

Land Reform Bill 2024 – Areas for possible amendment and questions at Stage 1 Evidence

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

CLS would welcome the Net Zero Committee scrutinising the following areas of the Bill during Stage 1 evidence sessions:

Areas for possible amendment:

1. **Transfer test to be properly re-defined as Public Interest Test** – this helps avoid legal challenge, more firmly centres human rights and more clearly centres an assessment of the potential monopoly impact of prospective buyer and how their ownership will meet the public interest¹
2. **Thresholds of ‘significant landholdings’**: the removal of ‘contiguous’ within 44D to allow for aggregate landholdings to be included; the aligning of threshold criteria for land management plans and transfer tests:
 - 500ha²
 - 25% of any inhabited island
 - Sites of community significance - Land that a designated public body (potentially the Scottish Land Commission (SLC) or planning authorities) can agree is of significance to any applying community³
3. **Lotting Process**: decisions underpinned by public interest considerations, with lotting one of the potential outcomes of a meaningful Public Interest Test which places a forward-looking burden on the landownership
4. **Land Management Plans**: meaningful penalties for breaches and lack of compliance which include escalating proportionate fines and the potential of forced sales; broader criteria for all citizens to be able to report breaches
5. **Prior Notification of Sale**: currently based on faulty ‘late applications’ process in 2003 Act and needs serious amendment of timeframes, procedure and definitions⁴
6. **Land and Communities Commissioner**: stronger governance structures that require the Commissioner to engage more closely with the Commission; update the functions of the Commission and strengthen the enforceability of the Land Rights and Responsibilities Statement (LRRS)

Potential questions at Stage 1:

- The Scottish Government consulted on a Land Reform Bill which would address the scale and concentration of landownership – how will the Bill address the concentration of landownership?

¹ The SLC published legal advice from James Mure KC on this topic in Feb 2022: [620f73b06cbc1_Land Lines - Balancing rights and interests in Scottish land reform.pdf \(landcommission.gov.scot\)](#)

² This would mean 2,025 landholdings rather than c.420 will be under a requirement to produce LMPs and 17 rather than 8 transactions for a transfer test

³ This would be supported by guidance required by the provisions of the Bill, which would set out the issues that should be considered when using the discretion to bring a piece of land within consideration for the mechanisms within the Bill, in order to protect against “the creation or continuation of a situation in which excessive power acts against the public interest”.

⁴ There have been no successful ‘late applications’ since 2017

- Why is the penalty for not producing a Land Management Plan capped at £5,000 and there is no penalty for non-compliance? How will this be an effective means of ensuring Land Management Plans work?
- The Prior Notification of Sale for communities is based upon the 'late application' process in the 2003 Act, this has not been successfully used since 2017. How will this new mechanism work when it is based upon legislation and internal procedures which are no longer working properly?
- What was the rationale for picking 3,000ha as the threshold for Land Management Plans (LMP) applying to landholdings? Why are the thresholds for LMPs (3,000ha) and the transfer test (1,000ha) different?
- Why isn't there a meaningful Public Interest Test within the Bill despite it being in the public consultation and featuring prominently in Scottish Land Commission recommendations?
- Has any assessment been made of the likely increase in legal challenge to the 'transfer test' as public interest considerations have not been included in the Bill?
- On average 7 land transactions per year (according to Land Commission research) will be picked up by the 'transfer test' how will this deliver any meaningful change of landownership patterns?
- Why is there no assessment of who will be buying land which falls under the transfer test? Communities who are purchasing land undergo thorough assessments of their business/land plans and local consultation/balloting
- What was the policy rationale for not including Scotland's towns, villages and cities in the legislation?
- Why does the Bill not further strengthen the LRRS as recommended by the SLC?
- What are the provisions within the Bill to secure accountability and good governance in relation to the new Commissioner?

Key arguments:

1. Landownership is what matters, not land management:

- a. Land management is primarily shaped by who the landowner is and what they decide to do
- b. The UN have explicitly encouraged member states to pursue policies and legal frameworks which avoid the concentration of landownership.⁵

2. Large scale landownership is not essential to economic development or nature recovery

- a. Research shows that if you own a lot of Scotland's land then economic activity takes place on that land – that does not mean large-scale ownership is beneficial.⁶
- b. The SLC have argued that 'the economic benefits said to derive from scale of landownership may not be realised as often as they could be and where they tend to benefit landowners more than communities'.⁷
- c. Large scale private ownership is the status quo and has resulted in the various issues that the Scottish Government is seeking to address around rural depopulation/rural housing crisis/biodiversity crisis /unsustainable and damaging deer numbers/huge problems with invasive species /considerable emissions from degraded peatland

⁵ [g2300035.pdf \(un.org\)](#), p.9.

⁶ <https://www.scottishlandandestates.co.uk/sites/default/files/inline-files/The%20Contribution%20of%20Rural%20Estates%20to%20Scotland%27s%20Wellbeing%20Economy%20-%20Full%20Report.pdf>

⁷ [5dd7d6fd9128e_Investigation-Issues-Large-Scale-and-Concentrated-Landownership-20190320.pdf \(landcommission.gov.scot\)](#), p.20.

- d. Nature projects are more sustainable and resilient, and deliver wider benefits, when they are community-led and/or taking place across multiple landholdings
3. **Strengthened proposals which include a Public Interest Test will not fall foul of the European Convention on Human Rights (ECHR)**
 - a. Article 1 of Protocol 1 (A1P1), the protection of property under ECHR is not an absolute right. Parliament and Government can interfere with that right in particular circumstances which are balanced and justifiable. These circumstances are determined by a Public Interest Test. Courts are led by what Parliament and Government set out as public interest considerations.⁸
 - b. Centring the Public Interest rather than 'community sustainability' as the rationale for all new mechanisms will provide a stronger legal footing and prevent legal challenge
 - c. Previous Land Reform Acts have given rights and powers as or with even more significantly radical potential outcomes than this Bill does. All of them subject to the approval of Ministers acting in the public interest.
 - d. Other European nations who are ECHR signatories have much stronger land regulations than Scotland. For example, in Iceland ownership of land by foreign nationals (outwith the European Economic Area) who are not domiciled in the country is forbidden, subject to ministerial approval and is then capped at 3.5ha for personal use and 25ha for business operations.⁹
 4. **'Family farms' will not be significantly impacted by the reduction of the threshold to 500ha**
 - a. 96.4% of agricultural holdings in Scotland are under 500ha in size
 5. **The current proposals will not deter investment or economic development**
 - a. The Bill needs to provide thorough oversight of who is owning significant landholdings in Scotland and how they are managing it – this is a public interest concern
 - b. Businesses, investors and landowners who are owning land in the public interest and delivering wider benefits alongside the success of their enterprise need not be concerned by the Bill
 - c. However too much of Scotland is not owned in the public interest – instead current landownership extracts wealth from Scotland and contributes to our nature and depopulation crises and drives further inequality. The Bill can help ensure that landownership and investment in Scotland's land works for a much wider range of economic and social benefits.
 6. **Amended and strengthened proposals will not be too expensive to implement**
 - a. It is not clear that any of the provisions would prevent any sale in all circumstances, just the way the sale might occur. Compensation would be based on any difference in sale receipts due to government intervention and would be a fair value rather than 'hope value'¹⁰.
 - b. Point. 99 in the Financial Memorandum acknowledges the 'unlikely' possibility of Scottish Ministers as a final buyer if sales are prevented, concluding that potential liability is unknown but could be multiple millions. The memo states that 'the land purchased would of course be an asset and could potentially be re-sold at a profit.'¹¹

⁸ These remarks are taken from discussions with Prof Katie Boyle, Professor of Human Rights, University of Strathclyde, 20/08/2024

⁹ [Government of Iceland | Foreign Nationals' Real Property Rights](#)

¹⁰ This has been set out by the Land Commission when discussing use of CPOs and new CSO proposals - [5dd6a16d88752_CSO-Proposal-final.pdf \(landcommission.gov.scot\)](#), p.5.

¹¹ [financial-memorandum-accessible.pdf \(parliament.scot\)](#), p.29.