

Legislative proposals to address the impact of Scotland's concentration of land ownership:

Summary of discussion paper from the Scottish Land Commission

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SCOTTISH LAND COMMISSION
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Scotland has an unusually concentrated pattern of land ownership with relatively little public regulation by international comparison. Many people are deeply uncomfortable with the fact that so much of Scotland is owned or controlled by so few, in a pattern that is not necessarily shaped for today's needs.

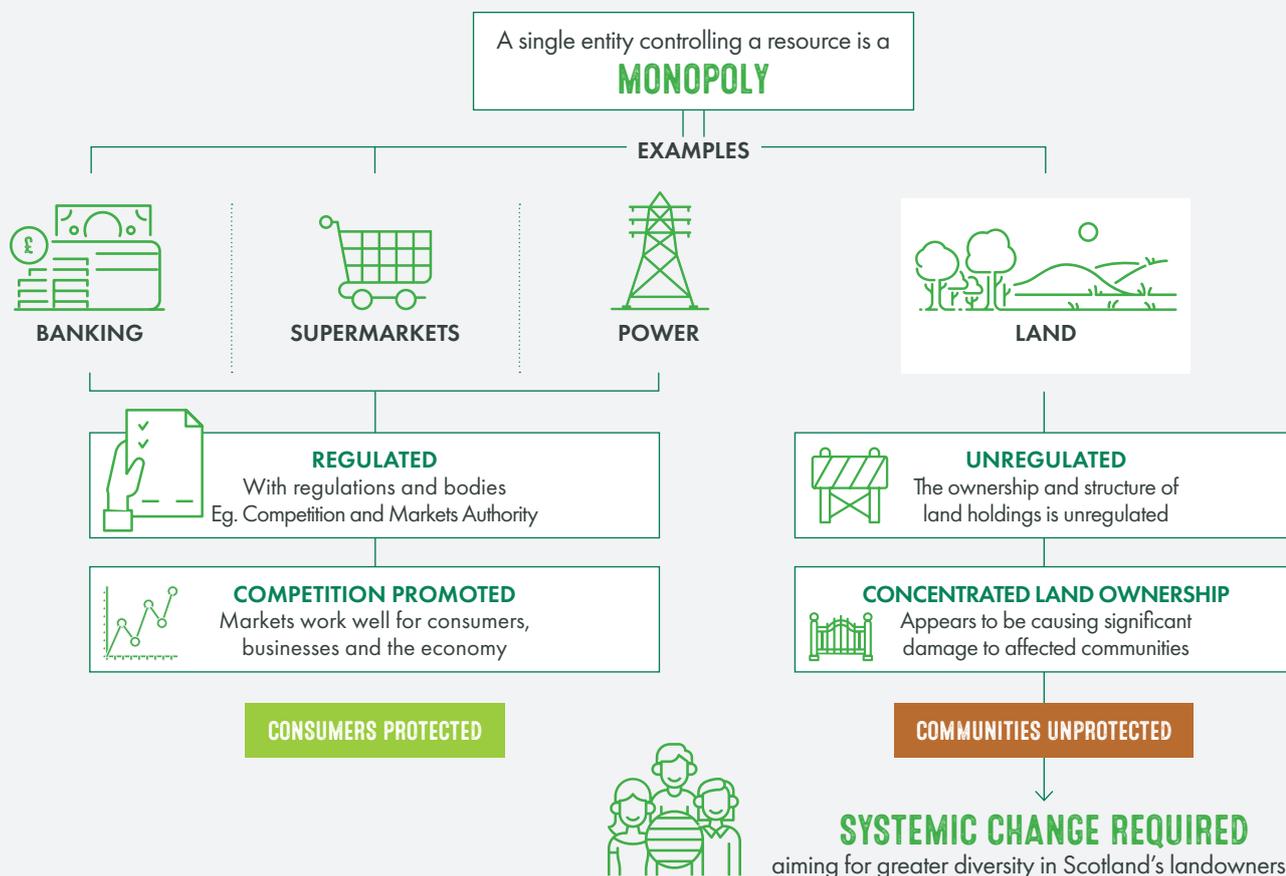
Scottish Ministers asked the Scottish Land Commission to examine the issues associated with large scale and concentrated land ownership in Scotland.

In 2019 the Scottish Land Commission published a **major report** on the issues related to Scotland's concentrated pattern of land ownership. The investigation found that this pattern of ownership can create concentrated power in which an individual or organisation can exert significant 'monopoly' control. This can impact on the social, economic and environmental wellbeing of communities, and runs counter to the needs of a modern and dynamic economy.

We made **recommendations** to Scottish Government for changes in law and policy as well as culture and practice to address the adverse impacts of concentrated land ownership and to protect rural communities from the misuse of this power and to help them achieve their full potential.

CONCENTRATION OF POWER

Most disadvantages of Scotland's landownership relate to concentration of power



Voluntary action can address some of the risks of concentrated land ownership, but it is not enough to tackle the wider problem, and neither is existing land reform legislation. The recommendations included three new changes to law designed to modernise how Scotland's rural land markets work:



Significant land holdings would be required to engage on, and publish, a **Management Plan**



Land Rights and Responsibilities Review process to provide a practical means to review cases where there is evidence of adverse impacts of concentrated ownership



Public Interest Test to test whether significant land acquisitions create risks of excessive power.

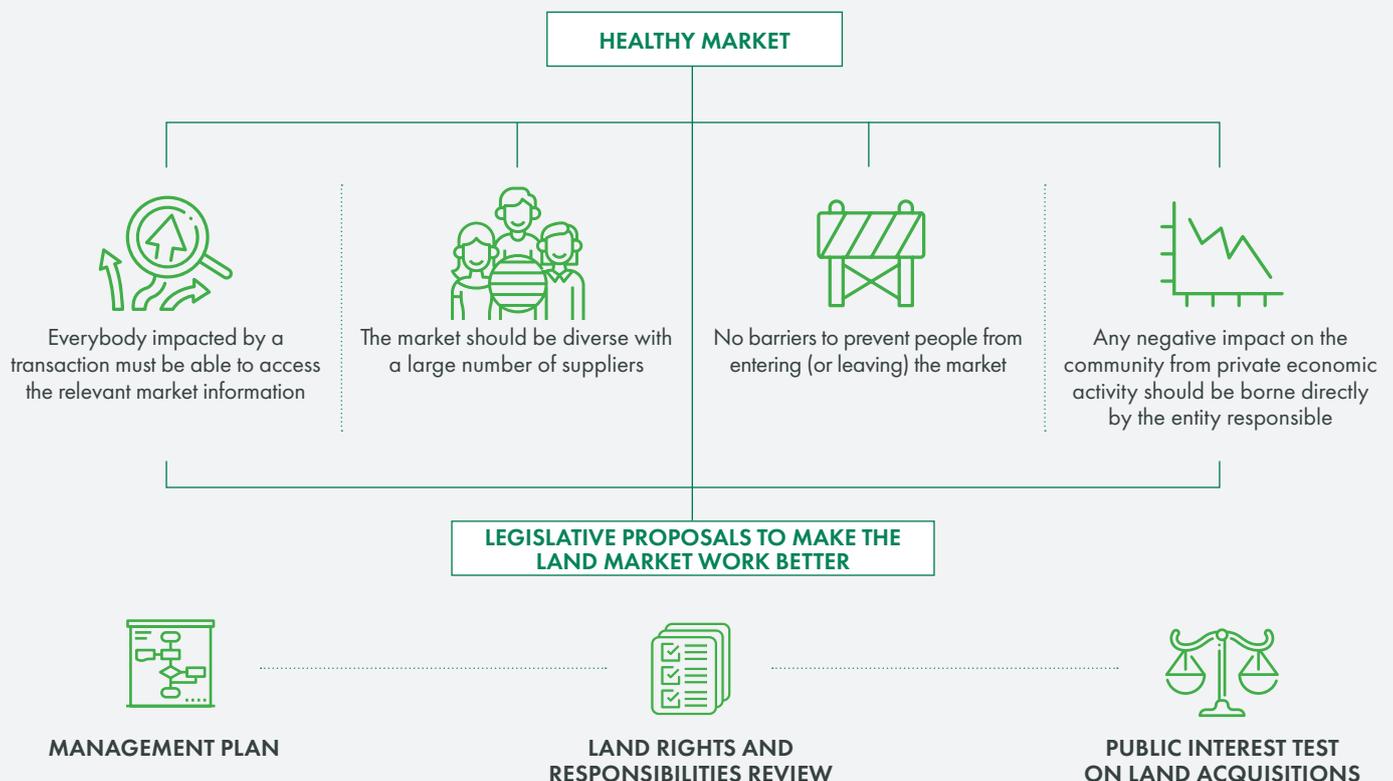
Scotland needs to address the risks of excessive power associated with concentrated land ownership to be able create a dynamic and resilient economy.

The legislative proposals are designed to make Scotland's rural land market work better and help address the issues of concentrated land ownership using ways that are normal in other countries and economic sectors.



For a market to work well a number of criteria need to be in place.

DYNAMIC AND RESILIENT ECONOMY



Legislative Proposals

Management Plans

We propose that land holdings over a defined scale prepare and publicly engage on a management plan. This can help to address some of the risks of concentrated land ownership by moderating the power of ownership by ensuring communities are more involved in influencing and benefitting from land use decisions.

This recommendation should only apply to landholdings above a certain size to ensure that it would not create disproportionate burdens on smaller landholdings.

The plans would be required to set out how the management of the landholding supports the principles of the Land Rights and Responsibilities Statement (LRRS) and contributes to relevant land use, economic and community development priorities, and opportunities as expressed in community plans, regional and national policy.

Enforcement could be based on a range of cross-compliance mechanisms, such as being a pre-requisite for access to regulatory consents and financial support.

The requirement to prepare and engage on management plans could be a standalone law, or it could also be implemented as part of a statutory set of Codes of Practice.

Land Rights and Responsibilities Review

The proposed Land Rights and Responsibilities Review is framed by the principles of Scotland's LRRS and provides a means of intervention to address the adverse impacts of concentrated ownership in a specific land holding.

The review is intended to address situations where there is a need for intervention to resolve matters, without having to either wait for a change in ownership or to expect use of 'Rights to Buy'. A review process should be underpinned by statutory Codes of Practice and include the power to investigate breaches of a Code, report publicly on the findings, and propose appropriate changes.

This builds on the successful experience of the Tenant Farming Commissioner functions and the Land Commission's ongoing work to embed the principles of the LRRS through the use of protocols and guidance.

KEY POINTS OF PROPOSAL

- » Application to conduct a review could be lodged by anyone with a legitimate interest in the landholding and be clearly identified within the relevant code of practice.
- » There has to be a credible allegation that one of the codes of practice has been breached and investigating the alleged breach would be in the public interest.
- » The outcome of the review could conclude with options for further action such as recommendations, a requirement to change operational, management or governance practices or a requirement to dispose of assets.

Public Interest Test on Land Acquisitions

This proposed new legal power would apply a public interest test at the point of transfer, to test whether there is a risk in which excessively concentrated power acts against the public interest.

The proposed test is to address whether a potential acquisition of land could create or perpetuate excessive market power that could harm the social, economic or environmental wellbeing of an area's communities.

The outcome of the test should apply measures to safeguard the public interest if it is found to have a significant impact. This can be done either through preventing an acquisition or applying conditions to it.

The proposal could adopt a definition of 'controlling interest' that parallels that of the Register of Controlling Interests in Land.

It would be important for the circumstances under which a test might be applied to be clearly defined at the outset.

KEY POINTS OF PROPOSAL

» The test is to be applied at the point when control of a landholding transfers from one party to another. All forms of transfer of control could be covered including:

- Sale on the open market
- Private sale
- Inheritance
- Sale of shares in the controlling company resulting in a change of controlling interest or majority shareholder
- Appointment to, or change in, trusteeship
- Creation of an option agreement over land.

» Excluding categories of land and property from the test would help ensure proportionality and predictability.

» A set of scoping criteria would make it possible to quickly and easily determine whether or not an acquisition should be the subject of a test.

» A formal notification process prior to transfer would be introduced as part of the normal legal course, but there is also a need to investigate transfers that have taken place without due transparency.

» The test phase would require the assessing body to consider available evidence, such as adverse consequences often associated with monopolies in other sectors, and make a judgement on whether any measures are necessary to safeguard the public interest.

Considerations

There are some important issues that will need to be considered in taking forward the proposals, such as:

- Who should administer each of the new powers? Powers could sit with Scottish Ministers directly, local authorities or another public body.
- These proposals have been developed with rural Scotland in mind but may have wider relevance to urban Scotland.
- The proposals are consistent with Scottish Minister's commitments under European Court of Human Rights (ECHR), and seek to deliver on the obligation to realise economic, social and cultural rights. Further development of the proposals will need to carefully consider the appropriate balance of rights and compliance with ECHR.
- It will be for Parliament and Government to consider if and how to take these proposals forward. Developing effective legislation would require significant work and stakeholder engagement.

Scotland needs to address the risks of excessive power associated with concentrated land ownership to be able to create a successful and resilient economy. These are targeted proposals to address the adverse impacts of concentrated land ownership using ways that are normal in other countries and economic sectors.

They are part of an ongoing programme of reform, and will not transform the patterns of land ownership on their own. That will require wider reforms, for example on taxation, as well as non-statutory action, all of which the Land Commission is addressing in our current work.

They do offer an effective next step in Scotland's land reform journey and modernising land ownership, ensuring the ways our land markets work keeps pace with society's needs and expectations, supporting a fair and dynamic economy.

Read the full discussion paper '[Legislative proposals to address the impact of Scotland's concentration of land ownership.](#)'

