



30th October 2022

The Landworkers' Alliance Response to the Scottish Government's 'Land Reform in a Net Zero Nation Bill' Consultation

Part 4: Criteria for large-scale landholdings

Q1 Do you agree or disagree with the criteria proposed for classifying landholdings as 'large-scale':

- a) A fixed threshold of 3,000 hectares
 - Agree / **Disagree** / Don't know

- b) Land that accounts for more than a fixed percentage of a data zone (or adjacent data zones) or local authority ward(s) designated as an Accessible Rural Area or Remote Rural Area, through our six-fold urban/rural classification scheme
 - **Agree** / Disagree / Don't know

- c) Land that accounts for more than a specified minimum proportion of a permanently inhabited island
 - **Agree** / Disagree / Don't know

Please give some reasons for your answer and outline any additional criteria:

The Landworkers' Alliance understands that large scale concentrated land ownership has a significant negative impact on our food and agriculture system, local communities, and the environment. Smaller scale farms perform better across a number of different indicators than large-scale farms in relation to ecology, local employment, community wellbeing and healthy food supply. Concentrated landownership is also a significant limiting factor in much needed generational renewal of the agricultural workforce in Scotland: "Concentration of landownership can arise from, and perpetuate, issues around agricultural land availability and land use... particularly for new entrants and progressing farmers" (SLC report, 2019: 55). Similarly, concentrated landownership can be seen to have impacts on local communities through the loss of family farms and the resulting impact on local employment. The increasing scale and concentration of farmland ownership is often linked to more capital-intensive forms of agriculture which are detrimental to our environment, most obviously in loss of biodiversity and soil quality and in increases in carbon emissions

(Fairbairn, 2020: 63). The Land Reform Bill presents an opportunity to support smaller scale farms, however at present the criteria for large-scale land holdings seems very limited in this regard.

The Landworkers' Alliance supports the overall principles of this Bill in relation to addressing the concentrated landownership in Scotland. However, we are concerned with the details of how this proposal is currently framed in this consultation. Our members have consistently raised concerns that 3000 ha is too high a minimum threshold. This excludes much of the land in Scotland, and many landowners who hold enough land to significantly concentrate power locally. Agricultural land makes up the majority of land in Scotland, with the average size of a farm in Scotland being 220 ha, considerably higher than the European average. Indeed, the Scottish agricultural census designates any agricultural land greater than 200 ha as a 'large holding'. Anything which is notably larger than the average should be considered to be a large landholding. We therefore propose that if size is to form the basis for deciding what constitutes a considerable landholding, the minimum threshold should be reduced by at least 10 times, to ≤ 300 ha. It is important to note though that the impact of the scale of concentration may have regional variation across Scotland and therefore that a regional approach to defining thresholds could have a beneficial impact on accounting for regional variation.

If size is used as the criterion for a 'large-scale' landholding, it is essential that this applies to non-contiguous land held by one owner. A landowner's entire portfolio of land should be considered as one, rather than each parcel of land being considered in isolation. This argument has been well articulated by Andy Wightman here and we are supportive of this argument.

Proposals b) and c) could provide a more sensible approach to designating considerable landholdings. For example several islands across Scotland are less than 3,000Ha in size and face transition challenges in agriculture relating to estates that own a large proportion of the island. Using a data zone approach could also provide a clearer mechanism for urban and peri-urban areas. As no numbers are suggested for the minimum percentage of land required to count as 'large-scale', we are unable to comment on whether these proposals are sufficient, but do see that they could have potential in developing a more nuanced approach to defining significant landholdings.

Additional criteria other than size should also be considered when designating significant landholdings, with the proposals in this Bill applying to land identified as a significant asset by the local community. The Landworkers' Alliance favours an approach whereby all agricultural land is considered as significant. The ownership and use of agricultural land is a matter of public interest as our food system, environment and community life depend upon it.

Q2. Do you agree or disagree that family farms should be exempt from the proposals outlined in Parts 5 to 7 even if they are classified as a 'large-scale' landholding?

- Agree / **Disagree** / Don't know

Please give some reasons for your answer:

The Landworkers' Alliance is in support of family farms and the important role that they play in our food and farming system in holding knowledge, culture, and skills in farming. We support the UN Decade of Family Farming and the work that that involves in supporting and protecting family farms. The UK has one of the smallest proportions of family farms across the whole farming sector, and so measures to support family farms are important. However, we have a number of concerns with this proposal.

Firstly, there is, as far as we are aware, no clear definition of a family farm in the key terms of the consultation document, nor other areas of Scottish Government legislation and policy. Family farms can range in size from very large farm units to very small. Family farms may be owner occupiers, tenants or families with less secure tenure than owners or tenants, and they may also operate farms across a mix of ownership, tenancy and more informal access arrangements. Farmers and their families can be engaged in full or part time farming, with increasing rates of part-time farming occurring while family members participate in off-farm work and other activities. Across different areas of research and policy on family farms, definitions can refer to how labour is organised on the farm, who has ownership and control over the land and business, how the business is legally constituted, how succession might be arranged, and who takes responsibility for business risk. All of these factors will change over time depending on a range of factors from the economic climate, agricultural support packages, and family circumstances. As such, defining the family farm clearly in law is complex. If it is to be used as a key criteria for exemption then there will be a considerable challenge in making sure it is well defined.

Secondly, there are clear examples in Scotland where a family farm would currently be exempt from the proposals in this legislation as it currently stands, but where that family farm is acting in a way that is counterproductive to the aims of this Bill in terms of enhancing the wellbeing and resilience of local people. For example, it is the case that a large proportion of an island is owned by one family and operated as a family farm, which, in the past had several farming tenants all operating as family farms, but now manages the estate in hand and runs the farmhouses as holiday accommodation. As such the family ownership of the land has in part resulted in a reduction of family farming opportunities on the island by way of not offering new tenancy opportunities when previous family farms ended their tenancies. The overall impact on remote rural populations should not be underestimated, with significant challenges relating to access to affordable housing, employment and land access for viable farm businesses. This island example follows an overall trend of farm consolidation in Scotland that is significantly limiting opportunities for new entrants and smaller scale agroecological farming systems in favour of larger scale intensive agricultural practices which have been supported by the area-based payment systems. Family ownership of a farm does not necessarily preclude monopolistic or environmentally harmful practices which can be deeply detrimental to communities.

Third, we would like to argue for greater protection of farming systems that can play a positive role in supporting thriving rural communities. This would mean developing the concept of family farming to be more inclusive and focused on farming systems which are embedded in and producing for their local community. This could contribute towards a more resilient food system and more resilient rural populations. As such we would support and encourage the Scottish Government to consider instead a definition of family farming that is in line with the United Nations Declaration on the Rights of Peasants. This states that "a

peasant is any person who engages or who seeks to engage alone, or in association with others or as a community, in small-scale agricultural production for subsistence and/or for the market, and who relies significantly, though not necessarily exclusively, on family or household labour and other non-monetized ways of organising labour, and who has a special dependency on and attachment to the land". We believe that this encapsulates many of the positive elements of family farming in relation to being small-scale and connected to local communities. However it also offers a more flexible approach in that other forms of organising farm labour around small-scale agriculture are also recognised and supported, and thus is more inclusive as an approach.

Finally, we suggest that inclusion of family farms in the definition of a significant landholding has the potential to provide greater protection to family farms than by exempting them. By creating greater public scrutiny over the acquisition and transfer of family farms this can provide an accountable mechanism for the transfer which could result in the protection of family farms as being in the public interest.

Q3. Do you think that the proposals considered in this consultation should be applied to the urban context?

- **Yes** / No / Don't know

Please give some reasons for your answer:

The negative impacts of concentrated land ownership also exist in urban areas. Certain landowners own large amounts of the urban area, with developers having the power to greatly shape neighbourhoods and affect the lives of many people.

The majority of Scotland's population (71%) lives in urban areas. For the proposals considered here to benefit these people, they must also apply in the areas where urban communities live. In particular, urban communities should be given a notice of intention to sell if land is to be sold in their neighbourhood regardless of whether or not they have previously registered an interest in it.

In addition, land in the vicinity of urban areas affects many people, and so should be subject to high levels of scrutiny both in terms of land use and land transfer. Urban and peri-urban land should not be overlooked by the Land Reform agenda, particularly as it has the potential to provide extensive benefits to local food systems and economies. For many people living in urban and peri-urban areas, access to land for food production is very difficult, whether this be on an allotment, in a community growing project, or for market gardening and urban/peri-urban farming. Research from Glasgow Community Food Network shows that there is significant demand for land in Glasgow for such purposes, with similar dynamics in other urban areas across Scotland. Projects such as the Edinburgh Agroecology Co-op at Lauriston Farm demonstrate the potential of utilising publicly owned land in urban contexts for urban farming. However significant amounts of land in urban and peri-urban contexts remain underutilised for community based agroecological farming projects. The Fringe Farming project have reported in detail how, with the right interventions, land in and around the city of Glasgow could "become a mainstay of a sustainable, just,

localised food economy, providing good jobs, education and training, better access to nature, and high quality, affordable food for all, contributing to greater resilience of the city region.”

The proposals in this consultation, such as the public interest test on land transfers and the requirement for land management plans, are therefore also important in urban areas to ensure local communities reap the benefits of land in their area. However, for these proposals to make sense in an urban context, the minimum threshold for these to apply should be lowered considerably. We suggest that, in urban areas in particular, land that counts for more than a specific percentage of a datazone should be considered significant, as suggested in Q1 b). In addition, it is essential that non-contiguous landholdings are included in this legislation. In areas of dense population, concentration of land ownership can cause drastic power imbalances.

Part 5: Strengthening the Land Rights and Responsibilities Statement

Q4. We propose that there should be a duty on large-scale landowners to comply with the Land Rights and Responsibility Statement and its associated protocols. Do you agree or disagree with this proposal?

- **Agree** / Disagree / Don't know

Please give some reasons for your answer:

Placing a duty on landowners to comply with the LRRS could provide a mechanism to hold landowners to account, which is sorely lacking in Scotland. This could in turn improve stewardship of the land. All landowners should have a duty to comply with the LRRS, not just large-scale landowners. The requirements of this statement and associated protocols do not present a great burden for landowners or create extensive bureaucratic work, and so should be applied to all land in Scotland.

However, in order for this to be effective in reducing the power of landowners and improving access to land, the statement and protocols could be strengthened considerably. As it stands, the statement itself provides high-level guiding principles, with no mechanism for judging whether these are being complied with. Similarly, the protocols set out practical advice for achieving the principles of the statement, but do not provide clear benchmarks on which compliance could be measured. If the LRRS and protocols are to be used as a mechanism for holding landowners accountable, they must be updated in such a way that it is clear to landowners what their specific responsibilities are, and clear to the community when these are not being properly carried out. This proposal is only worthwhile if it is enforceable.

Q5. If there was a legal duty on large-scale landowners to comply with the Land Rights and Responsibility Statement and its associated protocols, we propose that this should be enforced by having a formal procedure for raising complaints, and by making provisions for independent adjudication and enforcement.

a) Do you agree or disagree with the proposal above?

- **Agree** / Disagree / Don't know

Please give some reasons for your answer:

An accountability procedure such as this is a minimum requirement. Owning large amounts of land, and being able to wield the associated power, should come with significant responsibilities. We propose that landowners should be inspected regularly and randomly by the relevant authorities to ensure compliance with the LRRS, rather than enforcement applied only on the occasion of a complaint.

Complaints procedures should be simple and easy to understand, with free legal advice and guaranteed anonymity available to complainants. Independent adjudication should be carried out by an environmental court or tribunal with the necessary expertise to do this, as recommended by the Environmental Right Centre.

b) Do you agree or disagree that only constituted organisations that have a connection to the local area or the natural environment should be able to report breaches of the Land Rights and Responsibility Statement?

- Agree / **Disagree** / Don't know

Should these constituted organisations have a remit on:

- **Community**
 - **Agree** / Disagree / Don't know
- **Charity**
 - **Agree** / Disagree / Don't know
- **Public service**
 - **Agree** / Disagree / Don't know

Please provide some reasons for your answers and any additional suggestions:

Anyone should be able to raise a complaint, not only those in constituted organisations in the local area. Land management impacts go far beyond the immediate locality. For example, flooding, water pollution or carbon emissions have far reaching consequences beyond the immediate locality. Those from beyond the immediate geographical area should therefore also be empowered to report breaches of the LRRS.

Communities most impacted by environmental harm are often not incorporated into a formal group. For example, marginalised groups impacted by poor air pollution, or those without access to green space, may not be part of a formally constituted organisation, but should have the right to report breaches of the LRRS. Limiting which groups are able to engage with this procedure to those which are formally constituted risks excluding and disempowering many of the communities most impacted by irresponsible land management. In addition, individuals should also be able to report breaches. People who work on the land, such as farmers and farm workers, are particularly well-placed to identify poor land-management, and should be empowered to report this to the relevant authorities themselves.

It is essential that guaranteed anonymity is offered to complainants, whether they be individuals or groups. As noted in the consultation paper, concentrated land ownership can

lead to concentrated power in the hands of a few individuals, and it can be extremely difficult for individuals or a local community to publicly report breaches against landowners without fear of reprisal or damage to livelihoods and relationships in the community.

c) Do you think the responsibility for investigating and dealing with complaints should sit with:

- **the Scottish Government**
 - Yes / No / **Don't know**
- **a public body (such as the Scottish Land Commission)**
 - Yes / No / **Don't know**

Please provide some reasons for your answers and any additional suggestions:

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d) Should the potential outcome from an investigation of a breach be:

- **Recommendation for a mediation process**
 - Yes / No / **Don't know**
- **Recommendation on how the landowner or governing body could comply with the Codes of Practice/protocols**
 - Yes / No / **Don't know**
- **A direction to the landowner or governing body to implement changes to operational and/or management practices**
 - Yes / No / **Don't know**

Please provide some reasons for your answers and any additional suggestions:

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e) Should the enforcement powers for a breach be:

- **Financial penalties**
 - **Yes** / No / Don't know
- **'Cross-compliance' penalties**
 - **Yes** / No / Don't know

Please provide some reasons for your answers and any additional suggestions:

Financial penalties are not always effective as a deterrent, especially when they are relatively small compared to the overall wealth of the payee or balanced out as a low risk against the potential income gained from the activity. Financial penalties for breaches are necessary but not sufficient. In order to be an effective deterrent to breaching the LRRS, these penalties must be reasonable and proportional to the breach but also must be effective. Landowners who own large amounts of Scotland's land are considerably wealthy, and may not be affected by flat fines, so this form of financial penalty may not be effective in many cases.

In instances of significant breaches, a financial penalty could be the cessation of public funding for public goods delivery by the owner until the issue is resolved. Agricultural farm support payments are designed to pay land users for delivering public goods: if they breach the LRRS then their future payments should cease. The power to withhold agricultural support payments as a sanction for failing to comply with LRSS should be created in this Act, and enabled in the forthcoming Agriculture Bill.

Penalties for breaching the LRRS, particularly in the circumstances of serious breaches or repeat offences, should include the breaking up of large-scale landholdings. Land which is being irresponsibly managed should be compulsorily purchased by public bodies and repurposed for the public good. It could also be a trigger for the Community Right to Buy.

Q6. Do you think the proposal to make the Land Rights and Responsibility Statement and its associated protocols a legal duty for large-scale landowners would benefit the local community?

- **Yes** / No / Don't know

Please give some reasons for your answer:

In general, introducing accountability measures to ensure landowners are carrying out their responsibilities is likely to be of benefit to local communities. Currently, large-scale landowners have a large degree of autonomy and control over how they use and manage their land, and have little or no formal accountability systems to their local community. Any mechanism to shift power from landowners towards communities will have some benefit. However, this proposal does not go far enough. The LRRS and associated protocols must be significantly strengthened or the effects of this proposal will be minimal. In addition, this must form part of a larger cultural shift to empower local communities and hold landowners accountable to the people of Scotland.

Q7. Do you have any other comments on the proposal to make the Land Rights and Responsibility Statement and its associated protocols a legal duty for large-scale landowners?

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Part 6: Compulsory Land Management Plans

Q8. We propose that there should be a duty on large-scale landowners to publish Management Plans. Do you agree or disagree with this proposal?

- **Agree** / Disagree / Don't know

Please give some reasons for your answer:

We agree that there should be a duty on the owners of significant landholdings to publish Management Plans. For this duty to have an impact it is important that there are clear information standards, implementation and enforcement. Land Management Plans should be developed in participation with the local community, including everyone who works on, lives

on and uses the land recreationally. They should then be assessed by a public body with relevant expertise to ensure they achieve the required objectives.

In order to support the transition to agroecological farming in Scotland the Landworkers' Alliance would be supportive of management plans including how the landowner intends to fulfil the principles of agroecology and transition agriculture and land use practices towards these agroecological principles and practices.

The consultation paper offers no insights into how Management Plans will apply to tenanted land. A clear and simple procedure must be developed for this, which places the responsibility and administrative burden on the landowner rather than the tenants.

Q9. How frequently do you think Management Plans should be published?

We suggest Management Plans are published every 5 years, to allow time for community consultation before each publication, while ensuring plans include achievable short-term benchmarks for progress.

Q10. Should Management Plans include information on:

- **Land Rights and Responsibility Statement compliance**
 - **Yes** / No / Don't know
- **Community engagement**
 - **Yes** / No / Don't know
- **Emission reduction plans**
 - **Yes** / No / Don't know
- **Nature restoration**
 - **Yes** / No / Don't know
- **Revenue from carbon offsetting/carbon credits**
 - **Yes** / No / Don't know
- **Plans for developments/activities that will contribute to local and inclusive economic development or community wealth building**
 - **Yes** / No / Don't know

Please provide some reasons for your answers and any additional suggestions:

It is essential that Management Plans take a holistic approach to land, and do not prioritise specific goals (i.e. emissions reduction) to the detriment of others (i.e. biodiversity). In addition, Management Plans should include information on contributions to local food systems and agroecological transitions, including how existing agricultural production could better serve the local area, how access to land for new entrant farmers could be improved, and how community food growing could be promoted.

For all topics covered, there should be clear guidance as to what the management plans should be aiming to achieve, and penalties for those who consistently fail to improve in any of these areas.

Q11. Do you think the responsibility for enforcing compulsory land management plans should sit with:

- **the Scottish Government**
 - Yes / No / Don't know
- **a public body (such as the Scottish Land Commission)**
 - Yes / No / Don't know

Please provide some reasons for your answers and any additional suggestions:

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Q12. Do you think the proposal to make Management Plans a legal duty for large-scale landowners would benefit the local community?

- Yes / No / Don't know

Please give some reasons for your answer:

Some benefit could be obtained in terms of greater transparency about land use in the local area, however, with no clear mechanism to monitor implementation, this could be of limited use to communities. Involving the local community in shaping the Management Plan, as well as employing appropriate mechanisms to ensure plans are followed and landowners held accountable has the potential to increase benefits. However, recognition of the limited capacity for individuals and communities to take part in such processes needs to be addressed, and support for engagement resourced. Management Plans need to be ambitious and enforceable if they are to have tangible benefits.

Q13. Do you have any other comments on the proposal to make Management Plans a legal duty for large-scale landowners?

While this proposal may increase transparency on land use decisions of large scale landowners, we are concerned that this may not have a significant impact on the reduction of concentration of land ownership in Scotland, which is one of the stated main goals of this Bill.

Part 7 i): Regulating the market in large-scale land transfers - a new Public Interest Test

Q14. We propose that a public interest test should be applied to transactions of large-scale landholdings. Do you agree or disagree with this proposal?

- Agree / Disagree / Don't know

Please give some reasons for your answer:

The LWA welcomes the introduction of regulation on the sale and transfer of land. The existing lack of regulation has resulted in both extreme concentration of land ownership and poor land management in some instances. Introducing a public interest test is an essential

step towards addressing the issues of land ownership concentration, and brings us more in line with some of our European neighbours.

We would like to draw attention to the SAFER mechanism in France which has the right to intervene in the sale of all agricultural land in rural areas, with the purpose of protecting agricultural land for future generations and maintaining thriving rural communities. The SAFER can intervene in the sale of agricultural land for a number of different reasons, and then they may sell the land to a preferred bidder. In many instances this has resulted in the installation of new entrant farmers. One of the grounds for intervention in the sale of agricultural land that is considered by the SAFER is relating to the price at which the land is being sold. This provides an important mechanism in regulating the land market, not just in terms of who the landowner is but what price is paid, which has an overall effect on the market and helps to avoid speculative behaviour and price spikes such as we have experienced during the past two years.

Limiting the trigger of the public interest test to land holdings over 3000 ha is likely to significantly limit the impact of this legislation. Land of this scale very rarely goes on the market, so setting the minimum threshold this high will seriously limit the impact that this proposal can have on reducing concentration of land ownership. As discussed above, we advocate for a definition of significant landholding which depends on a range of factors, including land use and location, and allows for local communities to determine the significance of the landholdings.

It is essential that the public interest test also applies in situations where land is transferred as part of an inheritance. The consultation paper does not make it clear whether this proposal will apply to inheritance of land. However, the Scottish Land Commission suggested in their recommendations that inheritance should be included as a transfer of land to which a public interest test should be applied. Reforming succession laws has been shown to be effective in reducing concentration of land ownership, and applying a public interest test to inherited land could have a similar positive effect.

A key consideration for this proposal is what land uses would be considered to be in the 'public interest'. This is not made clear in the consultation paper. The public interest test must take a holistic approach, and consider a wide range of factors such as food sovereignty, biodiversity enhancement, climate mitigation, recreational access, community wealth building and connecting people with land. In order to achieve this, it must tie in with the goals of all other relevant legislation, such as the Good Food Nation Act, the Local Food Strategy, the Vision For Agriculture, the Biodiversity Strategy and the Agriculture Bill. The criteria for the public interest test should be consulted on and published to ensure transparency.

We are concerned that a prioritisation of achieving 'net zero' could undermine efforts to reduce concentration of land ownership and achieve other policy goals. The public interest test must not be used as a means to justify sale of Scotland's land for carbon credits and private carbon offsetting schemes. Carbon credits for private companies allow them to continue emitting large amounts of carbon while claiming to be carbon neutral. Such schemes do not help mitigate against climate change, do not contribute towards Scotland's own net zero goal (as credits purchased to offset corporate emissions cannot also be

thought of as offsetting the country's emissions, as they cannot be counted twice), and are pushing land prices up across Scotland, further concentrating land ownership in the hands of the very wealthy. The LWA represents many landworkers who are unable to access land to produce healthy local food in Scotland, and this is being greatly exacerbated by carbon speculation on land. Private carbon offsetting and carbon credit schemes are not in the public interest.

Carbon offsetting schemes fail to take a holistic approach to tackling the climate crisis by focusing on very specific activities and reducing them to carbon credit production. Agroecological production provides a much more realistic and practical approach to addressing the climate crisis in relation both to reducing carbon emissions at source, sequestering carbon through holistic land management practices, reducing emissions throughout the food supply chain, while also centring social justice and communities.

Q15. What do you think would be the advantages and/or disadvantages of applying a public interest test to transactions of large-scale landholdings?

Please write your answer in the text box below:

The introduction of regulation of transfer of landholdings presents a significant opportunity to clearly define what land use is in the public interest and drive forward changes both in land ownership and land use. This will also be advantageous if it succeeds in breaking up large landholdings, allowing smaller parcels of land to be sold. This could provide opportunities to new entrants in the landwork and agricultural sectors, aid in rural regeneration and support local food systems.

However, there could be notable disadvantages if the criteria for 'public interest' are too narrow, and do not capture a holistic view of this concept. For example, a focus on carbon sequestration for net zero, without regard for other public needs, could result in large amounts of Scotland's land being sold for carbon credit schemes. As described above, such schemes have not been shown to reduce carbon emissions, can have serious negative impacts on biodiversity, and rarely benefit local communities.

The public interest test could also be viewed negatively by landowners and has the potential to have the perverse impact of disincentivizing land sales and further slowing down the market. It is essential then that this proposal sits alongside a range of measures which disincentivize concentrated land ownership, such as an end to area based agricultural payment mechanisms under the upcoming Agriculture Bill, and the introduction of a land tax. Providing security to the seller is also likely to reduce the likelihood of this potential perverse impact. The SAFER model provides a useful example which reduces uncertainty in the sale process by a public body purchasing the land/asset as an interim while a preferred buyer is found.

We also would like to note that a significant proportion of land sales occur privately, and that a perverse consequence of this Bill could be to force more private transfers of land, thereby reducing public access to land. We would therefore propose that all land sales must be done publicly.

Q16. Do you think the public interest test should be applied to:

- The seller only / The buyer only / **The seller and buyer** / Don't know

Please give some reasons for your answer:

We advocate for applying this test to both the seller and the buyer. If it does not apply to the buyer then it will not be effective in addressing consolidation of land ownership in such a way that may concentrate power. In particular, we would like to emphasise that the public interest test should apply to any buyer or seller who owns more than a minimum threshold amount of land in total, even if that land is non-contiguous. Owning many smaller parcels of land across Scotland rather than one large parcel is still contributing to concentration of land ownership, concentrating power in the hands of a wealthy few while reducing opportunities for others. In addition, the public interest test should apply to those who receive land as inheritance.

Q17. If the public interest test was applied to the seller, do you think the test should be considered as part of the conveyancing process?

- Yes / No / **Don't know**

Please give some reasons for your answer

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Q18. Do you think that all types of large-scale landholding transactions (including transfers of shares and transfers within or between trusts) should be in scope for a public interest test?

- **Yes** / No / Don't know

Please give some reasons for your answer:

In order to have an impact in terms of reducing concentration of land ownership and improving land management, the public interest test must be applied to all transfers of significant landholdings.

Q19. We have proposed that if a public interest test applied to the seller concluded there was a strong public interest in reducing scale/concentration, then the conditions placed on the sale of the land could include:

- The land in question should be split into lots and could not be sold to (or acquired by) one party as a whole unit
- The land, in whole, or in part, should be offered to constituted community bodies in the area, and the sale can only proceed if the bodies consulted, after a period of time, indicate that they do not wish to proceed with the sale

Do you agree or disagree with these conditions?

· Condition i.

- **Agree** / Disagree / Don't know

· **Condition ii.**

- Agree / Disagree / Don't know

Please give some reasons for your answer and suggest any additional conditions:

The LWA believes that it is in the public interest to break up large landholdings into smaller parcels and that the public interest test can be a key mechanism to enable this. However, the procedure of subdividing an estate and offering first right of refusal to community bodies are both complicated proposals which need both time and resources to manage effectively. In order to facilitate these processes we would strongly argue for the government to take ownership as an interim step, which would have the benefit of giving security to the seller, and giving time for the process of subdivision and a transparent application process for individuals and organisations who are interested in purchasing some or all of the land. The bidding process for the land could then include a range of selection criteria which could give preference to a) local communities, b) the potential for sustainable development and rural regeneration. This process is likely to support the diversification of land ownership across Scotland, including supporting greater community land ownership alongside other forms of land ownership for small-scale agroecological production, such as individual farmers, farm cooperatives and land trusts.

Q20. Do you think that a breach of the Lands Right and Responsibilities Statement should be taken into account when determining the outcome of a public interest test?

- Yes / No / Don't know

Please give some reasons for your answer:

A landowner who has previously breached the LRRS has been shown to be in violation of their duty to manage their land responsibly. Therefore this should be a key consideration taken into account in the public interest test.

Q21. Do you think that a public interest test should take into account steps taken in the past by a seller to:

a) Diversify ownership

- Yes / No / Don't know

b) Use their Management Plan to engage with community bodies over opportunities to lease or acquire land

- Yes / No / Don't know

Please give some reasons for your answers:

-

c) What time period do you think this should cover?

-

Q22. Do you think the responsibility for administering the public interest test should sit with:

- **the Scottish Government**
 - Yes / No / **Don't know**
- **a public body (such as the Scottish Land Commission)**
 - Yes / No / **Don't know**

Please provide some reasons for your answers and any additional suggestions:

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Q23. Do you think the proposal that a public interest test should be applied to transactions of large-scale landholdings would benefit the local community?

- Yes / No / **Don't know**

Please give some reasons for your answer:

Whether this proposal would benefit the local community depends largely on what the criteria are for 'public interest'. If a broad range of criteria are used, which consider rural resilience and local food systems, then the local community is likely to benefit. Additionally, if the outcome of the public interest test is primarily for land to be sold to communities or broken into smaller lots, this is likely to increase benefits to the community. However, land uses such as the development of large-scale private carbon sequestration schemes would be detrimental to local communities, and should not be considered to be in the public interest.

Q24. Do you have any other comments on the proposal that a public interest test should be applied to transactions of large-scale landholdings?

Regulating the transfer of land through the introduction of a public interest test is an essential step towards a fairer land system in Scotland. As described above, this must take a holistic approach to the definition of 'public interest', and must apply to land smaller than the 3000 ha threshold in order to have tangible benefits for the public.

We would like to re-emphasise our concern that the focus of this bill on 'net zero' could lead to a very narrow understanding of what is in the public interest, and undermine the effort to diversify land-ownership. Even in relation to the goal of net zero, a holistic approach must be taken which recognises many different ways in which carbon can be sequestered. The public interest test should recognise the benefits of agricultural practices such as agroecology which sequester carbon in the soil, as well as providing wide ranging benefits in terms of biodiversity and local food system development. Where possible, the public interest test should look to identify land uses such as this which provide diverse public benefits.

The public interest test must not be used to justify increased private investment in natural capital. As described above, this is not in the public interest. Every ton of carbon sequestered in Scotland and used to offset emissions elsewhere is a ton of carbon that is not contributing to cooling the planet. In order to reduce the worrying inflation of land prices due to carbon speculation, private carbon markets should not be considered a solution.

Part 7 ii): Regulating the market in large-scale land transfers - requirement to notify an intention to sell

Q25. We propose that landowners selling large-scale landholdings should give notice to community bodies (and others listed on a register compiled for the purpose) that they intend to sell.

a) Do you agree or disagree with the proposal above?

- **Agree** / Disagree / Don't know

Please give some reasons for your answer:

In general, we fully support the proposal that communities should be given notice of land sales. Many Scottish rural communities are small, under-resourced and reliant on voluntary time. The development of bids for ownership by local community groups takes a significant amount of preparation and planning, which must be given time and resources to ensure engagement and democratic participation in the process. In order for this proposal to have any effect on patterns of land ownership, it is essential that it is possible in all cases for communities to request a subdivision of the available land should they prefer, and they should have the right to choose which section would be most beneficial to them. Very large tracts of land may not always be advantageous assets for community groups

We would argue that notice should also be given to a wider range of organisations and individuals rather than just being specifically told to existing community groups. New community groups should be given the opportunity to form in response to the sale of a particular piece of land, and information should be available to all members of the community. The definition of 'community bodies' in the Act should be extended beyond just those based on proximate geographic residence. 'Community bodies' should also include communities of interest such as small farm membership organisations and national organisations promoting Good Food and wider access to land ownership in Scotland.

Defining 'community bodies' based primarily on geographical proximity excludes the majority of Scotland's population, and limits the diversity of communities who have the option to purchase land. Adopting a wider definition of 'community group' in the Act will greatly increase the likelihood of active responses leading to the transfer of land into community ownership. Other relevant bodies could include new entrant farmers and organisations supporting new entrant land access.

b) Do you agree or disagree that there should be a notice period of 30 days for the community body or bodies to inform the landowner whether they are interested in purchasing the land?

- Agree / **Disagree** / Don't know

Please give some reasons for your answer:

30 days is not enough time. Community groups are made up of diverse groups of people, often reliant on voluntary labour. Reaching agreement about having an interest in purchasing land can take a significant amount of time and requires discussion and deliberation of risks

and benefits to the community. The benefit of the model with the SAFER is that it gives much more time to the process of interested parties developing proposals for interest in purchasing land.

c) If the community body or bodies notifies the landowner that they wish to purchase the land during the notice period, then the community body or bodies should have 6 months to negotiate the terms of the purchase and secure funding. Do you agree or disagree with this proposal?

- Agree / **Disagree** / Don't know

Please give some reasons for your answer:

Again, this time frame is too short. Decision making within community groups, as well as finding appropriate funding, can take significant amounts of time, and 6 months is not a reasonable timescale for this process. We propose a time frame of at least a year, and preferably longer. It is more important for land transfers to take place in a manner which supports the public interest and empowers communities. Again, the SAFER model has the benefit of giving the seller the security of selling their land while also giving an appropriate amount of time for interested parties to develop their bids.

Q26. Do you have any other comments on the proposal that landowners selling large-scale landholdings should give notice to community bodies that they intend to sell?

Many communities and individuals do not live where they desire to live, but live there due to economic necessity, and are excluded from current processes of community right to buy because they are unable to live and work in rural areas. This limits the impact of these mechanisms as they currently stand. Widening these proposals to communities of interest and individuals has the opportunity to increase the diversity of landownership across Scotland, especially in depopulated areas where there may not be local communities able to purchase land.

Small-scale private enterprises with an interest in using the land for public good should, such as for agroecological farming to strengthen local food systems, should be given the opportunity to purchase land under these mechanisms. These are often out-priced by large-scale corporations on the open market, which reduces diversity of land ownership and seriously limits opportunities for new entrants to the land sector. A system to regulate land transfers should recognise the multitude of benefits of small-scale land-based enterprises, particularly in the face of biodiversity loss and climate change.

This is of particular relevance to our members, many of whom are new entrants to the landwork sector and who are struggling with gaining access to land. Despite having the relevant expertise and skills for agroecological farming, growing and forestry, many are unable to afford to move to the rural communities which would allow them access to community land ownership. Many of our members describe living in a caravan in the countryside for many years while building the necessary relationships with local landowners in order to gain access to small amounts of agricultural land for their work.

Part 8: New conditions on those in receipt of public funding for land based activity

Q27. We propose the following eligibility requirements for landowners to receive public funding from the Scottish Government for land based activity:

- i. All land, regardless of size, must be registered in the Land Register of Scotland.**
- ii. Large-scale landowners must demonstrate they comply with the Land Rights and Responsibility Statement and have an up to date Land Management Plan.**

Do you agree or disagree with these requirements?

a) Requirement i.

- **Agree** / Disagree / Don't know

b) Requirement ii.

- **Agree** / Disagree / Don't know

Please give some reasons for your answers:

Public funding should be spent on public goods. The above suggestions form the very minimum which should be required by landholders to receive public funding. In order to award public funding, the government must have a clear understanding of land ownership and land use, and landowners should be required to demonstrate that they are using their land in line with the public interest. The LRRS should apply to all landholdings in Scotland, and large-scale landowners should be regularly inspected for compliance.

Q28. Do you have any other comments on the proposals outlined above?

-

Q29. Do you agree or disagree with our proposal that there should be a Land Use Tenancy to allow people to undertake a range of land management activities?

- Agree / Disagree / **Don't know**

Please give some reasons for your answers:

The main priority of reforming tenancies should be an increase in overall tenancy provision to ensure that more land is available for people to grow healthy food in a sustainable manner for their local communities in order to increase the resilience of our food and farming system. Our members have expressed concern that agricultural land does need greater public protection and that with current financial incentives for tree planting we risk losing agricultural land, and so this proposal needs to be considered in line with future agricultural payments systems to ensure that resilient food supply is not undermined by diversification especially into monoculture forestry systems.

That said, we do recognise the benefits of operating a diverse business model, and many of our members have diverse business models that encompass food production alongside on farm sales, woodland creation, educational opportunities and small-scale ecological tourism initiatives. Improving opportunities for diversification of practice could be beneficial to tenants, particularly as this can increase business security of farmers. However, the opportunity to diversify land use beyond agriculture does exist in the MLDT and so we are

unsure what this new tenancy type would offer above and beyond the existing mechanisms within the MLDT. We understand the principle of frontloading agreements in principle between landowner and tenant which is perhaps different to how the operation of diversification requests are made with MLDTs. However we also want to flag that requests should also be able to be made at any point during the tenancy due to the nature of the changing economic circumstances and evolution of farm businesses, which aren't always possible to foresee at the outset of a tenancy agreement.

Our members also experience significant barriers to diversification which go far beyond tenancy type, such as challenges with funding and planning mechanisms. For example, planning regulations often prevent the development of small-scale farm shops on farm land, which would provide essential mechanisms for development of short supply chains. Funding packages for woodland creation are often not well designed for smaller-scale farms, preventing farms from being able to develop agroforestry systems or reintroduce shelter belts and hedgerows to their land. A future subsidy system which supports agroecological farming properly will also reduce the need for farmers and other landworkers to diversify, allowing them to focus on agroecological land management practices, and so we want to ensure that this proposal is considered alongside the design of the future payment system in the forthcoming Agriculture Bill.

Overall we question the intention behind this policy proposal. The primary challenge with the tenanted sector is availability of secure tenancies, which in general have been in decline for decades. A significant proportion of our members also achieve land access through verbal agreements and temporary mechanisms, as this is the only way available to them to access land. Any proposal to introduce a new tenancy type to the complicated landscape of tenancies in Scotland needs to be assessed thoroughly in terms of whether the intervention is likely to lead to a net gain in tenancies overall. We would like to see evidence that this is the case for this proposal.

Many of our members are unable to gain access to secure tenancies. For some, they have enough capital to purchase land, and prefer to do this so that they can develop long-term land management plans for the benefit of the land and their communities. Even then, it can be a struggle to establish their business and we are concerned that this Bill, with its proposals based on 3,000Ha, will do little to support smaller scale farming as practiced by many of our members. It feels like a missed opportunity.

The case study from one member describes this:

"I farm 70 acres in the hills above Loch Ness. I run mostly sheep, with geese and ducks and am in the very early stages of implementing an agroforestry plan. I arrived in the highlands 5 years ago, after leaving my job on a city farm in London - as I felt too constrained there and was keen to do more agroecological practice than was possible on 1 acre of grazing surrounded by concrete.

My mum had lived in the highlands for the past 15 years, in various places, and my dad had moved to the Black Isle a couple of months before I left London. So I decided I wanted to move up to be closer to my family. I then met my partner, an Invernessian through and through, and so it was settled, I would look for land near Inverness.

I wanted to buy land rather than find a tenancy, partly because it is so hard to find a tenancy, but also because I wanted security to know that I could develop an agroforestry scheme and that I wanted to be there in 30+ years to see the benefits of my labour. This option was open to me because I have money, but I know a lot of people who aren't in the same boat.

I had bought a flat in London 7 years earlier, and so was in an incredibly privileged position to have a lot of money from the sale, and knew I wanted to buy a farm. Though I had a lot of money, the price of farmland meant that I would only be able to afford the right size for my enterprise on marginal land, possibly with a shed but definitely not with housing. Typical house prices around Inverness were beyond what I could afford and they didn't come with land. I didn't want to get bank loans as I worried about repayments on a small income. I planned to buy a static or wooden cabin to live in temporarily while I got planning to build a house.

When I found Achpopuli everything felt right. After a couple of months of getting to know the farm, I had identified a good spot for the house, so put in pre planning form, was advised to get an operational needs assessment and then put in for full planning permission. Planning was eventually granted, but with covid and soaring timber prices the build has started 3 years later than we hoped.

The impacts of this has meant the development of my business has been slower and more difficult - needing to travel to use kitchens and warm water, and not being able to make any business investments til the house is paid for. Staying in a little caravan has taken its toll on my body - my most important tool. My mental health has also suffered, which has limited me too.

I am very much looking forward to having somewhere I can care for myself more easily, have somewhere warm, dry and spacious enough to do my woolwork, a kitchen that I am able to make my skincare range in, and the facilities to welcome people to the farm for visits and workshops. Mike will be on-site too which will make me happy, and he can help with putting the birds away when I am out at craft markets in the winter and get home after dark. Asking people to farm sit will be much easier too, so I can go away for sales opportunities, professional development and recreation too! I will also enjoy being able to invite people in for tea/meals, as the connections I've made in the community feel abit one-sided, and not having a 'proper' home has made me feel abit of an imposter, like an illegitimate member of the community.

I know I've had it incredibly easy compared to most landworkers, but it has still felt very hard at times."

- Katharine Sharp, Farmer and Maker, Achpopuli Farm

Q30. Are there any land management activities you think should not be included within a Land Use Tenancy?

Private carbon offsetting schemes which take agricultural land out of production should not be included within this type of tenancy.

Q31. Do you think that wider land use opportunities relating to diversification, such as renewable energy and agri-tourism, should be part of a Land Use Tenancy?

- Yes / No / Don't know

Please give some reasons for your answers:

Yes, where these activities complement the primary function of agricultural activity and provide the farmer(s) with an opportunity to maintain dignified livelihood and carry out the farming activity in an ecologically sustainable manner that is of benefit to their local community and wider food system.

Q32. Do you agree or disagree that a tenant farmer or a small landholder should, with the agreement of their landlord, have the ability to move their agricultural tenancy into a new Land Use Tenancy without having to bring their current lease to an end?

- Agree / Disagree / Don't know

Please give some reasons for your answers:

-

Q33. Do you agree or disagree that when a tenant farmer or small landholders' tenancy is due to come to an end that the tenant and their landlord should be able to change the tenancy into a Land Use Tenancy without going through the process of waygo, with parties retaining their rights?

- Agree / Disagree / Don't know

Please give some reasons for your answers:

-

Q34. How do you think the rent for a Land Use Tenancy should be calculated?

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Q35. Would you use a Land Use Tenancy if you had access to a similar range of future Scottish Government payments which other kinds of land managers may receive?

- Yes / No / Don't know

Please give some reasons for your answers:

Many of our members face serious challenges with access to land. Were more tenancies made available, our membership would certainly make use of these. However, a Land Use Tenancy which replaces currently existing tenancies without increasing the availability of tenancies overall may be of limited benefit, and would not effectively diversify Scotland's agricultural sector.

This is also very hard to comment on when there is a severe lack of clarity about the future of the agricultural payment system.

36 Do you think that there should be guidance to help a tenant and their landlord to agree and manage a Land Use Tenancy?

- Yes / No / Don't know

Please give some reasons for your answers and outline who you think should be responsible for writing and managing the guidance in the text box below:

-

Q37. Do you think there should be a process to manage disputes between a tenant of a Land Use Tenancy and their landlord?

- Yes / No / Don't know

Please give some reasons for your answers and outline how this process could be managed:

-

Q38. Do you agree or disagree that tenants of a Land Use Tenancy and their landlords should be able to resolve their legal disputes in relation to the tenancy through the Scottish Land Court?

- Agree / Disagree / Don't know

Please give some reasons for your answers and outline additional ways in which disputes could be resolved:

Q39. Do you have any other comments on our proposal for a Land Use Tenancy?

- Yes / No / Don't know

Please give some reasons for your answers:

We are concerned that the introduction of such a tenancy does not address the issues facing tenants in Scotland, and could lead to agricultural land being taken out of food production. This would be in contradiction with many of the Scottish Government's other policies, such as the Local Food Strategy and the Good Food Nation Act. There is an urgent need for more agricultural tenancies in Scotland, rather than less.

In order to address some of the limitations of the current tenancy system, we propose that large-scale landholdings should have a duty to offer tenancies for small-scale food production and mixed land use. This duty could also apply to public landowners, in order to reinvigorate the council farm model, and there are a lot of lessons to be learnt in the development of starter farms by Forestry and Land Scotland.

Part 10: Small landholdings

Q41. Do you agree or disagree with our proposal to explore:

- **Who should be able to acquire large-scale landholdings in Scotland**
 - Agree / Disagree / Don't know

- **The possibility of introducing a requirement that those seeking to acquire large-scale landholdings in Scotland need to be registered in an EU member state or in the UK for tax purposes**
 - Agree / Disagree / Don't know

Please give some reasons for your answers:

-

Q42. Do you have any views on what the future role of taxation could be to support land reform?

We are in support of the introduction of a progressive tax on owning land, applied per hectare on all land above a minimum size threshold. This would be effective in reducing concentration of land ownership, as it would actively dissuade people from continuing to own large amounts of land. Many proposals in this consultation rely on landowners deciding to sell, which happens very rarely and thus may not result in notable redistribution of land. Indeed, standing alone, policies such as the introduction of a public interest test could disincentive land sales. Incentivising land sales through taxation of land ownership above a certain threshold would greatly increase the diversification of land ownership.

Q43. How do you think the Scottish Government could use investment from natural capital to maximise:

- a) community benefit**
- b) national benefit**

We propose that voluntary carbon markets should be banned in Scotland, to prevent inflation of land prices and ensure that carbon sequestration projects in Scotland directly contribute to reducing the nation's carbon footprint

Q44. Do you have any additional ideas or proposals for Land Reform in Scotland?

There have been three acts for land reform in Scotland over the past two decades, yet the impact on the land ownership structure in Scotland has yet to significantly change. We support the Scottish Government to be bolder in its proposals. Both taxation and changes to inheritance laws have been shown to significantly reduce concentration of land ownership, yet neither is proposed here.

In order to achieve these aims, we suggest that the Scottish Government also:

- *Implements a progressive system of land taxation*
- *Applies a public interest test to those inheriting land, or reforms inheritance laws to prevent concentration of landownership in certain families Greatly reduced the minimum threshold size above which landholdings are considered significant, or uses*

a different metric to assess significance Bans carbon markets and caps land prices, making land purchase more accessible to communities, small-scale farmers and environmental organisations. Redistributes power over land-use and ownership to local authorities. In EU countries, such as France, it is standard for decision making on regulation of ownership to happen at the municipality level, where local interests are better understood.

- *Prioritises land-sharing rather than land-sparing approaches to carbon sequestration, such as agroecology, which mitigate against climate change at the same time as providing innumerable benefits to local communities*

It is also important to ensure that the current work on the Agricultural Bill works alongside this Bill. The impact of agricultural payment systems in the past has undoubtedly contributed to the current structure of concentrated land ownership in Scotland. Any future agricultural payment system needs to address this dynamic. Land Access is one of the main challenges that new entrants face, but it must be noted that the challenges that new entrants face are complex, and therefore a holistic approach must be developed to support new entrants who want to farm agroecologically. Our recommendations for support for new entrants include various mechanisms to support land access which run alongside capital grant schemes, training and support and greater investment in local supply chain development.

Part 13: Assessing impact

Q45. Are you aware of any examples of how the proposals in this consultation might impact, positively or negatively, on island communities in a way that is different from the impact on mainland areas?

-

Q46. Are you aware of any examples of particular current or future impacts, positive or negative, on young people, (children, pupils, and young adults up to the age of 26) of any aspect of the proposals in this consultation?

It is unclear how the proposals outlined in this consultation will lead to benefits for young people who want to work in land based sectors. The price of land is prohibitively high, and rural housing scarce, which pose major barriers to young people who do not have access to a large amount of capital either through family or through having a previous career. We would like to draw your attention to our work on new entrant land access which includes a holistic set of policy measures to address land access challenges for new entrants.

[Supporting New Entrants - Landworkers Alliance](#) (webpage)

Q47. Are you aware of any examples of how the proposals in this consultation may impact, either positively or negatively, on those with protected characteristics (age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation)?

The strong focus on communities of place within these proposals is likely to limit the benefits this legislation will have to those with many of these protected characteristics. In particular,

the population in much of rural Scotland is far less diverse than in urban areas, so limiting the proposals to communities of place, and those who can easily integrate into them, may exclude many people with protected characteristics from being able to acquire land.

This is of particular relevance to our members, many of whom are part of protected groups which generally have less access to land, such as migrant communities, people of colour, women and people who are marginalised because of their gender. For example, the members of our LGBTQ+ branch, OOTL (Out On The Land), regularly highlight the challenges which queer people face in rural communities, as well as the increased likelihood of economic precarity for those with protected gender and sexuality characteristics, which pose huge barriers to land access. Expanding the definition of 'community groups' to include people beyond those who already live in rural areas in this bill is essential to ensure increased diversity of landownership and land use in Scotland.

Q48. Are you aware of any examples of potential impacts, either positive or negative, that you consider any of the proposals in this consultation may have on the environment?

The focus of much of this consultation on natural capital, carbon credits and the race to net zero could have extremely negative effects on the environment. Carbon credit and offsetting schemes allow large corporations licence to continue emitting carbon, and have not been shown to reduce overall emissions. This approach risks further concentrating power with large corporations which can afford to buy up large tracts of land, and is a seriously flawed approach to mitigating climate change. In addition, it promotes a land-sparing narrative, which further alienates people from the land, leading to knock on negative effects for the environment. Focusing extensively on achieving net zero to the detriment of other goals would also have other negative impacts on the environment, such as limiting biodiversity regeneration.

Q49. Are you aware of any examples of how the proposals in this consultation might impact, positively or negatively, on groups or areas at socioeconomic disadvantage (such as income, low wealth or area deprivation)?

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Q50. Are you aware of any potential costs and burdens that you think may arise as a result of the proposals within this consultation?

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Q51. Are you aware of any impacts, positive or negative, of the proposals in this consultation on data protection or privacy?

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