

CONSULTATION

Response Document



Land Reform in a Net Zero Nation

18 October 2022

Scottish Government

Introduction to CIEEM

The Chartered Institute of Ecology and Environmental Management (CIEEM), as the leading membership organisation supporting professional ecologists and environmental managers in the United Kingdom and Ireland, welcomes the opportunity to comment on this consultation.

CIEEM was established in 1991 and has over 6,000 members drawn from local authorities, government agencies, industry, environmental consultancy, teaching/research, and voluntary environmental organisations. The Chartered Institute has led the way in defining and raising the standards of ecological and environmental management practice with regard to biodiversity protection and enhancement. It promotes knowledge sharing through events and publications, skills development through its comprehensive training and development programme and best practice through the dissemination of technical guidance for the profession and related disciplines.

CIEEM is a member of:

- Scottish Environment Link
- Wildlife and Countryside Link
- Northern Ireland Environment Link
- Wales Environment Link
- Environmental Policy Forum
- IUCN – The World Conservation Union
- Professional Associations Research Network
- Society for the Environment
- United Nations Decade on Biodiversity 2011-2020 Network
- Greener UK
- Irish Forum on Natural Capital (working group member)
- National Biodiversity Forum (Ireland)
- The Environmental Science Association of Ireland

CIEEM has approximately 720 members in Scotland who are drawn from across the private consultancy sector, NGOs, government and SNCOS, local authorities, academia and industry. They are practising ecologists and environmental managers, many of whom regularly provide input to and advice on land management for the benefit of protected species and biodiversity in general.

This response was coordinated by Members of our [Scotland Policy Group](#).

We welcome the opportunity to participate in this consultation and we would be happy to provide further information on this topic. Please contact Jason Reeves (CIEEM Head of Policy) at JasonReeves@cieem.net with any queries.

Consultation Questions

Part 4: Criteria for large-scale landholdings

Q1. Do you agree or disagree with the criteria proposed for classifying landholdings as 'large-scale':

a) A fixed threshold of 3,000 hectares Agree / Disagree / Don't know

Disagree

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 Agree / Disagree / Don't know

Agree

c) Land that accounts for more than a specified minimum proportion of a permanently inhabited island Agree / Disagree / Don't know

Disagree

Please give some reasons for your answer and outline any additional criteria:

Setting a criteria for classifying landholdings as 'large-scale' is challenging. The fundamental point is that how the land is managed is more crucial than the size of landholding or ownership. After all there are poor managers of natural capital at all scales and types of ownership, and likewise, good examples. Rights and Responsibilities obligations should apply to all landowners and land managers irrespective of the scale of the holding. That obligation should be enshrined in the new legislation.

Setting a threshold of 3,000 hectares will restrict this Bill to a small number of large estates whereas the delivery of nature positive, carbon sequestration measures should be embedded across many more land holdings than would be included with the 3,000 hectares threshold. If it is decided that a scale has to be set we would support the threshold proposed by the Scottish Land Commission of 1,000 hectares.

Some charitable holdings such as those of the National Trust for Scotland exceed the threshold, the Mar Lodge Estate of the National Trust for Scotland, for example, is 29,300 ha in area, as do some community buy-outs, The North Harris Trust manages 22,500 ha.

We agree with the reservations outlined for point (b) as the impact will vary depending on what the fixed percentage is. Local authority ward boundaries vary considerably in size, particularly in rural areas. The extent of land owned can overlap across local authority boundaries.

Some permanently inhabited islands are very small and it is unclear how far this criterion overlaps with the previous criterion. Great Cumbrae for example is 1, 168 ha in size and includes the town of Millport.

It is not clear what the relative rating of the criteria will be and/or how they interact and if there will be exceptions, for example, charity or community ownership.

Q2. 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?

Agree / Disagree / Don't know

Don't know

Please give some reasons for your answer:

Family farms are already subject to a range of rules including cross-compliance measures. However, the definition of a 'family farm' would need to be very clear and include an area limitation so as not to include large estates. This should be considered in association with the development of the Agricultural Policies that are currently subject to the Agricultural Transition in Scotland: first steps towards our national policy consultation.

Q3. Do you think that the proposals considered in this consultation should be applied to the urban context?

Yes / No / Don't know

No

Please give some reasons for your answer:

Urban developments are already subject to the planning process. It should however be made clear that the Land Rights and Responsibilities Statement applies to all urban and rural land in Scotland.

There is a growing demand for land with developers buying up land to 'offset' or compensate for urban developments, for both biodiversity and carbon, which has potential to negatively impact local communities if not subject to the proposals in this consultation. These should be required to produce management plans and the habitat provided should be guided by local ecosystem priorities and as part of a national nature network.

Including urban areas could result in some Social Landlords being classed as "large-scale" landowners. Potentially also the NHS or other public bodies such as an urban Local Authority would end up being treated differently to other public bodies that don't meet the criteria.

It would be useful to clarify which definition of "urban" and "rural" is being used here.

Part 5: Strengthening the Land Rights and Responsibilities Statement

Q4. 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 / Disagree / Don't know

Agree

Please give some reasons for your answer:

The statement was widely consulted on and is generally supported. The Statement was published in 2017, however, and would benefit from revision to update it and make stronger references to net zero and the biodiversity crisis.

Q5. 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.

a) Do you agree or disagree with the proposal above?

Agree / Disagree / Don't know

Agree

Please give some reasons for your answer:

The success of any new regulations will rely on the provision of adequate monitoring and enforcement, with the responsible body fully funded to deliver this.

As a matter of course, Rights and Responsibilities must apply in the contract between government and owners/managers for any form of government financial support under nature, natural heritage, agriculture, forestry grant aid schemes etc.

b) Do you agree or disagree that only constituted organisations that have a connection to the local area or the natural environment should be able to report breaches of the Land Rights and Responsibility Statement?

Agree / Disagree / Don't know

Disagree

Should these constituted organisations have a remit on:

Community Agree / Disagree / Don't know

Agree

Charity Agree / Disagree / Don't know

Agree

Public service Agree / Disagree / Don't know

Agree

Please provide some reasons for your answers and any additional suggestions:

Monitoring compliance is costly and difficult, particularly in remote areas. As is the case with breaches of the Access Code anyone should be able to report an infringement. However, there needs to be a body that looks at each report in order to determine the validity of complaints.

Both local and national interests can be best aligned through regional land use planning via Regional Land Use Partnerships.

c) Do you think the responsibility for investigating and dealing with complaints should sit with:

the Scottish Government

Yes / No / Don't know

No

a public body (such as the Scottish Land Commission)

Yes / No / Don't know

Yes

Please provide some reasons for your answers and any additional suggestions:

Complaints should be dealt with by government agencies, not the government itself. The Scottish Land Commission is best placed to take the lead. But there should also be a statutory defined role for Environmental Standards Scotland, particularly in relation to checking overall compliance mechanisms and undertaking periodic reviews of the system.

d) Should the potential outcome from an investigation of a breach be:

Recommendation for a mediation process Yes / No / Don't know

Yes

Recommendation on how the landowner or governing body could comply with the Codes of Practice/protocols Yes / No / Don't know

Yes

A direction to the landowner or governing body to implement changes to operational and/or management practices Yes / No / Don't know

Don't know

Please provide some reasons for your answers and any additional suggestions:

It is important to work with the landowner or community group as they are usually best placed to decide what is appropriate in their particular situation. There is no single right answer in relation to land management and a variety of models may well be appropriate. Some large holdings are already managed with sustainability at their core. However, there may be different views as to what constitutes sustainability. Some traditional practices, such as peat cutting, may at first sight not align with net zero but a life cycle analysis comparing peat cutting with other forms of fuel can show true differences.

In the case that remedial action is not taken then a direction to the landowner to implement changes to operational and/or management practices will be required.

e) Should the enforcement powers for a breach be:

Financial penalties Yes / No / Don't know

No

'Cross-compliance' penalties Yes / No / Don't know

Yes

Please provide some reasons for your answers and any additional suggestions:

Cross-compliance penalties provide a powerful incentive while still giving the land manager the responsibility to choose what to do. Financial penalties as such would no doubt end up being challenged in the courts. Also, for some larger landowners, the size of the fine, unless very substantial, may not act as a deterrent for poor practice.

Q6. 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 / No / Don't know

Yes

Please give some reasons for your answer:

Principles 2 and 3 of the statement should clearly benefit the local community. Note that some local communities, e-NGOs and charities are large-scale landowners themselves.

Q7. 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?

Part 6: Compulsory Land Management Plans

Q8. 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 / Disagree / Don't know

Agree

Please give some reasons for your answer:

Publication of a management plan means that there are criteria for assessing whether the plan has been successful. The Scottish Land Commission templates provide good examples of what a plan should contain. They are brief and are flexible enough to allow changes to be made when new situations arise.

There should be mandatory Management Plans for all land that is in receipt of government financial support.

Q9. How frequently do you think Management Plans should be published?

There should be a revision every five years or whenever there are significant changes, for example new tree planting above a specified size, developments or other land use changes. Guidance on other "significant changes" that would require a revision would be beneficial.

Q10. Should Management Plans include information on:

Land Rights and Responsibility Statement compliance Yes / No / Don't know Yes

Community engagement Yes / No / Don't know Yes

Emission reduction plans Yes / No / Don't know Yes

Nature restoration Yes / No / Don't know Yes

Revenue from carbon offsetting/carbon credits Yes / No / Don't know Yes

Plans for developments/activities that will contribute to local and inclusive economic development or community wealth building Yes / No / Don't know Don't know

Please provide some reasons for your answers and any additional suggestions:

If you take a natural capital approach, the economic (and often social) benefits will derive from managing natural resources in a sustainable manner. We commend Crown Estates Scotland for their advocacy of the use of the Natural Capital Protocol in farming businesses and would support it being used for all land using businesses.

Land that is being managed primarily for nature should not have to evidence contribution towards economic development, or community wealth building in the narrow sense although an increase in natural capital should be seen as an increase in community wealth.

We feel that there is a case for adding climate adaptation and resilience measures to the list. Climate action is more than just emissions reduction.

Q11. Do you think the responsibility for enforcing compulsory land management plans should sit with:

the Scottish Government Yes / No / Don't know No

a public body (such as the Scottish Land Commission) Yes / No / Don't know Yes

Please provide some reasons for your answers and any additional suggestions:

This must be completed by a body that is independent of government and is seen not to be swayed by political pressures. We support the role of the Scottish Land Commission in this area.

Q12. Do you think the proposal to make Management Plans a legal duty for large-scale landowners would benefit the local community?

Yes / No / Don't know

Yes

Please give some reasons for your answer:

This should allow better understanding between land managers and local communities and could foster a more open and cooperative dialogue.

Q13. Do you have any other comments on the proposal to make Management Plans a legal duty for large-scale landowners?

No

Part 7: Regulating the market in large-scale land transfers: a new Public Interest Test, and a requirement to notify an intention to sell

Q14. 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 / Disagree / Don't know

Agree

Please give some reasons for your answer:

Transactions of large-scale landholdings should be subject to a well defined public interest test to help determine the impact on local communities and the contribution of the landholding in addressing the nature and climate crises. Continuation of membership of existing partnerships such as the relevant Deer Management Group or other land use partnerships such as the East Cairngorms Moorland Partnership might form part of a public interest test.

Q15. What do you think would be the advantages and/or disadvantages of applying a public interest test to transactions of large-scale landholdings?

Private buyers with no interest in community cohesion, public good, climate action and nature restoration could be restricted in their ability to acquire more land.

However there is a danger that an added layer of bureaucracy could be added to charities, family businesses and community interest organisations trying to buy land for community good, and this would act as a disincentive.

Q16. Do you think the public interest test should be applied to:

The seller only / The buyer only / The seller and buyer / Don't know

The seller and buyer

Please give some reasons for your answer:

We suggest it applies to both but the test should as a minimum apply to the buyer.

Q17. If the public interest test was applied to the seller, do you think the test should be considered as part of the conveyancing process?

Yes / No / Don't know

Don't know

Please give some reasons for your answer:

Q18. 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 / No / Don't know

Don't know.

Please give some reasons for your answer:

Q19. We have proposed that if a public interest test applied to the seller concluded there was a strong public interest in reducing scale/concentration, then the conditions placed on the sale of the land could include:

i. The land in question should be split into lots and could not be sold to (or acquired by) one party as a whole unit

ii. The land, in whole, or in part, should be offered to constituted community bodies in the area, and the sale can only proceed if the bodies consulted, after a period of time, indicate that they do not wish to proceed with the sale

Do you agree or disagree with these conditions?

Condition i. Agree / Disagree / Don't know

Agree

Condition ii. Agree / Disagree / Don't know

Agree

Please give some reasons for your answer and suggest any additional conditions:

There is also the scope here for partnerships between community ownership and environmental NGOs, for example, the Isle of Eigg Heritage Trust which is a partnership between the Isle of Eigg Residents' Association, The Highland Council and The Scottish Wildlife Trust.

Q20. 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 / No / Don't know Don't know

Please give some reasons for your answer:

Much of this depends on the process decided for reporting / investigating breaches.

Q21. Do you think that a public interest test should take into account steps taken in the past by a seller to:

a) Diversify ownership Yes / No / Don't know

Yes

b) Use their Management Plan to engage with community bodies over opportunities to lease or acquire land Yes / No / Don't know

Yes

Please give some reasons for your answers:

These potentially show willingness of a land owner to manage land with public interest in mind.

c) What time period do you think this should cover?

Don't know.

Q22. Do you think the responsibility for administering the public interest test should sit with:
the Scottish Government Yes / No / Don't know

No

a public body (such as the Scottish Land Commission) Yes / No / Don't know

Yes

Please provide some reasons for your answers and any additional suggestions:

One organisation, such as the Scottish Land Commission, should lead on the public interest test. However, it should be done in collaboration with other organisations and include consideration of targets and delivery plans in the Scottish Biodiversity Strategy and emission reduction targets.

Regional Land Use Partnerships have an important role to play here.

Q23. 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 / No / Don't know

Yes

Please give some reasons for your answer:

Q24. Do you have any other comments on the proposal that a public interest test should be applied to transactions of large-scale landholdings?

Q25. 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.

a) Do you agree or disagree with the proposal above?

Agree / Disagree / Don't know

Agree

Please give some reasons for your answer:

b) Do you agree or disagree that there should be a notice period of 30 days for the community body or bodies to inform the landowner whether they are interested in purchasing the land?

Agree / Disagree / Don't know

Don't know.

Please give some reasons for your answer:

c) If the community body or bodies notifies the landowner that they wish to purchase the land during the notice period, then the community body or bodies should have 6 months to negotiate the terms of the purchase and secure funding. Do you agree or disagree with this proposal?

Agree / Disagree / Don't know

Agree

Please give some reasons for your answer:

There should be a considerable number of precedents from previous community land buyouts that show what time scale is appropriate.

Q26. 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?

No

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

Q27. We propose the following eligibility requirements for landowners to receive public funding from the Scottish Government for land based activity:

- i. All land, regardless of size, must be registered in the Land Register of Scotland.
- ii. Large-scale landowners must demonstrate they comply with the Land Rights and Responsibility Statement and have an up to date Land Management Plan.

Do you agree or disagree with these requirements?

a) Requirement i. Agree / Disagree / Don't know

Agree

b) Requirement ii. Agree / Disagree / Don't know

Agree

Please give some reasons for your answers:

This is a powerful measure for encouraging good land management in the local and national interest while still respecting the right of land managers to make decisions relating to their own circumstances. Rights and Responsibilities obligations should apply to all landowners and land managers irrespective of the scale of the holding.

There should be mandatory Management Plans for all land that is in receipt of government financial support. This might be extended to land that is subject to a planning application.

Q28. Do you have any other comments on the proposals outlined above?

No

Part 9: Land Use Tenancy

Q29. 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 / Disagree / Don't know

Agree

Please give some reasons for your answers:

Flexibility is given to tenants who want to do more but who are currently prevented from doing so, without making it mandatory.

Q30. Are there any land management activities you think should not be included within a Land Use Tenancy?

Q31. 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 / No / Don't know

Don't know

Please give some reasons for your answers:

There are some forms of small-scale agri-tourism and renewable energy that might be added but others that would be incompatible with the objectives. Renewables for example even on a microscale could have a cumulative effect across a landscape which therefore needs to be considered as a whole.

Q32. 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 / Disagree / Don't know

Agree

Please give some reasons for your answers:

This seems a prudent proposal that reduces risk to the tenant.

Q33. 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 / Disagree / Don't know

Please give some reasons for your answers:

Q34. How do you think the rent for a Land Use Tenancy should be calculated?

This is not within our area of expertise.

Q35. 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?

Yes / No / Don't know

Please give some reasons for your answers:

Not applicable.

Q36. Do you think that there should be guidance to help a tenant and their landlord to agree and manage a Land Use Tenancy?

Yes / No / Don't know

Yes

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

These can be complex issues with unexpected consequences. We have no view about who should draft the guidance but feel that it should be subject to consultation with bodies with relevant expertise.

Q37. Do you think there should be a process to manage disputes between a tenant of a Land Use Tenancy and their landlord?

Yes / No / Don't know

Yes.

Please give some reasons for your answers and outline how this process could be managed:

It is unclear why there should be a difference between a Land Use Tenancy and existing forms of tenancy in relation to resolving disputes.

Q38. 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 / Disagree / Don't know

Agree

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

The Scottish Land Court has a wealth of experience in resolving disputes.

Q39. Do you have any other comments on our proposal for a Land Use Tenancy?

Yes / No / Don't know

Please give some reasons for your answers:

No

Part 10: Small landholdings

Q40. Would you like to be kept informed about the Small Landholding Consultation for the Land Reform Bill?

Yes / No

No

If yes, please provide your email details here:

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

Q41. Do you agree or disagree with our proposal to explore:

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

Agree / Disagree / Don't know

Part 12: Other land related reforms

Q42. Do you have any views on what the future role of taxation could be to support land reform?

No

Q43. How do you think the Scottish Government could use investment from natural capital to maximise:

- a) community benefit**
- b) national benefit**

The publication of the Interim Principles for Responsible Investment in Natural Capital was welcome, and in particular the recognition that such investment must be of high environmental integrity. Future development and clear governance structures around these principles will be welcomed.

Q44. Do you have any additional ideas or proposals for Land Reform in Scotland?

No

Part 13: Assessing impact

Q45. 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?

Islands have definite boundaries and communities with a clear identity. It is important that the proposed legislation does not inhibit local management of islands.

Q46. 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?

Young people under 7 will be still in their 20s when we reach 2045 and hopefully achieve net zero. The proposals in the consultation document should help that goal to be reached and the challenges posed by the biodiversity crisis to be overcome.

Q47. 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)?

No

Q48. 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?

As mentioned in previous answers, there is the potential for the cumulative (negative) impacts of some small scale “developments” (e.g. renewables) to be missed by being included in Land Use Tenancies. This is where Regional Land Use Partnerships can have that overview.

Q49. 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)?

No

Q50. Are you aware of any potential costs and burdens that you think may arise as a result of the proposals within this consultation?

Devising and properly resourcing a clear reporting and monitoring system for breaches and for enforcing management plans.

Q51. Are you aware of any impacts, positive or negative, of the proposals in this consultation on data protection or privacy?

No