

Mercedes Villalba consultation – Community Land Scotland response - DRAFT

Aim and approach

1. Which of the following best describes your view of the proposal's aim, to reduce the concentration of land ownership in Scotland?

Please note that this question is compulsory.

Fully supportive

Please explain the reasons for your response.

Community Land Scotland has been working to diversify landownership, increase community landownership and tackle the deep inequality in Scotland which concentrated landownership fosters. We welcome proposals which seek to reduce this concentration of ownership across Scotland. We agree with the consultation document that Scotland's highly concentrated land ownership lies at the heart of the issues of rural, housing and depopulation, a lack of housing of all tenures and prices creates an inability to build on local and national economic opportunities due to concentrated landownership patterns. Land ownership also blights urban Scotland, where vacant and derelict land hinders the ability to deliver local economic opportunity because of absentee landowners stranglehold key sites. The decline of Scotland's high streets and town centres is a direct cause of land used counter to the public interest, in which strategic sites are held as financial assets rather than being released for development or reuse. Connectedly, the [Scottish Land Commission's 2023 Market Insights Report](#) explicitly acknowledged the impact that corporate and institutional buyers were having on the rural land market, through purchasing property and land to operate as a financial asset and inflation hedge rather than having any plan for how to use that land or property.

2. Which of the following best describes your view of a presumed limit on the amount of land that can be sold or transferred, or that any person can own?

Fully supportive

Please explain the reasons for your response.

Community Land Scotland supports the proposal for a presumed limit on the amount of land that can be sold or transferred, or that any person can own, unless that person or organisation can demonstrate that their ownership and the scale of landholding works in the public interest. A piece of legislation such as this would provide a much firmer policy framing for the Public Interest Test (PIT) which the Scottish Government is currently proposing. This would secure more democratic influence on landownership over time and importantly it is a presumed limit (not an absolute limit) on



landownership. In effect, any land owned over 500ha would be subject to a very stringent PIT and become regulated land. This would make a clear commitment that Scotland's land, its primary asset, needs to work in the public interest for all of the people of Scotland.

A policy such as this would be a legitimate development of the threshold trigger that the Scottish Government is already indicating will be used for the Public Interest Test, the key benefit being that this would have a much more far-reaching impact upon the democratisation of landownership and help address the urgent issues of scale and concentration of existing landholdings.

It is important to consider concentration as well as scale in policies such as this, most particularly in relation to the potential mechanisms for urban Scotland to be included in any public interest. We think it is essential that urban areas are not excluded from upcoming Land Reform legislation, and that the new proposals in the Land Reform Bill apply to all areas of Scotland and thus maintain the equality of treatment between urban and rural land reform established in the 2015 Community Empowerment Act. We think that this proposed legislation on a presumed limit on landownership can complement our proposals well. The need for aggregate limits on landholdings is key for urban Scotland, where fragmented landownership means power is concentrated through a portfolio of landholdings.

We propose a solution which identifies landholdings/assets where a Public Interest Test would apply that is criteria-based but includes a provision that would allow the consideration of cases that are significant and result in excessive power acting against the public interest, alongside a fixed threshold based on scale of 500ha and a percentage of an inhabited island. This would be land that a designated public body (potentially the Scottish Land Commission) can agree is of significance to any applying community. The term 'significant' provides an appropriate hurdle to be cleared and is of course a term in common use in legislation and/or formal guidance across a range of important public interest matters. We envisage specific guidance would be developed and issued in support of this provision by the appropriate designated public body which we see being the Scottish Land Commission.

This provision would ensure that urban and peri-urban areas are included in the Land Reform Bill. Furthermore this would mean that the concentration of landownership power, where this impacts on economic, social, cultural and environmental rights, or fair and equal access to land, not just scale, is reflected within the important developments the Bill proposes.

This would also vest powers in the Scottish Land Commission to define the public interest and would work coherently with the proposed powers of the Land Commission within this consultation.



3. If there is to be such a presumed limit, which of the following best describes your view on setting this limit at 500 hectares?

500 hectares is about right

Please explain the reasons for your response (including by suggesting what alternative limit you would favour, if appropriate)

In our response to the Land Reform Bill consultation we recommended a threshold of 500ha, which would, by a considerable margin, ensure that the vast majority of farms (which are typically less than 300 hectares in size) would fall outwith the scope of this particular scale criterion. To ensure a meaningful number of land transactions are included in the Public Interest Test and that both scale and concentration of landownership can begin to be addressed the threshold needs to be lower. As such we fully support the proposals in this consultation for a limit of 500ha.

The events at Taymouth/Glenlyon over recent weeks, where the local community has been outraged by plans by Discovery Land Company to create a gated community for wealthy international elites, and in the process have closed various businesses and facilities around Kenmore, would not be addressed by the current proposals for a Public Interest Test, due to the size of the landholdings (Glenlyon Estate 2507.31ha and Taymouth Castle 177.46ha). The acquisition of important Kenmore amenities by Discovery Land Company, such as the hotel, shop, post office, restaurant, pub and housing concentrates significant power in the hands of one landowner. This would not be addressed by the current proposals within the Land Reform Bill. However the proposed presumed limit on aggregated landownership in this consultation, alongside a Public Interest Test which includes a criterion of 'landholdings of significance' as noted above, would have prevented this disturbing example of Scotland's landownership patterns.

We also welcome the intervention in this consultation on the aggregate amount of land one person can own. In our view, a presumed limit of 500ha should also apply to landowners with a controlling interest in individual landholdings anywhere in Scotland that, in aggregate, exceed our proposed 500 hectares threshold. Urban landownership is characterised by fragmented holdings, thus an aggregate limit will be important in controlling excessive power against the public interest in urban areas. Land being purchased by public sector organisations should be regarded as land being purchased in the public interest, as they are subject to ultimate democratic control, and therefore could be exempt from the test. Community purchases of land will be by community bodies compliant with Scottish



governance, which have constitutions defined to deliver the public interest, as adjudicated in Scottish courts,

Applying the test to aggregated landholdings would address the issue of accumulation of land ownership by individuals and other entities which results in concentration of the power of ownership beyond particular localities. It would also prevent avoidance loopholes in the form of small sections of larger holdings being held under separate titles to effectively split large landholdings into separate smaller landholdings. There should be a presumption that such activities are prohibited unless it can be proven that it is not being used as an avoidance mechanism. Community Land Scotland is also of the view that appropriate anti-avoidance measures will have to be built into the legislation to ensure that steps cannot be taken by landowners to circumnavigate its intention by transferring parts of landholdings into different companies or trusts for ownership purposes.

4. Which of the following best describes your view of having a statutory regulator with powers to subject proposed sales of land that are over the presumed limit to a public interest test?

Fully supportive

Please explain the reasons for your response

It will be essential for there to be a statutory regulator to subject land sales over the presumed limit to a Public Interest Test. Some form of regulatory body will need to define the public interest in land sales over 500ha. It would make more sense for this to be a statutory regulator rather than Scottish Ministers to allow the system to be nimble and subject to statutory guidance. Community Land Scotland believe it is not necessary for Ministers to have to make all such decisions when an effective regulator acting within statutory constraints and guidance can do so effectively. A statutory regulator would also be able to produce guidance on the criteria of the public interest and to assist landowners in ensuring that their landholdings over 500ha are truly in the public interest.

5. Do you agree that the Scottish Land Commission is the appropriate body to be given this regulatory role?

Yes

Please explain the reasons for your response (including by saying which body, if any, should be given this regulatory role)



The Scottish Land Commission would in many ways be the natural body to be given a regulatory role. They have a deep knowledge of Scottish land issues based upon several years of producing research and policy advice for the Scottish Government and a well-informed panel of Land Commissioners. The current Scottish Government proposals for the Land Reform Bill also potentially significantly increase the regulatory role of the Land Commission in their oversight of the Land Rights and Responsibilities Statement being placed on a statutory footing and oversight of Land Management Plans. Moreover they are likely to be a prominent body within the Scottish Government's proposed Public Interest Test and Community Land Scotland have suggested that it should be the Land Commission which decides upon the criteria of that Public Interest Test. As such it would be a natural extension of their likely future role to also cover the presumed limit on landownership.

If the Land Commission took on this expanded role it would be important to ensure that the Commission could maintain its research and policy role which has contributed a great deal to a better understanding of land issues in Scotland.

6. Do you have any comments on the proposed public interest test criteria (set out in the annex of the consultation document)?

Community Land Scotland agree with the proposed Public Interest Test criteria as set out in the consultation annex. A further criterion could be added to include land being used for sustainable energy provision (which works alongside other criteria around sustainable development and building community wealth)

7. Which of the following best describes your views on the proposed voluntary arrangements (in Section 3E of the consultation document) which would assist those seeking to sell or transfer land over the presumed limit, to comply with the public interest test?

Fully supportive

Please explain the reasons for your response

The building of national consensus, through applied policy, on what constitutes the public interest will be important to secure broad agreement with the principle of a presumed limit on land ownership. The regulatory body would have an important role as mediator and adviser to landowners to minimise the number of cases being taken to a formal Public Interest Test. We particularly welcome the proposal of discussing potential arrangements for the sale with the landowner, including how they can secure community support and community benefit through offering land for local needs. The voluntary



arrangements would also be a useful means of gradually codifying guidance and precedent on what constitutes the 'public interest'.

8. Which of the following best describes your views on the proposed powers that would allow the regulatory body to apply a public interest test to existing landholdings above the presumed limit, and give it options for intervention (see section 4A of the consultation document)?

Fully supportive

Please explain the reasons for your response

Community Land Scotland is fully supportive of the proposal to apply a Public Interest Test to existing landholdings above the threshold of 500ha when there are concerns that the landholding is not in the public interest. This would be a vital mechanism for achieving diversified landownership as well as empowering communities to hold landowners actively and robustly to account. In our current system there is no mechanism for communities and local people to challenge the activities of the landowner who controls the land where they live. The consultation sets out a robust procedure, and it would need to be robust, in which poor landownership can be challenged. This is a potentially transformational intervention which would be made relatively straightforward through this proposed legislation and the increased regulatory function of the Scottish Land Commission. We welcome the thoroughness of the proposal as well as the recognition that if any such landholding was sold through this process that a properly constituted community body would have first refusal on the land.

9. Which of the following best describes your views on making any sale or transfer of the whole or greater part of an island (or, possibly, a remote peninsula) subject to the public interest test (see section 5 of the consultation document)?

Fully supportive

Please explain the reasons for your response

Community Land Scotland agrees with the inclusion of islands within this proposed legislation. We do not currently have a settled view on what proportion of inhabited islands should trigger a public interest test. Instead we agree that sales of a majority of an inhabited island would need to be approved by the regulatory body.

However, we would also recommend that the criteria should also include ownership of defined categories of local assets of community importance (for example, shops, hotels, harbour areas,



suitable housing land, airstrip etc). This would align with our position of including urban areas within land reform legislation and ensuring that concentration as well as scale are adequately considered.

10. Which of the following best describes your view of the proposed policies on non-domestic rates and valuation (see pages 27 and 28 of the consultation document)?

Fully supportive

Please explain the reasons for your response

Community Land Scotland supports amendments to the taxation system to help further land reform. We consider taxation to be an important policy instrument in support of progressive land reform. Scotland's uniquely concentrated pattern of rural land ownership is underpinned by a range of grants, subsidies and tax exemptions which drive up land prices and build and protect private wealth. Large scale landowners benefit from numerous tax exemptions that contribute to inflated land market values. Indeed, the scope to reduce individuals' and entities' tax burdens can often be a significant motivation for large-scale land purchases.

The decentralisation of non-domestic rate setting would allow local councils to be more responsive to local need. The separation of unimproved value and improved value could be an important mechanism for tackling absentee landlordism, the purchase of land as a financial 'hedge' and ensure that landowners actually use the land for sustainable development as they are morally (if not yet legally) obligated to do.

Community Land Scotland also agrees that all land should be added to the Valuation Roll, even if exemptions apply. The lack of transparency around landownership is a continual hurdle for diversifying ownership and for communities to be able to further their land ownership ambitions. Greater transparency of landownership and sales could be the bedrock of further land reform and any interventions which could achieve this are welcomed by Community Land Scotland.

In addition to the taxation suggestions in the consultation, we also consider that tax reform should take place alongside reform of the subsidy system and should include the following:

- A demand for immediate repatriation to Scotland of powers over Inheritance Tax and Capital Gains Tax and the declaration of the intention to remove these exemptions for land
- Initiation of a phased re-introduction of non-domestic rates for agricultural and forestry land



We also support amending the Land and Buildings Transaction Tax (LBTT) to include an escalating supplement on sales of land meeting specific criteria with revenues from supplement being added to the Scottish Land Fund. This could follow the precedent of the Additional Dwelling Supplement for second homes which adds 6% on top of the LBTT – a similar mechanism could be applied to individuals who own multiple landholdings. We note that the Scottish Land Commission has also recommended that the LBTT be amended in line with our proposal.

We note that the SNP manifesto for the 2021 Scottish Parliament Election contained a commitment to introducing ‘land value legislation’, which broadly aligns with the outlines in this consultation.

Financial implications

11. Any new law can have a financial impact which would affect individuals, businesses, the public sector, or others. What financial impact do you think this proposal could have if it became law?

Some increase in costs

Please explain the reasons for your answer, including who you would expect to feel the financial impact of the proposal, and if there are any ways you think the proposal could be delivered more cost-effectively.

The increased powers and role of the Scottish Land Commission/Scottish Land Court would require more funding and administrative support which would have to come from the Scottish budget. Landowners may have increased costs associated with the administration required at the point of sale if over the 500ha threshold.

Equalities

12. Any new law can have an impact on different individuals in society, for example as a result of their age, disability, gender re-assignment, marriage and civil partnership status, pregnancy and maternity, race, religion or belief, sex or sexual orientation.

What impact could this proposal have on particular people if it became law? If you do not have a view skip to next question. Please explain the reasons for your answer and if there are any ways you think the proposal could avoid negative impacts on particular people.

CLS agrees with the considerations of property rights set out in the consultation document

Sustainability



13. Any new law can impact on work to protect and enhance the environment, achieve a sustainable economy, and create a strong, healthy, and just society for future generations.

Do you think the proposal could impact in any of these areas? If you do not have a view then skip to next question. Please explain the reasons for your answer, including what you think the impact of the proposal could be, and if there are any ways you think the proposal could avoid negative impacts?

This proposal could significantly boost the chance of Scotland creating a stronger, healthier and more just society for future generations. Moreover centuries of concentrated landownership have resulted in Scotland having some of the most degraded and deforested land in Europe. Diversified landownership would provide opportunities for ecosystem regeneration and community, social and economic regeneration.

General

14. Do you have any other additional comments or suggestions on the proposed Bill (which have not already been covered in any of your responses to earlier questions)

N/A

