

**Written submission from Dr Frankie McCarthy, University of Glasgow
Land Reform (Scotland) Bill**

General Comments

The structure of the Bill as a whole lacks coherence at present. The Policy Memorandum states one of the objectives of the Bill as being:¹

the Scottish Government's vision...for a stronger relationship between the people of Scotland and the land of Scotland...through a democratically accountable and transparent system of land rights.

Transparency requires the legislation to be accessible and comprehensible to non-specialists. This is especially important in relation to the powers given to community bodies in Part 5. It seems unlikely that these powers will be utilised as frequently or to the maximum effect they could be if community bodies are unable to understand what is required of them without the help (and expense) of a lawyer.

Further, detailed examples of the confusing structure of the Bill and the lack of precision in key terms can be found in the written evidence submitted by my colleague, Dr Jill Robbie.

I would urge the committee to consider significant amendment to the structure and wording of the Bill in order to make it more accessible to the public.

Part 1 – Land Rights and Responsibilities Statement

I support the creation of a Land Rights and Responsibilities Statement to provide a clear and accessible foundation for future legislation and policymaking on land reform. I agree in principle that the Statement should be reviewed every five years. However, given the significance of the Statement, and the desire for transparency and accountability in relation to land ownership and use, I do not consider it appropriate for the Statement simply to be created by Ministers and laid before Parliament. The Statement should be created in legislation, in order to benefit from the full scrutiny of the legislative process.

The Policy Memorandum indicates that the Ministers “would intend to consult”² the public on the drafting of any LRRS. The Bill should be amended to include a requirement that such consultation take place before the drafting of any LRRS to ensure transparency and accountability in the process.

Part 2 – The Scottish Land Commission

I support the establishment of the Scottish Land Commission (“the Commission”).

1 Land Reform (Scotland) Bill, Policy Memorandum (SP Bill 76-PM), para 4.

2 Land Reform (Scotland) Bill, Policy Memorandum (SP Bill 76-PM), para 43.

I agree with the detailed written evidence submitted by my colleague Dr Robbie under this heading, in particular to the effect that:

- The Bill should be amended to provide that the Strategic Plan must be based in the principles of the LRRS, and the Plan should be reviewed every five years following on the review of the LRRS;
- Section 9(1)(a) should be amended to include a subparagraph (vii) land management, and a further subsection 9(1)(c) should be added to the effect that the Ministers must have regard to the desirability of the Commission (taken as a whole) hailing from or having significant connections with diverse areas of Scotland.
- The list of proposed Commissioners should be submitted to the Rural Affairs, Climate Change and Environment Committee for approval, and that Committee should have a veto in respect of the appointment of any individual Commissioner.
- Two Tenant Farmer Commissioners should be appointed, subject to the jurisdiction of the Land Court to resolve any deadlock between them.

Part 3 – Information about Control of Land

Section 35(1) as drafted is incredibly broad. The section seems to have been inspired in some way by the original proposal from the LRRG to limit ownership of land in Scotland to legal entities registered in the EU. The Policy Memorandum makes clear that this proposal was considered unworkable,³ but does not go on to explain the type of regulation that Ministers may wish to make under this section instead, or how it relates to the priorities and concerns identified by respondents to the earlier consultation.⁴ I would suggest that the Bill be amended to include greater specification as to the ambit of any regulations to be made under this section.

Part 4 – Engaging Communities in Decisions Relating to Land

I support the proposals in this part. I agree with the comments in the written evidence of Dr Robbie seeking greater specification in the Bill of terms such as “sustainable development”, “persons with control over land” and “community engagement”.

Part 5 – Right to Buy Land to Further Sustainable Development

I support the introduction of a community right to buy land to further sustainable development.

As noted in the written evidence by Dr Robbie, the provisions allowing for nomination of a third party to hold the land undermine the otherwise strict requirements for community bodies specified in section 42. There are no requirements specified for the third party which raises the question of why there are restrictive rules on what qualifies as a community body for the purpose of Part 5.

3 Land Reform (Scotland) Bill, Policy Memorandum (SP Bill 76-PM), para 101.

4 Land Reform (Scotland) Bill, Policy Memorandum (SP Bill 76-PM), para 102-106

I also agree with Dr Robbie's evidence on the following issues:

- Defining a community by reference to postcode does not take proper account of the range of shared purposes that may in reality define a community wishing to take advantage of these powers. The Bill should be amended to allow for communities to self-define relative to other factors such as culture, language, land use or interest in a particular cause.
- Section 45(2) should be amended to make clear that the right to buy may be *granted* to community bodies by Scottish Ministers. As currently drafted, the section implies that all community bodies already hold this right and are merely seeking consent to exercise it, which is legally incoherent.
- Section 47 should be amended to include a definition of “sustainable development”. In defining the term, recognition should be given to the potential for conflict between the competing policy aims underlying land reform (social justice vs economic development vs environmental protection) and an indication given of the basis on which such conflicts might be resolved.
- Section 47 should be amended to include the requirement that, when assessing applications under Part 5, Scottish Ministers must additionally consider relevant planning documentation including the local development plan, and the LRRS.
- In section 47, the terms “public interest” and “community benefit” should be defined. In particular, it should be made clear if and how there is a difference between them.
- In section 49, there should be guidance on how Ministers are to adjudicate between competing applications for the same piece of land.

Finally, the Bill should contain provision as to enforcement mechanisms should the community fails to fulfil the purposes for which the right to buy application was granted. The enforcement powers conferred on planning authorities in Part VI of the Town & Country Planning (Scotland) Act 1997 as a starting point for legislative provision here.