

Proposed Land Ownership and Public Interest (Scotland) Bill



Proposed Land Ownership and Public Interest (Scotland) Bill: A proposal for a Bill to address the centuries old, concentrated pattern of land ownership in Scotland and to restore land for the many by introducing a presumed limit of 500 hectares on individual sales or transfers of land and on the aggregate amount of land any person can own, and by strengthening the regulation of Scotland's land market by making land transfers over the 500-hectare limit subject to a public interest test.

Consultation by Mercedes Villalba MSP for North East Scotland Region

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Foreword



One of the most entrenched inequalities in Scotland is that of the extraordinarily high concentration of land in the hands of so few. This, in many ways, is the foundation of economic injustice in the country and is something we must urgently address if we are to build a fairer Scotland.

In 2013, in a briefing to the House of Commons Scottish Affairs Committee, it was reported that **just 432 landowners own 50% of all Scotland's privately owned land**¹. There is no more current figure available, but there is no indication that there has been a significant shift in this pattern of ownership. Increasing transparency on this is urgent, if concerns over patterns of land ownership are to be discussed openly.

This concentration of ownership has remained unaddressed, despite various land reform measures introduced in the post-devolution period.

This is because the focus of these measures has been on strengthening alternative types of ownership without tackling the concentration of ownership itself.

The Land Reform (Scotland) Act 2003 gave rights to rural communities to register an interest in land which they were then entitled to have the right to purchase (under

¹ <https://www.parliament.uk/globalassets/documents/commons-committees/scottish-affairs/432-Land-Reform-Paper.pdf>

certain conditions) if that land came onto the market. The Act also granted special rights to crofters to seek to acquire their land even when the landowner did not wish to sell².

The Community Empowerment (Scotland) Act 2015³ and the Land Reform (Scotland) Act 2016⁴ further empowered communities with rights to buy land if it could be shown that they were acting in the public interest in doing so. Communities were also given rights to have publicly owned assets transferred to community ownership in asset transfer arrangements.

However, despite these efforts, **the continuing concentration of ownership remains a barrier to communities exercising their rights.**

The Land Reform Review Group has noted that the scale or pattern of land ownership, and the decision of landowners, can inhibit communities from gaining rights to land for initiatives ranging from housing development to renewable energy installations⁵.

Increasing demand for land from wealthy individuals is leading to rising prices, entrenching the current patterns of ownership.⁶

Scotland's Rural College and two major estate agencies – Savills and Strutt & Parker analysed land sales in Scotland involving Highland sporting estates, commercial forests and farms, finding that prices were rising steeply with sporting estates prices jumping by 87% in 2021 compared with 2020⁷.

This rise in prices, along with an increase in sales, led to a notable increase in spending which was up by 119% in the same period. Many communities simply find themselves unable to participate in the market.

Communities are also finding it difficult to exercise their rights as land sales are increasingly carried out privately, denying them participation in the process as a result.

² "Land Reform (Scotland) Act 2003." Legislation.gov.uk, Statute Law Database, <https://www.legislation.gov.uk/asp/2003/2/contents>.

³ "Community Empowerment (Scotland) Act 2015." Legislation.gov.uk, Statute Law Database, <https://www.legislation.gov.uk/asp/2015/6/contents/enacted>.

⁴ "Land Reform (Scotland) Act 2016." Legislation.gov.uk, Statute Law Database, <https://www.legislation.gov.uk/asp/2016/18/contents/enacted>.

⁵ "The Land of Scotland and the Common Good: Report". Land Reform Review Group. <http://www.gov.scot/Publications/2014/05/2852>.

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"Rural Land Market Insights Report 2023". Scottish Land Commission. https://www.landcommission.gov.scot/downloads/645cda7a2ba61_Rural%20Land%20Markets%20Insights%202023.pdf

⁷ "Absentee Owners Buying up Scottish Estates in Secret Sales." 2022. The Guardian. <https://www.theguardian.com/uk-news/2022/apr/12/majority-of-sales-of-highland-estates-conducted-in-secret-scotland>.

Nearly two-thirds of land sales in 2021 were carried out privately, without the land going on the open market, with a third of the total going to overseas buyers.⁸

There is a growing recognition inside and outside of government that future legislative change must now be focused on tackling Scotland's patterns of land ownership.

In 2017, the Scottish Government published its Land Rights and Responsibilities Statement which recognised the need for greater diversity of ownership⁹.

The Scottish Land Commission's work has also illustrated Scotland's unusual and highly concentrated land ownership patterns, reinforcing the need for diversification.

Researchers and other interested stakeholders have also increasingly highlighted how the lack of diversity in Scotland's land ownership is a social justice issue with the current use of land having a detrimental effect on jobs, housing and the environment and climate.

The John Muir Trust, in considering how to reach the net zero targets, in 'Just Transition and Wild Places' makes the point that whilst working within the market, 'governments, local and national, have a responsibility to ensure that the surging demand for land for carbon sequestration does not degenerate into a free-for-all that enriches a small minority of big landowners and companies while excluding local people, harming biodiversity, failing to maximise overall reductions in carbon output, and perpetuating concentrated ownership patterns'¹⁰

The second Just Transition Committee's initial report *Making the Future* published in 2021 noted that "Scotland's land use is defined by extreme asymmetries in ownership" and urged the Scottish Government to "tackle the root causes of these severe inequalities in land ownership and governance, which are fundamental to issues facing nature, economic development, housing, and food systems"¹¹.

Jobs

In its 2021 paper, *Work for the Land*¹², the Common Weal think tank highlighted the inefficient use of Scotland's land in terms of creating jobs and incomes.

⁸ "Absentee Owners Buying up Scottish Estates in Secret Sales." 2022. The Guardian. <https://www.theguardian.com/uk-news/2022/apr/12/majority-of-sales-of-highland-estates-conducted-in-secret-scotland>.

⁹ "Scottish Land Rights and Responsibilities Statement." <https://www.gov.scot/publications/scottish-land-rights-responsibilities-statement/>.

¹⁰

https://www.johnmuirtrust.org/assets/000/002/146/JMT_JustTransition_B5_LO_v2_original.pdf?1648544800

¹¹

"Making the Future - Second Just Transition Commission: Initial Report." [www.gov.scot. https://www.gov.scot/publications/making-future-initial-report-2nd-transition-commission/](https://www.gov.scot/publications/making-future-initial-report-2nd-transition-commission/).

¹² Common Weal, 2021, *Work the Land: The Employment Potential of Land Reform*. [Work-The-Land-v2.pdf \(commonweal.scot\)](https://www.commonweal.scot/Work-The-Land-v2.pdf)

Common Weal cites research by Scottish Land and Estates showing that Scotland's private shooting estates create just 2,640 jobs (including indirect jobs) with an average income of £11,401, below minimum wage levels. Around a seventh of Scotland's rural land area is used for grouse shooting.

Common Weal estimates that diversifying Scotland's land ownership so that it is used for a wider range of purposes ranging from crofting, housebuilding and horticulture could create up to tens of thousands of new jobs in rural communities.

For example, up to 20,000 land management jobs could be created with one job per 24 hectares.

Forestry work could lead to 21,000 jobs being created with one job per 42 hectares.

18,000 jobs in housebuilding could also be created with one job per 11 hectares.

Housing

Scotland faces a housing crisis with many communities finding themselves facing housing shortages coupled with the increasing number of second homes, short-term lets and holiday homes exacerbating the issue.

In 2019, the Scottish Land Commission published an Investigation into the *Issues Associated with Large scale & Concentrated Landownership in Scotland*¹³.

Around a quarter of respondents to the investigation highlighted that Scotland's current pattern of land ownership has a negative impact on the ability to meet local housing needs with the power of a dominant landowner to control the supply of housing exacerbating issues like depopulation and economic decline.

Environment and climate

In 2021, the Scottish Government-appointed Just Transition Commission published its final report on how Scotland will achieve its net zero target by 2045. The Commission identified the importance of land to achieving net zero through initiatives such as restoring peatlands, tree planting and woodland management.

The Commission's report also emphasised the detrimental impact of Scotland's current patterns of land ownership to achieving net zero:

“part of ensuring a just transition must be about making sure the benefits of investment in carbon sequestration are felt as widely as possible. Without careful design and meaningful engagement there is a risk that benefits may

¹³ Glenn, S., MacKessack-Leitch, J., Pollard, K., Glass, J., and McMorran, R., (2019), *Investigation into the Issues Associated with Large scale and Concentrated Landownership in Scotland*, Scottish Land Commission. [The Model CHP for the Scottish Government and Associated Public Authorities Sector in Scotland - Word Template \(landcommission.gov.scot\)](https://landcommission.gov.scot)

*flow mainly to large landowners and opportunities for community benefit will be missed*¹⁴.

The Scottish Land Commission also recently published a study on the operation of the Land Market in Scotland which showed rising interest in the purchase of land in Scotland for forestry and growth in the market for land by what have become known as 'Green Lairds'¹⁵.

Legislation

In February 2023, the Scottish Government launched its consultation on a Community Wealth Building Bill. This consultation closes on 23rd April 2023. The Scottish Government uses this framework:

*'CWB is a practical approach to economic development focused on five pillars of activity. These pillars are the key areas of focus due to the economic levers they represent. All of the pillars play a complementary role in the retention of wealth in local places and regions for the benefit of communities. Increased spend with local businesses and higher levels of inclusive or community forms of ownership means that more money stays in the communities that create the wealth through higher incomes, fairer employment opportunities and a greater say over the use of local and regional assets.'*¹⁶

The Shared Policy Programme agreed by the SNP and Scottish Greens in Government says:

*'We will develop a Community Wealth Building Bill, which will focus on encouraging diverse and inclusive local economies, finance, land, and ownership models'*¹⁷

Increasing the benefit that local communities can gain from land and property assets, and further developing the role that 'anchor organisations' play – including through local authorities as anchor organisations – immediately raises questions about ownership and public interest tests. The Partnership Agreement was specific on promoting diverse land and ownership models, in the CWB context.¹⁸

¹⁴ Just Transition Commission, 2021, *A national mission for a fairer, greener Scotland*, p. 35: [Just Transition Commission: A National Mission for a fairer, greener Scotland - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/transition-commission-a-national-mission-for-a-fairer-greener-scotland-2021-08/scottish-government-and-scottish-green-party-shared-policy-programme/documents/scottish-government-and-scottish-green-party-draft-shared-policy-programme/scottish-government-and-scottish-green-party-draft-shared-policy-programme/govscot%3Adocument/SG%2BSGP%2BTalks%2B-%2BDraft%2BPolicy%2BProgramme%2B-%2BFINAL%2B-%2BOFFSEN.pdf)

¹⁵

https://www.landcommission.gov.scot/downloads/62543b9498bb1_Rural%20Land%20Market%20Insights%20Report%20April%202022.pdf

¹⁶ <https://www.gov.scot/publications/building-community-wealth-scotland-consultation-paper/pages/2/>

¹⁷ <https://www.gov.scot/binaries/content/documents/govscot/publications/agreement/2021/08/scottish-government-and-scottish-green-party-shared-policy-programme/documents/scottish-government-and-scottish-green-party-draft-shared-policy-programme/scottish-government-and-scottish-green-party-draft-shared-policy-programme/govscot%3Adocument/SG%2BSGP%2BTalks%2B-%2BDraft%2BPolicy%2BProgramme%2B-%2BFINAL%2B-%2BOFFSEN.pdf>

¹⁸ "Community Wealth Building and a Just Transition to Net Zero". Community Land Scotland.

<https://www.communitylandscotland.org.uk/wp-content/uploads/2022/08/Report-2022-Community-Wealth-Building-and-a-Just-Transition-to-Net-Zero.pdf>

I will be following the CWB consultation with interest and anticipate some overlap in issues raised during the consultation on my proposed Member's Bill.

In July 2022, the Scottish Government launched its consultation on the new Land Reform Bill – *Land Reform in a Net Zero Nation*¹⁹ – which seeks views on several proposals including:

- Strengthening the Land Rights and Responsibilities Statement.
- Introducing compulsory land management plans.
- Ensuring the public interest is considered on transfers of large-scale landholdings.
- Introducing new requirements to access public funding for land-based activity.
- Introducing a new Land Use Tenancy.
- Increasing transparency in relation to land ownership and land use.

While recognising the proposals brought forward by the Scottish Government as a positive step forward in addressing Scotland's concentrated patterns of land ownership, I do not believe they go nearly far enough in delivering the transformational change needed to ensure that Scotland's land works in the interests of the many.

The Scottish Government's proposals do not include a limit on land ownership, meaning that wealthy individuals could continue to accumulate an ever-greater concentration of land.

The Scottish Government's proposals also fail to set out which body would be responsible for regulation of Scotland's land market, including the administering of a public interest test. Given their work in the area of land reform, the Scottish Land Commission seems the most appropriate regulatory body given the additional resources and expertise which would be required if either the Scottish Government or local authorities were to assume a regulatory role.

There are further limitations to the Scottish Government's proposals, including no specific considerations for the public interest test and very limited scope for public interest examinations of existing landholdings.

That is why I believe that this consultation is vital to determine whether there is support for a limit on ownership, for a strong regulatory role for the Scottish Land Commission and for further measures including a strengthening of the public interest test.

Whatever your views on this proposal, I would very much welcome your input through the consultation process.

Mercedes Villalba MSP

¹⁹ "Land Reform in a Net Zero Nation - Scottish Government." <https://consult.gov.scot/agriculture-and-rural-economy/land-reform-net-zero-scotland/>.

How the Consultation Process works

This consultation relates to a draft proposal I have lodged as the first stage in the process of introducing a Member's Bill in the Scottish Parliament. The process is governed by Chapter 9, Rule 9.14, of the Parliament's Standing Orders which can be found on the Parliament's website at:

<https://www.parliament.scot/about/how-parliament-works/parliament-rules-and-guidance/standing-orders/chapter-9a-private-bill-procedures>

At the end of the consultation period, all the responses will be analysed. I then expect to lodge a final proposal in the Parliament along with a summary of those responses. If that final proposal secures the support of at least 18 other MSPs from at least half of the political parties or groups represented in the Parliamentary Bureau, and the Scottish Government does not indicate that it intends to legislate in the area in question, I will then have the right to introduce a Member's Bill. A number of months may be required to finalise the Bill and related documentation. Once introduced, a Member's Bill follows a 3-stage scrutiny process, during which it may be amended or rejected outright. If it is passed at the end of the process, it becomes an Act.

At this stage, therefore, there is no Bill, only a draft proposal for the legislation.

The purpose of this consultation is to provide a range of views on the subject matter of the proposed Bill, highlighting potential problems, suggesting improvements, and generally refining and developing the policy. Consultation, when done well, can play an important part in ensuring that legislation is fit for purpose.

The consultation process is being supported by the Scottish Parliament's Non-Government Bills Unit (NGBU) and will therefore comply with the Unit's good practice criteria. NGBU will also analyse and provide an impartial summary of the responses received.

Details on how to respond to this consultation are provided at the end of the document.

Additional copies of this paper can be requested by contacting me at:

Mercedes.Villalba.MSP@Parliament.Scot

Mercedes Villalba MSP
Room M1.03
Scottish Parliament
Edinburgh EH99 1SP

Enquiries about obtaining the consultation document in any language other than English or in alternative formats should also be sent to me.

An on-line copy is available on the Scottish Parliament's website
<https://www.parliament.scot/> under Bills and Laws/Proposals for Bills.

Aim of the Proposed Bill

This Bill will legislate for the introduction of **a presumed limit on land ownership**, the **strengthening of regulation of Scotland's land market** and the **creation of a public interest test for land sales and transfers**.

My aim is to tackle the high concentration of land ownership in the hands of so few to ensure that Scotland's land serves the needs of the many.

There are currently no presumed limits on land ownership in Scotland which means wealthy individuals could continue to accumulate an ever-greater concentration of land.

To promote greater diversity in Scotland's land ownership, this Bill will introduce a presumption that land ownership is limited to 500 hectares as a single land-holding or in aggregate.

Scotland also currently lacks a body tasked with overseeing the regulation of its land market.

Given their work in the area of land reform, this Bill will designate the Scottish Land Commission as the regulatory body, giving it new powers and duties including the administering of the public interest test.

To ensure that Scotland's land serves the needs of the many, this Bill will create a public interest test for land sales and transfers. The Scottish Land Commission will have specific public interest considerations that it must have regard to when administering the public interest test.

One weakness in the Scottish government proposals is the lack of any thorough exploration of what the public interest in relation to land is. I believe it is important and only fair to all with an interest in land to be as clear as possible about the public interest considerations in land. I have provided further discussion on this in an Annex to this consultation paper on which I am also seeking consultation responses.

The Scottish Land Commission will also be given the ability to undertake a public interest examination of a landholding with options at its disposal ranging from requiring landowners to produce a land management plan to the eventual sale of all or part of the land in the event of landowner intransigence.

There will also be a requirement for landowners to notify the Scottish Land Commission of planned land sales or transfers above the presumed limit of 500 hectares.

The Scottish Land Commission will then seek to guarantee the public interest in the sale or transfer of the land, including ensuring that any properly constituted community body expressing a wish to buy the land be given appropriate time to advance the prospect of purchase.

Taken together, these measures would represent substantially improved opportunities for transformational change in Scotland's land ownership and how its land market operates.

The next section sets out these proposals in more detail and how I envisage them working in practice.

Key elements of the Proposed Bill

As I have already set out, this Bill will legislate for the introduction of a **presumed limit to land ownership**, the **strengthening of regulation of Scotland's land market** and the **creation of a public interest test for land sales and transfers**.

1. Presumed limit on land ownership

This proposed Bill establishes the key presumption relating to the ownership of land in Scotland that new purchases or transfers of land should not exceed a limit of 500 hectares, and the presumption that no-one should be able to own more than 500 hectares of land in total.

1A) Presumed limit on land ownership – establishing an appropriate limit

To address potential concerns around a rigid limit on land ownership, I propose creating a presumption against ownership above a specified limit.

This means that it may still be possible to own land above the presumed limit, but only when a clear public interest case for this has been established.

In establishing an appropriate presumed limit to land ownership, there are a number of potential indicators which could be used to illustrate questions of scale of land to which individuals can relate and gain perspective.

Using population as an indicator, Scotland's population is approximately 5.48 million²⁰ people while its total land area is estimated at around 7.9 million hectares²¹. This provides an indicator of the equivalent of 1.4 hectares of land per person in Scotland.

Another indicator could be households, with 2.5 million households²² in Scotland equating to around 3.1 hectares of land²³ per household on average.

²⁰ Mid-2021 Population Estimates Scotland from National Records of Scotland.

²¹ <https://www.accesstoland.eu/Background-236>

²² <https://www.nrscotland.gov.uk/files/statistics/household-estimates/2020/house-est-20-publication.pdf>

²³ Divide 7.9million hectares by 2.5 million households.

However, Scotland has a highly urbanised population with 91% living in settlements or localities that use only 2% of Scotland's total land area²⁴.

Scotland's agricultural land lies in its rural areas outside settlements. This land is occupied by many tenant crofters and farmers, by some owner occupier crofters and many owner-occupied farms and larger estates. Ownerships may be by individuals or various forms of trust, partnership and company arrangements.

Answers to a written parliamentary question which I submitted reveal that there are 49,325 agricultural holdings in Scotland²⁵ with a mean average size of 115 hectares. However, this fails to account for the very uneven distribution across the range of ownerships with a small number of very large holdings and a large number of very small holdings with the median average size being just 9 hectares²⁶.

Given that the average householder in Scotland is very unlikely to own even the notional average of 3.1 hectares, with the vast bulk of households owning no land or a fraction of this, owners of 500 hectares would own around 166 times more land than any average distribution of land, or just over four times the mean average agricultural holding. By these standards, any holding in Scotland greater than 500 hectares would be considered 'large-scale' by most people resident in Scotland when compared to their personal or household experience of land in their control.

In an answer to another parliamentary question²⁷ the Scottish Government reveal that only some 3.6% of all agricultural holdings, some 1,794 of the 49,325 agricultural holdings in Scotland, would be potentially affected at some time by my proposals if they came up for sale or had ownership otherwise transferred.

The Parliamentary Question answer also reveals that the agricultural holdings above 500 hectares, although relatively small in number, account for a much larger proportion of Scotland's land, illustrating again just how concentrated ownership of land is in Scotland.

The setting of a presumed limit of 500 hectares should not affect any domestic householders, crofters or the average scale landowner, only those landholdings many times larger than the average.

That is why my proposal is to set the presumed limit of ownership at no more than 500 hectares. Any land transfers below this level would not be subject to a public

²⁴ <https://www.nrscotland.gov.uk/news/2022/91-percent-of-scotlands-population-live-in-2-percent-of-its-land-area#:~:text=The%20population%20of%20Scotland%20living,living%20outside%20settlements%20was%20491%2C330.>

²⁵ <https://www.parliament.scot/chamber-and-committees/written-questions-and-answers/question?ref=S6W-04664>

²⁶ S6W-04664 converted from acres to hectares.

²⁷ [Written question and answer: S6W-10506 | Scottish Parliament Website](#)

interest test and could proceed unless they are otherwise included, such as islands or transfers which would put the individual over the 500-hectare presumed limit.

This proposed presumed limit is proportionate with only around 1,794 landholdings ever likely to be covered by its provisions. In any given year, only a small proportion of these are likely to be subject to a sale or transfer of ownership.

While there will be different views on where the limit should be set, I expect that these views will be expressed in responses to this consultation and will be debated during proceedings on this Bill in the Parliament.

However, I consider the proposed limit of 500 hectares to be balanced and responsible given the evidence that I have set out about the current concentration of Scotland's land ownership.

I recognise that viewed from the perspective of the very few owners of very substantial amounts of land, 500 hectares will seem very small. However, viewed from the perspective and experience of the vast majority of ordinary Scottish residents and even the average crofter or farmer, 500 hectares of land is a large scale of land to be in any single ownership. Not every person in Scotland aspires to own land even on a very modest scale, but there are many who individually or in communities find their ability to acquire or rent land is severely constrained or impossible because of Scotland's highly concentrated land ownership patterns.²⁸

While my proposal will be for the Parliament to set the first presumed limit in primary legislation, any variation to the limit will be possible through statutory instrument following a super-affirmative procedure. This means that any proposal to change the limit would need to be subject to public consultation by the Scottish government first. Once the results of the consultation had been taken into account a draft would need to be laid before the Scottish Parliament and would become law only if approved by the majority of MSPs.

This proposal is focussed on rural Scotland as it deals with issues of implications flowing from large scale ownerships. Of course, areas of land which are below the 500-hectare presumed limit can present public interest considerations. In urban Scotland in particular power and economic gain can also be concentrated at levels of much lower ownership, sometimes less than or of just a few hectares. I am interested in receiving views about whether and how consideration of issues of concentrated power and influence through land ownership below the 500-hectare presumed limit can be addressed.

1B) Scottish Government position on limit on land ownership

²⁸ [1] "The Cheviot, the Stag, and the Black, Black Carbon". Community Land Scotland.
<https://www.communitylandscotland.org.uk/the-cheviot-the-stag-and-the-black-black-carbon>

The Scottish Government's 2022 consultation *Land Reform in a Net Zero Nation*²⁹ sets out its definition of what they call "large-scale holdings". The Scottish Government considers a holding to be large-scale if it meets one of the following criteria:

- 3,000 hectares or larger
- 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 the six-fold urban/rural classification scheme
- Land that accounts for more than a specified minimum proportion of a permanently inhabited island

This 3,000 hectare threshold for classification as a large-scale holding is six times larger than my proposed limit. The Scottish Government give the rationale for 3,000 hectares as being that it would not be reasonable to require of smaller land holdings the burdens being imposed by their proposals. This being their policy reasoning it is not clear how any area of land that might fit their second criterion could be considered, if less than 3,000 hectares. Such an approach would exclude many areas of land from proper regulation and undermine attempts to improve diversity in Scotland's land ownership.

There is no indication in the Scottish Government's consultation as to what the fixed percentage in the second criterion will be.

The island criterion is covered in a separate section of my Bill.

1C) Avoidance of the measures

Given the proposed presumed limit in this Bill, some current landowners may seek to avoid the Bill's provisions by changing ownerships before the legislation is enacted such as by transferring the ownership to a Trust or Company where the ownership thereafter is very unlikely to change. Further, there may be efforts to split land holdings to below the limit I propose and distribute those separate ownerships between for example family members or in a series of smaller trusts or companies in order to avoid the presumed limit and seek to avoid the 500-hectare aggregate holding.

There will have to be consideration given to whether the Bill will have a retrospective effect to counteract these sorts of actions and enable the regulator to determine whether any changes in holdings have been undertaken for avoidance purposes. I envisage any retrospection will be limited to the period between when my proposal is introduced to the Parliament and its commencement as an Act.

²⁹ <https://consult.gov.scot/agriculture-and-rural-economy/land-reform-net-zero-scotland/>.

Further, however, I think it may be necessary to have other back-up proposals. I will therefore consider whether all land owned by Trusts or Companies over the presumed level of 500 hectares should be systematically scrutinised by the Land Commission over a defined period to establish if the land ownership is delivering in the public interest, starting with those most recently converted to their new ownership status. Thereafter, such owners will be required every decade to demonstrate they are still operating in the public interest.

2. Strengthening regulation of Scotland's land market

2A) Strengthening regulation through new powers and duties for the Scottish Land Commission

The Bill proposes strengthening regulation of Scotland's land market by giving a wide range of new powers and duties to the Scottish Land Commission (the Commission).

The Commission was established in 2017 to make more of Scotland's land by stimulating fresh thinking, supporting change on the ground and making recommendations to Scottish Ministers, where appropriate, for legislative and policy change across three priority areas of work: reforming land rights, embedding responsible land ownership and use, and reforming land markets. A notable body of research has been commissioned by the Commission on which to base informed policy ideas and legislative proposals to the Scottish Government.

Through their Tenant Farming Commissioner, the Commission already has a form of regulatory role in Scotland's land market. The Commissioner can investigate tenant farming related cases, assisting mediation in disputes and publishing findings and recommendations. The Commissioner does not have any formal sanctions at their disposal but is widely regarded as having made a positive contribution to the tenant farming sector.

The full functions and activities of the Commission can be found on their website³⁰.

Given their experience and knowledge of land issues and policy in Scotland, this Bill seeks to give greater regulatory responsibility for Scotland's land market to the Commission.

There are issues with the other public bodies which could take on regulatory functions.

It may be best to keep regulation clearly at arms-length from Ministers to provide continuity of regulatory decision making between differing administrations which is a normal and well-established arrangement.

³⁰ <https://www.landcommission.gov.scot/>

Beyond their planning responsibilities, the bulk of the responsibility for providing expertise in land issues concerning ownership and management has not been carried by local authorities but by government, its agencies, by independent organisations with land expertise and more recently by the Land Commission. Local authorities would face a significant challenge in building the necessary expertise in the face of many competing priorities.

Local authorities could however be given statutory rights of consultation in the Commission's regulatory work to ensure a democratic local insight is fed into the processes.

If the Commission were to be given the regulatory functions and thus potentially powers in relation to the operation of property rights, the Commission could be required to seek the approval of Scottish Ministers before finalising any decision that significantly impacted an owner's property rights.

However, it should be recognised that the Commission is a non-departmental public body which is accountable to the Parliament through Scottish Ministers. Scottish Ministers have powers to set the direction and priorities of the Commission and can already influence its work in certain respects.

With all of these considerations, my preference as stated is for the Commission to be given regulatory functions, but I welcome views in this consultation on what the most appropriate regulatory body should be.

2B) The Scottish Government's position on an appropriate regulatory body

In their consultation, the Scottish Government does not set out a comprehensive regulatory role for the Commission in the way that this Bill does.

In relation to the Land Rights and Responsibilities Statement (LRRS), the Scottish Government does envisage the Commission playing a role in a statutory complaints adjudication process. They propose that a Commissioner of the Commission could conduct a review into complaints about non-compliance with the LRRS and take action to ensure compliance such as issuing a direction to a landowner to change their practices or issuing a penalty of some sort.

The Scottish Government also envisages the Commission issuing codes and protocols which landowners would have regard to and these would be used to assess compliance with the LRRS.

In relation to 'large-scale' holdings, the Scottish Government suggests that landowners will be required to publish land management plans with an official body responsible for enforcing this.

However, they do not specifically suggest that this would be a role for the Commission, noting potential other bodies such as the arm of the Scottish Government responsible for administering agricultural grants and subsidies. This is because they envisage enforcement in relation to management plans might be achieved through cross-compliance measures which mean that failure in one requirement such as that relating to management plans could be incentivised by the loss of grants or subsidies due from another part of government.

The Scottish Government also propose that a public interest test be applied to certain defined land when that land is to be sold or transferred. They do not provide any indication as to which body would be responsible for administering the test.

This proposed Bill makes clear that the public interest test I envisage should be administered by the Commission.

3. Creation of a public interest test for land sales/transfers

3A) Scottish Land Commission as administrator of the public interest test

I believe that the Commission should be given duties requiring it to protect the public interest at the point of land ownership transfer transactions which exceed the presumed limit of 500 hectares.

3B) Public interest considerations

The Bill should define a range of considerations that the Commission must have regard to when considering the public interest in land (See Annex for suggested areas of public interest). A comprehensive list of public interest issues that the Commission would be required to have regard to would give sufficient clarity to both landowners and communities.

However, I also recognise that an approach could be taken which bases the public interest considerations around core elements like economic, social, cultural and environmental rights. This approach of building out of core elements could also include, for example, building wider guidance of public interest considerations arising from the protection and development of natural capital, of community wealth building, and the drive towards a Wellbeing Economy.

My preference is for the Bill to set out as complete a view as possible on the public interest considerations that the Commission would be required to have regard to, perhaps as a schedule to the Bill with powers for Scottish Ministers to vary the schedule by statutory instrument in light of changing circumstances.

I look forward to receiving views on public interest considerations in the consultation responses.

3C) Scottish Government's position on public interest considerations

In their consultation, the Scottish Government do not state a view on what constitutes public interest considerations in land, other than in a broad statement that a public interest test would be applied to define large-scale holdings and would consider where "excessive power may act against the public interest".

The key difference between the Scottish Government's position and my proposals are that I believe the public interest considerations that the Commission is required to have regard to must be clearly set out in the Bill.

I also envisage the Commission being required to issue guidance or codes of practice or protocols in support of their interpretation of these public interest considerations.

3D) Sellers of land

There is too much secrecy surrounding land market transactions in Scotland with the material effects that these transactions can have on people and communities not becoming known until the new owner is announced. In these circumstances, there is no opportunity to ask the important public interest questions and communities are effectively prevented from participating in the land market.

I envisage my Bill would address this by:

- i. Requiring owners seeking to sell land or otherwise transfer it to new ownership to notify the Commission, where the unit of land for sale or transfer was above the presumed limit.
- ii. The Commission, upon receipt of a notification, would advertise this by appropriate means and specifically notifying owners of adjacent land and public bodies with interests that extended over the land (this would likely include local authorities, community councils, and other properly constituted bodies likely to have a potential interest in being aware of the sale.)
- iii. The public advertisement and notifications would invite any person or properly constituted body to make any representations regarding a range of public interest considerations to the Commission within a defined timescale.
- iv. Any properly constituted community body could express an interest in purchasing the land or a part of the land in their response to the advert or notification above, during which time the owner would not be able to proceed with the sale. This would require modifications to the Community Right to Buy provisions that currently exist. Any community body purchase

would require the democratic consent of electors in the area as with current Community Right to Buy legislation.

The purpose of this is to allow the Commission to assess whether there were public interest questions that may arise in relation to the land sale or transfer. The land in question could not be sold until the Commission had completed the procedures envisaged.

Where the Commission considered there were no public interest issues to be considered, the sale could proceed.

Where the Commission considered there were public interest issues to be considered, the Commission would be required to notify the seller, and the seller to notify potential purchasers that their plans to purchase would be subject to a public interest test before purchase would be permitted. The seller would be required to make this clear in any particulars of sale.

3E) Facilitating voluntary arrangements

It is preferable that land sales and transfers should be open and transparent, that the opportunity to consider the public interest is addressed early and that, where appropriate, voluntary arrangements can be made to secure the public interest.

I envisage this Bill will introduce a further range of powers and obligations for the Commission in order to facilitate constructive and early dialogue with landowners seeking to dispose of land above the specified level to establish a suitable way forward which would protect the public interest.

In this regard the Bill would:

- Give the Commission powers to enter discussion with any landowner considering selling as to potential public interest issues the Commission may envisage arising from the sale of the land.
- The Commission would be empowered to discuss with a seller the potential arrangements for the sale to secure the public interest and thus prevent the purchase being subject to a formal public interest test. (This could envisage lotting arrangements for the sale, or the voluntary sale of land to a community body, housing association or the like, or facilitating a process of dialogue between community interests and the owner on such issues.)
- Where the Commission considered there were potential arrangements possible it would be empowered, with the consent of the landowner, to share the potential arrangements with a range of specified bodies pursuing the advance of public interest issues to seek their views on possible future arrangements for the land or facilitate the landowner in doing so.
- The landowner would be able to agree binding conditions with the Commission on the sale which would condition the conveyancing, and the

sale or transfer could proceed without the need for a formal public interest test on the purchase.

- Where discussions and proposals proceeded to the extent that a consensus was likely to be achieved on the proposal the Commission would be empowered to issue a preliminary ruling in which a land sale that proceeded with such agreement would not be subject to a public interest test on potential purchasers.

These proposals are made to facilitate constructive engagement to secure the public interest and create a helpful incentive to do so. The arrangements in effect seek to empower the Commission in such circumstances to anticipate public interest considerations and help broker arrangements with the seller and others interested in the land to advance the public interest and not otherwise interfere with the sale.

Where the owner and the Commission could not find sufficient common ground, the owner would be required to go through the process outlined for notification of sales.

The Commission would be required to issue guidance on what are the public interest considerations it would be looking for in such circumstances.

The arrangements here seek to make progress in pragmatic ways, and I am sure they are capable of development. I look forward to ideas and views in response to this consultation to strengthen these proposals.

3F) Scottish Government position on sellers of land

In its consultation, the Scottish Government proposes that there be a notification process for land sales, but this would take the form of the landowner notifying recognised community bodies of the sale. There is no role envisaged for the Commission, unlike in my proposals.

3G) Purchasers of land

When arrangements in Section 3D and E have come to a satisfactory conclusion, a purchaser of land would not be required to seek the consent of the Commission for a purchase.

In all other circumstances, any person seeking to purchase land above the presumed limit would be required to obtain the consent of the Commission.

The process I envisage for my Bill would be:

- i. Any person wishing to purchase land above the presumed level would be required to apply to the Commission for permission to purchase.
- ii. Any such application would require to be accompanied by a strategic plan for the land to be purchased and why in the view of the potential purchaser

their purchase would serve the public interest considerations the Commission would be bound to have regard to.

- iii. On receipt of any application the Commission would be obliged to advertise this by appropriate means and specifically notify the owners of adjacent land, and any public body with interests that extended over the land. (This would include local authorities, community councils and properly constituted bodies likely to have a potential interest in the proposed purchase.)
- iv. The public advertisement and notifications to bodies would invite any person or properly constituted body to make any representations they thought fit regarding a range of public interest considerations to the Commission.
- v. The Commission would be obliged to consider the strategic plan and the representations it received and then decide whether to:
 - a. approve the purchase without conditions.
 - b. Approve the purchase with conditions, or
 - c. refuse the purchase.
- vi. Where an application was approved with conditions the Commission would set out a process for monitoring the meeting of the conditions.
- vii. Where the purchase had been concluded and Commission was not satisfied after one year that the conditions applying to the purchase were being met by the now owner it would have a three-stage escalating process for dealing with this:

Stage 1: to issue to the owner and publish a report stating the reasons it was not satisfied and stating what it thought the owner ought to now do to meet the conditions and require the owner to provide it with a management plan for the land which addresses the recommendations, for approval by the Commission. The management plan proposed and subsequently agreed by the Commission would be made public.

Stage 2: if after 1 year the Commission remained dissatisfied it could issue directions to the owner to take certain actions and implement cross-compliance measures to incentivise the actions needed

Stage 3: where after a further period of two years and the issuing of at least one reminder as to the requirements of the conditions the Commission was not satisfied its conditions were being met and the public interest the conditions were designed to protect were thus jeopardised, the Commission could move after public consultation to require the land to be sold. At this point a properly constituted community body which wished to purchase the land would have the first right to buy the land provided it attained democratic assent from local electors (as is required in Community Right to Buy legislation).

- viii. The Commission would have powers to, at any stage, facilitate discussion or mediation between an owner and local community interests to find voluntary means of proceeding.
- ix. There would be an appeal process to the Scottish Land Court of any decision to require the sale or break-up of the landholding.

3H) Scottish Government position on purchasers of land

In its consultation, the Scottish Government does accept there may be occasions when a public interest test might need to be applied to a purchaser of land.

However, their proposals do not contain any information on either the nature of any public interest test or which body would have responsibility for administering it.

4. Public interest for existing land holdings

4A) Existing land holdings

In circumstances where there was legitimate concern about established land ownerships above the presumed limit on the question of whether the public interest was being met through the ownership and use of the land, the Commission would also have a duty to protect the public interest.

I envisage that my Bill would give powers to the Commission to:

- i. Decide at their own discretion that a public interest examination of a land holding may be warranted, or following consideration of a public petition from registered voters living within the land or representations from recognised bodies and individuals holding elected office that such an examination is warranted in the public interest. (The persons and bodies envisaged would be MSPs, MPs, Councillors, Local Authorities, Community Councils, public bodies with interests that extend to the land in question, and properly constituted bodies having a relevant local interest.)
- ii. If making a decision at their own discretion, the Commission would be required to set out their reasons for so doing and notify the owner and seek the owner's response.
- iii. That response would be published and become a matter of an open local consultation and with recognised bodies.
- iv. Where a decision to proceed to a public interest examination follows the receipt of formal representations the owner would be asked to respond and the representations and response would be considered by the Commission.
- v. The Commission could decide to:
 - a. take no further action, or

- b. enter discussions with the owner with a view to agreeing arrangements for the management and ownership of the land or parts of the land such as would not necessitate any further immediate action, with monitoring arrangements being put in place on implementation of the agreement.
- vi. where voluntary agreements could not be reached, the Commission could require the owner to produce a management plan for their land for the approval of the Commission and with formal monitoring arrangements established.
- vii. The Commission could agree the management plan with conditions.
- viii. Where after a failure to provide the management plan or formal monitoring for 1 year of the approved management plan the Commission was dissatisfied with the progress made on the matters agreed they would be given powers for further action through a two-stage escalating process decide to:
 - a. Stage 1: the Commission could issue directions to the owner to take certain actions, and implement cross-compliance measures to incentivise the actions needed
 - b. Stage 2: where after a further 1 year of monitoring the directions given the Commission remained dissatisfied, the Commission could move, after public consultation to require the land to be sold or broken-up. At this point a properly constituted local body which wished to purchase the land would have the first right to buy the land.
- ix. The Commission would have powers to, at any stage, facilitate discussion or mediation between an owner and local community interests to find voluntary means of proceeding.
- x. There could be an appeal to the Scottish Land Court of any decision to require the sale or break-up of the land-holding.

There would be a case for limiting application of these provisions to areas of land which exceeded the presumed limit.

However, it is also clear that there may well be circumstances in places where ownerships were below that level and problematic when meeting public interest considerations.

I therefore propose that the Commission could follow the same process as above for any land in Scotland except for ownerships which may be exempted.

I believe it is reasonable to expect that those referred to above and empowered to make representations about the management of the land in question are responsible people occupying positions of democratic office or in publicly accountable bodies or are registered voters. I believe this is a sufficient safeguard against malicious or mischievous representations and where not, the Commission can be expected to use their discretion in considering representations and act rationally and reasonably. The Commission would issue guidance on those empowered to make representations in relation to these provisions and that guidance would also to

ensure these complaint provisions would only be available in circumstances which warranted potential investigation.

4B) Scottish Government position on existing land holdings

Similar to my proposal, the Scottish Government envisage a way in which the Commission can receive complaints about existing landholdings, but the avenue they envisage is around landowners' compliance with the Land Rights and Responsibilities Statement (LRRS).

In contrast, my proposals are built around a much wider and clearer description of the public interest of which meeting the LRRS is but one element.

My proposals also envisage as a last resort the compulsory sale of all or parts of land where the public interest considerations are considered not to have been met. The Scottish Government are silent on this very important issue.

5. Exemptions

My Bill will make provision for exceptions to its provisions in order to ensure the protection of domestic residences of landowners. There may be a case for other limited exemptions and disapplication of the Bill's provisions.

I welcome views on this in responses to the consultation, but I believe that exemptions must be limited and justifiable in terms of protecting the public interest.

6. Islands

It is my view that islands will require special provisions to protect their interests.

There are islands in Scotland where a significant proportion or the majority or all the land is owned by a single individual in what is a monopoly of local land ownership, controlling management and use decisions. This has proven to be severely problematic for some local communities and has motivated past community ownership bids, such as famously in the case of the island of Eigg.

There are few islands in single ownership that would exceed the presumed limit, but clear public interest questions arise when a whole island or a majority of an island may be purchased.

My Bill will propose that islands have a special status with any person intending to purchase a majority or entirety of an island having to seek the consent of the Commission. Similar provisions as those outlined in Section 4 for the purchasers of land above the presumed limit would apply.

However, I will welcome the views from island communities about what might be an appropriate threshold.

I also recognise there may be a case for similar treatment of remote peninsulas and I would welcome any views on this in responses to the consultation.

7. Appeals

My Bill will make provisions for the appeal of certain decisions of the Commission to the Scottish Land Court in order to recognise the property rights of landowners. This will provide for an appeal where the Commission decides to require the sale of all or any part of a landholding under consideration.

The Wider Picture for Land Reform

Land reform to deconcentrate land ownership in Scotland is an extremely broad issue, necessitating a broad range of approaches acting together and building upon each other. While my proposed Bill offers one approach, of a presumed limit on land ownership, there are other policies which could be brought forward in future to improve the impact of all land reform legislation. Though not part of the proposed Bill, I am also consulting on proposed policy of land valuation and non-domestic rate changes, with the intention to encourage informed policy development in this area in the future.

Non-Domestic Rates and Land Valuation:

Non-Domestic Rate Setting Authority

Non-domestic rates (NDRs) are the local taxes which private, public, and third sector properties are subject to, and pay annually to the local council to provide essential services. Despite being administered and paid locally, they are set at a national level by the Scottish Government. This means local councils are unable to adjust rates to fit their needs, such as lowering NDRs to encourage business activity or raising NDRs to increase council revenue.

This policy would return Non-Domestic Rates values to local councils, as it was prior to 1990, to allow local government to be more responsive to their local needs.

Non-Domestic Rate Values

Currently the amount paid for NDRs is based on the 'rateable value' as judged by assessors through valuations. The valuations are based on the potential rental value or other value of the property, giving a single 'value' every three years. However, this single value does not separate the unimproved value (the land itself) and the improved value (any development on the land, such as buildings). Having both these values can allow for changes in the balance between them, such as to encourage keeping land undeveloped (by increasing tax on developed land value), or to discourage keeping land undeveloped (by decreasing tax on developed land value).

This policy would introduce a 'split-rate' valuation system whereby both the unimproved and improved values are assessed and recorded, to allow councils to set the balance of those values themselves.

Non-Domestic Property Valuation Roll

When a non-domestic property has been valued, its value is then included on the Valuation Roll, which is a public document. The Roll includes the owner of the

property and the rateable value, as well as other information about the property. However, properties exempt from paying NDRs, including agricultural and forestry land, are not valued at all, so there is no public record of their ownership and value.

Although exemptions from paying rates are important for certain industries, I believe all land should still be valued and then exempt industries could have their fee waived – much like exemptions to domestic rates are applied for students. This would allow us much greater public insight into land ownership and value and would allow for future adaptations to NDRs where local needs change. This change was recommended in the 2022 Scottish Land Commission’s Report on Land Reform and Taxation and in the 2017 Barclay Review of the Non-Domestic Rating System.³¹

This policy would introduce all land to the Valuation Roll, to allow greater transparency and understanding of the ownership and value of land across our country.

Policy Points for Consideration:

1. Returning non-domestic rate setting powers to local authorities.
2. Valuing non-domestic properties on both unimproved and improved values
3. Adding all land to the Valuation Roll

I would like to hear your thoughts on these ideas, for future policy development.

Please note, these are not part of the Member’s Bill proposal, they are considerations for future policy around the broader area of land reform.

³¹ [1]

https://www.landcommission.gov.scot/downloads/61efa506191e2_Land%20Reform%20and%20Taxation%20-%20Advice%20to%20Scottish%20Ministers.pdf

<https://www.gov.scot/publications/report-barclay-review-non-domestic-rates/pages/5/>

Financial Implications

Upon introduction of the Bill to Parliament there would be a requirement for a Financial Memorandum in order to give a broad indication of extra costs to the public purse arising from the proposals and to other interests.

The public sector costs will arise mainly from extra administrative and regulatory functions on the Commission and Scottish Land Court. At this stage an estimate of these extra costs would be for 10 members of staff at a total not exceeding £1 million.

There are likely to be costs for landowners attaching to the administrative requirements on them that flow from the Bill at the point of the sale/purchase of land. These require to be seen in the context of the substantial escalation of the value of land or the current price of land where these additional costs are likely to be a very small proportion of such values.

Equalities Implications

I am conscious that when land reform issues are discussed the matters involved can be viewed as being potentially controversial and might involve court challenges due to a perceived breach of established property rights. I believe this is one of the main reasons that previous land reform measures in Scotland have felt so constrained. The Scottish Land Commission recently published a detailed paper on the question of property rights and the public interest³². The paper notes that many European countries have laws restricting the acquisition, use and management of land which go further than Scots law currently does in this regard.

The paper notes that, in principle, it is possible to develop further lawful land reform in Scotland and it recognises that the Scottish Parliament has broad discretion in determining what is in the public interest within any legislation and that property rights may be removed in the general public interest if the responsible legislature provides for that in well considered statute. The paper also recognises that it is for the courts to take the final decision when Scottish Parliament legislation or decisions flowing from it are challenged. It is also the case that the courts could take a different view from the Parliament on whether any legislation was within the Parliament's legislative competence, for example, whether it was compatible with the European Convention of Human Rights (ECHR) or was devolved or reserved.

The paper further notes that legislation on land tenure is not a reserved matter and that the authority to restrict private property rights must come from the legislature to give it legitimacy and authority.

³² https://www.landcommission.gov.scot/downloads/620f73b06cbc1_Land%20Lines%20-%20Balancing%20rights%20and%20interests%20in%20Scottish%20land%20reform.pdf

In considering the provisions in my proposed Bill I have been mindful of the legal opinion given to the Commission and I have designed my proposals to sit within the boundaries of what requires to be considered to respect owner's property rights.

I believe it is worth noting that land reform measures are inevitably controversial as they promote change which potentially affects established economic interests. Parliamentarians in my view need to legislate carefully but should not fear court challenge as the courts have a legitimate role in finally determining and clarifying what is and is not legal.

My proposals seek to provide measures which are justified by the public interest considerations in land by making balanced suggestions and providing ample opportunity for discussion and agreement with proper authorities and will provide appropriate appeals mechanisms.

Sustainable Development

An initial Sustainable Development Impact Assessment has been carried out, evaluating the proposal's potential impact on matters such as living within environmental limits, achieving a sustainable economy, and ensuring a strong, healthy and just society.

As noted earlier in the document, the proposed bill may lead to more people owning small plots of land, resulting in the diversification of land use. Using land for a wide range of purposes such as crofting, housebuilding and horticulture has the potential to create a large number of new jobs, particularly in rural communities. This in turn may improve people's wellbeing by providing them with financial stability, have a positive impact on the local economy and create a fairer distribution of wealth. It is also hoped that the proposed bill will lead to small communities having more opportunity to purchase land for community use which could have a positive impact on those who live there.

While there is potential for the increase in small scale farming leading to more materials and energy being used in the building on, and development of, plots of land, my view is that the proposed bill will have an overall positive impact on the environment. As noted earlier in the document, there has been increased interest in purchasing land for purposes such as reforestation. It is therefore expected that the proposed bill will lead to an increase in land being used for activities such as restoring peatlands, tree planting and woodland management.

I note that placing limits on land ownership may have an adverse effect on the livelihoods of large-scale landowners, who may argue that their businesses are impacted as a result of the proposed bill. While I am confident that the positive impacts of the proposed bill will outweigh any adverse effects, I will endeavour to mitigate any potential negative impact the proposed bill may have and welcome views on how this may be achieved.

Annex

Public interest considerations in relation to land.

I believe it is possible and important that there is a broad and shared understanding of what might be the range of considerations in relation to land as part of the future regulation of land in the public interest.

I believe the following are issues vital to our future success and are all related to land, its ownership and use:

- providing for the sustainable production of healthy food
- providing for the timber needs of the nation
- delivering affordable housing
- protecting and building natural capital
- achieving climate targets and long-term sustainable carbon sequestration
- developing inclusive and sustainable growth
- furthering the realisation of economic, social, cultural and environmental human rights
- realising the aims of the Land Rights and Responsibilities Statement
- building community wealth
- extending economic opportunity and limiting monopoly ownership through substantially widening and diversifying ownership of land
- achieving a just transition to net zero carbon
- empowering communities
- widening the opportunity for tree and habitat management and food growing by more people
- reducing negative flooding impacts locally and downstream
- causing repopulation
- improving access to land, its interpretation and cultural appreciation

These are the issues that the Commission should be required to consider, appropriate to each circumstance, and among other issues they will regard as requiring consideration in determining the public interest.

Of course, landowners have private interests and rights to enjoy their property, and these require to be taken fully into account. But given the scale of concentrated ownership in Scotland, ownership of so much land by so few people, it is vital that public interest issues can be considered alongside those private interests and rights. These are matters that will require balanced consideration within the future regulatory system I envisage.

The public interest in land is broadly based and owners of land have a responsibility to contribute across the broadest range of public interest issues compatible with the

potential of the land in question. The public interest should not be measured only in the achievement of narrow goals and in achieving one predominant goal other goals should not be forgotten.

Questions

About you

(Note: Information entered in this “About You” section may be published with your response (unless it is “not for publication”), except where indicated in **bold**.)

1. Are you responding as:
- an individual – in which case go to Q2A
 - on behalf of an organisation? – in which case go to Q2B
- 2A. Which of the following best describes you? (If you are a professional or academic, but not in a subject relevant to the consultation, please choose “Member of the public”.)
- Politician (MSP/MP/peer/MEP/Councillor)
 - Professional with experience in a relevant subject
 - Academic with expertise in a relevant subject
 - Member of the public

Optional: You may wish to explain briefly what expertise or experience you have that is relevant to the subject-matter of the consultation:

- 2B. Please select the category which best describes your organisation:
- Public sector body (Scottish/UK Government or agency, local authority, NDPB)
 - Commercial organisation (company, business)
 - Representative organisation (trade union, professional association)
 - Third sector (charitable, campaigning, social enterprise, voluntary, non-profit)
 - Other (e.g. clubs, local groups, groups of individuals, etc.)

Optional: You may wish to explain briefly what the organisation does, its experience and expertise in the subject-matter of the consultation, and how the view expressed in the response was arrived at (e.g. whether it is the view of particular office-holders or has been approved by the membership as a whole).

3. Please choose one of the following:

- I am content for this response to be published and attributed to me or my organisation
- I would like this response to be published anonymously
- I would like this response to be considered, but not published (“not for publication”)

If you have requested anonymity or asked for your response not to be published, please give a reason. **(Note: your reason will not be published.)**

4. Please provide your name or the name of your organisation. **(Note: The name will not be published if you have asked for the response to be anonymous or “not for publication”.)**

Name:

Please provide a way in which we can contact you if there are queries regarding your response. Email is preferred but you can also provide a postal address or phone number. **(Note: We will not publish these contact details.)**

Contact details:

5. **Data protection declaration**

- I confirm that I have read and understood the [Privacy Notice](#) to this consultation which explains how my personal data will be used.

If you are under 12 and making a submission, we will need to contact you to ask your parent or guardian to confirm to us that they are happy for you to send us your views.

- Please **ONLY** tick this box if you are **UNDER 12** years of age.

Your views on the proposal

Note: All answers to the questions in this section may be published (unless your response is “not for publication”).

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
- Partially supportive
- Neutral (neither support nor oppose)
- Partially opposed
- Fully opposed
- Unsure

Please explain the reasons for your response.

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
- Partially supportive
- Neutral (neither support nor oppose)
- Partially opposed
- Fully opposed
- Unsure

Please explain the reasons for your response.

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?

- The limit should be higher than 500 hectares
- 500 hectares is about right
- The limit should be lower than 500 hectares
- The limit should be different, in different circumstances
- Unsure

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

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
- Partially supportive
- Neutral (neither support nor oppose)
- Partially opposed
- Fully opposed
- Unsure

Please explain the reasons for your response

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

- Yes
- No – because a different body should be given this role (please specify below)
- No – because no body should be given this role
- Unsure

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

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

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
- Partially supportive
- Neutral (neither support nor oppose)
- Partially opposed
- Fully opposed
- Unsure

Please explain the reasons for your response

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 land holdings above the presumed limit, and give it options for intervention (see section 4A of the consultation document)?

- Fully supportive

- Partially supportive
- Neutral (neither support nor oppose)
- Partially opposed
- Fully opposed
- Unsure

Please explain the reasons for your response

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
- Partially supportive
- Neutral (neither support nor oppose)
- Partially opposed
- Fully opposed
- Unsure

Please explain the reasons for your response

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
- Partially supportive
- Neutral (neither support nor oppose)
- Partially opposed
- Fully opposed
- Unsure

Please explain the reasons for your response

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?

- A significant increase in costs
- Some increase in costs
- No overall change in costs
- Some reduction in costs
- A significant reduction in costs
- Unsure

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.

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.

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?

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)?

How to respond to this consultation

You are invited to respond to this consultation by answering the questions in the consultation and by adding any other comments that you consider appropriate.

Format of responses

You are encouraged to submit your response via an online survey (Smart Survey) if possible, as this is quicker and more efficient both for you and the Parliament. However, if you do not have online access, or prefer not to use Smart Survey, you may also respond by e-mail or in hard copy.

Online survey

To respond via online survey, please follow this link:

<https://www.smartsurvey.co.uk/s/LandOwnership/>

The platform for the online survey is Smart Survey, a third party online survey system enabling the SPCB to collect responses to MSP consultations. Smart Survey is based in the UK and is subject to the requirements of the General Data Protection Regulation (GDPR) and any other applicable data protection legislation. Any information you send in response to this consultation (including personal data) will be seen by the MSP progressing the Bill and by staff in NGBU.

Further information on the handling of your data can be found in the Privacy Notice, which is available either via the Smart Survey link above or here: [Privacy Notice](#)

Smart Survey's privacy policy is available here:

<https://www.smartsurvey.co.uk/privacy-policy>

Electronic or hard copy submissions

Responses not made via Smart Survey should, if possible, be prepared electronically (preferably in MS Word). Please keep formatting of this document to a minimum. Please send the document by e-mail (as an attachment, rather than in the body of the e-mail) to:

Mercedes.villalba.msp@parliament.scot

Responses prepared in hard copy should either be scanned and sent as an attachment to the above e-mail address or sent by post to:

Mercedes Villalba MSP
Room M1.03
Scottish Parliament
Edinburgh EH99 1SP

Responses submitted by e-mail or hard copy may be entered into Smart Survey by my office or by NGBU.

If submitting a response by e-mail or hard copy, please include written confirmation that you have read and understood the [Privacy Notice](#).

You may also contact my office by telephone on (0131) 348 6390.

Deadline for responses

All responses should be received no later than **12 September 2023**. Please let me know in advance of this deadline if you anticipate difficulties meeting it. Responses received after the consultation has closed will not be included in any summary of responses that is prepared.

How responses are handled

To help inform debate on the matters covered by this consultation and in the interests of openness, please be aware that I would normally expect to publish all responses received (other than “not for publication” responses) on my website mercedesvillalba.scot

Published responses (other than anonymous responses) will include the name of the respondent, but other personal data sent with the response (including signatures, addresses and contact details) will not be published.

Where responses include content considered to be offensive, defamatory or irrelevant, my office may contact you to agree changes to the content, or may edit the content itself and publish a redacted version.

Copies of all responses will be provided to the Scottish Parliament’s Non-Government Bills Unit (NGBU), so it can prepare a summary that I may then lodge with a final proposal (the next stage in the process of securing the right to introduce a Member’s Bill). The [Privacy Notice](#) explains more about how the Parliament will handle your response.

If I lodge a final proposal, I will be obliged to provide copies of responses (other than “not for publication” responses) to the Scottish Parliament’s Information Centre (SPICe). SPICe may make responses available to MSPs or staff on request.

Requests for anonymity or for responses not to be published

If you wish your response to be treated as anonymous or “not for publication”, please indicate this clearly. The [Privacy Notice](#) explains how such responses will be handled.

Other exceptions to publication

Where a large number of submissions is received, particularly if they are in very similar terms, it may not be practical or appropriate to publish them all individually.

One option may be to publish the text only once, together with a list of the names of those making that response.

There may also be legal reasons for not publishing some or all of a response – for example, if it contains irrelevant, offensive or defamatory content. If I think your response contains such content, it may be returned to you with an invitation to provide a justification for the content or to edit or remove it. Alternatively, I may publish it with the content edited or removed, or I may disregard the response and destroy it.

Data Protection

As an MSP, I must comply with the requirements of the General Data Protection Regulation (GDPR) and other data protection legislation which places certain obligations on me when I process personal data. As stated above, I will normally publish your response in full, together with your name, unless you request anonymity or ask for it not to be published. I will not publish your signature or personal contact information. The [Privacy Notice](#) sets out in more detail what this means.

I may also edit any part of your response which I think could identify a third party, unless that person has provided consent for me to publish it. If you wish me to publish information that could identify a third party, you should obtain that person's consent in writing and include it with your submission.

If you consider that your response may raise any other issues under the GDPR or other data protection legislation and wish to discuss this further, please contact me before you submit your response. Further information about data protection can be found at: www.ico.gov.uk.

Freedom of Information (Scotland) Act 2002

As indicated above, NGBU may have access to information included in, or provided with, your response that I would not normally publish (such as confidential content, or your contact details). Any such information held by the Parliament is subject to the requirements of the FOISA. So if the information is requested by third parties the Scottish Parliament must consider the request and may have to provide the information unless the information falls within one of the exemptions set out in the Act. I cannot therefore guarantee that any such information you send me will not be made public should it be requested under FOISA.

Further information about Freedom of Information can be found at:

www.itspublicknowledge.info.