FEARANN COIMHEARSNACHD NA H-ALBA | COMMUNITY LAND SCOTLAND

Pearce Institute | 840-860 Govan Road
Glasgow | G51 3UU
e: info@communitylandscotland.org.uk
www.communitylandscotland.org.uk

Land Reform Bill 2024

Community Land Scotland response to the Scottish Land Commission Advice on Part 1 of the Bill

February 2025

Community Land Scotland (CLS) welcomed the introduction of the Land Reform Bill in March 2024, and have engaged over the past eleven months in providing the necessary scrutiny and significant strengthening needed to make the legislation meaningful. Significant change is required to make this a worthwhile and workable set of land reform proposals. Our chief concern with the Bill is that it falls well short of seriously addressing the question of land ownership diversification in Scotland and offers limited influence on the issue of lesser significance; land use and management.

As such CLS were pleased to see that the Scottish Land Commission (SLC) has published further advice on amendments to Part 1 of the Bill. CLS welcomes all the recommendations in the SLC paper, which significantly simplify and strengthen the Bill, whilst making it clearer and more proportionate for all concerned. The proposal for public sector land acquisition as a result of a public interest test is a particularly welcome intervention.

CLS agrees with all the SLC's recommended changes to the Bill, however there are several areas of which require further strengthening and development. The further changes which are required in addition to the SLC advice are set out below.

Thresholds

The proposed alignment of thresholds is welcome and adds much greater coherence to LMPs and the 'transfer test' – which should both be underpinned by the same public interest considerations. This would have the benefit of ensuring that landowners over the threshold are producing LMPs in-line with public interest considerations which should help ensure that the landholding and their land management are well placed to engage with a 'transfer test' based on the same public interest considerations should they choose to sell.

However CLS propose an aligned threshold of 500ha rather than 1,000ha, meaning that 2,025 landholdings rather than c.700 will be under a requirement to produce LMPs and 17 rather than 8 transactions for a transfer test.[1] Many of the landholdings which would be caught by the lower 500ha threshold will already be producing LMPs, as is already good practice amongst conservation organisations, public forestry, responsible private landowners and community landowners.

Thresholds should also be able to be amended through secondary legislation, once monitoring and evaluation of the impact of the legislation has been made.

[1] Financial Memorandum accessible (parliament.scot)and Advice on Part 1 of the Land Reform Bill from the Scottish Land Commission, p.6.

Pearce Institute | 840-860 Govan Road
Glasgow | G51 3UU
e: info@communitylandscotland.org.uk
www.communitylandscotland.org.uk

If the Land Reform Bill is to deliver meaningful change, then the new provisions within the Bill need to apply to a proportionate yet significant number of landholdings and transactions. 500ha is still a significant amount of land which can deliver a large amount of economic, social and environmental benefit. In addition, this level still protects the overwhelming majority of 'family farms' as 96.4% of agricultural holdings in Scotland are under 500 hectares in size.[2] Land transfers are also relatively infrequent. If we want Scotland's land to be owned and managed in the public interest, then assessing on average 17 transactions a year to see if they meet the public interest hardly seems excessive.

Composite, aggregate and complex ownership structures

CLS agrees with the Scottish Land Commission that aggregate holdings and complex ownership structures pose challenges for transparency and applying the provisions in the Bill. CLS suggest that the considerable issue of aggregate holdings which exceed the thresholds and contribute significantly to the concentration of landownership in Scotland need to be addressed in the following ways:

- There needs to further clarification on what constitutes 'composite holdings' within the Bill and why this definition is based on persons linked through the Register of Persons Holding a Controlled Interest in Land, rather than anyone connected to the land through any registers, including within Companies House or other UK-level registers
- Significant landowners often already have different companies owning different bits of land, and multiple partnerships like Gresham House. However, Companies House could be used to look at the holding company which is connected to the different companies holding land to try and address this issue. An additional means of closing this loophole would be to have a meaningful public interest test which assessed both the landholding and the prospective buyer
- The sale of companies or company shares has the potential to be used as a loophole which the Committee should note at Stage 1
- In 44D and 46K "contiguous" should be removed, not only to avoid the loophole of significant landholdings severed by infrastructure but also so that aggregate national landholdings are included within LMP requirements and the transfer test. For example, funds managed by Gresham House Ltd partnerships own a significant amount of Scottish land (53,775 ha).[3] Yet due to their fragmented landholdings, none are over 3,000ha and only a handful are over 1,000ha.[4]

Land Management Plans (LMP)

The SLC advice on LMPs is coherent and welcome, however there are a number of additional points or aspects of qualification to strengthen the Bill:

- Thresholds for LMPs should be aligned at 500ha with the transfer test
- LMPs should be underpinned by the same public interest considerations as the transfer test – see the amendment sheet produced by CLS on the public interest
- A central repository of LMPs is an excellent idea – it should align with an existing land-based register rather than creating a new system to ensure land data is kept coherent and easily accessible

[2] Written question and answer: s6w-10506 | Scottish Parliament Website
[3] Who Owns Scotland 2024 (a preliminary analysis) - Land Matters (andywightman.scot)
[4] Large-scale Rural Land Sales 2020 – 2022 - Land Matters (andywightman.scot)

Pearce Institute | 840-860 Govan Road
Glasgow | G51 3UU
e: info@communitylandscotland.org.uk
www.communitylandscotland.org.uk

- Subsidy and statutory consents cross-compliance is essential as the SLC identify.[5] However, there should be an escalating process of sanctions for breaches of duty in LMPs (producing a plan, undertaking community engagement, that engagement informing the plan) which includes cross-compliance but ultimately ends in a public interest test and the means for the ownership to be changed
- Fines for breaches should be set as high as possible within existing statutory limits (likely to be £10,000) but these fines should be recurring annually for repeated non-compliance with statutory duties
- There should be light touch monitoring of the implementation of LMPs to ensure they are helping drive land management change
- Reporting of breaches – the expanded list proposed by the SLC is welcome but this needs to be wider so local residents can report breaches as individuals. This process should be anonymised if requested, with the point of anonymisation being the reporting of the breach to the landowner not from the complainant to the Commission to prevent vexatious claims
- There needs to be an element of succession in LMPs so that incoming landowners need to engage with the existing LMP. This could help prevent duplication of work for landowners and communities as well as adding coherence to a forward-looking public interest test which assesses the landholding *and* the incoming buyer's land management principles. Succession requirements are already written into existing regulation for natural capital projects or long-term forest management plans where existing land use needs to be maintained
- Sites of community significance incorporated into LMPs is a good way of integrating this important designation. However, this avenue needs to be one option sitting alongside sites of community significance being identified through Local Place Plans, Community Action Plans, Community Council resolutions and any area under Community Right to Buy (CRtB) registration

Prior Notification of Sales

The SLC advice on Prior Notification are all important steps to simplify and clarify the process. A longer timeframe for prohibition of sale, introducing de minimis considerations, a public notification process and setting in statute a timeframe for Section 34 letters will be invaluable changes to the Bill. The proposed simple public notification process to replace the register of interested parties is particularly welcome. It removes an overly complex mechanism and is akin to existing processes in planning and crofting and will place the obligations of transparency on the landholder.

The Prior Notification mechanism is based upon communities using the 'late application' process in the 2003 Land Reform Act, this has not been successfully used since 2017. This is because SG interpreted 'late applications' as only applicable when a community body is already in possession of a Section 34 letter and actively working on a CRtB application, this is simply unrealistic. SG need to issue guidance that they will accept applications from compliant community bodies who do not meet this unrealistically high criteria.

CLS would note two additional points to further strengthen this mechanism and ensure it provides communities with better opportunities to purchase land:

- A single universal 120-day prohibition on sale rather than 90 days – CRtB processes currently take many months, a 28-day time frame for Scottish Government (SG) issuing Section 34 letters will help,

[5] Statutory consents could include planning, agricultural and forestry permissions etc.

Pearce Institute | 840-860 Govan Road
Glasgow | G51 3UU
e: info@communitylandscotland.org.uk
www.communitylandscotland.org.uk

but a longer prohibition of sale will allow time for communities to do the administrative and fundraising work necessary

- If the Prior Notification mechanism is going to be agile and effective it needs to accept that interested community groups are unlikely to be CRtB compliant ahead of time and that they may not have a clear public record of interest in the land. This is especially problematic when there is a monopoly landowner, who has held the land for many years and there seems to be little likelihood it will come on the market

Transfer test becoming a Public Interest Test

The centring of the public interest within the transfer test and lotting decisions, as well as closer alignment with LMPs are important developments from the SLC and make the 'test' more predictable and proportionate. The inclusion of public sector acquisition of land immediately after a lotting decision is a potentially transformational intervention which can effectively secure the public interest regarding the landholding.

CLS have several suggestions to reframe and strengthen the 'transfer test' into a Public Interest Test. This will ensure that it delivers public interest outcomes in a way more aligned to the SLC's original proposals for a public interest test, which underpinned the original consultation for the Land Reform Bill.[6] Public interest on the face of the Bill is important but does not produce a meaningful Public Interest Test on its own:

- The list of public interest considerations underpinning *both* the 'test' and LMPs should be on the face of the Bill – this will add coherence and predictability to a proper Public Interest Test
- The test needs to be a forward-facing with an assessment made by the SLC/Commissioner on whether the landholding *and* the incoming landowner's land management principles will meet the public interest
- This will enable incoming buyers to engage with the existing LMP on the landholding as well as starting to engage with the LMP process as a necessary part of their ownership
- The outcomes of the Public Interest Test could be:
  1. Transfer/sale progresses without conditions
  2. Transfer/sale progresses with lotting burden in the first six months to meet public interest
  3. Proactive public sector acquisition of the entire landholding or lots during the 'test' for public interest concerns
  4. Test is failed and sale/transfer does not go ahead due to public interest concerns – another buyer is assessed, or public sector acquisition operates as a final backstop as set out in the Financial Memorandum

[6] Balancing rights and interests in Scottish land reform