

LAND REFORM (SCOTLAND) BILL

POLICY MEMORANDUM

INTRODUCTION

1. As required under Rule 9.3.3 of the Parliament’s Standing Orders, this Policy Memorandum is published to accompany the Land Reform (Scotland) Bill introduced in the Scottish Parliament on 13 March 2024.
2. The following other accompanying documents are published separately:
 - Explanatory Notes (SP Bill 44-EN);
 - a Financial Memorandum (SP Bill 44-FM);
 - a Delegated Powers Memorandum (SP Bill 44-DPM);
 - statements on legislative competence by the Presiding Officer and the Scottish Government (SP Bill 44-LC).
3. This Policy Memorandum has been prepared by the Scottish Government to set out the Government’s policy behind the Bill. It does not form part of the Bill and has not been endorsed by the Parliament.

POLICY OBJECTIVES OF THE BILL

4. The Bill covers four principal policy areas:
 - land reform;
 - a model lease designed for letting land that can be used wholly or partially for environmental purposes which will be known as a Land Management Tenancy (a letting arrangement to support individuals to undertake a range of land use activities in one lease type);
 - agricultural holdings legislation; and
 - small landholdings legislation.

Land reform

5. 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”.¹

6. These proposals deliver the Programme for Government 2023-24² legislative commitment to improve the transparency of land ownership, further empower communities, and help ensure that large-scale landholdings are delivering in the public interest.

7. This Bill is intended to help realise this vision and commitment 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 Commission³ (“the Land Commission”) and are intended to be targeted and proportionate ways of addressing the risks identified by the Land Commission.⁴

8. The aims of the measures in the Bill are:

- to further improve the transparency of land ownership and management in Scotland,
- 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,
- to improve the sustainable development of communities by increasing opportunities for community bodies to purchase land when it comes up for sale,
- 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.

9. 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,

¹ [Scottish Land Rights and Responsibilities Statement 2022 - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/scottish-land-rights-and-responsibilities-statement-2022/pages/introduction.aspx)

² [Cabinet Secretary for Rural Affairs, Land Reform and Islands - Programme for Government 2023 to 2024 -gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/cabinet-secretary-for-rural-affairs-land-reform-and-islands-programme-for-government-2023-to-2024/pages/introduction.aspx)

³ [Investigation into the Issues Associated with Large scale and Concentrated Landownership in Scotland, Scottish Land Commission](https://www.gov.scot/publications/investigation-into-the-issues-associated-with-large-scale-and-concentrated-landownership-in-scotland/pages/introduction.aspx)

⁴ [Report to Ministers Scale and Concentration Land Ownership \(Land Commission.gov.scot\)](https://www.gov.scot/publications/report-to-ministers-scale-and-concentration-land-ownership/pages/introduction.aspx)

- 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.

Modernising leases of agricultural holdings and small landholdings, and providing for a new model lease (the ‘land management tenancy’)

10. In relation to agriculture (a policy area with close links to land reform), the Scottish Government Vision for Agriculture, published in March 2022⁵, outlined its ambition to “become a global leader in sustainable and regenerative agriculture.”

11. This Vision, and those in the Scottish Government’s Programme for Government⁶, are progressed in this Bill through the introduction of measures aimed at:

- supporting the use of land for environmental purposes including sustainable farming by providing a model lease (a ‘land management tenancy’), and
- modernising legislation relating to small landholdings and agricultural holdings.

BACKGROUND

Land reform

12. 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.”

13. Land reform has been a continuing legislative priority since devolution and has seen the following Acts of the Scottish Parliament since 1999:

- the Abolition of Feudal Tenure etc. (Scotland) Act 2000⁷ abolished the feudal system of land tenure and saw land previously held feudally converted into simple ownership.

⁵ [Sustainable and regenerative farming - next steps: statement - gov.scot \(www.gov.scot\)](https://www.gov.scot/binaries/content/documents/govscot/publications/strategy-plan/2023/09/programme-government-2023-24/documents/equality-opportunity-community-programme-government/equality-opportunity-community-programme-government/govscot:document/equality-opportunity-community-programme-government.pdf)

⁶ [Programme for Government 2023 to 2024 - gov.scot \(www.gov.scot\)](https://www.gov.scot/binaries/content/documents/govscot/publications/strategy-plan/2023/09/programme-government-2023-24/documents/equality-opportunity-community-programme-government/equality-opportunity-community-programme-government/govscot:document/equality-opportunity-community-programme-government.pdf)
<https://www.gov.scot/binaries/content/documents/govscot/publications/strategy-plan/2023/09/programme-government-2023-24/documents/equality-opportunity-community-programme-government/equality-opportunity-community-programme-government/govscot:document/equality-opportunity-community-programme-government.pdf>

⁷ [Abolition of Feudal Tenure etc. \(Scotland\) Act 2000 \(legislation.gov.uk\)](https://www.legislation.gov.uk/ukpga/2000/12)

- the Land Reform (Scotland) Act 2003⁸ (the “2003 LR Act”) introduced a right of responsible access to the countryside, a community right to buy land when it comes on the market, and an absolute crofting community right to buy land.
- the Community Empowerment (Scotland) Act 2015⁹ included extensions to the rights to buy given to urban areas, the introduction of additional rights for communities to buy land that was abandoned, neglected and detrimental to the environmental wellbeing of the community and a requirement for those responsible for taking decisions about public services to take account of community needs and views.
- the Land Reform (Scotland) Act 2016¹⁰ (the “2016 Act”) included requirement for Scottish Ministers to develop a Scottish Land Rights and Responsibilities Statement (LRRS) to improve the relationship between the land and people of Scotland, the establishment of the Land Commission to review the effectiveness and impact of current and potential future laws and policies relating to land, and a new community right to buy land to further sustainable development.

14. In early 2018, the Land Commission issued a public call for evidence, inviting people with experience of living and working in communities where most of the land is owned by a very small number of individuals to share their experience. Over 400 responses were received to this call for evidence, with follow up interviews conducted with a representative sample. For interview broadly similar numbers of people who identified as residents of communities in areas of concentrated landownership and people who identified as landowners or land-managers were selected.

15. The analysis of this call for evidence was published in 2019, as the report Investigation into the Issues Associated with Large scale and Concentrated Landownership in Scotland¹¹. This report concluded that “In some parts of Scotland concentrated landownership appears to be causing significant and long term damage to the communities affected.” This report was further supported by an evidence review¹², and consideration of international approaches¹³.

⁸ [Land Reform \(Scotland\) Act 2003 \(legislation.gov.uk\)](https://www.legislation.gov.uk/ukpga/2003/10/section/1)

⁹ [Community Empowerment \(Scotland\) Act 2015 \(legislation.gov.uk\)](https://www.legislation.gov.uk/ukpga/2015/10/section/1)

¹⁰ [Land Reform \(Scotland\) Act 2016 \(legislation.gov.uk\)](https://www.legislation.gov.uk/ukpga/2016/10/section/1)

¹¹ https://www.landcommission.gov.scot/downloads/5dd7d6fd9128e_Investigation-Issues-Large-Scale-and-Concentrated-Landownership-20190320.pdf

¹² Glass, J., McMorran, R., Thomson, S., The effects associated with concentrated and large-scale land ownership in Scotland: a research review, report prepared for Scottish Land Commission, March 2019

¹³ Glass, J., Bryce, R., Combe, M., Hutchison, N.E., Price, M.F., Schulz, L. and Valero, D. 2018. Research on interventions to manage land markets and limit the concentration of land ownership elsewhere in the world. Scottish Land Commission, Land Commissioned Report No 001.

16. Subsequently, in February 2021, the Land Commission published a further paper making recommendations for legislation¹⁴. These recommendations were:

- the requirement for significant land holdings to engage on, and publish, a management plan;
- a land rights and responsibilities review process, to take effect where there is evidence of adverse impacts; and
- a new public interest test that would determine whether significant land transfers or acquisitions are in the public interest.

17. The Land Commission’s recommendations have helped inform the measures in this Bill which apply to large-scale landholdings. Those measures have been developed following further consultation, engagement and policy development. The proposals put forward in this Bill are intended as targeted and proportionate ways of addressing key risks identified by the Land Commission through their work on scale and concentration.

Modernising land tenure legislation relating to land management, agricultural holdings and small landholdings

18. Rural tenancy law provides for three key activities namely crofting, the farming of agricultural holdings, and the cultivation of small landholdings. There is as yet no suitable tenancy type for the hybrid land management activities that will help mitigate the adverse effects of climate change and nature loss. This gap makes it both more difficult and more costly to pioneer new types of land use, including mixed land use with an element of farming.

19. Tenant farming is a key component of Scottish agriculture, and tenants are responsible for 22% of Scotland’s agricultural land.

20. The majority of agricultural tenancies are secure agricultural tenancies which can pass through generations in the same farming family. Some of these tenancies pre-date the 20th Century, and they have been regulated under many enactments over the years.

21. The main agricultural tenancy enactments are the:

- Agricultural Holdings (Scotland) Act 1991 (“the 1991 Act”), and
- Agricultural Holdings (Scotland) Act 2003 (“the 2003 AH Act”).

¹⁴ Scottish Land Commission (2021), [Legislative proposals to address the impact of Scotland’s concentration of land ownership: a discussion paper from the Scottish Land Commission, \[Legislative proposals for addressing concentrated landownership \\(landcommission.gov.scot\\)\]\(#\)](#)

22. Typical farm leases operate under the 1991 Act, and for that reasons those leases are described as secure 1991 Act agricultural tenancies.

23. The limited duration tenancy was created by the 2003 AH Act to enable land to be let for a fixed period. That Act also enables short limited duration tenancies for not more than 5 years, which could be converted into limited duration tenancies. The limited duration tenancy was replaced for new leases with modern limited duration tenancies, under changes made by the 2016 Act.

24. The 2016 Act also provided for the repairing tenancy, which would become a limited duration tenancy after a repairing period.

25. The Scottish Government Agricultural Census 2021 results are broken down into:

- 3,821 secure 1991 Act agricultural tenancies¹⁵,
- 368 Limited Partnership agricultural tenancies,
- 175 Modern Limited Duration Tenancies,
- 743 Limited Duration Tenancies, and
- 1,258 Short Limited Duration Tenancies.

26. The Scottish Agricultural Census results also identified 59 small landholders in Scotland, who manage 2,168 hectares of land. Over two-thirds of small landholdings are less than 20 hectares in size.

27. The Scottish Government considers that a vibrant agriculture tenanted sector is key to ensuring that Scotland gets the most from the land, and from the people farming it. However, since 1982 there has been approximately a 45% decrease in the area of land managed by tenant farmers. Shorter leases are also becoming more common, although some former tenant farmers are now owner occupiers having purchased all or part of their holdings.

28. The Scottish Government also considers that farm tenancies, and 1991 Act tenancies in particular, are less suited to carrying out the full range of land management activities that are needed to help mitigate the effects of climate change and nature loss.

29. The agricultural holdings proposals in the Bill have been informed by the invaluable contribution from partnership working with the Tenant Farming Advisory Forum (TFAF).

¹⁵ <https://www.gov.scot/publications/results-scottish-agricultural-census-june-2021/>

30. The small landholdings proposals have been informed by a 2017 legislative review¹⁶ and the legal guide.¹⁷

31. The land management tenancy proposals have been developed in discussion with land managers, land agents and environmental NGOs.

32. The measures being proposed, the policy objectives they are designed to meet, and consideration of alternatives that have been proposed, are set out in detail below.

OVERVIEW OF THE BILL

Land reform measures

33. The Bill introduces the following measures which would apply to owners of large-scale landholdings:

Obligations on landowners

- introduction of Ministerial powers to make regulations which will place new community engagement obligations on landowners to produce land management plans and to engage with local communities, to support compliance with the principles of the LRRS.

Requirements prior to transfer

- requirements (“pre-notification requirements”) for community bodies to receive advance notice 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).

34. The Bill establishes a new Commissioner at the 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.

35. The Bill makes these changes by amending relevant sections of the 2003 LR Act and the 2016 Act. This locates these measures alongside existing rights and obligations applying to landowners and community bodies in these Acts, allowing for greater ease of reference.

¹⁶ [Review of Legislation Governing Small Landholdings in Scotland \(www.gov.scot\)](http://www.gov.scot)

¹⁷ [Small Landholdings Legislation: A guide to the law in Scotland \(www.gov.scot\)](http://www.gov.scot)

36. These proposals deliver the Bute House Agreement¹⁸ commitment to deliver legal mechanisms to tackle scale and concentration of land ownership. The Bute House Agreement commits to a Land Reform Bill that will include a public interest test to “apply to transfers of particularly large-scale land holdings which will include a right of pre-emption in favour of community buy out where the public interest test applies.”

37. The community right to buy element of this public interest test commitment has been taken forward as the pre-notification requirements. The test on transfers has been taken forward as the transfer test proposals set out in this section. These measures combined give effect to the Bute House Agreement commitment.

38. Further details of these proposals are provided in the ‘Specific Provisions’ section of this Policy Memorandum.

Definition of land in scope

39. A fundamental policy decision contained within the Bill is defining the thresholds at/from which land the provisions should apply to. These are:

- for community engagement and land management plan requirements, the Bill applies to a landholding that is more than 3000 hectares, or a landholding that exceeds 1000 hectares that accounts for more than 25% of a permanently inhabited island,
- for pre-notification requirements and transfer test, the Bill applies to a landholding that is more than 1000 hectares.

40. 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)¹⁹, and are geographically contiguous.

41. The decision to fix different thresholds is intended to ensure that the measures:

- are justified in relation to the policy aims, and
- will not have a disproportionate impact on smaller landholdings following from the additional requirements and associated financial impacts.

42. Policy aims are set out in more detail in the ‘Specific Provisions’ section of this Policy Memorandum.

¹⁸ [Agreement with Scottish Green Party - gov.scot \(www.gov.scot\)](https://www.gov.scot/agreement-with-scottish-green-party)

¹⁹ In certain circumstances, titles held by different persons may be treated as constituting a single owner if there is shared controlling ownership as recorded in RCI or other ownership transparency regimes.

Establishing a letting arrangement to support individuals to undertake a range of land management activities (land management tenancy)

43. The proposal will support the development of a new model lease, that will enable tenants to carry out a wide range of broadly environmental activities (including farming activities) on land.

44. A lease for this purpose has been described variously as a land use tenancy or a land management tenancy, and going forward it is described as a land management tenancy for ease of use for end users. The Bill refers to a model lease designed for letting land so that it can be used wholly or partly for an environmental purpose.

45. The model lease is intended to support people to use and manage land in a way that will help develop the new types of land use that will help us to address the climate change and nature loss challenges. There is a strong public interest in supporting that transition. This proposal places a duty for Scottish Ministers to publish a model lease, and Scottish Ministers intend to engage closely with key stakeholders for that purpose.

46. This duty 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.

47. Further details are provided in the ‘Specific Provisions’ section of this Policy Memorandum.

Modernising small landholdings legislation

48. The measures provide small landholders with a modernised legal framework which is more comparable to the rules for crofting and agricultural holdings. This will ensure that the legal framework will provide the support needed in the 21st Century, and enable small landholders to play their part in the Scottish Government’s Vision for Agriculture.

49. The measures deliver Programme for Government 2021-22 commitments including modernising small landholding legislation and ensuring that smallholders have access to climate change adaptation and mitigation measures.

50. The Bute House Agreement also committed to exploring providing small landholders with a pre-emptive right to buy, and ensuring that smallholders are not disadvantaged from participating in climate change mitigation and adaptation.

51. The Bill includes the following provisions (further details of which are provided in the ‘Specific Provisions’ section of this Policy Memorandum):

- 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 there is a fair balance between the interests of small landholders and their landlords.

Modernising agricultural holdings legislation

52. The provisions collectively will provide greater equality of opportunity for tenant farmers, and enable them to play a full part in delivering the Scottish Government’s Vision for Agriculture.

53. The measures deliver the Programme for Government 2021-22²⁰ commitments including:

- to modernise tenant farming,
- ensure that tenant farmers have access to climate change adaptation and mitigation measures,
- bring forward a revised approach to rent reviews, and
- consider how valuation for resumption should be assessed.

54. The Bute House Agreement commits to improving the rights of tenant farmers, so they are not disadvantaged from actively participating in climate change mitigation and adaptation.

55. The Bill includes the following provisions (further details of which are provided in the ‘Specific Provisions’ section of this Policy Memorandum):

²⁰ [Programme for Government 2021 to 2022 - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/programme-for-government-2021-to-2022/pages/100-to-109.aspx)

- diversification – providing tenant farmers with greater opportunity to diversify their business, and in that way 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 Land 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 – improving the registration process, to ensure that it is as least burdensome as possible for the tenant.

ALTERNATIVE APPROACHES

56. The Bill does not include measures that could be provided for under existing powers to make legislation, nor does it include measures on matters that have formed part of wider discussion of land reform in recent years, for example:

- reform of the various community rights to buy introduced via prior land reform legislation,
- review of the Community Empowerment (Scotland) Act 2015,
- modernisation of compulsory purchase act powers available to local authorities, including in respect of possible compulsory sales orders,
- taxation measures including for example a carbon emissions Land tax or reforms to land value taxation.

57. The Scottish Government announced on 6 March 2024 that it will review the operation and effectiveness of all the current community right to buy rules. The review will begin in Summer 2024, following introduction of this Bill and report at the end of 2025. It will cover all the current rights to buy, and will look at legislative and procedural aspects of the rights to see if new legislation is needed.

58. The Scottish Government is currently reviewing the operation and effectiveness of the measures in and under the Community Empowerment Act. For example, stakeholders have been asked to explore and investigate the experiences of those involved in taking on community control and ownership of public spaces.

59. As set out in the Programme for Government 2023-2024²¹, the Scottish Government will continue to consider the justification for, and practical operation of, compulsory sales orders.

60. In relation to taxation, the Scottish Government is giving careful consideration to these complex matters and intends to explore them more fully as part of its commitment to producing a longer-term tax strategy.

61. Additionally, the *Land Reform in a Net Zero Nation* consultation²² included proposals to place certain conditions on public funding. The Bill makes no provision in respect of public funding, but measures are being brought forward in the Agriculture and Rural Communities Bill that will enable the Scottish Ministers to attach certain conditions when providing financial assistance.

62. The option to make no legislative changes to agricultural holdings and small landholding was considered. However, this would result in tenant farmers, small landholders and their landlords being left with a legislative framework not fit to fulfil the policy ambitions of delivering the Vision for Agriculture. The overarching ambition is to provide equality of opportunity, help ensure tenant farmers have access to climate change and mitigation measures and create a thriving tenant farming sector. The position of the Scottish Ministers is to take forward the provisions to modernise agricultural holdings and small landholdings legislation.

63. If a ‘land management tenancy’ duty is not brought forward now that could further inhibit land managers from undertaking the hybrid land management activities to address a range of issues including climate change mitigation and adaptation.

CONSULTATION

Land reform and the land management tenancy

64. Consultation on the land reform and model lease measures in this Bill opened on 4 July 2022 and closed on 30 October 2022. *Land Reform in a Net Zero Nation* set out proposals for inclusion in the Bill and asked 51 questions about those proposals. 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.

²¹ [Deputy First Minister and Cabinet Secretary for Finance - Programme for Government 2023 to 2024 - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/programme-for-government-2023-to-2024/pages/100/index.aspx)

²² [Land reform in a Net Zero Nation: consultation paper - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/land-reform-in-a-net-zero-nation-consultation-paper/pages/100/index.aspx), see Part 8.

65. 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.

66. While there was majority support for most of the proposals, responses varied by stakeholder group. A greater proportion of individual respondents were in favour than organisations. Within organisations, community or local organisations, third sector and campaign groups tended to be in support of the proposals. Landowners and private sector organisations were more likely to disagree with the proposals, with landowners most likely to be opposed.

67. More detail on the consultation analysis for each proposal is provided under the ‘Specific Provisions’ section of this Policy Memorandum. A full analysis of the consultation has been published²³.

Small landholdings

68. The consultation on small landholdings modernisation opened on 22 October 2022 and closed on 14 January 2023. It set out a series of proposals in relation to small landholdings, including on right to buy, diversification, assignation and succession. The consultation received 41 responses, of which 30 were from individuals and 11 were from organisations. While this number may appear low, Agricultural Census data from June 2021 suggests that there are only 59 small landholders across Scotland.

69. While there was general support for the proposals, there were significant differences in the level of support for specific provisions. More detail on the consultation analysis for each proposal is provided below in the ‘Specific Provisions’ section of document. The full analysis of the consultation has been published.²⁴

Agricultural holdings

70. The Scottish Government consulted on proposals to modernise tenant farming as part of the “Delivering our Vision for Scottish Agriculture: Proposals for a new Agriculture Bill”, which opened on 29 August 2022 and closed on 5 December 2022. A total of 392 valid responses were received, of these 225 were from individuals, and 167 were from organisations. The in-person and online engagement events were attended by approximately 600 people. The Scottish Government heard a range of views both from members of the public and stakeholder organisations across Scotland.

²³ [Land reform in a Net Zero nation: consultation analysis - gov.scot \(www.gov.scot\)](https://www.gov.scot/resources/documents/2023/03/2023-03-20-land-reform-consultation-analysis.pdf)

²⁴ [Small landholdings modernisation: consultation analysis - gov.scot \(www.gov.scot\)](https://www.gov.scot/resources/documents/2023/03/2023-03-20-small-landholdings-modernisation-consultation-analysis.pdf)

71. More detail on the consultation analysis is provided below in the ‘Specific Provisions’ section for the topics included in the Bill. The full analysis of this consultation has been published.²⁵

POLICY OBJECTIVES: SPECIFIC PROVISIONS

Land reform

Community engagement obligations

72. Land is one of Scotland’s most fundamental and important assets. Effective land use is key to achieving sustainable development, and to many other important aspects of people’s lives, from housing to recreation, from agriculture to mitigating climate change. Land underpins communities’ social and cultural development, and is crucial in protecting and enhancing the environment. In a progressive and fair Scotland, communities must have a say in the important decisions about land that affect them.

73. The community engagement obligations for owners of large land holdings set out in section 1 of the Bill aim to improve the transparency of land ownership and management in Scotland. They are intended to strengthen the rights of communities by giving them greater involvement in decisions about the land on which they live and work, and to encourage dialogue about how community needs in relation to land can be met other than through the transfer of land. These obligations further principles 6 and 7 of the 2022 LRRS²⁶, which state that:

- There should be transparency about the ownership, use and management of land, and this information should be publicly available, clear and contain relevant detail.
- There should be meaningful collaboration and community engagement in decisions about land.

74. This Bill will allow Scottish Ministers, by regulation, to set out community engagement obligations which will apply to owners of ‘large land holdings’²⁷, which are:

- land holdings of more than 3000 hectares, or,
- land holdings that exceed 1000 hectares that account for more than 25% of a permanently inhabited island.

75. Regulations must set out these community engagement obligations, requiring owners of large land holdings to produce a land management plan, engage with communities on the

²⁵ [Agriculture Bill: consultation analysis - gov.scot \(www.gov.scot\)](https://www.gov.scot)

²⁶ [Scottish Land Rights and Responsibilities Statement 2022 - gov.scot \(www.gov.scot\)](https://www.gov.scot)

²⁷ 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. In certain circumstances, titles held by different persons may be treated as constituting a single owner if there is shared controlling ownership as recorded in RCI or other ownership transparency regimes.

development of and significant changes to that plan, make that plan publicly available, and review and revise the plan, as appropriate and at least every 5 years. The regulations must also include provision requiring an owner of a large land holding to consider reasonable requests from communities to lease land or buildings.

76. The Bill provides that the regulations must set out what information is to be included in a land management plan, 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 existing obligations relating to land (such as those in the Outdoor Access Code²⁸ and Deer Code²⁹) as applicable, and how the landowner is managing or intends to manage the land in a way that contributes towards achieving net-zero emissions targets, adapting to climate change and increasing or sustaining biodiversity.

77. According to data from Registers of Scotland, approximately 40% of the land in Scotland is made up of landholdings of over 3000 hectares. The obligation for owners of these landholdings to publish land management plans providing this information will therefore give local communities and the wider public access to better information about how a large percentage of the land in Scotland is intended to be used and managed. The Land Commission recommended that the requirement for land management plans would address risks identified in their work on large scale and concentrated landholdings through allowing for greater community involvement and influence over decision making and through increasing transparency³⁰.

78. The list of content for land management plans set out above, and in the Bill at section 44B(3), are high level statements of required content and are not exhaustive. It is anticipated that the requirement to set out details of the land owned is likely to include provision of maps illustrating boundaries of the landholding as well as specifying ownership. High level management proposals will not include commercially sensitive information, but sufficient information to allow for understanding of current and intended land use (e.g. agriculture, forestry, sporting land uses, conservation). The Bill states that regulations must require that land management plans are updated at least every 5 years. This is based on anticipated time and effort to landowners in preparing and consulting on a plan, and was the most frequently proposed timescale in consultation responses.

²⁸ [NatureScot \(outdooraccess-scotland.scot\)](https://www.naturescot.gov.scot/outdooraccess-scotland/scot)

²⁹ [Code of Practice on Deer Management | NatureScot](https://www.naturescot.gov.scot/code-of-practice-on-deer-management)

³⁰ p30, Scottish Land Commission (2021), [Legislative proposals to address the impact of Scotland's concentration of land ownership: a discussion paper](https://www.landcommission.gov.scot/legislative-proposals-to-address-the-impact-of-scotland-s-concentration-of-land-ownership) from the Scottish Land Commission, [Legislative proposals for addressing concentrated landownership \(landcommission.gov.scot\)](https://www.landcommission.gov.scot/legislative-proposals-for-addressing-concentrated-landownership)

79. Regulations will also set out more detail on the requirement that land management plans contain information of how the landowner is managing or intends to manage their land in a way that contributes towards achieving net-zero emissions targets, adapting to climate change and increasing or sustaining biodiversity. This is not a requirement that landowners must take specific measures, but is intended to encourage landowners to consider what steps they may be able to take and to provide transparency on these plans. This will differ for each landowner and landholding. For example, for a landholding with degraded peatland, it is likely to be relevant that the landowner sets out information about any peatland restoration measures in their plan. For a landowner focused on food production or other agricultural uses of land, it is likely to be relevant to set out information about any steps that contribute to the objectives in the Scottish Government's Vision for Agriculture and how they are using or will use sustainable and/or regenerative agricultural practices.

80. If this Bill is approved by Parliament, the Scottish Ministers will conduct further consultation and engagement with stakeholders on the appropriate form and content of these plans. Following this further consultation, regulations in accordance with s44A will be prepared which set out the required obligations, including the procedures by which plans must be produced and updated, how communities are to be meaningfully engaged on plans, and the ways in which the plans will interact with other codes and obligations.

81. These duties on owners of large land holdings to engage will not give local communities any legal right over land, nor any direct power to direct the actions and decisions of landowners. It will however provide greater opportunities for communities' views to be heard and considered on proposed plans. In many cases, effective engagement and negotiation between community and landowner (both public and private) can ensure that community needs are met³¹.

82. 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 Commissioner (further detail on the establishment of this new Commissioner is set out at paragraphs 144-153). This Commissioner must be consulted as part of developing regulations in respect of these obligations.

83. The Commissioner may investigate an alleged breach of an obligation, and for that purpose may 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 obligation 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.

³¹ Roberts, D. & McKee, A. 2015. Exploring barriers to community land-based activities. Report for the Scottish Government.

Alternatives considered

84. Alternative approaches considered by the Scottish Government on this proposal were:

- continuing with current approach of a voluntary LRRS,
- making all elements of the existing LRRS into statutory requirements,
- application of these measures universally, or to a greater number of landholdings.

85. Voluntary approaches to achieving transparency and community-focused aims, such as the existing LRRS and associated Land Commission guidance and protocols have helped to encourage and support good practice by many landowners, but this is not universal. A significant theme in response to the 2018 Land Commission call for evidence³² were comments relating to poor community engagement. A voluntary approach to land management plans also means that where landowners do produce plans, these can vary widely in what information they contain, the level and quality of community engagement involved in their production, and in how often these are updated. An individual or community group having access to these plans will depend on them being aware of them and where they are published (e.g. on the company or private website of a landowner). The community engagement obligations on owners of large land holdings will help to remedy these issues.

86. Following review of the LRRS obligations, the community engagement obligations proposed in the Bill were taken forward as enforceable requirements that further the community engagement and transparency principles (see paragraph 73) of the LRRS.

87. Applying these measures to all landholdings, or to a greater number of landholdings, would increase the number of people and communities who potentially might benefit from greater engagement. However, it would increase the likelihood of disproportionate burden on smaller landowning businesses and increase the financial impact on public funds of administering the proposals, without there being a clear benefit. This is further considered in the Financial Memorandum and BRIA for the Bill.

88. The Bill does however include a power to amend the threshold for which landholdings are in scope, should that prove to be necessary or appropriate in the future.

Consultation

89. *Land Reform in a Net Zero Nation* consulted on proposals for land management plans and community engagement requirements. A majority (77% of those answering) agreed that there should be a duty on large-scale landowners to publish land management plans. In terms of how

³² Glenn, S., MacKessack-Leitch, J., Pollard, K., Glass, J., and McMorran, R., (2019), Investigation into the Issues Associated with Large scale and Concentrated Landownership in Scotland, Scottish Land Commission.

often management plans should be published, the most frequent suggestion was every 5 years. There was support (75% of those answering) for placing a duty on large-scale landowners to comply with the LRRS (which includes community engagement) and its associated protocols. A majority (69% of those answering) also thought this would benefit local communities. However, some respondents argued that there is evidence to suggest that a voluntary, guidance-led approach is working for both landowners and communities.

Pre-notification of intention to sell

90. Section 2 and 3 of the Bill proposes the introduction of a requirement for a prior notification of intention to sell land from a landholding over 1000 hectares to offer communities an enhanced opportunity to make a late application under existing community right to buy³³ (CRtB) legislation (for which see the 2003 LR Act). It is widely recognised that the best and most sustainable outcomes are achieved when community groups and landowners work together cooperatively on potential transfers as early as possible. Ideally, these discussions would take place ahead of any proposed sale: however, these pre-notification requirements are intended to provide an opportunity for a community body to buy land that is part of a landholding over 1000 hectares where the body may not have expected that the land would be sold.

91. This proposal is designed to complement the measures discussed above in relation to community engagement and land management plans, and should encourage landowners and community bodies to engage with each other on potential community land needs prior to any intended sale. Early engagement of that kind may lead to an agreed sale or lease, or allow a community body to be set up and note interest in the usual way.

92. The pre-notification requirements will allow community bodies the opportunity to be notified of proposed transfers from landholdings³⁴ over 1000 hectares, and make it possible for them to use the CRtB late application process³⁵ set out in Part 2 of the 2003 LR Act (the “Part 2 procedure”). This will make it easier for community bodies to make a successful application to purchase land, which if successful would allow them to deliver benefits for the whole community, and meet local need.

93. Among the barriers to community ownership of land are challenges in establishing communication between community bodies and landowners, and shortcomings in transparency

³³ A Community Right to Buy is a pre-emptive right that allows communities across Scotland to apply to register a community interest in land or buildings, and to be given the right of first refusal should the landowner decide to put the land up for sale.

³⁴ 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. In certain circumstances, titles held by different persons may be treated as constituting a single owner if there is shared controlling ownership as recorded in RCI or other ownership transparency regimes.

³⁵ A late application under CRtB is one where the application is submitted after the owner has taken steps to offer the land for sale or to transfer the land. The procedure for these applications is set out in section 39 of the 2003 Act.

around land ownership. 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 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. Off-market transactions also result in land being made available to a smaller pool of potential buyers, due to the lack of open marketing, with further negative impacts on the transparency of land sale information³⁶.

94. While these concerns exist generally, there is evidence to indicate that these issues are greater for landholdings over 1000 hectares. According to the 2022 Rural Land Market report, 45% of estates were advertised off-market in 2020, with this rising to 64% in 2021³⁷. Additionally, landholdings of this scale tend to sell infrequently, with the result that a community may not think it is worthwhile to register an interest under the Part 2 procedure³⁸.

95. Additionally, a lack of support for proposed community land-based activities by a single landowner can have disproportionate local impacts where the scale of the landholding means that there are limited or no alternatives for the community³⁹.

96. The pre-notification requirements amend Part 2 of the 2003 LR Act to introduce a requirement that landowners are prohibited from taking steps to transfer all or part of a single or composite landholding over 1000 hectares (so a transfer of 100 hectares from a 2000 hectare estate would be in scope) without notifying the Scottish Ministers of the intended sale. Transfers that are exempt under section 40(4)⁴⁰ of the 2003 LR Act are also exempt from these requirements.

97. The Scottish Ministers will be required to publish prescribed information on a website and notify community bodies which have registered an interest in being informed. Community bodies (including prospective bodies) would have a protected period where the landowner would be prevented from taking further steps to transfer the land, so enabling a community body which has not already registered an interest in the land to make a late application to buy the land under the Part 2 procedure. A community body will also be able to use the community asset transfer procedure where the landholder is a public body in scope.

³⁶ For discussion of the influence of land markets and the role of off-market sales see Section 4 of the [Interim Report of the Scottish Affairs Committee on Land Reform in Scotland](#)

³⁷ McMorran, R., Glendinning, J and Glass, J. Rural Land Markets Insights Report. Scottish Land Commission, Land Commissioned Report.

³⁸ Hindle, R., Thomson, SG., Skerratt, S., McMorran, R., & Onea, P. (2014). Economic contribution of estates in Scotland: An economic assessment for Scottish Land and Estates. [https://www.scottishlandandestates.co.uk/sites/default/files/library/Economic Contribution of Estates in Scotland.pdf](https://www.scottishlandandestates.co.uk/sites/default/files/library/Economic%20Contribution%20of%20Estates%20in%20Scotland.pdf)

³⁹ Roberts, D, McKee, A, Exploring barriers to community land-based activities – report for the Scottish Government: [Exploring Barriers to Community Land-Based Activities \(www.gov.scot\)](https://www.gov.scot/Resource/0045/0045_0001.pdf)

⁴⁰ Exempt transfers include transfers between spouses, a transfer between companies in the same group, a transfer other than for value, and a transfer to a statutory undertaker for the purpose of carrying out their undertaking, See section 40(4) of the 2003 Act for the full list.

98. Under these provisions a community body will have 30 days from being notified by the Scottish Ministers to express an interest in making a late application. Where at least one community body has expressed an interest, a further prohibition on sale will apply for an additional 40 days to allow for preparation of an application under the Part 2 procedure.

99. From the point of an application being received by the Scottish Ministers, the process then follows the approach taken for any other community right to buy as set out in the existing Part 2 procedure.

Community right to buy prohibitions – Part 2 of the 2003 LR Act (existing, and those added through this Bill)

100. In order to ensure that the landowner cannot sell the land while the community body is considering whether to make a bid and to pursue an application, a series of prohibitions on the sale of the land exist at each stage. These ensure that the land cannot be sold without the community being given an opportunity to acquire the land, whilst at the same time providing that the land is not subject to restrictions longer than necessary to give effect to the community rights.

When applies	Prohibition	Provision
Whilst a community interest in land is registered	In respect of the land to which the registration applies: <ul style="list-style-type: none"> • transferring the land or part of it, • taking action with a view to transferring that land, <p>except in accordance with Part 2 of the 2003 LR Act</p>	Section 40 (existing)
On receipt of an application to register a community interest in land until determined whether such an interest is to be registered	In respect of the land in respect of which an application to register has been made: <ul style="list-style-type: none"> • transferring the land or part of it, • taking action with a view to transferring that land, <p>except in accordance with Part 2 of the 2003 LR Act</p>	Section 37(5) (existing)
Ownership of a large landholding until Scottish Ministers lift the prohibition	In respect of the large landholding: <ul style="list-style-type: none"> • transferring the land or part of it, • taking action with a view to 	Section 46B (as amended in this Bill)

	transferring that land, except in accordance with exemptions set out (in section 46G(2))	
Where a community body has been invited to make an application to register an interest to be considered by the Scottish Ministers (under section 37ZA) until the deadline set out (in section 46F)	In respect of the large landholding: <ul style="list-style-type: none"> • transferring the land or part of it, • taking action with a view to transferring that land, except in accordance with exemptions set out (in section 46G(2))	Section 46F (as amended in this Bill)

101. Where the transfer test also applies to the landholding – i.e. where the land to be sold is 1000 hectares or more, elements of the pre-notification requirements and transfer processes will run in parallel to minimise impacts on timescales.

Alternatives considered

102. Alternatives considered by the Scottish Government in relation to this proposal were:

- to introduce an entirely new community right to buy process for landholdings over 1000 hectares,
- to make wider amendments to the Part 2 community right to buy, such as simplifications to the application process,
- to require that only landholdings over 3000 hectares, or all landholdings, are subject to pre-notification requirements,
- to require pre-notification requirements only where the land proposed for sale is over 1000 hectares (i.e. part sales of a landholding should not be in scope), and
- to provide for longer timescales under the process.

103. The approach taken through this Bill, is to amend existing provisions in the Land Reform (Scotland) Act 2003 to provide for prohibitions on steps towards transfer that allows for community bodies to have protected time to produce an application under the Part 2 process. This is the most efficient approach to take, reducing the complexity that would be involved in introducing a new route, while fulfilling the government’s ambition for and commitment to enabling greater community ownership and involvement. While there are stakeholder calls for a range of other amendments to community right to buy powers, it is important that more wide-scale changes to the community right to buy process, some of which has now been in use for 20 years, is based on the wider review and consultation that is being undertaken, to avoid unintended consequences. For that reason, this review is being taken forward as a separate programme of work rather than attempting to include further amendments to community rights to buy into this Bill.

104. Requiring pre-notification requirements in relation to landholdings over 1000 hectares is viewed as appropriate, given the considerations outlined above. The Bill includes powers to amend the thresholds for which transfers are in scope by regulation, providing an avenue to amend should evidence indicate that this was merited. 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 purchases⁴¹, with the vast majority of these acquisitions being of landholdings under 100 hectares, applying these measures to partial sales from a landholding over 1000 hectares as well as to sales of the whole is considered as a key element in the effectiveness of the proposal.

105. As a planned sale must be delayed for the pre-notification requirements, the protected time for community bodies to apply is limited to ensure that any delays are not unduly long. 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 pre-notification requirements.

Consultation

106. *Land Reform in a Net Zero Nation* consulted on proposals for pre-notification of intention to sell. 77% of those answering the question agreed with the proposal for community bodies to be notified of intention to transfer large landholdings.

107. Support for the proposals included that they have the potential to contribute to wider land reform, community empowerment, and community wealth building policy priorities. It was also suggested that engagement with communities should be good practice for landowners considering a transfer, with some noting that this is already part of their land management approach. Land for housing was identified as being subject to particular pressure.

108. Some respondents were concerned that prior notification could add further administrative burden, uncertainty and delays to land transactions. Others considered that relatively few community groups may be interested in the acquisition of such landholdings (however this was based on the proposals that the threshold for notification would be set at 3000 hectares).

The transfer test

109. Sections 4 to 6 of the Bill introduce the transfer test. Land ownership in Scotland is highly concentrated, with a relatively low number of owners holding a large proportion of Scotland's land.

⁴¹ [Community Ownership in Scotland 2022 - gov.scot \(www.gov.scot\)](https://www.gov.scot/Community-Ownership-in-Scotland-2022)

Analysis by the James Hutton Institute to support this Bill identifies 1066 landholdings above 1000 hectares, representing 4.32 million hectares, or 55% of Scotland's land⁴².

110. The 2019 Land Commission report *Investigation into the Issues Associated with Large scale and Concentrated Landownership in Scotland*⁴³ concluded that highly concentrated landownership can have detrimental effects on rural development outcomes, and that “these effects arise because landowners have the power to decide who can access land, when, for what purpose and at what price.”

111. In their 2021 advice to Scottish Ministers⁴⁴, the Land Commission set out recommendations for a test “for significant land acquisition, at the point of transfer, to test whether there is a risk arising from the creation or continuation of a situation in which excessive power acts against the public interest”.

112. The Land Commission recommendations were clear that the criteria that could trigger a test needed to be proportionate, and that those engaged in land transfers needed to have certainty from the outset as to whether a test could apply to their transaction. The Land Commission noted that “There should be no need to apply such a test to the majority of land acquisitions, so the Land Commission considers that a) certain categories of transfer should be automatically excluded and b) a scoping stage should identify those transfers that pose a potential risk, and which should therefore be subject to the test.”⁴⁵

113. The initial Land Commission proposal was that the test would apply to the prospective buyer, and that the test could have a number of outcomes, including denial of a sale, a requirement to lot, or requirements for future management and governance. Scottish Ministers noted these initial proposals and agreed that the issues identified by the Land Commission should be addressed, however after further policy consideration and consultation decided to take forward an amended proposal to do so as set out below. The alternative approaches section below provides consideration of the initial Land Commission proposals.

114. Land, and access to land, is essential for sustainable development, and is key to many important aspects of people's lives - from housing to recreation, from agriculture to mitigating climate change. As highlighted in Land Commission research⁴⁶, concentrated land ownership

⁴² This analysis combines information sourced from the Who Owns Scotland dataset, Forestry and Land Scotland data and IACS data which combined cover around 5.5m hectares of Scotland's land. Further detail on this analysis is set out in the BRIA for this Bill.

⁴³ Glenn, S., MacKessack-Leitch, J., Pollard, K., Glass, J., and McMorran, R., (2019), *Investigation into the Issues Associated with Large scale and Concentrated Landownership in Scotland*, Scottish Land Commission. 20th March 2019.

⁴⁴ p2, [Legislative proposals for addressing concentrated landownership \(Land Commission.gov.scot\)](https://www.landcommission.gov.scot/downloads/5dd7d6fd9128e-Legislative-proposals-for-addressing-concentrated-landownership-Land-Commission.gov.scot)

⁴⁵ p37, [Legislative proposals for addressing concentrated landownership \(Land Commission.gov.scot\)](https://www.landcommission.gov.scot/downloads/5dd7d6fd9128e-Legislative-proposals-for-addressing-concentrated-landownership-Land-Commission.gov.scot)

⁴⁶ <https://www.landcommission.gov.scot/downloads/5dd7d6fd9128e-Investigation-Issues-Large-Scale-and-Concentrated-Landownership-20190320.pdf>

provides a landowner with a high degree of control over land in an area, which can negatively impact sustainable rural development of local communities, most critically in relation to land availability for affordable housing or economic development⁴⁷.

115. These aspects of the sustainability of a community have links to wider community outcomes, such as maintaining an adequate population. Without intervention, fourteen local authorities are expected to experience a decrease in population over the next 10 years with most of those being located in the west and south-west of the country. This creates skill shortages, threatens community sustainability, and puts pressure on public services⁴⁸.

116. Where land continues to be transferred at scale this restricts who can purchase land due to the size and value, this may lead to the supply of land being insufficient in particular areas which impacts on the sustainability of those communities. Recent years have seen rising land prices in Scotland's rural land market⁴⁹, with community interviews highlighting views that this is having impacts including pricing out individual farming businesses from expansion, reducing new entrant farming land access, and restricting opportunities for community organisations to utilise right-to-buy mechanisms⁵⁰. The Just Transition Commission has recognised the role of land reform as a key element of a just transition, stating "Current questions about the influence of natural capital investment sit in a wider context of high land prices, significant disparities in power, and a concentrated pattern of land ownership. Scotland has a finite area of land and as a society we demand increasingly more from it. A combination of limited supply and growing competition between land uses helps drive high land values, and noted "*that further safeguards are required in Scotland's land market*"⁵¹.

117. Concentration of land ownership may also have a negative impact on the frequency with which land is available for sale in an area, as large landholdings are transferred less often⁵². Land is an important and finite resource for a country. In the Scottish context, issues of concentration of land can lead to issues of a lack of supply of land. Without a sufficient or adequate supply of land, many important social, economic or environmental objectives obviously may be more difficult to achieve.

⁴⁷ Glenn, S., MacKessack-Leitch, J., Pollard, K., Glass, J., and McMorran, R., (2019), Investigation into the Issues Associated with Large scale and Concentrated Landownership in Scotland, Scottish Land Commission. 20th March 2019.

⁴⁸ [Balance: Ensuring Our Population Is More Balanced And Distributed Across Scotland So All Our Communities Can Flourish - A Scotland for the future: opportunities and challenges of Scotland's changing population - gov.scot \(www.gov.scot\)](#)

⁴⁹ McMorran, R., Glendinning, J and Glass, J. Rural Land Markets Insights Report. Scottish Land Commission, Commissioned Report.

⁵⁰ Daniels-Creasey, A. and McKee, A. (2022) Understanding the impact of scale and concentration of landownership: community perspectives from the south of Scotland. Report prepared for the Scottish Government, 37pp

⁵¹ [Natural Capital and Land Reform: Next Steps for a Just Transition \(landcommission.gov.scot\)](#)

⁵² See Merrell, I., Pate, L., Glendinning, J. and Thomson S. (2023) Rural Land Market Insights Report 2023. A report commissioned by the Scottish Land Commission, [SLC Rural Land Market Insights 2023 \(landcommission.gov.scot\)](#)

118. Reflecting the earlier Land Commission research and recommendations, the aim of the transfer test is to provide an opportunity for the Scottish Ministers to consider (prior to the transfer of a landholding over 1000 hectares) whether 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.

119. This Ministerial consideration will be based on the individual circumstances of the landholding and the particular communities, and lotting is not expected to be appropriate in all cases. This transfer test, in combination with the other measures applying to large landholdings, is thought likely to allow for the supply of land to be increased and diversified by widening the number of potential purchasers. This is both through any lotting outcome, and through the (indirect) incentive the test provides for a landowner to engage constructively with local communities (supported through the other measures in the Bill such as land management plans and community engagement obligations).

120. The transfer test will apply where a landowner is intending to transfer over 1000 hectares. When considering at what scale of landholding for transfer such a test should apply to, the Land Commission noted that *“It is suggested that the aim should be to establish a threshold that would ensure that family farms and small businesses would not fall in scope, but that modest estates that could pose risks would. It may be reasonable to expect that, for example, holdings over 10,000ha would always be in scope, while those under 1,000ha would always be exempt.”*⁵³

121. The size threshold for the transfer test requires to be set at a level at which there could plausibly be concentration of landownership in the relevant area with impacts on land availability and supply. The 1000-hectare size threshold for this proposal has been determined in reference to Land Commission research, data on land transactions and land ownership in Scotland⁵⁴, consultation and stakeholder engagement.

122. The transfer test provisions amend the 2003 LR Act to add a new Part 2A, and is framed as a requirement that a landholding of over 1000 hectares may not (unless the transfer is exempt) be transferred without a lotting decision by the Scottish Ministers, and may only be transferred in accordance with such a decision.

123. Landowners will be required to apply to the Scottish Ministers for a lotting decision, which will required to be made in the manner prescribed by Scottish Ministers in regulations made under the Bill. It is expected that those regulations will require the owner to provide information about the proposed transfer, including for example:

- details of the land proposed for sale,

⁵³ p39, [Legislative proposals for addressing concentrated landownership \(Land Commission.gov.scot\)](https://www.landcommission.gov.scot)

⁵⁴ As set out further in the BRIA for this Bill

- any evidence that following this process would lead to undue financial hardship,
- a proposal for lotting of the landholding where the landowner proposes to sell in this way.

124. Scottish Ministers may make an expedited lotting decision if satisfied that the owner seeks to transfer the land to alleviate or avoid financial hardship, and that having to wait for a lotting decision is likely to cause or worsen financial hardship. They may in that event determine that the land need not be transferred in lots. Otherwise, Scottish Ministers will request a report for the purposes of making a lotting decision from the Land and Communities Commissioner at the Land Commission.

125. The Land and Communities Commissioner will prepare a report that will inform the making of a lotting decision by the Scottish Ministers. They must prepare this report in accordance with any instructions given by Scottish Ministers. 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 Scottish Ministers confirming this and allowing for a Ministerial lotting decision at this point.

126. Otherwise, it is anticipated that the Land and Communities Commissioner will conduct further investigation, which can include seeking advice from those with appropriate experience of lotting land on whether lotting would be appropriate in order to improve the availability of land in the area, and on how the land should be lotted (if viable). The investigation could for example reference information on the landholding provided, relevant documents such as local development plans, local housing strategies incorporating housing need and demand assessments, enterprise agency assessments, and consultation with the landowner, appropriate authorities (e.g. local authority, enterprise agency), and/or other parties (e.g. relevant community groups or community councils).

127. In assessing potential contributions to the sustainability of communities, regard could be given to high level objectives such as economic development, repopulation, maintenance of populations, regeneration, public health, social wellbeing and environmental well-being.

128. Following this investigation, the Land and Communities Commissioner will submit the report to the Scottish Ministers and the owner. Scottish Ministers must then take that report into account when making any lotting decision.

129. Where a landholding is required to have a lotting decision in order to be transferred, Scottish 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. If Scottish Ministers decide to order lotting, they must specify the lots, and the lots must then be transferred to different purchasers. Anticipated timescales for the various stages of this process will be set out in accompanying guidance. These

timescales are intended to correspond to the pre-notification requirements in most cases (70 working days from initial notice until Ministerial decision), however these timescales will be reduced in some cases as referenced at paragraph 124-125 above.

130. The Scottish Ministers must review a lotting decision if an application to that effect is made more than one year after the decision is made, or more than 1 year after an earlier review. A review once started may be stopped after an application to that effect. The Scottish Ministers must either confirm the decision, withdraw the decision and make a new one, or offer to buy one or more of the lots.

131. The Scottish Ministers may offer to buy land only if they are satisfied that it is likely that the land has not been transferred as it is less commercially attractive than it would have been had the lotting decision not been made. The land can only be bought at an appropriate price to be determined by an independent valuer. An owner may specifically request that Scottish Ministers consider offering to buy land as part of the review process.

132. Landowners will have appeal rights to the Court of Session in respect of the Ministerial lotting decision (including a decision made on review). Where an owner has made an application for the Scottish Ministers to make or review a lotting decision, the owner may make a subsequent request that this lotting decision (or review) should not be made. This could for example be in cases where the owner has decided that they no longer wish to sell the land in question, or where they intend to change the land to be sold in a way that would impact upon the lotting decision.

133. Landowners will be entitled to apply to the Scottish Ministers for compensation for any loss or expense that is incurred in complying with procedural requirements, attributable to a potential transfer being prevented, or attributable to a lotting decision (including the requirement that lots be transferred to different purchasers). The amount of compensation will be determined by Scottish Ministers, or by the Lands Tribunal on an appeal against the Ministerial determination.

134. There is a risk that landowners may seek to avoid the transfer test by selling the land in smaller lots over time (potentially to the same buyer). To mitigate against this risk, an owner is required to seek a lotting decision at the point that the total area of land that they are seeking to transfer exceeds 1000 hectares, even if this has been set out as multiple different applications under the pre-notification requirements.

Part 2A of the 2003 LR Act (new prohibitions added through this Bill)

135. In order to ensure that the landowner cannot sell the land until the Scottish Ministers have been able to consider and make a lotting decision, and that land is then sold in accordance with that decision, a series of prohibitions on the sale of the land exist at each stage.

When applies	Prohibition	Provision
Transfer of land in scope where there is no lotting decision in respect of the land	Transfer of land is of no effect if: <ul style="list-style-type: none"> • land is in scope (section 67F) • the transfer is not exempt (section 40(4)) • no lotting decision has been made 	Section 67C (new)
Transfer of land in scope where there is a lotting decision	Transfer of land is of no effect if: <ul style="list-style-type: none"> • land is in scope (section 67F) • the transfer is not exempt (section 40(4)) • transfer not in accordance with lotting decision (unless Ministerial approval) 	Section 67D (new)

Alternatives considered

136. Alternatives considered by the Scottish Government in relation to this proposal were:

- transfer test applying to buyer,
- further criteria for which landholdings are in scope of the transfer test, including consideration of concentration of landownership or specific features of a landholding,
- limit, or presumed limit, on scale of land which can be owned.

137. A test on a buyer of land would need to be focused on their intended future use of the land, and would delay any intended purchase. It is not clear how a ‘purchase’ control could adequately resolve the issues linked to scale and ownership identified by the Land Commission. It would not therefore contribute to achieving the policy objectives of the lotting measures. The options open to Scottish Ministers should any ‘public interest’ purchase test be met are likely to be limited to:

- agreeing to the sale,
- denying the sale, which may not lead to a more ‘suitable’ purchase,
- giving another potential buyer such as a community body a chance to purchase the land, which offers no advantage over the pre-notification requirements in the Bill, or
- purchase by the Scottish Ministers, which may be an unsuitable use of public funds.

138. *Land Reform in a Net Zero Nation* consulted on a whether the criteria for landholdings in scope should include where a landholding 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 the Scottish Government six-fold urban/rural classification scheme. This criterion might bring into scope more instances where a smaller-scale landowner may hold a concentration of power in a certain area, but there are significant practical issues which make this criterion unfeasible. Data zones and local authority wards can vary significantly in size and population and are subject to change over time. These data types do not map closely to communities, creating complications where communities are split across multiple zones. For these reasons, this is not considered to be a suitable factor for determining whether or not a holding should be in scope for the transfer test.

139. Proposals that the transfer test also apply to landholdings based on certain factors of the individual landholding (such as whether it is of particular significance to a local community) have been raised in stakeholder engagement. These would introduce significant complexity in determining which landholdings were in scope, making it difficult for landowners to understand what is required of them. A common rationale highlighted by stakeholders for including these kinds of additional criteria as part of determining what landholdings are in scope is to allow for urban landholdings to be in scope. The Bill measures are not limited to rural land, but in practice no urban landholding will meet the threshold tests. In their 2019 report to Scottish Ministers⁵⁵, the Land Commission noted that *“The evidence and our recommendations focus on rural land ownership. We acknowledge that similar issues and patterns may be relevant to an urban property context, but we do not currently have clear evidence on this. Our recommendations here are targeted to addressing ownership primarily in a rural context because this is where the evidence has so far identified pressing issues. We are also conscious that applying measures that are targeted for a rural landholding context to a general urban property market situation risks unintended consequences. Our wider workstreams will therefore continue to address tailored proposals for urban land reform.”*

140. The pattern of landownership and issues faced by rural and urban communities in relation to concentration of land ownership differ to the extent that further research and consideration is required. Other measures such as those highlighted at paragraph 56 are more applicable to urban land. Subject to successful passage of the Bill and implementing obligations, the operation of the transfer test to landholdings over 1000 hectares will be monitored to ensure that it is operating at an appropriate level.

141. There is insufficient evidence to justify a limit or presumed limit on the size of landholding that can be owned. Land Commission research, and prior research by the Scottish Government⁵⁶, did not find clear links between scale alone and wider social, economic and environmental

⁵⁵ p3, Review of Scale and Concentration of Land Ownership: Report to Scottish Ministers, Scottish Land Commission, 20 March 2019: [5dd7d77021f04_Report-to-Ministers-Scale-and-Concentration-Land-Ownership-FINAL-20190320.pdf](#) ([landcommission.gov.scot](#))

⁵⁶ [The impact of diversity of ownership scale on social, economic and environmental outcomes: Exploration and case studies - March 2016](#) ([www.gov.scot](#))

outcomes. This proposal would also have significant financial consequences, particularly in relation to compensation.

Consultation

142. *Land Reform in a Net Zero Nation* consulted on a test prior to transactions involving large-scale landholdings (referred to in the consultation as the ‘public interest test’). A majority of respondents (72% of those answering) agreed with the application of such a test. Of the remaining respondents, 22% disagreed and 6% did not know. The level of agreement was lower for organisations than individuals, primarily due to the majority of Landowner organisations (23 out of 32 who responded to this question) disagreeing with the proposal.

143. A majority (63% of those answering) agreed with the proposal that such a test could lead to a landholding being split into lots and not being sold to (or acquired by) one party as a whole unit. The level of agreement was lower among organisational respondents than Individuals, at 47% and 69% respectively. Of the Landowners who responded to this question, 24 out of 31 disagreed with the proposal.

Establishment of the Land and Communities Commissioner

144. Section 6 of this Bill amends Part 2 of the 2016 Act to establish the office of a new commissioner called the Land and Communities Commissioner. The 2016 Act established the Land Commission to review the effectiveness and impact of current and potential future laws and policies relating to land. This new Commissioner will be part of the Land Commission, but with a remit and functions that differ from existing Land Commissioners and the TFC.

145. As set out above, this new Commissioner will have functions in relation to enforcement of new obligations on landowners (paragraphs 82-83), and in preparing a report for Scottish Ministers to inform their making of a lotting decision (paragraphs 124-128).

146. In order to be eligible for appointment to the role of the Commissioner, the successful applicant must have experience in land management and community empowerment. Experience in land management could include land owned or worked as a tenant, employment in land management or through involvement in land management of community owned land. Community empowerment could include involvement in community land ownership, or experience in activities intended to improve community engagement and awareness. A person may not be appointed as the Commissioner if that person is, or within one year prior to appointment has been, the owner of a landholding which is over 1000 hectares.

147. The work associated with the powers of the new Commissioner can be delegated to the staff of the Commission who, it is expected, will carry out day to day duties and the Commissioner could take a strategic and decision-making role in the processes. The new Commissioner is to collaborate with the other Land Commissioners to the extent that there is overlap in their functions. Scottish Ministers are required to consult the Commissioner as part of developing regulations. The

Commissioner is expected to provide guidance to and support landowners in complying with the new requirements on them.

Alternatives considered

148. Alternatives considered by the Scottish Government in relation to this proposal were:

- Scottish Government administers all new functions,
- Commissioner administers all new functions,
- functions administered by another existing public body,
- creating a new public body to administer these functions.

149. New functions in this Bill have been split between Scottish Ministers and the new Commissioner. Scottish Ministers are responsible for administration of pre-notification requirements as set out at paragraphs 90-101 due to their existing role under Part 2 community right to buy. As this process leads to a late application under Part 2 community right to buy, it was considered most efficient for these functions to be held by Scottish Ministers. Scottish Ministers are also responsible for making lotting decisions under the transfer test, which is considered appropriate given potential impacts of these decisions on landowners.

150. No existing bodies were considered to have the appropriate knowledge and expertise for this role and establishing a new public body to administer the functions is not considered proportionate or an efficient use of public funds.

Consultation

151. The *Land Reform in a Net Zero Nation* asked a series of questions on who should be responsible for enforcement of breaches of obligations (Question 5), land management plans (Question 11), and administering a test prior to transactions involving large-scale landholdings (referred to in the consultation as the ‘public interest test’) (Question 22).

152. In response to all of these questions, a majority of those answering thought that this responsibility should sit with a public body such as the Land Commission. Landowners and private sector respondents were most likely to disagree, with the most common reason given being that they did not agree with the proposals.

153. Where respondents commented on the suitability of the Land Commission for carrying out these functions, points raised in favour were that the Land Commission has the appropriate experience and expertise. Those opposed to the Land Commission serving this role raised concerns that without clear division of power and responsibilities this new role may not be compatible with the existing advisory functions of the Land Commission. These concerns have informed the establishment of a separate Commissioner with these functions. This approach allows for division of these responsibilities, while allowing for a level of collaboration and delegation as appropriate.

This is a model that has been successful in relation to the existing TFC and will allow the Land Commission to continue to play a key role in advising Scottish Ministers on land reform.

Land management tenancy

154. The new model lease will help support new types of land management. It will therefore complement existing types of land tenure, rather than replace them.

155. In particular, it will not impact farming on land let under an agricultural holding, small landholding or croft. Those forms of tenure will continue to ensure the rights of the parties to those types of lease are unaffected by the availability of the new model lease. The primary purpose of an agricultural tenancy is the carrying out of agricultural activities, and as such the main activity of the holding should be agricultural. The model lease template is only intended to be used where less than 50% of the land management activity is agricultural.

156. The use of the model lease is entirely voluntary, and the Scottish Government intends to co-develop the model with all interested parties. It will therefore consider any proposals made during the passage of the Bill.

157. The Bill places a duty on the Scottish Ministers to publish a model lease designed for letting land so that it can be used wholly or partly for environmental purposes, which includes sustainable and regenerative agriculture. The model lease is being described as a land management tenancy.

158. The intention is that making the model lease available will help willing parties to agree on proposals for a mix of land uses under a single lease agreement, including land uses which contribute to net-emissions targets, tree planting, nature conservation and restoration, flood management, mitigation of climate impacts, peatland restoration, and sustainable food production.

159. The model lease will be published on the Scottish Government website. The Land Commissioners will be able to prepare guidance on the model lease, which could include guidance on how to adapt it for any particular use should that be considered appropriate.

Alternative approaches

160. Alternative options considered by the Scottish Government to take forward were:

- to do nothing, or
- to provide for a new form of statutory ‘land management’ lease.

161. Having nothing in the Bill would mean failing to address the challenge faced by a potential landlord or tenant looking to develop hybrid land uses, and therefore fail to deliver any of the public benefits that might flow from those uses. Barriers to progress would remain in place, so that for example leases would need to be negotiated in full in each case with no scope to reduce legal costs by using ‘off the peg’ clauses from the model lease.

162. A new statutory tenancy would add a further layer to an already complex area of law, and it would be difficult to integrate any type of lease with the existing statutory regimes for agricultural holdings, small landholdings, and crofts. A new statutory tenancy would also require primary legislation to make changes. A largely non-statutory model lease aims to meet consultation respondents desire for flexibility.

Consultation

163. The “Land Reform in a Net Zero Nation” consultation proposed new form of flexible tenancy, then called a ‘Land Use Tenancy’, which would help agricultural holdings, small landholding tenants and others to deliver multiple eligible land use activities within one tenancy. The consultation outlined that the land use tenancy would cover woodland management, agroforestry, nature maintenance and restoration, peatland restoration, and agriculture. The consultation proposed introducing a legal framework and setting out the key elements of the new lease type in the Bill.

164. The majority (71% of those answering) agreed that there should be a land use tenancy. Those in support often pointed to the importance of greater flexibility in the way let land is used, including a greater focus on activities contributing towards just transition to net zero, climate adaptation, biodiversity recovery and nature restoration, community wealth building and population retention and growth in areas within rural Scotland. Respondents who disagreed with, or were not sure about, developing a Land Use Tenancy most frequently commented that the lack of detail on the proposal makes it difficult to form an opinion.

165. The model Land Management Tenancy lease will involve relevant stakeholders and partner bodies in its design and development, with the detail being developed with them to address consultation concerns around lack of detail.

Small landholdings

Diversification

166. Currently small landholdings may only be used for cultivation purposes. “Cultivate” includes the use of a holding 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”.⁵⁷ A small landholder can also undertake a subsidiary or auxiliary occupation provided that it is one which, in the event of a dispute, the Land Court may find reasonable and not inconsistent with the cultivation of the holding.

⁵⁷ [Section 10\(1\) of the Small Landholders \(Scotland\) Act 1911](#)

167. Part 2 of the Bill’s schedule will enable a small landholder to use the small landholding for a purpose other than for ‘cultivation’. The Bill includes a provision enabling a small landholder and their landlord to enter into an agreement that the land comprising the holding or any part of it may be used for a purpose other than cultivation (a “diverse purpose”). The policy objective is to provide small landholders with greater opportunity to diversify their business, support profitability and enable them to take action to help address the twin crises of climate change and biodiversity loss

168. There is also provision for a small landholder to give notice to their landlord that they intend to use the land or any part of it for a diverse purpose. In these circumstances, there are grounds upon which a landlord can object to the diversification. Where a landlord objects, they will be required to provide the small landholder with detailed reasons for their decision. This will enable the small landholder to consider if the proposal can be modified to remove any concern.

169. A landholder may, within 30 days of receiving an objection, notify the landlord that they wish to negotiate a diversification agreement. This is intended to provide parties with an opportunity to see if any agreement can be reached without the need for the matter to be determined by the Land Court.

170. Where no agreement is reached, the matter can be referred to the Land Court. In making any determination, the Land Court will be required to take into account whether the intended use of the land is likely to have a positive effect on the environment and, if so, whether the positive effects outweigh any negative effects.

Alternatives considered

171. Alternative options considered by the Scottish Government to take forward were:

- Do nothing.

172. The Scottish Ministers considered that doing nothing would undermine the Programme for Government commitment⁵⁸ to modernise small landholding legislation and the Bute House Agreement commitment to ensure that smallholders are not disadvantaged from participating in climate change mitigation and adaption activities. The Scottish Ministers consider that the inability of small landholders to diversify is unreasonable and not in keeping with wider aims for rural development.

Consultation

173. The “Small Landholdings Modernisation: Consultation”⁵⁹ on allowing small landholders to diversify. The majority of respondents (83%) agreed that small landholders should be able to

⁵⁸ [A Fairer, Greener Scotland: Programme for Government 2021-22 \(www.gov.scot\)](https://www.gov.scot)

⁵⁹ [Small landholdings modernisation: consultation - gov.scot \(www.gov.scot\)](https://www.gov.scot)

diversify their activities on their landholdings. Over a third of respondents (39%) stated that small landholders should not require their landlord's permission in advance of diversifying their activities, whilst a slightly lower number said they should. In recognition of the impact on landlords interests, the Scottish Government considers that a proportionate approach, to consultation responses, is to provide a set amount of grounds on which a landlord can raise an objection.

Succession and assignation

174. The proposal aims to enable small landholders to assign or bequeath their tenancy to broadly the same classes of people as tenant farmers with secure 1991 Act agricultural tenancies can under the 2016 Act, with some additions (for example, the widow and widower of a person is included in the same way as a spouse or civil partner, and step descendants are included in all cases where descendants are included). For intestate succession a small landholders interest will be treated in accordance with Part 1 of the Succession (Scotland) Act 1964. The measures aim to encourage investment and growth: enabling wider family members to take over, providing older small landholders with greater ability to retire at an earlier stage, and opening up opportunities for new entrants and future generations of young farmers.

175. Legislation in relation to testate succession dates back to 1886 and no longer reflects modern family arrangements. The provisions enable a wider range of individuals to be able to succeed to a small landholding, making it easier for a suitable person within the wider family to continue a tenancy.

Alternatives considered

176. Alternative options considered by the Scottish Government to take forward were:

- Do nothing.

177. The Scottish Ministers considered that to do nothing would fail to reflect modern family arrangements and make it increasingly difficult for small landholdings to continue.

Consultation

178. The "Small Landholdings Modernisation: Consultation" consulted on expanding the classes of person that can succeed to and be assigned a small landholding. Over half of respondents (54%) agreed that the legislation setting out who can be assigned or succeed to a small landholding should be updated to have similar succession and assignation rights as tenant farmers with secure 1991 Act tenancies. Almost a quarter (24%) disagreed.

Rent and compensation

179. The legislative provisions in relation to compensation are spread out over a number of Acts dating from 1886 to 1931. The rent and compensation provisions in the Bill aim to simplify,

consolidate and update the legal framework to support a fair balance between small landholders and their landlords while modernising the legislation.

180. Parties are currently able to reach a mutual agreement on rent. Where a small landholder proposes to carry out a diversification activity and the landlord consents to the diversification, it is open to both parties to mutually amend and agree the rent. However, where the rent cannot be agreed, the Bill will enable either the landlord or small landholder to apply to the Land Court to fix the rent to take account of the diversification.

181. In relation to compensation, the current provision in relation to compensation to a small landholder for permanent improvements will remain. In relation to diversification, where there is an increase in the value of the holding as a result of diversification, compensation will be payable to the small landholder at an amount equal to the value of the use or change in question to an incoming tenant of the holding. Where there is a decrease in value as a result of the diversification, the landlord will be entitled to compensation at an amount equal to the value by which the holding has reduced due to the diverse purpose.

182. Provision has also been included to enable the landlord to recover compensation from their small landholder when the small landholder quits the small landholding on termination of the tenancy where their landlord shows that the value of the small landholding has been reduced by dilapidation, deterioration or damage.

183. Parties will be given the opportunity to reach an agreement between themselves on the amount of compensation owed either to the small landholder or their landlord. But where no agreement can be reached, there is provision for either party to apply to the TFC for an independent valuer to be appointed. The expenses of the valuer will be met by the party who is responsible for paying the compensation. Either party may then appeal the valuation to the Lands Tribunal.

Alternatives considered

184. Alternative options considered by the Scottish Government to take forward:

- Do nothing.

185. Doing nothing would mean that small landholders and their landlords would be unable to adjust rent in the case of a dispute after a diversification (if they were otherwise tied in to a period for which the rent was fixed) and would be left with a statutory compensation regime not fit for modern practices. This would fail to advance the Programme for Government commitment to modernise the legislation.

Consultation

186. The “Small Landholdings Modernisation: Consultation” did not actively consult on these provisions. However, this was deemed a necessary consequential associated with provisions outlined above.

Right to buy

187. The Bill introduces a pre-emptive right to buy for small landholders which generally mirrors the pre-emptive right to buy available to tenant farmers with secure 1991 Act tenancies. The policy is aimed at helping to remove barriers to sustainable rural development by providing small landholders with greater certainty over their small landholding and encouraging them to invest in their business.

188. The provisions will enable a small landholder to register an interest in purchasing the land constituting their small landholding should the opportunity arise. The requirement for registration is supplemented by a power granted to the Scottish Ministers to, by regulations, improve the pre-emptive right to buy process. Following registration a small landholder’s pre-emptive right to buy will be triggered in two situations:

- where the owner of a small landholding (or creditor with power to sell) gives the small landholder notice of a proposal to transfer the land comprising the small landholding and the transfer is not an exempt transfer; or
- where the owner or creditor of a small landholdings takes steps with a view to transferring the land comprising the small landholding or any part of it and the transfer is not an exempt transfer.

189. A transfer is exempt in certain cases – for example, where it is being transferred not for value, between companies in the same group, or as part of a person’s bankruptcy, etc. After the landlord or creditor triggers the right to buy then the small landholder can make an offer and agree the price of the small landholding with the landlord or creditor in a standard security.

190. Where the small landholder and 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.

191. The valuer will be required to take into account the value that is likely to be agreed between a reasonable seller and buyer. They also need to consider: any factors that may lead to a person wanting to buy the land at a price higher due to the characteristics of the land; the date when the small landholding would otherwise have been returned to the landlord (the vacant possession date); the terms or conditions of any lease of sporting interests affecting the land; and any moveable property belonging to the owner which is to be sold with the land.

192. 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 – for example, if part or all of an estate was being sold).

193. Within six weeks of being appointed, the valuer must send the seller and small landholder the price. Where either party does not agree with the valuer's price assessment then they 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 their small landholding.

Alternatives considered

194. Alternative options considered by the Scottish Government to take forward were:

- Provide small landholders with an absolute right to buy.

195. The Scottish Ministers considered an absolute right to buy but considered that this was not a proportionate approach for small landholders. This view mirrored those expressed by several consultation responses by organisations who favoured a pre-emptive right to buy only. These organisations stated that a pre-emptive right to buy would have less impact on the wider agricultural tenanted sector. As with any legislative proposal, it must be balanced and proportionate, so the Scottish Ministers favoured bringing forward a pre-emptive right to buy for small landholders, in a similar way as tenant farmers have with secure 1991 Act agricultural tenancies.

Consultation

196. The “Small Landholdings Modernisation: Consultation” consulted on providing small landholders with a right to buy. Over half of respondents (63%) agreed that small landholders should have the opportunity to purchase their small landholding if their landlord gives notice or takes action to transfer the land containing the small landholding.

Umbrella body

197. The proposal aims to allow landlords and small landholders to have access to the TFC and intends for the TFC to have similar functions for small landholdings as those currently set out for agricultural holdings in Chapter 3 of Part 2 of the 2016 Act. The policy objective is to allow small landholders to access the TFC who will promote and encourage good relations between landlords and small landholder tenants by publishing guidance and codes of practice for their benefit.

198. The TFC would promote and encourage good relations between small landholders and their landlords, publishing guidance and codes of practice.

199. The TFC would also be given the power to investigate alleged breaches of codes of practice. This proposal would help to reduce confusion or tensions between small landholders and their landlords while making small landholdings legislation more accessible.

200. The TFC would be able to produce small landholding guidance on a range of matters including: negotiating rent; diversification; negotiating the fulfilment of the obligations of landlords and small landholders; the right to buy process; the process of succession and assignment; guide for landlords on the creation of small landholdings; conversion to crofting; and determining compensation at removal.

Alternatives considered

201. Alternative options considered by the Scottish Government to take forward were:

- Encompass oversight of small landholdings into another existing body besides the TFC (which is part of the Land Commission).

202. The Scottish Ministers considered the consultation responses closely and believe that the TFC would be best suited to provide a function similar to an umbrella body due to the geographical location of small landholdings and the similarity in legislative terms to agricultural holdings following the Bill's overall approach to modernising small landholdings legislation.

Consultation

203. The "Small Landholdings Modernisation: Consultation" consulted on encompassing small landholdings within the remit of an existing public body (such as the Land Commission). The majority (88%) of respondents agreed that small landholders and their landlords should have access to a public body, in a similar way that tenant farmers and their landlords have for agricultural tenancies; 4% disagreed.

Agricultural holdings

Power to improve the registration process

204. An eligible tenant farmer who wishes to exercise their pre-emptive right to buy must first register their interest in the Register of Community Interests in Land (RCIL). The registration expires 5 years after the date of registration, unless it is renewed.

205. The RCIL is a public register maintained by the Keeper of the Registers of Scotland, and information held on the RCIL is therefore available to any person who might have an interest in the land. Persons interested in transacting with the land know whether or not the tenant has expressed an interest in buying the land, and the tenant farmer will know that they have ensured that they can exercise their right to do so.

206. The process of registration can however be unduly burdensome for the tenant farmer. They may incur legal and administrative costs, and must regularly renew their registration if they are to be able to exercise their right to buy the land. For that reason, section 99 of the Land Reform (S) Act 2016 repealed the requirement to register an interest.

207. Section 99 was however not commenced, in order for proposals to be developed that could deliver the benefits of registration while minimising the costs. The Scottish Ministers consider that this objective is best achieved, by working in a flexible way with stakeholders to co-develop an improved registration process.

208. The Bill therefore repeals section 99 of the 2016 Act, and provides for Scottish Ministers to be able to modify the registration process by regulations (this power will also be applicable to small landholder's right to buy).

Alternatives considered

209. Alternative options considered by the Scottish Government to take forward were:

- commence section 99 of the 2016 Act,
- require tenants with a pre-emptive right to buy to serve notice of their intention to exercise that right on the landlord.

210. The Scottish Ministers after careful consideration, and engagement with stakeholders, identified that commencing section 99 would raise a number of issues which would potentially make the situation harder for an eligible tenant farmer. Not registering an interest could subject a tenant farmer to issues including:

- disputes over the extent of the leased land at the time of sale, which has the potential to be a complex and expensive process for the eligible tenant farmer.
- relying on litigation to resolve disputes between the eligible tenant farmer, the seller or the purchase (it is not uncommon for farm boundaries to be disputed, and neither the tenant nor the landlord may know exactly where the boundary is, particularly for older titles).

211. Requiring secure 1991 Act tenant farmers to serve notice could subject them to:

- expense and inconvenience of applying to the Land Court to determine the extent of the land, perhaps many years before any decision is made to sell the land,
- having to evidence that the notice was sent and was in proper form where a landlord denies receiving the notice, or claims it was invalid,
- a requirement to issue a further notice to a new owner of the land, even though the tenant farmer may not know there is a new owner unless they search the Land Register (which may not be up to date at the time of search, and for which there is a fee).

Consultation

212. The “Delivering our Vision for Scottish Agriculture: Proposals for a new Agriculture Bill” did not consult directly upon this provision. However, TFAF was consulted on the proposal to keep the requirement to register, and develop proposals for improving the registration process.

Resumption

213. Land is resumed when a landlord takes it back out of an agricultural tenancy for specific purposes. The provisions will make the procedures for resumption for agricultural and non-agricultural consistent, ensure that tenants are given at least one year’s notice before any resumption, and modernise the compensation provisions to ensure that a tenant farmer is provided with fair compensation.

214. The aim of the resumption provision is to promote a thriving tenant farming sector, and to enable tenant farmers to plan with business certainty.

215. Currently, a landlord has the right to resume if there is a written lease which includes an express power to resume, and that power would normally set out how the purposes for which that can be done. The provisions do not change that.

216. The Scottish Ministers consider that the tenant has a financial interest in the value of the lease which is not covered by existing compensation arrangements. Rents are generally lower than the amount that might be obtained in an unregulated market, and that the tenant’s interest can be assigned in some circumstances. The Scottish Ministers consider therefore that fixing compensation by reference only to rent multiples, disturbance, and reorganisation costs does not take due account of the ‘capital value’ in the lease. It is unfair to the tenant, and might act as an incentive to resuming land that might otherwise continue to be part of the farm business.

217. The Bill enables a tenant farmer to claim additional compensation in respect of the resumption by reference to a fair share of the capital value in respect of the lease of that land. This is similar to the compensation that can be claimed in relation to relinquishment of land by the tenant, as introduced by the following the 2016 Act.

218. The Bill also reforms the disturbance payment that can be claimed by a tenant on termination of the lease, including termination of part of the lease by resumption. The tenant will be able to claim compensation for costs reasonably incurred by them in connection with development of the holding, including for example the cost of seeking a statutory consent such as a building warrant or planning permission.

Alternatives considered

219. Alternative options considered by the Scottish Government to take forward were:

- make no change,

- apply the new right to compensation in respect of the value of the lease to termination for any reason.

220. If there is no change then tenants will not be fairly compensated for the effects of resumption.

221. Extending these compensation provisions beyond partial resumptions was not taken forward as Scottish Ministers consider that there is not the same need to adjust the compensation provisions elsewhere in agricultural holdings legislation.

Consultation

222. The “Delivering our Vision for Scottish Agriculture: Proposals for a new Agriculture Bill” consulted on amending the resumption provisions on compensation for disturbance to include a new valuation formula. Around a quarter (26%) of respondents consider that the Scottish Ministers should amend the resumption provisions on compensation for disturbance to include a new valuation formula, while 20% do not, and 53% don’t know.

Agricultural improvements

223. Schedule 5 of the 1991 Act enables a tenant to undertake a specific range of improvements which support agricultural activity on the farm. At waygo (when the tenancy is ending), a tenant may be entitled to compensation for improvements based on their value to a hypothetical incoming tenant.

224. Schedule 5 is currently split into three Parts:

- Part 1 which lists improvements that need the landlord’s prior consent,
- Part 2 which lists improvements that need the tenant farmer to give advance notice to the landlord,
- Part 3 which lists improvements that need neither consent nor notice.

225. Currently a change is not an improvement unless it is included on one of the lists, which have been in place for many years⁶⁰. They are no longer flexible enough to support activities that must now take place if tenant farmers are to play their part in tackling the twin climate and biodiversity crises.

226. The Bill will provide for more flexibility by moving to a principles based approach for more significant changes, and changing existing fixed lists to illustrative lists. It will facilitate changes

⁶⁰ See Schedule 1 to the Agriculture (Scotland) Act 1949 for a previous version.

that will promote the development of sustainable and regenerative agriculture. The changes are as follows:

- Part 1: consent - improvements that mean land or equipment is unlikely to return to its former use, or which otherwise have a long term or significant impact,
- Part 2: notice - improvements that change the land or equipment, but which do not have a long term or significant impact on the holding as a whole,
- Part 3: neither consent nor notice - a fixed list of improvements,
- Part 4: consent or notice - improvements that are presumed to facilitate sustainable and regenerative agriculture.

227. All activities currently listed in Schedule 5 are kept, and have been moved into a relevant Part.

Alternatives considered

228. Alternative options considered by the Scottish Government to take forward were:

- add climate adaptation and mitigation and biodiversity enhancing activities to the lists,
- take a wholly principles based approach without lists.

229. These options were not taken forward as adding climate and nature activities to the lease would detract from the core objective of promoting sustainable and regenerative agriculture, which will itself improve climate and nature outcomes.

230. Moving entirely to a principles based approach could have created uncertainty about what is permitted and what is not, which would have an adverse effect on efforts to improve both farm businesses and climate and nature outcomes.

Consultation

231. The “Delivering our Vision for Scottish Agriculture: Proposals for a new Agriculture Bill” consulted on amending Schedule 5 of the Agricultural Holdings (Scotland) Act 1991 to enable tenant farmers to play their part in supporting biodiversity and undertake mitigation and adaptation measures. 53% of respondents agreed that the Scottish Ministers should add new activities and items onto Schedule 5 of the Agricultural Holdings (Scotland) Act 1991 to enable tenant farmers to support biodiversity and undertake climate change mitigation and adaptation activity on their tenant farms, while 18% disagreed.

Diversification (non-agricultural activities)

232. The changes in the Bill are intended to ensure that tenants are able to undertake non-agricultural activities that will develop farm businesses, and improve environmental outcomes. That might include, for example, additional tree planting or peatland restoration.

233. The provisions will affect: 1991 Act tenancies, limited duration tenancies, modern limited duration tenancies and repairing tenancies.

234. The Bill amends the 1991 and 2003 Acts to reform the basis on which a landlord can consent (or not) to a proposed diversification, in order to ensure that environmental considerations are considered at all stages of the process. It will also help ensure that improvements in the value of the land that deliver benefits of that kind can be compensated. These changes will promote the development of sustainable and regenerative agriculture in Scotland.

235. The tenant farmer will be encouraged to consider what if any environmental benefit their proposed diversification will have. Their landlord will be required to consider impact of the 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.

236. 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 make it easier for the parties to reach agreement, where that is possible.

237. The provisions amend the 1991 Act to enable a tenant farmer to claim compensation from their landlord when the tenant's diversification still enables the land to be used for sustainable and regenerative agriculture by an incoming tenant farmer. The compensation is valued based on its value to a hypothetical incoming tenant.

Alternatives considered

238. Alternative options considered by the Scottish Government to take forward were:

- a power for the Scottish Ministers to determine an acceptable diversification,
- a separate environmentally orientated diversification provision.

239. These options were not taken forward as for example listing permitted diversifications would be inflexible, and deter the kinds of change that are needed to improve businesses and outcomes.

240. A separate environmentally orientated diversification provision would have created a complex overlapping relationship with the existing 2003 AH Act diversification provisions.

Consultation

241. The “Delivering our Vision for Scottish Agriculture: Proposals for a new Agriculture Bill” consulted on providing the Scottish Ministers with a power to determine what is an acceptable diversification. 50% of respondents agreed that the Scottish Ministers should have a power to be able to determine what is an acceptable diversification, while 28% disagreed.

Compensation for game damage

242. The proposals aim to modernise the right of the tenant to claim compensation for game damage, and in particular to enable tenants to claim compensation for losses other than damage to crops.

243. 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.

244. Currently the tenant farmer is only entitled to compensation where there is crop damage. The provisions will enable tenant farmers to claim compensation for damage to 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.

245. It is intended that tenants should be placed in a position that is no better or worse than before the game damage occurred.

Alternatives considered

246. Alternative options considered by the Scottish Government to take forward were:

- make no changes.

247. Making no change would mean that tenants would have to bear the costs of game damage for which they are not responsible.

Consultation

248. The “Delivering our Vision for Scottish Agriculture: Proposals for a new Agriculture Bill” did not consult directly upon this provision. However, the proposal was raised during the course of the consultation as important issue that should be addressed in the modernising of tenant farming legislation as per the Programme for Government commitment 2021-22.

Waygo

249. Waygo is the term for the process that a tenant farmer and landlord go through at the end of tenancy, and includes determining and paying any compensation that is due by one party to the other. There are many different types of claim, all with a different process. It can be difficult for a tenant to progress in farming or to fully retire until a claim is settled.

250. In some cases claims can take months or even years to be agreed, or paid when agreed. The aim is to ensure that waygo claims are settled in good time, and in a manner that is fair to both the tenant and the landlord.

251. The Bill provides for a standard claims procedure under which claims must be made 9 months before they fall due, and paid within 2 months after that date. It also provides for interest to be added to late payments. Currently waygo claims are not subject to uniform timescale.

252. The Bill provides for the Scottish Ministers to be able to apply the new procedure to any statutory claim for compensation, and to be able to modify that procedure when applying it to a particular type of claim.

253. Under the standard procedure 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 TFC to appoint one.

254. 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 five months prior to the due date.

255. Three months prior to the due date an updated valuation report will be provided, taking into account any changes in the circumstances in the tenancy.

256. The Bill provides for the valuer to be appointed failing agreement by the TFC, with a right of appeal to the Land Court. The notice of assessment can be appealed to the Lands Tribunal for Scotland.

Alternatives considered

257. Alternative options considered by the Scottish Government to take forward were:

- Maintain the status quo

258. The 1991 Act includes a provision on the enforcement of waygo claims by the Scottish Land Court. This position was not tolerable in the consultation responses. The provision for a timeframe above aims to enable both landlord and tenant farmer to reach an agreement on the waygo compensation claim prior to the end of the tenancy agreement.

Consultation

259. The “Delivering our Vision for Scottish Agriculture: Proposals for a new Agriculture Bill” consulted on introducing set timescale to conclude the process of waygo. 76% of respondents agreed that when an agricultural tenancy comes to an end a tenant farmer should have certainty about the timescale by when they will receive any money due to them, and their landlord should also have a similar certainty.

A new rent review system

260. The Bill makes changes to new rent review processes introduced by the 2016 Act, as parts of that process were agreed with stakeholders to be too difficult to translate into practice.

261. The provisions will affect: 1991 Act tenancies, Limited Duration Tenancies, Modern Limited Duration Tenancies and repairing tenancies.

262. The changes draw on the work of the TFC, and are informed by close engagement with the TFAF. They ensure that the new process will indeed provide a flexible and proportionate system which will enable the parties to provide evidence from a number of different sources, and places an increased emphasis on negotiation.

263. The new rent review system will be based around a non-exhaustive and non-hierarchical list of factors, which should be considered when calculating rent. It will for example now take account of:

- the productive capacity of the holding,
- comparable rental information, and
- prevailing economic conditions in the applicable sector of agriculture.

264. Where parties are unable to reach agreement on the rent payable, they will be able to access TFC mediation which will be supported by TFC guidance. Failure 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.

Alternatives considered

265. Alternative options considered by the Scottish Government to take forward were:

- commence the rent review process in the 2016 Act, without changes,
- move back to a market based approach to assessing rent, or some other model.

266. The 1991 Act focused on ‘open market rent’, which is no longer achievable given the lack of an ‘open market’ for secure tenancies means that new secure tenancy lease are rare. The 2016 Act tied the rent to the productive capacity and economic potential of the holding which has the potential to distort the rent calculation.

267. The provisions outlined above follow the approach proposed by the TFC, and provide a foundation for parties to negotiate a fair rent whilst allowing for adaptability in the factors that can be considered in determining the rent.

Consultation

268. “Delivering our Vision for Scottish Agriculture: Proposals for a new Agriculture Bill” consulted on repealing the rent provisions in the 2016 Act, and introducing a new rent calculation that would balance 3 core elements and factors specific to the lease:

- comparable rents for secure or fixed duration tenancies,
- assessment of the earnings potential by means of a farm budget, and
- consideration of economic outlook for the next 3 years.

269. 56% of respondents agreed that adaptability and negotiation in rent calculations are required to meet the global challenges of the future, while 5% disagreed and 39% did not know. 32% of respondents think there are other relevant considerations that should be included in part of a rent review.

Rules of Good Husbandry and Estate Management

270. The Bill reforms the current rules of good estate management and good husbandry to place a greater emphasis on sustainable and regenerative agricultural activities, so meeting the aims of the Scottish Government’s Vision for Agriculture.

271. This could for example enable tenant farmers to undertake activities such as leaving uncropped field margins while staying within the Rules. It is anticipated that the provisions will support tenant farmers to access future funding streams for sustainable and regenerative agriculture without risking irritating their individual leases.

272. The Rules of Good Husbandry applying to tenant farmers, and the Rules of Good Estate Management applying to landlords, are defined in the Agriculture (Scotland) Act 1948. As a result they focus on how agriculture was required to work 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.

273. 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.

274. The provisions also modernise the statutory language to ensure that practices are reflective of modern standards and expectations.

Alternatives considered

275. Alternative options considered by the Scottish Government to take forward were:

- more extensive changes bringing in further environmental principles.

276. These options were not taken forward as they may have subjected tenant farmers to a higher degree of environmental scrutiny when compared to owner occupiers. Scottish Ministers considered this would place a disproportionate burden on tenant farmers.

Consultation

277. The “Delivering our Vision for Scottish Agriculture: Proposals for a new Agriculture Bill” consulted on amend the rules of good husbandry and good estate management to enable tenant farmers and their landlords to undertake a wider range of activities on the land, to enable them to meet future global challenges such as food production, biodiversity, and climate change crises.

278. The majority (68%) of respondents to this question agree that the Scottish Ministers should be able to amend the rules of good husbandry and good estate management defined in the Agriculture (Scotland) Act 1948 to enable tenant farmers and their landlords to be able to meet future global challenges, while 11% disagreed.

SUMMARY

279. Taken together, the measures introduced through the Acts passed since 2000 have helped to achieve a better, fairer balance of power between communities and landowners in all sectors.

280. Today more than ever, our land needs to contribute to the interests of everyone who lives on the land and who earns their living from it, as well as the wider public. Above all, these interests are to enable us to produce more of our food sustainably, maintain rural populations, bring about a just transition to net zero, and to tackle the biodiversity crisis through the restoration of nature. These challenges are different to those faced by earlier generations of reformers, but they call for a response on a scale that is at least as robust and ambitious.

EFFECTS ON EQUAL OPPORTUNITIES, HUMAN RIGHTS, ISLAND COMMUNITIES, LOCAL GOVERNMENT, SUSTAINABLE DEVELOPMENT ETC.

Equal opportunities

281. The public sector equality duty requires public bodies to have due regard to the need to eliminate discrimination, advance equality of opportunity and foster good relations between different people when carrying out their activities. An Equality Impact Assessment (EQIA) has been carried out and a summary of its findings is provided below.

282. The EQIA assessment for the Bill did not identify negative effects of the land reform proposals. Requirements on owners are targeted at those who own landholdings of over a certain scale. This avoids any disproportionate impact on smaller landowning businesses, and so no negative equality impacts are anticipated in relation to the impact on landowners.

283. The land reform proposals in the Bill are intended to bring about a better balance of power in relation to the ownership, use and management of large-scale landholdings, and the EQIA assessment indicated a positive impact on local communities (including people with protected characteristics living in these communities) through advancing equality of opportunity. The Bill gives Ministers powers to make regulations establishing community engagement obligations on landowners, including the requirement to produce land management plans. Further EQIA assessment will be carried out for secondary legislation which will establish the detail of what will be included in plans and how landowners should engage with local communities, including people with protected characteristics who live there. The land management tenancy, agricultural holding and small landholding proposals aim to provide greater equality of opportunity for tenants to participate in delivering the Scottish Government's Vision for Agriculture.

284. In summary, the EQIA assessment has found that the Bill does not unlawfully discriminate in any way with respect to any of the protected characteristics (including age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation) either directly or indirectly.

285. Further details will be provided an Equality Impact Assessment which will be published shortly following Bill introduction.

Human rights

286. The Scottish Government has considered the effect of the provisions of the Bill on Human Rights in particular the following Articles of the European Convention on Human Rights ("ECHR"), Article 6 (right to a fair hearing), and Article 1 Protocol 1 ("A1P1") ECHR in relation to the impact of policies on an individual's property rights. Any interference with A1P1 must be justified by reference to the three-part test of lawfulness, pursuit of a legitimate aim, and proportionality.

Land Reform

287. The Bill introduces a duty on the Scottish Ministers to make regulations imposing obligations on owners of large land holdings in relation to management of those holdings and community engagement. The provisions will create a new Land and Communities Commissioner to investigate and enforce breaches of these obligations. This is a right of appeal to the Lands Tribunal for Scotland – an Article 6(1) compliant tribunal.

288. The amendments to the 2003 LR Act in respect of the extended opportunity to register a community right to buy will interfere with an individual's A1P1 rights. This interference amounts

to a control of use of property because, in certain circumstances, the provisions impose prohibitions on the transfer of a large holding of land and if the new additional route to making a late application to register a community right to buy results in registration of an interest, then this may require the owner to transfer the land to a particular community body rather than a person of their choosing.

289. The Bill makes clear the circumstances in which the prohibitions and the additional route for making a late application will apply, thus satisfying the requirement of lawfulness. These provisions pursue the legitimate aim of enabling communities on or near to large holdings of land to have an opportunity to acquire the land which is part of the community on which they live and work or which may benefit the community. The notification and publication requirements will mean that communities are aware such land is for sale and the additional route for late applications will give communities the opportunity to seek to purchase such land. The provisions strike a fair balance for the following reasons: the measures only apply where the landowner wishes to voluntarily transfer the land, existing compensation provisions in Part 2 of the 2003 LR Act will apply to the new provisions, in respect of the additional late application route there are time limits and criteria that must be met to use this, the owner will be free to transfer the land within a period of up to 2 years following the lifting of the prohibitions by the Scottish Ministers (where the additional late application route is not used or the Scottish Ministers decide that there is no reasonable prospect of an application under that route being successful), certain transfers are exempt from the prohibition and there are appropriate rights of appeal. When considered overall, these safeguards ensure that the provisions are a proportionate interference with an individual's A1P1 rights.

290. In relation to the lotting of large land holdings these provisions will interfere with an individual's A1P1 rights as in certain circumstances an owner of a large land holding will only be able to transfer some or all of that land in accordance with a lotting decision requiring the land to be transferred in lots and transferred to different people. For the reasons explained in the Policy Memorandum it is considered a legitimate aim to make provision of this nature in order to seek to reduce the impact that concentration of land ownership may have on the supply of land in particular areas. The test looks at whether improving that supply of land might be more likely to lead to the land that is being sold being used in ways that might help these communities more sustainable than if the land were transferred to one person. This aim is distinct from the various rights to buy which exist to allow communities to purchase land in various circumstances. Instead of a large land holding being sold as a single parcel it may be required to be transferred in lots to different people which allows for the supply of land to be increased by widening the number of potential purchasers.

291. The Bill sets out a clear process and structure for the operation of the lotting test, thus satisfying the lawfulness requirement. Where the grounds for making a lotting decision are met then the Scottish Ministers will have a discretion as to whether to make a lotting decision which will enable them to consider all the particular facts and circumstances of a case including the implications for the A1P1 rights of the landowner. Not every proposed transfer of a large land holding will lead to a lotting decision by the Scottish Ministers. The provisions do not involve compulsory acquisition or sale. Any restrictions on the action that a landowner can take in relation to their property are temporary and necessary to deliver the aim of the policy. The Bill also includes appropriate exemptions allowing for transfers without consideration of whether to make a

lotting decision, appeal and review provision and mechanisms to ensure that owners of land are compensated for losses arises as a result of a lotting decision, including the requirement to transfer the land to different people. In certain limited circumstances there is an option for an owner whose land was subject to a lotting decision where the land has not sold, or not all lots have sold, to make an application for the Scottish Ministers to consider purchasing the land. There is also a process for expediting a lotting decision in certain circumstances relating to financial hardship. When considered overall, these safeguards ensure that the provisions are a proportionate interference with an individual's A1P1 rights.

Land tenure reform (agricultural holdings, small landholdings, land use tenancies)

292. Land tenure reform may constitute a control of use of property for the purposes of A1P1. These proposals extend the rights of agricultural tenants and small landholders, and to that extent may impact the rights of landlords

293. Provisions have been designed to take account of the reasonable interests of landlords. For example, the Bill provides for a right of objection in relation to the assignation of and succession to small landholdings. It also provides for landlords to be able to apply to the Land Court to fix the rent where no agreement can be reached on the level of rent for the use of a small landholding for a non-cultivation purpose.

Island communities

294. The land reform measures are not likely to have an effect on an island community which is significantly different from its effect on other communities (including other island communities).

295. It has been recognised since the start of the development of the Bill that specific threshold criteria would be needed for islands, given that the concentration of land ownership may be significant even if the absolute size of an island landholding is not as large as those elsewhere in Scotland. The islands criteria set out for the community engagement obligations (paragraph 72-83) in the Bill are intended to ensure that the effect on an island community will not be significantly different from its effect on other communities.

296. The land management tenancy, agricultural holding, and small landholding proposals will apply throughout Scotland. From consultation analysis and engagement, the proposals are unlikely to have any negative impacts for island communities and will provide the same opportunities as those on the mainland. From Scottish Government engagement and analysis no unique impacts for island communities has been discovered. There will be no unique impacts in terms of demographic, economic, Gaelic, or social factors.

297. An Islands Communities Impact Assessment has been completed and published to coincide with the introduction of the Bill.

Local government

298. Many of Scotland's local authorities responded to the consultations on the Bill, and further engagement was carried out with COSLA as part of the Business and Regulatory Impact assessment for the Bill.

299. For the land reform measures, the Bill lists local authorities as one of a number of parties that may report a breach of an obligation made under regulations to the Land and Communities Commissioner. This may impact staff time within local authorities. Secondary legislation may also set out a consultation role for local authorities in relation to the pre-notification and transfer test, and this will be informed by further consultation on these regulations, including with local authorities.

300. The Scottish Government is not aware of any local authorities with landholdings which would be in scope of the community engagement and land management plan regulations as a landowner. The Scottish Government has identified a small number of local authority landholdings that may be in scope of pre-notification and transfer test requirements, however as these apply only on sale it is anticipated that these will have no or minimal impact on local authorities as landowners.

301. For the land management tenancy, identified potential costs on local authorities are in responding to consultations (should they choose to do so) and where local authorities are a landlord and decide to utilise the new model lease. For small landholding and agricultural holdings provisions it is not anticipated that there will be any new costs to local authorities except where they are a landlord letting land to a small landholder or eligible tenant farmer. Information on whether local authorities have any small landholdings or agricultural holdings was not held centrally by COSLA.

302. The financial implications for local authorities are set out in the Financial Memorandum. These represent both potential costs (comparable to landlords) and potential savings.

Sustainable development

303. A Business and Regulatory Impact Assessment (BRIA) has been carried out and will be published to coincide with the introduction of the Bill. To understand the impact of the proposals on businesses a Scottish Businesses a questionnaire was issued to 17 businesses, who were interviewed individually between October 2023 and December 2023. This was in addition to the above consultation. Of the 17 businesses interviewed: 8 were landlords/ landowners, 6 were agricultural tenants, and 3 were small landholders. The BRIA concluded that Bill proposals for a land management tenancy and the proposals for agricultural holdings and small landholdings should be brought forward.

304. The main financial implications for businesses identified in relation to the land reform proposals are the costs involved with producing and engaging on land management plans (following secondary legislation), and the costs associated with required notifications to Scottish Ministers as

part of the additional requirements on sale. Given that adequate compensation and review provisions are set out, it is not anticipated that delay of sales or impacts to selling price caused by lotting would have a direct financial impact on landowners. In developing the regulations, it is the Scottish Government's intention to ensure that any requirements placed on business are proportionate.

305. A Strategic Environmental Assessment (SEA) screening and scoping has been carried out⁶¹. The Consultation Authorities agreed with the Scottish Government's assessment that agricultural holdings, small landholdings, and land use tenancy should be subject to a full SEA. A consultation⁶² was undertaken and environmental reports⁶³ were published. The environmental reports concluded that the proposals have the potential to lead to major positive significant effects for biodiversity and geodiversity, climate change, and soil and water, along with positive cumulative effects. The effects on the historic environment are uncertain.

306. The Scottish Government is committed to continuing to engage with stakeholders on the detail of this work as it develops and to undertaking further BRIAs and or SEAs if and when necessary.

CROWN CONSENT

307. It is the Scottish Government's view that the Bill as introduced does require Crown consent. Crown consent is required, and must be signified during a Bill's passage, where the Bill impacts the Royal prerogative, the hereditary revenues of the Crown or the personal property or interests of the Sovereign, the Prince and Steward of Scotland or the Duke of Cornwall. The Scottish Government's view is that:

- sections 1 to 6 (land reform) impact the personal property of the Sovereign where such property meets the criteria for the application of those provisions, and
- sections 11 to 28 (agricultural holdings) impact the personal property of the Sovereign and may impact the hereditary revenues of the Crown.

308. For the source of the requirement for Crown consent, see [paragraph 7 of schedule 3 of the Scotland Act 1998](#), and [rule 9.11 of the Parliament's Standing Orders](#). For further information about the considerations that go into determining whether Crown consent is required for a Bill see [Erskine May](#), the guide to procedure in the UK Parliament.

⁶¹ [Scottish Environment Assessment Gateway - Search \(strategicensementassessment.gov.scot\)](#)

⁶² [Strategic Environmental Assessment of Agricultural Tenancies, Small Landholdings and Land Use Tenancy Proposals Consultation \(www.gov.scot\)](#)

⁶³ [Strategic Environmental Assessment \(SEA\) for the Agricultural Tenancies proposals Environmental Report - gov.scot \(www.gov.scot\)/ Strategic Environmental Assessment \(SEA\) for the Small Landholdings and Land Use Tenancy Proposals Environmental Report - gov.scot \(www.gov.scot\)](#)

This document relates to the Land Reform (Scotland) Bill (SP Bill 44) as introduced in the Scottish Parliament on 13 March 2024

LAND REFORM (SCOTLAND) BILL

POLICY MEMORANDUM

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