

Small Landholdings Modernisation Consultation: report

June 2023

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Acronyms

ECHR	European Convention on Human Rights
HNV	High Nature Value
NFUS	National Farmers Union Scotland
RESAS	Rural & Environmental Science and Analytical Services
SCF	Scottish Crofting Federation
SG	Scottish Government
TFC	Tenant Farming Commissioner

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Highlights

Why was the research needed?

Small landholdings are a form of tenanted land located across Scotland, and are an important part of its agricultural and national heritage. There are approximately 59 small landholders in Scotland. Their small landholdings cover 2,168 hectares (5,360 acres), which constitutes 0.1% of Scotland's total agricultural land area.¹

The Scottish Government has outlined a series of proposals to explore how best to modernise and update small landholdings legislation. These proposals relate to four parts of small landholdings legislation: 1. Right to buy; 2. Diversification; 3. Assignation and succession, and; 4. Access to an umbrella body.

This will aim to achieve three broad objectives: to give small landholders equality of opportunity in line with tenant farmers and crofters; to help small landholders to play their part in tackling the climate and biodiversity crises; and to enable small landholdings to play a role in supporting local rural communities and population sustainability.

What did we do?

We carried out a consultation. This was open from 22 October 2022 to 14 January 2023 and received a total of 41 responses, 30 of which were from individuals (73%) and 11 of which were from organisations (27%). Responses were received from individual small landholders, alongside a range of agricultural organisations, including those representing crofters, farmers, agents and landowners. We analysed all of the responses received using robust and systematic methods.

The consultation paper was sent to small landholders and landlords. Officials endeavoured to make personal contact with all small landholders and to ensure that landlords had fair representation. Scottish Government officials also a workshop on the Isle of Arran and organised individual meetings with landlords.

We also contacted all of those who responded to the Land Reform Bill Consultation, who had indicated that they wished to be kept updated in regards to a future Small Landholdings consultation, and provided them with the opportunity to respond.

¹ [Results from the Scottish Agricultural Census: June 2021 - gov.scot \(www.gov.scot\)](https://www.gov.scot/resources/consultation-papers/cp12021-0001/0001.pdf)

What did we learn?

Right to buy

- The majority of respondents (73%) agreed that providing small landholders with the absolute right to buy the land under their homes and gardens could give them greater security and allow them to invest into their small landholding and business with confidence.
- The majority of respondents (68%) agreed that this could also be beneficial in reducing rural depopulation for communities with small landholdings in them.
- Over half of respondents (63%) agreed that small landholders should have the opportunity to purchase their small landholding if their landlord gives notice or takes action to transfer the land containing the small landholding for sale or transfer to another company or trust.
- Around half of respondents (49%) agreed that a clawback provision should be introduced to ensure fairness for the landlord, if a small landholder who previously purchased the land under their home, garden or small landholding subsequently sells either of these within a specific timeframe.
- The majority of respondents (73%) agreed that the most appropriate and fair valuation for the right to buy the land under the home and garden should be decided by a valuer appointed in agreement by both the small landholder and their landlord, or failing this, an independently appointed one.
- There was no broad consensus among respondents in terms of how the valuation of the right to buy should be calculated to provide fairness for both the small landholder and their landlord.

Diversification

- The majority of respondents (83%) agreed that small landholders should be able to diversify their activities on their landholdings.
- Over a third of respondents (39%) stated that small landholders should not require their landlord's permission in advance of diversifying their activities, whilst a slightly lower number said they should.
- Around a third of respondents (35%) did not agree that the small landholder should have to go to the land court if the landlord does not consent to their diversification, whilst just over a quarter (27%) agreed that they should.

Assignment and succession

- Over half of respondents (54%) agreed that the legislation setting out who can be assigned or succeed a small landholding should be updated to have similar succession and assignment rights as tenant farmers with secure 1991 Act tenancies. Almost a quarter (24%) disagreed.
- A number of respondents agreed there was a need for alignment with secure 1991 Act tenancies in this area. However, others felt that this should instead be done in line with crofting regulations on assignment and succession. Several respondents highlighted the need for consistency across all types of agricultural tenancies, to reduce confusion.
- Almost half (41%) of respondents agreed that a landlord should be able to object to the person the small landholder wishes to be assigned the small landholding or to succeed it. Just under a third (29%) disagreed.
- In terms of objection grounds, respondents felt that landlords should consider factors including: character; interest in agriculture; competency, knowledge and qualifications, and; financial capability and sufficient resources.
- Respondents on both sides felt that there should be provisions in place to prevent different interpretations of the criteria (for example, that the successor is of 'good character') and discrimination against specific groups.

Access to an umbrella body

- The majority (88%) of respondents agreed that small landholders and their landlords should have access to a public body, in a similar way that tenant farmers and their landlords have for agricultural tenancies; 4% disagreed.
- Those who agreed gave a number of reasons, including the need for a public body to oversee disputes; and a wider need for consistency and equity.
- Respondents noted the potential benefits of a public body for small landholders, including: access to guidance, protection and support; making legislation more accessible; and improving relations between small landholders and their landlords.
- Several respondents felt that the Scottish Land Commission was an appropriate public body. Others felt it should be the Tenant Farming Commissioner or a crofting organisation such as the Crofting Commission.
- Three quarters of respondents (75%) agreed that if a small landholder and their landlord have a disagreement, the public body should be able to mediate. They gave reasons including fairness, and the benefits of mediation as an option for both tenants and landlords, in terms of it being a less costly and stressful way of reaching a resolution.

- Another set of respondents stated in the interests of neutrality, the public body should encourage and facilitate mediation but not carry it out.

Additional considerations

- Respondents were able to give their views on further potential changes to small landholding legislation to support small landholders and their landlords. They raised a number of issues, including: changes to agricultural tenancy types; support for new entrants; and the role that small landholdings can play in meeting climate and biodiversity goals due to their scale.

Potential costs and burdens

- Over a third (39%) of respondents said they were aware of potential costs and burdens that may arise as a result of the proposals within this consultation paper. Almost a fifth (17%) said they were not and the same number (17%) were unsure.
- The main potential costs identified by respondents were: costs in purchasing the land, for example valuations, mortgage or conveyancing costs; the cost of funding the purchase; legal costs; the wider cost of new legislation and regulations, for example to the public, and; the loss of small landholdings and the opportunities they offer to new entrants and start-ups.

Potential impacts on the environment

- Almost a third (32%) of respondents said they were not aware of any potential impacts, either positive or negative, of the proposals in this consultation paper on the environment. A fifth (20%) said they were.
- Potential positive environmental impacts identified by respondents included: they may speed up the decision-making process for environmental activities; tenants with greater security will invest more into their holdings and be more likely to participate in environmental schemes, and; the environmental benefits of keeping small landholdings occupied, from local food production to sustainable land management.
- Other respondents identified potential negative impacts, largely in terms of the loss of small landholdings and the neglect or mis-use of agricultural land.
- Lastly, several respondents stated that the consultation proposals were not relevant to this topic, and did not address environmental issues.

Potential impacts on young people

- Over a third (37%) of respondents said they were aware of current or future impacts on young people due to the proposals. Around a fifth (17%) were not aware of any impacts. Whilst some felt the proposals would have a positive impact on young people in terms of opportunities for new entrants, others felt they would have a negative impact in this area.
- Almost a third (32%) of respondents thought improvements could be made from a young person's perspective. Only a small number (5%) said 'No'.
- Respondents who did feel that improvements could be made focused on several key issues in their answers: the need to simplify the small landholding system; support for new entrants, and the need to broaden access to land and tenancy opportunities within the agricultural sector.

Potential impacts on data privacy

- Around half of respondents (46%) were not aware of any impacts of the proposals on data protection or privacy, and a quarter (24%) were unsure.

Potential impacts on those with protected characteristics

- Around half of respondents (46%) said they were not aware of any examples of how the proposals in this consultation paper may impact those with protected characteristics. 7% said 'Yes' and a fifth (20%) were unsure.
- Respondents raised several points: succession, and the positive impacts of widening opportunities in rural areas; the importance of protecting the rights of all small landholders; the potentially negative impacts of a loss of small landholding tenancies on diversity in the agricultural sector and in rural areas.

Potential impacts on groups or areas experiencing socioeconomic disadvantage

- Around a third (32%) of respondents said they were not aware of any examples of how the proposals might have particular impacts on groups or areas experiencing socioeconomic disadvantage. A fifth (20%) said they were aware of potential impacts and a fifth were unsure.
- Respondents noted potential positive impacts including: benefits to rural communities and services; and the benefits to small landholders

experiencing socioeconomic disadvantage. One potentially negative impact was the decline of small agricultural tenancies, which could restrict access to rural land for small-scale and local food production.

Potential impacts on island communities

- Almost a third (29%) of respondents were not aware of any examples of any potential differential impact of the proposals on island communities. Around a quarter (24%) were aware of potential impacts and 17% were unsure.
- Respondents identified a number of potential benefits to island communities in terms of: increasing access to employment and housing; bringing in new residents; and small landholders on islands having more control over their future.

What happens now?

This consultation has provided an insight into the views of a range of stakeholders, including small landholders, landlords and agricultural organisations, on the Scottish Government's proposals to update and modernise small landholdings legislation. The findings outlined in this report will inform our work in this area. All the consultation responses, where permission has been given, will be published.

Introduction

This report outlines the results of a **Small Landholdings Modernisation Consultation** held October 2022-January 2023. The consultation aimed to gather views on proposals to modernise and update small landholdings legislation.

The Scottish Government proposed a set of **legislative reform measures** relating to four parts of current small landholdings legislation: 1. Right to buy; 2. Diversification; 3. Assignment and succession and 4. Access to an umbrella body.

The consultation included **24 questions**. In total, we received **41 responses** to the online consultation, 30 from individuals (73%) and 11 from organisations (27%). This report outlines the results of the consultation by each topic.

This report outlines the results of the Small Landholdings Modernisation Consultation held between October 2022 and January 2023 which aimed to gather views on proposals to modernise and update small landholdings legislation.

The Scottish Government outlined a series of proposals to explore how best to modernise and update small landholdings legislation, to achieve three broader aims: to give small landholders equality of opportunity in line with tenant farmers and crofters; to help small landholders to play their part in tackling the climate and biodiversity crises; and to enable small landholdings to play a role in supporting local rural communities and population sustainability.

1. Small landholdings

Small landholdings are a form of tenanted land located across Scotland, including Arran, Bute, Moray, and parts of the Highlands, with the largest number on Arran. Concentrations of small landholdings remain in Ayrshire, Aberdeenshire, Moray, Dumfriesshire, the Scottish Borders and east central Scotland. Small landholdings are an important part of Scotland's agricultural and national heritage.

Following World War I, the UK Government brought forward legislation in Scotland to support the settlement of people on the land, particularly war veterans from World War I and any previous wars.

The [Scottish Agricultural Census](#) (June 2021) indicated that there are approximately 59 small landholders in Scotland. Their small landholdings cover 5,360 acres (2,168 hectares) with over two-thirds of Small Landholding Act tenancies being less than 50 acres (approx 20 hectares).

2. Legislative context

The last Small Landholding Act was in 1931 and since then there has been no primary legislation for this form of land tenure. The legislation governing tenant farming (agricultural holdings), crofting and land tenure has not brought forward provisions to keep small landholdings in step with other forms of land tenure.

As a result, small landholdings have fallen behind in comparison to the modernisation of crofting and tenant farming, which has resulted in small landholders lacking comparable rights to the other forms of land tenure. The legal framework for small landholdings is still dealt with under Landholding Acts which have not been updated for over 80 years. These Acts are set out in Annex 1.

The Scottish Government gave a legal commitment to reviewing small landholding legislation in the Land Reform (Scotland) Act 2016, and between October and November 2016, the Scottish Government consulted on the [Review of Legislation Governing Small Landholdings](#). The [Programme for Government 2021-2022](#) followed with a commitment to taking the next step to begin to modernise small landholdings legislation. In August 2021, the Scottish Government and the Scottish Green Party Parliamentary Group signed the [Bute House Agreement](#).

In this agreement they committed to exploring providing small landholders with the same pre-emptive right to buy as crofters and 1991 Act tenant farmers, and the treatment of the land under their houses. The proposals set out in this document have been informed by the [2016 consultation response](#) and the commitments outlined above. They aim to bring greater policy coherence between small landholders and other forms of land tenure.

3. Consultation proposals

The Scottish Government has proposed a set of legislative reform measures relating to the following parts of small landholdings legislation:

1. Right to buy
2. Diversification
3. Assignment and succession
4. Access to an umbrella body

This is to ensure that small landholders have comparable rights with other types of land tenure, and the opportunity to contribute to wider objectives including addressing the climate and biodiversity crises. By modernising small landholdings

legislation, we aim to support Scotland's innovative small scale producers and enable them to play a role in delivering our [vision for Scottish Agriculture](#).

Responses to this consultation will help to:

- allow small landholders to take the right business decisions for them;
- help them to play their part in urgently tackling the climate and biodiversity crises; and
- help Scotland to reach Net Zero by 2045.

These proposals aim to enable small landholdings to continue to play a role in supporting local rural communities by encouraging population retention and enabling the next generation of small landholders to remain within their community.

4. Consultation responses

The [Small landholdings: Modernisation consultation](#) was open from 22 October 2022 to 14 January 2023, and responses could be submitted on Citizen Space, by email or post. Small landholders and landlords were both able to respond.

A consultation event was held on the Isle of Arran on 21 November 2023, with 18 attendees. Feedback provided during this event has been incorporated in the analysis of responses to each proposal where relevant.

In total, we received 41 responses to the online consultation, 30 of which were from individuals (73%) and 11 of which were from organisations (27%) (see Table 1).

5. Consultation analysis

The consultation included 24 questions (see Annex 2), with the majority including a closed question and an opportunity for the respondent to provide reasons for their answer. The results for the first part of each question are presented as figures alongside a summary of the reasons given by respondents in written responses.

The consultation responses were added to a coding framework,² checked for any duplicate responses, and grouped by respondent type (agree, disagree, neither).

² A coding framework is a set of codes (or descriptive labels) organised into categories that are used to manage and organise data. This creates a new structure for the data (rather than the full original accounts given by participants) and is helpful to summarise data for analysis.

The open responses were then coded, sub-coded and analysed, and the coding framework was tested to ensure consistency of analysis.

A separate coding framework was developed for each question to summarise the key themes and sub-themes raised in respondents' answers. An example of this can be found in Annex 3. There were over-arching issues which occurred repeatedly in relation to a number of questions, and these were included too.

This report outlines the responses to each question by topic, identifying the main themes, reasons and suggestions given by respondents in each group. A small number of quotes are included for illustration purposes. It should be noted that consultation exercises are self-selecting in nature, as people choose to respond, rather than being included as part of a considered sampling strategy. As such, the findings in this report do not reflect the weight or range of views within the population as a whole. Any figures quoted give us an indication of what respondents thought, but should not be taken to represent the views of the population as a whole. Respondents' comments and views may be based on evidence or on their opinions or perceptions of what is true.

Table 1. Responses by type³

Option	Total	Percent
Individual	30	73%
Organisation	11	27%

³ In general, percentages have been rounded to the nearest whole number. The figure for each question gives a base number to indicate the number of responses.

1. Consultation findings: Right to buy

This section of the report outlines the consultation findings in relation to the first set of questions on the Right to buy.

The Scottish Government proposes:

To introduce into legislation an absolute right to buy the land under the small landholder's house and garden along with a pre-emptive right to buy the remainder of the small landholding. This proposal will aim to provide small landholdings with a right to buy comparable to other forms of land tenure.

Key findings: The majority of respondents (73%) agreed that providing small landholders with the absolute right to buy the land under their homes and gardens could give them greater security and allow them to invest into their small landholding and business with confidence, and the majority (68%) also agreed that this could be beneficial in reducing depopulation in rural communities.

Over half of respondents (63%) **agreed** that small landholders should have the opportunity to purchase their small landholding if their landlord gives notice or takes action to transfer the land containing the small landholding for sale or transfer to another company or trust, and around half (49%) agreed that a clawback provision should be introduced to ensure fairness for the landlord.

The majority of respondents (73%) **agreed** that the most appropriate and fair valuation for the right to buy the land under the home and garden should be decided by a valuer appointed in agreement by both the small landholder and their landlord, or failing this, an independently appointed one. There was no consensus among respondents in terms of how the valuation of the right to buy should be calculated.

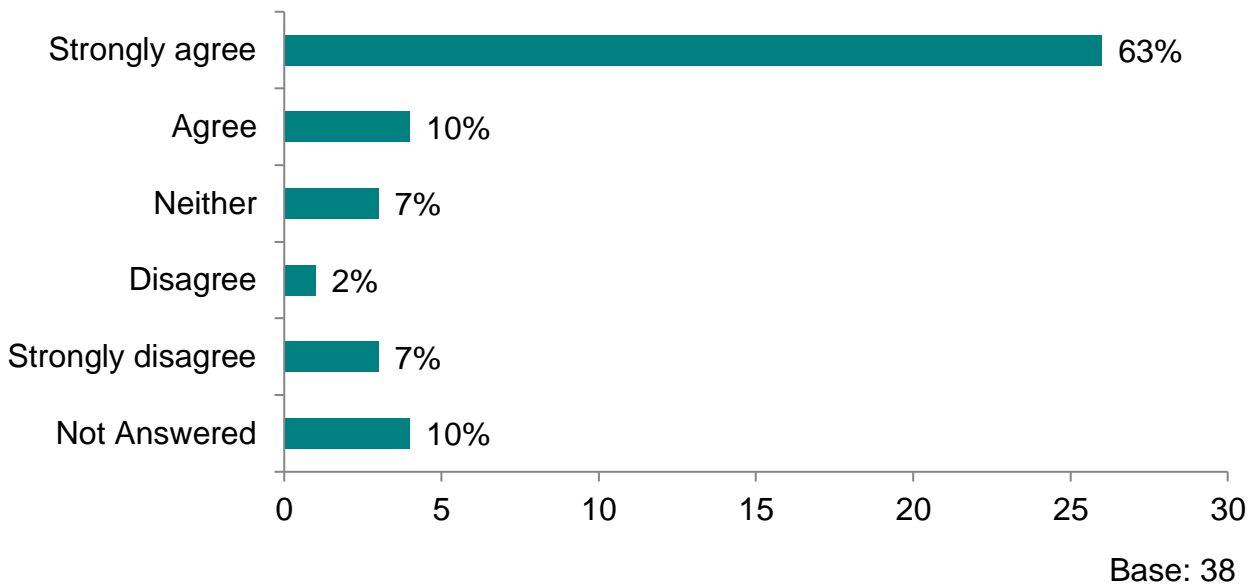
This section of the report outlines the consultation findings in relation to the first set of questions on the Right to buy, which focused on:

- Security of small landholders and business investment;
- Benefits in reducing rural depopulation;
- Giving small landholders the opportunity to purchase the small landholding if a landlord gives notice or takes action to sell or transfer the land;
- Introduction of a clawback provision; and
- Appropriate and fair valuation for the right to buy.

1.A Security of small landholders and business investment

Figure 1.1 Security of small landholders and business investment

Q. Do you agree that providing small landholders with the right to buy the land under their homes and their gardens could give small landholders greater security and allow them to invest into their small landholding and business with confidence?



Option	Total	Percent
Strongly agree	26	63.41%
Agree	4	9.76%
Neither	3	7.32%
Disagree	1	2.44%
Strongly disagree	3	7.32%
Not Answered	4	9.76%

The majority of respondents (73%) agreed that providing small landholders with the absolute right to buy the land under their homes and gardens could give them greater security and allow them to invest into their small landholding and business with confidence. Around a tenth (9%) disagreed and 7% said neither. 10% of respondents did not answer this question.

Key findings

The majority of respondents **agreed** that providing small landholders with the absolute right to buy the land under their homes and gardens could give them greater security and allow them to invest into their small landholding and business with confidence.

Respondents identified a range of **potential benefits**, from creating fairness across all types of secure land tenure in Scotland, to allowing tenants to invest in the buildings and wider holding, without uncertainty; increasing their ability to invest financially and plan their business; and environmental benefits, such as increasing small landholders' motivation to carry out these types of activities.

Among those respondents who supported this proposal, one group felt that this change should be in line with crofting legislation, whilst others were in favour of alignment with secure 1991 Act agricultural tenancies.

A second set of respondents, the majority of whom were organisations, **disagreed** with this proposal. They gave a number of reasons, including that: small landholding tenancies already offer enough security; it is unclear why this change would give small landholders greater security than lease tenure; it would create practical difficulties and financial risk for those managing tenancies; and that this change would not be in the best interests of the tenanted sector.

Several organisations stated that this change would have a long-term, negative impact on tenants and new entrants, and contradicted the policy aim of retaining small landholdings for the future. They also felt that discussions around this policy have eroded confidence and led to a contraction of the tenanted sector in Scotland.

Respondents were asked to give reasons for their answer, and a total of 27 did so. This question received the most detailed responses and the following sections outline respondents' views by topic.

Potential benefits

Respondents identified a range of potential benefits in providing small landholders with the absolute right to buy the land under their homes and gardens, including:

- creating fairness across all types of secure land tenure in Scotland, in terms of access to funding and development opportunities;
- allowing tenants to invest more in the buildings and the wider holding;

- increasing their ability to invest financially and plan their business;
- addressing issues such as the costs tenants face in maintaining older buildings, and justifying investment in property or land they do not own;
- potential environmental benefits, in terms of increasing small landholders' motivation to carry out activities that contribute toward meeting climate objectives.

Respondents highlighted the poor quality of some housing on small landholdings, and the cost of maintaining older buildings, for example in relation to making improvements for energy efficiency. They felt this change would help to address issues including rented properties falling into disrepair, by encouraging better upkeep of the buildings through ownership. Further, one respondent noted that in their experience, when a tenant leaves a tenancy and retires without passing it on, the landlord is likely to sell the house and buildings for development.

Several respondents stated that it is difficult to justify investment in the buildings on their smallholding under the current arrangement, with several expressing their unwillingness to spend money and time making improvements to a property or land owned by someone else. They felt this change would encourage small landholders to make a range of improvements to the holding, from fencing to agroforestry, water and soil management. One respondent stated that businesses such as energy or installation companies would be more favourable towards doing this work if the smallholder owned the land.

One respondent stated that an absolute right to buy has always been the preferred option for small landholding tenants and this proposal is a good alternative. They felt it important that this right is extended to the solum on which their houses and buildings stand, as this would provide small landholding tenants with the security of continued use of their houses and buildings should they relinquish their leases.

Several felt that this should only apply where a tenant or their family has built the house. However, one respondent noted that most of the houses on small holdings were built with government funding, and have been extended or altered over time.

Financial support and investment

One key benefit highlighted by respondents was the positive impact this would have on small landholders' ability and incentive to both invest in and plan their business. They felt this change would lead to greater confidence, security and stability, and make it easier to secure financial support from banks, including loans and mortgages. Several noted that ownership of the land would enable small

landholders' to borrow against the property, improve the buildings and invest in the business, as they would be more confident about seeing a return on this.

One organisation stated that whilst they aim to work with tenants and support them to invest in their small landholdings despite not owning the land, they recognise that tenants' borrowing powers are reduced by not owning the asset.

Alignment with other types of agricultural tenancies

Among those respondents who supported this proposal, one group felt that this change to small landholders' rights should be in line with crofting legislation, giving them an absolute right to buy the remainder of their smallholding. Others were in favour of alignment with secure 1991 Act agricultural tenancies, and a pre-emptive right to buy for the entire small landholding.

Respondents raised further issues in relation to how this change in small landholding legislation would work in practice, including:

- how the right to buy would be recorded, as the approach taken under the Land Reform (Scotland) Act 2016 has made it difficult for full information about land to be obtained;
- the need to consider an option for a relinquishment provision, due to the age of many small landholders and in some cases a lack of successor;
- the importance of listening to those directly affected in terms of the benefits of this proposal.

Respondents who favoured alignment with crofting suggested that bringing small landholdings into the crofting framework would save resources, and give small landholders greater security through fairer compensation for the building as a fixture on the land, for example in enabling the possibility of investments being realised upon assignation, which would reduce the need for a right-to-buy.

Several organisations highlighted a potential issue in terms of small landholders in designated crofting areas being able to apply to convert their smallholdings to crofts, to benefit from the right to buy provisions within crofting law. As they identified, this could lead to a conflict with small landholdings legislation and may also contribute to existing uncertainty as to which regime landholders are operating under. One option to resolve this uncertainty would be to time-limit the right to convert a landholding to a croft under the relevant crofting law provisions.

Several organisations instead favoured a pre-emptive right to buy for the entire small holding, in line with secure 1991 Act agricultural tenancies. They highlighted a need for consistency, rather than a hybrid approach which partly aligns with both crofting legislation and agricultural tenancy legislation. These organisations stated that a consistent approach based on a pre-emptive right to buy is more likely to benefit all parties, would have less impact on the wider tenanted sector, and is in line with the view of the Agricultural Holdings Legislation Review Group.⁴

Potential negative impacts

A second set of respondents, the majority of whom were organisations, disagreed with this proposal. They gave a number of reasons, which are outlined in more detail below. These included:

- Small landholding tenancies already offer enough security for long-term investment, for example in terms of succession options;
- it is unclear why this change would give small landholders greater security than lease tenure;
- this would create practical difficulties in terms of decision-making;
- this change would not be in the best interests of the tenanted sector, and would set an unwelcome precedent;
- this change would benefit only a limited number of individuals and would not justify the potential wider impacts of the legislation;
- the potential negative impacts on landowners and estates, including financial loss and the risk of investing in land that a tenant may request to buy;
- a lack of fairness in terms of the rights and opportunities open to small landholders and their landlords (for example in selling a property);
- this change may be in breach of landowners' human rights;
- on purchase by the tenant, it would no longer be a small landholding;
- it is not in line with broader policy aims.

In terms of the first point, one organisation stated that the land on which the house is built is protected by small landholding status, the landlord cannot resume it without sufficient grounds and would be required to offer compensation.

In addition to this, these organisations stated that it was unclear why ownership of the land under the house would give greater security or encouragement to invest, than a highly protected form of lease tenure, for example if the small landholder continued to rent the land and other buildings. One organisation noted that there is

⁴ [Agricultural holdings legislation - Agricultural holdings and tenant farming guide](#)

security of tenure and waygo mechanisms in place, whilst another respondent argued that a change in line with freedom of contract would give added flexibility.

Respondents also highlighted potential negative impacts on landowners and estates managers, for example in terms of the financial risk of investing in land that a tenant may request to buy. One respondent commented that an absolute right to buy for small landholders would represent a major change in the property rights of the landlord. In addition to these concerns, one organisation stated that a pre-emptive right to buy would enable better estate management and decision making.

Loss of the small landholding

Several organisations stated that in the event of the small landholder purchasing the land, it would no longer be a small landholding. Others stated that separating the residence from the land may lead to a loss of value due to severance, and the future loss of the small landholding. This was highlighted within the 2017 [Small landholdings legislation review](#) which stated that any decision to explore offering small landholders a right to buy would need to be balanced against the benefits of retaining small landholdings as a form of land tenure. As one organisation stated, the holding may be less attractive to incoming tenants who may not have access to housing, or would need to be incorporated into a larger holding. Whilst this can work in the context of crofting, it is less likely to work for small landholdings, and would have a wider impact on the local area.

This set of respondents felt that this change would have a long-term, negative impact on tenants and new entrants, and contradicted the policy aim of retaining small landholdings for the future. They stated that it would create practical difficulties for both the landowner and occupier in terms of decision-making.

One organisation stated that they did not support an absolute right to buy as they do not think this is in the best interests of the tenanted sector. They argued that discussions around introducing an absolute right to buy have eroded confidence and led to a contraction of the tenanted sector in Scotland. This view was also expressed by several attendees at the public consultation event held in Arran.

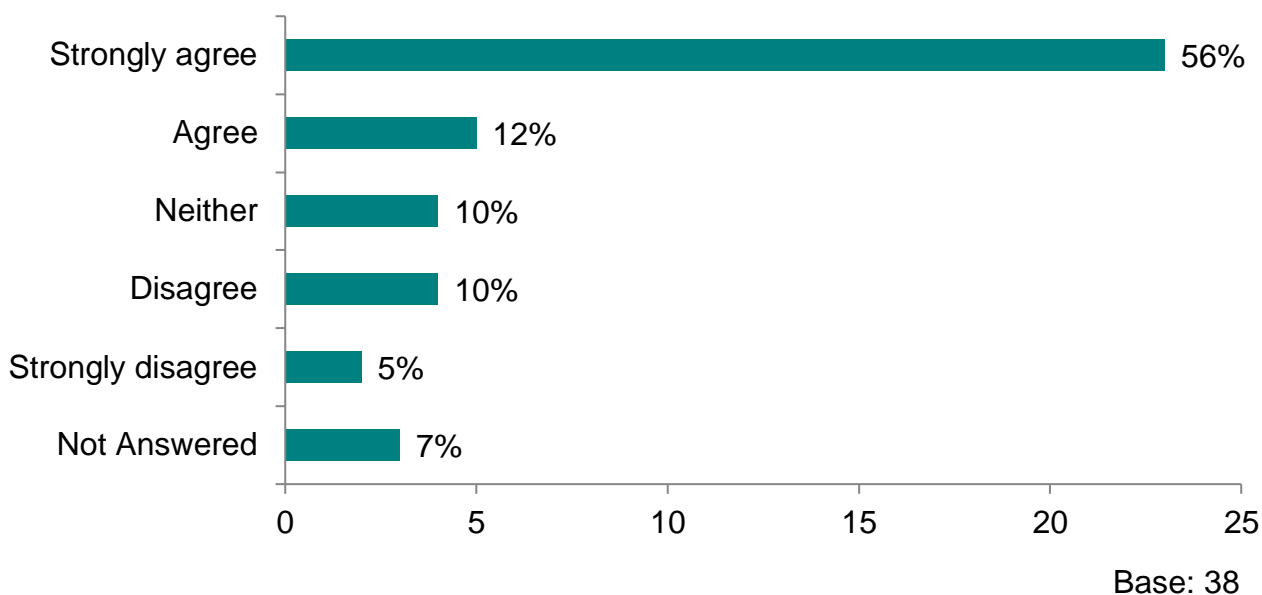
Lastly, respondents felt that providing existing small landholders with an absolute right to buy will benefit a limited number of individuals which would not justify the potential wider impacts of the legislation.

1.B Benefits in reducing rural depopulation for communities with small landholdings in them

The majority of respondents agreed (68%) that giving small landholders the right to buy the land under their homes and garden could be beneficial in reducing rural depopulation for the communities with small landholdings in them.

Figure 1.2 Benefits in reducing rural depopulation

Q. Do you agree that giving small landholders the right to buy the land under their homes and garden could be beneficial in reducing rural depopulation for the communities with small landholdings in them?



Option	Total	Percent
Strongly agree	23	56.10%
Agree	5	12.20%
Neither	4	9.76%
Disagree	4	9.76%
Strongly disagree	2	4.88%
Not Answered	3	7.32%

Key findings

The **majority** of respondents agreed (68%) that giving small landholders the right to buy the land under their homes and garden could be beneficial in reducing rural depopulation for the communities with small landholdings in them.

Respondents who **agreed** gave reasons including the need for affordable and secure housing, the longer-term maintainance of buildings on small landholdings, and the fact that it might address the issue of properties being allowed to fall into disrepair. They identified positive impacts for rural communities, including: making it easier for people to buy houses and move into rural areas, and encouraging tenants and their families to live there in the long-term.

Respondents who **disagreed** felt this change could have a negative impact on rural depopulation and the availability of housing, as it may lead to properties being used as short-term lets or second homes, and may reduce opportunities for new entrants in farming. A third set of respondents felt the proposal would have **no impact** on rural depopulation, for example as it would not add to local housing stock.

Lastly, participants on both sides stated that rural depopulation is due to **wider issues**, including a lack of job opportunities and affordable housing, and on islands particular challenges with transport, infrastructure and connectivity.

The majority of respondents agreed (68%) that giving small landholders the right to buy the land under their homes and garden could be beneficial in reducing rural depopulation for the communities with small landholdings in them. A smaller number disagreed (15%) and 10% answered neither. Respondents were asked to give reasons for their answer and a total of 25 did so.

Those who agreed gave reasons including the need for affordable and secure housing, and the longer-term maintainance of buildings on small landholdings. For example, several respondents felt that the land was more likely to continue to be inhabited and adequately maintained if owned by the small landholder. A number noted the issue of properties being allowed to fall into disrepair, for example when small landholders retire, and the long-term impact this has on rural communities.

Other points noted included: the need for alignment with crofting; the need to introduce a mechanism to prevent onward sales; and the suggestion that these changes should occur at specific points, for example if there is a change of ownership on the small landholding, and should not apply to all current tenancies.

Positive impacts for rural communities

A number of respondents identified potential positive impacts for rural communities, including: increasing tenants' sense of belonging; encouraging a settled community; opening up the housing market and making it easier for people to buy houses and move into rural areas. One respondent stated that outbuildings on small landholdings also present an opportunity for development into affordable housing.

Several respondents stated that a change to small landholding legislation, and greater security through ownership, would mean that tenants and their families would be more likely to stay on the small landholding in the long-term, and allow them to pass it on, leading to a positive impact on succession. As one respondent noted, this would have particular benefits in some small landholding areas such as the Island of Arran which needs to retain a young population.

In terms of the agricultural business, a number of respondents felt that giving small landholders the right to buy the land under their homes and garden would benefit rural communities by increasing small landholders' confidence in investing in their business, for example through diversification, giving greater financial sustainability. One organisation stated that this security could be created in other ways, for example by encouraging positive relationships between tenants and their landlords, in addition to introducing a right to buy.

Negative impacts for rural communities

Respondents who were unsure or disagreed with the statement felt this change could have a negative impact on rural depopulation and the availability of housing, as it may instead lead to properties being sold and used as short-term lets or second homes, which would have a negative impact on the local population.

This would worsen rural housing issues and may lead to the neglect of agricultural land. As one organisation stated, this may happen if properties were taken out with the scope of small landholding legislation, and a provision to prevent separation of the house and holding would reduce the risk of this happening.

A number of organisations who responded objected as the change would lead to the separation of the house and the land, which would have a negative impact on communities with small landholdings. Several that were unsure or disagreed made comparisons with the introduction of similar rights in the crofting context, in terms of it leading to houses being used as holiday lets, not permanently occupied.

Other issues raised by organisations included the fact that in the event of the small landholder buying the land, the holding would lose its protected smallholding status, for example in terms of the land being occupied for agricultural use, and that it may also reduce opportunities for new entrants in farming.

It would make no difference

A number of respondents stated that this proposal would have no impact on rural depopulation. As one noted, it would not add to local housing stock, whilst another respondent felt that it would not make a difference to the small landholder's decision about whether to stay or leave.

One organisation questioned whether this policy would be more effective than making changes to small landholding tenancies, for example greater security of tenure, or fairer compensation for improvements. They also stated that introducing a right to buy may reduce landlords' willingness to create new tenancies.

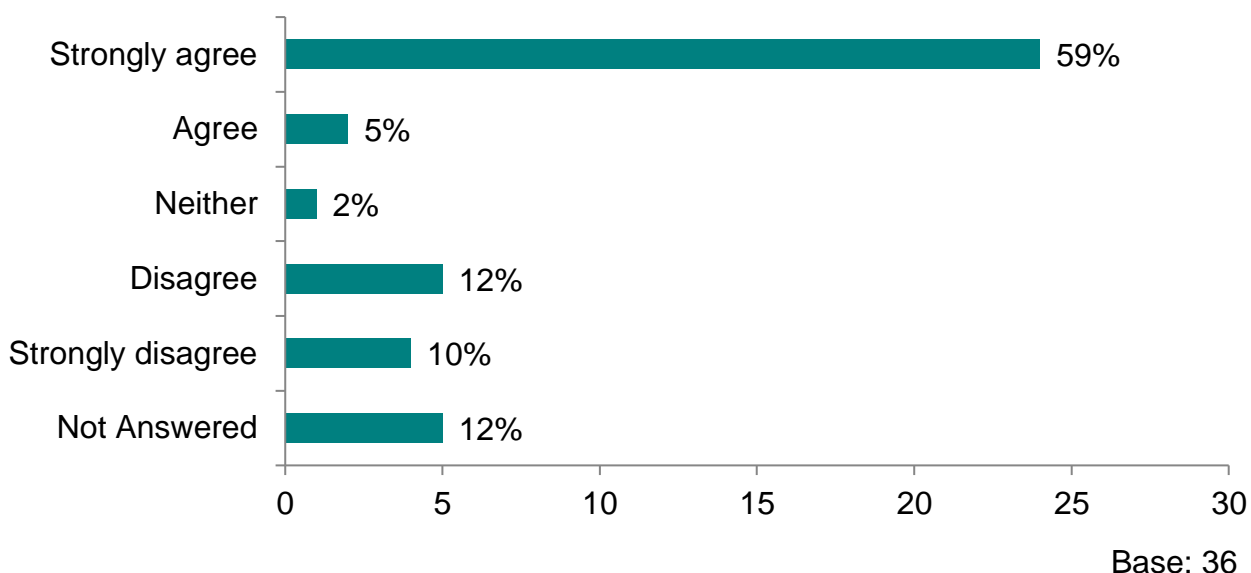
Lastly, participants on both sides stated that rural depopulation is due to wider issues, including a lack of job opportunities and affordable housing, and on islands particular challenges with transport, infrastructure and connectivity.

1.C Opportunity to purchase the small landholding if a landlord gives notice or takes action to sell or transfer the land

The Scottish Government proposes: That small landholders should have the right to buy the remainder of their small landholding tenancy if the landowner of their land gives notice and takes action (with the view of selling the land or a part of the land) to transfer the land containing their small landholding.

Figure 1.3 Opportunity to purchase the small landholding if a landlord gives notice or takes action to sell or transfer the land

Q. Do you agree that small landholders should have the opportunity to purchase their small landholding if their landlord gives notice or takes action to transfer the land containing the small landholding for sale or transfer to another company or trust?



Option	Total	Percent
Strongly agree	24	58.54%
Agree	2	4.88%
Neither	1	2.44%
Disagree	5	12.20%
Strongly disagree	4	9.76%
Not Answered	5	12.20%

Key findings

Over half of respondents agreed that small landholders should have the opportunity to purchase their small landholding if their landlord gives notice or takes action to transfer the land containing the small landholding for sale or transfer to another company or trust. Around a fifth disagreed.

Respondents who **agreed** gave reasons including: the financial investment small holders have made in their holdings, over a long period of time; the stress caused to small landholders by potential changes in land ownership; and the fairness in giving the small landholder the opportunity to buy the land before other parties.

Among respondents who **disagreed** with this proposal, the main reasons given was that it would cause confusion due its alignment with agricultural tenancy law.

Over half of respondents (63%) agreed that small landholders should have the opportunity to purchase their small landholding if their landlord gives notice or takes action to transfer the land containing the small landholding for sale or transfer to another company or trust. Around a fifth (22%) disagreed and 2% answered neither. Respondents were asked to give reasons for their answer and 28 did so.

Reasons for agreement

Among those who agreed, one group of respondents felt this should be the case due to the investment small holders have made in their holdings, from the financial cost of improvements and maintenance, to the length of time they have spent farming it, for example over multiple generations. Several referenced the idea of fairness, and felt it was appropriate that the small landholder is given the opportunity to buy the land before other parties. As one respondent stated, this right should be automatic and not require a registration of interest.

Other respondents referenced wider issues with the current system. For example, several noted the stress caused to small landholders by potential changes in land ownership, due to uncertainty about the new landlord or the risks of having an absentee landlord or one who does not manage the land effectively or in line with the tenant's interests. Other reasons given included: the lack of a current right to buy; the issue of absentee landlords; the need for long-term stability.

A small number of respondents stated that this should be an absolute right to buy, in alignment with crofting. Others stated that this change should be in line with the 1991 Act, including its provision for negotiation between the landlord and tenant.

Several respondents stated that a **pre-emptive right to buy** would be a suitable option, with one organisation noting that this option enables flexibility in terms of what land is sold and when, and that allowing interest in a smallholding to be registered supports estate management and investment; and one individual stating that a pre-emptive right to buy if the property is put on the market would not affect the landowner or the tenants' rights. The former was supportive of an approach where rights to buy the land under the house and the garden aligned with a general pre-emptive right to buy the small holding.

One organisation raised issues similar to those given above, including how a right to buy would be recorded. For example, the approach taken under the Land Reform (Scotland) Act 2016, to remove the requirement for tenant farmers to register their pre-emptive right to buy, has made it difficult to access information about land. This organisation also again noted the need to consider the fact that smallholders in designated crofting areas may choose to convert their landholding to a croft, and the risk this would add to uncertainty as to which regime landholders are operating under. One option to resolve this uncertainty would be to time-limit the right to convert a landholding to a croft under the relevant crofting law provisions.

Reasons for disagreement

Respondents who disagreed with this proposal gave a number of reasons, with the main one being potential confusion due to the fact that whilst small landholding legislation currently aligns with crofting law in many ways, this change would be in line with agricultural tenancy law. One respondent stated that it does not make sense, and would cause further complexity, and a potential breach of the European Convention on Human Rights (ECHR) to give small landholders some of the rights of a secure 1991 Act tenancy despite crofters not having similar rights.

One organisation stated that small landholdings should be brought into the crofting framework, with the options it provides crofters with - in purchasing their land, and the safeguards it provides to ensure good agricultural use of the land. They stated that without these statutory requirements, and as recognised in the previous consultation report, a right to buy may lead to the loss of small agricultural landholdings outwith crofting counties, the neglect or re-development of land with potentially significant impacts on local food production and biodiversity.

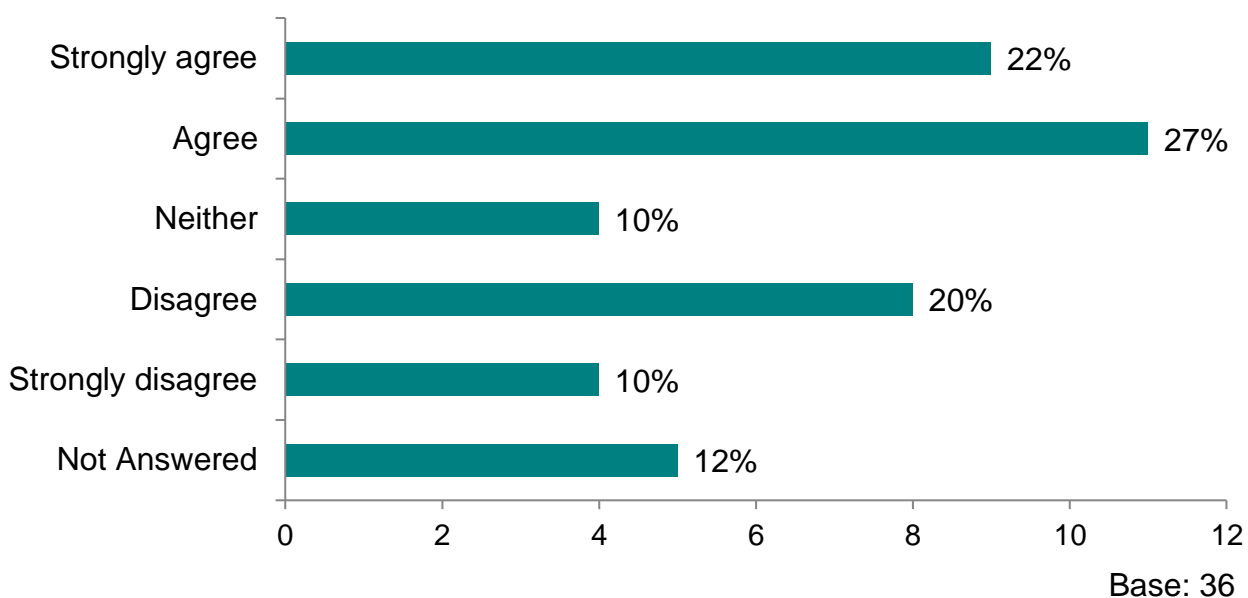
Other reasons provided included: the transfer of businesses within a family due to death or mental incapacity may be caught up in this proposal; the view that the existence of a tenancy should not give a right to buy if ownership is transferred.

1.D Introduction of a clawback provision

The Scottish Government proposes: To introduce an appropriate clawback provision to ensure fairness for the landlord. This would mean that once the small landholder purchases the land under their home and garden or their small landholding, if they then decide to sell on either of these within a certain timescale, they would have to pay their landlord a specific amount.

Figure 1.4 Introduction of a clawback provision

Q. Do you agree that a clawback provision should be introduced [...] if a small landholder who previously purchased the land under their home and garden or their small landholding and subsequently sells either of these within a specific timeframe?



Option	Total	Percent
Strongly agree	9	21.95%
Agree	11	26.83%
Neither	4	9.76%
Disagree	8	19.51%
Strongly disagree	4	9.76%
Not Answered	5	12.20%

Key findings

Around half of respondents agreed that a clawback provision should be introduced to ensure fairness for the landlord, if a small landholder who previously purchased the land under their home, garden or small landholding subsequently sells either of these within a specific timeframe. Just under a third disagreed.

Respondents who **agreed** gave reasons including: the need for long-term stability within local communities; it would encourage landowners to sell and ensure fairness, and; it would prevent misuse and frequent changes in land ownership.

Respondents who **disagreed** gave reasons including: there is no need for a clawback provision if the sale price is fair; the landlord has made no further improvements to the land following its sale, and this would be unfair to small landholders; a clawback provision would be difficult to apply fairly and consistently.

In addition, several respondents noted the need to allow for circumstances outwith the small landholder's control, such as bereavement or retirement.

Around half (49%) of respondents agreed that a clawback provision should be introduced to ensure fairness for the landlord, if a small landholder who previously purchased the land under their home, garden or small landholding subsequently sells either of these within a specific timeframe. Just under a third (29%) disagreed and a tenth (10%) answered 'Neither'. Respondents were asked to give reasons for their answer and a total of 28 did so.

Agreement with the proposal

Those respondents who agreed gave a number of reasons, including

- the need for long-term stability within local communities;
- it would encourage landowners to sell, and ensure fairness for the landlord;
- it would prevent financial misuse and frequent changes in land ownership.

Several noted the need to prevent land being purchased for the wrong reasons, including to sell on for profit, with one organisation noting that this would be unfair to the landlord if they had sold the landholding at an affordable price or made a considerable investment into the landholding that has increased its sale value.

Respondents felt that the appropriateness of a clawback provision would depend on how the price was calculated, with several noting that a clawback provision would be necessary if the land had been bought at a price that did not reflect its market value, for example due to a discount to account for the tenancy.

Disagreement with the proposal

Respondents who disagreed with this proposal gave reasons including:

- there is no need for a clawback provision if the sale price is fair;
- the landlord has made no further improvements to the land following its sale;
- this would be unfair to small landholders due to the rent they have paid over a long time-frame;
- this would be unfair unless it were applied to other former tenants who have bought their land;
- this proposal may have financial implications, for example it may prevent investment by impacting the owners' ability to secure a mortgage or funding;
- the clawback provision, and rural house burden, has been wrongly implemented in crofting;
- introducing a clawback provision would perpetuate the existing relationship between landlord and tenant, for example in terms of the landlord looking for land value to be unlocked by the tenant;
- a clawback provision would not be appropriate as property values can both increase or decrease, and are subject to the market;
- clawbacks can be difficult to apply, for example where a tenant has improved a property after purchase making it challenging to calculate how much of the value of that improvement should form part of the clawback provision;
- a clause (rural burden) attached to small landholding sales may be a more effective way of addressing local housing concerns;
- the system of land-ownership is unfair, and long-established land-owners have already benefited enough from increases in land value over time and agricultural subsidies.

One organisation noted that if a property is sold on, for example for tourism purposes, this may reduce any intended benefits to the rural community in selling to the small landholder, for example the aim of addressing local housing issues and retaining the population. As this organisation stated, a clawback provision could help to deter the sale of landholdings for a specific time-frame, and may help to address concerns about tenants unfairly profiting from the sale of landholdings. The clawback would have to be set at a level high enough to deter sales, and this would vary in different areas, for example in relation to local housing demand.

However, they added that it is not clear that a clawback provision would necessarily be the best mechanism to limit sales, and that a clause (rural burden) attached to small landholding sales may be a more effective way of addressing local housing concerns, for example by stipulating that it cannot be sold as a second home.

As one organisation stated, introducing a clawback provision may deter sales to those who want to live and work in an area on a long-term basis. In such cases clawback could stifle rural development and it may need to be waived.

Another organisation which disagreed with the proposal stated that a clawback provision has not been seen as appropriate under the 1991 Act and would add further complexity. It would also not be appropriate as property values are subject to the market. In the market, land is more often sold subject to clawback where development is a possibility but not significantly recognised in the current value of the property, and as clawback provisions are negotiated on a case-by-case basis, this might be hard to define and apply in an equitable way.

Several respondents who disagreed with the proposal felt there was no justification for a clawback provision. As one stated, if this was introduced it should be for a minimal period and should end if the small landholder starts to make significant investments to the holding. Several felt a more appropriate option would be to use a title burden restricting use and ownership to people who planned to use the property as their principal private residence.

In addition, several respondents noted the need to allow for circumstances outwith the small landholder's control, such as bereavement. As one further respondent stated, many small landholding tenants are of retirement age and may need to sell the property following its purchase if they wish to retire or move into a care home.

1.E Calculation of clawback and the length of time it should apply

Respondents were asked how they think this clawback should be calculated and the length of time it should apply. There was **no broad consensus** amongst respondents in terms of the length of time they think the clawback should apply, with suggestions ranging from 2 years to the life-time of the purchaser.

In terms of how the clawback should be **calculated**, there was again no consensus with respondents making a range of suggestions. They stated however that the clawback should be: calculated in a proportionate way; take into account rent paid over time; and reflect any improvements made by the small landholder since purchasing the land and the impact this has had on its value.

Respondents were asked how they think this clawback should be calculated and the length of time it should apply. There were 36 responses to this question.

There was no broad consensus amongst respondents in terms of the length of time they think the clawback should apply. The list below outlines their answers and indicates the percentage of respondents who suggested each option:

- two years (6%)
- less than three years (3%)
- five years (6%)
- seven to ten years (3%)
- ten years (14%)
- twenty years (6%)
- twenty-five years (3%)
- life-time of purchaser (3%)
- no specific time should be attached to a clawback (6%)
- alignment with crofting (6%).

Several stated that this should be in line with clawback provisions in crofting legislation. For example, one respondent stated that the timeframe should be 10 years in line with the croft house grant scheme.

Of those who gave longer time-frame of 20 years, their reasons included: the use of this time-frame in a crofting context; the timescales of land management and rural property; the need for long-term stability and to prevent small landholdings being purchased for short-term sale; to incentivise keeping the property linked to the landholding; under existing legislation clawback cannot extend beyond 20 years.

Several respondents noted the need for flexibility, with others stating that an acceptable time scale should be agreed through negotiation. As one respondent stated, the time-frame and clawback calculation should act as guidance, and there is a need to take individual and relevant circumstances into account.

For example, one respondent stated that this should continue to apply if there is a clawback-free transfer to a related party, for example within a family, and that it should also apply if there is a successful change of use planning application.

How should the clawback be calculated

Respondents stated that the clawback should be: calculated in a proportionate way; take into account rent paid over time; and reflect any improvements made by the small landholder since purchasing the land and the impact this has had on its value, although as one respondent noted this could be difficult to calculate.

In terms of how the clawback should be calculated, there was again no consensus and a number of respondents were unsure how this should be done. For those who did respond, specific suggestions were:

- profit to be divided between landlord and seller 50-50%;
- 20% of any profit made within 2 years;
- 5% of the difference between the cost of buying the land and the sale price up to 10 years;
- 10% per year for 10 years;
- current market value, minus purchase price;
- 50% commercial price land has increased since sale excluding any land improvements by new owner within 2 years;
- calculation of the actual sale value minus the original statutory purchase price, with a large percentage of the uplift being given to the landlord;
- sliding scale over a seven year period starting at 70% of the uplift and reducing by 10% per year thereafter;
- Calculation of clawback should be on the land value under house, buildings and garden only;
- The clawback should be limited to a proportion of the increase in the small holding's value compared to the sum originally paid for the land disregarding the value of any improvements carried out by the tenant or his family since the start of the lease, e.g. including the cost of licenses or consents.

One organisation stated that it should be set at a level that acts as an adequate deterrent to sale. This should perhaps differ in different parts of Scotland where demand for housing varies. Another organisation stated:

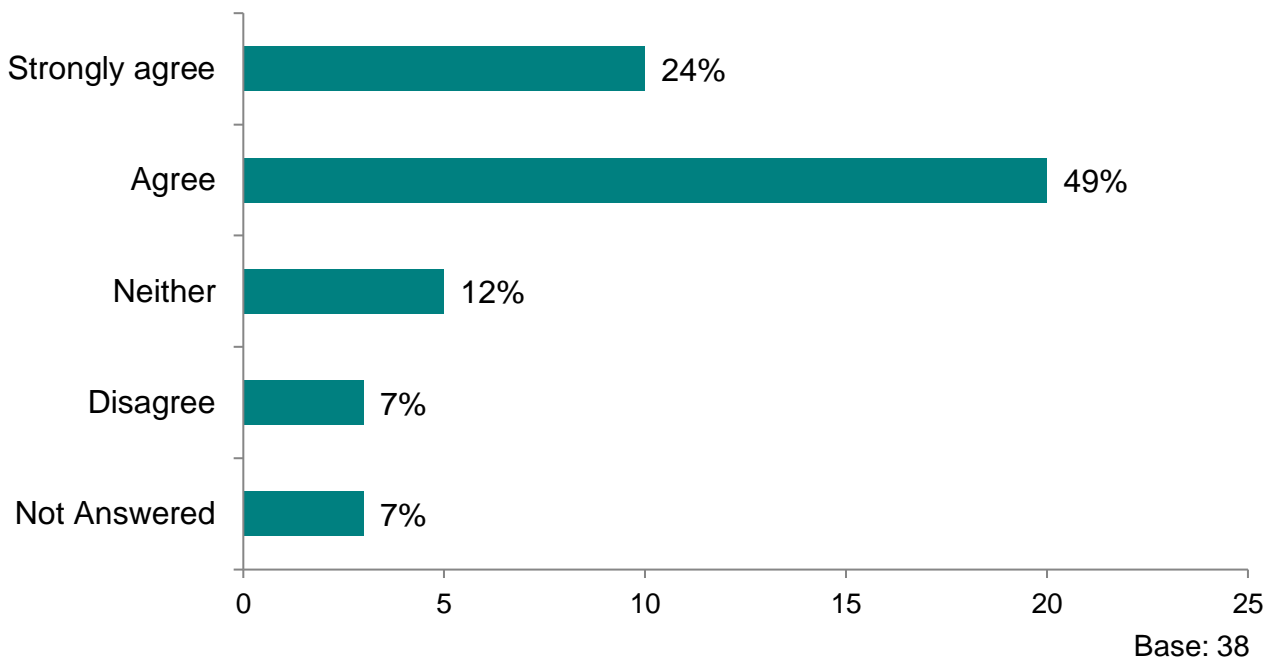
If a clawback is to be applied and whether or not subject to a development provision, it should be on a simple percentage scale applied to the difference between the sale price received and the purchase price (perhaps indexed) for a limited period of time (perhaps not more than five years). It should have the least restrictive effect on the business decisions of the purchasing tenant.

Several respondents stated the need for alignment with the time-frame used within crofting legislation. However, as several noted, criticisms of the use of the clawback provision within crofting should be taken into account, for example their misuse by crofting landlords. As one respondent noted, under crofting law the purchase price is fifteen times the annual rent, and not market value as suggested in this proposal. In this case, the rationale for a clawback provision is less clear.

1.F Appropriate and fair valuation for the right to buy

Figure 1.5 Appropriate and fair valuation for the right to buy

Q. Do you agree that the most appropriate and fair valuation for the right to buy the land under the home and garden should be decided by a valuer appointed in agreement by both the small landholder and their landlord, or [an independently appointed one]?



Option	Total	Percent
Strongly agree	10	24.39%
Agree	20	48.78%
Neither	5	12.20%
Disagree	3	7.32%
Strongly disagree	0	0.00%
Not Answered	3	7.32%

Key findings

The majority of respondents agreed that the most appropriate and fair valuation for the right to buy the land under the home and garden should be decided by a valuer appointed in agreement by both the small landholder and their landlord, or failing both of them agreeing a valuer, one would be independently appointed.

Respondents who **agreed** with this proposal stated that it was fair, reasonable, appropriate and practical. Several respondents noted the need for an agreed and recognised method of calculation, and others felt that if this was sufficiently transparent there may be no need for a valuer as it could be agreed by negotiation. In terms of who should pay for the valuation, respondents held mixed views.

The majority (73%) of respondents agreed that the most appropriate and fair valuation for the right to buy the land under the home and garden should be decided by a valuer appointed in agreement by both the small landholder and their landlord, or failing this, one would be independently appointed. A small number (7%) disagreed and around a tenth (12%) answered 'Neither'. Respondents were asked to give a reason for their answer and a total of 26 did so.

Respondents who agreed with this proposal stated that it was fair, reasonable, appropriate and practical. Several respondents noted the need for an agreed and recognised method of calculation, rather than the process depending on individuals.

Similarly, one organisation stated that if the valuation criteria is sufficiently transparent there may be no need for a valuer as the landlord and tenant may be able to agree a purchase price by negotiation. One individual also stated this.

Further comments included:

- the need for the valuer to be fully independent;
- the necessary role of an independent third party in financial negotiations between a landlord and tenant;
- the need to take into account any fixed equipment owned by the small landholder (for example fences, gates, livestock equipment);
- the need for alignment with crofting legislation;
- the small landholder should be allowed to make a mutually agreeable offer, notwithstanding the independent valuation;
- the landlord should not be able to increase the price above the valuation;

- in the event of the failure to negotiate and agree a valuer, one should be appointed by the Tenant Farming Commissioner at a rate set by them.

In terms of who should pay for the valuation, respondents held mixed views. Whilst some felt the small landholder should not have to pay, others stated that the small landholder should pay, as they have initiated the purchase. One respondent felt that the cost should be shared between both parties. An additional suggestion was that both parties pay for their own valuation and come to an agreement based on these. Several noted that the cost of the valuation should not be prohibitive.

One respondent stated that in cases where there is a dispute, the suggestion that the proposed umbrella body has a role in appointing an independent valuer is a sensible option. Lastly, one organisation which agreed with this proposal noted potential challenges when compared with the crofting regime. Under crofting law, valuation is undertaken when the crofter sells on to a third party, for the purposes of assessing the clawback, and each croft is entitled to one house free of any clawback. As the purchase price is based on annual rent, it means that valuation at the time of purchase is not required. Requiring a valuation is likely to make the right to buy process expensive for the tenant which contrasts with the crofting position.

1.G Fair calculation of the valuation of the right to buy the land under the home and the garden site

Key findings

Respondents were asked how the valuation of the right to buy the land under the home and the garden site should be calculated to provide fairness for both the small landholder and their landlord.

There was no **broad consensus**, and respondents gave a range of suggestions on how it should be calculated. Whilst one group stated that it should be based on open market value, others suggested it should be based on: the value of bare agricultural land in the local area; the value of the land at the point the tenant took on the tenancy; it should be calculated in alignment with the 1991 Act.

Respondents were asked how the valuation of the right to buy the land under the home and the garden site should be calculated to provide fairness for both the small landholder and their landlord. There were 30 responses to this question.

In terms of wider points raised, several respondents emphasised that the valuation should take into account rent paid, and works and improvements made and paid for by the small landholder including services, consents and permissions.

How should this be calculated

Specific suggestions for calculating the valuation of the right to buy the land under the home and the garden site made by respondents included:

- 30 times the rent and not market prices;
- negotiation at or around one third;
- current market value for a dwelling, or building site;
- open market with a discount for improvements made by the tenant;
- initial asset cost, inflation plus improvements;
- market value should be sought with a consideration of rent paid;
- open Market Valuation based on comparable evidence.

A number of respondents stated that this should be based on open market value. As one organisation stated, this is the only fair way to compensate the landlord for loss of control of their property and being unable to exercise their property rights, whilst others felt this should be balanced with an overview of rent paid and investment made over the duration of the lease.

Other points, outlined in more detail below, included:

- the valuation should be based on the value of bare agricultural land in the local area;
- the tenant should pay the value of the land at the point they took on the tenancy, and this should be calculated independently for fairness;
- it may be appropriate to consider means testing if the current tenant is going to require a loan to buy;
- it should be calculated in alignment with the 1991 Act.

The first point was raised by a fifth of respondents to this question, who stated that the valuation should be based on the value of bare agricultural land held under a secure tenanted lease in the local area, rather than as land with vacant possession.

One organisation stated that it should be calculated in alignment with the 1991 Act, based on the investment value of the property plus half the difference between that and the property's value without the tenancy (vacant possession value), so

assuming equality of motivation between the parties, with adjustments for waygo valuations for tenant's improvements and dilapidations.

As this organisation stated, an alternative could be to follow the compensation approach, linked to interest rate markets, used under the Abolition of Feudal Tenure (Scotland) Act 2000. Whatever method is used, when it is just the house and garden being bought, that would require a valuer's apportionment of the rent for the whole holding to find the share due for the part being purchased.

Disagreement with the proposal

Amongst those who disagreed with this proposal, specific reasons included: lack of support for the separation of the home and garden from the land; current use and title restrictions; no need for the land to be purchased, with option instead for land to be appropriated by the government and given to the small landowner on a permanent lease, to be passed on; the potential complexities of this proposal, due to the situation of varying ownership of the house and land.

One respondent noted the need to consider landlords' rights, stating that many landlords will not view valuation as resulting in a fair outcome when land which could not previously be subject to an enforced buy out becomes so. If smallholders are to be given additional rights, this respondent added, then it appears fair and reasonable that their landlords should be given the same and this would require an extensive overhaul of the existing legislation.

2. Consultation findings: Diversification

This section of the report outlines the consultation findings in relation to the second set of questions on Diversification.

The Scottish Government proposes:

To introduce legislation to enable small landholders to diversify their current activities, and to modernise and adapt their business enterprise, in line with the options available to other tenants of agricultural land. This aims to allow small landholders to play their part in tackling the urgent climate and biodiversity crises. This could be delivered by implementing a similar approach as has been used in the crofting legislation. This could help enable small landholdings to develop their business, and contribute more to their local community.

Key findings

The majority of respondents (83%) agreed that small landholders should be able to diversify their activities on their landholdings. Over a third of respondents (39%) stated that small landholders should not require their **landlord's permission** in advance of diversifying their activities, whilst a slightly lower number said they should. Around a third of respondents (35%) did not agree that the small landholder should have to go to the **land court** if the landlord does not consent to their diversification, whilst just over a quarter (27%) agreed that they should.

This section of the report outlines the consultation findings in relation to the second set of questions on Diversification, which focused on:

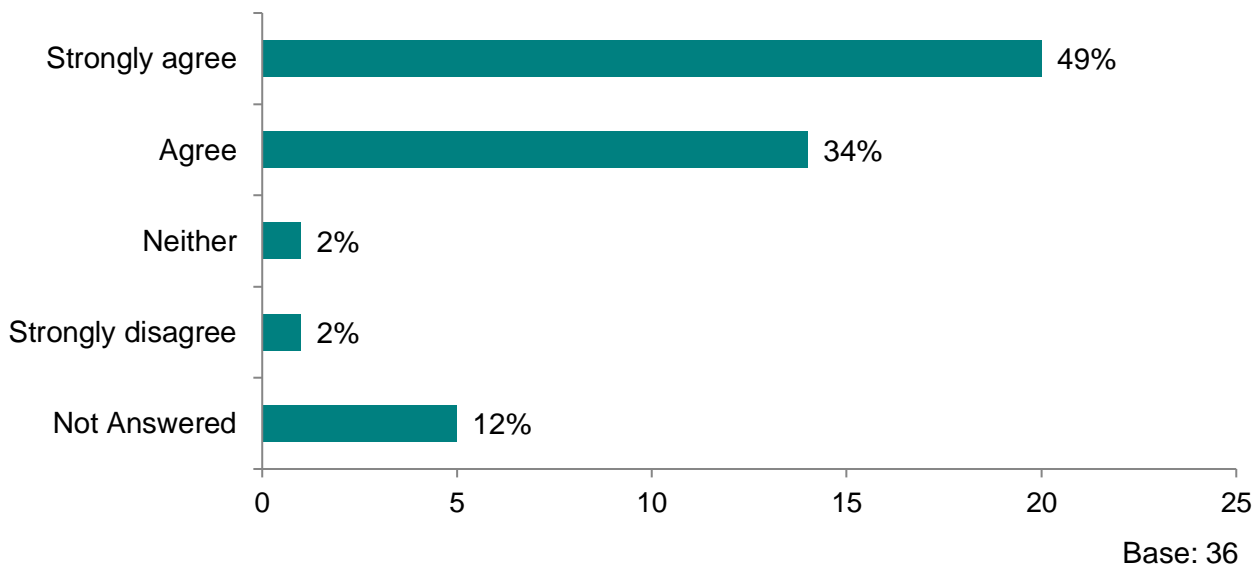
- Small landholders' ability to diversify their activities on their landholdings;
- Views on a requirement for landlord's permission in advance of diversification;
- Views on role of the land court if the landlord does not consent to the small landholder's diversification.

The results are set out separately for each question.

2.H Small landholders' ability to diversify their activities on their landholdings

Figure 2.1 Ability to diversify activities on small landholdings

Q. Do you agree that small landholders should be able to diversify their activities on their landholdings?



Option	Total	Percent
Strongly agree	20	48.78%
Agree	14	34.15%
Neither	1	2.44%
Disagree	0	0.00%
Strongly disagree	1	2.44%
Not Answered	5	12.20%

The majority of respondents (83%) agreed that small landholders should be able to diversify their activities on their landholdings. Only 2% disagreed and the same number (2%) said 'Neither'. Around a tenth of respondents (12%) did not answer. Respondents were asked to give reasons for their answer, and a total of 30 did so.

Key findings

The majority of respondents (**83%**) agreed that small landholders should be able to diversify their activities on their landholdings.

Respondents who **agreed** that small landholders should be able to diversify their activities on their landholdings gave reasons including: potential benefits for rural communities and small landholders' ability to take advantage of new financial opportunities, from climate change mitigation to tourism.

A number of respondents felt that diversification is key to the **economic sustainability** of small landholdings, tenants' businesses and the agricultural sector more widely. Several respondents felt that diversification should not be limited to activities to tackle the climate crisis, and that small landholders should be able to carry out a range of activities to encourage future innovation.

Respondents who agreed that small landholders should be able to diversify their activities on their landholdings gave a number of reasons, including:

- potential benefits for rural communities, such as the creation of jobs;
- small landholders' ability to take advantage of new opportunities, from climate change mitigation to tourism, such as self-catering accommodation;
- small landholders should have equal rights to diversify their activities as other types of agricultural tenants;
- this would be in line with the Scottish Government's wider rural policy, for example its support for rural businesses.

A number of respondents stated that diversification on small landholdings should be done in line with crofting legislation, and the requirements made of crofters, for example that diversification is for a 'purposeful use'. One noted that any future changes to crofting legislation should be reflected in small landholding legislation. In contrast, one organisation stated that legislation to enable small landholders to diversify their current activities should be done in line with provisions made within the 1991 Act, including the structure of notices, timetables and criteria for landlords' consent, and in line with any planned changes to this legislation.

A number of respondents felt that diversification is key to the economic sustainability of small landholdings, their tenants' businesses and the agricultural sector more widely. Several felt this was particularly the case in the context of changing agricultural support payments, and that the need to have additional

sources of income can be seen in other contexts such as crofting, with one stating that small-scale farmers do not qualify for enough support.

As one individual noted:

Diversification of activities will become increasingly important as government policy refocuses towards environmental and climate change mitigation measures and as farmers and crofters look towards other sources of income.

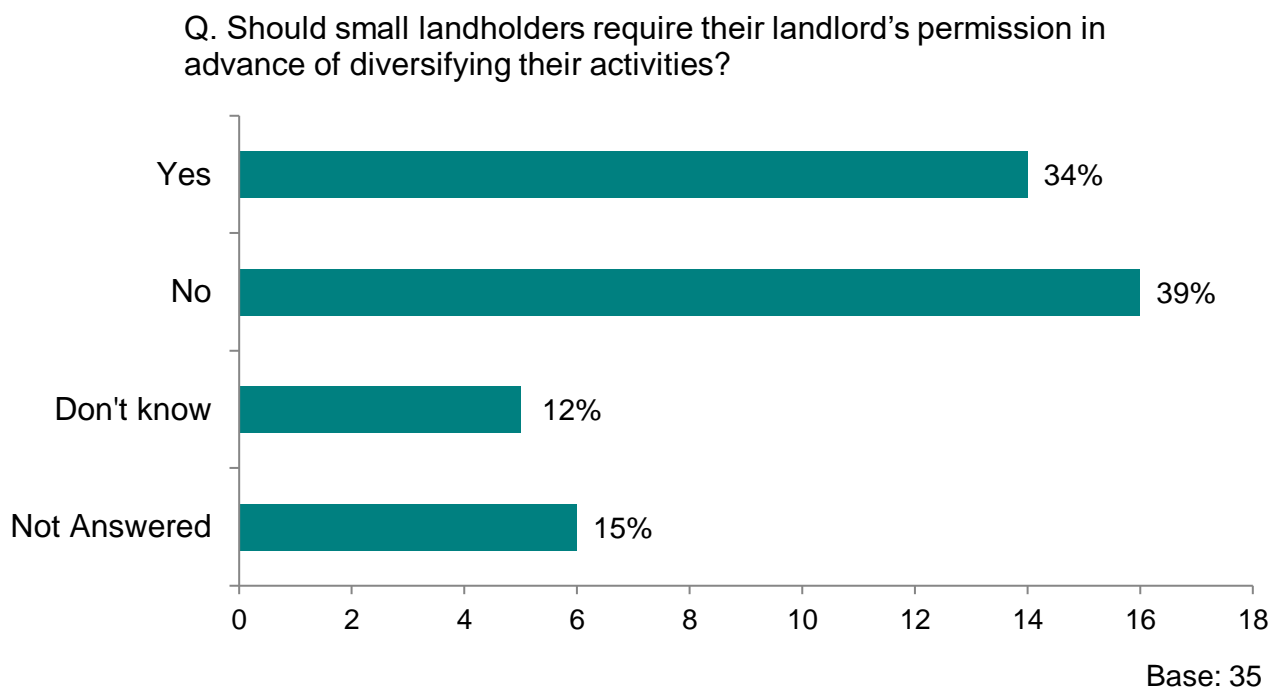
Several respondents noted that diversification should be done by mutual agreement with the landlord, who should have a right to object, for example if the planned activity would devalue the holding. One respondent highlighted a need for negotiation, and the potential for conflicts of interest between the landlord and tenant, for example in long-term land-use change. Others felt there should be safeguards, as in crofting law, to ensure the suitability of planned diversification activities. Examples given by respondents in terms of suitability included:

- should be suitable in terms of the land and its agricultural use;
- should not be detrimental to local residents or the environment;
- should be for environmental or tourism purposes.

Several respondents felt that diversification should not be limited to activities to tackle the climate crisis, and that small landholders should be able to carry out a range of new activities to encourage future innovation. As one stated, a broader range of opportunities should be promoted in line with the proposals set out in the Scottish Government's [Agriculture Bill consultation](#).

2.1 Requirement for landlord's permission in advance of diversification

Figure 2.2 Views on a requirement for landlord's permission in advance of diversification



Option	Total	Percent
Yes	14	34.15%
No	16	39.02%
Don't know	5	12.20%
Not Answered	6	14.63%

Over a third (39%) of respondents stated that small landholders should not require their landlord's permission in advance of diversifying their activities, whilst a slightly lower number (34%) said they should. Just over a tenth (12%) said 'Don't know'.

Key findings

Over a third of respondents (39%) stated that small landholders should not require their landlord's permission in advance of diversifying their activities, whilst a slightly lower number said they should.

In terms of whether that permission should have a set timescale that a landlord is required to meet, one set of respondents felt that small landholders should not be required to ask their landlord's permission or follow a timescale, as they should be **able to diversify and make improvements** to the land as needed. Several others felt that permission should not be required, but that small landholders should inform the landlord of their intention to diversify.

Another set of respondents, including a number of organisations, felt that gaining the landlord's permission and making use of **a timescale was appropriate**, for example where diversification would result in a long-term change in land use. Respondents also felt that a timescale was important in order to **progress** with the proposed activity.

Around half of those who responded to this question gave their views on a potential timescale. Suggestions varied, and included: 28 days, in line with the crofting framework; 3 months; permission in principle within 6 weeks with full permission granted or refused within 6 months; the same but within a 12 month timescale.

If yes, should that permission have a set timescale that a landlord is required to meet?

A total of 26 responses were received to this follow-up question. Individual respondents felt this should depend on the type of diversification, or should be subject to planning permission.

One set of respondents felt that small landholders should not be required to ask their landlord's permission or follow a timescale, as they should be able to diversify and make improvements to the land as needed.

Several others felt that permission should not be required, but that small landholders should inform the landlord of their intention to diversify, and that whilst the landlord should not be able to prevent diversification they should have some form of recourse. One individual stated that permission should only be needed in the event of a material change, for example that requires planning permission.

A further set of respondents, including a number of organisations, felt that gaining the landlord's permission and making use of a timescale was appropriate, for example where diversification would result in a long-term change in land use or could have financial impacts on the land owner. One organisation highlighted a need for clarity in terms of what types of diversification are possible.

One attendee at the public consultation event in Arran highlighted a need for clarity in terms of what is classed as diversification, and stated that if a lease is for agricultural purposes it should remain the same and if small landholders want to do something else then it should be a commercial lease.

Several stated that there should be a requirement for dialogue between the landlord and tenant, and a mechanism to deal with any landlord's refusal to allow a proposed diversification. As one respondent stated, agreements between landlords and their tenants to enable diversification, for example as a joint venture, can often be reached informally and legislation may not be appropriate in this context.

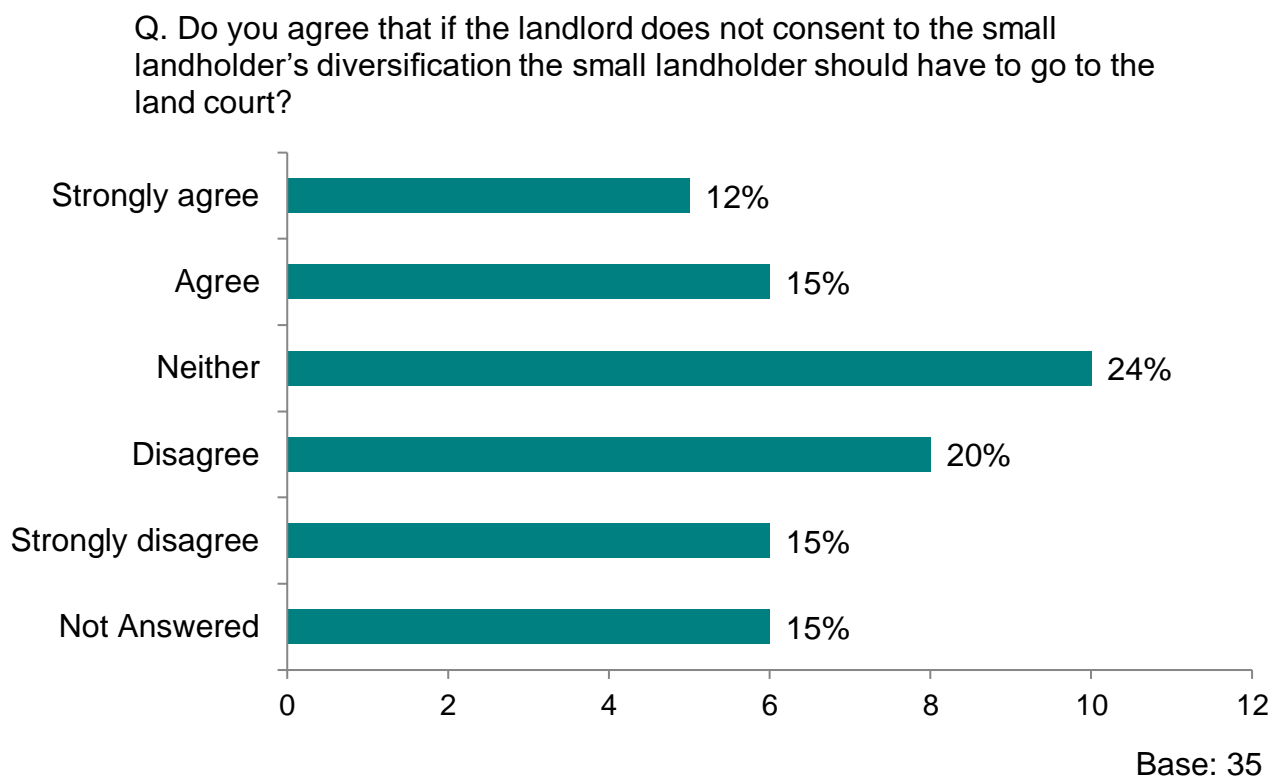
Around half of those who responded to this question gave their views on a potential timescale. Again, several respondents felt that this should be in line with crofting regulation whilst others stated that it should be consistent with other forms of agricultural tenancies. Specific timescales suggested by respondents included:

- 28 days, in line with the crofting framework;
- Permission should be restricted to simple notification with one month to raise objections;
- 3 months;
- permission in principle within 6 weeks with full permission granted or refused within 6 months - to allow the small landholder time to secure other approvals as needed;
- initial response within 12 weeks of the tenant expressing a written interest to the landlord or his agents, and permission or refusal within 12 months.

Respondents felt that a timescale was important in order to progress with the proposed activity, with one stating that failure by the landlord to engage with the tenant during this period should be deemed agreement by default. Others agreed that there should be a timescale for landlords to respond, once they have received the information they require to make a decision.

2.J Views on role of the land court if the landlord does not consent to the small landholder’s diversification

Figure 2.3 Views on role of the land court if the landlord does not consent to the small landholder’s diversification



Option	Total	Percent
Strongly agree	5	12.20%
Agree	6	14.63%
Neither	10	24.39%
Disagree	8	19.51%
Strongly disagree	6	14.63%
Not Answered	6	14.63%

Around a third of respondents (35%) did not agree that the small landholder should have to go to the land court if the landlord does not consent to their diversification. Just over a quarter (27%) agreed that they should, whilst a quarter (24%) said ‘neither’ and 15% of respondents did not answer the question.

Key findings

Around a third of respondents (35%) did not agree that the small landholder should have to go to the land court if the landlord does not consent to their diversification, whilst just over a quarter (27%) agreed that they should.

For those who **agreed**, several felt this was a necessary step, and that the land court was an appropriate forum. For those who **disagreed**, reasons given included the fact that this depend on the proposed activity. One group of respondents raised concerns about the costs, inconvenience and risks of going to the land court for small landholders.

Alternative options suggested by respondents included: alternative methods of dispute resolution, such as dialogue or mediation; bringing small landholdings into line with crofting, or other types of agricultural tenancies; agreeing a list of acceptable diversifications instead; finding a more affordable, local option for small landholders; use of the planning process or another public body.

If you disagree what alternative do you propose?

A total of 27 responses were received to this follow-up question, from those who both agreed or disagreed that the small landholder should have to go to the land court if the landlord does not consent to their diversification.

Alternatives suggested by respondents can be summarised as follows:

- alternative methods of dispute resolution should be used, such as dialogue or mediation as part of a stepped process, with the land court as last resort;
- this issue should be brought in line with crofting, or alternatively with other types of agricultural holdings;
- a list of acceptable diversifications should be agreed instead;
- a more affordable, local option for small landholders should be found, for example a public body;
- landlords should have to go to the land court;
- use of the planning permission process;
- the Tenant Farming Commissioner should be used;
- support from the Scottish Land Commission.

For those who agreed, several felt this was a necessary step, and that the land court was an appropriate forum. Several stated that the majority of cases can be resolved by reaching an agreement, and that the Land Court should be used as a

last resort. Others felt this issue would be resolved by the granting or denial of planning permission, as used by crofting trusts.

Several respondents stated that this issue should be brought in line with crofting, and that the Crofting Commission would be a more accessible and suitable body, and that in this case, the Scottish Crofting Federation would be able to support the tenant during this process. One respondent stated that it would not be fair to provide small landholders with more diversification rights than crofters. Others stated that the issue of diversification on small landholdings should be in line with other types of agricultural holdings more generally.

Several respondents felt that both parties should be encouraged to use alternative methods of dispute resolution, and that there should be provision for this. One organisation stated that dialogue and engagement should be encouraged to try and address issues before going to the land court, as part of a stepped process. As another organisation stated, alternative methods can be a quicker and more cost-effective way of handling disputes.

For those who disagreed, a range of reasons were given, including the view that landlords not tenants should be obliged to go to the land court, or that this option would depend on the proposed activity. One suggested that a list of acceptable diversifications should be agreed.

One group of respondents raised concerns about the costs, inconvenience and risks of going to the land court for small landholders. One suggested that this may prevent them going ahead with their diversification plans, whilst others felt that a more affordable, local option should be available and that tenants would benefit from having access to a more approachable public body.

As one organisation highlighted, going to the land court may have a negative impact on tenant and landowner relationships. The use of a fair process and timescale as suggested above should provide the basis of any necessary arbitration, with a mutually agreed or independently appointed arbiter, as an alternative approach.

Several organisations suggested that it would be appropriate for small landholders to go to the Scottish Land Commission if their landlord does not consent, for example to ask them to appoint an expert to resolve the dispute. Whilst some respondents felt that landlords should have the final say, others felt that landlords should not be able to prevent changes in land use, or should only be able to object to tenants' diversification plans if they had valid reasons.

3. Consultation findings: Assignment and succession

This section of the report outlines the consultation findings in relation to the third set of questions on Assignment and succession.

The Scottish Government proposes:

To amend the legislation for small landholdings and update the assignment and succession provisions, so a small landholder can assign to the same classes of people as tenant farmers with secure 1991 Act agricultural tenancies in the Land Reform (Scotland) Act 2016.

We consider that the landlord should be able to object to the person identified to be assigned or succeed the small landholding for the following reasons:

- a) if the person is not of good character;
- b) does not have sufficient resources to enable them to farm the small landholding with reasonable efficiency; or
- c) the person has insufficient training in agriculture or insufficient experience, unless the person is undertaking a suitable training course.

Key findings: Over half of respondents (54%) **agreed** that the legislation setting out who can be assigned or succeed a small landholding should be updated to have similar succession and assignment rights as tenant farmers with secure 1991 Act tenancies. Almost a quarter (24%) **disagreed**.

Almost half (41%) of respondents agreed that a landlord **should be able to object** to the person the small landholder wishes to be assigned the small landholding or to succeed it. Just under a third (29%) of respondents disagreed.

This section of the report outlines the consultation findings in relation to the third set of questions on Assignment and succession, which focused on:

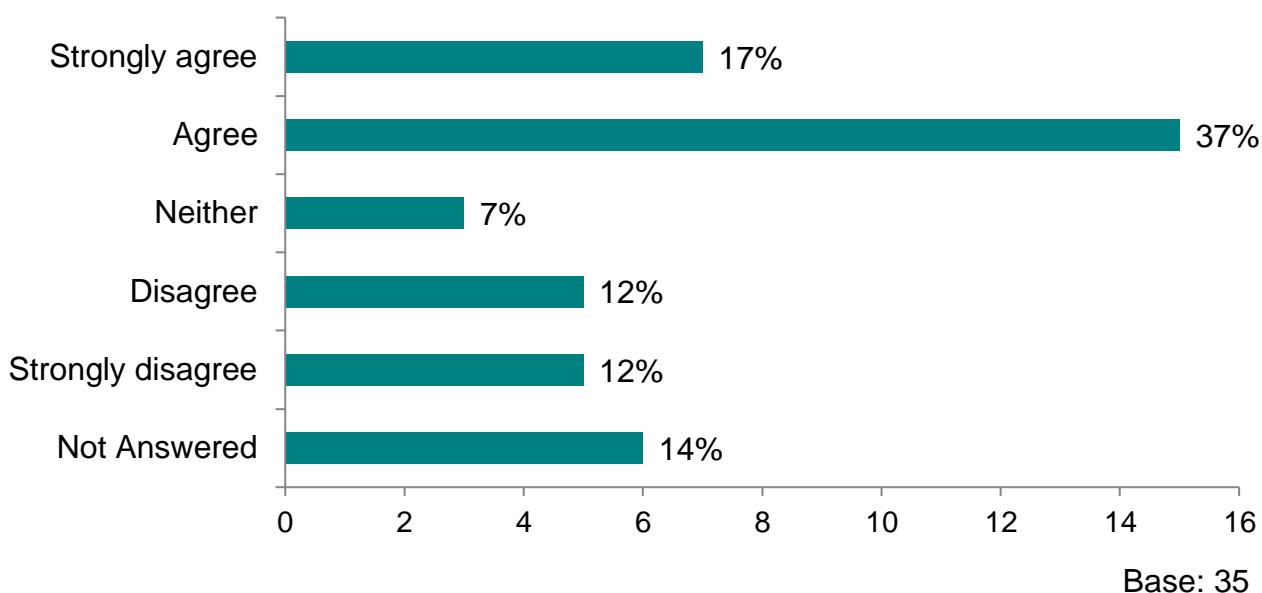
- Views on succession and assignment rights;
- Landlords' rights to object to the person the small landholder wishes to be assigned the small landholding or to succeed it.

The results are set out separately for each question.

3.K Succession and assignation rights

Figure 3.1 Views on succession and assignation rights

Q. Do you agree that the legislation setting out who can be assigned or succeed a small landholding should be updated to have similar succession and assignation rights as tenant farmers with secure 1991 Act tenancies?



Option	Total	Percent
Strongly agree	7	17.07%
Agree	15	36.59%
Neither	3	7.32%
Disagree	5	12.20%
Strongly disagree	5	12.20%
Not Answered	6	14.63%

Over half of respondents (54%) agreed that the legislation setting out who can be assigned or succeed a small landholding should be updated to have similar succession and assignation rights as tenant farmers with secure 1991 Act tenancies. Almost a quarter (24%) disagreed and 7% answered 'neither'.

Key findings

Over half of respondents (54%) **agreed** that the legislation setting out who can be assigned or succeed a small landholding should be updated to have similar succession and assignation rights as tenant farmers with secure 1991 Act tenancies. Almost a quarter (24%) **disagreed**.

A number of respondents agreed there was a need for alignment with secure 1991 Act tenancies in this area. However, others felt that this should instead be done in line with crofting regulations on assignation and succession. Several respondents highlighted the need for consistency across all types of agricultural tenancies, to reduce confusion.

Respondents were asked to give reasons for their answer, and a total of 24 did so. A number of respondents agreed there was a need for alignment with secure 1991 Act tenancies in this area. They gave a number of reasons, including the need for consistency and parity with tenant farmers, and the appropriateness of this in line with the extension of categories of qualifying people for the 1991 Act sector under the Land Reform (Scotland) Act 2016. Further reasons given were:

- Small landholders are best placed to identify a successor in the interests of the landholding, from a family member to a suitably qualified new entrant;
- Current succession rights are too restrictive and can lead to the loss of the landholding when the tenant has no immediate successor;
- This approach may prevent profiteering.

One organisation stated that it is important to recognise other ways in which tenancies can change hands, such as the [Scottish Land Matching service](#), in order to ensure that land remains in the tenanted sector and to bring new entrants into farming. Appropriate provisions should be made to ensure that small landholdings remain productive components of the rural economy.

However, a number of respondents disagreed that the legislation setting out who can be assigned or succeed a small landholding should be updated to align with secure 1991 Act tenancies. One set of respondents felt instead that this should be done in line with crofting regulations on assignation and succession. One key reason given was that crofts are more comparable in size to small landholdings than tenant farms. One organisation stated that small landholdings should be brought into the crofting framework, and that this would be a more practical approach than introducing aspects of 1991 Act tenancies into small landholding

legislation. Another organisation stated that alignment with 1991 Act tenancies would result in small landholders having different rights to crofters.

Several respondents highlighted the need for consistency across all types of agricultural tenancies, to reduce confusion. Further views included:

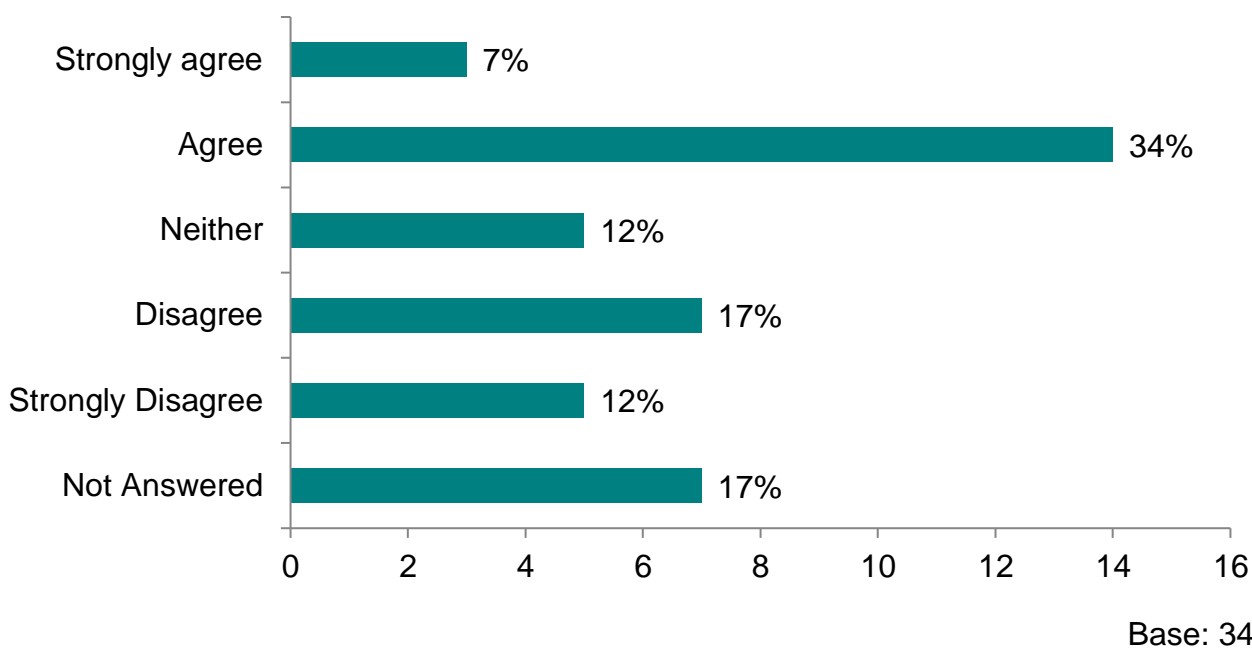
- The current legislation is suitable;
- Assignment and succession should be similar to 1991 Act tenancies and apply to any family relatives;
- Small landholdings should not be directly passed on but open to any applicant;
- Given the smaller scale of small landholdings, the level of training and knowledge required of the person identified as a successor should be lower than that required for an agricultural tenancy.

One organisation stated that assignment and succession of agricultural holdings is a contentious area, and did not wish to comment further as it was not clear from the consultation if assignment for value (as found within agricultural holdings law) was a consideration in this context.

3.L Right of landlord to object to the person the small landholder wishes to be assigned the small landholding or to succeed it

Figure 3.2 Views on rights of landlord to object to identified successor

Q. Do you agree that a landlord should be able to object to the person the small landholder wishes to be assigned the small landholding or to succeed it?



Option	Total	Percent
Strongly agree	3	7.32%
Agree	14	34.15%
Neither	5	12.20%
Disagree	7	17.07%
Strongly disagree	5	12.20%
Not Answered	7	17.07%

Almost half (41%) of respondents agreed that a landlord should be able to object to the person the small landholder wishes to be assigned the small landholding or to succeed it. Just under a third (29%) of respondents disagreed, 12% said 'Neither' and 17% of respondents did not answer the question.⁵

⁵ There was some misunderstanding about this question, with several respondents stating that allowing a landlord to object would only be appropriate if they still own the land.

If so what should those objection grounds be?

Key findings

Almost half (41%) of respondents agreed that a landlord should be able to object to the person the small landholder wishes to be assigned the small landholding or to succeed it. Just under a third (29%) of respondents disagreed.

In terms of **objection** grounds, several respondents stated that those already in place are sufficient. Others felt landlords should consider: character and working relationship; interest in agriculture, and a suitable level of competency, knowledge and qualifications; financial capability and sufficient resources.

Several respondents stated that the grounds for the landlord's objection should be in line with 1991 Act tenancies, whilst others felt this should instead be done in line with crofting regulations.

Respondents on both sides felt that there should be provisions in place to **prevent discrimination** against specific groups (for example, in use of the criteria that the successor is of 'good character'). Several felt there was scope for different interpretations of the criteria and misuse of grounds for objection.

A total of 31 responses were received to this question. Of those respondents who agreed, several raised the need for fairness, proportionality and a balanced approach. Several stated that the landlord should have sufficient reasons to object, or should only be able to do so in a limited number of circumstances, for example: if they could demonstrate that the identified successor would harm the future viability of the holding, or if the identified successor has a serious criminal record. Others felt that not allowing the landlord to object would be a breach of their rights.

In terms of the objection grounds, several respondents stated that those already in place are sufficient. Other gave suggestions relating to:

- Character, for example to enable a working relationship between the incoming successor and landlord;
- A relevant interest in agriculture;
- A suitable level of competency, knowledge and qualifications, to be able to farm the land to an appropriate standard;
- The person's ability to maintain the landholding;
- As long as they farm it in guidance with current legislation;

- Financial capability and sufficient resources.

One organisation recommended the inclusion of an additional criterion that the successor will actively live and work on the small holding to ensure the land is productively used. They stated that the aim should be to promote, support and simplify assignment and succession, to encourage rural development.

Several respondents stated that the grounds for the landlord's objection should be in line with 1991 Act tenancies. One organisation suggested that a higher standard should be set across both in terms of the proposed successor's competency, in order to ensure more efficiency and productivity within Scottish agriculture, and meet the challenges of environmental impact and land management.

Of those who disagreed or selected 'Neither', several respondents felt this should instead be done in line with crofting regulations. Others felt that small landholders were best placed to make decisions about the future of the holding, with one pointing out that the title conditions restricting use would also apply to the successor. One individual commented that objections should be limited to character and access to resources.

Respondents on both sides felt that there should be provisions in place to prevent discrimination against specific groups (for example, in use of the criteria that the successor is of 'good character'). Several felt there was scope for different interpretations of the criteria and misuse of grounds for objection.

Respondents felt that further guidance is needed, including to define criteria such as 'good character', outline expectations and any evidence required.

Attendees at the public consultation event stated that new entrants should be added to the list of eligible assignees.

Lastly, a number of respondents highlighted the need for an appeal mechanism against decisions, or referral to an umbrella body for mediation and resolution.

4. Consultation findings: Access to an umbrella body

This section of the report outlines the consultation findings in relation to the fourth set of questions on Access to an umbrella body. The main findings are as follows:

The Scottish Government proposes:

As there are only a small number of small landholdings it would not be justifiable to create a new body solely for small landholders and their landlords. It would be better value for money and more appropriate, for small landholdings to fall under the remit of an existing public body (such as the Scottish Land Commission).

This would require the Scottish Government to amend their remit but would allow small landholders and their landlords access to support, and encourage good relationships. As part of this, the organisation would promote and encourage good relations between small landholders and their landlords, publishing guidance and codes of practice. The organisation could also be given the power to investigate alleged breaches of codes of practice.

Key findings

The majority (88%) of respondents agreed that small landholders and their landlords should have **access to a public body**, in a similar way that tenant farmers and their landlords have for agricultural tenancies. Three quarters of respondents (75%) agreed that if a small landholder and their landlord have a disagreement, the public body should be able to mediate. Only 5% disagreed.

This section of the report outlines the consultation findings in relation to the fourth set of questions on Access to an umbrella body, which focused on:

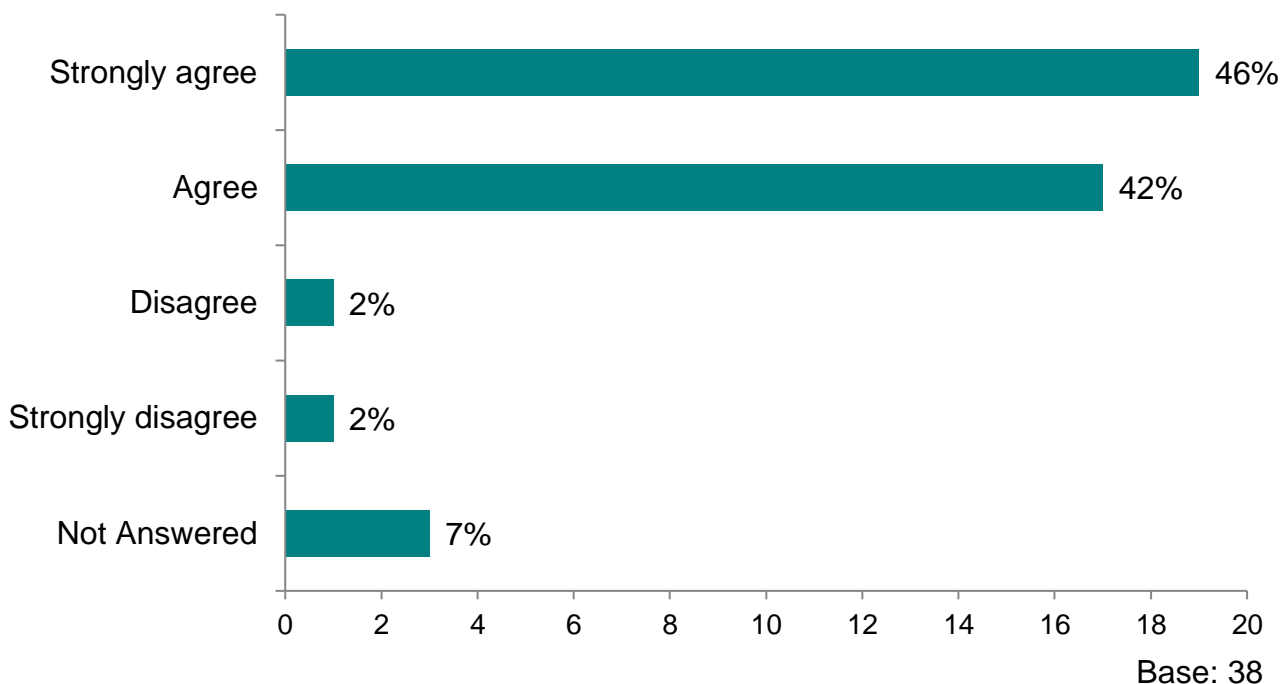
- Views on access to a public body;
- Views on the mediation role of the body if a small landholder and their landlord have a disagreement.

The results are set out separately for each question.

4.M Access to a public body

Figure 4.1 Views on access to a public body

Q. Do you agree that small landholders and their landlords should have access to a public body (in a similar way that tenant farmers and their landlords have for agricultural tenancies)?



Option	Total	Percent
Strongly agree	19	46.34%
Agree	17	41.46%
Neither	0	0.00%
Disagree	1	2.44%
Strongly disagree	1	2.44%
Not Answered	3	7.32%

The majority (88%) of respondents agreed that small landholders and their landlords should have access to a public body, in a similar way that tenant farmers and their landlords have for agricultural tenancies. Only 4% disagreed. Respondents were asked to give reasons for their answer and a total of 25 did so.

Key findings

The majority (88%) of respondents agreed that small landholders and their landlords should have access to a public body, in a similar way that tenant farmers and their landlords have for agricultural tenancies. Only 4% disagreed.

Those who **agreed** gave a number of reasons, including the need for a public body to oversee disputes in line with the modernisation of small landholding tenancies; and a wider need for consistency and equity.

They noted the **potential benefits** of a public body for small landholders, including: access to guidance, protection and support; making legislation more accessible; and improving relations between small landholders and their landlords.

Several respondents felt that the Scottish Land Commission was an appropriate public body. Others felt it should be the Tenant Farming Commissioner or a crofting organisation such as the Crofting Commission or Scottish Crofting Federation.

Those who agreed that small landholders and their landlords should have access to a public body gave a number of reasons, including the need for a public body to oversee disputes in line with the modernisation of small landholding tenancies; and a wider need for consistency and equity. They noted the potential benefits of a public body for small landholders, including:

- Greater clarity and support;
- Access to guidance and information;
- Protection for small landholders;
- Making small landholding legislation more accessible;
- The positive impact it could have on relations between small landholders and their landlords;
- The fact that small landholder should have the same rights as other tenants.

One respondent noted the need for the public body to recognise diversified activities on small landholdings, out-with traditional agricultural land use, for example forestry, horticulture, leisure and cultural activities.

Several respondents felt that the Scottish Land Commission was an appropriate public body in this context. Another set of respondents, including several organisations, stated that it should be the Tenant Farming Commissioner, and attendees at a public consultation event held in Arran also supported this option.

Their reasons included simplicity, fairness, and cost effectiveness; it being a suitable fit with the Tenant Farming Commissioner's role; and the impact this public body has already had in facilitating improved negotiations between tenants and their landlords, resolving disputes and offering advice and information.

One organisation which was supportive of this approach did express concerns about extending the Tenant Farming Commissioner's remit, for example in resolving disputes, as this may risk compromising its role in providing guidance or may test its resources. Similarly, another respondent expressed the view that dispute resolution is a more appropriate role for an independently agreed arbiter.

One organisation which responded stated that the public body should follow the model of the Tenant Farming Commissioner, for example in providing guidance and support to both tenants and their landlords:

The tenant farming commissioner role works best when providing guidance and encouragement to both sides, rather than any use of statutory powers. Therefore, this model would seem logical. If Small Landholdings legislation were to continue to be a mix of crofting and agricultural tenancy law, then it will be difficult to provide that needed clarity and advice.

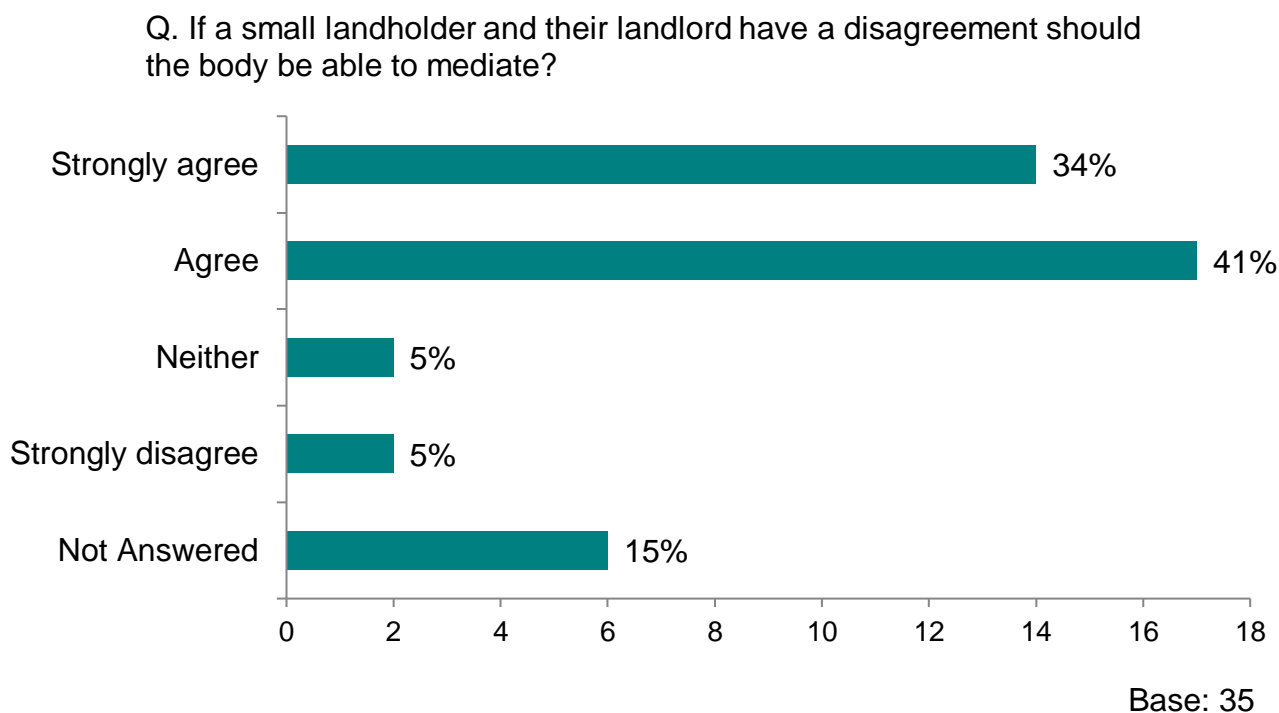
However, a separate group of respondents felt the public body for small landholders should be a crofting organisation, with suggestions including: the Crofting Commission, the Land Court and the Scottish Crofting Federation (SCF).

For example, one respondent stated that small landholdings should be brought into the crofting framework, and that the umbrella body responsible for small landholdings should be the Crofting Commission, 'which holds significant expertise relevant to the interests of small-scale agricultural tenants'. Another organisation which responded stated:

The Crofting Commission and the Tenant Farming Commissioner have very different functions. The Commission has a regulatory function and decision making powers in respect of crofts, and as smallholdings are a type of croft and as there are very few smallholding remaining, it appears to better fit with Crofting Commission functions for smallholders to have access to the Commission as opposed to the Tenant Farming Commissioner / Land Commission. Further, the Tenant Farming Commissioner has defined functions fixed by legislation applicable to agricultural holdings and not currently linked with crofting and/or smallholdings.

4.N Views on the mediation role of the body if a small landholder and their landlord have a disagreement

Figure 4.2 Views on the mediation role of the body if a small landholder and their landlord have a disagreement



Option	Total	Percent
Strongly agree	14	34.15%
Agree	17	41.46%
Neither	2	4.88%
Disagree	0	0.00%
Strongly disagree	2	4.88%
Not Answered	6	14.63%

Three quarters of respondents (75%) agreed that if a small landholder and their landlord have a disagreement, the public body should be able to mediate. Only 5% disagreed and the same number (5%) selected 'neither'. Respondents were asked to give reasons for their answer and a total of 26 did so.

Key findings

Three quarters of respondents (75%) agreed that if a small landholder and their landlord have a disagreement, the public body should be able to mediate. Only 5% disagreed.

Those who **agreed** gave reasons including equity and fairness, and many respondents noted the benefits of mediation as an option for both tenants and landlords, in terms of it being a more cost-effective way of reaching a resolution. Another set of respondents stated in the interests of **neutrality**, the public body should encourage and facilitate mediation but not carry it out.

Those who agreed gave reasons including equity and fairness, and many respondents noted the benefits of mediation as an option for both tenants and landlords. Several commented that this would be a less costly and stressful way of reaching a resolution. Others felt it was a more appropriate option than, for example, taking legal action or going to the land court, due to landlords typically having greater financial resources than small landholders.

Several respondents felt this should be in line with crofting, with one suggesting the Crofting Commission could play a role in maintaining good relations between tenants and their landlords, and handling disputes, for example over diversification. One respondent stated that this should be in line with 1991 Act tenancies.

Another set of respondents stated that the public body should encourage and facilitate mediation, but not carry it out. As one organisation stated in their response to the consultation, this would be in line with the role of the Tenant Farming Commissioner in relation to agricultural holdings. Whilst in some cases, they added, it may be appropriate for the body to make regulatory decisions, in the interests of neutrality this should not include mediation. Others agreed with this, and felt that professional agents or an independently agreed arbiter should be used, not the body responsible for producing guidance.

One respondent asked for clarity on the proposed role of the public body, for example in handling disputes over diversification, in relation to the role of the Scottish Land Court. They felt that the new public body could play a useful role in this context, and would be a more accessible option than the Land Court. However, another respondent felt there should still be recourse to the land court for more serious disagreements. There was also criticism of the Scottish Land Commission's handling of a previous dispute from one respondent, who felt it had not been dealt with adequately.

5. Additional considerations and impacts

This section of the report outlines the consultation findings in relation to the fifth set of questions on additional considerations and impacts.

Key findings

Respondents were able to give their views on **further potential changes** to small landholding legislation to support small landholders and their landlords. They raised a number of issues, including: changes to agricultural tenancy types; support for new entrants; and the role that small landholdings can play in meeting climate and biodiversity goals due to their scale.

Over a third (39%) of respondents said they were aware of **potential costs and burdens** that may arise as a result of the proposals. The main potential costs identified by respondents were: costs in purchasing the land; the cost of funding the purchase; legal costs; the wider cost of new legislation and regulations, for example to the public, and; the loss of small landholdings and the opportunities they offer to new entrants and start-ups.

In terms of **environmental impacts**, whilst some respondents felt that the proposals would lead to positive environmental impacts, for example through diversification and greater participation in environmental schemes, others felt there was a risk of negative impacts in terms of the loss of small landholdings and the effective management of agricultural land.

Over a third (37%) of respondents said they were aware of current or future impacts on **young people** due to the proposals. Around a fifth (17%) were not aware of any impacts. Whilst some felt the proposals would have a positive impact on young people in terms of opportunities for new entrants, others felt the proposals would have a negative impact in this area.

Almost a third (32%) of respondents thought improvements could be made from a young person's perspective. Only a small number (5%) said 'No'. Their answers focused on several key issues: the need to simplify the small landholding system; support for new entrants and the need to broaden access to land and tenancy opportunities within the agricultural sector.

Around half of respondents (46%) were not aware of any impacts of the proposals on **data protection or privacy**, and a quarter (24%) were unsure.

Around half of respondents (46%) said they were not aware of any examples of how the proposals in this consultation paper may impact those with **protected characteristics**. Respondents raised several points: succession, and the positive impacts of widening opportunities in rural areas; the importance of protecting the rights of all small landholders; the potentially negative impacts of a loss of small landholding tenancies on diversity in the agricultural sector and in rural areas.

Around a third (32%) of respondents said they were not aware of any examples of how the proposals might have particular impacts on groups or areas experiencing **socioeconomic disadvantage**. A fifth (20%) said they were aware of potential impacts and a fifth were unsure.

Respondents noted potential positive impacts including: benefits to rural communities and services; and the benefits to small landholders experiencing socioeconomic disadvantage. One potentially negative impact was the decline of small agricultural tenancies, which could restrict access to rural land for small-scale and local food production.

Almost a third (29%) of respondents were not aware of any examples of any potential differential impact of the proposals on **island communities**. Around a quarter (24%) were aware of potential impacts. Respondents identified a number of potential benefits of the proposals to island communities in terms of: increasing access to employment and housing; bringing in new residents; and small landholders on islands more control over their future.

This section of the report outlines the consultation findings in relation to the fifth set of questions on additional considerations and impacts, which focused on:

- Further potential changes to small landholding legislation to support small landholders and their landlords;
- Potential costs and burdens that may arise due to the consultation proposals;
- Potential environmental impacts of the proposals;
- Potential current or future impacts on young people;
- Potential improvements from a young person's perspective;
- Potential impacts on data protection or privacy;
- Potential impacts on those with protected characteristics;
- Potential impacts on groups or areas experiencing socioeconomic disadvantage; and
- Potential impacts of the proposals on island communities

5.0 Wider feedback on potential changes to the current small landholding legislation to modernise small landholdings

Key findings

In this section, respondents were able to give their views on further potential changes to small landholding legislation to support small landholders and their landlords. They raised a number of issues, including: changes to agricultural tenancy types; support for new entrants; and the role that small landholdings can play in meeting climate and biodiversity goals due to their scale.

Respondents were asked if there was anything else they thought should be changed in the current small landholding legislation to modernise small landholdings, so they can play their part helping to tackle the climate and biodiversity crises and for Scotland to reach Net Zero by 2045. There were 28 responses to this question. Respondents raised a number of wider issues in their answers, including:

- The need for consistency across agricultural legislation i.e. wider changes in the sector to be applied to small landholdings.
- Changes to small landholding legislation should be in line with expectations of other farmers and landowners.
- Support for new entrants, including in small landholdings.
- Need to consider other types of financial support, e.g. guaranteed income raised from annual ground rent to support small landholders.
- Suggested changes to agricultural tenancy types.

In terms of enabling small landholders to have a role in tackling the climate and biodiversity crises, the key points raised were:

- Need for simplified language and clear guidelines or codes of practice for small landholders, for example in terms of environmental activities.
- Legislation should encourage the creation of more small landholdings, for example through financial incentives for landlords.
- Need to give small landholders long-term trust and security.
- Need for further support for climate activities on small landholdings, for example diversification, sustainable energy, electric vehicles.
- Recognition of the suitability of small landholdings for modernised farming practices, and the opportunities they offer due to their scale.

- Transparency of the Scottish Government's climate goals, with targets in line with wider legislation.
- Clear delegation of costs, rights and responsibility, for example for small landholders in carrying out diversification activities to meet climate objectives, and limit on any penalties for doing so.
- The need to protect Scottish land for food and agriculture and maximise the potential of small-scale systems of land use for climate and nature.
- The view that there were a lack of proposals in the consultation to help address the climate crisis, and a lack of consideration given to the potential role of small landholders in this area.

Agricultural tenancy types

A number of respondents, largely organisations, reiterated earlier comments in terms of agricultural tenancy types, with the three responses being:

- Small landholdings should be brought within a modernised crofting framework;
- Small landholdings should be brought in line with tenant farming legislation;
- Small landholdings should be converted to secure agricultural tenancies.

A greater number of respondents to this question stated that small landholdings should be brought within the crofting framework – with small landholders having the same rights, protections, and responsibilities as crofters – as part of a wider reform of crofting legislation. Several referenced the need for fairness and equality in terms of the rights given to crofters but not small landholders during earlier reforms.

As one crofting organisation stated, this would help to protect agricultural land for future generations. The crofting framework has been designed for small-scale agricultural tenants, offers adequate rights and the protection, in addition to access to support, training and advice from bodies including the Crofting Commission and the Scottish Crofting Federation. They added that this was logical as a significant number of small landholdings are in designated crofting areas, and would be the most efficient and best use of public funds.

One organisation stated its concern in terms of the revision of small landholding legislation, and the fact that it may add to the complexity in this area if separate legislation continues to apply to small holdings. This organisation stated that a better option may be to consider incorporating a provision in the agricultural tenancies legislation for the conversion of small landholdings to secure agricultural tenancies so that they will all be governed by the same legislation.

Another organisation noted current confusion around legislation, and stated that some of the suggested changes could exacerbate this by creating further confusion between a small landholding, croft and agricultural tenancy. They raised a series of further points: the need to protect current relations between landlords and their tenants; the need for fairness to both parties; respect of landlords' property rights; small landholdings are a legacy type of land tenure and should be dealt with in that context; the potential requirement to look more broadly at the rights of the landlord as well as tenants within this context of any changes.

Other suggestions included further additions to small landholdings legislation which exist in other forms of tenancies, including:

- Minimum duration of tenancies, for example of ten years;
- Compensation for improvements, for example at the end of a tenancy;
- Right to build a house on the land if there is no suitable property, subject to obtaining the approval from the local authority;
- An absolute right to buy for tenants i.e. they should be allowed to buy the land even if the landlord has not put it up for sale;
- Need for integration between Small Landholdings legislation, local planning and housing regulations, for example in island areas.

One further point raised by an individual was in terms of the registration of small land holdings since the 1931 Act, and problems in converting to crofting status due to issues with the register held by the Land Court and in meeting the legal criteria of being a Small Landholding tenant. They suggested that reasonable evidence should be acceptable proof of small landholding status and applicants should be accepted from all areas of Scotland.

Support for new entrants

Several respondents referenced the need to attract and support new entrants. As one organisation stated, the size of small landholdings can be attractive to new entrants and introduce them to farming at a manageable scale. It would be useful to consider if any provision would be appropriate in the legislation or as part of the role of the umbrella body, to support small landholdings as a particular opportunity for new entrants. In terms of support for new entrants, this included a specific point on improving grants for those who do not have sheds and slurry stores, and face high fertiliser costs as a result, and the beneficial environmental impact this would have.

Tackling the climate and biodiversity crises

In terms of climate activities, several respondents felt that further support should be offered to small landholders in carrying out these types of activities, including small wind and solar production, heat pumps, electric vehicles, heat pumps, rewilding, and further diversification. This included raising awareness and offering financial incentives or subsidies. As one organisation noted, the size of small landholdings means that their resources are often limited.

Several respondents commented on the need for transparency in terms of the Scottish Government's wider goals in meeting Net Zero. For example, one suggested that there should be a schedule of changes to tackle the climate crisis, with appropriate support and protection in law, as this would help small landholders who face local challenges to new activities, and that this list should be responsive to innovation and new approaches.

As one respondent noted, introducing a minimum duration of tenancies would contribute to meeting climate and biodiversity goals as it would help to facilitate longer-term planning and activities such as tree planting, water and soil improvements. A minimum tenancy term would offer more scope to do this.

As one organisation stated, due to their scale, small landholdings may be more readily suited to a more modern farming framework focussing on biodiversity and climate change. There may be a particular opportunity to develop more flexible lease types for small landholdings that are less complex and more readily support the aims of this consultation. These would also be particularly attractive to new entrants and would help to support that part of the agricultural tenanted sector.

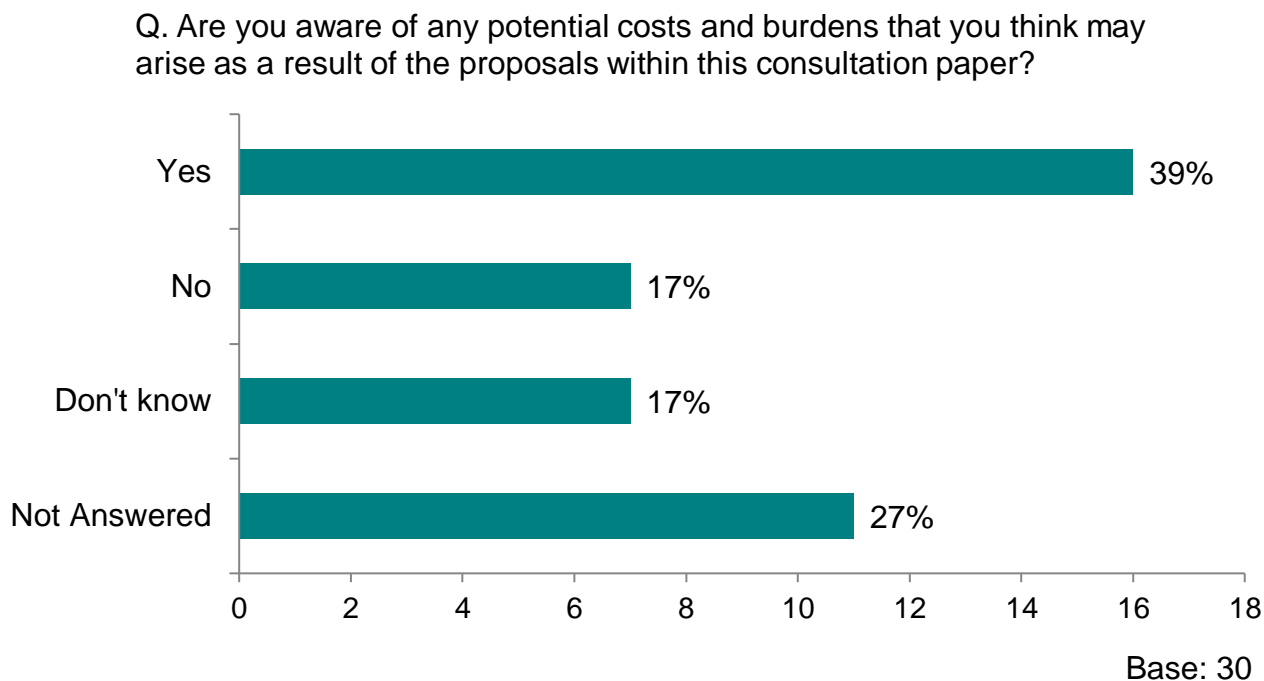
However, several organisations felt that there were a lack of relevant proposals that would help small landholders to play a role in tackling the climate and biodiversity crises, and that the Scottish Government should give more consideration to the role that small landholdings play in the tenanted sector and broader land use priorities.

For example, one organisation stated that the consultation proposals provided no safeguards to protect agricultural land and small-scale food production, and to protect extensive farming systems in High Nature Value areas, for example on Arran. As identified in the [2016 consultation](#), diminishing numbers of small landholdings are a key concern following introduction of a right-to-buy outside of crofting law and the duties to cultivate and maintain, and not to misuse or neglect. This organisation was in favour of increasing numbers of small agricultural holdings within and outside crofting counties, and the creation of new crofts on public land.

Two organisations noted that the proposed changes may in fact have a negative impact on the climate and biodiversity, by leading to a reduction in the number of available small landholdings and less land being occupied for agricultural purposes. One stated that they would value the opportunity to take part in a round table discussion on this topic, to discuss options and alternatives.

5.P Potential costs and burdens of the consultation proposals

Figure 5.1 Potential costs and burdens of the consultation proposals



Option	Total	Percent
Yes	16	39.02%
No	7	17.07%
Don't know	7	17.07%
Not Answered	11	26.83%

Respondents were asked if they were aware of any potential costs and burdens that they think may arise as a result of the proposals within this consultation paper. Over a third (39%) said 'Yes', almost a fifth (17%) said 'No' and the same number said 'Don't know' (17%). Over a quarter (27%) did not answer the question. Respondents were asked to give reasons for their answer and a total of 18 did so.

Key findings

Over a third (39%) of respondents said they were aware of potential costs and burdens that may arise as a result of the proposals within this consultation paper. Almost a fifth (17%) said they were not and the same number (17%) were unsure.

The main **potential costs** identified by respondents were: costs in purchasing the land, for example valuations, mortgage or conveyancing costs; the cost of funding the purchase; legal costs; the wider cost of new legislation and regulations, for example to the public, and; the loss of small landholdings and the opportunities they offer to new entrants and start-ups.

Respondents identified a number of costs, both for small landholders and their landlords and for the wider public. The main costs they identified were:

- costs in purchasing the land, for example valuations, mortgage or conveyancing costs;
- the cost of funding the purchase for example through current income, resources or borrowing;
- legal costs, for example legal fees, the cost of legal advice, sales and transactions, local authority planning systems;
- the wider cost of new legislation and regulations, for example to the public;
- the loss of small landholdings and the opportunities they offer to new entrants and start-ups, and potential human rights implications.

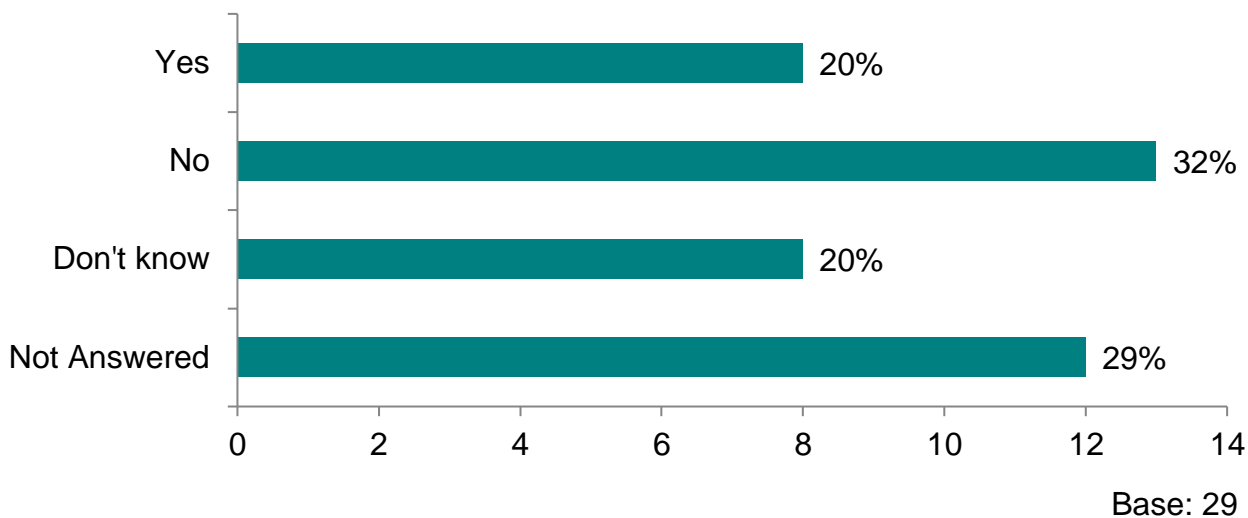
The first type of cost was of the most concern, with over a third of respondents (39%) to this question raising this. However, as several noted, these costs would be offset by the fact that small landholders have the opportunity to buy the land.

Lastly, one respondent stated that the process of selling and purchasing land may be burdensome to both land owners and small landholders, and have an impact on their relationship, which may lead to the loss of these holdings from the tenanted sector and the opportunities they offer to new entrants and start-ups.

5.Q Potential environmental impacts of the proposals

Figure 5.2 Potential environmental impacts of the proposals

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



Option	Total	Percent
Yes	8	19.51%
No	13	31.71%
Don't know	8	19.51%
Not Answered	12	29.27%

Respondents were asked if they were aware of any examples of potential impacts, either positive or negative, that they consider that any of the proposals in this consultation paper may have on the environment. A fifth (20%) said 'Yes', almost a third (32%) said 'No' and a fifth said 'Don't know' (20%). Almost a third (30%) did not answer the question.

Respondents were asked to give reasons for their answer and a total of 16 did so.

Key findings

Almost a third (32%) of respondents said they were not aware of any potential impacts that any of the proposals in this consultation paper may have on the environment. A fifth (20%) said they were, and a fifth were unsure.

Potential **positive** environmental impacts identified by respondents included: may speed up the decision-making process for environmental activities; tenants with greater security will invest more into their holdings and be more likely to participate in environmental schemes, and; the environmental benefits of keeping small landholdings occupied, from local food production to sustainable land management.

Other respondents identified potential **negative** impacts, largely in terms of the loss of small landholdings and the neglect or mis-use of agricultural land.

Lastly, several respondents stated that the consultation proposals were not relevant to this topic, and did not cover issues around land use and the environment.

A group of respondents felt that giving small landholders the right to buy would lead to positive environmental impacts, including through diversification.

Potential positive environmental impacts identified by respondents included:

- the changes may speed up the decision-making process for relevant projects, for example those addressing biodiversity and the climate;
- giving more rights to tenants will improve soil and water management, and tree growing;
- tenants with greater security will invest more into their holdings and be more likely to participate in environmental schemes.
- the environmental benefits of keeping small landholdings occupied, producing high quality local food and managing the land to reach its environmental potential, for example sustainable grazing of peatlands.

Respondents also stated that this would depend on the small landholder's behaviour, the future use of the land and its new owner, and that any changes may be minimal if the existing occupier stays on the land after purchasing it.

Other respondents identified potential negative impacts, largely in terms of the loss of small landholdings and the neglect or mis-use of agricultural land. For example, one respondent felt that the proposals could have a negative environmental impact depending on the future use of this land and its buildings once it changes tenure.

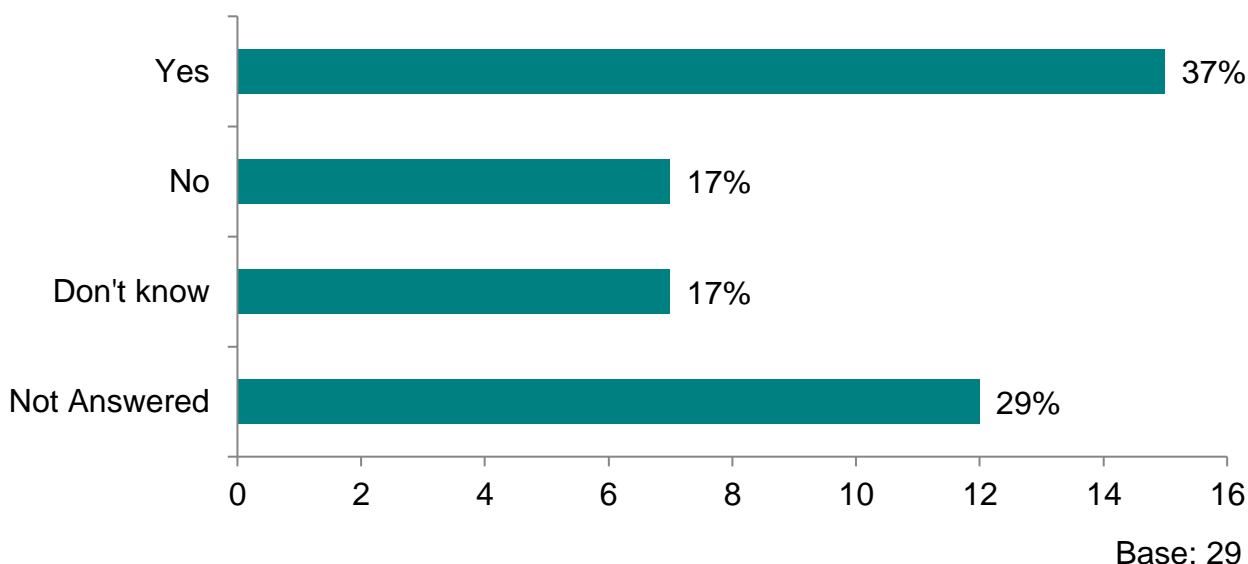
One organisation stated that introducing a right-to-buy without statutory requirements to cultivate and maintain could lead to neglect and misuse of good land, and could be detrimental for the climate and nature particularly in terms of High Nature Value (HNV) farmland that relies on extensive agricultural practices.

Lastly, several respondents stated that the consultation proposals were not relevant to achieving net zero, or did not cover issues around land use and the environment.

5.R Potential current or future impacts on young people

Figure 5.3 Potential current or future impacts on young people

Q. Are you aware of any examples of particular current or future impacts, positive or negative, on young people, of any aspect of the proposals in this consultation paper?



Option	Total	Percent
Yes	15	36.59%
No	7	17.07%
Don't know	7	17.07%
Not Answered	12	29.27%

Respondents were asked if they were aware of any examples of particular current or future impacts, positive or negative, on young people, of any aspect of the

proposals in this consultation paper. Over a third (37%) said 'Yes', almost a fifth (17%) said 'No' and the same number said 'Don't know' (17%). Almost a third (29%) did not answer the question.

Respondents were asked to give reasons for their answer and a total of 16 did so.

Key findings: Over a third (37%) of respondents said they were aware of current or future impacts on young people due to the proposals in this consultation paper. Around a fifth (17%) were not aware of any impacts.

Whilst some respondents felt the proposals would have a **positive** impact on young people in terms of opportunities for new entrants, others felt the proposals would have a **negative** impact in the longer-term, for example by leading to a reduction in opportunities for new entrants and the availability of land.

Positive impacts identified by respondents included:

- Securing the future of small landholdings for young people.
- Land reform, including greater diversification of land ownership, for local residents of all ages.
- The partial benefits to rural depopulation in keeping small landholdings occupied, for example in retaining those in younger age groups.
- Changes to succession could benefit younger people, giving access through inheritance to rural employment and careers.
- Giving great rights to small landholders will encourage the next generation to maintain an interest in the holdings.
- Affordable housing and the availability of small landholdings for future generations.

On the first point, several respondents felt that giving more opportunities to tenants to buy and subsequently sell their land will increase availability on the market to new and young farmers. As one noted, this will help to break up large estates, and make smaller, more affordable plots of land available to young people. They felt this would make a positive contribution to wider land reform in Scotland through greater diversification of land ownership. As one individual stated:

The proposals discussed will help secure the future of small landholdings which could prove to be an ideal stepping stone into agriculture and land management.

In contrast to above, several respondents felt that the proposals would lead to a reduction in opportunities for new entrants and start-up businesses, in terms of the

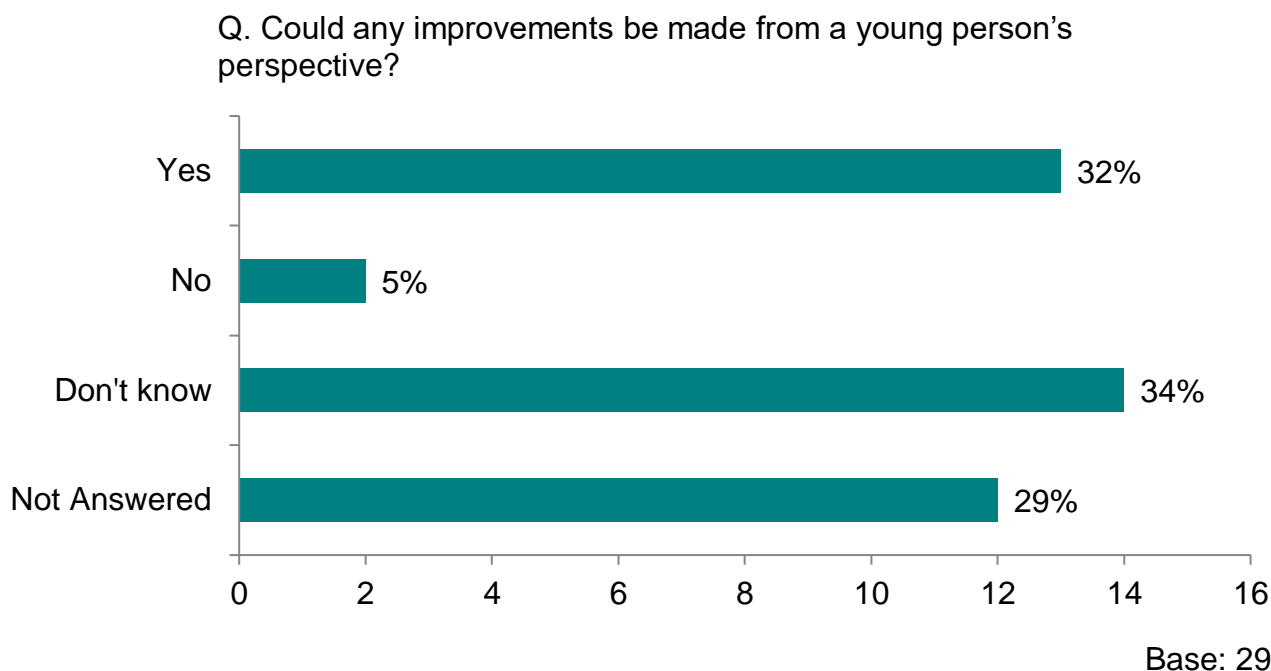
availability of land. They felt that a reduction in the number of small landholdings available to let would mean less opportunities for young people to have a career in land management, and to join the industry. Respondents also noted longstanding rural issues, including employment and transport, and challenges faced by new entrants, including accessing funding to buy and lack of steady income.

One organisation noted that the separation of houses from the holding may make access to small landholdings more difficult for new entrants including young people, with significant shortages of housing in rural areas. Additionally, where land is purchased and made available on open markets (with competing claims for use) this will limit access to land for a new generation of small landholders.

As one organisation noted, the proposed changes relate to a particular group of small landholders and may benefit young people only in terms of potential successors who wish to acquire the land for residential, not agricultural use.

5.S Potential improvements from a young person’s perspective

Figure 5.4 Potential improvements from a young person’s perspective



Option	Total	Percent
Yes	13	31.71%
No	2	4.88%
Don't know	14	34.15%
Not Answered	12	29.27%

Respondents were asked if they thought any improvements could be made from a young person’s perspective. Around a third (32%) said ‘Yes’, 5% said ‘No’ and over a third (34%) said ‘Don’t know’. Almost a third (29%) did not answer the question. Respondents were asked to give reasons for their answer and a total of 17 did so.

Key findings: Almost a third (32%) of respondents thought improvements could be made from a young person’s perspective. Only a small number (5%) said ‘No’.

Respondents focused on several key topics in their answers: the need to simplify the small landholding system; support for new entrants and the need to broaden access to land and tenancy opportunities within the agricultural sector.

Their responses can be summarised as follows:

- Support for new entrants, for example in terms of training, financial support, grants, access to land.
- Simplify the small holding system, by bringing it into line with crofting or other agricultural tenancies.
- Succession, including encouraging succession and assignation, and relaxing planning to enable tenants to build retirement accommodation.
- Thinking about how to expand agricultural letting, beyond protecting the rights of existing tenants.

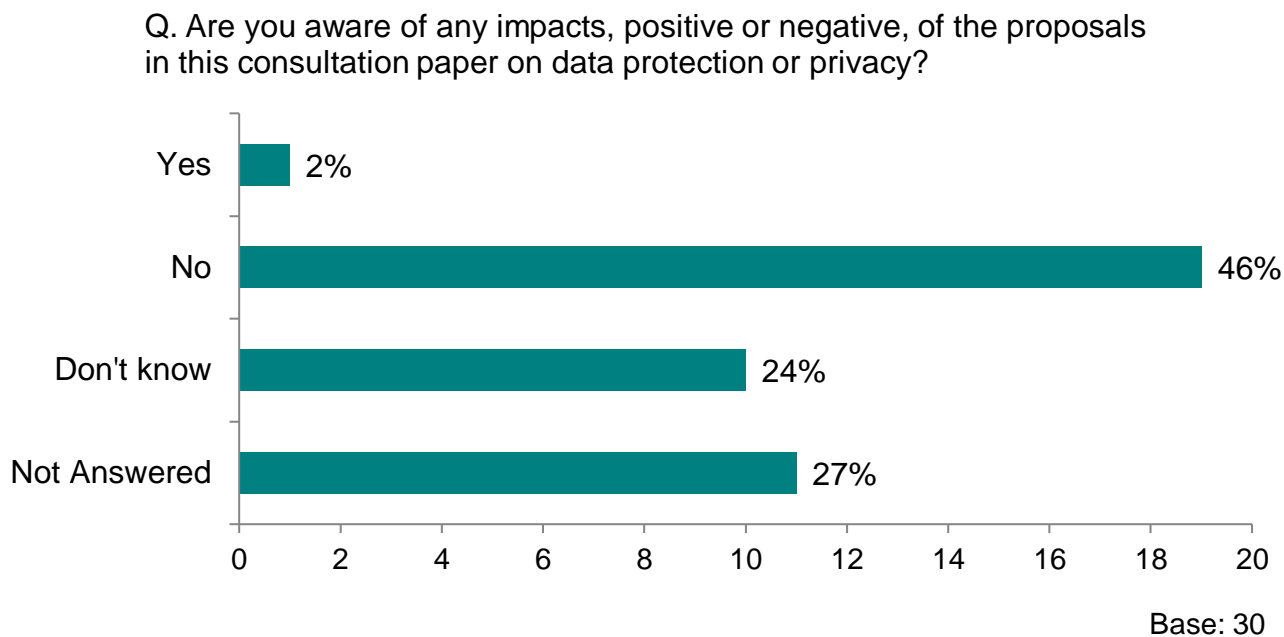
In terms of support for new entrants, respondents' suggestions included: training and financial support, including grants for housing or livestock; start up subsidies, like an Apprenticeship Scheme; a national mortgage set at a fixed rate for the term of the mortgage; land reform and the need for wider access to land. As one noted, this is important in the current economic climate and the cost of living crisis.

In terms of simplifying the system, by bringing it into line with crofting or other agricultural tenancies, respondents stated that this would help to protect the land's capacity in terms of food production and environmental value, and increase the availability of small holdings for young people.

5.T Potential impacts on data protection or privacy

Key findings: Around half of respondents (46%) were not aware of any impacts of the proposals on data protection or privacy, and a quarter (24%) were unsure. No detailed responses were given to this question.

Figure 5.5 Potential impacts on data protection or privacy



Option	Total	Percent
Yes	1	2.44%
No	19	46.34%
Don't know	10	24.39%
Not Answered	11	26.83%

Respondents were asked if they were aware of any impacts, positive or negative, of the proposals in this consultation paper on data protection or privacy. One respondent (2%) said 'Yes', around half (46%) said 'No' and a quarter (24%) said 'Don't know'. Almost a third (27%) did not answer the question.

No further responses were provided by respondents.

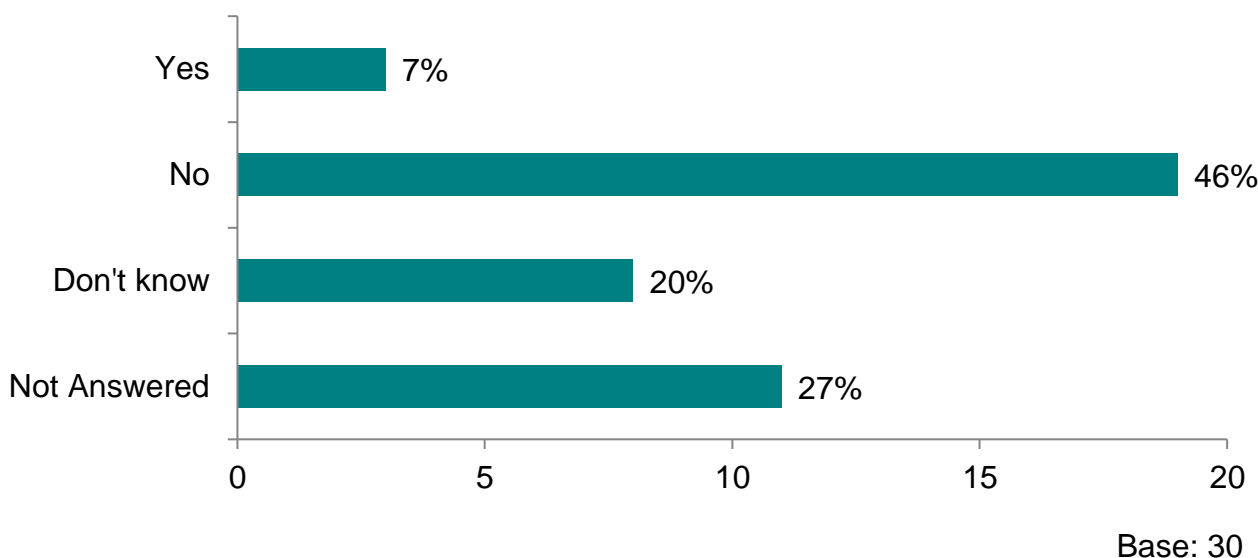
5.U Potential impacts on those with protected characteristics

Key findings: Around half of respondents (46%) said they were not aware of any examples of how the proposals in this consultation paper may impact those with protected characteristics. 7% said 'Yes' and a fifth (20%) were unsure.

Respondents raised several points: succession, and the positive impacts of widening opportunities in rural areas; the importance of protecting the rights of all small landholders; the potentially negative impacts of a loss of small landholding tenancies on diversity in the agricultural sector and in rural areas; the potential for discrimination toward small landholders with protected characteristics.

Figure 5.6 Potential impacts on those with protected characteristics

Q. Are you aware of any examples of how the proposals in this consultation paper may impact, either positively or negatively, on those with protected characteristics?



Option	Total	Percent
Yes	3	7.32%
No	19	46.34%
Don't know	8	19.51%
Not Answered	11	26.83%

Respondents were asked if they were aware of any examples of how the proposals in this consultation paper may impact, either positively or negatively, on those with protected characteristics.⁶ A small number (7%) said 'Yes', around half (46%) said 'No' and a fifth (20%) said 'Don't know'. Around a quarter (27%) did not answer the question. Respondents were asked to give reasons for their answer and a total of 10 did so. They raised the following points:

- Succession, and the positive impacts of widening opportunities for other groups in rural areas;
- The importance of protecting the rights of small landholders to use the land, including those with protected characteristics;
- This issue is less relevant as the consultation is about how small holding land is held not by whom.

One organisation stated that the proposed changes could have a negative impact on those with protected characteristics by leading to a loss of small landholding tenancies out-with crofting areas, restricting opportunities for greater diversity in the small-scale agricultural sector and rural areas more widely.

One respondent raised concerns around the potential for discrimination in asking landlords to judge the 'character' of landholders, and how this may impact the relationship between landlords and tenants with protected characteristics.

⁶ Age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

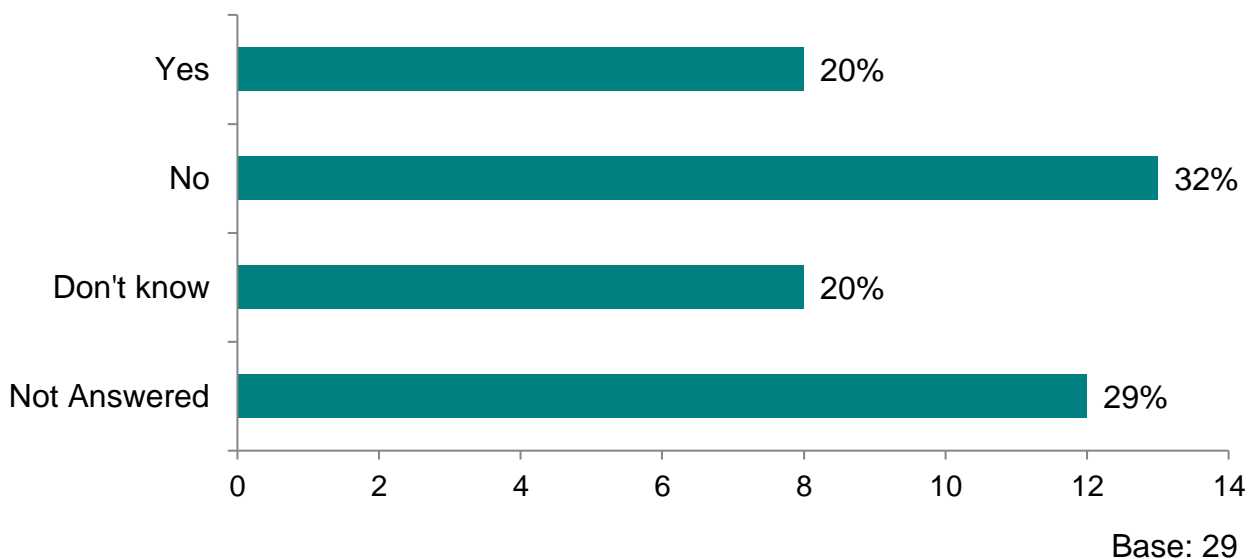
5.V Potential impacts on groups or areas experiencing socioeconomic disadvantage

Key findings: Around a third (32%) of respondents said they were not aware of any examples of how the proposals might have particular impacts on groups or areas experiencing socioeconomic disadvantage. A fifth (20%) said they were aware of potential impacts and a fifth were unsure.

Respondents noted potential positive impacts including: benefits to rural communities and services; benefits to small landholders experiencing socioeconomic disadvantage, through introducing a right to buy. One potentially negative impact was the decline of small agricultural tenancies, which could restrict access to rural land for small-scale and local food production.

Figure 5.7 Potential impacts on groups or areas experiencing socioeconomic disadvantage

Q. Are you aware of any examples of how the proposals in this consultation paper might have particular positive or negative impacts on groups or areas experiencing socioeconomic disadvantage?



Option	Total	Percent
Yes	8	19.51%
No	13	31.71%
Don't know	8	19.51%
Not Answered	12	29.27%

Respondents were asked if they were aware of any examples of how the proposals in this consultation paper might have particular positive or negative impacts on groups or areas experiencing socioeconomic disadvantage. Around a third (32%) said 'No', a fifth (20%) said 'Yes', a fifth said 'Don't know' and around a third (29%) did not answer the question.

Respondents were asked to give reasons for their answer and a total of 12 did so.

Potential positive impacts identified by respondents were:

- Benefits to small landholders currently experiencing socioeconomic disadvantage, for example through introducing a right to buy.
- Addressing economic inequality between tenants and landlords.
- Succession should be opened out to all to widen opportunity.
- Positive financial benefits, to rural economies and investment
- Wider benefits, for example to rural communities and services, through population retention.

Several respondents noted the potential benefits to rural communities and their economies through population retention, including supporting local services such as schools, housing and transport.

One organisation noted a potential negative impact, stating that the proposals in this consultation could lead to a decline of small agricultural tenancies outside of the crofting areas, and could further restrict access to land for small-scale and local food production in rural and remote areas.⁷

⁷ Note: Question 5.W stated 'Please note these could be households with low incomes or few resources; families struggling to make ends meet; people who experienced poverty while growing up; or areas with few resources or opportunities compared with others.' This was included as a question as an error and no further relevant responses were given.

5.X Potential impacts of the proposals on island communities

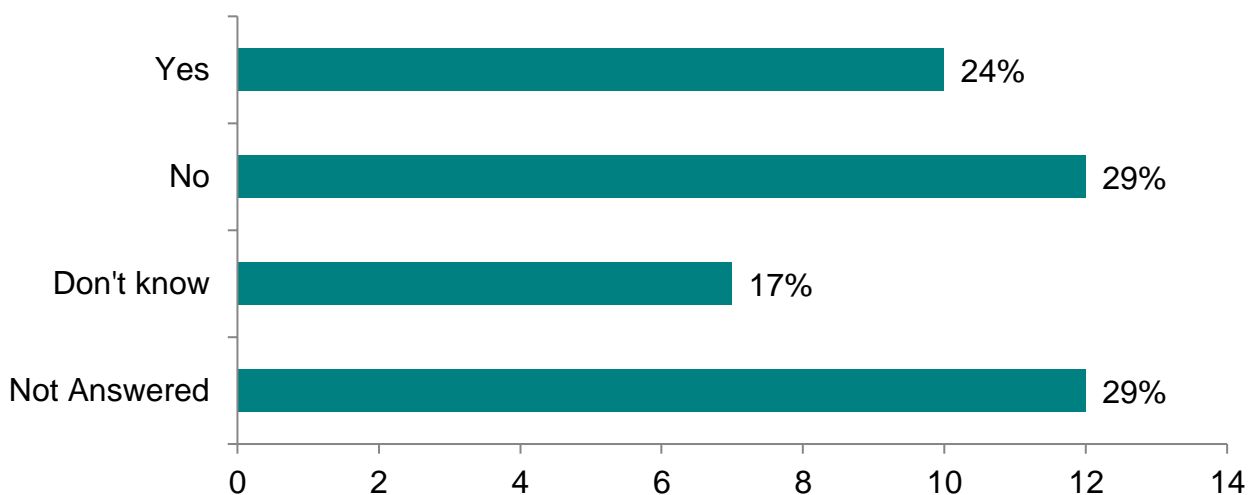
Key findings: Almost a third (29%) of respondents were not aware of any examples of any potential differential impact of the proposals on island communities. Around a quarter (24%) said they were aware of potential impacts and 17% were unsure.

Respondents raised a number of **wider points**, including the need for fairness and consistency across mainland and island holdings, and to protect island small landholdings for future generations.

They also identified a number of **potential benefits** of the proposals to island communities in terms of: increasing access to employment and housing; bringing in new residents; and small landholders on islands more control over their future.

Figure 5.8 Potential impacts of the proposals on island communities

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



Base: 29

Option	Total	Percent
Yes	10	24.39%
No	12	29.27%
Don't know	7	17.07%
Not Answered	12	29.27%

Respondents were asked if they were aware of any examples of how the proposals in this consultation paper might impact, positively or negatively, on island communities in a way that is different from the impact on mainland areas. Around a quarter (24%) said 'Yes', almost a third (29%) said 'No', and a smaller number (17%) said 'Don't know'. Almost a third (29%) did not answer the question. Respondents were asked to give reasons for their answer and a total of 15 did so.

Respondents made a number of wider comments in answering this question:

- Small landholdings play an important role in island economies.
- Island communities are more sensitive to depopulation and the rural economy will benefit from new people and increased investment.
- There is a potential for different outcomes in terms of the extent to which small landholders on islands are able to capitalise on financial opportunities, for example in terms of developing and selling the land.
- There is an opportunity to give small landholders on islands access to further support and benefit communities if brought within the crofting framework.
- Depends on what is being produced and how it is being sold.
- Need for fairness and consistency across mainland and island holdings.
- The need to protect island small landholdings for future generations.
- Wider issues in rural and island areas including access to affordable housing.

Respondents identified potential benefits to island communities in terms of:

- Increasing access to employment and affordable housing.
- Bringing in new residents as small landholding tenants.
- Addressing inequalities between the mainland and islands by giving small landholders on islands more opportunities and control over their future.

However, one organisation raised concerns in terms of the proposals potentially leading to a decline of small landholding tenancies on Arran, a designated crofting area. As they stated, this would restrict access to land and opportunities for young people in areas of High Nature Value. They recommended that a study should be done to examine the potential impacts of converting small landholdings into crofts, for example on tenant's rights, as opposed to the proposals put forward in this consultation.

6. Conclusion

This report has outlined the findings of the Small Landholdings Modernisation Consultation held in 2022-23.

The key findings in relation to each of the five sections are as follows:

1. Right to buy

Overall, respondents were broadly supportive of the proposals in this section of the consultation paper, including that providing small landholders with the absolute right to buy the land under their homes and gardens could give them greater security, allow them to invest into their small landholding and business with confidence, and could help to reduce rural depopulation in these communities.

2. Diversification

There was broad support for small landholders' ability to diversify their activities on their landholdings, with the majority of respondents (83%) agreeing that small landholders should be able to do so. Respondents' views on the other proposals in this section were more mixed. Over a third felt that small landholders should not require their landlord's permission in advance of diversifying their activities and a similar number did not agree that small landholders should have to go to the land court if the landlord does not consent to their diversification.

3. Assignment and succession

Respondents' views on the proposals in this section of the consultation paper were also mixed. However, over half agreed that the legislation setting out who can be assigned or succeed a small landholding should be updated to have similar rights as tenant farmers with secure 1991 Act tenancies. There was less clear support for the proposal that a landlord should be able to object to the person the small landholder wishes to be assigned the small landholding or to succeed it.

4. Access to an umbrella body

Overall, respondents were broadly supportive of the proposals in this section of the consultation paper. The majority agreed that small landholders and their landlords should have access to a public body, and that if a small landholder and their landlord have a disagreement, the public body should be able to mediate.

5. Additional considerations and potential impacts

Respondents made a number of suggestions in terms of further potential changes to small landholding legislation, including: changes to agricultural tenancy types; support for new entrants; and recognising the role that small landholdings can play in meeting climate and biodiversity goals due to their scale.

No significant potential impacts on specific groups were identified by respondents in the final section, but concerns were raised in terms of the impact of a decline in small landholding tenancies on specific groups including young people, those with protected characteristics, and on the wider diversity of the agricultural sector.

This report has outlined the findings of the Small Landholdings Modernisation Consultation held in 2022-2023.

Respondents to the consultation shared their views on a set of proposed legislative reform measures relating to the following parts of small landholdings legislation:

1. Right to buy
2. Diversification
3. Assignment and succession
4. Access to an umbrella body

Overall, respondents were supportive of the proposals in relation to sections 1 and 4, on the right to buy and access to an umbrella body, but held mixed views on the proposals in relation to sections 2 and 3 on diversification, assignment and succession. There was also a lack of consensus among respondents in terms of specific issues such as the introduction of a clawback provision.

More broadly, one group of respondents to the consultation were in favour of bringing small landholdings in line with crofting legislation, whilst other respondents were in favour of alignment with Agricultural Holdings Act 1991 tenancies. Several organisations emphasised the need for clarity to address a lack of understanding around small landholdings legislation, and the mixture of proposals set out above.

No significant potential impacts on specific groups were identified by respondents in the final section, but concerns were raised in terms of the impact of a decline in small landholding tenancies on specific groups including young people and those with protected characteristics, and on the wider diversity of the agricultural sector. The main conclusions in relation to each section are set out below.

1. Right to buy

Overall, respondents were broadly supportive of the proposals in this section of the consultation paper. The majority agreed that providing small landholders with the absolute right to buy the land under their homes and gardens could give them greater security, allow them to invest into their small landholding and business with confidence, and could be beneficial in reducing rural depopulation in communities with small landholdings in them.

Respondents identified a range of potential benefits, from creating fairness across all types of secure land tenure in Scotland, to increasing tenants' ability to invest in and plan their business; and environmental benefits. Those who disagreed raised potential issues including practical difficulties, financial risk for land owners, a reduction in opportunities for new entrants, and a wider negative impact on the tenanted sector.

Respondents were also broadly supportive of the other proposals in this section, including that small landholders should have the opportunity to purchase their small landholding if their landlord gives notice or takes action to transfer the land for sale or transfer, and that the most appropriate and fair valuation for the right to buy the land under the home and garden should be decided by a valuer appointed in agreement by the small landholder and their landlord, or failing this, an independently appointed one.

There was less consensus in terms of the introduction of a clawback provision. Whilst some respondents felt it would help to ensure long-term stability within rural communities, and prevent land being purchased for the wrong reasons, others felt there is no need for this provision if the sale price is fair, and that it would be difficult to apply fairly and consistently. There was also no broad consensus amongst respondents in terms of how the clawback should be calculated or the length of time it should apply. There was also no consensus in terms of how the valuation of the right to buy the land under the home and the garden site should be calculated to provide fairness for both the small landholder and their landlord. These practical issues should be given further consideration, taking the range of issues raised by respondents to the consultation into account.

2. Diversification

There was broad support for small landholders' ability to diversify their activities on their landholdings, with the majority of respondents (83%) agreeing that small

landholders should be able to do so, noting potential benefits for rural communities and the positive environmental impacts this may have.

However, respondents' views on the other proposals in this section were more mixed. Over a third stated that small landholders should not require their landlord's permission in advance of diversifying their activities, whilst a slightly lower number said they should. For the second group, which included a number of organisations, this was particularly important in terms of long-term land-use change. In terms of whether there should be a set timescale for landlords' permission, respondents' views were also mixed.

Around a third of respondents did not agree that the small landholder should have to go to the land court if the landlord does not consent to their diversification, whilst just over a quarter agreed that they should.

3. Assignment and succession

Respondents' views on the proposals in this section of the consultation paper were also mixed. Over half of respondents agreed that the legislation setting out who can be assigned or succeed a small landholding should be updated to have similar succession and assignment rights as tenant farmers with secure 1991 Act tenancies. However, almost a quarter disagreed. Some respondents instead felt this should be done in line with crofting law, whilst others highlighted the need for consistency across all types of agricultural tenancies.

Almost half of respondents agreed that a landlord should be able to object to the person the small landholder wishes to be assigned the small landholding or to succeed it. Just under a third disagreed. In terms of objection grounds, respondents felt that landlords should consider factors including: the person's character and interest in agriculture; competency, knowledge and qualifications, and; financial capability and sufficient resources.

Respondents on both sides felt that there should be provisions in place to prevent discrimination against specific groups (for example, in use of the criteria that the successor is of 'good character'). Several felt there was scope for different interpretations of the criteria and misuse of grounds for objection.

4. Access to an umbrella body

Overall, respondents were broadly supportive of the proposals in this section of the consultation paper. The majority agreed that small landholders and their landlords

should have access to a public body, and that if a small landholder and their landlord have a disagreement, the public body should be able to mediate.

5. Additional considerations and potential impacts

When asked to give their views on further potential changes to small landholding legislation to support small landholders and their landlords, respondents raised a number of issues, including: changes to agricultural tenancy types; support for new entrants; and the role that small landholdings can play in meeting climate and biodiversity goals due to their scale. These wider issues should be considered as part of any legislative reforms.

Respondents identified a number of potential costs and burdens, largely in terms of: the costs of purchasing the land; the wider cost of new legislation and regulations, and the loss of small landholdings and opportunities for new entrants. In terms of further impacts in specific areas, the results were as follows:

- **Environmental impacts** - respondents identified positive impacts, including diversification and greater participation in environmental schemes, and potential negative impacts in terms of the loss of small landholdings and the effective management of agricultural land.
- **Young people** - respondents' views were varied, ranging from positive impacts in terms of opportunities for new entrants, to negative impacts such as a reduction in land availability. Improvements that respondents felt could be made from a young person's perspective included: simplifying the small landholding system; support for new entrants and broadening access to land and tenancy opportunities.
- **Those with protected characteristics** - respondents raised issues such as succession, the need to widen opportunities in rural areas; the importance of protecting the rights of all small landholders; the potentially negative impacts of the loss of small landholding tenancies on diversity in the agricultural sector and in rural areas.
- **Groups or areas experiencing socioeconomic disadvantage** - respondents noted potential benefits to rural communities and to small landholders experiencing socioeconomic disadvantage, but raised concerns in terms of the impact of a decline in small agricultural tenancies.
- **Island communities** - respondents identified largely positive benefits including increasing employment opportunities, bringing in new residents; and giving small landholders on islands more control over their future.

This consultation has provided an insight into the views of small landholders, landlords and a range of agricultural organisations on the Scottish Government's proposals to modernise small landholdings. The findings outlined in this report will inform our work to modernise small landholdings legislation.

Recommendations

A series of recommendations can be drawn from the consultation findings:

1. Small landholders should be given the absolute **right to buy** the land under their homes and gardens, as this could give them greater security, allow them to invest into their small landholding and business with confidence, and is likely to have wider benefits for rural communities and a positive environmental impact.
2. Small landholders should have the **opportunity to purchase** their small landholding if their landlord gives notice or takes action to transfer the land containing the small landholding for sale or transfer to another company or trust.
3. Consideration should however be given to the impact of this change on the wider tenanted sector, with practical support for landlords and their tenants. There should also be a specific focus on creating opportunities for **new entrants**, to ensure fairness of opportunity for young people and the wider diversity of the sector.
4. Further consideration should be given to the introduction of a **clawback provision**, and how to ensure that it is applied fairly and consistently.
5. Small landholders should be able to **diversify** their activities on landholdings, as this could provide benefits both to rural communities and to the environment. If they are required to gain their landlord's permission, a clear **timescale** should be set to enable small landholders to progress with planned activities.
6. In terms of landlords' ability to **object** to the person the small landholder wishes to be assigned the small landholding or to succeed it, the criteria should be clearly outlined and provisions should be put in place to prevent different interpretations of the criteria and any discrimination against specific groups.
7. Small landholders and their landlords should have access to a **public body**, which should produce guidance and codes of practice. This body should be able to **mediate** if a small landholder and their landlord have a disagreement, however consideration should be given in terms of how to ensure its neutrality.
8. Further **issues of importance** to respondents, including wider changes to agricultural tenancy types, support for new entrants, and the role that small landholdings can play in meeting climate and biodiversity goals, should be considered and prioritised as part of any legislative reforms.

Annex 1. Small landholding legislation

Small landholding legislation:

- Crofters Holdings (Scotland) Act 1886 (the “1886 Act”)
- Crofters Common Grazings Regulation Act 1891 (the “1891 Act”)
- Congested Districts (Scotland) Act 1897 (the “1897 Act”)
- Crofters Common Grazings Regulation Act 1908 (the “1908 Act”)
- Small Landholders (Scotland) Act 1911 (the “1911 Act”)
- Small Holdings Colonies Acts of 1916 (the “1916 Act”)
- Small Holdings Colonies (Amendment) Act of 1918 (the “1918 Act”)
- Land Settlement (Scotland) Act 1919 (the “1919 Act”)
- Small Landholders and Agricultural Holdings (Scotland) Act 1931 (the “1931 Act”)

Key documents

[Review of Agricultural Holdings Legislation Final Report \(2015\)](#)

[Small landholdings in Scotland: legislation review - gov.scot \(2016\)](#)

[Sustainable and regenerative farming - next steps: statement - gov.scot \(2022\)](#)

Annex 2. Consultation questions

Small Landholdings Modernisation Consultation

1. Right to Buy

- A. Do you agree that providing small landholders with the right to buy the land under their homes and their gardens could give small landholders greater security and allow them to invest into their small landholding and business with confidence?

- Strongly agree
- Agree
- Neither
- Disagree
- Strongly disagree

Please give reasons for your answer:

- B. Do you agree that giving small landholders the right to buy the land under their homes and garden could be beneficial in reducing rural depopulation for the communities with small landholdings in them?

- Strongly agree
- Agree
- Neither
- Disagree
- Strongly disagree

Please give reasons for your answer:

- C. Do you agree that small landholders should have the opportunity to purchase their small landholding if their landlord gives notice or takes action to transfer the land containing the small landholding for sale or transfer to another company or trust?

- Strongly agree
- Agree
- Neither
- Disagree

Strongly disagree

Please give reasons for your answer:

D. Do you agree that a clawback provision should be introduced to ensure fairness for the landlord if a small landholder who previously purchased the land under their home and garden or their small landholding and subsequently sells either of these within a specific timeframe?

- Strongly agree
- Agree
- Neither
- Disagree
- Strongly disagree

E. How do you think this clawback should be calculated and what length of time should the clawback apply to?

Please give reasons for your answer:

F. Do you agree that the most appropriate and fair valuation for the right to buy the land under the home and garden should be decided by a valuer appointed in agreement by both the small landholder and their landlord, or failing both of them agreeing a valuer, one would be independently appointed? The small landholder will be legally required to meet the cost of the valuation.

- Strongly agree
- Agree
- Neither
- Disagree
- Strongly disagree

Please give reasons for your answer:

G. How should the valuation of the right to buy the land under the home and the garden site be calculated to provide fairness for both the small landholder and their landlord?

Please give reasons for your answer:

2. Diversification

H. Do you agree that small landholders should be able to diversify their activities on their landholdings?

- Strongly agree
- Agree
- Neither
- Disagree
- Strongly disagree

Please give reasons for your answer:

I. Should small landholders require their landlord's permission in advance of diversifying their activities?

- Yes
- No
- Don't know

If yes, should that permission have a set timescale that a landlord is required to meet?

Please give reasons for your answer:

J. Do you agree that if the landlord does not consent to the small landholder's diversification the small landholder should have to go to the land court?

- Strongly agree
- Agree
- Neither

- Disagree
- Strongly disagree

If you disagree what alternative do you propose?

Please give reasons for your answer:

3. Assignment and Succession

K. Do you agree that the legislation setting out who can be assigned or succeed a small landholding should be updated to have similar succession and assignment rights as tenant farmers with secure 1991 Act tenancies?

- Strongly agree
- Agree
- Neither
- Disagree
- Strongly disagree

Please give reasons for your answer:

L. Do you agree that a landlord should be able to object to the person the small landholder wishes to be assigned the small landholding or to succeed it? If so what should those objection grounds be?

- Strongly agree
- Agree
- Neither
- Disagree
- Strongly disagree

Please give reasons for your answer:

Access to an umbrella body

M. Do you agree that small landholders and their landlords should have access to a public body (in a similar way that tenant farmers and their landlords have for agricultural tenancies)?

- Strongly agree
- Agree
- Neither
- Disagree
- Strongly disagree

Please give reasons for your answer:

N. If a small landholder and their landlord have a disagreement should the body be able to mediate?

- Strongly agree
- Agree
- Neither
- Disagree
- Strongly disagree

Please give reasons for your answer:

Additional considerations

O. Is there anything else you think should be changed in the current small landholding legislation to modernise small landholdings, so they can play their part helping to tackle the climate and biodiversity crises and for Scotland to reach Net Zero by 2045?

If yes, please use this text box to provide reasoning for your answer:

Assessing the impact

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

- Yes
- No
- Don't know

If yes, please give reasons:

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

- Yes
- No
- Don't know

If yes, please give reasons:

R. Are you aware of any examples of particular current or future impacts, positive or negative, on young people, of any aspect of the proposals in this consultation paper?

- Yes
- No
- Don't know

If yes, please give reasons:

S. Could any improvements be made from a young person's perspective?

- Yes
- No
- Don't know

If yes, please give reasons:

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

- Yes
- No
- Don't know

If yes, please give reasons:

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

- Yes
- No
- Don't know

If yes, please give reasons:

V. Are you aware of any examples of how the proposals in this consultation paper might have particular positive or negative impacts on groups or areas experiencing socioeconomic disadvantage?

- Yes
- No
- Don't know

If yes, please give reasons:

W. Please note these could be households with low incomes or few resources; families struggling to make ends meet; people who experienced poverty while growing up; or areas with few resources or opportunities compared with others.

- Yes
- No
- Don't know

If yes, please give reasons:

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

- Yes
- No
- Don't know

If yes, please give reasons:

Annex 3. Coding framework example

Table 2 provides an example taken from the coding framework, and lists the codes and sub-codes used to analyse responses to question 1a:

- ‘Do you agree that providing small landholders with the right to buy the land under their homes and their gardens could give small landholders greater security and allow them to invest into their small landholding and business with confidence? Please give reasons for your answer.’

Table 2. Coding framework example

Codes	Sub-codes
Agricultural tenancy points	<ul style="list-style-type: none"> • Need for alignment with crofting legislation • Incompatibility with current legislation in crofting counties • Need for a Relinquishment Provision • Small landholders already have enough security • It will make no difference • Will depend on small landholders’ use of this opportunity • Need for fairness across different types of land tenure • Need for simplicity and consistency • Pre-emptive right to buy would enable better estate management and decision making • Risk of uncertainty about which regime small landholders are operating under • How would the right to buy be recorded • Importance of listening to those directly affected
Specific points, for example financial aspects, upkeep of buildings	<ul style="list-style-type: none"> • Will encourage upkeep of buildings • Ability to invest financially, plan business - greater security and stability • This would help small landholders gain financial support, for example loans, mortgage • Expense / labour in maintaining buildings • Potential impact on landowner / estate • Critique of landlords, for example absent landlords
Long-term impacts	<ul style="list-style-type: none"> • Environmental benefits of improvements • Longer term impact - sale of land in future • Will no longer be a small holding - long-term impact and future issues, for example in separating house and land • Not in the best interests of the tenanted sector • Impact on new entrants, future tenants and so on.
Queries	<ul style="list-style-type: none"> • Query - more information requested



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