CabSecforRALRI@gov.scot>

Cc: Fiona Harrison <Fiona.Harrison@gov.scot>; [REDACTED] @gov.scot>; George Burgess <George.Burgess@gov.scot>; [REDACTED] @gov.scot>; [REDACTED] @gov.scot>; [REDACTED] @gov.scot>; [REDACTED] @gov.scot>; [REDACTED] @gov.scot>

SPEAKING NOTE

@gov.scot>; [REDACTED] @gov.scot>; [REDACTED]@gov.scot>; Colin McAllister <Colin.McAllister@gov.scot>; Kate Higgins <Kate.Higgins@gov.scot>
Subject: RE: Recommendations for appointment to the Scottish Land Commission - CONFIDENTIAL

Dear [REDACTED]

Thank you for this update and for issuing the letter to the NZET Committee. We note Ms Gougeon's point about gender balance and will work with the Sponsor Team and Board to see what steps can be taken to enthuse more women to apply appointments to the SLC. We expect the next vacancies to the board will be advertised in 2028/29.

[REDACTED]

[REDACTED]

From: [REDACTED] @gov.scot> On Behalf Of Cabinet Secretary for Rural Affairs, Land Reform & Islands 2024

Sent: Thursday, October 17, 2024 9:39 AM

To: [REDACTED] @gov.scot>

Cc: Cabinet Secretary for Rural Affairs, Land Reform & Islands 2024

<CabSecforRALRI@gov.scot>; Fiona Harrison <Fiona.Harrison@gov.scot>;

[REDACTED] @gov.scot>; George Burgess <George.Burgess@gov.scot>;

[REDACTED] @gov.scot>; [REDACTED] @gov.scot[REDACTED]

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@gov.scot>; [REDACTED] @gov.scot>; Colin McAllister

<Colin.McAllister@gov.scot>; Kate Higgins <Kate.Higgins@gov.scot>

Subject: RE: Recommendations for appointment to the Scottish Land Commission - CONFIDENTIAL

Hi [REDACTED]

Ms Gougeon is content to appoint the three candidates proposed. She has commented that she does know one of the appointees, [REDACTED], who she met for the first and only time on a visit as part of a Rural and Islands Parliament last year.

Cab Sec is content with the letter.

However, Cab Sec has commented that there is still a lack of gender balance on the commission and she would appreciate proposals on how this could be addressed in further appointment rounds in future.

[REDACTED]

I will issue the letter to the NZET Committee today and confirm once it has been issued.

SPEAKING NOTE

Many thanks,

[REDACTED] | Deputy Private Secretary
Cabinet Secretary for Rural Affairs, Land Reform and Islands – Mairi Gougeon MSP
Mobile: [REDACTED]

Room 2N.08 | St. Andrew's House | Regent Road | Edinburgh | EH1 3DG

Ms Gougeon's box will close at 14:00 on Monday - Thursday and 12:00 on Fridays.
You can find Ms Gougeon's updated preferences [HERE](#).

All e-mails and attachments sent by a Ministerial Private Office to any other official on behalf of a Minister relating to a decision, request or comment made by a Minister, or a note of a Ministerial meeting, must be filed appropriately by the recipient. Private Offices do not keep official records of such e-mails or attachments.

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From: [REDACTED] @gov.scot>
Sent: Monday, October 7, 2024 4:49 PM
To: Cabinet Secretary for Rural Affairs, Land Reform & Islands 2024
<CabSecforRALRI@gov.scot>
Cc: Fiona Harrison <Fiona.Harrison@gov.scot>; [REDACTED] @gov.scot>; George Burgess <George.Burgess@gov.scot>; [REDACTED] @gov.scot>; [REDACTED] @gov.scot>; [REDACTED] @gov.scot>; [REDACTED] @gov.scot>; [REDACTED] @gov.scot>; [REDACTED] @gov.scot>; Colin McAllister <Colin.McAllister@gov.scot>; Kate Higgins <Kate.Higgins@gov.scot>
Subject: Recommendations for appointment to the Scottish Land Commission - CONFIDENTIAL

Cabinet Secretary for Rural Affairs, Land Reform and Islands

Please find attached a submission with recommendations for the appointment of two Land Commissioners and a Tenant Farming Commissioner to the Scottish Land Commission (SLC). Full candidate summaries will be shared with you and a shorter copy list.

Appointments to the SLC require parliamentary approval. We have also attached a letter for you to send the Net Zero, Energy and Transport (NZET) Committee that seeks their approval for the recommended candidates.

Candidates named in the submission are not aware of the outcome of their applications and will not be informed until after NZET have considered the letter. The names of recommended candidates remain restricted and confidential information until then and have only been shared within SG on a strictly need-to-know basis.

SPEAKING NOTE

Grateful for your comments and/or approval are required by Monday 14 October to ensure NZET can consider the appointments in line with the proposed timeline for filling these roles.

Sincerely

[REDACTED]

[REDACTED]

Head of Public Appointments
Scottish Government
Telephone: [REDACTED]

Item 5

From: [REDACTED] @gov.scot>

To: Cabinet Secretary for Rural Affairs, Land Reform & Islands 2024

<CabSecforRALRI@gov.scot>

Cc: [REDACTED] @gov.scot>; [REDACTED] @gov.scot>; [REDACTED] @gov.scot>; [REDACTED] @gov.scot>; [REDACTED] @gov.scot>; [REDACTED] @gov.scot>; [REDACTED] @gov.scot>; Deputy Director for Land Reform, Rural and Islands Policy <DeputyDirectorLandReformRuralAndIslandsPolicy@gov.scot>; Colin McAllister <Colin.McAllister@gov.scot>; Kate Higgins <Kate.Higgins@gov.scot>; [REDACTED] @gov.scot>; [REDACTED] @gov.scot>; [REDACTED] @gov.scot>; PLU Bill Programme <PLUBillProgramme@gov.scot>; Director of Agriculture and Rural Economy <DirectorARE@gov.scot>; [REDACTED] @gov.scot>; [REDACTED] @gov.scot>; [REDACTED] @gov.scot>; [REDACTED] @gov.scot>; [REDACTED] @gov.scot>; [REDACTED] @gov.scot>; [REDACTED] @gov.scot>; [REDACTED] @gov.scot>

Subject: RE: Land Reform Bill - briefing for Cabinet Secretary's session with the DPLR Committee on Tuesday 17 September

[REDACTED]

As [REDACTED] mentioned earlier in today's officials' DPLRC pre-meeting with Cab Sec, I have attached the revised briefing. We have made changes to page 20 and 21 (highlighted in yellow).

<https://erdm.scotland.gov.uk/documents/A49534697/details>

Thanks

[REDACTED]

Attachment:

What	Evidence session at the Delegated Powers and Law Reform Committee in respect of the Land Reform (Scotland) Bill
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SPEAKING NOTE

When	17 September 2024, 10 am - 11 am	
Key messages	<ul style="list-style-type: none"> • We have prepared the Bill to ensure its delegated powers' provisions receive appropriate parliamentary scrutiny. • We nevertheless welcome further views from the committee to ensure the Bill best strikes the correct balance between implementing the policy provisions with suitable engagement and appropriate parliamentary scrutiny. 	
Official support	<ul style="list-style-type: none"> • [REDACTED], Head of Agricultural Holdings and Women in Agriculture Team • [REDACTED], Land Reform Bill Team Leader • [REDACTED], Scottish Government Legal Directorate 	
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SPEAKING NOTE

ANNEX A – BACKGROUND TO SESSION

The role of the Delegated Powers and Law Reform Committee (DPLRC)

The DPLRC scrutinise the Delegated Powers Memorandum (DPM) for every Bill. The delegated powers in Bills can be used to bring forward future secondary legislation, usually in the form of Scottish Statutory Instruments or SSIs.

When scrutinising each delegated power in the Bill, the DPLRC asks three questions:

1. Is a power to make secondary legislation appropriate, or should a measure be on ‘the face of’ the Bill?
2. If the power is appropriate, is it drafted so that it is proportionate to the proposed purpose (for example, it is not so wide that it could be used by a future Government for a different purpose)?
3. Does the proposed parliamentary procedure - usually either the negative or affirmative procedure – provide the right degree of scrutiny?

The DPLRC’s scrutiny of the Land Reform (Scotland) Bill

The DPLRC first considered the delegated powers in the Bill in June. Following that meeting, the Convener, Stuart McMillan MSP, wrote to you with questions on 12 powers in the Bill. You responded to these questions on 31 July.

The Convener also invited you to give evidence at a meeting in September to “provide the Committee with the opportunity to discuss your response, and to ask any further questions.” The DPLRC doesn’t always seek an evidence session with the lead minister on a bill. It’s usually only when they have a number of significant concerns about individual powers.

DPLRC clerks have suggested the request to take evidence session is “**reflective of the number of powers and the breadth of some of the powers which could be used to quite fundamentally alter the Bill.**” Clerks have said that the Committee will likely:

- begin with general questions about the overall approach to delegated powers / consultation requirements etc (consultation requirements was a theme of the DPLRC’s letter to you) and then go more into any questions on specific powers;
- it may also touch on questions around what is called ‘framework legislation’ (bills thought to leave “too much” to delegated powers, as characterised by the DPLRC in discussions with the Minister for Parliamentary Business). The Bill is not we think a framework bill, but see **Annex C** for lines in that respect.

Following your response to the DPLRC, Scottish Land & Estates (SLE) wrote to the Committee (see **Annex H**). It the DPLRC’s line of questions, particular on what it perceived to be a lack of consultation requirements. These are highlighted under each relevant power in **Annex D**.

SLE also highlighted broader policy concerns with the Bill, which are mainly for the lead Committee to consider.

SPEAKING NOTE

After the DPLRC take evidence it will submit a report to the NZET Committee, likely in October. This will be published, and you will be able to respond directly to any of its recommendations.

SPEAKING NOTE

ANNEX B – OPENING SPEAKING NOTES (207 WORDS)

Good morning Convener. Thank you for this opportunity to speak to the Committee on the delegated powers in the Land Reform Bill. I am committed to working with Members to deliver good law.

I know Members will have a range of questions on the powers but if I might just make a couple of opening comments to give some background to my approach with this Bill.

As set out in the Delegated Powers Memorandum, the overarching policy objectives of this Bill are to help realise our visions for land reform and sustainable and regenerative agricultural.

The Bill therefore covers the ongoing management and transfer of large landholdings. It will also help secure the viability of tenant farming, and enable tenant farmers and small landholders to participate in delivering our Vision for Agriculture.

Specifically, the Bill covers four principal policy areas:

1. Land reform;
2. A new Land Management Tenancy;
3. Agricultural holdings legislation; and
4. Small landholding legislation.

As I wrote in my response to your initial questions, I want to ensure that the Bill provides the correct balance between primary and secondary legislation, so that the key measures are on the face of the Bill and there is proper scrutiny for the measures made under the Bill.

SPEAKING NOTE

I welcome views from the Committee and from stakeholders to ensure that the Bill strikes that balance.

ANNEX C – TOP LINES & OVERARCHING Q&A

Top lines

LAND REFORM PROVISIONS

This bill represents a leap forward in Scotland’s land reform journey on how land is owned and managed in our rural and island communities for the better.

- Large landholdings over 1000 hectares make up more than 50% of Scotland’s land.
- The Bill will temporarily prohibit certain sales of landholdings over 1000 hectares, until Ministers can consider the impact on the local community.
- Ministers could require such landholdings to be lotted into smaller parts for sale, if that may help local communities.
- The Bill will also ensure communities are notified of certain sales from large landholdings.
- It will also place legal responsibilities on the owners of the very largest estates – over 3000 hectares – to publicise through Land Management Plans how they use their land and how that use contributes to key public policy priorities, like addressing climate change and protecting and restoring nature.
- The owners of very large landholdings will now also have to engage with local communities about how they use the land.

LAND MANAGEMENT TENANCY PROVISIONS

- The land management tenancy will facilitate a new approach to land management, and will support a range of land management activities that help to deliver net zero, biodiversity and sustainable and regenerative agricultural ambitions.

AGRICULTURAL HOLDING AND SMALL LANDHOLDING PROVISIONS

- The bill includes measures to reform tenant farming and small landholding legislation, to make it fit for the future

Q&A

Q: Where’s your evidence base for the reforms?

- Land is key to ensuring that rural and island communities can thrive, to giving people places to live and work, to providing essential infrastructure that people need and to help us keep people on the land.
- Our proposals for reform are based on the recommendations from the Scottish Land Commission.
- The SLC concluded that highly concentrated landownership can have detrimental effects on rural development outcomes, and that “these effects arise because landowners have the power to decide who can access land, when, for what purpose and at what price.”
- We consulted widely on the Bill proposals and have published impact assessments that show additional analysis regarding the Bill.

Q: Why are Scottish Government changing farm tenancies, which might harm the tenanted sector?

- This Bill will balance the rights of tenant farmers and landowners.

- I am committed to empowering tenant farmers by giving give them more opportunity to participate in sustainable and regenerative agriculture and non-agricultural activities.
- I want tenant farmers to be able to plan with business certainty, and be fairly compensated where a landlord decides to resume land.
- I want to develop solutions for more flexible uses of land, including farming as part of a wider mix of land uses under a single agreement.
- I know that SLE have concerns about some of these provisions and my officials are considering these.

Co-development approach

Q. Can you expand on co-development approach you outlined in your opening statement?

- In developing the Bill, we have engaged extensively with stakeholders along with the public consultations.
- This Government is committed to continue to work collaboratively towards progressing our vision for land reform and modernising tenant farming and small landholding legislation.
- For example, my officials have sought to develop the tenant farming and small landholding legislation in as much detail as possible with the Tenant Farming Advisory Forum (TFAF) and small landholder stakeholders.
- This collaborative approach will continue throughout the development of the secondary legislation.

The need for flexible legislation

Q. Can you set out why flexibility is required within the bill through the use of secondary legislation?

- Farming in general needs to adapt to a fast changing world, and in particular it must help address the climate and nature emergencies
- The tenant farming sector is under particular pressure, and we must help tenants both survive and thrive
- Some legislation needs to be updated, and small landholdings legislation is particularly antiquated
- We must ensure that the measures in the Bill can where appropriate flex in response to new and changing pressures
- The Bill therefore takes a proportionate approach to secondary legislation allowing for flexibility to ensure that the legislation continues to be fit for purpose.

Stage 2 Amendments

Q. You recently wrote to the NZET Committee around bringing forward a number of Stage 2 amendments. Can you comment on that in terms of the delegated powers?

- I wanted to give early notice of my intention to bring forward a number of Stage 2 government amendments to Part 2 of the Bill relating to small landholdings.
- They are intended to ensure that the law on small landholdings is both clear and can be accessed in one place. That will I think be welcomed by the legal experts who gave evidence to the NZET Committee on the 18 June 2024.
- My officials are still working on the amendments, so it is too early to say whether we might seek any further enabling powers.

Consultation requirements (expected to come up a few times in evidence so provided in a text box for ease of reference)

Q. Scottish Land and Estates have said that the Bill should impose duties on Ministers to consult before making secondary legislation under the Bill. Do you agree?

General duty to consult

- I said in my reply to the letter from the Committee that the Scottish Government is under a legal obligation to undertake consultation where appropriate with persons affected by any decision.
- It might assist the Committee if I flesh that out a bit.
- The Scottish Government has published 'Right First Time', our guide to decision making and the law. Step 2 of that guidance covers the process of making a decision.
- It sets out how a decision might be unlawful if a failure to consult means that Ministers are not in possession of the information they need to make a rational decision.
- It also sets out how once a decision to consult has been made, the consultation must be fair. A decision might be unlawful because of a flawed consultation which did not enable persons affected by the proposal to make an intelligent response.
- As well as being generally desirable, consultation may therefore be required even if there is no express statutory duty to consult.

Specific engagement...

- I am therefore strongly committed to working with stakeholders, including through formal consultation where appropriate.
- Engagement with stakeholders take many forms, and in some cases a formal – and expensive - consultation process may not be needed where reforms are agreed through joint working with our partners, or where we are only making minor changes.
- It follows that we should not take a 'one size fits all' approach to this issue.
- I have therefore carefully considered, on a case by case basis, whether there should be an additional statutory requirement to consult.

If pressed

- For example, section 10 provides for a power to modify the requirements for a tenant to register their interest in buying their holding, and includes a duty on Ministers to consult the Keeper and those likely to have an interest in registration.
- Section 23 provides for Ministers to be able to make further provisions around rent review for 1991 Act tenancies places, and includes requirement for Scottish Ministers to consult such persons as they consider appropriate.

Framework Bills (there is no set definition of what constitutes a ‘framework’ Bill but is generally considered to be a Bill which includes powers to set out significant aspects of proposals in secondary legislation)

Q: Do you consider the Bill is a framework Bill?

- No. Like almost every Bill, it contains some form of delegated powers. However these have been included only when appropriate.

Q. What’s you’re general view of framework legislation

- I understand the committee intends to launch an inquiry into ‘framework’ Bills and is liaising with the Minister for Parliamentary Business on this.
- The Government looks forward to considering any proposals which the committee makes in this area.
- The Minister for Parliamentary Business has been clear that the Government needs to retain an approach to legislation which is flexible and proportionate, and supports effective governance in Scotland.

If pressed:

- However they are defined, the Government does not set out to routinely bring forward “framework” Bills.
- In some situations, a framework approach (for a specific power, or multiple powers, in a Bill) may be unavoidable or may be viewed by the Government as the best approach to deliver its policy ambitions.
- The recent Agriculture and Rural Communities (Scotland) Act 2024 is an example, where Parliament agreed the ‘framework’ approach.
- The Government is committed to proactively engaging with the Delegated Powers Committee to explain its approach when Bills contain substantial numbers of delegated powers.

ANNEX D - SECTIONS FOCUSED ON BY THE COMMITTEE IN REQUEST FOR WRITTEN RESPONSE

The Clerk of the DPLRC expects the specific areas of questioning on the DPM to focus on the same powers as the written questions received on 21 June 2024. These are:

Part 1		
Policy area	Specific power	Page
Community engagement for LMPs	1. Section 1(4) inserting section 44A into the Land Reform (Scotland) Act 2016 - Power to impose obligations on the owner of land	10
	2. Section 1(4) inserting section 44M into the Land Reform (Scotland) Act 2016 - Power to modify community-engagement obligations for owners of large land holdings	11
Pre-notification	3. Section 2(4) inserting section 46L into the Land Reform (Scotland) Act 2003 - Power to modify the extended opportunity to register interest in relation to large land holdings	13
Transfer Test	4. Section 4(2) inserting section 67S(6) into Land Reform (Scotland) Act 2003 – Power to make further provision about buying land under section 67P, including about how land is to be valued	16
	5. Section 4(2) inserting section 67V(4) into Land Reform (Scotland) Act 2003 to make further provision about compensation.	17
	6. Section 4(2) inserting section 67Y into the Land Reform (Scotland) Act 2003 to modify various provisions	17
Part 2		
Policy area	Specific power	
Small Landholdings	7. Schedule: paragraph 40(4) Assessment of compensation	20
	8. Schedule: paragraph 49(5): Transfers not requiring notice	21
	9. Schedule: paragraph 50(7): Right to Buy	23
	10. Schedule: paragraph 59: Registration of small landholder's interest: power to modify provisions; and Section 10: Registration of interest and right to buy	24
Resumption	11. Section 11: Resumption in relation to 1991 Act tenancies, paragraph 4(5), schedule 2A to the 1991 Act;	26
Compensation	12. Section 14: Compensation for Improvements	28

Part 1 (Land Reform) powers

Community engagement for LMPs

1. Section 1(4) inserting section 44A into the Land Reform (Scotland) Act 2016 - Power to impose obligations on the owner of land

Parliamentary procedure: Affirmative

Background to the reason for taking the power

Inserted section 44A confers a power on the Scottish Ministers to enable them by regulations to impose obligations on the owner of land described in inserted section 44D for the purpose of promoting community engagement in relation to the land.

While sections 44B and 44C provide the requirements that must be included in the regulations to be made under section 44A they are not exhaustive and could in future require to be supplemented. It is therefore considered appropriate that the regulations to impose such obligations are set out in subordinate legislation.

As required in section 44A(5), this approach will also require the Scottish Ministers to consult with the Land and Communities Commissioner (created by section 6 of the Bill) prior to making regulations under this section. This approach will also allow Scottish Ministers to conduct further consultation and engagement with stakeholders, as required, on the appropriate form and content of these regulations.

Q&A

Q. Have you considered including a requirement for a statutory consultation with stakeholders prior to making regulations under this power similar to the requirement to consult the Land and Communities Commissioner?

- I have considered the extent to which it is appropriate to require a statutory consultation. It is for that reason that section 44A(5) provides for Ministers to be required to consult the Land and Communities Commissioner, who will have a role in supporting delivery of the regulations.
- I would also expect to consult with a wide range of stakeholders before making regulations under this power, as set out in the [Financial Memorandum](#) where the associated costs are identified. The nature of any consultation and who is to be consulted will depend on the type of changes that are proposed.
- I do not consider an additional statutory requirement to consult any additional persons to be necessary or appropriate.

Pre-notification

2. Section 1(4) inserting section 44M into the Land Reform (Scotland) Act 2016 - Power to modify the land in relation to which obligations may be imposed as well as alter the list of who may submit a report of an alleged breach

Parliamentary procedure: Affirmative

Background to the reason for taking power

Section 44D sets out the land in relation to which obligations may be imposed by the Bill. The power in section 44M provides flexibility should it be prove to be necessary or appropriate to alter the criteria in the future.

Section 44E(2) lists those persons who may submit a report of an alleged breach of an obligation imposed by regulations under section 44A to the Land and Communities Commissioner. The power in section 44M provides the flexibility to alter this list in future should the need arise.

Given the potential need to modify both section 44D and section 44E(2) in future, it is considered appropriate to make this provision in subordinate legislation.

Q&A

Q. Why do you consider the power to modify the threshold for land management plans?

- A key decision within the Bill is the definition of the threshold for the amount of land to which the provisions should apply.
- The threshold has been set at a level which I consider will deliver the policy objectives around transparency, without the additional requirements having a disproportionate impact on smaller landholdings.
- It is important that the Government should be able to adjust the threshold in future if monitoring of the effect of the measures indicates that those objectives are not being met.

Q. Why is this power to modify not more narrowly drafted to allow the Parliament to understand how it is likely to be exercised?

- Section 44D effectively defines a large landholding of land as being either a single or composite holding that is either over 3000 hectares or forms part of a permanently inhabited island that exceeds 1,000 hectares and accounts for more than 25% of the island.
- As well as these thresholds, section 44D also provides for landholdings to be in scope where they are contiguous to each other, owned by the same or connected persons, and collectively come to a combined size which exceeds either of the thresholds.
- The thresholds in 44D are connected with other measures in the Bill, such as definitions of landholdings and connected persons, and changing just one element without the ability to make wider modifications to the new Chapter could create unintended consequences.

- There is limited scope to narrow the drafting of this power while retaining the ability to respond meaningfully to monitoring and stakeholder feedback.
- For example, section 46D(6) takes the same approach to connected persons as is the case for the equivalent provisions in respect of the transfer threshold in section 46K(4) and (5).

Q. In what circumstances does the Scottish Government propose to use this power to modify and to what extent? How does the Scottish Government intend to assess Article 1 Protocol 1 (ECHR): Protection of Property (“A1P1”) compliance in the exercise of the power?

- I consider that the power would be used where feedback showed that doing so was appropriate or necessary in order to ensure that the policy objectives are being delivered.
- That might include modifying the thresholds and making further or consequential changes in that respect.
- Alternative approaches of that type were however ruled out at this time (paragraphs 138 to 140 of the [Policy Memorandum](#)).
- The monitoring of the effect of the measures will help identify additional considerations that would, if taken into account, make the measures more effective.
- Another potential use of this power could be to make minor updating revisions to references, for example should further changes be made in respect of controlling interests in land under section 39 of the Land Reform (Scotland) Act 2016, or further transparency schemes be introduced in the future.
- Proposals for compatibility with A1P1 ECHR will be assessed in the usual way. The Policy Memorandum highlights how the Government has assessed relevant ECHR rights.

Q. Has the Scottish Government considered including a requirement to consult with stakeholders and the Land and Communities Commissioner before exercising this power to modify the land (also raised by SLE)? Further, has consideration been given to including a requirement to lay consultation documents or reports on any consultation carried out alongside regulations made under this power?

- The Scottish Government is committed to engaging stakeholders in an appropriate manner throughout policy development. Any significant amendment to these powers is anticipated to be the result of monitoring of their real world application, and so would be subject to the following basic stages:
 - Identification of a policy issue
 - Stakeholder consultation on appropriate response
 - Impact assessment
 - Laying of regulation
- For minor corrective legislative fixes it may not be appropriate to do a full public, written consultation.

- The Scottish Government is under a legal obligation to undertake appropriate consultation with persons affected by any decision. *[Refer to boxed 'consultation requirements' section on page 6 in ANNEX C above if required]*.
- The Scottish Government will make information available following a public consultation in the usual way. For smaller changes, the costs involved in preparing and publishing a report are not considered proportionate to the benefit. It does not therefore consider that a duty to publish or lay consultation documents or reports is required although the Explanatory Memorandum accompanying any regulations would detail what consultation had taken place.

Q. Given this power is significant, why does the Scottish Government consider it appropriate to change the land to which the obligations would apply by way of subordinate legislation and not by primary legislation in order that the Parliament could properly debate and scrutinise the proposals given the significance of the policy provision that could be made by this power?

- I do not consider that the changes that could be made under this power are so extensive that primary legislation alone is appropriate.
- The power would need to be exercised with reference to the overall objectives and purposes of the Bill, with appropriate consultation and with reference to eg ECHR A1 P1.
- Such changes can only be made if they are approved by the Parliament through the affirmative procedure.
- I consider that secondary legislation is an appropriate mechanism to enable the principal policy in the Bill to continue to be achieved.
- The power will ensure that changes can when necessary or appropriate be made in a timely and flexible manner, taking due account of ongoing monitoring and continuing stakeholder engagement, so that the policy aims can continue to be met.

3. Section 2(4) inserting section 46L into the Land Reform (Scotland) Act 2003 - Power to change the period specified in s46F(2)(b) (the 40 days for the second prohibition for prenotification) and the land to which s46K applies (land affected by the prohibitions).

Parliamentary procedure: Affirmative

Reason for taking power

Under inserted section 46F(2)(b), the prohibition imposed by the Scottish Ministers on an owner of land and any creditor in a standard security over an interest in the land, from transferring the land, or taking any action with a view to a transfer of the land to allow an application to be made to register an interest in land expires 40 days after it is imposed. The power in 46L provides the flexibility to alter this period in future should the need arise.

Inserted section 46K sets out the land that is, or forms part of, a large holding of land. The provisions in new Chapter 2A apply by reference to large holdings of land. The power in inserted section 46L(b) allows the section to be modified should that prove to be necessary or appropriate in the future.

Q&A

Q. Can you provide further detail why the power to modify the length of the prohibition and the land to which the prohibition would apply is deemed necessary? (SLE has also raised concerns about how long the 40 day period could be extended to)

Modification of 46F(2)(b) – timescales

- 46F(2)(b) establishes the 40 day time period during which a further prohibition applies on the land to allow for an application to register an interest in the land, in cases where the requirements in 46F(3) are met. It is proposed that it should be possible to amend this period by secondary legislation.
- The 40 day period is consistent with timescales in the existing right to buy legislation into which the new procedures fit. 40 days was considered an appropriate period taking into account the balance between the timescales needed by the community body and the impact on the landowner of delay.
- While we have sought to balance the respective interests of landowners and community bodies it may transpire that in future changes need to be made to the timescales to ensure smooth operation of the procedures.
- Ministers would have to have regard to the respective interests of parties in considering any changes which might be made to timescales. Ministers could only make such changes if satisfied that doing so was within devolved competence.

Modification of 46K – modification of the land affected by the prohibition

- 46K sets a threshold for the land that is to be subject to the transfer prohibitions, by reference to the area of the land in the holding (46K(2)), as well as providing definitions of composite holdings and connected ownership for the purposes of establishing whether this area requirement is met.
- Again, it is important that there is the ability for these definitions to be amended in light of monitoring of the Bill provisions in practice, particularly since this is a new area of policy.
- Monitoring may identify an avoidance route which should be addressed, or a suggest that a revision of definitions of land in scope would improve the effectiveness of proposals. E.g. shows land is being managed together but has been separated into titles which don't fall within the connected persons definition.

Q. Why is this power to modify not more narrowly drafted to allow the Parliament to understand how this power is likely to be exercised?

- As the power to modify section 46F(2)(b) is narrowly drafted, this response relates to the power to modify section 46K.
- Section 46K defines a large landholding of land as being over 1000 hectares, and includes various supporting definitions to take account of the variety of ways in which land can be held. These supporting definitions allow for landholdings to be considered as in scope where they are contiguous to each

other, owned by the same or connected persons and come to a combined size of over 1000 hectares.

- There is limited scope to narrow the drafting of this power while retaining the ability to respond meaningfully to monitoring and stakeholder feedback.
- The operation of the prohibitions will be closely monitored, and should be capable of being modified as proposed where that is warranted having regard to the purpose of the measures. For example, it might be appropriate to change the land to which the prohibitions apply to exclude land used for particular purposes (such as operational use for energy or water supply) or on account of particular land features.

Q. In what circumstances does the Scottish Government propose to use this power to modify and to what extent? How does the Scottish Government intend to assess A1P1 compliance in the exercise of the power?

Modification of 46F(2)(b) – timescales

- The periods specified in the Bill – and the 40 day period in particular - have been set having regard to community right to buy timescales, and the need to balance the rights and interests of landowners and community groups.
- Monitoring could for example reveal that a high number of successful applications under the existing Part 2 community right to buy ‘late application’ process (as established in the Land Reform Act 2003) are made within 5 days of the end of the 40 day period set out in 46(2)(b).
- In that event it could be sensible to explore with stakeholders whether a small extension to the 40 day period in the Bill would provide more certainty to both landowners and community bodies as regards the new measures, and if appropriate to provide for that under this power.
- Ministers would have to have regard to the respective interests of parties in considering any changes which might be made to timescales. Ministers could only make such changes if satisfied that doing so was within devolved competence.

Changes to the land subject to the prohibitions

- As set out above, any revisions to the land in scope of the prohibitions are anticipated to come from ongoing monitoring of provisions once in force.
- Alternatively, monitoring and impact assessment of the operation of these provisions may reveal other amendments to definitions of land that would improve the effectiveness of the proposals.
- Connected persons are defined by reference to the register of controlled interests in land and subsequent changes may be necessary to ensure alignment.
- Ministers would have to have regard to the respective interests of parties in considering any changes which might be made to timescales. Ministers could only make such changes if satisfied that doing so was within devolved competence.

Q. Given the potential significant impact on landowners and creditors of any modification to the land and the length of the prohibition, has the Scottish Government considered including a requirement to consult with stakeholders and the Land and Communities Commissioner before exercising this power?

- See previous responses on consultation.

Q. Given this power is significant, why does the Scottish Government consider it appropriate to use subordinate legislation and not by primary legislation in order that the Parliament could properly debate and scrutinise the proposals given the significance of the policy provision that could be made by this power? (also raised by SLE)

- It's absolutely right that the Parliament has the opportunity to fully scrutinise any such use of this power, and that is why I think affirmative procedure is appropriate.
- I do not consider that the changes that could be made under this power are so extensive that primary legislation alone is appropriate.
- The power would need to be exercised with reference to the overall objectives and purposes of the Bill, with appropriate consultation and with reference to ECHR A1 P1.
- Such changes can only be made if they are approved by the Parliament through the affirmative procedure.
- I consider that secondary legislation is an appropriate mechanism to enable aims of the Bill to continue to be achieved.
- The power will ensure that changes can when necessary or appropriate be made in a timely and flexible manner, taking due account of ongoing monitoring and continuing stakeholder engagement, so that the policy aims can continue to be met.

Transfer Test

4. Section 4(2) inserting section 67S(6) into Land Reform (Scotland) Act 2003 – Power to make further provision about buying land under section 67P, including about how land is to be valued

Parliamentary procedure: Affirmative

Reason for taking power

While the current provision provides options for how the land can be valued, the regulations enable further detail to be provided in the future such as to the valuation process and procedures.

Q&A

Q. Have you given any consideration to including a statutory consultation requirement with stakeholders and the Land and Communities Commissioner prior to making regulations under this power? (SLE made a similar point)

- See earlier lines on consultation in text box in Annex C (page 6).

5. Section 4(2) inserting section 67V(4) into Land Reform (Scotland) Act 2003 to make further provision about compensation.

Parliamentary procedure: Negative

Reason for taking power

The provisions needed for compensation will include a number of detailed matters. For example, the regulations will need to set out the evidence to be submitted to support the claim for compensation. It is important that these are clearly set out with the appropriate level of detail. Detailed matters relating to payment and procedures and about applications for compensation are considered appropriate matters to be dealt with in regulations.

Q&A

Q. have you considered that the power to make further provision about how the compensation payable is to be determined is more suitable to the affirmative procedure in order that the Parliament may have a sufficient degree of scrutiny over what is being proposed given the impact on landowners, creditors and the public purse? (SLE made a similar point)

- I considered which procedure was most appropriate for this power.
- Equivalent powers in respect of other community rights to buy are also subject to negative procedure. I highlighted in my letter the example of section 63(5) of the Land Reform (Scotland) Act 2003.
- On that basis, I considered that the negative procedure is also appropriate here.
- While the negative procedure allows for significant scrutiny, I will of course consider any comments the Committee has with this power.

Q. Have you given any consideration to including a statutory consultation requirement with stakeholders and the Land and Communities Commissioner prior to making regulations under this power?

- See earlier lines on consultation in text box in Annex C (page 6).

6. Section 4(2) inserting section 67Y into the Land Reform (Scotland) Act 2003 to modify various provisions

Parliamentary procedure: Affirmative

Reason for taking power

This will ensure sufficient flexibility in the future to respond to changing circumstances and to make changes quickly without the need for primary legislation.

A power to modify what constitutes an exempt transfer is provided to allow the Scottish Ministers to take into account how these measures are operating in practice. For example, should it become apparent that another form of transfer should be exempt or that a form of transfer currently set out as exempt appears to be being used for the purposes of avoidance.

A power to amend the land affected by the prohibitions is intended to allow for amendment in the future should monitoring or impact assessment of the provisions suggest that this would be appropriate.

The power to amend how long lotting decisions have effect and the period after which a review of a lotting decision can be requested are to allow for amendments should Scotland's land market sufficiently change in such a way that these periods are no longer appropriate.

Q&A

Q. Can you provide further details on why the power to modify what constitutes an exempt transfer, the land to which the prohibition on transfer without a lotting decision applies, the duration of the lotting decision and the period to make an application for review of a lotting decision, is deemed necessary?

- The requirement to have the ability to modify the land to which the prohibition applies are the same as the power to modify sections 46F(2)(b) and 46K. It is important that there is the ability for what constitutes an exempt transfer to be amended in light of monitoring of the Bill provisions in practice, particularly since this is a new area of policy.
- The power is considered necessary in order to be able to ensure that the measures operate effectively in the light of experience, including addressing for avoidance should that be necessary.

Q. Why is this power to modify not more narrowly drafted to allow the Parliament to understand how this power is likely to be exercised?

- There is limited scope to narrow the drafting of this power while retaining the ability to respond meaningfully to monitoring and stakeholder feedback.
- I intend that the operation of the prohibitions will be closely monitored, and should be capable of being modified as proposed where that is warranted having regard to the purpose of the measures.

Q. In what circumstances does you propose to use this power to modify and to what extent? How do you intend to assess A1P1 compliance in the exercise of the power?

- The power could for example be used:
 - a) to provide for a new exemption, such as where practical operation of the provisions provided evidence that certain kinds of landholding were being found never to require a lotting decision;
 - b) to limit the scope of a current exemption, should evidence show that it is being used to avoid the requirements;
 - c) to reduce or increase the threshold at which the prohibition on transfer applies, based on ongoing evaluation of operation of the measures;
 - d) to modify the period during which the lotting decision will subsist should evidence show that it is either too short or too long;
 - e) to modify the period after which a landowner may make an application for variation or review of the lotting decision, should evidence show that a year is too long, or that some further flexibility is needed to allow for an agreed proposal to go ahead.

- In general, the purpose of these provisions is to allow for adjustment where monitoring and practical experience of the proposals demonstrate that this is required.
- Ministers would have to have regard to the respective interests of parties in considering any changes. Ministers could only make such changes if satisfied that doing so was within devolved competence.

Q. Given the potential significant impact on landowners and creditors of any modifications, have you considered including a requirement to consult with stakeholders and the Land and Communities Commissioner before exercising this power to modify these various provisions?

- See earlier lines on consultation in text box in Annex C (page 6).

Q. Given the impact of this power is potentially significant, why do you consider it appropriate to modify these provisions by way of subordinate legislation and not by primary legislation in order that the Parliament could properly debate and scrutinise the proposals given the significance of the policy provision that could be made by this power? (SLE has made similar points)

- It's absolutely right that the Parliament has the opportunity to appropriately scrutinise any such use of this power which is why it's an affirmative power.
- I do not consider that the changes that could be made under this power are so extensive that primary legislation is appropriate, and notes that in any event changes can only be made if they are approved by the Parliament through the affirmative procedure.
- The power will ensure that changes can when necessary or appropriate be made in a timely and flexible manner, taking due account of ongoing monitoring and continuing stakeholder engagement, so that the policy aims can continue to be met.

Part 2

Small Landholdings

7. Schedule: paragraph 40(4) Assessment of compensation

Parliamentary procedure: Affirmative

Reason for taking power

Assessing compensation can involve a number of factors.

The regulations are intended to provide further detail on the basis on how a valuer is to assess compensation and any factors to be taken into consideration in relation to paragraph 40.

It is important that this is clearly set out, and it is appropriate to set out details in secondary legislation. The power provides Ministers with flexibility to adapt the basis on how valuers are to assess compensation, the factors that should/should not be taken into account in the process.

The power could also be used to remove factors that are no longer necessary in a valuer's assessment.

Q&A

Q. Could further provision be made on the face of the Bill to enable the Parliament to properly debate and scrutinise the proposals given the significance of this power of compensation claims?

- Secondary legislation will enable refinement of the range of elements to be assessed in a compensation claim, providing necessary flexibility in the future.
- The Bill already provides some detail on how different types of compensation are to be calculated. Paragraph 27(2) in the Schedule on Small Landholdings sets out how compensation is to be calculated where a landholder is due compensation for an improvement, and valuers will need to be cognisant of these provisions in carrying out any assessment.
- If the power is used, the affirmative procedure will give the Parliament an opportunity to consider the effect of any regulations before they are made.
- I am open to feedback from this committee and stakeholders on this provision if it emerges during the course of the Bill process.

[IF PRESSED

- I have outlined my intention to bring forward a number of Stage 2 amendments relating to the small landholding provisions. We will review these provisions as part of that work to ensure an appropriate balance between primary and secondary legislation.]

Q. Has there been any policy development and discussion with stakeholders has taken place to date on what these provisions may include?

- Detailed policy development and discussion with stakeholders has not as yet taken place; any policy development would be informed by stakeholder feedback, for example from valuers and those with an interest in small landholdings.

Q. Have you considered including a requirement to consult with stakeholders before exercising this power?

- I considered whether there should be a statutory requirement to consult, but did not consider that such a duty is required.
- I am strongly committed to working with a range of stakeholders such as small landholders, landlords and valuers, including where appropriate consulting on proposed legislation.
- Engagement with stakeholders take many forms, and in some cases a formal – and expensive - consultation process may not be needed where reforms are agreed through joint working with our partners, or where we are only making minor changes.
- In other cases, a formal consultation may be appropriate and would be carried out.

Q. Should this power be an obligation on Ministers to specify these matters, rather than an option to do so?

- An obligation on Scottish Ministers to specify what a valuer must consider may not be appropriate for all valuation assessments of compensation. In some circumstances, for instance, the provision of guidance may be more appropriate.
- I am open to feedback on this provision as to whether valuers require greater clarity on what may be considered.

8. Schedule: paragraph 49(5): Transfers not requiring notice

Parliamentary procedure: Affirmative

Reason for taking power

(As set out in the Policy Memorandum), the pre-emptive right to buy provision aims to provide small landholders with the opportunity to purchase the land comprised in their small landholding, if their landlord or an eligible creditor decide to transfer the land.

This power enables the Scottish Ministers to review and amend the list of exempt transfers in order to achieve an appropriate balance between ensuring the process operates effectively while recognising there are circumstances where transfers should be exempt.

This power would only be used if evidence comes to light from stakeholders that an amendment is necessary, to ensure that the provision operates effectively.

Q&A

Q. Could you provide further detail on why this power is considered necessary?

- The power is considered necessary to enable the nature of exempt transfers to be refined if they are required, once the legislation comes into force e.g. if stakeholder evidence is provided on how the provisions operates.
- This approach is consistent with the one taken for agricultural holdings set out in section 27(5) of the Agricultural Holdings (Scotland) Act 2003. Which enables Scottish Ministers to modify by order subsections 27(1)-(4) of the 2003 Act which relates to exempt transfers.
- Taking a similar power for small landholdings helps to ensure consistency among the legal frameworks.
- For instance, it would be unfortunate if an issue arose in future which requires amendment and which could be done by secondary legislation for agricultural holdings and not for small landholdings.

Q. What policy development and discussion with stakeholders has taken place to date on what these provisions may include?

- No detailed or formal discussion has taken place yet, any policy development around this provision would be informed by stakeholder feedback including from small landholders, their landlords or land agents.
- The power could be used to allow the Scottish Government to respond to stakeholder feedback.

Q. Given the potential significant impact on stakeholders, have you considered including a requirement to consult with stakeholders before exercising this power?

- I have considered if there should be a statutory requirement to consult, but I do not consider it is required.
- I am already under legal obligation to undertake appropriate consultation with persons affected by any decision which would include small landholders and landlords.
- I am strongly committed to working with a range of stakeholders such as small landholders and landlords, including, where appropriate, consulting on proposed legislation. Any significant amendment to these powers will be the result of monitoring of their application, and would be subject to the following:
 - a. Development of an arising policy issue
 - b. Stakeholder consultation on appropriate response
 - c. Impact assessment evaluation and impacts.
 - d. Laying of regulations
- For minor changes, a more narrowly targeted stakeholder engagement process would be quicker, cheaper and more effective.

Q. Why is this power not more narrowly drafted to allow the Parliament to understand how this power is likely to be exercised?

- The provision is drafted in this manner to ensure the list of exempt transfers remains relevant to small landholdings and to enable the list to be adjusted in future as required.
- The power is intended to ensure that the provision operates effectively and is no wider than necessary.
- It mirrors a similar power in section 27 of the Agricultural Holdings (Scotland) Act 2003.
- I recognise of course that the power could be used to amend primary legislation, which is why I think affirmative procedure is appropriate.
- I am of course open to feedback on this provision throughout the Bill process.

9. Schedule: paragraph 50(7): Right to Buy

Parliamentary procedure: Affirmative

Reason for taking power

The power will enable the Scottish Ministers to amend what steps [taken by or on behalf of the landowner or secured creditor] will trigger the small landholder's right to buy where no notice has been given to the small landholder.

This power would be used if it becomes evident that further steps need included or current ones removed or changed.

Q. could you provide further detail on why this power is considered necessary?

- This power is considered necessary to ensure that we can update the list of steps taken by the landowner or a creditor which trigger the right to buy
- It will in particular enable the Scottish Government to respond to stakeholder feedback on the operation of the provision.
- The power mirrors an equivalent power in section 28(5) of the Agricultural Holdings (Scotland) Act 2003 for tenant farmers, and ensures that we take a consistent approach for small landholdings and agricultural holdings.

Q. What policy development and discussion with stakeholders has taken place to date on what these provisions may include?

- While no detailed or formal discussion has taken place on what these provisions may include, any development would be informed by stakeholder feedback.
- The power allows the Scottish Government to respond to their feedback and evidence where required.

Q. Given the potential significant impact on stakeholders, has the Scottish Government considered including a requirement to consult with stakeholders before exercising this power?

- I have considered whether there should be a statutory requirement to consult, but do not consider it necessary. I am under a legal obligation to undertake appropriate consultation with persons affected by any decision.
- I am strongly committed to working with a range of stakeholders including small landholders and their landlords, including where appropriate consulting on proposed legislation.
- Any significant amendment is anticipated to be the result of monitoring their application, and would be subject to the following:
 - Development of an arising policy issue
 - Stakeholder consultation on an appropriate response
 - Impact assessment
 - Laying of regulations
- For minor changes, we consider a more narrowly targeted stakeholder engagement process would be quicker, cheaper and more effective.
- The equivalent provision in section 28(5) of the Agricultural Holdings (Scotland) Act 2003 for tenant farmers does not have a consultation requirement.

Q. Why is the power not more narrowly drafted to allow the Parliament to understand how it is likely to be exercised, for example, to add or remove matters from the list?

- The provision is drafted to ensure the list of steps which trigger the right to buy remain relevant to small landholdings, and to enable the list to be adjusted if it becomes clear this is necessary.
- The power is no wider than necessary.
- The provision mirrors a similar power in section 28 of the Agricultural Holdings (Scotland) Act 2003 for tenant farmers, and the Bill is therefore consistent with the equivalent measures for small landholdings

10. Schedule: paragraph 59: Registration of small landholder’s interest: power to modify provisions; and

Section 10: Registration of interest and right to buy–

Parliamentary procedure: Affirmative

Reason for taking powers

Paragraph 59: Registration of small landholder’s interest: power to modify provisions –

As set out in the Policy Memorandum, the process of registering an interest in land should not be unduly burdensome for the small landholder, but should still provide fair notice to the landlord and to third parties who might transact with the land.

The Scottish Ministers consider that this objective is best achieved by working in a flexible way with stakeholders to co-develop an improved registration process. The power in paragraph 59 of the schedule for small landholders will enable Ministers to give effect to any changes that are considered appropriate following that process.

Tenant Farming

Section 10: Registration of interest and right to buy –

As set out in the Policy Memorandum, the process of registering an interest in land should not be unduly burdensome for the tenant, but should still provide fair notice to the landlord and to third parties who might transact with the land.

The Scottish Ministers consider this objective is best achieved by working flexibly with stakeholders to co-develop an improved registration process.

The power in the proposed new section 31A of the 2003 Act will enable Ministers to give effect to any changes that are considered appropriate following that process.

Q&A

Q. Have you considered making some provision and detail about the registration process on the face of the Bill in order that the Parliament could properly debate and scrutinise the proposals given the significance of the policy provision being made by these powers on landlords and third parties?

- I have considered the commencement of section 99 of the Land Reform (Scotland) Act 2016, which would have ended the requirement for eligible secure 1991 Act tenant farmers to register their pre-emptive right to buy.
- I have considered setting up a new 'notice' procedure on the face of the Bill.
- I came to the view that neither change was appropriate, and would mean the law lacked the certainty that both parties to the lease (and third parties) need.
- I am still of the view that reform is needed to ensure policy objectives are met, and the process of exercising right to buy is not unduly burdensome for tenant farmers.
- I am committed to working with stakeholders, rendering it appropriate to make changes through secondary legislation.
- I note the requirement to register an interest in buying land is set out in primary legislation, and we cannot change that.
- The powers in the Bill are limited to the registration process, and even then any new rules must be agreed in advance by the Parliament.
- Subject to those limitations, the power needs to be wide enough to allow us to proactively address issues identified by stakeholders and to work with them to co-develop and improve the registration process.
- The Bill requires the Scottish Ministers to consult the Keeper of ROS and such other persons likely to have an interest in the registration of interests to buy land.
- I am very happy to consider comments on this provision during the Bill process.

Q. What policy development and discussion with stakeholders has taken place to date on what these provisions may include?

- Officials met with Tenant Farming Advisory Forum members prior to Bill introduction, to discuss section 99 of the Land Reform (Scotland) Act 2016 and potential solutions to improve the registration process.
- I am open to further feedback during consideration of the Bill.

Q. Why are these powers not more narrowly drafted to allow the Parliament to understand how the powers are likely to be exercised?

- The powers are no wider than they need to be.
- The powers will enable modifications that are considered necessary or appropriate to ensure changes to the registration process are fair and effective.
- As set out in the Policy Memorandum, Scottish Ministers consider this objective is best achieved, by working in a flexibly with stakeholders to co-develop an improved registration process. This co-development will shape the use of the power.
- The powers are subject to affirmative procedure to ensure the Parliament is able to scrutinise any use of the power.

Resumption

11. Section 11: Resumption in relation to 1991 Act tenancies, paragraph 4(5), schedule 2A to the 1991 Act; and

Section 12: Resumption in respect of limited duration tenancies and repairing tenancies, Paragraph 4(5), schedule 2 to the 2003 Act

Parliamentary procedure: Affirmative

Reason for taking power

Section 11: Resumption in relation to 1991 Act tenancies, paragraph 4(5), schedule 2A to the 1991 Act –

The basis on which the valuer is to assess the value of the land being resumed is a key part of the resumption measures in the Bill.

Paragraph 4 of new schedule 2A of the 1991 Act sets out the matters to which a valuer when assessing the value of land is to have regard, to take into account, or to take no account of.

Paragraph 4 provides for the Scottish Ministers to be able to add, remove or vary such matters

The power is considered necessary to ensure the valuation process can take account of changing circumstances in a way that ensures the measures continues to be fair to both the landlord and the tenant.

Section 12: Resumption in respect of limited duration tenancies and repairing tenancies, Paragraph 4(5), schedule 2 to the 2003 Act

Paragraph 4 of new schedule 2 of the 2003 Act makes equivalent provision for limited duration and repairing tenancies, for the same reason.

Q&A

Q. Can you provide further detail on the necessity of these powers?

- The powers are necessary to ensure the valuation of compensation on resumption is fair to both landlord and tenant.
- The powers are similar to those already in force for other equivalent measures
- For example, section 32J of the Land Reform (Scotland) Act 2016 provides for an equivalent power regarding the valuation of land being relinquished by a tenant.
- I am of course actively considering stakeholder evidence on the resumption valuation assessment including evidence submitted in the call for views.

Q. How it is anticipated that these powers will be exercised?

- These powers will be exercised as required to ensure fairness for both landlords and tenants.
- I expect their use to resolve any issues raised in stakeholder feedback, including from valuers, around any lack of fairness or clarity.
- They will help ensure the provisions remain fit for purpose, subject to scrutiny by the Scottish Parliament under the affirmative procedure.

Q. What policy development and discussion with stakeholders has taken place to date on what these provisions may include?

- Following the Bill being introduced stakeholders have raised areas where clarity would be appreciated. Any policy development around this would be informed by further stakeholder feedback.
- The power allows the Scottish Government to respond to this if required.

Q. Given the potential significant impact on stakeholders, has the Scottish Government considered including a requirement to consult with stakeholders before exercising these powers?

- I have considered whether there should be a statutory requirement to consult, but do not consider this necessary.
- I am committed to ensuring decisions are made in a fair and transparent manner. A decision may only be lawful if it has been consulted on in advance, whether or not there is a statutory requirement to consult.
- In some cases, formal consultation may be appropriate, and will be conducted.
- In other cases, a more narrowly targeted stakeholder engagement process would be quicker, cheaper, and more effective.

Q. Why are these powers not more narrowly drafted to allow the Parliament to understand how they are likely to be exercised?

- I consider that the powers are drafted in a manner that is consistent with achieving the purposes for which they are sought.
- I note section 32J of the Land Reform (Scotland) Act 2016 provides an equivalent power. The scope of the power is comparable and allows the Scottish Government to respond to issues identified by stakeholders.
- I am of course open to feedback on this during the Bill process.

Q. Will Scottish Ministers remove the resumption provisions in the Bill given their direct impact on landlord confidence in letting, housing and rural development?

- The resumption measures are intended to strike a fair balance between the interests of landlords and tenants
- I am of course considering comments from all stakeholders supportive or otherwise, including those by Scottish Land and Estates

Q: Why does the Bill attach a capital value to 2003 Act tenancies?

- The resumption measures are intended to strike a fair balance between the interests of landlords and tenants, including in respect of limited duration tenancies under the 2003 Act
- I am of course considering comments from all stakeholders supportive or otherwise, including those by Scottish Land and Estates

Q: Are these changes retrospective as suggested by SLE?

- The measures in the Bill respect the rights of all those affected by them
- I am of course considering comments from all stakeholders supportive or otherwise, including those by Scottish Land and Estates on retrospectivity

Q. Does the resumption valuation provisions include hope value?

- I note that some stakeholders have commented on this issue, and I am of course considering those comments

Q As suggested by SLE isn't this Bill proposal a windfall payment comprising a percentage of the capital value of the land rather than a compensation payment?

- The measures in the Bill respect the rights of all those affected by them
- I am of course considering comments from all stakeholders supportive or otherwise, including those by Scottish Land and Estates on retrospectivity

Compensation for improvements

12. Section 14: Compensation for improvements – section 73(1A) and 3(A)

**Parliamentary procedure: Negative
Reason for taking power**

As set out in the Policy Memorandum, the Bill seeks to take a 'principles' based approach when determining whether an improvement requires consent (paragraph 1 of the new Schedule) or notice (paragraph 3 of the new Schedule).

In addition, the Land Court is to consider, when deciding whether to approve an improvement to which the landlord has objected following notice, if the improvement is likely to facilitate or enhance sustainable or regenerative agriculture.

The Scottish Ministers consider that it is necessary for them to be able to modify the illustrative lists in paragraphs 2, 4 and 6, and the fixed list in paragraph 5, in order to ensure that those lists properly reflect changes in understanding and in agricultural practice over time.

Ministers expect the power would be used when engagement with stakeholders and other evidence demonstrates it would be helpful to include a particular type of improvement to one of the lists. This will aid the proper understanding and application of the new approach.

That will help ensure improvements are made when necessary or desirable for the efficient management of the holding, and will facilitate on-farm investments and activities aimed at mitigating the adverse impacts of climate change and nature loss

Q&A

Q. Can you provide further detail as to why you consider the negative procedure to be appropriate in this instance given it is permitting the amendment of primary legislation and whether the affirmative procedure would afford a better level of parliamentary scrutiny?

- The power does not enable Ministers to change the way in which improvements are managed, only to modify the illustrative lists of improvements to be specified in the legislation
- This will ensure the lists remain up to date, facilitate good agricultural practices as they develop, and help us move towards sustainable and regenerative agriculture
- I remain of the view that the negative procedure is appropriate for a limited power of this type.

ANNEX E - DELEGATED POWERS AND LAW REFORM COMMITTEE

[REDACTED]

ANNEX F – SCOTTISH LAND & ESTATES LETTER TO DPLR COMMITTEE

[REDACTED]

Item 6

From: [REDACTED] @gov.scot>
Sent: Wednesday, September 11, 2024 12:11 PM
To: Cabinet Secretary for Rural Affairs, Land Reform & Islands 2024 <CabSecforRALRI@gov.scot>
Cc: [REDACTED] @gov.scot>; [REDACTED] @gov.scot>; [REDACTED] @gov.scot>; [REDACTED] @gov.scot>; [REDACTED] @gov.scot>; [REDACTED] @gov.scot>; [REDACTED] @gov.scot>; Deputy Director for Land Reform, Rural and Islands Policy <DeputyDirectorLandReformRuralAndIslandsPolicy@gov.scot>; Colin McAllister <Colin.McAllister@gov.scot>; Kate Higgins <Kate.Higgins@gov.scot>; [REDACTED] @gov.scot>; [REDACTED] @gov.scot>; [REDACTED] @gov.scot>; PLU Bill Programme <PLUBillProgramme@gov.scot>; Director of Agriculture and Rural Economy <DirectorARE@gov.scot>; [REDACTED] @gov.scot>; [REDACTED] @gov.scot>; [REDACTED] @gov.scot>; [REDACTED] @gov.scot>; [REDACTED] @gov.scot>; [REDACTED] @gov.scot>; [REDACTED] @gov.scot>
Subject: Land Reform Bill - briefing for Cabinet Secretary's session with the DPLR Committee on Tuesday 17 September

Good afternoon [REDACTED]

Please find attached the briefing for the Cabinet Secretary ahead of Tuesday's evidence session with the Delegated Powers and Law Reform Committee on the Bill.

As you know we're meeting with Ms Gougeon at 2.45 today where we can discuss the briefing and the DPLR Committee's likely approach.

As an initial heads-up, while the DPLR Committee's scrutiny is generally quite technical, it wrote to the Cabinet Secretary with questions about the Bill in June (which the Cabinet Secretary responded to in late July). In our subsequent discussions with the clerks they said these questions were reflective of the Committee's concerns about the number and breadth of some of the powers. The briefing looks to respond to these concerns. Annex A gives a little bit of this context which we can talk through with the Cabinet Secretary.

[REDACTED]

Finally, I appreciate the DPLR Committee clerks have been in touch with you to raise the possibility that next week's evidence session could be postponed. We're obviously working on the assumption that it's still going ahead but clearly things may change.

Thanks

[REDACTED]

[REDACTED]

Land Reform Bill Team Leader | Land Reform Unit
Scottish Government | Victoria Quay | Edinburgh | EH6 6QQ
[REDACTED] @gov.scot | [REDACTED]

Item 7

From: [REDACTED] @gov.scot>

To: Kate Higgins <Kate.Higgins@gov.scot>; Cabinet Secretary for Rural Affairs, Land Reform & Islands 2024 <CabSecforRALRI@gov.scot>

Cc: [REDACTED] @gov.scot>; [REDACTED] @gov.scot>; [REDACTED] @gov.scot>; [REDACTED] @gov.scot>; [REDACTED] @gov.scot>; [REDACTED] @gov.scot>; [REDACTED] @gov.scot>; Deputy Director for Land Reform, Rural and Islands Policy <DeputyDirectorLandReformRuralAndIslandsPolicy@gov.scot>; Colin McAllister <Colin.McAllister@gov.scot>; [REDACTED] @gov.scot>; [REDACTED] @gov.scot>; [REDACTED] @gov.scot>; PLU Bill Programme <PLUBillProgramme@gov.scot>; Director of Agriculture and Rural Economy <DirectorARE@gov.scot>; [REDACTED] @gov.scot>; [REDACTED] @gov.scot>; [REDACTED] @gov.scot>; [REDACTED] @gov.scot>; [REDACTED] @gov.scot>; [REDACTED] @gov.scot>; [REDACTED] @gov.scot>; [REDACTED] @gov.scot>

Subject: RE: Land Reform Bill - briefing for Cabinet Secretary's session with the DPLR Committee on Tuesday 17 September

Thanks Kate

[REDACTED]

[REDACTED]

From: Kate Higgins <Kate.Higgins@gov.scot>

Sent: Wednesday, September 11, 2024 3:57 PM

To: [REDACTED] @gov.scot>; Cabinet Secretary for Rural Affairs, Land Reform & Islands 2024 <CabSecforRALRI@gov.scot>

Cc: [REDACTED] @gov.scot>; [REDACTED] @gov.scot>; [REDACTED] @gov.scot>; [REDACTED] @gov.scot>; [REDACTED] @gov.scot>; [REDACTED] @gov.scot>; [REDACTED] @gov.scot>; Deputy Director for Land Reform, Rural and Islands Policy <DeputyDirectorLandReformRuralAndIslandsPolicy@gov.scot>; Colin McAllister <Colin.McAllister@gov.scot>; [REDACTED] @gov.scot>; [REDACTED] @gov.scot>; [REDACTED] @gov.scot>; PLU Bill Programme <PLUBillProgramme@gov.scot>; Director of Agriculture and Rural Economy <DirectorARE@gov.scot>; [REDACTED] @gov.scot>; [REDACTED] @gov.scot>; [REDACTED] @gov.scot>; [REDACTED] @gov.scot>; [REDACTED] @gov.scot>; [REDACTED] @gov.scot>; [REDACTED] @gov.scot>; [REDACTED] @gov.scot>

Subject: RE: Land Reform Bill - briefing for Cabinet Secretary's session with the DPLR Committee on Tuesday 17 September

[REDACTED]

[REDACTED]

Kate

Kate Higgins
Special Advisor to the First Minister
[REDACTED]

Scottish Government
St Andrew's House, 2 Regent Road, Edinburgh, EH1 3DG
Scottish Ministers, Special advisers and the Permanent Secretary to the Scottish Government are covered by the terms of the Lobbying (Scotland) Act 2016. See www.lobbying.scot.

Item 8

From: Kate Higgins <Kate.Higgins@gov.scot>
Sent: Wednesday, September 11, 2024 3:57 PM
To: [REDACTED] @gov.scot>; Cabinet Secretary for Rural Affairs, Land Reform & Islands 2024 <CabSecforRALRI@gov.scot>
Cc: [REDACTED] @gov.scot>; [REDACTED] @gov.scot>; [REDACTED] @gov.scot>; [REDACTED] @gov.scot>; [REDACTED] @gov.scot>; [REDACTED] @gov.scot>; [REDACTED] @gov.scot>; Deputy Director for Land Reform, Rural and Islands Policy <DeputyDirectorLandReformRuralAndIslandsPolicy@gov.scot>; Colin McAllister <Colin.McAllister@gov.scot>; [REDACTED] @gov.scot>; [REDACTED] @gov.scot>; [REDACTED] @gov.scot>; PLU Bill Programme <PLUBillProgramme@gov.scot>; Director of Agriculture and Rural Economy <DirectorARE@gov.scot>; [REDACTED] @gov.scot>; [REDACTED] @gov.scot>; [REDACTED] @gov.scot>; [REDACTED] @gov.scot>; [REDACTED] @gov.scot>; [REDACTED] @gov.scot>; [REDACTED] @gov.scot>; [REDACTED] @gov.scot>

Subject: RE: Land Reform Bill - briefing for Cabinet Secretary's session with the DPLR Committee on Tuesday 17 September

Thanks [REDACTED]

Kate Higgins
Special Advisor to the First Minister
[REDACTED]

Scottish Government
St Andrew's House, 2 Regent Road, Edinburgh, EH1 3DG
Scottish Ministers, Special advisers and the Permanent Secretary to the Scottish Government are covered by the terms of the Lobbying (Scotland) Act 2016. See www.lobbying.scot.

Item 9

From: [REDACTED] @gov.scot>
To: Kate Higgins <Kate.Higgins@gov.scot>; [REDACTED] @gov.scot>
Cc: Spads Admin <Spads_Admin@gov.scot>; [REDACTED] @gov.scot>;
[REDACTED] @gov.scot>
Subject: FW: Recommendations for appointment to the Scottish Land Commission –
CONFIDENTIAL

Hi Kate

Absolutely – I'll get some time in your diary.

[REDACTED]

From: Kate Higgins <Kate.Higgins@gov.scot>
Sent: Thursday, October 10, 2024 5:25 PM
To: [REDACTED] @gov.scot>; [REDACTED] @gov.scot>
Cc: Spads Admin <Spads_Admin@gov.scot>
Subject: FW: Recommendations for appointment to the Scottish Land Commission -
CONFIDENTIAL

Hello

Can we arrange a follow up chat around some of what came up today?
[REDACTED]

Kate Higgins
Special Advisor to the First Minister
[REDACTED]

Scottish Government
St Andrew's House, 2 Regent Road, Edinburgh, EH1 3DG

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From: [REDACTED] @gov.scot>
Sent: Thursday, October 10, 2024 4:13 PM
To: Kate Higgins <Kate.Higgins@gov.scot>
Cc: Cabinet Secretary for Rural Affairs, Land Reform & Islands 2024 <CabSecforRALRI@gov.scot>
Subject: FW: Recommendations for appointment to the Scottish Land Commission - CONFIDENTIAL

Hi Kate,

As discussed with Ms Gougeon earlier, please see attached for your consideration.

Kind regards,

[REDACTED]

[REDACTED]
Deputy Private Secretary - Cabinet Secretary for Rural Affairs, Land Reform and Islands, Mairi Gougeon, MSP
Scottish Government, St Andrews House, Regent Road, Edinburgh, EH1 3DG
Tel: [REDACTED]
E-mail: cabsecforRALRI@gov.scot

Item 10

From: [REDACTED] @gov.scot>
Required: Kate Higgins <Kate.Higgins@gov.scot>; [REDACTED] @gov.scot>; [REDACTED] @gov.scot>
Optional: [REDACTED] @gov.scot>
Subject: LR Bill catch-up

Hi Kate

Would this afternoon be helpful/doable for a follow-up to yesterday's meeting with SLC or shall I push it into next week? I'm off on Monday but back Tuesday.

Thanks

[REDACTED]

Item 11

From: [REDACTED] @gov.scot>
Required: Kate Higgins <Kate.Higgins@gov.scot>; [REDACTED] @gov.scot>;
[REDACTED] @gov.scot>
Optional: [REDACTED] @gov.scot>
Subject: LR Bill catch-up

Thanks Kate

[REDACTED] and I are both on leave next Thursday/Friday but [REDACTED] and our new colleague [REDACTED] (who has replaced [REDACTED]) are in.

Thanks

[REDACTED]

Item 12

From: [REDACTED] @gov.scot>
Required: Kate Higgins <Kate.Higgins@gov.scot>; [REDACTED] @gov.scot>;
[REDACTED] @gov.scot>; [REDACTED] @gov.scot>
Subject: LR Bill catch-up

Moving this to 2pm to fit Kate's diary.

Thanks

[REDACTED]

Item 13

From: [REDACTED] @gov.scot>
To: Kate Higgins <Kate.Higgins@gov.scot>
Subject: LR Bill catch-up

Thanks Kate

Just re-sent the invitation for 2 pm.

[REDACTED]

From: Kate Higgins <Kate.Higgins@gov.scot>
Sent: Wednesday, October 16, 2024 1:19 PM
To: [REDACTED] @gov.scot>; [REDACTED] @gov.scot>; [REDACTED] @gov.scot>

Cc: [REDACTED] @gov.scot>
Subject: RE: LR Bill catch-up

Sorry [REDACTED] I cant now do this time. I can do anytime after 2 if that is ok?

Kate Higgins

Special Advisor to the First Minister
[REDACTED]

Scottish Government
St Andrew's House, 2 Regent Road, Edinburgh, EH1 3DG
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Item 14

From: [REDACTED] @gov.scot>
To: Cabinet Secretary for Rural Affairs, Land Reform & Islands 2024
<CabSecforRALRI@gov.scot>
Cc: Deputy Director for Land Reform, Rural and Islands Policy
<DeputyDirectorLandReformRuralAndIslandsPolicy@gov.scot>; Kate Higgins
<Kate.Higgins@gov.scot>; [REDACTED] @gov.scot>; [REDACTED] @gov.scot>;
[REDACTED] @gov.scot>; [REDACTED] @gov.scot>; [REDACTED] @gov.scot>;
[REDACTED] @gov.scot>; Colin McAllister <Colin.McAllister@gov.scot>
Subject: For Clearance - Minute of meeting with Land Reform Bill Team Officials -
Part 1 Measures

Good afternoon [REDACTED]

Please find attached for clearance the minute from the meeting between Cab Sec, Kate Higgins and officials on 2nd September, where officials provided an update on Part 1 measures of the Land Reform Bill.

Officials will provide further advice on a number of policy areas noted in the minute.

Best wishes,
[REDACTED]
[REDACTED] (She/Her) | Land Reform Policy and Legislation Team | Directorate for
Agriculture and Rural Economy | Scottish Government
5 Atlantic Quay | 150 Broomielaw | Glasgow | G2 8LU
Email: [REDACTED] @gov.scot

The document was attached with Ailsa's email, it is also item 2 in this document

Item 15

From: [REDACTED] @gov.scot>
To: Kate Higgins <Kate.Higgins@gov.scot>; [REDACTED] @gov.scot>;
[REDACTED] @gov.scot>; [REDACTED] @gov.scot>
Subject: RE: LR Bill catch-up

Hi Kate, it looks like 2 – 2.30 will work. We'll amend the diary hold. See you tomorrow.

Best wishes,
[REDACTED]
[REDACTED] (She/Her) | Land Reform Policy and Legislation Team | Directorate for
Agriculture and Rural Economy | Scottish Government
5 Atlantic Quay | 150 Broomielaw | Glasgow | G2 8LU
Email: [REDACTED] @gov.scot

Item 16

From: [REDACTED] @gov.scot>
To: Cabinet Secretary for Rural Affairs, Land Reform & Islands 2024
<CabSecforRALRI@gov.scot>
Cc: Deputy Director for Land Reform, Rural and Islands Policy
<DeputyDirectorLandReformRuralAndIslandsPolicy@gov.scot>; Kate Higgins
<Kate.Higgins@gov.scot>; [REDACTED] @gov.scot>; [REDACTED] @gov.scot>;
[REDACTED] @gov.scot>; [REDACTED] @gov.scot>; [REDACTED] @gov.scot>;
[REDACTED] @gov.scot>; Colin McAllister <Colin.McAllister@gov.scot>
Subject: RE: For Clearance - Minute of meeting with Land Reform Bill Team Officials
- Part 1 Measures

Thanks [REDACTED],

Please see the link below, apologies for not including this previously.

Land Reform Bill - Meeting with Officials and Cab Sec - 2 September 2024 -
Summary details - Objective ECM (scotland.gov.uk)

Best wishes,
[REDACTED]

[REDACTED] (She/Her) | Land Reform Policy and Legislation Team | Directorate for
Agriculture and Rural Economy | Scottish Government
5 Atlantic Quay | 150 Broomielaw | Glasgow | G2 8LU
Email: [REDACTED] @gov.scot

From: [REDACTED] @gov.scot> On Behalf Of Cabinet Secretary for Rural Affairs,
Land Reform & Islands 2024

Sent: Tuesday, September 17, 2024 2:17 PM

To: [REDACTED] @gov.scot>

Cc: Deputy Director for Land Reform, Rural and Islands Policy

<DeputyDirectorLandReformRuralAndIslandsPolicy@gov.scot>; Kate Higgins

<Kate.Higgins@gov.scot>; [REDACTED] @gov.scot>; [REDACTED] @gov.scot>;

[REDACTED] @gov.scot>; [REDACTED] @gov.scot>; [REDACTED] @gov.scot>;

[REDACTED] @gov.scot>; Colin McAllister <Colin.McAllister@gov.scot>

Subject: RE: For Clearance - Minute of meeting with Land Reform Bill Team Officials
- Part 1 Measures

Hi [REDACTED],

Many thanks for this.

The Cabinet Secretary is content with the minute. Grateful if you can provide an erdm link for MPO records.

Thank you,
[REDACTED]

Item 17

From: Kate Higgins <Kate.Higgins@gov.scot>

To: [REDACTED] @gov.scot>; Colin McAllister <Colin.McAllister@gov.scot>; Spads Admin <Spads_Admin@gov.scot>; Cabinet Secretary for Rural Affairs, Land Reform & Islands 2024 <CabSecforRALRI@gov.scot>; Minister for Agriculture and Connectivity <MinisterforAC@gov.scot>

Cc: [REDACTED] @gov.scot>; [REDACTED] @gov.scot>; [REDACTED] @gov.scot>; [REDACTED] @gov.scot>; [REDACTED] @gov.scot>; [REDACTED] @gov.scot>; [REDACTED] @gov.scot>; [REDACTED] @gov.scot>

Subject: RE: LR Bill - Absolute Right To Buy - opportunity to confirm Scottish Government's position at the NFUS conference - 18 oct 2024

[REDACTED]

Kate Higgins
Special Advisor to the First Minister
[REDACTED]

Scottish Government
St Andrew's House, 2 Regent Road, Edinburgh, EH1 3DG
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From: [REDACTED]@gov.scot>
Sent: Friday, October 18, 2024 10:24 AM
To: Kate Higgins <Kate.Higgins@gov.scot>; Colin McAllister <Colin.McAllister@gov.scot>; Spads Admin <Spads_Admin@gov.scot>; Cabinet Secretary for Rural Affairs, Land Reform & Islands 2024 <CabSecforRALRI@gov.scot>; Minister for Agriculture and Connectivity <MinisterforAC@gov.scot>
Cc: [REDACTED]@gov.scot>; [REDACTED]@gov.scot>; [REDACTED]@gov.scot>; [REDACTED]@gov.scot>; [REDACTED]@gov.scot>; [REDACTED]@gov.scot>; [REDACTED]@gov.scot>
Subject: RE: LR Bill - Absolute Right To Buy - opportunity to confirm Scottish Government's position at the NFUS conference - 18 oct 2024

[REDACTED]

[REDACTED]

[REDACTED] | Head of Agricultural Holdings & Women in Agriculture Team | Agriculture Policy Division | Scottish Government | Saughton House | EDINBURGH | EH11 3XD

I am currently working from home email:[REDACTED]M: [REDACTED] DD: [REDACTED]

From: Kate Higgins <Kate.Higgins@gov.scot>
Sent: Friday, October 18, 2024 10:19 AM
To: [REDACTED]@gov.scot>; Colin McAllister <Colin.McAllister@gov.scot>; Spads Admin <Spads_Admin@gov.scot>; Cabinet Secretary for Rural Affairs, Land Reform & Islands 2024 <CabSecforRALRI@gov.scot>; Minister for Agriculture and Connectivity <MinisterforAC@gov.scot>
Cc: [REDACTED]@gov.scot>; [REDACTED]@gov.scot>; [REDACTED]@gov.scot>; [REDACTED]@gov.scot>; [REDACTED]@gov.scot>; [REDACTED]@gov.scot>; [REDACTED]@gov.scot>
Subject: RE: LR Bill - Absolute Right To Buy - opportunity to confirm Scottish Government's position at the NFUS conference - 18 oct 2024

[REDACTED]

Kate Higgins
Special Advisor to the First Minister
[REDACTED]

Scottish Government
St Andrew's House, 2 Regent Road, Edinburgh, EH1 3DG

Scottish Ministers, Special advisers and the Permanent Secretary to the Scottish Government are covered by the terms of the Lobbying (Scotland) Act 2016. See www.lobbying.scot

From: [REDACTED]@gov.scot>
Sent: Friday, October 18, 2024 10:01 AM
To: Colin McAllister <Colin.McAllister@gov.scot>; Spads Admin <Spads_Admin@gov.scot>; Cabinet Secretary for Rural Affairs, Land Reform & Islands 2024 <CabSecforRALRI@gov.scot>; Kate Higgins <Kate.Higgins@gov.scot>; Minister for Agriculture and Connectivity <MinisterforAC@gov.scot>
Cc: [REDACTED]@gov.scot>; [REDACTED]@gov.scot>; [REDACTED]@gov.scot>; [REDACTED]@gov.scot>; [REDACTED]@gov.scot>; [REDACTED]@gov.scot>
Subject: LR Bill - Absolute Right To Buy - opportunity to confirm Scottish Government's position at the NFUS conference - 18 oct 2024

[REDACTED]

Regards
[REDACTED]
[REDACTED] | Head of Agricultural Holdings & Women in Agriculture Team | Agriculture Policy Division | Scottish Government | Saughton House | EDINBURGH | EH11 3XD
I am currently working from home email: [REDACTED]@gov.scot M: [REDACTED] DD: [REDACTED]

Item 18

From: [REDACTED]@gov.scot>
To: Cabinet Secretary for Rural Affairs, Land Reform & Islands 2024 <CabSecforRALRI@gov.scot>
Director of Agriculture and Rural Economy <DirectorARE@gov.scot>; Deputy Director for Land Reform, Rural and Islands Policy <DeputyDirectorLandReformRuralAndIslandsPolicy@gov.scot>; [REDACTED]@gov.scot>; [REDACTED]@gov.scot>; Kate Higgins <Kate.Higgins@gov.scot>
Subject: Routine: Land Reform Bill - Note of Meeting with SLC Chair and CEO - 10 October

Good Afternoon,

Please find attached a draft note of the Cabinet Secretary's meeting with Michael Russell, Chair of the Scottish Land Commission and Hamish Trench, the Commission's CEO, on 10 October. I would be grateful if the Cabinet Secretary

could please confirm if she is content with the note? I've included the eRDM link for the note below for your records.

- <https://erdm.scotland.gov.uk:8443/documents/A50617408/details>

Many thanks,
[REDACTED]

[REDACTED] | Land Reform Bill Manager | Land Reform Policy and Legislation Team
| Directorate for Agriculture and Rural Economy | Scottish Government
Area 3 J South, Victoria Quay, Edinburgh, EH6 6QQ | Mobile: [REDACTED]

Item 19

From: Kate Higgins <Kate.Higgins@gov.scot>
To: [REDACTED]@gov.scot>; [REDACTED]@gov.scot>; [REDACTED]@gov.scot>;
Spads Admin <Spads_Admin@gov.scot>
Cc: [REDACTED]@gov.scot>; [REDACTED]@gov.scot>; [REDACTED]@gov.scot>;
[REDACTED]@gov.scot>; [REDACTED]@gov.scot>; Communications Net Zero,
Energy and Rural Affairs <CommunicationsNetZero&RuralAffairs@gov.scot>;
[REDACTED]@gov.scot>; [REDACTED]@gov.scot>
Subject: SPAD VIEW - Bid - MG - Land Reform Bill - BBC Politics Live - Monday
28th October

Yes

From: [REDACTED]@gov.scot>
Sent: Friday, October 25, 2024 3:45:11 PM
To: Kate Higgins <Kate.Higgins@gov.scot>; [REDACTED]@gov.scot>;
[REDACTED]@gov.scot>; Spads Admin <Spads_Admin@gov.scot>
Cc: [REDACTED]@gov.scot>; [REDACTED]@gov.scot>; [REDACTED]@gov.scot>;
[REDACTED]@gov.scot>; [REDACTED]@gov.scot>; Communications Net Zero,
Energy and Rural Affairs <CommunicationsNetZero&RuralAffairs@gov.scot>;
[REDACTED]@gov.scot>; [REDACTED]@gov.scot>
Subject: SPAD VIEW - Bid - MG - Land Reform Bill - BBC Politics Live - Monday
28th October

Hi Spads,

BBC have asked for Ms Gougeon to appear on Politics Live on Monday to speak about the Land Reform Bill. They have said they could do this via zoom or use a BBC studio if she was able to travel to one.

I have included the full query below. From her calendar Ms Gougeon returns from leave that day, are you happy for me to put to PO to see if she is able and content to take part in the interview, recommending accept if she can?

WHO	OUTLET	TIME	LIVE/PRE-REC	INTERVIEWER	TOPICS

Recommendation Other details (if required)

Ms Gougeon BBC Politics Live Between 12 and 1pm Monday LIVE (Zoom or to camera) [REDACTED] Land Reform Bill Accept The presenter may invite the panel in the studio to join the conversation with the Cab Sec

Query

Good to speak with you on the phone a moment ago. As I mentioned we'd be keen to interview Mairi Gougeon MSP on the Government's Land Reform Bill. We'd center the discussion around how it might work and what the impact of the bill could be. All the details are below but please let me know if you have any questions. I will of course follow up with you over the weekend, or Monday morning with a bit more detail about the discussion.

Time: between 12.00-13.00

Location: We have a BBC camera stationed in Holyrood so if that is easiest we can do it there. Alternatively, we can do it over Zoom or find a closer BBC studio. This will of course depend on where the minister is located.

Topic of discussion: The discussion will center around the Land Reform Bill introduced in March. We will be asking the minister about it, but there is also a chance we could ask the rest of the panel their views and encourage some discussion between guests.

I appreciate Mairi may be on annual leave, so another minister would also be greatly appreciated. To be completely transparent we are trying to achieve a gender balance on the show so if it were a woman that may be easier, but I appreciate that is sometimes out of your control.

Thanks

[REDACTED]

Item 20

From: [REDACTED]@gov.scot>

To: Cabinet Secretary for Rural Affairs, Land Reform & Islands 2024
<CabSecforRALRI@gov.scot>

Cc: Deputy Director for Land Reform, Rural and Islands Policy

<DeputyDirectorLandReformRuralAndIslandsPolicy@gov.scot>;

[REDACTED]@gov.scot>; [REDACTED]@gov.scot>; [REDACTED]@gov.scot>;

Colin McAllister <Colin.McAllister@gov.scot>; Kate Higgins

<Kate.Higgins@gov.scot>; [REDACTED]@gov.scot>; Spads Admin

<Spads_Admin@gov.scot>

Good afternoon,

Just a bit of an update to note that there will be a slight delay in relation to the first submission Anna noted below on the Bill: [REDACTED]

We had planned to send this up tomorrow but are now intending to share with special advisors early next week and then subject to comments or any discussion that might be helpful submit to private office by the end of the week.

Hopefully this doesn't cause too much inconvenience and happy to discuss,

[REDACTED]

From: [REDACTED]@gov.scot> On Behalf Of Cabinet Secretary for Rural Affairs, Land Reform & Islands 2024
Sent: Wednesday, October 30, 2024 4:38 PM
To: [REDACTED]@gov.scot>
Cc: Cabinet Secretary for Rural Affairs, Land Reform & Islands 2024 <CabSecforRALRI@gov.scot>; Deputy Director for Land Reform, Rural and Islands Policy <DeputyDirectorLandReformRuralAndIslandsPolicy@gov.scot>; [REDACTED]@gov.scot>; [REDACTED]@gov.scot>; [REDACTED]@gov.scot>; [REDACTED]@gov.scot>; Colin McAllister <Colin.McAllister@gov.scot>; Kate Higgins <Kate.Higgins@gov.scot>
Subject: RE: For Awareness: Land Reform Bill - Timings of Forthcoming Submissions

Hi [REDACTED],

Ms Gougeon has noted with thanks and she appreciates receiving this timeline.

Many thanks,

[REDACTED] Deputy Private Secretary
Cabinet Secretary for Rural Affairs, Land Reform and Islands – Mairi Gougeon MSP

Item 21

From: [REDACTED]@gov.scot>
Sent: Wednesday, October 30, 2024 10:57 AM
To: Cabinet Secretary for Rural Affairs, Land Reform & Islands 2024 <CabSecforRALRI@gov.scot>
Cc: Deputy Director for Land Reform, Rural and Islands Policy <DeputyDirectorLandReformRuralAndIslandsPolicy@gov.scot>; [REDACTED]@gov.scot>; [REDACTED]@gov.scot>; [REDACTED]@gov.scot>; [REDACTED]@gov.scot>; Colin McAllister <Colin.McAllister@gov.scot>; Kate Higgins <Kate.Higgins@gov.scot>
Subject: For Awareness: Land Reform Bill - Timings of Forthcoming Submissions

Good Morning [REDACTED],

As discussed at our catch-up on Monday, the Land Reform Bill team are planning to send seven submissions over the next month for the Cabinet Secretary's

Ms. Gougeon has noted the attached, thanks.

Kind regards,

[REDACTED]

[REDACTED]

Deputy Private Secretary - Cabinet Secretary for Rural Affairs, Land Reform and Islands, Mairi Gougeon, MSP
Scottish Government, St Andrews House, Regent Road, Edinburgh, EH1 3DG
Tel: [REDACTED]
E-mail: cabsecforRALRI@gov.scot

From: [REDACTED]@gov.scot>
Sent: 12 November 2024 12:01
To: Cabinet Secretary for Rural Affairs, Land Reform & Islands 2024
<CabSecforRALRI@gov.scot>
Cc: Deputy First Minister and Cabinet Secretary for Economy & Gaelic
<DFMCSEG@gov.scot>; Cabinet Secretary for Finance & Local Government
<CabSecFLG@gov.scot>; Lord Advocate <LordAdvocate@gov.scot>; Minister for
Parliamentary Business 2024 <MinisterPB@gov.scot>; Minister for Agriculture and
Connectivity <MinisterforAC@gov.scot>; DG Net Zero <DGNetZero@gov.scot>;
Director of Agriculture and Rural Economy <DirectorARE@gov.scot>; Deputy
Director for Land Reform, Rural and Islands Policy
<DeputyDirectorLandReformRuralAndIslandsPolicy@gov.scot>;
[REDACTED]@gov.scot>; [REDACTED]@gov.scot>; [REDACTED]@gov.scot>;
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[REDACTED]@gov.scot>; [REDACTED]@gov.scot>; [REDACTED]@gov.scot>;
[REDACTED]@gov.scot>; [REDACTED]@gov.scot>
Subject: Routine Submission: Land Reform Bill - Net Zero, Energy and Transport
Committee Note - Witness session 5 October

PS/Cabinet Secretary for Land Reform, Rural Affairs, and Islands,

Please find attached a note of the Net Zero, Energy and Transport evidence session with community land stakeholders that was held on 5 November. eRDM link to the note here.

We understand that the NZET Committee will be continuing its scrutiny of the Bill in coming weeks and we will continue to provide updates and notes as appropriate.

Best wishes,
[REDACTED]

Nye Todd (pronouns: he/him/his)
Land Reform Bill Team| Land Reform Unit|
[REDACTED]@gov.scot | [REDACTED]

Attachment below

From: [REDACTED], Land Reform Bill Team

To: Cabinet Secretary for Rural Affairs, Land Reform and Islands

Copy to:
The Deputy First Minister and Cabinet Secretary for Economy and Gaelic
The Cabinet Secretary for Finance and Local Government
Minister for Parliamentary Business
Lord Advocate
Minister for Agriculture and Connectivity

Land Reform (Scotland) Bill – Committee evidence session proceedings

Lead Committee	Net Zero, Energy and Transport Committee
Date of proceedings	5 October 2024
Purpose	To provide a note of the Committee session on the Land Reform (Scotland) Bill.
Committee session summary	<p>This Committee session took evidence on the Bill from community stakeholders. The session included questions covering Part One of the Bill. Questions tended to be focused on seeking stakeholder views on the scope and expected impact of Part 1 measures.</p> <p><u>Discussion</u></p> <ul style="list-style-type: none">• Scope: witnesses viewed more landholdings should be in scope, including in urban areas, and that the thresholds should be aligned.• Land Management Plans/Engagement: main themes were concerns that communities able to engage are defined too narrowly, and that enforcement options insufficient.• Pre-notification: witnesses praised transparency improvements but raised concerns over timescales and interactions with CRTB process.• Transfer test: witnesses view ‘public interest’ not sufficiently focused on in test. <p><u>Focus of members</u></p>

	<ul style="list-style-type: none"> • SNP: The Deputy Convener, Michael Matheson asked questions focused on landholdings in scope, key definitions and the role of the SLC. Bob Doris MSP questioned landholdings in scope, and sufficiency of breach provisions. Jackie Dunbar MSP asked about consideration of public interest as part of the transfer test. • Conservative: The Convener, Edward Mountain focused on costs to landowners and the SG. Douglas Lumsden MSP questioned complexity of pre-notification. • Labour: Monica Lennon MSP asked a number of questions focused on climate change. Rhoda Grant MSP (not a Committee member so likely present due to her role as the labour Party’s spokesperson on Land Reform) asked questions on the inclusion of urban land, a ‘public interest test’, and sale transparency. • Green: Mark Ruskell MSP asked a number of questions about definitions, avoiding duplication and exemptions for prenotification.
<i>Next steps</i>	None noted.

Land Reform (Scotland) Bill

Note of session at the Delegated Powers and Law Reform Committee

Witnesses:

- Dr Josh Doble, Policy Manager, Community Land Scotland;
- Jon Hollingdale, Policy Adviser, Scottish Community Alliance;
- Linda Gillespie, Head of Community Ownership, Development Trusts Association Scotland.

Committee members (all present)

- Edward Mountain MSP, Scottish Conservative and Unionist Party (Convener)
- Michael Matheson MSP, SNP (Deputy Convener)
- Bob Doris MSP, SNP
- Jackie Dunbar MSP, SNP
- Douglas Lumsden, Scottish Conservative and Unionist Party
- Monica Lennon MSP, Scottish Labour
- Mark Ruskell MSP, Scottish Greens

Questions from other MSPs

- Rhoda Grant MSP, Scottish Labour

Discussion (grouped by theme)

General comments

- Edward Mountain MSP asked witnesses their general views on the Bill.
- Josh Doble (CLS) noted welcomed the legislation in principle but view that significant amendment needed to allow it to contribute to greater diversity of ownership.
- John Hollingdale noted disappointment with scope of the Bill.

LANDHOLDINGS IN SCOPE

Thresholds

- All witnesses viewed that thresholds should all be reduced to 500 hectares and 25% of islands.
- Witnesses viewed financial impact to landowners should not be unreasonable but that providing funding to support LMP production may be appropriate in some cases.

Urban land/land of community significance

- All three witnesses supportive of need to include urban land through changing definition of landholdings in scope to include 'land of community significance' as well as scale criteria.
- Mark Ruskell MSP asked this could be defined clearly enough for legislation. Josh Doble agreed that CLS would provide further written response on this point for the committee.

Aggregate landholdings:

- Bob Doris MSP asked whether the Bill should consider land in scope based on aggregate land owned across Scotland.
- All three witnesses were supportive of this, with Josh Doble suggesting that the requirement for landholdings to be 'contiguous' should be removed from the Bill. It was noted that some exemptions may be needed (eg. for Church of Scotland).

Farms:

- Edward Mountain asked if lowering threshold for LMPs to 500 hectares could place unrealistic expectations on 'small farms'.
- Josh Doble noted vast majority of farms are under 500 hectares, so small farms would not be impacted.

Avoidance:

- Josh Doble noted that company share transfers are a serious loophole for many elements of the Bill.

LAND MANAGEMENT PLANS/COMMUNITY ENGAGEMENT

Content

- Monica Lennon asked if what is included in LMPs is adequate.
- Witnesses viewed other 'public interest' criteria should be included.
- Witnesses supportive of idea (posed in question from Monica Lennon MSP) that requirements on landowners should be to increase biodiversity, not just sustain at current level.

Enforcement

- Witnesses viewed that the ability to report a breach needs to be significantly extended, to wider community bodies and individuals. View that SLC should be able to self report breaches.
- Edward Mountain MSP questioned whether this would lead to vexatious claims. Witnesses considered that this could be handled by SLC, noting example of OSCAR (charities regulator).
- View that penalties for breaches insufficient. Should be tiered based on landholding size/value and/or include cross compliance.

Community Consultation:

- Witnesses viewed that there is currently not enough clarity in the Bill on what consultation requirements are and how engagement should be taken into account.

Definition of communities:

- Considerable discussion of definitions of 'communities' in the Bill, with all witnesses viewing that definitions should be much wider such as 'local stakeholders with a demonstrable interest in the land', with more detail to be set out in guidance or regulations.
- Edward Mountain MSP challenged that a wider definition likely to increase burden on landowners.

Interaction with other plans

- Mark Ruskell MSP questioned how LMPs should sit alongside other plans to avoid duplication.

- Witnesses agreed that this is an important consideration, suggesting that there should be greater reference to links, such as to local place plans.

PRE-NOTIFICATION

Scope

- Mark Ruskell MSP asked witnesses whether they viewed there should be a minimum size of land in scope of pre-notification.
- Witnesses did not agree with a minimum size threshold, as likely to exclude useful land. However, suggested that defining 'land of community significance' could be an alternative to reduce this burden.

Complexity

- Douglas Lumsden MSP asked if complexity will limit effectiveness.
- Witnesses viewed that the process itself wasn't too complex, but noted concerns with complexity and timescales for existing CRTB processes.
- Linda Gillespie noted that any limitation of notifications to just communities who are established under CRTB would limit effectiveness.

Timescales

- Josh Doble noted that for timescales to work, would need to be requirements that related steps such as authorisation of community bodies could be done on escalated timescales. Linda Gillespie viewed that 3 month period may be appropriate.

Review of CRTB

- Witnesses expressed disappointment over timing of CRTB review.

TRANSFER TEST

Public interest

- Jackie Dunbar asked series of questions on whether public interest and local context sufficiently considered. Witnesses viewed that there should be much more focus on the wider public interest in the test – not just on community sustainability.
- Josh Doble noted CLS view that a test on the buyer focused on the public interest of future use would be more effective.
- Edward Mountain noted concerns that if the test introduces too many factors it would become impractical, have negative impacts on the land market and potential substantial cost to the government.

International approaches

- Monica Lennon MSP asked whether could follow international approaches. Witnesses noted SLC research on this shows precedent for intervention in the land market however there is not a solution that could just be lifted into Scotland as land ownership and other factors are different.

ROLE OF SLC

- Michael Matheson asked a series of questions on the role of the new Commissioner.
- Witnesses viewed that there should be restructuring of how the new commissioner interacts with the SLC to ensure adequate oversight.

- Witnesses noted concerns that SLC policy function would be scaled back to allow for regulatory role.

FINANCE

- Edward Mountain asked witnesses if they had view on cost implications to the Scottish Government of the changes they were proposing.
- Josh Doble noted that didn't view financial impacts as excessive, and that there could be potential for breaches to bring in funding.

NET ZERO

Impact on climate change

- Monica Lennon asked witnesses views of statements by SLE and others that land ownership at scale necessary to allow climate change action.
- Witnesses noted examples of collaboration across landowners of differing sizes to achieve climate change impacts.
- Jon Hollingdale noted that Scotland is an outlier in relation to Europe in having such concentrated landownership – with no evidence that this is leading to better results in relation to climate change goals.

Taxation

- Monica Lennon asked if taxation best way to decarbonise land use. Witnesses were broadly supportive, but noted that further work on proposals such as a carbon tax needed.