

Land Reform for the Nature Emergency

Land Reform Bill Stage 1 briefing

As climate breakdown accelerates and nature loss continues, we face an unprecedented threat to our way of life and our children's future. The climate and nature emergencies are intertwined - one cannot be tackled without the other. Restoring nature will improve Scotland's ability to address, and adapt to, climate breakdown.

Scotland is ranked 212 out of 240 countries and territories for the state of its nature. To give nature the best chance of bouncing back, we need to rewild, at scale, at speed. Rewilding – large-scale restoration of ecosystems and natural processes – offers hope for tackling the nature and climate emergencies, and creates a cascade of benefits for people.

Natural processes are the interactions that shape our planet and support life, such as the free movement of a river, a bee pollinating a flower or a predator preying on other animals. A healthy ecosystem is one where natural processes are working properly. Across Scotland, natural processes have been interrupted, damaged or broken. If humans can restore these natural processes, nature can begin to restore itself.

The Scottish Rewilding Alliance is urging the Scottish Government to declare Scotland a Rewilding Nation, with 30% of land and sea managed on rewilding principles. This can be done by restoring wild habitats such as peatlands, native woodlands, wetlands, rivers and seas, while maintaining and benefitting agricultural land used for growing food.



One of the trustees of Kinloch Woodlands, Shieldaig
Mark Hamblin / scotlandbigpicture.com

The management and ownership of large landholdings is a critical issue in our journey towards a restored, properly functioning natural environment. We also want to see more people engaged in nature restoration, bringing stability and agency to Scotland's journey towards a healthy natural environment.

We support the provisions in the draft bill to introduce requirements for landowners to publicise and engage with communities on their land management intentions; to regulate private off-market sales of land; and to regulate the sale of large landholdings. We further support the creation of a Land and Communities Commissioner, the creation of a model lease for letting land for environmental purposes and greater clarification in the laws around small landholdings and agricultural holdings.

However, in the midst of the nature and climate emergencies, the restoration of Scotland's natural environment for the benefit of the nation should be central to any legislation we put in place today. We want a Scotland where land is owned, managed and used in ways that are fit for the future. We want a Scotland where as many people as possible are working to restore nature. We are therefore recommending 4 ways to make this legislation function better for nature and people:

1. Ensure large estates set out their plans to restore nature
2. Require public bodies to restore nature
3. Create a right to rewild
4. Create a model lease for hatters

"Rewilding means enabling nature's recovery, whilst reflecting and respecting Scotland's society and heritage, to achieve more resilient and autonomous ecosystems.

Rewilding is part of a set of terms and approaches to landscape and nature management; it differs from other approaches in seeking to enable natural processes which eventually require relatively little management by humans.

As with all landscape management, rewilding should be achieved by processes that engage and ideally benefit local communities, in line with Scotland's Land Rights and Responsibilities Statement, to support a Just Transition."

Defining Rewilding for Scotland's Public Sector
Prepared by the James Hutton Institute for the Scottish Government

Context

The objectives of the Land Reform Bill are to further improve transparency of land ownership and management in Scotland, strengthen rights of communities in rural areas, increase opportunities for communities to purchase land when it comes up for sale and allow for Ministerial consideration of proposed transfers of large-scale landholdings. The policy objectives as set out in the Land Reform in a Net Zero Nation consultation included a just transition to Net Zero, tackling the climate and biodiversity crises, furthering community ownership and bringing about a greater diversity of land ownership. This consultation was based on Scottish Land Commission recommendations.

However, the draft Bill and its objectives narrows the ambition of the Scottish Government rather than widening it. In the midst of dual nature and climate emergencies, this is disappointing.

Scotland's best chance of reversing biodiversity loss is for 30% of our land and seas to be committed to nature recovery, alongside other sustainable land uses, creating a cascade of benefits for nature, climate and people. Ecosystem recovery should be a key priority of the Scottish Government in relation to land reform, and should be enabled by the Land Reform Bill.

This legislation is a vital opportunity to transform our approach to land use in Scotland. But it needs to do more to restore Scotland's nature.

Our recommendations

1. Ensure large estates set out their plans to restore nature

In a country like Scotland, where land ownership is relatively concentrated, a relatively small number of landholdings hold huge potential to contribute to the repair of Scotland's ecosystems. In the Bill as drafted, the Scottish Government can create secondary legislation that imposes obligations on the owners of large landholdings to publish land management plans.

At present, the 'large' landholdings that these regulations will apply to are defined as landholdings on the mainland over 3,000 hectares and landholdings on inhabited islands over 1,000 hectares, where that is more than 25% of the island. The total area can be made up of a single parcel of land, or by multiple parcels owned by the same entity.

The land management plans as specified in the draft bill will require the landowner to set out how they are: complying with the Scottish Outdoor Access Code; complying with the code of practice on deer management; contributing towards the net-zero emissions target; adapting to climate change; increasing or sustaining biodiversity; and any other obligations set by secondary legislation.

We support the idea that owners of large landholdings should have a legal duty to consult on and publish land management plans. Scotland's largest landholdings have a pivotal role to play in repairing Scotland's biodiversity, mitigating against the effects of climate breakdown and enabling Scotland to adapt to a changing climate. It is therefore essential that this is underlined in the requirements for land management plans. There are 623 landholdings in Scotland over 3,000 hectares, comprising 40% of Scotland's land area. [1] We have identified just 19 landholdings over 3,000 hectares restoring natural processes at scale. While there are likely to be more large estates who are restoring nature, the lack of land management plans laying this out makes data collection difficult.

While other policy, legislation and funding levers already exist to encourage large landowners to restore nature at scale, having this requirement on the face of the Land Reform Bill would underline the importance of responding to the nature emergency. To ensure that the Land Reform Bill contributes to Scotland's natural environment aims, the Scottish Government should follow the example of other countries with world-leading ecosystem recovery laws.

For example, Brazil's 2012 Forest Code (Law no. 12.651) requires that rural landowners maintain a percentage of their property area as Legal Forest Reserve, with room for leniency when it comes to land used for agriculture. Germany's Federal Nature Conservation Act places legal duties on landowners to ensure that their land is not degraded and, in some cases, restored. Equivalent legislation for Scotland would need careful consideration to ensure that appropriate ecosystems are prioritised.

2. Require public bodies to restore nature

2a. Statutory duty to enhance biodiversity - public bodies

Under the Nature Conservation (Scotland) Act 2004, public bodies have a duty to further the conservation of biodiversity when carrying out their responsibilities [2]. In 2011, mandatory reporting on the biodiversity duty was introduced [3]. A 2016 report on compliance with the biodiversity duty found that less than half of public bodies had published a biodiversity duty report as required by the legislation. During the most recent reporting cycle (2021-23), just over half of public bodies could demonstrate that they were compliant with the duty. [4]

Additionally, the conservation of biodiversity is no longer an adequate response to the nature emergency unfolding across Scotland and the world. The Kunming-Montreal Global Biodiversity Framework has 23 action-oriented global targets for urgent action over the decade to 2030. This includes integrating biodiversity into decision-making at every level, as well as working to enhance biodiversity across at least 30% of areas of degraded terrestrial, inland water and marine and coastal ecosystems. Updating the biodiversity duty to better align with international targets is a crucial step.

We recommend amending the biodiversity duty to ensure that enhancement as well as conservation is included in the duty. This also aligns with the legal duty on local authorities in England and Wales to conserve and enhance biodiversity introduced by the Environment Act 2021.

2b. Statutory duty to promote nature recovery - public bodies

For landholding public bodies, their responsibilities towards nature must be made even clearer. We suggest introducing a duty on public bodies to ensure that they are contributing to nature recovery on publicly owned land over a certain size (1,000ha). There are 78 land parcels in public ownership over 3,000 hectares, and 165 between 1,000 and 2,999 hectares. In total, there are 243 land parcels in public ownership over 1,000 hectares. [5] These landholdings include land owned by Forestry and Land Scotland, NatureScot, Ministry of Defence, Scottish Ministers Crofting and Farming Estate and Scottish Water.

Currently, some of these land parcels are managed for the purposes of nature recovery. This is in contrast to managing land for the conservation of biodiversity, which often takes a species-focused, fine-tuning approach. Conserving biodiversity often involves protecting pockets of remaining healthy ecosystems, whereas managing land for nature recovery - or rewilding - aims to restore ecologically depleted land. In a nature emergency, this is an important distinction. We need both in order to not only halt biodiversity loss but begin to reverse it.

Natural processes in legislation

Despite large areas of Scotland's land being managed for conservation, biodiversity continues to decline and species are still threatened with extinction. Traditional conservation focuses on protecting areas of nature. The field of nature conservation is constantly evolving, and scientific advancements can help us select the appropriate conservation tool to reverse biodiversity loss.

Ecological restoration focuses on returning an ecosystem to as close to its former state as is possible after a major disturbance. Rewilding, in contrast, focuses on restoring natural processes and proper ecosystem function, providing a way forward for ecologically degraded areas beyond restoration. [6]

Biodiversity and conservation are frequently referenced in Scottish legislation. However, a growing body of evidence points to rewilding as an important tool for responding to the nature and climate emergencies. It is vital to update our legislation as our understanding of how to halt and reverse biodiversity loss evolves.

- Conservation appears in approximately 24 acts of the Scottish Parliament and over 100 statutory instruments
- Biodiversity appears in 16 acts and 31 statutory instruments
- Ecosystem appears in 7 acts and 19 statutory instruments
- Natural processes in the context of ecological functions are not currently mentioned in any piece of Scottish legislation

In contrast, several other countries have incorporated ecological processes into their domestic legislation. Norway's Nature Diversity Act 200 specifically refers to "landscape diversity and ecological processes".

Some proposed legislation in the UK has also included consideration of ecological processes. For example, the Climate and Ecology Bill included measures aimed at "restoring and expanding natural ecosystems, and enhancing the management of cultivated ecosystems to protect and enhance biodiversity, ecological processes and ecosystem service provision, including climate change mitigation".

3. Community right to buy for nature restoration

Depending on the timeline of the review of community rights to buy, we would like to see consideration of an additional right to buy to rewild or restore nature. The rights to purchase vacant, derelict or abandoned land and the right to buy land for sustainable development do not sufficiently cover situations where communities wish to purchase land for the restoration of nature.

Rewilding Britain commissioned research from the Centre for Mountain Studies on the interaction between land reform and rewilding. Researchers conducted a 'rapid evidence assessment' (Government Social Research, 2010), which is designed to understand trends using available information, without making demands on communities. They identified 21 examples of communities pursuing biodiversity conservation and/or rewilding objectives on land.

There are a number of ways in which communities can contribute to the restoration of natural processes, including working in partnership with other organisations. Acquiring land, however, is a key route to empowering nature-focused communities. Such communities in Scotland could make a significant contribution to tackling the nature emergency as well as making their own community more sustainable, at large scales as well as small scales.

"It is one of the significant constraints of land reform as currently constructed that it is so difficult for communities to acquire land. The area of land now in community ownership (212,342ha [524,708 acres] in 2022, the latest published statistics) indicates the scale of effort and willpower that communities will apply to gain land. Research shows that communities have to overcome a range of hurdles including the requirement to make complex and multiple applications, funding requirements, multiple agendas of sellers (including some public bodies) and the potential for burn-out among volunteers.

The fact that community groups do jump those hurdles, often with biodiversity as one of their objectives, shows their commitment to those objectives."

Intersections between land reform and rewilding in Scotland: a briefing paper for Rewilding Britain

Anna Lawrence and Bobby Macaulay, Centre for Mountain Studies, University of the Highlands and Islands [7]

We suggest introducing a new ‘Community Right to Buy for the Restoration of Nature’ or similar. We note that there is a review of community rights to buy currently underway which may affect how rights to buy are structured. However, we would like to see discussion of the place of communities in Scotland’s efforts to respond to the nature emergency. To that end, we propose amending the Land Reform (Scotland) 2016 Act to ensure that nature restoration is explicitly covered by the existing powers available to communities.

The Right to Buy Land to Further Sustainable Development was introduced under Part 5 of the Land Reform (Scotland) Act 2016. It is a right which allows community bodies who meet certain requirements to apply to Scottish Ministers for consent to exercise a compulsory purchase of land or a building for the purposes of furthering the achievement of sustainable development. We suggest that this right is extended to the purposes of furthering nature restoration.

The cost of land acquisition is a significant barrier to those wishing to restore nature on land that they own, including individuals as well as community groups. The Scottish Government previously committed to double the Scottish Land Fund to £20 million. This has not yet happened. Even if it did occur, large land sales for the purpose of nature restoration would still be difficult to finance. Where a community land purchase would both make the community more sustainable and be in the public interest, there should be exploration of a mechanism to discount the sale of land for the purposes of nature recovery beyond the scope of this Bill.

4. Hutting model lease

Informal buildings, or huts, are important for a number of reasons. They provide a base for outdoor activity; they enable the development of a better understanding of the carrying capacity of the environment; they encourage the development of new skills; they provide a platform for the creation of cohesive communities, and they contribute to sustainable rural development. [8]

Currently, no model lease exists for public bodies seeking to create plots of land for hutting. A lease has been trialled at Carnock, in South-West Fife, to enable a group of hutters to build 12 huts on the national forest estate. This could form the basis of a model lease agreement to be used by other public bodies.

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*Anna Lawrence and Bobby Macaulay, Centre for Mountain Studies,
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References

- [1] <https://www.gov.scot/publications/land-reform-scotland-bill-business-regulatory-impact-assessment-bria/pages/1/>
- [2] <https://www.legislation.gov.uk/asp/2004/6/contents>
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<https://www.parliament.scot/chamber-and-committees/questions-and-answers/question?ref=S6W-30617>
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- [6] <https://besjournals.onlinelibrary.wiley.com/doi/full/10.1111/1365-2664.13487>
- [7]
<https://www.rewildingbritain.org.uk/about-us/what-we-say/research-and-reports/briefing-paper-scottish-land-reform>
- [8] <https://pressat.co.uk/media/uploads/5a84a6a5c342fa4bb185d3b600ed1f14.pdf>

Sign the Rewilding Nation Charter

We're calling on everyone who shares our hopes and sense of urgency to make their voices heard by signing the Rewilding Nation Charter – urging our political leaders to make this declaration to benefit us all and future generations. The nature and climate crises can feel overwhelming, but we can all make a difference by uniting behind a clear message.

Restore. Revitalise. Rewild.

rewild.scot/charter