Land Reform (Scotland) Bill
Supplementary Submission

Net-Zero, Energy & Transport Committee

January 2025

Overview

Scottish Land & Estates' CEO Sarah Jane Laing gave evidence to the Committee on 12 December 2024. During her evidence session Sarah Jane committed to provide further information on the unintended consequences of the Prior Notification and Lotting requirements in the Bill. This paper sets out further thoughts in light of the evidence to date.

SLE shares the views of others who have given evidence to the Committee that sections 2-6 of the Bill will not deliver the stated policy objectives and as we explain below, may actually run counter to them.

Purely for our own use in understanding these sections of the Bill we produced the attached flowchart. We have shared this with Scottish Government officials and SPICe and we felt it may be helpful for the Committee members to have a copy too, to illustrate just how complex the processes set out in the Bill would be if implemented.

Sections 2 and 3 - Prior Notification

The policy intent behind these provisions is to allow community bodies a further chance to acquire land where it comes to the market unexpectedly or would be transferred via an off market sale which they would otherwise not have known about.

However, this is unnecessary additional legislation because the Land Reform (Scotland) Act 2003 should already prevent off market or unexpected sales happening. Community bodies already have the ability to register their interest in land so that they get notified if the land is to be transferred. If that legislation is not working as it should, then the first port of call should be to fix any deficiencies rather than creating a new unnecessarily complicated additional process to follow to achieve the same goal.

It would be helpful to look at why community bodies may not be registering an interest and try to resolve that problem. It might be that land is rarely offered for sale in that area so the community may not have deemed it worthwhile to become constituted as a community body and register their interest. Is the process therefore too expensive or too complicated? How can it be simplified? These are questions to which answers can be sought through the ongoing review of CRTB.

SLE urges the Committee to recommend that the 2003 Act be amended instead to allow simplification of the process for registration of a community interest to make it quicker, simpler and cheaper so that all communities and neighbouring landowners are aware of community aspirations ("registration light"). The Bill's policy aims of improving transparency and increasing opportunities for community bodies to purchase land would be better delivered through this approach.

Given that there is an ongoing review of community rights to buy, it seems sensible to await the outcome before amending legislation. Sections 2 and 3 of the Bill are therefore premature at this time and our view is that they should be removed and replaced with a commitment from Ministers to consult upon improvements to the Community Right to Buy process. This would include registration provisions, late applications, measures for enforced sale to further sustainable developments and other elements which are not currently considered by this Bill. These changes, and any new measures, would then be able to take into account any recommendations from the ongoing review.

To support the view that sections 2 and 3 are unworkable, we have identified a number of unintended detrimental consequences, including the following:

1. The Bill fails to recognize that many off market sales occur for very valid reasons which benefit communities and local people so these types of transfers should not all be prevented from happening in future unless it can be shown they were for the purpose of frustrating community ownership.
    a. There are some exemptions listed in the Bill (mirroring those in the 2003 Act) but we feel that it omits other necessary exemptions nor is there a power to add to the list as experience dictates. Those situations which have come to our attention can be listed as follows:-
    b. Sale of land or buildings to a sitting tenant whether residential, commercial or agricultural. (Sale to a croft tenant is already exempt).
    c. Transfer of a small portion of ground at a small cost to expand a private garden.
    d. A single house plot
    e. A large housing site being developed (in line with planning consent) with land transfers occurring on a rolling basis.
    f. A housing development where the developer is already on site under licence and title to the land is to be transferred on completion of houses.
    g. Land that is already subject to contractual obligations which would conflict with community ownership such as an option agreement.
    h. Land for an access route to service a renewable energy project which has received planning consent.
    i. Land agreed to be transferred at minimum cost to a community of interest body for their use e.g. local bowling club or village hall but where there is no registered interest
    j. Involuntary sales such as calling up a standard security over part of the holding
    k. Land subject to a part 5 application (sustainable development)

2. The Bill also omits a mechanism to avoid catching transfers which are required for a legitimate alternative use which is planned for the land and it can be shown that this is (a) not for the purposes of frustrating community ownership, or (b) is to further some other public interest justification, or (c) was already subject to community engagement and disclosed in the land management plan.

3. Where there is an immediate need for community ownership in the interests of sustainable community development then community bodies already have the protection of Part 5 of the 2016 Act available to them to acquire the land. A similar type of provision would be needed to provide the necessary balance between the owner's and the community's interests in the land.

4. It has been suggested that the Bill could be improved by adding a de minimis threshold below which prior notification would not be required. However, having heard the evidence to date, the difficulty in having a de minimis hectarage is that often the areas a community body might be interested in will be small in area. Nil value transfers are already exempt but there could be a de minimus value threshold. However, again the difficulty with putting a figure in legislation is that its relevance will change with land values and the same problem arises that the areas the community is interested in may also often be low value areas.

5. In terms of the numbers of smaller transactions happening which should not be caught by prior notification, the BRIA suggests there are likely to have been an average of 90 transactions per year in the past 5 years on the mainland. However a very brief survey of SLE members owning more than 1000ha, of 115 responses received, those members stated there were 306 transactions for this small group alone. Analysis by the James Hutton Institute identified 1066 landholdings above 1000ha so if this data is extrapolated, it would indicate 530 transaction per year. While this is a rough estimate it does indicate that the information in the BRIA does not accord with the reality our members experience. This demonstrates that the true impact of these provisions may be vastly understated and it may be unwise to proceed with such provisions where the evidence to justify them is unclear.

   We think the above demonstrates how unduly complex Section 2 is and if the existing CRTB and registration of interest provisions could be made to work more effectively it would not be required at all.

Sections 4 and 5 – Transfer Test (Lotting)

The Bill introduces a transfer test placed upon seller at point of sale based on community sustainability justification. Such an intervention in the land market sets a serious precedent and will be robustly examined by those potentially detrimentally affected. These provisions therefore need to be able to stand up to scrutiny in terms of delivering the stated policy intentions in a proportionate way which could not be delivered in any less detrimental manner. The evidence given to the Committee to date from across the land reform spectrum appears to be clear in providing a resounding warning signal to Parliament.

SLE believes that the consequences of including the transfer test and lotting provisions would be entirely counterproductive to the stated policy intention (community sustainability) and the impact on the land market would reach far beyond the anticipated small number of voluntary transfers each year, thereby creating a disproportionately detrimental impact which could be achieved by less invasive measures.

The existence of these provisions on the statute books will affect land value for secure lending even where the owner does not intend to bring the property to the market and therefore negatively impact investment and wider rural development. Again, the Scottish Government has not fully assessed the impact of the provisions. The policy rationale for this concept is sustainable community development but it could in fact be completely counter productive to that objective if it proceeds.

SLE has found it impossible at this stage to develop alternatives or amendments which could sufficiently ameliorate the damaging impacts in a way which could create workable legislation out of this part of the Bill. We would call for the Committee to seek a complete rethink by the Scottish Government, guided by the review of existing legislation.

Attachment: SLE Flowchart for Lotting and Prior Notification

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Land Reform (Scotland) Bill Part 1

KEY
LCC - Land & Communities Commissioner
SMs - Scottish Ministers
LD - Lotting Decision
CRTB - Community Right to Buy
LMP - LandManagement Plan

COLOUR KEY
Teal- Prior Notification
Pink - Lotting
Orange - Outcome

Community Engagement

- Fine: Landowner up to £5000 (for breach of obligation)
- Fine: Anyone up to £1000 (fail to provide info)
- Investigate
- Community Body Reports Breach to LCC
- Publish MPS
  - Every 5 Yrs
  - Community Consultation
- Consider Lease Requests
- Other obligations??

Landowners 3000Ha +

Prior Notification

Landowner wants to transfer or take action with a view to transfer land

- Owns 3000+ ha
- Owns 1000+ ha
- Owns less than 1000 ha
- All of part of holding
- 1000+ ha
- Exempt
- Existing LD
- Not Exempt
- Free to transfer
- Time to be specified in notice.
- Time in notice expires
- S46I Financial hardship notice
- Prohibition on Transfer S46B
- 2 Years
- Land not subj. to reg comm interest
- Land already subj. to reg comm. int.
- S46C notice to request prohibition be lifted
- S48 not of latended transfer
- S46D Process SMs advertise, notify & invite notice of intent to reg interest
- 30 days
- No applics
- Applics Rec'd
- S46E Notice to lift prohibit
- SMs decide not to allow to proceed
- SMs decide to allow applic & notice of intent has reasonable prospect of being reg
- Excluded land or exempt S46H
- New prohibition on transfer S46F for 40 days
- 40 days
- Invite comm. body to make S37 Applic.
- S39ZA If sale imminent 30 days If not imminent 63 days
- SMs decide not to reg. comm interest
- SMs decide to reg. comm interest
- Owner deemed to have served S48 notice
- Usual CRTB process

Lotting

- Free to transfer
- Prohibition of transfer S67D
- Transfer according to LD
- Transfer contrary to LD or to a connected person
- Apply to SMs for LD
- VOID
- Financial hardship?
- 1 Year
- After 1 Year
- Yes
- No
- No time limit?
- SMs Request report from LCC
- LCC fail to produce
- Owner makes valid request not to make LD S67L
- No time limit ?
- SMs make LD: Is it more likely lotting would lead to land being used (all or part) in ways to make comm more sustainable? Having regard to (a) frequency of land sales and (b) concentration of ownership S67N
- 5 Years
- After 5 Years
- Yes
- No
- LD Specify lots
- 28 Days
- Owner appeal to Court of Session
- Quash
- Uphold
- 1 Year
- Lots not sold
- All lots sold to unconnected persons
- Owner applies for review of LD
- Owner makes valid applic to stop renew S67Q
- S67T Notice to request SMs to offer to buy
- SMs must take advice
- Leave uncharged.
- New LD to be made
- SMs may offer if condition met S67S
- Lots not sold
- SMs make offer
- Valuer appointed by SMs
- SMs don't make offer
- 21 days
- Owner appeals decision not to offer to Lands Tribunal
- Ministers were wrong
- Ministers were correct not to offer under S67T
- Lots not sold.
- Valuation agreed
- Valuation not agreed
- 21 days
- Appeal valuation to Lands Tribunal
- Lots sold to the SMs
- SMs make further offer
- Lots not sold
- COMPENSATION