

## Item 1

### Official sensitive: Cabinet Secretary for Rural Affairs, Land Reform and Islands Briefing for NZET Committee Evidence

{REDACTED – information out of scope of the question}

#### *Compensation and financial risk*

##### Background:

Conservative committee members may ask about the lack of detailed estimation of compensation risks to the Scottish Government in the Financial Memorandum.

The conclusion of the Financial Memorandum for the Bill notes that calculations do *“not include the costs that the Scottish Administration would be liable for in terms of compensation in relation to the pre-notification and Part 2 community right to buy processes as well as actions in relation to the transfer test. These costs will need to be carried as liabilities. As set out in the financial memorandum, the total liability for the Scottish Government in an individual case will depend on: any difference in sale value between the lotted estate and the whole estate; how many landholdings Ministers direct to be lotted and, where there is any delay arising from the prohibitions on transfer of land, any costs incurred as a result of the delay /any loss in value during the delay.*

*Given the history of compensation claims in relation to community right to buy, the Scottish Government expects successful compensation claims in relation to delays in sale to be a rare occurrence. The advice to Ministers to inform their decision on lotting will include an assessment of the possibility that compensation will be required and the value for public money in relation to the anticipated reduction of community harm. Where expert advice indicates that lotting is highly likely to significantly negatively impact the overall value of the land, it will be open to Ministers to decide that the benefits of lotting do not justify the costs.”*

In their letter to NZET committee, the Finance Committee does not specifically make reference to compensation costs that may be liable under the transfer test, however does more broadly reference SLE comments that impacts to the wider land market insufficiently considered.

The Bill team have been working with RESAS and the Government Actuary’s Department to develop a more detailed understanding of compensation risk under the transfer test. A submission was sent to you by {REDACTED} on 23 January providing an update on this work. This report provided set low, medium and high estimated annual costs for transfer test compensation, however noted a high degree of uncertainty in key assumptions.

This further analysis has not yet been shared with the Committee (and the Committee has not requested such costs). The Bill team have been undertaking further engagement with land agents which may help to better inform some of the assumptions made. The lines below offer for further information to be shared should committee members challenge this point.

Lines to take:

- An estimate was not provided for compensation costs in the Financial Memorandum for the Bill as there is limited ability to accurately predict these costs.
- This is because of the wide range of uncertainties involved including judgements on the future land market in Scotland, the number and kinds of future land transactions in scope, the proportion of these where Ministers decide to lot, and any financial impacts of these decisions.
- Additionally, advice to Ministers to inform lotting decisions will include an assessment of potential compensation risks so that Ministers can consider this against potential benefit to local communities.
- This will allow for assessment of compensation risk on a case-by-case basis.

*If pressed to provide figures:*

- My officials are working to develop further analysis to help inform Parliament of the range of potential costs of compensation.
- I am happy to provide an interim summary of this analysis in writing following this session.

{REDACTED – information out of scope of the question}

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**Item 2**

From: {REDACTED}@gov.scot> On Behalf Of Cabinet Secretary for Rural Affairs, Land Reform & Islands 2024  
Sent: 23 January 2025 09:39  
To: {REDACTED}@gov.scot>; Cabinet Secretary for Rural Affairs, Land Reform & Islands 2024 <CabSecforRALRI@gov.scot>  
Cc: Minister for Agriculture and Connectivity <MinisterforAC@gov.scot>; Cabinet Secretary for Finance & Local Government <CabSecFLG@gov.scot>; Deputy First Minister and Cabinet Secretary for Economy & Gaelic <DFMCSEG@gov.scot>; Director of Agriculture and Rural Economy <DirectorARE@gov.scot>; Director of Environment & Forestry <director.enfor@gov.scot>; Gita Anand <Gita.Anand@gov.scot>; John Kerr <John.Kerr@gov.scot>; {REDACTED}@gov.scot>; {REDACTED}@gov.scot>; {REDACTED}@gov.scot>; Deputy Director for Land Reform, Rural and Islands Policy <DeputyDirectorLandReformRuralAndIslandsPolicy@gov.scot>; Fiona Harrison <Fiona.Harrison@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>; {REDACTED}@gov.scot>; {REDACTED}@gov.scot>; Alison Coull <Alison.Coull@gov.scot>; {REDACTED}@gov.scot>; Ian Muirhead <Ian.Muirhead@gov.scot>  
Subject: RE: ROUTINE Submission - Compensation costs associated with the transfer test – an analysis to support the Land Reform Bill 2024

Hi {REDACTED},

Ms Gougeon has noted the main findings of the analysis and notes that this work has informed separate advice on amendments to this part of the Bill.

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

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From: {REDACTED}@gov.scot>

Sent: 23 January 2025 09:29

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

<CabSecforRALRI@gov.scot>

Cc: Minister for Agriculture and Connectivity <MinisterforAC@gov.scot>; Cabinet Secretary for Finance & Local Government <CabSecFLG@gov.scot>; Deputy First

Minister and Cabinet Secretary for Economy & Gaelic <DFMCSEG@gov.scot>;

Director of Agriculture and Rural Economy <DirectorARE@gov.scot>; Director of

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Deputy Director for Land Reform, Rural and Islands Policy

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{REDACTED}@gov.scot>; Alison Coull <Alison.Coull@gov.scot>;

{REDACTED}@gov.scot>; Ian Muirhead <Ian.Muirhead@gov.scot>

Subject: ROUTINE Submission - Compensation costs associated with the transfer test – an analysis to support the Land Reform Bill 2024

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

Please find attached a routine submission to inform the Cabinet Secretary of the main findings of an analytical report (see full report attached) commissioned by the Land Reform Bill Policy team and produced by RESAS regarding the potential impact of compensation costs associated with the 'transfer test' in the Land Reform Bill.

This submission has been approved by Friona Harrison, Deputy Director for Land Reform, Islands and Rural Policy.

Kind regards,  
{REDACTED}

Note erdm links below

Submission - Land Reform Bill - Transfer Test - Compensation Provisions Analysis report (RESAS) details - Objective

Final Report - Compensation costs associated with the Transfer Test - 23rd January 2024 details - Objective

{REDACTED}  
Economic Adviser  
Agriculture, Food & Drink Analysis (AFDA) Unit

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### Item 3

From: {REDACTED}  
Rural and Environmental Science and Analytical Services (RESAS)  
23 January 2024

Cabinet Secretary for Rural Affairs, Land Reform and Islands

## **Compensation costs associated with the transfer test – an analysis to support the Land Reform Bill 2024**

### **Priority and Purpose**

#### **Routine:**

- To inform the Cabinet Secretary of the main findings of an analytical report commissioned by the Land Reform Bill Policy team and produced by RESAS regarding the potential impact of compensation costs associated with the 'transfer test'.

### **Recommendation**

Recommends that you note the main findings of the analysis and note that this work has informed separate advice on amendments to this part of the Bill.

### **Context and Issues**

1. As the Cabinet Secretary will be aware, the Land Reform Bill introduces a 'transfer test', which broadly provides a new power for Scottish Ministers to instruct landowners selling large landholdings over 1,000 hectares in size to sell this land in a particular manner (through a process known as 'lotting'), where certain conditions are met.
2. Following concerns raised by the Finance and Public Administration committee, there is a renewed expectation that the financial costs to Scottish Government arising from provisions within Bills are quantified as far as possible. The cost of future compensation claims to landowners arising from compensation provisions set out in the transfer test were unclear at the point the Land Reform Bill was introduced into the Scottish Parliament (March 2024).
3. To respond to this evidence gap and provide further assurance to parliament, an internal analytical report was commissioned by the Land Reform Bill Policy team and produced by RESAS. The analysis helped inform policy advice on proposed amendments to the 'transfer test' as outlined in a submission by {REDACTED} on 17th December.

### **Objectives of the Analysis**

4. The objectives of the analysis were agreed by the Land Reform Bill Policy team and were as follows:
  - **Objective 1:** Create a comprehensive process map of the transfer test process, capturing all possible outcomes that may arise in a typical case (including the appeals process), identifying clearly the types of compensation that could arise and the key variables which would drive significant compensation claims.
  - **Objective 2:** Develop 3-5 stylised 'case studies' which, as far as practicable, are informed by reasonable assumptions on key variables in the process that will determine the size of compensation claims in a particular case to illustrate the potential range of impacts on the Scottish Government (low impact to high impact).
  - **Objective 3:** Assess potential policy actions and make recommendations as to what could be effective in reducing the risk of significant compensation payments arising in the transfer test process over time.
  - **Objective 4:** Assess the feasibility of generating broader quantitative scenarios or projections to illustrate the overall total potential SG financial risk associated with the compensation provisions over time in line with requirements of a Financial Memorandum.

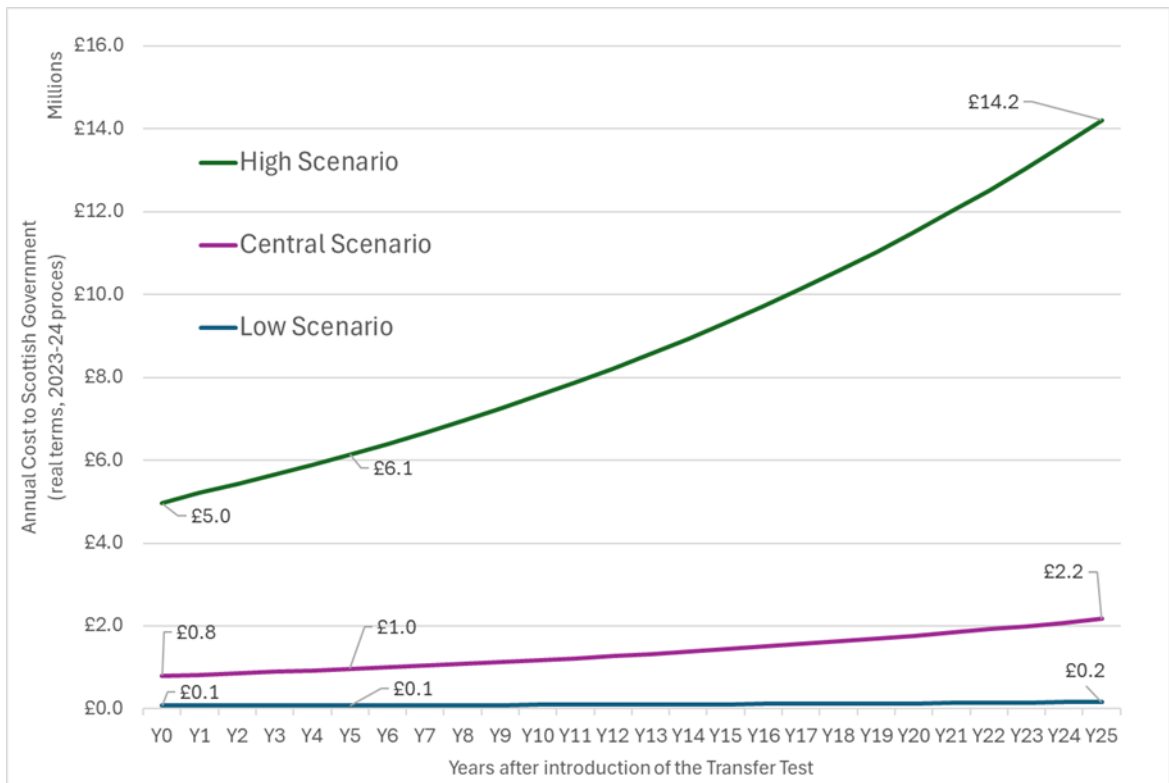
### **Main Findings**

5. The transfer test is expected to impact a relatively small number of land transactions each year and a small proportion of Scotland's rural land. There

were known to be fewer than 30 transactions of landholdings over 1,000 hectares in the last 4 years of available data which could be in scope for the transfer test.

6. The modelling contained in this report captured six different possible grounds for compensation costs linked to the transfer test process. These included claims based on a 'loss of interest' related to the prohibition of a land sale during the transfer test process, potential changes in the market value of the landholding if linked to a lotting decision, additional legal expenses and direct costs associated with Scottish Ministers buying land.
7. There were a significant number of judgements required to produce quantitative projections of the potential financial costs associated with the transfer test, due to the absence of evidence about the future operation of the measures. These included assumptions about the future of Scotland's land market and assumptions about the transfer test process and the decisions taken.
8. The report sets low, high and central scenario cost projections, as shown in the figure below. In the central case scenario, at the year of introduction (assuming 2023-24 prices), annual compensation costs were projected to be £0.8m per year, rising to £1.0m per year after 5 years. The range of values around this central projection was very significant (£0.1m to £5 million in the first year) indicating a high degree of uncertainty in the projections driven by a range of factors. These factors are outlined in the full report and include the number of future land transactions, the area and value of land transacted in in large landholdings and the proportion of in-scope landholdings that Ministers decide will be subject to lotting. In practice, due to the limited number of large land transactions and the high degree of variance in the nature of Scotland's rural land, costs are likely to vary significantly from year-to-year.

**Estimated Annual Compensation Costs associated with the transfer test (all scenarios) in real terms (2023-24 prices)**



9. These estimates are based on average annual transactions associated with all scenarios, which smooth the results, but in reality, the main costs are associated with decisions to lot and annual costs are likely to be much more variable. For each transaction directed to be lotted, the costs per transaction were estimated to be £0.30m in the central scenario projection in the first year, with £0.10m and £0.76m in the low and high scenarios respectively (this excludes any additional costs arising from any lots purchased by Scottish Ministers, this detail is covered in the full report).
10. The report identifies a range of factors that affect possible compensation costs. In particular, and unsurprisingly, higher costs are associated with higher levels of intervention—so the total annual costs are highly dependent on the number of decisions made to direct lotting in order to achieve policy aims. A faster process, or fewer LCC investigations, would reduce costs linked to delays in a sale, but this has to be weighed against the risk of errors in bringing together evidence and advice in expedited circumstances, which could lead to landowners making more successful appeals against decisions.
11. If landowners can be encouraged to consider factors that could lead to a lotting decision prior to a sale (for example through engagement with communities to inform land management plans) this may potentially reduce complexity and delays, reducing expected compensation costs while still allowing for Ministerial intervention where appropriate.

## Sensitivities

12. This report was produced to meet an identified evidence need and to inform Land Reform Policy officials and Scottish ministers ahead of parliamentary

scrutiny of the Land Reform Bill 2024. Further refinement of the analysis – particularly the financial projections - may be necessary should amendments to the transfer test provisions be taken forward. RESAS can also re-visit this analysis if new evidence is brought forward which would materially reduce uncertainty in judgments made around the transfer test process. We do not intend to publish this analysis at this stage. Should further details on potential compensation be requested by parliament as part of their ongoing scrutiny, we will provide advice on what to share with them.

## Quality Assurance

13. Expert input was sought the UK Government Actuary Department in terms of quality assurance of the methodology used to underpin the financial projections produced for this report. Scottish Land Commission staff also commented on the final report.

14. This submission was quality assured by Fiona Harrison, DD, Land Reform, Rural & Islands Policy.

{REDACTED}

Directorate For Environment And Forestry / RESAS – Agriculture Statistics Unit

{REDACTED}

<b>Cabinet Secretaries and Ministers Copy List</b>	<b>For Action</b>	<b>For Information Portfolio interest</b>	<b>For Information Constituency interest</b>	<b>For Information General awareness</b>
Minister for Agriculture and Connectivity	«text»	X	«text»	«text»
Cabinet Secretary for Finance and Local Government		X		
Deputy First Minister/Cabinet Secretary for Economy and Gaelic		X		

### Officials Copy List

George Burgess – Director, Agriculture Rural Economy  
 Diarmuid O’Neill - Director, Environment and Forestry  
 Gita Anand – Interim DD, RESAS  
 John Kerr – DD, Agriculture Policy Division  
 {REDACTED}– Agriculture  
 {REDACTED}– RESAS - Agriculture Food and Drink Analysis  
 {REDACTED}– RESAS - Research, Business and Sponsorship



## Officials Copy List

Fiona Harrison, DD, Land Reform, Rural & Islands Policy  
{REDACTED}, Head of Land Reform Unit  
{REDACTED}, Land Reform Bill Team Leader  
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Alison Coull, SGLD  
{REDACTED}, RESAS  
Ian Muirhead– Special Adviser

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### Item 4

ARE: Land Reform, Rural and Islands  
17 December 2024

## Cabinet Secretary for Rural Affairs, Land Reform and Islands

### Land Reform Bill – Update on Transfer test proposals

{REDACTED – information out of scope of the question}

#### **Financial Considerations**

1. Further consideration will be needed on financial implications. Final decisions on timescales are likely to have an impact on resource costs, however this may be offset by reductions in compensation. A submission from RESAS on modelling potential compensation costs under the transfer test will be provided early in the new year.

{REDACTED – information out of scope of the question}

{REDACTED}

ARE: Land Reform, Rural and Islands

{REDACTED}

<b>Cabinet Secretaries and Ministers Copy List</b>	<b>For Action</b>	<b>For Information Portfolio interest</b>	<b>For Information Constituency interest</b>	<b>For Information General awareness</b>
Cabinet Secretary for Rural Affairs, Land Reform and Islands	X			
Minister for Agriculture and Connectivity		X		
Lord Advocate		X		
Solicitor General		X		

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Legal Secretariat to the Lord Advocate
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**Item 5**

RESAS report – released as a separate attachment.

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**Item 6**

RESAS presentation – released as a separate attachment.

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**Item 7**

Withheld under sections 29(1)(b) and 30(b)(i).