

Scottish Community Alliance Briefing on the Land Reform Bill

Summary

The Land Reform (Scotland) Bill was introduced in the Scottish Parliament on Wednesday 13 March 2024, following an extensive consultation in 2022. The introduction had been delayed from last year, amid murmurs that “expectations would need to be managed”. Even so, the Bill as introduced is embarrassingly thin with respect to landownership, with the bulk of the provisions focussing on agricultural and other tenancies, while many proposals covered in the consultation are conspicuous in their absence.

The definition of “large-scale landholdings” is partially reduced from the 3,000ha proposed in the consultation, with a threshold of 1,000ha now applying to some measures, and a new Land Commissioner will be established (although it is difficult to see how they will keep themselves occupied). Otherwise there are just three substantive measures, all heavily caveated.

1) The Bill gives Ministers the power to require that a publicly accessible land management plan be produced and regularly reviewed for all large-scale (>3,000ha) landholdings. Development of the plan must include community consultation and there are some indications of the required content, but the details will be in secondary legislation, with no timescale for when or even if these must be implemented.

However, as there is no obligation on landowners to take any notice of consultation responses, the penalties for proven breaches are slap-on-the-wrist fines, and the only organisations that can report breaches are local LRA-compliant community bodies, the relevant local authority and three quangos, in practice most landowners can probably safely ignore this measure.

2) The Bill requires that owners intending to transfer all or part of a large (>1000ha) landholding, must notify the Scottish Government and certain other parties in advance, to give community bodies an opportunity to try and buy the land. This is welcome, however the threshold is too high and the timescale for any community response is very short, especially where there is no pre-existing LRA-compliant body.

3) The Bill introduces a prohibition on the transfer of large (>1,000ha) landholdings without an application to Ministers for a decision on whether to sub-divide the land into “lots”, to be sold to different purchasers. Whilst this is welcome in principle, the proposed “transfer test” is a pale shadow of the broad range of measures considered in the 2022 consultation under the banner of a public interest test and there is little to ensure that lotting will actually make communities more sustainable.

Critically, by focussing on the seller and omitting any scrutiny of buyers, this proposal does little to encourage diversity or inhibit the consolidation and expansion of ownership by existing large landowners.

Given the broad range of potential provisions consulted on in 2022, and the widespread support from respondents towards stronger measures, the three substantive proposals noted above are very weak, and appear to have been designed to do the minimum possible to meet the commitments made in successive Programmes for Government and the Bute House Agreement.

Various other measures, many of which were included in the 2022 consultation, have not found their way into the Bill, including:

- Review and reform of the asset transfer provisions and the various community rights to buy introduced by previous legislation;
- Modernisation of the compulsory purchase powers available to local authorities, and/or the introduction of compulsory sales orders;
- Review and reform of existing taxes, such as non-domestic rates, capital gains tax and inheritance tax, and/or the introduction of land value tax or carbon emissions tax;
- Strengthening the Land Rights and Responsibilities Statement;
- Conditions on those in receipt of public funding for land-based activity;
- Measures to regulate who can own, control and benefit from Scotland's land;
- Measures to secure affordable rural housing for the sustainability of local communities.

Most strikingly, any consideration of the urban domain is completely excluded, with the measures in the Bill effectively only relevant to rural Scotland.

Parliament's Net Zero, Energy and Transport Committee is expected to be designated as lead committee for scrutiny of the Bill; they will issue a call for evidence, consult with stakeholders and prepare a report. Amendments to the Bill can be proposed and voted on in the subsequent stages 2 and 3.

The Scottish Community Alliance (SCA) should seek to work with member networks and other interested parties to strengthen the Bill for the benefit of communities, both through the parliamentary process and through wider campaigning.

I Introduction

The Land Reform (Scotland) Bill¹ was introduced in the Scottish Parliament on Wednesday 13 March 2024, together with the usual suite of supporting documents, including a Policy Memorandum, Explanatory Notes, Business and Regulatory Impact Assessment² and Financial Memorandum. The Parliament's research service SPICe has produced a briefing on the Bill.³

Several proposals for the Bill were included in the 2022 consultation document "Land Reform in a Net Zero Nation"⁴ to which SCA responded in detail.⁵

The Bill covers four principal policy areas:

- Land reform
- A new Land Management Tenancy
- Agricultural holdings
- Small landholdings

Although the tenancy, agricultural holdings and small landholdings sections are important for their respective sectors, and the provisions therein comprise the bulk of the Bill as introduced, they are not discussed further here.

¹ <https://www.parliament.scot/bills-and-laws/bills/land-reform-scotland-bill/introduced>

² Published separately at <https://www.gov.scot/publications/land-reform-scotland-bill-business-regulatory-impact-assessment-bria/>

³ <https://spice-spotlight.scot/2024/03/14/the-land-reform-scotland-bill-2024-what-do-the-proposals-for-large-landholdings-look-like/>

⁴ <https://consult.gov.scot/agriculture-and-rural-economy/land-reform-net-zero-scotland/>

Henceforth referred to as the 2022 consultation

⁵ <https://scottishcommunityalliance.org.uk/wp-content/uploads/2023/01/Scottish-Community-Alliance-Land-Reform-in-a-Net-Zero-Nation-consultation-response-1.pdf>

Chapter 2 of this briefing discusses the proposed land reform measures in Part I of the Bill. Chapter 3 notes some areas of policy which are completely missing from the Bill and Chapter 4 outlines next steps for SCA and its member networks to influence the development of the Bill, and note some potential areas for amendment.

2 Land reform measures

The Bill introduces three measures which would apply to owners of large-scale landholdings:

- Ministerial powers to make regulations to place new community engagement obligations on landowners to produce land management plans and to engage with local communities;
- requirements for community bodies to receive advance notice in certain cases that the owner intends to transfer a large landholding, or part of it, and provide an opportunity for community bodies in the area to purchase land;
- the introduction of a “transfer test” for certain transfers of all or part of a large landholding, to determine if the owner should be required to transfer the land in smaller parts (lotting).

The Bill also seeks to establish a new Commissioner at the Scottish Land Commission (SLC) to be known as the “Land and Communities Commissioner”, with responsibilities in relation to the new obligations on landowners and the transfer test. These changes will be made by amending relevant sections of the 2003 and 2016 Land Reform Acts.⁶

Given the wide range of potential provisions consulted on in 2022, and the general steer from respondents towards stronger measures, the three substantive proposals noted above are very weak, and appear to have been designed to do the minimum possible to meet commitments made in successive Programmes for Government⁷ and the Bute House Agreement.⁸

2.1 Size threshold for large landholdings

A key element of the Bill is the definition of the threshold by which landholdings are within scope of the various provisions:

- for community engagement and land management plan requirements, the Bill applies to a landholding that is more than 3,000 hectares, or a landholding that exceeds 1,000 hectares that accounts for more than 25% of a permanently inhabited island,
- for pre-notification requirements and transfer test, the Bill applies to a landholding that is more than 1,000 hectares.

The Policy Memorandum attempts to illustrate the impact of these thresholds:

- According to data from Registers of Scotland, approximately 40% of the land in Scotland is made up of landholdings of over 3,000 hectares.
- Analysis by the James Hutton Institute to support this Bill identifies 1066 landholdings above 1,000 hectares, representing 4.32 million hectares, or 55% of Scotland’s land.

However, a significant proportion of these totals is land owned by public bodies which are (in theory) subject to public scrutiny, and covered by Asset Transfer provisions. Forestry and Land Scotland already produces Land Management Plans⁹ (with an element of public consultation) for all their

⁶ Henceforth referred to as the 2003 Act and the 2016 Act respectively

⁷ <https://www.gov.scot/publications/fairer-greener-scotland-programme-government-2021-22/>

<https://www.gov.scot/publications/stronger-more-resilient-scotland-programme-government-2022-23/>

⁸ <https://www.gov.scot/publications/scottish-government-scottish-green-party-shared-policy-programme/documents/>

⁹ <https://forestryandland.gov.scot/what-we-do/planning>

holdings, whilst some other holdings are owned by community bodies and environmental NGOs, so it appears the impact of these proposals¹⁰ is being exaggerated somewhat.

It is also important to note that the provisions apply to contiguous landholdings, not aggregate landownership. Whilst a single landholding can include land held under more than one title deed, if the titles are held by the same person,¹¹ these titles must be geographically contiguous, so a landowner with five separate holdings each of 2,000ha will not be within scope of the community engagement and land management plan requirements.

The 2022 consultation proposed a fixed threshold of 3,000ha, potentially supplemented by criteria based on landholdings exceed a specified percentage of other areal divisions.¹² This threshold was the object of much discussion during and since the consultation, with most respondents arguing for lower thresholds. SCA's response noted that "that 3,000ha is too high: this would capture relatively few landholdings and would not have significant impact in tackling issues of scale and concentration in land ownership in Scotland" and proposed a threshold of 1,000ha, which should be based on aggregate beneficial ownership

SCA also argued for a much lower threshold for measures relating to prior notification of sales, and proposed an additional criterion for "large scale landholdings", based on receipt of direct agricultural subsidy to help address the regional imbalance inherent in an area threshold, whereby the significance and value of given area of land varies greatly across the country.

Whilst the Bill's introduction of a 1,000ha threshold for pre-notification and transfer test represents an advance on the 2022 consultation, it remains too high and the limitation to contiguous landholdings ensures that it will not have a significant effect on tackling issues of scale and concentration in land ownership.

2.2 Land and Communities Commissioner

Section 6 amends the 2016 Act to establish the office of a new (additional) Scottish land Commissioner called the Land and Communities Commissioner. The proposed Commissioner (who cannot have been the owner of a large landholding in the preceding year) will have a distinct remit and functions, and is required to have expertise or experience in land management and community empowerment.

The 2022 consultation covered the question of who should administer any new measures, and there was general support, including from SCA, for these remaining within the purview of the Scottish Land Commission. A new, specific role was not proposed at that time but it does seem a sensible proposal that SCA should endorse.

2.3 Community engagement obligations

Section 1 of the Bill gives Scottish Ministers the power to make regulations,¹³ informed by the Land Rights and Responsibilities Statement, which impose obligations on the owners of large land holdings for the purpose of promoting community engagement.

Owners of landholdings over 3,000ha, or land of at least 1,000ha that accounts for more than 25% of a permanently inhabited island, will be required to have a land management plan.¹⁴ The regulations will require that:

- the land management plan is publicly available

¹⁰ In terms of how much additional land will be subject to these provisions

¹¹ titles held by different persons may be treated as constituting a single owner if there is shared controlling ownership.

¹² E.g. islands, data zones, local authority wards

¹³ This means that most of the detail will be in secondary legislation, which there is no obligation to introduce.

¹⁴ Which does not, apparently, have to cover all of that land

- there is engagement with communities¹⁵ on the development of, and significant changes to, the plan,
- the plan is reviewed and, where appropriate revised, on a 5 year schedule

Land management plans should include information on ownership structure, long-term vision and objectives (including potential sale), as well as compliance with the Scottish Outdoor Access Code,¹⁶ the Code of Practice on Deer Management¹⁷ and how the owner is managing or intends to manage the land in a way that contributes to:

- achieving the net zero emissions target set in the Climate Change (Scotland) Act 2009,
- adapting to climate change,
- increasing or sustaining biodiversity.

Whilst increased engagement is welcome, and these proposals would provide greater opportunities for communities' views to be heard, as the Policy Memorandum notes "These duties on owners of large land holdings to engage will not give local communities any legal right over land, nor any direct power to direct the actions and decisions of landowners."

Many large landholdings in the crofting counties have individual (crofters) and collective (common grazings) tenants, whilst large landowners elsewhere may have tenant farmers on all or part of their holdings. The proposals place obligations solely on land owner and do not appear to consider these scenarios.

The 3,000ha threshold is very high: as SCA noted in the response to the 2022 consultation private sector forestry holdings of 100ha or more are already required, as a condition of the receipt of forest management grants,¹⁸ to produce a Long Term Forest Plan¹⁹ which includes community consultation and considerably more detail than appears to be expected from the proposed Bill.

Owners of large landholdings will also be required to "give consideration to a reasonable request from a community body²⁰ to lease land or any part of it (including any building on it)", however there is no obligation to do more than "give consideration to" the request, nor any definition or limitation of grounds for refusal.

2.3.1 Penalties for non-compliance

The Bill includes provisions to enable alleged breaches to be reported to the Land and Communities Commissioner, with failure to provide information being subject to a fine of £1,000 and a proven breach being punishable with a fine of up to £5,000.

The 2022 consultation suggested both financial and cross compliance²¹ penalties. The SCA response noted that it was uncertain "whether fines could be set at a level that would have any meaningful deterrent effect on large scale landowners" and we question to what extent a maximum one-off fine of £5,000 is a serious deterrent to a landowner of >3,000ha.

Together with a clear majority of respondents to the consultation, SCA was supportive of cross-compliance penalties, believing that "full or partial removal of access to subsidy, especially if effective over more than one year, is likely to be a much more substantial deterrent for large scale landowners."

¹⁵ It is not clear whether there will be any restrictions (geographical, or constitutional) on who can engage with the development of land management plans

¹⁶ <https://www.outdooraccess-scotland.scot/>

¹⁷ <https://www.nature.scot/code-practice-deer-management>

¹⁸ Note that this applies to existing forest holdings, not to woodland creation proposals.

¹⁹ <https://forestry.gov.scot/publications/132-long-term-forest-plans-applicant-s-guidance>

²⁰ Which must be LRA-compliant

²¹ i.e. fully or partially removing access to agricultural subsidies

The Policy Memorandum does not specifically mention cross-compliance, but notes that measures are being brought forward in the Agriculture and Rural Communities (ARC) Bill²² that will enable Scottish Ministers to attach certain conditions when providing financial assistance. However, the accompanying documents for the ARC Bill do not set out any intentions to use these or any other powers to deliver land reform, and given the general tenor of the ARC Bill it seems highly unlikely that it these measures will be added.

SCA, along with a number of other respondents, argued that there should be additional sanctions in the most egregious cases, or where large landowners refuse to comply with direction, which might include withdrawal of other consents,²³ Compulsory Sale Orders, or disqualification from landownership. None of these additional measures have been included in the Bill, nor are they mentioned in the Policy Memorandum.

2.3.2 Reporting breaches

As noted, the Bill includes provisions to enable alleged breaches to be reported to the Land and Communities Commissioner. However, the power to report an alleged breach is restricted, to “a body that has registered an interest, or is eligible to register an interest, under Part 2 of the Land Reform (Scotland) Act 2003 in the land to which the report of the alleged breach relates”; the relevant local authority; and three Government bodies: Historic Environment Scotland, Scottish Environment Protection Agency, Scottish Natural Heritage. The Policy Memorandum fails to give any rationale for the limitation to LRA-compliant bodies, which is even tighter than that suggested in the 2022 consultation, which asked whether “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.”

In responding to the 2022 consultation, SCA argued that that the ability to report breaches should not be restricted to constituted organisations, noting that the Office of the Scottish Charity Regulator has a well-established and open process for reporting a concern with a charity or a body representing itself as a charity.²⁴

Restricting the community power to report breaches to LRA-compliant bodies in this way effectively neutralises the value of the provisions.

- Many rural communities in Scotland do not have a pre-existing community body, and it seems disproportionate to expect communities to establish such a body on the off-chance that they might need to report a breach.
- Even where there is a pre-existing community asset owner, it may well not be fully LRA-compliant, because the LRA requirements have been tightened over time, or because they acquired assets using asset transfer provisions which have different criteria.
- A report of a breach will inevitably be seen as a hostile act by the landowner, and doing so may not be in the best interests of a community body that has at the same to work with the landowner on other issues.

The three Scottish Government bodies named in the Bill do not have a strong record in regulating large scale landowners and communities will have little confidence that they would do so in the future.

²²<https://www.parliament.scot/bills-and-laws/bills/agriculture-and-rural-communities-scotland-bill/introduced> This is currently at Stage I in the Scottish Parliament

²³ E.g. shooting licences, felling licences and livestock movement licences

²⁴ <https://www.oscr.org.uk/concern-form/>

2.4 Pre-notification requirements

Sections 2 and 3 of the Bill propose the introduction of a requirement for prior notification of intention to sell land from a landholding over 1,000 hectares and allow community bodies the opportunity to use the Community Right to Buy (CRtB) late application process in the 2003 Act.

A community body would have 30 days from being notified by the Scottish Ministers to express an interest in making a late application. If interest is expressed, the landowner would be prohibited from selling the land in question for a further 40 days to allow for preparation of an CRtB application.

The Scottish Ministers will be required to publish prescribed information on a website and notify community bodies which have registered an interest in being informed.

Pre-notification of sales is welcome, and importantly this provision covers all or part of a landholding over 1,000 hectares (so a transfer of 100ha from a 1,500ha holding will be in scope), however the threshold is still too high and the timescale for community response is very short, especially where there is no pre-existing LRA-compliant community body.

2.5 Transfer test

Sections 4 and 5 introduce a prohibition on the transfer of large landholdings except in accordance with a lotting decision. This would mean that a large landholding (or more than 50ha of a large landholding) cannot be transferred without an application to Ministers for a decision on whether to sub-divide the land into “lots”, to be sold (initially at least) to different purchasers, which it is believed could increase the supply of more varied plots and might have a positive impact on local community sustainability.

Ministers would have to request a report from the Land and Communities Commissioner to inform their decision, and must be satisfied that ownership of the land being transferred in accordance with the decision would be more likely to lead to its being used (in whole or in part) in ways that might make a community more sustainable than would be the case if all of the land were transferred to the same person. They must also consider how often land in the community’s vicinity becomes available for purchase on the open market and the extent to which ownership of land in the community’s vicinity is concentrated.

Ministers may offer to buy land following a review of a lotting decision, but only if they are satisfied that it is likely that the fact that the land has not been transferred since the lotting decision was made is attributable to the land being less commercially attractive than it would have been had the lotting decision not prevented its being transferred along with other land. Landowners are entitled to compensation for loss or expense incurred in complying with the procedural requirements, or attributable either to a potential transfer of the land being prevented by the lotting decision or to the requirement to transfer land in lots.

Whilst the proposal to impose lotting is welcome in principle, the proposed transfer test is very narrowly framed and is a pale shadow of the broad range of measures discussed under the banner of a public interest test. In particular, there is little to ensure that lotting will actually make communities more sustainable.

The 2022 consultation asked whether a possible outcome of the public interest test might be that the land “be offered to constituted community bodies in the area”, reflecting the commitment in the Bute House Agreement to “ensure that the public interest is considered on transfers of particularly large-scale landholdings [with an] aim to introduce a pre-emption in favour of community buy-out where the public interest test applies.”

The Policy Memorandum claims that “the community right to buy element of this public interest test commitment has been taken forward as the pre-notification requirements”, however the restriction to LRA-compliant bodies is a considerable narrowing of scope from the “constituted community bodies in the area” suggested in the consultation. SCA’s consultation response

supported a right of pre-emption of constituted community bodies, and also proposed an additional option: the acquisition of all or part of the land by other public or non-statutory bodies (e.g. housing associations) for the delivery of specific activities for public benefit.

Where lots are created, they will be subject to open market sale where those with deep pockets looking for a financial investment will be able to outbid new entrants or those interested in working the land. Whilst community bodies able to use the community right to buy provisions are in a somewhat privileged position, they must still raise funds to pay over inflated market rates, which will be increasingly challenging with the recently announced cuts to the Scottish Land Fund.

More fundamentally, because the Bill does nothing to tackle the fiscal architecture which supports the land market,²⁵ and focusses exclusively on the seller, this proposal does little to encourage diversity or to inhibit the consolidation and expansion of large-scale landownership by existing landowners: forest investment companies or large farming businesses who can continue to buy up smaller parcels of land unhindered.²⁶ Lotting will only foster diversity if the lots are acquired by new owners:²⁷ splitting a large landholding into a few chunks which are snapped up by existing large landowners, whether neighbouring or not, only delivers further concentration of ownership.

3 What's not in the Bill

Various other potential measures, many of which were included in the 2022 consultation, have not found their way into the Bill, including:

- Review and reform of the asset transfer provisions and the various community rights to buy introduced by previous legislation;
- Modernisation of the compulsory purchase powers available to local authorities, and/or the introduction of compulsory sales orders;
- Review and reform of existing taxes, such as non-domestic rates, capital gains tax and inheritance tax, and/or the introduction of e.g. land value tax or carbon emissions tax;
- Strengthening the Land Rights and Responsibilities Statement;
- Conditions on those in receipt of public funding for land based activity;
- Measures to regulate who can own, control and benefit from Scotland's land;
- Measures to secure affordable rural housing for the sustainability of local communities.

Most strikingly, any consideration of the urban domain is completely excluded, with the measure in the Bill effectively only relevant to rural Scotland.

Some of these omissions are mentioned in the Bill and explained on the basis that they are being dealt with in some other way, although this often appears little more than can-kicking. Some areas are ignored altogether.

3.1 Review and reform of asset transfer and community rights to buy

The 2022 consultation did not specifically ask about reform of existing legislative measures, but a considerable number of respondents, including SCA, did cover this in their answers to Question 44 "Do you have any additional ideas or proposals for Land Reform in Scotland?"

The SCA response noted that reform of existing legislation - the 2003 and 2016 Land Reform Acts and the 2015 Community Empowerment Act - was required to simplify procedures and harmonise requirements for community bodies, in particular to permit greater cross-eligibility, e.g.:

- allowing Crofting Community Bodies to use other Rights to Buy & Asset Transfer

²⁵ Indeed, they go out of their way to ensure that the financial interests of large scale landowners are protected

²⁶ The Scottish Land Commission proposed that the public interest test would apply to the prospective buyer of the land, on the basis that the purchase could exacerbate scale and concentration of landownership if the buyer already held land in the area.

²⁷ and more importantly, new types of owners

- allowing Asset Transfer-eligible bodies to use the Community Rights to Buy where there was clear public benefit.

SCA also argued that the time period for exercise of the Community Right to Buy should be extended from 8 months to 12 months and that the Bill should include provisions to strengthen the Community Asset Transfer legislation: introducing greater accountability (and sanctions) for Public Authorities and limiting the removal of public assets from the scope of the legislation.

The Policy Memorandum says “The Scottish Government announced on 6 March 2024²⁸ that it will review the operation and effectiveness of all the current community right to buy rules. The review will begin in Summer 2024, following introduction of this Bill and report at the end of 2025. It will cover all the current rights to buy, and will look at legislative and procedural aspects of the rights to see if new legislation is needed.”

“The Scottish Government is currently reviewing the operation and effectiveness of the measures in and under the Community Empowerment Act. For example, stakeholders have been asked to explore and investigate the experiences of those involved in taking on community control and ownership of public spaces.”

3.2 Compulsory purchase and sale orders

There is a well-recognised need for Governments and other public authorities to be able to acquire land as part of fulfilling their responsibilities. Compulsory purchase powers are based on the long established position that landowners’ private property rights give way to the public interest.

The Land Reform Review Group²⁹ considered that there was a clear need to update Scotland’s system of compulsory purchase and recommended that the Scottish Government and local authorities should have a right to register a statutory right of pre-emption over land where that is in the public interest.

Whilst the 2022 consultation document stated that “Issues around the reform of compulsory purchase orders will be taken forward in the Community Wealth Building Bill later in this Parliament”, a number of respondents, including SCA, proposed compulsory purchase orders and/or compulsory sale orders as potential sanctions for particularly severe breaches of rules, or where large landowners repeatedly refuse to comply with direction.

Despite the commitment that CPOs would be addressed in the Community Wealth Building Bill, they were not covered in the 2023 consultation on that Bill, and the Policy Memorandum states “As set out in the Programme for Government 2023-2024,³⁰ the Scottish Government will continue to consider the justification for, and practical operation of, compulsory sales orders.”³¹

3.3 Taxation

The SCA response to the 2022 consultation noted that large scale landowners benefit from a number of tax exemptions which serve to contribute to the inflated land market as buyers are attracted by the opportunity to “manage” their tax burden; indeed, the availability of these tax exemptions is often a key selling point. Reform of taxation is therefore necessary to tackle the reasons why individuals and corporations want to buy and hold on to vast swathes of land, not just to try and mitigate the negative impacts of large-scale ownership.

²⁸ <https://www.gov.scot/news/community-right-to-buy-1/>

²⁹ <https://www.gov.scot/publications/land-reform-review-group-final-report-land-scotland-common-good/documents/>

³⁰ <https://www.gov.scot/publications/programme-government-2023-24/pages/3/>

³¹ The specific actions detailed in the PfG are:

- Progress work to reform and modernise Compulsory Purchase Orders, starting with the appointment of an expert advisory group in 2023-24, and implement new infrastructure levy regulations by spring 2026.
- Continue to consider the justification for, and practical operation of, Compulsory Sales Orders.

The Policy Memorandum says simply that “In relation to taxation, the Scottish Government is giving careful consideration to these complex matters and intends to explore them more fully as part of its commitment to producing a longer-term tax strategy”, which strongly suggests that no action is likely to be taken in this area in the foreseeable future.

3.4 Strengthening the Land Rights and Responsibilities Statement

The Land Rights and Responsibilities Statement (LRRS) was published in 2017³² and revised in 2022.³³ It is supported by advisory notes, case study examples, and a series of good practice protocols developed by the Scottish Land Commission.³⁴ The LRRS, and its associated advisory notes and protocols, is currently voluntary and relies on landowners and land managers engaging with it.

The 2022 consultation states: “we propose to introduce measures which would place a legal duty on owners of large-scale landholdings to comply with the LRRS and its associated codes/protocols. This would be accompanied by a statutory process to adjudicate on complaints about non-compliance and the response to a breach.”

SCA agreed with the proposal that there should be a duty on large-scale landowners to comply with the Land Rights and Responsibility Statement and its associated protocols, although SCA noted that the LRRS would need to be revised to give clarity to landowners and land managers as to what’s expected of them and to allow objective assessment of potential breaches.

The Policy Memorandum suggests that the introduction of new community engagement obligations on landowners to produce land management plans and to engage with local communities supports compliance with two of the seven principles of the LRRS:

- There should be transparency about the ownership, use and management of land, and this information should be publicly available, clear and contain relevant detail.
- There should be meaningful collaboration and community engagement in decisions about land.

However, the proposals in the Bill do not require meaningful collaboration and there is nothing to support compliance with the other five principles.

3.5 Conditions on those in receipt of public funding for land based activity

Public support for land managers in the year 16 October 2021 to 15 October 2022 exceeded £940 million,³⁵ 90% of which was distributed as recurring and non-competitive subsidies, which were not dependent on the delivery of specific outputs or public benefit outcomes.

The 2022 consultation noted public concern as to who is in receipt of public funds and whether profit from land investment (which may have had the benefit of public subsidy) finds its way out of the country. Several potential additional measures were explored, including the withdrawal of public funding for those not complying with LRRS requirements, and it was proposed that all recipients of Scottish Government land-based subsidies should be registered and liable to pay tax in the UK or EU.

SCA agreed the need for reform of the system of public subsidy for land-based activity and supported the use of cross-compliance penalties for the breaches of the LRRS, and that all beneficiaries should be liable for tax in the UK. It was noted that reform must be much more far reaching than the measures proposed and that the current system of direct payments, decoupled from the delivery of meaningful public benefit, operates against the public interest, frustrating land reform, and inhibiting measures to tackle climate change.

³² <https://www.gov.scot/publications/scottish-land-rights-responsibilities-statement/>

³³ <https://www.gov.scot/publications/scottish-land-rights-responsibilities-statement-2022/>

³⁴ <https://www.landcommission.gov.scot/our-work/good-practice/land-rights-and-responsibilities-protocols>

³⁵ <https://cap-payments.defra.gov.uk/Default.aspx>

As noted in 2.3.1 above, the Bill does not include restriction of public subsidy as a sanction for breach on the requirement to engage with communities or to produce a land management plan, and there is no mention in the Bill of any of the additional measures proposed in the consultation. The Policy Memorandum does refer to unspecified “measures being brought forward in the Agriculture and Rural Communities Bill”, however there is no evidence in the ARC Bill or its supporting documents that there is any intention to introduce provisions that might deliver these outcomes.

3.6 Regulating who can acquire land in Scotland

The 2022 consultation asked “Do you agree or disagree with our proposal to explore

- Who should be able to acquire large-scale landholdings in Scotland
- 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”

The SCA response supported proposals to explore who should be able to acquire large-scale landholdings in Scotland, but suggested that the second proposal should be tightened, arguing that the requirement should be based on domicile rather than registration and limited to the UK, given that Scotland is (unfortunately) no longer part of the EU.

The Policy Memorandum does not give any rationale for the omission of any measures to regulate land ownership in this way.

3.7 Housing

The chronic lack of affordable housing is the single most important land and property issue for many rural (and urban) communities. In addition to the negative social and demographic impacts, the housing shortage is a major constraint on the economic development of rural Scotland.

The Policy Memorandum quotes from SLC research that “concentrated land ownership ... can negatively impact sustainable rural development of local communities, most critically in relation to land availability for affordable housing or economic development”, however there are no measures in the Bill specifically designed to address housing issues, either through increased regulation of the housing market or by increasing the supply of land for the development of affordable housing (this is a possible outcome of lotting but nothing in the Bill or the Policy Memorandum suggests that housing is in any way a priority).

3.8 The urban dimension

The 2021-22 Programme for Government stated “we will aim to bring forward a Land Reform Bill to tackle the scale and concentration of land ownership across rural and urban Scotland”³⁶ although the 2022 consultation document stated that “This Bill will focus on land ownership and use in rural Scotland.” However, as SCA noted at the time, a great many of the proposals considered in the consultation could have application in the urban context, most notably Public Interest Tests and the requirement to notify community bodies of an intention to sell, albeit that in most cases additional criteria and appropriate thresholds would be required.

The 2022 consultation also stated: “we recognise that there are of course many land-related issues in urban parts of the country. We see opportunities to address some of these in our forthcoming Community Wealth Building Bill.” However, the 2023 CWB consultation did not contain any new proposals for urban land reform e.g. tackling vacant and derelict land or enabling better use of public land to support community growing.

As the SCA response to the 2022 consultation said: “the Scottish Government and Parliament have long recognised that land reform covers, and is necessary within, both rural and urban contexts, and

³⁶ <https://www.gov.scot/publications/fairer-greener-scotland-programme-government-2021-22/documents/>

we consider that restricting the forthcoming Land Reform Bill to rural Scotland sends a negative message.”

4 Next steps

The SPICe briefing notes that “Parliament’s Net Zero, Energy and Transport Committee is expected to be designated as lead committee for scrutiny of the Bill. A call for views and further engagement will be issued in the near future.”

Once the committee has consulted with stakeholders and prepared its report (and assuming the Bill passes the Stage 1 vote), amendments to the Bill can be proposed and voted on in the subsequent stages 2 and 3. It is theoretically possible that the Bill could be thrown out at Stage 1, but even if all stakeholders were united in the view that it was a complete waste of time this would be highly unlikely. SCA and member networks must therefore seek to improve the Bill as best they can, by engaging with the call for evidence from the committee and arguing for specific amendments to the Bill (which must be proposed by MSPs).

The general principle³⁷ is that amendments have to be within the scope of the Bill; this isn't formally defined, but is broadly indicated by the long title of the Bill, in this case: "An Act of the Scottish Parliament to make provision about the management and transfer of large holdings of land; to require the Scottish Ministers to make publicly available a model lease for environmental purposes; to modify the law on small landholdings and agricultural holdings; and for connected purposes."

So for example in this case it would be possible to introduce amendments that change the area thresholds or widen the list of people who can report breaches of the requirements, but probably not to extend the Bill to cover completely new areas, such as taxation reform.

The Policy Memorandum claims that some potential topics (such as use of cross compliance penalties as sanctions for breaches or reform of community rights to buy) are being taken forward through other legislative routes or reviews: regardless of whether this is actually the case, this may limit the chances of amendments on these topics.

SCA might wish to suggest a wide range of amendments. As well those mentioned above, key targets would be to extend the transfer test to include some scrutiny of buyers as well as sellers, and to regulate who can acquire large scale land holdings.

³⁷ See <https://www.parliament.scot/about/how-parliament-works/parliament-rules-and-guidance/guidance-on-public-bills/part-4> for more detailed guidance