



Consultation Briefing: Land reform in a net- zero nation

About this briefing - This is a new type of briefing exclusively for CIH members. These briefings are designed to inform you about current consultations, highlight potential implications for the sector that you might want to consider in your own response and set out CIH Scotland's position.

Background

In its [Programme for Government 2021-22](#), the Scottish Government committed to taking forward a new **Land Reform Bill** to address concerns about land ownership in rural areas of Scotland.

The Bill is due to be introduced at the end of 2023 and will build on the [Community Empowerment \(Scotland\) Act 2015](#), which made changes addressing community rights in relation to land, and the [Land Reform \(Scotland\) Act 2016](#), which established the Scottish Land Commission and made provisions for changes to land ownership and management.

The Scottish Government is seeking views on the Bill in a new consultation: [Land Reform in a Net Zero Nation](#). The deadline for responses is 25 September 2022. There will also be a separate consultation on a new [Community Wealth Building](#) Bill.

What's in the proposals?

The new Bill aims to:

- Encourage and support **responsible** and **diverse** land ownership.
- Increase **transparency** of land ownership.
- Strengthen requirements for **engagement with communities** over how land is used.
- Address issues of **fairness, equality** and **social justice** connected to the ownership of, access to and use of land in Scotland.

Measures proposed in the new Bill include:

- The introduction of a **public interest test** for transfers of large-scale landholdings.
- A requirement on owners of large-scale holdings to give **prior notice** to community bodies of their intention to sell.
- A requirement on those seeking land-based subsidies to have the land recorded in the **Land Register**.

Other proposals include creating a new flexible '**Land Use Tenancy**' for smallholdings to enable tenant farmers and others to undertake a combination of agricultural and non-agricultural activities and

proposals to explore the introduction of a requirement for those seeking to acquire large-scale landholdings to be **registered in an EU member state or in the UK** for tax purposes.

Criteria for large-scale holdings

The Scottish Government states that it does not wish to place disproportionate duties on small-scale landholdings or family farms so many of the proposals only apply to large-scale holdings. It proposes new criteria for **large-scale holdings** as follows:

- a) A fixed threshold of 3,000 hectares;
- b) Land that accounts for more than a fixed percentage of a data zone (or adjacent data zones) or local authority ward(s) designated as an Accessible Rural Area or Remote Rural Area, through our six-fold urban/rural classification scheme; or
- c) Land that accounts for more than a specified minimum proportion of a permanently inhabited island.

Strengthening the Land Rights and Responsibilities Statement

The 2016 Land Reform Act placed a requirement on Ministers to publish a statement on **land rights and responsibilities**. The [Land Rights and Responsibilities Statement \(LRRS\)](#) was published in 2017 and aims to inform the development of land policy and encourage everyone to recognise their rights and responsibilities in relation to land.

The LRRS is currently voluntary but the consultation proposes placing a **legal duty on owners of large-scale landholdings** to comply with the LRRS and its codes/protocols. This would be accompanied by a statutory process to adjudicate on complaints about non-compliance.

There would be an ability for "**defined parties**" (organisations with a community, charitable or public service remit) to report potential breaches of the codes/protocols and for a Commissioner to



investigate and report publicly on their findings.

Compulsory Land Management Plans

Irrespective of the scale of a landholding, there is currently **no legal requirement** on landowners to make information on their medium to long-term management plans for their land publicly available.

The consultation sets out proposals for large-scale holdings to publish **compulsory land management plans** which will aim to:

- demonstrate how the owner will implement the **principles** set out in the LRRS;
- demonstrate how land will be **used** and **managed** to meet requirements for sustainable management, contributing to net zero and nature restoration goals;
- set out plans for how they will **engage** with local communities;
- offer the opportunity to owners to increase the **transparency** of their objectives and operations; and
- set out how these connect with **local priorities**, opportunities, and public policy.

The new public interest test

In a [discussion paper](#) published in 2021, the Scottish Land Commission (SLC) recommended that the forthcoming Bill should include "a **public interest test** for significant land acquisition, at the point of transfer, to test whether there is a risk arising from the creation or continuation of a situation in which excessive power acts against the public interest".

The consultation proposes that this would be applicable to large-scale landholdings or where a large-scale land holding would be created and would apply to both the buyers and sellers of land.

Prior notification of intention to sell

Existing Community Right to Buy legislation enables a community body to apply to register a **pre-emptive right of purchase**.

Currently, where there is a pre-emptive right to buy in place, the community body has eight months from the point they confirm they wish to proceed, to exercise their right, secure funding and take ownership. The landowner will have been consulted as part of the registration process and will have

received a Decision Notice. If the community body decides not to proceed, the landowner may sell the land on the open market.

Where there is no registration in place, the consultation proposes that landowners should be under a **duty to give notice** to community bodies in the surrounding area which are compliant with Community Right to Buy requirements, and/or other community bodies whose aims are social/community benefit (such as Registered Social Landlords), that they intend to sell when the public interest test criteria are met. It proposes that there should then be 30 days for the community body or bodies to inform the landowner if they are interested in the sale.

This would require the **establishment of a register of bodies** to whom the landowner would have to give notice. It is proposed that community bodies should be able to register their interest with Ministers under a new statutory mechanism, and that there should be a further six month period for the community body and the landowner to negotiate terms of the sale and for the community body to secure funding.

The CIH view

We welcome this new consultation on land reform and support any measures which could help community engagement and enhance the supply of affordable housing in rural areas.

However, while some community bodies, including social landlords, may benefit from this legislation, we have concerns about how easy it will be for some community groups to take advantage of these new rights, especially if they do not have specialist knowledge of the processes and procedures involved.

While we await to see the full details of the Bill, it remains to be seen if the proposals will go far enough to strengthen the engagement of community bodies and make a significant difference towards addressing affordable housing need in rural communities.

We will be developing a response to this consultation and would like to hear what CIH members think. You can share your thoughts by emailing scotland@cih.org