



**Scottish
Wildlife
Trust**

**Response to Net Zero, Energy and Transport
Committee call for views**

Land Reform (Scotland) Bill

Scottish Wildlife Trust

21st May 2024

The Scottish Wildlife Trust supports the proposals of the Land Reform (Scotland) Bill. We consider the potential for improved patterns of land ownership as a means towards better management and use of land, rather than the end goal itself. Nature and climate must be key in all land use decisions to ensure a just transitions and a sustainable future for Scotland.

The Scottish Wildlife Trust welcomes this opportunity to respond to the Net Zero, Energy and Transport Committee call for views on the Land Reform (Scotland) Bill

The Trust is supportive of the changes proposed by the Land Reform (Scotland) Bill, but we have the following key points to emphasise:

- The Trust considers the potential for improved patterns of land ownership as a means towards better management and use of land, rather than the end goal itself. The nature and climate crises must be the key driver of land management goals and this needs to be reflected in changing land ownership in Scotland.
- The Land Rights and Responsibilities Statement must be made mandatory with appropriate funding and compliance monitoring to affect positive change in the way land is managed.
- Communities must be properly supported to manage land for the long term through accessible public funding sources and high integrity private finance opportunities, as well as providing advice, knowledge sharing and benefits for local communities.
- Tackling the nature and climate crises and providing public goods must be considered a legitimate and important part of land management.
- Coherence between the various legislative drivers is needed to ensure appropriate funding availability and alignment of land management goals and ensure priority for nature and climate positive actions.

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

The Scottish Wildlife Trust (the Trust) is primarily concerned with how land is used and managed in order to maximise public benefits such as biodiversity, carbon sequestration, improved water and air quality, and flood prevention. We are of the opinion that the historic pattern of land ownership in Scotland has often tended to encourage monocultural patterns of land use which have focused on management for one or very few private benefits, sometimes to the detriment of the public benefits which result from healthy ecosystems. Indeed, large scale land management practices common on many (but by no means all) of the larger estates are amongst the main drivers of biodiversity loss in upland Scotlandⁱ. Examples include damage from burning and suppression of woodland/scrub regeneration on intensively managed grouse moors, and overgrazing by deer kept at artificially high numbers in some areas due to a lack of appropriate culling levels

The current legislation does not go far enough to address the potential ecological issues, as outlined above, posed by large landholdings in Scotland. Since the Land Reform (Scotland) Act was updated in 2016 Scotland still has the most inequitable land ownership in the world. Half of Scotland's land is owned by 433 people, this number has decreased since 2012, so despite the aims of the 2016 Act fewer people now own more land. A number of large landholdings are owned by international companies or registered in tax havens, with the beneficiaries kept secretⁱⁱ. In some places land is still managed in a way that is detrimental to the climate and biodiversity, and not in the best interests of local communities or the nation as a whole. In a climate and nature emergency all land use decisions

must demonstrate beneficial impacts on biodiversity and increase community resilience to climate change.

There have been few community buyouts since the introduction of the Land Reform (Scotland) Act 2016 despite the demand, but where it has been successful it offers communities control over their future, improving their resilience and social wellbeing. Scottish Wildlife Trust were instrumental in the community buyout of the Isle of Eigg in 1997, which has made a significant difference to the resilience of the natural and cultural heritage of the island and the communityⁱⁱⁱ.

An increasing number of financial investors are buying up land in Scotland, causing a surge in land prices, making it unaffordable for local communities^{iv}. To ensure that land ownership in Scotland is not only an option for the ultra-wealthy more needs to be done to make land ownership more accessible and equitable. This is an essential step to achieving a just transition.

Consideration must be given to possible negative impacts caused by increased number of landowners due to the variety of land use goals which could result in habitat fragmentation. This could be managed by appropriate environmental land use payments, nature networks and regional land use partnerships/ frameworks. The requirement proposed by the new Land Reform (Scotland) Bill for landowners to consult on and publish a land management plan will improve transparency and facilitate collaboration in land use goals, providing opportunities for habitat connectivity and contribute to nature networks and feed into and support Regional Land Use Partnerships.

There also needs to be strong links with NPF4, Agriculture and Rural Communities Bill, Natural Environment Bill, Scottish Biodiversity Strategy, 30 by 30, Nature Networks and proposed deer management changes including the deer management nature restoration orders.

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

No. It will make moves to achieving the objectives, but we fail to see how this will make considerable change in the pattern of land ownership in Scotland.

Many of the originally consulted proposals have not made it into the proposed Bill. The Land Rights and Responsibility Statement only "informs" regulations made under the Bill we are not convinced this gives it enough weight. The LRRS has not resulted in sufficient change since its introduction in 2016 and it is not a valid excuse to state that not enough time has passed since the statement was introduced for all landowners to have made progress to meet the requirements.

Greater scrutiny of land use is important due to land providing ecosystem services as public goods. In a climate and nature emergency landowners must be encouraged to make responsible choices and play their part in improving climate resilience and biodiversity.

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 – Landowners must play a bigger part in rural communities. The ways in which land is managed will have significant impacts on local businesses, infrastructure, services and opportunities for local people.

We would like to see more detail on what these obligations mean for landowners. Considerations must be made for NGO and charitable landowners such as Scottish Wildlife Trust that manage land who may lack capacity for considerable community engagement. Consideration must also be given to the fact that ecological restoration works in 30/40 year+ management cycles and not at the more

human centric five-year timeframes, compromise must be found here if we are to meet climate and nature goals within a just transition.

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 land in Scotland has a value to all, regardless of who owns it. Transparency is necessary to make local and national decisions on how land should be used. In a climate and biodiversity crisis, landowners should not be able to make land use decisions unchallenged and must consider the wider implications of how they manage their land. Those who own land designated as protected areas must make appropriate considerations for these designations and demonstrate how they will manage neighbouring land in a manner that will not impact the ability of protected areas to achieve or maintain favourable condition.

We would like to see more detail on the information required in a land management plan, with a standardisation of content. Management plans must take into account the legislative requirements and include contributions to Regional Land Use Partnerships, nature networks, catchment management plans and demonstrate ambitions for continuous improvement.

We would like more information on consultation frequency due to concerns around the level of burden that could fall on NGOs that manage land. Consideration must also be given to the fact that ecological restoration works in 30/40 year+ management cycles and not at the more human centric five-year timeframes, compromise must be found here if we are to meet climate and nature goals within a just transition.

We would like clarity on whether the burden of responsibility falls on the landowner or land manager, for example, what responsibility does the land manager have if the owner refuses to comply?

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?

Those who breach these requirements must be held accountable. The penalty for violation of the agreement must be severe enough to prevent landowners from committing an offence. £5000 limit to the fine might not offer significant enough threat to some. The cost of wanton inaction must outweigh the cost of engaging with the community.

Section 2

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

Yes – strengthening the opportunities for community bodies to buy large landholdings (or part of one) will improve the resilience of these communities, allowing greater freedom to use the land in ways which will benefit them, the climate and nature.

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

What does an expression of interest by a community body need to demonstrate? Priority should be given to those who seek to address the climate and nature crises and provide public goods,

alongside high-quality food production Communities must also be given appropriate time to acquire the funds needed for the purchase.

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

Yes – According to the Scottish Land Commission's Rural Land Market Report 2020-2022 most of rural land sales identified were less than 500ha. The report found very few land sales over 3000ha over the three-year period. There is concern that a 1000ha threshold will not result in a significant number of community ownership opportunities. Other criteria could be included when making decisions of land ownership, including environmental sensitivity, community demands, ecosystem services provided by the land, aims of local development plans and regional land use partnerships. Ultimately land needs to be managed in a way that supports mitigating and adapting to the nature and climate crises and the provision of public goods and high-quality food. This should be considered when determining appropriate sales rather than focusing overly on land area.

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 ability of communities to purchase large areas of land is very rare given the high cost. By lotting the land there will be increased opportunities for communities to buy the land and manage it in a way that makes them more resilient. Land is a national asset and should be used in a manner that benefits all.

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

Yes

Other criteria should be considered when making decisions of land ownership and lotting, including environmental sensitivity, community demands, ecosystem importance and the services provided by the land, aims of local development plans and regional land use partnerships. Ultimately land needs to be managed in a way that prioritises dealing with the nature and climate crises and providing public goods. This should be considered when determining appropriate sales and lotting decisions rather than focusing overly on land area. Ultimately far greater use of strategic landscape scale planning can help achieve this.

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

No – Lotting decisions should consider elements of environmental and community sustainability. More needs to be done to ensure that lotting decisions will not have a deleterious effect on the environment and will contribute to improving the following – environmental sensitivity, community demands, ecosystem services provided by the land, aims of local development plans (including nature networks) and regional land use partnerships.

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

N/A

Section 6

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

Yes - The Commissioner will help to ensure that the Land Rights and Responsibilities Statement is followed, breaches are investigated, and enforcement imposed. The current voluntary approach for compliance with the statement has failed to result in appropriate action.

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

N/A

Part 2 of the Bill

Section 7

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?

Yes – The climate and biodiversity crises demand that we use all rural land in a way that includes environmental purposes. Having areas where the sole goal is environmental purposes should be supported but this must not result in other land areas being used in a way that has a negative impact on the climate and biodiversity.

Sections 8 and 9

Do you agree with the provisions in the Bill extending certain rights to small landholders?

Yes – small farms are reported to have greater biodiversity and have higher yields at the farm and landscape levels compared to larger farms^v, however under the current system these landholdings are often financially unsustainable. Supporting small landholdings to diversify and expand their business could help ensure viability of these businesses and have wider benefits for tackling the biodiversity and climate crises.

Do you agree that the Tenant Farming Commissioner's functions should be extended to include small landholders?

Yes – there needs to be equality in the way all tenanted land is considered and for all tenant and landowner relationships to result in positive outcomes for those involved and wider Scotland, regardless of the size of the land holding.

Section 10

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?

N/A

Sections 11 to 13

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

N/A

Section 14

Do you agree with the proposed changes to compensation for improvements for tenant farmers?

Yes – there is a need to value environmental improvements appropriately so farmers making positive changes to improve biodiversity and reduce the impacts of climate change are fully compensated.

Tenant farmers must be supported to make sustainable choices for their businesses and for the environment. Tenant farmers must not be penalised for improving the farm resilience and sustainability of the land through regenerative farming practices. Compensation should be duly awarded should tenant farmers improve the soil quality, increase biodiversity, reduce flood and drought risk etc on the land. We support the change meaning that only the most significant changes in the land use should require consent from the landlord, this will help tenant farmers to take advantage of the agricultural payments in a manner that prevents delay and unnecessary hurdles.

Do you believe that the provisions will better enable tenant farmers to engage in sustainable and regenerative agriculture?

Yes – We highly support making it easier for tenant farmers to engage in sustainable and regenerative agriculture, though we are still concerned that a definition of these terms has not been provided. We believe the Sustainable and Regenerative Farming in Scotland vision statement set out by Scottish Government in 2022 still provides appropriate ambition for the future of Scottish agriculture^{vi}. Including sustainable and regenerative agriculture as an improvement for which compensation may be payable will give tenant farmers reassurance that they will not be penalised in the future when making positive changes for nature and climate. In a climate and nature emergency there should not be unnecessary barriers to farmers making sustainable choices for their businesses and moving to regenerative agricultural practices. These choices must be supported as much as possible. Should the landlord contest the changes proposed the tenant farmer must be properly supported to make the case for their proposal and not incur prohibitive cost.

Sections 15 to 19

Do you agree with the proposed changes in relation to diversification on tenant farms? Yes -We support changes to improve the ability of tenant farmers to diversify with the stipulation that any diversification effort does not have significant impact on the environment. Changes of land use or business model must make efforts to not contribute to the biodiversity and climate crises, ideally improving climate change sustainability and biodiversity and contributing to the nature networks.

Do you believe these provisions will better enable tenant farmers to engage in sustainable and regenerative agriculture?

Yes – better supporting tenant farmers to diversify their business will open up opportunities for better environmental land management for climate change adaptation and increased biodiversity.

Section 20

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

Yes – cost caused by game damage to a tenant farmers business, through lost investment and need to repair the damage should be appropriately compensated. The definition of “tree” (page 54, line 25) must also include those planted for nature and climate benefits. If tenant farmers are to feel

adequately supported to make land use decisions for nature and climate then these decisions must be given equal weight to those that produce a traditional product such as food or timber.

Tenant farmers must be supported to claim compensation against the landlord in a way that does not make the process onerous or off-putting.

In the case of deer, in line with the proposed changes to deer management in relation to nature and climate, landlords who wish to keep high levels of deer numbers must ensure deer do not impact tenant farmers and other neighbouring land uses and should be held responsible for fencing and any other deer management costs.

Section 21

Do you agree with the proposed standard claim procedure for compensation at the end of a tenancy?

N/A

Do you agree with granting the Scottish Ministers power to apply the standard claim procedure to any relevant type of compensation?

N/A

Section 22

Do you agree that interest should be payable on outstanding compensation claims?

N/A

Do you agree with the rate of interest set out in the Bill?

N/A

Sections 23 to 25

Do you agree with the changes to rent reviews proposed in the Bill?

N/A

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?

N/A

Sections 26 and 27

Do you agree with the proposed changes to the rules of good estate management?

Yes - "Good estate management" must be modernised to promote and support activities that benefit nature and climate resilience. Land management that benefits biodiversity and climate through sustainable and regenerative practices should be a cornerstone of what is considered good estate management. Those managing the land should have the flexibility to change their practices in a way that allows the land improve, promoting soil quality, climate resilience, biodiversity and other benefits, while promoting high-quality food production. Good estate management must be updated to consider new legislation such as the Wildlife Management and Muirburn (Scotland) Act 2024 and the forthcoming Agriculture and Rural Communities Bill.

Do you agree with the proposed changes to the rules of good husbandry?

n/a

General QuestionsLinks 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?**

The changes will improve the ability of tenant farmers to adopt sustainable and regenerative agricultural practices, but they must be supported with training and knowledge sharing opportunities, so they are able to make the most of their land in a way that also benefits climate and nature, while also producing high-quality food. Tenant farmers must not fear being penalised if they make changes to the way they farm to benefit nature and climate. Managing the land for nature and climate through adopting sustainable and regenerative practices must be considered of high value, both monetarily and within society.

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?**

It should improve the equality of land ownership in Scotland and support a just transition. The urgency of the nature and climate emergency mandates that these issues must be the primary driving force for land use decisions.

Appropriate consideration should be given to community buyouts which are funded by a private source which may look to profit from the land through ventures such as wind farms or forestry plantations.

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?**

No – While we believe that improving the transparency of land ownership and management, strengthening the rights and sustainability of communities by increasing and improving opportunities to purchase land will help to deliver a just transition we do not feel that they will go far enough to improve tackling the nature and climate crises. While we believe it is important and necessary to improve equality and diversity in land ownership, it is the manner in which land is managed and used that will have the greater impact on achieving net zero and tackling the biodiversity crises. The Trust considers the potential for improved patterns of land ownership as a means towards better management and use of land, rather than the end goal itself. A greater focus should be on improving resilience of local communities to the impacts of climate change and land management has a major influence on the risk of flooding, drought, wildfires etc.

To better achieve a just transition to net zero and tackling the biodiversity crisis more needs to be done to support communities for the long term. Ongoing management and monitoring are essential to better understand changes and achieve the necessary benefits to tackle the climate and biodiversity crises. Without long term support and access to funding communities may struggle to

sustain the necessary land management to achieve their aims. It is essential that the current and future land management funding is coherent throughout and accessible to communities. The Land Reform Bill must tie up public funding opportunities and private high integrity finance options so that communities are able to take full advantage.

ⁱ <https://stateofnature.org.uk/wp-content/uploads/2023/09/TP26056-SoN-Scotland-summary-report-v5-1.pdf>

ⁱⁱ <https://theferret.scot/hundreds-foreign-property-owners-stay-secret-rules/#:~:text=The%20Ferret%20found%20that%203%2C016,their%20property%20before%20December%202014.>

ⁱⁱⁱ <http://isleofeigg.org/>

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https://www.landcommission.gov.scot/downloads/65644f2d6ed20_Rural%20Land%20Market%20Report.pdf

^v

https://www.researchgate.net/publication/350400524_Higher_yields_and_more_biodiversity_on_smaller_farms

^{vi} <https://www.gov.scot/publications/next-step-delivering-vision-scotland-leader-sustainable-regenerative-farming/pages/1/>