

Land Reform (Scotland) Bill

Business and Regulatory Impact Assessment (BRIA)

March 2024

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This BRIA is divided into two parts. Part 1 covers the land reform measures. Part 2 covers the Land Management Tenancy, agricultural holdings and small landholdings measures.

Part 1: Land Reform Measures

Title of Proposal

1.1 Land Reform Bill 2024

1.1.1 This Business and Regulatory Impact Assessment (BRIA) assesses the impacts arising from measures to further advance the Scottish Government's land reform programme contained within the Land Reform (Scotland) Bill 2024. This document is written subject to the best available information at the time, based on evidence gathered from engagement with relevant stakeholders and relevant public consultations.

1.1.2 This BRIA is structured into the following sections:

- Section 2 covers the purpose and intended effect of the legislation as well as background to the Bill
- Section 3 provides details of the consultation within government, with the public and with businesses that has informed this BRIA
- Section 4 provides an assessment of the options considered to deliver the intent of the legislation, and the cost and benefits to different identified groups
- Section 5 provides details of regulatory impacts and EU alignment
- Section 6 provides an assessment of the impact of the legislation on Scottish firms, the competition assessment and consumer assessment
- Section 7 provides the summary and recommendation
- Section 8 contains the declaration and publication statement

Purpose and Intended Effect

2.1 Background to the Land Reform Bill 2024

2.1.1 More detailed background to the Land Reform Bill, including an overview of the history of Land Reform legislation in Scotland, can be found in the Policy

Memorandum accompanying the Bill¹. The content in this BRIA provides a high-level summary.

2.1.2 The Scottish Government defines land reform as “...the ongoing process by which the ownership of land, its distribution and the law which governs it is modified, reformed and modernised.” Land reform has been a continuing legislative priority since devolution.

2.1.3 The proposals put forward in this Bill are intended as targeted and proportionate ways of addressing a number of risks identified by the Land Commission through their work on scale and concentration.

2.1.4 These proposals deliver Programme for Government commitments to improve the transparency of land ownership, further empower communities, and help ensure that large-scale landholdings are delivering in the public interest. These proposals deliver The Bute House Agreement commitment to deliver legal mechanisms to tackle scale and concentration of land ownership.

2.1.5 The Bill introduces the following measures which would apply to owners of large-scale landholdings, grouped into two Parts for the purposes of this BRIA:

Part A measures: Obligations on landowners

- introduction of Ministerial powers to make regulations which will place new obligations on landowners to produce land management plans and to engage with local communities, to support compliance with the principles of the Land Rights and Responsibilities Statement (LRRS).

Part B measures: Requirements prior to transfer

- requirements (“pre-notification requirements”) for community bodies to receive prior notification in certain cases that the owner intends to transfer a large landholding, or part of it, and provide an opportunity for community bodies in the area to purchase land.
- the introduction of a test (“transfer test”) at the point of certain transfers of all or part a large landholding if the land to be transferred is over 1000 hectares, to determine if the owner should be required to transfer the land in smaller parts (lotting).

The Bill establishes a new Commissioner at the Scottish Land Commission to be known as the “Land and Communities Commissioner”, with responsibilities in relation to the new obligations on landowners and the transfer test.

2.1.6 Definition of land in scope

- for Part A measures, the Bill applies to a landholding that is more than 3000 hectares, or a landholding of at least 1000 hectares that accounts for more than 25% of a permanently inhabited island,

¹ <https://www.parliament.scot/bills-and-laws/bills/land-reform-scotland-bill/>

- for Part B measures, the Bill applies to a landholding that is more than 1000 hectares.

It should be emphasised that a single 'landholding' can for those purposes include land held under more than one title deed, so long as the relevant titles are held by the same person(s), and are geographically contiguous.

2.2 Background to Rural Land Data in Scotland

2.2.1 Rural Scotland accounts for 98% (7.62 million hectares) of the total land mass of Scotland (7.79 million hectares) and 17% of Scotland's population are resident there². The majority of rural land in Scotland is privately owned and managed.

2.2.2 According to the latest Scottish Government statistics there were 754 assets in community ownership in 2022 owned by 505 community groups, consisting of 212,000 hectares (472,688 acres)³. This represents around 3% of Scotland's land (with both the number and total area trending upwards since the establishment of the NPF indicator). Around 12% of Scotland's land is in public ownership⁴ (primarily land managed by Forestry and Land Scotland) and approximately 2.5% of land is owned by third sector/NGOs such as the National Trust for Scotland and John Muir Trust.

2.2.3 Regardless of ownership structure, the majority of Scotland's land is classified as agricultural land. As reported in the 2023 June Agricultural Census, the total Scottish agricultural area in 2023 was 5.33 million hectares⁵. It should be noted, however, that large areas of agricultural land are only lightly farmed. For example, hilly or mountainous areas are mostly used for rough grazing. There were 44,698 agricultural landholdings (a mix of owned and rented) recorded in the latest census, the vast majority of these holdings (over 95%) were less than 500 hectares in size.

2.2.4 Other private landholdings in Scotland may combine agricultural and non-agricultural activities. There is no robust national level data on the value of economic activity on private 'rural estates' in Scotland, nor is there an accepted definition of 'estates'. Hindle et al. 2014⁶ provides an indicative illustration of what the impacts of the sector as a whole may look like across Scotland based on an extensive survey of private estates. The research suggests that the following economic activities are typical of private estates in Scotland:

- In-hand agriculture, tenanted agriculture and crofting
- Forestry and woodland management
- Sporting land uses (hunting, shooting, fishing)
- Conservation management
- Renewable energy developments
- Residential property management and letting

² See [Rural Scotland Key Facts 2021 - gov.scot \(www.gov.scot\)](https://www.gov.scot/rural-scotland-key-facts-2021)

³ See [Community Ownership in Scotland 2022 - gov.scot \(www.gov.scot\)](https://www.gov.scot/community-ownership-in-scotland-2022)

⁴ See [Section 9 - Extent of Public Land - The land of Scotland and the common good: report - gov.scot \(www.gov.scot\)](https://www.gov.scot/section-9-extent-of-public-land-the-land-of-scotland-and-the-common-good-report)

⁵ The total Scottish agricultural area excludes common grazing land.

⁶ [Economic Contribution of Estates in Scotland.pdf \(scottishlandandestates.co.uk\)](https://www.scottishlandandestates.co.uk/economic-contribution-of-estates-in-scotland.pdf)

- Tourism and leisure (holiday accommodation and visitor attractions)
- Commercial property
- Minerals and quarrying
- Other activities including food and drink manufacturing

2.2.5 For estates over 1,000 hectares (estates which will be impacted by at least some of the provisions of the Bill), the four most common activities generating business income were provision of residential property, agriculture, sporting activity and forestry.

Land Ownership Data in Scotland

2.2.6 As part of this BRIA and the policy development process, alternative options for hectare size thresholds were considered and the impact of these thresholds on the magnitude of costs and benefits arising for different groups and sectors were assessed.

2.2.7 Land Register data from RoS contains land which has been transacted across Scotland since 2003 (or earlier depending on county area). Older titles (contained in the Register of Sasines) remain in physical copy only. RoS have developed and released a further dataset – Unlocking Sasines⁷ – which contains indicative ownership extents for titles which exist in Sasines. Data was extracted from the Land Register (as at 14 October 2023) and shared with Scottish Government. Rights in land recorded in the Land Register of Scotland can include ownership of land, ownership of separate legal tenements such as salmon fishing, sporting or mineral rights; as well as servitudes and burdens which grant other rights and responsibilities in the use of land. Land Register title tenures include ownership and long-term tenancies. For the purposes of this analysis, RoS included all tenures, legal tenements and polygons associated with each title. The data therefore is not wholly analogous to the definition of landholding for the purposes of the Bill, but does provide useful context to the likely scale of impact across Scotland’s land.

2.2.8 It is widely recognised that land ownership data is fragmented with data collected across multiple organisations with different remits. This leads to partial coverage and therefore limits the attribution of tenure to individual land parcels and the identification and classification of active land managers and final beneficiaries of land. Land ownership data is held in several sources including Scottish Government Agriculture datasets, Forestry and Land Scotland (FLS), Registers of Scotland (RoS), Local Authorities, from the private sector and other sources. The datasets differ in terms of scope, coverage, granularity, frequency of update, and cost of access.

2.2.9 The analysis in this BRIA utilises detailed modelling which the Scottish Government have commissioned from the James Hutton Institute⁸. This modelling uses a combination of relevant datasets to give a more robust estimate of the number of landholdings that may be in scope for the different hectare thresholds

⁷ [Unlocking sasines - Registers of Scotland \(ros.gov.uk\)](https://ros.gov.uk)

⁸ Dave Miller and Keith Matthews (2024) Analysis of Counts of Large Land Holdings in Scotland, Methodology Note, Scotland’s Land Reform Futures project (JHI-E3-1)

considered. We are grateful for the collaboration of the James Hutton Institute (JHI) and for the expert advice provided. In addition to data sourced from the JHI, we have also acquired information from RoS and the SLC which have informed our assessment of the impact of the Pre-Notification and Transfer Test.

2.2.10 The combined RoS data suggest that there are 2958 estates of 500 hectares or more in Scotland, comprising two-thirds (63%) of Scotland's land. Tables 1 and 2 show the combined titles in the Land Register and Unlocking Sasines dataset broken down by selected hectarage thresholds (absolute numbers and cumulative totals).

Table 1: Number of land titles and total hectarage between given thresholds (absolute figures)

Area threshold (ha)	Number of titles	Hectares (millions)	Share of Scotland's total land (%)
500-1,000	1,148	0.68	9%
1,000-1,500	471	0.49	6%
1,500-2,000	453	0.34	4%
2,000-3,000	263	0.49	6%
3,000+	623	3.09	40%
Total*	2,958	4.91	63%

**The area totals in these tables are not arithmetic totals of each column, but a calculation of the combined footprint area of titles in each category, with overlaps in rights within and between titles removed.*

Source: Registers of Scotland

Table 2: Number of land titles and total hectarage of areas above given thresholds (cumulative figures)

Area threshold (ha)	Number of titles	Hectares (millions)	Share of Scotland's total land (%)
500+	2,958	5.09	65%
1,000+	1,810	4.40	57%
1,500+	1,339	3.92	50%
2,000+	886	3.57	46%
3,000+	623	3.09	40%
Total*	2,958	4.91	63%

**The area totals in these tables are not arithmetic totals of each column, but a calculation of the combined footprint area of titles in each category, with overlaps in rights within and between titles removed.*

Source: Registers of Scotland

2.2.11 The data from RoS indicates that around 40% (3.09 million hectares) of Scotland's land is concentrated in 623 land titles. Halving the 3,000 threshold to 1,500 would increase land coverage to around 50% (3.92 million hectares) of Scotland's land and would more than double the number of titles in scope to 1,339. A threshold of 1,000 ha (as used for the Part B measures in the Bill) would bring in scope 57% (4.4 million hectares) of Scotland's land and 1,810 land titles.

2.2.12 The data from RoS includes mainland titles and ‘island’ titles⁹. 95 titles (out of 623) were located on islands and were above 3,000 hectares¹⁰. 228 titles (out of 1,180) were located on islands and were above 1,000 hectares.

2.2.13 While a title will often correspond to the intuitive idea of a ‘landholding,’ this is not always the case. A landowner can register adjacent areas as separate titles at first or subsequent registration. Multiple contiguous land titles may therefore be owned by a single landowner, so using title data alone as a proxy measure for the number of large-scale landholdings is likely to overestimate the actual number of estates that will need to comply with new duties set out in the Bill.

2.2.14 To address this and to support the analysis in this BRIA, the Scottish Government commissioned the James Hutton Institute to make an assessment of the total number of landowners with one or multiple titles, with a combined hectareage above 3,000 ha or 1,000 ha. The analysis combines information sourced from the Who Owns Scotland dataset¹¹, Forestry and Land Scotland data and IACS data¹² which combined cover around 5.5m hectares of Scotland’s land¹³. The results provide a very similar picture to RoS data in terms of total land coverage (4.90m hectares vs 4.91m hectares). The estimate of the number of landholdings is significantly lower than the estimated number of titles, with 414 above 3,000 hectares and 1,066 above 1,000 hectares (compared to 623 and 1,810 titles respectively using RoS data). This discrepancy is primarily a result of a single owner having multiple titles across a single landholding.

2.2.15 We have used these estimates (table 3) as being the best available for the analysis set out in this BRIA, but stress that they are not definitive due to the challenge of identifying multiple titles in close geographical proximity with single ownership, and other challenges with the data.

Table 3: Number of landholdings and total hectareage above given thresholds (cumulative figures)

Area threshold (ha)	Number of landholdings	Hectares (millions)	Share of Scotland's total land (%)
500+	1,907	4.90	63%
1,000+	1,066	4.32	55%
1,500+	763	3.95	50%
2,000+	598	3.66	47%
3,000+	414	3.22	41%
Total*	1,907	4.90	63%

Source: James Hutton Institute analysis

⁹ Titles have been categorized as ‘island titles’ using the National Records of Scotland: Islands dataset where the title overlaps with an NRS island geometry and does not also intersect with the mainland geometry.

¹⁰ For the purposes of the Bill, landholdings located on islands that make up more than 25% of the land area of an inhabited island and are over 1,000 ha will also fall under the LMP duty in the Bill. This means titles below 3,000 ha may also be in scope.

¹¹ See [Land Ownership Map | Who Owns Scotland](#)

¹² Integrated Administration and Control System data support schemes covered by the Single Application Form and other farm subsidy applications

¹³ JHI concluded that the only readily usable source of land ownership data with both land parcels and owners attributed is Who Owns Scotland.

2.2.16 Some of the titles that fall within the scope of the large-scale landholding definition are owned by public sector bodies, as well as Charities/NGOs. Internal Scottish Government data, from Land Use Portfolio Office project ‘Delivering Climate Change and Biodiversity Goals on Publicly Owned Land’ provides an estimate of the number of landholdings owned by public bodies above the two thresholds set in the Bill. Further information is provided in para 4.3.33, which discusses the costs and benefits of the bill for Public bodies and the Third Sector.

Table 4: Summary of landholdings managed by Public Bodies

	Number of landholdings	Cumulative size of landholdings (million hectares)
Landholdings over 1,000 ha	235	0.61
Landholdings over 3,000 ha	75	0.45

Source: Scottish Government

Land Transaction Data for the Pre-Notification requirement and Transfer Test

2.2.17 The rural land market in Scotland is relatively small, with very little land transacted every year¹⁴.

2.2.18 Evidence gathered by the SLC’s latest rural land market report suggests that in recent years (2020, 2021 and 2022), the average number of rural land sales (above 25 hectares) was around 250 transactions per year, with 59% of land being classified as farmland, 31% being classified as forestry and woodlands and 10% being classified as ‘estates’¹⁵. Based on this data, the vast majority of rural land transactions would not be affected by the Transfer Test considered in this BRIA as they concern landholdings under 1,000 hectares. Across a 3 year period, 24 transactions (5-12 transactions per year) were for landholdings above 1,000 ha. More detail is provided in the discussion of costs of the Transfer Test to private landowners.

2.2.19 The Pre-Notification requirements will apply to more transactions per year than the Transfer Test, as sales of parts of any large-scale landholding may be subject to the process.

2.2.20 As part of the consultation process for this BRIA, the Scottish Government acquired data from RoS on the number of transfers of part (TP) of titles from ‘parent titles’, where the size of the ‘parent title’ was above a given hectareage threshold (3,000 ha for Option 2, 1,000 ha for Options 3 and 4 considered in this BRIA).

2.2.21 A transfer of part (TP) arises when a deed over part of a registered land either creates a new interest (i.e. grant of a lease), or transfers ownership of a part of the previously registered land to a new proprietor. Transfers of part can be identified in RoS data by filtering for a dedicated TP application type. We were provided data

¹⁴ [SLC Rural Land Market Insights 2023 \(landcommission.gov.scot\)](https://landcommission.gov.scot)

¹⁵ “Estate” is not a land classification in terms of land registration legislation. Estates were mainly identified in the report by conducting searches of registrations for the word “estate”, and by cross-checking published market analyses.

on TP applications registered from 2018 to 2022 for transfers of ownership (grants of long leases were removed from the data, as these would not be subject to a test).

2.2.22 In all cases the ‘parent title’ recorded in these cases includes the footprint (all spatial rights), not just the area of exclusive ownership of the parent title. A large ‘data artifact’ related to a housing development in the central belt which skewed the data was identified and corrected for, but it remains the case that the figures presented are likely to overstate the number of transactions that would be in scope for the Pre-Notification requirements based on the hectarage of the parent landholding.

2.2.23 Table 5 sets out the number of transfers of part from parent titles over 1,000 hectares and those over 3,000 hectares. On average, across the 5 years of data available, around 140 transactions per year were from landholdings over 1,000 hectares and around 84 transactions per year were from landholdings over 3,000 hectares. Each individual transaction could be very small (e.g. croft houses) so this data is not directly comparable to the transaction data set out in paragraph 2.2.18 which excludes transactions of less than 25 hectares. As TPs are a first registration type, the new TP titles may not be mapped yet by RoS and final area information was therefore not available.

Table 5: Transfers of part per year for parent titles with current area over a given threshold: a proxy measure of transactions subject to a Pre-Notification requirement

	Over 1,000 ha			Over 3,000 ha		
	Island	Mainland	Total	Island	Mainland	Total
2018	44	55	99	39	30	69
2019	46	102	148	30	53	83
2020	49	71	120	35	43	78
2021	54	110	164	35	58	93
2022	56	113	169	38	57	95
Total	249	451	700	177	241	418
5-year average	50	90	140	35	48	84

Source: Registers of Scotland. Note ‘Over 3,000 ha figures are a sub-set of the ‘Over 1,000 ha figures’.

2.2.24 Off-market sales are considered important in many rural market reports, with Strutt and Parker estimating as many as one in five sales occurred off-market in 2022¹⁶. There is some evidence to indicate that off market sales are greater for larger landholdings than smaller ones . According to the 2022 Rural Land Market report produced by the SLC, 45% of estates were advertised off-market in 2020, with this rising to 64% in 2021¹⁷.

2.2.25 The market for land transactions in Scotland has been described in the SLC Rural Land Market Insights 2023 report¹⁸. The most significant theme from land agents was that general environmental, social, and governance (ESG) motivations had become drivers for investment in the estates market. Specifically, the key new

¹⁶ See [SLC Rural Land Market Insights 2023 \(landcommission.gov.scot\)](https://landcommission.gov.scot)

¹⁷ See [Scotland's Rural Land Market Insights Report April 2022 \(landcommission.gov.scot\)](https://landcommission.gov.scot)

¹⁸ See [SLC Rural Land Market Insights 2023 \(landcommission.gov.scot\)](https://landcommission.gov.scot)

drivers were identified as peatland restoration opportunities for carbon emission off-setting, native woodland creation opportunities to capture carbon, and rewilding opportunities for nature restoration.

2.2.26 Uncertainties around land investments were also reported in the SLC Market review, which included: the carbon market; taxation; agricultural support payments, and how these could change in the future.

2.3 Objectives

2.3.1 The Scottish Government is committed to an ongoing programme of land reform, aimed at bringing about “a Scotland with a strong and dynamic relationship between its land and people, where all land contributes to a modern, sustainable and successful country, supports a just transition to net zero, and where rights and responsibilities in relation to land and its natural capital are fully recognised and fulfilled”.

2.3.2 This Bill is intended to help realise this vision by bringing forward legislative requirements in relation to the ongoing management and transfer of large landholdings. These requirements are based on recommendations of the Scottish Land Commission, and are intended to be targeted and proportionate ways of addressing the risks identified by the Land Commission through their research.

2.3.3 The specific objectives set out for the Bill and the duties which meet these objectives are aligned with the following national outcomes:

- Communities – we live in communities that are inclusive, empowered, resilient and safe,
- Environment – we value, enjoy, protect and enhance our environment,
- Economy – we have a globally competitive, entrepreneurial, inclusive and sustainable economy,
- Human Rights – we respect, protect and fulfil human rights and live free from discrimination.

2.4 Rationale for Government Intervention

2.4.1 A summary of measures and their rationale is provided below, with further detail set out in the Policy Memorandum for this Bill.

Description of Land Reform Bill measures and rationale for intervention

2.4.2 Measure: Land management plans, and community engagement obligations

Description: The introduction of Ministerial powers to make regulations which will place new obligations on landowners to produce land management plans and to engage with local communities, to support compliance with the principles of the Land Rights and Responsibilities Statement (LRRS).

Rationale: To further improve the transparency of land ownership and management in Scotland, and to strengthen the rights of communities in rural areas by giving them greater involvement in decisions about the land on which they live and work.

2.4.3 Measure: Pre-notification of intention to sell

Description: Introduction of a requirement for a prior notification of intention to sell large landholdings to offer communities an enhanced opportunity to make a late application under existing community right to buy (CRtB) legislation (for which see the 2003 Act).

Rationale: To improve the sustainable development of communities by increasing opportunities for community bodies to purchase land when it comes up for sale.

2.4.4 Measure: Transfer test

Description: A test at the point of certain transfers of all or part a large landholding if the land to be transferred is over 1000 hectares, to determine if the owner should be required to transfer the land in smaller parts (lotting).

Rationale: To allow Scottish Ministers to consider (before a planned sale) if land being sold in lots could increase the supply of more varied plots of land in a way that might be expected to have a positive impact on the ongoing sustainability of communities in the area.

Consultation

3.1 Within Government

3.1.1 Two working groups were established early in the policy development process – one to discuss the strengthening of the LRRS principles (which became the land management plan and community engagement provisions) and the other to discuss pre-notification requirements and the transfer test. The working groups were designed to inform the development of and test the proposals, and consider how they could best support the delivery of a range of outcomes, and met fortnightly over a period of several months. Individual policy areas were also consulted on a bilateral basis as part of the development of the proposals, to consider interaction of the measures with other policies and how they could support delivery of aims and outcomes. Together the working groups and bilateral meetings comprised of officials representing a range of policy interests, including:

- Peatland Restoration
- Biodiversity
- Wildlife Management
- Natural Capital Investment
- Forestry
- Islands
- Agricultural Holdings
- Crofting
- Rural Communities
- Community Right to Buy
- Community Wealth Building

- Community Empowerment
- Civil Justice
- Planning
- Housing
- Property
- Climate Change Adaptation
- Land Use Transformation Board
- Food and Drink

3.1.2 Public bodies and teams within the Scottish Government who manage land on behalf of Scottish Ministers were consulted on the impact of the proposals, including the cost and resource implications of compliance with the measures.

3.1.3 The Scottish Courts and Tribunals were consulted on the potential impacts on the court service of the appeal mechanisms proposed in the Bill for the Land Court, Lands Tribunal and Court of Session. The Scottish Legal Aid Board were also consulted as part of the Legal Aid Impact Test, the results of which are set out further on in this document.

3.2 Public Consultation

3.2.1 The development of the measures in the Bill and evaluation of their impacts were informed by the Land Reform in a Net Zero Nation consultation.

3.2.2 Drawing on the recommendations of the Commission, consultation on the land reform components of this Bill opened on 4 July 2022 and closed on 30 October 2022. Land Reform in a Net Zero Nation¹⁹ set out a number of proposals for inclusion in the Land Reform Bill and sought views through 51 separate questions. It also invited respondents to give their views on other ideas and proposals, which it was noted, might not necessarily form part of this current Bill but could be suitable to take forward in future legislation, or in other ways. In total, 537 responses were received, of which 162 were from groups or organisations and 375 from individual members of the public. Six in-person consultation events were also held across Scotland with a further event online.

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

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

¹⁹ [Land reform in a Net Zero Nation: consultation paper - gov.scot \(www.gov.scot\)](https://www.gov.scot/resources/documents/2022/07/Land_reform_in_a_Net_Zero_Nation_consultation_paper_-_gov.scot.pdf)

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

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

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

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

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

3.3 Business

3.3.1 A number of landowners, land agents and representative organisations of land-based businesses were consulted on the proposals and involved in ongoing engagement. Their views helped inform the development of the proposals and understanding of the potential impacts on landowners and related businesses, including financial impacts.

Options

4.1 Sectors and groups affected by the Land Reform (Scotland) Bill 2024

4.1.1 In this BRIA, the impact(s) of various requirements of the Bill are considered for two main groups in detail: private landowners and local communities that live on land that are subject to the main duties of the Bill outlined below. Further impacts are also considered on other groups such the Scottish Government (including the Scottish Courts and Tribunal Service (SCTS)), the Scottish Land Commission (SLC), Local Authorities and other Public Sector and Third Sector Organisations (principally

those that have large-scale landholdings). The impacts of each option are set out in the costs and benefits sections 4.3 and 4.4.

4.1.2 This BRIA primarily considers first round effects of the legislation on different sectors and groups, however it is recognised that there may be indirect second round effects arising from the implementation of certain elements of the Bill which may have longer-term benefits and costs, particularly those linked to future changes in land management. The need for further BRIAs will be considered during the development of secondary legislation as appropriate.

4.2 Options considered in this BRIA

4.2.1 For the purposes of this BRIA we group the measures in the Bill into two parts (A and B) to assess costs and benefits to different groups, as set out at point 2.1.4.

Strengthening the Land Rights and responsibilities Statement (LRRS) through implementing compulsory Land Management Plans (LMP)

4.2.2 The Land Reform Act 2016 requires Scottish Ministers to publish and regularly review a land rights and responsibilities statement (LRRS). This was published in 2017, reviewed in 2022²⁰, and is supported by good practice protocols developed by the SLC²¹. The aim of the LRRS and the protocols (which are currently voluntary for all landowners regardless of size of landholding) is to support landowners, land managers, and communities to work together to make better, fairer and more transparent decisions about land use.

Table 6: Policy options considered in this BRIA for enforcement of land management plan and community engagement obligations and Land Management Plans

	Enforcement of obligations	Land Management Plan (LMP) obligations
Option 1 (Do Nothing, Voluntary)	Existing voluntary LRRS, no statutory obligations.	Existing voluntary approach
Option 2 (Minimal Intervention)	Apply to landholdings over 3,000 ha, & according to islands criteria. Statutory obligations set out in regulations – administrator has advisory powers in relation to breach (similar to tenant farming commissioner).	Apply to landholdings over 3,000 ha, & according to islands criteria. Requirement for a LMP. New plan required after 10 years or subject to significant change in management of the land. Plan must be published/made available but no consultation required to develop a plan.

²⁰ Scottish Government, [Scottish Land Rights and Responsibilities Statement 2022](#), September 2022.

²¹ Scottish Land Commission, [Land Rights and Responsibilities Protocols](#).

<p>Option 3 (Preferred Option – as set out in the Bill)</p>	<p>Apply to landholdings over 3,000 ha & according to islands criteria. Statutory obligations set out in regulations – administrator can set financial penalties in relation to a breach.</p>	<p>Apply to landholdings over 3,000 ha, & according to islands criteria. Requirement for a LMP. New plan required after 5 years or subject to significant change in management of the land. Draft plan should be shared with local community for views prior to publication and final plan published/made available.</p>
<p>Option 4 (Maximum intervention)</p>	<p>Apply to landholdings over 1,000 ha. Statutory obligations set out in regulations – administrator can set financial and 'cross compliance' (impacting subsidies) penalties in relation to a breach.</p>	<p>Apply to landholdings over 1,000 ha. Requirement for a LMP. New plan required after 5 years or subject to significant change in management of the land. Formal consultation/ community meetings on draft plan required prior to publication and final plan published/made available.</p>

4.2.3 The **'do nothing' option (option 1)** considered in this BRIA for these aspects of the Bill is the continuation of the current voluntary approach to LRRS and LMPs. There is clear evidence that some landowners have drawn up LMPs under the current voluntary basis. Through the Good Practice Programme in 2019-2020 the SLC provided support to over 150 landowners and communities to help them put LRRS protocols into practice in both rural and urban Scotland. Participants included a wide range of landowners including private landowners, public bodies, community landowners, environmental non-government organisations and faith organisations.

4.2.4 As reported in the consultation analysis, some landowners of private estates are also applying LRRS principles in their current practice, providing a number of sectoral plans to manage specific resources within the landholding and/or complying with particular local plans or community action plans.

4.2.5 In their response to the consultation, the SLC reported that the Good Practice Programme showed that although significant progress can be made through a voluntary approach, there remain situations in which land owners or managers (in any sector) choose not to engage with LRRS, or do not see it as being of significance in decision making.

4.2.6 Hence the alternative policy options (**Options 2,3 and 4**) that were considered in the policy development process for the Bill, and which are set out in this BRIA and summarised in Table 6, set out proposals that formalise this voluntary approach and place LMP obligations on a statutory footing. Each of these three options would strengthen compliance with the principles of the existing Scottish Land Rights and Responsibilities Statement, and enforce compliance with certain aspects of the principles.

4.2.7 Each requires owners of large-scale landholdings to produce a land management plan, make that plan publicly available, and review and revise the plan, as appropriate (with the frequency of such updates varying between options). Some

options – including Option 3 as set out in the Bill – require landowners to engage with communities on the development of and significant changes to that plan.

4.2.8 Under each policy option, the information that is included in a LMP is similar (although the consultation requirements and frequency of update to the plan varies as set out in Table 6), including:

- details of the land owned including the owner;
- the long term vision and objectives for the management of the land, including high level management proposals and potential for future sale;
- how the landowner is demonstrating compliance with obligations relating to land (such as those in the Outdoor Access Code and Deer Code) as applicable; and
- how the landowner is managing the land in a way that contributes to carbon reduction and/or nature restoration.

4.2.9 The details of what will be required to meet the requirements of the duty to engage with communities (under **Options 3 and 4**) and further detail in relation to land management plans (including the procedures by which plans must be produced, consulted on, published, adhered to and updated, and the ways in which the plans will interact with other codes and obligations) will be set out as regulations in secondary legislation. The provisions in the primary legislation set out the parameters of the regulation-making powers, and so the costs and benefits that arise are assessed on the basis of these parameters and where possible, on the expected costs associated with detail that will be set out in regulations.

4.2.10 To support the enforcement of the LMP requirements, Options 2,3 and 4 include powers to enable alleged breaches of the duties or requirements to be reported to a new Land and Communities Commissioner. This will be an additional Commissioner within the SLC and require modifications to the Commission's statutory functions. There are differing options for the extent of new statutory powers for the Commission to investigate an alleged breach, support landowners to remedy a breach where one is found, and (depending on the option) apply financial penalties for not remedying a breach where appropriate. Under options that include a penalty, there is provision for landowners to appeal the decision and any penalty in relation to a breach investigation as set out in the Bill.

Adopting Pre-Notification requirements and a Transfer Test on large-scale landholdings

4.2.11 As set out in section 2.4, the policy options considered in this BRIA for this aspect of the Bill aim to bring about “a Scotland with a strong and dynamic relationship between its land and people, where all land contributes to a modern, sustainable and successful country, supports a just transition to net zero, and where rights and responsibilities in relation to land and its natural capital are fully recognised and fulfilled”. It is recognised that not all communities wish to acquire and manage large estates: some will decide that their needs are best met by smaller

parcels of land, for example, for housing, or community projects. The options considered offer communities the opportunity to be notified of proposed transfers from large-scale landholdings in scope, giving them an additional opportunity to make an application under the late application process set out in Community Right to Buy (CRtB) legislation (Land Reform (Scotland) Act 2003).

Table 7: Policy Options for adopting Pre-Notification requirements and a Transfer Test for large-scale landholdings

Sub-proposal	Pre-notification requirements	Transfer Test
Option 1 (Do Nothing)	Do nothing	Do nothing
Option 2 (Minimal Intervention)	Apply to landholdings over 3,000 hectares, & according to islands criteria. Introduce a requirement to notify Scottish Ministers of sale to allow for publication/notification of interested community bodies. No further prohibition on sale to allow community bodies to prepare application.	N/A
Option 3 (Preferred Option – as set out in the Bill)	Apply to landholdings over 1,000 ha. Applies to all sales from a landholding that is in scope, so long as the transfer would be in scope of CRtB. Following notification of an intended sale, community bodies have 30 working days to express interest, then 40 working days to complete an application (total 14 weeks) during which period landowner prohibited from selling.	Apply to landholdings over 1,000 ha. Applies only where intended landholding for sale is over 1,000 ha (i.e. not to smaller part). Test on landholding before intended sale. If initial screening is passed, SLC produce report and Ministers may, if tests met, require land to be sold as lots.
Option 4 (Maximum Intervention)	Apply to landholdings over 1,000 ha. Pre-notification process same as Option 3 but length of prohibition on sale for community groups to prepare application extended to 26 weeks/6 months.	As per option 3, above.

4.2.12 One of the aims of the pre-notification requirement is to ensure that place-based community bodies have advance notice of sales of large-scale landholdings, as well as of sales of portions of such landholdings.

4.2.13 There are already some restrictions on land sales under the ‘do nothing’ option (Option 1). Communities can pre-emptively register an interest in a particular area of land under current ‘Part 2’ Community Right to Buy (CRtB) legislation, if they meet certain conditions. Landowners (regardless of size of landholding) who chose to put land on the market where a community has an active registered interest under CRtB are not able to sell the land freely but must first allow 30 days for the interested

community body to confirm it wishes to purchase the land, subject to agreement by Ministers. Some transfers are exempt from Part 2 under section 40(4) of the 2003 Act and will continue to be exempt from the requirements set out in the Bill and this BRIA.

4.2.14 Under the policy options for change considered in this BRIA (Options 2, 3 and 4 as set out in Table 7), community bodies would have the opportunity to be informed about prospective sales and then have an opportunity to make an application to register a community interest under the CRtB Part 2 process. Large-scale landowners (as defined under each option) would be required to notify Scottish Ministers should they intend to transfer all or part of their landholding, to allow for those community bodies that had registered an interest in being informed of such transfers in the area to be notified.

4.2.15 Under Options 3 and 4, community bodies would have a period of protected time where the landowner would be prevented from taking further steps to transfer the land to express an interest, and - should they pass an initial screening - produce a formal application under Part 2 Community Right to Buy (under Option 2 there would be no protected period of time). The criteria for decision making in relation to any application would follow what is currently set out for CRtB legislation.

4.2.16 Should a formal application be accepted, the community body would have a registered right to buy over the relevant land and would follow the process to complete purchase set out in existing Part 2 Community Right to Buy.

4.2.17 If a landholding proposed for sale was over 1,000ha, screening for the Transfer Test would be carried out as well as the Pre-Notification requirement under Options 3 and 4. Ministers would request that SLC prepare a report to inform a lotting decision.

4.2.18 Ministers will consider as part of the lotting decision whether they are satisfied that requiring this landholding to be sold in smaller lots to different purchasers could be anticipated to increase the supply of more varied plots of land in a way that might be expected to have a positive impact on the ongoing sustainability of communities in the area.

4.2.19 If Ministers decide to order lotting, they must specify the lots, and the lots must then be transferred to different purchasers. Landowners can apply for review of, or appeal, Ministerial lotting decisions.

4.3 Costs and Benefits of options to strengthen the LRRS obligations and introduce compulsory Land Management Plans (LMP)

Private Landowners

4.3.1 Under **Option 1**, the LMP would continue to be voluntary and therefore landowners who choose not to engage with the LMP currently would not incur any additional costs (or realise any benefits) associated with having to engage and comply with new regulations in future.

4.3.2 As stated above, there is clear evidence that some landowners have drawn up LMPs under the current voluntary basis. This demonstrates that there are benefits in engaging with LRRS principles through a LMP.

4.3.3 Under **Options 2, 3 and 4**, it would be compulsory for owners of large-scale landholdings to publish a Land Management Plan. The benefits of producing land management plans for landowners include:

- Providing an effective method to ensure and demonstrate that large-scale landowners are complying with the requirements of regulations, and thus mitigate against any potential action by the SLC in enforcement²² (more significant under options 3 and 4).
- Enabling stronger links between day-to-day land management activities and longer-term strategic objectives for a landholding, which may assist decision making and prioritisation around the use of resources on the estate by landowners.
- Creating a tool to improve land management, providing direction and focus so that everyone involved in the business or others connected to the land are clear of their role in the longer-term vision for the land.
- Providing a framework for regular review or benchmarking of a landholding and identification of any issues in particular at times of transition of ownership/succession.
- Supporting open communication – a point of access to information for people in the local community, wider public and investors/developers who want to find out more about land management and opportunities for investments in natural capital or other projects.

4.3.4 These benefits have been identified from responses to the consultation and through engagement with the SLC, but it has not been possible to quantify them robustly across all land owners who would be required to draw up a LMP. This is because any benefits will be contingent on the individual context in which a LMP is put in place in a given landholding, the decisions of individual landowners, the outcome of any required consultation exercises (under Options 3 and 4) and the relative costs and benefits associated with opportunities for alternative uses for land in the future, amongst other factors.

4.3.5 Under **Option 2 and 3**, benefits of compulsory LMPs would be realised for large-scale landowners with more than 3,000 hectares (or where land is more than 25% of a permanently inhabited island, with a minimum area of 1,000 hectares). As set out in section 2.2, this would apply to an estimated 414 landowners. Under **Option 4**, the number of landowners that would benefit would be significantly higher (at 1,050) due to all landholdings with a hectarage above 1,000 being in scope. It

²² This will be more relevant under options 3 and 4, where it is proposed that the SLC will have statutory powers to place fines on non-compliance on

should be recognised that under all options, owners of smaller landholdings could chose to benefit by putting in place a LMP, although there would be no legal duty to do so.

4.3.6 Under **Option 2**, a LMP would be published every 10 years or following a significant change in the management of the land with no specific requirements for local consultation (although landowners may choose to do this as a matter of course). Under **Options 3 and 4**, a LMP would be published every 5 years and there would be specific consultation requirements. Any landowner found to be in breach of this requirement could be investigated by the SLC, although no financial penalties for a breach in compliance would be applied under **Option 2**.

4.3.7 The principal costs to landowners will be costs associated with developing and publishing a land management plan and - for Options 3 and 4 – the cost of any consultation requirements. If non-compliant there may also be costs associated with financial penalties that could be imposed by the SLC for breaches of the regulations under Options 3 and 4.

4.3.8 The precise details of what will be required in a LMP and consultation requirements are not set out in the Bill and will follow in subsequent secondary regulations and, as such, will be subject to a further BRIA. For the purposes of this BRIA, it is anticipated that the level of detail and required consultation will be broadly equivalent to that in woodland Management Plans as currently required for smaller scale woodlands²³. The elements that are likely to be required in a management plan under Option 2-4 are set out in para. 4.2.8.

4.3.9 Each LMP will be specific and tailored to the landholding according to the size, types of existing land uses, and specific requirements of existing and planned land management activities. As part of the stakeholder engagement for this BRIA, cost estimates were gathered from public bodies that have developed similar management plans for land in different contexts (NatureScot and FLS) as well as some large-scale landowners (e.g. NTS) that have developed land management plans in recent years.

4.3.10 We expect that many large-scale landholdings (in particular landholdings of public bodies such as Forestry Land Scotland²⁴ and NatureScot) will already have some or all of the information that is expected to be required in LMP, such as the extent of their landholding, a long term vision and objectives for their land, and actions to be taken to remain compliant with existing codes and other statutory requirement. In line with the Financial Memorandum, we estimate that public bodies may incur additional costs in relation to publication of a LMP of £2,000-£4,000 per plan, on top of activity currently undertaken.

4.3.11 Based on information provided by stakeholders, we expect that the costs of drafting a land management plan would be between £3,000-£15,000 for a given

²³ See [643 \(forestry.gov.scot\)](https://www.forestry.gov.scot)

²⁴ Land management plans for FLS landholdings are publicly available at [Land management plan consultations - Forestry and Land Scotland](#). It should be noted that these plans go beyond the minimum requirements expected to be required for a LMP as set out in the Bill. It should also be noted that FLS plans exist for smaller landholdings (below 3,000 ha).

landholding for private landowners. These costs will be less for some landowners, who have already determined some or all of the information required.

4.3.12 Some of the information expected to be required by the plans, such as a map setting out the extent of the landholding will require technical specialists to determine it if a landowner does not already have the required detail. Based on engagement with land agents, if the extent of the landholding needs to be mapped by a land agent for the purposes of a land management plan, this could cost between £2,400-£3,600. This would be an additional one-off cost for landowners.

4.3.13 As the intention is that the landowner is only required to set out their plans in relation to carbon emission reduction and nature restoration, rather than being compelled to undertake certain activities, any costs associated with these activities would not be incurred as a result of the LMP measures. Consequently landowners would not incur any additional costs to provide that information for a land management plan.

4.3.14 The exact requirements for consultation and publishing – relevant for costs arising under Options 3 and 4 - will be set out in regulations which are still to be developed, and so cannot be fully quantified at this point but will be assessed during the development of the regulations. As an indication, if a landowner was required to make a draft land management plan available, allow time for comments on that land management plan, consider those comments as part of further development of the plan and then publish the plan (on their website, for example), we estimate this could cost between £1,000-£3,000 in publication costs for both the draft plan for consultation and the final plan.

4.3.15 Where parts of a landholding are leased, and the term of the lease is as such that the landowner does not have effective control over land management decisions, it is anticipated that more limited reporting and consultation requirements will be expected for the leased land. This detail will be set out in secondary legislation and is not within the Bill and not considered in this BRIA.

4.3.16 Table 8 sets out a range of estimated costs for private sector landowners and public sector bodies with landholdings above 3,000 hectares that will be under a duty to publish a LMP. The total cost is derived from assuming that each private landholding will incur costs associated with drafting a LMP, costs associated with employing a land agent to assist in mapping of the landholding and costs related to consultation with local communities. As set out above, public bodies in general are expected to broadly have already carried out work that could be used as the basis of a LMP, hence these costs are lower and reported separately.

Table 8: Estimated additional costs to landowners of the LMP duty under Policy Options

		Option 1	Option 2	Option 3 (SG preferred option)	Option 4
Private landholdings	Number of private large-scale landholdings	0	340	340	815
	Total cost of LMP/LRRS duty	£0	(£1.8m - £6.3m)	(£2.2m - £7.3m)	(£5.2m - £17.6m)
	<i>of which:</i>				
	<i>Cost of drafting a LMP</i>	£0	(£1m - £5.1m)	(£1m - £5.1m)	(£2.4m - £12.2m)
	<i>Cost of Mapping</i>	£0	(£0.8m - £1.2m)	(£0.8m - £1.2m)	(£2m - £2.9m)
	<i>Cost of Consultation</i>	£0	(£0m - £0m)	(£0.3m - £1m)	(£0.8m - £2.4m)
	Total cost of LMP/LRRS duty (annualised)	£0	(£0.2m - £0.6m)	(£0.4m - £1.5m)	(£1m - £3.5m)
	Estimated cost per landholding (annualised)	£0	(£500 - £1,900)	(£1,300 - £4,300)	(£1,300 - £4,300)
	Estimated cost per ha (annualised)	£0	(£0.7 - £2.3 per ha)	(£0.8 - £2.6 per ha)	(£1.4 - £4.7 per ha)
Public landholdings	Number of public large-scale landholdings	0	75	75	235
	Total cost of LMP/LRRS duty	£0	(£0.2m - £0.3m)	(£0.2m - £0.3m)	(£0.5m - £0.9m)
	Total cost of LMP/LRRS duty (annualised)	£0	(£0.02m - £0.03m)	(£0.03m - £0.06m)	(£0.09m - £0.19m)
	Estimated cost per landholding (annualised)	£0	(£200 - £400)	(£400 - £800)	(£400 - £800)
	Estimated cost per ha (annualised)	£0	(£0.04 - £0.07 per ha)	(£0.07 - £0.14 per ha)	(£0.16 - £0.32 per ha)

4.3.17 The total cost of the LMP duty increases under each option. Under Option 2, the duty to comply with the LMP requirement is estimated to cost in total between £1.8m and £6.3m. As a LMP is only required to be produced every 10 years under this option, in order to compare this with other options, costs are annualised to £0.2m-£0.6m per year. The estimated cost per landholding is £500 - £1,900 per year under this Option. Under Option 3, the estimated costs are slightly higher due to the requirement that a plan is produced/reviewed at least every 5 years and the requirement that LMPs are consulted upon. Annualised costs under Option 3 for landholdings are estimated to be between £0.4m and £1.5m per year (£1,100 to

£4,000 per landholding). Finally under Option 4, total costs are higher due to the requirement that landholdings over 1,000 ha must draw up on a plan (£1m- £3.5m per year), although the cost per landholding is similar to Option 3.

4.3.18 It is likely that the cost of LMPs would fall in future iterations of the plans. It is also the case that some in-scope landowners may already be complying with LMP requirements voluntarily or providing that information already as part of other statutory requirements (large farms with whole farm plans or large woodlands with management plans, for example).

4.3.19 If a landowner is investigated for an alleged breach of the requirements to develop a LMP, there may be costs associated with complying with a breach investigation process as they may need to produce certain information and respond to requests. If a landowner was then found to be in breach there may also be costs associated with remedying the breach depending on the action needing to be taken. In most cases this would have been action that they should have carried out to be compliant in the first instance and so would be unlikely to be an additional cost beyond that set out in Table 8.

4.3.20 If a landowner then fails to remedy a breach within the required timescale, the Land and Communities Commissioner can apply a financial penalty of up to £5,000 to the landowner, which would need to be paid to the Commission within 28 days under Options 3 and 4 (there would be no financial penalties under Option 2). There will be provision for landowners to appeal the decision of the Commissioner and any penalty in relation to a breach investigation to the Lands Tribunal for Scotland. Both the landowner and the Commissioner would likely incur legal costs as part of any action.

4.3.21 Under Option 4, there would more extensive financial penalties that could impact other support the landowner may be in receipt of (such as agricultural subsidies). As Option 4 applies to more landowners, this would also be a more significant burden on private landowners compared to Option 3.

Community bodies located in (or adjacent to) large-scale landholdings

4.3.22 There are no additional benefits to local community bodies under Option 1 (the 'do nothing option'). Communities that happen to be located in (or adjacent to) landholdings where the landowner voluntarily engages with LRRS would continue to see benefits from this level of community engagement, but this will not be shared more widely, and could be withdrawn in the future.

4.3.23 Broadly, Options 2, 3 and 4 would be likely to deliver a range of benefits to local communities which are set out in the table below

Table 9: Expected Benefits of Land Management Plans to Local Communities

Benefits to Local communities	Details
Access to information	<ul style="list-style-type: none"> a. Better access to information. b. Improved transparency and accountability around land ownership and land use. c. Identification of opportunities for community purchase or partnership with landowners.
Community engagement	<ul style="list-style-type: none"> a. Community consultation, engagement, involvement or participation in the development of LMP, depending on the extent to which communities can influence the planning process (limited under Option 2).
Improved communication and better relationships	<ul style="list-style-type: none"> a. Enhanced understanding and collaboration, between landowners and communities b. Alignment with national priorities. c. Information sharing and transparency.
Other potential benefits	<ul style="list-style-type: none"> a. Safeguarding public access rights. b. Environmental benefits, including with respect to climate and biodiversity. c. Increased community volunteering. d. Opportunities for local housing, small-scale renewables and ecotourism.

4.3.24 As with the benefits outlined for private landowners it is not possible to quantify these benefits, because they will necessarily be contingent on the individual context in which a LMP is put in place in a given landholding, the decisions of individual landowners, the outcome of any required consultation exercises (under Options 3 and 4) and the relationship between local communities and landowners.

4.3.25 In some cases, the LMP duty may not bring the expected benefits (in particular the ‘other potential benefits’ outlined in Table 9) to local communities as the landowner is ultimately under no obligation to change land management plans in response to consultation feedback (unless there is grounds for a breach of the duty, details of which would be set out in secondary legislation). However, it is potentially the case that a ‘second order’ effect of the LMP could be for more land in a large-scale landholding to be put to better use to meet the needs and aspirations of local communities, thus being a further benefit to them.

4.3.26 There may be some minimal costs under Option 3 and 4 associated with the requirement for landowners to consult with local communities, while local community bodies take time to consider responses to a draft plan before it is finalised. There may also be costs if communities feel that the consultation requirements were not carried out adequately by the landowner and decide to make a case to the SLC in order to report a breach. However, these are likely to be minimal.

4.3.27 There is potential for conflict between community aspirations for local land use change and the wider public interest as expressed in wider national priorities such as Net Zero and nature restoration.

Local Authorities

4.3.28 Under Option 1, there are not expected to be any additional costs or benefits arising for local authorities.

4.3.29 Under Options 2,3 and 4 local authorities would be one of the specified bodies that can make a report to the SLC should they become aware of an apparent breach by an owner landholding within their local authority area, but they are not under a duty to report such a breach. In considering whether to choose to make a report, local authorities would need to consider any resource implications of doing so. This will only be applicable to local authorities where there are landholdings in respect of which the LMP duty arises, so any costs will not be spread uniformly across local authorities.

4.3.30 If local authorities report an alleged a breach, they will need to complete a form and provide evidence to support a specific allegation. The length of time this will take to do will depend on the nature of the breach, but we estimate this could take between 1 – 2 days of staff time. They would not then have significant further involvement in the process, though they may be contacted by the SLC if needed during their investigation. As this process would not be undertaken on a regular basis, and the involvement of the local authority would be minimal, it is expected that reporting of breaches where necessary could be undertaken by the existing staff complement within local authorities.

4.3.31 Under **Options 3 and 4** there may be some further indirect-and optional-costs as local authorities could potentially engage – as an interested party - in LMP consultations. This may potentially be a burden for local authorities with higher numbers of large-scale landholdings to which the LMP requirement applies. There would be a small financial cost for local authorities associated with preparing and submitting a response, taking up staff time. It is estimated to take 2-5 days of a staff member's time to consider a land management plan and prepare and submit a response to the landowner with any comments, which would cost between £1,000-£2,000 in resource per plan.

4.3.32 Through engagement in LMP consultations of large-scale landholder in their area, under Options 3 and 4, local authorities may benefit from being able to formally influence the management of private land within their areas in line with wider local authority plans. The purpose of Local Authority local plans is to manage the development and use of land in the long term public interest²⁵.

Public Bodies and Third Sector Organisations

4.3.33 As landowners, public bodies that manage public large-scale landholdings and third sector organisations which own large-scale landholdings are likely to be impacted under Options 2,3 and/or 4 considered within this BRIA.

²⁵ See [Aims and expectations of LDPs - Local development planning guidance - gov.scot](https://www.gov.scot/Information/Policy/LocalDevelopment/LocalDevelopmentPlanningGuidance/aims-and-expectations-of-LDPs) (www.gov.scot)

4.3.34 Based on internal Scottish Government data compiled from various internal sources as outlined in para 2.2.16 there are approximately 75 large-scale landholdings that are over 3,000 ha (0.45 million hectares in total) which are managed by various public sector organisations on behalf of Scottish Ministers, UK Ministers and the Crown. There are significantly more large-scale landholdings over 1,000 ha (0.61 million hectares of land) managed by public bodies. These figures reflect land managed by Forestry and Land Scotland, Scottish Water, the Scottish Crown Estate Scotland, NatureScot and MoD. The vast majority of landholdings consist of Forestry and Land Scotland landholdings. Under Option 3 (the option within the Bill) Forestry Land Scotland (FLS), Nature Scot, Crown Estate Scotland and Scottish Water are understood to have landholdings that are within the scope of the Bill's provisions.

4.3.35 Similarly, it is recognised that there are a number of third sector organisations which own large-scale landholdings that we expect would be required to produce a LMP (or multiple plans) under the options consider in this BRIA such as the Woodland Trust, RSPB, Borders Forest Trust, NTS, John Muir Trust and Trees for Life.

4.3.36 As set out in the analysis in Table 8 above, many public bodies are likely to have already carried out work to determine some of the information that is expected to be required in a LMP, with the suggested costs for public bodies equating to less than £0.1m per year under each option considered in this BRIA. Therefore the costs arising for public bodies is expected to be minimal under all Options.

4.3.37 Similarly, for third sector organisations that are large-scale landholders, the costs associated with the LMP are a subset of the costings set out in Table 8. As is expected for public bodies, third sector organisations are more likely to have carried out work to determine some of the information that is expected to be required in LMP, such as the extent of their landholding, developing a long term vision and objectives for their land, and taking actions to remain compliant with existing codes and other statutory requirements. This means the cost per landholding is likely to be at the lower end of the range used to estimate costings to landowners as a whole under each Option.

4.3.38 The benefits for public bodies and third sector organisations of engaging in a LMP will be similar to the benefits for private landowners identified in para. 4.3.3.

Scottish Government

4.3.39 There will be no additional costs to Scottish Ministers under Option 1 ('do nothing option'). Under Options 2,3, and 4 there will be costs arising to Scottish Ministers due to the need to develop regulations to set out further details of the LMP duty (primarily resourcing and staffing costs), costs associated with compliance in cases where there are large-landholdings directly managed by Scottish Government, and costs to the Scottish Courts and Tribunal Service (SCTS) as a result of future potential appeals and additional costs for public bodies funded by the Scottish Government such as the SLC.

4.3.40 Under Options 2,3 and 4, Scottish Ministers would be responsible for preparing regulations which impose the obligations on landowners relating to the duties to engage with communities and to produce a LMP. Ministers will be required to consult with the Land and Communities Commissioner before making the regulations, and the regulations will be laid before Parliament as a Scottish Statutory Instrument.

4.3.41 Detail on the likely resourcing costs for the Scottish Government is set out in detail in the Financial Memorandum, with costs identified likely to be similar across Options 2,3 and 4.

4.3.42 There will be one-off resourcing costs associated with consulting on the development of the regulations and additional one-off resourcing and staffing costs linked to the need to lay draft regulations in parliament and produce required impact assessments. There is expected to be minimal ongoing work on the regulations once they are brought into force, with any ongoing costs potentially linked to future reviews of the regulations.

4.3.43 Under Options 2,3 and 4 there will be a new Commissioner within the SLC who will be a member of the Commission. The costs for this new Commissioner will mainly fall on the SLC and so are set out separately below. However, there may be some direct costs for Scottish Government associated with appointing the new Commissioner.

4.3.44 There will be compliance costs to the Scottish Government to ensure that any large-scale landholdings owned by Scottish Ministers a that are in scope of the regulations, such as the crofting estates, are compliant with its requirements, including the preparation and publication of a land management plan. The number of Scottish Government landholdings impacted by the obligations is expected to be between 10-15 (and may be higher under Option 4). The Scottish Government is likely to have already determined much of the information that is expected to be required by the plan and therefore the costs are expected to be minimal.

4.3.45 There will also be financial implications for the Scottish Courts and Tribunals Service under Options 3 and 4 in handling appeals in relation to the provisions. As there are no financial penalties for breaches under Option 2 and no Transfer test, there is not expected to be any costs for the SCTS under this option.

4.3.46 The landowner may appeal to the Lands Tribunal for Scotland regarding any financial penalty levied by the Land and Communities Commissioner under Options 3 and 4. Both the landowner and the Commissioner would likely incur legal costs as part of any action. Parties are not required to have legal representation at a hearing but even if parties choose not to incur costs for representation, there will be costs associated with lodging the appeal and administrative costs.

Scottish Land Commission

4.3.47 Under Option 1, the LMP would continue to be voluntary and therefore there would be no additional costs for the SLC, above the activity they already undertake to support voluntary compliance with LRRS and LMPs.

4.3.48 Under Option 2, the Bill would create a new Commissioner who will be a member of the SLC. The new Commissioner, supported by Commission staff, would have a duty to investigate complaints regarding compliance with landowners who may fail to comply with the requirements of the regulations e.g not publishing LMPs. The Commissioner would only have advisory powers in relation to breaches (similar to tenant farming commissioner), so would not have powers to impose fines for non-compliance to landowners in appropriate circumstances.

4.3.49 Experience of the Tenant Farming Commissioner (TFC) to date suggests that the advisory model has been successful in helping to bring stakeholders together and improve practice within the sector. A statutory review of the functions of the TFC was carried out in early 2020, which found that the Codes of Practice issued were easy to understand, useful, fair, and robust, and that they had helped to improve relations between tenants and landlords. Notwithstanding this finding, a key recommendation from this review was that - to foster compliance with the codes of practice - the TFC should be granted the authority to sanction and impose financial penalties on anyone found to have been in breach of the codes of practice, which would go beyond the powers outlined in Option 2²⁶.

4.3.50 Under Options 3 and 4 the Bill would similarly create a new Commissioner who will be a member of the SLC. The Commissioner would be under duty in relation to the matters in regulations to:

- investigate complaints relating to failure to engage with communities in terms of the duty,
- investigate complaints relating to failure to meet the requirements regarding land management plans; and
- enforce compliance with the powers to introduce financial penalties.

4.3.51 There will be costs associated with a new Commissioner under Options 2,3 and 4. In practice, the work associated with the duties of the new Commissioner will be delegated to the staff of the Commission, and it is expected that in practice the Commissioner would take a strategic and decision-making role in the processes.

4.3.52 There is a high degree of uncertainty as to the volume of the work the Commissioner and the staff would have in relation to any breaches of new duties by landowners, as this will depend on the number of allegations lodged and the level of compliance by landowners .It should be recognised that breaches can only be reported by certain communities bodies,, a local authority (if all or part of the land which is the subject of the breach falls within its local authority area), Historic Environment Scotland, the Scottish Environmental Protection Agency, Scottish Forestry and NatureScot.

²⁶ See [Tenant Farming Commissioner functions: review - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/tenant-farming-commissioner-functions-review/pages/10.aspx)

4.3.53 We are unable to identify any meaningful difference in the volume of work for a new Commissioner between Options 2, 3 and 4. It could be the case that the threat of financial penalties under Options 3 and 4 may encourage a higher degree of compliance amongst landowners and therefore a lower workload and costs for the Commissioner and their staff but this is only conjecture

4.3.54 As set out in the Financial Memorandum for the Bill, the Commission's budget is entirely funded through grant in aid by the Scottish Government. The Commission will require ongoing resource funding to cover the costs for the new Commissioner and additional staffing costs. It is proposed that these costs would be partially met through existing funding to the Commission, by reducing their current activities. Additional funding will, however, be required in order to fully fund these new functions.

4.4 Costs and Benefits of options to Adopting Pre-Notification requirements and a Transfer test on transfers of large-scale holdings

4.4.1 Table 7 set out the policy options considered in this BRIA for the Pre-notification requirements and a Transfer Test.

Private Landowners

4.4.2 There will be no additional costs or benefits to any landowners under Option 1 (the 'do nothing' option). It should be recognised, that under current Community Right to Buy (CRtB) legislation, communities can pre-emptively register an interest in a particular area of land if they meet certain conditions. Landowners (regardless of size of landholding) who chose to put land on market where a community has an active registered interest under the CRtB would therefore not be able to sell the land freely, and instead must allow 30 days for the interested community body to confirm it wishes to purchase the land and then Ministers would need to consider whether to agree to this. Therefore, it is the case that restrictions on land sales would remain a feature of the Scottish rural land market under a 'do nothing' option.

4.4.3 Under Options 2, 3 and 4, owners of large-scale landholdings (as defined by the threshold used in each option) that intend to sell part or all of their land, in certain circumstances, will be subject to additional costs associated with likely delays in selling their land due to the new tests and potential restrictions on sale. It is also possible that in some circumstances the policy could have an impact on land values as set out below.

4.4.4 The Pre-Notification requirements will apply to more land transactions than the Transfer test. A Pre-Notification requirement could apply to the sale of a small plot of land if that land is part of a large-scale landholding over 1,000 hectares. The Transfer Test will only impact transactions where the plot of land that is being transacted is itself over 1,000 hectares.

4.4.5 As set out in section 2.2, there is a higher degree of uncertainty as to the number of land transactions that the Pre-Notification requirement may be applied to under Options 2, 3 and 4 due to limitations regarding data currently collected and held by RoS. The data set out in Table 5 in section 2.2 is based on a methodology

that may overestimate (to a unknown degree) the number of land transactions that could be subject to a Pre-Notification requirement.

4.4.6 Notwithstanding these limitations, based on the data set out in section 2.2, our best estimate is that under Option 2 a Pre-Notification requirement might reasonably impact between 60 and 100 land transactions per year from sales from landholdings above 3,000 hectares. Whereas, under Options 3 and 4, this would increase to between 100 and 170 land transactions per year.

4.4.7 Similarly, as set out in section 2.2 evidence gathered by the SLC’s latest rural land market report²⁷ suggests the vast majority of rural land sales would not be affected by the Transfer test under Options 3 and 4 considered in this BRIA, with only 24 transactions of land that could have been in scope in 2020, 2021 and 2022. Of the 24 transactions above 1,000 ha, the majority of sales were attributable to ‘estates’ in the analysis (15 sales), with a very small number (3) being farmland (with no sales in 2020 and 2021) and a small number being forestry and woodland sales (6 transactions). Table 9 sets out the pattern of relevant transactions geographically²⁸. The vast majority of these sales were either in the Highlands and Islands region of Scotland or Eastern Scotland.

Table 10: Number of Sales, Total Hectarage and Average Price per Hectare of Land Transactions above 1,000 ha (2020 – 2022)

	No. of Sales	Total hectarage of sales	Average price per hectare
Eastern Scotland	10	27,000	£3,000
Highlands and Islands	11	27,000	£1,300
Rest of Scotland	3	10,000	£1,000
Total	24	64,000	£1,900

Source: Scottish Land Commission, note hectarage figures rounded to nearest 1,000 ha and price figures rounded to nearest £1,000

4.4.8 Under Option 2, it is expected that between 60 and 100 land transactions each year would meet the hectarage criteria and be subject to a Pre-Notification requirement. The Pre-Notification requirement under this option would compel the landowner to notify Scottish Ministers of the intention to sell any part of a landholding that is over 3,000 ha in size and for people who have previously registered an interest and certain bodies to be notified of the intended sale of relevant land. There is no Transfer Test under Option 2 and therefore no impacts arise from this test under this option.

4.4.9 Under Option 2, there is no advantage given to local communities in terms of protected time to formally register and buy land through the CRtB process. Off-market transactions continue to take place (i.e. private transfers not known to the public), with the effect that a community may not know about an intended transfer

²⁷ [Rural Land Market Report \(landcommission.gov.scot\)](https://landcommission.gov.scot)

²⁸ Note, the land market analysis report uses the NUTS classification (Nomenclature of territorial units for statistics) 2013. A map of precise locations of sales can be viewed in the report

until after it has taken place. It would then be too late for a community body to make an application under the Part 2 procedure.

Community bodies located in (or adjacent to) large-scale landholdings

4.4.10 Under option 1 ('the do nothing option') there will be no additional costs or benefits for local communities. It should be noted that in order to benefit from pre-notification (by acquiring land for community purposes) under the alternative options considered in this BRIA, then there will be financial implications for any community body in preparing and submitting an application, through the established Part 2 CRtB process for private landholdings. However, this is not an additional cost arising from the Bill.

4.4.11 Under the other options considered in this BRIA, it is proposed that the prerequisites for community bodies to formally register an interest in land as set out in the CRtB process will not apply for the purposes of the initial notification of proposed sales under the pre-notification process. However a community body will have to meet these requirements by the point of submitting an application under Part 2 Community Right to Buy (after 14 weeks under Option 3, or 26 weeks under Option 4).

4.4.12 Under Options 2,3 and 4, the initial expression of interest for community bodies interested in submitting an application to pursue purchase of all or part of a notified landholding would have minimal costs for community bodies as they would be expected to provide information that they should already possess, such as their constitution.

4.4.13 Ultimately, under all policy options, there will be benefits arising for local communities due to the expansion in the opportunities to use existing Community Right to Buy mechanism to buy land for community purposes. The opportunity to expand community ownership is likely to be stronger in Option 4, due to the longer time period in which communities can organise and register a bid for land, and weakest under Option 2 where there is no protected time period and no Transfer Test.

4.4.14 The expansion of community ownership can benefit local communities by addressing some of the issues with concentrated land ownership. For example, benefits may accrue through improving the provision of affordable housing by opening up the supply of land to communities and improving opportunities for business expansion due to difficulties in securing suitable land/premises on reasonable terms outwith the community ownership model.

4.4.15 Under **Options 3 and 4**, there will be more restrictions on the sale of land due the introduction of a Transfer Test and a lower hectareage threshold for the Pre-Notification requirement. it is expected that 100 and 170 land transactions each year would meet the hectareage criteria and be subject to a Pre-Notification requirement under these Options. Local community bodies that have registered an interest in the land under sale would have either 14 weeks to register and produce a formal application under Part 2 CRtB under Option 3 or 26 weeks under Option 4. The criteria for decision making would follow what is currently set out for CRtB route.

4.4.16 Table 10 below sets out a range of estimates of the number of land transactions that are likely to be in scope for a Transfer Test under Options 3 and 4 based on recent land transaction data as set out in section 2.2, between 5 and 15 transactions per year are over 1,000 hectares and are likely to be subject to a Transfer Test screening, of which a much lower number may be subject to further intervention.

Table 11: Reasonable scenarios for the number sales per year subject to initial screening and a Ministerial decision to lot due to a Transfer Test

Rural land transactions per year	Low (per year)	Medium (per year)	High(per year)
Proposed sales in scope per year for the Transfer Test	5	10	15
Assuming approximately one third of cases result in a Ministerial decision to lot	2	3	5

4.4.17 Where the Land and Communities Commissioner considers that Ministerial tests for requiring lotting cannot be met, following an initial assessment of the information provided they may provide a short report to Ministers setting this out , and reasons for it, so allowing for a Ministerial lotting decision at this point. Otherwise, it is anticipated that the Land and Communities Commissioner will conduct further investigation and prepare a fuller report for Ministers. Ministers will then decide whether the plot of land under consideration should be 'lotted' and each parcel subject to a separate sale. It is unclear what proportion of land transactions (and therefore the number of landowners) that might be subject to this provision as Ministerial consideration will be based on the individual circumstances of the landholding and nearby communities, and lotting will not be appropriate in all cases. Table 11 sets out a high, medium and low scenarios based on an assumed proportion that would be affected under the Transfer test.

4.4.18 It should also be recognised under this Option 3 and 4 that landowners could circumvent the requirement to need a Transfer Test if they sold land in multiple parcels of less than 1,000 hectares. This would mean additional transaction costs (such as agent fees) and some additional delays in selling all the land that the landowner may ultimately wish to sell (a sale of 1,000 ha might need to be divided into 2 individual sales), but it would mean the sale(s) would be concluded without the need for a Transfer Test. To address this potential loophole, Ministers would have the discretion to subsequent notifications under the pre-notification process as a single sale for the purposes of the Transfer Test (if from the same owner, the land area of sales combined met the hectareage requirement and missives not concluded).

4.4.19 Landowners are likely to face some additional costs under **Options 3 and 4** related to the Pre-Notification requirement and Transfer Test.

4.4.20 Firstly, there is the likelihood in some cases that landowners will face a delay in the disposal of their land compared to the 'do nothing' Option in cases where a community body registers an interest and applies to buy the land. A sale to a private

buyer could have feasibly completed in a shorter timescale²⁹. Under each option, at the extreme, the additional delay as compared to existing community right to buy procedures could be up to 14 weeks (under Option 3) and 26 weeks (under Option 4) - if an application to register an interest is made, this will then need to be considered by Ministers which will further delay the owner from transferring the land. If the land sold is above 1,000 ha then the Transfer Test will apply and Scottish Ministers may make a decision that a land parcel must be lotted before a sale can take place, this could introduce further administrative delays in a land sale. The intention is that parts of the transfer test and the pre-notification processes take place concurrently to limit impacts on transfer timescales, although some delay is likely.

4.4.21 The cost implications of such delays to landowners is challenging to assess as it would depend on the number of sales in future years, the value of land sold and the length of any delay relative to a market transaction. Based on the data set out in Table 10 above, the average price achieved for a landholding over 1,000 ha in the last three years was £5.1m. Assuming that between 2 and 5 sales are affected by a delay each year, this means landowners may face a delay in receiving income from sales of anywhere between £10 million and £26 million per year across all landowners subject to a Transfer Test. There will be further potential delays in transactions which are lower than 1,000 ha which are subject to Pre-Notification only, and where a community body has registered an interest in the land. Such delays may have an impact on the timing of future investment decisions by businesses selling land, where the motivation for selling land is perhaps to raise capital for other purposes.

4.4.22 The Scottish Government would, however, be responsible for paying a compensation for certain losses and expenses as it is under the existing CRtB provisions to compensate for any losses arising due to delays in sale. However, it should be noted that there have been fewer than 5 successful compensation claims following a community right to buy process since 2004. The value of compensation would depend on several factors, including any additional required costs incurred through ownership during the period a sale is delayed.

4.4.23 Secondly, apart from the potential delay in the sale of land as a result of these tests, the Transfer Test under Option 3 and 4 could require some landowners to divide the land they intend for sale into smaller parcels through a process of lotting which may incur additional costs above those had the land been sold as a single entity. The costs following a requirement to lot are split between the Scottish Government and the landowner as is currently done in relation to existing community right to buy processes. The landowner would be responsible for the advertising and costs related to the sale of the lots, but not for the work relating to the determining of the lot boundaries and their valuation. If a landowner can demonstrate that these costs exceed what they would have been had the land been sold as a single holding,

²⁹ Sales of rural land may take several months to several years currently, depending on the type of landholding and market demand. Although it only applies to agricultural land (and not necessarily and from a large-scale landholding), [Strutt & Parker](#) report that over 80% of the farms publicly marketed in 2021 had concluded missives or were under offer by the end of the year.

then the landowner can claim compensation from the Scottish Government and so costs to the landowner are expected to be minimal.

4.4.24 Where the transfer test applies, the landowner would be asked to provide information to the SLC to support their investigation and inform the report to Scottish Ministers. This would likely be basic information that the landowner should know or have to hand and so providing this information is not expected to be a burden to the landowner and doing so will have minimal to no cost implications for them.

4.4.25 If lotting was determined to be appropriate this would be subject to expert advice and landholder views would be considered. If Scottish Ministers direct that the land be transferred in lots, the landowner may incur additional costs above those had the land been sold as a single entity.

4.4.26 The landowner would be responsible for the advertising and costs related to the sale of the lots, but not for the work relating to the determining of the lot boundaries and their valuation. If a landowner can demonstrate that these costs exceed what they would have been had the land been sold as a single landholding, then the landowner can claim compensation from the Scottish Government to cover and offset such costs.

4.4.27 Where no lots are sold after a period of time after Ministerial decision, the landowner can apply to Ministers to review their decision. Ministers must either confirm their decision, withdraw it and make a new one, or offer to buy one or more of the lots. In summary, the landowner should not be significantly financially impacted by the decision to lot the land.

4.4.28 Finally, policy changes under Options 2,3 and 4 could feasibly have an impact on the price of rural land. It is thus important to recognise that under Options 3 and 4, there may be unintended consequences on land prices. The property market for land is characterised as being relatively illiquid and often requires large capital expenditure and third party borrowing. It also functions without a central trading market and is subject to significant transaction costs (both fiscal and agent based). If these policy options have the effect of reducing the number of potential buyers they could reduce the likely exchange price of land. Recent rural land market reports however indicate competition with the land market which is reflected in prices, and where land is lotted this could increase the number of buyers able to enter the market.

4.4.29 The introduction of a Pre-Notification requirement and Transfer Test will increase the length of the settlement process in some cases, hence reducing liquidity of land further, and introduces the new risk of Ministers not approving a private sale of land in the form that would be desirable for a prospective buyer. Assuming that rational risk/return decision making applies in the land market, these factors may combine to negatively affect the amount a purchaser would pay relative to a do nothing option. This was reflected in responses to the consultation, with public interest tests seen to have the potential to impact on land values, act as a barrier to investment, and lead to some landowners choosing not to sell.

authorities of any proposals in the regulations would need to be assessed and taken into consideration when the regulations are being developed.

4.4.37 Local authorities would indirectly benefit from pre-notification should the result of this be higher levels of community ownership in certain areas which may help to address long-standing needs of such communities (such as supply of housing needs).

Public Bodies and Third Sector Organisations

4.4.38 Similar to the costs set out for private landowners, land transactions will be subject to a potential delays compared to the 'do nothing' option if community bodies have expressed an interest in purchasing any land in a large-scale landholding owned and managed by a public body or a third sector organisation under **Options 2,3 and 4**.

Scottish Government

4.4.39 Under **Option 1** ('the do nothing option'), there will be no additional costs for Scottish Government or its agencies. Under the alternative policy options considered in this BRIA the Scottish Government would incur costs under three broad categories: resourcing costs, compliance costs and compensation costs (under options 3 and 4).

4.4.40 Under **Options 2,3 and 4** the Scottish Government would incur some resourcing costs as a result of being responsible for providing a way for community bodies to register interest in being notified of proposed sales in their area. The Scottish Government would be responsible for reviewing pre-notification forms submitted by large-scale landowners to confirm that these met requirements. For valid pre-notifications, the Scottish Government will be responsible for issuing this to relevant community bodies on the pre-notification list and for publishing high level details of the pre-notification on a website. The Scottish Government would also be responsible for providing guidance and for informal discussions with landowners and community bodies in relation to the process, and administrative requirements for stages prior to formal application. Scottish Government staff will support Scottish Ministers in deciding whether to accept a formal application from the community body, taking into account any response from the landowner. If an application is accepted, Scottish Government staff will provide administrative support for the subsequent process which would follow established CrtB processes.

4.4.41 An existing staff provision within the Scottish Government supports CrtB processes, but additional staff resource is expected to be needed to support an increased volume of work, new responsibilities as set out above in relation to pre-notification, the list of community bodies and the transfer test, and support and provide guidance on this new process. Detailed estimates are set out in the Financial Memorandum. It is expected that an additional five staff members will be needed: two at B1 grade, two at B2 grade, and one at B3 grade. This would cost approximately £235,000 in salary, plus approximately the same in overheads (IT, T&S, pension costs), bringing the overall costs to around £470,000. These costs refer to the SG preferred option (Option 3).

4.4.42 Under Options 2,3 and 4 there will be minimal compliance costs for the Scottish Government associated with notifying communities in the event of a sale of any land owned by Scottish Ministers and directly managed by SG.

4.4.43 Under **Options 3 and 4**, the Scottish Government may also incur compliance costs associated with the Transfer Test, although the majority of costs will be covered by the SLC. For example, if a landowner is required to place the land in lots, the Scottish Government would be responsible for meeting the professional fees to determine the boundaries of lots and having them valued, seeking expert advice where required to do so. Costs related to the determination of boundaries of lots and their valuation will vary on a case by case basis.

4.4.44 In addition to additional staff costs, under Option 3 and 4, the transfer test may result in additional costs for Scottish Government related to potential compensation costs for landowners (as set out above) arising from matters such as losses arising from delays in the sale of lotted land following a transfer test. The amount of compensation in any individual case would depend on various factors such as the difference in sale value between the lotted estate and the whole estate. The Scottish Government's total liability will also depend on how many landholdings Ministers direct to be lotted as a result of the transfer test. On an annual basis, the number of land transactions which are ultimately likely to be lotted will be small (up to 5 per year as per Table 11). It is also expected that expert advice will be sought as part of the transfer test process which may help Ministers understand the likelihood of lotting resulting in reduced ability for lots to sell. Ministers will also have the option to lift or amend lotting requirements subject to a review application which may reduce the value of any compensation claims. Given the degree of uncertainty, the relatively small number of transactions and case-by-case nature of land transactions it is not possible to provide a robust estimate of possible compensation.

4.4.45 Finally, under Options 3 and 4, decisions by Ministers relating to the Pre-Notification and Transfer test may also bring additional costs for the Scottish Courts and Tribunals Service ("SCTS"), as provision is made for Ministerial decisions in relation to the transfer test to be appealed to the Court of Session, and for compensation decisions to be appealed to the Lands Tribunal for Scotland. For Court of Session appeals against a ministerial decision, the potential initial costs of such an appeal to SCTS are in the region of £565 per appeal. This would be indicative of the initial procedural hearing only. Should the cause proceed to substantive hearings, the cost to SCTS would be in the region of £8,050 per day, based on an optimum 5 hour sitting time. This figure includes livestream costs. Initial costs for lodging and considering an appeal with the Lands Tribunal are likely to be in the region of £140 (plus 1.25 hours in members' fees for their initial consideration and signing of first orders). For more substantive hearings (based on a five hour sitting time), costs will be in the region of £295 (plus around 15 hours in members' fees) per day. There will be around an additional 25 hours of members' time to draft the final written orders and any expenses orders.

4.4.46 These figure are indicative of the initial costs to the SCTS, and do not include running and overhead costs to the courts nor fees payable by the parties in paying for legal representation or court fees etc. Court fees are based on the

statutory Fees Orders which are a matter for the Scottish Ministers. There is a fee for lodging an application with the Court of Session, if a case proceeds to proof or debate, etc. Procedure in an action, including length of any proof/debate etc. will vary depending on the circumstances of each case, including complexity and whether the application is opposed, etc., and so there is no 'model case' upon which typical court fees could be estimated for an action.

4.4.47 Given the degree of uncertainty, the relatively small number of transactions and the case-by-case nature of land transactions it is not possible to provide a robust estimate of possible costs to the SCTS.

Scottish Land Commission

4.4.48 Under Options 1 (the do nothing option) and 2, there will be no additional costs for the SLC.

4.4.49 Under Option 3 and 4, there will be new functions for a new SLC Commissioner in relation to the Transfer Test. In respect of this obligation the Commissioner would be under a duty to:

- conduct an investigation; and
- provide the Scottish Ministers with a report setting out the evidence gathered.

4.4.50 These new functions would be in addition to the functions set out at above to investigate complaints relating to failure to engage with communities or failure to meet the requirements regarding land management plans in terms of the obligations, and enforce compliance. A detailed assessment of the additional costs to the SLC is set out in the Financial Memorandum.

4.4.51 The Commission will require ongoing resource funding to cover the costs for the new Commissioner and additional staffing costs. It is proposed that these costs would be partially met through existing funding to the Commission, by reducing their current activities. Additional funding will, however, be required in order to fully fund these new functions.

Regulatory and EU Alignment Impacts

5.1 Intra-UK Trade

The measures are not expected to impact intra-UK trade.

5.2 International Trade

The measures are not expected to impact international trade.

5.3 EU Alignment

The measures in the Bill are not likely to impact on the Scottish Government's policy to maintain alignment with the EU.

Other Impact Tests

6.1 Scottish firms impact test

6.1.1 The Scottish Government conducted eight (face to face and online) interviews with landowners in 2023. These landowners and their representatives, represented community landowners, third sector landowners, and private businesses from different regions of mainland Scotland and the islands, and are listed as respondents 1-8 in the coding set out in Annex B. These interviews were in addition to the consultation work outlined above and the questionnaire used is at Annex A.

Part A: Strengthening the Land Rights and Responsibilities Statement (LRRS) through implementing compulsory Land Management Plans

6.1.2 Landowners highlighted the need for certainty over what they were being required to do. Some noted that the principle-based approach of the LRRS to engagement did not provide clear direction about what was expected of landowners, and that there is a need for clear definition of who they are expected to engage with. Some noted this was also important to help with communities' expectations, and to make it clear what happens if communities do not engage and what constitutes a landowner having fulfilled their duties in that scenario. To provide a clear understanding of what is expected of landowners, the two obligations, to engage with communities and to have a land management plan, were developed. These two obligations support several principles of the LRRS but allow for clear requirements to be set out independently of the LRRS to provide certainty to landowners. Further details of requirements of requirements for community engagement and land management plans, as well as who can report breaches of the obligations will be set out in regulations and supported by guidance.

6.1.3 Engagement with landowners highlighted that many landowners already have forms of land management plans either held privately or publicly available, or identify key objectives and plans for the landholding. For these landowners the impact of the measures is unlikely to be significant as they may already be undertaking much of the work required by the new measures. There will be a greater impact on landowners who are not already identifying or setting out this information, but landowners noted how doing so is beneficial to the management of the landholding and can encourage strategic thinking. Consequently the impact is considered to be proportionate.

6.1.4 Many also noted that they already undertake community engagement activities, and landowners such as third sector organisations identified that they had existing staff provision to support this work. Concerns were raised about costs and time needed for engagement however, and how to make engagement meaningful. Some landowners also noted from experience that engagement over contentious issues or where there was disagreement within a community would typically take longer to conduct. The cost and resource implications were of particular concern to

community landowners who often rely on volunteers to carry out engagement, and for smaller landowners with very few staff working on the management of the landholding. Those working with smaller landholdings noted the likely need to employ someone to develop a land management plan, increasing the financial impact on smaller landholdings compared to larger ones that could use in-house staff for the work.

6.1.5 Some respondents representing larger landholdings also raised that they may employ professionals to carry out development work to bring in their expertise. This choice is likely to be of a lesser burden to larger businesses however who may also have staff to support work.

6.1.6 The costs and challenges of mapping landholdings were raised, with specialist expertise being required and the length of time needed for land registrations to process. The measures propose requiring maps of landholdings to be included in land management plans to support transparency, but do not define the format or level of detail of those maps. The comments from landowners including on the costs associated with mapping and the potential pressure on professional services will need to be considered when the requirements for maps in land management plans are set out in regulations and guidance, to ensure the requirements are proportionate.

6.1.7 Some landowners reported that it could be challenging to get communities to take up engagement opportunities, and support communities to understand the process and how to engage meaningfully. There was concern that engagement requirements could result in “tick-box” exercises which would require resource to be spent on engagement without useful results, and that ongoing engagement can be of greater benefit.

6.1.8 To ensure a proportionate approach, given the resource implications of developing land management plans and engaging with communities, and community capacity to respond to engagement, it was proposed to have a different criteria for landholdings in scope of Part A measures than those in scope of Part B measures. There are fewer landholdings in scope of the Part A measures as a result, but this is considered a proportionate level in terms of the impact of the measures when balanced with the policy aim.

6.1.9 Comments from respondents also informed the proposed frequency for review of land management plans. A number of respondents who had already developed management plans noted that they reviewed their plans on a five yearly basis, though some that covered remoter areas with very little change in the management of land over long periods would review plans less frequently. Consequently, the proposal to require reviews every five years was considered proportionate.

Part B: Adopting a Pre-Notification requirement and Transfer test on transfers of large-scale landholdings

6.1.10 Landowners noted the need for certainty over what is in scope of the measures and who are the relevant communities are for the pre-notification measures. To provide parameters for what is in scope of the measures, the criteria

for being in scope is set out in the Bill. Details of requirements to be considered a relevant community body are also set out in the Bill and it is proposed that Scottish Ministers will be responsible for notifying those bodies during the pre-notification process. This approach aims to reduce uncertainty for landowners in who is in scope and who should be notified, and will be further supported by guidance.

6.1.11 Some landowners with experience of buying land as community bodies or selling land to community bodies were concerned that a time period of 70 days (split in the Bill as an initial 30 days to note an intention to register plus an additional 40 if required) would be challenging for community bodies to prepare an application as part of the pre-notification process. It was commented that a workable timeframe was needed but that the timeframe should not have a disproportionate impact on the landowner selling or transferring. As a planned sale must be delayed for the pre-notification requirement, the protected time for community bodies to apply is necessarily limited. A community pro-actively registering an interest prior to a sale through Part 2 community right to buy, community asset transfer, or direct negotiation with the landowner will therefore have more time in which to plan their application. The Bill will include powers to amend timescales for the process.

6.1.12 Some third sector landowners expressed concern about how land that is gifted, particularly through wills, would be impacted by the legislation as they sometime receive legacy gifts of land. This practice will not be impacted by the measures as transfers otherwise than for value are exempted.

6.1.13 Concerns were raised about the impact of Part B measures applying to all transfers of land that formed part of a landholding in scope of the measures. Some landowners discussed their experiences of selling plots of land for individual houses or to allow fields or private gardens to be extended. Placing additional requirements on these transactions could discourage development and was considered disproportionate and not within the policy aim. The transfer test will only apply to transfers of land over 1000 hectares, however pre-notification will apply to when part of a landholding that is over 1000 hectares in total is sold or transferred. In consideration of consultation responses (set out below) that landholdings of this scale are less likely to be accessible to community groups, and given the average sizes of community land purchases, with the vast majority of these landholdings being under 100 hectares, applying these measures to partial sales from a landholding over 1000 hectares is considered as a key element in the effectiveness of the proposal.

6.1.14 A number of potential impacts of lotting land as result of the transfer test were raised, including potential losses in value either as a result of lots not collectively achieving the same price as if the land had been sold as a single holding, or through changes in the market while the sale was delayed leading to a lower sale price being achieved than if the holding had been sold when the landowner planned to do so. The need to consider the use and saleability of areas of land when lotting and other issues such as access to certain sites and the positioning of existing utilities such as water pipes was also noted. It is anticipated that the Land and Communities Commissioner will seek advice from those with appropriate experience of lotting land where appropriate to inform their report to Ministers. Ministers will take

into account such considerations as part of their lotting decision. Appropriate review and compensation provisions are provided in the Bill.

6.1.15 It is proposed that Scottish Ministers will make decisions in relation to the Part B measures, and concerns were raised about political influence on decision-making and the impact such perception could have on landholdings as businesses, including on investment in those businesses. The Bill set out test that must be met by Ministers in order for a decision to be made that land should be lotted. The Bill provides appropriate routes for appeal of those decisions to the courts, to mitigate against any concerns regarding decision-making and the impact of that view.

6.2 Competition assessment

Will the measures directly or indirectly limit the number or range of suppliers?

6.2.1 The measures are not expected to significantly limit the number or range of suppliers in relation to the land market or land-based activities. However they could have some impact in these areas.

6.2.2 The pre-notification process and transfer test will potentially delay transactions and increase transaction costs in the Scottish land market for large-scale landholdings. The additional costs and risk of government intervention in a proposed sale (through lotting requirements) may discourage some private sector buyers from entering the market. This could in turn have a negative impact on land prices that could otherwise be achieved. There is provision in the Bill however for landowners to claim compensation in relation to additional costs incurred as a result of the pre-notification process and the transfer test, where these costs are not covered by any additional sale value achieved. The compensation provisions mitigate the risks in relation to increased transaction costs, and so while the measures may discourage some private sector buyers they are not expected to significantly limit the number or range of buyers. In cases where land is lotted, this is anticipated to widen the potential range of buyers past those with the capacity to purchase an entire large-scale landholding.

6.2.3 There is also potential that land management plans, through increasing transparency of land ownership data and providing information about plans for land use change might act a catalyst for investment by private sector into areas of land that are earmarked for development or for natural capital investments. This would not limit the number or range of suppliers though, and may encourage greater investment in rural areas.

Will the measures limit the ability of suppliers to compete?

6.2.4 The measures are not expected to significantly limit the ability of suppliers to compete in the market.

6.2.5 There may be a small competitive advantage for landholdings out of scope of the measures due to their size over those in scope, as they would not be subject to a pre-notification process or transfer test. The landholdings out of scope would not be

subject to measures which could impact how they can be transferred, which could make them more attractive to buyers. Any competitive advantage though that this gives landholdings out of scope of the measures is likely to be minimal. While there is overlap in the uses of smaller landholdings out of scope of the measures and larger landholdings that are in scope, buyers seeking to take ownership of large landholdings are unlikely to seek smaller landholdings out of scope of the measures as a result of these proposals. Their reasons for taking ownership of a larger landholding are unlikely to be satisfied by taking ownership of a smaller landholding. Consequently any competitive advantage is only likely to be for landholdings just out of scope over those just in scope, rather than all landholdings in scope.

Will the measure limit suppliers' incentives to compete vigorously?

6.2.6 No, the measures will not limit suppliers' incentives to compete vigorously.

Will the measure limit the choices and information available to consumers?

6.2.7 No, the measures will not limit the choices and information available to consumers. The measures will increase transparency of land ownership and use through land management plans and community engagement requirements, and provide additional opportunities for communities to take ownership of land. As a result more information will be available for consumers and all individuals, including prospective buyers of land (whether that is private businesses or community groups).

6.3 Consumer assessment

Does the policy affect the quality, availability or price of any goods or services in a market?

6.3.1 The policies may have some impact on the availability or price of goods or services in relation to land and the land market.

6.3.2 The measures will not increase the net availability of land. However they could lead to an increase in the availability of land to certain groups or individuals in the local area, either by encouraging landowners to offer land for sale to communities or to offer to sell or transfer land in lots rather than as a single entity, or by requiring land to be sold in lots as an outcome of the transfer test.

6.3.3 The increase in supply of land in different sizes in the market could impact on land prices but is not likely to do so significantly as there are other drivers of land prices, such as investment potential. The additional requirements and steps impacting the transfer of land however could discourage some buyers which could lead to a reduction in prices being achieved. Any impacts on prices though as a result of these measures are expected to be minimal as they will not affect other factors impacting land's investment potential.

6.3.4 While the requirements for land management plans and engagement with communities are not expected to require specialist professionals to be engaged by

landowners to carry out required actions, a number of landowners have expressed that they would employ their services to do so. This could put pressure on the availability of these services, but could also create new job and training opportunities if the market evolves in that direction.

Does the policy affect the essential services market, such as energy or water?

6.3.5 No, the measures do not effect the essential services market. The supply of land can impact this market, for example the availability of land for food production, renewable energy production, and housing, but the measures do not direct land use.

Does the policy involve storage or increased use of consumer data?

6.3.6 The measures require Scottish Ministers to keep a list of the contact details of persons who wish to be notified about any possible transfer of land to which the pre-notification provisions apply. How that data is collected and stored will be considered and addressed during the development of regulations in secondary legislation, and the impacts considered as that stage.

Does the policy increase opportunities for unscrupulous suppliers to target consumers?

6.3.7 No, it is not likely to increase opportunities for unscrupulous suppliers to target consumers. The measures are likely to increase the demand for services of specialist professionals such as land managers or consultants, and lawyers, but these services would be engaged by one professional business to another, and this activity does not present an increased risk to consumers.

Does the policy impact the information available to consumers on either goods or services, or their rights in relation to these?

6.3.8 The measures increase the information available to the public about the land management of landholdings in scope, and so will have a positive impact although not directly on goods or services. This increased transparency will support community engagement with landowners however, which could support community bodies in considering the purchase or lease of land and discussions on this with landowners.

Does the policy affect routes for consumers to seek advice or raise complaints on consumer issues?

6.3.9 The measures are not related to consumer issues.

6.4 Test-run of business forms

6.4.1 The measures may ultimately lead to the creation of new forms or guidance to support the processes for pre-notification and the transfer test, and requirements for land management plans and community engagement. A Business and Regulatory Impact Assessment will also be undertaken for secondary legislation.

6.5 Digital impact test

6.5.1 The provisions in the Bill are not prescriptive as to how the measures interact with digital processes, and so will be able to adapt to future advances in technology without changes to legislation. The measures cannot be circumvented by digital or online transactions.

6.5.2 Requirements that may interact with digital environments will be set out in regulations in secondary legislation and so the impacts will be considered at that stage following further development and consultation.

6.6 Legal Aid impact test

6.6.1 The Bill seeks to introduce some new appeals to the Lands Tribunal and Court of Session. Civil legal aid is available for Lands Tribunal procedures. There were a very small number of applications to the Scottish Legal Aid Fund relating to the Lands Tribunal over the previous year, and so the changes are unlikely to have an impact on the Fund. Information was shared with the Scottish Legal Aid Board in relation to Court of Session measures and no significant impacts on the legal aid fund were identified.

6.7 Enforcement, sanctions and monitoring

6.7.1 Enforcement and monitoring of the measures will be divided between the Scottish Land Commission and the Scottish Government.

6.7.2 To support the enforcement of the community engagement and land management plan obligations, the Bill includes provisions to enable alleged breaches to be reported to a new Land and Communities Land Commissioner, who will be a member of the Scottish Land Commission. The Commissioner may investigate an alleged breach of an obligation, and for that purpose require information to be provided and impose a fine of up to £1000 for a failure to do so. The Commissioner may, having determined that an obligations has been breached, impose a fine on the person who committed the breach of up to £5000. A person on whom a fine is imposed may appeal against the fine to the Lands Tribunal for Scotland.

6.7.3 Enforcement of compliance relies on breaches of the obligations being reported to the Land and Communities Commissioner rather than the Commissioner monitoring all landholdings in scope for compliance. Monitoring of the number of land management plans produced and breach investigations will be carried out by the Land and Communities Commissioner to support understanding of compliance with the obligations.

6.7.4 While the pre-notification and transfer test processes are ongoing, restrictions will be in place in respect of the landholding which prevent transferring the land or part of it, or taking action with a view to transferring that land, except in accordance with exemptions set out in the Bill. Monitoring of the pre-notification process, transfer test investigations, decisions and lotting will be carried out by the Scottish

Government to assess the effectiveness of the policy in meeting the original policy aims. .

6.8 Implementation and delivery plan

6.8.1 A detailed implementation plan will be developed to so that the timing of the measures coming into force and recruitment of the new Land and Communities Commissioner ensures that the measures can function effectively. The dates for the measures to come into force (subject to Parliamentary process and timing) will be appointed by the Scottish Ministers in regulations.

6.9 Post-implementation Review

6.9.1 The Scottish Government, with the support of the Scottish Land Commission, will monitor whether the measures, once implemented through regulations, are having the intended effect and whether they are implementing policy objectives efficiently. Plans for monitoring and review will be developed as regulations and guidance are developed.

Summary and Recommendation

7.1.1 Land is one of Scotland's most fundamental assets. It is essential to achieving sustainable development, and key to many other important aspects of people's lives, from housing to recreation, from agriculture to mitigating climate change. The objectives of the Land Reform Bill 2024 were to further improve transparency of land ownership and management in Scotland, strengthen rights of communities in rural areas, increase opportunities for communities to purchase land when it comes up for sale and allow for Ministerial consideration of proposed transfers of large-scale landholdings.

7.1.2 To deliver on these objectives, this BRIA has considered the costs and benefits of different options for delivering on two broad proposals; to introduce a Land Management Plan for large-scale landholdings, and; to introduce a test on the transfer of land from large-scale landholdings.

7.1.3 Option 3 across these two broad proposals is the favoured and recommended option, a summary of costs and benefits to different groups is provided in Table 12 and Table 13:

Table 12: Summary of Benefits and Costs associated with implementing compulsory Land Management Plans (LMP)

	Benefits	Costs
Private Landowners	<ul style="list-style-type: none"> • A tool to improve land management which creates stronger links between day-to-day land management activities and longer-term strategic objectives. • A framework for regular reviewing or benchmarking of a landholdings performance. • Improved communication of land use management to a wider audience (people in the local community, wider public and investors/developers). 	<ul style="list-style-type: none"> • Costs associated with drafting a LMP, consultation and mapping requirements. • Estimated to be an annual cost of between £1,300 and £4,300 per landholding or £2.2m - £7.3m per year in total across all private large-scale landholdings. • Additional compliance costs if found to be in breach of new duty (up to £5,000 per breach).
Community bodies	<ul style="list-style-type: none"> • Better access to information on land ownership. • Improved identification of community purchase or partnership opportunities through participation in LMP consultation. • Enhanced understanding and collaboration, between landowners and communities. • Safeguarding of public access rights and opportunities for developing local-housing, small scale renewables etc. 	<ul style="list-style-type: none"> • Minimal additional costs associated with participation in LMP consultations and any costs incurred due to reporting of a breach to the SLC.
Local Authorities	<ul style="list-style-type: none"> • Local authorities may benefit from being able to formally influence the management of private land within their jurisdiction in line with wider local authority plans 	<ul style="list-style-type: none"> • Costs will vary depending on rurality and size of the local authority. • Costs associated with (voluntary) reporting any breaches of LMP duties and participating as an interested party in LMP consultations. • Overall costs are discretionary and expected to be minimal
Public Bodies and Third Sector Landowners	<ul style="list-style-type: none"> • Similar to benefits for private landowners, as set out above. 	<ul style="list-style-type: none"> • Minimal costs associated with drafting a LMP for those that have a large-scale landholding. Most public bodies already using LMP framework
The Scottish Government	<ul style="list-style-type: none"> • Meet the stated objectives of the Land Reform Bill through improving transparency of land ownership across the majority of Scotland's rural land and strengthening rights of communities in rural areas. 	<ul style="list-style-type: none"> • One-off and on-going resourcing and staffing costs associated with developing regulations to set out further details of the LMP duty • Compliance costs in cases where Scottish Ministers own land that meet the criteria of a large-scale landholding. • Additional costs for STCS associated with appeals and additional costs for SLC leading to funding pressure.
The Scottish Land Commission	<ul style="list-style-type: none"> • Continue to provide advice to landowners to support the practical implementation of LRRS duties through a statutory LMP 	<ul style="list-style-type: none"> • Cost of a new Commissioner and additional SLC staff costs arising from a need to potentially investigate breaches of the LMP duty.

Table 13: Summary of Benefits and Costs associated with adopting a Pre-Notification requirement and Transfer Test on large-scale landholdings

	Benefits	Costs
Private Landowners		<ul style="list-style-type: none"> • A potential delay in sales of land that are subject to either or both of the Tests. However, any costs incurred due to delays could be subject to compensation. • A potential negative impact on land value prices, although evidence from other jurisdictions is mixed/inconclusive.
Community bodies	<ul style="list-style-type: none"> • An expansion in the opportunities for communities to use existing Community Right to Buy mechanisms to buy land for community purposes to address negative consequences of concentrated land ownership. 	<ul style="list-style-type: none"> • Additional costs for community bodies above those already in place under the CrtB process would be minimal.
Local Authorities	<ul style="list-style-type: none"> • In the longer-term, pre-notification will increase community ownership, delivering wider benefits to communities (i.e. increasing housing supply). This could reduce pressures on local authorities. 	<ul style="list-style-type: none"> • Minimal indirect costs on local authorities should the SLC make requests for information to support advice to Ministers with regards to a Transfer Test. Relatively few transactions in scope per year (5 – 15 across all of Scotland).
Public and Third Sector Landowners		<ul style="list-style-type: none"> • A potential delay in sales of land that are subject to either or both of the Tests.
The Scottish Government	<ul style="list-style-type: none"> • Proposals help meet the stated objectives of the Land Reform Bill through increase opportunities for communities to purchase land when it comes up for sale and allow for Ministerial consideration of proposed transfers of large-scale landholdings. 	<ul style="list-style-type: none"> • Resourcing costs associated with setting-up and running a pre-notification registration process for community bodies interested in being notified of proposed sales in their area. • Compliance costs associated with Transfer Tests (i.e. determination of boundaries of lots and their valuation). • Compensations costs associated with eligible costs borne by private landowners due to the impact of a any Transfer Test or Pre-Notification requirement.
The Scottish Land Commission		<ul style="list-style-type: none"> • Costs associated with new functions for a new SLC Commissioner to support the administration of the Transfer Test

Declaration and Publication

8.1.1 I have read the Business and Regulatory Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs. I am satisfied that business impact has been assessed with the support of businesses in Scotland.

Signed: Mairi Gougeon MSP, Cabinet Secretary for Rural Affairs, Land Reform and Islands

Date: 11 March 2024

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Part 2: Land Management Tenancy, Agricultural Holdings and Small Landholdings Measures

Title of proposal

1.1.1 Land Reform (Scotland) Bill: Land Management Tenancy, Agricultural Holdings, and Small Landholdings.

Purpose and intended effect

2.1.2 This Business and Regulatory Impact Assessment assesses the impact arising from the Land Reform (Scotland) Bill 2024 proposals relating to Land Management Tenancy, Agricultural Holdings, and Small Landholdings. This document is written subject to the best available information at the time, based on evidence gathered from engagement with relevant stakeholders and relevant public consultations.

2.2 Background

2.2.1 Agricultural tenancies and small landholdings have been subject to statutory regulation for more than 100 years. Agricultural tenancies are governed by two statutory regimes: the Agricultural Holdings (Scotland) Act 1991 and the Agricultural Holdings (Scotland) Act 2003. Small landholdings are governed by the Landholders (Scotland) Acts, which includes legislation from 1886 to 1931.

2.2.2 The Land Reform (Scotland) Act 2016 (the 2016 Act) reforms, in respect of agricultural holdings, were informed by the Agricultural Holdings Legislation Review Group. In 2015 the Group published its Final Report which formed the basis for agricultural holding reforms made in the 2016 Act.³²

2.2.3 The reforms proposed in the Land Reform (Scotland) Bill 2024 (the Bill) build on the legal framework outlined above and have been informed by the work of the Tenant Farming Advisory Forum (TFAF)³³.

2.2.4 Further background on the proposals relating to the Land Management Tenancy, agricultural holdings, and Small Landholdings can be found in the accompanying documents to the Bill.

2.3 Objective

2.3.1 The legislative proposals aim to deliver the Programme for Government commitments 2021-22 including:

- modernising tenant farming legislation – a key part of the rural economy (for some people this is the only route to enter agriculture);
- modernising small landholding legislation;

³² The Final Report can be found [here](#).

³³ TFAF includes the Scottish Tenant Farming Association, Scottish Land & Estates, National Farmers Union Scotland, Scottish Agricultural Arbiters & Valuers Association, Royal Institution of Chartered Surveyors, and Agriculture Law Association.

- ensuring that tenant farmers and smallholders have access to climate change adaptation and mitigation measures;
- bringing forward a revised approach to rent reviews; and assessing the valuation for resumption.

2.3.2 In conjunction with these, the Bute House agreement committed to ensuring that tenant farmers and smallholders were not disadvantaged from participating in climate change adaptation and mitigation.

2.3.3 The objective of these changes are to ensure that tenant farmers and small landholders are able to contribute to delivering our Vision for Agriculture outlining our ambition to become a global leader in sustainable and regenerative agriculture.

2.3.4 The Agricultural Reform Route Map, underlines the commitment to ensuring that tenant farmers, smallholders (including small landholders) and land managers are given equality of opportunity to allow them to play a key role in making our Vision for Agriculture a reality.

2.3.5 The policy objectives of each of the individual proposals are set out in detail in the Policy Memorandum accompanying the Bill. The aims of the provisions are summarised below:

2.3.6 Land Management Tenancy – this provision will seek to ensure that the model lease is developed in a way to enable individuals to undertake a range of land use activities in a way that supports sustainable and regenerative agriculture, the achievement of net zero targets, adaption to climate change, and increasing or sustaining biodiversity.

2.3.7 Modernising small landholdings legislation provisions include:

- Pre-emptive right to buy – providing small landholders with the opportunity to purchase the land comprised in their small landholding should the landlord (or a creditor with a right to sell) decide to transfer the land,
- Diversification – providing small landholders with greater opportunity to diversify their business, to support profitability and enable them to take action to help address the twin crises of climate change and biodiversity loss,
- Succession and assignation – ensuring that small landholders can bequeath and assign their tenancy to broadly the same classes of people as tenant farmers with secure 1991 Act tenancies,
- Guidance – extending the functions of the Tenant Farming Commissioner (TFC) to include small landholdings,
- Rent and compensation – modernising the law to ensure that there is a fair balance between the interests of small landholders and their landlords.

2.3.8 Modernising Agricultural Holdings legislation provisions include:

- Diversification – providing tenant farmers with greater opportunity to diversify their business, in order to improve farm incomes and help address the twin crises of climate change and biodiversity loss,
- Agricultural improvements – providing tenant farmers with greater scope to improve their holdings, and participate in sustainable and regenerative agriculture,

- Good husbandry and estate management rules – ensuring that tenant farmers can undertake sustainable and regenerative agricultural practices in accordance with these rules,
- Waygo – enabling tenants and landlords to settle their waygo claims in good time, and so move forward with the next stage of their life,
- Rent review – improving the 2016 Act changes, drawing on the work of the Tenant Farming Commissioner, to create a flexible ‘hybrid’ system of rent review meeting the needs of the industry,
- Resumption – ensuring that tenant farmers receive fair compensation where the landlord takes back any part of the leased land,
- Compensation for game damage – modernising the compensation for game damage provisions by making good a wider range of losses, and
- Pre-emptive right to buy – including a power to improve the registration process, to ensure that it is as least burdensome as is possible for the tenant.

2.3.9 The proposals in this Bill will contribute to the following national outcomes:

- Communities – We live in communities that are inclusive, empowered, resilient and safe.
- Environment – We value, enjoy, protect and enhance our environment.
- Economy – We have a globally competitive, entrepreneurial, inclusive and sustainable economy.
- Human Rights – We respect, protect and fulfil human rights and live free from discrimination.
- Poverty - We tackle poverty by sharing opportunities, wealth and power more equally.

2.4 Rationale for Government intervention

2.4.1 The Scottish Government’s vision is for a tenant farming sector that is dynamic, gets the best from the land and supports the people farming it, allowing them to participate in our vision to become a global leader in sustainable and regenerative agriculture. 22% of agricultural land in Scotland is tenanted and tenant farmers, small landholders, and landlords play an important part in the wider rural community. It is important that the legislative framework governing these arrangements reflects modern farming practice, where possible, to ensure that these businesses can continue to contribute to the rural economy.

Consultation

3.1 Within Government

3.1.1 Consultation, engagement, and discussion within the following Divisions, Directorates and organisations have helped to shape the policy proposals.

- Agriculture Policy Division
- Rural Payments and Inspections Division
- Information Systems Division
- Animal Health and Welfare Division
- Property and advice division

- Rural and Environment Science and Analytical Services
- Science and Advice for Scottish Agriculture (SASA)
- Natural Resources Divisions
- NatureScot
- Scottish Forestry
- SEPA
- Historic Environment Scotland

3.2 Public Consultation

Land Management Tenancy

3.2.1 The Land Management Tenancy was consulted on as part of the Land Reform in a Net Zero Nation consultation. The consultation received 537 responses, of which 162 were from groups or organisations and 375 from individual members of the public. Six in-person consultation events were also held across Scotland with a further event online. A number of discussions were held with environmental NGOs and tenant farming stakeholders to develop this proposal.

Small Landholdings Consultation

3.2.2 The small landholdings consultation was conducted in 3 stages: (1) a legislative review which originated from the Land Reform (Scotland) Act 2016; (2) a written Small Landholdings Modernisation consultation; and (3) a Strategic Environmental Assessment consultation.

3.2.3 The legislative review was published in 2017 after a comprehensive consultation. The consultation included contacting all known small landholders and their landlords. The Scottish Government attended various events to meet relevant stakeholders. Some of these were Scottish Government-led events which provided individual small landholders and landlords the opportunity to meet officials at a small number of separate events in the areas of Scotland with the highest density of small landholdings (including the Isle of Arran). Government officials also attended a number of industry events including the Smallholder & Growers Festival in Lanark, the Rural Parliament in Brechin, and AgriScot in Edinburgh. The legislative review report can be found here: [Small landholdings in Scotland: legislation review - gov.scot \(www.gov.scot\)](http://www.gov.scot)

3.2.4 After the launch of the Small Landholding Modernisation consultation, officials endeavoured to make personal contact with all small landholders and ensure that landlords had fair representation. Where possible the consultation was sent to small landholders and landlords directly. Officials also held a workshop on the Isle of Arran and organised individual meetings with landlords. The consultation analysis can be found here: [Small landholdings modernisation: consultation analysis - gov.scot \(www.gov.scot\)](http://www.gov.scot)

3.2.5 The Strategic Environmental Assessment consultation ran from 12 October 2023 to 11 December 2023. A total of 12 responses were received. The environmental report accompanying the consultation concluded that the proposals have the potential to lead to major positive effects for biodiversity and geodiversity,

climate change, and soil and water, along with positive cumulative effects. The effects on the historic environment are uncertain.

Agricultural Holdings

3.2.6 The agricultural holdings proposals were consulted upon in three stages: (1) a consultation as part of the “Delivering our Vision for Scottish Agriculture: Proposals for a New Agricultural Bill” consultation; (2) the co-development of the detail with the Tenant Farming Advisory Forum³⁴; and (3) a Strategic Environmental Assessment consultation.

3.2.7 The Agriculture Bill consultation included a number of agricultural holding responses and ran from 29 August 2022 to 5 December 2022. The consultation received 392 responses consisting of 225 from individuals and 167 from organisations. A series of in person consultation events were carried out during the consultation period including Inverness, Skye, Aberdeenshire, Oban, Scottish Borders, Stirling, Dumfries and Galloway, Ayrshire, and Orkney. In addition, an online workshop held on 15 November 2022 on modernising agricultural tenancies. was open to everyone including island communities. The Agriculture Bill consultation analysis was published in June 2023 and can be found here: Agriculture Bill: consultation analysis - gov.scot (www.gov.scot).

3.2.8 The proposals for tenant farming were co-developed in partnership with TFAF. The minutes and papers of these meetings can be found at the Tenant Farming Advisory Forum website - Tenant Farming - Our work - Scottish Land Commission.

3.2.9 The Strategic Environmental Assessment consultation ran from 12 October 2023 to 11 December 2023. A total of 12 responses were received. The environmental report which accompanied the consultation concluded that the proposals have the potential to lead to major positive effects for biodiversity and geodiversity, climate change, and soil and water, along with positive cumulative effects. The effects on the historic environment are uncertain.

Options

4.3 Sectors and groups affected

4.3.1 Information on tenancy type is available through the [Scottish Government Agricultural Census](#) and was last collected in 2021. The Scottish Government Agricultural Census 2021 results showed that there were:

- 3,821 secure 1991 Act agricultural tenancies,
- 175 Modern Limited Duration Tenancies (MLDTs).
- 743 Limited Duration Tenancies (LDTs).
- 1,258 Short Limited Duration Tenancies (SLDTs).

³⁴ It is the role of the forum to advise on the priorities for the Codes of Practice issued by the TFC, priorities for the commissioning of research and investigative studies and identifying barriers to creating a thriving tenant farming sector.

- 59 Small Landholders Act (SLA) tenancies.

4.3.2 Landlords and their tenant farmers have private contractual agreements to manage their tenant farms. People primarily affected by the Bill proposals are tenant farmers, small landholders, and landlords of agricultural holdings and small landholdings.

4.3.3 The potential for impacts on other groups including the public sector – Scottish Government Directorates, the Scottish Courts and Tribunal Service (SCTS), the Scottish Land Commission, Local Authorities and other parts of the public sector and third sector organisations.

4.3.4 This BRIA considers primary effects on different sectors and groups. However we recognise that there may also be indirect secondary effects as a result of the implementation of certain parts of the Bill. Groups which may be indirectly affected include land agents, agricultural solicitors, valuers, and surveyors, when a landlord or tenant farmer chooses to use one.

Option 1 – Do nothing

4.3.5 This option would mean that the proposals relating to the Land Management Tenancy, agricultural holdings, and small landholdings would not be included in the Land Reform (Scotland) Bill.

4.3.6 Under this option modernising tenant farming and small landholding legislation would not happen. Equally a Land Management Tenancy template would not be created as a statutory Ministerial duty. The costs and benefits of this option are outlined below.

Option 2 – Adopt the proposals for Land Management Tenancy, agricultural holdings and small landholdings

4.3.7 The Bill would bring forward the following provisions:

- A model Land Management Tenancy template.

4.3.8 For agricultural tenancies amendments to the following legal processes:

- Diversification.
- Agricultural improvements.
- Good husbandry and estate management rules.
- Waygo.
- A new rent review system.
- Resumption.
- Compensation for game damage
- Improvements to the pre-emptive right to buy process.

4.3.9 For small landholdings modernisation and amendment to the following legal processes:

- Pre-emptive right to buy.
- Diversification.

- Succession and assignment.
- Umbrella Body.
- Rent and compensation.

Benefits

4.4 Option 1 – Do nothing

Land Management Tenancy

4.4.1 At present a commercial lease could be significantly revised to enable it to provide the range of options that a land management tenancy model template will be able to do. However, the costs of revising a commercial lease would likely outweigh the rental income that would be generated for a number of years. This is why amended versions of commercial leases are not generally used by landowners to deliver a multiple land use lease.

Agricultural holdings

4.4.2 While the current legislation is complex there is general understanding around the main elements. However, the current legislation contains elements created post World War II, and is also outdated compared to modern farming methods. This lack of flexibility currently prevents tenant farmers from fully engaging in the range of agricultural and associated land management activities required for farms to remain resilient and adaptative to climate change and biodiversity challenges.

4.4.3 However, most tenant farmers and their landlords have a good relationship and this would be likely to continue without the proposed reforms. This is evidenced by a review by the Tenant Farming Commissioner on the conduct of agents with tenant farmers and landlords found that 82% of tenant farmers and 88% of landlords would describe their relationship with the other as either very good or good. Only 6% of tenants and 1% of landlords reported that the relationship was poor or very poor. This indicates that, in general, amicable agreements should be able to be reached.³⁵

Small landholdings

4.4.4 The small landholding legislation and statutory system has been in place over 100 years. As a result, elements are outdated and no longer fit for purpose in the 21st Century. If the legislation is not amended the divide between small landholders and other forms of land tenure will continue to grow.

4.5 Option 2 - Adopt the proposals for Land Management Tenancy, agricultural holdings and small landholdings

³⁵ Scottish Land Commission, A Review of the Conduct of Agents of Agricultural Landlords and Tenants, April 2018, p.8

Land Management Tenancy

4.5.1 This proposal offers land managers, owners and people wishing to rent land for hybrid uses the option to have a non-commercial lease to rent land out using a standard process. Under this model any agricultural use on the land will be required to be less than 50% of the land use activity. This is different to an agricultural tenancy where the main land use must be agricultural. The proposal enables a template to be produced that can be adjusted and modified without prescriptive legislation. This will enable agreements to be reached providing more diverse land tenure opportunities potentially focusing more environmentally in terms of delivering against net zero emissions and biodiversity targets.

Agricultural holdings

4.5.2 The provisions collectively encourage agricultural tenants to participate in sustainable and regenerative agricultural practices towards delivering the Scottish Government's Vision for Agriculture. The proposals significantly modernise some of the older legislative provisions which were focused on post war food production, maximising land use at the expense of the environment, to feed the nation. The adoption of the proposals will create opportunities and provide flexibility to tenant farmers. While the, Review of the Conduct of Agents of Agricultural Landlords and Tenants,³⁶ indicated that amicable agreements could be reached, where the landlord-tenant relationships are difficult, tenant farmers have little incentive to improve or modernise the holding if they do not anticipate having the ability to undertake the activities or receive compensation for their improvement. This could drive inequity across agriculture as tenant farmers are restricted from participating in some activities depending on the landlord.

4.5.3 The Scottish Government Farm Business Income Estimates Report (2020-21)³⁷ found that more than half of farms have diversified activities which generates additional incomes to their businesses. There was also an income gap between agricultural businesses with diversified activities and those without. On average, farms with no diversified activity £16,100 less in income was generated per annum. Taking this as a general proxy, non -agricultural diversification is likely to help individual agricultural tenancies to increase their income generation and revenue. The intention is to enable the Land Court to be able to consider environmental beneficially diversifications as well as other types of diversification.

4.5.4 The agricultural improvement provisions will give tenant farmers greater flexibility to conduct agricultural improvements and incentivise them to invest in a wider range of activities on their holding. Improvements could include renewable electricity measures for on farm energy needs, leading to efficiencies and reduced costs; or other activities such as the creation of hydroponics or facilities for processing agricultural products produced on the holding; or the creation of silvo-pasture or silvo arable systems. All of which could support a tenant farmer to reduce input costs and increase the carbon benefits of the holding.

³⁶ [637c8f743f4a4_5ddd55dfc5654_Final-Report-on-the-Conduct-of-Agents\[1\].pdf \(landcommission.gov.scot\)](#)

³⁷ [Scottish farm business income: annual estimates 2020-2021 - gov.scot \(www.gov.scot\)](#)

4.5.5 Scottish Firms Impact Assessment Test discussions with tenant farmers have highlighted that some tenant farmers have more than doubled their profit by undertaking sustainable and regenerative agricultural practices and reduced their input costs by 60-70%. By taking a flexible approach to agricultural improvements it is expected that more tenant farmers will be able to participate in and undertake more innovative agricultural practices.

4.5.6 In relation to the rules of good husbandry and estate management rules, the Scottish Firms Impact Assessment Test (respondent 9, 10, 11,13) said that the proposed rule changes were important to ensure that they could access the future agricultural funding. It was considered that the proposals will allow tenant farmers to leave uncropped field margins and participate in a wider range of sustainable practices, thereby potentially having an environmental benefit.

4.5.7 The amendments to the waygo process is likely to be beneficial in terms of reducing stress and time for both tenant farmer and their landlord. A number of tenant farmers and landlords described the current waygo process as painful. It is anticipated that proposed changes will allow tenant farmers to retire knowing what compensation they will receive and for landlords to be able to undertake more planning for this. The Scottish Firms Impact Assessment Test discussions highlighted that one tenant (respondent 11) had their mortgage retracted because they did not have their waygo compensation.

4.5.8 The proposed changes to the rent review system will allow tenant farmers and their landlords to negotiate over a wider range of factors rather than overly focusing one factor at the expense of another. It is expected that the amendments will be beneficial as they will not overly rely on productive capacity or open market comparable.

4.5.9 The resumption proposal will enable tenant farmers to receive a greater amount of compensation due to them from their landlord if their landlord decides to resume part of the tenancy and this results in particular defined costs to the tenant . Compensation will be reflective of the value of that part of the lease or verified business costs arising as a direct result of the loss of land. This will be beneficial in terms of allowing tenant farmers to plan by ensuring that the minimum notice period is 12 months.

4.5.10 The game damage compensation proposals will entitle a tenant farmer to be able to make a claim for a wider range of game damage than just crops e.g. This will enable a tenant farmer to claim compensation from the landlord if game, including deer, cause damage to their livestock, fixed equipment or trees.

4.5.11 The proposal to introduce a power to enable improvements to be made to the pre-emptive right to buy process will reduce the burden to the tenant farmer. The change will be made through regulations and will be co-developed to ensure that the benefits to tenant farmers are proportionate to the interests of the landlord.

Small landholdings

4.5.12 The small landholding provisions encourage small landholders to participate in sustainable and regenerative practices which contribute towards delivering the Scottish Government's Vision for Agriculture. The proposals significantly modernise the legislation, some of which originates from the 1800s and early 1900s, to enable it to be reflective of modern cultivation practices.

4.5.13 The pre-emptive right to buy proposal will be beneficial in encouraging small landholders to invest in their holding. This view was echoed by Scottish Firms Impact Assessment Test respondents 15 and 17. Respondent 17 saw this proposal as being beneficial to the community by enabling the next generation to continue to work the land and would encourage people to remain on the island.

4.5.14 The diversification proposals are expected to enable small landholders to increase their revenue. The intention is to enable small landholders to carry out environmental beneficially diversifications as well as other types of diversification.

4.5.15 The proposals for succession and assignation widen the range of people who can succeed or be assigned a small landholding tenancy. As outlined by respondent 17 in the Scottish Firms Impact Assessment Test, it was considered that this would encourage small landholders to invest in their holding and help young people stay on the island. It would also encourage people to further invest in their holding knowing that someone would come behind you and continue with the holding.

4.5.16 The proposal to require the Tenant Farming Commissioner to provide guidance on small landholdings reflected the views of a number of consultees throughout the consultation process who emphasised that guidance could provide a benefit by ensuring that parties understand their respective responsibilities and obligations.

Costs

4.6 Option 1 – Do nothing

Land Management Tenancy

4.6.1 There would be no additional financial costs if a land management tenancy was not brought forward. However, consultation respondents highlighted that the cost of entering into bespoke commercial leases to participate in hybrid land management is a barrier to undertaking activities which advance climate adaptation, biodiversity recovery and nature restoration due to the costs of revising the standard commercial lease templates. Doing nothing would fail to address the barrier to participating in hybrid land management through commercial leases. Scottish Firms Impact Assessment results demonstrated the cost of entering into a commercial lease could be up to £12,000 on the upper end per agreement (respondent 1).

Agricultural holdings

4.6.2 There would be no additional financial costs from retaining the existing legislation. However, where there are proposed changes to the rules of good husbandry and estate management a number of interviewees in the Scottish Firms Impact Assessment Test (respondent 9, 10, 11,13) said that the proposed changes to the rules were important to ensure that tenant farmers could fully access the future agricultural framework. Alongside this, a number of consultees highlighted that, without the changes, tenant farmers would be disadvantaged as they would lack flexibility to fully take advantage of the climate change adaptation and mitigation measures.

Small landholdings

4.6.3 There would be no additional financial costs from retaining the existing legislation. However, based on the pattern of decline, without changing the legislation it is likely this trend could continue.

4.7 Option 2 - Adopt the proposals for land management tenancy, agricultural holdings and small landholdings

4.7.1 The estimated financial costs arising from the provisions in the Bill are outlined in detail in the Financial Memorandum accompanying the Bill. There will be general costs to the Scottish Government associated with developing the Land Management Tenancy template and the regulations associated with agricultural holdings and small landholding proposals. There are also expected to be costs to the Scottish Land Commission as a result of bringing forward the proposals.

Land Management Tenancy

4.7.2 It is estimated that the costs of entering into a land management tenancy will be less than developing and entering into a bespoke commercial lease for hybrid land management as the Scottish Government will develop the template arrangement. If parties wish to enter into land management tenancy they will do so freely and with no element of compulsion. It is estimated that the legal cost to prospective landlords or their tenants would be at the low end of entering into an agreement – if they wished to seek legal advice - perhaps approximately £1,000 (as disclosed by respondent 8). The figure is expected to vary depending how closely individuals wish to correlate their final lease with the template. The main costs of this proposal will be for the Scottish Government when they develop the template.

Agricultural Holdings

4.7.3 There is no element of compulsion for either tenant farmers or their landlords to use the agricultural holdings provisions so costs to individuals will vary depending on their choices and the circumstances of their leases. The proposals enable rather than compel so costs will be particular to individual parties.

Small Landholdings

4.7.4 There is no element of compulsion associated with the small landholding provisions so costs to individuals will vary depending on their choices and the circumstances of their leases. The proposals enable rather than compel so costs will be particular to individual parties.

4.8 Scottish Firms Impact Assessment

4.8.1 In setting the impact of the proposals on Scottish Businesses a questionnaire was created and issued to 17 businesses, who were interviewed individually between October 2023 and December 2023. The questionnaire is contained in Annex A. This was carried out in addition to the consultation activity above. Of the 17 businesses interviewed: 8 were landlords/ landowners, 6 were agricultural tenants, and 3 were small landholders.

4.8.2 Interviews were conducted over video calls with the exemption of two which were face to face. Due to the private nature of landlord and tenant relationships each of these were recorded and anonymised.

4.8.3 A coding of identifiable costs and statements from these interviews are shown in Annex B. The information summarises the identifiable costs of the proposals:

Land Management Tenancy

4.8.4 In response to the Land Management Tenancy questions a number of responses identified costs associated with entering into a new tenancy agreement. The majority of those interviewed said that they would seek legal advice. Respondent 8 said that they would expect to pay around £450 - £650 an hour for a partner's time, due to the complexity and high-risk nature of the work. Although the cost of entering into one of these agreement would vary, interviewees estimated that these costs tend to be quite high (Respondent 2).

4.8.5 Respondent 3 felt that it would reduce costs.

4.8.6 A number of respondents gave varying cost estimates starting from £1,000 (respondent 8) at the lower end to end to approximately £5,000 (respondent 2) at the higher end. However, respondent 9 said that you could expect to pay £7,000 to leave one agreement and enter into a new agreement. Respondent 1 said that a recent example of entering into a bespoke commercial lease cost £12,000 plus legal costs.

4.8.7 Almost all interviewees said that guidance on entering into a land management tenancy agreement would save costs and that they would take up the option of any mediation prior to litigation.

Agricultural Holdings Proposals

Diversification

4.8.8 A number of tenant farming interviewees had previously undertaken diversifications on their holdings. Those that did highlighted that the cost of serving notice of diversification could differ between £100 (respondent 11) on the lower end to £1,800 (respondent 12) on the upper end. If the tenant opted to involve a consultant in creating the proposals, then this would cost approximately £650 for half a day's work (respondent 11). Diversified purposes also varied from those seeking carbon money (respondent 2), conservation activities (respondent 3), renewable energy (respondent 10, 11), tourism (respondent 11), wool processing (respondent 11), farm shops and coffee shops (respondent 12).

4.8.9 However, as highlighted by respondent 13, every farm is different and every diversification is different, with much depending on the location. Generally, these diversifications are income generating. Respondent 12 pointed out that if a diversified proposal was likely to be detrimental then it would be unlikely that a landlord would give permission. Respondent 8 identified that there could be a tax risk to the landowner depending on the scale of diversification.

4.8.10 In terms of income generation, respondent 11 made approximately £12,000 to £13,000 from a wind turbine. While respondent 12 had received an income stream of approximately £10,000 per annum from their diversification. Respondent 14 identified that they made approximately £2,000- £3000 per week from holiday accommodation (3 glamping pods) but they also had outgoings e.g. cleaning costs.

Agricultural Improvements (Schedule 5 amendments)

4.8.11 The majority of agricultural tenants considered that the proposal would help their holding to become more profitable and encourage tenants to undertake these improvements. However, there was disagreement about whether sustainable and regenerative activities could be profitable. Respondent 2 did not believe they would while respondent 9 said that they would. Respondent 12 said that that it is difficult to say if sustainable and regenerative farming would add value and respondent 11 mentioned that there is not enough common knowledge about the economic benefits.

4.8.12 However, many respondents said that that these activities would benefit the holding respondent 2 mentioned the benefits of minimal till, organics (respondent 13), species rich grassland (respondent 12), and silvo-pastoral (respondent 14). . Respondent 13 said that Schedule 5 needs to take account of modern farming practices so amending the legislation needs to happen. Respondent 14 said that recognising sustainable and regenerative farming activities as agricultural was very beneficial as they had doubled their profit as a result of regenerative farming and reduced their feed costs by 60-70% by undertaking sustainable and regenerative agricultural practices.

Good Husbandry and Estate Management Rules

4.8.13 A number of interviewees mentioned they had not experienced a certificate of bad husbandry (respondent 8, respondent 12, and respondent 14). However, one identified that the proposal to insert “sustainable and regenerative” could be subjective (respondent 9).

4.8.14 Several interviewees (respondent 9, 10, 11,13) said that this proposal was important in ensuring that they could access the future agricultural framework. While respondent 14 said that this was very beneficial as they had doubled their profit as a result of regenerative farming and reduced their feed costs by 60-70% by undertaking sustainable and regenerative agricultural practices.

Waygo

4.8.15 The majority of interviewees said that this proposal would have cost savings for time and money. Respondent 2 said that previous waygos had cost £2,000 in legal fees in 2010; while respondent 9 said that they had paid £3,000 to £4,000 in legal fees. A number of respondents said they would continue to appoint their own valuer (respondent 8, 11, 14) however, several said that they would go with the decision of a neutral valuer and not apply to the Lands Tribunal.

4.8.16 In terms of time, there was broad agreement that the proposal for a timeframe would resolve waygo claims quicker. Respondents 10 and 13 identified that waygo should not hold up retirement and a tenant farmer needed to know what they were entitled to prior to leaving the tenancy. Respondent 11 said that their mortgage was retracted because they did not have waygo so had to rent a house. Respondent 13 had heard of someone had only received compensation after 2 years. Respondent 9 said that the proposal would improve wellbeing and save stress associated with the current waygo process (along with respondents 12 and 14).

Rent Review

4.8.17 Several respondents said that the TFC guidance was helpful and a Code of Practice on rent would be helpful. Respondent 2 favoured the proposals as it is framed in a way on the elements a tenant farmer should consider rather than the way you should calculate it. A number of respondents said that the current system focusing on open market rent was not workable (respondents 10, 11, 13) and that unsuitable open market rental comparables were being used (respondents 9, 10, 11, and 13).

Resumption

4.8.18 Almost all tenants had experienced resumptions. A number of tenants said that they believed they would receive more compensation as a result of the proposals (respondents 9 and 14). A number of tenants gave examples of their resumptions:

- Respondent 9 said that they received £1250 for 14.14 acres and woodland strips. The landlord allowed them to occupy the land for another year so they weren't entitled to disturbance costs.
- Respondent 10 had a field resumed for housing. They received £500 for 3 acres of the tenancy. Rent was approximately £40 per acre.
- Respondent 11 had approximately 600 square metres resumed for a wind farm which took 5 years of negotiation with a £4,000 bill. They received a £50-60 rent adjustment as a result of this resumption.
- Respondent 13 had 3 acres resumed and received £500 of compensation.
- Respondent 14 had experienced several resumptions. One was for less than a hectare and they received a rent reduction of £250, for another they received £5,000.

Compensation for Game Damage

4.8.19 The majority of tenants had experienced varying levels of game damage – respondent 9 and 10 had not experienced game damage. All tenant farmers believed this proposal would be beneficial. Some believed that guidance on calculating and quantifying damage would be helpful (respondents 10, 11, 13, and 14). Respondent 12 would like training opportunities to learn how to quantify damage. A number of tenants gave examples of the game damage that they had experienced:

- Respondent 11 said that there is quite a lot of displaced red deer approximately between 300 and 400 and they were approximately 25% short in terms of yield over a 5 year period.
- Respondent 12 gave a number of examples
 - they used to grow high value seed potatoes that used to produce £350 pt when lifted. This resulted in a damage claim of around £10k.
 - they had 9 acres destroyed/ flattened that was not combinable due to game bird damage then they submitted a claim for damage to barley. It was between 15-20% loss on the barley left standing and the area of flattened as well so they had compensation for both elements of this.
 - In 2015 they lost 16 calves out of 68 cows. Approximately 60-70% of cows were affect by cryptosporidium. A PHD student undertook research confirmed that this was caused by game birds around the steading.
 - They also have had avian flu so their chickens get closed in and they were concerned about game birds being imported from the EU and transferred around the UK (there are 14,000 pheasants and 8,000 partridge on just under 700 acres).
- Respondent 14 believed they lost somewhere between £2,000 - £5,000 per acre due to deer.

Small Landholdings

Right to Buy

4.8.20 All respondents were positive about having a pre-emptive right to buy. Respondent 15 said they were unlikely to be able to afford the right to buy but it would encourage them to invest in their holding. Respondent 17 echoed this position saying they would definitely invest more and do a lot more on the holding.

Respondent 17 however highlighted that the landlord was unlikely to sell the holding. Respondent 15 and 17 said that there were no issues with their boundaries of the holdings. Respondent 17 says this proposal could be a benefit to the community – it could mean that the next generation could keep farming and would also help in people remaining on the island. Respondent 15 and 17 saw the Land Court as the last resort.

Diversification

4.8.21 Respondent 15 was not in an immediate position to diversify but felt the proposal would help if they decided to do so in the future to provide additional income.

4.8.22 Respondent 17 would be interested in diversifying and would encourage their children if they wanted to do something with the holding. Respondent 17 would speak to a consultant on diversification but was not aware of the costs for it (weighting up the cost against benefit). Respondent 17 thought the negotiation period would be beneficial to help sort out any difficulties and would prefer the opportunity to negotiate, which could have a cost saving benefit. Respondent 17 said that due to the geography, they are limited in what they can do possibly, could do something like deer farming.

Succession and Assignment

4.8.23 Respondent 15 had no children and was relatively new small landholder so had not really thought about succession or assigning the holding. Respondent 17 thought this was a great idea for small landholders as it could help young people stay on the island and would encourage people to further invest in their holding knowing that someone would come behind you and continue with the holding. Respondent 17 when asked whether this would benefit the 59 small landholders, said it was more important to have residents on the island and hoped it would encourage people to invest in their holding.

Umbrella body

4.8.24 Respondent 15 felt that any guidance on responsibilities would be helpful and asked for it to include improvements and whether there was any difference in terms of how they would be treated between secure 1991 Act tenancies and small landholdings. Respondent 17 thought the TFC would be up to date with legislation and would be able to give advice on rights and responsibilities which could make life a bit easier.

4.9 Regulatory and EU Alignment Impacts

4.9.1 The proposals relating to land management tenancy, agricultural holdings, and small landholdings are not likely to impact on intra-UK trade, international trade and investment, or affect the commitment to maintain EU alignment as far as possible.

4.10 Competition Assessment

4.10.1 Agricultural holdings and small landholdings are private arrangements between landlords and tenants. Landlord and tenant must enter into these agreements voluntarily. The provisions in the Bill will not directly or indirectly limit the ability or incentive of suppliers to compete vigorously and will not limit choices or information available to consumers.

4.10.2 The land management tenancy, agricultural holding, and small landholding provisions are designed to increase vibrancy within the agricultural industry for Scottish land tenure and should increase competition.

4.10.3 The proposals will not: limit the number or range of suppliers, either directly or indirectly; limit the ability of suppliers to compete; reduce suppliers' incentives to compete vigorously; or limit the choices and information available to consumers. A competition assessment is therefore not required.

4.11 Consumer assessment

4.11.1 Agricultural holdings and small landholdings are private arrangements between landlords and their tenants. Landlords and tenant farmers/small landholders must enter into their agreement voluntarily. As such, it will not have any impact on consumers. It will not affect the quality, availability or price of any goods or services in a market; affect the essential services market; involve storage or increased use of consumer data; increase opportunities for unscrupulous suppliers to target consumers; impact the information available to consumers on either goods or services, or their rights in relation to these; affect routes for consumers to seek advice or raise complaints on consumer issues.

4.12 Test run of business forms

4.12.1 No new forms will be required as a result of primary legislation. The Bill includes regulation making powers that may result in forms being prescribed. Any new forms will be tested with stakeholder and end users before they are introduced.

4.13 Digital Impact Test

4.13.1 The proposals for land management tenancy, agricultural holdings, and small landholdings will not have a digital impact. These amendments and proposals do not impose, require, or rely on any new technologies.

4.14 Legal Aid Impact Test

4.14.1 The proposed changes to the legislation are not expected to have a significant effect on the number of people applying for legal aid. Scottish Legal Aid Board (SLAB) commented that the Bill seeks to introduce some new or improved Land Court and Lands Tribunal procedures. Civil legal aid is available for procedures in both. SLAB had a small handful of applications relating to these institutions over the last year (one for the Land Court which was rejected and two or three for the

Lands Tribunal). SLAB agreed with the Scottish Government's assessment that that these changes are unlikely to have much of an impact on the Fund. SLAB noted that parties are to be encouraged to use the Tenant Farming Commissioner mediation services to resolve various disputes. They noted they were able to pay for mediation as an outlay under Advice and Assistance but as the civil applications relating to Land Court/Tribunal are so few we are of the view that we cannot see there being much of an impact in relation to Advice and Assistance either.

4.15 Enforcement, sanctions and monitoring

4.15.1 The Bill proposals are concerned with private land tenure leasing arrangements. These arrangements are contractually enforceable between the parties concerned. The Tenant Farming Commissioner can provide advice on the resolution of any issues and parties have recourse to the Scottish Land Court in event of dispute on a point of law or Scottish Lands Tribunal on points of valuation.

4.16 Implementation and delivery plan

4.16.1 The provisions will be laid in Parliament as part of the Land Reform (Scotland) Bill 2024. Where the provisions in the Bill do not require regulations to be made it is the intention to commence the provisions in the first commencement order or before in the case of the Land Management Tenancy. Provisions that require regulations to be made to become fully effective will not come into effect until after the regulations are made.

4.17 Post-implementation review

4.17.1 It is anticipated that the recommendations of the Environmental Reports, which were developed as part of the SEA will be adopted, and the impact of the proposals will be monitored on a rolling annual basis, to ensure they remain in line with modern farming practice. The Scottish Government will continue to engage with agricultural industry bodies, legal advisors and land agents through TFAF to ensure their suitability on at least an annual basis. Additional surveys will be undertaken intermittently.

4.18 Summary and recommendation

4.18.1 It is recommended that Option 2 is pursued. These changes have been co-developed in detail with the industry. These proposals will encourage hybrid land management while ensuring agricultural tenants and small landholders have opportunities through a just transition and can participate in sustainable and regenerative agricultural practices which hold the potential to benefit the wider rural economy.

4.19 Declaration and publication

4.19.1 Sign-off for Final BRIAs: I have read the Business and Regulatory Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the

costs. I am satisfied that business impact has been assessed with the support of businesses in Scotland.

Signed: Mairi Gougeon MSP, Cabinet Secretary for Rural Affairs, Land Reform, and Islands

Date: 11 March 2024

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Measures applicable to large-scale landholdings

The Bill introduces four measures which would apply to large-scale landholdings. Our current working assumption is that large-scale landholdings will be defined as landholdings of more than 3000 hectares or land that accounts for more than 25% of a permanently inhabited island, with a minimum area of 1000 hectares, as set out in the public consultation, These measures are:

New duties on owners to support compliance with the principles of the Land Rights and Responsibilities Statement (LRRS);

The introduction of compulsory land management plans;

The introduction of a test at the point of transfer of a landholding to determine if the landholding should have conditions placed on that transfer; and

Requirements for community bodies to receive prior notification of impending sales or transfers.

Where all or a portion of the landholding is subject to a tenancy agreement meaning that the landowner does not have control over land management decisions for that land, this would be taken into account in terms of the duties and requirements on the landowner.

We need to strike a balance between the land rights and responsibilities of landowners, communities and the wider public. We do not wish to place an undue administrative burden on small businesses which would disadvantage them relative to larger landholdings with more staff and capacity.

Given that the Bill is still under development, the matter of administering authority is still to be finalised. At this stage, it is probable that the functions in relation to the LRRS duties, management plans, and investigation as part of the transfer test will fall to the Scottish Land Commission, with administrative responsibilities and decisions in relation to pre-notification and the transfer test being determined by Scottish Ministers in line with current arrangements in place for the existing statutory community rights to buy. Resourcing decisions are yet to be determined.

LRRS Duties

Proposal

Landowners would need to comply with specific duties based on LRRS principles, focused on engagement and land management plans.

Breaches of the duties could be reported to the administering authority, who if satisfied that a duty was not being complied with, would in the first instance prioritise advice and support to support the landowner to remedy the breach.

Where a breach is proven and not remedied there could be financial penalties.

Questions

- Do you have current and/or past experience of community engagement activities?

- What were the impacts of undertaking engagement?
 - For example, how did it affect your timescales, did members of the community engage, did it lead to changes, were there subsequent delays to certain activities/tasks – if so what was the impact on the business?
 - Are you able to share cost and/or resource implications of engaging with local communities, e.g. meetings, workshops, etc.?
- Do you/the landholding have experience with leasing areas of land to local communities or local businesses?
 - If so, can you provide more detail about the scale and length of those leases, and was it for a specific agreed purpose?
 - Are you aware of any positive or negative impacts of leasing land in this way, such as financial or social impacts?
 - If you have direct experience of impacts, are you able to quantify these?

Land Management Plans

Proposal

Requirement to consult on, publish and update a land management plan. A plan may require information such as:

A long-term vision and objectives for the landholding

High level management proposals over a long period

Details of the land owned, including a map.

Information about land that may be available for lease or sale over the life of the plan

How the management contributes to carbon emission reduction and/or nature restoration

Note that details are only an example, looking to understand impact of providing a range of information.

It's proposed that local communities should be engaged on the development of land management plans. Guidance would set out what the expectations for this engagement would be, so that parties were clear on what steps would need to be taken to meet the requirements. Plans would be required to be updated periodically, e.g. every 5 years.

Breaches of requirements for producing a plan could be reported to the administering authority, who if satisfied that requirements were not being met, would in the first instance prioritise advice and support to the landowner to allow them to remedy the breach (i.e. through updates to their plan). Where a breach is proven and not remedied there could be financial penalties.

Questions

- Beyond what is set out above, is there additional information which you think should be included in a land management plan?
- Do you already identify or set out any of the information that could be included in a plan, for example including it on your website?

- Can you quantify the impact (e.g. costs, time, resource, contracting of workers etc.) of collecting, collating and presenting that information?
- How do you publish that information or otherwise make it accessible to the public and/or local communities?
- What would you expect the impact, including any cost and resource implications, to be of preparing a land management plan that contained such information?
 - Do you have a sense of which requirements would have the most costs associated with them?
 - Would you be able, based on experience, to quantify the costs you would expect to be associated with the different requirements proposed for land management plans?
 - Would you expect cost and/or resource implications to be less when updating a plan, compared to producing the first plan?
 - If so, where do you see the costs being less, and do you have a sense as to how much less they might be?
- Would this work be likely to be carried out in-house, or would some of the work be likely to be carried out by a third party?
 - If work was likely to be carried out by a third party, what work would this be likely to be?
- If you needed to consult the local community on a draft plan and allow them time to comment, do you have an idea of what the impact of doing so might be for the organisation, particularly based on your current or past experiences of community engagement as discussed earlier? The requirements for engagement on plans would be set out, and could include requirements for communities to be able to submit written comments within a defined timeframe, e.g. 12 weeks. Landowners may then be required to set out how they considered these responses and why any changes were or weren't made following the consultation.

Pre-Notification

Proposal

Landowners would be required to notify the administering authority should they intend to transfer all or part of their landholding (where it met the definition of a large-scale landholding), to allow for registered community bodies in the area to be notified.

Community bodies would have a period of protected time where the landowner would be prevented from taking further steps to transfer the land to a) express an interest, and should they pass an initial screening, b) produce a formal application under either Part 2 Community Right to Buy (private landholding) or Community Asset transfer (public landholding). The criteria for decision making would follow what is currently set out for those routes.

Should a formal application be accepted, the community body would have a registered right to buy over the relevant land and would follow the process to

complete purchase set out in existing Part 2 community right to buy or community asset transfer routes.

Questions

- What impact do you think the pre-notification process would have, given the potential impact on timescales and plans to transfer land?
 - If, for example, the community group had 30 days to note interest and a further 40 days (if passed screening) to submit an application? Could the additional time be planned for? What would the cost and/or wider business implications be of the transfer being delayed for this process?
 - What if this was extended to 30 days note of interest and 60 days to prepare application? Does this change the impact?

Transfer Test

Proposal

Where a landholding was in scope for pre-notification, the administering authority would conduct a screening to determine whether the landholding should be subject to a transfer test, considering whether there were risks of concentration of power held over communities.

Should the landholding screen into the transfer test, a further investigation would be carried out and a report produced for ministers. This process could take place concurrently to the pre-notification process, to limit impact on transfer timescales.

Scottish Ministers would determine on the basis of this report whether they were satisfied that a) there was concentration of power over communities in the landholding, and b) that this concentration of power had, or was highly likely to lead to harm to these communities. Where satisfied of both of these, Scottish Ministers would determine whether lotting of the landholding would be appropriate. If lotting was determined to be appropriate, this could be of the whole landholding or a certain part (e.g. only land near to a given community), and would be subject to expert advice.

Questions

- If a landholding did screen in for a transfer test, what impact do you think the subsequent investigation process and any delay to transfer proceedings while that was taking place would have for the business?
- If the landholding was then required to be lotted, what might the impact of this decision be from the business's/landholding's standpoint?
 - What would the impact on costs, timeframe etc. associated with the transfer process likely be, if the land had to be lotted?
- Based on past experience, are you able to quantify any costs in relation to these points?

Land Use Tenancy Questions

The new land use tenancy will complement existing types of land tenure leases, rather than replace them. In particular, it will not have an adverse effect on farm leases under agricultural holdings legislation. Officials will be continuing to work with stakeholders to consider whether further measures are needed during the course of the Bill.

This proposal places a new duty on Scottish Ministers to publish a land use tenancy template, and to consult with key stakeholders about the template.

This duty seeks to ensure that the land use tenancy template is developed in a way that enables individuals to undertake a range of land use activities that supports:

- Climate change mitigation and adaptation;
- Nature restoration and enhancement;
- Other diverse land use opportunities; and
- Food producers.

The letting template will be published on the Scottish Government's website. It may also be recorded in the Books of Council and Session to give parties confidence that they can rely on the terms of the lease when entering into an agreement.

Stakeholders have confirmed that they are currently not utilising a commercial lease mechanism for hybrid land use due to the legal costs associated with the changing of the terms of the standard commercial lease template. They also lack confidence in the commercial lease process.

It is intended that the Tenant Farming Commissioner will produce guidance on how to enter into a Land Use Tenancy.

Questions

- What financial impact could the land use tenancy have for you as: an individual starting a business; an established business; a charity/organisation; and/or a perspective landlord?
- How much do you think it would cost to get legal advice when preparing a land use tenancy agreement? Do you think this would cost less or more than the legal advice required to enter into a commercial lease?

Agricultural Holdings Proposals – Questions

Diversification (undertaking non-agricultural activities)

The diversification proposals will enable a tenant farmer to set out the environmental benefit/s which will be delivered as part of a proposed diversification on part of their agricultural holding.

Their landlord will be required to consider impact of the tenant farmer's proposal across the whole of the tenant farmer's holding, rather than only the part of the holding where the diversified activity will take place. The range of grounds where a landlord can object to the diversification will be altered to reflect this change.

The landlord will be required to provide more detailed information and reasons if they object to the proposal. This will enable their tenant farmer to consider if they want to amend their proposal so their landlord can reconsider and potentially change their mind. As part of the process a tenant farmer will also be able to serve a "suspension notice" which would pause the approval process for thirty days. These changes will give both parties the ability to have the opportunity to negotiate and consider revising the diversification proposals.

The proposed changes will also allow the Land Court to take into account any environmental benefit/s of a proposed diversification when they are asked to consider whether a landlord's objection to a proposed diversification is reasonable.

Questions:

- How much do you think it would cost to receive advice from a relevant consultant to assess the environmental benefit of a proposed diversification?
- What impact would this proposal have for your business?

Agricultural improvements to Schedule 5

Schedule 5 of the 1991 Act currently enables a tenant farmer to undertake a specific range of activities which are supplementary to the agricultural activity on the tenant farm and support the use of the holding. The Schedule is split into three Parts:

Part 1 which lists the range of tenant farmer's improvements that need the landlord's prior consent.

Part 2 which lists the range of tenant farmer's improvements that need the tenant farmer to give advance notice to their landlord before they do the improvement.

Part 3 which lists the range of tenant farmer's improvements that do not need the landlord's consent or tenant farmer to serve a notice in advance.

The tenant farmer may be entitled to compensation for the improvement at the end of their tenancy.

Currently if an activity is not on one of the three lists it is not an improvement. The lists have been created in the past and are no longer flexible enough to support modern farming activity and the practices needed in the future to enable a tenant farmer to do their part to tackle the twin climate and biodiversity crises.

The proposal is to modernise and update the existing lists using a principles-based approach with example activities. As follows:

Part 1 – Improvements which the tenant farmer will need the landlord’s prior consent to do the activity. Where the activity is a change of the agricultural use of the holding that will generate direct income for the holding.

Part 2 – Improvements that relate to infrastructure or land management which can be altered without major impact to the land management of the holding. Where the tenant farmer will require to serve a notice to their landlord in advance of undertaking the activity.

Part 3 – Will be a list of specific tenant improvements that do not need the landlord’s consent in advance or for the tenant farmer to serve a notice in advance before they do the activity.

Part 4 – Improvements which will benefit the holding by being sustainable and regenerative agriculture and the tenant farmer will need the consent of their landlord before they do the activity.

Parts 1, 2 and 4 will all contain examples of the activities that fall under the principles and can be undertaken in those Parts. Part 3 will retain a specific list of activities which can be undertaken without the landlord’s permission. All activities currently listed in Schedule 5 will be kept and will be moved into a relevant Part. You can see the proposed approach in the attached Schedule 5 list.

Questions:

- If improvements or activities are carried out do you expect these to have an economic value to an incoming tenant farmer of the holding? What are those?
- As a landlord do you think the proposed changes will provide longer term economic benefit to your estate? Why do you think they would or would not provide longer term economic benefit?
- What impact will these changes have for your business?

Good Husbandry and Estate Management Rules

The proposal will shift the current approach to the rules of good estate management and good husbandry from ‘efficient production’ to placing a greater emphasis on sustainable and regenerative agricultural activities meeting the aims of the Scottish Government’s Vision for Agriculture. This will enable tenant farmers to undertake activities such as leaving uncropped field margins as part of their agricultural activities within the Rules.

The Rules of Good Husbandry applying to tenant farmers, and the Rules of Good Estate Management applying to landlords, were defined in the Agricultural Holdings (Scotland) Act 1948. As a result, they focus on how agriculture worked post World War II. The Rules will be redefined so that a tenant farmer will be expected to farm in a way to achieve both efficient production and sustainable and regenerative production.

A landlord will have fulfilled the rules of good estate management if they manage the estate in such a way to enable the tenant to achieve efficient production and sustainable and regenerative production.

Questions

- What impact will these Rules changes have to your business?
- Do you think allowing a tenant farmer to undertake sustainable and regenerative agricultural activities along with their obligation to maintain efficient production, would enable those businesses to be more profitable, less profitable, or not have any impact?

Waygo

The proposal aims to provide a clear timescale around the 'waygo' process for waygo to better enable tenants and landlords to settle waygo claims timeously and move forward with the next stage of their life. Currently waygo claims are not subject to uniform timescale. In the majority of cases the waygo claim can come months after the date of termination of the lease, and there is often significant delay between the date of lease termination and the date when the claimant will receive any compensation due.

The proposal is to insert a timeframe for parties to adhere to, following a notice being served to end the tenancy. They also require that a valuer should be appointed nine months prior to the termination of the tenancy. In the event that parties cannot agree the appointment of a valuer, then they can approach the Tenant Farming Commissioner to appoint one.

The valuer will produce an interim valuation report providing a valuation of the heads of claim being sought by either party. The interim valuation report will be provided six months prior to the termination of the tenancy.

Three months prior to the termination of the tenancy an updated valuation report will be provided, taking into account any changes in the circumstances in the tenancy and providing a valuation for any new claims arising.

The valuation report is not the final word on the amount which the claimant is entitled to claim against the other party, but it should be used as the basis for the respective claims for compensation submitted by the claimant against the other party. Parties will intimate their claim for compensation against the other party two months prior to the termination of the tenancy. Should any new claims arise less than two months prior to the end of the tenancy, where parties dispute the valuation, then either party can apply to the Land Tribunal.

Questions

- Will this proposal enable you to receive the compensation due to you at Waygo quicker? If not why not?
- Do you think this proposal could provide cost savings when reaching the final settlement, and why? If you think it would, what would these be?
- How else will these changes impact your business?

A new rent review system

It is proposed to reform the rent review system introduced by the 2016 Act, as elements of the provisions which were identified as being difficult to translate into robust practical procedures. The proposed approach will draw on the work of the Tenant Farming Commissioner and engagement with the Tenant Farming Advisory Forum. This creates a flexible system of rent review which enables both parties to provide evidence from a number of different sources and places an increased emphasis on negotiation.

The new rent review system will be based around a non-exhaustive and non-hierarchical list of factors, which should be taken into account when calculating rent. This will mean that parties will require to consider:

- Comparable rental information
- The productive capacity of the holding; and
- The prevailing economic conditions and factors reasonably foreseeable over a 3 year period.

Where parties are unable to reach agreement on the rent payable, they will be able to access Tenant Farming Commissioner (TFC) mediation which will be supported by TFC guidance. Failure by parties to agree rent, will result in either party being able to apply to the Land Court to have the rent fixed using the revised method.

Agricultural Holdings (Scotland) Act 2003 agricultural tenancies will follow a similar approach.

Questions

- If you already use a different approach to calculating your rent what is this based on?
- Would having a TFC code of practice on the new rent method enable both parties to come to agreement quicker? If you think it would, would this new method help you save money?
- Would you access TFC mediation if you fail to agree rent given the average cost for mediation is estimated around £3,000?
- How will this proposal impact your business? Will it result in you receiving/paying more or less rent?

Resumption

Resumption is the term used when a landlord takes land back out of an agricultural tenancy for specific purposes. The aim of the resumption provision is to promote a

thriving tenant farming sector, and to enable tenant farmers to plan with business certainty. This proposal aims to allow this to happen.

Currently, a landlord has the right to resume if there is a written lease which contains a resumption clause and the clause sets out the purposes when land can be resumed. We are not changing that.

The 1991 Act confirms that when a landlord resumes land for non-agricultural activity, they must give their tenant farmer notice of the intended resumption at least 12 months before it is due to take place, otherwise it is invalid. The planned resumption must not constitute a fraud on the lease. However, when the resumption is for agricultural use by the landlord then their tenant farmer can treat this as a notice to quit and the tenant farmer can serve a counter notice.

The proposals aim to make these procedures consistent and aim to modernise the compensation due to the tenant farmer to ensure that they are provided with fair compensation for their loss. The provisions will allow the tenant farmer to claim compensation on a reduction in rent, a disturbance payment, and an additional reorganisation payment.

Questions

- Do you think a landlord with a tenant farmer with a secure 1991 Act tenancy, would have to pay more compensation to resume land? Would this be more than the compensation paid using the current valuation process using multiples of rent?
- What affect would this proposal have on your business?

Compensation for game damage

The proposals aim to modernise the compensation for game damage provisions to clarify the process and enable tenant farmers to claim compensation for losses other than damage to crops. This will amend section 52 of the Agricultural Holdings (Scotland) Act 1991.

Game is defined as deer, pheasant, partridge, grouse and black game (that is, black grouse) within section 52. The proposals will remove black game from the definition of game, due to their declining population.

Currently the tenant farmer is only entitled to compensation where there is crop damage and the payment rates are outdated with the tenant farmer only currently able to receive compensation if crop damage exceeds 12 pence per hectare. The proposals will enable tenant farmers to claim compensation for damage to their crops, fodder, grass for livestock grazing, disease impact on livestock, damage to trees for the purposes of short-rotation cropping, damage to trees which are planted for sustainable and regenerative agriculture, damage to trees planted for non-agricultural purposes, and damage to fixed equipment.

Questions

- Would you need specific training to assess game damage or would you pay a consultant to do this for you? If you would like specific training who should pay for that? As a landlord do you anticipate being able to recover part of this cost if you have a sporting tenant?
- How would these changes impact your business? How would you fund any costs arising to you from these changes?

Small Landholdings Measures- Questions

The Scottish Government committed in the Programme for Government to “modernise small landholding legislation” and the Bute House Agreement committed to “explore providing small landholders with the same pre-emptive right to buy as crofters and Agricultural Holdings (Scotland) Act 1991 tenant farmers, and the treatment of the land under their houses”.

To meet these commitments, the [Small Landholdings Modernisation](#) consultation included proposals to modernise small landholdings legislation relating to:

- Right to Buy;
- Diversification;
- Succession and Assignment; and
- An Umbrella Body.

The Scottish Government Agricultural Census results (June 2021) shows that there are approximately 59 small landholders who have identified themselves in Scotland and with 5,360 acres (2,168 hectares).

Right to Buy

It is proposed that the pre-emptive right to buy proposal for small landholders will generally mirror the pre-emptive right to buy approach that tenant farmers with secure 1991 Act agricultural tenancies have. With the aim of removing barriers to sustainable agricultural activity and rural development by providing small landholders with greater certainty over their smallholding and encouraging them to invest in their agricultural business.

It is intended that the small landholder will initiate the process by providing a written notice to their landlord confirming their intention to exercise their pre-emptive right to buy. This notice will include a plan and map together with a detailed description of the land which the small landholder considers forms their smallholding. Once the landlord receives the written notice they must respond to their small landholder within 30 days confirming whether they agree to the information contained within the notice. This process will encourage dialogue between the small landholder and their landlord and enable them to clarify and agree the area of the small landholding.

There will be an option for the small landholder and their landlord to go to mediation at this point and the Tenant Farming Commissioner will provide guidance on the pre-emptive right to buy process and mediation.

The small landholder will have the option to go to the Land Court if there is a dispute with their landlord about the area of the small landholding or the lease.

Once the notice is served by the small landholder a pre-emptive right to buy will be triggered in two situations:

- Where the owner of a small landholding or creditor gives the small landholder notice of a proposal to transfer the land covering the small landholding; or
- Where the owner or creditor of a small landholdings takes some of action with a view to transferring the land covering the small landholding or any part of it. 'Takes action' means that the land is advertised or exposed for sale, negotiations are entered into, or any proceedings are further taken with the proposed transfer of the land.

After the landlord or creditor 'takes action' then the small landholder can make an offer and agree the price of the smallholding with the landlord or creditor in a standard security.

Where the small landholder or the landlord/creditor fail to agree the value of the small landholding then a valuer can be appointed by agreement. Where both parties fail to agree the appointment of a valuer then one can be appointed by the Land Court.

The valuer will be required to take into account value that is likely to be agreed between a reasonable seller and buyer. They also need to consider any factors that may lead a person wanting to buy the land at a price higher due to the characteristics of the land; and the date when the small landholding may be returned to the landlord (the vacant possession date) and the individual terms or conditions of the lease and any moveable property.

As part of this process, the small landholder, landlord or other persons who have an interest in the estate can make written representations to the valuer. The expenses of the valuer will be met by the small landholder or shared equally between the small landholders (where more than one small landholder is exercising their right to buy in relation to the seller's land eg if part or all of an estate was being sold).

Within 6 weeks of being appointed, the valuer must send seller and small landholder the price. Where parties do not agree with the valuer's price assessment then the seller or small landholder can appeal the valuation to the Lands Tribunal within 21 days of receiving the valuer's notice. At the end of the process the small landholder will be able to purchase the whole of their small landholding.

Questions

- What financial impact will the pre-emptive right to buy proposal have on your business?
- As part of agreeing the boundaries of the small landholding lease, would you wish to undertake mediation prior to going to the Land Court? (average cost for mediation is estimated around £3,000)
- As a small landholder would you be able to pay the potential valuation cost of owning your small landholding?

Diversification

Currently small landholdings may only be used for cultivated purposes. Cultivation is defined as being used for “horticulture or for any purpose of husbandry, inclusive of the keeping or breeding of livestock, poultry, or bees, and the growth of fruit, vegetables, and the like” or other occupations that the Scottish Land Court find reasonable, so long as the occupation is not inconsistent with the small landholding’s cultivation.

This proposal will enable a small landholder to use the small landholding for a purpose other than for ‘cultivation’. This will align with agricultural holdings diversification provisions set out in Part 3 of the Agricultural Holdings (Scotland) Act 2003.

When assessing the small landholder’s proposal, the landlord is required to consider it in the context of the impact it will have across the whole of the small landholder’s holding, not just the effect it will have on the part of the holding where the diversified activity will take place. The grounds upon which a landlord can object to the diversification will be changed.

A landlord will be required to provide detailed reasons if they object to the proposed diversification. This will enable the small landholder to consider if the proposal can be modified to remove any concern, so both parties can agree to the proposal. A small landholder will be entitled to serve a “suspension notice” to pause the approval process for 30 days to enable negotiation between the landlord and small landholder, creating an opportunity for a modified proposal to be agreed.

The Land Court will, if asked to consider whether an objection to the proposed activity is reasonable, be able to take account of any environmental benefit.

Questions

- Would you hire a consultant to assist in assessing the environmental benefit of a proposed diversification? How much do you think this could cost?
- Would you expect that any diversified income would be reflected in the rent for the holding?
- Do you expect that diversification could devalue the holding and result in the landlord claiming compensation from the small landholder at waygo?
- How else will these changes impact your business?

Succession and Assignment

The proposal aims to enable small landholders to assign their tenancy to the same classes of people as tenant farmers with secure 1991 Act agricultural tenancies can through the Land Reform (Scotland) Act 2016. It aims to encourage investment and growth; enabling wider family members to take over, provide older small landholders greater ability to retire at an earlier stage, while opening up opportunities for new entrants and future generations of young farmers.

The provisions modernise the range of family members who can succeed a small landholding by amending the legislation for testate succession in the Crofters Holdings (Scotland) Act 1886 (which significantly limits the range of eligible individuals, compared to modern family arrangements).

Question

- As a small landholder, will being able to pass on your tenancy more easily, encourage you to invest in your small landholding?
- As a landlord, how do you think this proposal will affect your long-term business plan for the estate?
- What impact will this change make to your business?

Umbrella body

The proposal aims to allow landlords and small landholders to have access to the Tenant Farming Commissioner (TFC) and intends for the Tenant Farming Commissioner to have similar functions for small landholdings as those currently set out for agricultural holdings in Chapter 3 of the Land Reform (Scotland) Act 2016.

The Tenant Farming Commissioner would promote and encourage good relations between small landholders and their landlords, publishing guidance and codes of practice.

The Tenant Farming Commissioner would also be given the power to investigate alleged breaches of codes of practice. This proposal would help to reduce confusion and tension while making small landholdings legislation more accessible.

The Tenant Farming Commissioner would be able to produce small landholding guidance on - negotiating rent; diversification; negotiating the fulfilment of the obligations of landlords and small landholders; the right to buy process; the process of succession and assignation; guide for landlords on the creation of small landholdings; conversion to crofting; and determining compensation at removal.

Questions

- Do you think that being able to access TFC guidance and codes of practice reduce your costs? Please explain why.
- Would this change help you resolve disputes without having to go to the Land Court? (Average cost for mediation is estimated around £3000)
- How will this proposal impact your business?

Scottish Firms Impact Assessment

As part of the Scottish Firms Impact Assessment 17 businesses were interviewed between October 2023 and December 2023. The questionnaire shown above in **Annex A**, was developed in consultation with RESAS, and was used accordance to the relevance of proposals to the individual for example small landholders were asked small landholding related questions only. Of the 17 businesses interviewed: 8 were landlords/ land owners, 6 were agricultural tenants, and 3 were small landholders.

Interviewee	Type	Detail
1	Landlord/ landowner	Island based community land owner/ landlord
2	Landlord/ landowner	Private land owner/ landlord
3	Landlord/ landowner	Charitable land owner organisation/ landlord
4	Landlord/ landowner	Charitable land owner organisation/ landlord
5	Landlord/ landowner	Private land owner/ landlord
6	Landlord/ landowner	Private land owner/ landlord
7	Landlord/ landowner	Community land owner/ landlord
8	Landlord/ landowner	Private land owner/ landlord
9	Agricultural tenant	Secure and short term leases, beef, arable and farm shop diversification
10	Agricultural tenant	Secure lease, beef and arable
11	Agricultural tenant	Fixed term lease only, beef and sheep
12	Agricultural tenant	Secure lease, hill sheep and beef.
13	Agricultural tenant	Island, secure lease, mixed farm with diversifications.
14	Agricultural tenant	Island, secure and fixed term leases, beef, sheep & diversifications
15	Small landholder	Island based
16	Small landholder	Island based
17	Small landholder	Island based

Land Use Tenancy

Respondent 1 Existing commercial leases are for extraction purposes, e.g. sand extraction, preventing coastal erosion, and utilities. These leases have impacts on crofts. Protections for crofters are not built into some existing leases and payments have needed to be made to some crofters. Recouping the costs can be challenging. One recent example cost £12k plus legal costs.

Respondent 1 if there was an accepted template for a land use tenancy agreement then this could save time and money.

Respondent 1 would seek legal advice before entering into an agreement. Costs incurred by engaging a legal firm/solicitor for advice and the price of the agreement. Bespoke arrangements are more costly and time consuming. Some companies will pay an early entry fee but this can make it difficult to enforce leases (e.g. restoration of land).

Respondent 1 considerable staff time resource goes into identifying appropriate guidance for tenancy arrangements. Any guidance would help to limit time spent looking for appropriate guidance and reduce costs.

Respondent 2 the land use tenancy would be of interest if it can be guaranteed that the landowner can benefit from any forestry activity or peatland restoration, e.g. through carbon credits. Importance of a partnership between a landlord and tenant, where both need to benefit.

Respondent 2 costs associated with new tenancy agreements tend to be quite high, with need to get everything right, find a new tenant and comply with legislation. Isn't a guarantee that the landowner will still want the tenant in time or that the agreement won't need adapting.

Respondent 2 in terms of costs, using a recent lease to the neighbouring golf club as an example – recent lease agreed for 99 years, incurring approximately £5000 in legal fees for mapping and reorganisation of boundaries etc.

Respondent 2 potentially cost benefits to having guidance, with fewer disputes as all parties know what they're agreeing to.

Respondent 2 guidance is good, but would look for something less prescriptive in terms of guidance for this proposed tenancy as neither party needs a prescriptive model given levels of current support for tenants.

Respondent 3 it would reduce costs. RSPB are happy to look at the proposal in more detail and are interested in the proposed new tenancy. Currently have a lot of grazing lets, and longer agreements with grazing tenants would be helpful. Existing grazing lets are often for grazing for conservation purposes, and so the terms of them need to be enforceable.

Respondent 3 If it provided the intended benefits, then it would be beneficial over time. It could reduce staff costs and time spent on agreements, including by allowing agreements to run for longer periods than they are currently set up for.

Respondent 4 is Supportive of proposal and would see as additional rather than replacing.

Respondent 4 No positive or negative financial impact from proposal, it would depend on what was in the detail. If template is prescriptive, then more difficult to work with, if it is available to be modified, then may be more readily applied.

Respondent 4 Example of Private Residential Tenancy, where users are bound to the material terms. Noted that the Property Standardisation Group (psglegal.co.uk/) is already producing standard contracts that can be taken and built on.

Respondent 7 At the moment 'no' because it is not something they have discussed as part of the organisation. Gut reaction is that it is a nature reserve – if it were something they were looking at. Joint approach may be more satisfying. Sort out problems before they arise. Template lease drawn up – same lease for a smaller area. They think about getting it checked - as a document it is relatively straight forward if it is getting any more technical with lawyers then it adds to costs and time. Clear templates – private rented tenancies for housing. ScotGov website (equivalent of that). Hope that the Tenant Farming Commissioner would save costs and time.

Respondent 8 Commercial leases are more expensive than agricultural leases. Gave the example of a recent lease of building where rent was £450 but the lease was expected to cost £1000 - £2000. Officials noted that this type of lease was already covered in an existing lease template and that the Land Use Tenancy isn't the same as an agricultural lease.

Respondent 8 Agricultural lawyers can have high costs, would expect to pay around £450 - £650 an hour for a partner's time, due to the complexity and high risk nature of the work. Would expect a land agent's time to cost around £150 - £200 an hour. Would expect additional costs for setting up the lease with a lawyer of around £1000 - £2000.

Respondent 8 Not sure if they would use a land use tenancy. Have a number of different types of agricultural tenancies on estate, including 1991 Act, 1948 Act and pre-1948 Act tenancies. Wouldn't expect 1991 Act tenants to be interested in using a land use tenancy. Estate likely to look at joint venture contract farming agreements before considering a land use tenancy. If the land came out of tenancy agreement, would likely bring set up in-house or establish a contract farming agreement as it would allow the estate to retain more control, and there is more financial benefit to the estate in taking one of those approaches than retaining a tenancy. From a business perspective, it is better to have the land in-hand and let out the house.

Respondent 9 said that from experience leaving an existing tenancy arrangement and moving into another had cost them approximately £7,000 to quantify end of tenancy compensation and agree a new contract this included the legal fees.

Respondent 9 would get a lawyer to look over the contract.

Respondent 9 would only seek mediation if the term was longer than 1 year.

Respondent 10 said that entering into a tenancy agreement costs approximately £4-£5k in legal fees.

Respondent 10 said that involving the TFC in producing clear guidance would be a big help and cost saving

Respondent 10 said that mediation would be the cheapest and most sensible route.

Respondent 11 said that the cost of changing the lease would cost approximately £4,000.

Respondent 11 said that TFC guidance would reduce the cost however, it would ultimately depend on if agents are involved as to whether it would have a cost saving.

Respondent 11 said that if they have had a dispute then they would go to a mediator and each side paying £1,500 depending on the value of the lease is reasonable.

Respondent 12 took legal advice on entering into a 5 year lease and the costs were between £1,400 and £1,500 and that was just to get the paperwork checked.

Respondent 12 thought that the template was a good idea and, if set up by the TFC, it would give a general starting point for the farmer.

Respondent 12 he would like to think you would discuss and try to sort things out. If not could then go to mediation and finally the Land Court. Mediation would be a lot less than going to court. The Codes of Practice produced by the TFC are brilliant bit of kit.

Respondent 13 said there are bound to be significant costs to set these up if they head towards a commercial lease. If there isn't one, then it will end up in the landlord's favour. We are always seeking more land to rent. I sought legal advice before I took on my ag holding tenancy. As part of being fair I bought out my parents when I was assigned the tenancy. It cost me £4-5k at that time which was some time ago. Depending on the length of the new land use tenancy it might cost more.

Respondent 13 Anything the TFC has been involved in so far has been a big help to both landlords and tenants. It's a good approach and prevents a free for all – I've used him to help us to come to an understanding with my landlord.. the TFC approached my landlord on my behalf. I get on fine with my landlord it was on the amnesty and it helped us to clear up issues and progress.

Respondent 14 said they legal advice when starting their tenancy and this cost approximately £1,500.

Respondent 14 said that the proposal affects them their tenancy doesn't allow them to plant trees but does allow them to plant hedges. Trees on their island are not economically viable.

Respondent 14 The economics of islands and trees is more of a millstone around your neck. We'd be more likely to plant broadleaves for 200 years time.

Respondent 14 said the TFC guidance will be important as he has more access to the legal issues etc. As you don't want to be exposed at the end of the tenancy.

Respondent 14 I don't think this would be more expensive than a commercial lease and it would be beneficial if the TFC gave out guidance.

Respondent 14 I would go to mediation before court due to costs. We have a good relationship with our landlord but we've had differences of opinions with their land agent on occasion.

Agricultural Holdings

Diversification (undertaking non-agricultural activities)

Respondent 2 said importance of ability of landowner to increase the rent due to activities undertaken. For example, if carbon money is created then the landowner should be able to access some of that money.

Respondent 2 would object if the tenant was allowed to undertake new activities without repercussions, leaving the landlord with the changed use at the end of the tenancy.

Respondent 2 would talk to tenant if a notice to diversify is given and would discuss proposal and assess it. Would seek legal advice before responding to any notice, which would have cost implications.

Respondent 3 would seek legal advice before agreeing to any diversification. From experience some are better at conservation activities than others. Any measures would need to prevent environmental damage.

Respondent 4 felt this was difficult to answer as impact will depend on specifics of diversification. However, may be no long-term benefits, but could be a benefit to the tenant, which may be needed to prompt the action in the first place.

Respondent 4 suggested possible tension for NTS and other landowners depending on what the diversification is and how this affects other interests, e.g. landscape, or biodiversity.

Respondent 4 commented that regenerative agriculture is good from an NTS perspective, may not be welcomed by all landowners, depending on the impact on income. May also be a tension with increasing food production.

Respondent 8 Typical costs can be around £4000-£5000 depending on the size of the scheme. Rarely need to use notices as agreement is usually reached through negotiation, focusing on what the tenant is trying to achieve. Concerns about

diversification with forestry, as there is no guarantee that there is a market for new crop (e.g. trees) in time. Notes that the land was rented as a farm, not a forestry plantation.

Respondent 8 Risks for landowner with needing to maintain forested area for a lengthy minimum period (e.g. 100 years) if a carbon credit agreement is entered into. If the land is being used for trading and investment there is a tax risk, and trading is preferred to investment.

Respondent 8 Questioned if tenant would need insurance for these kinds of diversification activities, if the action would reduce the value of the land at waygo. Risk the tenant could be declared bankrupt.

Respondent 9 would definitely use a consultant.

Respondent 9 said that additional rent would be justifiable but turnover percentage would not be. Payment based on turnover would be the beginning of the end and deciding what is fair and in terms of rent is key.

Respondent 9 previously did get a lawyer to write a letter on a diversification and this cost £450.

Respondent 10 had only used a consultant for a carbon audit.

Respondent 10 would seek legal advice on serving notice for their experience serving notice associated with the amnesty cost approximately £2/2.5k. The templates produced by the TFC were a cost saver for the amnesty.

Respondent 10 said that that if the landlord was to seek a large amount of rent as a result of the diversification then they wouldn't bother with the diversification.

Respondent 10 said that the proposal would most likely generate additional income for the tenant and mentioned wind farms and renewable energy as possible income streams.

Respondent 11 said that from their experience serving notice on their landlord would cost between £100- £200 but this would be the cost of legal advice only.

Respondent 11 could imagine that it would cost approximately £650 for half a days work of a consultant so unlikely to be less than £1,000.

Respondent 11 envisaged the main purpose of a diversification being tourism.

Respondent 11 made approximately £12,000 to £13,000 for the renewable turbine.

Respondent 11 also had a diversified wool processing business which made about £5,000 to £6,000 a year after costs.

Respondent 12 said if a project was detrimental to the holding, it would be unlikely that permission would be given.

Respondent 12 said that they would be seeking legal advice on serving notice. The cost of serving notice was around £1,800 while another notice cost approximately £1,000.

Respondent 12 said that if he was undertaking a new project of which he had no experience, they would seek advice from a consultant as they had done for environmental schemes.

Respondent 12 had received an income stream of approximately £10,000 per annum from their diversification.

Respondent 12 said that tourism and farm to fork are good examples of diversifications (farm shops) along with coffee shops. At the end of the day these could be a major asset for the landlord.

Respondent 13 Before I did a diversification I would research if it was viable. I would get someone to check I served the notice properly. I wouldn't use a consultation to prep the diversification. I would draw on legal advice if needed. I used legal advice before for my amnesty. It cost me roughly £2-2.5k it wasn't much work doesn't take much to get to that price. You need a specialist I wouldn't bother with the diversification if there was too many demands from my landlord I would do it on non tenanted land.

Respondent 13 Every farm is different and every diversification is different – its hard to attract the public up to more hilly locations for diversifications as that is not a great place for the public. A diversification has to be income generating.

Respondent 14 I think we bring 2-3k per week from holiday accommodation (3 glamping pods) but there are also outgoings e.g. cleaning costs

Respondent 14 We didn't need legal advice to proceed with our diversification we approached the landlord and took it from there.

Respondent 14 We would seek a consultant when we enter into the environmental diversification area. It would depend on the issue if we went to a lawyer . the issue of paying compensation to our landlord for land lost as a result of trees puts me off applying for that.

Respondent 14 Consultant fees – 1-3k.

Respondent 14 The big unknown is carbon capture will we be able to participate in this – we've been advised not to do this yet. We've started an organic conversion process. We're selling more meat direct to the consumer via the butcher to increase the value of the product.

Respondent 14 If a diversification is done sensibly then it should not negatively impact the farm.

Agricultural Improvements (Schedule 5 amendments)

Respondent 2 not sure if sustainable farming would have a benefit in terms of value. May be benefits in terms of value if receiving carbon payments due to practices, e.g. minimal tilling of soil.

Respondent 2 some activities which are of benefit to an existing tenant may not benefit an incoming one, e.g. one may convert to organics but the incoming tenant may not wish to farm that way. This can generate additional costs.

Respondent 3 Sustainable and regenerative agriculture could add value. There is value in delivering for conservation. Key concern is on the impact of activities.

Respondent 8 The economic benefit of improvements depends on the subsidy regime that applies. Costs often recorded as off-balance sheet debt, which is the money to pay tenants if the lease was terminated – risk liabilities could exceed assets. Waygo is typically not applied to 1991 Act tenancies, and so mainly risks associated with SLDTs and MLDTs.

Respondent 9 believed that sustainable and regenerative agricultural activities would be profitable.

Respondent 9 believed that their lease would affect the range of activities they are able to undertake.

Respondent 10 believed that this proposal would help the tenancy to become more profitable and encourage tenant to undertake these improvements.

Respondent 10 said that modern agriculture requires flexibility and must take account of modern improvements so as to add value to the holding.

Respondent 10 said that sustainable and regenerative practices in schedule 5 are bound to improve the farm and soil health while adding value to an incoming tenant farmer.

Respondent 11 said that serving their improvement notice on the landlord cost approximately £1,000

Respondent 11 said that they didn't know whether sustainable and regenerative activities would add value. There is not enough common knowledge about the economic benefits of these yet.

Respondent 11 said tree planting is tricky as the outgoing tenant could be liable for replanting the previously agricultural managed field.

Respondent 11 to get tenants to plant trees there needs to be more significant legal changes.

Respondent 11 said that there could be other costs if regenerative impacts the income generation of the farm and this could impact the rental value of the farm. My rent has been based on so much per cow or sheep. Will a landlord give me a 25%

reduction in rent if the subsidy regime requires me to reduce my volume of stock by 25%.

Respondent 12 said that the proposals could make things more profitable.

Respondent 12 said that species rich grassland was a disappearing asset.

Respondent 12 said that improvements under schedule 5 could be of value if giving an income to the farm. Then again, the extra income could impact on the rent.

Respondent 12 said it is difficult to say if sustainable and regenerative farming would have value. If a scheme was still running it could be of value. It could impact the business but that would depend on the payments.

Respondent 12 said that sustainable and regenerative agricultural activities would have an impact on lots of businesses and they would have to change their way of working. There is always room for improvement but would wait to see if there was profitability in it.

Respondent 13 My landlord knew it was an improvement but he wasn't keen to agree that it was on paper. The schedule needs to take account of modern farming practices so it needs to happen.

Respondent 13 Hypothetically, organics could provide a value to an incoming tenant – it depends how the incoming tenant wants to farm. Its bound to improve the health of the soil

It needs to cover regenerative practices and on farm renewables

Respondent 14 I would think so, this would encourage us to look at more and different diversification like an environmental thing e.g. species rich grassland or a silvo pastural option. It would be good if that was looked on as a tenant's improvement. This would deal with the dog kennel issue we faced before.

Respondent 14 For our conversion to organics we've not put it through as anything. The landlord has been very encouraging towards organics over the past decade. We've told the landlord what we're doing and they're being encouraging. We are in year x of the 5 year conversion to organics.

Respondent 14 Income generation for organic modelling – we had been heading down regenerative management and we had already reduced the amount of fertilizer and pest inputs (we don't grow crops) that showed profits going up. Organic farming seemed to be the next step for us and in selling organic livestock. Generally our way of evaluating things is to look a other businesses.

Good Husbandry and Estate Management Rules

Respondent 2 Haven't experienced any disputes in relation to good husbandry. Important that the tenant is able to pay rent and the farm is in a good condition.

Respondent 8 Bad husbandry certificate process is challenging, particularly with 1991 Act tenants. Considers rules are reasonable though.

Respondent 9 believed that changing single farm payments are changing and allowing these activities is key.

Respondent 9 believed that regenerative activities are subjective and used the example of ragwort as to whether allowing this to go would be 'right'.

Respondent 10 believed that without this amendment then they may be excluded from some schemes in the future.

Respondent 11 The rules need to come in line with GAEC. Their landlord clear felled a wood and we are now left with dealing with all the ragwort from the landlord's land which is directly impacting us. It needs to be fair on both sides. This won't impact subsidy rules it will just bring it all in line.

Respondent 12 said that these changes could make it more difficult to issue a certificate of bad husbandry.

Respondent 12 said that they would like to think that you could be sustainable and regenerative and still be a good traditional farmer.

Respondent 13 This is a good idea; if it doesn't get updated we could be excluded from one of the future funding schemes. However, depending on the size of the holding etc. there could be issues – I used up all my available areas of land to access the agri-environment scheme and I didn't have any more land to enable me to engage in more agri-environment

Respondent 14 This would be a good thing to put in. We doubled our profit as a result of regenerative farming. we are reducing our feed costs by 60-70% as a result of this.

Respondent 14 Its hard just now for a landlord to issue a certification but it would be good to have regenerative and biodiversity elements expressed.

Waygo

Respondent 2 Existing waygo system is too complicated with some things needing permission, others needing notification and some things not needing anything at all. If it can be demonstrated that money has been spent, then you should be able to get compensation.

Respondent 2 Waygo could be different in the future as sustainable farming and carbon management could change practices, which makes the costs of some things more subjective.

Respondent 2 a single valuer would save time and money and reduce disputes.

Respondent 2 previous waygo cost approximately £2000 in legal fees in 2010. A later waygo with fewer improvements to address only cost £1000. The cost depends on what is being claimed and any disputes.

Respondent 4 probably helpful and potential savings, but would this be obligatory? What valuations would be applied and what evidence drawn on?

Respondent 4 Waygo is difficult to be scientific, often the tenancy has petered out, due to internal (personal) or external (economic) changes.

Respondent 4 could potentially also create a mini-industry for providing evidence to official valuer.

Respondent 8 Would want to use own valuer in waygo process, but no issue with timelines. Concern that fixtures and improvements at amnesty were not properly considered.

Respondent 9 said that their waygo process had previously cost £3-4k in legal fees but didn't appoint a valuer.

Respondent 9 would use the TFC to appoint a valuer and that it would be fairer to get an external body.

Respondent 9 believed that in terms of stress it the proposal would have wellbeing savings.

Respondent 9 would take the valuers assessment without seeing recourse to the Lands Tribunal.

Respondent 10 said that they knew people who had a terrible time getting compensation and the proposal would definitely help in terms of cost and time.

Respondent 10 would apply to the TFC to appoint a valuer.

Respondent 10 would potentially appeal a valuer's decision

Respondent 10 said that there must be a clear timescale and consequence if this is not adhered to.

Respondent 10 said that they do not want to be getting close to retirement without knowing what compensation they may be entitled to.

Respondent 11 agree that the valuation needs to be before the tenancy ends. They have been strongly advised to appoint a valuer. This proposal would give cost savings for both parties.

Respondent 11 said that it had cost approximately £1,000 for an incoming valuer.

Respondent 11 said that their mortgage was retracted because they didn't have waygo so had to rent a house.

Respondent 12 said that they would probably need to get an independent valuer . You would probably get your own before you entered into the whole situation. . You could then go to a neutral valuer. He would only appeal if the valuations were quite different.

Respondent 12 said there could be cost savings with the timetable. If a tenant farmer is retiring, he only wants to have enough for his retirement.

Respondent 13 I've not used a proper valuer for a proper valuation process. A colleague of mine has used one for the new entrant starter farmer – they had a terrible time getting compensation for when the tenancy ended. Its taken them 2 years even though it was proper valuation process.

Respondent 13 There are issues around what a valuer values the improvements at versus what you may value them at.

Respondent 13 This process will help. The TFC will help in this too

Respondent 13 Statutory codes where it has to be adhered to are helpful. What incentives are there to go with the codes – there needs to be a timescale and penalty if a landlord goes over the set timescale.

Respondent 13 It needs not to hold up your retirement you need not be relying on that compensation – you almost need to know what you are going to get for your retirement. The negotiations need to start earlier.

Respondent 14 has not experienced waygo but heard of the problems faced.

Respondent 14 A process before the end of the tenancy will help resolve this. The timescale was the biggest issue to get to an agreement – leading to it going 2 or 3 months beyond. This will help to settle claims quicker.

Respondent 14 I would appoint my own one to start with then see what the landlord's side come up with then go to TFC to get mediation or appoint someone to mediate

Respondent 14 doubt it I don't think I'd apply to the Lands Tribunal given you'd used an independent valuer.

Amendments to the Rent Review System

Respondent 2 Little cost currently to issuing rent notices. If there are issues, would just re-issue a notice the following year. Proposals unlikely to impact the estate. Landowner should be able to benefit from increases in tenant's income.

Respondent 2 Different elements go into rent considerations. Would be better if advice was 'this is what you should consider' rather 'than this is the way you should calculate it'.

Respondent 4 could potentially complicate situation. Focus on productive potential could conflict with other measures in bill, e.g. regenerative agriculture or diversification.

Respondent 4 three-year period, view that operators can often be pessimistic about prospects (weather, past sales, disease, etc.), as farming does have many uncertainties.

Respondent 4 NTS approach has been to base upon market prices plus inflation.

Respondent 4 Tenant Farming Commissioner code of practice is already very helpful.

Respondent 8 Nine tenanted farms on landholding, not covering a significant area. When notices are served the methodology used for the rent review is not included. Focus on working out agreement between landlord and tenant and shouldn't have to be concerned about small legal costs. Costs can increase when there are minor errors to the letters served, as they need to be corrected.

Respondent 8 A code of practice would be helpful and could be enclosed with the letters. Trying to put together a tenant management pack to make it more clear what is being valued.

Respondent 9 went through a rent review process 3 years ago and it was very difficult to get comparable rents due to GDPR concerns.

Respondent 9 said that their landlord shared rents without context and you need to know what you are comparing it to.

Respondent 9 believed that it was beneficial to keep as many factors in as possible.

Respondent 9 said that TFC guidance was amazing.

Respondent 9 would seek mediation if they failed to agree rent as a first step and only as a last resort would apply to the Land Court.

Respondent 10 said they had never been given enough comparable evidence to make the current legislation work.

Respondent 10 said that the landlord tried to put the rent up, but this was not based on anything meaningful and sometimes wouldn't include the fixed equipment.

Respondent 10 said that in theory this proposal looks a good idea and should be a fairer assessment for everyone.

Respondent 10 said that the forward-looking element was difficult to quantify.

Respondent 10 said that a TFC code of practice was bound to help.

Respondent 11 said that for a comparable rent you need to see a comparable lease with comparable inputs. However, people are very shy over telling you what they are paying for rent.

Respondent 11 was concerned if there would be stocking density reduction how this would be treated in the rent calculation.

Respondent 11 said that a TFC code of practice would help people save money.

Respondent 11 would only go to the Land Court as an absolute last resort.

Respondent 12 said that the rental amount can't exceed the amount I can make a living out of, but I also need to generate enough income to be able to farm the ground in a way that it needs to be farmed. Would prefer it to be indexed to margins. Respondent 13 Open market comparables need to be on a like for like status. I know there are no 1991 act tenancies on the market.

Respondent 13 I've never been given enough details for my rent review so I can trust the comparables. My landlord has tried to use unsuitable comparables to increase my rent but it was a lot of work for me – it was a 40 page counter proposal from me and my landlord didn't know what to do with it

Respondent 13 The 3rd element of the comparables on the economic condition will enable us to look forward more closely.

Respondent 13 I would only go to the Land Court if I needed to get a reasonable amount.

Respondent 14 Using productive capacity would help and profitability would help in the future.

Respondent 14 current we negotiate based on what we have paid previously, adjust what we can afford to pay. A rent review is not a great fear for us. We are making good profits due to our ability as good farmers. Our estate has not come every 3 years for our rent review its been 5,6 or more since the last one. In the past 30 years we've had 6 rent increases.

Respondent 14 this would give us the ability to argue about the productive capacity and profitability of the land. It would help us set out our case on that basis.

Respondent 14 It could take longer to reach an agreement, but the land agents just now are more aware of the TFC process - we got 13 months notice prior to the rent review. This process will help, it will extend the negotiation but that will be to our benefit.

Respondent 14 The TFC code of practice will help. We would go to the TFC to mediate before the Land Court. The last place we would want to go is the Land Court because of the costs but also because of the stress. As an absolute last resort, we would apply to the Land Court if it was totally unfair.

Resumption

Respondent 2 costs in resuming land largely due to reduction in rent and lawyer's letters.

Respondent 2 notes that notice period for resumption should be at least 12 months, unless there's an emergency reason for the resumption. On the proposals to modernise compensation, it would be up to the tenant to suggest the impact of compensation.

Respondent 8 Proposals are fair. Resumption needs to be easier for landlords as well. Process needs to be fair and compensate for losses.

Respondent 9 believed that they would be entitled to more compensation as a result of this proposal.

Respondent 9 said that a lot had been resumed and sold off to mitigate the right to buy.

Respondent 9 said that they received £1250 for 14.14 acres and woodland strips. The landlord allowed them to occupy the land for another year so they weren't entitled to disturbance costs.

Respondent 10 had a field resumed for housing. Where a large area of land is resumed it significantly impacts the business. Compensation needs to be able to put tenant in a position where they can try and find more land. They received £500 for 3 acres of the tenancy. Rent was approximately £40 per acre.

Respondent 11 had approximately 600 square meters resumed for a wind farm which took 5 years of negotiation with a £4,000 bill. They received a £50-60 rent adjustment as a result of this resumption.

Respondent 11 said it would be fairer for a tenant to be given a small percentage of the value of the resumption.

Respondent 12 had experienced the resumption of 3 pieces of land for tree planting and game compensation didn't cover the losses to the farm.

Respondent 13 The statutory payment was three times the rent. We were due £360 we got £500 of compensation for a 3 acre field. We are struggling to find more land to rent or buy. If you got a share in the uplift in the value for a non-agricultural diversification it might help a tenant to put down a deposit for other land.

Respondent 13 We were never going to fight it. It was in the terms of the lease that they can resume it. A tenant farmer should be entitled to more compensation, it needs to be fairer.

Respondent 13 It should be based on something similar to relinquishment as a valuation. You won't get enough value to enable you to let elsewhere.

Respondent 14 We didn't get compensation for the resumption, but we got a small reduction in rent. The resumption was less than 1 ha. It was old farm buildings. The rent reduction was £250 a nominal amount. We took the view that it wasn't worth fighting and we had hoped to get the tenant's compensation for improvements. It would have caused too much stress and legal fees to fight it.

Respondent 14 We used a lawyer it cost us £3k and a valuer and their fees were £1500 and the landlord gave us £5k. The main issue with the resumption is that its too close to the main steading and it impact upon the farm. We were given over a year's notice for it.

Respondent 14 The proposal would enable us to get additional compensation. It would be nice to get a tenant's element on the proportion of the value of the improvement. I'm aware of farms on the mainland where land is being taken away for forestry and the tenants are not being fairly treated. The compensation for these is very little and these are significant areas of land. They are getting a small rent reduction based on the agricultural value of them, I'm not sure the length of time that they were served notice for.

Respondent 14 Getting served with a notice for non-agricultural use can affect your long-term plans for your business especially if it's a large area of land.

Compensation for Game Damage

Respondent 4 No specific impact on NTS, as not operating game shoots. From past experience, would normally be part of a negotiation with a tenant.

Respondent 8 Challenge of deer and crops – need a stalker on estate to handle deer. Need to know when damage happens to properly assess – not after activity has taken place (e.g. the field has been ploughed). No issues providing compensation where evidence shows damage. Easier to see impacts of damage pre-harvest.

Respondent 9 had not experienced game damage.

Respondent 10 said that if there is a procedure to follow and it can be recognised by both landlord and tenant then it would encourage a tenant to put in a claim and calculate the amount.

Respondent 11 said that there is quite a lot of displaced red deer approximately between 300 and 400 and they were approximately 25% short over a five year period. This would cost about £70-80 an acre if it was kale.

Respondent 11 said that deer had damaged the fence costing £7 - £10 a meter plus retentioning costs.

Respondent 11 said that measuring damage is hard. Grass damage is hard to assess but fodder crops are easier to assess for kale/rape.

Respondent 11 said that the shooting rights had been let to a small family shoot where they were expected to manage 10-20 deer per year and they were having to manage over 100 deer and were lacking the knowledge to do so. In the end the shooting tenant ended their tenancy.

Respondent 11 said that training for landlords, land agents, and tenants similar to the goose model would be helpful to manage the impacts.

Respondent 12 said that they used to grow high value seed potatoes that used to produce £350 pt when lifted. This resulted in a damage claim of around £10k. The landlord didn't believe them, but the factor got factual info confirming the damage loss.

Respondent 12 said that they had 9 acres destroyed/ flattened that was not combinable due to game bird damage then they submitted a claim for damage to barley. It was between 15-20% loss on the barley left standing and the area of flattened as well so they had compensation for both elements of this.

Respondent 12 said that In 2015 they lost 16 calves out of 68 cows. They also had spyridia and I was drive close to the edge. I was tubing cows on a regular basis then spending 5-6 days thinking it was getting better 60-70% of cows were affect by cyro. A PHD student undertook research on cyrpto sporidium issue, we thought it was feeding/water vector. report showed the vector that the game birds present and the level of damage from cyrpto.

Respondent 12 said that there are 14,000 pheasants and 8,000 partridge on just under 700 acres. They also have avian flu so chickens are getting closed in and game birds are still being imported from the EU and transferred around the UK,.

Respondent 13 Examples where there is big deer damage will be easier to quantify. If fields are shaded by trees, then the rent should reflect that so when the game push the grain flat then that may be an easier approach to manage.

Respondent 13 If there is a procedure to follow and you can both recognise the procedure then that would enable tenants to put in a claim.

Respondent 14 The red deer roam in herds and we have had a field of forage crops decimated, some of the silage crops are also affected we are losing production from those too. If we allow the grass to grow, we get deer and goose damage. How you evaluate it is difficult. The deer roaming around also cause damage. Not sure how you quantify the goose damage per acre.

Respondent 14 I think I've lost somewhere between 2-5k pa as there are generally 20 deer roaming around closer to the rough areas but the grass doesn't grow very well in those areas due to deer. I think that's a conservative estimate

Respondent 14 I think the proposals would help to get compensation. Very often the landlords' agents are minimising the game damage. Something more prescriptive methodology would be good.

Respondent 14 It would be useful if there was guidance on assessing damage. It would also be helpful if there was training we could get on how to assess the damage.

Respondent 14 It would also be good for rent review considerations. – link to the productive capacity of the holding

Small Landholdings

Right to Buy

Respondent 4 is supportive of this.

Respondent 15 said they were unlikely to be able to afford the right to buy but it would encourage them to invest in their holding. Mentioned wanting to put up a shed and would consider doing this on the small landholding or secure tenancy that they held.

Respondent 15 said that there was no issue with the boundaries and that it was quite clear given the sea boundary at the end.

Respondent 15 said that it would depend how big a difference was over the boundaries of the tenancy. They said that they wouldn't be paying for that area of land so may not challenge it. But if the difference was big then they would go to mediation before the Land Court.

Respondent 15 would speak to landlord prior to mediation or Land Court

Respondent 17 said it would work well for them but he knows the landlord would be reluctant and unlikely to sell. He has a good relationship with the landlord. When asked about market value he did not think it would have an impact but unsure. He was 100% for the Right to Buy and would definitely buy if the opportunity arose.

Respondent 17 definitely would invest more and do a lot more on the holding.

Respondent 17 sees this as a benefit to the community. It could mean that the next generation could keep farming and would also help in people remaining on the island.

Respondent 17 on the question of boundaries, he said there were no issues with the holding which is all properly fenced. He also has two seasonal lets as well at present. If he had the right to buy, he would give up these fields.

Respondent 17 in disputes, he said he has had dealings with the factor but thinks he would be okay. Would want to reach some agreement before considering the Land Court.

Respondent 17 On mediation, he thought it was a high cost for 60 acres. He thought that he could come to an agreement with the landlord in the past.

Respondent 17 On the appointment of a valuer, he thought the cost of around £1,000 was affordable. There could be issues if the landlord was reluctant to give up land. Thinks there could be an opportunity if the factor was running the estate for the landlord. Respondent 17 did not think the price would be higher because he lived on Arran as the location of the holding was in a zone out with Brodick and the higher prices of land on the island.

Diversification

Respondent 15 was not in an immediate position to diversify but felt the proposal would be of help if they decided to do so in the future to help with additional income. Respondent 17 has not diversified. He only has sheep and is quite traditional. He would be interested and would encourage his children if they wanted to do something with the holding. Possibly get better production.

Respondent 17 would speak to a consultant on diversification to get the take on it but not aware of the costs for it. He said he would need to weight up the cost against benefit and how long it would take to recover costs before he would consider it.

Respondent 17 thought the negotiation period would be beneficial to help sort out any difficulties and would prefer the opportunity to negotiate, which could have a cost saving benefit.

Respondent 17 commercial and environmental diversification, he said they were not big enough to allow tree planting. Due to the geography, they are limited in what they can do possibly could do something like deer farming. And he did think a diversification could lead to a rent increase.

Succession and Assignment

Responded 15 had no children and was relatively new to farming so had not really thought about succession or assigning the holding.

Respondent 17 thought this was a great idea for small landholders. It could help young people stay on the island and gave an example of what could happen to the holding in those circumstances. It would encourage people to further invest in their holding knowing that someone would come behind you and continue with the holding.

Respondent 17 when asked whether this would benefit the 59 small landholders, said it was more important to have residents on the island. He hoped it would encourage people to invest in their holding.

Umbrella body

Respondent 15 felt that any guidance on responsibilities would be helpful and asked about improvements and whether there was any difference in terms of how they would be treated between secure 1991 Act tenancies and small landholdings.

Respondent 17 thought the TFC would be up to date with legislation and be able to give advice on rights and responsibilities. He could clarify things which could make life a bit easier.



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This publication is available at www.gov.scot

Any enquiries regarding this publication should be sent to us at

The Scottish Government
St Andrew's House
Edinburgh
EH1 3DG

ISBN: 978-1-83601-063-0 (web only)

Published by The Scottish Government, March 2024

Produced for The Scottish Government by APS Group Scotland, 21 Tennant Street, Edinburgh EH6 5NA
PPDAS1432126 (03/24)

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