

Response ID ANON-5AGP-WTRN-R

Submitted to Land Reform in a Net Zero Nation
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Part 4: Criteria for large-scale landholdings

1 Do you agree or disagree with the criteria proposed for classifying landholdings as 'large-scale':

question1 - a) A fixed threshold of 3,000 hectares:
Disagree

question1 - 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:
Don't know

question1 - c) Land that accounts for more than a specified minimum proportion of a permanently inhabited island:
Agree

Please give some reasons for your answers and outline any additional criteria in the text box below::

a) A fixed threshold of 3,000 hectares is much too large – it would have little impact as would affect so few land-holdings. We suggest a threshold of 1000 ha maximum and would be happy with 500 ha. There needs to be provision to adjust this via secondary legislation. This would need to apply to all the land held by an individual, a family or a business, taking it as an aggregate.

There needs to be provision to deal with exploitation of loopholes – i.e. make the intention clear and have the ability to close loopholes that allow circumnavigation of the intention via secondary legislation.

The Bill should address land ownership rather than landholdings, as this implies reference to tenanted land also, whereas the bill is addressing land ownership. With the exception of Part 9 (land use tenancy) the consultation document does not provide for land occupied by a tenant – a crofter or crofters.

b) We are not clear as to how data zones would be used to define holding size, so further information is needed.

c) We agree that it makes sense to define a holding size as a proportion of a defined area such as an island, and would also include peninsulas and other geographically isolated communities in this.

2 Do you agree or disagree that family farms should be exempt from the proposals outlined in Parts 5 to 7 even if they are classified as a 'large-scale' landholding?

Disagree

Please give some reasons for your answer in the text box below::

You have given no definition of 'family farm', if one exists. A 2000 ha farm run by a family is a family farm, but should come within the proposed legislation. The legislation should apply equally to all holdings that meet the criteria.

3 Do you think that the proposals considered in this consultation should be applied to the urban context?

Yes

Please give some reasons for your answer in the text box below::

We don't have a direct interest in this as crofts are rural, however we see no reason why this legislation would not apply to urban land – it is land reform legislation after all.

Part 5: Strengthening the Land Rights and Responsibilities Statement

4 We propose that there should be a duty on large-scale landowners to comply with the Land Rights and Responsibility Statement and its associated protocols. Do you agree or disagree with this proposal?

Agree

Please give some reasons for your answer in the text box below::

We need clear 'rules' on what is expected of large scale land owners. The current LRRS is a statement of best practice but we suspect that current awareness is low. A duty of compliance will increase its awareness and therefore its impact.

5 If there was a legal duty on large-scale landowners to comply with the Land Rights and Responsibility Statement and its associated protocols, we propose that this should be enforced by having a formal procedure for raising complaints, and by making provisions for

independent adjudication and enforcement.

Agree

Please give some reasons for your answer in the text box below::

If there is a legal duty to comply, there needs to be provision to address non-compliance, and some form of consequence, otherwise it is meaningless.

Disagree

question5b_organisation_type - Community:

question5b_organisation_type - Charity:

question5b_organisation_type - Public sector:

Please provide some reasons for your answers and any additional suggestions in the text box below::

Individuals or organisation should be able to report a breach but this to be evidence-based and appropriate procedures can be in place to deal with spurious or vexatious complainers.

The second part of this is pre-empting our answer - it is poor consulting.

question5c - the Scottish Government:

No

question5c - a public body (such as the Scottish Land Commission):

Yes

Please provide some reasons for your answers and any additional suggestions in the text box below::

The Scottish Land Commission or other land-based public bodies with existing regulatory responsibilities would appear appropriate, if resourced appropriately and this additional function does not conflict or detract from existing duties. That being the case we see no reason to set up a new body to deal with this.

question5d - Recommendation for a mediation process:

Yes

question5d - Recommendation on how the landowner or governing body could comply with the Codes of Practice/protocols:

Yes

question5d - A direction to the landowner or governing body to implement changes to operational and/or management practices:

Yes

Please provide some reasons for your answers and any additional suggestions in the text box below::

question5e - Financial penalties:

Yes

question5e - 'Cross-compliance' penalties:

Yes

Please provide some reasons for your answers and any additional suggestions in the text box below::

If the breach were to continue despite enforcement, sanctions should escalate to, for example, compulsory sale. We believe that land ownership in Scotland should come with responsibility, such as with crofting legislation.

6 Do you think the proposal to make the Land Rights and Responsibility Statement and its associated protocols a legal duty for large-scale landowners would benefit the local community?

Yes

Please give some reasons for your answer in the text box below::

We need improved transparency regarding ownership, use and management of the land. We also need greater engagement and collaboration between landowners and the community, particularly in relation to decisions about land, so any legislative changes that encourage this are good.

7 Do you have any other comments on the proposal to make the Land Rights and Responsibility Statement and its associated protocols a legal duty for large-scale landowners?

Please write your answer in the text box below::

Not at the moment.

Part 6: Compulsory Land Management Plans

8 We propose that there should be a duty on large-scale landowners to publish Management Plans. Do you agree or disagree with this proposal?

Agree

Please give some reasons for your answer in the text box below :

As we said earlier, we believe that land ownership comes with responsibilities. A management plan can illustrate how the management of the land is complying with national policy and outcomes that we are trying to achieve. This is particularly appropriate the larger land holding becomes as consequences are greater. These land management plans should complement rather than duplicate any similar requirements for agricultural holdings.

9 How frequently do you think Management Plans should be published?

Please write your answer in the text box below::

A plan should be made on acquisition of land and should be reviewed every 5 years.

10 Should Management Plans include information on:

question10 - Land Rights and Responsibility Statement compliance:

Yes

question10 - Community engagement:

Yes

question10 - Emission reduction plans:

Yes

question10 - Nature restoration:

Yes

question10 - Revenue from carbon offsetting/carbon credits:

Yes

question10 - Plans for developments/activities that will contribute to local and inclusive economic development or community wealth building:

Yes

Please provide some reasons for your answers and any additional suggestions in the text box below::

The plans may be based on a template but will need to provide an appropriate level of detail to ascertain that claimed outcomes will be met.

11 Do you think the responsibility for enforcing compulsory land management plans should sit with:

question11 - the Scottish Government:

Don't know

question11 - a public body (such as the Scottish Land Commission):

Yes

Please provide some reasons for your answers and any additional suggestions in the text box below::

A public body such as the Scottish Land Commission or other land-based public bodies with existing regulatory responsibilities seems appropriate, though SG may be involved. It goes without saying that the organisation is resourced appropriately and this additional function does not conflict or detract from existing duties. We would not support the setting up of a new body to fulfil this role.

12 Do you think the proposal to make Management Plans a legal duty for large-scale landowners would benefit the local community?

Yes

Please give some reasons for your answer in the text box below :

We need improved transparency regarding ownership, use and management of the land. We also need greater engagement and collaboration between landowners and the community, particularly in relation to decisions about land, so any legislative changes that encourage this are good.

13 Do you have any other comments on the proposal to make Management Plans a legal duty for large-scale landowners?

Please write your answer in the text box below::

A landlord's management plan would have to take into account, and be formed in partnership with, any crofting tenancies.

Crofting tenure covers a significant proportion of land in Scotland, including areas of Scotland's peatlands. The legislation should facilitate realisation of the beneficial potential from good management of that resource.

Part 7 i): Regulating the market in large-scale land transfers - a new Public Interest Test

14 We propose that a public interest test should be applied to transactions of large-scale landholdings. Do you agree or disagree with this proposal?

Agree

Please give some reasons for your answer in the text box below :

We agree in principle but would need more information to comment on how it would actually work.

15 What do you think would be the advantages and/or disadvantages of applying a public interest test to transactions of large-scale landholdings?

Please write your answer in the text box below::

It may be difficult to define what public interest is. This would need to be defined first, with due consideration.

16 Do you think the public interest test should be applied to:

The seller and buyer

Please give some reasons for your answer in the text box below :

The seller has to have a responsibility for what they are selling and any 'burdens' attached to the property. We have seen numerous cases of croft land being sold with no mention of the fact that it is regulated. So saying, we consider the PIT should predominantly rest with the purchaser who will assume responsibility for the land.

17 If the public interest test was applied to the seller, do you think the test should be considered as part of the conveyancing process?

No

Please give some reasons for your answer in the text box below :

It needs to take place well before conveyancing is entered into.

18 Do you think that all types of large-scale landholding transactions (including transfers of shares and transfers within or between trusts) should be in scope for a public interest test?

Yes

Please give some reasons for your answer in the text box below :

This will help mitigate opportunities to avoid the PIT. There is a need for all qualifying land assets to be within the scope of the legislation irrespective of ownership structure.

19 Do you agree or disagree with these conditions?

question19 - Condition i.:

Agree

question19 - Condition ii.:

Agree

Please give some reasons for your answer and suggest any additional conditions in the text box below::

i. We think that the creation of new crofts is a means of addressing a fundamental principle of land reform – that more land should be used by more people. If an estate failed the PIT it would be an opportunity for the land owner to have to create a number of crofts. The size of crofts would be appropriate to possible land management in the area and the number of crofts would depend on size – the total amount of land having to be put into crofts being a proportion of the estate deemed acceptable to satisfy the PIT.

If land were split into smaller lots, where the land in question is subject to crofting tenancy, it will be important to take account of township boundaries so as not to create tenancies with more than one crofting landlord.

ii. Large properties that fail the PIT should be offered to a community. The above should still apply.

20 Do you think that a breach of the Lands Right and Responsibilities Statement should be taken into account when determining the outcome of a public interest test?

Yes

Please give some reasons for your answer in the text box below :

The LRRS should be considered as part of the public interest test, assuming this is to be applied to a prospective acquirer of the land.

21 Do you think that a public interest test should take into account steps taken in the past by a seller to:

question21 - Diversify ownership:

No

question21 - Use their Management Plan to engage with community bodies over opportunities to lease or acquire land:

No

Please give some reasons for your answer in the text box below :

We think such steps taken by the seller in the past could be taken into account, but circumstances change and the PIT should reflect current needs. Such steps taken in the past should not negate applying the test.

Please write your answer in the text box below::

N/A

22 Do you think the responsibility for administering the public interest test should sit with:

question22 - the Scottish Government:

Don't know

question22 - a public body (such as the Scottish Land Commission):

Yes

Please provide some reasons for your answers and any additional suggestions in the text box below::

A public body such as the Scottish Land Commission or other land-based public bodies with existing regulatory responsibilities seems appropriate, though SG may be involved. It goes without saying that the organisation is resourced appropriately and this additional function does not conflict or detract from existing duties. We would not support the setting up of a new body to fulfil this role.

23 Do you think the proposal that a public interest test should be applied to transactions of large-scale landholdings would benefit the local community?

Yes

Please give some reasons for your answer in the text box below :

24 Do you have any other comments on the proposal that a public interest test should be applied to transactions of large-scale landholdings?

Please write your answer in the text box below::

As noted in our response to Q1, we believe that large-scale landholdings should reflect aggregated ownership.

Part 7 ii): Regulating the market in large-scale land transfers - requirement to notify an intention to sell

25 We propose that landowners selling large-scale landholdings should give notice to community bodies (and others listed on a register compiled for the purpose) that they intend to sell.

Agree

Please give some reasons for your answer in the text box below :

AND:

There are very often no community bodies existing until after the asset has been advertised and/or sold. We therefore think that notification should be public, and that it be given in plenty of time for any interested community to form a body that can express an interest.

Disagree

Please give some reasons for your answer in the text box below :

30 days is very short for a community to form a body and to go through a democratic process resulting in a possible expression of interest. We suggest 90 days to be a minimum.

Disagree

Please give some reasons for your answer in the text box below::

Having looked at past community buy-outs, we have to conclude that 12 months would be the absolute minimum, and would prefer 18 months.

26 Do you have any other comments on the proposal that landowners selling large-scale landholdings should give notice to community bodies that they intend to sell?

Please write your answer in the text box below::

Not at the moment

Part 8: New conditions on those in receipt of public funding for land based activity

27 Do you agree or disagree with these requirements?

question27 - Requirement i.:

Agree

question27 - Requirement ii.:

Agree

Please give some reasons for your answer in the text box below: :

i. We agree in principle that all land, regardless of size, must be registered in the Land Register of Scotland. HOWEVER, crofting already has its own registration process and this must not be affected by any legislation that arises from this consultation and land reform process.

ii. It would not be acceptable for a landowner who has ownership of a large portion of Scotland's land and who is not complying with a land regulation duty, to be in receipt of public funding.

28 Do you have any other comments on the proposals outlined above?

Please write your answer in the text box below::

Not at the moment.

Part 9: Land Use Tenancy

29 Do you agree or disagree with our proposal that there should be a Land Use Tenancy to allow people to undertake a range of land management activities?

Agree

Please give some reasons for your answer in the text box below: :

We think that crofting has worked very well as a tenancy system and would welcome the suggestion of a Land Use Tenancy modelled on crofting legislation.

30 Are there any land management activities you think should not be included within a Land Use Tenancy?

Please write your answer in the text box below::

There is probably a long list which is better summarised as principles – activity to be compliant with policy targets, strategies and outcomes.

31 Do you think that wider land use opportunities relating to diversification, such as renewable energy and agri-tourism, should be part of a Land Use Tenancy?

Yes

Please give some reasons for your answer in the text box below: :

32 Do you agree or disagree that a tenant farmer or a small landholder should, with the agreement of their landlord, have the ability to move their agricultural tenancy into a new Land Use Tenancy without having to bring their current lease to an end?

Agree

Please give some reasons for your answer in the text box below: :

33 Do you agree or disagree that when a tenant farmer or small landholders' tenancy is due to come to an end that the tenant and their landlord should be able to change the tenancy into a Land Use Tenancy without going through the process of waygo, with parties retaining their rights?

Agree

Please give some reasons for your answer in the text box below :

34 How do you think the rent for a Land Use Tenancy should be calculated?

Please write your answer in the text box below::

35 Would you use a Land Use Tenancy if you had access to a similar range of future Scottish Government payments which other kinds of land managers may receive?

Don't know

Please give some reasons for your answer in the text box below :

36 Do you think that there should be guidance to help a tenant and their landlord to agree and manage a Land Use Tenancy?

Yes

Please give some reasons for your answers and outline who you think should be responsible for writing and managing the guidance in the text box below::

37 Do you think there should be a process to manage disputes between a tenant of a Land Use Tenancy and their landlord?

Yes

Please give some reasons for your answers and outline how this process could be managed in the text box below::

There should be a regulator (Commission) to determine and if unresolved or appealed, the Scottish Land Court.

38 Do you agree or disagree that tenants of a Land Use Tenancy and their landlords should be able to resolve their legal disputes in relation to the tenancy through the Scottish Land Court?

Agree

Please give some reasons for your answers and outline additional ways in which disputes could be resolved in the text box below::

39 Do you have any other comments on our proposal for a Land Use Tenancy?

Please write your answer in the text box below::

not at the moment

Part 10: Small landholdings

40 Would you like to be kept informed via email about the Small Landholding Consultation for the Land Reform Bill? We would use the email you provide in the 'About you' section to contact you.

Yes

Part 11: Transparency: Who owns, controls and benefits from Scotland's Land

41 Do you agree or disagree with our proposal to explore:

question41 - Who should be able to acquire large-scale landholdings in Scotland:

Agree

question41 - The possibility of introducing a requirement that those seeking to acquire large-scale landholdings in Scotland need to be registered in an EU member state or in the UK for tax purposes:

Don't know

Please give some reasons for your answer in the text box below :

We don't know how those seeking to acquire large-scale landholdings in Scotland being registered in an EU member state or in the UK for tax purposes solves the issues we have with invisible landlords. It is more important to say that they need to be completely transparent, that their identity and lines of communication are known. Whether they are registered for tax and/or pay tax is for HMRC to determine.

Part 12: Other land related reforms

42 Do you have any views on what the future role of taxation could be to support land reform?

Please write your answer in the text box below::

There needs to be far and appropriate tax levied on land and land use, as with any asset and business.

43 How do you think the Scottish Government could use investment from natural capital to maximise:

Please write your answer in the text box below::

We don't know enough about this, especially how it relates to croft land, to comment. There needs to be a lot more work and communication on benefits that may come from natural capital – and the pitfalls associated.

Please write your answer in the text box below::

We don't know enough about this, especially how it relates to croft land, to comment. There needs to be a lot more work and communication on benefits that may come from natural capital – and the pitfalls associated.

44 Do you have any additional ideas or proposals for Land Reform in Scotland?

Please write your answer in the text box below::

We reiterate that the crofting model of land use and tenure is appropriate to be rolled out across the whole of Scotland as originally intended. If we want radical land reform, crofting legislation did exactly that and was stopped. Get the existing regulation of croft land in order and restart the process.

Land needs to be protected. There is little control of what happens to rural land, and we see regulated land such as croft land not being protected or put to purposeful use. If land is not used well we should not see enforcement of regulation to be anything other than in the public interest, including forced sale.

Simplifying the existing mechanisms for community ownership, and especially crofting community buy-outs, in addition to introducing the prior notification proposal, will deliver more support to community ownership.

Second homes lying empty for much of the year are a blight on rural Scotland. We would like to see housing regulation as has been introduced in other parts of the UK.

Part 13: Assessing impact

45 Are you aware of any examples of how the proposals in this consultation might impact, positively or negatively, on island communities in a way that is different from the impact on mainland areas?

Please write your answer in the text box below::

No

46 Are you aware of any examples of particular current or future impacts, positive or negative, on young people, (children, pupils, and young adults up to the age of 26) of any aspect of the proposals in this consultation?

Please write your answer in the text box below::

No

47 Are you aware of any examples of how the proposals in this consultation may impact, either positively or negatively, on those with protected characteristics (age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation)?

Please write your answer in the text box below::

No

48 Are you aware of any examples of potential impacts, either positive or negative, that you consider any of the proposals in this consultation may have on the environment?

Please write your answer in the text box below::

Proposals seem to offer positive impact to the environment.

49 Are you aware of any examples of how the proposals in this consultation might impact, positively or negatively, on groups or areas at socioeconomic disadvantage (such as income, low wealth or area deprivation)?

Please write your answer in the text box below::

Proposals seem to offer positive impact to groups or areas at socioeconomic disadvantage, or will not disadvantage them.

50 Are you aware of any potential costs and burdens that you think may arise as a result of the proposals within this consultation?

Please write your answer in the text box below::

No, none that are not just and proportionate.

51 Are you aware of any impacts, positive or negative, of the proposals in this consultation on data protection or privacy?

Please write your answer in the text box below::

No

Part 15: About you

What is your name?

Name:

Patrick Krause

What is your email address?

Email:

patrick@crofting.org

Are you responding as an individual or an organisation?

Organisation

What is your organisation?

Organisation:

Scottish Crofting Federation

The Scottish Government would like your permission to publish your consultation response. Please indicate your publishing preference:

Publish response only (without name)

We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

Yes

I confirm that I have read the privacy policy and consent to the data I provide being used as set out in the policy.

I consent

Part 16: Evaluation

Please help us improve our consultations by answering the questions below. (Responses to the evaluation will not be published.)

Matrix 1 - How satisfied were you with this consultation?:

Neither satisfied nor dissatisfied

Please enter comments here.:

Some interesting questions but quite a few rather leading and some lacking the opportunity to agree/disagree with caveats. There were some areas where more information would have been helpful.

Matrix 1 - How would you rate your satisfaction with using this platform (Citizen Space) to respond to this consultation?:

Slightly satisfied

Please enter comments here.: