

## Land Reform Bill 2024

### Stage 1 Evidence for the Net Zero Committee

#### Community Land Scotland

#### Part 1 of the Bill

#### General Purpose in Relation to Large Landholdings

1. **Do you agree that there is a need for further land reform to address issues around large landholdings in Scotland?**

Community Land Scotland's evidence relates only to Part 1 of the Bill as introduced. CLS is not offering evidence on Parts 2 or 3.

Community Land Scotland supports the need for significant further land reform. Scotland has one of the most concentrated patterns of landownership anywhere in the world. Research by the Scottish Land Commission has highlighted the negative impacts of concentrated landownership.<sup>1</sup> Research by Andy Wightman has recently shown that landownership is further concentrating in Scotland despite the 25 years since devolution and several pieces of land reform legislation since.<sup>2</sup> This has serious repercussions for how power and influence is accumulated, wealth is distributed and how Scots can respond to the climate and biodiversity crises.

Community Land Scotland (CLS) welcomes the introduction of the Land Reform Bill as the means of triggering the necessary scrutiny and enabling the consideration of significant strengthening. **Significant change is required to make this a worthwhile and workable set of land reform proposals.**

In particular we welcome the following aspects of the Bill, but all of which require significant strengthening to make them meaningful or workable:

- Community engagement obligations (Question 3, 4 and 5)
- The principle of penalties for failures in relation to Land Management Plans (Question 5)

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<sup>1</sup> [The Model CHP for the Scottish Government and Associated Public Authorities Sector in Scotland - Word Template \(landcommission.gov.scot\)](https://landcommission.gov.scot)

<sup>2</sup> [Who Owns Scotland 2024 \(a preliminary analysis\) - Land Matters \(andywightman.scot\)](https://andywightman.scot)

- Prior notification of sales and the opportunity for communities to register an interest – requiring amendment of Community Right to Buy to make the proposals workable (Question 6)
- The principle of lotting of land for sale (Questions 7 and 8)

The impact of the Bill will be very limited as the hectareage thresholds for consideration of key aspects of the Bill are set too high. CLS favour a unified threshold for all purposes in the Bill at 500 hectares.

Further, the Bill has a number of omissions which need to be included and without which the Bill will fall short in meeting an expressed political desire for material change in the way Scotland's land is owned and managed, as follows:

- Enforcement proposals to support the delivery of actions within land management plans, in line with public interest considerations (Question 5)
- The inclusion of urban and peri-urban areas within the prior notification and Right to Buy so they can benefit from the legislation (Question 6)
- Applying a public interest test to buyers of land (Question 9)
- Defining public interest considerations when considering lotting (Question 9)
- Ensuring public interest considerations can be used to assess the need for action within existing landownership (Questions 9 and 10)
- Updating the functions of the Land Commission to support its new and wider remit (Question 10)
- Strengthening the enforceability of the Land Rights and Responsibilities Statement (Question 10)
- The governance relationship between the Land and Communities Commissioner and the Commission (Question 10)
- Additionally, the Land and Buildings Transaction Tax should be extended for large land purchases (Question 30)

Our chief concern with the Bill is that it falls well short of seriously addressing the question of land ownership diversification in Scotland and offers limited influence on the issue of lesser significance, land use and management.

The key land question for Scotland is one of land ownership. Land use and management primarily hinges upon ownership. There are no mechanisms within the Bill which will be capable of significantly impacting the scale and concentration of existing ownership. The proposed Land Management Plans provide no means of changing ownership and, in providing

no effective means of monitoring their implementation, let alone providing for any enforcement, they can simply be created then ignored.

Questions of addressing the public interest in the ownership of land have been avoided, and contrary to the commitments to introduce a public interest test, the Bill provides little clue or definition as to relevant public interest considerations in the ownership of land. The Bill needs to consider the public interest in both the sale and the ownership of land.

**CLS hopes that the Net Zero Committee will be able to recommend at Stage 1 that the matters outlined above will be addressed by the Scottish government so that the Bill is as robust and coherent as it can be to tackle the scale *and concentration* of landownership in Scotland.**

**2. Will the proposals in this Bill fulfil the Scottish Government’s objectives in relation to land reform?**

The objectives for this Bill as stated in the Policy Memorandum do not meet the objectives of government policy previously clearly stated in manifesto commitments and in the consultation on the Bill, nor in relation to the recommendations of the Scottish Land Commission, with regard to:

- achieving a diversification of land ownership
- applying a public interest test on land acquisitions
- strengthening the Land Rights and Responsibilities Statement
- introduce new requirements to access public funding for land-based activity

The omission of these key matters is material in understanding the weakness of the current proposals.

The focus on land management, severely limiting the ability to address questions of the scale of ownership, alongside the omission of concentration of ownership and a limited notion of the public interest in the ownership of land are serious areas of weakness and would need to be addressed to meet previously stated Scottish government objectives, many of which are shared by other parties.

**3. Do you support the proposal that the Scottish Ministers may, by regulations, impose obligations on landowners to promote community engagement in relation to large landholdings?**

In principle yes, CLS welcomes obligations on landowners to promote community engagement in relation to what are described as large land holdings, a term CLS would prefer to see referenced as *significant landholdings*.

However, there is no definition of the considerations Scottish Ministers must have in drafting those regulations and CLS believe parliament should seek to provide a framework of matters that Ministers must address in drafting the Regulations.

Ministers should be required to address a range of policy objectives when framing the regulations; these should include, inter alia:

- The desirability of progressively achieving a more diverse ownership of land
- Achieving relevant human rights.
- Furthering sustainable development
- Securing a just transition to net zero
- Advancing community wealth building
- Maintaining or restoring biodiversity
- Increasing community agency on matters seen as important to them
- The delivery of an adequate supply of affordable social housing, and of workspace for employment
- The appropriate repopulation or settlement of land
- The creation of new land and agricultural tenancies, for example crofts and farms/smallholdings
- Adherence to the terms of the LRRS

There needs to be a clearer definition of what community engagement is expected to be and what likely obligations are within a Land Management Plan and it would be appropriate to include reference to the Land Rights and Responsibilities Statement (Section 44B).

Furthermore, the definition of the community, in regard to 'community engagement' needs to be more clearly defined and be open to all local people and agencies with a relevant interest over the land, not just a Section 34 compliant community body. This needs to be expanded beyond the community bodies which can report breaches of Land Management Plans.

### **Community request to lease land**

The regulations to include an obligation to consider community requests to lease land (44C) appear to be entirely unnecessary in its current form. This is because the provisions, as drafted,

will not change anything. In the current situation anyone can request a lease, and it is unclear what an obligation to consider a request looks like.

If this section of the legislation is to be made meaningful and have some value the following need to be included in the Bill:

- Specify process for assessment of request to lease land
- Specify grounds for rejection of request to lease land with an appropriate penalty for failing to properly consider a request
- Widen scope of eligible community bodies beyond "a community body within the meaning of section 34 of the Land Reform (Scotland) Act 2003"
- Refusal to consider a valid request to lease should feature as a material consideration within any future CRtB decision by Scottish Ministers

It is not clear why, if it is appropriate to include an obligation to consider a lease of land, why there should not also be an obligation to consider a request to buy land, with similar provisions as suggested above for leasing.

### **Criteria for compulsory Land Management Plans**

The criteria for landholdings which must produce a compulsory Land Management Plan (44D) needs broadened so that a meaningful number of landholdings and communities can benefit, and so that urban and peri urban Scotland are not excluded. CLS propose:

- 500ha
- 25% of any inhabited island
- Sites of community significance - further detail in Question 6

Bringing the threshold down to 500ha rather than 3,000ha would mean 2,025 landholdings rather than c.420 will be under a requirement to produce LMPs.<sup>3</sup> Many of the landholdings which would be caught by the lower 500ha threshold will already be producing LMPs, as is already good practice amongst conservation organisations, public forestry, responsible private landowners and community landowners.

CLS suggests that the criteria set out above to assess which landholdings should produce Land Management Plans, should also be used to trigger a 'transfer test'. If the threshold for LMP and the transfer test are the same this will provide greater policy coherence and oversight for

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<sup>3</sup> [Financial Memorandum accessible \(parliament.scot\)](#).

changing land management but also landownership. The transfer test could then incorporate LMP considerations to ensure that future land use after transfer works in the public interest.

The implications of the threshold alignment at 500ha would be that 2,025 landholdings would be eligible for LMPs as well as the ‘transfer test’.<sup>4</sup> By careful administrative introduction of the process for LMPs, the Land Commission should be able to cope and the additional casework should be at relatively small cost.

### **Composite or aggregate landholdings**

Sections 44D and 46K make clear that the criteria apply to single, composite or contiguous holdings. This ignores the considerable issue of aggregate holdings which exceed these criteria and contribute significantly to the concentration of landownership in Scotland. The Committee should ask for further clarification on what constitutes ‘composite holdings’ within the Bill and why this based on persons linked through the Register of Persons Holding a Controlled Interest in Land, rather than within Companies House or another UK-level register. This has the potential to be used as a loophole which the Committee should note at Stage 1.

In both these sections, “contiguous” should be removed, so that aggregate landholdings are included within LMP requirements and the transfer test. For example, corporations such as Gresham House Ltd partnerships own a significant amount of Scottish land (53,775 ha).<sup>5</sup> Yet due to their fragmented landholdings, none are over 3,000ha.<sup>6</sup>

These kinds of aggregated, corporate landholdings need to be included in the Bill.

Aggregate landholdings could be included within the Bill in two ways:

1. Amend to include aggregate holdings (new sections 44D and 46K) – the detail could be left to the Commission/Ministers to set out guidance to address this:
  - a. For example public utility organisations could be exempt from land management plans on aggregate holdings
  - b. There appears to be existing mechanisms in the Bill (*44B(2) - 15 Subsection (1) does not require the obligation it describes to be imposed in connection with all land to which section 44D applied*) to discount parts of a landholding from these provisions - this could be used to omit certain holdings from LMPs. This requires further clarification. CLS asks that the Committee enquire as to what this opt-out

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<sup>4</sup> [Financial Memorandum accessible \(parliament.scot\)](#).

<sup>5</sup> [Who Owns Scotland 2024 \(a preliminary analysis\) - Land Matters \(andywightman.scot\)](#)

<sup>6</sup> [Large-scale Rural Land Sales 2020 – 2022 - Land Matters \(andywightman.scot\)](#)

provision is for and that an additional requirement should be added that this clause only be applied for good reasons.

2. The Bill could provide discretion to the Land and Communities Commissioner (LCC) in exceptional circumstances where the ongoing acquisition of multiple smaller sites may be seen to act against the Public Interest. This discretion, when exercised, could require:
  - a. Land management plan for each of the aggregated holdings if total holdings are over 500ha
  - b. Regulations then stipulate what aggregate landholder has to do – for example the landowner can determine with Commissioner if a single LMP is needed for each holding or whether one LMP covers landholdings within the same geographic area

**CLS hopes the Committee in their Stage 1 report can urge the Scottish government to give consideration to foregoing issues and in seeking appropriate strengthening of the Bill.**

4. **In principle, do you agree that owners of large landholdings should have a legal duty to consult on and publish land management plans?**

Yes, the introduction of compulsory Land Management Plans is welcome, *if* they result in robust mechanisms for supporting better land management in the public interest, can impact damaging land management practices, and provide new routes to diversified ownership in the most extreme cases of poor land management.

Land Management Plans *could* be an effective tool for making Scotland's land work in the public interest and, in some circumstances, lead to diversifying landownership, however the proposals in the Bill need to be strengthened.

The new Land and Communities Commissioner should be required, following consultation, to provide guidance on what LMPs should contain, in drawing up guidance the LCC must address the following policy objectives (44B 3):

- The desirability of progressively achieving a more diverse ownership of land
- Achieving relevant human rights.
- Furthering sustainable development
- Securing a just transition to net zero
- Advancing community wealth building
- Maintaining or restoring biodiversity

- Increasing community agency on matters seen as important to them
- The delivery of an adequate supply of affordable social housing, and of workspace for employment
- The appropriate repopulation or settlement of land
- The creation of new land and agricultural tenancies, for example crofts and farms/smallholdings
- Adherence to the terms of the LRRS

Guidance issued by the LCC and/or Ministers will be required to be updated following any revision of the LRRS.

As it stands the Bill will grant powers to Ministers "to impose obligations by regulations" but there is no indicated timescale by which these regulations have to be introduced/commenced, nor any considerations Scottish Ministers must have in drafting the regulations. This is unsatisfactory and leaves too wide a discretion to Ministers.

**CLS hopes the Committee in its Stage 1 report will urge the Scottish government to address the above points to clarify and strengthen the Bill.**

**5. Do you support the process for investigating alleged breaches of community engagement requirements for large landowners set out in the Bill? Do you support the proposed level of penalty for contravention?**

Yes, there should be a process for investigating breaches.

No, the proposed penalty levels are not adequate.

**Breaches**

The required publication of a LMP is insufficient in itself and, without a means to monitor implementation, may prove to be a largely meaningless gesture.

It is vital to have robust processes for reporting breaches and meaningful penalties for landowners that do not comply with legislation.

The reporting of breaches in the Bill requires strengthening to make them more inclusive and effective



## Penalties for not producing or complying with Land Management Plans

A £5,000 fine for not producing a LMP is largely worthless and may simply be viewed as a good value price for not producing a LMP.

Without further powers the Commissioner has no effective means of implementing the requirement for a Land Management Plan. The Commissioner should be given escalating powers. It is possible to envisage a staged escalation process, for example:

- Stage 1 Escalation: a fine which is considerably more than £5,000 to provide the correct incentives to act.
  - There is existing precedent within Data Protection breaches that link fines to a percentage of annual turnover of the guilty party. The Information Commissioner has the power to issue a monetary penalty for an infringement and this can range from 2-4% of global annual turnover
- Stage 2 Escalation: The Commissioner has the power to impose a LMP order which creates an obligation to produce a LMP. Failure to comply with the order resulting in:
  - The Commissioner making a public report on the failure to comply with the order, and
  - The LCC being able to initiate action using powers within the Agriculture Bill which would impact the owners entitlement to receive payments of public funds (cross compliance).
- Stage 3 Escalation: If escalation 2 did not bring the desired results the LCC would have the power to report a continued breach which could be made a criminal offence, or alternatively, the LCC could have powers to make an order requiring the sale of the land in whole or in lots.
  - In such circumstances an option would be for Ministers to purchase the land

The key point is that not complying with LMP currently has no consequence and may render the measure largely worthless. CLS recommend that the penalties associated with not producing a LMP should be applied to not complying with a LMP.

## LMP monitoring

The LCC should be given light touch powers to initiate monitoring the implementation of LMPs by seeking from time to time, if they consider this appropriate, a short report from owners indicating the progress being made against the plans and publish the report seeking comment from any interested parties.

Where the Commissioner considers that the implementation of the management plan has, without good cause, not been sufficient, they should have the power to publish a report to this effect and seek action from the landowner within a defined timescale.

If suitable action is not taken the LCC may levy a proportionate fine and impose an order requiring identified issues to be actioned by the landowner. Failure to comply would trigger the escalating actions described above.

Fines should be paid into the Scottish Land Fund as a means of helping meet Scottish Government land reform policy objectives.

**The Committee is encouraged to recommend to the Scottish government the need to significantly strengthen the sanctions to ensure compliance with both the need to produce a LMP and its monitoring thereafter.**

### **Reporting breaches of LMP**

CLS welcomes the ability for groups to report breaches of LMPs and is an important means of securing transparency and compliance. However the proposals under the draft Bill are too narrow.

Stating in law who is eligible to report a breach, removes the rights of others and individual citizens to report alleged breaches, or would require any citizen to have to report a breach to a public body and convince them of the need to report the breach.

OSCR, the Scottish Charity Regulator, has a robust mechanism for reporting concerns about charities and to avoid vexatious claims. Any member of the public can report concerns. A similar process could be followed in the reporting of LMP breaches to provide more thorough and meaningful oversight.

The following issues with the reporting of breaches need to be strengthened within the Bill:

- Any public agency or properly constituted body and any member of the public may report an alleged breach in not producing a plan or in its subsequent implementation.
- Further clarification is needed around how much of the landholding in question a community body's area needs to cover for them to be eligible to report breaches
- The Land and Communities Commissioner should be able to initiate enquiry into landownership themselves after consultation with the Commission, and not just be reliant on someone or somebody reporting an alleged breach.

- Putting the onus on local community groups with an interest in the land to report breaches is ineffective as for various reasons communities may not want to threaten their relationship with a landowner who may have monopoly power over the local area or with whom they may wish to pursue a negotiated sale. There is existing evidence of the issues this presents when looking at the work of the Tenant Farming Commissioner who has dealt with only a handful of breaches as tenants have to report their landlord – this is a serious limitation. Our suggestion above that the LCC may at their own discretion seek a report from a landowner on progress provides a useful alternative mechanism to address this issue.

**CLS urges the Committee to raise these issues in its Stage 1 report.**

### **Tenancies and Land Management Plans**

There are questions within the Bill over the necessary process if the actions of a tenant do not comply with the LMP as set out by the landowner. Tenant farmers will be required to produce whole farm plans as a condition to receiving support payments, which could conflict with a landlord's land management plan. It may be advisable for landlords to be required to engage with both communities and tenants when drafting land management plans. Similarly there may be possible conflict where a community's interest in land overlaps with a tenant's interest in land. These challenges may be particularly pronounced for crofting estates which may have many hundred individual crofters sitting under one Land Management Plan. Scottish Ministers are one of the largest crofting landlords, this potential conflict needs to be addressed within the Bill.

**CLS asks the Committee to invite the Scottish Government to consider ways to address these issues.**

**6. Do you support in principle strengthening community bodies' opportunity to buy large landholdings?**

Yes, however CLS disagree with the definition of 'large landholdings' and instead propose that 'significant landholdings' is the phrase used and that the following criteria are used:

- a) A fixed threshold of 500 hectares
- b) Land that accounts for more than 25% of a permanently inhabited island

- c) Site of community significance - Land that a designated public body (potentially the Scottish Land Commission or planning authorities) can agree is of significance to any applying community

There is a longstanding and unambiguous policy recognition by the Scottish Government and Parliament that land reform encompasses both the urban and rural contexts, and urban areas should not be excluded in the provisions of this new Land Reform Bill. Since the 2015 Community Empowerment Act rural and urban Scotland have both benefited from access to land reform legislation. The current draft Bill will exclude urban Scotland. It will not provide any mechanisms to ensure that the public interest is considered in urban land management or urban land sales. This is a pressing issue in urban and peri-urban areas which are often blighted by vacant and derelict land, absentee and corporate landowners and widespread land banking and speculation.

The desire for urban Scotland to be included in the Bill was shared by a strong majority of respondents to the question on urban in the consultation (Q3). 67% of respondents were in favour of inclusion.<sup>7</sup> There is clearly widespread support for urban provision in the Bill.

310 respondents provided written response to Q3 (64% of respondents), evidencing a strong coalition of organisations, local authorities and individual interested in urban land reform.<sup>8</sup>

In recent independent polling on land reform 75% of respondents agreed that 'Land reform should cover all of Scotland, not just rural Scotland.'<sup>9</sup>

The omission of urban and peri-urban Scotland from the Bill, and the ability for communities in Scotland's town, cities and villages to make use of further opportunities to buy land will seriously limit the ability for the Scottish Government to meet its policy objectives of diversifying land ownership and further empowering urban communities.

**CLS urges the Committee to raise in its Stage 1 Report this serious omission in the Bill with the Scottish Government and to consider the suggestion of how to rectify this made by CLS.**

- **If you answered "yes", does Section 2 of the Bill go about this in the right way to address the Government's aims?**

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<sup>7</sup> [Land reform in a Net Zero nation: consultation analysis - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/land-reform-consultation-analysis-2024/pages/10.aspx)

<sup>8</sup> [Land reform in a Net Zero nation: consultation analysis - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/land-reform-consultation-analysis-2024/pages/10.aspx)

<sup>9</sup> [Land-Reform-in-Scotland-Topline-May-2024.pdf \(diffleypartnership.co.uk\)](https://www.diffleypartnership.co.uk/land-reform-in-scotland-topline-may-2024.pdf)

The Prior Notification of Sale for communities is a welcome mechanism only in so far as it seeks to tackle the number of sales taking place off the open market (61% of land sales were off market between 2020-2021).<sup>10</sup> This new mechanism will mean that land transactions over a 1000ha threshold will have to be made public and where the community will be given the opportunity to potentially buy the land or a lotted part of it.

CLS firmly believes the threshold should be reduced to 500 hectares to widen the scope of the Bill's provisions to increase opportunities for communities and is an administratively manageable threshold.

It is disappointing that much needed reforms of Community Right to Buy (CRtB) are not included in this legislation and have instead been moved into a Review which will report in December 2026. CLS have considerable evidence from our members that CRtB has ceased to function as it should and is no longer delivering community ownership as intended. The Scottish Government should provide a commitment to a legislative vehicle to introduce any reforms to CRtB following the review.

This review notwithstanding, the Scottish government's Bill proposals themselves do amend the Community Right to Buy (CRtB) legislation but fail to do so in a meaningful way or in a way that will make the Prior Notification of Sale process workable. As the proposals stand, they appear unworkable and the draft Bill needs amending to make the proposals viable.

In practise, the current proposals are extremely unlikely to make it easier for communities to buy land as the Prior Notification mechanism proposed in the Bill appears to build on practises adopted in the current administration of the 'late application' process under existing CRtB which has not been successfully used since 2017.

The 'late application' practice is now interpreted as only applicable when a community body is *already* in possession of a Section 34 letter and actively working on a CRtB application. This is simply unrealistic and it is concerning that this already flawed system is providing the basis for the new Prior Notification provision.

Furthermore the timescales for communities to respond to a Prior Notification are not practical. For example, it currently takes 2 months for the Scottish Government to get a Section 34 letter stating that the community group is a compliant body to be able to use CRtB legislation, so the specified timelines for communities to act are not achievable.

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<sup>10</sup> [Scottish-Estates-Q4-2021-Market-Review-final\\_web\\_compressed.pdf \(struttandparker.com\)](#)

In order for the Prior Notification of Sale to function effectively the following changes will be needed:

- If the Prior Notification mechanism is going to be agile and effective it needs to accept that interested community groups are unlikely to be CRtB compliant ahead of time and that they may not have a clear public record of interest in the land. This is especially problematic when there is a monopoly landowner, who has held the land for many years and there seems to be little likelihood it will come on the market.
- The eligible community bodies who can be added to the register for the 'Prior Notification of Sale' should be as broadly and inclusively defined as possible and not limited to being CRtB compliant, i.e. having a pre-existing Section 34 letter
- The 40 days in which a sale is prohibited to allow for application to register interest (46F) needs to be extended for a CRtB application to be successfully submitted.
  - If the time limits are not amended, then Ministers should be obliged to make available 'standard submissions' to community bodies to assist compliance with requirements for Part 2 and be required to respond with a Section 34 letter within one working week of application.
- In order for the register of community bodies who may receive a prior notification to be function, further clarity is needed on:
  - Who holds and manages the register of organisations to be notified about sales
  - What the eligibility criteria are to be on the register of organisations
  - The broadening of the criteria to be as inclusive as possible
- For this mechanism to be inclusive and agile, and to broaden opportunity for communities as far as possible, there needs to be an allowance for a range of recognisable community bodies to indicate a potential interest registration within first 30 days.

**CLS urges the Committee to raise in their Stage 1 report these serious concerns about the unworkability of the proposals in the Bill and extend the relevant timescales. Without change the proposals will make no practical difference and thus in practice worthless.**

- **Do you think that 1,000 hectares is an appropriate threshold?**

The threshold of 1000ha for the transfer test is too high.

Scottish Land Commission research has shown that this will impact only around 8 transactions per year, if this was reduced to 500ha it would likely impact 17.<sup>11</sup> This cannot be regarded as being an excessive number.

In addition this level still protects the overwhelming majority of family farms as 96.4% of agricultural holdings in Scotland are under 500 hectares in size.<sup>12</sup>

The concept of a 'large landholding' is different in urban and peri-urban areas. What has large impact in a more rural context may differ in a more urban context. This is why the Scottish Land Commission uses the term 'significant' landholding and 'excessive power' to denote not just the physical size of the landholding but the impact it has on the wider area.<sup>13</sup>

When thinking through landownership in terms of significant impact, the case for including all of Scotland's communities is compelling. Further, CLS has concerns in principle that all Scottish communities deserve to benefit from land reform proposals and by designing this Bill in this way returns Scotland to a pre-2015 separation of different community land rights between urban and rural Scotland and is undesirable.

Scotland's villages, towns and cities have numerous examples of negligent and damaging landownership that would not currently be addressed by the draft Bill. The current ownership of the Ayr Hotel, Taymouth Castle, Largo house and adjacent land, and the Crieff Hotel are just some prominent examples of significant local land ownership challenges where it is necessary to offer communities equivalent to those in rural areas but are unaddressed in the Bill.

A solution to this is to have both a criteria-based threshold and a broad and discretionary criterion that would 'capture' cases that are "significant" or result in "excessive power":

- a) A fixed threshold of 500 hectares
- b) Land that accounts for more than 25% of a permanently inhabited island
- c) Sites of community significance - Land that a designated public body (potentially the Scottish Land Commission or planning authorities) can agree is of significance to any applying community

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<sup>11</sup> [Rural Land Market Report \(landcommission.gov.scot\)](#), p.16

<sup>12</sup> [Written question and answer: s6w-10506 | Scottish Parliament Website](#)

<sup>13</sup> [Legislative proposals to address impact of Scotland's concentration of land ownership - News - News & Events - Scottish Land Commission](#)

This third discretionary criterion we envisage would be supported by guidance. Such guidance should be required by the provisions of the Bill, to be issued by Ministers who would be bound to have regard to a range of considerations in drafting the guidance and following consultation with the Land Commission. This guidance would set out the issues that should be considered when using the discretion to bring a piece of land within consideration for any decision that a public interest test, transfer test, LMP or prior notification of sale is warranted to protect against “the creation or continuation of a situation in which excessive power acts against the public interest”.<sup>14</sup>

This approach has a number of advantages, reflects the fact that land ownership patterns/contexts are so varied, and in particular:

- It avoids the need to define ‘urban’ and draw an artificial boundary between urban and other land.
- It means that the land reform mechanisms in the Bill can address all aspects of “significance” and the potential “creation or continuation of a situation in which excessive power acts against the public interest” – not just size of landholdings.

The approach is also similar, in concept, to a number of other statutory decision-making processes relating to either land and/or the implementation of legislation.

**CLS urges the Committee, in its Stage 1 report, to recommend the 1,000 hectare threshold be reviewed and to consider the proposals CLS makes.**

#### **Section 4**

##### **7. Do you, in principle, approve of allowing the Scottish Ministers to make a lotting decision in relation to sales of large landholdings?**

Yes, lotting is a potentially impactful mechanism if used to secure break-up of large landholdings in the public interest.

However, the lotting process as envisaged is a weak proposal as the Bill offers no framework of the considerations the LCC should have in making recommendations. Further, who is buying the land and for what purpose is not a consideration in the process at all, when this is hugely important. In short, the transfer test is not a comprehensive public interest test.

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<sup>14</sup> [Legislative proposals for addressing concentrated landownership \(landcommission.gov.scot\)](https://www.landcommission.gov.scot/legislative-proposals-for-addressing-concentrated-landownership)



There is also a danger the lotting process as envisaged could fail to deliver its intended purpose as another significant landowner could purchase the lots, or use holding companies or associates to purchase the lots and subsequently aggregate them or manage them as a single entity.

A robust Public Interest Test is needed to underpin any lotting decision (as outlined in Question 9). This would require an assessment of the prospective buyer and their plans, in other words a Fit and Proper Person, (perhaps more fittingly described as an Approved Owner test to embrace the plans for the land) is required, a version of which already exists in Scottish legislation.<sup>15</sup>

A process of assessing prospective buyers of landholdings of significance, which align with the criteria set out in this consultation response (500ha, 25% of an inhabited island and sites of community significance), would mean that there can be robust public scrutiny of who owns landholdings of significance and how they are to be used.

One approach to this would be to make provision that anyone seeking to purchase land in Scotland above the agreed threshold be required to be an 'approved owner' for the purchase of owning land of significance. Prospective buyers would need to apply to an approving body, potentially the Scottish Land Commission, in order to receive this status.

For example, to gain approved status a person could be required need to, inter alia:

- indicate whether you lived on the land in question or adjacent to it, and for how long they have lived there
- how much other land in Scotland they had a controlling interest in and specify where
- be required to make a statement of intended use of the land (with guidance being available on the sort of public interest issues to be addressed within such a statement)
- be required to agree that you would produce a LMP within 1 year of taking ownership of the land which would give effect to the statement of intended use of the land
- to agree to provide a report, every fourth year to the LCC of progress on the implementation of the plan

The LCC could then monitor implementation in line with the provisions set out above on their general role in monitoring plans. Where progress was not satisfactory and could not be resolved satisfactorily, in the most extreme circumstances, the approval to own land could be

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<sup>15</sup> [4. The 'Fit and Proper Person' Test - Landlord registration: statutory guidance for local authorities 2017 - gov.scot \(www.gov.scot\)](#) and [Chapter 5 - Fit and proper person test - Licensing system for mobile home sites with permanent residents: guidance for local authorities - gov.scot \(www.gov.scot\)](#)

withdrawn, forcing the land back onto the market and could be subject to a lotting requirement.

The approved status would relate to a particular piece of land, not a general approval.

Communities seeking to own land under the existing Community Right to Buy processes are already required to undergo approval tests. In the first instance, under Section 34 of the Land Reform (Scotland) Act 2003, as amended, the community must have a compliant constitution. That constitution, inter alia, provides for open membership of the organisation within the community; requirements to guarantee a majority of community members in control; that there is a minimum number of members; that you have in place proper mechanisms for financial management; that any surplus funds are applied only for the benefit of the community; that upon dissolution the assets are protected first for wider community use or fall to the benefit of the wider public through the government; that there are transparent arrangement for any community member to have insights into the decisions of the body. Beyond this initial approval process, any exercise of the Right to Buy must formally demonstrate it is in the public interest.

Given these stringent existing tests on a community in seeking to own land, communities in essence become 'approved owners' through existing legislation. This constitutes an approval to own in itself and removes the need for the new 'approved owner' test, as set out above, to be applied to community bodies.

In essence, the lotting process needs to be significantly more comprehensive and the Land and Communities Commissioner needs to have clear oversight over the lotting, sale and management of land under this process.

These issues are demonstrated in research by Andy Wightman which has shown that even when land transactions may be eligible to be covered by these proposals, likely decisions around lotting and prior notification of sale would not have resulted in any meaningful difference in terms of the ownership or structure of the landholding.<sup>16</sup>

**CLS urges the Committee in its Stage 1 Report to raise with the Scottish government the inadequacy of their current proposals in not providing for a comprehensive public interest test in the ownership of land and should seek significant strengthening of their proposals.**

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<sup>16</sup> [Land Reform \(Scotland\) Bill \(4\) - Land Matters \(andywightman.scot\)](#)

- **If so, do you agree that 1000 hectares is an appropriate threshold?**

See answer to 6 above.

8. **Is the proposed process for making a lotting decision appropriate and workable?**

Not as it currently stands, see answer to Question 7.

9. **Do the Scottish Government’s proposals for a “transfer test” adequately take the public interest into account?**

The introduction of a ‘transfer test’ in the draft Bill is a disappointing watering down of a meaningful Public Interest Test, as was consulted on. The transfer test does not make any assessment of the wider public interest, nor make an assessment of whether the buyer or their plans for the land meets the public interest.<sup>17</sup>

Land transfers, as defined by the draft Bill, are infrequent and many of the most significant land transactions – through succession or transfer of land between companies – would not be included.

The Scottish Government has a clear and consistent commitment to diversifying landownership patterns in Scotland. As it stands the transfer test is not an effective mechanism for achieving this. The proposed changes to the transfer test set out in Question 7, as well as the recommendations below would begin to make the transfer test more effective.

The transfer test should be designed to specifically address a range of public interest considerations and to inform lotting decisions.

The public interest issues (44B (d)) should be extended to increase the range of considerations.

In looking to the public interest in land transfers and lotting and in considering whether a prospective purchaser should receive ‘Approved Owner status’ they should embrace consideration of whether the envisage ownership will advance:

- The desirability of progressively achieving a more diverse ownership of land
- Achieving relevant human rights.
- Furthering sustainable development
- Securing a just transition to net zero

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<sup>17</sup> CLS have published research which details when, how and why a public interest test on land could be applied in Scotland: [Legislating for a public interest test in land sales, transfers, and management – Community Land Scotland](#)

- Advancing community wealth building
- Maintaining or restoring biodiversity
- Increasing community agency on matters seen as important to them
- The delivery of an adequate supply of affordable social housing, and of workspace for employment
- The appropriate repopulation or settlement of land
- The creation of new land and agricultural tenancies, for example crofts and farms/smallholdings
- Adherence to the terms of the LRRS

Amendment to 67N (5) – other significant public interest issues as above must be considered.

**CLS encourages the Committee to raise these issues as representing significant weakness in the Bill and urge that they are rectified.**

## Section 6

### 10. Do you support the creation of the new role of Land and Communities Commissioner?

The introduction of a new Land and Communities Commissioner (LCC) is potentially beneficial, although CLS would prefer the powers were vested in the Commission and existing Land Commissioners, albeit with the LCC taking the lead on behalf of the Commission.

- **If so, are their responsibilities under the Bill adequate/appropriate?**

No, CLS have concerns that the current role of the LCC as defined is not sufficiently linked to the wider Commission.

As it stands the effective delivery of the powers given to the LCC will be highly dependent on the individual in post, rather than building upon the considerable expertise, experience and wider accountability of the wider Scottish Land Commission. The LCC is in the exercise of their functions wholly autonomous and sits apart from the Commission, other than for the support they receive. While the LCC is part of the Commission for the purpose of its corporate decision making, the Commission has no role in the decisions of the LCC. This arrangement is unlikely to be conducive to good governance overall, with scope for divergent positions between the Commission and the LCC, with the potential to undermine coherence of the Commission in its public facing roles, and its accountability.

The LCC appears to be based upon the existing Tenant Farming Commissioner, however the LCC is taking on more of an enforcement and regulatory function than the mediatory role of the Tenant Farmer Commissioner, as such there need to be a number of changes to the role to reflect this.

To ensure greater coherence of action between the LCC and the Commission and to ensure corporate accountability, CLS recommend that the following strengthening and codification of the of the new Commissioners role:

- The LCC must consult with the Commission before making recommendations or in drafting Codes of Practise or Guidance
- The LCC must have regard to the Commission’s policies in undertaking their work and act in ways consistent with the Commission’s policies
- In the conduct of their work the LCC must have regard to any considerations the Commission itself must have regard to
- LCC should be able to issue Codes of Practice, promote any such codes; and issue Guidance in relation to LMPs
- LCC should be able to hold public hearings, at their discretion, in the exercise of their functions.

### **Updating the functions of the Commission**

Furthermore, the regulatory function of the Scottish Land Commission (SLC) is expanding under the draft Bill and this should be recognised in an updating of their functions.

For example, the following functions should be added to the functions of the Commission (Section 22 of Land Reform (Scotland) Act 2016 section 22 (5)(a):

- the contribution of land to the achievement of a just transition to net zero
- the relationship between scale of land holdings to the building of community wealth
- the desirability of progressively achieving a more diverse pattern of landownership comprising more landowners and different types of landowners
- measures to support the repopulation of land and the sustainability of communities

### **Statutory requirement to comply with the Land Rights and Responsibilities Statement and its enforcement**

The Scottish Government consulted on the strengthening on the LRRS, and there was overwhelming support for this to happen:

- 75% of respondents agreed that there should be a duty on large-scale landowners to comply with the LRRS and its associated protocols<sup>18</sup>
- 76% of respondents agreed that there should be a formal procedure for raising complaints, and provisions for independent adjudication and enforcement<sup>19</sup>
- 69% of those answering the question, thought that a breach of the LRRS should be taken into account by the public interest test<sup>20</sup>

The Scottish Government appears to consider the LRRS as insufficiently specific to be statutorily enforceable. This is worrying and signals significant weakness in the construction of the LRRS which needs to be addressed.

The Bill provides Ministers with regulatory powers and such powers could be used to turn the clear spirit and intent of the LRRS into more explicit requirements that could be subject to statutory enforcement through LMP's.

Further, if the LRRS is currently unsuited to enforcement the Bill could require an immediate review of its terms to provide a framework which would be enforceable.

Under section 44A (4) the wording could be amended so that the regulatory guidance should be compatible with the LRRS.

**The current weakness of the LRRS needs to be addressed and CLS would like to see the Committee pick this up in their Stage 1 Report as a serious weakness.**

## General questions

### Links to the Agriculture and Rural Communities (Scotland) Bill

**29. Are the changes proposed in the Land Reform (Scotland) Bill sufficient to enable tenant farmers to engage in sustainable and regenerative agriculture, and to allow them to take part in schemes and programmes under any new agricultural policy?**

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<sup>18</sup> [Executive Summary - Land reform in a Net Zero nation: consultation analysis - gov.scot \(www.gov.scot\)](#)

<sup>19</sup> [Executive Summary - Land reform in a Net Zero nation: consultation analysis - gov.scot \(www.gov.scot\)](#)

<sup>20</sup> [Executive Summary - Land reform in a Net Zero nation: consultation analysis - gov.scot \(www.gov.scot\)](#)

The key issue that needs to be considered in relation to agricultural policy is that cross-compliance of agricultural subsidy with Land Management Plan obligations needs to be named within the Land Reform Bill.

### **Fairness and checks and balances**

#### **30. Do you consider the Bill strikes a balance between the competing interests and rights of landowners, local communities, landlords and tenants, alongside the wider public interest?**

No, the Bill does not sufficiently empower communities or challenge the monopoly power of many landowners. Moreover, the public interest does not feature adequately within the draft Bill so it is not possible to consider how it sits alongside competing interests. As the current proposals only apply to landholdings over 1,000ha or 3,000ha, the vast majority of local communities around Scotland will not have an opportunity to make use of the provisions.

CLS suggest a further provision to be included within the Bill relating to the reform of Land and Buildings Transaction Tax (LBTT)

#### **Land and Buildings Transaction Tax be extended for significant land purchases**

There is a clear and legitimate precedent for governments to use taxation to seek to alter behaviours (smoking, alcohol, car fuel, etc). In relation to land, it is important to note that the Scottish Government has already introduced a premium on second home purchases to create a disincentive to such transactions.

CLS propose that the LBTT be amended to include an escalating supplement on sales of land meeting specific criteria:

- There could be a sliding scale of supplement by bands of hectareage across all ownership once over a 500ha threshold – consistent with a reduced threshold to 500ha for the ‘transfer test’ and for compulsory Land Management Plans
- Amended LBTT on land sales would follow the precedent of the Additional Dwelling Supplement for second homes – a similar mechanism could be applied to individuals who own, in aggregate, above the thresholds through multiple landholdings with rates escalating to punitive levels as the hectareage increases

- We note that the Scottish Land Commission and Future Economy Scotland have recommended similar amendments to LBTT<sup>21</sup>

## Tackling the Climate and Biodiversity Crises

### 31. In your view, does the Bill make adequate provision for the role that land might play in delivering a just transition to net zero and tackling the biodiversity crisis?

No, Scotland is one of the most nature-depleted countries in the world, ranked 28th from the bottom out of 240 countries/territories in its remaining biodiversity. It also has one of the world's most concentrated landownership patterns. In the context of the Scottish Government's Net Zero targets, financial incentives have been put in place to encourage tree planting and peatland restoration, which has resulted in an increased interest in carbon offsetting. This is attracting 'green lairds' to buy large estates in Scotland who then receive public money for environmental projects. Corporations can buy nature-depleted land, 'restore' it without engaging with or bringing benefit to the local community, and profit both from public grants and the huge rise in land values we are seeing across Scotland. The rates of peatland restoration and woodland planting need to be increased to meet nature goals, however attention must be paid to the wider impact of any financial incentives and their actual delivery of nature outcomes. This Bill should set out clear requirements for community engagement in relation to nature and climate land management. Simultaneously there needs to be a review, and likely increase, of incentives for community, conservation and non-corporate private landowners to deliver peatland restoration and native woodland planting.

The Bill makes only sparse reference to a just transition and biodiversity. It is not evident that these ideas underpin the proposed mechanisms within the legislation. As a means of addressing this the LMP regulations should require that land management will contribute to climate and biodiversity targets.

Through the various weaknesses in the draft Bill we have outlined, the Bill will make no meaningful difference to concentrated landownership and allow private investors to continue profiting from public money and inflating land prices whilst blocking out community ownership. Diversification of land ownership and further community ownership is an equitable and just way of restoring biodiversity and achieving a just transition to Net Zero.

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<sup>21</sup> [Land Reform and Taxation: Advice to Scottish Ministers \(landcommission.gov.scot\)](#), p.11 and [Land Reform for a Democratic, Sustainable and Just Scotland | Future Economy Scotland](#), p.5.