



SCOTTISH LAND COMMISSION
COIMISEAN FEARAINN NA H-ALBA

Meeting of the Commissioners

Tuesday 6th October 2020, 9:30am
By Video-Conference

A G E N D A

Item no	Item	Paper no	Action	Lead
	Welcome/Apologies			Andrew Thin
	Declarations of Interest			Andrew Thin
1.	Minutes of previous meeting 1 st September 2020	1	For agreement	Andrew Thin
2.	Concentrated land ownership: legislative proposals <i>Draft Proposals (confidential pending forthcoming publication)</i>	2 <i>Annex A</i>	For agreement	James MacKessack-Leitch
3.	Diversifying land ownership workstream: progress and priorities	3	For agreement	Hamish Trench/Shona Glenn
4.	Review of potential tax reforms: priorities and next steps	4	For agreement	Shona Glenn
5.	Update on Programme for Government	-	For information	Hamish Trench
6.	AOB - Communications campaign plans - November/December board meetings - Board meeting with Cabinet Secretary 3 November	-		Posy MacRae Hamish Trench Andrew Thin

Action number	Date Raised	Context
20090101	01/09/2020	Strategic Plan / Programme of Work Regional Land Use
20090102	01/09/2020	Partnerships Regional Land Use
20090103	01/09/2020	Partnerships
20090104	01/09/2020	3-Year Review Summary
20090105	01/09/2020	Commissioners' Meetings

Actions from Board Meetings - Update of actions to date

Action Detail	Responsible	Date Required
Hamish to finalise strategic plan and programme of work in line with discussion. Andrew to sign off final documents for submission to Ministers.	HT	
Harriet and Megan to arrange a phone call	HD / MM	
Harriet and Hamish to complete the report for agreement by Andrew and Sally	HT / HD	
Hamish to consider whether further information on follow-up action should be included.	HT	
Hamish to send Commissioners updated plan for 2020 board meetings and dates for 2021 meetings.	HT	

Date Closed	Comments
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The Strategic Plan and Programme of Work were agreed and laid in Parliament 28th September 2020

Phone call discussion was held on 4th September
Report agreed on 14th September and submitted to
Scottish Government

Further detail on status of recommendation
implementation not included, summary published
7th September

Updated 2020 plan has been shared and AOB item
on agenda for 6th October. 2021 dates have been
agreed and calendar invites sent



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Commissioners' Meeting 6th October 2020

PAPER 2

ADDRESSING CONCENTRATED LANDOWNERSHIP – STATUTORY PROPOSALS

Purpose: To approve, for publication, proposals for statutory mechanisms to address concentrated landownership.

Context

In 2019 the Land Commission published research into the issues associated with the scale and concentration of landownership in Scotland and made recommendations for reform based upon this evidence to Scottish Ministers. The recommendations included proposals for three new statutory mechanisms:

- a Public Interest Test for significant land transfers/acquisitions;
- the requirement for significant land holdings to engage on, and publish, a Governance and Management Plan; and
- a Land Rights and Responsibilities Review process, to take effect where there is evidence of adverse impacts.

The Cabinet Secretary responded by asking the Commission to work with her officials and stakeholders to develop the recommendations further. Following a series of subsequent engagement workshops on the report and recommendations, the Commission has developed proposals setting out the case for legislative reform and providing further details about how the new mechanisms could operate.

The Board had a substantial discussion on the outline proposals in May. In the meantime we have sought legal opinion and further developed the proposals. Commissioners are now asked to consider and approve the proposals for publication.

The proposals seek to address the risks of concentrated land ownership in ways that are considered normal in other developed countries and sectors of the economy.

In developing these proposals it became clear that merging the requirement for a Governance and Management Plan into the Land Rights and Responsibilities Review process is a logical and proportionate approach.

The proposals are “in principle” proposals, and as will be apparent, there is much further work required to fully develop the proposals. This paper should therefore be read as a starting point to inform consideration of the options by Parliament and others.

Legal Principles

Commissioners are advised to consider the key legal principles inherent in the proposals. As the proposals would affect property rights – not least those protected under the European Convention of Human Rights (ECHR) – it is vital that proposals are, at this stage, in principle, serving a legitimate public interest purpose, proportionate to the need identified, and lawful inasmuch as they can be clearly understood and fairly applied.

Whether the use of a particular proposed mechanism is in the “public interest” will always depend on the particular circumstances. Prevailing legal policy and practice strongly opposes a fixed definition of the “public interest” for this reason. A fixed definition has the potential to cause unintended consequences, and would potentially require continual amendment.

It is accepted that, with sufficient clarity and guidance, the “public interest” is best determined at the point of need by an appropriately accountable actor, such as Scottish Ministers, local authorities, or a public agency.

While ECHR does protect property rights, it is also explicit that these rights are limited, and can be subordinate to the public interest under certain circumstances. One key point that is clear, is that there is no right to purchase, acquire, inherit, or otherwise gain control over land.

The critical question for decision makers is how to balance the property rights of the individual, with the wider public interest. This balance generally falls on four key questions that must be satisfied:

- whether there is a legitimate aim sufficiently important to justify a restriction of rights;
- whether the measure adopted is rationally connected to that aim;
- whether the aim could have been achieved by less intrusive means, and;
- whether, having regard to these matters and to the severity of the consequences, a fair balance has been struck between the rights of the individual and the public interest.

As with determining the public interest, these questions can only really be answered in any detail on a case-by-case basis.

However, in broad terms the case for legitimacy, adopting the specific proposed measures, and the case against a less intrusive approach, has been set out in our proposals.

Proposals

The two specific proposals are for a Land Rights and Responsibilities Review (LRRR), and a Public Interest Test on Transfer (PITT). (As noted above the proposal for a separate Governance and Management Plan has been integrated into the Land Rights and Responsibilities Review proposal). The proposals can be found in appendix 1.

The LRRR broadly parallels the existing mechanism of the Tenant Farming Commissioner, whereby codes of practice and guidance articulate expected behaviours and provide clarity for all interested parties. These codes act as a baseline for behaviour and are the measure against which landowners actions can be held accountable.

We propose that when a review is necessary, a thorough investigation will determine the facts, and make recommendations to address the issue at hand and prevent further occurrences. As such the outcomes from a review could range from recommendations on how to improve operations, to compulsory sale of assets.

The PITT broadly parallels the powers that the Competition and Markets Authority (CMA) exercises when investigating, and addressing, corporate mergers and acquisitions. This is explicitly to protect the public interest from the well-established corrosive effects of monopoly, or concentrated, power.

The PITT focuses on the transfer of controlling interest in land by whatever means. However, we expect the vast majority of land transfers will be outwith the scope of the PITT. Whether any given transfer is within scope will be a matter for case-by-case assessment as will the outcomes, should the full test be triggered.

Outcomes could again parallel those of the CMA, ranging from approval, approval with conditions, or refusal.

Next Steps

We intend to publish the outline proposals to inform Parliamentary and public consideration of the options for legislative reform. The paper is intended to provide a stimulus for discussion that will help to open up some of the important questions that will need to be addressed by any subsequent legislation rather than a definitive outline of how any new powers might work.

After publication we anticipate that the Land Commission will continue to play an active role in developing the proposals and supporting the development of subsequent legislation; however the onus for leading this work will rest with Parliament and the Scottish Government.

Commissioners are asked to consider and approve the proposals with particular regard to:

- **the key legal principles;**
- **the effectiveness of the proposals in meeting the intent of the Commission's 2019 recommendations.**

James MacKessack-Leitch & Shona Glenn
October 2020



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Commissioners' Meeting 6th October 2020

PAPER 3

DIVERSIFYING THE PATTERN OF LAND OWNERSHIP – PROGRESS AND NEXT STEPS

Purpose: To update Commissioners on our work relating to the diversification of landownership

Background

Following discussion at the previous board meeting this paper provides a summary of progress on the workstream for “diversifying the pattern of land ownership” and considers the priorities for the next steps.

Our Business Plan for 2020/21 sets out our commitments to a) support Scottish Government in developing legislative options to address the risks and adverse consequences of concentrated land ownership; and b) support non-statutory action through land ownership sectors.

In 2019 we made a series of recommendations to Scottish Government. These were accepted in principle and we were asked to continue to work with officials to develop them further.

Annex A provides a summary of progress against the recommendations made.

Progress to Date

The separate paper on the 6th October meeting agenda takes forward work to show how the proposed legislative measures could operate. These are the proposed public interest test, and statutory review mechanism (incorporating the requirement for a management plan).

We have also made good progress in supporting implementation of the measures for practice, through our Land Rights and Responsibilities Protocols, good practice programme and self-assessment pilots. These measures are intended to address potential adverse effects and promote voluntary routes to more diverse ownership.

The area where further work is required is on other policy interventions to stimulate a more diverse pattern of ownership. We are progressing work on two key components of this. Firstly we see potential tax reforms as a priority for consideration, and a separate paper sets out our proposed next steps having completed the tax scoping report. This sets out our proposed priorities in delivering on the commitment in our

new Programme of Work to: *Conduct a review of tax and fiscal reforms to support a more diverse and productive pattern of land ownership.*

Secondly, we commissioned advice on potential interventions around point of sale and intend to develop this work into a public discussion paper and series of workshops. There is a potentially wide range of options to be considered, including the way sales are structured and lotted, the use of rights of pre-emption, and market mechanisms to make smaller land holdings available. This work also connects to consideration of different governance models that widen the benefits of land ownership, including more diverse private ownership.

Future priorities

There are five areas we intend to address in the next phase of work:

- **Legislative Proposals** – building on the initial proposals, and the discussion generated, we intend to support the development of the detail of the legislative mechanisms as necessary.
- **Legal Underpinning of Land Rights** – this work will examine the legal framework around land rights. Essentially land ownership constitutes the exclusive ownership of a bundle of legal rights, better understanding how this works and how this interacts with human rights could help unlock new ways of diversifying land rights, and therefore ownership.
- **Policy and Practice Reforms** – taking forward the consideration of options for diversification – particularly around the point of sale – this work will involve extensive engagement, but aims to fill the gap between voluntary good practice and statutory interventions.
- **Alternative Models of Governance and Finance** – drawing on both the international research and community funding work carried out previously, this aims at developing new ownership and funding models (including Common Good) that would better support the diversification of land ownership as well as being attractive to investment and financially robust. This work would partly address the requests made of the Land Commission in the 2020/21 Programme for Government.
- **Supporting Community Land Ownership Recommendations** – providing a supporting and advisory role to the Scottish Government working group implementing the recommendations from our 2018 review of community ownership mechanisms.

The Commissioners are asked to consider progress and discuss the priorities for the next steps.

Hamish Trench and Shona Glenn



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PAPER 3 – Annex A

DIVERSIFYING THE PATTERN OF LAND OWNERSHIP – PROGRESS AND NEXT STEPS

Progress against 2019 recommendations	
Recommendation	Progress
1.1 We recommend the Scottish Government introduce a power to apply a public interest test and approval mechanism at the point of significant land transfer.	Further SLC work setting out more information on the rationale and how these three proposals could operate will be published following the October board meeting.
1.2 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.	Scottish Government had intended to lead stakeholder engagement on these proposals, but this was put back due to Covid-19 response. Our proposals will be published as a basis for discussion to inform consideration of options by the next Parliament.
1.2 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.	
1.4 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.	Right to buy now in operation and guidance published by SG.
2.1 We recommend that the Scottish Land Commission review and investigate policy options to encourage a more diverse pattern of private ownership and investment.	SLC commissioned advice on potential options related to point of transaction, proposed next steps to prepare discussion paper and workshops. Tax scoping report completed, next steps to focus on potential tax reforms targeted to support more diverse ownership.
2.2 We recommend the Scottish Government develop and implement more robust	SLC advice on regional land use partnerships addresses a new mechanism to improve more local accountability and influence on land use.

<p>mechanisms to ensure local democratic influence and benefit from land use change.</p>	<p>SG publishing new Land Use Strategy and National Planning Framework in 2021.</p> <p>No further work planned.</p>
<p>3.1 We recommend landowners review the operation and governance of their land holdings to optimise opportunities using the principles of the Land Rights and Responsibilities Framework.</p>	<p>SLC supporting implementation through development of 'self-assessment' with Community Land Scotland, Scottish Land & Estates, Scottish Property Federation. Expect 20 pilots to be completed by end 2020.</p> <p>Expectation that landowners regularly review their holdings included in Protocol on Diversifying Ownership</p>
<p>3.2 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.</p>	<p>SLC published suite of 8 Land Rights and Responsibilities Protocols supported by a programme of good practice training, advice, and casework.</p>



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PAPER 4

TAX WORKSTREAM

Purpose: To agree priorities and next steps for the tax workstream.

Background

A recent scoping study undertaken by Alma Economics explored opportunities to using tax to achieve land reform objectives. Building on this work the Commission has made two specific commitments to tax reform within its 2020-23 Strategic Plan:

- conducting a review of tax and fiscal reforms to support a more diverse and productive pattern of land ownership; and
- advising on opportunities for vacant and derelict land regeneration to deliver recovery and renewal and potential tax reforms to address the risk of a potential new legacy of vacant property

The next steps for this work will be informed by research led by Alma Economics, a specialist economics consultancy with expertise in taxation policy and experience advising with HM Treasury who the Commission appointed in March 2019. The first phase of the research explored the opportunities for using tax to achieve land reform objectives, provided a logical framework within which these opportunities can be assessed and used this to help the Land Commission develop a set of research priorities to take forward in phase two. The research found that tax reforms can be used to support a wide range of goals, including increasing diversity of land ownership, reducing the number of vacant and derelict sites, expanding agricultural tenancies and joint-venture farming and expanding the supply of land for new housing.

Policy Drivers

Two main policy drivers are relevant to this work: the immediate need for policy responses to help mitigate against some of the adverse impacts of Covid; and the longer term need for more systemic change that will help to bring about a more productive and diverse pattern of landownership and use in Scotland.

These drivers have both been recognised recently. Firstly by the Advisory Group on Economic Recovery, which noted that land has an important role to play in Scotland's economy recovery from the COVID-19 crisis. Secondly in the Scottish Government's Programme for Government, in which the Land Commission was invited to provide advice *"on how we can ensure our land is factored in to our economic thinking and to explore new policy levers that could shape land markets in a way that will help us support recovery and build resilience."*

Reforming land and property taxes that shape land use could create short-term fiscal stimulus (via tax reliefs, for example) to support recovery but it can also help boost productivity, redistribute wealth and support more environmentally sustainable patterns of land use, all of which would help put Scotland on a more sustainable long term growth path.

Time Scales and Deliverables

The ultimate goal of this area of work is to bring about a fundamental shift in Scotland's approach to land and property taxation that will help to deliver systemic change by supporting a more diverse and productive pattern of landownership and use. Achieving this will require shifting toward taxing the unproductive and unearned gains from landownership (economic rent) and away from productive activity like work and investment.

While it will be possible to make progress in this direction over the 12-18 months, this is a long-term project that is likely to take several years to complete. In the meantime there is an urgent need for reform to help mitigate both the immediate effects of Covid and the ongoing effects of Scotland's concentrated pattern of landownership.

Within this context we propose that the next phase of our work on tax should focus on:

- developing a series of proposals that could help Scotland to respond effectively to the challenges that Covid has created within property markets;
- investigate options for mitigating the ongoing effects of concentrated landownership in rural Scotland; and
- build consensus around a set of principles to guide longer term reform of Scotland's land and property taxation system and develop a route map setting out what further work will be required to deliver this.

Further detail on what is envisaged under each of these headlines is provided below.

Responding to Covid

The pandemic is already having profound effects on property markets in different ways in different parts of the country.

In urban areas the shift to work working and on-line shopping are expected to cause significant reductions in demand for office and retail space. If left unchecked there is a real risk that this could result in the creation of a new legacy of redundant commercial property. Reform of land and property taxation could help to address this by creating new incentives for landowners to repurpose surplus commercial property for socially beneficial uses and disincentives for allowing land to remain idle.

Options for reform could include the introduction of reliefs from business rates following redevelopment, the removal of reliefs for vacant properties, reductions in corporation tax for developers who bring problematic sites back into use or extending VAT exemptions that already apply to new build homes to retrofitting existing buildings.

Given the urgency for action we propose that the initial focus for any work to investigate these options should be on reforms to non-domestic rates because these are within the competence of the Scottish Parliament with further work on corporation tax being undertaken as and when resources allow. **Commissioners are asked to confirm they are happy with this prioritisation.**

COVID19 has also made remote working the norm for many households and has given rise to a demand in living space. Consequently, we are witnessing a rise in property

searches and relocations from urban areas across the UK to rural communities. This increased pressure on land and property is likely to increase prices in rural communities and could make housing even more unaffordable for local residents. Tax reform could help to mitigate this effect, support the creation of a diverse rural housing market and create the conditions necessary to create productive rural economies.

Undertaking work on this is not currently part of our work plan. This could be brought within scope but this would have resource implications for the rest of the project, which are considered below.

Mitigating Concentrated Land Ownership

Bringing about systemic change in Scotland's pattern of landownership will require long-term and fundamental reform to the tax system. This is likely to take many years to implement but, as our previous research has shown, there are communities in Scotland where more urgent action is required.

Options include reforming agricultural property relief for inheritance tax and introducing a supplement to Land and Buildings Transactions Tax (LBTT) for large estates.

Our work to date has found little evidence in support of reforming agricultural property relief and as reform in this area is currently outwith the competence of Holyrood we do not propose to undertake any further work on this at this time.

It would be possible to undertake further work to investigate the value of a supplement to LBTT but it is unlikely that this could be progressed in parallel with the additional work relating to mitigating the impact of covid on rural housing markets referred to in the previous section. **Commissioners are therefore invited to consider which of these two areas of work should be prioritised.**

A Route Map for Longer Term Reform

Supporting more systemic change in Scotland's approach to land and property taxation is a long-term project that will require a strategic approach to implementation. Developing this approach is a challenging task in its own right that will require explicit effort and will need to be resourced appropriately.

To support this effort we propose to establish an expert working group composed of a range of external stakeholders representing different sectors. We will develop a formal remit for this group over the coming weeks but envisage that this would incorporate:

- helping to develop a high-level set of principles to guide long-term reform;
- providing expertise to inform the development of specific proposals (including insight into how individual proposals might affect behaviour in different sectors and any potential unintended consequences); and
- setting out a route map for long-term reform (we anticipate that this element of the work would link closely to our wider work on land values, which we intend to use to help identify further options for reform).

We propose that this group should be chaired by one of the Land Commissioners.

Proposed Next Steps

With agreement from Commissioner's we propose that the next steps in this workstream would be as follows:

- Establish steering group to guide delivery of the next phase of work and a detailed work plan to guide project delivery;

- Commission Alma Economics to undertake detailed policy appraisal of reforms in relation to non-domestic rates and LBTT outlined above. This will consider the potential effectiveness of the reforms, look at behavioural effects, impacts on receipts, distributional implications, legislative and administrative issues; and
- Publish (Alma Economics) scoping report alongside short paper/blog setting out next steps as outlined above.

It is currently anticipated that we would be in a position to publish the scoping report and outline of next steps around mid-November.

Questions for Discussion

Commissioners are asked to:

- confirm they are happy with the long-term approach set out above;
- agree the priorities and next steps for the workstream; and
- nominate a Commissioner to chair the proposed expert working group.

Kathie Pollard and Shona Glenn