



SCOTTISH LAND COMMISSION
COIMISEAN FEARAINN NA H-ALBA

Land Governance

Land reform discussions often revolve around the relative importance of land ownership versus land use, but in practice both of these aspects interact and are equally important. As the demands put on our land increase to meet economic, social, and environmental needs and ambitions, framing ownership and use together as a question of governance shifts the focus and presents new opportunities.

To address the climate and nature crises, for example, we know broadly what we need to do – from habitat restoration, to modernising agricultural practices, to developing 20 minute neighbourhoods – and we know that land is the platform upon which these, and other, changes will take place. However, how we make these changes, and who makes the decisions, is critical to delivering a Just Transition.

This is where the role of land governance comes to the fore. Understanding, and reforming, how decisions are made, and who is making them – recognising needs and ambitions, fairly sharing risks and opportunities – will help ensure that the necessary land use transition is just.

“A just transition is both the outcome – a fairer, greener future for all – and the process that must be undertaken in partnership with those impacted by the transition to net zero. Just transition is how we get to a net zero and climate resilient economy, in a way that delivers fairness and tackles inequality and injustice.”

Just Transition: A Fairer, Greener Scotland, Scottish Government



What does “Land Governance” mean?

At its heart, governance is about the framework of decision making; identifying who has the power to make and enforce decisions, and how that power should be exercised and accountable. Land Governance is simply the way this applies to decisions about land.

Governance applies at all levels: from individual landholdings where the focus may be on who trustees or directors are, how they are appointed, and how they make decisions; to a landscape scale or regional level where structures facilitating collaboration between neighbours, public bodies, institutions, and others are vital; to the national or system level of legislation, rights, and policy, balancing interests and supporting innovation. Identifying the how and who is multi-layered and will vary as much as every landholding or landscape is different, but they are the first steps to understanding and reshaping governance.

The “how” is focused on the process of decision making – the structure and rules to be followed, the factors and considerations to take into account, the evidence required, the level of external consultation or input expected, whether there is a right to appeal and so on. In the land context the Land Rights and Responsibilities Statement provides the overarching principles which inform this process, which are then practically articulated through the Commission’s own [Protocols and Guidance](#). There are also a range of processes for specific types of decisions – the planning system, for example, relies on a well-established application process and a clear structure, with detailed standards and guidance to shape decisions about the built environment.

The “who” is about identifying where the power to make and enforce a decision – or not – lies. While it may be obvious,

it is worth restating that deliberate land use change, and land management, do not happen unless someone, somewhere, decides they will happen. Within our current system, that power lies unambiguously with the landowner, unless a different governance structure has been deliberately put in place. It may well be that that power is sometimes constrained by regulation, and decisions are often influenced by policy – the “how” noted above – but in its current form it remains a significant, potentially landscape altering, power, and that is why we rightly focus on the need to diversify the pattern of land ownership.

The Commission has previously carried out detailed research and made [recommendations on how to tackle concentrated ownership](#) and the power that derives from it. Beyond these specific measures there are a range of options – and opportunities – to diversify the pattern of land ownership through changes to governance. These options focus on expanding both the number of individual landowners, as well as sharing the power of ownership amongst more – and crucially are not just an end in themselves.

There is a growing body of evidence – some of which is highlighted below – that diverse ownership and governance makes decision making more robust, responsive, and innovative, leading to resilient organisations and places that meet broader societal needs and ambitions. Considering the challenges we face today, let alone those that may arise in the future, the opportunities presented by reformed and innovative governance could be significant and far reaching.

This paper brings together our existing research and work relating to land governance, highlighting learning from international experience and the corporate world, before charting a course for the Commission’s forthcoming work in this area.

Learning from international experience

Land governance arrangements exist in a variety of forms across the world, and notably amongst Scotland's European peers. Our [research](#) into international models of community, communal, and municipal ownership highlights not just the breadth of approaches to land ownership, use, and management, but also throws into stark contrast some of the assumed barriers to change that exist in Scotland.

In general, the current Scottish approach characterises land ownership as the exclusive possession – from the top of the sky to the centre of the earth – of a bundle of rights, and that the landowner can be neatly described as private, public, community, or charitable. While there are a few notable exceptions to these characterisations, this framing is almost always seen as the immutable fact of what land ownership is and who landowners are. It need not be.

The basic concept of the allocation of different rights in land is of course not new to Scotland, we are familiar with the way some rights, such as mineral or sporting rights, can be separated from the ownership of other rights, but there is potential to explore much more.

Examples from Europe and beyond demonstrate how rights can be held – or owned – by different parties and utilised harmoniously and profitably across the same area. Many of our European peers have unpicked the bundle of rights, and in so doing have found more productive ways to allocate resources, and ensure collaborative land use decision making.

The owners of those rights are also far more likely to be a mix of interests, working collaboratively, rather than a single individual or entity. Hybrid and mixed ownership and governance models are

ubiquitous, bringing together private and public interests, individuals and communities (of place and interest), charities and institutions. This ensures a wide range of voices are heard, and their needs and aspirations can be understood and met.

In particular, landowning cooperatives are abundant across Europe – whether that's a single landowning entity with dozens or hundreds of investor members, or an organisation of many small landowners pooling resources and sharing management – these models are tried and tested, operationally effective, and in many cases highly profitable for the members.

While there are many cooperatives in Scotland already – notably in retail and agricultural services – there are few, if any, owning and managing significant areas of land. Making more use of the cooperative model, common in other sectors of the economy, to diversify the pattern of landownership could be a very easy step to take on Scotland's land reform journey.

Learning from the wider economy

There are also other lessons to learn from governance in the wider economy across Europe, and our [research on Understanding the Benefits of Diversification in Ownership, Tenure, and Control](#) examines some models currently in use, and how they perform across economic, social, and environmental measures.

The research findings “strongly point toward wider benefits from diverse ownership and control, including greater security of employment, but without strong evidence to suggest foregone productivity”. The idea that diversifying ownership, governance, control, or decision making would automatically lead to worse economic performance is robustly dispelled. Further, the research shows that on economic

measures like business resilience and longevity, organisations with diversified governance models perform better.

Some of these models also show how diverse governance can be achieved without changing existing ownership structures. Codetermination – a legal requirement for large German companies, and in use elsewhere – doesn't challenge or alter company ownership, but it does ensure democratic employee participation in significant and strategic decision making.

“Employee codetermination is when employees participate in the corporate governance of an enterprise. This model therefore affords employees an element of control of the enterprise without necessarily sharing in the ownership and profitability. Whilst codetermination has been adopted in several European countries, including Austria, Poland, Denmark and Sweden, perhaps the most prominent system of codetermination exists in Germany, where it is often termed “Mitbestimmung”.”

Understanding the Benefits of Diversification in Ownership, Tenure, and Control, Alma Economics

The research on codetermination highlights particular advantages of the model at times of economic stress. The evidence shows that during and after the financial crash in 2008/9 German companies using codetermination lost fewer employees, were more profitable, increased investment, and recovered much quicker than comparable European peers.

The evidence around cooperatives paints a similar picture. Co-ops are more resilient than comparable businesses, are more likely to maintain employment levels, and have a stronger focus on the long term. For example, during the 2008/9 financial crisis European cooperative financial institutions

accounted “for 7% of the European banking industry's write-downs in this period despite having a 20% market share.” This is partly attributed to decisions influenced and made by members around engaging in less risky behaviour and maintaining higher reserves.

There are clear lessons to learn from this experience, and though this is just a snapshot of the possibilities for diversifying land governance that exist currently, it is a prompt to break free of assumptions about what diversifying governance and the pattern of land ownership means. With the aid of this wider perspective, it is possible to reimagine what land governance could, or should, look like in 21st century Scotland, what it needs to do to meet the challenges of today and into the future, and how we get there.

The opportunities ahead

The first step, and the purpose of this paper, is to stimulate thinking about the role of land governance, the possibilities that reform can bring, and the lessons to be learnt from international peers and other economic sectors. Moving the discussion on from one that debates whether it is ownership or use that is most important will benefit everyone. In due course this should open space to stimulate ideas and innovation, and deliver tangible opportunities for landowners, communities, local business, and individuals.

Given the collective challenges we face, much of this debate needs to happen at pace, beginning by acknowledging that while some seek to own land for the sake of owning land, most seek land ownership as a means to do something productive. What is often assumed is that to do something productive, one needs to own the land outright. However, this ignores the range of options already available in the Scottish system. Creative use of leases, partnerships, joint ventures, cooperatives,

and even company structures – it's often overlooked that most private and community landowners rely on the same basic yet flexible limited company structure – is already possible and could yield significant first mover advantages to those willing to innovate.

The current context of natural capital investment also shows where a governance focus can help. Some investors, with our encouragement, are already questioning whether they need to own land to achieve nature finance ambitions. The next proactive step is to devise governance models that actively meet the ambitions of investing in nature while also sharing the decision making, value, and benefits of doing so with local communities. With support and guidance, there is no reason more imaginative governance structures cannot be developed in practice. The Commission's Good Practice Programme will continue to provide some of this support, as well as seeking to work with willing partners, develop pilots and case studies, and produce further guidance and advice.

In the medium term, greater acceptance of diverse governance models throughout the economy and society, linked to policy support and changes to fiscal policy, should support innovation, new opportunities, and enhance prosperity – and put Scotland on a more equal footing with European peers already enjoying the benefits of diverse land ownership and governance.

Though much can and should be done to improve the way our current system of land ownership and governance functions, there remains a need to reform the fundamental ways in which we both think about land ownership and governance, and how this works in practice. Acknowledging that our current system is the product of centuries, this work will be principled, thoughtful, and with a dual focus on the immediate practical challenges as well as long term systemic and culture change.

The challenge of addressing the climate and nature crises requires land use decision making that will enact changes taking decades or centuries to take effect, and will have consequences for generations. Ensuring our land governance models are up to this challenge, being both flexible and futureproof, is a necessary part of the just transition to net zero, meeting the needs and ambitions of Scotland today, and well into the next century.

Next steps

The Commission's new Strategic Plan and Programme of Work sets out a priority for the Commission to develop work on land governance in the coming three years.

Our Good Practice Programme will publish new guidance on governance, and will continue to support current and potential landowners, investors, and communities seeking to improve their governance approaches.

We are and will be working with partners across urban and rural Scotland to develop and test some of the changes that can be made within our existing systems – finding and overcoming barriers, creating innovative solutions, and developing policy recommendations and advice.

We will also look to longer term systemic change, with a discussion paper and engagement to open up ideas. We will seek to work with Scotland's most innovative and forward thinking landowners to understand the opportunities, trade-offs, and risks in profoundly rethinking land governance.

The scope of this work is broad and open, and if you or your organisation would like to get involved, discuss opportunities, or are seeking land governance advice, please get in touch.

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