



SCOTTISH LAND COMMISSION  
COIMISEAN FEARAINN NA H-ALBA

## Land and Human Rights Advisory Forum

### Note of Meeting – 12/04/22

#### General Discussion

##### *General Discussion*

Members noted that the Register of Persons Holding a Controlled Interest in Land (RCI) went live on the 1st of April 2022. This was raised and discussed as an important legal development in land ownership and reform issues.

Members briefly considered some of the implications arising from the Scottish Land Commission (SLC)'s recently published "[Rural Land Market Insights Report](#)," noting that serious consideration should be given to a system of land use planning, not unlike the development planning process, for significant land use change, as it was felt there is currently little oversight of such decisions.

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##### *SLC Market Intervention Proposals*

Members considered in detail practical considerations around SLC's proposals for Land Rights and Responsibilities Reviews, statutory Management Plans, and the Public Interest Test on Transfers (of land).

##### *All mechanisms*

Members believed the issues identified in the "[Rural Land Market Insights Report](#)" further reinforced the need for the mechanisms proposed.

Members considered the need for an appeal process, and suggested the Land Court could be suitable.

Members considered the use of Compulsory Purchase as an option for intervention, recognising that work was underway to consider reforms in this area, and, that although complex, requires prioritisation. Noting concerns around resourcing such an approach members considered that this is distinct from the workings of the mechanism itself. On a practical point, members highlighted the ability, and increasing use, of back-to-back Compulsory Purchase as an option, whereby an acquiring authority immediate upon acquisition transfers property on to a suitable end user (commonly a developer).

Members considered the use of Compulsory Sales as an option for intervention, but considered that while cheaper, this may be riskier than Compulsory Purchase, given the lack of clarity over future owners and intentions.

### *LRRS Reviews*

Members considered the proportionality of application of any Codes of Practice arising from placing the Land Rights and Responsibilities Statement (LRRS) on a statutory footing. Members noted that the LRRS as it stands applies to all landowners, and therefore logically so should any Codes of Practice. In practice it would be up to the reviewing body to determine the merits of taking action on issues raised under the Codes of Practice – there was no consensus on a particular threshold for taking action, but members broadly considered issues raised would need to reach a significant bar.

Members queried the level of statutory weight to be given to the LRRS, noting this will have implications both for the mechanism itself, as well as its relationship with other areas of legislation and policy.

### *Management Plans*

Members considered the benefits of linking plans to existing mechanisms such as Environmental Statements or EIAs.

Members considered that, once approved, an existing management plan should be binding on future acquirers until a new, or suitably updated, plan has been consulted upon and approved.

### *Public Interest Test (PIT) on Transfers*

While members recognised the simplicity of a fixed scale threshold for triggering the PIT, they considered this may not be the most suitable route to address public interest issues. Members broadly agreed a value threshold would provide a more accurate reflection of the importance of land.

However, members did not reach consensus on the need for a lower threshold per se, on the one hand suggesting flexibility on a case-by-case basis would be more appropriate, and, for example, removing the lower limit to the proposed buffer threshold (where holdings of 1,000-10,000ha may be in scope if other criteria are met) would be appropriate.

On the other hand, members considered that existing Community Right to Buy (CRtB) legislation, particularly under Parts 3A and 5, should allow communities to achieve aspirations for land/property that falls below any upper scale or value threshold, outwith the scope of the PIT (implying that holdings of less than 1,000ha would never need be in scope as community aspirations can be met through existing CRtB routes).

Relatedly, it was noted that applications made under CRtB provisions for land above any threshold would have already demonstrated the public interest case for such acquisitions, and that therefore the PIT should be designed to recognise this in such cases.

Members considered the types of transfer in scope, and particularly challenges around tracking the sale of shares in land-owning companies. Recognising that Company Law is reserved, and so outwith the scope of the Scottish Parliament, members queried if there was way to track transfers through LBTT declarations, and whether such an approach could be of practical use.

Members agreed that no one should lose sight of the original intentions of the PIT – which is to discourage the creation or expansion of harmful monopolies that are not in the public interest.

Members considered the implications of the Bute House agreement, where the expectation is that the Public Interest Test is linked to a pre-emption in favour of community buyout. Members considered the main challenge was in identifying suitable community bodies in a timely manner, and that a register may be helpful. Members also suggested that a wider range of community bodies could be considered, such as crofting bodies, and that greater support and advice to prompt proactive community body formation would be helpful.

To facilitate effective use of pre-emption rights, members considered that a reasonable amount of time should be allowed by any pre-transaction notice.

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### *Carbon Rights*

Members considered issues arising from the increase in Natural Capital investment, particularly carbon sequestration, and the implications for land rights and benefits sharing.

Members highlighted concerns over significant uncertainty within the current carbon credits frameworks, which may in turn be hampering the provision of professional advice.

Members felt that there was a need to ensure that the carbon market is regulated, with detailed oversight on carbon credits in particular. To that end, members briefly explored a range of mechanisms – such as the possible introduction of a Carbon Commissioner, with similar power to the current Tenant Farming Commissioner – that would support fair regulation.

Members also raised the possibility that one way of ensuring transparency in the carbon credit/natural capital market could be to include purchasers of carbon credits in the RCI.

Members considered the underpinning property theory of carbon rights, suggesting that as an accession benefit (whereby the ability to exploit a new or previously unrecognised resource – in this case the ability of land to sequester carbon – automatically sits with the landowner), that landowners who had previously never considered the ability of land to sequester carbon valuable – or even known about it – have no justification to monopolise the benefits arising from this new, publicly supported, land use.

Members noted that, as the current frameworks around carbon rights and credits are state sponsored, they are unlikely to constitute property, and thus would not engage property rights. Viewing carbon matters in this light is more helpful than through a property lens, and likely to support more practical regulation, support, and policy solutions. However, members noted that retrospective action may still engage human rights.

Members queried whether tax mechanisms could help, in particular the use of tax in securing public benefit from rising land values.

The forum discussed the recently published Community Land Scotland paper “[Green Finance, land reform and a just transition to net zero](#)”, in particular issues surrounding the

stacking of public and private funding presenting an issue for communities attempting to purchase land.

Members considered the economic, social, and cultural rights implications of land use change, particularly the cumulative effects, and the locking in of land use, which could arise over time. Better alignment of grants/subsidies combined with democratic land use planning and strengthening the remit and powers of Regional Land Use Partnerships (RLUPs) could help avoid issues arising.

In achieving a fair balance of benefits, members agreed there would have to be some trial and error, noting that experience from the renewables sector would be instructive. Members also suggested that assessing benefits through a net value approach may help illustrate the true value of benefits to landowners, communities, and the wider public.

Members emphasised that the importance of a just transition is not forgotten – that that principle is both a national and a global one which, along with human rights, should always be at the heart of the Forum's work, as well as land reform policy more generally.