

**Land reform (Scotland) Bill**  
Response to Stage One Call for Views

**Andy Wightman 11 May 2024**

I have set out my views on the Bill in this paper which incorporates the questions asked by the Committee. Most of my comments relate to Part 1 of the Bill but I have made some comments in relation to Part 2.

## **INTRODUCTION**

I welcome the fact that the Government remains committed to further land reform. However, I do not believe that this bill represents the ambitious next steps that are required and I do not believe this Bill will deliver what its promoters say it will. Some background is instructive here.

Many of the recommendations of the Land Reform Review Group from 2014 remain unfulfilled. A number were committed to but never delivered. These include a commitment to complete the Land Register by 2019 (for public land) and 2024 (for private land). Neither has been achieved. A Scottish Land Information System promised by John Swinney in 2015 and to be completed by 2017 was never delivered. The official Scottish Government target to deliver one million acres of land in community ownership was set and then dropped.

Furthermore, the Bill does not incorporate many of the issues raised in the Government's Consultation, *Land Reform in a Net Zero Scotland*, specifically

1. no public interest test (instead we have a more ineffective transfer test),
2. no strengthening of the Land Rights and Responsibilities Statement,
3. no new conditions on those in receipt of public funding for land based activities,
4. no new land use tenancy,
5. no restrictions on landownership to legal entities registered within EU or UK,
6. no proposals for tax reform.

Overall I do not believe that the Bill will achieve the aims set out in paragraph 8 of the Policy Memorandum. I review them each in turn.

- *to further improve the transparency of land ownership & management in Scotland,*

The only proposal in the Bill designed to achieve this is the community engagement and management plan provisions in Section 1. Much of this is to be achieved through secondary legislation and such measures are restricted to landholdings above 3000 ha. Map 1 appended to this paper illustrates this land which incorporates around 405 landholdings covering 41.5% of Scotland

- *to strengthen the rights of communities in rural areas by giving them greater involvement in decisions about the land on which they live and work,*

Section 1 is focussed on large upland holdings in the less populated parts of Scotland. Few people live here and fewer still live and work on the land in question (a definition that covers estate tenants and employees only) and thus community engagement will be limited. The vast majority of the Scottish population will not have any greater involvement in decisions about land than they do at present.

- *to improve the sustainable development of communities by increasing opportunities for community bodies to purchase land when it comes up for sale.*

Although opportunities may be increased, this will only be at the very margins.

In relation to the Section 2 provisions (late registration under Part 2 of the 2003 Act), their impact will be restricted to the very small amount of land over the 1000 ha threshold that is sold each year, to qualifying transfers covered in the Land Reform (Scotland) Act 2003, under the narrow and extremely onerous terms of the late registration procedures of the 2003 Act, where there is already a qualifying community body in existence, and where it can move quickly in the space of 30 days to take advantage of any opportunities.

In addition, the proposals relate to sales only. In 2021, the Scottish Land Commission recommended that any test to be applied to the transfer of land should cover inheritance, changes in trusteeship, and the sale of shares in companies that own land.<sup>1</sup>

- *to allow Scottish Ministers to consider (before a planned sale) if land being sold in lots could increase the supply of more varied plots of land in a way that might be expected to have a positive impact on the ongoing sustainability of communities in the area.*

In relation to the Section 4 provisions (lotting of large landholdings), the opportunities for communities to acquire land is likely to be just as modest. It will be restricted to land for sale over the statutory threshold (1000 ha), where a lotting decision is made and if there is any community body with the capacity and the finance to acquire any land they need.

In addition, such modest opportunities are restricted to community bodies. Individuals, businesses, community enterprises and other entities are provided with no additional levers to acquire land to help the local economy.

Map 2 appended to this paper illustrates the land covered by the 1000ha threshold.

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<sup>1</sup> Scottish Land Commission 2021 - Legislative proposals to address the impact of Scotland's concentration of land ownership at para 7.2.

## IMPACT

I have analysed the potential impact of these measures by examining qualifying land sales in 2020, 2021 and 2022 and assessing the likelihood of the Bill making any difference had it been law at the time. The average number of sales over the three years was just over 8 properties covering just over 25,000 ha each year. This equates to 0.3% of Scotland's rural land being offered for sale each year. I conclude that it is unlikely to have made any significant or even modest difference for a number of reasons including,

- the community right to buy provisions could already be invoked (the new provisions merely bring land that is not advertised for sale within scope of the CRTB),
- there is no community body in existence,
- the sales were excluded (for example land acquired by Scottish Ministers),
- or the lotting provisions were unlikely to be invoked (or if they were, would have little impact and possibly concentrate the ownership of land even more than at present).

The table below illustrates the likely impact for the three years and the 26 sales of landholdings over 1000ha in extent. There is no impact in 18 of the 26 and a modest likelihood among the remaining 8 with the maximum likelihood assessed at 20% in two cases.

IMPACT of BILL	2020	2021	2022	TOTAL
No Impact	9	3	6	18
Some Impact	4	2	2	8
Total sales >1000ha	13	5	8	26
2020 Some Impact equates to 5, 10, 15 and 20% likelihood across the 4 landholdings				
2021 Some Impact equates to 10 and 20% across the 2 landholdings				
2022 Some Impact equates to 5% and 5% across the 2 landholdings				
Assessments of the sales that took place in each year can be read on my blog <a href="#">here</a> , <a href="#">here</a> and <a href="#">here</a> .				

## OTHER

Some other matters I would like to draw to the attention of the Committee and which are not covered by the questions you ask are as follows.

## **Regulations**

Because this Bill modifies the Land Reform (Scotland) Act 2003, it is not immediately evident how important and far-reaching regulation making powers in Section 1 for example are to be exercised. The Committee should satisfy itself that these powers are subject to sufficient scrutiny by Parliament.

## **Ministerial Powers**

The Bill yet again centralises power in Edinburgh by giving Ministers a wide range of powers to make decisions about land in Dumfries-shire, Aberdeen-shire and Argyll. These decisions are best made by the democratically elected local government in those areas.

Furthermore there is a practical issue with land being sold by Scottish Ministers that meets the 1000ha threshold. Scottish Ministers face a conflict of interest by being the seller of qualifying land and also the arbiter of whether to invoke the provisions of Sections 2 and 4. For example, they decide whether their own land should be lotted and can ask themselves to review a decision made by themselves about a lotting decision on land owned by themselves

## **Land and Communities Commissioner**

The proposed Land and Communities Commissioner has the role of advising Ministers (as part of the statutory functions of the Scottish Land Commission) but also acting as a regulator by receiving and adjudicating on complaints. It is not clear that these roles are compatible when, for example, some of these complaints may be about land owned by Scottish Ministers or about land where the Commissioner is providing advice about lotting for example.

## **Crofting**

The Bill appears to take no account of crofting tenure and its interactions with the land management, community engagement, CRTB and lotting powers. This is a major omission that I would expect the Scotland's crofters to have something to say about this.

## **CONCLUSION**

In relation to Sections 2 to 6 of the Bill, I am very sceptical about whether it will make any meaningful contribution to the aims set out in the Policy Memorandum. It represents another example of a tactical intervention in the status quo rather than the fundamental structural reform needed to land tenure, land ownership and the land market. It should also be very evident to the Committee that the provisions in the Bill see to introduce highly legalistic, complex and bureaucratic processes to the exercise of selling landholdings above 1000 ha.

Such legalistic and bureaucratic interventions are complex. Evidence from other legislation suggests that they are difficult to get right. They are wide open to unintended consequences, avoidance strategies and legal challenges. The process around lotting, advice of the proposed Land and Communities Commissioner and the interface with the land market is a particular focus for likely trouble.

Such disadvantages would perhaps be acceptable if the outcomes achieved were far reaching but they are not. If this legislation is passed by Parliament, it will have little impact beyond creating new complexities, friction and conflict in the land market for no evident gain.

Section 1 on the other hand is the most valuable part of the Bill introducing for the first time compulsory management plans. Despite much being left to secondary legislation, these proposals deserve support and provide a new framework for bringing greater accountability to how the largest landholdings in Scotland are managed.

I recommend that the Committee consider excluding Sections 2 to 6 of the Bill from any recommendation to Parliament to approve the general principles of the Bill.

## **RESPONSES TO SPECIFIC QUESTIONS FROM THE COMMITTEE**

### **Part 1 of the Bill**

#### **General Purpose in Relation to Large Landholdings**

Do you agree that there is a need for further land reform to address issues around large landholdings in Scotland?

Yes. But it is important to be clear what is meant by large landholdings. In research I published in March 2024, I demonstrated that the increased concentration of landownership in Scotland evident since 2012 has arisen as a consequence of the amalgamation and accumulation of land in the hands of fewer landowners. (1) Some of this relates to the acquisition of land adjoining existing holdings and thus making them larger but the predominant trend is the accumulation of large numbers of smaller holdings (the vast majority of which are less than 1000 ha in extent) but which in aggregate have produced large landholdings in excess of 1000 ha. Such concentration of land in such large landholdings and in fewer hands is not addressed by this Bill.

(1) [Who Owns Scotland 2024 - a preliminary analysis](#)

2. Will the proposals in this Bill fulfil the Scottish Government's objectives in relation to land reform?

The Government's objectives in relation to land reform appear to be as set out in paragraph 5 of the Policy memorandum, namely to bring about "a Scotland with a strong and dynamic relationship between its land and people, where all land contributes to a modern, sustainable and successful country, supports a just transition to net zero, and where rights and responsibilities in relation to land and its natural capital are fully recognised and fulfilled."

The proposals in this Bill will most certainly will not fulfil this objective. I shall not take up time by spelling this out in detail but one good example is the reference to "all land" contributing to a modern, sustainable and successful country. The proposals in this Bill exclude urban land and are restricted to modest and ineffectual measures affecting only around 50% of rural Scotland

The key weakness in the proposals is in the uncritical acceptance of the recommendations of the Scottish Land Commission in its definition of the nature of the risks associated with scale and concentration of landownership. The SLC recommendations focussed on the concentration of power in local areas and neglected the wider regional and national trends in concentration which are likely to have significant impacts on the performance of the rural economy more generally by concentrating power increasingly in the hands of (as it happens) absentee corporations.

3. Do you support the proposal that the Scottish Ministers may, by regulations, impose obligations on landowners to promote community engagement in relation to large landholdings?

Yes, in principle. However much depends on the detail of this process which is absent from the Bill and is to be set out in secondary legislation. Furthermore, the proposal ignores the important role of local authorities and their duties and powers over planning and local services. I would rather see local authorities being given a central role in this proposed process.

4. In principle, do you agree that owners of large landholdings should have a legal duty to consult on and publish land management plans?

Yes.

5. Do you support the process for investigating alleged breaches of community engagement requirements for large landowners set out in the Bill? Do you support the proposed level of penalty for contravention?

The £1000 (44G) and £5000 (44H) appear to be modest but in line with similar sanctions in other civil land law. However the Committee should consider carefully the design of such sanctions. They should be structured in such a way as to be cumulative and not simply a one-off fine.

## Section 2

6. Do you support in principle strengthening community bodies' opportunity to buy large landholdings?

Yes.

If you answered "yes", does Section 2 of the Bill go about this in the right way to address the Government's aims?

No. The problem is that the Bill does not strengthen the Community Right to Buy under Part 2 of the 2003 Act. It merely extends existing late registration provisions to land which is sold privately. Where land is openly marketed, the Bill provides no new opportunities since the existing late registration provisions of the 2003 Act can be used.

The only modest change is to the time period during which late registration can be made. But this is offset by the new requirement in inserted Section 44F that Ministers will not accept a late registration application unless they are satisfied that "there is a reasonable prospect of the application resulting in a community interest in the land being registered (46F(3)(d)(ii))

Do you think that 1,000 hectares is an appropriate threshold?

No. It is wholly arbitrary. as illustrated by Map 2, it excludes vast areas of Scotland where people live and where communities could benefit from enhanced rights to buy.

## Section 4

7. Do you, in principle, approve of allowing the Scottish Ministers to make a lotting decision in relation to sales of large landholdings?

It depends on what such a decision is designed to deliver. It is hard to see how the proposals as set out will change much. Most landowners will already lot land for sale if it might achieve a higher aggregate sale price. If they are aware of specific interest in specific parcels then, so long as it does not compromise a wider parcel of land, an owner will generally seek to realise the higher price such lotting will deliver.

It is hard to see lotting decisions being used very widely and harder still to see how they are going to deliver any significant opportunities for communities, local businesses or other organisations. There is no regulation of who buys these lots apart from fact that no one buyer can buy more than one. However, there appears to be nothing in the Bill to prevent this happening later on.

Let us assume that a lotting decision is made to split a 2400 ha property into three parcels of 800ha each. no one person can buy more than one lot. But there's nothing to prevent them acquiring the other lots later. Imagine I wish to buy the 2400 ha. I can get my friends Susan and Jim to buy the other two lots and then when the dust is settled they sell them to me.

The existing trend towards more concentrated private ownership of rural land is being driven by the acquisition of numerous parcels of land across Scotland by one buyer. These buyers will often be the ones who buy such lots and in such circumstances, the concentration of land held by few and fewer owners will simply continue.

If so, do you agree that 1000 hectares is an appropriate threshold?

If lotting is to happen the choice of 1000 ha is arbitrary and thus not appropriate.

8. Is the proposed process for making a lotting decision appropriate and workable?

No. It is cumbersome and bureaucratic and likely to lead to greater friction, uncertainty and legal challenge with no evident beneficial outcomes. To try and ensure that the market-assisted land reform that this Bill promotes is successful, it would be far better to reform compulsory purchase powers, introduce compulsory sale orders and introduce a wider power of pre-emption.



9. Do the Scottish Government's proposals for a "transfer test" adequately take the public interest into account?

The transfer test consists of the extended community right to buy through late application and the lotting provisions. The Scottish Land Commission originally proposed a public interest test that was never expanded in any great detail but was intended to provide a means by which the public interest in any sale could be assessed. The transfer test by contrast merely provides an opportunity in a tiny number of cases for late registration application for community right to buy and the possibility for mandatory lotting by Ministers. These two provisions take very little of the public interest into account. Environment, economic development, housing and a range of other public interests in land are completely absent from the transfer test.

## Section 6

10. Do you support the creation of the new role of Land and Communities Commissioner?

No. The role of the Commissioner as set out in the Bill could be exercised by the Scottish Land Commission without the need for a new dedicated Commissioner. In any event, I am of the view that such powers should be vested in local authorities and not in an unelected body.

If so, are their responsibilities under the Bill adequate/appropriate?

n/a

## Part 2 of the Bill

### Section 7

11. Are you satisfied with the broad duty Section 7 of the Bill places on the Scottish Ministers to develop a model lease for environmental purposes, including the definition of "environmental purposes" set out in Section 7?

Yes but it is of no great consequence. Ministers can publish such a model lease now if they wish. They do not require statutory powers to do so. Moreover, the consultation paper proposed a new environmental tenancy which would involve a new statutory framework. Nothing in the Bill delivers this. The duty to publish a model tenancy (presumably under the existing common law of leases) is a duty to publish a bit of paper. Such a modest exercise has no place in primary legislation.

### Sections 8 and 9

12. Do you agree with the provisions in the Bill extending certain rights to small landholders?

Yes

Yes

## Section 10

14. Do you agree with repealing Section 99 of the Land Reform (Scotland) Act 2016, and with giving the Scottish Ministers the power to make regulations which modify the requirement for tenants to register their interest in exercising their pre-emptive right to buy?

This provision is an excellent example of a wider malaise in law-making in the Scottish Parliament. The Agricultural Holdings (Scotland) Act 2003 introduced a right to buy for tenant farmers which could be exercised when their farm was to be sold by the landlord. To be able to exercise this right, the tenant had to register their farm in the Register of Community Interests in Land and renew it every five years. Section 99 of the Land Reform (Scotland) Act removed this requirement but it has never been brought into force. The Bill proposes reverting to the original 2003 provisions.

Parliament voted in 2016 for the removal of registration provisions but it was left to secondary legislation to set out the details of how that would work. This has never been done. Now, this Bill proposes reversing Parliament's intention and again, by regulation to put in place a modified scheme of registration, the details of which we all remain ignorant of.

Ministers did not know how the 2016 provisions would work then and they don't know how the future provisions will work. It is poor legislative practice to ask Parliament to agree to abolishing an existing provision (the 2003 registration process) but not setting out how it is to be achieved. This is compounded by then proposing the repeal of the abolition provisions because they could not be made to work and replacing them with further powers for Ministers to do something different.

Ministers have had over a decade to decide what they wish to do in this area and we are no further forward. Such proposals should be set out clearly in primary legislation.

## Sections 11 to 13

15. Do you agree with the changes to resumption proposed in the Bill?

Yes

## Section 14

16. Do you agree with the proposed changes to compensation for improvements for tenant farmers?

Yes

17. Do you believe that the provisions will better enable tenant farmers to engage in sustainable and regenerative agriculture?

Yes

## Sections 15 to 19

18. Do you agree with the proposed changes in relation to diversification on tenant farms?

Yes but it is long past time that we tried to accommodate evolving land use practice in tenancy agreements which have their origins in a different era. Instead, the Bill should be amended to provide tenant farmers in Scotland with a right to buy their farms at any time.

19. Do you believe these provisions will better enable tenant farmers to engage in sustainable and regenerative agriculture??

Yes

## Section 20

20. Do you agree with the proposed changes to compensation for game damage for agricultural tenants?

Yes but again more fundamental reform is needed. The Bill should allow tenant farmers the right to buy out the sporting rights over their tenancy from the landlord.

## Section 21

21. Do you agree with the proposed standard claim procedure for compensation at the end of a tenancy?

No comment

22. Do you agree with granting the Scottish Ministers power to apply the standard claim procedure to any relevant type of compensation?

No Comment

## Section 22

23. Do you agree that interest should be payable on outstanding compensation claims?

Yes

24. Do you agree with the rate of interest set out in the Bill?

Yes

## Sections 23 to 25

25. Do you agree with the changes to rent reviews proposed in the Bill?

No Comment

26. Do you agree with the Scottish Ministers being given powers to make provision in relation to matters that are to be taken into account by the Land Court when determining the rent for a holding?

Yes

## Sections 26 and 27

27. Do you agree with the proposed changes to the rules of good estate management?

No Comment

28. Do you agree with the proposed changes to the rules of good husbandry?

No Comment

## General questions

### Links to the Agriculture and Rural Communities (Scotland) Bill

29. Are the changes proposed in the Land Reform (Scotland) Bill sufficient to enable tenant farmers to engage in sustainable and regenerative agriculture, and to allow them to take part in schemes and programmes under any new agricultural policy?

No. Tenant farmers are the best judge of this question in relation to their own holdings. They need the flexibility to invest for the long term and that means having the option to buy their farms where they are of the view that the tenancy arrangements as modified by this Bill do not meet their requirements.

### Fairness and checks and balances

30. Do you consider the Bill strikes a balance between the competing interests and rights of landowners, local communities, landlords and tenants, alongside the wider public interest?

It strikes A balance but the WRONG balance. The system of land tenure and ownership in Scotland is still weighted far too heavily in favour of the landed class.

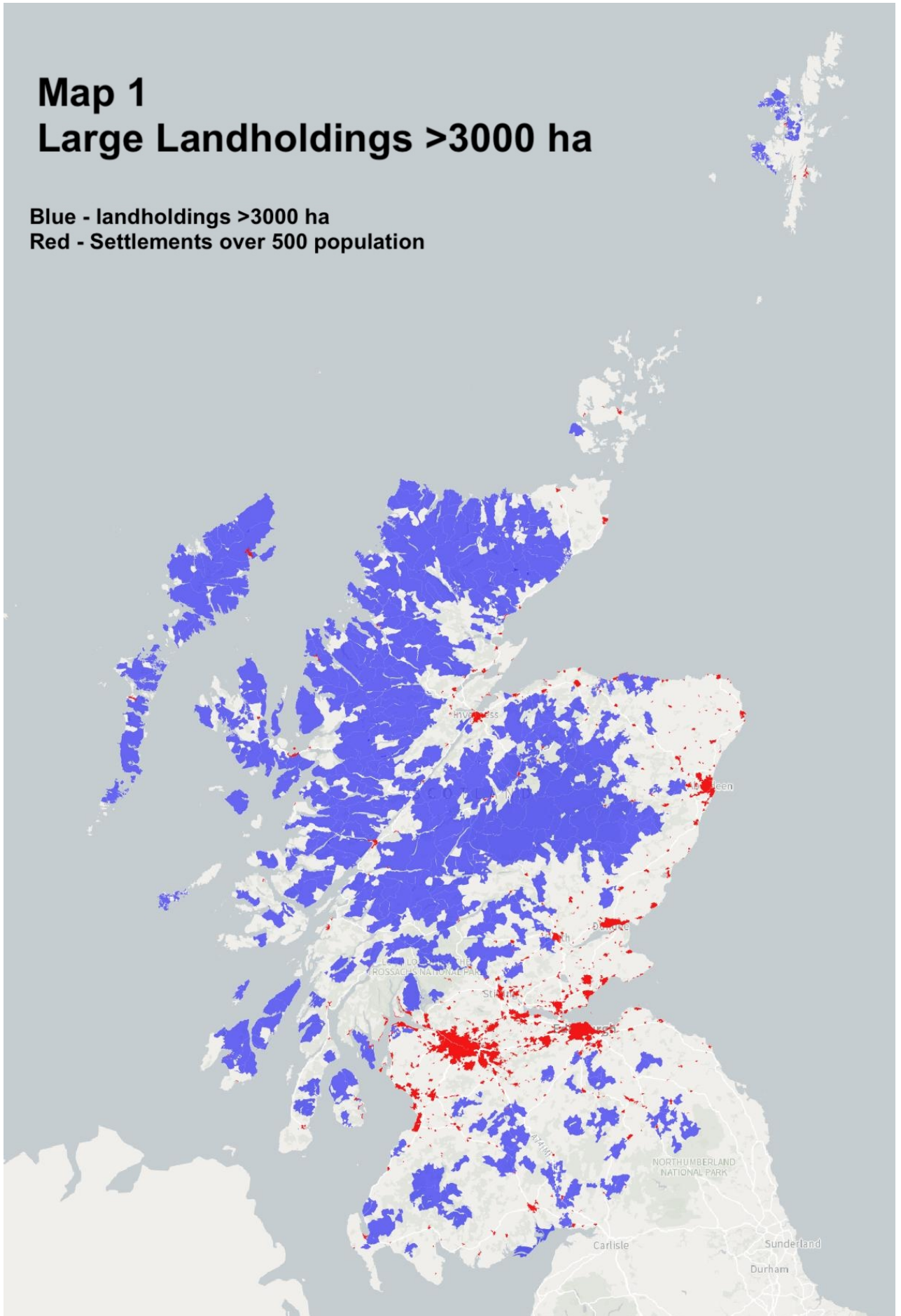
## Tackling the Climate and Biodiversity Crises

31. In your view, does the Bill make adequate provision for the role that land might play in delivering a just transition to net zero and tackling the biodiversity crisis?

No. With the exception of compulsory management plans (and their effectiveness depends on decisions yet to be taken in secondary legislation), the Bill makes little or no difference to delivering a just transition. Such a transition cannot be achieved when so much of Scotland is owned by so few people, when land is bought and sold to the highest bidder with little or no scrutiny and where there are no legal responsibilities incorporated within the tenure system.

# Map 1 Large Landholdings >3000 ha

Blue - landholdings >3000 ha  
Red - Settlements over 500 population



## Map 2 Large landholdings >1000 ha

Green - landholdings >1000 ha  
Red - settlements over 500 population

