

Edward Mountain MSP
Convener
Net Zero, Energy and Transport Committee
Scottish Parliament
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8 August 2024

Dear Convener,

Land Reform (Scotland) Bill - Law Society of Scotland Evidence

We write further to providing evidence to the Net Zero, Energy and Transport Committee at its meeting on 18 June 2024, as part of its consideration of the Land Reform (Scotland) Bill at Stage 1.

At the meeting, Gail Watt, the Convener of our Property and Land Law Reform Sub-Committee, undertook to provide additional information on several points which arose during the meeting.

Cross-compliance

We were asked by Bob Doris MSP:

"First, why do you think those proposals [relating to cross-compliance] have not been included, and would there be any legal difficulties in doing so? Secondly, would those proposals provide a greater range of remedies to ensure compliance?"¹

We responded in September 2022 to the preceding Scottish Government consultation prior to the introduction of the Bill, *Land Reform in a Net Zero Nation*.² The consultation included discussion of the potential role of cross-compliance mechanisms for enforcement, including at Parts 5, 6, and 8.

The response indicated its support for cross-compliance penalties in response to question 5e, relating to the enforcement of a prospective *"legal duty on large-scale landowners to comply with the Land Rights and Responsibility Statement and its associated protocols"*. It noted that *"if a duty is to be created, we consider it appropriate that there would be a means of enforcing this otherwise the duty would be of limited value."*; and *"We consider that using subsidies to incentivise certain activities is the most suitable way to drive compliance"*. We would add that any cross-compliance mechanisms would need to be supported by appropriate safeguards and administrative procedures.

¹ Official Report (Draft), Column 13, accessible [here](#).

² The consultation is accessible [here](#); our response is accessible [here](#).



We do not have any specific comments as to why these cross-compliance provisions were not included in the Bill, although would highlight the relevant discussion in the Scottish Government's analysis of responses to the consultation, e.g. pages 58-61.³

We note more generally the role of cross-compliance under the Agriculture and Rural Communities (Scotland) Act 2024, which recently received Royal Assent.⁴ For example, the Policy Memorandum for the Bill when introduced provided that one of its aims is to:

“create a system that would provide for cross compliance, conditionality that covers core standards in relation to sustainable environment, climate, Good Agricultural and Environmental Condition (GAEC), land, public and animal health, plant health and animal welfare, soil health, carbon capture and maintenance.” (paragraph 142)

The role of cross-compliance measures was also discussed in the Bill's Explanatory Notes regarding section 10 (Refusal or recovery of support where in the public interest).

Greater detail would be welcomed in relation to the interaction between the Act and the Land Reform (Scotland) Bill in this context, for example whether there is a policy intention for any cross-compliance provisions to extend to land use matters relevant to the Land Reform (Scotland) Bill.

Legislative and Policy Landscape

We were asked by Monica Lennon MSP:

*“is there a wider concern that the Government is doing too much at once? A lot of different legislation, strategy and policy is coming through, but the cohesive approach is getting lost somewhere in the process. Is that something that you can comment on, or is there any advice that you can give to committee members as we try to scrutinise what is, at times, a busy landscape of Government activity?”*⁵

We highlight the extensive ongoing and prospective legislative and policy reform within the wider land reform, agricultural, and environmental legal landscape. We welcome attempts to clarify and improve the law across these important areas. The volume of legislative and policy developments in this area can, however, present challenges with effective forward-planning and assessing how the proposals will interact.

Relevant legislative developments having recently undergone parliamentary scrutiny include the Wildlife Management and Muirburn (Scotland) Act 2024, the Agriculture and Rural Communities (Scotland) Act 2024, the Circular Economy (Scotland) Act 2024. When providing evidence on the latter two Acts during their respective Bill stages, we highlighted some challenges with the use of “framework” legislation in this context. In particular, that it can be difficult to fully understand and assess the current and future legal impacts.

There are also a range of relevant prospective legislative and policy changes which could be introduced during the remainder of this parliamentary session.

³ Accessible [here](#).

⁴ The Act and Bill documentation can be found [here](#). Our engagement on the Bill, including our written evidence and briefings, can be found [here](#).

⁵ Official Report (Draft), Column 23.



These include:

- The introduction of a Natural Environment Bill providing for statutory nature recovery targets⁶ (potentially also including legislative changes relating to the “30 by 30” biodiversity commitment on terrestrial and freshwater sites⁷);
- Many aspects of the Delivery Plan also set out in the consultation on *Scotland's Strategic Framework of Biodiversity*;
- Prospective changes relating to deer management;⁸
- The prospect of a new Human Rights Bill including a right to a healthy environment, which may engage many areas of existing policy and regulatory frameworks;⁹
- Changes to the climate change framework, including through the prospective Climate Change (Emissions Reduction Targets) (Scotland) Bill, and the publication of the next Climate Change Plan;
- The consequences of the Draft Scottish National Adaptation Plan (2024-2029), which in turn will be followed by further reviews, future plans, and strategies, research, networks and partnerships (meaning that the future policy and actions currently remain uncertain);¹⁰
- The proposed changes to the water industry in Scotland, particularly if there are changes for private water supplies which serve many rural properties and where the infrastructure may cross current or future landholdings;¹¹
- Changes to Crofting legislation;¹² and
- The plans for heat in buildings¹³ which may have significant consequences for many commercial activities and property management.

We stress that it is important to consider the interplay and overlap between such reforms to ensure a consistent and aligned approach across all policy developments affecting the relevant sectors. For example, we note the importance of ensuring consistency across different areas of law – such as agricultural support, agricultural tenancies, tax, and biodiversity – to ensure that the objectives in one area are not disrupted by technical obstacles in others.

Looking ahead

We will monitor the development of the Bill in the meantime and look to engage further as it progresses through the legislative process. If we can be of any further assistance to the Committee, please let us know.

Yours sincerely,

Robbie Forbes

Policy Executive & Secretary to the Property and Land Law Reform Sub-committee
Law Society of Scotland

⁶ [Tackling the Nature Emergency: Consultation on Scotland's Strategic Framework for Biodiversity](#)

⁷ [Meeting our '30 by 30' biodiversity commitment on terrestrial and freshwater sites: consultation on legislative proposals](#)

⁸ [Managing deer for climate and nature: consultation](#)

⁹ [A Human Rights Bill for Scotland: Consultation](#)

¹⁰ [Climate change - draft Scottish National Adaptation Plan 3: consultation](#)

¹¹ [Water, wastewater and drainage policy consultation](#)

¹² [Crofting consultation 2024](#)

¹³ [Proposals for a Heat in Buildings Bill: Consultation](#)