



Land Reform in a Net Zero Nation, October 2022

Introduction to Scottish Environment LINK

Scottish Environment LINK is the forum for Scotland's voluntary environment community, with over 40 member bodies representing a broad spectrum of environmental interests with the common goal of contributing to a more environmentally sustainable society.

Its member bodies represent a wide community of environmental interest, sharing the common goal of contributing to a more sustainable society. LINK provides a forum for these organizations, enabling informed debate, assisting co-operation within the voluntary sector, and acting as a strong voice for the environment. Acting at local, national and international levels, LINK aims to ensure that the environmental community participates in the development of policy and legislation affecting Scotland.

LINK works mainly through groups of members working together on topics of mutual interest, exploring the issues and developing advocacy to promote sustainable development, respecting environmental limits. This consultation response was written by LINK's Land Use and Land Reform Group.

1. Response

Part 4: Criteria for large-scale landholdings

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

a) A fixed threshold of 3,000 hectares

DISAGREE

b) Land that accounts for more than a fixed percentage of a data zone (or adjacent data zones) or local authority ward(s) designated as an Accessible Rural Area or Remote Rural Area, through our six-fold urban/rural classification scheme

DON'T KNOW

c) Land that accounts for more than a specified minimum proportion of a permanently inhabited island

AGREE

Please give some reasons for your answers and outline any additional criteria in the text box below:

The use and ownership of land is an important factor in delivering wider societal benefits, including nature restoration, carbon sequestration, and sustainable economic development. The measures contained within this Bill should have a wide enough reach in order to deliver meaningful benefits. In defining the threshold for a "large-scale landholding", there is a risk that the legislation results in too narrow a focus on a small number of estates.



It is Scottish Environment LINK's view that 3,000 hectares is likely to be too large a threshold. We note that the Scottish Land Commission has suggested that the threshold could be as low as 1,000 hectares. It is our view that most people working in land would consider 1,000 hectares to be a "large scale" holding, and that this level would therefore be appropriate.

However, we do recognise that there may be practical issues associated with a lower threshold and that this would result in potentially significant increased demand on the resources of those responsible for ensuring compliance. It is most important that any new measures are effective in their intentions, and the Government should take care that the threshold is not set at a level that renders the Bill ineffective - either by capturing too few landholdings to make a difference, or by capturing too many to allow for effective governance. For these reasons, on pragmatic grounds, we could accept an initial threshold of 3,000 hectares that was lowered over time, allowing for a bedding-in of the legislation.

What is considered to be a large landholding will often be context dependent. An important factor is whether landownership in a specific area is concentrated to the degree that it constitutes undue influence socially, economically or ecologically. LINK broadly welcomes the attempt to provide nuance to the hectare-based threshold, but as drafted we are unable to support proposal (b). Our concerns are twofold: first, that we feel unable to comment on the effectiveness of an undefined "fixed percentage"; and second, we are unconvinced that using local authority ward boundaries is appropriate. Ward boundaries vary considerably in size, particularly in rural areas, and applying a fixed percentage to wildly varying geographic areas may result in undesirable anomalies. In addition, ward boundaries will also not usually map neatly onto patterns of landownership, and landholdings may fall between 2 or more wards. It may be the case that ward boundaries are more appropriate in and around urban areas, although more detail is required as to how this would function.

By setting a hectare threshold at, or closer to, 1,000 hectares, more landholdings will be impacted by the Bill and the need for a separate threshold proposed as part (b) will be significantly lessened.

We are however comfortable with proposal (c) for a proportional threshold on island communities.

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

DISAGREE

Please give some reasons for your answer in the text box below:

An exemption for family farms would create a significant loophole in the legislation. Many large estates undertake agriculture activity and may consider themselves to be family farms. The consultation paper does not sufficiently justify such an exception. We do however note that, as agricultural policy is moving towards a whole farm plan approach, that there may be significant overlaps with management plans, and that it may be unnecessary to apply the measures contained in Part 6 of the consultation.

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

YES

Please give some reasons for your answer in the text box below:

We accept that there are very few landholdings in urban areas that would be defined as large-scale under a 3,000 hectare threshold, and that even under a lower threshold the land affected would be overwhelmingly rural. However, this does not in itself justify excluding large urban landholdings from



these measures. The Land Rights and Responsibilities Statement applies to all urban and rural land in Scotland and it is not clear why these responsibilities should have a lower level of enforcement in urban areas. Similarly, it is not clear why urban communities should not benefit from a public interest test in the sale of large landholdings, or why those excluded from purchasing large-scale landholdings in rural areas should be able to do so in urban areas.

Part 5: Strengthening the Land Rights and Responsibilities Statement

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

AGREE

Please give some reasons for your answer in the text box below:

LINK supports the principle that landowners with holdings over a defined threshold should be under a universal duty to uphold the Land Rights and Responsibilities Statement.

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

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

AGREE

Please give some reasons for your answer in the text box below:

LINK supports the principle of a complaints procedure leading to independent adjudication and enforcement – in general, purely voluntary approaches are likely to have mixed results and will be insufficient to achieve the level of ecological change we require in the face of a nature emergency. However, our support for this proposal is heavily caveated and we are concerned over the possible implications should such a system of enforcement be poorly designed.

LINK's concern is primarily around the current drafting of the Land Rights and Responsibilities statement. The introduction of a legal duty means that the lines drawn in the statement become very important. At present, the statement is sufficiently vague that even well-meaning landowners may be unclear precisely what action should be undertaken to meet this legal duty. Without a more clearly defined set of expectations of landowners it is difficult to comment on the potential consequences for those who fail to meet these expectations.

LRRS has shifted expectations and encouraged community engagement that wouldn't have happened previously. It is however not clear that this is a tool that can significantly constrain or direct patterns of behaviour as it is currently designed. The Statement, or associated guidance, should have more clarity on nature, carbon, and social justice.

b) Do you agree or disagree that only constituted organisations that have a connection to the local area or the natural environment should be able to report breaches of the Land Rights and Responsibility Statement?

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DISAGREE

Should these constituted organisations have a remit on:

Community AGREE

Charity AGREE

Public sector AGREE

Please provide some reasons for your answers and any additional suggestions in the text box below:

The focus of this consultation is on community of place. There are wider communities of interest, including the national interest, and these perspectives should not be excluded. It is LINK's view that local interests and national interests in land use can be best aligned through regional land use planning.

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

the Scottish Government DON'T KNOW

a public body (such as the Scottish Land Commission) DON'T KNOW

As discussed in response to question 5(a), LINK is supportive of the principle of a legal duty but concerned over the implications of enforcement of the Statement as currently drafted. The appointment of a regulator moves the Statement from a set of principles underpinning public policy to regulations underpinning a quasi-judicial investigator with the power to punish landowners.

As a matter of principle, LINK believes that functions of governance should have a clear division of responsibilities, with advisory functions being for advisory bodies, executive or regulatory functions being for executive bodies or regulators, and judicial functions being for judicial bodies. The Scottish Land Commission is primarily an advisory body, and an extension of its responsibilities into investigation and enforcement would be a significant change. LINK recognises that there could be benefits to a specialist body being responsible for these duties - however, without clear divisions of powers and responsibilities the governance of land could become unnecessarily complex.

A simple model, in line with the principle of division of responsibilities, would see any executive functions and/or regulatory decisions introduced by this Bill undertaken by the Scottish Government. The responsibility for decisions on compliance cases or the granting of approvals or consents (e.g. compliance with LRRS, or that a sale either does or does not pass a public interest test) would rest with Scottish Ministers, and in routine cases be delegated to DPEA or similar.

If these powers are to be exercised instead by a public body, the Scottish Government should do so on the grounds of a compelling logic, with clear division between responsibilities. LINK would not support the Scottish Land Commission performing both an advisory role to landowners and an investigatory function without an effective firewall between these functions, for instance.

When decisions are made they must be subject to judicial oversight. LINK supports the establishment of a specialist environmental court or tribunal, which could occur through expanding the jurisdiction of the Scottish Land Court. This may be an appropriate body to perform judicial oversight in this context.

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



Recommendation for a mediation process YES

Recommendation on how the landowner or governing body could comply with the Codes of Practice/protocols YES

A direction to the landowner or governing body to implement changes to operational and/or management practices DON'T KNOW

Please provide some reasons for your answers and any additional suggestions in the text box below:

We refer to our answers to questions 5(a) and 5(c). Mediation and advice would likely to be proportionate responses to any breaches of the Statement as currently drafted. However, while it is possible to envisage circumstances in which this may be appropriate, our concerns over a lack of clarity within the Statement would apply to “a direction” imposed on a landowner.

e) Should the enforcement powers for a breach be:

Financial penalties DON'T KNOW

'Cross-compliance' penalties DON'T KNOW

Please provide some reasons for your answers and any additional suggestions in the text box below:

We refer to our answers to 5(a), 5(c) and 5(d).

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

YES

Please give some reasons for your answer in the text box below:

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

Part 6: Compulsory Land Management Plans

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

AGREE

Please give some reasons for your answer in the text box below:

Management Plans can play an important role in ensuring landowners are working towards their responsibilities while consulting with their communities and stakeholders. This approach may also open

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up greater opportunities for collaboration, where Management Plans are developed in neighbouring areas, although this would have greatest impact when applied to a smaller definition of large-scale landholding, as discussed in response to question 1(c).

However, some landowners will already have Management Plans which may have been produced shortly before this became a legal requirement. Where this is the case, legislation should be clear at what point they will need to publish subsequently, and should not be unduly burdensome on organisations with existing plans.

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

Every five years.

10. Should Management Plans include information on:

Land Rights and Responsibility Statement compliance

Community engagement

Emission reduction plans

Nature restoration

Revenue from carbon offsetting/carbon credits

Plans for developments/activities that will contribute to local and inclusive economic development or community wealth building

YES TO ALL

Please provide some reasons for your answers and any additional suggestions in the text box below:

LINK broadly supports the inclusion of all these aspects.

It is not entirely clear how revenue from carbon offsetting would be included. This is a fast-moving marketplace where price may be set year-to-year and could change significantly within the period covered by a Management Plan and may not be accurately predicted.

The requirement to include information on plans to contribute towards economic development or community wealth building should be clarified to ensure that landowners do not feel required to pursue development activity on land intended for use primarily for nature.

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

the Scottish Government DON'T KNOW

a public body (such as the Scottish Land Commission) DON'T KNOW

Please provide some reasons for your answers and any additional suggestions in the text box below:

We refer to our answer to 5(c).

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Whichever body is responsible for enforcement should be aware of the risk that these Plans become a tick-box exercise in which landowners provide standardised information in order to meet a legal obligation. We would support an approach that encourages creativity and innovation within Plans.

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

YES

Please give some reasons for your answer in the text box below:

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

In order to emphasise the importance of tackling the nature and climate emergencies, we suggest that Management Plans are instead called “Sustainability Plans” or similar.

Part 7 i): Regulating the market in large-scale land transfers - a new Public Interest Test

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

AGREE

Please give some reasons for your answer in the text box below:

Ownership of large-scale landholdings provides individuals and organisations with considerable, and at times disproportionate, influence over local and national communities. Land should be viewed as a strategic national asset, particularly in the context of the crises of climate and nature loss. It is reasonable that transactions of land be subject to a public interest test.

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

A well-defined and enforced public interest test could help ensure that large landholdings are contributing to our shared national objectives of restoring nature and tackling climate change, while being aware of the particular impacts of concentrated landownership on communities.

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

THE SELLER AND BUYER

Please give some reasons for your answer in the text box below:

It is unclear how a test could function without being applied to the buyer. However, as the intention to sell would presumably be the trigger for a test, it is a reasonable assumption that the test would be applied in some way to both those selling and buying relevant land.



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

DON'T KNOW

Please give some reasons for your answer in the text box below:

18. Do you think that all types of large-scale landholding transactions (including transfers of shares and transfers within or between trusts) should be in scope for a public interest test?

YES

Please give some reasons for your answer in the text box below:

Any exemptions in methods of transfers would build in loopholes, and this would inherently be against the public interest.

19. Do you agree or disagree with these conditions?

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

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

AGREE

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

AGREE

Please give some reasons for your answer and suggest any additional conditions in the text box below:

While community ownership can have immense benefits and will be appropriate in many areas, it is not always the case that community bodies will have the capacity, skills, or desire to take on large landholdings. LINK suggests that environmental NGOs should also be offered the opportunity to purchase land in these circumstances. We would also be supportive of allowing partnership approaches, for example where community groups and environmental NGOs could collaboratively purchase land.

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

YES

Please give some reasons for your answer in the text box below:



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

Diversify ownership DON'T KNOW

Use their Management Plan to engage with community bodies over opportunities to lease or acquire land DON'T KNOW

Please give some reasons for your answer in the text box below:

What time period do you think this should cover?

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

the Scottish Government DON'T KNOW

a public body (such as the Scottish Land Commission) DON'T KNOW

Please provide some reasons for your answers and any additional suggestions in the text box below:

We refer to our answer to 5(c).

23. Do you think the proposal that a public interest test should be applied to transactions of large-scale landholdings would benefit the local community?

YES

Please give some reasons for your answer in the text box below:

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

The public interest test should include delivering environmental outcomes, linked to the objectives of the Scottish Biodiversity Strategy and national emissions reductions targets, as well as relevant Regional Land Use Frameworks.

There is a broader question over why the public interest should only be considered at the point of sale, although how such a test would work in practice would require greater consideration.



Part 7 ii): Regulating the market in large-scale land transfers - requirement to notify an intention to sell

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

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

YES

Please give some reasons for your answer in the text box below:

LINK broadly supports this proposal in principle. There have on occasion been instances where land has been sold off-market to environmental NGOs by landowners who wish for the land to be used for conservation, and may not otherwise have been sold. The Scottish Government should consider whether an exemption to this requirement could be implemented for those selling or gifting land for conservation.

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

DON'T KNOW

Please give some reasons for your answer in the text box below:

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

DON'T KNOW

Please give some reasons for your answer in the text box below:

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

As in our response to question 19, LINK would support the inclusion of environmental NGOs in the bodies to be notified of an intention to sell.

Part 8: New conditions on those in receipt of public funding for land based activity

27. Do you agree or disagree with these requirements?



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

- i. **All land, regardless of size, must be registered in the Land Register of Scotland.**

DON'T KNOW

- ii. **Large-scale landowners must demonstrate they comply with the Land Rights and Responsibility Statement and have an up to date Land Management Plan.**

AGREE

Please give some reasons for your answer in the text box below:

In principle, LINK agrees with the objectives of such an approach but has significant concerns over the implications. In relation to point (i), there are practical concerns over such a requirement. A significant amount of land is currently unregistered and there may be major difficulties for owners of such land, which may be on small plots, in achieving this requirement. It would be profoundly unhelpful if valuable land-based work, meeting Scottish Government objectives, could not be funded because of delays to registration that has not previously been required. If such a requirement is taken forward, LINK would strongly argue for a phased introduction and that all efforts are taken not to undermine efforts to restore nature and tackle climate change.

In relation to point (ii), LINK agrees with this approach in principle but reiterates our concerns, expressed in response to questions 5(a), 5(c) and 5(d) over how compliance with the Land Rights and Responsibility Statement will be measured. We would expect that withdrawal of eligibility for public funding would require a reasonably high bar, such as an explicit or fragrant breach. For example, it is not necessarily obvious that a landowner being referred to mediation should be denied future public funding if issues were resolved. We would welcome clarity on this point.

28. Do you have any other comments on the proposals outlined above?

Part 9: Land Use Tenancy

29. Do you agree or disagree with our proposal that there should be a Land Use Tenancy to allow people to undertake a range of land management activities?

AGREE

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

31. Do you think that wider land use opportunities relating to diversification, such as renewable energy and agri-tourism, should be part of a Land Use Tenancy?

AGREE

Please give some reasons for your answer in the text box below:



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

AGREE

Please give some reasons for your answer in the text box below:

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

DON'T KNOW

Please give some reasons for your answer in the text box below:

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

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

Please give some reasons for your answer in the text box below:

36. Do you think that there should be guidance to help a tenant and their landlord to agree and manage a Land Use Tenancy?

YES

Please give some reasons for your answers and outline who you think should be responsible for writing and managing the guidance in the text box below:

37. Do you think there should be a process to manage disputes between a tenant of a Land Use Tenancy and their landlord?

YES

Please give some reasons for your answers and outline how this process could be managed in the text box below:



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

YES

Please give some reasons for your answers and outline additional ways in which disputes could be resolved in the text box below:

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

Part 11: Transparency

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

Who should be able to acquire large-scale landholdings in Scotland DON'T KNOW

The possibility of introducing a requirement that those seeking to acquire large-scale landholdings in Scotland need to be registered in an EU member state or in the UK for tax purposes DON'T KNOW

Part 12: Other land related reforms

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

Taxation can be a very powerful tool in shaping both land ownership and use. LINK would welcome further exploration of how the tax system can support a transformation in land use in response to the climate and nature emergencies. While the Scottish Government's powers in this area are restricted by the limits of the devolution settlement, local tax could be reformed to include a land-based element.

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

a) Community benefit

The Woodland Carbon Code and Peatland Code don't seriously address biodiversity and community benefit. The Scottish Government should consider how higher standards, ensuring both community and national benefits, could be developed. This could be achieved through a 'gold standard' national accreditation scheme, linked to public funding.

b) National benefit

LINK welcomes the publication of the Interim Principles for Responsible Investment in Natural Capital, and in the particular the recognition that such investment must be of high environmental integrity. We



look forward to progress being made in developing more formal governance in this area, and LINK will work constructively to scrutinise any future proposals.

44. Do you have any additional ideas or proposals for Land Reform in Scotland?

Raising funding for community takeovers can be difficult. There should be a bigger role for environmental NGOs to work with communities to buy land in the interest of both parties, or for greater collaboration including the public and/or private sectors. LINK would support exploration of how potential governance models could support such partnership approaches.

This response was compiled on behalf of the Land Use and Land Reform Group and is supported by:

Amphibian and Reptile Conservation
Association for the Protection of Rural Scotland
Bumblebee Conservation Trust
John Muir Trust
Ramblers Scotland
Scottish Campaign for National Parks
Scottish Wild Land Group
Trees for Life

For further information contact:

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