

Net Zero, Energy and Transport Committee's call for views on the Land Reform Bill.

A response from the John Muir Trust.

Submitted on 17 May 2024.

Part 1 of the Bill

General Purpose in Relation to Large Landholdings

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

Yes.

Without a strengthening of the market, land use and land management regulation around large landholdings, they are likely to compromise the Scottish Government's ability to realise its net zero ambitions. Voluntary measures for land use change have not been sufficient to instigate the scale of change that's needed.

Whilst some major landowners are restoring upland peatlands, working with partners to connect fragmented habitats and reintroducing species, this isn't the case for all large landholdings. This represents a missed opportunity given the huge potential of large estates throughout Scotland to reduce carbon that is being emitted from the land, deliver outcomes for nature's recovery and reverse the decline of biodiversity. It is the John Muir Trust's position that the use of land is critical to reducing carbon emissions and supporting nature's recovery and that all large areas of land should be contributing to carbon emission reduction and biodiversity outcomes.

Another reason why reforms are needed is the precarious nature of large private landownership. Land can be sold with little transparency and overnight there can be an entirely different vision for land use and management over a large area of Scotland. Whether that new landowner vision supports or hinders national progress towards carbon emission reduction and improved biodiversity is beyond the control of the Government without regulation. Regulation helps to bring stability around future land uses and with this can ensure that efforts to reduce carbon emissions or recovery nature over the long term are not in the future undermined.

If the present status quo continues, there is a risk it will store up societal inequalities into the future. In recent years transaction prices for rural land have risen steeply. Current inflated prices are widely viewed as a barrier to community groups being able to purchase land. There's something important to note here about the relationship between land reform and net zero. This is that demand for land in recent years, which has pushed prices up, has mostly come from a new type of buyer (i.e. corporate companies, investment firms and wealthy individuals) looking to offset carbon emissions on behalf of their company or on behalf of others. This trend both shows the value of managing land to reduce carbon emissions but also underlines that the

present unregulated market leaves this to the whim of external private interest, rather than being set pro-actively by the Government's own agenda.

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

No.

Three aims for land reform were set out in the foreword of the original consultation paper. These were: 1) Increase diversity of land ownership, 2) Bring about changes in land use and 3) Create more opportunities to engage communities in land use decision making. We think the Bill will partially achieve objectives 1), 2) and 3). The aim to realise changes in land use (including for carbon emission reduction and nature recovery) could be considered most relevant to the remit of the Net Zero, Energy and Transport Committee. As all three aims are related, we have considered all three aims in our response below.

On objective 1), the Bill includes proposals that ought to make more land available for sale on an open market if the powers are used. In time, we would expect this to help diversify land ownership. Specifically, the Bill proposes new powers for Ministers to force the sale of landholdings over 1000ha, introduces a 'transfer test' to determine if the owner of a landholding over 1,000ha should be required to transfer the land in smaller parts, includes provision whereby Ministers can invite communities to register an interest in land, creates powers for Ministers to prohibit the sale of land to give communities time to register an interest in a large land holding, and provides small tenant landholders with the pre-emptive right to buy.

We note that reforms to community right to buy are not being brought forward through this Bill. As far as we can tell the Bill is silent on making the process easier in practical terms for communities, once they have registered an interest in land, to acquire the land. In our previous consultation response, we said it was important that communities are given enough time to organise and raise the funds they need to purchase the land. Without sufficient time to raise the funds it is unlikely that communities will be able to reach a position of being able to buy the land they have registered an interest in. Community Land Scotland have advised that the prior notification measures in the Bill won't result in increased ability of communities to buy land unless there are reforms to the existing community right to buy timescales. The ability of communities to buy land more easily is relevant to Scotland's net zero targets because we know from examples amongst existing community landowners that communities can be trusted to manage land sustainably.

On objective 2), the Bill restricts the available potential to realise carbon emission reduction and improved biodiversity through changes in land management by limiting the requirement to produce land management plans (which are to include detail on reducing emissions, adapting to climate change and increasing or sustaining biodiversity) to landholdings over 3,000ha. Based on available data, and our own direct experience of managing land and working in partnership with other landowners,

it appears to us that, collectively, landholdings between 1,000ha and 3,000ha offer the greatest potential for achieving change at scale and therefore restricting the requirement to produce land management plans to landholdings over 3,000ha vastly limits the opportunity to bring about land use change.

Other factors that could hinder the achievement of objective 2 include: 1) Whether the powers to publish a model lease for letting land so that it can be used wholly or partly for environmental purposes are used and, beyond that, whether the model lease is put into effect. 2) Whether the detail within the published land management plans is acted on. The Bill does not seem to contain any measures that would ensure that the detail in the plans will be acted upon. 3) Whether the views of communities expressed through consultations on land management plans are taken into consideration and land management plans are adapted to reflect ways the community would like to see the land being used.

On objective 3), the Bill includes proposals that should enable the views of communities to inform land use changes proposed in land management plans for land holdings over 3,000ha. However, because these engagement opportunities only apply for the largest landholdings, defined as over 3,000ha the Bill is missing a huge opportunity for community engagement in land-use decision making. By setting the threshold at the higher end of a range consulted on (1,000ha-3,000ha), rather than the lower end (1,000ha), the proposal will cover approximately 386 landholdings in Scotland. This is half the number of engagement opportunities than if the requirement was to apply to all landholdings over 1,000ha. This is relevant to net zero as it means substantially fewer landholdings will consult the community on their plans to adapt to climate change, contribute to net zero emissions and improve biodiversity.

The public understands the seriousness of addressing the climate emergency and the role that land management has in reducing carbon emissions. If all land holdings over 1,000ha were required to publish land management plans and consult with communities on them, it is probable that, working with the views of communities, more land would be managed for climate and nature. The Bill is also silent on the methods of engagement, which creates a risk that the quality of engagement will be patchy, dependent on the inclination and energy of the landowner.

To support the realisation of all three objectives we would have liked the Bill to have strengthened the voluntary principles within the Land Rights and Responsibilities Statement by making compliance with the principles mandatory for all landholdings. Instead, the Bill as drafted only requires the largest landholdings to comply with some of the principles. Principle 5, for example, is not strengthened under the Bill's provisions. This principle states 'Land ownership, management and use should deliver a wide range of social, environmental, economic and cultural benefits.' However, under the Bill as drafted, most landowners won't have to produce land management plans nor consult the community on those plans. Principle 5 of the LRRS would also have been strengthened had the Bill included a public interest test for the sale of large land holdings, as consulted on originally. Instead, the Bill makes provision for a 'transfer test'. The transfer test will determine whether the land coming up for sale

should be split into smaller areas. It will not regulate the future uses of the land and therefore is a missed opportunity for ensuring more land delivers public benefits such as carbon sequestration.

Relevant to fulfilling all three objectives is that most of the proposed changes are the creation of powers which rely on future, secondary legislation, before they can come into effect. In this respect, future legislation will fulfil the Government's land reform objectives, rather than the present Bill.

3. 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.

Future regulations that impose obligations on landowners to promote community engagement could advance Principle 1 of the Land Rights and Responsibilities Statement (LRRS). However, under the draft Bill, they would only advance this LRRS principle for the largest landholdings, defined as those over 3,000ha. Therefore, whilst we support an obligation to promote community engagement, we would have preferred to see this apply to all landholdings over 1,000ha. In our view, that would have been the appropriate threshold for this obligation and closer to fulfilling the intention of the LRRS, which has universal application to landholdings in Scotland irrespective of size.

A note on language used in the Bill provision. It is not clear what 'promote' with respect to 'community engagement' means in practice. Does it mean that landowners advertise and publish ways for the community to get involved in land use design, changes and estate planning or management? How does 'promote community engagement' differ to the new legal duty to consult on and publish land management plans? We suggest this wording is looked at again to make it clearer what is required by 'promote'. We would also like to see, whether in the draft Bill, or in guidance, an outline of activity expected by landowners when fulfilling their community engagement obligations.

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

Yes.

We agree that owners of large landholdings should have a legal duty to consult the public, specifically local communities, about their land management plans. Making this a legal duty should mean that more landowners are more likely to comply with principles 6 and 7 of the Land Rights and Responsibilities Statement. The Bill misses an opportunity however in effecting change by limiting these duties to landholdings over 3,000ha. This will exclude the majority of landholdings from the obligation, which curtails the government's ability to instigate land use change. The ability to instigate

change is also limited without more detail on how communities will be consulted and under what circumstances a land management plan should be revised (e.g. if it became clear through consultation that a proposed land use change would not reduce carbon emissions or would not enhance biodiversity, would the landowner be required or at least expected to change and republish their plans?).

If the requirement is revised to include all landholdings over 1,000ha, the Government could incentivise and drive land use change for climate and nature across approximately 50% of landholdings in Scotland. It, as well as the public, could also have access to land management data for 50% of landholdings in Scotland. That information, if systematically analysed, could help better understand whether and how 50% of Scotland is i) contributing to the net zero targets, ii) adapting to climate change and iii) increasing or sustaining biodiversity. This information would be useful for the Government to track progress on emissions reduction through land-based activity and to the Net Zero, Energy and Transport Parliamentary Committee, in its work scrutinising the Government on its ability to deliver on its net zero commitments.

5. 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 have responded no because whilst we support the inclusion of provisions in the Bill on a process for reporting breaches and enforcement we recommend more detail is added to these provisions.

Enabling a simple process through which recognised bodies can report instances on non-compliance sounds reasonable. However, we would support a wider range of organisations including those that are representative of community voices, from being able to report breaches. We also suggest that there is a process that covers the possibility where one of the listed organisations that can report a breach is in breach of the requirements – who in those circumstances would report a breach?

We suggest where a breach occurs, that there should be an emphasis on resolution through dialogue in the first instance, with penalties introduced when a process of dialogue has broken down or been impossible to instigate. For a persistent breach, second or repeated breaches, we suggest the penalties should increase (e.g. escalating fines with an ultimate sanction for persistent breaches and non-cooperation such as compulsory purchase).

In addition to penalties for not publishing a land management plan or failing to engage the community with a land management plan, we recommend there is a penalty for failing to comply with the detail of a published land management plan.

Section 2

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

Yes.

We support the principle of enabling more communities to own and manage land. Community bodies that own land are more in control of the future of their community and how land where they live is used. This empowers people living in these communities, supporting their health and wellbeing as well as their future prosperity. There are excellent examples in Scotland of what communities have been able to achieve for the benefit of a community through land ownership, including generating renewable energy for the community through community-owned development, public buildings for community use, affordable housing and managing natural resources, such as woodlands, sustainably. The amount of land entering community ownership has stalled in recent years. Strengthening community bodies' opportunity to buy land is a measure the Scottish Government can take to ensure communities are not squeezed out of the land market. This should help to support community wealth building in Scotland in the longer run.

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 generally support provisions in Section 2 of the Bill as a positive step towards giving communities greater awareness of land coming up for sale. Under the Bill Scottish Ministers are to publish information about land coming up for sale, notify communities that have already registered an interest in future land sales that land is now up for sale, and provide information on how a community can register an interest if they have not already done so. The provisions will give those communities that have registered an interest, 30 days to express an interest in land that is coming up for sale. They will also provide communities that haven't yet registered an interest with additional time to do so (accompanied by Scottish Ministers having the power to prohibit a land transfer for a period of time (40 days)).

The Explanatory Note states 'Under the provisions, a community body will have 30 days from being notified by the Scottish Ministers to express an interest in making a late application. Where at least one community body has expressed an interest, a further prohibition on sale will apply for an additional 40 days to allow for preparation of an application under the Part 2 procedure.' We are doubtful that the 30-day period for communities that have pre-registered their interest in land that is coming up for sale is sufficient time for a community to decide it wants to submit an expression of interest. We are also uncertain that the additional 40-day period is sufficient and suggest this period is lengthened to align with the time it can take a community to submit a community right to buy application under the current process. In addition, we suggest there should be a provision that enables this period to be extended for communities that won't manage to meet the deadline.

In addition to providing communities with enough time to engage with the process of registering an interest in the sale of land and preparing an application for community right to buy, communities also need time to raise the funds they need for a purchase. Without sufficient time to raise the funds it will be difficult for many communities to reach a position of being able to buy the land they have registered an interest in. The 2022 consultation paper mentioned that the Government was considering that after registering interest with Scottish Ministers, there should be 'a further six-month period for the community body and the landowner to negotiate the terms of the purchase and for the community body to secure funding'. Allowing sufficient time for communities to negotiate terms of a sale and secure funding is critical to enabling communities to ultimately succeed in purchasing land after registering an interest.

The ability of communities to buy land more easily is relevant to Scotland's net zero targets because we know from existing community land ownership models that communities seek to manage land sustainably, for future generations and in the interests of a place-based community. We recommend that this Bill ensures communities have enough time to engage with new opportunities to buy land that are created through the provisions of this Bill.

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

Yes.

In our previous consultation response we suggested a threshold for 'large' landholdings be set at 1,000ha. This advice hasn't changed and we would like to see the 1,000ha threshold applied for all landholdings that are subject to requirements introduced by this Bill.

Section 4

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

Yes.

Lotting decisions could help to diversify land ownership by bringing land onto the land market that, without an intervention, would not have come up for sale. By doing so, the lotting decisions may enable new buyers to enter the market thereby diversifying ownership. The effect could be to increase the number of landowners in each area. This may diversify approaches to land use in the area.

For the lotting decision process to complement the Bill's provisions which are intended to enable more communities to buy land will require Scottish Ministers to be informed about the capability of communities to buy land that becomes available once split into lots and for the Bill to allow for enough time for communities to participate in the buying process.

We suggest that the lotting decision takes into consideration the track record of a landowner's compliance with the Land Rights and Responsibilities Statement as well as the provisions in the Bill to publish land management plans and consult with communities. In addition, we suggest the landowner should be required to provide evidence that the landholding is contributing to carbon emissions reduction and improved biodiversity.

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

Yes.

In our previous consultation response we suggested a threshold for 'large' landholdings be set at 1,000ha. This advice hasn't changed and we would like to see the 1,000ha threshold applied throughout this Bill.

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

No.

We have answered no because we suggest that some land classifications are more suitable than others for subdivision into smaller units, and in some instances – for example, steep and rugged mountain landscapes – land reform may be better served by charity or public ownership.

Where there are clear benefits to smaller plots, we would like to see safeguards in place to ensure that the subdivided land would continue to comply with the Land Rights and Responsibilities statement and associated protocols. The regulatory process for what happens after a lotting decision would benefit from being clearer. For example, how will those who are buying the lots be regulated? What assurances will a future buyer of land (made available following a lotting decision) give towards managing the land according to the Land Rights and Responsibilities Statement?

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

No.

Compared to the original 'public interest test' proposal, the proposed 'transfer test' does not appear to present the same breadth of opportunity for influencing changes in how landholdings are managed in ways that are in the public interest in the future.

During the 2022 consultation on the Land Reform Bill proposals, a public interest test was proposed to govern sales of large landholdings, with criteria for that test to be determined. As drafted, the lotting decision process proposed by the Bill would take public interest into account by requiring Ministers to be satisfied that following a lotting decision, ownership of the land being transferred in accordance with the decision would be more likely to end up being used (in whole or in part) in ways that

might make a community more sustainable than would be the case if all of the land were transferred to the same person.

We envisage it being difficult to predict whether the future land ownership split amongst different owners will end up being under more sustainable land management without some guarantees or assurances from potential buyers about that before the transfers take place. There is also no guarantee that the lotting process and transfer test will result in more land in community land ownership. This depends on communities having the ability to organise and raise the funds to purchase land, to agree on plans for the land and have the skills or experience in the community to manage the responsibilities that come with being a landowner.

The original 2022 land reform consultation proposal, for the sale of large landholdings to be subject to a public interest test, was intended to assess whether there was a risk of excessive power being created or continued, which would act against the public interest. 'Public interest' criteria had not at that stage been consulted upon, but it seemed possible that criteria could be wide-ranging, including considering whether the land had been managed in the public interest (from an environmental perspective, that could look like habitats had been restored and carbon retained in soils). It was also foreseen that conditions could be attached to the transaction which would bind the actions of a future owner. The consultation paper noted 'A test could have an outcome that placed specific conditions on the buyer, such as a requirement to include in their Management Plan provisions to restore degraded peatland or to make part of their holding available to local compliant community bodies.' The 'transfer test' seems to have lost the breadth of the original 'public interest test' and appears to be more narrowly defined, both conceptually, as well as in practice.

Section 6

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

Yes.

Creating a new role should make it clear where responsibility within the Scottish Land Commission lies for upholding the legal requirements introduced by the Bill. Creating a new Commissioner will increase the workload for the Scottish Land Commission staff but we understand that the financial and resourcing implications of this have been considered already.

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

The Land and Communities Commissioner seems to have a lot of power vested in one role in addition to a lot of autonomy. We are not sure if this will change the dynamic of how the Scottish Land Commission works as a whole but suggest the new role is fully integrated into the Scottish Land Commission's work so that there is

learning and experience from this role supports the Commission's work and vice-versa.

Part 2 of the Bill

Section 7

11. Are you satisfied with the broad duty Section 7 of the Bill places on the Scottish Ministers to develop a model lease for environmental purposes, including the definition of "environmental purposes" set out in Section 7?

We understand the duty to develop and publish a model lease for environmental purposes is intended to 'help willing parties to agree on proposals for a mix of land uses under a single lease agreement, including land uses which contribute to net-emissions targets, tree planting, nature conservation and restoration, flood management, mitigation of climate impacts, peatland restoration, and sustainable food production.' (Policy Memorandum, para 158).

We support this intention in so far as it could help tenant occupiers of land to agree terms of a lease which will make it easier for them to restore native habitats, contributing to net zero ambitions and improved biodiversity. We would welcome a stronger emphasis in this policy statement (or others related to land use and land reform) on natural regeneration as opposed to simply tree planting. The conditions for natural regeneration could be created under a model lease for environmental purposes and this would result in a natural, dynamic recovery of nature with improved species diversity and long-term carbon sequestration in not just the trees, but also plants, soils and animals.

We are not sure if the model lease is intended primarily for tenant land managers and farmers or whether it is also intended for corporations that lease land for development such as renewable companies. For the latter, if the lease enables renewable energy developers to invest more in the restoration of land within a landholding on or beyond the immediate development site, that is welcome, but if the lease enables them to negotiate harder for more expansive development in the name of that development being renewable, we would have serious reservations about the trade-offs that then arise. Land use change which results in land becoming a predominantly built environment rather than natural affects the future ability of land to function as a carbon sink and support sustained and improved biodiversity (there are also associated carbon emissions as a result of the construction and the losses of habitat, both direct and indirect).

As proposed, the definition provided for 'environmental purposes' is land used for one of four purposes: (a) for sustainable and regenerative agriculture, (b) in a way that contributes towards achieving the net-zero emissions target set by section A1 of the Climate Change (Scotland) Act 2009, (c) in a way that contributes towards adaptation to climate change, and (d) in a way that contributes towards increasing or sustaining biodiversity. We suggest the definition of 'environmental purposes' under

(b) and (c) is reworded to become more focused on reducing carbon emissions from the land through the restoration of natural habitats and processes, which would be complimentary to (d) and could also take place alongside (a).

Sections 8 and 9 (didn't answer)

12. Do you agree with the provisions in the Bill extending certain rights to small landholders?
13. Do you agree that the Tenant Farming Commissioner's functions should be extended to include small landholders?

Section 10 (didn't answer)

14. Do you agree with repealing Section 99 of the Land Reform (Scotland) Act 2016, and with giving the Scottish Ministers the power to make regulations which modify the requirement for tenants to register their interest in exercising their pre-emptive right to buy?

Sections 11 to 13 (didn't answer)

15. Do you agree with the changes to resumption proposed in the Bill?

Section 14 (didn't answer)

16. Do you agree with the proposed changes to compensation for improvements for tenant farmers?
17. Do you believe that the provisions will better enable tenant farmers to engage in sustainable and regenerative agriculture?

Sections 15 to 19 (didn't answer)

18. Do you agree with the proposed changes in relation to diversification on tenant farms?
19. Do you believe these provisions will better enable tenant farmers to engage in sustainable and regenerative agriculture?

Section 20 (didn't answer)

20. Do you agree with the proposed changes to compensation for game damage for agricultural tenants?

Section 21 (didn't answer)

21. Do you agree with the proposed standard claim procedure for compensation at the end of a tenancy?
22. Do you agree with granting the Scottish Ministers power to apply the standard claim procedure to any relevant type of compensation?

Section 22 (didn't answer)

- 23. Do you agree that interest should be payable on outstanding compensation claims?
- 24. Do you agree with the rate of interest set out in the Bill?

Sections 23 to 25 (didn't answer)

- 25. Do you agree with the changes to rent reviews proposed in the Bill?
- 26. Do you agree with the Scottish Ministers being given powers to make provision in relation to matters that are to be taken into account by the Land Court when determining the rent for a holding?

Sections 26 and 27 (didn't answer)

- 27. Do you agree with the proposed changes to the rules of good estate management?
- 28. Do you agree with the proposed changes to the rules of good husbandry?

General questions (didn't answer)

Links to the Agriculture and Rural Communities (Scotland) Bill

- 29. 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 (didn't answer)

- 30. 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?

Tackling the Climate and Biodiversity Crises

- 31. 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?

No.

We welcome the provisions on creating, publishing and consulting communities on land management plans. We also welcome the detail within these plans to include how the landowner is demonstrating compliance with existing obligations relating to land and how the landowner is managing or intends to manage the land in a way that contributes towards achieving net-zero emissions targets, adapting to climate change and increasing or sustaining biodiversity. Requiring this information from land owners, and requiring it be made public, signals that land has a role in delivering a just transition to net zero and tackling the biodiversity crisis.

However, to understand whether land is playing a role in delivering a just transition to net zero and tackling the biodiversity crisis, there needs to be assurance and evidence provided that the detail in the plans is being acted on. Land managers who monitor species, soils and habitats will be able to understand whether the changes they are making to their management or land use are resulting in carbon savings and species recovery. Without monitoring and data gathering this understanding won't exist. We suggest that the Scottish Government considers, with universities and colleges, landowners and civil society, how a national research programme, perhaps with a citizen science component, could support land managers and owners to monitor changes on their land.

The Bill hasn't made provision for a carbon emissions land tax, but we note this is acknowledged in the Explanatory Note accompanying the Bill and we welcome the Scottish Government's commitment to consult on this tax. The John Muir Trust believes a carbon emissions land tax can support the objectives of this Bill and work with other financial incentives for land use change that may come forward as provisions in the Agriculture and Rural Communities Bill (whereby conditions for environmental outcomes are attached to agricultural payments).