



Review of Scale and Concentration of Land Ownership

Report to Scottish Ministers

20 March 2019

Report to Ministers on the Scottish Land Commission's Review of Scale and Concentration of Land Ownership

Executive Summary

Scotland has an unusually concentrated pattern of land ownership in an international context. As part of the Commission's work to support Ministers' ambitions for a fairer and more dynamic framework for the ownership and use of Scotland's land we have investigated the issues associated with scale and concentration of land ownership.

The evidence received by the Commission indicates that issues associated with large-scale and concentrated rural land ownership in Scotland directly impact economic and social wellbeing. The evidence identifies perceived advantages and disadvantages in the current pattern. The advantages relate predominantly to economies of scale. The disadvantages relate to imbalances of power or to a deficit in participation created by the concentrated pattern of ownership and by inadequate land-use decision making processes. These themes are connected by a common thread of fairness. The evidence shows that adverse effects are being realised and that where this is the case, there is little method of redress for communities affected.

We find that the pattern of market and social power evident in concentrated land ownership has parallels with monopoly power in wider economic policy, and we draw on these principles in both our analysis and recommendations.

We conclude that:

- a) concentration of land ownership has a direct influence on the public interest with potential adverse consequences through the exercise of market and social power and this is amplified by large scale ownership;
- b) there is evidence of the adverse effects of excessively concentrated market and social power being realised and causing significant detriment to the communities affected;
- c) there is a need for a statutory framework to mitigate the risks and adverse impacts of concentrated ownership;
- d) such a framework is considered normal in other sectors and in international experience and would enable further delivery of the Land Rights and Responsibilities Statement and Ministers' ambitions for land reform.

Our recommendations seek to:

- address the risks and adverse impacts of the current pattern of concentrated land ownership and monopoly situations;
- strengthen local democratic accountability of land ownership and use;
- stimulate a more productive, diverse and accountable pattern of land ownership, use and investment.

1. Introduction

This report sets out the Commission's conclusions and recommendations from our review into issues associated with scale and concentration of land ownership.

In the Programme for Government 2017 the Scottish Government asked the Commission to review the unusually concentrated pattern of land ownership in Scotland, including the potential risk of localised monopolies in some situations and its potential impact on the public interest.

In addressing this the Commission has focused on understanding the issues associated with scale and concentration in Scotland's current pattern of rural land ownership and the accompanying report provides a significant body of new evidence on which we have based our recommendations. The Call for Evidence provided the Commission with 'lived experience' of the issues as seen from multiple perspectives including individuals, businesses, land owners, land managers and communities.

We have developed recommendations to address the underlying issues revealed by the evidence and to support Ministers' stated ambitions for land reform. Given the breadth and depth of the evidence base, we expect that we will continue to engage both stakeholders and the Scottish Government widely in the implications of the findings, our recommendations and further steps that can be taken beyond our immediate recommendations.

Our conclusions and recommendations draw on the following evidence base published by the Commission:

- a) Research on interventions to manage land markets and limit the concentration of land ownership elsewhere in the world (Glass *et al*; published March 18);
- b) Research Review of existing research on issues associated with scale and concentration in land ownership (Glass & McMorrان; ready for publication);
- c) 'Investigation into the Issues Associated with Large-Scale and Concentrated Land Ownership in Scotland' following our public Call for Evidence (ready for publication).

The accompanying report 'Investigation into the Issues Associated with Large-Scale and Concentrated Land Ownership in Scotland' provides a full report and analysis of the evidence received by the Commission which underpins our recommendations.

The evidence and our recommendations focus on rural land ownership. We acknowledge that similar issues and patterns may be relevant to an urban property context, but we do not currently have clear evidence on this. Our recommendations here are targeted to addressing ownership primarily in a rural context because this is where the evidence has so far identified pressing issues. We are also conscious that applying measures that are targeted for a rural landholding context to a general urban property market situation risks unintended consequences. Our wider workstreams will therefore continue to address tailored proposals for urban land reform.

2. Conclusions

2.1 The context and concepts

Our conclusions and recommendations are framed in the context of Principle 1 of the Land Rights and Responsibilities Statement: *‘The overall framework of land rights, responsibilities and public policies should promote, fulfil and respect relevant human rights in relation to land, contribute to public interest and wellbeing, and balance public and private interests. The framework should support sustainable economic development, protect and enhance the environment, help achieve social justice and build a fairer society’.*

We set out to investigate the issues associated with scale and concentration in land ownership, in relation to the economy, communities and the environment. The evidence has led us to consider these issues using concepts of monopoly and market power that are well established in wider economic policy. This recognises that market power, and in this context social power, are normal features of the economy, but that where power becomes excessively concentrated, it can act against the public interest.

We have considered scale of ownership in terms of the area of land owned within a single controlling interest, and concentration of ownership in terms of the extent of decision-making power and influence that is concentrated within a single controlling interest.

2.2 The power and influence of land ownership

Land ownership and use are intimately connected. Existing research and our call for evidence demonstrates the inherent power of decision making and influence that is associated with land ownership. A fair and dynamic approach to land and decisions about its use are central to delivering the Scottish Government’s ambitions for inclusive growth and a healthy rural economy and infrastructure as set out in Scotland’s Economic Action Plan.

The call for evidence identifies five broad themes in which issues associated with scale and concentration of ownership can be seen to influence public interest outcomes:

- local economic opportunities;
- agricultural productivity;
- local housing needs;
- community and social cohesion;
- the natural and built environment.

In each of these themes the evidence identifies both advantages and disadvantages associated with the current pattern of scale and concentration, and examples of good and bad outcomes and patterns of behaviours. The evidence indicates that the power associated with land ownership can act both for or against the public interest. Where it is acting against (whether intentionally or not), there is in many cases little or no method of redress or intervention for those affected. An analysis of each of these themes is contained in the full evidence report.

2.3 Scale and Concentration

We find that scale and concentration are distinct factors. The evidence indicates that most of the perceived advantages people associate with the current pattern of ownership relate to investment and economies of scale, while most of the disadvantages relate to concentration of power over decision making and influence. We consider that concentrated or large-scale ownership is not a necessary condition for realising economies of scale, and the evidence identifies no specific advantages associated with concentration of ownership.

Limiting the amount of land an individual can own has been proposed as a way of addressing scale and concentration of ownership. International review suggests relatively few countries impose limits on the maximum size of land holding, although land ceilings are a recognised policy option in UN FAO Guidelines. Where restrictions exist, they tend to be specific to agricultural land, or are applied at local level as part of planning control mechanisms.

We consider that the scale of a land holding is not in itself the most significant factor, though it amplifies the underlying issues. Rather the core issue is the concentration of power, as experienced by relevant communities, businesses or individuals, evident in the balance of power and participation in local decision making and access to opportunities. While scale can amplify both positive and negative effects, the concentration of power and participation can arise at any scale of ownership. It can also arise in any type or sector of land ownership and is not restricted to private ownership.

For this reason we do not advocate a simple area limit on the amount of land an individual can own, as we do not believe this would address the underlying issues. Instead we conclude that interventions to address the adverse effects of concentrated market power are required, as well as systemic change to diversify the pattern of ownership.

The evidence demonstrates a pattern of market and social power associated with land ownership that is consistent with characteristics of monopoly power in other economic sectors. As in other sectors, it would be in the public interest to put in place controls to manage the risks associated with excessively concentrated power and prevent monopoly positions emerging.

The research has identified strong evidence that harmful land monopolies exist and appear to be causing significant and long-term detriment to the communities affected. Our recommendations focus on the core issue of concentration of power, rather than scale per se. However, given that large scale holdings amplify the risks of concentrated ownership, scale is an appropriate criteria in targeting interventions in a proportionate way, though other risk factors will also be appropriate criteria.

2.4 The pattern of land ownership

Ministers want to increase the diversity of land ownership in Scotland. We conclude a more diverse pattern of ownership across all sectors, including community, public, NGO and more diverse private ownership, is likely to reduce the disadvantages

identified and increase the opportunities. The current pattern of scale and concentration, combined with a relatively low turnover in transactions, mean that without proactive intervention, the pattern of ownership is unlikely to change significantly and opportunities for most people to acquire land will remain limited.

In particular, we conclude there is a need for a significant and proactive focus on stimulating a more diverse private sector, alongside other models of community and public interest ownership, and a more dynamic ability for communities, businesses and individuals to access the land they need.

An expansion of community ownership is a key part of a more diverse pattern of ownership, particularly in relation to land around communities, where the risks of monopoly power are especially evident. Community ownership should be a much more normal option for communities across Scotland and our recommendations of November 2018 on community ownership set out the measures we think are necessary to make the shift to it being a common part of the overall pattern of land ownership.

2.5 Parallels in other countries and sectors

Review of international experience demonstrates that it is common practice for countries to have mechanisms in place to manage who can own what land, to meet a varied range of policy objectives. We also identify parallel regulatory approaches in other sectors of the economy that address similar risks associated with monopoly power.

In particular, it appears a common practice internationally to implement some form of approval process at point of acquisition to ensure that the aspirations of prospective purchasers do not have negative impacts on land use policy and the public interest. While the circumstances in international examples vary widely, they nonetheless offer experience that is relevant to the Scottish context.

The issues of market power identified in the evidence are addressed in the wider economy through established regulatory approaches, in particular through the work of the Competition and Markets Authority which aims to make markets work well for consumers, businesses and the economy. We consider that the same principles which are normal in other sectors should underpin the regulation of market power in land ownership.

3. Recommendations

Our recommendations set out the principles of the changes we propose are needed. We anticipate significant engagement with stakeholders and Scottish Government in considering and further developing the proposed operation of these.

We recommend the following changes to help deliver Principle 1 of the Land Rights and Responsibilities Statement: *‘The overall framework of land rights, responsibilities and public policies should promote, fulfil and respect relevant human rights in relation to land, contribute to public interest and wellbeing,*

and balance public and private interests. The framework should support sustainable economic development, protect and enhance the environment, help achieve social justice and build a fairer society’.

Our recommendations are set out in three groups.

Recommendations 1.1- 1.4 propose statutory mechanisms aimed at addressing the key risks and adverse consequences of concentrated ownership, putting in place the mechanisms that are currently lacking, enabling action to reduce and avoid these consequences.

Recommendations 2.1 and 2.2 propose further targeted policy work to develop and implement systemic change that will diversify the pattern of ownership and improve the accountability of land use change.

Given the immediacy of the issues identified in our evidence and the need for action, recommendations 3.1 and 3.2 propose action that can be taken now through leadership and collaboration with the land-owning sector. We recognise that these actions rely on voluntary collaboration, but notwithstanding the statutory provisions proposed, there is significant and positive action that can be taken by land owners to address the issues and risks identified in the evidence report.

Recommendations for statutory change

Recommendation 1.1 Public interest test for significant land transfer

We recommend the Scottish Government introduce a power to apply a public interest test and approval mechanism at the point of significant land transfer.

Purpose: We recommend a statutory power to apply a public interest test in significant land transfers to prevent the establishment or continuation of a situation in which excessively concentrated market power would act against the public interest. This proposal draws on parallels with established practice in regulating corporate acquisitions and mergers.

Operation: We propose the public interest test should be triggered in defined circumstances related to the potential impacts. Development of the criteria should consider scale, value, location, proposed land use and fragility of community. In order to be accountable and connect to local priorities and circumstances, we propose the power to apply the test should sit with local authorities, with a potential appeal to Ministers.

Such a mechanism should be capable of:

- a) discretion not to apply the public interest test if there is no case for doing so; and if it is applied:
- b) determining whether a transfer should proceed as proposed or in a modified form;
- c) placing obligations on the parties involved in transfer to secure delivery of the public interest and mitigate risks of excessively concentrated market power.

Consideration of the test should be informed by a transparent assessment of the evidence against defined public interest criteria, with the reasons for the decision clearly stated.

Approval mechanisms operate in many countries and can be tailored to meet the specific public interest criteria required. We do not envisage this measure being applicable to most land transactions but propose a discretionary power targeted to circumstances where the risks to the public interest are significant.

Recommendation 1.2 Requirement for a management plan

We recommend the Scottish Government introduce a requirement for landholdings above a defined scale threshold to prepare and engage on a management plan incorporating community engagement.

Purpose: It is a reasonable expectation that any landholding operating at scale should prepare and engage on a management plan that demonstrates delivery against the Land Rights and Responsibilities Statement and connects with local priorities, opportunities and public policy. This provides a necessary basis for transparency of objectives, collaboration, broadening the benefits of land use, and mitigating some of the risks associated with concentration of ownership.

Operation: Large scale ownership amplifies the risks associated with concentrated power. Therefore while smaller holdings should consider this a matter of good practice, we recommend that landholdings over a defined scale threshold should be required to prepare and engage on a management plan. Determining the appropriate threshold requires careful consideration in order to ensure proportionality. For example, we do not envisage it would include most family farm holdings, but rather would be set in the region of 1,000-3,000 Ha.

The plans should set out how the management of the landholding supports the principles of the Land Rights and Responsibilities Statement and contributes to relevant land use, economic and community development priorities and opportunities as expressed in community plans, regional and national policy. The plans should include a community engagement plan setting out how community engagement will be embedded in line with the Scottish Government's Guidance on Engaging Communities in Decisions Relating to Land. The Scottish Land Commission has recently published a practice guide on preparing a community engagement plan.

We propose that the approach to enforcement should be based on a range of cross compliance mechanisms, such as being a pre-requisite for access to regulatory consents and fiscal support.

Recommendation 1.3 Statutory Land Rights and Responsibilities Review

We recommend the Scottish Government introduce a statutory review underpinned by Codes of Practice to ensure accountability in the operation of

landholdings in relation to the principles of Land Rights and Responsibilities Statement.

Purpose: We find clear evidence of communities affected by the adverse consequences of concentrated power and a lack of effective ways to address this. While good practice approaches should reduce the risks, we identify a need for a mechanism to address adverse impacts where normal responsible management approaches are not effective.

We therefore recommend the introduction of a statutory land rights and responsibilities review to provide accountability in the operation of land holdings, particularly targeted to addressing risks of concentrated power, to ensure they operate in a way that supports the public interest.

Operation: We propose the review should be framed in terms of the principles of the Land Rights and Responsibilities Statement and be triggered in defined circumstances. To provide clarity of expectations and a trigger mechanism we propose the review should be underpinned by statutory Codes of Practice on relevant issues, on the model of the Tenant Farming Commissioner Codes of Practice. The principle purpose of the Codes is to ensure a proactive management approach that identifies and mitigates the risks of a monopoly position and facilitates opportunities to deliver against the Land Rights and Responsibilities principles.

Like the Tenant Farming Commissioner Codes of Practice, there should be the ability for defined parties to allege potential breaches of the Codes and the ability to instigate and report publicly on a review. The purpose of the review should be to investigate the relevant issues and identify remedial actions which could include:

- requirement to prepare a management plan and community engagement plan if not already covered by recommendation 1.2 (this enables a management plan requirement to be targeted to relevant situations that do not necessarily meet the scale threshold proposed in 1.2);
- changes in management practice or governance;

The emphasis of the Review should be on taking action to address the risks and adverse effects. This is likely to be through changes in management approach or changes to diversify the governance. It is in part intended to stimulate a more dynamic approach to making land available to meet community needs and ambitions. Where a change in ownership of some land is an appropriate solution, the review is intended to prompt consideration of negotiated sales or application of existing community rights to buy and compulsory purchase mechanisms.

The proposed review mechanism does not itself create any new powers to affect a change in ownership, but is intended to provide a prompt for effective use of existing powers such as community right to buy, compulsory purchase or sales powers where relevant. We anticipate the evidence of both the Review itself and subsequent action would be a material factor in considering the use of these powers.

Recommendation 1.4 Community Right to Buy Land to Further Sustainable Development

We recommend the Scottish Government take into account the effects of concentrated ownership in the implementation of the forthcoming Community Right to Buy Land to Further Sustainable Development.

The emphasis of these recommendations is on reducing the risks associated with concentrated ownership and diversifying the pattern of ownership. Where negotiated approaches and other mechanisms are not effective, the community right to buy land to further sustainable development (Part 5 of the Land Reform (Scotland) Act 2016) is an important provision that enables a community to take action in appropriate circumstances.

In implementing this right to buy, we recommend that consideration of the sustainable development conditions should be able to take into account the effects of concentration of ownership where this is a relevant factor, and the extent to which compliance with the Land Rights and Responsibilities Statement is demonstrated, as evidenced in part through the management plans and reviews proposed above.

Recommendations for systemic change

Recommendation 2.1 Promoting more diverse private ownership

We recommend that the Scottish Land Commission review and investigate policy options to encourage a more diverse pattern of private ownership and investment.

Purpose: The recommendations above will address the pressing risks of concentrated land ownership and go some way to changing the pattern of ownership. But a long-term consistent policy approach will be required to encourage a more diverse pattern of ownership and investment.

The concentrated influence over large scale land holdings, combined with a relatively low turnover of land coming to the market, means opportunities for people to acquire land are often relatively few. This constrains opportunity and means the pattern of ownership is unlikely to change significantly without proactive intervention.

Many of the responses submitted to the call for evidence demonstrated the transformative effect that private capital can have on rural communities, supporting employment and physical regeneration that may not otherwise exist. While it is sometimes assumed that large-scale land ownership is required to attract such investment, this should not be assumed to be the only way of securing private capital.

For this reason, while an increase in community control will be part of the solution to many of the issues identified, it can only be part of the solution. It is clear from the responses to the call for evidence that there is also an appetite for greater individual land ownership in rural communities.

Operation: The Scottish Land Commission intends to engage stakeholders in review of the options that would stimulate greater diversity in private ownership. This should

consider policy interventions that would stimulate wider availability of smaller scale land holdings.

This review will draw together the next stages of several workstreams already identified by the Commission. We will consider tax, including land value taxation, and fiscal policy (for example land management support mechanisms) as key levers influencing the pattern of ownership, as well as potential interventions associated with point of sale or purchase, including for example options for conditions or restrictions, and rights of pre-emption. We will also consider the role of publicly owned land, and particularly transactions of publicly owned land, as another key opportunity to promote a more diverse pattern of ownership.

Recommendation 2.2 Engagement in land use change

We recommend the Scottish Government develop and implement more robust mechanisms to ensure local democratic influence and benefit from land use change.

Purpose: Land use change is inherent in a dynamic economy making productive use of land. An underlying theme in many issues identified through the call for evidence appears to be the lack of effective community participation in decisions about large-scale land-use change and the consequent failure of communities to benefit as a result of these decisions. Responsibility for effective engagement lies in part with individual landowners and communities. But the evidence indicates a discomfort with and lack of participation in strategic land use change decisions at a scale beyond individual land holdings.

In the immediate future there will continue to be strong drivers of land use change including climate change, changes in land management support and population retention/growth. We recommend developing more robust mechanisms for engaging land managers and communities in land use change, choices and priorities at a local or regional scale.

This issue is not solely related to scale and concentration in ownership, but it is integral to the lack of power and participation that communities feel is a result of the current pattern of ownership and decision-making. The sense of being unable to influence land use change is compounded in some cases by the feeling that communities do not benefit from some of the substantial change they see going on around them and are unable to capitalise on the opportunities.

Operation: The Land Use Strategy sets out a vision, objectives, policies and proposals for taking a joined-up approach to land use decisions, including a proposal for more regional/local frameworks to inform decision making. The Guidance on Engaging Communities in Decisions Relating to Land also sets out clear expectations about involvement in decisions with significant impact, including land use change. Together these provide a framework to develop practical ways to enhance community participation and accountability.

We propose the Scottish Land Commission works with Scottish Government and stakeholders to develop and pilot more robust mechanisms for engaging land

managers and communities in land use planning at a local or regional scale. Drawing on parallels in the development planning sector, we propose this should include working with local authorities to pilot place-based land use planning and engagement.

Recommendations for practice that can be implemented now

Recommendation 3.1 Land Rights and Responsibilities Reviews

We recommend land owners review the operation and governance of their land holdings to optimise opportunities using the principles of the Land Rights and Responsibilities Framework.

Purpose: We recommend that land owners, particularly of larger-scale land holdings, review their land holdings in order to optimise the potential to support wider community and public interest development, delivering the Land Rights and Responsibilities principles and mitigating the potential risks of concentrated ownership. We see this as a matter of good practice in responsible business conduct.

Operation: The principles of the Land Rights and Responsibilities Statement provide an effective framework for reviewing the opportunities and risks in relation to the public interest at an individual landholding level. We recommend a review should include consideration of collaborative and joint venture options, options for lease and disposals through sale or transfer of parts of the land holding and proactive negotiations with communities about opportunities for ownership. Consideration of governance and controlling interests should seek to ensure effective local accountability and consideration of the public interest.

Recommendation 3.2 Land Rights and Responsibilities Good Practice

We recommend the Scottish Land Commission, with the land ownership sector, implement in the immediate future a programme of land rights and responsibilities good practice.

Purpose: Greater non-statutory leadership is required in all land ownership sectors to implement a programme of good practice in land rights and responsibilities that establishes a common understanding of what is expected and addresses issues on the ground.

Operation: We recommend the Scottish Land Commission work with the Scottish Government and sector organisations including Scottish Land and Estates, Community Land Scotland and Environmental NGOs to implement a joint programme. Such a programme should seek to improve practical implementation of the principles of the Land Rights and Responsibilities Statement building on work started to date on promotion, guidance, protocols and action.

Where there is evidence of significant issues on specific land holdings, we propose the Scottish Land Commission should convene the necessary bodies with the land owner, to review and develop an action plan to address the issues.

4. Next Steps

Following Ministers consideration of the recommendations we propose to engage stakeholders and the public widely in both the findings of the evidence, as well as the recommendations. If Ministers agree the principles of the recommendations we anticipate significant engagement to develop them further in conjunction with Scottish Government. We also propose to engage widely on the findings of the evidence and its implications for land owners and managers, communities and others, through stakeholder events and our programme of public meetings.