

Cabinet Secretary for Rural Affairs, Land Reform
and Islands

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Edward Mountain MSP

Convener

Net Zero, Energy and Transport Committee

Scottish Parliament

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Dear Edward,

Land Reform Bill – response to requests for further information from the Committee

Thank you for inviting my officials to appear before you and the Committee at an informal session on the Land Reform (Scotland) Bill last month to provide some background to the Bill and answer your initial questions on the provisions. I know this is just the start of your scrutiny of the Bill and I look forward to following your work and of course appearing before you myself in due course.

Can I also thank you for your follow-up letter requesting further information to what was discussed at the session. I will answer each of your questions in turn.

Request for additional information on the lack of provision on compulsory sale orders in the Bill – what progress in being made on this commitment and where does responsibility for it now lie?

The Programme for Government includes a commitment to take forward work to consider the justification for and practical operation of Compulsory Sales Orders. My colleague Paul McLennan MSP, Minister for Housing, leads on compulsory sales orders. This work is planned to be taken forward in collaboration with local authorities to ensure that the practical act of compelling the sale of an individual's property on the open market without their agreement would meet the aims of any proposed legislation, in a way that is also compliant with the European Convention on Human Rights. Any mechanism that involves expropriation of private property, whether through compulsory sale or compulsory purchase, needs to be subject to appropriate checks and balances to ensure use is proportionate and in the public interest. While compulsory sales orders are not included in the Bill, our next steps will be informed by this work.

It is also helpful to highlight here that local authorities already have broad compulsory purchase powers, which are being used to tackle empty homes and, where possible, return them to use as warm, safe and secure housing. We nevertheless recognise that the compulsory purchase orders process could be improved and are taking forward work to reform and modernise the system. In recent months we have appointed an advisory group to help us take this forward – in line with our Programme for Government commitment. This work sits within the portfolio of my colleague Ivan McKee MSP, Minister for Public Finance.

Compulsory purchase orders are an existing tool that already enable local authorities, and other public bodies, to acquire land for various purposes – including revitalisation of empty properties and vacant land. We recognise that the legislation governing compulsory purchase is in need of modernisation and that is why we have committed to reform it. In doing so, our intention is to make the process simpler, quicker and fairer for all parties. In line with the Programme for Government, we have as a first step established an expert advisory group to help us take forward this substantial piece of work. The Group, which is jointly chaired by Roseanna Cunningham and the Chief Planner, met for the first time at the end of March. While its focus is rightly compulsory purchase, the Advisory Group's Terms of Reference indicate that it can consider the extent to which CPO reform could achieve the outcomes and suggested benefits of alternative approaches such as CSO.

Compulsory purchase reform is a substantial and complex undertaking: extensive stakeholder engagement and policy development is required to ensure reform proposals are robust and evidence-based. That work was only started in March, with a view to publishing a public consultation on reform proposals in Autumn 2025. The bulk of the provisions governing compulsory purchase are contained in primary legislation; substantive change would need to be delivered through a future bill rather than secondary legislation.

We will ensure that the CPO reform group, and the work on the operation of CSO powers, remain closely aligned.

A hypothetical case study to illustrate how new Chapter 2A (Extended Opportunity to Register Interest in Relation to Large Land Holding) works in practice.

As requested, a case study is provided in the Annex which illustrates how the pre-notification measures in the Bill would operate in practice.

Additional information on why there is no figure in the Financial Memorandum for compensation payments.

My officials have advised me that this question was raised in the scope of discussions on Part 1 proposals in the Bill, and so this response focuses on these measures. Further consideration is set out in the Financial Memorandum for compensation in other parts of the Bill. For Part 1 measures, no figure or potential range has been provided in the Financial Memorandum for potential compensation payments overall as the potential costs would depend on an individual landholding. However considerable detail is set out on the relevant factors in the [Financial Memorandum](#), which I have also provided below for ease.

Pre-notification (Section 2 and 3 of the Bill, 'Community right to buy: registration of interest in large land holding'):

The notification process, and the process following any subsequent application, will delay the sale or transfer of the landholding, and could result in compensation needing to be paid to the landowner for certain additional costs incurred. The Scottish Government would be responsible for paying this compensation as it is under the existing right to buy provisions. Based on experience of compensation claims in relation to existing right to buy process however, we expect successful compensation claims of this nature to be a rare occurrence. There have been fewer than 5 successful compensation claims following a community right to buy process since 2004. The value of compensation would depend on several factors including any additional required costs incurred through ownership during the period a sale is delayed.

Transfer test (Section 4 of the Bill, 'Lotting of large landholding):

If the transfer test is applicable, the Ministers must compensate landowners for losses directly related to the transfer test including any loss or expense arising from complying with procedural requirements, attributable to the prohibitions or as a result of a lotting decision being imposed by Ministers. The scale of compensation in an individual case relating to loss in value would depend on the difference in sale value between the lotted estate and the whole estate. The total liability for the Scottish Government will also depend on how many landholdings Ministers direct to be lotted. Where compensation relates to a delay arising from the prohibitions on transfer of land, the compensation will depend on any costs incurred as a result of the delay or any loss in value during the delay.

Engagement with land agents on costs involved in the sale of land in lots or as a whole suggest that this will be highly dependent on the individual landholding. Advertising, sale and legal costs associated with selling in lots may be around double those anticipated for sale as one unit (in both cases assuming land sold on open market) however, in many cases this may be offset by increased overall value achieved through sale in lots.

As part of the transfer test proposal, the advice to Ministers to inform their decision on lotting will include an assessment by officials of the possibility that compensation will be required and the value for public money in relation to the anticipated benefit to local communities. Where expert advice indicated that the lotting was highly likely to significantly negatively impact the overall value of the land, it will be open to Ministers to decide that the benefits of lotting did not justify the costs.

This approach is in keeping with current Scottish Government policy. The Scottish Public Finance Manual provides that prudent lotting should always be considered and that public bodies are obliged to obtain Best Value which is not necessarily the highest price if there are associated benefits.

Currently landholdings that meet the criteria to be in scope of the transfer test are typically being sold for values between £2m-£30m, with an average sale price of £8m in 2022, based on industry reports. Data from the Scottish Land Commission's "Rural Land Markets Insights Report 2023" suggests a lower average sale value for Scottish Estates, but their figures account for small landholdings not in scope of the transfer test which reduces the average value figure for sales. Compensation being claimed for a difference in value caused by the land being sold or transferred in lots, or where there is a loss in value as a result of a lot or lots not being sold or transferred, is difficult to estimate due to the individualised nature of costs for a landholding and the potential for those costs to be offset by sale values.

Given these factors, no figure or potential range has been provided in the Financial memorandum for potential compensation payments overall as the potential costs would depend on an individual landholding. Any compensation costs for diminution of value incurred, however, would never be for the full value of a landholding as compensation would only be paid for losses arising where a difference in value caused by the land being sold or transferred in lots can be demonstrated or where there is additional financial impact as a result of the process. Ministers would also consider an assessment of the possibility that compensation will be required and the value for public money in

relation to the anticipated benefit to local communities in making any decisions about lotting.

I hope that this consideration of potential compensation costs is helpful to the Committee.

An explanation of what “making a community more sustainable” means in the context of new section 67N(1) that’s being inserted into the 2003 Act.

The Ministerial consideration of a lotting decision and what factors may be expected to make a community more sustainable will be based on the individual circumstances of the landholding and the particular communities. While this assessment will depend on these individual factors, in assessing potential contributions to the sustainability of communities, it is anticipated that this would include having regard given to high level objectives such as economic development, repopulation, maintenance of populations, regeneration, public health, social wellbeing and environmental well-being.

There are other legislative tests which require Ministers to consider a number of factors and the individual circumstances of a case. For example, the considerations that Ministers make as determining whether approving an application to buy land to further sustainable development is likely to result in significant benefit to a relevant community (or that not granting consent is likely to result in harm to that community), as set out at section 56(12) of [the Land Reform \(Scotland\) Act 2016](#).

(12) In determining what constitutes significant benefit to the community for the purposes of subsection (2)(c) or harm to the community for the purposes of subsection (2)(d), the Scottish Ministers must consider the likely effect of granting (or not granting) consent to the transfer of land or tenant's interest on the lives of the persons comprising that community with reference to the following considerations—

- (a) economic development,*
- (b) regeneration,*
- (c) public health,*
- (d) social wellbeing, and*
- (e) environmental wellbeing.*

The [Policy Memorandum](#) of the Bill also sets out further detail on how this would be assessed by the Land and Communities Commissioner in their report to inform Ministerial lotting decisions, provided for ease below.

It is anticipated that the Land and Communities Commissioner will conduct further investigation, which can include seeking advice from those with appropriate experience of lotting land on whether lotting would be appropriate in order to improve the availability of land in the area, and on how the land should be lotted (if viable). The investigation could for example reference information on the landholding provided, relevant documents such as local development plans, local housing strategies incorporating housing need and demand assessments, enterprise agency assessments, and consultation with the landowner, appropriate authorities (e.g. local authority, enterprise agency), and other parties (e.g. relevant community groups or community councils).

The number of properties over 1000 hectares which were sold in Scotland last year

The 2023 figures for rural land market sales are not yet available, but the [Business and Regulatory Impact Assessment \(BRIA\)](#) for the Bill sets out information from the SLC Rural Land Market Report analyses of the previous three years. While the average number of rural land sales was about 250 transactions per year, the vast majority of these are under 1000

hectares. Table 5 of the [SLC Rural Land Market Report](#) provides that across this three year reporting period, 24 transactions (2020: 12 transactions, 2021: 5 transactions, 2022: 7 transactions) were for landholdings above 1000 hectares.

Of these 24 transactions above 1000 hectares, the majority of these were attributed as 'estates' (15 transactions), with a very small number (3) being farmland (with no sales in 2020 and 2021) and a small number being forestry and woodland sales (6 transactions).

Further information on the thresholds for large landholdings in the Bill and whether these are considered to exclude “family farms”

The definition of “land” which applies to the power to make regulations imposing obligations on owners of land promoting community engagement and which must make provision requiring land management plans requirements (section 1), applies to single or composite holdings of land that:

- exceed 3,000 hectares, or
- exceed 1,000 hectares and constitute more than 25% of an inhabited island.

The [latest agricultural census](#) shows that there are 44,698 agricultural landholdings (a mix of owned and rented) recorded. The vast majority of these (over 95%) are less than 500 hectares in size, with approximately 250 wholly or mostly owned landholdings of 3000 hectares or over¹. These landholdings of 3000 hectares or over represent less than 1 per cent of all agricultural land holdings in Scotland.

The pre-notification requirements in section 2 of the Bill apply to land that is a single or composite holding over 1,000 hectares. The transfer test requirements in section 4 of the Bill apply to transfers of land that exceed 1,000 hectares or in certain circumstances smaller amounts of land that form part of a large landholding and are cumulatively more than 1,000 hectares.

Analysis of data from the latest census shows there are around 640 wholly or mostly owned landholdings of 1000 hectares or over, representing 1.4% of total agricultural landholdings.

In setting the appropriate thresholds for these proposals, I have considered both the policy aims of the proposals and the risk of disproportionate impacts following from these additional requirements, particularly in relation to smaller businesses. As demonstrated by the figures above, these requirements will apply to only a very small minority of the largest agricultural landholdings.

There is no specific exemption for ‘family farms’ in the Bill. We consulted on whether such an exemption might be justified. The majority of respondents to the question (62%) disagreed with such an exemption. Following consideration of the consultation response, further engagement with stakeholders and further policy analysis, I took the decision that a specific exemption for ‘family farms’ would not be justified.

Flow diagrams, etc. relating to Part 2 of the Bill that might help the Committee’s understanding

¹ Data currently available from the 2023 Agricultural census does not exactly match the thresholds of the Bill. As an example, while community engagement requirements in the Bill apply to landholdings over 3000 hectares and so do not include landholdings of exactly 3000 hectares, the data on agricultural landholdings shows number of landholdings of 3000 hectares and over.

A package of additional information on Part 2 measures is still being finalised. As I do not want to delay this letter, this will follow on shortly. I hope you will find it helpful.

Definition of “regenerative and sustainable agriculture”

As detailed in the explanatory notes accompanying the Bill, the terms “sustainable” and “regenerative” are not defined by the Bill. This is because section 26 of the Agriculture and Rural Communities (Scotland) Bill (SP-33) (the “Agriculture Bill”) places a duty on the Scottish Ministers to prepare and publish guidance on sustainable and regenerative agriculture. The guidance is to be known as the Code of Practice on Sustainable and Regenerative Agriculture (“the Code”) and is to contain, among other things—

- an explanation of what the Scottish Ministers are classifying as sustainable and regenerative agriculture,
- the agriculture activities and methods that they consider best practice for sustainable and regenerative agriculture,
- and such other information about sustainable and regenerative agriculture as they consider appropriate.

As the Code is to set out what the Scottish Ministers consider to be sustainable and regenerative agriculture, no definitions are contained in this Bill or the Agriculture Bill.

Regenerative farming is broadly any form of farming activity which both generates production and improves the environment. Practitioners try, for example, to disturb the soil as little as possible, following ‘no-till’ methods which do not disturb the complex network of wormholes and fungal hyphae in the soil. That, in turn, improves the capacity of the soil as a carbon store, and should help reduce reliance on artificial fertilisers.

Our [Agricultural Reform Route Map](#) outlined that regenerative agriculture is a collection of farming practices with a focus on renewing and conserving soils, landscapes and ecosystems. The method supports nature and social justice in rural communities alongside agricultural outputs. It draws upon decades of scientific and applied research on agriculture and ecology. Key practices include minimising soil disturbance, and maximising crop diversity. Another approach is to integrate livestock and arable farming more closely. The goals of regenerative agriculture include: improving animal welfare, increasing climate-resilience of production, capturing carbon in soils and vegetation, enhancing water quality and supply in the landscape as well as supporting thriving biodiversity and ecosystem health.

Sustainable agriculture can include adopting regenerative agriculture principles and approaches, using tools such as carbon audits and soil testing to inform practice change.

It is not possible to put a simple definition of sustainable and regenerative agriculture in this Bill or the Agriculture Bill. We have not designed the Code yet and we cannot say definitively what will be in it, because we want to consult on it and get it right. The Code is about providing support for people and providing them with a basket of measures included in that definition.

Minor Correction to Policy Memorandum

I would also like to highlight a minor correction to the Policy Memorandum. The reference to the Just Transition Commission at paragraph 116 of the memorandum should instead be to the Scottish Land Commission, as it is their report that is referenced at footnote 51.

Next Steps

I am grateful to the Committee for their initial consideration of the Bill and hope that this information proves helpful. I look forward to engaging further with Committee members as part of the Bill process and am happy to respond to any further questions that the Committee might have.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Mairi Gougeon', with a stylized flourish at the end.

MAIRI GOUGEON

Annex

PRE-NOTIFICATION PROPOSALS IN LAND REFORM BILL – CASE STUDY

Scenario

Landowner A wishes to sell a mixed use estate of 1500 hectares and this will be the first time the land has been available for purchase in 150 years. It makes up the majority of land on a peninsula and includes a dozen cottages on the outskirts of Village B, ten of which are currently used as holiday lets and two which require refurbishment. Village B has seen a demand for additional housing. Community body C 'Village B Community Association' has been working with its local authority and development trust in recent years to develop a plan for delivering more affordable homes in the area.

Community body C had considered registering an interest under the community right to buy (in Part 2 of the Land Reform (Scotland) Act 2003 as a potential route to purchasing the land should it become available for purchase. As part of this, potential land, including some or all of the cottages on the estate, has been identified as being capable of being developed into additional housing, and Community body C has set themselves up as an eligible body able to access community right to buy. However, a completed application had not yet been made, as Community body C didn't expect the land to come onto the market, given that it had been in the same ownership for such a long duration.

Current position

The estate is sold without being publicly marketed (an 'off market sale'). Missives are completed before Community Body C is able to negotiate to purchase the land or register a community right to buy interest.

With 'pre-notification' requirement in Section 2 and 3 of the Bill

Community Body C registers to be informed of potential sales in the area as part of their planning for affordable housing (new section 46A).

Landowner A is prohibited from transferring the estate, with some exceptions, until Ministers lift this prohibition (new section 46B). To get the prohibition lifted then Landowner A must start by notifying Scottish Ministers that they wish to transfer the estate.

Scottish Ministers are required to publish information about Landowner A wanting to transfer the estate and this includes informing people who have registered to be informed about such sales (new section 46D) – this would include Community Body C.

Community Body C has 30 days from publication of information by Scottish Ministers to inform Scottish Ministers that they are interested in making a community right to buy application (new section 46E). They inform Scottish Ministers during this period that they are interested in making an application for 1 hectare of land on the estate, which includes the sites of the two cottages requiring refurbishment and surrounding land which they plan to develop into community space/garden.

Scottish Ministers consider if Community Body C would be likely to submit an application to register a community interest within the timescales that apply and if they did whether there is a reasonable prospect that such an application would result in a community interest being registered (new section 46F(3)).

In this case, as Community Body C is already set up as an eligible body for community right to buy and has begun planning for use of a site and funding avenues, Scottish Ministers are sufficiently confident that they will submit an application that has a reasonable prospect of leading to a successful registration of community interest. As a result, the Scottish Ministers invite Community Body C to make an application to register a community interest (new section 46G). In this situation the prohibition on Landowner A transferring the part of the estate that the Community Body C has noted an interest in buying continues for a further period of 40 days (new section 46F).

Once Community Body C submits an application to register an interest then a further prohibition on transfer of the part of the estate that Community Body C are seeking to buy applies until the application is rejected or if approved until the process has finished (existing section 37(5) of the Land Reform (Scotland) Act 2003). So if the Community Body C submits their application within the 40 day period then there will be no opportunity for Landowner A to transfer the land before the further prohibition applies.

Community Body C submits an application which is approved by Ministers. This approval activates the right to buy the right and so Community Body C can seek to purchase the land in accordance with the procedure laid down in Part 2 of the Land Reform (Scotland) Act 2003. For further information on the existing community right to buy process and stages see [Community right to buy \(Part 2\) - Land reform - gov.scot \(www.gov.scot\)](http://www.gov.scot/Community%20right%20to%20buy%20(Part%20)-%20Land%20reform).