

Response by the SLA to the Scottish Governments Consultation Land Reform in a Net Zero Nation: 24.10.2022

Questions

Criteria for large-scale landholdings

Q1. Do you agree or disagree with the criteria proposed for classifying landholdings as 'large-scale':

- a) A fixed threshold of 3,000 hectares Agree
- b) Land that accounts for more than a fixed percentage of a data zone (or adjacent data zones) or local authority ward(s) designated as an Accessible Rural Area or Remote Rural Area, through our six-fold urban/rural classification scheme Don't know
- c) Land that accounts for more than a specified minimum proportion of a permanently inhabited island Agree

Please give some reasons for your answer and outline any additional criteria:

- a) Agreed. However, the proposed threshold of 3,000 hectares is set far too high and risks undermining the policy intention of other proposals contained in the consultation paper. Community Land Scotland advise a minimum threshold set at 500 Hectares (1200 acres), which is bigger than most family farms and would only affect a very small percentage of overall landholdings. This minimum threshold should also include aggregate landholdings of landowners, rather than only single landholdings.
- b) Further detail on the data zone proposals and how these might work is required as this is a complex approach which could lead to anomalies where a large landholding is split across boundaries. However, we agree some form of relevant measurement is required for urban communities
- c) More detailed is required. Why are only inhabited islands included and not all islands?

Q2. Do you agree or disagree that family farms should be exempt from the proposals outlined in Parts 5 to 7 even if they are classified as a 'large-scale' landholding? Disagree

Please give some reasons for your answer:

No. There is likely to be farming activity on most of the large-scale landholdings and the definition of what makes a family farm could be disputed. This questions could imply that families will undertake better long term stewardship than other types of land manager but this may not be the case, and these farms may need help to transition to net zero and develop nature based solutions just as much as other owners or managers.

Q3. Do you think that the proposals considered in this consultation should be applied to the urban context? Yes

Please give some reasons for your answer:

The principle that land should be sustainably managed and in the public interest applies to urban as well as rural area. We see no justification for not allowing urban communities to have Notification of Sale Rights, improved Community Right to Buy Rights and the ability to address local concentrations of scale of ownership. However, there may need to be other mechanisms and support to deliver net zero land stewardship in urban areas.

Strengthening the Land Rights and Responsibilities Statement

Q4. We propose that there should be a duty on large-scale landowners to comply with the Land Rights and Responsibility Statement and its associated protocols. Do you agree or disagree with this proposal? Agree

Please give some reasons for your answer:

The Land Rights and Responsibilities Statement is intended to apply to all landowners and land managers. There is the risk that by creating a two-tier approach to its application that the Statement is seen as being more relevant to a subset of owners and managers. Landholdings may also be disaggregated to avoid being classed in the upper tier.

We agree that there should be a duty on 'large-scale' landowners to comply with the Land Rights and Responsibilities Statement and its associated protocols. The obligations in the Land Rights and Responsibilities Statement should be made compulsory and not remain voluntary. Compliance requirements need to be clearly framed and proportionate to provide certainty for landowners as to what they have a duty to do in relation to the Statement's 7 principles. We favour extending the duty to comply with the LRRS to also include urban landowners in towns and cities based on clearly defined criteria relating to their landholdings.

We support the CLS view that holdings (of any size) that are in receipt of significant public funds (grants, subsidies, tax exemptions etc) should be subject to the new compulsory obligations under the Land Rights and Responsibilities Statement. We suggest this could be an aggregated sum (across all public resources) of £100,000 pa or more.

Q5. If there was a legal duty on large-scale landowners to comply with the Land Rights and Responsibility Statement and its associated protocols, we propose that this should be enforced by having a formal procedure for raising complaints, and by making provisions for independent adjudication and enforcement.

a) Do you agree or disagree with the proposal above? Don't know

Please give some reasons for your answer:

More detail is required here. In itself, the Land Rights and Responsibilities Statement does not constitute such a regulatory framework.

Ideally, good land management would result from a clear regulatory framework applicable to all landowners and land managers.

'Good' management could be reinforced through public subsidy or incentivisation and where stewardship fails to abide by regulation or contractual relationships this would lead to a complaints process.

b) Do you agree or disagree that only constituted organisations that have a connection to the local area or the natural environment should be able to report breaches of the Land Rights and Responsibility Statement? [Don't know](#)

Should these constituted organisations have a remit on:

- Community [Agree](#)
- Charity [Agree](#)
- Public service [Agree](#)

Please provide some reasons for your answers and any additional suggestions:

It would be better to have a clear regulatory standard against which all relevant decisions are tested. This should be adequately resourced. However, if third parties are to be used in this way then community, charity and public service bodies would seem appropriate guardians of agree standards.

c) Do you think the responsibility for investigating and dealing with complaints should sit with:

- the Scottish Government [No](#)
- a public body (such as the Scottish Land Commission) [Don't know](#)

Please provide some reasons for your answers and any additional suggestions:

Will this be a judicial process, with evidence-gathering, judgement, and appeal routes?

In terms of separation of powers, should such a function sit separately from any advisory or information function relating to land management?

We understand that there is to be a consultation on the potential establishment of an Environmental Court in 2023, following the UK's exit from the European Union, and to help Scotland meet its commitments under the Aarhus Convention. This could be an opportunity to test what cases should be heard and under what process.

The proposals may also form a new layer of planning appeal, this time for community groups. Without any recourse through the 2019 Planning Act, there is continuing argument for a community right of appeal, and in developing these proposals consideration will need to be given to how such a process would interact with land management permissions granted through the planning system.

d) Should the potential outcome from an investigation of a breach be:

- Recommendation for a mediation process [Don't know](#)
- Recommendation on how the landowner or governing body could comply with the Codes of Practice/protocols [Don't know](#)
- A direction to the landowner or governing body to implement changes to operational and/or management practices [Don't know](#)

Please provide some reasons for your answers and any additional suggestions:

A judicial process will establish precedents and will need to consider how the system will interact with other public permissions, e.g. planning consents, forestry grants and agricultural payments, as these will in turn shape what is permissible under these systems.

e) Should the enforcement powers for a breach be:

- Financial penalties Don't know
- 'Cross-compliance' penalties Don't know

Please provide some reasons for your answers and any additional suggestions:

Judicial oversight of land management decisions will determine whether the action is legal or not, and whether it is permitted or must be reversed.

Q6. Do you think the proposal to make the Land Rights and Responsibility Statement and its associated protocols a legal duty for large-scale landowners would benefit the local community? Yes

Please give some reasons for your answer:

There could be benefits for communities in encouraging the application of the Statement, particularly in respect of general transparency and achieving genuine community engagement and buy-in around proposed public benefits.
This process of open engagement could then be further reinforced through the application requirements to receive planning permission and/or public subsidies.

Q7. Do you have any other comments on the proposal to make the Land Rights and Responsibility Statement and its associated protocols a legal duty for large-scale landowners?

If there are public benefits from a legal application of the LRRS, it would make sense to extend this to all relevant landowners and managers through a consistent regulatory approach, rather than by exception or a case by case approach.

Compulsory Land Management Plans

Q8. We propose that there should be a duty on large-scale landowners to publish Management Plans. Do you agree or disagree with this proposal? Agree

Please give some reasons for your answer:

There are public benefits to developing and publishing management plans for significant areas of land. Many landowners already develop and publish their management plans which helps build confidence for local communities, heritage bodies and agencies with whom owners have a working relationship.

Q9. How frequently do you think Management Plans should be published?

Practically, a management plan for a large area of land, affecting multiple communities, will take time to gather evidence, draft and approve. A minimum period of five years is recommended, but up to ten years may be needed for drafting, approval and delivery. Thought should also be given to whether changes in landownership, implementation of significant development/infrastructure or damage caused by a major climatic incident (fire or flood) would require the automatic review and amendment of a management plan sooner than planned

Q10. Should Management Plans include information on:

- Land Rights and Responsibility Statement compliance Yes
- Community engagement Yes
- Emission reduction plans Yes
- Nature restoration Yes
- Revenue from carbon offsetting/carbon credits Don't know
- Plans for developments/activities that will contribute to local and inclusive economic development or community wealth building Yes

Please provide some reasons for your answers and any additional suggestions:

Aspects of costs and income are likely to be viewed as commercially sensitive and may not be necessary within the context of the public benefits aspects of the Management Plan.

Q11. Do you think the responsibility for enforcing compulsory land management plans should sit with:

- the Scottish Government No
- a public body (such as the Scottish Land Commission) Yes

Please provide some reasons for your answers and any additional suggestions:

There is potentially the need for a regulatory body independent of government, similar to SEPA, with the powers to handle any legally binding aspects of this proposal not covered by existing bodies.

Q12. Do you think the proposal to make Management Plans a legal duty for large-scale landowners would benefit the local community? Yes

Please give some reasons for your answer:

Where management plans processes are transparent, encourage communications and help develop thinking, build consensus on the direction of land management, then there are likely to be benefits for communities and for owners for example community volunteering, encouraging local housing, small scale renewables and ecotourism

Conversely though, landowners might not engage fully and aspire to do the minimum necessary to meet requirements, resulting in the loss of opportunities for communities.

Q13. Do you have any other comments on the proposal to make Management Plans a legal duty for large-scale landowners?

Not all land management decisions are made by owners. Consideration should be given to when tenants land managers are brought into the process.

Regulating the market in large-scale land transfers: a new Public Interest Test, and a requirement to notify an intention to sell

Q14. We propose that a public interest test should be applied to transactions of large-scale landholdings. Do you agree or disagree with this proposal? **Agree**

Please give some reasons for your answer:

However there does need to be an agreed definition of public interest to manage expectations and ensure the test could be applied both in rural and urban areas.

Q15. What do you think would be the advantages and/or disadvantages of applying a public interest test to transactions of large-scale landholdings?

Q16. Do you think the public interest test should be applied to:

The seller and buyer

Please give some reasons for your answer:

For the reasons stated in the consultation

Q17. If the public interest test was applied to the seller, do you think the test should be considered as part of the conveyancing process? **Yes**

Please give some reasons for your answer:

This would seem the natural point to undertake the test

Q18. Do you think that all types of large-scale landholding transactions (including transfers of shares and transfers within or between trusts) should be in scope for a public interest test? **Don't know**

Please give some reasons for your answer:

The consultation sets out the issues the Scottish Government faces and the need to reach agreement with the UK Gov. Negotiations at this level could add delay and complexity. Would it be better to act on these areas at a later date, as part of a follow up review, so that the proposal can be progressed to implementation?

Q19. We have proposed that if a public interest test applied to the seller concluded there was a strong public interest in reducing scale/concentration, then the conditions placed on the sale of the land could include:

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

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

Do you agree or disagree with these conditions?

- Condition i. Don't know
- Condition ii. Agree

Please give some reasons for your answer and suggest any additional conditions:

Condition i – Definition of one party is required. How would efforts by sellers to use multiple shell companies and complex company arrangements be tracked on a case by case basis to avoid abuse?

Condition ii – would likely facilitate more purchases by locally established community charities. However, larger scale national charities should not be excluded as a potential buyer either if they can bring greater resources and capacity to a landholding.

Q20. Do you think that a breach of the Lands Right and Responsibilities Statement should be taken into account when determining the outcome of a public interest test? Yes

Q21. Do you think that a public interest test should take into account steps taken in the past by a seller to:

- a) Diversify ownership -Yes
- b) Use their Management Plan to engage with community bodies over opportunities to lease or acquire land Yes

Q22. Do you think the responsibility for administering the public interest test should sit with:

- the Scottish Government No
- a public body (such as the Scottish Land Commission) Yes

Q23. Do you think the proposal that a public interest test should be applied to transactions of large-scale landholdings would benefit the local community? Don't know

Please give some reasons for your answer:

It is much more likely that owners/managers will want to engage with communities to ease management and transactions going forward. CLS or another body like RICS should be encouraged to collate and share examples of good practice.

Q24. Do you have any other comments on the proposal that a public interest test should be applied to transactions of large-scale landholdings?

Q25. We propose that landowners selling large-scale landholdings should give notice to community bodies (and others listed on a register compiled for the purpose) that they intend to sell.

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

Please give some reasons for your answer:

We agree with the proposal to place a requirement on large-scale landowners to give prior notification of an intention to sell land and other assets. This will ensure local communities are made aware of planned sales in advance of them happening.

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

Please give some reasons for your answer:

We agree with the need for notice period but believe 30 days is inadequate and this should be extended to at least 60 days to register a formal interest in an acquisition.

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

Please give some reasons for your answer:

It seems more reasonable that a community body or bodies should have 8 months to negotiate the terms of the purchase and secure funding in line with existing practice, and preferably longer where this can be negotiated.

Q26. Do you have any other comments on the proposal that landowners selling large-scale landholdings should give notice to community bodies that they intend to sell?

There should be some analysis of community purchases to understand the timescales involved in acquisitions, especially raising funds, to arrive at some evidenced based time frame.

New conditions on those in receipt of public funding for land based activity

Q27. We propose the following eligibility requirements for landowners to receive public funding from the Scottish Government for land based activity:

- i. All land, regardless of size, must be registered in the Land Register of Scotland.
- ii. Large-scale landowners must demonstrate they comply with the Land Rights and Responsibility Statement and have an up to date Land Management Plan.

Do you agree or disagree with these requirements?

- a) Requirement i. Agree
- b) Requirement ii. Agree

Please give some reasons for your answers:

i – in principle, using receipt of subsidies as a trigger to move could accelerate the move from the General Register of Sasines to the Land Register as intended. However, not all public funding recipients will be the property owners.

ii – management plans are likely to be of varying dates, depending on the needs of the owners, funders and others. If there is a defined management plan period of validity, this may result in shorter, more formulaic plans.

Land Use Tenancy

Q29. Do you agree or disagree with our proposal that there should be a Land Use Tenancy to allow people to undertake a range of land management activities? [Agree](#)

Please give some reasons for your answers:

The prospect of hybrid agricultural and non-agricultural land uses within a tenancy would allow far more nuanced approaches to development and land management which might facilitate small scale renewables and small scale rural housing and tourism supporting policy aspirations around a just transition and community wealth building.

Q30. Are there any land management activities you think should not be included within a Land Use Tenancy?

Q31. Do you think that wider land use opportunities relating to diversification, such as renewable energy and agri-tourism, should be part of a Land Use Tenancy? [Yes](#)

Please give some reasons for your answers:

We would also include the restoration of culturally significant and/or historic buildings, designed landscapes and battlefield sites

Q32. Do you agree or disagree that a tenant farmer or a small landholder should, with the agreement of their landlord, have the ability to move their agricultural tenancy into a new Land Use Tenancy without having to bring their current lease to an end? [Agree](#)

Please give some reasons for your answers:

Likely to accelerate positive change.

Q33. Do you agree or disagree that when a tenant farmer or small landholders' tenancy is due to come to an end that the tenant and their landlord should be able to change the tenancy into a Land Use Tenancy without going through the process of waygo, with parties retaining their rights? [Agree](#)

Q34. How do you think the rent for a Land Use Tenancy should be calculated?

Q35. Would you use a Land Use Tenancy if you had access to a similar range of future Scottish Government payments which other kinds of land managers may receive? -

Q36. Do you think that there should be guidance to help a tenant and their landlord to agree and manage a Land Use Tenancy? [Yes](#)

Q37. Do you think there should be a process to manage disputes between a tenant of a Land Use Tenancy and their landlord? [Yes](#)

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

Q39. Do you have any other comments on our proposal for a Land Use Tenancy?

Small landholdings

Q40. Would you like to be kept informed via email about the Small Landholding Consultation for the Land Reform Bill? [No](#)

Transparency: Who owns, controls and benefits from Scotland's Land

Q41. Do you agree or disagree with our proposal to explore:

- Who should be able to acquire large-scale landholdings in Scotland [Agree](#)
- The possibility of introducing a requirement that those seeking to acquire large-scale landholdings in Scotland need to be registered in an EU member state or in the UK for tax purposes. [Don't know](#)

Please give some reasons for your answers:

[Given that Scotland is no longer in the EU, it is not clear why this proposal is contained here.](#)

Other land related reforms

Q42. Do you have any views on what the future role of taxation could be to support land reform?

Q43. How do you think the Scottish Government could use investment from natural capital to maximise:

a) community benefit

[We need to encourage whole system approaches in respect of improving soil biodiversity, capturing carbon in all soil but especially peatlands, grasslands and forests, tackling water quality and water management at the catchment scale, addressing vacant and derelict land, encouraging greater food self-sufficiency, delivering urban greening to encourage biodiversity/reduce urban heat islands/ improve mental wellbeing and greater habitat connectivity across Scotland.](#)

b) national benefit

[Ditto](#)

