



Law Society
of Scotland

Consultation Response

Land Reform in a Net Zero Nation

September 2022



Introduction

The Law Society of Scotland is the professional body for over 12,000 Scottish solicitors.

We are a regulator that sets and enforces standards for the solicitor profession which helps people in need and supports business in Scotland, the UK and overseas. We support solicitors and drive change to ensure Scotland has a strong, successful and diverse legal profession. We represent our members and wider society when speaking out on human rights and the rule of law. We also seek to influence changes to legislation and the operation of our justice system as part of our work towards a fairer and more just society.

Our Rural Affairs, Property and Land Law and Tax Law sub-committees and Property Law Committee welcome the opportunity to consider and respond to the Scottish Government's consultation on *Land Reform in a Net Zero Nation*¹. We have the following comments to put forward for consideration.

General remarks

While we broadly support the ambitions to diversify land ownership, encourage community engagement and increased transparency in land ownership, we consider that it is important to recognise the particular context of land ownership in Scotland, including the reasons for Scotland's current pattern of land ownership; challenges around the use, quality and value of land; and relevant economic factors such as economies of scale and nature and availability of public funding (both historically and in future). In this regard, it is important to bear in mind the different character of land in Scotland from that in some other countries as well as the multiplicity of rights which can be held in the land, including agricultural and small-holding tenancies, crofting rights, common grazing rights, and shared rights in hill grazing.

We consider that there is a risk that the additional burdens created by many of the proposals may act to discourage economic investment in land in Scotland. It is important that ambitions to diversify ownership of land and enhance community engagement are balanced with other factors, such as climate and biodiversity goals, food and energy security, and economic stability and resilience, particularly post-Covid. It is crucial to upholding the rule of law that the law is clear, comprehensible and transparent so that requirements can be understood by those whom they will affect. There should be certainty and clarity for those owning or considering owning land as to the requirements of doing so. At this consultation stage, there is limited detail as to how the proposed measures will operate and little detail of the guidance that will potentially sit alongside these measures. Uncertainty may act to discourage investment in Scotland's economy and make it challenging for existing landowners to invest for the future.

¹ <https://consult.gov.scot/agriculture-and-rural-economy/land-reform-net-zero-scotland/>

We also note that existing regimes including right to buy and community empowerment mechanisms, the planning process and licencing requirements currently create a means for public consultation and engagement in relation to land. We question how these public consultation and engagement mechanisms will sit alongside the proposed requirements set out within this consultation, particularly where there may be conflicts between the regimes. We suggest careful consideration is needed of these factors.

Consultation response

Part 4: Criteria for large-scale landholdings

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

- a) **A fixed threshold of 3,000 hectares** Don't know
- 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** Don't know

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

We consider that this matter is difficult to determine given that ‘one size does not fit all’ in terms of classifying landholdings. Different types and locations of land are more useful and valuable than others and therefore a fixed size-based area may be a somewhat incongruous measure.

In relation to criteria (b) and perhaps to a lesser extent (c), we anticipate it may be difficult for landowners to easily assess whether they fall within scope of the measures. This could cause uncertainty for owners and potential owners.

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

Agree.

We agree with this in principle but question how this will be defined. We are not aware of a legal definition of a ‘family farm’. It is important that there is clarity and certainty in the law so that individuals can guide their conduct accordingly. There can be significant diversity among family farming businesses, with some being large corporate entities, albeit in some cases with only one or two family members with a controlling

interest, and others, much smaller operations where additional burdens could have more significant impacts.

Given the potential challenges in defining ‘family farms’, we consider that it would be clearer and more certain to exclude all farms from the scope of the proposals. This could be done on the basis of agriculture being the primary source of business. We note the policy intention of the measures being to “tackle issues associated with scale and concentration of landownership”, however, it is also important to bear in mind possible competing demands, such as food production and security. An exemptions of farms generally from the proposals in the consultation paper may assist in this regard.

In addition, we note that these proposals are focussing on landownership and so do not take account of those leasing land, potentially equally large areas and perhaps from multiple owners, and therefore may not fall within scope of these proposed measures.

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

Don't know.

While we consider that it is difficult to see how these proposals would be equally applied to the urban context, we recognise that the division between rural and urban land may be difficult to determine in some areas (for example, greenbelt). This could create uncertainty as to the applicability of the measures which would be a concern. On the basis of the policy intention and in the wider context of community empowerment measures and ambitions for urban regeneration, it is difficult to justify differing approaches being taken to rural and urban areas.

Part 5: Strengthening the Land Rights and Responsibilities Statement

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

Don't know.

Please provide some reasons for your answer.

While we recognise the benefits, in principle, of creating a duty on large-scale landowners to comply with the Land Rights and Responsibility Statement (LRRS) and its associated protocols, we consider this could be difficult to translate into ‘good law’.

It is a clear principle of the rule of law that laws must be accessible, intelligible, clear and consistent. The contents of the LRRS and associated protocols are, by their nature, somewhat subjective and open to

differing interpretations. For example, “high standards of land ownership, management and use” (LRRS, principle 4) may be interpreted in different ways given that there are differing views as to the meaning of “high standards” and what is good for the land and for the environment. In order for any such duty to adhere to the principle of the rule of law, there will require to be criteria to test compliance with the LRRS which can be objectively applied, ideally set out in legislation so as to ensure certainty, accessibility, and awareness among those who would be required to comply. We anticipate that this would require clarity as to what constitutes good land management. We suggest that this should be linked to Scotland’s Land Use Strategy and also wider issues affecting land, including food security. We also anticipate that there will be relevant considerations around the nature of subsidies going forward, particularly in terms of agriculture but also in relation to land use more generally.

In addition, the existing protocols set out expectations both for landowners but also for other parties. There is the potential for this to become confusing if there were to be differing approaches to the status of the LRRS and protocols depending on the nature of the party (i.e. a duty on large-scale landowners to comply and no such duty on others).

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

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

Agree

Please provide some reasons for your answer.

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.

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?

Agree

Should these constituted organisations have a remit on:

- **Community** Agree
- **Charity** Agree
- **Public service** Agree

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

We agree that this approach would be merited so as to ensure that compliance with the LRRS is being assessed on the basis of complaints (where relevant) from appropriately constituted organisations with a relevant connection to the land in question. We consider that this strikes an appropriate balance between enforcement of the duty and reducing the potential for vexatious reporting.

We consider that the provisions around community bodies under existing right to buy legislation may provide an appropriate template.

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

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

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

Investigation of complaints should be carried out independently and should be transparent process.

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

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

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

We have no comment.

e) Should the enforcement powers for a breach be:

- **Financial penalties** No
- **'Cross-compliance' penalties** Yes

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

We consider that using subsidies to incentivise certain activities is the most suitable way to drive compliance.

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

Don't know

Please give some reasons for your answer.

We have no comment.

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

We have no comment.

Part 6: Compulsory Land Management Plans

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

Agree

Please give some reasons for your answer.

We agree with this proposal in principle in the interests of transparency, and public interest and engagement.

While we note the intention that “plans would be high-level/strategic in nature”, it will be important for these to contain measurable objectives, such as targets, so as to be of greater benefit. In the interests of the rule of law, there will require to be clear expectations as to what is to be included in a plan so that those subject to the duty may understand their responsibilities and guide their conduct accordingly. We therefore have concerns about setting requirements to include certain information within the plan (such as at Q10) without providing clear and comprehensible guidance to assist landowners in formulating a plan. We do note that in order to be of greatest value, plans should be holistic, for example, including deer management arrangements where relevant.

We understand that it can be difficult to plan and carry out land management plans including deer management, habitat management and climate change mitigations at anything other than a landscape scale (generally a minimum of 30-40,000 hectares) and plans for upland areas are likely to be of limited value for smaller areas of land except for agricultural activities or renewable energy projects.

We note the potential engagement of human rights, in particular Protocol 1, Article 1 of European Convention on Human Rights (ECHR), if the necessary provisions of Management Plans would have the effect of requiring certain things to be done with the land.

In relation to the proposal (addressed further in Part 8) to make Management Plans a pre-requisite to receive public funding, we note that other similar land-use provisions where plans are required to obtain Government funding, such as forestry plans, could be used as a model if this proposal is taken forward.

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

We have no comment beyond noting that for the Plans to be relevant, we would expect that they would need to be updated at least annually.

Q10. Should Management Plans include information on:

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

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

Please see our comments at question 8.

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

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

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

We consider that it would be most appropriate for a public body, such as the Scottish Land Commission, to undertake this role which we presume will amount to whether a plan exists and if any requirements (such as those detailed in Q10) are met. In the interests of justice, a right of appeal should be available, and we suggest that this should be to the Land Court.

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

Don't know

Please give some reasons for your answer.

We have no comment.

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

We note that a duty only to publish a plan is somewhat limited given that a Plan could be published then not adhered to. We consider however, that there is a balance to be struck in this regard as it may not be feasible to carry out land management in line with a published Plan for any number of reasons. For example, for landowners who are landlords, what happens ‘on the ground’ may be largely outwith their control. It may not be possible to adhere the plan for other reasons outwith the control of the landowner, for example, weather. It is likely to be burdensome for landowners to report on adherence to a Plan and for this to be subject to oversight and enforcement.

Part 7: Regulating the market in large-scale land transfers: a new Public Interest Test, and a requirement to notify an intention to sell

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

Don't know

Please give some reasons for your answer.

We suggest that careful consideration is required as to the creation of a public interest test. At this stage, there is insufficient detail provided in the consultation as to how such a test might be delivered so as to allow us to fully assess the impacts of the proposals.

We support the statement in the consultation that “it is imperative that any proposals are fully compliant with the European Convention on Human Rights” and recognise the strong justification required for interference in the rights afforded to property owners. Integral to the principle of the rule of law is that the law must afford adequate protection of fundamental human rights and we consider that this should be a central consideration in considering whether it is appropriate to implement a public interest test. If a public interest test is introduced, it is necessary to consider how the proportionality of interference with Article 1, Protocol 1 would be assessed, and who would undertake this assessment.

If such a test were to be applied, the rule of law also dictates that clarity and certainty in the law is necessary. There would require to be clear legislation establishing the test, and certainty as to how an assessment of the test would be undertaken so as to ensure objectivity as far as possible.

The nature of a public interest test is that it has the potential to be highly subjective. Consideration would be required as to the meaning of ‘public’ in this context – for example, is this the local community in the area of the land or the wider public in Scotland? A local or other community may have a particular interest which in some circumstances, may vary from that of the wider public. If the key aim for introducing the

measure is to enhance diversification of land ownership, we consider that the wider public in Scotland may have an interest.

There are a number of practicalities to be considered in framing such a test including the process and length of time for a determination and the details of an appeal process. The position of mortgage lenders also needs to be considered.

Please also note our comment at question 15.

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

We refer to our comments at question 14.

There is a potential that such a test may affect the market for large-scale landholdings if potential purchasers are unsure whether they will be able to sell the land in future.

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

Don't know

Please give some reasons for your answer.

If the test is applied to the seller, we note that this could act as a restriction on sale and has the potential to engage Protocol 1, Article 1 of ECHR, if the result is that a seller is unable to dispose of their interest in land (which could arise if the land is in practical terms not able to be sold subject to any conditions which have been put in place).

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

Don't know

Please give some reasons for your answer.

Any such test would need to be workable, and not unduly delay the progress of transactions. A purchaser will need to have confidence that their title will be registered and they become the owners. If some sort of 'pre-clearance' mechanism was possible, that would be advantageous.

Q18. Do you think that all types of large-scale landholding transactions (including transfers of shares and transfers within or between trusts) should be in scope for a public interest test?

Don't know

Please give some reasons for your answer.

While it seems anomalous not to include all types of large-scale landholding transactions as this would appear to be contrary to the policy intentions of the measures, we do have concerns that taking steps to amend the relevant law could risk creating unintended consequences and fragmentation of the law.

We also consider that there could be difficulties in appropriately capturing transfers of land associated with succession rights – any steps taken to capture such transactions within scope of these measures could significantly limit freedom of testation which is a concern.

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

- i. The land in question should be split into lots and could not be sold to (or acquired by) one party as a whole unit**
- ii. The land, in whole, or in part, should be offered to constituted community bodies in the area, and the sale can only proceed if the bodies consulted, after a period of time, indicate that they do not wish to proceed with the sale**

Do you agree or disagree with these conditions?

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

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

In relation to condition (i), in the experience of our members, large scale landholdings can often achieve economies of scale and may employ larger numbers of staff relative to the size of land than small landholdings. We consider that these factors may be relevant to the assessment of the public interest, in particular, the question of whether there was a strong public interest in reducing scale/concentration. We suggest that any such condition should be subject to some degree of flexibility to allow the sale to a single purchaser if no other purchaser were to come forward for particular lots resulting in this land being unable to be sold and therefore impacting the outgoing landowner's ability to dispose of their interest.

In relation to condition (ii), we note that this could broadly follow existing community right to buy mechanisms. We recognise that there can be challenges for community bodies to make the necessary preparations for a purchase which can take some time, particularly securing the required funding, and therefore we consider that it would be important to fix a set period of time for bodies to inform the landowner whether they wish to purchase the land and if going ahead, a fixed period of time to negotiate the terms of the purchase and secure funding.

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

Don't know

Please give some reasons for your answer.

We have no comment.

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

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

Please give some reasons for your answers.

We consider that this would be fair if applied prospectively rather than retrospectively. It may be that other factors should be included. For example, creating tenanted holdings would not meet either of these criteria but could be said to be diversifying engagement and use of the land.

c) What time period do you think this should cover?

We do not seek to suggest any particular time period but note that this potentially needs to be a long time as the opportunities to meet the criteria may not arise often.

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

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

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

We consider that administration of the test should be undertaken by a court or tribunal which is independent from Government and we suggest that the Scottish Land Court would be an appropriate body for this. We consider that this would be appropriate in the context of the interaction with Article 1, Protocol 1 to the ECHR. We note that the process for administering the test would require to be done at some pace so as not to unduly delay transactions, and therefore we suggest that a fast-tracked process would be required.

Q23. Do you think the proposal that a public interest test should be applied to transactions of large-scale landholdings would benefit the local community?

Don't know

Please give some reasons for your answer.

We have no comments.

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

We have no further comments.

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

a) Do you agree or disagree with the proposal above

Don't know

Please give some reasons for your answer.

We do not seek to comment at this stage on the creation of such a requirement.

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

Agree

Please give some reasons for your answer:

If such a requirement is to be created, we consider it would be appropriate to fix a short notice period such as 30 days to allow time for the community body/bodies to notify the landowner of their interest to purchase.

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?

Agree

Please give some reasons for your answer.

We agree that if such a requirement is to be created, it would be appropriate to fix a period of time to negotiate the terms of the purchase and secure funding. 6 months would appear to be an appropriate period to allow time for funding to be obtained but without unduly delaying a potential open-market sale if the body/bodies cannot obtain the necessary funding.

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

We have no further comments.

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

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

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

Do you agree or disagree with these requirements?

- a) Requirement i. Disagree
- b) Requirement ii. Don't know

Please give some reasons for your answers.

In relation to (i), while we recognise that such a requirement would support Scottish Government's ambitions to complete the Land Register of Scotland and support greater transparency of ownership information, we question whether Registers of Scotland has sufficient capacity to undertake additional voluntary registration when there is currently a significant arrear to be processed. We note the Registers of Scotland ambitions to achieve functional completion of the Land Register and clearing the current arrear by 2024. We presume that submission of an application to register title would be classed as registration in the Land Register given the current delays. We consider similar resource implications would apply if a requirement to register in the Crofting Register were to be introduced.

If a title needs to be registered before the landowner can access any public funding, we consider that the costs and efforts required for voluntary registration would be prohibitive for many landowners and may have the effect of negating the value of funding that is available for those involved. An obligation to register

in the Land Register may not be a proportional requirement for many who seek to access public funding. We note that the costs involved in registration are likely to have the most significant impacts on those operating small farms and crofts and community groups, and could have significant impacts on their access to public funding as a result.

At present, it is not clear how widely this requirement around receiving public funding will be drawn. Does this include all public funds no matter how derived or only those from central government funds, and is any level of funding proposed to be included? We understand that at present, many local authorities issue funding to local groups such as community trusts – where funding is of a lower level (for example, in some cases, under £50,000), a local authority does not generally take a security over the land, however, a requirement for land to be registered in the Land Register may result in local authorities seeking to take security over the land, which in turn may require local groups to improve governing documents and make other arrangements. This could result in significant additional efforts and costs, on top of those required for registration in the Land Register itself.

In addition, we question how this criteria might operate where there is a tenant farmer who seeks public funding but where the landowner's title is not registered in the Land Register. We consider that this could unfairly affect tenant farmers who would have no control over whether a landowner would register their title in the Land Register.

In relation to (ii), we have no particular view on this although note that it would appear sensible to use this as an enforcement mechanism if legal duties are put in place for large-scale landowners to comply with the LRRS and publish an up-to-date Management Plan.

Q28. Do you have any other comments on the proposals outlined above?

We have no comment.

Part 9: Land Use Tenancy

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

Disagree

Please give some reasons for your answers.

We understand from the consultation document that the rationale for the creation of a new land use tenancy is to overcome the barriers to undertaking a combination of agricultural and non-agricultural activity within an agricultural or small landholding tenancy. The diversification measures introduced by the Agricultural Holdings (Scotland) Act 2003 already permit tenants to undertake non-agricultural activity on an agricultural holding. If it is considered that these measures are not sufficient and that barriers remain,

we consider that it would be most appropriate to review and revise the existing diversification measures to allow greater flexibility rather than create a new kind of tenancy. This would enable sufficient change in the law to meet the policy aims, while maintaining consistency with the existing legal regime in this area and without adding further complexity to the statute book with the creation of an additional form of tenancy.

We note that the issue of modernising Agricultural Tenancies is considered in Scottish Government's consultation *Delivering our vision for Scottish agriculture - proposals for a new Agriculture Bill*² which we intend to respond to in due course.

If it is thought that a more radical change is required to truly deliver the ambitions to achieve net zero, we anticipate that a new tenancy with greater freedom of contract may be appropriate so as to allow landlord and tenant broad freedom to agree the terms of the contract.

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

We have no comment.

Q31. Do you think that wider land use opportunities relating to diversification, such as renewable energy and agri-tourism, should be part of a Land Use Tenancy? Yes / No / Don't know

Please give some reasons for your answers.

We have no comment.

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

Agree

Please give some reasons for your answers.

We agree that parties should have the ability to move their tenancy into a new Land Use Tenancy if these are to be introduced. As long as both parties had to consent to the change, we consider that they should be able to agree how to manage any issues.

² <https://www.gov.scot/publications/delivering-vision-scottish-agriculture-proposals-new-agriculture-bill/>

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

Agree

Please give some reasons for your answers.

We agree that parties should have the ability to change the tenancy into a new Land Use Tenancy without going through the process of waygo if these tenancies are to be introduced.

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

We have no comment.

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

Not applicable.

Q36. Do you think that there should be guidance to help a tenant and their landlord to agree and manage a Land Use Tenancy?

Yes

Please give some reasons for your answers and outline who you think should be responsible for writing and managing the guidance.

If such a statutory tenancy is to be introduced, we consider it would be of assistance to have guidance to help tenants and landlords. We expect that the Scottish Land Commission/Tenant Farming Commissioner would be the most appropriate body to be responsible for writing and managing the guidance.

Q37. 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 interests of justice, we consider it crucial that there is an ability to resolve disputes via a court, and we suggest that the Scottish Land Court would be the appropriate body for this. That said, we also strongly support the provision of alternative dispute resolution. Experience from other civil justice areas suggests

that alternative dispute resolution can offer quicker and more cost-effective outcomes than court resolution, a higher degree of satisfaction in the process for the parties involved and higher likelihood of successful enforcement of any outcome reached. We believe that alternative dispute resolution should be an option for parties, rather than a mandatory step as evidence suggests that outcomes are better for the former than the latter. Also, some disputes involve complex issues of law, which are better resolved by a court determination, or would have a binary outcome (either a right or responsibility exists or not), for which alternative dispute resolution may not be the most appropriate approach.

Q38. Do you agree or disagree that tenants of a Land Use Tenancy and their landlords should be able to resolve their legal disputes in relation to the tenancy through the Scottish Land Court?

Agree

Please give some reasons for your answers and outline additional ways in which disputes could be resolved.

Please see our comments at question 37.

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

No, we have no further comment.

Part 10: Small landholdings

Q40. Would you like to be kept informed about the Small Landholding Consultation for the Land Reform Bill?

Yes

If yes, please provide your email details here

Yes, alisonmcnab@lawscot.org.uk.

Part 11: Transparency: Who owns, controls and benefits from Scotland's Land

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

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

Please give some reasons for your answers.

We note that there are already a number of transparency regimes relevant to the ownership of land in Scotland, including the Register of Controlled Interests in Land, Register of Overseas Entities and the Trust Registration Service. We question the benefit of introducing further measures to increase transparency, including restricting those who can acquire land, particularly given the potential for those seeking to own land to structure businesses in such a way as to meet the requirements. In addition, the nature of these measures covering only large-scale land ownership will mean that any benefits of the measures are naturally limited in scope.

In relation to the possibility of introducing a requirement that those seeking to acquire large-scale landholdings be registered in an EU member state or in the UK for tax purposes, we do not consider that the consultation sets out sufficient reasoning for the proposed restriction to EU registered taxpayers. We note that there are tax treaties between the UK and a number of countries out-with the EU at present, and we do not consider that these proposed measures would achieve the policy aims set out in the consultation of helping to deal with absenteeism or helping to ensure social justice.

Part 12: Other land related reforms

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

We consider that the greatest levers in using taxation to support land reform are likely to be in the form of taxation on transfers of assets such as capital gains tax and inheritance tax. We note that these are not devolved matters.

More generally, any taxation measures under consideration to support land reform would likely need to be additional to current taxation – consideration should be given as to whether duplicate taxation of landholdings would be desirable.

Separately, we note that SDLT now contains a surcharge for non-UK residents which is not mirrored in LBTT. This may merit consideration.

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

- a) community benefit**
- b) national benefit**

We have no comment.

Q44. Do you have any additional ideas or proposals for Land Reform in Scotland?

We have no further proposals to make.

We question whether the anticipated Bill will require amendment to other related areas of law, such as crofting, agricultural holdings, and community empowerment legislation.

Part 13: Assessing impact

Q45. Are you aware of any examples of how the proposals in this consultation might impact, positively or negatively, on island communities in a way that is different from the impact on mainland areas?

We have no comment.

Q46. Are you aware of any examples of particular current or future impacts, positive or negative, on young people, (children, pupils, and young adults up to the age of 26) of any aspect of the proposals in this consultation?

We have no comment.

Q47. Are you aware of any examples of how the proposals in this consultation may impact, either positively or negatively, on those with protected characteristics (age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation)?

We have no comment.

Q48. Are you aware of any examples of potential impacts, either positive or negative, that you consider any of the proposals in this consultation may have on the environment?

We have no comment.

Q49. Are you aware of any examples of how the proposals in this consultation might impact, positively or negatively, on groups or areas at socioeconomic disadvantage (such as income, low wealth or area deprivation)?

We have no comment.

Q50. Are you aware of any potential costs and burdens that you think may arise as a result of the proposals within this consultation?

We have no comment.

Q51. Are you aware of any impacts, positive or negative, of the proposals in this consultation on data protection or privacy?

We have no comment.

For further information, please contact:

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