

# Land Reform for a Wellbeing Economy

WEAll Scotland response to the Scottish Parliament's Net Zero, Energy and Transport Committee call for views on the Land Reform (Scotland) Bill.

## Part 1 of the Bill

### General Purpose in Relation to Large Landholdings

**Do you agree that there is a need for further land reform to address issues around large landholdings in Scotland?**

Yes.

Scotland is blessed with a large and diverse amount of land, which provides the foundation for our wellbeing. It provides the basis for homes and communities; the soil to grow our food and timber; the space for our businesses and energy production and the habitats that nurture and protect our natural environment.

Reforming the way we own, use and manage our land in Scotland is key to unlocking the potential of a Wellbeing Economy to enable Scotland's people and communities to thrive. It is also key to achieving a just transition to net zero, to embedding community wealth building throughout Scotland, and to tackling the housing crisis.

In a Wellbeing Economy, Scotland's land use and ownership would be organised in a way that prioritises the outcomes needed to achieve good lives for all on a healthy planet using Wellbeing Economy principles:

- **Dignity:** affordable land is available for housing, growing healthy food, and providing the materials needed to meet the basic needs of all people in Scotland.
- **Nature:** our land is home to nature with its diverse habitats and ecosystems that can support our collective wellbeing.
- **Fairness:** the ownership of land and the wealth created from it are distributed fairly.
- **Purpose:** the laws and institutions that govern land are designed to ensure that it is used to serve the common good.

- Participation: decisions on how land in Scotland is used are made with meaningful participation of those affected by the decisions, especially those living on the land.

Some of the best examples of Wellbeing Economies in Scotland are based on sites of community and democratic land ownership (Community Land Scotland, 2022, "[Community Wealth Building and Just Transition to Net Zero](#)"). Such arrangements enable communities to sustainably develop their local areas in line with their needs, building community wealth and resilient circular economies in the process. We need to encourage and support these models.

Right now, too much of Scotland's land is currently owned by a small minority of people with very little democratic accountability. As a result, it is managed for goals that do not align with the principles and objectives of a Wellbeing Economy.

These arrangements stifle the potential of community activities, businesses and entrepreneurs that are key to developing a thriving economy in Scotland. For example, high land prices driven by investments in land focused on financial returns, rather than the needs of people and planet, prevent the development of more affordable housing and stifle efforts by communities to tackle the housing crisis. Similarly, many of the innovative and community-oriented businesses that we will need for a Wellbeing Economy, including community energy projects, struggle to launch or survive because of a lack of affordable land to conduct their business or house their employees.

### **Will the proposals in this Bill fulfil the Scottish Government's objectives in relation to land reform?**

No.

We welcome the introduction of the Land Reform Bill. Many of its proposals present small steps in the right direction. But the measures proposed in the Bill have several important gaps and are not strong enough to achieve the Scottish Government's objectives.

The Scottish Government has a long-standing commitment to the twin objectives of diversifying land ownership in Scotland and making sure that Scottish Land is used in the public interest. In its [Programme for Government 2021-2022](#) ("A fairer, greener Scotland"), the first in this parliament, the Scottish Government committed to 'bring forward a Land Reform Bill to tackle the scale and concentration of land ownership across rural and urban Scotland, including provision for a public interest test to apply

to transfers of particularly large scale landholdings, with a presumption in favour of community buy-out when the test applies.’ (p. 86).

These objectives are important because they recognise the important negative impacts on the economic development and wellbeing of communities from the concentration of land ownership in Scotland, as laid out in a report by the Scottish Land Commission published in 2019 (“[Investigation into the Issues Associated with Large scale & Concentrated Landownership in Scotland](#)”). They are also important because land reform that tackles the scale and concentration of land ownership and makes sure that land is used in the public interest will be crucial for achieving the Scottish Government’s wider objectives of building a Wellbeing Economy, achieving a just transition to net zero, and tackling poverty.

The impacts of the current Bill, even if moving us closer to them, will not be enough to achieve the Scottish Government’s objectives of reducing concentration and diversifying land ownership and making sure land is used in the public interest. This is because of the following reasons:

### **1. Omission of a full public interest test**

- Despite its key objective to align land use in Scotland with the public interest, it does not include a full public interest test at the point of transfer.
- Such a public interest test has been recommended by the Scottish Land Commission and also received strong support in the consultation on the Bill with 72% of respondents in favour.
- The proposed transfer test is a much inferior replacement and does not capture the full range of public interest that is important for building a Wellbeing Economy.

The Bill should be amended to widen the scope of the transfer test to a full public interest test, which should be applied to both the seller and buyer at the point of transfer. A public interest test should also be part of the regulatory mechanisms of land management plans and the Land Rights and Responsibilities Statement (LRRS).

### **2. Obligations for land management plans and community engagement are too weak**

- The intention of the Bill to encourage greater consultation of land owners with the communities and consider their environmental impacts in land management plans is welcome, but the measures in the Bill are too weak to affect meaningful change.
- There are very few specific details in the Bill of the form that such community engagement should take, which will likely make it minimal and tokenistic.

- While powers to introduce such requirements are transferred to Ministers in the Bill there is no obligation to introduce them.
- The narrow criteria for those who are allowed to report breaches will make it very difficult for communities to report them. And even if they do, the level of fines are so low that most land owners can afford to ignore them.

The Bill should be amended to link community engagement requirements to a stronger statutory footing of the LRRS, as recommended by the Scottish Land Commission. In addition, the criteria for bodies that can report breaches should be widened and fines should be increased and set to grow with multiple breaches, with a compulsory sales order as last resort to enforce compliance.

### **3. Omission of urban land and smaller sites of significance**

- Due to its exclusive focus on the size of land holdings, rather than their concentration or significance, the Bill does not apply to urban land in Scotland.
- This excludes a large portion of the population from any benefits of the Bill and falls short of the explicit commitment to cover urban land in the Programme for Government.

The Bill should be amended to also apply to smaller sites where the concentration of land ownership is impacting negatively on communities and the public interest.

### **4. Size thresholds for rural land holdings are too high**

- Even in rural areas, the size threshold for land holdings are too high to affect any meaningful change as a result of this Bill.
- The threshold of 1000 ha for the transfer test will only capture a handful of sales every year, with the Scottish Land Commission recording a total of 24 land transactions over 1000 hectares in the three years from 2020 to 2022 ("[Rural Land Market Report: Analysis of land sales data 2020-2022](#)")
- Having two different thresholds for the land management plans and public engagement requirements and the transfer test and lotting decisions creates confusion. For example, it could lead to a situation where a land holding of between 1000 ha and 3000 ha would be considered significant enough to be subject to the transfer test at the point of sale but then not considered significant enough to fall under the requirement to engage communities on their land management plans afterwards.

The Bill should be amended to apply a unified threshold of 500 hectares for rural land holdings to all measures with an extra criteria to capture smaller landholdings of significance where concentrated ownership is acting against the public interest.

## Section 1

**Do you support the proposal that the Scottish Ministers may, by regulations, impose obligations on landowners to promote community engagement in relation to large landholdings?**

Yes.

Participation and democratic control of our economy is a core principle of the Wellbeing Economy. This principle applies especially to economic assets like land, which are both scarce and directly important for multiple aspects of wellbeing. Monopoly control of such assets often has specifically adverse consequences for wellbeing and economic development. In the case of Scottish land ownership, the Scottish Land Commission has clearly laid out the risks that concentration of ownership and excessive power brings to the wellbeing of people and planet ([“Investigation into the Issues Associated with Large scale & Concentrated Landownership in Scotland”](#)).

In these circumstances we consider it important that land management decisions are based on democratic processes considering both the communities living on or near the land as well as the wider public interest. The proposed regulations imposing obligations on land owners to promote community engagement are an important, albeit small, step in that direction.

But in order to be effective the community engagement has to be able to affect change on issues that communities are concerned about. Otherwise, engagement will simply be tokenistic, foster resentment, and erode trust between communities and land owners. The measures proposed in the Bill are currently not sufficient to achieve this.

**In principle, do you agree that owners of large landholdings should have a legal duty to consult on and publish land management plans?**

Yes.

The importance of land for wellbeing and economic development gives large landowners, or landowners that hold a significant concentration of land in a key location, a disproportionate amount of power to help or hinder progress towards democratically set goals, from tackling the climate and nature emergency, to eradicating poverty and addressing the housing crisis. How large land owners plan to use their land is, therefore, a key concern for communities living on or near the land, as well as for the wider public interest.

We therefore consider it appropriate that owners of large or otherwise significant landholdings should have a legal duty to consult on, and publish, land management plans.

Such land management plans should take community considerations into account and set out how land owners are planning to manage the land in line with the LRRS and in order to advance wider societal priorities. While we have seen some progress in pursuing such an approach on a voluntary basis, it is too easy for those landowners who are not community-minded to ignore their responsibilities.

The requirements set out in the Bill rightly recognise the importance of ensuring that land is managed transparently and in the public interest. But they are not strong enough to achieve meaningful positive impacts on the ground. We therefore propose strengthening the Bill in the following ways:

First, the required land management plans should be supported by a strengthened LLRS and set on a statutory footing, as recommended by the Scottish Land Commission ("[Summary of Research and Recommendations](#)"). This proposal has also received significant support in the Scottish Government consultation on the Bill with 75% of respondents agreeing that there should be a duty on large-scale landowners to comply with the LRRS and its associated protocols. The LRRS should be made to be a statutory obligation, tied to secondary guidance which sets out the best practice that must be adhered to. The Land Commissioners' functions should also be updated so that they are empowered to oversee the LRRS.

Second, the size threshold for land holdings, to which the obligations apply, should be lowered to 500 hectares with additional provisions for smaller sites of community significance. The proposed threshold of 3000 ha only captures a small number of land holdings (ca. 320-350) and omits a large fraction of Scotland's rural (let alone urban) land. Forestry management plans and farm plans apply for any landholding so there is existing precedent.

Third, land management plan requirements must be included within the Bill itself, with details of the regulation potentially in secondary legislation. As it stands, the Bill will grant powers to Ministers 'to impose obligations by regulations' but there is no indicated timescale by which these regulations have to be introduced/commenced.

Fourth, mechanisms for holding land owners to account for breaching their responsibilities need to be strengthened. More details are in our answer to the next question.

**Do you support the process for investigating alleged breaches of community engagement requirements for large landowners set out in the Bill? Do you support the proposed level of penalty for contravention?**

No.

We fully support an effective and independent process for investigating breaches of community requirements including penalties for contravention. Such a process and penalties are crucial for making the Bill effective. But the process and penalties as proposed in the Bill will be ineffective unless they are strengthened in the following ways:

First, penalties for not producing a land management plan need to be significantly increased and should also apply to non-compliance with the land management plan. The £5000 maximum penalty is too low to ensure compliance with the new regulation. Instead, penalties should increase with multiple contraventions and should consider cross-compliance mechanisms, for example, the possibility to remove subsidies. As a final backstop, in case of continued breaching of the requirements, there should be the option to conduct a public interest test leading to a compulsory sales order if the test is failed. This is a last resort action that is unlikely to be used, but we consider it important to be included in the Bill to provide a strong motivation for compliance.

Second, the current set of criteria for bodies who are allowed to report a breach will, in practice, prevent communities from reporting breaches. Many communities do not have community bodies registered under the narrow criteria listed in the Bill. Even if they have such a community body, it might not be in their best interest to report a breach of a monopoly landowner who has significant power over their community, especially if they know that the proposed penalties are so low that the reporting of a breach will not have much of an impact.

To address this important failure we recommend amending the Bill to make sure that a much wider range of community bodies, and potentially even individuals, are able to report breaches. OSCR the Scottish Charity Regulator has a robust mechanism for reporting concerns about charities and to avoid vexatious claims. Any member of the public can report concerns. A similar process could be followed in the reporting of land management plan breaches to provide more thorough and meaningful oversight.

## **Section 2**

**Do you support in principle strengthening community bodies' opportunity to buy large landholdings?**

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Yes.

Aligning land use and ownership in Scotland with a Wellbeing Economy and achieving the Scottish Government's objective to diversify land ownership will require a much bigger share of land held in community ownership. Some of the best examples of Wellbeing Economies in Scotland are based on sites of community and democratic land ownership. Such arrangements enable communities to sustainably develop their local areas in line with their needs, building community wealth and resilient circular economies in the process ( Community Land Scotland, 2022, "[Community Wealth Building and Just Transition to Net Zero](#)"). We need to encourage and support these models.

**If you answered "yes", does Section 2 of the Bill go about this in the right way to address the Government's aims?**

No.

We support the measures to require prior notification of sales proposed in the Bill. These measures are welcome because they increase transparency, ensuring that all sales of land holdings over the threshold cannot happen off market and in secrecy.

However, on their own these measures are too restrictive in allowing community groups to make use of such a notification. In order to strengthen community bodies' opportunity to buy large landholdings will require longer notice periods and a strengthening of right-to-buy rules as reflected in a recent blog by the Community Land Leadership Group on 13 December (accessible here: <https://www.landcommission.gov.scot/news-events/blog/community-land-leadership-group-update>)

**Do you think that 1,000 hectares is an appropriate threshold?**

No.

Current proposals for identifying land holdings to which measures apply are not fit for the purpose of the Bill. By applying measures only to land holdings of over 1000 hectares or over 3000 hectares large parts of the Scottish population are excluded from the benefits of the Bill, including all of Scotland's urban areas.

In addition, applying two different thresholds makes it harder to integrate the different measures of the Bill. For example, a land management plan could be an important part of the process of conducting a public interest test on the buyer of a plot of land and of

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holding a buyer to its plans after the sale. However, at the moment the transfer test applies to land holdings over 1000 hectares, but not all of these would be covered by the requirements for land management plans and community consultation which only applies above 3000 hectares.

We therefore recommend a unifying approach that would allow the legislation to be flexible enough to not only capture large land holdings, but also apply to smaller sites where the concentration of land ownership is impacting negatively on communities and the public interest. We support Community Land Scotland's proposals in this regard which propose the following criteria for identifying large-scale land holding or land-holding of significance:

- a) A fixed threshold of 500 hectares
- b) Land that accounts for more than 25% of a permanently inhabited island
- c) Site of community significance - land that a designated public body (potentially the Scottish Land Commission or planning authorities) can agree is of significance to any applying community

This third broad and discretionary criterion would need greater clarity. The legislation should therefore state that, in reaching a view of the 'significance' of any land, the designated public body should have regard to relevant guidance. The application of this guidance and future decisions using it would also be subject to case law arising from any challenges to decisions by that public body.

This approach has a number of advantages. It reflects the fact that land ownership patterns/contexts are so varied. It avoids the need to define 'urban' and draw an artificial boundary between urban and other land. It means that the land reform mechanisms in the Bill can address all aspects of 'significance' and the potential 'creation or continuation of a situation in which excessive power acts against the public interest' – not just size of landholdings. And it allows for judgements to be made on the application of a public interest test (albeit that such judgements should be steered by guidance, and subject to challenge).

The approach is also similar, in concept, to a number of other statutory decision-making processes relating to either land and/or the implementation of legislation.

## Section 4

**Do you, in principle, approve of allowing the Scottish Ministers to make a lotting decision in relation to sales of large landholdings?**

Yes.

The sheer size of many landholdings in Scotland is a key factor driving the increasing concentration of land ownership. It is also a key barrier to diversifying land ownership and a key barrier to building a Wellbeing Economy. A mechanism for dividing up larger landholdings into smaller ones is therefore welcome.

However, such a lotting process on its own will not be sufficient to achieve the Government's objectives because it is only focused on the intention of the seller and not on the buyer. Enabling the lotting process to ensure that land is owned and managed in the public interest will require a stronger public interest test, as outlined below.

**If so, do you agree that 1000 hectares is an appropriate threshold?**

As laid out in our response to an earlier question, we consider that the threshold should be reduced to 500 hectares and include an additional criterion that can capture smaller land holdings where excessive concentration of power is acting against the public interest.

**Is the proposed process for making a lotting decision appropriate and workable?**

**Do the Scottish Government's proposals for a "transfer test" adequately take the public interest into account?**

No.

Building a Wellbeing Economy requires mechanisms to ensure that our land in Scotland is used to further the democratically determined priorities of the country, such as tackling the climate emergency, reducing inequality, and addressing poverty. This requires ways in which democratic governments and community organisations can hold land owners accountable for their impact on these priorities.

A public interest test is a key tool to establish this accountability. That is why it has been recommended as a key plank of land reform by the Scottish Land Commission

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(“[Summary of Research and Recommendations](#)”) and has also received the support of 72% of respondents to the Scottish Government consultation on the Bill.

The transfer test proposed in the Bill, however, does not constitute such a public interest test and will be far less effective. This is because it is too narrowly focused on local community sustainability rather than taking into account all aspects of public interest. It is also focused exclusively on the land holding itself and not on the intentions of the buyer for the use of the land.

Even if the transfer test leads to a lotting decision, there is nothing in the Bill to ensure that the smaller pieces of land are subsequently used in a way that is aligned with Wellbeing Economy principles and the public interest.

We therefore recommend that the transfer test in the Bill is strengthened to create a full public interest test by:

- including a wider scope for the test than just community sustainability
- specifying that lotting decisions are made to achieve public interest outcomes including scrutiny for the plans of potential buyers

Such a public interest test should also apply to land holdings with a wider set of criteria to capture smaller landholdings with concentrated power (as outlined above). The public interest test should be part of the regulatory framework to hold landowners accountable for their land management plans and adherence to the LRRS.

Applied in this way, such a public interest test will allow for more effective oversight of how land is owned and managed.

## Section 6

**Do you support the creation of the new role of Land and Communities Commissioner?**

Yes.

**If so, are their responsibilities under the Bill adequate/appropriate?**

## Part 2 of the Bill

### General questions

#### Links to the Agriculture and Rural Communities (Scotland) Bill

**Are the changes proposed in the Land Reform (Scotland) Bill sufficient to enable tenant farmers to engage in sustainable and regenerative agriculture, and to allow them to take part in schemes and programmes under any new agricultural policy?**

#### Fairness and checks and balances

**Do you consider the Bill strikes a balance between the competing interests and rights of landowners, local communities, landlords and tenants, alongside the wider public interest?**

No.

Given the largely unregulated nature of the Scottish land market, the balance between competing interests is strongly skewed in favour of landowners and landlords and against local communities and the wider public interest.

This imbalance is less prominent in cases where the interests of the various parties align, which they often do. However, it becomes particularly glaring in cases where landowners pursue an agenda that is at odds with the interests of local communities and the wider public interest. In such cases our land ownership and management system does not offer local communities democratic and effective ways to promote their interests and find a sustainable balance.

The measures proposed in the Bill shift the balance slightly more towards local communities and the wider public interest, but it does not go nearly far enough to strike a fair balance.

#### Tackling the Climate and Biodiversity Crises

**In your view, does the Bill make adequate provision for the role that land might play in delivering a just transition to net zero and tackling the biodiversity crisis?**

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No.

Tackling the climate emergency and restoring the health and integrity of our natural environment are the foundations for the wellbeing of current and future generations. Following our current trajectory this wellbeing is seriously threatened and undermined.

Tackling the climate and biodiversity crisis should therefore be top priorities for land management in Scotland. But it needs to be done in a way that (a) enables communities to benefit from these actions and (b) is consistent with a viable pathway to reach our climate targets. At the moment, land management is not paying sufficient attention to these priorities. Even where actions on climate and biodiversity happen, they are too often done in a way that is damaging to local communities and mainly benefiting landowners and wealthy financial investors; while also not helping our climate change efforts because they are offsetting the emissions that should be reduced.

Making sure that land can fulfil its important role in helping to tackle the climate and biodiversity crises will require much stricter regulations and accountability mechanisms to hold land owners to account for their actions.

The current proposals in the Bill do not do that. It is welcome that the Bill proposes that the required land management plans should set out how landowners are planning to contribute to efforts to tackle climate change and restore biodiversity. But this will largely be ineffective in as far as the land management plans will be ineffective overall as set out earlier. This is because there is no mechanism to hold landowners accountable for the delivery of their land management plans as fines are too low and there is no public interest test.