

# **LAND REFORM (SCOTLAND) BILL**

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## **FINANCIAL MEMORANDUM**

### **INTRODUCTION**

1. As required under Rule 9.3.2 of the Parliament's Standing Orders, this Financial Memorandum is published to accompany the Land Reform (Scotland) Bill, introduced in the Scottish Parliament on 13 March 2024.

2. The following other accompanying documents are published separately:

- Explanatory Notes (SP Bill 44–EN);
- a Policy Memorandum (SP Bill 44–PM);
- a Delegated Powers Memorandum (SP Bill 44–DPM);
- statements on legislative competence by the Presiding Officer and the Scottish Government (SP Bill 44–LC).

3. This Financial Memorandum has been prepared by the Scottish Government to set out the costs associated with the measures introduced by the Bill. It does not form part of the Bill and has not been endorsed by the Parliament.

### **THE BILL**

4. The Land Reform (Scotland) Bill aims to further improve transparency of land ownership and management, to strengthen the rights of communities by giving them greater involvement in decisions about the land on which they live and work, to increase opportunities for community bodies to purchase land when it comes up for sale, to provide opportunities for a wider group of potential buyers to purchase land where this may further sustainability of local communities, to further modernise and reform the law on agricultural holdings and small landholdings, and to make provision for a new form of tenancy for environmental and hybrid land management purposes (sometimes described as the proposed 'land management tenancy').

5. The Bill introduces the following measures which would apply to owners of large-scale landholdings:

### ***Obligations on landowners***

- New obligations on landowners to produce Land Management Plans and engage with local communities, to support compliance with the principles of the Land Rights and Responsibilities Statement (LRRS).

### ***Requirements prior to transfer***

- Requirements (“pre-notification requirements”) for community bodies to receive prior notification in certain cases that the owner intends to transfer the large landholding, or part of it, and provide an opportunity for community bodies in the area to purchase the land.
- The introduction of a test at the point of certain transfers of a large landholding, or a part of it which is itself over 1000 hectares, to determine if the owner should be required to transfer the land in smaller parts.

6. For the purposes of the obligations on landowners, the Bill defines a large-scale landholding as more than 3,000 hectares, or land that accounts for more than 25% of a permanently inhabited island, where that land exceeds 1,000 hectares. However, for the purposes of the requirements prior to transfer, a large-scale landholding is any landholding (mainland or island) over 1,000 hectares.

7. The Bill also aims to improve the rights of tenant farmers and small landholders, so they are not disadvantaged compared to owner occupier farmers, and are better able to help mitigate the effects of climate change and nature loss. It modernises small landholding legislation to provide small landholders with similar rights to tenants under other forms of land tenure.

8. These measures are divided in the Bill into four principal policy areas:

- measures to further advance the Scottish Government’s land reform programme;
- development of a letting arrangement to support individuals to undertake a range of land use activities in one lease type (land management tenancy);
- measures to modernise agricultural holdings legislation; and
- measures to modernise small landholdings legislation.

9. The costs of the measures in the Bill on the Scottish Administration, local authorities and other bodies, individuals and businesses are set out under their principal policy areas.

10. The development of the measures in the Bill and evaluation of their impacts were informed by three separate public consultations:

- the Land Reform in a Net Zero Nation consultation<sup>1</sup>;
- the Agriculture Bill consultation<sup>2</sup>, which contained the proposals for the modernisation of agricultural tenancies; and
- a consultation on small landholdings<sup>3</sup>.

11. The analyses of all three consultations were published in June 2023<sup>4</sup>. The measures and evaluation of associated costs and impacts have been further informed by research and engagement with stakeholders, including with landowners, tenant farmers and communities. These included discussions with landowners, land managers, and professionals working in the sector. Where the evidence gathered from these conversations informed costs, the source of the evidence is not directly referenced as the information was provided on a confidential basis due to its commercial sensitivity.

## **LAND REFORM – MEASURES TO FURTHER ADVANCE THE SCOTTISH GOVERNMENT’S LAND REFORM PROGRAMME**

12. For the purposes of setting out the costs in relation to the land reform measures, the Scottish Government have grouped the policies in the Bill into two sections:

- Obligations on owners regarding land management plans and community engagement; and
- Pre-Notification to registered community bodies of intended transfers, and the Transfer Test.

13. The costs of the land reform measures are set out in tables in each section, with costs set out over a six year period. Year one represents the first year following Royal Assent, with work progressing on the development of the regulations for the obligations and appointment of the Land and Communities Commissioner. The second and third year cover continued development of the regulations for the obligations. Costs increase in year four as the regulations for the transfer test and pre-notification measures are developed, and staff complements are increased ahead of regulations on the obligations coming into force in year five. Year five costs represent costs during a transition period for the obligations regulations when landowners would need to take action to become compliant but penalties and breach procedures would not yet be in force. Year 6 costs represent costs following full implementation of the measures.

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<sup>1</sup> <https://www.gov.scot/publications/land-reform-net-zero-nation-consultation-paper/>

<sup>2</sup> <https://www.gov.scot/publications/delivering-vision-scottish-agriculture-proposals-new-agriculture-bill/>

<sup>3</sup> <https://www.gov.scot/publications/small-landholdings-modernisation-consultation/>

<sup>4</sup> <https://www.gov.scot/publications/land-reform-net-zero-nation-analysis-responses-consultation-exercise/>  
<https://www.gov.scot/publications/agriculture-bill-analysis-consultation-responses/>  
<https://www.gov.scot/publications/small-landholdings-modernisation-consultation-report/>

## **Land management plans and community engagement obligations**

14. The Bill includes powers to make regulations imposing obligations on owners of large land holdings relating to the management of those holdings and community engagement in respect of them. Regulations will provide that these obligations must include engaging with communities and producing a land management plan. They are designed to, enforce compliance with certain principles of the existing Scottish Land Rights and Responsibilities Statement as provided for in Part 1 of the Land Reform (Scotland) Act 2016. They aim to improve the transparency of land ownership and management and are intended 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, and to encourage dialogue about how community needs in relation to land can be met, outwith a sale.

15. In respect of the obligations, regulations must require owners of large landholdings to produce a land management plan, engage with communities on the development of - and significant changes to - that plan, make that plan publicly available and review and revise the plan at least every 5 years. The Bill also provides that the regulations must set out what information is to be included in a land management plan, including:

- details of the land owned including the owner;
- the long-term vision and objectives for the management of the land, including high level management proposals and potential for future sale;
- how the landowner is demonstrating compliance with obligations relating to land (such as those in the Scottish Outdoor Access Code and Deer Code) as applicable; and
- how the landowner is managing the land in a way that contributes towards net zero emissions targets, adapting to climate change and increasing or sustaining biodiversity.

16. The regulations must also include provision requiring an owner of a large landholding to consider reasonable requests from communities to lease land or buildings.

17. The details of what will be required to meet the requirements of the duty to engage with communities and further detail in relation to land management plans, including the procedures by which plans must be produced, consulted on, published, adhered to and updated, and the ways in which the plans will interact with other codes and obligations, will be set out as regulations in secondary legislation. The provisions in the primary legislation set out the parameters of the regulation-making powers so the costs are assessed on the basis of these parameters and, where possible, on the expected costs associated with detail that will be set out in regulations.

18. Costs associated with the certain obligations to notify communities when the landowner is transferring all or part of the land are set out in the next section alongside costs associated with the transfer test due to the close interaction of these two measures.

19. To support the enforcement of the duties and land management plan requirements, the Bill includes provisions to enable alleged breaches of the duties or requirements to be reported to the new Land and Communities Commissioner. To enable this, the Bill provides for an additional Commissioner within the Scottish Land Commission and makes modifications to the Commission's statutory functions. The Bill also enables the Commission to investigate an alleged breach, support landowners to remedy a breach where one is found and apply financial penalties for not remedying a breach where appropriate. The Bill also makes provision for landowners to appeal the decision and any penalty in relation to a breach investigation.

### ***Costs on the Scottish Administration***

#### *Resourcing costs*

20. The Scottish Ministers will be responsible for preparing regulations which set out the detail of what is required by the obligations on landowners relating to the duties to engage with communities and to produce a land management plan. Ministers will be required to consult with the Land and Communities Commissioner on the draft regulations and the regulations will be laid before Parliament as a Scottish Statutory Instrument (SSI). Costs for consulting on the development of the regulations are comprised of staff costs (set out at point 22) and publication and analysis costs, and is based on it requiring two public consultations to allow for a further consultation on the detail of the regulations developed following an initial consultation. The costs of publishing the consultations on the draft regulations is expected to be between £350-£750 per consultation (inclusive of VAT). The costs of consulting with the Land and Communities Commissioner would be part of the costs for a public consultation. The costs for analysing the consultations are expected to be between £5,000-£40,000 per consultation (inclusive of VAT), based on the costs of analysing the consultation on the draft Register of Persons Holding a Controlled Interest in Land (RCI) regulations, the consultation on the first draft LRRS and the consultation on the proposals for this Land Reform Bill. On the basis of these costs, it would cost between £80 – £100 per response to analyse the consultation.

21. Costs to lay the draft regulations in Parliament is expected to be around £750 (inclusive of VAT), based on the costs for laying SSIs to make amendments to the RCI Regulations, amendments to the Rules for the Land Tribunal for Scotland and Regulations for the Crofting Community Right to Buy. It costs £185 per copy of an SSI and £145 per policy note plus VAT, and typically SSIs will need to be published twice, first in draft and again when made. The regulations are also likely to require impact assessments and the publication costs of these are expected to be between £1000-£2000 based on the costs for publishing an Equalities Impact Assessment, Business and Regulatory Impact Assessment and Data Protection Impact Assessment for the RCI regulations.

22. There is an existing staff complement within the Scottish Government who lead on ensuring that the requirements of the Land Reform (Scotland) Act 2016 are complied with, including the regular five-yearly review of the Scottish Land Rights and Responsibilities Statement. This complement would need to be augmented to support both the work required to develop and consult on the regulations. Based on the staff complement required to develop the RCI regulations, two additional members of staff, one at B3 grade and one at B2 grade, will be needed to develop the regulations for the obligations at a cost of around £120,000, plus approximately the same in overheads (IT, travel & subsistence, pension costs), bringing the overall costs to around £240,000. These will be time-limited posts and resource needs will be considered to strategically balance taking forward new legislative commitments alongside existing ones.

23. The regulations would need to be brought into force prior to full implementation of the compliance requirements. There would be minimal ongoing work on the regulations themselves once they are brought into force. There is no requirement to review the regulations on a regular basis.

24. The Bill will create a new Commissioner within the Scottish Land Commission, the Land and Communities Commissioner, who will be a member of the Commission, and confer new functions on this Commissioner to support and enforce the administration of the new duties on owners of large landholdings. The costs for this new Commissioner will mainly fall on the Commission and so are set out in the sub-section below on costs to the Scottish Land Commission. The new Commissioner will need to be appointed through a public appointments process following enactment however, the costs associated with appointing the Commissioner will fall on the Scottish Government. There is existing staff complement within the Scottish Government to conduct appointment rounds for the Commission, and the appointment process for the new Commissioner can be adopted as part of this work. The first appointment round for the new Commissioner may need to be held as a standalone appointment round but subsequent appointment rounds could be timed to coincide with appointments of the Land Commissioners or Tenant Farming Commissioner (“TFC”). The additional costs for a standalone appointment round are expected to be between £1500 - £3000 based on costs for previous appointment rounds to cover costs associated with conducting interviews, including travel. There may be savings on these additional costs when they are broken down per role for subsequent appointment rounds where the Land and Communities Commissioner role is appointed alongside other Commissioner roles at the Scottish Land Commission, as the same panel could conduct interviews for the different roles.

**Table 1: Costs for Scottish Administration to develop regulations and appoint the first Land and Communities Commissioner**

	Year 1 (£)	Year 2 (£)	Year 3 (£)	Year 4 (£)	Year 5 (£)
Publish first consultation on regulations	350 – 750				
Analysis of first consultation on regulations	5000 – 40000				
Publish second consultation on regulations		350 – 750			
Analysis of second consultation on regulations			5000 – 40000		
Lay draft regulations				750	
Publish impact assessments				1000 – 2000	
Staffing costs (one B3 grade and one B2 grade)	240,000	240,000	240,000	240,000	240,000
Commissioner Appointment (one standalone appointment round)	1500 – 3000				

*Compliance costs for the Scottish Government*

25. There will be costs to the Scottish Government to ensure that any large landholdings owned by the Scottish Ministers and managed directly by the Scottish Government that are in scope of the regulations, such as the crofting estates, are compliant with its requirements, including the preparation and publication of a land management plan. The number of Scottish Government managed landholdings impacted by the obligations is expected to be between 10-15. There will also be costs to public bodies who manage land owned by the Scottish Ministers. These costs would fall on the public bodies and are listed under the relevant sub-heading in this section. While the duty to comply will be on the Scottish Ministers as the owners, the compliance activities in this case will be undertaken by the public bodies who manage the land and so they will also bear the costs.

26. The Scottish Government has already determined some of the information that is expected to be required by the plan, such as the extent of the holdings, long term visions and objectives and actions to remain compliant with existing codes and other statutory requirements in relation to

landholdings it manages directly. Some of the information expected to be required by the plans, such as a map setting out the extent of the landholding, may require technical specialists to determine it. If the extent of the landholding needs to be mapped for the purposes of a land management plan then this could cost between £2400-£3600.

27. There would not be additional costs for landowners associated with the proposal for plans to include information on how the landholding is contributing to carbon emission reduction and nature restoration. As the intention is that the landowner is only required to set out their plans in relation to carbon emission reduction and nature restoration rather than being compelled to undertake certain activities, any costs associated with these activities would not be incurred as a result of these measures. Consequently the Scottish Government would not incur further costs to provide that information for a land management plan.

28. There are likely to be modest costs on the Scottish Ministers associated with consulting on and publishing the plan in relation to landholdings that they directly manage. The exact requirements for consultation and publishing will be set out in regulations which are still to be developed and so cannot be fully quantified at this point but will be assessed during the development of the regulations. As an indication however, if the Scottish Government was required to make a draft land management plan available, allow time for comments on that land management plan, consider those comments as part of further development of the plan and then publish the plan on their website, this could cost between £1000-£3000 in publication costs for both the draft plan for consultation and the final plan. This is based on online publication costs for regulations and other documents of comparable size. Comments could be received by letter or email which would not incur additional costs for the Scottish Government. The costs to consult on a plan will be higher where an enhanced consultation is required but this would only be as a result of the Scottish Government being found in breach of the regulations in respect of land management plans and where this action was specified as a consequence.

29. It is expected that two members of staff, one at B3 grade and one at B2 grade, would be needed to produce and consult on land management plans for Scottish Government managed landholdings and lead on reviews of these plans every five years. This is based on information provided by landowners and public bodies who have experience of preparing land management plans and that the number of Scottish Government managed landholdings impacted is expected to be between 10-15. This additional resource would cost around £120,000 plus approximately the same in overheads (IT, T&S, pension costs), bringing the overall costs to around £240,000. These posts would only be required for limited period every five years and resource needs will be considered to strategically balance taking forward new legislative commitments alongside existing ones.

30. Costs in relation to the obligation for landowners to give consideration to reasonable requests from a community to lease land are expected to be minimal. Where a large landholding is owned by the Scottish Ministers, regulations under the Bill must place an obligation on the Scottish Ministers to give consideration to reasonable requests to lease land and is not requiring that land to be leased. The consideration could be undertaken with existing staff complements as the number of requests required to be considered is not expected to be significantly higher than the



number of any current approaches about leasing land, although as these will be ad-hoc, the Scottish Government cannot be certain of the approximate number of requests. If the Scottish Ministers chose to then enter into a lease arrangement following this consideration, there would be additional costs such as legal fees but this would be a choice by the Scottish Ministers as a landowner and the cost implications of this process are not a direct result of the obligation.

**Table 2: Compliance costs for the Scottish Government**

	Year 5 (£)	Year 6 (£)
Mapping of Landholdings	24,000 – 54,000  (Mapping of a single landholding expected to cost between £2400-£3600, with 10-15 landholdings managed by the Scottish Government in scope. The lower cost estimate is based on 10 landholdings at a cost of £2400 per landholding to map, and the higher cost estimate is based on 15 landholdings at £3600 per landholding to map.)	
Consultation and publication of final plans	10,000 – 45,000  (Cost to cover consultation and publication of 10-15 land management plans, based on costs of £1000 - £3000 per landholding)	
Staff costs  (One B3 grade and one B2 grade)	240,000  (Staff to develop, consult on and publish land management plans for 10-15 landholdings)	240,000

*Costs to the Scottish Land Commission*

31. The Bill will create a new Commissioner, who will be a member of the Commission, and confer new functions on this Commissioner regarding the duties to be imposed on the owners of large landholdings. In respect of the obligations, the Commissioner would have the power to:

- investigate complaints relating to failure to engage with communities in terms of the duty;
- investigate complaints relating to failure to meet the requirements regarding land management plans; and
- enforce compliance.

32. The approach is consistent with public sector reform objectives to minimise additional costs and optimise shared services. The decision to place some of the duties to support the administration of these measures with a Commissioner within the Commission, while placing other responsibilities for the development of regulations for these measures with the Scottish Ministers, was taken to ensure that decisions had appropriate and proportionate oversight based on the potential impact and consequences while minimising costs by avoiding the need to establish a new public body.

33. There will be new costs for a new Commissioner who would be paid at a daily rate for the number of days the Commissioner was contracted to work in a month. The daily fee for a Commissioner at the Scottish Land Commission for 2023-24 is £224.38. This fee is the same for the Land Commissioners (with the exception of the Chair) and the TFC and so it would be appropriate to use the same fee level for the new Commissioner.

34. At present, the TFC usually is expected to work around 8 days per month. The new Commissioner's role is not directly comparable to that of the TFC as the new Commissioner's role is broader but their role is more similar to the TFC's role than that of the Land Commissioners, who only usually work 2 days a month. The duties of the new Commissioner are more similar to that of the TFC, given their powers to investigate breaches, conduct reviews and prepare reports so it is proposed that the new Commissioner may need to work a similar number of days as the TFC is expected to do. If the new Commissioner were to work an average of 8 days per month, then this would be at annual cost to the Commission of around £21,500 in salary costs with around a further £25,000 in overhead costs. A pension is not provided for the Commissioner's role. In practice, the Commissioner may need to work greater or fewer than 8 days a month but this will be determined by the overall volume of work. The Commissioner is expected to work less than 8 days per month until the measures are fully implemented. These costs are the same as those set out in relation to Commissioner for the transfer test and do not represent costs in addition to those costs.

35. The work associated with the powers of the new Commissioner can be delegated to the staff of the Commission who, it is expected, will carry out the majority of the work and in practice the Commissioner would take a strategic and decision-making role in the processes. The Commissioner's work would likely include reviewing and commenting on the consultation response to the draft regulations and making decisions in relation to alleged breaches based on advice and work carried out by Commission staff.

36. In carrying out the Commissioner's functions, it is expected that staff would develop the Commission's response to the Scottish Ministers when they are consulted on the draft regulations, assess allegations of breaches of the regulations to determine if they meet the criteria for investigation, conduct investigations where the criteria are met, make a recommendation to the Commissioner as to whether there has been a breach and, if so, the appropriate course of action. The costs and time for the Commissioner set out above take account of this delegation of tasks.

37. The Scottish Government cannot be certain as to the volume of the work the Commissioner and the staff would have in relation to breaches of the new obligations by landowners as this will depend on the number of allegations lodged. The bodies entitled to report a potential breach have been limited to a community body (where the body's defined area includes or is immediately adjacent to the land which is the subject of the breach), a local authority (if all or part of the land which is the subject of the breach falls within its local authority area), Historic Environment Scotland, the Scottish Environment Protection Agency, Scottish Forestry and NatureScot. Based on the Commission's existing casework to support the implementation of the LRRS, while taking into consideration that the casework can cover a wider range of issues than the obligations would and having statutory compliance may reduce the number of instances of potential breaches, we expect there to be between 10-30 allegations of breaches of the obligations per year. Based on the TFC's experience of conducting reviews and producing reports, it is expected that the costs of conducting investigations and producing reports, excluding staff time, will be between £1000-£4000 per case.

38. Based on the required powers, level of responsibility and examples of staffing in other operational areas, it is expected at a minimum that the work carried out by staff to support the new Commissioner's functions in respect of the new duties on landowners and other duties in respect of the transfer test would require the support of 3 staff at the equivalent of one B2 grade, one B3 grade and one C1 grade. This would cost approximately £210,000 in salary plus approximately the same for operating overheads (IT, T&S, pension).

39. The total cost of around £470,000 per annum for staffing the Commission and the Commissioner in respect of the obligations on landowners to engage with communities and produce a land management plan will be met by the Commission through their budget. The Commission's budget is entirely funded through grant-in-aid by the Scottish Government. The Commission will require ongoing resource funding to cover the costs for the new Commissioner and additional staffing costs. It is proposed that these costs would be partially met through existing funding to the Commission by reducing their current activities, such as their policy work. Additional funding will, however, be required in order to fully fund these new functions. The Commission's annual budget for 2023-24 is £1,550,000, of which almost £1m is for salary costs for Commission staff and the Commissioners.

**Table 3: Costs for the Scottish Land Commission**

	Year 2 (£)	Year 3 (£)	Year 4 (£)	Year 5 (£)	Year 6 (£)
Land and Communities Commissioner Costs	12,500  (Year 2-4 costs are based on the Commissioner working 2 days per month to support the development of regulations and guidance)	12,500	12,500	50,000  (Year 5-6 costs are based on the Commissioner working 8 days per month once regulations are implemented)	50,000
Breach investigations and reports					10,000 – 90,000  (Based on 10-30 cases per year, at a cost of £1000 - £4000 each)
Staff costs  (One C1 grade, one B3 grade and one B2 grade)			420,000  (Staff to be brought in in year 4 ahead of implementation in year 5)	420,000	420,000

*Compliance costs for public bodies that manage land*

40. As noted above at point 25, there will be costs to public bodies that manage land on behalf of the Scottish Ministers to ensure that landholdings that are in scope of the regulations are compliant with its requirements, including the preparation and publication of a land management plan.

41. Based on internal Scottish Government data, there are around 70-80 landholdings managed by public bodies above 3000 ha in size. Forestry & Land Scotland (FLS), NatureScot, Crown Estate Scotland and Scottish Water are understood to have landholdings that are within the scope of the Bill's provisions.

42. Public bodies have already determined some of the information that is expected to be required by the plan, such as the extent of the holdings, long term visions and objectives and actions to remain compliant with existing codes and other statutory requirements in relation to landholdings it manages directly. Some of the information expected to be required by the plans, such as a map setting out the extent of the landholding, may require technical specialists to determine it. If the extent of the landholding needs to be mapped for the purposes of a land management plan then this could cost between £2400-£3600 per landholding.

43. FLS, who are responsible for Scotland's national forests and land, have 360 land management plans for forestry purposes to meet statutory requirements which are fully reviewed every ten years, with an interim review every 5 years. Their operational budget for forestry planning in 2023-24 is £8.7 million, with an additional £960,000 for staff costs for 17 FTE. However, the team's work is broader than just the delivery and review of land management plans. As the work covered by this budget is broader than land management plans and FLS's holdings vary in size, the average cost of a land management plan for forestry purposes cannot be taken from these figures. FLS land management plans for forestry purposes contain a greater level of technical detail than is proposed for land management plans in the Bill and so costs for public bodies to produce a land management plan are not expected to be as high as these costs suggest.

44. NatureScot have estimated, based on current planning activity, that, for an average site, it would cost around £15000 to produce a land management plan including consultation costs. NatureScot currently produce management plans for their National Nature Reserves and are involved in Deer Management Plans.

45. Whilst the content of FLS's current land management plans may not be the same as what will be required in land management plans under the Land Reform Bill, the Scottish Government is committed to minimising duplication. Duplication will be addressed in the regulations in secondary legislation and may help reduce the costs on public bodies and others who are required to produce other forms of statutory plans for landholdings also in scope of land management plans obligations.

46. As public bodies already produce plans for their holdings, additional costs to produce land management plans to meet the obligations are expected to be minimal as they are likely to be collecting a significant amount of the required information already. Public bodies already undertake consultation and engagement activities either directly in relation to current management plans or other activities. Consequently any additional costs for engagement in relation to statutory land management plans are also expected to be minimal as that engagement either already takes place or could form part of other existing engagement. Overall costs to produce, consult on and publish management plans are expected to be between £3000-£15000. Any new costs for public

bodies however to meet these obligations are not expected to be this high as many already produce and consult on detailed plans. Public bodies are likely to incur additional costs in relation to publication, and these would be expected to be £300-£1500 per plan.

47. If a public body was alleged to be in breach of the regulations, there may be costs associated with complying with a breach investigation process, such as staff costs, as they may need to produce certain information and respond to requests. Based on engagement with landowners in relation to LRRS casework conducted by the Scottish Land Commission, it expected that investigations could require 1-2 days of staff time. Based on engagement with landowners, it is expected that this could be at a cost of £200 - £2000 per investigation. If a public body does not provide information required by the Land and Communities Commissioner, that they consider appropriate for the purposes of the investigation, the Commissioner can apply a financial penalty of up to £1000 to the landowner.

48. If a landowner was found to be in breach of the regulations, there would also be costs associated with remedying the breach depending on the action needing to be taken. In most cases this would have been action that they would have been expected to undertake to be compliant in the first instance, and so would be unlikely to be an additional cost.

49. If a landowner then fails to remedy a breach within the required timescale, the Land and Communities Commissioner can apply a financial penalty of up to £5000 to the landowner, which would need to be paid to the Commission within 28 days. The money would then be paid into the Scottish Consolidated Fund (“SCF”). As the focus is on remedying a breach and only applying a financial penalty if it is not remedied timeously, the number of fines applied is expected to be low, for example less than five in a year.

50. Public bodies are exemplars however of responsible land management and community engagement, and any landowner complying with the obligations are very unlikely to be subject to a breach investigation.

**Table 4: Compliance costs for public bodies that manage land**

	Year 5 (£)	Year 6 (£)
Land Management Plan Costs	21,000 – 120,000  (Overall costs based on 70-80 landholdings, at a cost of £300-£1500 per plan – as set out above these are additional costs for public bodies given existing activities and staff provision. The lower cost estimate is based on 70	

	landholdings at a cost of £300 per plan, and the higher cost estimate is based on 80 landholdings at £1500 per plan.)	
Mapping of Landholdings	168,000 – 288,000  (Mapping of a single landholding expected to cost between £2400-£3600, with 70-80 landholdings managed by public bodies in scope. The lower cost estimate is based on 70 landholdings at a cost of £2400 per landholding to map, and the higher cost estimate is based on 80 landholdings at £3600 per landholding to map.)	
Breach investigations		400 – 20,000  (Based on costs of £200-£2000 per investigation, with landowners (excluding non-public landowners) being subject to 2-10 investigations per year in total. This figure is for all public landowners in scope of this section, not per landowner)

*Costs to the Scottish Courts and Tribunals Service*

51. There will also be financial implications for the Scottish Courts and Tribunals Service (“SCTS”) in handling appeals in relation to the provisions. The landowner may appeal to the Lands Tribunal for Scotland regarding any financial penalty levied by the Commissioner.

52. Initial costs to the SCTS for the initial consideration of an appeal are likely to be in the region of £240 per appeal. Court fees may also be required to be paid by the landowner making the appeal. For more substantive hearings (based on a five hour sitting time), costs will be in the region of £1800 per day. Approximate costs to draft final written orders and any expenses orders

may be in the region of a further £1800. Lands Tribunal members are salaried, and so the exact costs likely to be incurred by the SCTS is dependent on members respective salaries.

53. Where a site visit is required as part of the process, there will be additional travel costs. Costs to the SCTS in this regard will be dependent on the location of the site visit and the number of members involved. Travel time would need to be factored into any site visit, which could involve a day trip or an overnight trip.

54. Procedure in an appeal action will vary depending on the circumstances of each case, including complexity and whether the application is opposed etc. and so the costs will also vary. As the number of breaches resulting in a financial penalty is expected to be very low, the number of appeals is expected to be very low as well. It is estimated that there may only be less than 5 appeals per annum to the Lands Tribunal in relation to breach investigations.

**Table 5: Costs for SCTS**

	Year 6 (£)
Initial consideration of appeal	240 – 1200  (Based on 1-5 appeals per year, at a cost of £240 per appeal)
Substantive hearings	1800 – 9000  (Based on 1-5 appeals per year, at a cost of £1800 per appeal)
Drafting of final written orders and any expense orders	1800 – 9000  (Based on 1-5 appeals per year, at a cost of £1800 per appeal)

***Costs on local authorities***

55. There are not expected to be any direct costs for local authorities to comply with the regulations as they are not currently understood to own land that meets the criteria at which they would be required to comply with the regulations in respect of those landholdings.

56. There may be some costs for local authorities though, as the regulations could require that landowners consult with local authorities as part of the consultation on their land management plans. Where landowners consult with local authorities on their land management plans, there would be a small financial implication for local authorities in preparing and submitting a response as this would require staff time to do so. It is expected that this impact will be minimal however and local authorities would not be under a duty to respond to the consultation as the requirement



would only be on the landowner to give them the opportunity to do so. The financial implications for local authorities of any proposals in the regulations would need to be assessed and taken into consideration when the regulations are being developed. It is expected to take 2-5 days of a staff member's time to consider a land management plan and prepare and submit a response to the landowner with any comments, which would cost between £1000-£2000 in resource.

57. The number of plans that each local authority may be consulted on would vary by authority. Across Scotland there are expected to be around 400 – 420 landholdings required to have a management plan. One plan could cover more than one landholding though and so the number of plan local authorities are consulted on would likely be less than 400, and only the authority in which the landholding sits would be consulted. Not all authorities would be consulted as not all authorities would have landholdings in scope of the measures within their local authority area. These costs would likely be incurred on a five yearly cycle in relation to each landholding, but these would not all be coming to the local authority at the same time.

58. Local authorities are also one of the specified bodies that can make a report to the Land and Communities Commissioner where they become aware of an apparent breach on a landholding within their local authority area but they are not under a duty to report the breach. In considering whether to choose to make a report, local authorities will need to consider the resource implications of doing so.

59. If local authorities choose to allege a breach, they will need to complete a form and provide evidence to support the allegation. To reach this stage they will also have needed to consider the issue and whether a breach should be alleged. They would not then have significant further involvement in the process, although they may be contacted by the Land and Communities Commissioner if needed during their investigation.

60. As this process would not be undertaken on a regular basis and the involvement of the local authority would be minimal, it is expected that reporting of breaches where necessary could be undertaken by the existing staff complement within local authorities. As the involvement of local authorities is minimal and involves existing staff time, it is challenging to quantify the exact staff costs but the impact is expected to be minimal. It is expected that it could take 2-5 days of staff time, which would cost between £1000-£2000 in resource, to report a breach and engage as required with the Land and Communities Commissioner as part of the investigation process.

**Table 6: Costs for local authorities**

	Year 5 (£)	Year 6 (£)
Responding to consultations on land management plans	400,000 – 840,000  (Based on resource costs of £1000-£2000 per plan, with around 400-420 plans	

These costs are across all local authorities and not per-authority.	requiring consultation nationwide.)	
Reporting breaches and engaging with the investigation process  These costs are across all local authorities and not per-authority.		5,000 – 30,000  (Based on resource costs of £1000-£2000 per investigation, assuming that local authorities report at most half the expected number of breaches allegations per year (5 – 15). The overall estimate for breach allegations in a year is 10 – 30.)

### ***Costs on other bodies, individuals and businesses***

#### *Costs to landowners*

61. There will be costs to public, private, community and third sector landowners of large landholdings in relation to compliance with the regulations due to the new obligations that will be imposed on them including the need to develop and publish a land management plan.

62. Many owners of large-scale landholdings are likely to have already carried out work to determine some of the information required by the plan such as the extent of their holding, developing a long term vision and objectives for their land and taking actions to remain compliant with existing codes and other statutory requirements. Some will need to take these and other steps if they have not done so already, to determine information required by the plan. Based on information provided from a range of different types of landowners, it is expected that the costs of drafting a land management plan would be between £3,000-£15,000 per plan, with around 320 - 350 plans needing to be completed in total (not including plans to be completed by public landowners). These costs will be less for some landowners who have already determined some of the information required.

63. Some of the information expected to be required by the plans, such as a map setting out the extent of the landholding, will require technical specialists to determine it if a landowner does not have the required detail. Based on engagement with land agents, if the extent of the landholding needs to be mapped by a land agent for the purposes of a land management plan, then this could cost between £2,400-£3,600 per landholding.

64. There may also be costs associated with the proposal for plans to include information on how the landholding is contributing to carbon emission reduction and nature restoration. As the

intention is that the landowner is only required to set out their plans in relation to carbon emission reduction and nature restoration rather than being compelled to undertake certain activities, any costs associated with these activities would not be incurred as a result of these measures. Consequently, landowners would not incur further costs to provide that information for a land management plan.

65. There are likely to be modest costs associated with consulting on and publishing the plan. The exact requirements for consultation and publishing will be set out in regulations which are still to be developed and so cannot be fully quantified at this point but will be assessed during the development of the regulations. As an indication however, if a landowner was required to make a draft land management plan available, allow time for comments on that land management plan, consider those comments as part of further development of the plan and then publish the plan on their website, this could cost between £1000-£3000 in publication costs for both the draft plan for consultation and the final plan. This is based on online publication costs for regulations and other documents of comparable size. Comments could be received by letter or email which would likely not incur additional costs. The costs to consult on a plan will be higher where an enhanced consultation is required but this would only be required if a landowner was found in breach of the regulations in respect of land management plans and where this action was specified as a consequence.

66. Costs in relation to the obligation for landowners to consider reasonable requests from a community to lease land are expected to be minimal, and be costs in terms of staff resource and any professional advice sought, if a landowner chooses to do so. Consideration of a reasonable request would likely only require 1-2 days of staff time. Regulations to be made under the Bill are only placing an obligation on landowners to consider reasonable requests to lease land and cannot require that land is leased. The consideration could be undertaken with existing staff complements as the number of requests required to be considered is expected to be low, although as these will be ad-hoc the Scottish Government cannot be certain of the approximate number of requests. If the landowner chose to then enter into a lease arrangement following this consideration, there would be additional costs such as legal fees but this would be a choice by the landowner to enter into a lease and the costs do not arise directly from the obligation.

67. If a landowner was alleged to be in breach of the regulations, there may be costs associated with complying with a breach investigation process, such as staff costs, as they may need to produce certain information and respond to requests. Based on engagement with landowners in relation to LRRS casework conducted by the Scottish Land Commission, it is expected that investigations could require 1-2 days of staff time. Based on engagement with landowners, it is expected that this could be at a cost of £200 - £2000 per investigation. If a landowner is complying with the obligations, they are very unlikely to be subject to a breach investigation. If a landowner does not provide information required by the Land and Communities Commissioner, that they consider appropriate for the purposes of the investigation, the Commissioner can apply a financial penalty of up to £1000 to the landowner.

68. If a landowner was found to be in breach of the regulations, there would also be costs associated with remedying the breach depending on the action needing to be taken. In most cases

this would have been action that they would have been expected to undertake to be compliant in the first instance, and so would be unlikely to be an additional cost.

69. If a landowner then fails to remedy a breach within the required timescale, the Land and Communities Commissioner can apply a financial penalty of up to £5000 to the landowner, which would need to be paid to the Commission within 28 days. The money would then be paid into the Scottish Consolidated Fund (“SCF”). As the focus is on remedying a breach and only applying a financial penalty if it is not remedied timeously, the number of fines applied is expected to be low, for example less than five in a year.

**Table 7: Compliance costs for landowners (excluding public landowners)**

70. Costs in table 7 are for all landowners in scope of this section, and are not per landowner.

	Year 5 (£)	Year 6 (£)
Consultation and development of Land Management Plans	0.96m – 5.25m  (Based on 320-350 plans needing to be completed at a cost of £3000-£15000 per plan)	
Mapping of Landholdings	0.77m – 1.26m  (Based on 320-350 landholdings needing to be mapped at a cost of £2400-£3600 per landholding)	
Publication of plans		0.320m – 1.05m  (Based on 320-350 plans to be published at a cost of £1000-£3000 per plan)
Breach investigations		1000 – 50,000  (Based on costs of £200-£2000 per investigation, with landowners (excluding public landowners) being subject to 5-25 investigations per year in total.)

### *Appeals*

71. There will also be financial implications for the parties involved in appeals of decisions in relation to breaches of the regulations, which would include landowners and the Land and Communities Commissioner.

72. The landowner may appeal to the Lands Tribunal for Scotland regarding any financial penalty levied by the Commissioner. Both the landowner and the Commissioner would likely incur legal costs as part of any action. Parties are not required to have legal representation at a hearing but, even if parties choose not to incur costs for representation, there will be costs associated with lodging the appeal and administrative costs.

73. Procedure in an appeal action will vary depending on the circumstances of each case, including complexity and whether the application is opposed etc. and so the costs will also vary. The unsuccessful party in an appeal action may be required to pay expenses to the successful party which could incur further costs for the landowner or for the Scottish Land Commission.

74. As the number of breaches resulting in a financial penalty is expected to be very low, the number of appeals is expected to be very low as well. It is estimated that there may only be less than 5 appeals per annum to the Lands Tribunal in relation to breach investigations.

### ***Summary of costs for community engagement and land management plan obligations***

75. The table below summarises costs in relation to the obligations. It does not include costs for landowners in relation to appeals of decisions or financial penalties. These costs are included in the summary table in the conclusion along with the reasons for not capturing all appeal and penalty costs in the summary table.

***Table 9: Costs summary for community engagement and land management plan obligations***

*(Where required, figures below 1 million are rounded to the nearest lower £1000 for the lower figure in the range and the nearest higher £1000 for the higher figure in the range. Figures over 1 million are rounded to the nearest £10,000.)*

	Year 1 (£)	Year 2 (£)	Year 3 (£)	Year 4 (£)	Year 5 (£)	Year 6 (£)
Costs on the Scottish Administration	245,000 – 284,000	252,000 – 254,000	257,000 - 293,000	674,000 - 676,000	1.17m – 1.46m	724,000 – 840,000
Costs on local authorities					400,000 – 840,000	5000 – 30,000
Costs on individuals and businesses					1.73m – 6.51m	0.32m – 1.10m

## **Pre-notification and the transfer test**

### ***Pre-notification***

76. The owners of large landholdings would be required to notify the Scottish Ministers should they intend to transfer all or part of their landholding (where it met the definition of a large-scale landholding), to allow for individuals who have registered an interest to be notified. Community bodies would have a period of protected time where the landowner would be prevented from taking further steps to transfer the land to a) express an interest, and, should they pass an initial screening, b) produce a formal application under Part 2 of the Land Reform (Scotland) Act 2003 (“Part 2 Community Right to Buy”) for a private landholding. The criteria for decision making would follow what is currently set out for this route.

77. Should a formal application be accepted, the community body would have a registered right to buy over the relevant land and would follow the process to complete purchase set out in existing Part 2 community right to buy.

### ***Transfer test***

78. If landholding proposed for sale was over 1000 hectares the transfer test will be carried out as well as pre-notification. Scottish Ministers will refer the land proposed for sale to the Land and Communities Commissioner who will consider the application and produce a report for Ministers. This would take place concurrently to the pre-notification process to limit impact on transfer timescales.

79. The Scottish Ministers would determine, with reference to the Land and Communities Commissioner report whether lotting of the landholding would be appropriate. If lotting was determined to be appropriate this is anticipated to be subject to expert advice and landholder views would be considered. The landholder would then be instructed to market and transfer the landholding in the lots as specified. There would be a restriction on any one party being able to purchase multiple lots.

80. Where not all lots are sold after a specified period of time after public listing for sale, the landowner may apply to Ministers to:

- have the requirement to sell in lots lifted, or
- require that remaining lots should be purchased at market value by Scottish Ministers.

## ***Costs on the Scottish Administration***

### ***Resourcing costs***

81. The Scottish Ministers will be responsible for preparing regulations in secondary legislation to cover aspects of the pre-notification and the transfer test processes. The regulations will be laid before Parliament as a Scottish Statutory Instrument (SSI). Costs for consulting on the development of the regulations is based on it requiring one public consultation. The costs of

publishing the consultation on the draft regulations is expected to be between £350-£750 (inclusive of VAT). The costs for analysing the consultation is expected to be between £5,000-£40,000 (inclusive of VAT), based on the costs of analysing the consultation on the draft RCI regulations, the consultation on the first draft LRRS and the consultation on the proposals for this Land Reform Bill. On the basis of these costs, it would cost between £80 – £100 per response to analyse the consultation.

82. Costs to lay the draft regulations in Parliament is expected to be around £750 (inclusive of VAT) based on the costs for laying SSIs to make amendments to the RCI Regulations, amendments to the Rules for the Land Tribunal for Scotland and Regulations for the Crofting Community Right to Buy. It costs £185 per copy of an SSI and £145 per policy note plus VAT and typically SSIs will need to be published twice, first in draft and again when made. The regulations are also likely to require impact assessments and the publication costs of these are expected to be between £1000-£2000 based on the costs for publishing an Equalities Impact Assessment, Business and Regulatory Impact Assessment and Data Protection Impact Assessment for the RCI regulations.

83. The Scottish Government will be responsible for providing a way for community bodies to register interest in being notified of proposed sales in their area. The Scottish Government will also be responsible for initial review of pre-notification and transfer test forms submitted by the landowner to confirm that these met requirements. For valid pre-notifications, the Scottish Government will be responsible for issuing this to contacts on the pre-notification list and for publishing high level details of the pre-notification on a website. The Scottish Government will also be responsible for providing guidance, for informal discussions with landowners and community bodies in relation to the process and administrative requirements for stages prior to formal application.

84. Scottish Government staff will support the Scottish Ministers in deciding whether to accept a formal application from the community body and considering any response from the landowner. If an application is accepted, Scottish Government staff will provide administrative support for the subsequent process which would follow established community right to buy processes.

85. It is estimated that 100 – 170 transactions per year will be in scope of pre-notification. Based on previous experience of the number of community right to buy applications received for existing processes, and taking into consideration the number of groups who receive support in respect of community right to buy but do not always then lodge an application, not all of these notifications will result in community bodies then proceeding with the community right to buy process.

86. Analysis of land sales data 2020-2022 as published in Scottish Land Commission Rural Land Market Report<sup>5</sup>, has been used to produce the below table of estimates for the number of transactions in scope of the transfer test:

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<sup>5</sup> [Rural Land Market Report \(landcommission.gov.scot\)](https://landcommission.gov.scot)

**Table 10: Estimate of transactions in scope of the transfer test**

<b>Estimate</b>	<b>Low (per annum)</b>	<b>Medium (per annum)</b>	<b>High(per annum)</b>
Proposed sales in scope	5	10	15
Assuming 30% result in Ministerial decision to lot	2	3	5

87. An existing staff provision within the Scottish Government supports community right to buy processes, but additional staff resource will be needed to develop the regulations, support an increased volume of work and new responsibilities as set out above in relation to pre-notification, the list of community bodies and the transfer test, and support, and provide guidance on, this new process. It is expected that an additional five staff members will be needed: two at B1 grade, two at B2 grade and one at B3 grade. This would cost approximately £255,000 in salary plus approximately the same in overheads (IT, travel & subsistence, pension costs), bringing the overall costs to around £510,000 per annum. These staff would only be needed once the measures for pre-notification and the transfer test were fully implemented, and so costs would not be incurred until that stage.

88. As set out in the section on land management plans and community engagement obligations, the Bill will create a new Commissioner within the Scottish Land Commission, who will be a member of the Commission, and also confer new functions on this Commissioner to support the administration of the transfer test. The costs for this new Commissioner will mainly fall on the Commission and so are set out in the relevant sub-section below. Costs in relation to the new Commissioner, including their appointment are set out at points 24 and 34. There are no additional costs for the new Commissioner due to their responsibilities in relation to the transfer test.

89. There will be minimal costs for the Scottish Administration associated with notifying communities in the event of a sale of any land. The costs associated with notifying communities when the Scottish Ministers are selling all or part of the land are expected to come to between £100-£300 for Scottish Ministers. These costs would be for notifying communities and only be incurred when all or part of a landholding was being sold, which would occur approximately 100-170 times per year.

90. If, as a result of the transfer tests, a landowner is required to place the land in lots, the Scottish Government would be responsible for meeting the professional fees to determine the boundaries of lots and having them valued, seeking expert advice where required to do so. Costs related to the determination of boundaries of lots and their valuation will vary on a case-by-case basis. Engagement with land agents suggest that cost relating to the provision of this advice would likely be in the region of £5000-£10000 each time advice is sought. This assumes that a qualified



land agent is providing the advice and that this agent conducts a site visit taking one day, a desk-based review of the landholding (0.5 days) and then drafts a report to Scottish Ministers setting out advice (1 day). Based on the figures set out in table 10, it is expected that this advice may be needed 2-5 times per year, coming to an annual overall cost of £10,000 - £50,000.

91. If a landowner appeals the Scottish Ministers' decision in relation to the transfer test and is successful, the Scottish Ministers would likely be required to pay expenses to the successful party following the court proceedings. Procedure in an action, including length of any proof/debate etc. will vary depending on the circumstances of each case, including complexity and whether the application is opposed etc., and expenses will vary depending on procedure and the length of an action. Consequently it is difficult to estimate the potential cost of expenses if a decision is successfully challenged, though based on current fees, expenses could range from the low thousands of pounds to tens of thousands of pounds.

**Table 11: Costs for the Scottish Administration**

	Year 4 (£)	Year 5 (£)	Year 6 (£)
Staff Costs  (One B3 grade, two B2 grade and two B1 grade)	240,000  (Based on one B3 grade and one B2 grade required to develop regulations)	240,000 – 510,000  (Increased to full staff complement of one B3 grade, two B2 grade and two B1 grade for implementation of regulations)	510,000
Publish consultation on regulations	350 – 750		
Analysis consultation on regulations	5000 – 40000		
Lay draft regulations		750	
Publish impact assessments		1000 – 2000	
Notifying communities of a proposed sale			10,000 – 51,000  (Based on £100 - £300 per notification, occurring 100-170 times per year)

Advice from experts on lotting			10,000 – 50,000  (As set out at point 90)
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*Compensation costs*

92. If the transfer test is applicable, the Ministers must compensate landowners for losses directly related to the transfer test including any loss or expense arising from complying with procedural requirements, attributable to the prohibitions or as a result of a lotting decision Being imposed by Ministers. The scale of compensation in an individual case relating to loss in value would depend on the difference in sale value between the lotted estate and the whole estate. The total liability for the Scottish Government will also depend on how many landholdings Ministers direct to be lotted. Where compensation relates to a delay arising from the prohibitions on transfer of land, the compensation will depend on any costs incurred as a result of the delay or any loss in value during the delay.

93. Engagement with land agents on costs involved in the sale of land in lots or as a whole suggest that this will be highly dependent on the individual landholding. Advertising, sale and legal costs associated with selling in lots may be around double those anticipated for as one unit (in both cases assuming land sold on open market) however, in many cases this may be offset by increased overall value achieved through sale in lots.

94. Similar rules for claiming compensation exist for community right to buy cases under current legislation. The landowner is responsible for costs relating to the advertising and sale of the lots. If a landowner can demonstrate that these costs exceed what they would have been had the land been sold as a single holding, then the landowner will be entitled to claim compensation from the Scottish Government.

95. As part of the transfer test proposal, the advice to Ministers to inform their decision on lotting will include an assessment by officials of the possibility that compensation will be required and the value for public money in relation to the anticipated benefit to local communities. Where expert advice indicated that the lotting was highly likely to significantly negatively impact the overall value of the land, it will be open to Ministers to decide that the benefits of lotting did not justify the costs.

96. This approach is in keeping with current Scottish Government policy. The Scottish Public Finance Manual provides that prudent lotting should always be considered and that public bodies are obliged to obtain Best Value which is not necessarily the highest price if there are associated benefits.

97. Currently landholdings that meet the criteria to be in scope of the transfer test are typically being sold for values between £2m-£30m, with an average sale price of £8m in 2022<sup>6</sup>, based on industry reports. Data from the Scottish Land Commission’s “Rural Land Markets Insights Report 2023” suggests a lower average sale value for Scottish Estates, but their figures account for small landholdings not in scope of the transfer test which reduces the average value figure for sales. Compensation being claimed for a difference in value caused by the land being sold or transferred in lots, or where there is a loss in value as a result of a lot or lots not being sold or transferred, is difficult to estimate. Any compensation costs for diminution of value incurred, however, would never be for the full value of a landholding as compensation would only be paid for losses arising where a difference in value caused by the land being sold or transferred in lots can be demonstrated or where there is additional financial impact as a result of the process.

98. Where some lots remain to be sold after a specified period of time after public listing for sale, the landowner may apply to Ministers to review the lotting decision. Subject to this review, the Minister may maintain the original lotting decision, agree to lift or revise the original lotting decision or agree that the Scottish Ministers will purchase a remaining lot or lots at market value. The landowner can appeal this decision to the Lands Tribunal.

99. Since the likelihood of lots only partially selling would have been considered by Ministers in reaching their original decision, and in other cases lifting or amending the lotting requirement may be sufficient to allow a sale to proceed, the outcome of the Scottish Ministers agreeing to purchase land is, although a possibility, unlikely. In very limited circumstances, the outcome may be that the Scottish Ministers agree to purchase land. In this scenario, the potential liability would depend on the value and size of the lot(s) in question and be subject to the market which causes values to change over time, so it is very challenging to quantify the Scottish Ministers’ liability in this respect with certainty. The value of the lot or lots could potentially be anything from the low thousands of pounds to over £10m. The land purchased would of course be an asset and could potentially be re-sold at a profit.

#### *The Scottish Land Commission*

100. The Bill will confer further new functions on the new Commissioner to support the administration of the transfer test. In respect of this obligation, the Commissioner would be under a duty to:

- to consider the information provided by the landowner and the individual circumstances of the landholding, in certain cases carrying out a more full investigation which may include seeking advice on lotting ; and
- provide the Scottish Ministers with a report setting out the evidence gathered.

101. These new functions would be in addition to the function set out at point 31 to investigate complaints (relating to failure to engage with communities or failure to meet the requirements

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<sup>6</sup> Strutt and Parker, *Scottish Estate Market Review 2023*, <https://rural.struttandparker.com/wp-content/uploads/2023/02/Scottish-Estates-Q4-2022-Web.pdf>

regarding land management plans in terms of the obligations) and enforce compliance. Costs on the Scottish Land Commission, including for the new Commissioner and staff to support these duties, are set out at points 34 and 38 and captured in the costs on the Scottish Administration in the section on land management plans and community engagement obligations.

102. As set out earlier, the approach is consistent with public sector reform objectives to minimise additional costs and optimise shared services. The decision to place some of the duties to support the administration of the measures with a Commissioner within the Commission, while placing some duties to support their administration with Scottish Ministers, was taken to ensure that decisions had appropriate and proportionate oversight based on the potential impact and consequences, while avoiding the need to establish a new public body.

#### *The Scottish Courts and Tribunals Service*

103. There will be costs for the SCTS as provision is made for Ministerial decisions in relation to the transfer test to be appealed to the Court of Session. It is estimated that this could lead to less than five appeals to the Court of Session each year, as only 2-5 transfers are expected to result in lotting decisions per annum. For Court of Session appeals against a ministerial decision, the initial costs to SCTS are in the region of £565 per appeal, resulting in additional costs per annum of £1030 - £2825. This would be indicative of the initial procedural hearing only. Should the cause proceed to substantive hearings, the cost to SCTS would be in the region of £8050 per day, based on an optimum 5 hour sitting time. This figure includes livestream costs. These could lead to further costs to SCTS of £8050 - £65000, depending on how many appeals proceeded to substantive hearing and how long those hearing required.

104. These figures are indicative of the initial costs to the SCTS and do not include running and overhead costs to the courts nor fees payable by the parties for legal representation or court fees etc. Court fee information relating to the Court of Session is published on the main SCTS website. These are based on the statutory Fees Orders which are a matter for the Scottish Ministers. There is a fee for lodging an application with the Court of Session, if a case proceeds to proof or debate etc. Procedure in an action, including timescales, will vary depending on the circumstances of each case, including complexity, whether the application is opposed, etc., so there is no 'model case' upon which typical court fees could be estimated for an action. Costs could range from the low thousands in court fees, where cases only require a day of court time for any proof, to thousands or tens of thousands, depending on the procedure.

105. There may also be costs for the SCTS as a result of landowner appeals against compensation decisions by Scottish Ministers. These appeals would be to the Land Tribunal. As it would be possible for any transfer in scope of the transfer test to incur losses regardless of a decision to lot (e.g. for delays), the potential number of compensation applications to Ministers is 5-15 per year. The number of appeals will depend on whether the landowner is satisfied with Scottish Ministers decision on compensation. If it is assumed that a compensation application is received in relation to all transfer test cases, and that approximately half of the landowners receiving a decision decide to challenge these decisions, then this gives a range of 3-9 appeals per year.

106. Initial costs to the SCTS the initial consideration of an appeal are likely to be in the region of £240 per appeal. Court fees may also be required to be paid by the landowner making the appeal. For more substantive hearings (based on a five hour sitting time), costs will be in the region of £1800 per day. Approximate costs to draft final written orders and any expenses orders may be in the region of a further £1800. Lands Tribunal members are salaried, and so the exact costs likely to be incurred by the SCTS is dependent on members respective salaries.

**Table 12: Costs for SCTS**

	Year 6 (£)
Court of Session: initial appeal cost	1030 – 2825  (As set out at point 103)
Court of Session: substantive hearings	8050 – 65,000  (As set out at point 103)
Lands Tribunal: initial consideration of appeal	720 – 2160  (Based on 3-9 appeals per year, at a cost of £240 per appeal)
Lands Tribunal: substantive hearings	5400 – 16,200  (Based on 3-9 appeals per year, at a cost of £1800 per day. Estimate based on only one day being required.)
Lands Tribunal: drafting of final written orders and any expense orders	5400 – 16,200  (Based on 3-9 appeals per year, at a cost of £1800.)

***Costs on local authorities***

107. There are anticipated to be indirect costs on local authorities, as relevant bodies, to be informed of pre-notification and to be consulted where appropriate as part of the transfer test. There are not expected to be any further direct or indirect costs, on local authorities, as a result of the pre-notification processes or the transfer test, when it is engaged.

108. When local authorities are notified that all or part of a landholding is being sold, they will not need to take any action at that stage, as this step is to make them aware of the planned sale. Consequently, there would be minimal financial implications for local authorities at this stage.

109. As part of the transfer test the Land and Communities Commissioner may ask local authorities for relevant information relating to issues that may have been suggested by an initial desk based assessment of the relevant area (e.g. if the local development plan suggested lack of land for housing, then the Land and Communities Commissioner could request more detail including on whether that is influenced by the scale of landholding). Local authorities would be expected to provide the requested information or confirm they do not have any to provide.

110. Responding to any Land and Communities Commissioner’s requests in relation to transfer test investigations would impact staff time within local authorities. The amount of staff time that a request would take to fulfil will vary depending on what is requested. As an example, however, if the request required the staff member to review if the landholding was impacting a lack of land for housing identified in the local development plan and then respond to the Land and Communities Commissioner, this could take 1-2 days of a staff member’s time which would cost between £350 - £500 in resource. Given that whether or not the Land and Communities Commissioner will need to seek further information will depend on the individual circumstances of the case, it is challenging to estimate the overall frequency. However, if it is assumed that approximately half of the 5-15 transfers per year in scope result in the need to consult local authorities then this would mean potentially 3-8 cases nationwide requiring consultation per annum. This would mean that an individual local authority would likely only be engaged in this process up to twice a year, if at all given the low numbers likely to reach the consultation stage. It may however disproportionately impact local authorities with a significant number of landholdings within their area that fall within the scope of the measures, such as Highland Council. The financial impact however on local authorities to participate in this process is still expected to be minimal, given the low financial impact at £350-500 per case.

111. Any requirements for local authorities in relation to the transfer test will be set out in secondary legislation. The financial implications for local authorities of any proposals in the regulations would need to be assessed and taken into consideration when the regulations are being developed, and may include costs for local authorities to respond to consultations or provide certain information.

**Table 13: Costs for local authorities**

	Year 6 (£)
Responding to consultation from the Land and Communities Commissioner regarding a transfer test	1050 – 4000  (Based on 3 – 8 consultations per year, at a resource cost of around £350 – £500. This cost is across all local authorities and is not per authority.)

***Costs on other bodies, individuals and businesses***

*Costs to landowners*

112. The notification to community bodies of intention to sell or transfer will have small administrative costs on the landowner in relation to providing relevant information to Scottish Ministers (to enable relevant community bodies to be notified of the landowner's intention to transfer all or part of the landholding). Where Ministers accept a Part 2 Community Right to Buy application following pre-notification of the proposed sale, the community body will have the periods as specified in the Land Reform (Scotland) Act 2003 to negotiate a sale, during which period there will be a prohibition on the landowner transferring to another party. Valuation of the landholding will also follow the requirements as set out in s. 59 of the Land Reform (Scotland) Act 2003.

113. Some community bodies may wish to apply under the community asset transfer process where the landowner is a relevant authority under the Community Empowerment (Scotland) Act 2015 and this process will not prevent this.

114. The notification process, and the process following any subsequent application, will delay the sale or transfer of the landholding, and could result in compensation needing to be paid to the landowner for certain additional costs incurred. The Scottish Government would be responsible for paying this compensation as it is under the existing right to buy provisions. Based on experience of compensation claims in relation to existing right to buy process however, we expect successful compensation claims of this nature to be a rare occurrence. There have been fewer than 5 successful compensation claims following a community right to buy process since 2004. The value of compensation would depend on several factors including any additional required costs incurred through ownership during the period a sale is delayed.

115. If following a screening process it is determined that a transfer test should be carried out, the landowner would be asked to provide information to the Scottish Land Commission to support their investigation and inform the report to Scottish Ministers. This would likely be basic information that the landowner should know or have to hand, so providing this information is not expected to be a burden to the landowner and doing so will have minimal to no cost implications for them.

116. The Scottish Ministers will then consider the report as part of their decision on whether to require the landholding to be sold in lots. If Ministers direct that the land be transferred in lots, the landowner may incur additional costs above those had the land been sold as a single entity. The costs following a requirement to lot are split between the Scottish Government and the landowner as is currently done in relation to existing community right to buy processes. The landowner would be responsible for the advertising and costs related to the sale of the lots, but not for the work relating to the determining of the lot boundaries and their valuation. If a landowner can demonstrate that these costs exceed what they would have been had the land been sold as a single holding, then the landowner can claim compensation from the Scottish Government.

117. Where no lots are sold after a period of time after public listing for sale, the landowner can apply to Ministers to have the requirement to lot lifted. Where some lots have sold after a fixed period while others have not, the landowner can apply to Ministers that the remaining lots should be purchased at market value by the Scottish Ministers. In summary, the landowner should not be significantly financially impacted by the decision to lot the land.

#### *Community bodies*

118. To be eligible to be notified, communities must form an eligible community body. Community bodies can be a Company Limited by Guarantee (CLBG), a Scottish Charitable Incorporated Organisation (SCIO) or a Community Benefit Society (Becom). There are minimal costs to communities in setting up a CLBG, SCIO or Becom and these requirements are already in place for any community body following a Part 2 Community Right to Buy process.

119. The initial screening process for community bodies interested in submitting an application to pursue purchase of all or part of a notified landholding would have minimal costs for community bodies as they would be expected to provide information that they should already possess, such as their constitution.

120. If they pass the screening, there will then be financial implications for them in preparing and submitting an application through the established Part 2 Community Right to Buy process for private landholdings. These could include costs for preparing maps of the community area, documentation, and business plans.

#### *Appeals*

121. There will be costs for landowners if they choose to appeal Ministerial decisions in relation to the transfer test to the Court of Session. These would include fees payable for legal representation or court fees etc. Court fee information relating to the Court of Session is published on the main SCTS website. These are based on the statutory Fees Orders which are a matter for the Scottish Ministers. There is a fee for lodging an application with the Court of Session, if a case proceeds to proof or debate etc. Procedure in an action, including timescales, will vary depending on the circumstances of each case, including complexity, whether the application is opposed, etc., so there is no 'model case' upon which typical court fees could be estimated for an action. Costs could range from the low thousands in court fees, where cases only require a day of court time for any proof, to thousands or tens of thousands, depending on the procedure.

122. If a landowner appeals the Scottish Ministers' decision in relation to the transfer test and is unsuccessful, the landowner would likely be required to pay expenses to the Scottish Ministers following the court proceedings. Procedure will vary depending on the circumstances of each case, and expenses will vary depending on procedure and the length of an action. Consequently, it is difficult to estimate the potential value of expenses that a landowner would be required to pay if they unsuccessfully challenge a decision. Landowners would also incur costs for their legal representation.



123. There would also be costs for a landowner if they choose to appeal against compensation decisions by Scottish Ministers. These appeals would be to the Land Tribunal.

124. For a landowner, assuming that the fee for making an appeal on compensation is the same as what is currently set out for appeals against Scottish Ministers decisions on compensation under section 64 of the Land Reform Act 2003, then this would be £150 per appeal<sup>7</sup>. A landowner would also have costs in relation to any legal representation and legal advice.

***Summary of costs for pre-notification and the transfer test***

125. The table below summarises costs in relation to pre-notification and the transfer test. It does not include costs in relation to appeals of decisions for landowners or compensation claims. The costs in table 14 are included in the summary table in the conclusion along with the reasons for not capturing all appeal and compensation costs in the summary table.

***Table 14: Pre-notification and the transfer test***

*(Where required, figures are rounded to the nearest lower £1000 for the lower figure in the range and the nearest higher £1000 for the higher figure in the range.)*

	Year 1 (£)	Year 2 (£)	Year 3 (£)	Year 4 (£)	Year 5 (£)	Year 6 (£)
Costs on the Scottish Administration				245,000 – 281,000	241,000 – 513,000	550,000 – 714,000
Costs on Local Authorities						1050 – 4000

**‘LAND MANAGEMENT’ TENANCY – DEVELOPMENT OF A LETTING ARRANGEMENT TO SUPPORT INDIVIDUALS TO UNDERTAKE A RANGE OF LAND USE ACTIVITIES IN ONE LEASE TYPE**

126. The Bill places a requirement on the Scottish Ministers to publish a model tenancy agreement designed for letting land so that it can be used (wholly or partly) for environmental purposes. The model lease is described as a ‘land management tenancy’. The TFC will be able to produce guidance relating to such a tenancy.

***Costs on the Scottish Administration***

127. The central costs associated with the preparation of the model will be the staff time for the administration costs associated with engaging with stakeholders and development of the model lease.

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<sup>7</sup> <http://www.lands-tribunal-scotland.org.uk/using/fees>

128. The Scottish Ministers intend that the terms of the model lease should be capable of being adopted by a prospective landlord or tenant with only modest changes to suit their circumstances. It follows that the terms will need to be drafted and/or reviewed by a specialist solicitor, and that may be one of the private firms that provide outsourced advice for the Scottish Ministers. We estimate the costs of obtaining external legal advice using the Scottish Government legal services procurement framework to be £10,000.

129. The Scottish Ministers may seek other professional advice on the terms of the model lease, including, for example, on the approach to be taken in the case of compensation for losses that may be incurred by either party in respect of the lease. The Scottish Government estimates the costs of such further external specialist technical advice to be in the region of £20,000 based the cost of the procurement for the delivery of the specialist technical advice given on land tenure environmental reports (the Strategic Environmental Assessment).

130. Preparation of the model lease will require staff time and, as with other similar tenancy reforms, will require engagement with key stakeholders. The Scottish Ministers may also elect to hold a public consultation on proposed terms for the model lease. An independent analysis of the responses might be obtained depending on the volume of responses.

131. The costs of publishing the consultation on the Land Management Tenancy is expected to be between £350-£750 (inclusive of VAT). The costs for analysing the consultation are expected to be between £5,000-£40,000 (inclusive of VAT), based on the costs of analysing the consultation on the draft RCI regulations, the consultation on the first draft LRRS and the consultation on the proposals for this Bill. Based on these costs, it would cost between £80 – £100 per response to analyse the consultation.

132. It is estimated that staff costs associated with this activity will total £113,760. This is based on 0.1 FTE at C1 grade (£17,340), 0.3 FTE at B3 grade (£39,750), 0.3 FTE at B2 grade (£30,870) and 0.3 at FTE at B1 grade (£25,800). These costs include overheads (IT, T&S, pension). These costs will be met from existing budgets and current staff resource.

133. Publishing the Land Management Tenancy model lease is expected to be between £350-£750 (inclusive of VAT) based on the Land Reform Bill consultation costs.

134. In total, costs to the Scottish Administration are estimated to be between £149,460 and £185,260 for the consultation, consultation analysis, development, specialist technical advice, legal framework advice, staff costs and publishing a Land Management Tenancy model lease. This cost will come within 2 years after the Bill receives Royal Assent and is split 60:40 in the table is in the range of £89,676 to £111,156 in Year 1 and £59,784 to £74,104 in Year 2.

### ***Costs on local authorities***

135. It is not anticipated that there will be any direct costs for local authorities except general costs associated responding to any consultation should they chose to do so.

136. Where local authorities are a landlord and decide to utilise the model lease then they may choose to seek legal or land agent advice. If a local authority chooses to enter into a Land Management Tenancy, they would pay £100 to £595 in hourly rates depending on the firm and the experience of the solicitor. It is estimated, based on stakeholder evidence, to cost £1,000 to £3,000 in legal advice to enter into a Land Management Tenancy.

***Costs on other bodies, individuals and businesses***

137. It is not anticipated that there will be any direct costs to bodies, individuals and businesses except general costs associated with engaging and responding to any consultation if they chose to engage in that process. Costs for individual landlords will be similar to those set out above for local authority landlords. The model aims to reduce the legal costs involved and make these types of agreements more accessible.

138. Commercial leases currently offer landlord and tenants the opportunity to enter into a land tenure agreement. Parties may choose to seek legal advice. Based on BRIA discussions, costs will depend on circumstances such as complexity of the agreement, value of the lease and willingness of the parties. This was further evidenced in the range of associated costs starting from mid costs of approximately £5,000 to £12,000 at the high end. Comparatively, it is estimated, based on stakeholder evidence, to cost £1,000 to £3,000 in legal advice to enter into a Land Management Tenancy which is a cost saving when compared to the amount of legal advice required to amend a standard commercial lease.

***Table 15: Potential Land Management Tenancy costs***

	Year 1 (£)	Year 2 (£)	Year 3 (£)	Year 4 (£)	Year 5 (£)	Year 6 (£)
Costs on the Scottish Administration	£89,676 to £111,156	£59,784 to £74,104	£2,500 (cost of producing guidance undertaken by Scottish Land Commission)	Minimal	Minimal	Minimal
Costs for entering into a Land Management Tenancy are entirely dependent on the parties. These costs are illustrative and are not included in the final cost assessment for the Bill but are provided below for information.						
Costs on local authorities	See below costs on individuals and businesses.					

Costs on individuals and businesses	Estimated cost £1,000 to £3,000 in legal advice to enter into a Land Management Tenancy per individual for both landlords and tenant. Seeking legal advice would be at the discretion of the individual/ business.
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## **MEASURES TO MODERNISE SMALL LANDHOLDINGS**

139. Small landholdings are a form of tenanted land found outside of the Crofting Counties. The Scottish Government Agricultural Census (June 2021) identified 59 small landholders in Scotland managing 5,360 acres (2,168 hectares). Over two-thirds of Small Landholding Act tenancies are less than 50 acres (approx. 20 hectares) in size.

140. Geographically, some lie in the designated crofting areas of Arran, Bute, Moray and parts of the Highlands, with the largest number, between 15-18, on Arran. There are also concentrations of small landholdings in Ayrshire, Aberdeenshire, Moray, Dumfriesshire, the Scottish Borders and east central Scotland.

141. The below provisions seek to significantly modernise the legal framework relating to small landholdings. However, like agricultural holdings, these are private agreements between landlord and tenant and costs will depend on individual choices.

### **Diversification**

142. Diversification provisions will enable small landholdings to be used for activities other than cultivation. Where a landlord objects to the diversification, there will be provisions for the matter to be determined by the Land Court. Currently a small landholder is required to “cultivate” their holding, which includes the use of the holding for “horticulture or for any purpose of husbandry, inclusive of the keeping or breeding of livestock, poultry or bees, and the growth of fruit, vegetables and the like.” A small landholder can also make use of a holding for a subsidiary or auxiliary occupation provided it is one which the Land Court, in the case of dispute, may find to be reasonable and not inconsistent with the cultivation of the holding.

143. The provisions aim to provide small landholders with greater opportunity to diversify the activities they can carry out on their holding, grow their businesses and support greater profitability through enabling small landholders to undertake commercial and environmental diversification.

### ***Costs on the Scottish Administration***

144. The provisions include powers for the Scottish Ministers to make regulations relating to small landholding diversification. There are two affirmative powers at paragraph 7(5) and paragraph 9(8)(a). There are two negative SSIs in Schedule 1 at paragraph 7(4)(b) and paragraph 9(8)(b) relating to small landholdings diversification. The cost of developing each of these regulations are shown below.

145. The regulations will be laid before Parliament as Scottish Statutory Instruments (SSIs). Costs for consulting on the development of the regulations is based on if affirmative regulations require a public consultation. The costs of publishing the consultation on the draft regulations is expected to be between £350-£750 (inclusive of VAT). The costs for analysing the consultation are expected to be between £5,000-£40,000 (inclusive of VAT), based on the costs of analysing the consultation on the draft RCI regulations, the consultation on the first draft LRRS and the consultation on the proposals for this Land Reform Bill. Based on these costs, it would cost between £80 – £100 per response to analyse the consultation.

146. Costs to lay the draft regulations in Parliament is expected to be around £750 (inclusive of VAT) based on the costs for laying SSIs to make amendments to the RCI Regulations, amendments to the Rules for the Land Tribunal for Scotland and Regulations for the Crofting Community Right to Buy. It costs £185 per copy of an SSI and £145 per policy note plus VAT and typically affirmative SSIs will need to be published twice, first in draft and again when made. If the affirmative SSI consultation outcomes require impact assessments, the publication costs of these are expected to be between £1,000-£2,000 based on the costs for publishing Assessments for the RCI regulations.

147. Based on the staff costs associated with the previous relinquishment and assignation affirmative regulations from the 2016 Act, it is expected that 0.3 B3 grade FTE for £39,750, 0.3 B2 grade FTE for £30,870 and 0.3 B1 grade FTE for £25,800 will be required for each affirmative regulation. The totals £96,420 per affirmative regulation. If exercised negative regulations will utilise current staff resources of approximately 0.1 B3 grade FTE (£13,250) and 0.1 B2 grade FTE (£10,290) totalling £23,540 per negative regulation. These costs will be accommodated within existing Scottish Government budgets.

148. It is expected that one negative SSI will be laid soon after the Bill. It is estimated that this will cost £24,290 including staff time and laying the regulations.

149. Any other SSIs will only be made if evidence emerges that they are required. Further legislation of that kind is estimated to be a Year 2 cost.

**Table 16: Estimated costs to Scottish Administration of one negative Small Landholdings Diversification SSI**

	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6
Costs to Scottish Administration		£24,290				

*Costs on the Scottish Land Commission (part of Scottish Administration)*

150. The Scottish Government anticipate the TFC will publish a Code of Practice on small landholding diversification. Previously, the development of TFC guidance has cost approximately £1,500 in staff time and approximately £1,000 to design, publish and print the guidance.

### ***Costs on local authorities***

151. It is not anticipated that there will be any new costs to local authorities except where individual local authorities are a landlord letting land to a small landholder. Information on whether local authorities have any small landholdings was not held centrally by COSLA. In these circumstances, costs will be similar to those identified for individual landlords.

### ***Costs on other bodies, individuals and businesses***

152. The diversification provisions have the potential to provide financial benefit for individual small landholders by providing them with greater access to sources of non-cultivation funding and income generation. The Scottish Government Farm Business: annual estimates Report (2020-21)<sup>8</sup> found that more half of farms have diversified activities which generates additional incomes for their businesses. The Report also found that there was an income gap between agricultural businesses with diversified activities and those without. On average, farms with no diversified activity generated £16,100 less in income per annum in 2020-21 than those with diversified activity.

153. Utilising this information as a general proxy, diversification is likely to help individual small landholder tenancies to increase their income generation and revenue if they undertake non-cultivation diversification. Whilst rent can be increased as a result of diversification, it is not anticipated that it would be increased to such an extent that it would remove completely the benefit of the small landholder having diversified.

154. The diversification provisions also amend the compensation provisions by allowing an increase in value of the holding as a result of diversification to be considered when calculating compensation due to the small landholder at the end of the tenancy. Conversely, where there has been a decrease in value as a result of the diversification, the provisions will enable this to be taken into account in calculating compensation to a landlord.

155. The level of compensation cannot reasonably be estimated as it will depend on the type of diversification and circumstances of the holding. The range of compensation is not quantifiable given the range of activities and the individual circumstances of each holding. However, it is more likely, based on Business and Regulatory Impact Assessment discussions with stakeholders, that diversifications will potentially add value to the land. For instance, permanent structures such as the installation of a wind turbines on a holding may generate an additional £12,000 to £13,000 per turbine annually.

156. If a small landholder opts to seek legal advice on serving notice under the diversification provisions, legal fees are likely to be approximately £450 based on stakeholder evidence. The legal fees of entering into a diversification agreement will range between £100 to £595 in hourly rates, depending on the firm and the experience of the solicitor and the nature of the proposed change.

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<sup>8</sup> [Data sources and more information - Scottish farm business income: annual estimates 2020-2021 - gov.scot \(www.gov.scot\)](https://www.gov.scot/data-sources-and-more-information-scottish-farm-business-income-annual-estimates-2020-2021)

157. Where a small landholder obtains diversified income as a result of the provision, this may be reflected during rent negotiations. For some landlords, this may lead to increased rental income. The rental income arising from a diversification will be variable, and as such cannot be quantified given the range of activities and the individual circumstances of each holding. In a case where the landlord wants to prevent the diversification, the landlord will require to apply to the Land Court to determine the reasonableness of their objection (and potentially also ask the court to adjust the rent if a rent increase to reflect any diversification cannot be agreed).

158. The cost of an application to the Land Court by a landlord will be £100 (plus £50 for each additional applicant) and £45 for each respondent. Usually there is one applicant and one respondent so the total application fee would be £145. The Land Court team consists of (approximate FTEs) 0.5 SEO, 1 HEO, 1 EO and 1 AO who deal with crofting and some environmental issues as well as agricultural holdings and small landholders. The resource costs to the Land Court vary depending on the facts and circumstances of the case.<sup>9</sup>

159. It is not possible to quantify the likely number of applications to the court, but given there are only fifty nine small landholders it is likely to be very low.

### **Assignment of and succession to small landholdings**

160. The provisions aim to enable small landholders to assign and bequeath their tenancy to broadly the same classes of people that tenant farmers with secure 1991 Act agricultural tenancies can through the 2016 Act (with some changes to include half-siblings of a spouse as well as including a widow/widower wherever a spouse/civil partner is included).

161. The provisions modernising the range of people who can be assigned or succeed to a small landholding tenancy will help to support businesses remaining within the wider family. This will enable positive succession planning. This approach will encourage investment and growth by enabling more family members to take over the small landholding tenancy. It will enable older small landholders to retire at an earlier stage, while opening opportunities for new entrants and future generations of young farmers by modernising the range of family members who can be assigned or succeed to the small landholding.

### ***Costs on the Scottish Administration***

162. There are no direct costs for the Scottish Administration associated with widening succession and assignment rights for small landholders.

### ***Costs to the Scottish Land Commission (part of Scottish Administration)***

163. The Scottish Government anticipates that the TFC will publish a Code of Practice on Assignment and Succession of a Small Landholding. Previously, the development of TFC

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<sup>9</sup> Any costs to SCTS would fall on the Scottish Administration.

guidance has cost approximately £1,500 in staff time and approximately £1,000 to design, publish and print per guide.

### ***Costs on local authorities***

164. It is not anticipated that there will be any new costs to local authorities except where individual local authorities are a landlord letting land to a small landholder. Information on whether local authorities have any small landholdings was not held centrally by COSLA. In these circumstances, costs will be similar to those identified for individual landlords.

### ***Costs on other bodies, individuals and businesses***

165. In relation to small landholders who already have eligible successors under the current legislation, the proposals will largely have no direct impact. The small landholder will not require to change their will and the court process for any objection to a successor is sufficiently similar to the 1886 Act rules that it is likely to cost the same for the successor.

166. There will be a proportion of small landholders who will now, under the Bill's new provisions, have a suitable successor when they did not have one before and will choose to pass on their tenancy to such a successor rather than pro-actively ending the tenancy and claiming compensation due to them.

167. For those small landholders, or others choosing to alter their successor or assignee due to the new provisions, there are likely to be additional legal costs to make these succession plans. The legal cost of making a will is estimated to be between £200 to £800 approximately, depending on the complexity of the will and the experience of the solicitor and these costs would be incurred when drafting any will for any client. The Bill allows for new eligible successors to a small landholding tenancy, where a landlord objects to this the tenant may then wish to seek legal advice. Costs vary between £100 to £595 per hour depending on the firm, the solicitor, the nature of proposed change and the complexity of the individual lease.

168. The only costs arising for landlords from these provisions would arise if they disputed the proposed assignee or successor. The cost of an application to the Land Court by a landlord will be £100 (plus £50 for each additional applicant) and £45 for each respondent. Usually there is one applicant and one respondent so the total application fee would be £145. If the applicant chooses to be represented, they may wish to seek legal advice which may cost £100 to £595 per hourly depending on the firm, the solicitor, the nature of the proposed change and the complexity of the individual lease.

169. The Land Court team consists of (approximate FTEs) 0.5 SEO, 1 HEO, 1 EO and 1 AO who deal with crofting and some environmental issues as well as agricultural holdings and small



landholders. The resource costs to the Land Court vary depending on the facts and circumstances of the case.<sup>10</sup>

170. It is not possible to quantify the likely number of applications to the court but given there are only fifty nine small landholders it is likely very low.

### **Rent and compensation**

171. All the above provisions in relation to small landholdings extend and substantially expand the rights of small landholders. In order to support a fair balance between the public interest and the private interests of landlords the Scottish Government is modernising the rent and compensation provisions for small landholdings.

172. For instance, where a small landholder proposed to carry out a diversification activity and the landlord consents to the diversification it is open to both parties to mutually amend and agree the rent or, where rent cannot be agreed, for either party to apply to the Land Court to fix the rent. In terms of compensation, where there is an increase in the value of the holding as a result of diversification, compensation will be payable to the small landholder. Where there is a decrease in value as a result of diversification, the landlord will be entitled to compensation.

### ***Cost on the Scottish Administration***

173. The provisions include powers for the Scottish Ministers to make regulations relating to small landholding compensation. There is one affirmative power at paragraph 9(8)(a) of Schedule 1. There are two negative powers at paragraph 9(8)(b) and paragraph 36(3). The cost of developing this regulation if required is shown below.

174. The regulations will be laid before Parliament as a Scottish Statutory Instrument (SSI). Costs for consulting on the development of the regulations is based on if an affirmative regulation with one public consultation. The costs of publishing the consultation on the draft regulations is expected to be between £350-£750 (inclusive of VAT). The costs for analysing the consultation are expected to be between £5,000-£40,000 (inclusive of VAT), based on the costs of analysing the consultation on the draft RCI regulations, the consultation on the first draft LRRS and the consultation on the proposals for this Land Reform Bill. On the basis of these costs, it would cost between £80 – £100 per response to analyse the consultation.

175. Costs to lay the draft regulations in Parliament is expected to be around £750 (inclusive of VAT) based on the costs for laying SSIs to make amendments to the RCI Regulations, amendments to the Rules for the Land Tribunal for Scotland and Regulations for the Crofting Community Right to Buy. It costs £185 per copy of an SSI and £145 per policy note plus VAT and typically SSIs will need to be published twice, first in draft and again when made. If the affirmative SSI

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<sup>10</sup> Any costs to SCTS would fall on the Scottish Administration.

consultation outcomes require impact assessments, the publication costs of these are expected to be between £1,000-£2,000 based on the costs for publishing Assessments for the RCI regulation.

176. Based on the staff costs associated with relinquishment and assignation affirmative regulations it is expected that 0.3 B3 grade FTE for £39,750, 0.3 B2 grade FTE for £30,870 and 0.3 B1 grade FTE for £25,800 will be required for each affirmative regulation. The totals £96,420 per affirmative regulation. If exercised negative regulations will utilise current staff resources of approximately 0.1 B3 grade FTE (£13,250) and 0.1 B2 grade FTE (£10,290) totalling £23,540 per negative regulation. These costs will be accommodated within existing Scottish Government budgets. An SSI will only be brought forward if stakeholder evidence emerges that they are required. As such at this time there is estimated to be no cost to the Scottish Administration.

#### *Costs to the Scottish Land Commission (part of Scottish Administration)*

177. The Scottish Government anticipates that the TFC will publish guidance on Rental Changes for Small Landholdings. Previously, the development of TFC Codes of Practice have cost approximately £1,500 in staff time and approximately £1,000 to design, publish and print per guide.

178. There will also be costs arising from the TFC appointing a valuer on behalf of either party in relation to the determination of compensation amounts. This is estimated by Scottish Land Commission to cost between £350 to £520 approximately per valuer appointment (utilising the 2 to 3 days of B3 grade FTE Scottish Land Commission time) this is based on existing costs of appointing valuers under section 32G of the 1991 Act. These additional costs will be absorbed within the additional costs arising from the TFC taking on responsibility for small landholders.

#### *Costs on local authorities*

179. It is not anticipated that there will be any new costs to local authorities except where individual local authorities are a landlord letting land to a small landholder. Information on whether local authorities have any small landholdings was not held centrally by COSLA. In these circumstances, costs will be similar to those identified for individual landlords which are dependent on the nature of the holding.

#### *Costs on other bodies, individuals and businesses*

180. Small landholders and their landlords currently can are able to mutually agree rent. Rental amounts are private contractual information and not publicly available.

181. Where a small landholder proposes to carry out a diversification activity and the landlord consents to that diversification, it is open to both parties to mutually amend the agreed rent. However, where rent cannot be agreed, the Bill will enable either the landlord or small landholder to apply to the Land Court to fix the rent. This will allow any additional diversified income which a small landholder receives from the diversification to be factored in as part of the rent of the holding.

182. The cost of an application to the Land Court by a landlord will be £100 (plus £50 for each additional applicant) and £45 for each respondent. Usually there is one applicant and one respondent so the total application fee would be £145. If the applicant chooses to be represented, they may wish to seek legal advice which may cost £100 to £595 per hour depending on the firm, the solicitor, the nature of the issue and the complexity of the individual lease.

183. The Land Court team consists of (approximate FTEs) 0.5 SEO, 1 HEO, 1 EO and 1 AO who deal with crofting and some environmental issues as well as agricultural holdings and small landholders. The resource costs to the Land Court vary depending on the facts and circumstances of the case.<sup>11</sup>

184. In relation to compensation, the current provision for compensation to a small landholder for permanent improvements will remain.

185. The Bill also enables the small landholder to claim the compensation for a diversification at the end of tenancy based on the value to an incoming tenant. The amount of compensation payable in each case will be dependent on the type of diversification undertaken and if that diversification adds value to the holding.

186. In addition, a provision is included to enable the landlord to recover compensation from their small landholder where their landlord can show that the value of the small landholding at the end of the tenancy has been reduced by the small landholder's dilapidation, deterioration or damage. Again, the amount of compensation due cannot be quantified in this memorandum as it will be dependent on the degree of dilapidation, deterioration or damage on the holding. This would be payable by the small landholder to the landlord.

187. Parties will be able to seek an agreement between themselves on the level of any compensation owed. Where no agreement can be reached, the Bill enables either party to apply to the TFC for an independent valuer to be appointed. The expenses of the valuer will be met by the party who is responsible for paying the compensation.

188. Either party may then appeal the valuation to the Lands Tribunal and their default fee is £150 regardless of the number of parties. If the applicant chooses to be represented, they may wish to seek legal advice which may cost £100 to £595 in hourly rates depending on the firm, the solicitor, the nature of the proposed change and the complexity of the individual lease. Initial costs to the SCTS for the initial consideration of an application are likely to be in the region of £240 per application. Court fees may also be required to be paid by the applicant. For more substantive hearings (based on a five hour sitting time), costs will be in the region of £1800 per day. Approximate costs to draft final written orders and any expenses orders may be in the region of a

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<sup>11</sup> Any costs to SCTS would fall on the Scottish Administration.

further £1800. Lands Tribunal members are salaried, and so the exact costs likely to be incurred by the SCTS is dependent on members respective salaries.<sup>12</sup>

189. It is not possible to quantify the likely number of applications to the Lands Tribunal but given there are only fifty nine small landholders it is likely to be very low.

### **Pre-emptive right to buy**

190. The Bill makes provisions to enable small landholders to exercise a pre-emptive right to buy their small landholdings, similar to the way tenant farmers with secure 1991 Act agricultural tenancies can.

191. The Bill aims to remove barriers to sustainable rural development by providing small landholders with greater certainty over their smallholding, encouraging them to invest in their small landholdings.

### ***Costs on the Scottish Administration***

192. The provisions include powers for the Scottish Ministers to make regulations. There are negative powers at paragraph 45(2),45(6), and 48(4)(b) of Schedule 1. There are affirmative powers at paragraph 49(5), paragraph 50(7), paragraph 56(8) and paragraph 59 of Schedule 1. These powers would be utilised if stakeholder evidence emerges that they are required. The cost of each of these if required is shown below. The Scottish Government will consult where necessary and likely where the procedure is affirmative.

193. The regulations will be laid before Parliament as a Scottish Statutory Instrument (SSI). Costs for consulting on the development of the regulations is based on an affirmative regulation and one public consultation. The costs of publishing the consultation on the draft regulations is expected to be between £350-£750 (inclusive of VAT). The costs for analysing the consultation are expected to be between £5,000-£40,000 (inclusive of VAT), based on the costs of analysing the consultation on the draft RCI regulations, the consultation on the first draft LRRS and the consultation on the proposals for this Land Reform Bill. On the basis of these costs, it would cost between £80 – £100 per response to analyse the consultation.

194. Costs to lay the draft regulations in Parliament is expected to be around £750 (inclusive of VAT) based on the costs for laying SSIs to make amendments to the RCI Regulations, amendments to the Rules for the Land Tribunal for Scotland and Regulations for the Crofting Community Right to Buy. It costs £185 per copy of an SSI and £145 per policy note plus VAT and typically SSIs will need to be published twice, first in draft and again when made. If the affirmative SSI consultation outcomes require impact assessments, the publication costs of these are expected to be between £1,000-£2,000 based on the costs for publishing Assessments for the RCI regulation.

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<sup>12</sup> Any costs to SCTS would fall on the Scottish Administration

195. Based on the staff costs associated with relinquishment and assignation affirmative regulations it is expected that 0.3 B3 grade FTE for £39,750, 0.3 B2 grade FTE for £30,870 and 0.3 B1 grade FTE for £25,800 will be required for each affirmative regulation. This totals £96,420 per affirmative regulation. If exercised negative regulations will utilise current staff resources of approximately 0.1 B3 grade FTE (£13,250) and 0.1 B2 grade FTE (£10,290) totalling £23,540 per negative regulation.

196. It is expected that one affirmative SSI will be laid soon after the Bill. It is estimated that this will cost between £103,520 and £139,920 including staff time, consultation publication, consultation analysis, impact assessment publication, and laying the draft regulations. This estimate will depend on the size of consultation and number of responses to the consultation. Any other regulations associated with the pre-emptive right to buy provisions will only be used if evidence emerges that they are required. It is estimated that this cost will be split 50:50 between Year 1 and Year 2. Beyond this it is not anticipated that there will be additional financial costs to the Scottish Administration arising from the provisions.

**Table 17: Estimated costs to Scottish Administration: Small landholdings pre-emptive right to buy SSI**

	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6
Costs to Scottish Administration	£51,760 to £69,960	£51,760 to £69,960				

*Costs to Registers of Scotland (part of Scottish Administration)*

197. The total cost of the register of pre-emptive right to buy for small landholdings is estimated by RoS to be £178,000. This cost will be split over Years 1 (£78,000) and Year 2 (£100,000). Ongoing maintenance costs of £3,500 per annum are estimated in each of Year 3, 4, and 5. This shown in the costing Table 18 at the bottom of this section.

**Table 18: Estimated costs to Registers of Scotland: Small landholdings pre-emptive right to buy**

	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6
Costs to Registers of Scotland	£78,000	£100,000	£3,500	£3,500	£3,500	£3,500

*Costs to the Scottish Land Commission (part of Scottish Administration)*

198. The Scottish Government anticipates that the TFC will publish a Code of Practice on the Pre-Emptive Right to Buy for small landholdings. Previously, the development of TFC Codes of

Practice have cost approximately £1,500 in staff time and approximately £1,000 to design, publish and print per guide.

### ***Costs on local authorities***

199. It is not anticipated that there will be any new costs to local authorities except where individual local authorities are a landlord letting land to a small landholder. Information on whether local authorities have any small landholdings was not held centrally by COSLA. In these circumstances, costs will be similar to those identified for individual landlords which are dependent on the nature of the holding.

### ***Costs on other bodies, individuals and businesses***

200. It is intended that a small landholder will initiate the process by registering their pre-emptive right to buy. The detail to be included in their registration will be set out in regulations. Legal advice may be required in registering their pre-emptive right to buy. If a small landholder opts to seek legal advice on notifying their pre-emptive right to buy to RoS, on the basis that work is likely to be similar to serving notice under the diversification provisions, legal fees are likely to be approximately £450. The small landholder will need to pay £40 to register their pre-emptive right to buy right. Registers of Scotland will require to amend their system to be able to add small landholding registrations. This is currently estimated as costing up to £178,000 along with annual ongoing maintenance costs of approximately £3,500.

201. Where there are unwritten leases or leases where boundaries have not been sufficiently described in the lease, there may be a dispute over the extent of the lease. The cost of an application to the Land Court by a small landholder, or their landlord, will be £100 (plus £50 for each additional applicant) and £45 for each respondent. Usually there is one applicant and one respondent so the total application fee would be £145. If the applicant chooses to be represented, they may wish to seek legal advice which may cost £100 to £595 per hour depending on the firm, the solicitor, the nature of the proposed change and the complexity of the individual lease.

202. The Land Court team consists of (approximate FTEs) 0.5 SEO, 1 HEO, 1 EO and 1 AO who deal with crofting and some environmental issues as well as agricultural holdings and small landholders. The resource costs to the Land Court vary depending on the facts and circumstances of the case.<sup>13</sup>

203. It is not possible to quantify the likely number of applications to the court but given there are only fifty nine small landholders it is likely very low.

204. Where parties fail to agree the value of the small landholding then a valuer may be appointed by agreement between the seller and the landlord. Where they fail to agree the appointment of a valuer, then one may be appointed by the Land Court. This would cost between

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<sup>13</sup> Any costs to SCTS would fall on the Scottish Administration

£350 to £520 approximately per valuer appointment for the Land Court (based on the two to three days of B3 grade FTE Scottish Land Commission time incurred when appointing a valuer).

205. The valuer will take into account a range of elements (comparable to secure 1991 pre-emptive right to buy) including: the value that is likely to be agreed between a reasonable seller and buyer; any factor which may result in someone wanting to buy the land at a higher price due to the particular characteristics of the land; the date the landlord was likely to get the small landholding back if there was no successor or assignee (vacant possession); the terms and conditions of any lease of sporting interests and any moveable property. The valuer will not consider any increase in the value of the land resulting from improvements carried out at the expense of the tenant.

206. As with any property, the valuation will be unique to each individual small landholding. It is therefore not possible to quantify what the tenant will be required to pay the landlord for the purchase of the small landholding.

207. It is intended that a landlord or creditor will receive a price for the small landholding property comparable to what they would have received for that property on the open market.

208. The small landholder, landlord or other persons with an interest in the estate can make written representations to the valuer. Valuer expenses will be met by the small landholder or shared equally between the small landholders (where more than one small landholder exercises their right to buy in relation to the seller's land). It is estimated that the valuer's assessment would cost approximately £1,500 (based on the size of small landholdings with two-thirds being less than 50 acres (approx. 20 hectares)) depending on the exact size and location of the small landholding. Hourly rates for valuations will likely be £100 - £150 per hour + VAT depending on the valuer's experience. Location will also be a factor if a small landholding is in a remote rural location. The valuer's travel costs will be reflected in the fee.

209. Where parties do not agree with the valuer's assessment then the seller or small landholder can appeal the valuation to the Lands Tribunal within 21 days of the valuer's notice being given. The default Lands Tribunal fee is £150 regardless of the number of parties. If the applicant chooses to be represented, they may wish to seek legal advice which may cost £100 to £595 in hourly rates depending on the firm and the experience of the solicitor and the nature of the proposed change and the complexity of the individual's lease. Initial costs to the SCTS for the initial consideration of an application are likely to be in the region of £240 per application. Court fees may also be required to be paid by the applicant. For more substantive hearings (based on a five hour sitting time), costs will be in the region of £1800 per day. Approximate costs to draft final written orders and any expenses orders may be in the region of a further £1800. Lands Tribunal members are salaried, and so the exact costs likely to be incurred by the SCTS is dependent on members respective salaries.<sup>14</sup>

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<sup>14</sup> Any costs to SCTS would fall on the Scottish Administration

210. It is not possible to quantify the likely number of applications to the Lands Tribunal but given there are only fifty nine small landholders it is likely to be very low.

### **Umbrella body**

211. The Bill includes the ability for landlords and small landholders to access the TFC and will provide the TFC with additional functions for small landholdings which are similar to those that they currently have for tenant farming as set out Chapter 3 of Part 2 of the 2016 Act.

212. The TFC would be required to promote and encourage good relations between small landholders and their landlords, publishing guidance and codes of practice where required. The TFC would also be given the power to investigate alleged breaches of codes of practice for small landholders. This proposal aims to improve relations between small landholders and their landlords, reduce confusion and make small landholdings legislation more accessible.

### ***Cost on the Scottish Administration***

213. There will be no additional costs to the Scottish Administration resulting from making provisions for the TFC to act as a small landholdings umbrella body.

### ***Costs on the Scottish Land Commission (part of Scottish Administration)***

214. The TFC will be able to produce small landholding guidance on matters including negotiating rent; diversification; negotiating the fulfilment of the obligations of landlords and small landholders; the right to buy process; the process of succession and assignment; the creation of small landholdings; conversion to crofting; and determining compensation at the end of the tenancy.

215. Previously, the development of TFC Codes of Practice have cost approximately £1,500 in staff time and approximately £1,000 to design, publish and print per guide.

216. The annual budget for TFC legal services is £14,400, and adding small landholdings into their remit will increase their annual costs to approximately £20,000 based on developing codes, guidance, and assisting parties in understanding complex technical. The modernisation of small landholdings is likely to keep legal service cost to a minimum and ensure the legislation is accessible. It is likely that the TFC will be required to work an additional 2 days a month resulting in an additional cost of £450 per month based on developing codes, guidance, and assisting parties in understanding complex legislation. Consequently, the revised TFC remuneration costs would be £43,080 compared with their current wage of £21,540.

217. The cost of publishing an estimate 8 Codes of Practice is £20,000 which will be split over Years 1 and 2. Increase in legal services (£5,600) and increase in annual TFC remuneration (£21,540) totals £27,140. Year 1 and Year 2 costs will be £27,140 annually. Year 3, Year 4, and Year 5 will be £10,985 annually. The TFC will also require additional B3 support totalling



£61,180 to provide additional, plus approximately the same again for operating overheads (IT, T&S, and pension).

***Costs on local authorities***

218. It is not anticipated that there will be any new costs to local authorities except where individual local authorities are a landlord letting land to a small landholder. Information on whether local authorities have any small landholdings was not held centrally by COSLA. In these circumstances, costs will be similar to those identified for individual landlords which are dependent on the nature of the holding.

***Costs on other bodies, individuals and businesses***

219. It is likely this likely that the widening of the TFC’s role has the potential to provide cost savings to small landholders and their landlords by enabling them to access the same level of support from the Scottish Land Commission as tenant farmers can at present. It is expected they will approach the TFC first before seeking legal advice. TFC advice is not legal advice. Should a small landholder wish to seek legal advice, after to speaking to the TFC, costs will vary between approximately £100 to £595 per hour depending on the firm, the solicitor, the nature of proposed change and the complexity of the individual lease.

***Table 19: Total potential small landholdings costs of all measures***

220. This excludes costs to the SCTS as it is not possible to prove confirmation of exact costs as it depends on uptake levels.

	Year 1 (£)	Year 2 (£)	Year 3 (£)	Year 4 (£)	Year 5 (£)	Year 6 (£)
Costs on the Scottish Administration	£51,760 to £69,960 (½ associated costs of preparing an affirmative SSI)	£76,050 to £94,250 (½ associated costs of completing an affirmative SSI and one negative SSI)	Minimal	Minimal	Minimal	Minimal
Costs on the Scottish Land Commission (part of Scottish Administration)	£159,500 (including increased TFC and staff costs along with costs of	£159,500 (including increased TFC and staff costs along with costs of	£149,500 (including increased TFC and staff costs and additional	£149,500 (including increased TFC and staff costs and additional	£149,500 (including increased TFC and staff costs and additional	£149,500 (including increased TFC and staff costs and additional

	preparing 4 Codes of Practice and additional legal services cost)	preparing a further 4 Codes of Practice and additional legal services cost)	legal services cost)	legal services cost)	legal services cost)	legal services cost)
Costs to Registers of Scotland (part of Scottish Administration)	<b>Pre-emptive right to buy:</b> Registers of Scotland – costs for creating of the register are spilt between two years £78,000	<b>Pre-emptive right to buy:</b> Registers of Scotland – completion of register £100,000	<b>Pre-emptive right to buy:</b> Registers of Scotland – ongoing register maintenance cost £3,500	<b>Pre-emptive right to buy:</b> Registers of Scotland – ongoing register maintenance cost £3,500	<b>Pre-emptive right to buy:</b> Registers of Scotland – ongoing register maintenance cost £3,500	<b>Pre-emptive right to buy:</b> Registers of Scotland – ongoing register maintenance cost £3,500
Costs on local authorities	See below on individual costs per potential activity.					
All costs shown below relate to known costs and do not take into account the scale and range of potential costs to individuals (such as legal costs) as these are entirely dependent on the details of private contractual leases and previous private negotiations between small landholders and their landlords. Costs relating to individuals (small landholders and landlords) are illustrative and not included in the final cost assessment for the Bill but are provided below for information.						
	<b>The costs outlined below relate to individual costs per potential activity per measure</b>					
Costs on individuals and businesses	<b>Diversification:</b> cost of serving a notice of diversification is £450 per notice.  Appeal to the Land Court by the landlord costs £145 per application.	<b>Succession &amp; assignation:</b> Appeals will cost the landlord £145 for their application to the Land Court.	<b>Rent &amp; compensation:</b> Appeals to the Lands Tribunal £150 per application by either party.	<b>Pre-emptive right to buy</b> valuation assessment costs for small landholder £1,500.  Appeal to lands tribunal by either party £150 for the application. If a small landholder exercises their Pre-emptive right to buy registration costs £40, appeal registration for either party costs £145		

## **MEASURES TO MODERNISE AGRICULTURAL HOLDINGS**

221. Agricultural tenancies are a critical part of Scottish agriculture and account for 22% of agricultural land. The majority of agricultural tenancies are secure agricultural tenancies which pass through generations in the same tenant farming family. Some of these tenancies pre-date the 20<sup>th</sup> Century and a range of legislation sets out the legal framework for managing these older tenancies. The main Act doing so is the Agricultural Holdings (Scotland) Act 1991 and as a result these older tenancies are named after this Act and are called secure 1991 Act agricultural tenancies. The Scottish Government Agricultural Census 2021 results show the following different types of agricultural tenancies:

- 3,821 Secure 1991 Act agricultural tenancies
- 368 Limited Partnerships,
- 175 Modern Limited Duration Tenancies (MLDTs),
- 743 Limited Duration Tenancies (LDTs) and
- 1,258 Short Limited Duration Tenancies (SLDTs).

222. There is no data available on the number of seasonal/grazing lets (a 364-day tenancy arrangement where land is rented for the purpose of grazing or cropping), and these provisions do not impact the legislation and management of seasonal lets.

223. The Land Reform Bill provisions seek to modernise tenant farming legislation for the majority of agricultural tenancies by offering tenant farmers greater equality of opportunity, enabling them to better contribute to delivering the Vision for Agriculture<sup>15</sup> through modernising and widening the range of activities tenant farmers can undertake.

224. As agricultural tenancies are private contractual arrangements between landlords and tenant farmers, the costs outlined below are to a large extent dependent on the individual choices of the parties who choose whether to enter into a lease on particular terms.

### **Improvement of pre-emptive right to buy process**

225. Currently, under Part 2 of the 2003 Act, a tenant farmer with a secure 1991 Act agricultural tenancy has the pre-emptive right to buy the land in their lease. However, they must first register their interest in the Register of Community Interests in Land (managed by the Registrars of Scotland) if they intend to exercise that right.

226. These provisions requiring registration were due to be repealed through section 99 of the 2016 Act, but that section has not been commenced. However, it is now proposed in the Bill that

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<sup>15</sup> [Sustainable and regenerative farming - next steps: statement - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/statement-2023-01-24/pages/10.aspx)

section 99 will instead be repealed, and that Ministers will be able, by regulations, to improve the registration process. There is an equivalent power for small landholdings pre-emptive right to buy.

227. The proposals aim to promote certainty about the extent of the leased land that can be purchased, and generally make the registration process less burdensome for tenants.

### ***Costs on the Scottish Administration***

228. Section 10 of the Bill includes a power for the Scottish Ministers to make affirmative regulations to improve the pre-emptive right to buy process, and when doing so to consult with key stakeholders. All Scottish Government consultations require staff time and, as with other similar tenant farming consultations, will require engagement with key stakeholders.

229. The draft regulations will be laid before the Scottish Parliament. Costs for consulting on the development of the regulations includes one public consultation. The costs of publishing the consultation on the draft regulations is expected to be between £350-£750 (inclusive of VAT). The costs for analysing the consultation are expected to be between £5,000-£40,000 (inclusive of VAT), based on the costs of analysing the consultation on the draft RCI regulations, the consultation on the first draft LRRS and the consultation on the proposals for this Land Reform Bill. On the basis of these costs, it would cost between £80 – £100 per response to analyse the consultation.

230. Costs to lay the draft regulations in Parliament is expected to be around £750 (inclusive of VAT) based on the costs for laying SSIs to make amendments to the RCI Regulations, amendments to the Rules for the Land Tribunal for Scotland and Regulations for the Crofting Community Right to Buy. It costs £185 per copy of an SSI and £145 per policy note plus VAT and typically SSIs will need to be published twice, first in draft and again when made. If the affirmative SSI consultation outcomes require impact assessments, the publication costs of these are expected to be between £1,000-£2,000 based on the costs for publishing Assessments for the RCI regulation.

231. Based on the staff costs associated with relinquishment and assignation affirmative regulations it is expected that 0.3 B3 grade FTE for £39,750, 0.3 B2 grade FTE for £30,870 and 0.3 B1 grade FTE for £25,800 will be required for each affirmative regulation. The totals £96,420 per affirmative regulation. These costs will be absorbed within existing budgets.

232. It is expected that one affirmative SSI will be laid soon after the Bill. It is estimated that this will cost between £103,520 and £139,920 including staff time, consultation publication, consultation analysis, impact assessment publication, and laying the draft regulations. This estimate will depend on the size of consultation and number of responses to the consultation. This cost is estimated to be split 50:50 in Year 1 and Year 2. Any other regulations associated with the pre-emptive right to buy provisions will only be used if evidence emerges that they are required.

233. Beyond this there will be no additional financial costs to the Scottish Administration arising from the provisions.

**Table 20: Estimated costs to Scottish Administration of improvements to pre-emptive right to buy SSI**

	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6
Costs to Scottish Administration	£51,760 to £69,960	£51,760 to £69,960				

*Costs to Registers of Scotland (part of Scottish Administration)*

234. Registers of Scotland (RoS) currently maintain the Register of Community Interests in Land in which tenants may register their interest in exercising the pre-emptive right to buy. Approximately 1,500 tenancies are registered. RoS have costs associated with managing this register which generally include: dealing with new registrations; amending registered entries; removing entries and re-registering. Based on estimates provided by RoS, these activities are undertaken by a staff member at a day rate of £143.65 based on January 2024 rate. Approximate processing costs are shown below:

- 3-4 new registrations can be undertaken in a day. Costing £39.90 per case.
- 11 amendments of registration can be undertaken in a day costing £12.77 per amendment.
- 9 removals of entry can be undertaken in a day costing £15.96 per removal.
- 3-4 re-registrations can be undertaken in day costing £40.70 per day.
- Currently, tenants are required to pay £40 to register their pre-emptive right to buy interest and £25 to re-register their interest.

235. RoS have provided caveated estimates for the pre-emptive right to buy registration process/service change that are likely to be needed for any regulations that are made. Following consultation with stakeholders, costs may range from £250,000-£500,000 for improving the pre-emptive right to buy registration system depending on the scale of change required to improve the pre-emptive right to buy system (these costs are entirely dependent on the use of the enabling power).

**Table 21: Estimated costs to Registers of Scotland of pre-emptive right to buy improvements**

	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6
Costs to Registers of Scotland	£125,000 to £250,000	£125,00 to £250,000				

### ***Costs on local authorities***

236. It is not anticipated that there will be any new costs to local authorities expect where individual local authorities are a landlord letting land to an eligible tenant farmer. Information on whether local authorities have any agricultural holdings was not held centrally by COSLA. In these circumstances, costs will be similar to those identified for individual landlords which are dependent on the nature of the holding.

### ***Costs on other bodies, individuals and businesses***

237. No costs are estimated at this stage and they will depend on the use of the enabling power.

### **Resumption**

238. Resumption is the legal term used when a landlord takes land back out of an agricultural tenancy for specific purposes. The provisions will make the procedures between agricultural and non-agricultural resumptions by a landlord consistent and modernise the compensation provisions to ensure that a tenant farmer is provided with fair compensation for their loss.

239. The Bill provisions will enable a tenant farmer to claim compensation for the land lost to the tenancy for a range of elements including reduction of rent; one year's rent for disturbance to the tenant, additional compensation on proof of specified losses; four years rent for additional re-organisation costs to the tenant farmer's business; an additional 'net profit' compensation claim; and compensation for loss of the resumed land calculated by reference to a fair share of the capital value in respect of the lease of that land.

240. Applying a scenario to the Bill proposal, if a landlord wished to resume three hectares of a secure 1991 tenancy from a tenant farmer where a rent is £145 per hectare then the tenant could be entitled to:

- a reduction in rent of £435,
- a disturbance compensation payment of £435 (for the three hectares in question), and
- four years rent for the re-organisation of £1,740.

241. In total the tenant farmer could receive a reduction in rent, compensation of £2,175, and an additional net profit claim for approximately £255 for three hectares of barley. However, as crop values vary it is not possible to provide precise costs.

242. The provisions will enable a tenant farmer to also claim compensation in respect of the resumption based on a fair share of the capital value of the lease. The amount of the compensation will depend on the particular circumstances, so it is not possible to quantify those claims. They will however be based on a professional valuation as considered below.

243. The amendments alter the disturbance payment to tenant farmers, enabling a compensation claim for costs reasonably incurred by them in connection with business development of the

holding (e.g. cost incurred for statutory consents such as a building warrant or planning permission).

244. Collectively, these changes aim to support a thriving tenant farming sector as well as enable tenant farmers to plan with business certainty and receive appropriate compensation for losses incurred.

### ***Costs on the Scottish Administration***

245. The provisions include powers for the Scottish Ministers to make regulations. Section 11 and 12 of the Bill introduces negative and affirmative procedures. These powers would be utilised if evidence emerges that they are required. The cost of each of these if required is shown below. The Scottish Government will consult where necessary and expects to do so where the procedure is affirmative.

246. Costs for consulting on the development of the regulations includes one public consultation in the case of affirmative regulations. The costs of publishing the consultation on the draft regulations is expected to be between £350-£750 (inclusive of VAT). The costs for analysing the consultation are expected to be between £5,000-£40,000 (inclusive of VAT), based on the costs of analysing the consultation on the draft RCI regulations, the consultation on the first draft LRRS and the consultation on the proposals for this Land Reform Bill. On the basis of these costs, it would cost between £80 – £100 per response to analyse the consultation.

247. Costs to lay regulations in Parliament is expected to be around £750 (inclusive of VAT) based on the costs for laying SSIs to make amendments to the RCI Regulations, amendments to the Rules for the Land Tribunal for Scotland and Regulations for the Crofting Community Right to Buy. It costs £185 per copy of an SSI and £145 per policy note plus VAT and typically SSIs will need to be published twice, first in draft and again when made.

248. If regulations require impact assessments, the publication costs of these are expected to be between £1,000-£2,000 based on the costs for publishing Assessments for the RCI regulation.

249. Based on the staff costs associated with relinquishment and assignation affirmative regulations it is expected that 0.3 B3 grade FTE for £39,750, 0.3 B2 grade FTE for £30,870 and 0.3 B1 grade FTE for £25,800 will be required for each affirmative regulation. The totals £96,420 per affirmative regulation. If exercised negative regulations will utilise current staff resources of approximately 0.1 B3 grade FTE (£13,250) and 0.1 B2 grade FTE (£10,290) totalling £23,540 per negative regulation. These costs will be absorbed within existing budgets.

250. It is not expected that an SSI will be required to be laid as a result of these provisions. An SSI will only be brought forward if stakeholder evidence emerges that they are required. As such at this time there is estimated to be no cost to the Scottish Administration.

*Costs to the Scottish Land Commission (part of Scottish Administration)*

251. It is estimated that these provisions provide the ability for the TFC to appoint a valuer will require two to three days Scottish Land Commission staff time. This would cost between £350 to £520 approximately per valuer appointment for the 2 to 3 days of Scottish Land Commission B3 staff time. Any right to resume is a matter of contract and, as such, the number of resumptions cannot be quantified, and neither can the number of valuers that should be appointed.

252. The Scottish Government anticipates that the TFC will publish a revised Code of Practice on Resumption. Previously, the development of each TFC Codes of Practice have cost approximately £1,500 in staff time and approximately £1,000 to design, publish and print. It is hoped that additional guidance on resumptions will provide tenant farmers and landlords with greater clarity over exercising a resumption clause within a secure 1991 Act tenancy.

*Costs on local authorities*

253. It is not anticipated that there will be any new costs to local authorities expect where individual local authorities are a landlord letting land to an eligible tenant farmer. Information on whether local authorities have any agricultural holdings was not held centrally by COSLA. In these circumstances, costs will be similar to those identified for individual landlords which are dependent on the nature of the holding.

*Costs on other bodies, individuals and businesses*

254. Currently, a landlord has the right to resume if there is a written lease which contains a resumption clause. This clause will make it clear the purposes for which the right can be exercised. If a landlord exercises a right of resumption, then the landlord must pay the statutory compensation set out in the Agriculture Holdings (Scotland) Act 1991.

255. The Bill provisions will entitle the tenant farmer to additional compensation for loss of the resumed land. This will be calculated by assessing a fair share of the capital value of the leased land and will also allow the tenant farmer to recover costs reasonably incurred in connection with the development of the holding (including for example costs incurred in respect of statutory consents such as a building warrant or planning permission).

256. The cost of a valuer undertaking an assessment in accordance with similar legislative provisions (relinquishment and assignation provisions) generally costs around £4,500. If a landlord exercises their resumption right, they would be required to meet the valuer's assessment costs. Currently, resumptions are based on multiples of rent and anecdotal evidence suggests there is rarely a valuer involved in assessing resumption compensation. Any right to resume is a matter of contract and, as such, the number of resumptions cannot be quantified.

257. The actual amount payable for each resumption will be specific to nature of each holding, the size of the resumption and type of land being resumed so is not quantifiable. The Bill provisions mirror the current legal relinquishment and assignation provisions for 1991 Act tenancies. These enable the tenant farmer to receive a share of the capital value of the lease.



258. As an example, take a 300 acre arable farm where the lease allows for resumptions up to 10% of gross area. The landlord therefore resumes 30 acres of land with a vacant possession value of £12,000 per acre, giving a total value of £360,000. The value of that land with a tenant in occupation is £180,000, which falls to be deducted from the vacant possession value to provide a compensation ‘pot’ of £180,000. The compensation due is £90,000 i.e. half of that pot.

259. The value of the land being resumed to the landlord may be higher, and in some cases considerably higher. It is not possible to quantify any such premium as it will depend very much on the individual circumstances.

260. These modernised compensation provisions aim to ensure that a tenant farmer is fairly compensated for the loss of the land which might otherwise have been managed as part of the farm business.

261. Where either party disagrees with the compensation payable then either party may apply to the Lands Tribunal to appeal the valuer's assessment. Their default fee is £150 regardless of the number of parties. If the applicant chooses to be represented, they may wish to seek legal advice which may cost £100 to £595 per hour depending on the firm, the solicitor, the nature of the issue proposed change and the complexity of the individual lease. Initial costs to the SCTS for the initial consideration of an application are likely to be in the region of £240 per application. Court fees may also be required to be paid by the applicant. For more substantive hearings (based on a five hour sitting time), costs will be in the region of £1800 per day. Approximate costs to draft final written orders and any expenses orders may be in the region of a further £1800. Lands Tribunal members are salaried, and so the exact costs likely to be incurred by the SCTS is dependent on members respective salaries.<sup>16</sup>

262. Stakeholder evidence suggests there are likely to be a low number of appeals to the Lands Tribunal.

### **Agricultural improvements**

263. Part 4, sections 40 and 41, and schedule 5 of the 1991 Act provide for compensation at waygo for certain improvements effected by a tenant. The basis on which compensation is to be paid is value of the improvement to a hypothetical incoming tenant.

264. It is a condition of compensation for some improvements that the landlord has given consent or been given notice. Part 1 of schedule 5 lists improvements which need consent, part 2 lists improvements which need notice, and part 3 lists improvements which need neither consent nor notice.

265. The provisions reform schedule 5 to replace the existing fixed lists with flexible lists (with illustrative examples) that take account of the significance and impact of a proposed

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<sup>16</sup> Any costs to SCTS would fall on the Scottish Administration.

modernisation. The Land Court can be asked to approve an improvement, with or without conditions, and to consider whether the improvement will facilitate or enhance sustainable or regenerative production on the holding. The Bill adds a new part 4 to schedule 5 which lists improvements which are presumed to have that effect.

266. The Bill enables Ministers via regulations to prescribe a form of notice and specify the information to be provided about a proposed improvement. It also enables Ministers through regulations to modify or amend schedule 5 (as amended by the Bill).

### ***Costs on the Scottish Administration***

267. The provisions include powers for the Scottish Ministers to make regulations. Section 14 of the Bill introduces powers subject to negative procedure. These powers would be utilised if stakeholder evidence emerges that they are required. The cost of each of these if required is shown below.

268. Costs to lay regulations in Parliament is expected to be around £750 (inclusive of VAT) based on the costs for laying SSIs to make amendments to the RCI Regulations, amendments to the Rules for the Land Tribunal for Scotland and Regulations for the Crofting Community Right to Buy. It costs £185 per copy of an SSI and £145 per policy note plus VAT and typically SSIs will need to be published twice, first in draft and again when made. If the affirmative SSI consultation outcomes require impact assessments, the publication costs of these are expected to be between £1,000-£2,000 based on the costs for publishing Assessments for the RCI regulation.

269. If exercised negative regulations will utilise current staff resources of approximately 0.1 B3 grade FTE (£13,250) and 0.1 B2 grade FTE (£10,290) totalling £23,540 per negative regulation. These costs will be absorbed within existing budgets.

270. It is not expected that an SSI will be required to be laid as a result of these provisions. An SSI will only be brought forward if stakeholder evidence emerges that they are required. As such at this time there is estimated to be no cost to the Scottish Administration.

### ***Scottish Land Commission (part of Scottish Administration)***

271. The Scottish Government anticipates that the TFC will publish a revised code of practice on agricultural improvements. Previously, the development of TFC codes of practice have cost approximately £1,500 in staff time and approximately £1,000 to design, publish and print per guide.

### ***Costs on local authorities***

272. It is not anticipated that there will be any new costs to local authorities expect where individual local authorities are a landlord letting land to an eligible tenant farmer. Information on whether local authorities have any agricultural holdings was not held centrally by COSLA. In these

circumstances, costs will be similar to those identified for individual landlords which are dependent on the nature of the holding.

***Costs on other bodies, individuals and businesses***

273. The provision will provide tenant farmers with greater opportunity to make improvements that could increase their revenue, including by increasing sustainable and regenerative agricultural practices on their holding. The legal changes will also help enable tenant farmers to access the same range of future grants and Scottish Government support as owner-occupier farmers. The tenant can be compensated for the new improvements as is the case under the current law. The improvements cover matters that will reduce input costs or reduce carbon impacts, such as:

- renewable electricity measures for on-farm energy needs (leading to efficiencies and reduced costs),
- the creation of hydroponic or other facilities for processing agricultural products produced on the holding; or
- the creation of silvo-pasture or silvo-arable systems.

274. Business and Regulatory Impact Assessment discussions with tenant farmers has highlighted that some tenant farmers have more than doubled their profit by undertaking sustainable and regenerative agricultural practices, which have reduced their input costs by 60-70%. This proposal may assist tenant farmers to achieve cost savings, but this will depend on the individual nature of the holding and the agreement of the landlord.

275. Tenant farmers undertaking these improvements will not be required to pay a rent increase with the exception of improvements listed in Part 1 of Schedule 5 of the 1991 Act. These amendments will not change this position.

276. The landlord may be required to pay compensation for these agricultural improvements at waygo if the improvements have a value to a hypothetical incoming tenant.

277. It is not possible to reasonably estimate the level of compensation as this depends on the type of improvement and circumstances of the individual holding and business. The landlord could however recoup the compensation from the incoming tenant. Depending on the individual circumstances of the holding and the lease, the rental value may also increase as a result of the increased activity on the holding.

278. There may be minimal additional costs for tenant farmers in seeking consent for a Part 1 improvement from their landlord or when they require to serve a notice to their landlord for activities listed in Parts 2 or Part 4. However, in the majority of cases it is anticipated that tenant farmers would approach their landlords to discuss the proposed improvement in advance. Based on costs associated with serving notice under the diversification provisions legal fees are likely to be approximately £450 to serve an improvement notice. These minor costs arise at the discretion of the parties.

279. Serving an improvement notice is a private matter between landlord and tenant, and as such it cannot be estimated how many notices will be served.

280. The Bill provides for a tenant seeking consent for an improvement to be able to apply to the Scottish Land Court to determine whether an objection is reasonable. This may result in an increase in applications to the Land Court, with associated financial costs. It is not possible at this point to quantify the volume and cost of new cases which will be taken to the Land Court as the volume of cases is will directly depend on the relationships between individual tenant farmers and their landlords, including if the parties follow the Code of Practice to be prepared by the Tenant Farming Commissioner.

281. The cost of an application to the Land Court by a tenant is £100 (plus £50 for each additional applicant) and £45 for each respondent. Usually, there is one applicant and one respondent so the total application fee would be £145. The Land Court team consists of (approximate FTEs) 0.5 SEO, 1 HEO, 1 EO and 1 AO who deal with crofting and some environmental issues as well as agricultural holdings and small landholders. The resource costs to the Land Court vary depending on the facts and circumstances of the case.<sup>17</sup>

### **Diversification**

282. The diversification provisions amend the Agricultural Holdings (Scotland) Act 2003 (“the 2003 Act”) by amending the landlord’s grounds for objecting to a tenant farmer’s proposed diversification and insert a new negotiation provision. The provisions will affect 1991 Act tenancies, Limited Duration Tenancies, Modern Limited Duration Tenancies and Repairing Tenancies. The collective aim of the amendments is to facilitate the carrying out of non-agricultural activities on farms, and in that way to help ensure a viable and sustainable tenancy sector where tenants help to mitigate the effects of climate change and nature loss.

283. The provisions also amend the Agricultural Holdings (Scotland) Act 1991 (“the 1991 Act”) to enable a tenant farmer to have greater opportunity to claim compensation at waygo for the diversification.

### ***Costs on the Scottish Administration***

284. The provisions include powers for the Scottish Ministers to make regulations. Section 15 of the Bill introduces a power subject to affirmative procedures. These powers would be utilised if stakeholder evidence emerges that it is required. The cost of each of these if required is shown below. The Scottish Government will consult where necessary and likely where the procedure is affirmative.

285. Costs for consulting on the development of the regulations is based on an affirmative regulation which requires one public consultation. The costs of publishing the consultation on the

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<sup>17</sup> Any costs to SCTS would fall on the Scottish Administration.

draft regulations is expected to be between £350-£750 (inclusive of VAT). The costs for analysing the consultation are expected to be between £5,000-£40,000 (inclusive of VAT), based on the costs of analysing the consultation on the draft RCI regulations, the consultation on the first draft LRRS and the consultation on the proposals for this Land Reform Bill. On the basis of these costs, it would cost between £80 – £100 per response to analyse the consultation. Costs to lay regulations in Parliament is expected to be around £750 (inclusive of VAT) based on the costs for laying SSIs to make amendments to the RCI Regulations, amendments to the Rules for the Land Tribunal for Scotland and Regulations for the Crofting Community Right to Buy. It costs £185 per copy of an SSI and £145 per policy note plus VAT and typically SSIs will need to be published twice, first in draft and again when made. If the affirmative SSI consultation outcomes require impact assessments, the publication costs of these are expected to be between £1,000-£2,000 based on the costs for publishing assessments for the RCI regulation.

286. Based on the staff costs associated with relinquishment and assignation affirmative regulations it is expected that 0.3 B3 grade FTE for £39,750, 0.3 B2 grade FTE for £30,870 and 0.3 B1 grade FTE for £25,800 will be required for each affirmative regulation. The totals £96,420 per affirmative regulation. These costs will be absorbed within existing budgets.

287. An SSI will only be brought forward if stakeholder evidence emerges that they are required. As such at this time there is estimated to be no cost to the Scottish Administration.

#### *Costs on the Scottish Land Commission (part of Scottish Administration)*

288. The Scottish Government anticipates that the TFC will publish a revised Code of Practice on Diversification. Information on whether local authorities have any agricultural holdings was not held centrally by COSLA. Previously, the development of TFC Codes of Practice have cost approximately £1,500 in staff time and approximately £1,000 to design, publish and print.

#### ***Costs on local authorities***

289. It is not anticipated that there will be any new costs to local authorities expect where individual local authorities are a landlord letting land to an eligible tenant farmer. Information on whether local authorities have any agricultural holdings was not held centrally by COSLA. In these circumstances, costs will be similar to those identified for individual landlords which are dependent on the nature of the holding.

#### ***Costs on other bodies, individuals and businesses***

290. Currently, if a tenant farmer decides to diversify then they must serve notice to their landlord. The provisions may lead to an increase in non-agricultural (diversified) activities, in which case more notices will be given. Business and Regulatory Impact Assessment discussions indicated that tenant farmers are likely to instruct a solicitor to draft their notice of diversification and this can cost approximately £450.

291. Serving a diversification notice is a private matter between landlord and tenant and as such it cannot be estimated how many notices will be served.

292. The diversification provisions have the potential to provide financial benefit for individual tenant farmers by providing them with greater access to non-agricultural income and funding. The Scottish Government Farm Business Income Estimates Report (2020-21) <sup>18</sup> found more than half of farms have diversified activities which generates additional incomes to their businesses. There was also an income gap between agricultural businesses with diversified activities and those without. On average, farms with no diversified activity generated £16,100 less in income per annum in 2020-21. Utilising this information as a general proxy, diversification is likely to help individual agricultural tenancies to increase their income generation and revenue if they undertake non-agricultural diversification.

293. Where a tenant farmer obtains additional diversified income as a result of the provisions, this may be reflected during rent negotiations. For some landlords, this may lead to increased rental income.

294. Currently section 45A of the 1991 Act provides for the tenant to compensate the landlord where the value of a holding decreases as a result of a diversified activity and vice versa, in the case of an increase in value. The landlord is not however required to compensate the tenant if the land where the diversified activity is carried on is unsuitable for use for agriculture. The provisions alter the process, so compensation takes a whole holding approach. This is expected to lead to more cases in which compensation is due to the tenant as a result of the diversification.

295. Compensation levels cannot reasonably be estimated as any compensation due will depend on the nature of the holding, the scale and type of the diversification and other matters.

296. It is more likely, based on Business and Regulatory Impact Assessment discussions with stakeholders, that diversifications will potentially add value to the land. For instance, permanent structures such as the installation of wind turbines on a tenant farmer's holding may generate an additional £12,000 to £13,000 per turbine but not necessarily affect the agricultural value of the holding. If a tenant erected a wind turbine with a 25-year life span and leaves the tenancy after 10 years, the wind turbine is likely to have a remaining utilisable life of 15 years. If the cost of an equivalent wind turbine at waygo was £70,000 then approximately £2,800 (£70,000 divided by 25 years) would be due for each year of remaining utilisable life, in this example £42,000 (£2,800 multiplied by 15 years). Other factors associated with a diversification are considered at waygo (see explanation of waygo below), such as depreciation, appropriateness of the installation to the wind turbine, and amount of income being generated.

297. The AH 2003 Act sets out the process which must be followed when a tenant proposes to diversify. The need to comply with the time limits associated with that process can prevent the parties from reaching an agreement which would otherwise be possible. The Bill proposes that the tenant may serve an extension notice on the landlord, with the aim of providing more time to reach

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<sup>18</sup> [Scottish farm business income: annual estimates 2020-2021 - gov.scot \(www.gov.scot\)](https://www.gov.scot/resources/documents/2021/04/Scottish-farm-business-income-annual-estimates-2020-2021.pdf)

an agreement. This is intended to reduce the number of references, which are already very low, to the Land Court with a subsequent saving in time and costs for the both parties.

298. For example, the cost of an application to the Land Court by a landlord is £100 (plus £50 for each additional applicant) and £45 for each respondent. Usually there is one applicant and one respondent so the total application fees saved in each case would be £145. The Land Court team consists of (approximate FTEs) 0.5 SEO, 1 HEO, 1 EO and 1 AO who deal with crofting and some environmental issues as well as agricultural holdings and small landholders. The resource costs to the Land Court vary depending on the facts and circumstances of the case.<sup>19</sup>

299. Based on stakeholder evidence, applications to the Land Court are likely to be very low.

### **Game damage**

300. The proposals will modernise the compensation for game damage provisions to enable tenant farmers to claim compensation for losses additional to crop damage by amending section 52 of the Agricultural Holdings (Scotland) Act 1991. Game is defined as deer, pheasant, partridge, grouse and black game (black grouse). The proposals remove black game from the definition of game, due to their declining population.

301. Currently a tenant farmer is only entitled to compensation where there is crop damage. Payment rates are outdated with the tenant farmer only currently able to receive compensation if crop damage exceeds 12 pence per hectare threshold. The proposals will enable tenant farmers to claim compensation for direct and indirect damage to their crops, fodder, grass for livestock grazing, disease impact on livestock, damage to trees for the purposes of short-rotation cropping, damage to trees which are planted for sustainable and regenerative agriculture, damage to trees planted for non-agricultural purposes and damage to fixed equipment such as fences and dykes.

### ***Costs on the Scottish Administration***

302. The provisions include powers for the Scottish Ministers to make regulations. Section 20 of the Bill introduces a power subject to negative procedures. These powers would be utilised if stakeholder evidence emerges that it is required. The cost of each of these if required is shown below.

303. Costs to lay the regulations in Parliament is expected to be around £750 (inclusive of VAT) based on the costs for laying SSIs to make amendments to the RCI Regulations, amendments to the Rules for the Land Tribunal for Scotland and Regulations for the Crofting Community Right to Buy. It costs £185 per copy of an SSI and £145 per policy note plus VAT and typically SSIs will need to be published twice, first in draft and again when made. If the affirmative SSI

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<sup>19</sup> Any costs to SCTS would fall on the Scottish Administration

consultation outcomes require impact assessments, the publication costs of these are expected to be between £1,000-£2,000 based on the costs for publishing Assessments for the RCI regulation.

304. If exercised regulations will utilise current staff resources of approximately 0.1 B3 grade FTE (£13,250) and 0.1 B2 grade FTE (£10,290) totalling £23,540 per negative regulation. These costs will be absorbed within existing budgets

305. It is expected that one negative SSI will be laid soon after the Bill. It is estimated that this will cost between £24,290 including staff time and laying the draft regulations. It is estimated this cost will be in Year 4. Any other regulations will only be used if stakeholder evidence emerges that they are required.

306. Any costs on the Scottish Government as landlord if game is not managed properly would be the same as for other landlords which are dependent on the level of damage and circumstances of the holding.

**Table 22: Estimated costs to Scottish Administration of good husbandry SSI**

	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6
Costs to Scottish Administration				£24,290		

*Costs to Scottish Land Commission (part of Scottish Administration)*

307. The Scottish Government anticipates that the TFC will publish revised guidance on the amended Game Damage. These costs will be comparable to the development of TFC Codes of Practice which cost approximately £1,500 in staff time and approximately £1,000 to design, publish and print per guide.

**Costs on local authorities**

308. It is not anticipated that there will be any new costs to local authorities expect where individual local authorities are a landlord letting land to an eligible tenant farmer. Information on whether local authorities have any agricultural holdings was not held centrally by COSLA. In these circumstances, costs will be similar to those identified for individual landlords which are dependent on the level of damage and circumstances of the holding.

**Costs on other bodies, individuals and businesses**

309. The provisions will enable tenants to claim the range of compensation costs arising from game damage on their holding from their landlord if they can demonstrate economic loss.



310. The basis of the compensation claims ensure that a tenant farmer is sufficiently compensated to ensure they are no better or worse off as a result of the damage. The amount due will be dependent on the type and scale of game damage on their holding.

311. For instance, where deer damage 10 metres of stock fence and the tenant's evidence it was caused by the deer, then the landlord may be required to pay estimated compensation costs to the tenant of approximately £120 plus labour cost for the area damaged. However, these costs do not include additional material costs arising from consequential fence damage or additional cost of retensioning the fence between the two strainers points. This is not possible to quantify due to fence lengths and individual circumstances on the area affected.

312. Taking another example, if intensively reared pheasants ate/damaged part of a tenant's spring barley field (measuring 2/5 of a hectare) of approximately 5 tonne per hectare trading at £150 a tonne, then the landlord would be required to compensate the tenant £300. However, as crop values vary it is not possible to provide precise costs.

313. Although a landlord may be required to pay compensation, they are entitled to recover those costs where the game management on the tenancy is the responsibility of the sporting tenant which is already set out in the 1991 Act.

314. Based on stakeholder evidence, applications to the Land Court are likely to be very low.

315. If the applicant chooses to be represented, they may wish to seek legal advice which may cost £100 to £595 per hour depending on the firm, the solicitor, the nature of the issue proposed change and the complexity of the individual lease. The cost of an application to the Land Court by a tenant farmer is £100 (plus £50 for each additional applicant) and £45 for each respondent. Usually, there is one applicant and one respondent so the total application fee would be £145. The Land Court team consists of (approximate FTEs) 0.5 SEO, 1 HEO, 1 EO and 1 AO who deal with crofting and some environmental issues as well as agricultural holdings and small landholders. The resource costs to the Land Court vary depending on the facts and circumstances of the case.<sup>20</sup>

## **Waygo**

316. Waygo is the term for the process that a tenant farmer and landlord go through at the end of tenancy. During this process they should agree and pay any compensation due by one party to the other. Delays in assessing and paying claims can cause significant difficulties particularly for tenants.

317. The Bill therefore provides for a standard claims procedure, and enables Ministers, by regulations, to provide for that procedure to apply to particular types of claims. The new procedure

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<sup>20</sup> Any costs to SCTS would fall on the Scottish Administration.

includes provision for either party to ask the TFC or, where appropriate, the Land Court to appoint a valuer, and provides for an appeal to the Lands Tribunal against a valuer's assessment.

318. Collectively, the provisions are intended to enable tenant farmers and landlords to settle their waygo claims quickly and fairly, allowing tenant farmers to move forward with the next stage of their life. These provisions will not however change the basis for making any claim or the basis for assessing the amount of compensation due in respect of the claim.

### ***Costs on the Scottish Administration***

319. There will be additional costs to the Scottish Administration resulting from implementing provisions on waygo. Section 22 provides that regulations will be subject to affirmative procedure. The cost of each of these if required is shown below. The Scottish Government will consult where necessary, and expects to do so where the procedure is affirmative.

320. Costs for consulting on the development of the regulations is based on if an affirmative regulation with one public consultation. The costs of publishing the consultation on the draft regulations is expected to be between £350-£750 (inclusive of VAT). The costs for analysing the consultation are expected to be between £5,000-£40,000 (inclusive of VAT), based on the costs of analysing the consultation on the draft RCI regulations, the consultation on the first draft LRRS and the consultation on the proposals for this Land Reform Bill. On the basis of these costs, it would cost between £80 – £100 per response to analyse the consultation.

321. Costs to lay the draft regulations in Parliament is expected to be around £750 (inclusive of VAT) based on the costs for laying SSIs to make amendments to the RCI Regulations, amendments to the Rules for the Land Tribunal for Scotland and Regulations for the Crofting Community Right to Buy. It costs £185 per copy of an SSI and £145 per policy note plus VAT and typically SSIs will need to be published twice, first in draft and again when made. If the affirmative SSI consultation outcomes require impact assessments, the publication costs of these are expected to be between £1,000-£2,000 based on the costs for publishing Assessments for the RCI regulation.

322. Based on the staff costs associated with relinquishment and assignation affirmative regulations it is expected that 0.3 B3 grade FTE for £39,750, 0.3 B2 grade FTE for £30,870 and 0.3 B1 grade FTE for £25,800 will be required for each affirmative regulation. The totals £96,420 per affirmative regulation. These costs will be absorbed within existing budgets.

323. It is expected that one affirmative SSI will be laid soon after the Bill. It is estimated that this will cost between £103,520 and £139,920 including staff time, consultation publication, consultation analysis, impact assessment publication, and laying the draft regulations. This estimate will depend on the size of consultation and number of responses to the consultation. It is estimated that this cost will be split 50:50 between Year 1 and 2. Any other regulations associated with the waygo provisions will only be used if evidence emerges that they are required.

**Table 23: Estimated costs to Scottish Administration of waygo SSI**

	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6
Costs to Scottish Administration	£51,760 to £69,960	£51,760 to £69,960				

***Costs on local authorities***

324. It is not anticipated that there will be any new costs to local authorities except where individual local authorities are a landlord letting land to an eligible tenant farmer. Information on whether local authorities have any agricultural holdings was not held centrally by COSLA. In these circumstances, costs will be similar to those identified for individual landlords which are dependent on the nature of the holding.

***Costs on other bodies, individuals and businesses***

325. The requirement to appoint an independent valuer will potentially save landlords and tenant costs as anecdotal evidence suggests that both parties currently appoint respective valuers at waygo for their interests. The appointment of an independent valuer by the TFC is likely to save costs and reduce the need for parties to appoint their own valuers. Hourly rates for valuations will be £100 - £150 per hour + VAT depending on valuer’s experience.

326. It is not possible to quantify the exact cost of a waygo valuation as all holdings and businesses are unique. Location will also be a factor, for instance is if a holding is in a particularly remote location, then travel costs will likely be reflected in the fee. By way of comparison, the relinquishment and assignation provisions brought forward in Chapter 7 of Part 10 of the Land Reform (Scotland) Act 2016 provided for the appointment of a valuer. The financial costs associated with those valuer’s assessment are around £4,500. It is estimated that cost of valuing waygo claims will be lower than a valuer’s assessment of the relinquishment and assignation provisions, ranging from £2,000 to £3,000 – depending on the size and circumstances of the holding, and costs will be split between tenant farmers and their landlords.

327. The provisions do not change the amount of compensation that a tenant may receive. For example, if a tenant farmer erects a shed with a 35-year life span and leaves the tenancy after 25 years, the shed is likely to have a remaining depreciation period of 10 years. If the cost to build an equivalent shed new at the point of waygo was £100k, then approximately £2,860 (£100k divided by 35 years) would be due for each year of remaining depreciation period, in this example £28,600. The actual cost of building the shed 25-years ago is not a factor in the calculations, only the usability of the shed to an incoming tenant. Where a building has stood for longer than the depreciation schedule attached to the building, then a different valuation is attached to the shed by a valuer. This normally hinges around the useability of the building for the incoming tenant. Other factors are considered at waygo such as depreciation, appropriateness of the installation to the farm and, for assets such as wind turbines, any income streams.

328. Given the number of variables involved which depends on individual circumstances and actions, it is not possible to estimate overall costs. However, the cost to the landlord will be balanced by the increase in value of their asset as a result of the improvement and this may also be reflected in the level of rent that can be charged to a new tenant farmer or additional income which may be accrued as a result of the utilising the improvement.

329. There may be some costs associated with increased paperwork, but these are likely to be negligible as this will be adding items to the existing waygo process.

330. It is estimated that these provisions (which provide the ability for the TFC to appoint a valuer) will require two to three days Scottish Land Commission staff time. This would cost between £350 to £520 approximately per valuer appointment for the 2 to 3 days of Scottish Land Commission B3 staff time. The number of waygo agreements are private contractual matters and as such the number of appointments required cannot be quantified.

331. The Bill includes provisions enabling a tenant farmer and their landlord to apply to the Lands Tribunal if any new compensation claims arise less than two months before the end of the tenancy or if parties dispute the valuation. The default Lands Tribunal fee is £150 regardless of the number of parties. If the applicant chooses to be represented, they may wish to seek legal advice which may cost £100 to £595 in hourly rates depending on the firm, the solicitor, the nature of the claim and complexity of the individual lease. Initial costs to the SCTS for the initial consideration of an application are likely to be in the region of £240 per application. Court fees may also be required to be paid by the applicant. For more substantive hearings (based on a five hour sitting time), costs will be in the region of £1800 per day. Approximate costs to draft final written orders and any expenses orders may be in the region of a further £1800. Lands Tribunal members are salaried, and so the exact costs likely to be incurred by the SCTS is dependent on members respective salaries.<sup>21</sup>

332. Between April 2022 and September 2023 there were 3 applications to the Land Court relating to Waygo. Based on this the total number of applications to the Land Court are likely to be very low.

333. The Bill makes provision for interest to be payable on compensation where it is overdue by either party.

334. These provisions are expected to provide early financial clarity for both parties enabling waygo costs to be known in advance and reduce costs and delays in payments due as well as reducing appeal costs.

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<sup>21</sup> Any costs to SCTS would fall on the Scottish Administration

## **Rent review**

335. The Bill includes provisions to reform the rent review systems introduced by the 2016 Act for 1991 Act tenancies and limited duration tenancies etc. which have not yet been commenced.

336. At present the Land Court, on application by either party, is required to determine the rent to be payable on the holding based on the value that might reasonably be expected to reach if let on the open market by a willing landlord to a willing tenant under sections 13 of the 1991 Act and sections 9 onwards of the 2003 Act.

337. These provisions amend the fair rent provisions in the 2016 Act (which are still to be brought into force) to create a flexible system of rent review which enables both parties to provide evidence from a number of different sources and places an increased emphasis on negotiation.

338. The new rent review system will be based around a non-exhaustive and non-hierarchical list of factors, which should be considered when calculating rent. They include:

- comparable rental information;
- the productive capacity of the holding; and
- the prevailing economic conditions in the sectors relevant to the holding and factors reasonably foreseeable over a 3 year period.

339. The provision will not affect parties' ability to continue to agree rent without using the statutory provisions. For example, tenants and landlords could continue to agree rent based on other factors or approaches should they wish to do so.

## ***Costs on the Scottish Administration***

340. Section 23 and 24 of the Bill provide powers for the Scottish Ministers to make, by regulations, further provision in respect of matters to which the Land Court must have regard when determining a fair rent, if asked to do so. If used the cost of each of these if required is shown below.

341. Costs for consulting on the development of the regulations is based on an affirmative regulation which requires one public consultation. The costs of publishing the consultation on the draft regulations is expected to be between £350-£750 (inclusive of VAT). The costs for analysing the consultation are expected to be between £5,000-£40,000 (inclusive of VAT), based on the costs of analysing the consultation on the draft RCI regulations, the consultation on the first draft LRRS and the consultation on the proposals for this Land Reform Bill. On the basis of these costs, it would cost between £80 – £100 per response to analyse the consultation.

342. Costs to lay the draft regulations in Parliament is expected to be around £750 (inclusive of VAT) based on the costs for laying SSIs to make amendments to the RCI Regulations, amendments to the Rules for the Land Tribunal for Scotland and Regulations for the Crofting Community Right

to Buy. It costs £185 per copy of an SSI and £145 per policy note plus VAT and typically SSIs will need to be published twice, first in draft and again when made. The regulations are also likely to require impact assessments and the publication costs of these are expected to be between £1000-£2000 based on the costs for publishing Impact Assessments for the RCI regulations.

343. It is expected that one affirmative SSI will be laid soon after the Bill. It is estimated that this will cost between £103,520 and £139,920 including staff time, consultation publication, consultation analysis, impact assessment publication, and laying the draft regulations. This estimate will depend on the size of consultation and number of responses to the consultation. It is estimated that this cost will be split 50:50 in Year 2 and 3. Any other regulations associated with the rent provisions will only be used if evidence emerges that they are required.

**Table 24: Estimated costs to Scottish Administration of rent SSI**

	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6
Costs to Scottish Administration		£51,760 to £69,960	£51,760 to £69,960			

*Costs to the Scottish Land Commission (part of Scottish Administration)*

344. The Scottish Government anticipates that the TFC will publish a revised Code of Practice on Rent Reviews. Previously, the development of TFC Codes of Practice have cost approximately £1,500 in staff time and approximately £1,000 to design, publish and print per guide. It is hoped that additional guidance will minimise the number of cases that are referred to the Scottish Land Court.

***Costs on local authorities***

345. It is not anticipated that there will be new costs to local authorities, except where individual local authorities are a landlord letting land to an eligible tenant farmer. Information on whether local authorities have any agricultural holdings was not held centrally by COSLA. In these circumstances, costs will be similar to those identified for individual landlords which are dependent on the nature of the holding.

***Costs on other bodies, individuals and businesses***

346. At present, both parties can employ suitable individuals to assist them during rent reviews and in any application to the Scottish Land Court for the determination of rent. Costs associated with such employment of individuals to assist parties will continue to be met by both parties. Applications to the Land Court to determine rent, where the rental does not exceed £500, costs £50 per application. For rent claims exceeding £500, it is an additional £7.50 for every £100 over £500. Where an application is dismissed or withdrawn before rent is fixed there is a cost of £80. Whichever party applies pays the fee. In addition, there will be legal fees incurred by both parties.

347. These costs may be substantial particularly where further costs are incurred after an award of expenses by the Court. It is not possible to quantify these given costs will be directly related to the individual circumstances of the case.

348. The TFC guidance is expected to provide a degree of savings to both parties if they chose to follow the guidance. Parties remain able to reach their own agreements on the rent payable, and rental data from 2018 show that the average rent in the non-Less Favoured Area land was £132 per hectare.

349. Only two cases where rent review was the primary issue have been heard by the Scottish Land Court approximately 10 years ago resulted in costs to the parties of over £50,000 and £100,000 respectively. It is likely legal fees will have increased since then and legal fees incurred by both parties may be substantial and additional costs will be incurred following award of expenses. So, if parties do not follow the TFC guidance then their costs should be expected to be higher than those who do.

350. Costs of individual cases are dependent on variables such as complexities of the legal disputes, time, Council and circumstances.

351. At present, it is not possible to quantify the volume and cost of new cases taken to the Scottish Land Court or costs for those individuals as this is dependent on the facts and circumstances of individual cases. The Land Court team consists of (approximate FTEs) 0.5 SEO, 1 HEO, 1 EO and 1 AO who deal with crofting and some environmental issues as well as agricultural holdings and small landholders. The resource costs to the Land Court vary depending on the facts and circumstances of the case.<sup>22</sup>

352. Between April 2022 and September 2023 there were 4 applications to the Land Court relating to rent. Based on this and stakeholder evidence, the number of applications to the Land Court are likely to be very low. Parties remain free to reach their own agreements outwith statutory provisions.

### **Rules of Good Husbandry and Estate Management**

353. The Bill amends the rules of good husbandry and the rules of good estate management as provided for in the Agriculture (Scotland) Act 1948.

354. The tenant farmer should maintain a reasonable standard of efficient production as regards both the quality and quantity of the produce while also keeping the unit in a condition to enable such a standard to be maintained in the future. The owner of the land should maintain agricultural holdings in good condition so that they can fulfil their productive potential and provide a return for both landlord and tenant farmer.

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<sup>22</sup> Any costs to SCTS would fall on the Scottish Administration

355. The respective changes modernise the respective rules so that regard is had both to efficient production as well as sustainable and regenerative agricultural practices.

***Costs on the Scottish Administration***

356. Section 27 of the Bill includes a power for the Scottish Ministers to make regulations to prescribe activities or descriptions of activities which are to be treated as conservation activities.

357. Costs to lay the draft regulations in Parliament is expected to be around £750 (inclusive of VAT) based on the costs for laying SSIs to make amendments to the RCI Regulations, amendments to the Rules for the Land Tribunal for Scotland and Regulations for the Crofting Community Right to Buy. It costs £185 per copy of an SSI and £145 per policy note plus VAT and typically SSIs will need to be published twice, first in draft and again when made. If the affirmative SSI consultation outcomes require impact assessments, the publication costs of these are expected to be between £1,000-£2,000 based on the costs for publishing Assessments for the RCI regulation.

358. If exercised negative regulations will utilise current staff resources of approximately 0.1 B3 grade FTE (£13,250) and 0.1 B2 grade FTE (£10,290) totalling £23,540 per negative regulation. These costs will be absorbed within existing budgets. It is expected that one negative SSI will be laid soon after the Bill. It is estimated that this will cost between £24,290 including staff time and laying the draft regulations. This is estimated to be a Year 4 cost. Any other regulations will only be used if evidence emerges that they are required.

***Table 25: Estimated Costs to Scottish Administration of Good Husbandry and Estate Management SSI***

	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6
Costs to Scottish Administration				£24,290		

*Scottish Land Commission (part of Scottish Administration)*

359. The Scottish Government anticipates that the TFC will publish revised guidance on the amended Rules of Good husbandry/Good Estate Management. These costs will be comparable to the development of TFC Codes of Practice, which cost approximately £1,500 in staff time and approximately £1,000 to design, publish and print.

***Costs on local authorities***

360. It is not anticipated that there will be any new costs to local authorities expect where individual local authorities are a landlord letting land to an eligible tenant farmer. Information on whether local authorities have any agricultural holdings was not held centrally by COSLA. In these circumstances, costs will be similar to those identified for individual landlords which are dependent on the nature of the holding.



**Costs on other bodies, individuals and businesses**

361. The provisions modify what is required to comply with the respective rules and will help tenant farmers to access future funding without the risk of being in breach of their obligations under the lease.

362. Currently parties can apply to the Land Court for a certificate of bad husbandry. Between April 2022 and September 2023 there has been 1 application to the Land Court relating to a certificate of bad husbandry. Accordingly applications to Land Court are likely to be very low.<sup>23</sup>

**Table 26: Potential agricultural holdings costs**

363. This excludes costs to the SCTS as it is not possible to prove confirmation of exact costs as it depends on uptake levels.

	Year 1 (£)	Year 2 (£)	Year 3 (£)	Year 4 (£)	Year 5 (£)	Year 6
Costs on the Scottish Administration	£103,520 to £139,920 (costs associated with starting ½ pre-emptive right to buy SSI and waygo SSI)	£155,262 to £208,380 (costs associated with completing the pre-emptive right to buy SSI and waygo SSI. Including starting ½ rent SSI).	£51,760 to £69,960 (costs associated with completing rent SSI).	£48,580 (costs associated with game damage and good husbandry SSI)	Minimal	Minimal
Costs on Register of Scotland (part of Scottish Administration)	£125,000 to £250,000 improvements to the pre-emptive right to buy register	£125,000 to £250,000 improvements to the pre-emptive right to buy register	Minimal	Minimal	Minimal	Minimal

<sup>23</sup> Any costs to SCTS would fall on the Scottish Administration

*This document relates to the Land Reform (Scotland) Bill (SP Bill 44) as introduced in the Scottish Parliament on 13 March 2024*

Costs on the Scottish Land Commission (part of Scottish Administration)	£10,000 (based on producing 4 Codes of Practices on ½ the above measures)	£10,000 (based on producing 4 Codes of Practice on ½ the above measures).	Minimal	Minimal	Minimal	Minimal
Costs on local authorities	See below on costs relating to individual activity.					
All costs shown below relate to known costs and do not take into account the scale and range of potential costs to individuals as these are entirely dependent on the details of private contractual leases and previous private negotiations between tenant farmer and their landlords. Costs relating to individuals (tenant and landlords) are illustrative and not included in the final cost assessment for the Bill but are provided below for information. The agricultural holding measures outlined above are amendments to existing legislation and largely do not introduce new costs.						
	<b>The costs outlined below relate to individual costs per potential activity</b>					
Costs on individuals and businesses	<p><b>Resumption</b> – landlord to pay valuers costs of approximately £4,500 (based on the cost of a relinquishment valuation) plus resumption costs. Application to appeal valuation to Land Tribunal will be £150 by either party.</p> <p><b>Agricultural improvements</b> – tenant to serve notice; £450 if they seek legal advice. Application to Land Court £100 and £45 for each respondent.</p> <p><b>Diversification</b> – tenant to serve notice; £450 if they seek legal advice. Application to Land Court £100 and £45 for each respondent. Compensation may be payable by either party at the end of tenancy</p> <p><b>Game damage</b> – application to Land Court £100 and £45 for each respondent. Compensation for damage payable from landlord to tenant.</p> <p><b>Waygo</b> – valuers assessment estimated to be £2,000 to £3,000 split between the parties. Waygo compensation payable to either party. Application to appeal valuation to Land Tribunal will be £150 by either party. Interest payable on compensation where overdue by either party.</p>					

	<p><b>Rent</b> – Applications to the Land Court to determine rent, where the rental does not exceed £500, costs £50 per application. For rent claims exceeding £500, it is an additional £7.50 for every £100 over £500. Where an application is dismissed or withdrawn before rent is fixed there is a cost of £80. Payable by applicant.</p> <p><b>Good husbandry</b> – Application to Land Court £100 and £45 for each respondent.</p> <p>Any above costs are dependent on the decisions of parties to undertake these activities. Remaining costs are entirely dependent on the circumstances of the holding and private contractual arrangements. As such, the costs on individual businesses for agricultural holdings are not included in the final table.</p>
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## CONCLUSION

364. The table below sets out a summary of the estimated costs of Bill following the first six years after commencement across the Land Reform, Land Use Tenancy, Agricultural Holdings, and Small Landholdings provisions, with some exceptions.

365. It does not include all costs that would be incurred by the Scottish Administration or individuals or businesses in relation to any appeals to the Courts across a range of measures as these are ad-hoc costs. It does however capture some of the potential costs to SCTS. The potential wide range of costs of an appeal for various parties means that these costs cannot be represented those costs in the table below. The potential costs to Scottish Administration, including SCTS and the Scottish Land Commission, or individuals or businesses is set out in each section of the financial memorandum where applicable.

366. It does not include costs to the Scottish Land Commission, the SCTS or landowners in relation to the financial penalty for breaching the community engagement or land management plan obligations. These are ad-hoc costs and not all cases where an investigation finds that a landowner is in breach will lead to a financial penalty being applied. It is expected that the number of penalties applied will be low and any costs to enforce the penalty are also expected to be low given the value of the civil penalty.

367. The table also does not include the costs that the Scottish Administration would be liable for in terms of compensation in relation to the pre-notification and Part 2 community right to buy processes as well as actions in relation to the transfer test. These costs will need to be carried as liabilities. As set out in the financial memorandum, the total liability for the Scottish Government

in an individual case will depend on: any difference in sale value between the lotted estate and the whole estate; how many landholdings Ministers direct to be lotted and, where there is any delay arising from the prohibitions on transfer of land, any costs incurred as a result of the delay /any loss in value during the delay.

368. Given the history of compensation claims in relation to community right to buy, the Scottish Government expects successful compensation claims in relation to delays in sale to be a rare occurrence. The advice to Ministers to inform their decision on lotting will include an assessment of the possibility that compensation will be required and the value for public money in relation to the anticipated reduction of community harm. Where expert advice indicates that lotting is highly likely to significantly negatively impact the overall value of the land, it will be open to Ministers to decide that the benefits of lotting do not justify the costs.

369. The table below does not include the costs on local authorities or individuals or businesses in relation to Land Management Tenancies, as these costs depend on whether they choose to enter into a Land Management Tenancy Agreement. It also does not include the costs on individuals or businesses in relation to the agricultural holdings and small landholdings measures, as costs for individual tenant farmers and landlords will vary significantly depending on the nature of the holding, individual leases, and the decisions of the parties. Agricultural holdings and small landholdings are private contractual agreements. Potential costs are set out in the section on agricultural holdings and based on a per person basis if those individuals utilise the provisions.

370. The table below includes estimated costs on the Scottish Administration, Scottish Land Commission, and Registers of Scotland for the Land Management Tenancy, Small Landholdings, and Agricultural Holdings measures.

**Table 27: Summary costs of measures in the Bill**

*(Where required, figures over 1 million are rounded to the nearest lower £10,000 for the lower figure in the range and the nearest higher £10,000 for the higher figure in the range.)*

	Year 1 (£)	Year 2 (£)	Year 3 (£)	Year 4 (£)	Year 5 (£)	Year 6 (£)
Costs on the Scottish Administration	0.86m – 1.11m	0.94m – 1.15m	464,760 – 517,960	1.12m – 1.16m	1.56m – 2.13m	1.42m – 1.71m
Costs on Local Authorities					400,000 – 840,000	6050 – 34000
Costs on individuals and businesses					1.73m – 6.51m	0.32m – 1.1m
<b>Total</b>	<b>0.86m – 1.11m</b>	<b>0.94m – 1.15m</b>	<b>464,760 – 517,960</b>	<b>1.12m – 1.16m</b>	<b>3.69m – 9.48m</b>	<b>1.75m – 2.84m</b>



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# **LAND REFORM (SCOTLAND) BILL**

## **FINANCIAL MEMORANDUM**

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