



SCOTTISH LAND COMMISSION
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The Land Reform Bill – Part 1

Scottish Land Commission
Advice to Ministers

ADVICE

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Advice on Part 1 from the Scottish Land Commission

Part 1 of the Land Reform Bill aims to support the Government’s vision for land reform by introducing new legal requirements for the management and transfer of large landholdings.

Our research highlights that the key public interest issue linked to concentrated land ownership is the imbalance of power and control over decision-making. Large-scale ownership is a good indicator of where risks to the public interest of this power imbalance might emerge. International evidence also shows that large-scale ownership is not necessary to achieve land use goals effectively.

The measures in Part 1 of the Bill build on the Scottish Land Commission’s work and recommendations for addressing concentrated land ownership in rural Scotland. Land Management Plans align closely with our advice, while the Prior Notification requirement and Transfer Test incorporate the principles of our advice but differ in their proposed implementation.

For the first time, the Bill introduces legal mechanisms in Scotland to:

- Increase transparency by requiring landowners to publicise and engage communities on their management plans.
- Regulate the land market to end private off-market sales of large estates, creating opportunities for communities, individuals, and businesses to acquire land.
- Scrutinise and regulate the sale of large landholdings with a power to require land to be sold in lots.

The Commission supports the objectives of the Bill and our advice seeks to simplify and strengthen the measures. Key recommendations include:

- Setting a unified threshold of 1,000 hectares for all of the measures.
- Strengthening Land Management Plans by allowing Community Councils, Enterprise Agencies, National Park Authorities, and the Crofting Commission to report breaches of duties and enabling the Land and Communities Commissioner to proactively investigate potential breaches.
- Simplifying Prior Notification requirements with a single 90-day notice period, exemptions for minor transactions, the option to designate assets of community importance, and a more cost-effective, decentralised local notification system.
- Improving the Transfer Test by explicitly referencing the “Public Interest” and using public sector land acquisition to achieve goals like housing, community land ownership, and access for new farmers.

The measures in this Bill represent a significant step towards addressing some of the impacts of Scotland’s long-standing pattern of concentrated land ownership. These changes will help ensure the Bill delivers on its goals and supports Scotland’s transition to a fairer and more transparent system of land ownership, more in line with common practices across Europe.

1. Introduction

This paper provides the recommendations and advice of the Scottish Land Commission on Part 1 of the Land Reform Bill. Recommendations and advice on Part 2 will be provided separately through the Tenant Farming Commissioner.

The Commission gave evidence on the Bill to the Parliament's NZET Committee on 11th June 2024.¹ In that session we articulated our support for the objectives of the Bill and identified some areas where Part 1 of the Bill could be strengthened and simplified.

Following the request of the Cabinet Secretary for Rural Affairs, Land Reform and Islands², we have since undertaken further work and engaged with the Government's Bill Team. This advice provides further recommendations and advice to inform possible changes to the Bill and to inform its implementation.

1.1 The focus of Part 1 of the Bill

The Policy Memorandum³ states the intent of Part 1 of the Bill is to help deliver the Government's land reform vision by introducing '*legislative requirements in relation to the ongoing management and transfer of large land holdings*'.

The Bill introduces measures to regulate large land holdings that are significant and that will help address the impacts of Scotland's unusually concentrated pattern of land ownership.

The research and evidence published by the Commission identifies the core public interest issue arising from this concentration of ownership to be one of power and control over decision making.⁴ That decision making affects the public interest in many ways, impacting economic, community and environmental outcomes.

While scale of land ownership is not always the same as concentration of power, if considered comprehensively scale is a good proxy for where risks to the public interest may arise from the misuse of concentrated power.

Our evidence also shows that while ownership at scale can bring administrative efficiency in making decisions about land use change, it is not a necessary condition for such change. Our research – and that of many others – shows that land use change at scale can and does happen in landscapes of multiple small landowners and mixed governance structures.⁵ This is the norm in most of Europe and is achievable in Scotland.

¹ Links to the Agenda and Parliament TV recording [here](#).

² Letter from the Cabinet Secretary to the Chair of the Commission [here](#).

³ Link to the Policy Memorandum [here](#).

⁴ Glenn, S., MacKessack-Leitch, J., Pollard, K., Glass, J., and McMorran, R., (2019), Investigation into the Issues Associated with Large scale and Concentrated Landownership in Scotland, Scottish Land Commission. Link [here](#).

⁵ Mc Morran, R., Glass, J., McKee, A., Atterton, J., Combe, M., Xu, T., Jones, S. and Perez Certucha, E. (2019). Review of International Experience of Community, Communal and Municipal Ownership of Land. Scottish Land Commission, Commissioned Report. Link [here](#).

The mechanisms outlined in Part 1 of the Bill draw heavily on the work and recommendations of the Commission in addressing concentrated land ownership in rural Scotland.^{6,7} Land Management Plans (LMPs) align closely with our recommendations. The Prior Notification requirement and the Transfer Test build on the principles of our recommendations but differ to a greater extent in their proposed operation.

Nevertheless, the Bill seeks to establish for the first time in Scots law mechanisms that will:

- bring significant new transparency by requiring landowners to publicise and engage with communities on their management intentions;
- regulate the land market in a way that would end private off-market sales of large estates and open up opportunities for communities, individuals, and business to acquire land;
- scrutinise and regulate the sale of large landholdings.

The following sections are structured in two parts: the first part in each provides our recommendations for direct changes to the Bill, the second part provides advice on secondary legislation and implementation.

⁶ Legislative proposals to address the impact of Scotland's concentration of land ownership, (2021), Scottish Land Commission. Link [here](#).

⁷ Natural Capital and Land: Recommendations for a Just Transition, (2022), Scottish Land Commission. Link [here](#).

2. Scope and Thresholds

A clear, predictable, and proportionate scope is necessary to support well-functioning interventions. The use of a scale threshold is appropriate given it is a good indicator of the risks of concentrated land ownership, and it provides a predictable and transparent means of identifying land in scope. Judgment of what the threshold should be is rightly for Parliament given the need to consider a range of factors including the impact, the costs of administration, and value for public money.

Our recommendations on the scope and threshold aim to provide a simple, clear, and proportionate approach.

2.1 Changes to the Bill

We recommend that the following changes would strengthen and simplify the Bill:

2.1.1 Harmonise all thresholds at 1,000Ha or 25% of an inhabited Island, across Land Management Plans, Prior-notification, and the Transfer Test.

As it stands, there are different thresholds for the mechanisms which risks causing confusion and some limited unintended consequences. Harmonisation of thresholds simplifies this, providing greater clarity and will help ensure the three measures can operate effectively together. If Parliament concludes the threshold should be set at a different level, we recommend that it be consistent across the three measures.

We consider a 1,000Ha threshold to be proportionate. It is what the Bill proposes for Prior Notification and the Transfer Test, and bringing the threshold for Land Management Plans to this level as well will increase the impact of this measure. We estimate this would double the number of holdings in scope for Land Management Plans from c.350 to c.700.⁸ We acknowledge this has an implication for resource, and recognise that within implementation some phasing may be necessary.

2.1.2 Clarify that severance by railway and other public infrastructure ownership is disregarded for the purpose of determining contiguity.

Consideration of contiguity is necessary in establishing whether titles are controlled and managed as a single composite holding. However, there may be a number of titles where public infrastructure – railways and roads in particular – act to sever larger holdings into smaller areas, which would individually fall under the thresholds. We advise the Bill should make clear that such severance should be disregarded in determining contiguity.

⁸ These figures are approximate due to uncertainty around the available data on land ownership, but draw upon the Financial Memorandum to the Bill, the Business and Regulatory Impact Assessment (BRIA) to the Bill, and the Commission's own internal work.

2.2 Secondary legislation and implementation

To support the implementation of the Bill and to provide further background, we advise:

2.2.1 Taking a proportionate approach to determining how linked and/or discontinuous holdings should be treated.

Complex ownership structures could pose challenges to determining the controlling interest, especially where multiple trusts are involved, and therefore whether a holding is composite and in scope. In addition, companies' law is a reserved matter and may pose challenges in tracking changes of ownership and control where the landowner is a company. While there may be options to scrutinise the use of complex structures, without knowing how many situations this occurs in, it may be disproportionate to expend significant effort to bring a handful of holdings in scope. We therefore advise that treatment of these scenarios is, at least initially, best addressed by Guidance to support practical implementation.

3. Land Management Plans

Land Management Plans (LMPs) are an opportunity to support collaboration and shared outcomes. LMPs are a vehicle for transparency and disclosure. LMPs should be an accessible summary, not a business or operating plan and should link to, but not duplicate, existing published information.

Our recommendations focus on a dual approach of ensuring that the Bill is strengthened to improve transparency, while also beginning to build a model of how LMPs could work in practice through regulations and guidance.

3.1 Changes to the Bill

We recommend that the following changes to would strengthen and simplify the Bill:

3.1.1 LMP duty to apply to land holdings of 1,000ha and above, or 25% or more of an inhabited island.

This is a restatement of threshold harmonisation, see Recommendation 2.1.1 above.

In addition, and for practical purposes, we advise consideration be given in the secondary regulations to phasing the introduction of this requirement, starting with the largest holdings in scope. This will help address administrative resource management, ensure that learning from early practice can be fed into the ongoing implementation, and establish a rolling programme.

3.1.2 Include a duty on the landowner under 44B(3) to demonstrate how community engagement has informed the LMP.

As it stands, the landowner only has a duty to engage with the community on the LMP. This recommendation would ensure the landowner has to show within the LMP how community engagement has informed the LMP, not just that the community has been engaged. This would help ensure and demonstrate that community engagement is meaningful, with clear influence, and not just a tick box exercise.

3.1.3 Include a duty to refer to Local Place Plans in LMPs.

This could be included under 44B(3)(d). Local Place Plans (LPPs) are an important collaborative articulation of local needs and ambitions and will have been developed with significant community engagement. We would expect local landowners to have been involved in their development. As such, where an LPP exists, it should be referenced in the LMP, showing how the landowner's land management will contribute to delivering the LPP, where relevant.

3.1.4 The list of persons able to allege a breach under 44E should be broadened to include community councils, enterprise agencies, national park authorities and the Crofting Commission.

We believe the existing list of persons is too narrow and misses key bodies with relevant remits beyond those currently listed.

Community Councils are the most local formal level of Scottish democracy and can play a key role in local community life. Our experience shows they are already regularly involved in land reform issues and often have good collective local knowledge and expertise to draw upon. Given the purpose of LMPs is not focused on community ownership, we advise this list should not restrict community bodies to those constituted for the purpose of community ownership, as the current drafting does.

Enterprise Agencies, particularly Highlands and Islands Enterprise (HIE) and South of Scotland Enterprise (SOSE) who have community support remits, are often more closely involved with community land/asset acquisition, management, and development than other public bodies, are likely to be well informed about the situation on the ground, and be in a position to credibly report potential breaches. More widely, all three agencies have economic development remits which may be relevant and not currently well covered by the list.

National Park Authorities play a significant role in land matters in their areas, specifically through the National Park Partnership Plans and engaging with landowners and communities. They will also be in a robust position to credibly allege breaches.

The Crofting Commission, as the regulator for crofting which covers approximately 10% of Scotland's land area, would also be in a position to credibly allege breaches in relation to crofted land holdings.

3.1.5 Include provision for the Land and Communities Commissioner to instigate an investigation into a potential breach in the absence of an allegation where there are reasonable grounds to do so.

In circumstances where the Land and Communities Commissioner (LCC) becomes aware of a situation where a potential breach may be occurring, it would be proportionate for the LCC to be able to instigate an investigation rather than to have to wait for a third party to make an allegation which may never come.

We believe this would provide a useful backstop in legislation and would only envision the LCC moving to initiate a formal investigation after other routes to resolve the issue(s) have failed.

3.2 Secondary legislation and implementation

To support the implementation of the Bill and to provide further background, we advise:

3.2.1 Producing clear guidance on LMP requirements

Comprehensive guidance will be required to set out the practical expectations for LMPs, provide templates, and support good practice. Guidance should be used to provide clarity on other aspects of LMPs, such as interaction with tenants (in crofting and agricultural context), a requirement to include a map of the holding covered, or how the LMP supports and delivers on the principles of the Land Rights and Responsibilities Statement (LRRS). The Scottish Land Commission is well-placed to develop such Guidance, drawing on our experience of supporting good practice in Land Rights and Responsibilities.

3.2.2 The ability to apply cross-compliance penalties where a landowner is in breach of an obligation.

In addition to the ability to levy a fine, this would provide a better range of options more suitable to different circumstances. The cross-compliance penalties may include restriction of access to public financial support, for example agricultural payments or forestry grants, as well as limiting the landowner's ability to apply for regulatory consents, such as planning permission. It could also include a bar on participation in public procurement.

3.2.3 A central online LMP portal should be created

This would provide a single clear access point on which LMPs are registered, and in addition to local circulation, supports accessibility, disclosure, and proactive monitoring.

There would be some cost associated with setting up the portal and its ongoing maintenance, but there are a number of practical options to do this and it would underpin wider use and value from the LMPs. It would, for example, improve ease of public access, provide a simple publication route for land owners, and support effective monitoring and review. The Scottish Land Commission is well-placed to co-ordinate this function, in part supporting the remit of the Land and Communities Commissioner.

3.2.4 LMPs should be designed to provide relevant information to support the transfer test.

This recommendation is explained in detail at 5.2.3 below.

4. Prior Notification of Sales

The inclusion of a prior notification requirement for certain land transactions is an important step in ensuring the land market operates in an open and transparent way. In line with our previous advice, we see this as important to not just enable community land ownership, but to provide opportunities for more diverse ownership by a wide range of businesses, farmers, and individuals.

Prior notification will ensure there is an opportunity to pursue a negotiated acquisition, perhaps for a specific part of a landholding that is coming forward for sale. It does not oblige the seller to a particular outcome but opens the opportunity for negotiation and directly addresses the significant and ongoing use of private off-market sales.

As drafted the prior notification measure will require significant administration. As drafted, there is also a risk it could disincentive part sales from within holdings, acting against diversification of ownership.

As drafted the measure will have very limited impact in extending opportunities for community land acquisition. This is because the interaction of the timescales set out with the existing operation of the Part 2 Community Right to Buy is not practical unless a community body is already constituted in line with eligibility criteria.

Our recommendations are for significant changes to the requirements and process, which together would simplify the implementation of this measure and improve its impact.

4.1 Changes to the Bill

We recommend that the following changes would simplify and strengthen the Bill:

4.1.1 Revising the approach to have a single longer 90-day prohibition period without the ability to extend.

This would replace the two-phase prohibition period of 30-days plus the 40-day extension in support of Community Right to Buy (CRtB) with a single universal 90-day prohibition of sale period. This would allow more time for communities to organise, while providing sufficient leeway to avoid encroaching on mortgage/lending considerations. This approach also removes administration costs for Ministers and communities associated with the need to apply for, assess, and implement an extension period.

Although this is a slightly longer overall prohibition period, in combination with below Recommendations 4.1.2 on de minimis, and 4.1.3 on assets of community significance, this would affect significantly fewer transactions than the current drafting and would therefore in our view be more proportionate in achieving the aims set out.

4.1.2 Inclusion of de minimis considerations to ensure proportionality of land/assets in scope with details to be set out in secondary legislation.

As drafted, the duties on selling landowners under prior notification would apply to any and all transactions coming out of a landholding of 1,000ha or more, in whole or part. Our developing evidence base suggests that a significant number of transactions in scope would be of little interest to third parties, and in many cases, notification would be meaningless as third parties have no ability to intervene in some transactions. We therefore recommend provisions for a de minimis level and exclusions are included within the primary legislation, the details of which should be set out in the secondary legislation. Further detail is set out in Recommendation 4.2.1 below.

4.1.3 Inclusion of ability to designate land/assets of community significance that are subject to notification where they would otherwise have been considered de minimis.

In combination with the more limited scope proposed above, the inclusion of the ability to designate land or assets of community significance would help strike the right balance in achieving a proportionate notification scheme. We believe such land/assets could most easily be identified through engagement on the Land Management Plan, providing transparent and consistent information that informs the implementation of both measures. More detail is set out in Recommendation 4.2.2 below.

4.1.4 Remove provisions relating to a central register of interested parties, and associated Ministerial duties, instead require a simple public notification process with evidence of notification to be provided to the LCC.

In line with our previous recommendations, we propose that a simpler public notification process is the most proportionate way to achieve the policy aims on land market transparency and opportunities to participate. As outlined in Recommendation 4.2.3 we propose this should follow similar procedures already in use for development planning andcrofting.

For compliance and monitoring purposes, we recommend that evidence of notification is provided to the LCC. While this would increase the resourcing and workload of the LCC, it would be significantly less than the resource required under the existing proposals for maintaining a central register and the ministerial duty to notify parties when land comes to market.

4.1.5 Set out in statute that CRtB Section 34 letters will be issued within 28 days of receipt of a valid application.

In combination with the 90-day prohibition period recommended in 4.1.1 this would increase the impact of the prior notification measure in supporting opportunities for community right to buy. Requiring a timely confirmation that a community body is

compliant as required under §34(4) of the Land Reform (Scotland) Act 2003 would mean that this route as envisaged by the Bill becomes a workable option for those communities seeking to use it.

4.2 Secondary legislation and implementation

To support the implementation of the Bill and to provide further background, we advise:

4.2.1 De minimis exclusions to include categories of existing statutory transfer as well as a scale threshold to exclude very minor transactions.

The types of transactions at a small scale noted in our developing evidence base include for example, boundary adjustments, sales of garden ground, provision of private parking spaces and driveways, sales of individual dwellings and housing plots. Few, if any, of these transactions pose risks to community sustainability, or are a risk to the wider public interest, and therefore interference in such transactions is likely to be disproportionate.

There is also a class of transfers already governed by statute, where there is no locus for a third party to intervene, whether they are notified or would wish to. This class would include sales to crofters and agricultural tenants exercising their right to buy; transfers under existing Community Rights to Buy; public sector acquisitions under Compulsory Purchase Orders; the exercise of KLTR functions.

Given the sheer range of transactions currently possible, and the potential for future changes in other areas of legislation affecting land transactions, it makes sense to articulate de minimis exemptions in secondary legislation that Ministers may from time-to-time update.

4.2.2 Land/assets of community significance to be designated through the community engagement duty under, and included within, LMPs.

Clarity for both the community and landowner will be key to ensuring that if assets of community significance are coming to market that the opportunity for community ownership is maximised. While the detail will need to be further developed on what and how assets of community significance are defined, SRUC has provided useful insight on this.⁹

To aid clarity for all parties, identifying assets of community significance through the community engagement duty for Land Management Plans would be a robust mechanism. This would ensure that the landowner and community are aware which assets are of significance and that they are noted in the LMP, providing a transparent

⁹ Doyle, C., (2024). Sites of Community Significance: Proactive Communities and the Land Reform Bill. Scotland's Rural College (SRUC). Report. Link [here](#).

basis for negotiated approaches and ensuring the prior notification measure takes account of these.

Identification within the LMP also supports the LCC who would receive evidence of notification prior to sale – as well as other relevant third parties – to monitor and support community ownership opportunities. This would likely require some additional resourcing for the LCC to fulfil these functions, however, even in combination with other cost implications noted in 4.1.4 above, we anticipate this would represent a substantial overall saving against the mechanism as drafted in the Bill.

Given the changing nature of community needs and aspirations over time, allowing Ministers to update the requirements for identifying assets of community significance from time-to-time would be proportionate.

4.2.3 Notification to be made directly to relevant community council(s) and notice to be published in local media. Evidence of doing such to be submitted to the LCC.

In supporting a decentralised and proportionate approach to notification, and drawing on the long-established practice in development planning and crofting, in the first instance we recommend notification of proposed sale be given to relevant Community Councils, and published in local media. Evidence of having done so would be submitted to the LCC for monitoring purposes.

As channels of communication change over time, it would be helpful if Ministers had the ability to vary, from time-to-time, the form of notification required and to whom or where notification should be given.

5. The Transfer Test & Lotting

The transfer test is not a public interest test at the point of acquisition of land as we recommended. As drafted it does not influence the acquisition or onward ownership of land which limits its impact. However, lotting does provide a means to directly address the challenge of concentrated land ownership in specific places, by ensuring the land in question is sold in more than one parcel, to different buyers.

Our recommendations aim to ensure the Transfer Test, with the ability to lot land in aid of improving community sustainability, has the potential to make a significant difference to community sustainability and public interest outcomes. To achieve this, we propose a clearer reference to the public interest, and a more deliberate approach to using public land acquisition in tandem with lotting to secure specific outcomes.

5.1 Changes to the Bill

We recommend that the following changes would simplify and strengthen the Bill:

5.1.1 Remove consideration of “frequency” (at 67N) from the test process.

Historic frequency of land coming to market in the vicinity of a community is of questionable relevance to future sustainability, and the data needed to make such an assessment is simply not available.

5.1.2 Include specific reference to “the public interest” alongside, and as the framing for, community sustainability.

The public interest is implicit in the consideration of community sustainability – which importantly is not only about community land ownership. Given the unique nature of every landholding and the issues that may arise, the LCC and Ministers will inevitably have to use their judgement in considering, implicitly or explicitly, the public interest in making a decision under the transfer test.

An action being in the public interest is the primary rationale and legal basis for intervening in property rights as set out under A1P1 of ECHR,¹⁰ which this Bill is proposing to do. Making the public interest explicit on the face of the Bill therefore provides a clearer, longstanding, and well understood frame of reference for the transfer test.

¹⁰ For more detail on the interaction of public interest, land reform, and property rights, see: Mure, J., (2022) Balancing rights and interests in Scottish land reform, Scottish Land Commission. Link [here](#).

5.1.3 Ministers are given the ability to review a Lotting Decision, on the same terms as the landowner.

This would ensure flexibility is available in changing circumstances. For example, should a community body form after the original Lotting Decision is made and express interest in the landholding, though not for the lots as they have been determined.

5.2 Secondary legislation and implementation

To support the implementation of the Bill and to provide further background, we advise:

5.2.1 The Report prepared by the LCC under 670, should be a two-phase process

The two-phase process will minimise unnecessary delays. We recommend:

1. Scoping Phase to identify issues of community sustainability:
 - Rapid assessment of the likelihood of issues associated with the landholding;
 - Report to Ministers on need for detailed investigation or recommend decision not to lot.
2. Detailed Investigation Phase and Recommendations:
 - Assessment of issues;
 - Assessment of whether lotting would help address issues, and if so, what lots should be;
 - Assessment of whether public land acquisition would be an appropriate option (on interim or permanent basis);
 - Report and Recommendations to Ministers

We envisage that through the detailed investigation:

- The LCC would invite the landowner to give a view on appropriate lots. This is not an obligation on the landowner, nor does providing a view bind the LCC to a particular course of advice.
- Where lotting may be appropriate, the LCC would seek professional advice from a suitably qualified party. In practice, the consideration of lotting will need to be informed by practical considerations as well as its potential impacts.
- The LCC could determine whether there is a likelihood of a properly constituted community body forming with the intent to acquire land, but one that would not be able to organise and fundraise in the time available. In such circumstances the LCC may recommend Ministers acquire land on a strictly interim basis to enable transfer into community ownership within a reasonable timeframe.

- The LCC would consult with relevant public bodies on whether there is a case for public land acquisition of any or all land under investigation. This would not bind public bodies or Ministers to a particular outcome but would inform lotting recommendations. Where there is value in interim public ownership and/or adding to the public estate the LCC may recommend lotting land in a way to support such acquisitions.

5.2.2 We recommend Ministers have the ability to make a fair market value offer to buy landholdings, in whole or part, immediately following the Lotting Decision.

The Bill already includes provisions for Ministers to acquire land in scope, though only following the landowner's request to review the lotting decision more than a year after it came into effect. At this point Ministers can offer to buy the land unsold, or the landowner can make a specific request to Ministers that they buy the land unsold – refusal under the latter can be appealed to the Land Court. While these existing provisions are necessary, the operation of the transfer test would be strengthened by a more strategic approach to using public sector land acquisition in tandem with lotting to deliver public interest outcomes.

For example, interim public ownership may enable community land acquisition where time for a community to organise and fundraise is required. Public acquisition may also in some cases be the effective means to secure housing land supply, establish new crofts, or create opportunities for new entrants in agriculture.

It is also worth noting the possibility that in some circumstances, even where there are significant issues of risk to community sustainability, lotting may not be practical – in such circumstances an alternative remedy would be necessary and the potential for public land acquisition would provide this.

We emphasise that the point of this provision is not necessarily to increase in perpetuity the public estate, but to use public acquisition as a means to facilitate and/or deliver specific outcomes.

In our view, public acquisition of land as a possible outcome from the transfer test brings a range of potential additional benefits, including but not limited to:

- a. Near immediate resolution – Ministers can acquire land swiftly, immediately following the Lotting Decision, versus what would inevitably be a much longer sales process.
- b. Reduced compensation eligibility – an immediate fair market value offer, if accepted, would leave little room for questions of additional compensation to arise. On the contrary, the landowner is likely to make a saving by accepting Ministers offer, as they wouldn't need to market the lots and wait for buyers to come forward.
- c. Legal certainty – the lotting process, decision, and review(s) can be challenged in various ways through the Courts, but the acceptance of a fair market value offer cannot be.

- d. Certainty for all affected – for the landowner and Ministers, but also for the community, local residents, and business whose needs and aspirations might otherwise be held back by unsold lots.
- e. Savings versus later acquisition – Ministers risk acquiring land following a review as it stands, with the real chance that this would be more costly – in time and resources, including compensation – than an immediate purchase following the Lotting Decision would have been.
- f. Control over subsequent ownership/use – as the landowner, Ministers would be able to restructure or sell on with conditions land acquired via this route. Such restructuring of a holding may, for example, include and be the simplest route to new croft creation.
- g. Interaction with Community Ownership – building on the utility of interim public ownership noted above, where there is a community interest in all or part of the land in question, Ministerial acquisition would mean that communities could follow the simpler Community Asset Transfer process to ownership, on a less pressured timescale.
- h. Demonstration of public interest – ministerial acquisition of land is a de facto demonstration of the public interest in the future of the land in question.
- i. Declination of offer and later compensation – where the landowner declines Ministers fair value offer, proceeds to market and sells lots on the open market, and then seeks compensation for any loss or delay, the fact they declined a fair market value offer initially could be taken into account in an assessment of fair compensation.

5.2.3 We recommend that, insofar as practical, the content of LMPs is aligned with being a source of information to inform the transfer test.

The Land Management Plans (LMPs) should be helpful in both understanding the local situation at point of transfer, as well as providing clear links and references to the types of evidence required to inform the assessment of community sustainability, and matters of public interest relating to the landholding.

While as drafted only some holdings in scope for the transfer test will have a Land Management Plan, aligning the threshold and the reference base of the transfer test with the requirements of what must be referenced and included within the LMPs would strengthen both mechanisms. It would also likely reduce the time and resource requirement for the LCC to compile their report under 670.

6. Land and Communities Commissioner

The Bill creates a new Land and Communities Commissioner (LCC) with specific powers and duties in relation to the mechanisms set out in the Bill, as well as being a full member of the Board of the Scottish Land Commission.

As written, the Bill envisions the specific functions of the LCC being exercised at arm's length from the rest of the Board. We consider there is more advantage in ensuring that the LCC works closely with the Land Commissioners and Tenant Farming Commissioner in order to draw on the collective expertise and challenge available to inform decisions.

6.1 Changes to the Bill

We recommend that the following changes to would strengthen the Bill:

6.1.1 In relation to the Transfer Test, we recommend that the LCC must consult with Land Commissioners and the Tenant Farming Commissioner, on their investigations before submitting a report and/or recommendations to Ministers.

6.1.2 In relation to the investigation of breaches pertaining to duties around Land Management Plans, we recommend that the LCC must consult with Land Commissioners and the Tenant Farming Commissioner on their findings and recommendations.

There are risks in the LCC operating in isolation from the board of the Commission before submitting a report and/or recommendations to Ministers. In addition, we see several advantages of closer collaboration, including being able to draw on the collective expertise and challenge of the board of Commissioners.

7. Conclusion

Part 1 of the Land Reform Bill introduces new measures that, with some changes, could establish a significant legal framework to regulate large land holdings in the public interest. The Commission sees this as an important step that complements the focus of previous land reform legislation on community land ownership.

Specifically the Bill will establish, for the first time in Scots law, mechanisms that bring significant new transparency by requiring landowners to publicise and engage with communities on their management intentions; regulate the land market in a way that would end private off-market sales of large estates and open up opportunities for communities, individuals, and business to acquire land; and scrutinise and regulate the sale of large landholdings. All of which moves Scotland towards a more normal European model of regulating land ownership and markets.

Our advice focuses on specific ways to simplify and strengthen the Bill, in support of its objectives and with a view to achieving its public interest outcomes.

This Bill, and indeed any Bill, is one part in a wider programme of reforms. Delivering Scotland's ambitions will need changes to policy and practice across key areas like tax, ownership and governance, data, and land use planning, as well as the consensus building that changes the culture and behaviours in our relationships with land.

The Commission will continue to provide leadership, evidence, and proposals to shape such a programme of reforms.