



Land Reform Bill consultation response

October 2022

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

We agree that it is essential to tie receipt of public money to these goals. We would also argue that it is reasonable – and indeed necessary - to expect all land management to be consistent with these goals to some extent.

1. Do you agree or disagree with the criteria proposed for classifying landholdings as ‘large-scale’:

A fixed threshold of 3,000 hectares

Land that accounts for more than a fixed percentage of a data zone (or adjacent data zones) or local authority ward(s) designated as an Accessible Rural Area or Remote Rural Area, through our six-fold urban/rural classification scheme

Land that accounts for more than a specified minimum proportion of a permanently inhabited island

We believe that this threshold is too high, exceeding any likely common understanding of the term, and excluding land holdings that have national significance because of their size. There is no obvious reason why the bill should not also apply to smaller land holdings. We agree that it is appropriate to have an additional condition related to minimum proportion of an area, provided this minimum is not also too high.

2. Do you agree or disagree that family farms should be exempt from the proposals outlined in Parts 5 to 7 even if they are classified as a ‘large-scale’ landholding?

We disagree. There is no single adequate definition of a family farm at this scale, and equally strong arguments of public interest apply to these anyway. Large-scale land holdings play a crucial role whatever their ownership, and should be treated consistently.

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

At some scale, yes. It is hard to see why urban communities should not have the same opportunities to engage with local land ownership as rural communities, particularly given the disparities in land ownership and access in Scotland’s urban areas.

4. We propose that there should be a duty on large-scale landowners to comply with the Land Rights and Responsibility Statement and its associated protocols. Do you agree or disagree with this proposal?

The protocols seem very vague, to the point that such a duty would either be unenforceable or, alternatively, enforceable against almost anything. We do not see how (non)compliance could be demonstrated – for example, Principle 4 states that “The holders of land rights should exercise these rights in ways that take account of their responsibilities to meet high standards of land ownership,

management and use. Acting as stewards of Scotland's land resource for future generations they contribute to sustainable growth and a modern, successful country." There seems no clear opportunity or reason to make compliance binding with such a statement. We would suggest far more concrete principles be included, whether or not they are binding in nature (and we accept there is a strong argument in principle for some to be binding).

5. If there was a legal duty on large-scale landowners to comply with the Land Rights and Responsibility Statement and its associated protocols, we propose that this should be enforced by having a formal procedure for raising complaints, and by making provisions for independent adjudication and enforcement.

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

As above, we believe this would require a far clearer definition of the protocols in order to function. Given this, we believe a formal procedure of this kind is a good idea provided that it is fully transparent, in terms of the complaint, process and findings, and accessible to all, independent of resources. This also implies a very efficient method of weeding out frivolous complaints.

b) Do you agree or disagree that only constituted organisations that have a connection to the local area or the natural environment should be able to report breaches of the Land Rights and Responsibility Statement?

No, we disagree with this condition. The criteria as stated are not really meaningful, and don't imply any greater right or ability to identify breaches. The thrust of the draft bill is that land is, at some level, a common resource (and one that needs to be used to mitigate the climate and biodiversity crises rather than worsen them). It surely follows that breaches can in principle be identified by any organisation or individual. It remains important to limit unjustified reports of breaches, and so precisely-defined rights & responsibilities are also essential.

c) Do you think the responsibility for investigating and dealing with complaints should sit with Scottish Gov. or a public body

We believe that an independent public body would provide the necessary transparency and consistency.

Should the potential outcome from an investigation of a breach be: Recommendation for a mediation process; Recommendation on how the landowner or governing body could comply with the Codes of Practice/protocols; A direction to the landowner or governing body to implement changes to operational and/or management practices

All of these could be appropriate depending on the breach and context. We believe that direction would need to be a possibility if the legislation is to have a real effect.

Should the enforcement powers for a breach be fiscal penalties or cross-compliance penalties

For serious or repeated breaches, penalties should presumably be fiscal. It is a basic societal requirement that land is managed in a way consistent with the continuing function of the ecosystems we rely on. Strong penalties for severe breaches that undermine net zero and biodiversity targets are entirely appropriate.

6. Do you think the proposal to make the Land Rights and Responsibility Statement and its associated protocols a legal duty for large-scale landowners would benefit the local community?

Potentially yes, if the Statement and protocols are clear and strong enough. There is also a question of the national (and even international) community. Net-zero and biodiversity restoration are not really meaningful goals at local scales, and it's important that local benefits remain in the context of these broader goals, as well as broader social and environmental justice.

7. Do you have any other comments on the proposal to make the Land Rights and Responsibility Statement and its associated protocols a legal duty for large-scale landowners?

It's important to note that there are strong financial pressures to manage land in ways that might not be consistent with the protocols. Given this, the legal duty might be unachievable or unreasonable. There should be far more support to manage land in ways consistent with these expectations, across policy areas.

8. We propose that there should be a duty on large-scale landowners to publish Management Plans. Do you agree or disagree with this proposal?

We agree. It is in the public interest to know how large-scale holdings will be managed.

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

We would suggest every 10 years.

10. Should Management Plans include information on:

- Land Rights and Responsibility Statement compliance
- Community engagement
- Emission reduction plans
- Nature restoration
- Revenue from carbon offsetting/carbon credits
- Plans for developments/activities that will contribute to local and inclusive economic development or community wealth building

All of the above. We believe that information should go beyond 'economic development' and 'community wealth building' to include topics such as wellbeing, employment, affordable housing, and opportunities to buy land parcels.

11. Do you think the responsibility for enforcing compulsory land management plans should sit with government or public body?

A public body, for reasons as above.

12. Do you think the proposal to make Management Plans a legal duty for large-scale landowners would benefit the local community?

Yes, and broader communities of legitimate interest.

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

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14. We propose that a public interest test should be applied to transactions of large-scale landholdings. Do you agree or disagree with this proposal?

We agree. It is essential that some public oversight exists, to ensure that the management of large-scale land holdings is consistent with climate and biodiversity goals.

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

The advantages would include far more consistency in land sales and management with broader societal goals. A possible disadvantage is that it could constrain the land market, but with rapidly rising land prices we believe that this is also in the public interest.

16. Do you think the public interest test should be applied to: The seller / the buyer / the buyer & the seller / don't know

The buyer and the seller

17. If the public interest test was applied to the seller, do you think the test should be considered as part of the conveyancing process?

Yes.

18. Do you think that all types of large-scale landholding transactions (including transfers of shares and transfers within or between trusts) should be in scope for a public interest test?

Absolutely. Otherwise these could become vehicles to circumvent the test..

19. Do you agree or disagree with these conditions?

We have proposed that if a public interest test applied to the seller concluded there was a strong public interest in reducing scale/concentration, then the conditions placed on the sale of the land could include

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

ii. The land, in whole, or in part, should be offered to constituted community bodies in the area, and the sale can only proceed if the bodies consulted, after a period of time, indicate that they do not wish to proceed with the sale

We agree with both, although the test of public interest would have to be rigorous to justify these conditions.

20. Do you think that a breach of the Lands Right and Responsibilities Statement should be taken into account when determining the outcome of a public interest test?

Yes, as it speaks to the reliability of public interest being achieved.

21. Do you think that a public interest test should take into account steps taken in the past by a seller to: Diversify ownership; Use their Management Plan to engage with community bodies over opportunities to lease or acquire land

Yes, as a reasonable guide to future outcomes.

What time period do you think this should cover?

10 years

22. Do you think the responsibility for administering the public interest test should sit with the Scottish Government or a public body?

A public body, for reasons as above.

23. Do you think the proposal that a public interest test should be applied to transactions of large-scale landholdings would benefit the local community?

This depends on what the public interest is defined as, but it is likely to – local community benefits are generally consistent with wider public interest.

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

We see this as a basic principle in a democratic country that recognises the importance of its land resource to a wide range of public objectives.

25. We propose that landowners selling large-scale landholdings should give notice to community bodies (and others listed on a register compiled for the purpose) that they intend to sell.

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

We agree; communities need time to assess and develop options.

b) Do you agree or disagree that there should be a notice period of 30 days for the community body or bodies to inform the landowner whether they are interested in purchasing the land?

We agree, as above

c) If the community body or bodies notifies the landowner that they wish to purchase the land during the notice period, then the community body or bodies should have 6 months to negotiate the terms of the purchase and secure funding. Do you agree or disagree with this proposal?

We agree

26. Do you have any other comments on the proposal that landowners selling large-scale landholdings should give notice to community bodies that they intend to sell?

27. Do you agree or disagree with these requirements?

We propose the following eligibility requirements for landowners to receive public funding from the Scottish Government for land based activity:

All land, regardless of size, must be registered in the Land Register of Scotland.

Large-scale landowners must demonstrate they comply with the Land Rights and Responsibility Statement and have an up to date Land Management Plan.

Yes, we agree. These are essential for achieving policy targets and for basic fairness.

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

29. Do you agree or disagree with our proposal that there should be a Land Use Tenancy to allow people to undertake a range of land management activities?

We agree. This could build on range of existing models and diversify land management in beneficial ways.

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

Industrial extraction and other forms of management that substantially degrade ecosystems or release greenhouse gases.

31. Do you think that wider land use opportunities relating to diversification, such as renewable energy and agri-tourism, should be part of a Land Use Tenancy?

Possibly. There would be a risk that both would lead to dispersed development with minor benefits for economic returns and energy generation, but big impacts on landscapes and environments. Energy generation in particular needs a national strategic approach (within which generation to support local communities could be a priority, which could be facilitated through such tenancies).

32. Do you agree or disagree that a tenant farmer or a small landholder should, with the agreement of their landlord, have the ability to move their agricultural tenancy into a new Land Use Tenancy without having to bring their current lease to an end?

Yes, this would be a key mechanism for introducing them

33. Do you agree or disagree that when a tenant farmer or small landholders' tenancy is due to come to an end that the tenant and their landlord should be able to change the tenancy into a Land Use Tenancy without going through the process of waygo, with parties retaining their rights?

We agree.

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

35. Would you use a Land Use Tenancy if you had access to a similar range of future Scottish Government payments which other kinds of land managers may receive?

We would be interested in offering them.

36. Do you think that there should be guidance to help a tenant and their landlord to agree and manage a Land Use Tenancy?

Yes this would be helpful

37. Do you think there should be a process to manage disputes between a tenant of a Land Use Tenancy and their landlord?

Yes.

38. Do you agree or disagree that tenants of a Land Use Tenancy and their landlords should be able to resolve their legal disputes in relation to the tenancy through the Scottish Land Court?

Yes

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

40. Would you like to be kept informed via email about the Small Landholding Consultation for the Land Reform Bill? We would use the email you provide in the 'About you' section to contact you.

Yes, as a landowner interested in offering them.

41. Do you agree or disagree with our proposal to explore:

Who should be able to acquire large-scale landholdings in Scotland

The possibility of introducing a requirement that those seeking to acquire large-scale landholdings in Scotland need to be registered in an EU member state or in the UK for tax purposes

We entirely agree. Scotland has suffered from speculation on land and secretive forms of ownership. Land ownership should be consistent with public good also in terms of transparency and tax payment.

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

We believe that a Land Value Tax could have important economic and societal benefits.

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

a) Community benefit

Develop models that support community provision of natural capital uplift, such as on small landholdings, and that reflect shared ownership of some forms of natural capital

b) National benefit

Ensure investment flows into genuine natural capital uplift, and meets conditions consistent with wider goals.

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

We are developing our own mass-ownership model, and believe that other new mechanisms for community ownership are important.

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

No

46. Are you aware of any examples of particular current or future impacts, positive or negative, on young people, (children, pupils, and young adults up to the age of 26) of any aspect of the proposals in this consultation?

On Highlands Rewilding land we have increased access to local greenspace for young people, with very positive outcomes. This could be a very substantial wider benefit of the proposals.

47. Are you aware of any examples of how the proposals in this consultation may impact, either positively or negatively, on those with protected characteristics (age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation)?

No

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

They should be designed to ensure environmental benefits – e.g. steps should be taken to improve biodiversity levels

49. Are you aware of any examples of how the proposals in this consultation might impact, positively or negatively, on groups or areas at socioeconomic disadvantage (such as income, low wealth or area deprivation)?

Yes. Many disadvantaged groups are urban and may not benefit, and there is currently no distinction between wealthy and disadvantaged rural areas. This should be a consideration in testing public interest.

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

Both, in the process of ensuring compliance. But benefits should outweigh these.

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

None that are not reasonable.