

# Strategic Environmental Assessment of Agricultural Tenancies, Small Landholdings and Land Management Tenancy Proposals: Consultation Report



**AGRICULTURE, ENVIRONMENT AND MARINE**

# Strategic Environmental Assessment of Agricultural Tenancies, Small Landholdings and Land Management Tenancy Proposals: Consultation Report



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## Acronyms

LMT	Land Management Tenancy
NFUS	National Farmers Union Scotland
NGO	Non-governmental organisation
RESAS	Rural & Environmental Science and Analytical Services
SEA	Strategic Environmental Assessment
SG	Scottish Government
TFC	Tenant Farming Commissioner

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# Highlights

## Why was the research needed?

The [Scottish Agricultural Census](#) shows that 22% of agricultural land in Scotland is tenanted (June, 2021). As part of its [Vision for Agriculture](#), the Scottish Government is committed to ensuring that tenant farmers, smallholders, crofters, new entrants and land managers are enabled to contribute towards delivering this vision.

## What did we do?

An online consultation was open for responses in 2023 as part of a Strategic Environmental Assessment of agricultural tenancies, small landholdings and land management tenancy proposals. The consultation received 12 responses in total, 5 from individuals (42%) and 7 from organisations (58%).

## What did we learn?

Respondents identified potential positive impacts on the climate, biodiversity and landscape for each set of proposals. In many cases they stated that this would depend on the scope and type of activities planned. Respondents were broadly supportive of proposals to modernise and update legislation and tenancy mechanisms to reflect modern farming practices, in the context of a wider move toward regenerative and sustainable agriculture. However, several noted the need to balance tenants' rights with landlords' long-term security.

In several areas, including the proposals for a new tenancy model, respondents stated that further guidance and consultation is needed. Wider points included: the need for a coordinated approach to land use to balance environmental considerations with issues such as agricultural costs, efficiency and food production, and; to consider the long-term risks of changes in land use or agricultural tenancies, for example in reducing the number of tenancies available to new entrants.

Across many of the proposals, respondents' views were mixed and a common answer was 'Don't know'. In several cases, participants stated that they did not fully understand the question or terminology used, or were unclear about the intended environmental impacts of the proposals.

## What happens now?

The findings will inform the Scottish Government's work to bring forward the proposals outlined in this report, as part of the new Land Reform Bill.

# Executive summary

## Policy context

Land is held in different ways in Scotland. The [Scottish Agricultural Census](#) demonstrates that 22% of agricultural land in Scotland is tenanted (June, 2021). The Scottish Government has outlined its [Vision for Agriculture](#), and is committed to ensuring that tenant farmers, smallholders, crofters, new entrants and land managers are effectively enabled to contribute towards delivering this vision, as part of the Scottish Government's [Agricultural Reform Route Map](#).

This report outlines the results of a consultation held as part of a Strategic Environmental Assessment of agricultural tenancies, small landholdings and land management tenancy proposals. The consultation responses will be used to inform changes to legislation, including the Agricultural Holdings (Scotland) Act 1991.

## Consultation method

The [consultation](#) was open from October-December 2023 and received a total of 12 responses, 5 from individuals (42%) and 7 from organisations (58%). Responses were received from individual farmers, industry bodies and wider organisations.

The consultation asked about: Diversification; Agricultural Improvements; Rules of Good Husbandry and Estate Management; Small Landholdings Diversification and Right to Buy; and proposals for a new Land Management tenancy model. It also asked about their potential impact on:

1. Climate factors, Greenhouse Gas emissions and agricultural resilience;
2. Biodiversity, flora and fauna; and,
3. Landscape and the historic environment.

The consultation responses were analysed thoroughly and fairly. Consultation exercises are self-selecting in nature – people choose to respond, rather than being included as part of a considered sampling strategy. As such, the findings do not reflect the (weight or range of) views within the population as a whole. Some respondents have answered all questions, others focused on specific sections or repeated their answers. Some focused on specific issues in their responses.

The low response rate should be taken into account in considering the results of this consultation. It should also be noted that some respondents did not feel clear

about the intended environmental impacts of many of these proposals, or did not understand the questions.

## Summary of main findings<sup>1</sup>

### 1. Diversification (for non-agricultural activities)

The aim of this proposal is to give tenant farmers greater opportunity to diversify and undertake non-agricultural activities to help address the twin crises of climate change and biodiversity loss, whilst also supporting their business and profitability.

- Respondents held mixed views on the climate, biodiversity and landscape impacts of these proposals.
- Whilst some felt they would improve tenant farmers' ability to carry out activities with positive environmental or biodiversity impacts, others stated that diversification would not necessarily achieve this, and may be shaped by other factors such as profit.
- Others suggested these goals could be achieved in other ways, for example technological advancements in farming methods.
- Some potential benefits to the historic environment were highlighted, such as improving tenant farmers' ability to maintain historic monuments and improve public access to them, and restoring and preserving farm buildings.
- Others noted that certain types of activity, such as windfarms, are subject to debate about their impact on the landscape.
- In several cases, respondents stated that the impacts would depend on the scope and scale of the proposed diversification.
- Wider points raised included the need for a coordinated approach to land use and to consider the long-term risks of land use and tenancy changes.

### 2. Agricultural Improvements

The aim of the proposal is to give tenant farmers greater flexibility to implement agricultural improvements, and to contribute to delivering the Vision for Agriculture, through changes to Parts 1, 2 and 3 and a new Part 4, Schedule 5 of the 1991 Act.

- Almost half (42%) of respondents thought that giving farmers greater flexibility to implement agricultural improvements would have positive climate and biodiversity impacts. In their answers, respondents largely focused on the practical application of these proposals.

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<sup>1</sup> See Table 1 for a summary of the quantitative responses.



- They agreed with the need to modernise Schedule 5 of the 1991 Act (which includes Parts 1, 2 and 3, and list improvements that need notice, consent or neither of the two) to reflect modern farming practices, and felt that the new framework would provide certainty for tenants and landlords.
- Whereas some felt the compensation for improvement proposals would provide an incentive for tenants to invest in environmental measures, others felt it would not do so, as it would not be payable until the end of the tenancy.
- Respondents highlighted the need for Part 3 (which lists improvements that need neither consent nor notice) to remain a fixed list to give landlords certainty, and to update and regularly review the list of activities in Schedule 5. Others raised concerns about the risk of valuation disputes.
- Lastly, several organisations stated that clearer guidance on the Part 4 proposals is required, and were unclear about their practical application in certain contexts: for example, decreases in land value where carbon credits have been sold, with long-term liability.
- A third (33%) of respondents were unsure about the potential impacts on the landscape and historic environment, for example due to a lack of relevant knowledge, or not understanding the meaning of the question.

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

The aim of this proposal is to shift the current focus of the rules of good estate management and good husbandry from 'efficient production' to placing a greater emphasis on sustainable and regenerative agricultural activities.

- Respondents were broadly supportive of the proposal to shift from 'efficient production' to focus on sustainable and regenerative activities, agreeing that the rules of good husbandry should be modernised to reflect modern practices. Some argued that these proposals should be linked to the proposed Code of Practice on Sustainable and Regenerative Agriculture, and highlighted the need to include a requirement to record the baseline in a consistent way.
- Almost half (42%) of respondents agreed that this proposal would have positive impacts on the climate, landscape and historic environment, and a third (33%) that it would have positive biodiversity impacts.
- Others, however, noted that efficient production is how farmers make a profit, and is connected to issues such as food production and costs, so any regenerative agricultural activities would need to be financially sustainable.

## **Waygo**

The Scottish Government proposes to amend Schedule 5 of the Agricultural Holdings (Scotland) Act 1991 to enable a wider range of activities to be included as factors to be taken into consideration in calculating waygo, and to introduce a set timescale to conclude the process of waygo.

- Whilst responses to this question were limited, respondents were largely supportive of the proposals to alter ways of calculating waygo and agreed they could have positive environmental impacts, for example by giving tenants greater clarity on compensation for improvements and introducing a set timescale for the waygo<sup>2</sup> process.
- Others were less sure, for example highlighting a lack of clarity around the role of valuations, and concern about the loss of agricultural tenancies and the wider impacts this would have.

## **Rent Review**

This proposal is to repeal the rent provisions in the Land Reform (Scotland) Act 2016 and introduce a new rent calculation, as part of a new approach to rent reviews. This will include balancing these factors: 1. Comparable rents for secure or fixed duration tenancies; 2. Assessment of the earnings potential by means of a farm budget; and 3. Consideration of economic outlook for the next 3 years.

- Respondents raised points including the importance of revising the rent review approach to ensure it is fit for purpose in the new agricultural policy context, and of balancing different considerations to ensure the proposals have a positive environmental impact, from tenants' requirements for affordable rents to incentivising landlords to retain agricultural land.
- Other respondents were less positive, highlighting a number of areas that require further guidance, including how the proposals will deal with statutory improvements to the land or fixed equipment. Several felt there was a lack of clarity on how these proposals aim to address climate change.

## **Game Damage Compensation**

This proposal aims to modernise the compensation for game damage provisions to clarify elements and enable tenant farmers to claim compensation for losses other than damage to crops (for example, damage to livestock, trees planted for different

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<sup>2</sup> Waygo is the effective date or termination date on a notice of intention to quit or a notice to quit of an agricultural leasing arrangement.

purposes, and fixed equipment). This will amend section 52 of the Agricultural Holdings (Scotland) Act 1991.

- Responses to this proposal focused largely on its practical implementation, rather than environmental impacts. Overall, responses were mixed.
- Some respondents agreed with these changes, supporting tenant farmers and strengthening their rights, and were also supportive of the proposal to remove black game from the definition.
- Other respondents asked for greater clarity in certain areas, such as the definition of ‘reasonable opportunity’ and how compensation would work in practice, for example in contexts such as damage by wild animals where attribution is difficult.

## Resumption

This proposal aims to make the 1991 Act resumption procedures consistent given their effect is the same, whether for agricultural or non-agricultural activities. The provisions aim to modernise the compensation provisions to ensure that the tenant is provided with fair compensation for their loss. The provisions will allow the tenant to claim compensation on a reduction in rent, a disturbance payment, and an additional reorganisation payment.

- In answering this question, respondents raised more general points on resumption, and were largely unclear on its potential environmental benefits.
- Several felt that the proposals risked making resumption a less attractive option for landlords, who may have wished to do so for the purpose of environmental activities.
- However, one respondent stated that the proposals may lead to tenants being more willing to carry out environment improvements on land they would have previously seen as ‘at risk’ of resumption.<sup>3</sup>

## 4. Small Landholdings: Diversification

The diversification proposal for small landholdings seeks to give small landholders greater opportunity to diversify their business, support profitability, and help address the twin crises of climate change and biodiversity loss.

- Responses to this section were mixed, with a quarter (25%) of respondents unsure about its climate, biodiversity and landscape impacts.

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<sup>3</sup> In the context of agricultural tenancies, resumption is the legal term used to describe the Landlord’s power to take back land or buildings out of an agricultural Lease.

- Several respondents highlighted a lack of clarity on how these proposals are expected to lead to environmental benefits, and the potential for both positive environmental impacts and wider socio-economic benefits in rural areas if the changes proposed increase the number of available small holdings.
- Others felt there were likely to be positive outcomes, as it would give small landholders greater ability to undertake non-agricultural measures to mitigate emissions or improve the landscape (such as maintaining historic monuments or improving public access).

## 5. Small Landholdings: Right to Buy

The proposal aims to remove barriers to sustainable rural development by providing small landholders with greater certainty, to encourage them to invest in their small landholdings. It is intended that the pre-emptive right to buy proposal for small landholders will follow that of secure 1991 Act tenant farmers with minor alterations.

- A third (33%) of respondents agreed that this proposal will have positive environmental and biodiversity impacts, and a quarter (25%) that it would have positive landscape impacts.
- Respondents highlighted a small number of potential benefits, including the fact that a pre-emptive right to buy will encourage small landholders to make long term investments in the climate, biodiversity or landscape, whilst others also emphasised the wider socio-economic benefits in rural areas if the changes proposed encourage greater availability of small landholdings.
- Others felt there would be no substantial changes, and highlighted a lack of clarity on how the relevance of the proposals to these wider goals; or a general lack of understanding of the policy.

## 6. Land Management Tenancy

To support the development of a new model of lease – a ‘Land Management Tenancy’ – which will aim to support people to use and manage land in a way that meets their needs, and Scotland’s needs and interests in the 21st Century.<sup>4</sup>

- Half (50%) of respondents were unsure about the climate, biodiversity or historic environment impacts of this proposal.
- Two positive impacts identified were that the proposed tenancy model has the potential to improve the speed and scope at which tenants and landlords are able to respond to environmental challenges, and may be more likely to facilitate the types of activities required to achieve net zero.

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<sup>4</sup> This was referred to as a ‘Land Use Tenancy’ in the consultation documents.

- However, several felt the likely low uptake of this model would decrease its impact; others were unclear what it would add to the current system or how it would interact with the other proposals, which already aim to allow non-agricultural activities within existing tenancy models.
- A number of respondents said that further information and detail on the proposal was needed in order for them to comment further.

## **Succession and Assignment**

This proposal aims to enable small landholders to assign their tenancy to the same classes of people as tenant farmers with secure 1991 Act agricultural tenancies can through the Land Reform (Scotland) Act 2016 to encourage investment and growth.

This question received a small number of relevant written responses. Whilst one respondent stated that the proposals would have a positive impact in terms of regenerative agricultural activities being taught to the next generation, and encouraging young people to stay in farming, another emphasised an earlier, wider point on protecting access to small landholdings.

## **Umbrella Body proposal**

This proposal aims to allow landlords and small landholders to have access to the Tenant Farming Commissioner (TFC) and intends for the Tenant Farming Commissioner to have similar functions for small landholdings as those currently set out for agricultural holdings in the Land Reform (Scotland) Act 2016.

This question received no detailed written response. Instead, participants highlighted a lack of understanding of the policy's aims and the question not being relevant to them. A previous point on protecting access to small landholdings, and the social and environmental benefits they offer was reiterated.

## **Conclusions**

Respondents identified potential positive impacts on the climate, biodiversity and landscape for each set of proposals; in many cases they stated that this would depend on the scope and type of activities planned.

Respondents were broadly supportive of proposals to modernise and update legislation and tenancy mechanisms to reflect modern farming practices, in the context of a wider move toward regenerative, sustainable agriculture. However, several noted the need to balance tenants' rights with landlords' long-term security.

In several areas, including proposals for a new tenancy model, respondents stated that further guidance and consultation is needed. Wider points included the need for a coordinated approach to land use; to balance environmental considerations with issues such as food production, agricultural costs and efficiency; and to consider the long-term risks of changes in land use or agricultural tenancies.

It should be noted that the sample size was small, respondents' views were mixed and in several cases, they did not clearly understand the question or terminology.

## Next steps

This consultation has provided an insight into respondents' views on the potential climate, biodiversity, landscape and historic environment impacts of the Scottish Government's agricultural tenancies, small landholdings, and Land Management Tenancy proposals. The consultation findings will inform the Scottish Government's work to bring forward these proposals as part of the Land Reform Bill.

**Table 1. Summary of responses<sup>5</sup>**

Proposal topic	Question	Responses
<b>Diversification (non-agricultural activities)</b>	1. Climate change	Yes (33%), No (33%) Don't know (17%) Not answered (17%)
	2. Biodiversity, habitats, flora and fauna	Yes (42%), No (25%) Don't know (17%) Not answered (17%)
	3. Landscape and historic environment	Yes (25%), No (25%) Don't know (33%) Not answered (17%)
<b>Agricultural Improvements</b>	1. Climate change	Yes (42%), No (25%) Don't know (17%) Not answered (17%)
	2. Biodiversity, habitats, flora and fauna	Yes (42%), No (25%) Don't know (17%) Not answered (17%)
	3. Landscape and historic environment	Yes (25%), No (25%) Don't know (33%) Not answered (17%)

<sup>5</sup> There were 12 responses to each of these questions.

<b>Rules of Good Husbandry and Estate Management</b>	1. Climate change	Yes (42%), No (25%) Don't know (17%) Not answered (17%)
	2. Biodiversity, habitats, flora and fauna	Yes (33%), No (17%) Don't know (25%) Not answered (25%)
	3. Landscape and historic environment	Yes (42%), No (17%) Don't know (25%) Not answered (17%)
<b>Small Landholdings: Diversification</b>	1. Climate change	Yes (25%), No (25%) Don't know (25%) Not answered (25%)
	2. Biodiversity, habitats, flora and fauna	Yes (25%), No (25%) Don't know (25%) Not answered (25%)
	3. Landscape and historic environment	Yes (25%), No (25%) Don't know (25%) Not answered (25%)
<b>Small Landholdings: Right to Buy</b>	1. Climate change	Yes (33%), No (17%) Don't know (25%) Not answered (25%)
	2. Biodiversity, habitats, flora and fauna	Yes (33%), No (17%) Don't know (25%) Not answered (25%)
	3. Landscape and historic environment	Yes (25%), No (25%) Don't know (25%) Not answered (25%)
<b>Land Management Tenancy</b>	1. Climate change	Yes (17%), No (17%) Don't know (50%) Not answered (17%)
	2. Biodiversity, habitats, flora and fauna	Yes (17%), No (17%) Don't know (50%) Not answered (17%)
	3. Landscape and historic environment	Yes (17%), No (17%) Don't know (50%) Not answered (17%)

# 1. Introduction

This report outlines the results of a consultation held as part of a Strategic Environmental Assessment of agricultural tenancies, small landholdings and land management tenancy proposals held in October-December 2023.

The consultation focused on **six topics**: Diversification; Agricultural Improvements; Rules of Good Husbandry and Estate Management; Small Landholdings: Diversification; Small Landholdings: Right to Buy; and a new tenancy model.

The consultation asked for views on the impact of these proposals on:

1. Climate factors, Greenhouse Gas emissions and agricultural resilience;
2. Biodiversity, flora and fauna, and;
3. Landscape and the historic environment.

The consultation included 20 questions. In total, it received 12 responses to the online consultation, 5 from individuals (42%) and 7 from organisations (58%). This report outlines the results of the consultation by question.

This report outlines the results of a consultation held in October-December 2023 as part of the Scottish Government's Strategic Environmental Assessment<sup>6</sup> of agricultural tenancies, small landholdings and land management tenancy proposals.

## 1.1 Consultation purpose

The Scottish Government's [Vision for Agriculture](#) outlines a long term vision to transform support for farming and food production in Scotland to become a global leader in sustainable and regenerative agriculture. As outlined in the [Agricultural Reform Route Map](#), the Scottish Government is committed to ensuring that tenant farmers, smallholders, crofters, new entrants and land managers are effectively enabled to exercise their essential role in making this vision a reality.

The Scottish Government is carrying out a Strategic Environmental Assessment of Agricultural Tenancies, Small Landholdings, and Land Management Tenancy Proposals. It wishes to test the proposals and consider opportunities to enhance the environmental impact of the proposals while avoiding or reducing significant

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<sup>6</sup> In Scotland, public bodies and private companies operating in a public character are required to assess, consult on, and monitor the likely impacts their plans, programmes and strategies will have on the environment: [Strategic Environmental Assessment \(SEA\) - Environmental assessment](#).



adverse effects on the environment. Impact Assessments, including a Strategic Environmental Assessment, are important tools in ensuring the suitability of the policy.

This consultation provided respondents with an opportunity to examine the environmental impact of proposed changes to agricultural tenancies, small landholdings, and the new land management tenancy in the context of this Strategic Environmental Assessment.<sup>7</sup> These proposals deliver commitments made in the [2021-22 Programme for Government](#) and the Scottish Government and Scottish Green Party's [shared policy programme](#) (2021) to improve the rights of tenant farmers and smallholders, and ensure they are able to access and participate in climate change mitigation and adaptation measures.

Tenant farmers, smallholders and land managers are critical to farming and food production in Scotland. Our proposals have been developed to ensure that tenant farmers and small landholders are supported to meet more of our food needs sustainably and to farm and croft with nature. They will ensure that tenant farmers and small landholders are given greater opportunities to contribute to addressing the twin crises. As part of delivering this commitment, a detailed Environmental Report was also prepared on the proposals.<sup>8</sup>

## 1.2 Other consultations

The proposals on modernising tenant farming legislation were consulted on as part of the Agriculture Bill consultation, which was open between August and December 2022. A report on the consultation findings was published in June 2023.<sup>9</sup> The agricultural tenancy proposals were consulted on as part of the Agriculture Bill consultation, and as part of several in-person and online engagement events which were attended by approximately 600 people.

The consultation on small landholdings modernisation was open between October 2022 and January 2023. A report on the consultation findings was published in June 2023.<sup>10</sup> As part of this consultation, officials also held a workshop on the Isle of Arran and organised individual meetings with landlords.

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<sup>7</sup> [Agricultural tenancies, small landholdings and land use tenancy proposals: strategic environmental assessment - consultation - gov.scot \(www.gov.scot\)](#)

<sup>8</sup> See Annex B and C of the Consultation document: [Agricultural tenancies, small landholdings and land use tenancy proposals: strategic environmental assessment - consultation - gov.scot](#)

<sup>9</sup> [Agriculture Bill: consultation analysis - gov.scot \(www.gov.scot\)](#)

<sup>10</sup> [Small landholdings modernisation: consultation analysis - gov.scot \(www.gov.scot\)](#)

The Land Management Tenancy<sup>11</sup> was consulted on as part of the Land Reform Bill consultation which was open between July and October 2022. A report on the consultation findings was published in June 2023.<sup>12</sup> This proposed new tenancy model has been subjected to extensive stakeholder engagement with environmental non-governmental organisations (NGOs) and agricultural stakeholders.

All of the tenant farming proposals have been subjected to detailed co-development with the [Tenant Farming Advisory Forum](#) which includes a range of industry bodies, including: the Scottish Tenant Farming Association; Scottish Land & Estates; National Farmers Union Scotland; Royal Institution of Chartered Surveyors; Scottish Agricultural Arbiters & Valuers Association; and Agricultural Law Association. These proposals will be brought forward as part of the Land Reform Bill.

As required under 5(4) of the Environmental Assessment (Scotland) Act, the Scottish Government consulted the Strategic Environmental Assessment Consultation Authorities (Nature Scot, Scottish Environmental Protection Agency, and Historic Environment Scotland) who considered the proposals and stated that there is a likelihood of significant environmental effects.<sup>13</sup>

The Consultation Authorities believed the proposals should be subjected to an eight week consultation to ensure that the environmental impact of the proposals were subjected to detailed examination. This consultation met that requirement. The Consultation Authorities consider that the proposals potentially have significant environmental effects on climate factors, biodiversity, habitats, flora and fauna; although their significance will depend on factors such as location, scale and individual practices. This consultation examined those potential environmental impacts, specifically in terms of:

- Greenhouse Gas emissions;
- Biodiversity, flora and fauna;
- Landscape and the historic environment.

The consultation was accompanied by two Environmental Reports produced by AECOM on behalf of the Scottish Government.<sup>14</sup> The purpose of these were to:

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<sup>11</sup> This was referred to as a 'Land Use Tenancy' in the consultation documents.

<sup>12</sup> [Land reform in a Net Zero nation: consultation analysis - gov.scot \(www.gov.scot\)](#)

<sup>13</sup> Further information: [Strategic Environmental Assessment \(SEA\) - Environmental assessment.](#)

<sup>14</sup> [Strategic Environmental Assessment \(SEA\) for the Agricultural Tenancies proposals Environmental Report - gov.scot.](#) and [Strategic Environmental Assessment \(SEA\) for the Small Landholdings and Land Use Tenancy Proposals Environmental Report - gov.scot.](#)

- Identify, describe, and evaluate the likely significant environmental effects of the proposals and alternative approaches; and
- Provide a perspective on the likely environmental performance of the proposals and key areas for monitoring during its implementation.

### **1.3 Wider context**

The proposals, developed to help Scottish farmers, crofters and land managers, will play a key role in tackling the twin crises of climate change and biodiversity loss, delivering against legally binding commitments set out in the [Environment Strategy for Scotland](#), including to achieve a just transition to net zero by 2045.

The [Scottish Agricultural Census June 2021](#) demonstrates that 22% of our agricultural land is tenanted. The majority of agricultural tenancies are secure 1991 Act agricultural tenancies (3,821). The Census also identified 59 small landholders in Scotland, covering 5,360 acres (2,168 hectares) in total.

### **1.4 Consultation method**

The consultation was open from 12 October to 11 December 2023, and responses could be submitted on Citizen Space, by email or post. In total, it received 12 online responses: 5 from individuals (42%) and 7 from organisations (58%) (see Table 2). All of the responses will be published on Citizen Space.

The consultation included 20 questions, with mainly closed questions followed by an open question, for the respondent to provide a reason for their answer. These responses were added to a coding framework, grouped by respondent type where applicable ('Yes', 'No', 'Don't know'), coded and analysed (see example, Annex 3).

This report outlines the responses to each question by topic, identifying the main points raised by respondents. The consultation had six sections:

- Diversification (for non-agricultural activities)
- Agricultural Improvements
- Rules of Good Husbandry and Estate Management
- Small Landholdings: Diversification (non-cultivated activities)
- Small Landholdings: Right to Buy
- Land Management Tenancy<sup>15</sup>

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<sup>15</sup> This section was titled 'Land Use Tenancy' in the consultation.

The consultation responses were analysed thoroughly and fairly. This consultation report has identified the key themes emerging from the responses and the arguments behind these. Consultation exercises are self-selecting in nature – people choose to respond, rather than being included as part of a considered sampling strategy. As such, the findings 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. The opinions/comments may be based on evidence or on respondents’ opinions or perceptions of what’s true. Some respondents may have a limited understanding of complex issues. Some respondents answered all questions, with others focusing on specific sections and repeating their answers.

In many sections, respondents expressed their views on the proposals themselves, rather than their impacts in terms of the climate, biodiversity and landscape. It should also be noted that respondents were not always clear on what a question meant, or lacked clarity on the intended impacts of proposals, so were not always able to answer. This indicates that the accessibility and clarity of the consultation questions and accompanying documents could have been improved. Throughout the consultation several respondents made general comments, for example on: the importance of improving food production and resilience in Scotland; and the environmental benefits of dairy sheep farming.

**Table 2. Responses by type<sup>16</sup>**

<b>Response type</b>	<b>Total</b>	<b>Percent</b>
<b>Individual</b>	5	42%
<b>Organisation</b>	7	58%

<sup>16</sup> Percentages throughout this report have been rounded to the nearest whole number. Some questions were repeated on Citizen Space, and in this report we have focused on respondents’ answers to the main questions as set out in Annex 1.

## 2. Consultation results

This section of the report outlines the consultation findings by topic. The consultation included 20 questions, with the majority including a closed question and an opportunity to provide reasons for their answer.

The consultation had six sections:

1. Diversification (for non-agricultural activities)
2. Agricultural Improvements
3. Rules of Good Husbandry and Estate Management
4. Small Landholdings: Diversification (non-cultivated activities)
5. Small Landholdings: Right to Buy
6. Land Management Tenancy

In each section, three questions asked respondents for their views on the specific proposal in terms of its potential impacts on:

1. Climate factors, Greenhouse Gas emissions and agricultural resilience;
2. Biodiversity, flora and fauna, and;
3. Landscape and the historic environment.



## 2.1 Diversification (for non-agricultural activities)

### Summary of proposal

The aim of this proposal is to give tenant farmers greater opportunity to diversify and undertake non-agricultural activities which help address the twin crises of climate change and biodiversity loss, whilst also supporting their business and profitability. The diversification proposal builds on the existing provisions contained within Part 3 of the Agricultural Holdings (Scotland) Act 2003, which in most cases allows a tenant farmer to seek the consent of their landlord for a non-agricultural activity on their holding. Tenant farmers with Short Limited Duration Tenancies are not able to undertake diversification in this manner.

The principal amendments include a requirement for the tenant to disclose any environmental benefit which will be delivered as part of their proposal to diversify part of their holding. When assessing the tenant's proposal the landlord is required to consider it in the context of the impact it will have across the whole of the tenant's holding, rather than simply the part of the holding where the activity will take place.

The grounds upon which a landlord can object to the diversification will be modified to reflect the changes. A landlord will be required to provide more detailed reasons should they object to the proposed activity. This will enable the tenant to consider if the proposal can be modified to remove any concern. A tenant would be entitled to serve a "suspension notice" which would pause the approval process for a thirty day period of negotiation between landlord and tenant, creating an opportunity for a modified proposal to be agreed. The Land Court will, if asked to consider whether an objection to the proposed activity is reasonable, be able to take account of any environmental benefit. The Tenant Farming Commissioner (TFC) will prepare a separate Code of Practice to provide practical guidance on the use of the tenant's holding for non-agricultural purposes.

### Question summary

The consultation asked for respondents' views on this proposal in terms of its potential impacts on:

1. Climate factors, Greenhouse Gas emissions and agricultural resilience;
2. Biodiversity, flora and fauna, and;
3. Landscape and the historic environment.

## 2.1.1 Climate factors

### Key findings

A third (33%) of respondents thought that the proposals to give tenant farmers greater opportunities to diversify and undertake non-agricultural activities will contribute to either reducing existing and avoiding new Greenhouse Gas emissions and/or will increase agricultural resilience to the impacts of climate change. A third (33%) did not think it would, and just under a fifth (17%) said 'Don't know'.

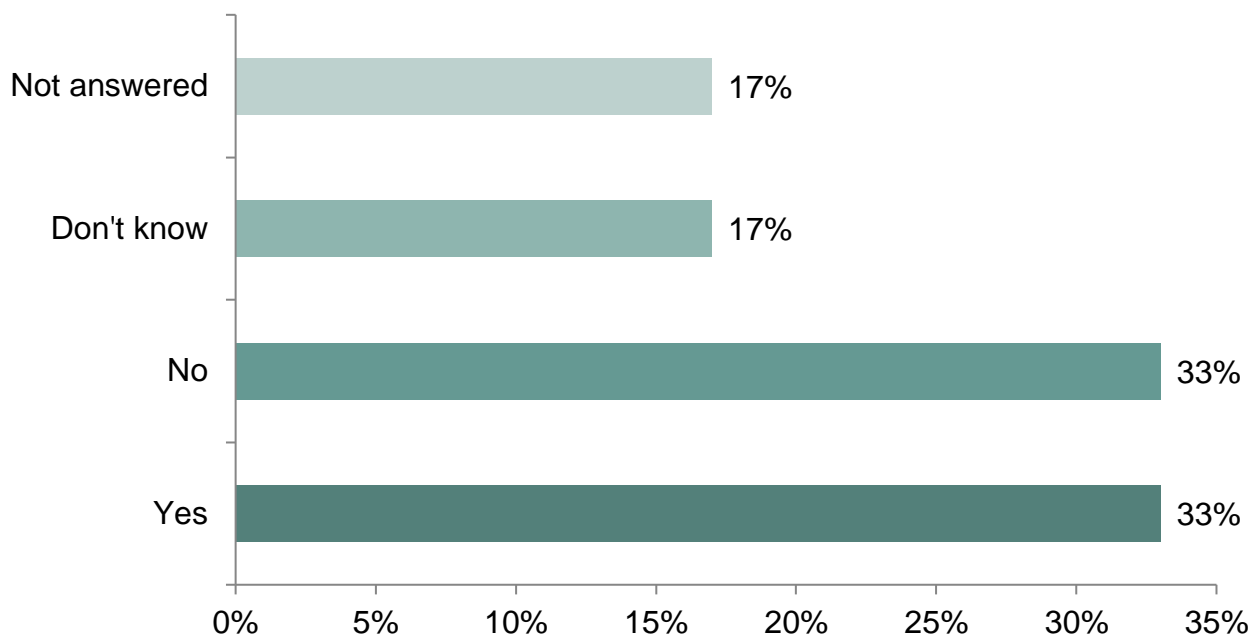
Those who answered 'yes' were most likely to say that this was because the proposal would give tenant farmers a greater ability to carry out activities that would have positive environmental impacts, including to reduce emissions.

Those who answered 'no' gave reasons including: landlords should have more control over what happens on their land; diversification activities will not necessarily have a positive environmental impact, as they are likely to be shaped by other factors such as profit; other types of activities offer a wider range of benefits.

Those who said 'Don't know' felt it was unclear how the proposals would reduce Greenhouse Gas emissions, or increase agricultural resilience to the impacts of climate change. Several emphasised the need for a co-ordinated approach to land use, and to balance these proposals with other important considerations such as food production. Lastly, two organisations highlighted the long-term and financial risks to landowners of these proposals.

## Figure 2.1 Climate factors

Q. Climate factors: will this policy proposal contribute to either reducing existing and avoiding new Greenhouse Gas emissions and/or increase agricultural resilience to the impacts of climate change?



Option	Total	Percent
Yes	4	33%
No	4	33%
Don't know	2	17%
Not answered	2	17%

Base: 12

A third (33%) of respondents agreed that the diversification proposals will have a positive impact on the climate. A third (33%) said 'No', and just under a fifth (17%) said 'Don't know'. Respondents who answered 'Yes' gave reasons including:

- This proposal will increase tenant farmers' ability to carry out non-agricultural activities that have positive environmental impacts, including reducing emissions and improving soil health and resilience;
- It will improve tenant farmers' ability to participate in environmental schemes;
- Tenants should have the ability to diversify into non-agricultural activities, particularly at a time when profitability in agriculture is less stable;
- The importance of balancing the rights of landlords and tenants;



- Support for the requirement to disclose intended environmental benefits, as this will give both parties an understanding of what is proposed and the ability to consider long term impacts on the holding.

One organisation stated that they would like to see an additional option to limit the types of reasons a landlord can give in objecting to activities, particularly those required to achieve climate and biodiversity targets or fulfil legal requirements, as set out as option D1 in the [Environmental Report](#).

Respondents who answered 'No' gave reasons including:

- Landlords should have more control over what happens on their land;
- Other activities, such as planting fruit trees, offer both environmental and social benefits, for example in terms of food production;
- The proposal will only apply to tenanted land;
- Diversification won't necessarily result in positive environmental impacts, and tenant farmers will be motivated by other factors when choosing which activities to carry out, including profit;
- The proposal is not understood.

Respondents who answered 'Don't know' gave reasons including:

- These proposals may not deliver any environmental benefit or meet wider objectives around biodiversity or food security;
- It is unclear how widening the scope for non-agricultural diversification will reduce or avoid Greenhouse Gas emissions, or increase agricultural resilience to the impacts of climate change;
- Agricultural resilience would be better achieved through technological advancement in farming methods, such as drought resistant crops or feed methane inhibitors, best-practice training and support;
- The need to balance these proposals with other important considerations such as food production and security;
- The need for a large-scale, co-ordinated approach to land use;
- The grounds for objection should include detrimental environmental impacts, and the Land Court should take this into account if necessary;
- Lack of understanding of the proposals.

Several of these reasons are discussed in more detail below. This group of respondents also highlighted longer-term risks, such as:

- The long-term impact on land use and liability should be a key concern in diversification decisions, and it is unclear how this would be dealt with;

- The impact on other factors, such as food production, if agricultural land is lost or changes in land use are permanent, and the need for landlords to be able to take these cumulative impacts into account;
- The need for a mechanism to ensure public benefit from diversification activities, which may reduce land available for food production or increase emissions, such as allowing refusal of consent or a rent review;
- The risk that these proposals place a disproportionate burden on landowners, who are not able to influence these activities, and carry financial risk;
- The need for a properly regulated carbon market and clear taxation guidance to encourage land owners to support long term land use change despite the potential liabilities and risks it involves;
- Tenant farmers have different property rights to owner occupiers and so may not be able to achieve the same outcomes within the limitations of an agricultural tenancy;
- It is difficult to predict how many tenant farmers will engage in environmental diversification, as most would be reliant on financial support or incentives;
- These proposals raise the risk of long-term, permanent land use change.

### **The appropriate use of agricultural tenancies**

One organisation stated that as the proposals would allow non-agricultural diversification without primary environmental objectives, this has the potential to change the nature of the tenancy. This organisation stated that an agricultural tenancy is not the correct vehicle for this to happen as it is impossible to balance both parties' interests adequately.

Several organisations stated that diversification should be secondary to agricultural or environmental purpose within Agricultural Holdings legislation. Alternatively, diversification activities should be dealt with under more suitable legal agreements for significant non-agricultural activities. Whilst a new tenancy model has been proposed which could achieve these objectives, as one organisation stated, unless these provisions are scaled back it is unlikely that any farm tenant will take land out of an agricultural holdings regime in order to enter into a more suitable vehicle unless required to do so by legislation.

### **The long-term, financial risks for landowners**

One organisation highlighted the long-term financial risks of these proposals for landowners, and the need for a provision for landlords to refuse consent or apply reasonable conditions, or a suitable contractual arrangement, to allow fair compensation when taking on significant risk, for example in the case of long-term carbon sequestration schemes. This organisation emphasised the need for the Scottish Government to work more closely with the UK Government to achieve a

wider fiscal, regulatory environment that incentivises environmental land management in a way that is in the public interest. If passed as proposed, implementation of these proposals should at least be delayed until the taxation of environmental land management is known. For example, the Scottish Government's announcement that a potential carbon land tax is to be considered raises the possibility of higher taxation on landowners due to tenants' diversification activities, and the need for a compensation mechanism.

### **The need for a co-ordinated approach in land use**

One organisation highlighted the need for a wider, co-ordinated approach to land use, and that policy and legislation should incentivise both landowners and tenants to collaborate with other farmers/tenants on the same estate or neighbouring land to facilitate larger-scale projects with a greater environmental impact than small-scale schemes. This could form part of the forthcoming Rural Support Plan, and ensure a better balance for the interests of tenants and landlords.

## 2.1.2 Biodiversity, flora and fauna

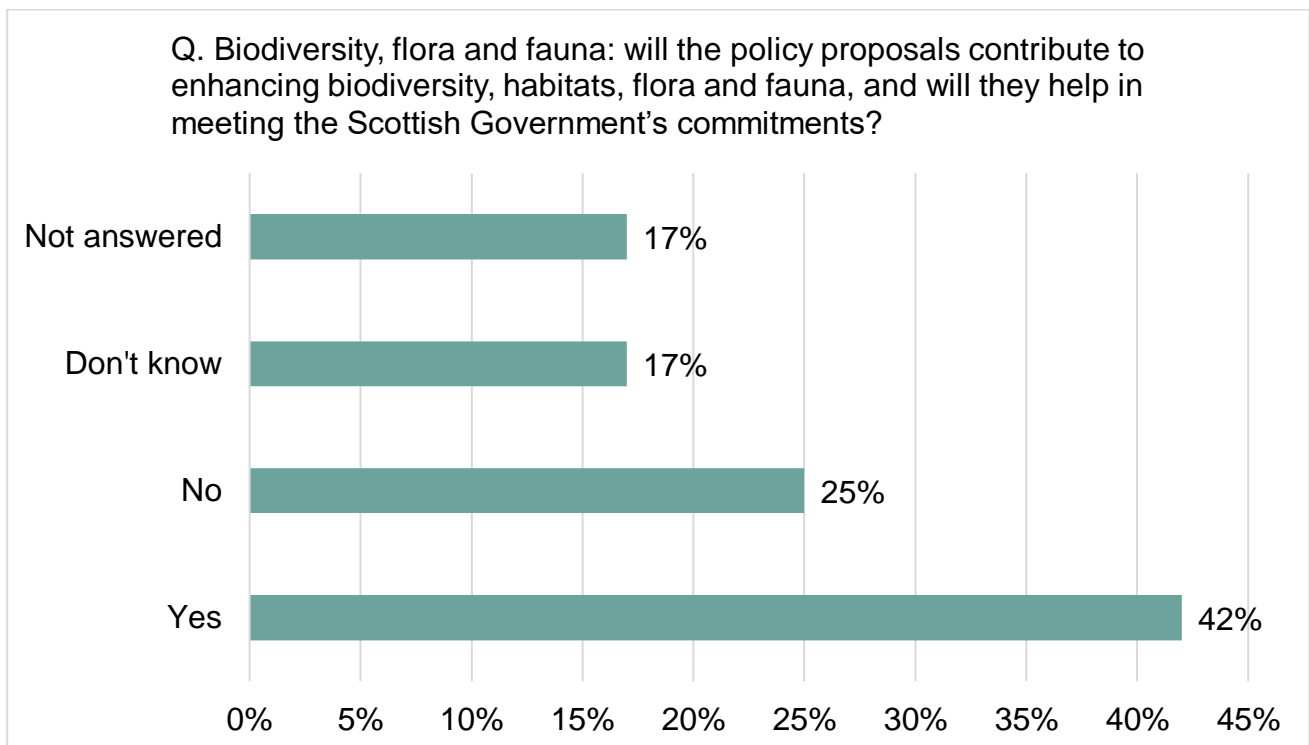
### Key findings

Almost half of respondents (42%) said 'Yes', they thought that proposals to give tenant farmers greater opportunities to diversify and undertake non-agricultural activities will contribute to enhancing biodiversity, habitats, flora and fauna. A quarter (25%) said 'No', it would not, and just under a fifth (17%) said 'Don't know'.

Those who answered 'yes' gave reasons including that the proposals would give tenant farmers the ability to carry out activities with a positive impact on biodiversity, flora and fauna.

Those who said 'Don't know' felt that the impact of the proposals on biodiversity, flora and fauna would depend on the details of the proposed diversification activities. One organisation referred to their answer to Question 1, which raised issues including the risks of long-term changes to agricultural tenancies and land use, and the associated financial risks of these activities for landowners.

**Figure 2.2 Biodiversity, flora and fauna**



Option	Total	Percent
Yes	5	42%
No	3	25%
Don't know	2	17%
Not answered	2	17%

Base: 12

Respondents were asked if they thought that this policy proposal will contribute to enhancing biodiversity, habitats, flora and fauna, and will help in meeting the Scottish Government's commitments. Almost half (42%) said 'Yes', a quarter (25%) said 'No', and just under a fifth (17%) said 'Don't know'. Again, just under a fifth (17%) did not answer. The reasons provided by respondents for this question were in line with Question 1, and several referred to their previous answers here. For example, respondents who answered 'Yes' gave reasons including:

- Tenants should have the ability to diversify into non-agricultural activities, particularly at a time when profitability in agriculture is less stable;
- These proposals will give tenant farmers the ability to carry out activities that have a positive impact on biodiversity, flora and fauna, and to undertake less intensive agricultural and land management practices with positive impacts on biodiversity and habitat management;
- The need for an additional option to limit the types of reasons a landlord can give in objecting to activities, particularly those required to achieve climate and biodiversity targets or to fulfil legal requirements;
- The importance of balancing the rights of landlords and tenants.

As one organisation stated:

*This measure could improve the ability of tenants to participate in environmental schemes, so the likely impact on climate and biodiversity could be positive. We support the need to disclose the aims for environmental benefit during the process as this will give both parties an understanding of what is proposed and ability to consider long term impacts on the holding.*

Amongst respondents who answered 'No', one made positive reference to the Scottish Government's [Scottish biodiversity strategy to 2045](#) (2023), which sets out a way to achieve these targets, but criticised the [Environment Strategy for Scotland](#)

(2020) as too vague. Another respondent stated that it was not clear how crofting fits in, and did not understand the proposals. Respondents who answered 'Don't know' gave reasons including:

- These proposals may not address biodiversity loss, and their impact would depend on the detail of the proposed diversification, for example renewable energy proposals can be detrimental to biodiversity, flora and fauna.
- The need for a co-ordinated approach to land use, as larger, collaborative approaches will offer greater outcomes than fragmented schemes.

One organisation referred to their response to Q.1, which raised issues including:

- Tenant farmers have different property rights to owner occupiers;
- The difficulty of predicting how many tenant farmers will engage in diversification activities, and their reliance on financial support;
- The need to balance this proposal with other important considerations such as food production and security.
- The risk of agricultural land being lost due to long-term changes to the nature of tenancies, land management and use;
- The financial risks for landowners, particularly with long-term changes, and the need to include a mechanism for compensation.

One further answer was a comment on the environmental benefits of sheep farming, and rotational grazing as a mitigation strategy, as it reduces the need for external feeds and maximises the use of local forage resources.



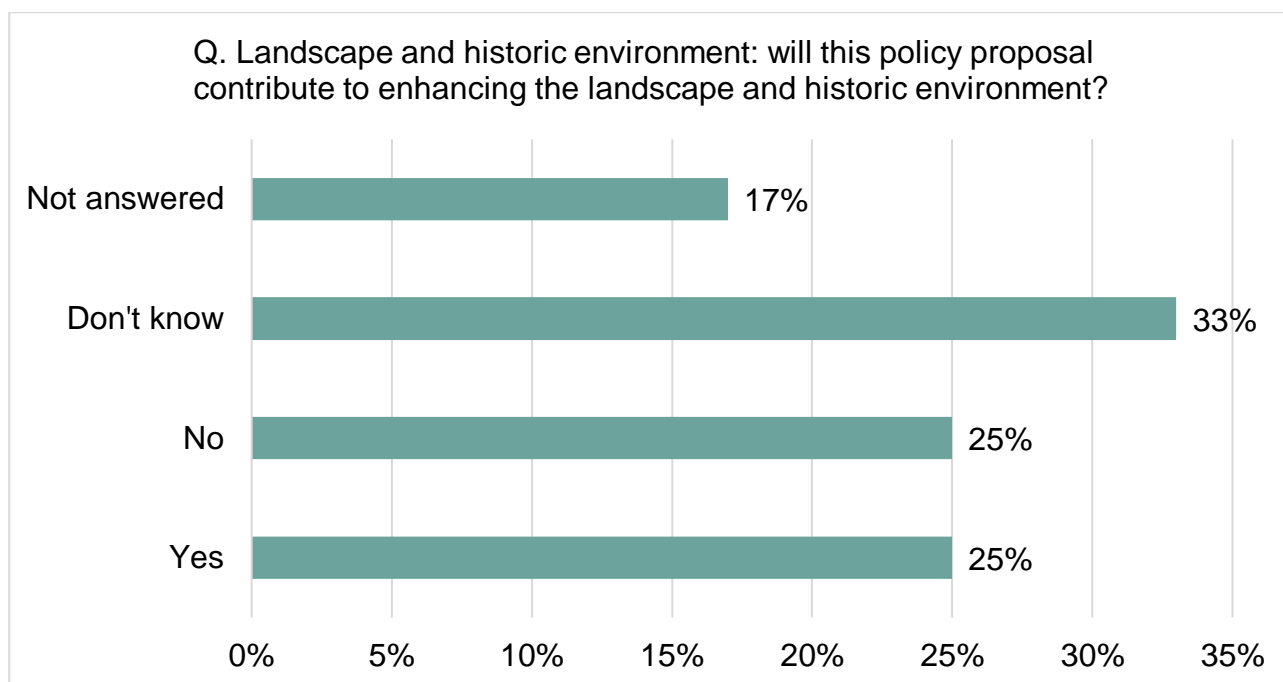
## 2.1.3 Landscape and historic environment

### Key findings

Respondents had mixed views as to whether proposals to give tenant farmers greater opportunities to diversify and undertake non-agricultural activities will contribute to enhancing the landscape and historic environment. The largest response at a third (33%) said 'Don't know'. A quarter (25%) said 'Yes' or 'No'.

Several respondents stated that the impacts of these proposals on the landscape and historic environment would depend on the type and scale of planned activities. As several also pointed out, the impact of construction projects like windfarms on the landscape is viewed both positively and negatively by different groups.

**Figure 2.3 Landscape and historic environment**



Option	Total	Percent
Yes	3	25%
No	3	25%
Don't know	4	33%
Not answered	2	17%

Base: 12

A third (33%) of respondents were unsure if this proposal would contribute to enhancing the landscape and historic environment. A quarter (25%) said 'Yes', and the same number (25%) said 'No'.

Several respondents stated that the impacts of these proposals would depend on the type and scale of planned activities. For example, infrastructure associated with renewable energy, commercial activity or tree planting would have the potential to impact the landscape and historic environment in different ways. As several also pointed out, the impact of construction projects like windfarms on the landscape is subject to debate, and viewed both positively and negatively by different groups.

Respondents who answered 'Yes' gave further reasons including:

- The proposals will allow tenants to carry out non-agricultural activities that would improve the landscape and historic environment. For example, maintaining historic monuments and improving public access to them;
- Activities like this are currently difficult for tenants to undertake due to agricultural restrictions in leases.

In parallel to this, one organisation stated that the definition of agriculture under the agriculture holding legislation needs to be understood in its broadest terms covering sustainable, agri-environmental and regenerative practices that will become part of the Code of Practice on Sustainable and Regenerative Agriculture proposed under the new Agriculture and Rural Communities (Scotland) Bill.

Respondents who answered 'Don't know' or 'No' gave reasons including:

- The need for a clear definition of environmental improvement and protection, which includes natural, cultural and historic aspects of the environment;
- Mitigation would be required to ensure that impacts on the historic environment are avoided. It cannot be assumed that greater income would lead to restoration of the historic environment;
- Specific activities, such as renewable energy projects, will be subject to debate and opposing views in terms of their impact on the landscape.
- One way of enhancing the historic environment would be to restore and preserve vernacular farm buildings, and bring them back into commercial use, if done sensitively and to a high standard;
- Conflicts of interest may arise however if historic buildings require modernisation to meet diversification needs;
- Lack of relevant knowledge or experience;
- Question wording unclear.



## 2.2 Agricultural improvements

### Summary of proposal

The aim of the proposal is to give tenant farmers greater flexibility to implement agricultural improvements, whilst contributing to delivering the Vision for Agriculture in respect of sustainable and regenerative agriculture.

Schedule 5 of the 1991 Act has three Parts: Part 1 lists improvements that need consent; Part 2 lists improvements that need notice, and; Part 3 lists improvements that need neither consent nor notice.

An activity if not listed is not considered as an improvement. The current lists are not flexible enough to support the new farming practices needed to tackle the twin climate and biodiversity crises. The tenant may be entitled to compensation for the relevant improvement at the termination of the tenancy.

The existing lists will be modernised to take a principles-based approach, where an activity in Part 1 or 2 will be regarded as an improvement if it is compatible with an over-arching principle. The existing activities across the three Parts will be retained and updated where necessary. The lists would then provide examples of the types of eligible activities which could be undertaken under the overarching principle. The changes will enable activities such as: organic farming, planting of hedgerows, renewables, the creation of silvo–arable and silvo-pasture systems, the creation of hydroponics, vertical farming, and other innovative agricultural practices.

In addition, a new Part 4 will be added to the Schedule providing for improvements that promote sustainable and regenerative agriculture. The tenant can ask for consent to such an improvement in the same way as under the current law. This will promote on-farm activities which support sustainable and regenerative activities, including climate change mitigation and biodiversity enhancement on a whole farm basis. For example, activities such as organics, tree planting, habitat creation and renewable energy which may be ancillary to the agricultural purpose of the holding will be able both to support food production and deliver nature and climate benefits. Measures are proposed to be introduced to ensure that where a landlord is required to give their consent to an improvement before a tenant is able to carry it out, the landlord cannot delay their response to the request.

**Question summary:** The consultation asked for respondents' views on this proposal in terms of its potential impacts on: 1. Climate factors, Greenhouse Gas emissions and agricultural resilience; 2. Biodiversity, flora and fauna, and; 3. Landscape and the historic environment.

## 2.2.1 Climate factors

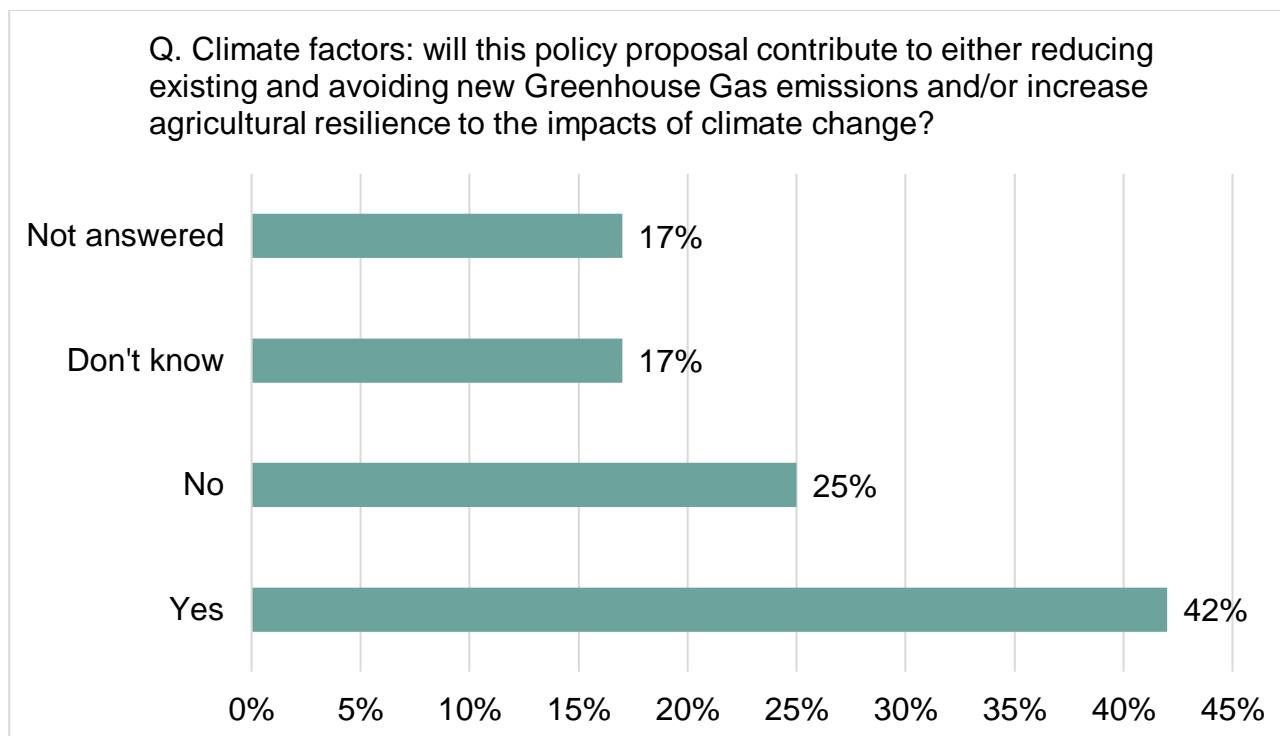
### Key findings

Almost half (42%) of respondents agreed these proposals to give tenant farmers greater flexibility to implement agricultural improvements would have a positive environmental impact. A quarter (25%) said 'No', and just under a fifth (17%) were unsure. Respondents who said 'yes' agreed with the need to modernise Schedule 5 to reflect modern farming practices; they felt that the proposals will enable land management practices which may have previously been excluded, and provide certainty to tenants and landlords. Whereas some felt that compensation for improvement would provide an incentive for tenants to invest in environmental measures, others felt this may not act as an incentive due to its long-term nature.

Among respondents who said 'Don't know', the main points were: the need to update and regularly review the list of activities in Schedule 5 in line with changing technology and practice; the need for Part 3 to remain a fixed list, to give landlords certainty; the fact that compensation for improvements may not act as an incentive for tenants as they are only payable at the end of the tenancy.

Two organisations stated that clearer clarification and guidance is required on the proposals for Part 4 before they are implemented, for example in terms of their application in the context of carbon credits and compensation for improvements.

**Figure 2.4 Climate factors**



Option	Total	Percent
Yes	5	42%
No	3	25%
Don't know	2	17%
Not answered	2	17%

Base: 12

Almost half (42%) of respondents agreed these proposals would have a positive environmental impact. A quarter (25%) said 'No', and just under a fifth (17%) were unsure. Respondents who said 'yes' agreed with the need to modernise Schedule 5 so that it reflects modern farming practices, giving further reasons including:

- A broader understanding of qualifying improvements could have positive impacts on the climate as it will enable land management practices which may have previously been excluded;
- The proposals will provide an incentive for tenants to invest in environmental measures, due to compensation for improvements at the end of tenancy;
- Personal experience of using these methods, and seeing their effectiveness (for example, organic and vertical gardening, in improving soil health);

- This framework will provide certainty to tenants and landlords.

One organisation stated that regenerative practices that are recognised as part of regular farming and have no long-term impact should be included in Part 3, and not require consent or notice, in order to facilitate their adoption, for example the provision of pollinator or bird friendly crops, with conservation headlands. This organisation agreed with the assessment in the [Environmental Report](#) that a mixed approach would contribute to a range of positive environmental impacts.

Among respondents who said ‘Don’t know’, the main points were:

- The list of activities in Schedule 5 does need to be updated and regularly reviewed in line with emerging societal needs, technology and practice;
- The need for Part 3 to remain a fixed list, to give landlords certainty;
- Compensation for improvements may not act as an incentive for tenants to invest in environmental land management as it is only payable at the end of the tenancy, which may be over a long time period;
- For new land use proposals and techniques, the long-term risk and uncertainty may be a disincentive.

Several organisations stated that there was a need for clearer guidance on Part 4 proposals. This is discussed below, with the key points being:

- The need to treat both landlords and tenants fairly, and to recognise potential long-term, financial impacts for landlords due to the proposals;
- The importance of landlords being able to introduce reasonable conditions on a wider basis to take other interests into account, particularly in terms of long-term change or risk, and the need to reduce risk or ensure adequate compensation for landlords if improvements bring substantial change;
- The need to allow landlords a longer period of time to consider proposals in detail, if the lists include general principles rather than specific regulations;
- The risk of an open-ended list, including lengthy disputes between tenants and their landlords over whether an improvement fits within Part 1, 2 or 4;
- The potential for disputes over valuation, which could be avoided with fixed lists of works accepted by stakeholders in advance.

One organisation, noting the need to update the list of activities in Schedule 5 to reflect new technologies and practices, stated that a mechanism to allow new practices to be incorporated would be welcome for certain types of works. Agreeing with the need for Part 3 to remain a fixed list, this organisation argued that the certainty provided by the other fixed lists should not be lost without consideration.

## Need for further guidance on Part 4 proposals

Two organisations stated that clearer clarification and guidance is required on the proposals for Part 4 before they are implemented, for example:

- Whether this would follow a similar process to Part 2 improvements, with a restricted scope to impose conditions based on scale and area;
- If they encompasses activities which may have a long-term impact on the land use and future liability, in which case it would be fair to ensure a robust process for landlords to object and impose conditions;
- Their application to carbon credits, for example whether these can be used to meet tenants' net zero targets or sold as part of an agreement, and the need to ensure a fair basis for this in terms of compensation for ongoing liabilities;
- What 'ancillary to agriculture' means in this context, and;
- How these proposals would support food production.

One organisation stated that the improvements listed in Part 4 of the schedule should be linked to the Code of Practice due to be published under the [Agriculture and Rural Communities \(Scotland\) Bill](#), as this is likely to be reviewed and updated more frequently than the legislation. The Code could then be referred to as part of discussions around reasonable conditions. Implementation of both Part 4 provisions and the Code of Practice should be aligned, and the legislation should refer to the Code. Early sight of the draft Code would be helpful for stakeholders.

One organisation stated that it would be possible to update the lists through secondary legislation where there is sufficient evidence that a new technology or practice will contribute to achieving sustainable and regenerative farming outcomes. As the proposal stands, a tenant may notify a landlord of a proposed improvement citing environmental benefits which may not be proven or widely accepted, with the landlord having only a short period of time to research its benefits and consider these alongside potential risks or negative impacts to themselves, neighbouring tenants or the wider community. This may lead to unnecessary conflict and negatively impact relations between landlords and tenants, despite being necessary in considering long-term land use changes.

As noted, several organisations were unclear about the application of these proposals in relation to carbon credits. For example, one noted that as methods of valuation for land subject to carbon sequestration activities are still unclear, it is also unclear how to calculate fair compensation. They noted that where carbon credits are being sold, with long-term liability, this is leading to a decrease in land value; for example, native woodland where value has been extracted by the sale of carbon credits, with only the liability and risk remaining.

## Compensation for improvements

Several organisations highlighted a lack of clarity on the issue of compensation for improvements, and stated that this may not act as an incentive for tenants to invest in environmental practices as it would only be payable at the end of the tenancy (i.e. a long time period). For new land use techniques, one stated, the long-term risk and uncertainty may be a disincentive. A second added that a better incentive would be from future schemes within the forthcoming Rural Support Plan, rather than provisions within agricultural holdings legislation.

As one organisation stated, questions of compensation are connected to waygo, and whilst all parties would benefit from a more straightforward process for assessing waygo claims, the proposed changes to Schedule 5 are likely to complicate that process. They suggested that guidance from the Tenant Farming Commissioner would be useful, rather than setting timescales in legislation, as each situation will vary. A professional and structured approach to waygo may encourage landlords to see tenants' improvements in a more positive light.

Lastly, one respondent who said 'No', stated that they did not understand the question, and that this terminology is inaccessible to crofters.

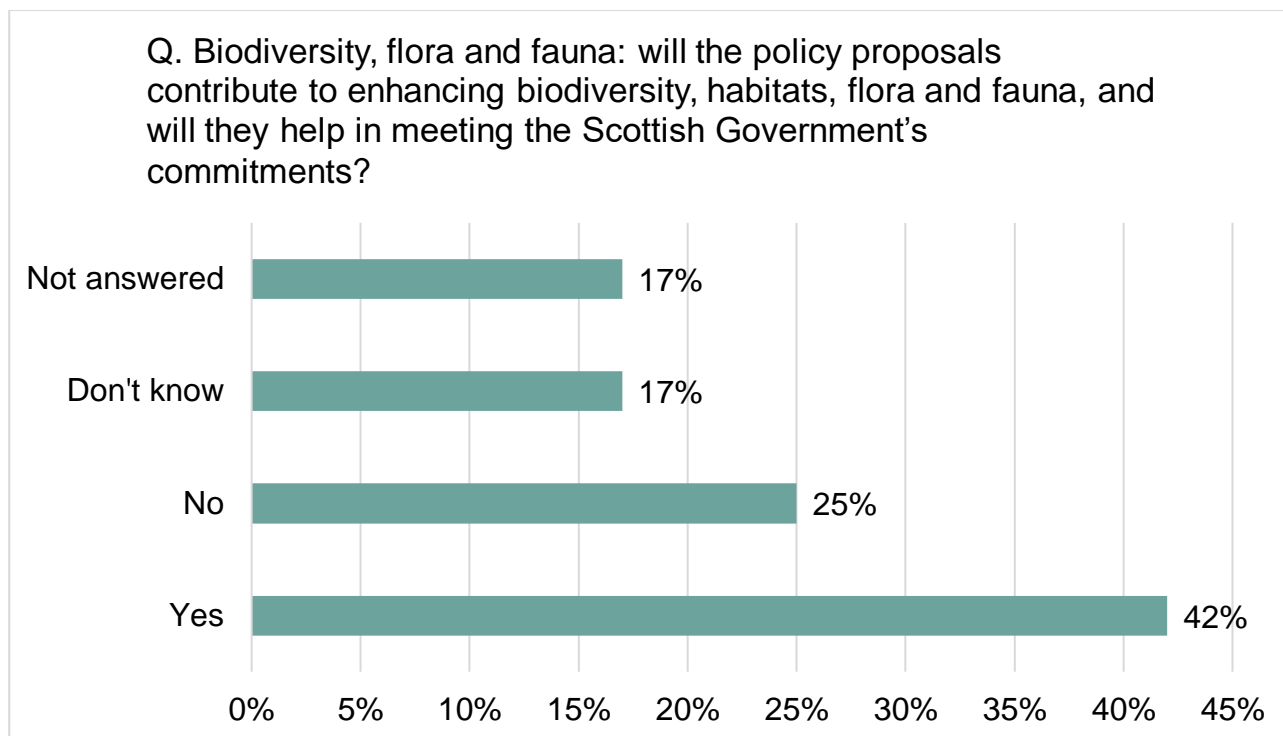
### 2.2.2 Biodiversity, flora and fauna

#### Key findings

Almost half (42%) of respondents agreed that proposals to give tenant farmers greater flexibility to implement agricultural improvements will contribute to enhancing biodiversity, habitats, flora and fauna. A quarter (25%) did not agree, and said 'No', and just under a fifth (17%) said 'Don't know'.

Respondents who answered both 'Yes' and 'Don't know' largely referred to their previous answers to Question 4, as outlined in the previous section.

**Figure 2.5 Biodiversity, flora and fauna**



Option	Total	Percent
Yes	5	42%
No	3	25%
Don't know	2	17%
Not answered	2	17%

Base: 12

Respondents were asked if they thought that this policy proposal will contribute to enhancing biodiversity, habitats, flora and fauna, and will help in meeting the Scottish Government's commitments. Almost half (42%) said 'Yes', a quarter (25%) said 'No', and just under a fifth (17%) said 'Don't know'.

Several respondents who answered 'Yes' referred to their answers to question Question 5 here, which raised points including:

- The need to modernise Schedule 5 so it reflects modern farming practices;
- A broader understanding of qualifying improvements could have positive impacts on the climate, as it will enable land management practices which may have previously been excluded;

- The proposals will provide an incentive for tenants to invest in environmental measures by recognising them as having value which the tenant can realise at the end of tenancy;
- Regenerative practices recognised as part of regular farming that have no long term impact should be included in Part 3 to facilitate their adoption;
- This framework will provide certainty to tenants and landlords.

Respondents who answered 'Don't know' also referred to the answers they gave to Question 4, which included detailed feedback including on:

- The need to update and regularly review the list of activities in Schedule 5 in line with changing technology and practice;
- The need for Part 3 to remain a fixed list, to give landlords certainty;
- The fact that compensation for improvements may not act as an incentive for tenants as they are only payable at the end of the tenancy;
- The need for clarification and guidance on the proposals for Part 4, for example in terms of their application in context of carbon credits and compensation for improvements;
- The need to treat both landlords and tenants fairly.

See section 2.2.1 for a more detailed overview.

Lastly, among respondents who said 'No' to this question, one stated that they did not understand the question, and that this terminology is inaccessible to crofters, and second repeated an earlier comment that the Scottish biodiversity strategy to 2045 gives confidence these outcomes will be achieved, as opposed to the Environment Strategy for Scotland (2020) which is too vague.



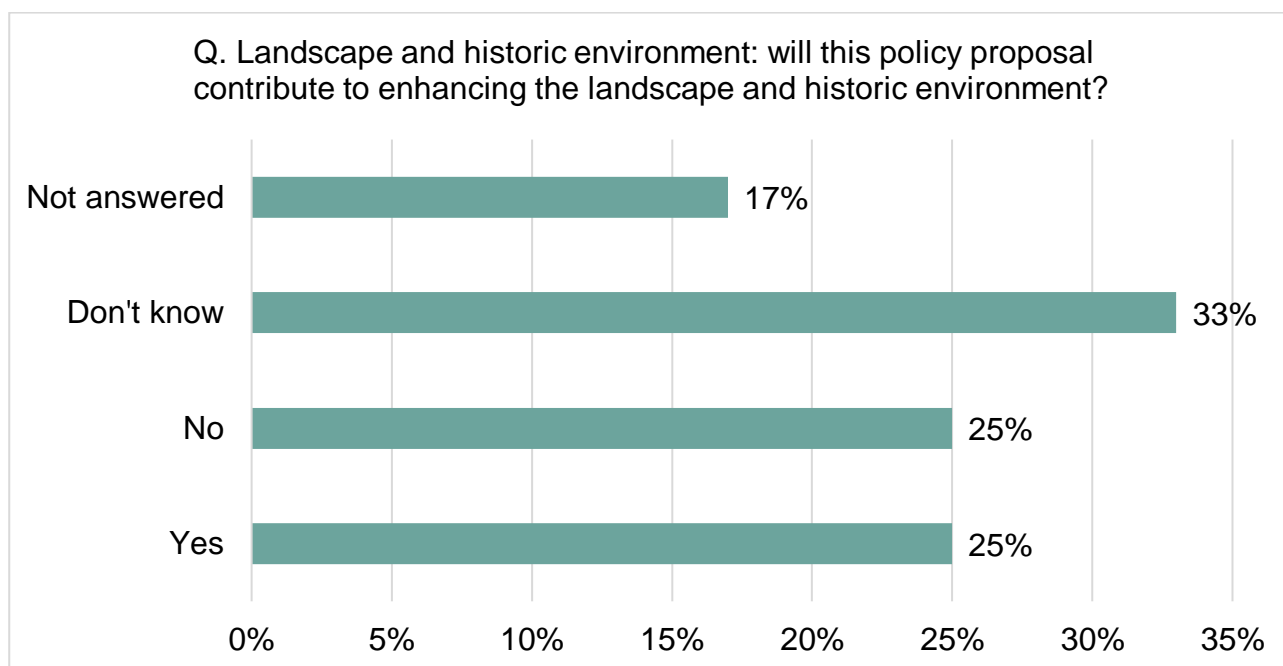
## 2.2.3 Landscape and historic environment

### Key findings

A third (33%) of respondents stated that they didn't know if **these proposals to give tenant farmers greater flexibility to implement agricultural improvements** will contribute to enhancing the landscape and historic environment. A quarter (25%) said 'Yes', they thought that it would, and a quarter (25%) said 'No'.

Respondents largely referred to their answers to Question 4, with one organisation stating that there is uncertainty around the impacts of this proposal on the historic environment at this stage, due to the lack of examples of heritage conservation, and that the term 'environment' should be understood more broadly to cover natural, cultural and historic aspects of the environment.

**Figure 2.6 Landscape and historic environment**



Option	Total	Percent
Yes	3	25%
No	3	25%
Don't know	4	33%
Not answered	2	17%

Base: 12

A third (33%) of respondents stated that they didn't know whether this policy proposal will contribute to enhancing the landscape and historic environment. A quarter (25%) said 'Yes', a quarter (25%) said 'No'.

Among respondents who answered 'Yes', one stated that the compensation proposals would act as an incentive for tenants to invest in improvements to the landscape and historic environment. Another referred to their previous answer to Question 4, which stated that:

- Regenerative practices recognised as part of regular farming that have no long term impact should be included in Part 3 to facilitate their adoption;
- This framework will provide certainty to tenants and landlords.

One organisation which answered 'Don't know' stated that the lack of examples of heritage conservation creates uncertainty around the impacts of this proposal on the historic environment at this stage, and that these impacts may be dependent on what is considered an environmental benefit. Further, in response to the recent Call for Views on the Agriculture Bill they noted that the term "environment" should be considered to cover natural, cultural and historic aspects of the environment.

Other respondents who answered 'Don't know' referred to the answers they gave to Question 4, which included detailed feedback on:

- The need to review and update the list of activities in Schedule 5 regularly;
- The need for Part 3 to remain a fixed list, to give landlords certainty;
- The fact that compensation for improvements may not act as an incentive for tenants as they are only payable at the end of the tenancy;
- The need for clarification and guidance on the proposals for Part 4, for example in terms of their application in specific contexts;
- The need to treat both landlords and tenants fairly.

See section 2.2.1 for a more detailed overview. One further respondent who answered 'Don't know' stated that this was due to a lack of relevant knowledge.

Lastly, among respondents who said 'No' to this question, one stated that they did not understand what was meant by the phrase 'enhancing a landscape'.

## 2.3 Rules of Good Husbandry and Estate Management

### Summary of proposal

The aim of this proposal is to shift the current focus of the rules of good estate management and good husbandry from 'efficient production' to placing a greater emphasis on sustainable and regenerative agricultural activities, to ensure that tenant farmers can do less efficient activities such as leaving uncropped field margins.

The Rules of Good Husbandry applying to tenant farmers, and the Rules of Good Estate Management applying to landlords, were defined in the Agricultural Holdings (Scotland) Act 1948. The Rules are currently framed towards 'efficient production' and need to be adapted as part of the Scottish Government's Vision for Agriculture.

The rules will be redefined so that a tenant will be expected to farm in a way to achieve both efficient production and sustainable and regenerative production. A landlord will have fulfilled the rules of good estate management if they manage the estate in such a way as to enable the tenant to achieve efficient production and sustainable and regenerative production.

### Question summary

The consultation asked for respondents' views on this proposal in terms of its potential impacts on:

1. Climate factors, Greenhouse Gas emissions and agricultural resilience;
2. Biodiversity, flora and fauna;
3. Landscape and the historic environment, and;
4. Further environmental impacts.

## 2.3.1 Climate factors

### Key findings

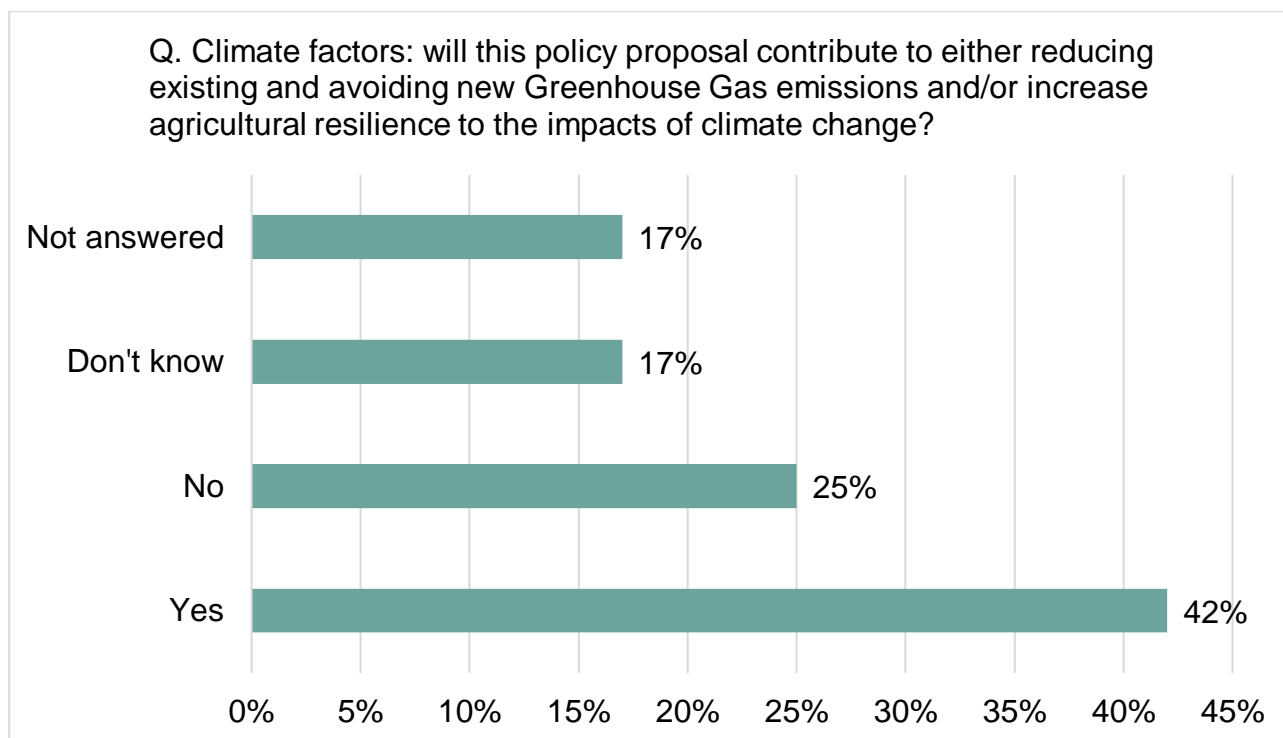
Almost half (42%) of respondents said 'Yes', they thought that the proposed changes to the rules of good estate management and good husbandry will contribute to either reducing existing and avoiding new Greenhouse Gas emissions and/or will increase agricultural resilience to the impacts of climate change. A quarter (25%) said 'No', and just under a fifth (17%) said 'Don't know'.

Respondents were broadly supportive of these proposals, with some agreeing that the rules of good husbandry should be modernised to reflect modern practices, and that the proposal could have a positive impact on the climate.

Further respondents argued that these proposals should be linked to the proposed Code of Practice on Sustainable and Regenerative Agriculture, and highlighted the need to include a requirement to record the baseline in a consistent way.

Other respondents, however, noted that efficient production is how farmers make a profit, and is connected to issues such as food production and costs. Therefore, any regenerative agricultural activities would need to be financially sustainable.

**Figure 2.7 Climate factors**



Option	Total	Percent
Yes	5	42%
No	3	25%
Don't know	2	17%
Not answered	2	17%

Base: 12

Respondents were asked if they thought that this policy proposal will contribute to either reducing existing and avoiding new Greenhouse Gas emissions and/or will increase agricultural resilience to the impacts of climate change. Almost half (42%) said 'Yes', a quarter (25%) said 'No', and just under a fifth (17%) said 'Don't know'.

Among respondents who said 'Yes', reasons given included:

- Support for modernising the rules of good estate management and husbandry to reflect modern practices, and agreement that the proposal could have a range of positive impacts, including on the climate;
- Embedding environmental practices and principles into statutory requirements will provide clear mechanisms and incentives for tenants to deliver environmental outcomes compared to the status quo;
- This proposal will give tenants greater ability to undertake activities aimed at reducing emissions and improving resilience without risking breaching the Rules of Good Husbandry.

Respondents who said 'Don't know' gave reasons including:

- Efficient production in a sustainable and regenerative way is a good principle;
- These proposals should be linked to, and delivered in alignment with, the proposed Code of Practice on Sustainable and Regenerative Agriculture;
- Compliance with the guidance and best practice in the Code should be referred to within this legislation, as the Code will be updated and reviewed in line with current practice, and with stakeholder input;
- The need to include a requirement to record the baseline in a consistent way using appropriate tools, to avoid disputes.
- The proposed whole farm review/carbon audit could be used as a baseline, providing an objective basis for application.
- The need to balance a range of interests in terms of the needs of the farmer, other tenants, landlord and estate, which may be a complex process.

One organisation stated that as a key criticism of the current estate management and husbandry rules is that it is difficult in many cases to assess the baseline condition, these proposals should be seen as an opportunity to introduce requirements around recording a baseline.

This process could take the form of a whole farm review as anticipated under the Rural Support Plan, for example including a carbon audit using an approved auditing tool or set of criteria. The baseline would then provide a way of measure the impact of the tenant's husbandry in terms of wider objectives. Failing to do so, the organisation adds, raises the risk of further dispute in the future.

Respondents who said 'No' gave reasons including:

- Efficient production is how farmers make a profit, and whilst it would be good if tenant farmers were able to do more regenerative agricultural activities, this needs to be financially sustainable;
- Farming efficiency is connected to food production, outputs and costs which has societal implications.

Lastly, one respondent who said 'No', stated that they did not understand the question, and that this terminology is inaccessible to crofters.



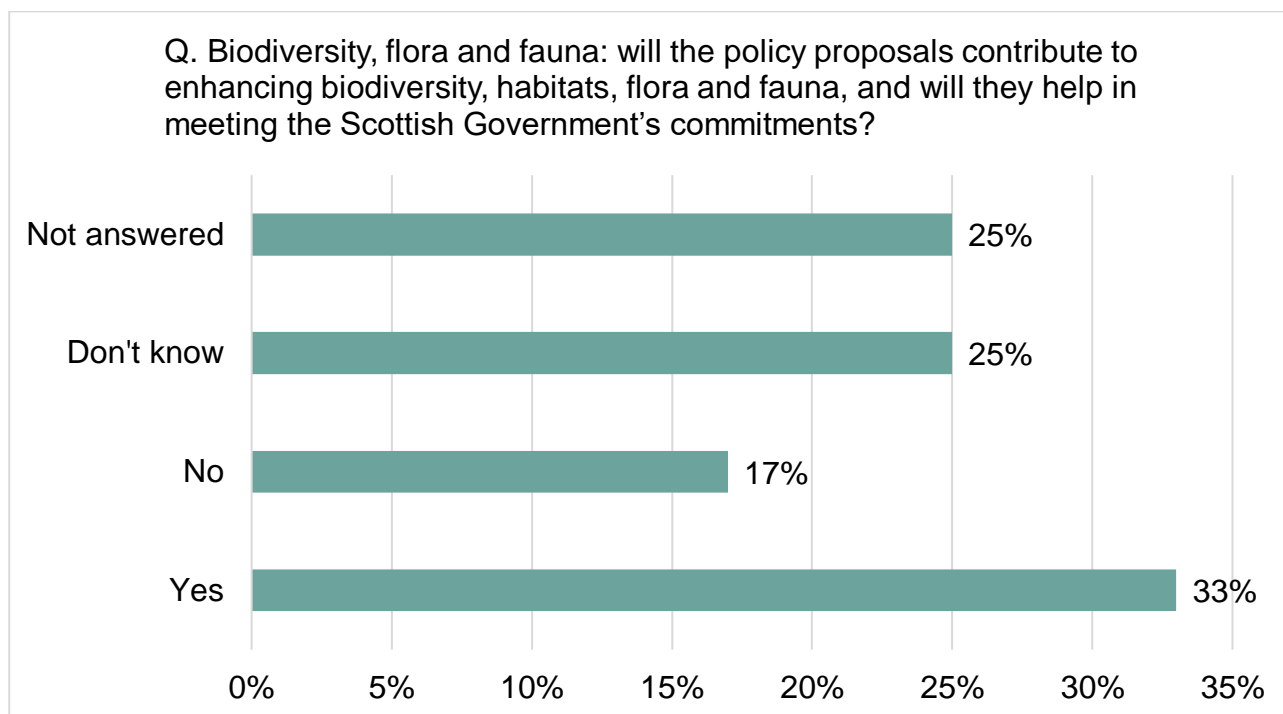
## 2.3.2 Biodiversity, flora and fauna

### Key findings

Respondents were asked if they thought that the proposed changes to the rules of good estate management and good husbandry will contribute to enhancing biodiversity, habitats, flora and fauna, and will help in meeting the Scottish Government's commitments. A third (33%) said 'Yes', just below a fifth (17%) said 'No', and a quarter (15%) said 'Don't know'.

Respondents were broadly supportive of these proposals, with most giving the same reasons as to the previous question.

**Figure 2.8 Biodiversity, flora and fauna**



Option	Total	Percent
Yes	4	33%
No	2	17%
Don't know	3	25%
Not answered	3	25%

Base: 12

A third (33%) of respondents thought that this proposal will contribute to enhancing biodiversity, habitats, flora and fauna, and will help in meeting the Scottish Government's commitments. Just below a fifth (17%) said 'No', and a quarter (15%) said 'Don't know'.

Respondents who answered 'Yes' gave reasons in line with those to the previous question, which can be summarised as follows:

- Support for modernising the rules of good estate management and husbandry to reflect modern practices, and agreement that the proposal could have a positive impact across a range of objectives, including those on biodiversity and the climate;
- This proposal will allow tenant farmers to undertake measures aimed at improving biodiversity without risking breaching the rules of good husbandry;
- Embedding environmental practices and principles into statutory requirements will provide clear mechanisms and incentives for tenants to deliver environmental outcomes compared to the status quo;
- The biodiversity benefits of producing dairy products from goats and ewes using local and traditional resources.

Respondents who answered 'Don't know' referred to their previous answers to Question 7, which included points such as:

- These proposals should be linked to, and delivered in alignment with, the proposed Code of Practice on Sustainable and Regenerative Agriculture;
- The need to include a requirement to record the baseline in a consistent way using appropriate tools, to avoid disputes;
- The proposed whole farm review/carbon audit could be used as a baseline, providing an objective basis for application;
- The need to balance a range of interests in terms of the needs of the farmer, other tenants, landlord and estate, which may be a complex process.

The points raised by these organisations in response to Question 7 are summarised in more detail in Section 2.3.1.

Lastly, among respondents who said 'No', one stated that they did not understand the question, and it was unclear what was meant by these commitments, and a second repeated an earlier comment that the Scottish biodiversity strategy to 2045 gives confidence these outcomes will be achieved, and criticised the Environment Strategy for Scotland (2020) as too vague.



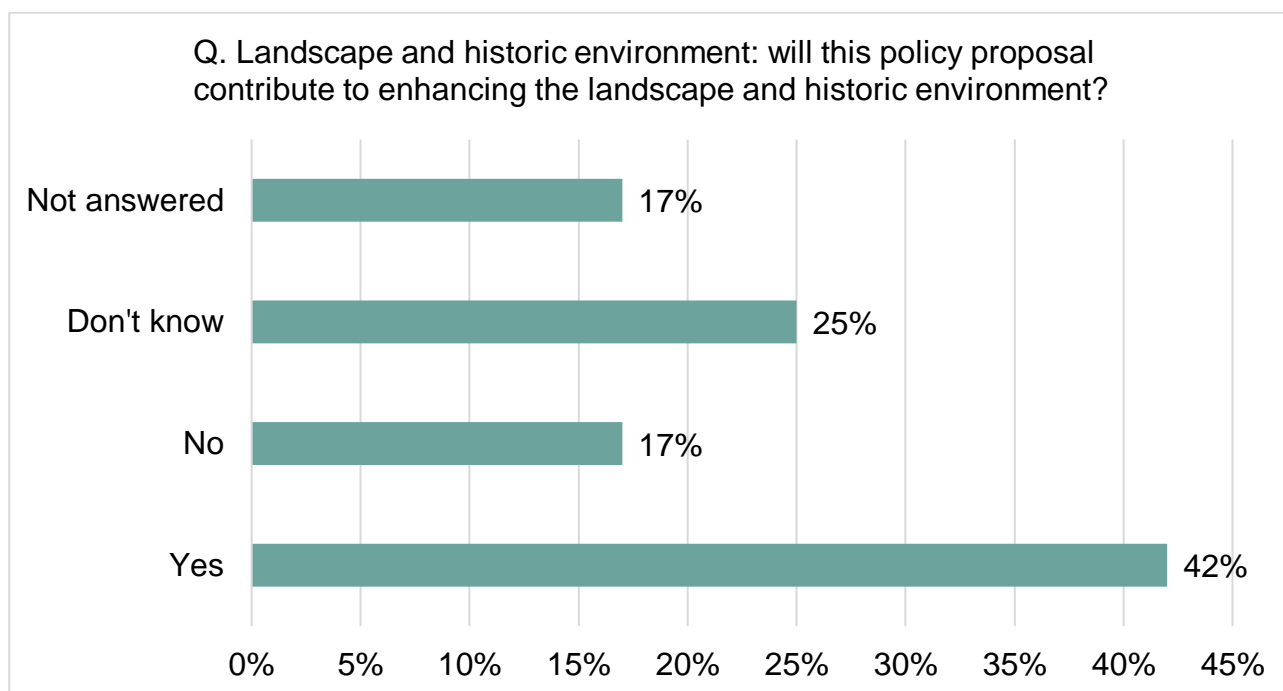
### 2.3.3 Landscape and historic environment

#### Key findings

Almost half (42%) of respondents thought that **the proposed changes to the rules of good estate management and good husbandry** will contribute to enhancing the landscape and historic environment. Just under a fifth (17%) said 'No', they did not think it would, and a quarter (25%) said 'Don't know'.

Respondents were broadly supportive of these proposals, agreeing that this proposal could have positive impacts on the historic environment. Most gave the same reasons as to the previous questions, such as the need to link this in practice with the proposed Code of Practice on Sustainable and Regenerative Agriculture.

**Figure 2.9 Landscape and historic environment**



Option	Total	Percent
Yes	5	42%
No	2	17%
Don't know	3	25%
Not answered	2	17%

Base: 12

Almost half (42%) of respondents thought that this policy proposal will contribute to enhancing the landscape and historic environment. Just under a fifth (17%) said 'No', they did not think it would, and a quarter (25%) said 'Don't know'. Just under a fifth (17%) did not answer the question. Respondents were broadly supportive of these proposals, with most giving the same reasons as to previous questions.

Among respondents who said 'Yes', reasons included:

- Agreement that this proposal could have positive impacts on the historic environment, where expanded obligations include consideration of rural historic environment assets;
- This proposal will allow tenant farmers to undertake measures aimed at enhancing the landscape and historic environment without risking breaching the Rules of Good Husbandry;
- Embedding environmental practices and principles into statutory requirements will provide clear mechanisms and incentives for tenants to deliver environmental outcomes compared to the status quo.

Among respondents who said 'Don't know', several organisations referred to their previous answer to Question 7, which included reasons such as:

- These proposals should be linked to, and delivered in alignment with, the proposed Code of Practice on Sustainable and Regenerative Agriculture;
- The need to include a requirement to record the baseline in a consistent way using appropriate tools, to avoid disputes;
- The proposed whole farm review/carbon audit could be used as a baseline, providing an objective basis for application;
- The need to balance a range of interests in terms of the needs of the farmer, other tenants, landlord and estate, which may be a complex process.

The points raised by these organisations in response to Question 7 are summarised in more detail in Section 2.3.1. Lastly, several respondents said they lacked relevant knowledge or did not understand the question.

### **2.3.4 Environmental impacts**

The next set of questions asked respondents to identify any potential environmental impacts associated with each of the agricultural tenancy proposals outlined in [Delivering our Vision for Scottish Agriculture: Proposals for a new Agriculture Bill](#), focusing on the following topics: Waygo; Rent Review; Game Damage Compensation and Resumption. The responses are outlined by topic below.

## Waygo proposal

**Summary of proposal:** The Scottish Government proposes to amend Schedule 5 of the Agricultural Holdings (Scotland) Act 1991 to enable a wider range of activities to be included as factors to be taken into consideration in calculating waygo. This will provide fairness, give tenant farmers the same opportunity to adapt for the future as the rest of Scottish agriculture, enable them to play their part in supporting biodiversity, and undertake mitigation and adaptation measures. The Scottish Government also proposes to introduce a set timescale to conclude the process of waygo, to increase fairness and enable tenant farmers to bring their agricultural tenancy to an end and move forward into the next stage of their lives.

**Summary of responses:** Respondents were largely supportive of these proposals and agreed they could have positive environmental impacts, for example by giving tenants greater clarity on compensation for improvements and waygo timeframes. One highlighted a lack of clarity around the role of negotiating valuations.

Whilst responses to this question were limited, positive views included:

- Agreement that these proposals could have positive environmental impacts;
- The proposed changes to Schedule 5, alongside the way-go proposals, will provide greater clarity on compensation for improvements, and in doing so will encourage tenants to invest in environmental improvements;
- Agreement with the assessment of improvements to the waygo time-frame and compensation, and that improvements to the legal framework will indirectly facilitate the potential for environmental improvements.

One organisation welcomed the proposal to give more clarity around waygo and to include statutory timeframes, and noted that they are aware of some instances of significant time delays in waygo payments. They added:

*Ideally, we would like there to be a healthy and vibrant tenanted sector with a ladder of opportunities. Where a tenant has moved on to another agreement, a lag in waygo payment could stifle ability to invest. There could be a positive impact from a climate and biodiversity point of view because of these proposals.*

One respondent was unsure. Other less positive responses included:

- The potential environmental impacts would be 'all bad';
- Lack of clarity over whether the appointed valuer's determination is binding on both parties. Due to the subjective nature of valuing land use changes,

each party should be entitled to undertake its own valuation appraisal followed by negotiation, and this should be done at the end of the tenancy;

- Concern about the loss of agricultural tenancies, and potential negative impacts on wider issues such as food production and population health.

## Rent Review proposal

**Summary of proposal:** The Scottish Government has proposed to repeal the rent provisions in the Land Reform (Scotland) Act 2016 and introduce a new rent calculation, which will be a different approach to rent reviews. This will include balancing three factors specific to the lease: 1. Comparable rents for secure or fixed duration tenancies; 2. Assessment of the earnings potential by means of a farm budget; and 3. Consideration of economic outlook for the next 3 years.

**Summary of responses:** Respondents who received these proposals positively raised points including the importance of revising the rent review approach to ensure it is fit for purpose in the new agricultural policy context, and of balancing different considerations, from affordable rents to retaining agricultural land. Other respondents were less positive, highlighting a number of issues and areas that require further guidance, including how the proposals will deal with statutory improvements to the land or fixed equipment.

Respondents who received these proposals positively raised points including:

- The importance of these proposals for the tenanted sector, as the current rent test is not fit for purpose, particularly within the context of new agricultural policies focused on the climate and biodiversity;
- The proposed changes will both encourage tenants to diversify into environmental measures and landlords to be supportive of such environmental diversifications;
- The importance of balancing different considerations in implementing these proposals to ensure they have a positive environmental impact – for example, tenant farmers need affordable rent to have the funds to carry out regenerative agricultural activities, but landlords should be incentivised to continue tenancies to ensure a sufficient supply of agricultural land;
- The importance of these proposals in ensuring fairness to both landlords and tenants, who will play a key role in adopting environmental measures to improve biodiversity and mitigate climate change.

Other respondents were less positive, highlighting a number of issues and areas that require further guidance, including:

- The new list of factors does not explicitly refer to the impact on productive capacity of sustainable and generative farming practices;
- Lack of guidance on how the proposals will deal with statutory improvements to the land or fixed equipment (for example, improvements to housing to meet Energy Performance Certificate standards, or environmental activities to meet legal requirements or funding conditions). This investment should be reflected in the rent. This lack of guidance may lead to legal disputes;
- If parties are not clear about who will be required to carry out different activities of work, or whether they will be able to get a return on investment, this will slow progress and investment in measures which could contribute towards climate change mitigation and energy efficiency;
- Lack of clarity on how these proposals aim to reduce emissions, address climate change or deal with the impact on productive capacity of sustainable and generative farming practices.

Further comments included that these provisions will have a ‘negligible impact’ on the environment, or that they would have a ‘bad’ impact. One respondent made a general comment on their concerns about the wider environmental impact of UK farming, for example livestock feed supply chains being linked to deforestation in Brazil, and one answered that the question was not relevant to them, as a crofter.

### **Game Damage Compensation proposal**

**Summary of proposal:** The proposals aim to modernise the compensation for game damage provisions to clarify elements and enable tenant farmers to claim compensation for losses other than damage to crops (for example, damage to livestock, trees planted for different purposes, and fixed equipment). This will amend section 52 of the Agricultural Holdings (Scotland) Act 1991.

**Summary of responses:** Responses to these proposals focused largely on their practical implementation, rather than environmental impacts. Overall, responses were mixed, with some respondents recognising the need to support tenant farmers through these changes, and others asking for greater clarity on specific aspects, including how compensation would work in practice, e.g. damage by wild animals.

Positive responses included:

- Support for the proposals, as game damage can be a significant concern for tenant farmers, and the need to apply a balanced approach that considers both conservation needs and impacts on agricultural businesses;
- Agreement with proposals to strengthen tenant’s rights in terms of compensation for damage (e.g. from deer, game), which will encourage

landlords to manage numbers effectively and engage with Nature Scot where necessary, for example to control high populations;

- Agreement with the proposal to remove black game from the definition of game due to its declining population, the term no longer being in use, and the fact that Black grouse is now a red list conservation species;
- The proposals are reasonable.

One respondent made a more general comment about the environmental problems associated with increasing numbers of both deer and reared game birds across Scotland being well recognised. More critical responses included:

- The need for greater clarity on how compensation can be claimed, and its application in specific contexts, for example damage by wild mammals, due to the difficulty of identifying the source of the damage, or the landowner or sporting rights holder from whom compensation is required;
- Lack of sufficient detail around the potential compensation threshold per hectare of damage;
- The need for a clearer definition of the 'reasonable opportunity' mechanism to increase understanding of how these proposals will work in principle, and the need for further stakeholder consultation;
- The potential for unintended consequences, for example excessive deer culls, to mitigate risks of compensation claims.

One organisation stated that any proposals should not impose disproportionate liability on sporting rights holders, particularly for damage caused by wild animals due to the challenges of establishing the source of this type of damage.

One organisation noted that it is unreasonable to include compensation for damage to trees by wild deer, as tenancies will generally have been taken on in the context of a pre-existing deer or game population, and individuals planting trees should be responsible for taking reasonable action to protect the crop from damage from hares, rabbits, deer and so on.

One respondent referenced problems they are experiences with deer and ingress from neighbours' sheep, which eat saplings and inhibit tree planting, and one further respondent said the issue was not relevant to them.

## **Resumption proposal**

**Summary of proposal:** The proposals aim to make the 1991 Act resumption procedures consistent given their effect is the same, whether for agricultural or non-agricultural activities. The provisions aim to modernise the compensation provisions to ensure that the tenant is provided with fair compensation for their loss.

The provisions will allow the tenant to claim compensation on a reduction in rent, a disturbance payment, and an additional reorganisation payment.

**Responses:** In answering this question, respondents raised more general points on resumption, and were largely unclear on the environmental benefits of this proposal. Several felt that the proposals risked making resumption a less attractive option for landlords, who may have wished to do so for the purpose of environmental activities. However, another respondent stated that the proposals may lead to tenants being more willing to carry out environment improvements on land they would have previously seen as 'at risk' of resumption.

Respondents' responses to this question can be summarised as follows:

- Agreement that tenants should be provided with fair compensation where resumption of all or part of a holding happens;
- Resumption is a difficult and emotive topic because it can impact on the viability of holdings;
- Resumption should be easy;
- Criticism of the idea of retrospectively changing the basis of existing agreements, as this may undermine trust and confidence in entering into future agreements, and have a wider negative impact on the tenanted sector;
- In turn, this may particularly impact new entrants, who may be more likely to farm in a sustainable and regenerative way, leading to a negative environmental impact as an unintended outcome.
- These proposals may have a negative environmental impact if they deter resumption by the landlord of part of a holding to carry out environmental or carbon-reduction activities. In this case, it should be facilitated.

One organisation stated that they would have no objection to reviewing the wording of how compensation for resumption is calculated to ensure fairness and clarity but would strongly oppose any attempt to apply a partial capital value to resumption.

In terms of the environmental benefits of this proposal, several respondents stated that they were unclear on what these would be. One positive impact noted by a respondent was that the compensation proposals may lead to tenants being more willing to carry out environment improvements on land they would previously have seen as 'at risk' of resumption (for example, uplands that may be resumed for commercial forestry).

One respondent made a general comment on the need for Scotland to be more self-sufficient in terms of food production, and another commented that resumption has a different meaning within a crofting context.

## 2.4 Small Landholdings: Diversification

### Summary of proposal

The diversification proposal for small landholdings seeks to give small landholders greater opportunity to diversify their business, support profitability, and help address the twin crises of climate change and biodiversity loss.

Currently small landholdings may only be used for cultivated purposes. This provision will enable a small landholder to use the small landholding for a purpose other than for 'cultivation'. This will align with agricultural holdings diversification provisions set out in Part 3 of the Agricultural Holdings (Scotland) Act 2003.

Notice must be given in writing by the small landholder to their landlord not less than 70 days before commencing the new diversified activity. The notice must include the following information: What the non-cultivation purpose is; the land which would be used for that purpose (identifiable on an OS map); any changes that the small landholder plans to make to that land for the proposed purpose; the date on which the small landholder proposes to begin using the land for the non-cultivation activity; and any environmental benefit connected with the proposal.

On receipt of a "notice of diversification", the landlord will be able to request further relevant information within 30 days. The landlord will then be able to either object to the diversification or consent/consent with conditions within set timeframes. The landlord may object on certain specified grounds, namely where the proposal would: Lessen significantly the amenity of the land or the surrounding area; Substantially prejudice the use of the whole small holding for cultivation purposes in the future; Be substantially detrimental to the sound management of the estate of which the small landholding consists or forms part; or Cause the landlord to suffer undue hardship. When a landlord objects, they must explain and justify their reasons in order to encourage negotiation and dialogue between the parties. The onus is on the landlord to apply to the Land Court for a determination that the objection is reasonable. If they fail to make an application within the timeframe then the small landholder can proceed with the diversification.

### Question summary

The consultation asked for respondents' views on this proposal in terms of its potential impacts on: 1. Climate factors, Greenhouse Gas emissions and agricultural resilience; 2. Biodiversity, flora and fauna, and; 3. Landscape and the historic environment.



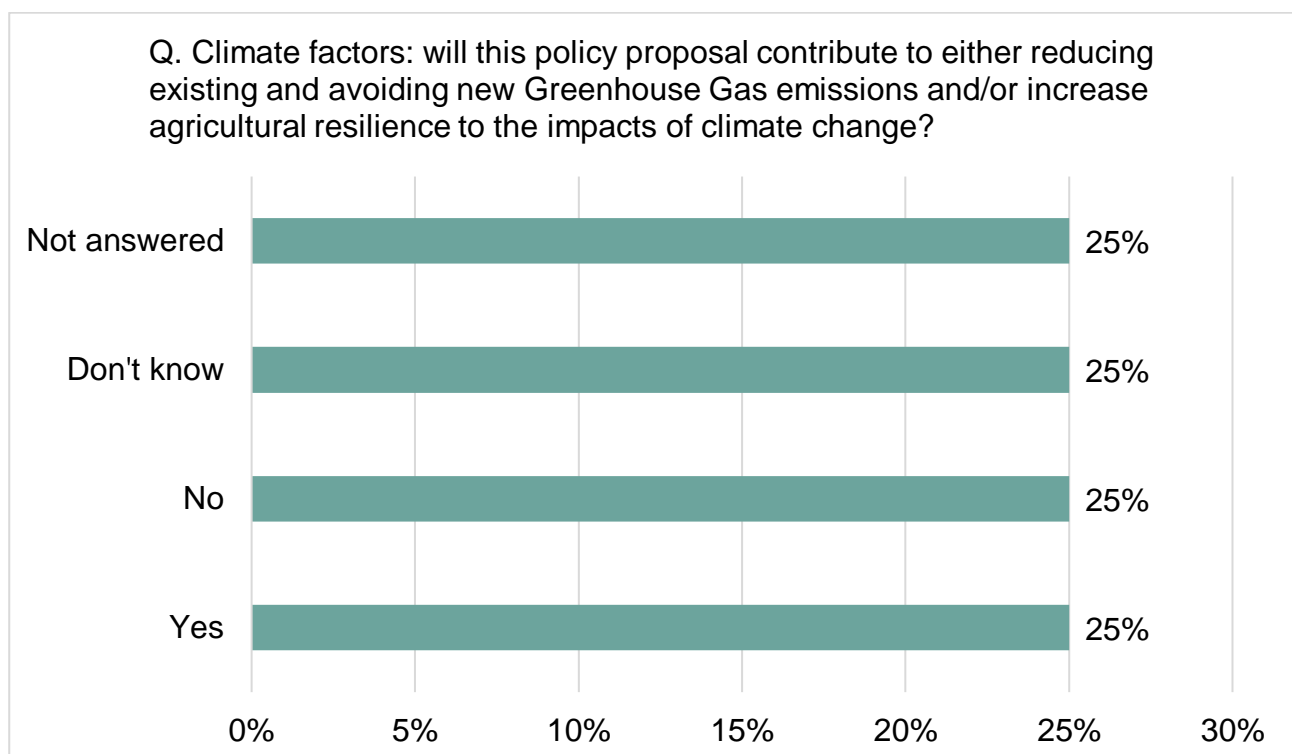
## 2.4.1 Climate factors

### Key findings

A quarter (25%) of respondents thought that the diversification proposals for small landholdings will contribute to either reducing existing and avoiding new Greenhouse Gas emissions and/or will increase agricultural resilience to the impacts of climate change. However, a quarter (25%) also said 'No', and quarter (25%) said 'Don't know'.

There were a small number of written responses to this question, with several respondents highlighting a lack of clarity on how these proposals are expected to lead to environmental benefits. Others felt there were likely to be positive outcomes, from giving small landholders greater ability to undertake non-agricultural measures to mitigate emissions, to increasing the number of available small landholding leases.

**Figure 2.10 Climate factors**



Option	Total	Percent
Yes	3	25%
No	3	25%
Don't know	3	25%
Not answered	3	25%

Base: 12

A quarter (25%) of respondents thought that this policy proposal will contribute to either reducing existing and avoiding new Greenhouse Gas emissions and/or will increase agricultural resilience to the impacts of climate change. However, a quarter (25%) also said 'No', and quarter (25%) said 'Don't know'.

There were a small number of written responses to this question, with several respondents highlighting a lack of clarity on how these proposals are expected to lead to environmental benefits. Critical comments included:

- Several respondents felt there was a lack of clarity on how proposals are expected to lead to environmental benefits;
- One stated that it was unclear how simply widening diversification provisions will do this, as opposed to encouraging activities with stated aims such as reducing or avoiding new GHG emissions;
- The potential for negative impacts, for example in terms of the production and transport of building materials for wind farms and solar panels.

More positive responses included:

- Agreement that the proposal will contribute to these outcomes, for example by giving small landholders greater ability to undertake non-agricultural measures to mitigate emissions and to practice systems of farming which improve soil health and resilience;
- Agreement with the need to remove ambiguity and align the rights and responsibilities of tenants with holdings under the Small Landholders Acts and the Agricultural Holdings Act 1991;
- The Environmental Report concludes that the proposals have the potential to deliver significant positive environmental impacts;
- Potential for both positive environmental impacts and wider socio-economic benefits in rural areas if the changes proposed encourage new lettings of

small holdings, where smallholders undertake some agricultural or environmental activity alongside another occupation.

In relation to this last point, however, this organisation commented that successive legislative interventions in this area over the last 25 years or so have reduced trust in legislators to such an extent that new tenancies are rare and other more flexible mechanisms will be used instead to provide access to land, where each party can negotiate freely.

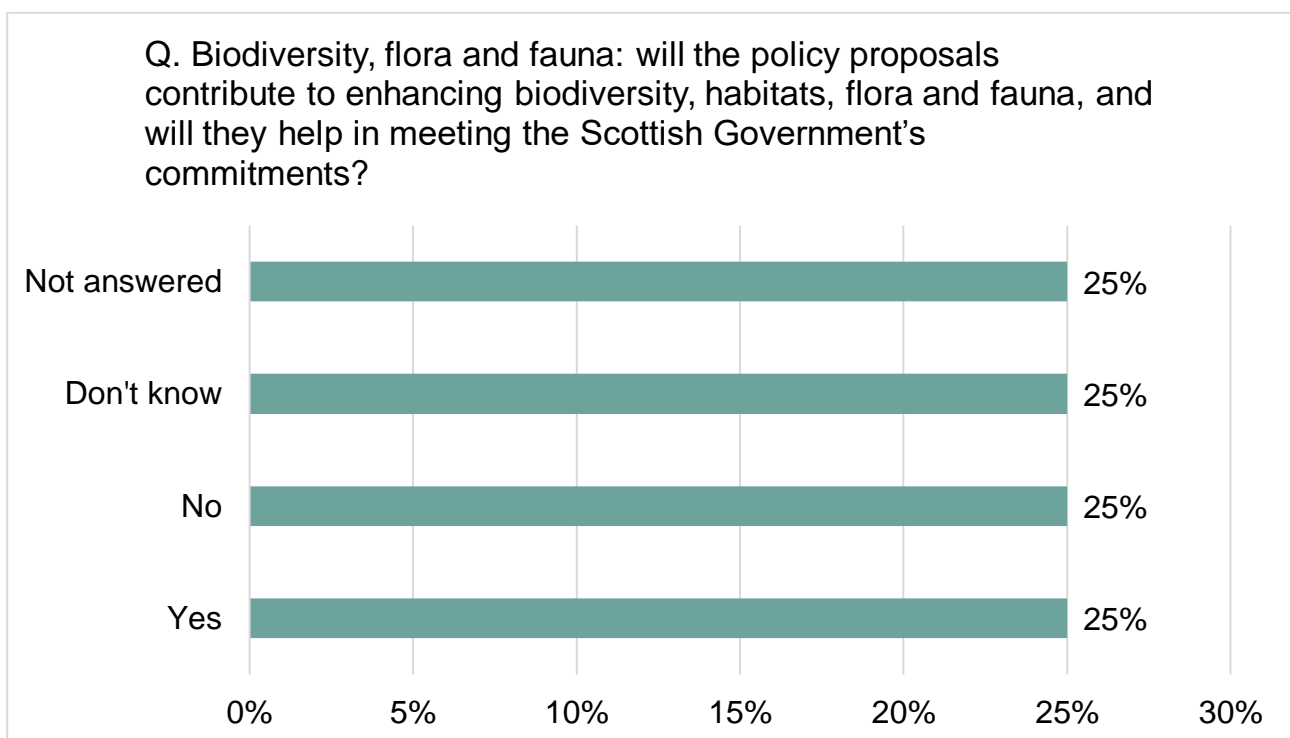
## 2.4.2 Biodiversity, flora and fauna

### Key findings

A quarter (25%) of respondents thought that the diversification proposals for small landholdings will contribute to enhancing biodiversity, habitats, flora and fauna, and will help in meeting the Scottish Government's commitments. However, a quarter (25%) said 'No', they did not think it would, and quarter (25%) said 'Don't know'.

There were a small number of written responses (7) to this question, with several respondents referring to previous answers, which raises points such as a lack of clarity on how these proposals are expected to lead to environmental benefits, and the potential for both positive environmental impacts and wider socio-economic benefits in rural areas if the changes proposed encourage new lettings of small holdings. One respondent expressed disagreement that climate change and biodiversity loss can be addressed through this type of legislation.

**Figure 2.11 Biodiversity, flora and fauna**



Option	Total	Percent
Yes	3	25%
No	3	25%
Don't know	3	25%
Not answered	3	25%

Base: 12

A quarter (25%) of respondents thought that this proposal will contribute to enhancing biodiversity, habitats, flora and fauna, and will help in meeting the Scottish Government's commitments. However, a quarter (25%) said 'No', they did not think it would, and quarter (25%) said 'Don't know'.

There were a small number of written responses (7) to this question, with several respondents referring to previous answers, which raised points such as a lack of clarity on how these proposals are expected to lead to environmental benefits; for example, it is unclear how simply widening diversification provisions will do this, as opposed to encouraging targeted activities which aim to reduce or avoid new GHG emissions. One respondent expressed disagreement that climate change and biodiversity loss can be addressed through this type of legislation. More positive responses, which also repeated earlier points, included:

- These proposals will increase small landholders' ability to carry out farming practices and non-agricultural activities aimed at improving biodiversity and habitat management, without risking a breach of lease conditions;
- Agreement with the need to remove ambiguity and align the rights and responsibilities of tenants with holdings under the Small Landholders Acts and the Agricultural Holdings Act 1991;
- Potential for both positive environmental impacts and wider socio-economic benefits in rural areas if the changes proposed encourage new lettings of small holdings, where smallholders undertake some agricultural or environmental activity alongside another occupation;
- The Environmental Report concludes that the proposals have the potential to deliver significant positive environmental impacts;

One respondent repeated an earlier comment that it is the Scottish biodiversity strategy to 2045 which gives confidence these outcomes will be achieved, as opposed to the Environment Strategy for Scotland (2020) which is too vague.

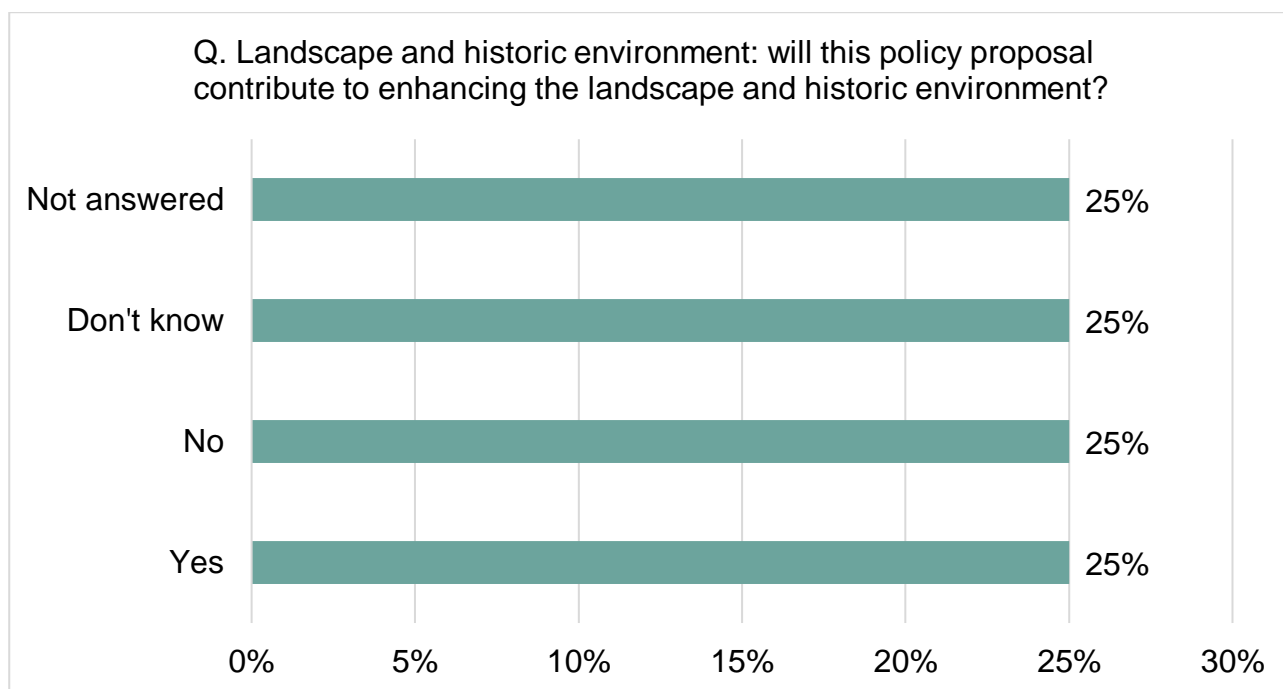
## 2.4.3 Landscape and historic environment

### Key findings

A quarter (25%) of respondents thought that the diversification proposals for small landholdings will contribute to enhancing the landscape and historic environment. However, a quarter (25%) said 'No', they did not think it would, and a quarter (25%) said 'Don't know'.

Responses to this question largely drew on points raised in response to the two previous questions. One respondent did state that this policy would make it easier for small landholders to undertake activities to improve the landscape and historic environment, such as maintaining historic monuments and improving public access.

**Figure 2.12 Landscape and historic environment**



Option	Total	Percent
Yes	3	25%
No	3	25%
Don't know	3	25%
Not answered	3	25%

Base: 12

A quarter (25%) of respondents thought that this policy proposal will contribute to enhancing the landscape and historic environment. However, a quarter (25%) said 'No', they did not think it would, and a quarter (25%) said 'Don't know'.

In answering this question, several respondents referred to previous answers. Those who answered 'Yes' made several points, including:

- This policy will allow small landholders to undertake non-agricultural measures to improve the landscape and historic environment;
- Examples would be improving the amenity value of landscapes and providing public access, and maintaining historic monuments and designed landscapes and improving public access to them. Such measures are currently difficult for small landholders to undertake due to agricultural restrictions in leases;
- The Environmental Report concludes that the proposals have the potential to deliver significant positive environmental impacts;

One respondents who answered 'No' stated that the proposals could have a negative impact in terms of the aesthetics of the historic environment. Another highlighted a lack of confidence in the policy proposals' effectiveness.

- Noting that the environmental assessment concludes that impacts on the historic environment are uncertain at this stage, one organisation welcomed the recommendation that proposals "clarify that activities, particularly non-agricultural activities, must give due consideration to the local landscape and historic context, with activities only being supported where they maintain or enhance local landscape character and/ or the setting and significance of the historic environment."

One further respondent noted that as continued legislative changes may result in a lack of confidence in entering new tenancies under this regime, with other mechanisms being used instead to provide access to land, this may have negative environmental impacts as when available, smallholdings can help meet environmental objectives and bring other benefits to rural communities. Further points repeated as above were:

- Agreement with the need to remove ambiguity and align the rights and responsibilities of tenants with holdings under the Small Landholders Acts and the Agricultural Holdings Act 1991
- Potential for both positive environmental impacts and wider socio-economic benefits in rural areas if the changes proposed encourage new lettings of small holdings, where smallholders undertake some agricultural or environmental activity alongside another occupation.

## 2.5 Small Landholdings: Right to buy

### Summary of proposal

The proposal aims to remove barriers to sustainable rural development by providing small landholders with greater certainty, to encourage them to invest in their small landholdings. It is intended that the pre-emptive right to buy proposal for small landholders will follow that given to secure 1991 Act tenant farmers with minor alterations.

It is intended that the small landholder will initiate the process by providing a written notice to the landlord. This notice will include a plan/map together with a detailed description of the land which the small landholder considers to form the smallholding. On receipt of the written notice from the small landholder, the landlord is to respond to the small landholder within 30 days confirming whether they agree or not with the notice describing the extent of the lease.

It is hoped that the process of seeking to clarify the extent of the lease would encourage dialogue between the small landholder and landlord to see if an agreement could be reached on the extent of the small landholding. Mediation may also be an option at this point, as would be taking the matter to the Land Court.

Following the serving of notice, a pre-emptive right to buy is triggered in two situations: where the owner of a small landholding or creditor gives the small landholder notice of a proposal to transfer the land; or where the owner or creditor takes action with a view to transferring the land or any part of it. Where parties fail to agree then a valuer may be appointed by agreement between the seller and the landlord. Where they fail to agree the appointment of a valuer then one may be appointed by the Land Court.

### Question summary

The consultation asked for respondents' views on this proposal in terms of its potential impacts on:

1. Climate factors, Greenhouse Gas emissions and agricultural resilience;
2. Biodiversity, flora and fauna;
3. Landscape and the historic environment, and;
4. Further environmental impacts.



## 2.5.1 Climate factors

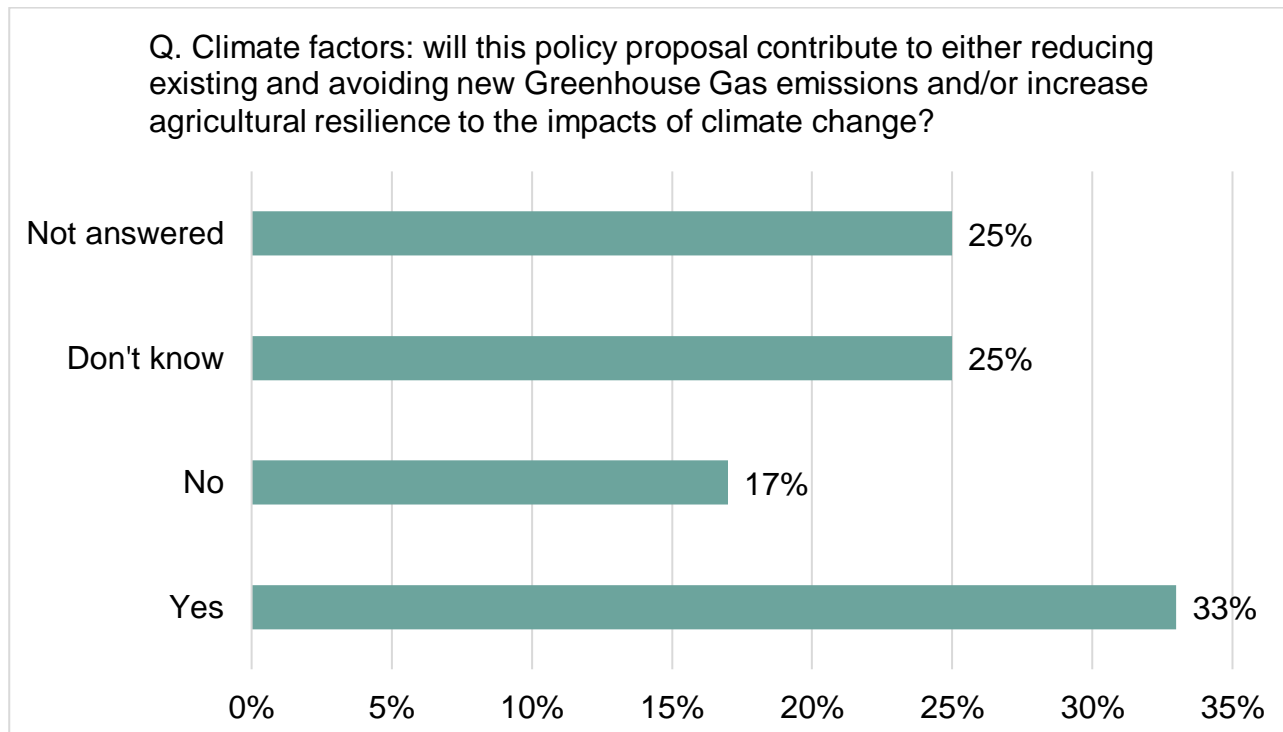
### Key findings

A third (33%) of respondents thought that the proposals to give small landholders greater certainty by giving them a pre-emptive right to buy will contribute to either reducing existing and avoiding new Greenhouse Gas emissions and/or will increase agricultural resilience to the impacts of climate change. Below a fifth (17%) said 'No', they did not think it would, and a quarter (25%) said 'Don't know'.

This question received a small number of relevant written responses (5).

Respondents highlighted a small number of potential benefits, including the fact that a pre-emptive right to buy will encourage small landholders to make long term environmental investments, whilst several others emphasised both the positive environmental impacts and wider socio-economic benefits in rural areas if the changes proposed encourage greater availability of small landholdings.

**Figure 2.13 Climate factors**



Option	Total	Percent
Yes	4	33%
No	2	17%
Don't know	3	25%
Not answered	3	25%

Base: 12

A third (33%) of respondents thought that the proposals to give small landholders greater certainty by giving them a pre-emptive right to buy will contribute to either reducing existing and avoiding new Greenhouse Gas emissions and/or will increase agricultural resilience to the impacts of climate change. Below a fifth (17%) said 'No', they did not think it would, and a quarter (25%) said 'Don't know'. Those who answered 'Yes' made several points, including:

- A pre-emptive right to buy will encourage small landholders to make long term environmental investments, in the knowledge that should the holding ever be sold they would be given the first opportunity to buy;
- If the tenant farmer doesn't have rent costs, they may be able to afford the regenerative agricultural activities;
- The Environmental Report concludes that the proposals have the potential to deliver significant positive environmental impacts;

Respondents who answered 'Don't know' referred to points raised in previous answers, including:

- Agreement with the need to remove ambiguity and align the rights and responsibilities of tenants with holdings under the Small Landholders Acts and the Agricultural Holdings Act 1991
- Potential for both positive environmental impacts and wider socio-economic benefits in rural areas if the changes proposed encourage new lettings of small holdings, where smallholders undertake some agricultural or environmental activity alongside another occupation;
- The potential environmental and social benefits of smallholdings for rural communities, and the negative impact therefore of continued legislative changes leading to a loss of confidence in entering new tenancies under this regime, with other mechanisms being used instead to provide access to land.

One respondent expressed a lack of confidence in the potential environmental impact of this type of policy.

## 2.5.2 Biodiversity, flora and fauna

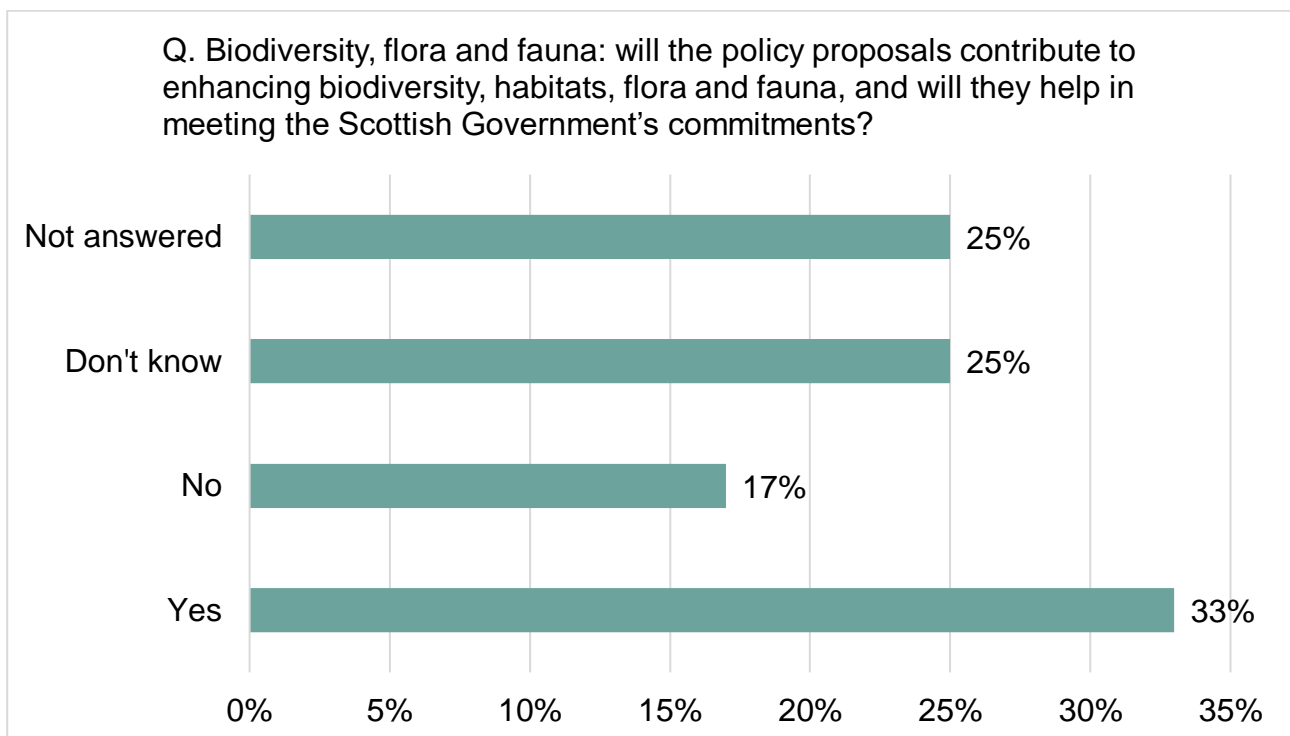
### Key findings

A third (33%) of respondents said 'Yes', agreeing that this proposal to give small landholders greater certainty by giving them a pre-emptive right to buy will contribute to enhancing biodiversity, habitats, flora and fauna, and will help in meeting the Scottish Government's commitments. Below a fifth (17%) said 'No', and a quarter (25%) said 'Don't know'.

This question received a small number of relevant written responses (6).

Whilst one respondent stated a pre-emptive right to buy will encourage small landholders to make long term investments aimed at improving biodiversity, others highlighted a lack of clarity on how the proposals are connected to the topic of biodiversity, flora and fauna; or a lack of general understanding of the policy.

**Figure 2.14 Biodiversity, flora and fauna**



Option	Total	Percent
Yes	4	33%
No	2	17%
Don't know	3	25%
Not answered	3	25%

Base: 12

Respondents were asked if they thought that this proposal will contribute to enhancing biodiversity, habitats, flora and fauna, and will help in meeting the Scottish Government's commitments. A third (33%) of respondents said 'Yes', below a fifth (17%) said 'No', and a quarter (25%) said 'Don't know'. This question received a small number of relevant written responses (6).

Those who answered 'Yes' made several points in line with those made in response to the previous question, including:

- A pre-emptive right to buy will encourage small landholders to make long term investments aimed at improving biodiversity, as should the holding ever be sold they know they would be given the first opportunity to buy;
- The Environmental Report concludes that the proposals have the potential to deliver significant positive environmental impacts;

Respondents who answered 'No' raised the following points:

- A lack of clarity on how the proposals are connected to the topic of biodiversity, flora and fauna;
- A lack of general public understanding of Government policy.

Respondents who answered 'Don't know' referred to their previous answers. These are summarised above in section 2.5.1.

## 2.5.3 Landscape and historic environment

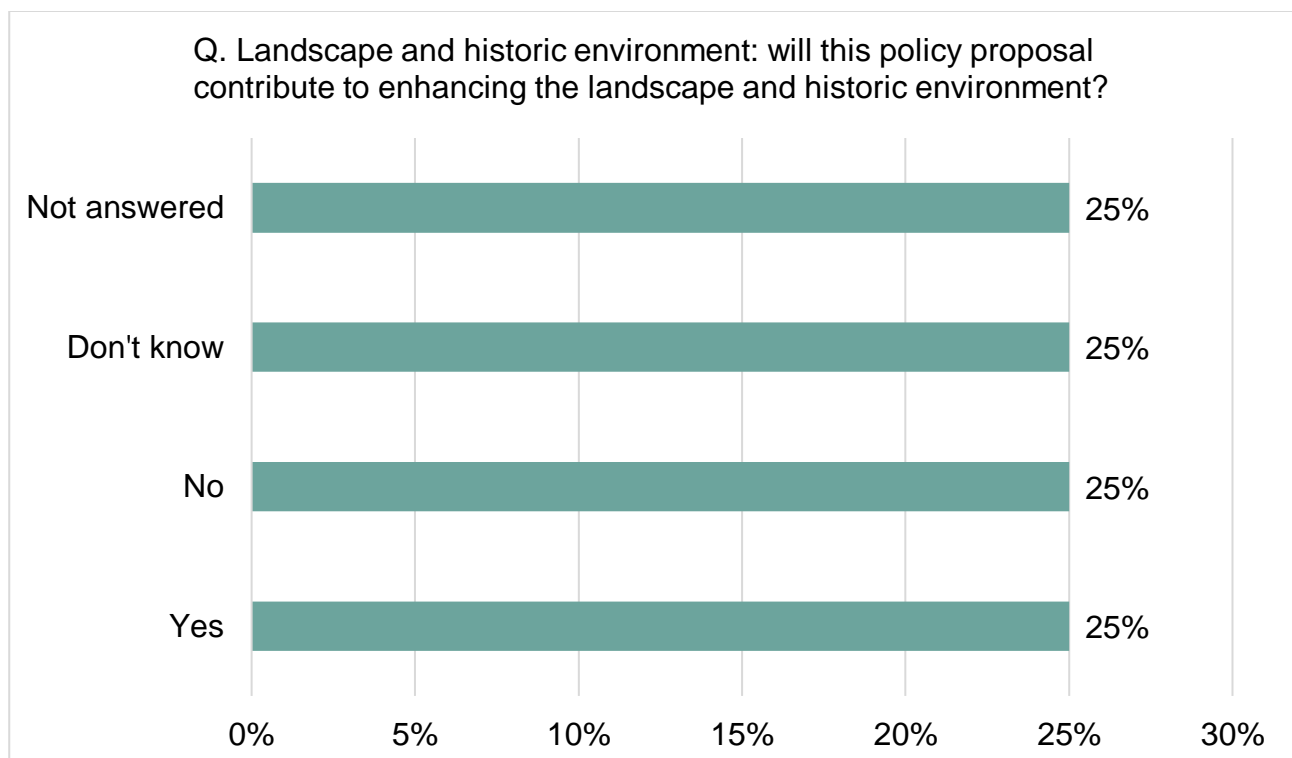
### Key findings

A quarter (25%) of respondents said 'Yes', they thought that this policy proposal to give small landholders greater certainty by giving them a pre-emptive right to buy will contribute to enhancing the landscape and historic environment. However, a quarter (25%) said 'No', and quarter (25%) said 'Don't know'.

This question received a small number of relevant written responses (5).

Whilst one respondent stated a pre-emptive right to buy will encourage small landholders to make long term investments in the landscape and historic environment, another commented that there would be no visible changes. Others referred to previous answers on small landholding tenancies more broadly.

**Figure 2.15 Landscape and historic environment**



Option	Total	Percent
Yes	3	25%
No	3	25%
Don't know	3	25%
Not answered	3	25%

Base: 12

A quarter (25%) of respondents said 'Yes', they thought that this policy proposal to give small landholders greater certainty by giving them a pre-emptive right to buy will contribute to enhancing the landscape and historic environment. However, a quarter (25%) said 'No', and quarter (25%) said 'Don't know'. This question received a small number of relevant written responses (5).

Those who answered 'Yes' made several points in line with those made in response to the previous question, including:

- A pre-emptive right to buy will encourage small landholders to make long term investment in the landscape and historic environment, in the knowledge that should the holding ever be sold they would be given the first opportunity to buy;
- The Environmental Report concludes that the proposals have the potential to deliver significant positive environmental impacts.

One respondent who answered 'No' commented that they think there will be no visible changes. Respondents who answered 'Don't know' referred to their previous answers. These are summarised above in section 2.5.1.

## 2.5.4 Environmental impacts

In this section, respondents were asked to identify any potential environmental impacts associated with each of the agricultural tenancy proposals outlined in [Delivering our Vision for Scottish Agriculture: Proposals for a new Agriculture Bill](#), focusing on: Succession and Assignment, and the Umbrella Body proposal. Their answers are summarised below.

### Succession and Assignment

**Summary of proposal:** This proposal aims to enable small landholders to assign their tenancy to the same classes of people as tenant farmers with secure 1991 Act agricultural tenancies can through the Land Reform (Scotland) Act 2016.

It aims to encourage investment and growth; enabling wider family members to take over, provide older small landholders greater ability to retire at an earlier stage, while opening up opportunities for new entrants and future generations of young farmers. The provisions modernise the range of family members who can succeed a small landholding by amending the legislation for testate succession in the Crofters Holdings (Scotland) Act 1886 (which significantly limits the range of eligible individuals, compared to modern family arrangements).

**Summary of responses:** This question received a small number of relevant written responses (4). Whilst one respondent stated that the proposals would have a positive impact in terms of regenerative agricultural activities being taught to the next generation, and encouraging young people to stay in farming, another emphasised an earlier, wider point on protecting access to small landholdings.

This question received a small number of relevant written responses (4). One positive response was:

*Regenerative agricultural activities can be taught which will make the next generation better informed. I think this is good idea, it will encourage young farmers to stay in farming and other young people to pick for their themselves and their children.*

A second respondent repeated an earlier point on the potential environmental and social benefits of smallholdings, and the negative impact of continued legislative changes leading to a loss of confidence in entering new tenancies under this regime, with other mechanisms being used instead to provide access to land.

Another respondent felt the impacts would be negative, but did not provide any further detail; lastly, one noted the question was not relevant to them, a crofter.

### **Umbrella Body proposal**

**Summary of proposal:** This proposal aims to allow landlords and small landholders to have access to the Tenant Farming Commissioner (TFC) and intends for the TFC to have similar functions for small landholdings as those currently set out for agricultural holdings in the Land Reform (Scotland) Act 2016.

The Tenant Farming Commissioner would promote and encourage good relations between small landholders and their landlords, publishing guidance and codes of practice. The TFC would also be given the power to investigate alleged breaches of codes of practice. This proposal would help to reduce confusion and tension while making small landholdings legislation more accessible.

**Summary of responses:** This question received no detailed written responses, with only the following points made: a lack of understanding of the policy's aims; negative impacts, but no further detail provided; the question not being relevant as they do not interact with the Tenant Farming Commissioner (TFC); and repetition of the point above on protecting access to small landholdings, and the social and environmental benefits they offer, more widely.





## 2.6 Land Management Tenancy

### Summary of proposal

To support the development of a new model of lease, a 'Land Management Tenancy',<sup>17</sup> which will aim to support people to use and manage land in a way that meets their needs, and Scotland's needs and interests in the 21st Century.

Stakeholders have asked for help in developing new types of agreement that can be adopted by landlords and tenants to enable a wider range of activities on land that will both promote our climate and nature objectives and model new ways of working with and on land. A Land Management Tenancy will complement existing types of lease, rather than replace them.

This proposal will place a duty for Ministers to publish a Land Management Tenancy template, and to consult with key stakeholders for that purpose. This duty will seek to ensure that the template is developed in a way to enable individuals to undertake a range of land use activities in a way that supports: climate change mitigation and adaption; nature restoration and enhancement; other diverse land use opportunities; and food producers. It is intended that the Tenant Farming Commissioner will produce guidance on entering into a Land Management Tenancy.

### Question summary

The consultation asked for respondents' views on this proposal in terms of its potential impacts on:

1. Climate factors, Greenhouse Gas emissions and agricultural resilience;
2. Biodiversity, flora and fauna, and;
3. Landscape and the historic environment.

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<sup>17</sup> This was referred to as a 'Land Use Tenancy' in the consultation documents.

## 2.6.1 Climate factors

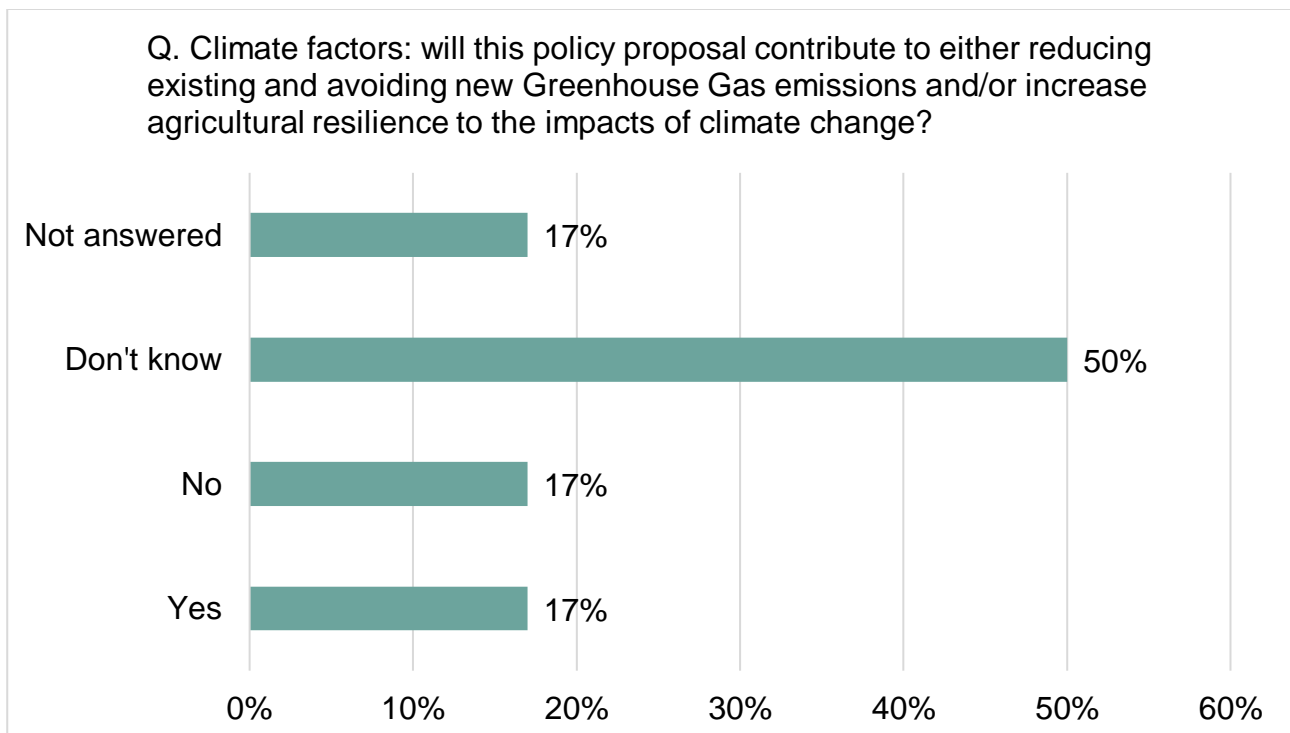
### Key findings

Half (50%) of respondents stated that they didn't know if this proposal to develop a new tenancy model will contribute to either reducing existing and avoiding new Greenhouse Gas emissions and/or will increase agricultural resilience to the impacts of climate change. Just under a fifth (17%) each said 'Yes', they thought that it would and 'No', it wouldn't.

Respondents raised a number of positive points, including that the proposed new tenancy model has the potential to improve the speed and scope at which tenants and landlords are able to respond to environmental challenges, may be more likely to facilitate the types of activities and collaborations required in rural Scotland to achieve net zero objectives.

However, several felt there is a lack of appetite from the industry, and that low uptake would decrease these impacts; others were unclear what this model would 'add to the current system' or how it would interact with other proposals which aim to allow non-agricultural environmental activities within existing tenancy models anyway. In addition, a number of respondents said that further information and detail on the proposal was needed in order for them to comment further.

**Figure 2.16 Climate factors**



Option	Total	Percent
Yes	2	17%
No	2	17%
Don't know	6	50%
Not answered	2	17%

Base: 12

Half (50%) of respondents stated that they didn't know if this proposal to develop a new Land Management Tenancy model<sup>18</sup> will contribute to either reducing existing and avoiding new Greenhouse Gas emissions and/or will increase agricultural resilience to the impacts of climate change. Just under a fifth (17%) each said 'Yes', they thought that it would and 'No', it wouldn't.

Among respondents who answered 'Yes', one answer stated:

- The proposed new Land Management Tenancy has the potential to improve the speed and scope for tenants and landlords to respond to environmental challenges;
- The need for further consultation around the template, and to ensure that it allows individuals to undertake activities that support: climate change mitigation and adaption; nature restoration and enhancement; other diverse land use opportunities; and food production.

Among respondents who answered 'Don't know', views included:

- The need for greater clarity on what additional benefits this tenancy model will bring, alongside other existing models;
- This model may allow collaboration between landowners and other parties to undertake environmental activities alongside other estate activities, bringing shared benefit, as long as they remain flexible, contractual arrangements that parties can enter into without fear of future government intervention;
- Whilst the proposal indicates that this tenancy model may be a useful resource to help guide agreements for non-agricultural activity, in practice it will be difficult to produce a template which covers all situations;
- There are already commercial leases and other business contracts which allow for non agricultural activity, and can be used for this purpose;

<sup>18</sup> This was referred to as a 'Land Use Tenancy' in the consultation documents.

- Lack of appetite from organisations' members, or the industry more widely, in line with agricultural tenancy legislation developments over the last 20 years;
- If there is a low uptake, the impacts of this measure will be negligible;
- Lack of clarity on how the new tenancy model would interact with an existing agricultural tenancy, for example at what point diversification under the latter would move to the former;
- If the current proposals allow an activity under diversification within an agricultural tenancy, it seems unlikely that this new tenancy model would be used instead;
- If framed in a way that takes account of the lessons from the past, this new tenancy model may be more likely to facilitate the types of activities and collaborations required in rural Scotland to achieve net zero objectives, as well as bringing new farm land to the market for let;
- Further information and detail on the proposed Land Management Tenancy needed in order to comment further.

One organisation commented that they don't support proposals for this new tenancy option because they are 'unclear what it will add to the current system'. One organisation, as part of a more detailed answer, commented:

Given the content of the proposals set out for agricultural holdings legislation it appears to be the case that [this proposed tenancy model] is not designed to replace an agricultural tenancy where a tenant farmer wishes to carry out activities that would previously not have been permitted under an agricultural tenancy. Once the proposed changes take effect in agricultural tenancies, there will be no incentive for a farmer to leave the security of that regime in order to carry out non-agricultural environmental activities.

If [this proposed tenancy model] will permit land to be let for farming with or without ancillary alternative land uses then it may have the potential to bring new land to the market for let, however landowners will remain wary of any tenancy vehicle for some time, given the experience from the last 25 years both in farm and residential tenancies. If the correct incentives (fiscal and policy) were to exist then it is possible that these new tenancies could facilitate activities that contribute to emissions reductions and resilience to climate change. Simply legislating alone without additional political messaging and incentives will not bring about change however.

Among respondents who answered 'No', one reason given was:

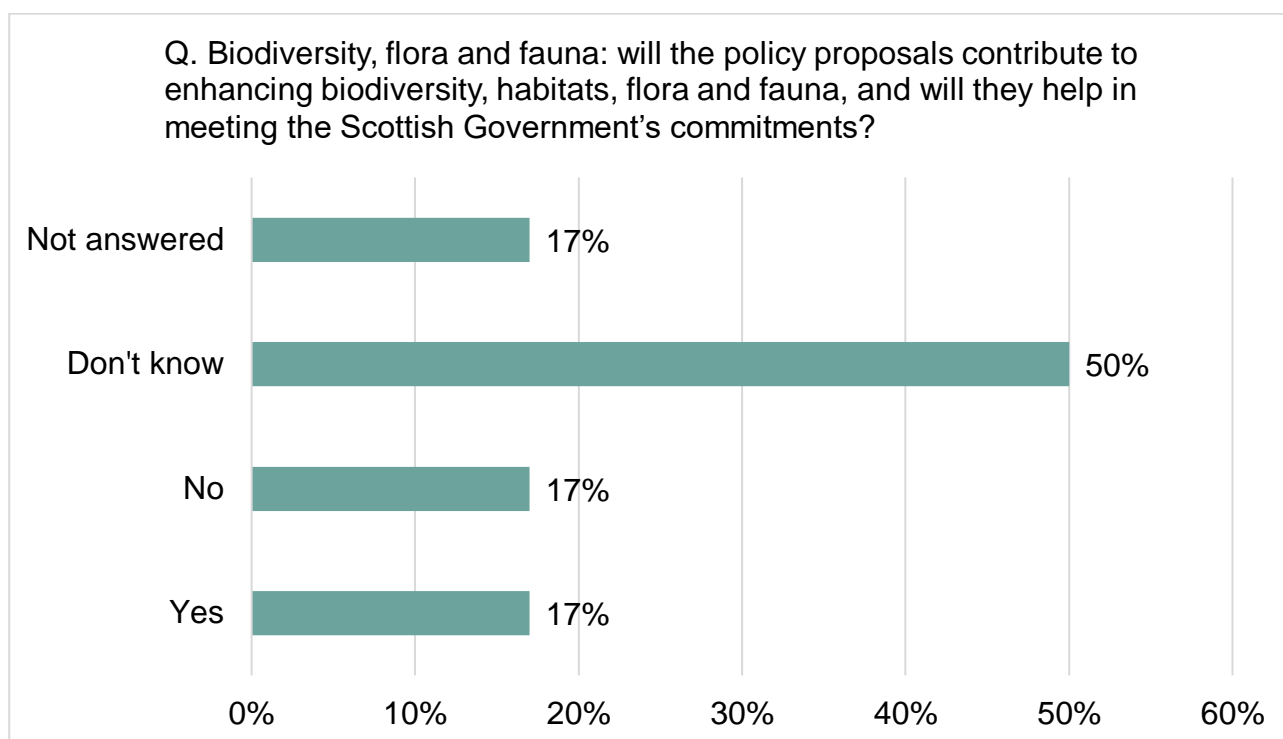
- Lack of wider understanding of Government policy and terms, and lack of confidence in its effectiveness.

## 2.6.2 Biodiversity, flora and fauna

### Key findings

Half (50%) of respondents stated that they didn't know if the proposal to introduce a new Land Management Tenancy will contribute to enhancing biodiversity, habitats, flora and fauna, and will help in meeting the Scottish Government's commitments. Just under a fifth (17%) said 'Yes', it would, and just under a fifth (17%) 'No', it wouldn't. Answers given in response to this question were all repeated from above. See Section 2.6.1 for an analysis of the main points.

**Figure 2.17 Biodiversity, flora and fauna**



Option	Total	Percent
Yes	2	17%
No	2	17%
Don't know	6	50%
Not answered	2	17%

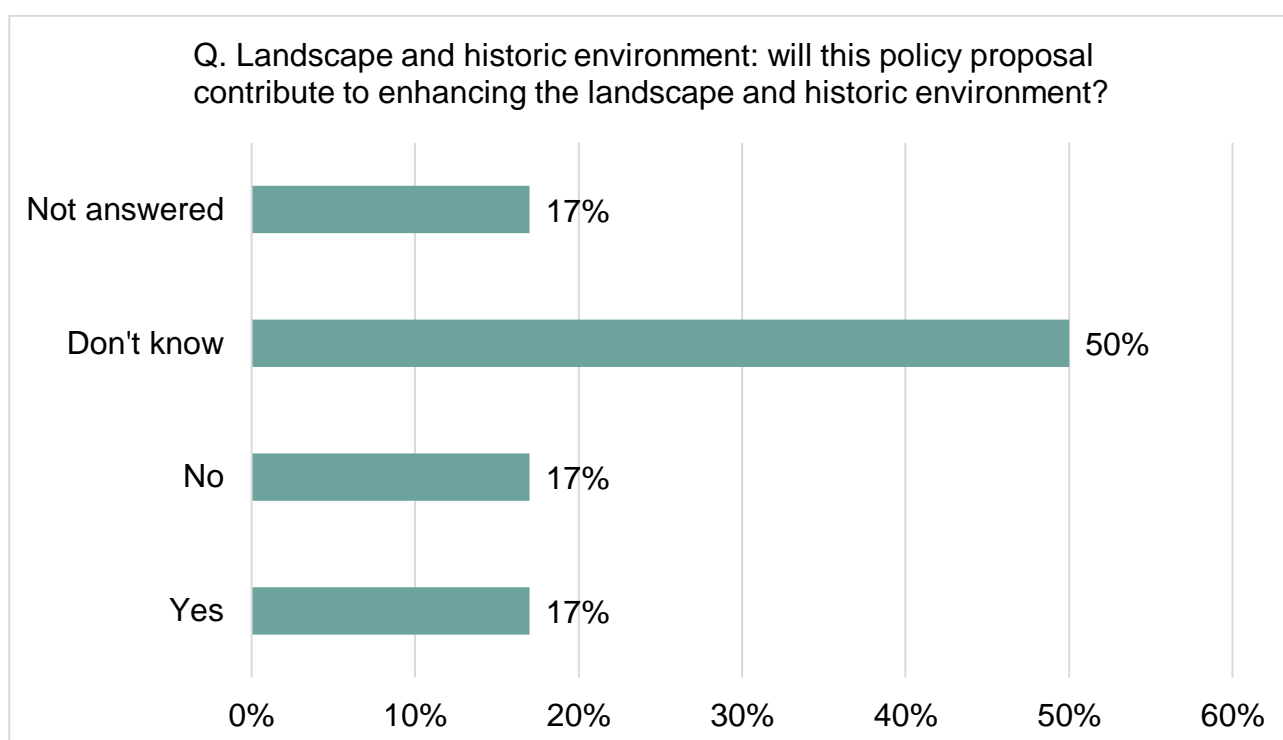
Base: 12

## 2.6.3 Landscape and historic environment

### Key findings

Half (50%) of respondents stated that they didn't know if the proposal to introduce a new Land Management Tenancy will contribute to enhancing the landscape and historic environment. Just under a fifth (17%) said 'Yes' and just under a fifth (17%) 'No'. Answers given in response to this question were all repeated from above. See Section 2.6.1 for an analysis of the main points.

**Figure 2.18 Landscape and historic environment**



Option	Total	Percent
Yes	2	17%
No	2	17%
Don't know	6	50%
Not answered	2	17%

Base: 12

## 3. Conclusions

### The main conclusions from this report are:

Respondents identified potential positive impacts on the climate, biodiversity and landscape for each set of proposals; in many cases they stated that this would depend on the scope and type of activities planned.

Respondents were broadly supportive of proposals to modernise and update legislation and tenancy mechanisms to reflect modern farming practices, in the context of a wider move toward regenerative, sustainable agriculture. However, several noted the need to balance tenants' rights with landlords' long-term security.

In several areas, including the Land Management Tenancy proposals, respondents stated that further guidance and consultation is needed. Wider points included the need for a coordinated approach to land use; to balance environmental considerations with issues such as food production, agricultural costs and efficiency; and to consider the long-term risks of changes in land use or agricultural tenancies.

It should be noted that the sample size was small, respondents' views were mixed and in several cases, they did not understand the question or terminology.

This report has outlined the findings of a consultation carried out as part of the Strategic Environmental Assessment of Agricultural Tenancies, Small Landholdings and Land Management Tenancy Proposals. The consultation ran from October to December 2023, and received 12 responses. The low response rate should be taken into account when considering the consultation results, which are summarised below.

### 3.1 Diversification

- Respondents held mixed views on the potential climate, biodiversity and landscape impacts of these diversification proposals. Whilst some felt the diversification proposals would improve tenant farmers' ability to carry out activities with positive environmental impacts, others stated that diversification would not necessarily achieve this, and may be shaped by other factors such as profit.
- Potential historic environment benefits of the diversification proposals highlighted by respondents included improving tenants' ability to maintain historic monuments and widen public access.

- In several cases, respondents stated that the impacts would depend on the proposed diversification. Wider points raised included the need for a coordinated approach to land use and to consider the long-term risks of changes in land use or agricultural tenancies.

### **3.2 Agricultural Improvements**

- Almost half (42%) of respondents thought that the Agricultural Improvements proposals would have positive climate and biodiversity impacts. They agreed with the need to modernise Schedule 5 to reflect modern farming practices, and felt that the new framework would provide certainty for tenants and landlords.
- Whereas some felt that compensation for improvement would provide an incentive for tenants to invest in environmental measures, others felt it would not do so, as it would not be payable until the end of the tenancy.
- Respondents highlighted the need for Part 3 of Schedule 5 to remain a fixed list to give landlords certainty, and to update and regularly review the list of activities in Schedule 5. Several organisations stated that clearer guidance on the Part 4 proposals is required, for example in relation to carbon credits.
- A third (33%) were unsure about the potential impacts on the landscape and historic environment, due to a lack of relevant knowledge, or in other cases not understanding the question.

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

- Respondents were broadly supportive of these proposals on the Rules of Good Husbandry and Estate Management and, agreed that they should be modernised to reflect modern practices.
- Almost half (42%) of respondents agreed that the Rules of Good Husbandry and Estate Management proposals would have positive impacts on the climate, landscape and historic environment, and a third (33%) agreed that it would have positive biodiversity impacts.
- Some argued that these proposals should be linked to the proposed Code of Practice on Sustainable and Regenerative Agriculture, and highlighted the need to include a requirement to record a baseline in a consistent way.
- Others, however, noted that efficient production is how farmers make a profit, and so any planned activities would need to be financially sustainable.



### **3.4 Small Landholdings: Diversification**

- Responses to this section were mixed, with a quarter (25%) of respondents unsure about its potential impacts. Several highlighted a lack of clarity on how these proposals are expected to lead to environmental benefits.
- Others emphasised potential wider socio-economic benefits in rural areas if the proposals lead to an increased number of small holdings.
- Others felt there were likely to be positive outcomes, as it would give small landholders greater ability to undertake non-agricultural measures to mitigate emissions or improve the landscape and historic environment.

### **3.5 Small Landholdings: Right to buy**

- A third (33%) of respondents agreed that the Right to Buy proposals for small landholdings will have positive environmental and biodiversity impacts.
- Potential benefits highlighted included that a pre-emptive right to buy will encourage small landholders to make long term investments in the holding with benefits to the climate, biodiversity or historic environment.
- Others felt there would be no substantial changes, and highlighted a lack of clarity on how the relevance of the proposals to these wider goals; or a general lack of understanding of the policy.

### **3.6 Land Management Tenancy**

- Half (50%) of respondents were unsure about the climate, biodiversity or historic environment impacts of this proposal.
- Two positive impacts identified were that the Land Management Tenancy model has the potential to improve the speed and scope at which tenants and landlords are able to respond to environmental challenges, and may be more likely to facilitate the types of activities required to achieve net zero.
- However, several felt the likely low uptake of this model would decrease its impact; others were unclear what it would add to the current system or how it would interact with the other proposals, which already aim to allow non-agricultural activities within existing tenancy models.
- A number of respondents said that further information and detail on the proposal was needed in order for them to comment further.

### **3.7 Wider points**

Overall, a number of wider points can be highlighted from respondents' answers to each of the six sections of the consultation:

- Respondents identified potential positive impacts on the climate, biodiversity and landscape for each set of proposals;
- In many cases they stated that this would depend on how the proposals work in practice, or the scope and type of activities or diversification planned;
- Respondents were broadly supportive of proposals to modernise and update legislation and tenancy mechanisms to reflect modern farming practices, in the context of a wider move toward regenerative, sustainable agriculture;
- Whilst respondents were supportive of giving tenant farmers and small landholders the ability and security to carry out activities aimed at benefitting the climate, biodiversity or landscape, a second group emphasised the need to give landlords greater certainty as part of these proposals, in order to protect the tenanted sector for new entrants (who may be more likely to farm in a sustainable, regenerative way), and in the long-term;
- In several areas, including in terms of the Land Management Tenancy proposals, respondents stated that further guidance and consultation is needed, both in terms of their practical application and intended impacts;
- Wider points raised included the need for a coordinated approach to land use; the need to balance environmental considerations with issues such as food production, agricultural costs and efficiency, when planning diversification activities, for example; and to consider the long-term risks of changes in land use or agricultural tenancies.

In conclusion, this consultation has provided an insight into respondents' views on the potential environmental impacts of the Scottish Government's agricultural tenancies, small landholdings, and Land Management Tenancy proposals. It should be noted that the sample size was small, respondents' views were mixed and in many cases there was a lack of understanding around the question and terminology used.

The findings will inform the Scottish Government's work to bring forward the proposals outlined in this report, as part of its work to deliver the Land Reform Bill.

## Annex 1. Consultation questions

### Diversification (for non-agricultural activities)

#### Question 1

Climate factors: Will this policy proposal contribute to either reducing existing and avoiding new GHG emissions and/or increase agricultural resilience to the impacts of climate change?

- Yes
- No
- Don't know

Please give reasons for your answer.

#### Question 2

Biodiversity, flora and fauna: Will the policy proposals contribute to enhancing biodiversity, habitats, flora and fauna and will they help in meeting the Scottish Government's commitments?

- Yes
- No
- Don't know

Please give reasons for your answer.

#### Question 3

Landscape and historic environment: Will this policy proposal contribute to enhancing the landscape and historic environment?

- Yes
- No
- Don't know

Please give reasons for your answer.

### **Agricultural Improvements (Schedule 5)**

#### **Question 4**

Climate factors: Will this policy proposal contribute to either reducing existing and avoiding new GHG emissions and/or increase agricultural resilience to the impacts of climate change?

- Yes
- No
- Don't know

Please give reasons for your answer.

#### **Question 5**

Biodiversity, flora and fauna: Will the policy proposals contribute to enhancing biodiversity, habitats, flora and fauna and will they help in meeting the Scottish Government's commitments?

- Yes
- No
- Don't know

Please give reasons for your answer.

**Question 6**

Landscape and historic environment: Will this policy proposal contribute to enhancing the landscape and historic environment?

- Yes
- No
- Don't know

Please give reasons for your answer.

**Rules of Good Husbandry and Estate Management**

**Question 7**

Climate factors: Will this policy proposal contribute to either reducing existing and avoiding new GHG emissions and/or increase agricultural resilience to the impacts of climate change?

- Yes
- No
- Don't know

Please give reasons for your answer.

**Question 8**

Biodiversity, flora and fauna: Will the policy proposals contribute to enhancing biodiversity, habitats, flora and fauna and will they help in meeting the Scottish Government's commitments?

- Yes
- No
- Don't know

Please give reasons for your answer.

**Question 9**

Landscape and historic environment: Will this policy proposal contribute to enhancing the landscape and historic environment?

- Yes
- No
- Don't know

Please give reasons for your answer.

**Question 10**

Please identify and describe any environmental impacts associated with each of the agricultural tenancy proposals briefly outlined in the [Delivering our Vision for Scottish Agriculture: Proposals for a new Agriculture Bill](#) and this consultation paper.

**Small Landholdings**

**Diversification (non-cultivated activities)**

**Question 11**

Climate factors: Will this policy proposal contribute to either reducing existing and avoiding new GHG emissions and/or increase agricultural resilience to the impacts of climate change?

- Yes
- No
- Don't know

Please give reasons for your answer.

**Question 12**

Biodiversity, flora and fauna: Will the policy proposals contribute to enhancing biodiversity, habitats, flora and fauna and will they help in meeting the Scottish Government's commitments?

- Yes
- No
- Don't know

Please give reasons for your answer.

**Question 13**

Landscape and historic environment: Will this policy proposal contribute to enhancing the landscape and historic environment?

- Yes
- No
- Don't know

Please give reasons for your answer.

## Right to Buy

### Question 14

Climate factors: Will this policy proposal contribute to either reducing existing and avoiding new GHG emissions and/or increase agricultural resilience to the impacts of climate change?

- Yes
- No
- Don't know

Please give reasons for your answer.

### Question 15

Biodiversity, flora and fauna: Will this policy proposal contribute to enhancing biodiversity, habitats, flora and fauna and will they help in meeting the Scottish Government's commitments?

- Yes
- No
- Don't know

Please give reasons for your answer.



**Question 16**

Landscape and historic environment: Will this policy proposal contribute to enhancing the landscape and historic environment?

- Yes
- No
- Don't know

Please give reasons for your answer.

**Question 17**

Please identify and describe any environmental impacts associated with each of the small landholding proposals in the [Small Landholdings Modernisation Consultation](#) and this consultation paper.

**Land Use Tenancy**

**Question 18**

Climate factors: Will this policy proposal contribute to either reducing existing and avoiding new GHG emissions and/or increase agricultural resilience to the impacts of climate change?

- Yes
- No
- Don't know

Please give reasons for your answer.

**Question 19**

Biodiversity, flora and fauna: Will the policy proposals contribute to enhancing biodiversity, habitats, flora and fauna and will they help in meeting the Scottish Government's commitments?

- Yes
- No
- Don't know

Please give reasons for your answer.

**Question 20**

Landscape and historic environment: Will this policy proposal contribute to enhancing the landscape and historic environment?

- Yes
- No
- Don't know

Please give reasons for your answer.

## Annex 2. Glossary

**Agricultural holding** - The aggregate of the agricultural land which comprises a lease.

**Agricultural lease** - A letting of land for a term of years, or lives of the tenant, or for lives and years, or from year to year.

**Landlord** - any person for the time being entitled to receive the rents and profits or take possession of an agricultural holding, and includes the executor, assignee, legatee, disponee, guardian, curator bonis, tutor, or permanent or interim trustee (within the meaning of the Bankruptcy (Scotland) Act 1985), of a landlord.

**Land Management Tenancy** - A proposed new model of lease to enable a wider range of activities on land that will promote both climate and nature objectives and model new ways of working with and on land. This will complement existing types of lease, not replace them.

**Resumption clause** - drafted in its widest terms, entitles the landlord to recover farm land from the agricultural holding for any non-agricultural purpose.

**Schedule 5 of the Agricultural Holdings (Scotland) Act 1991** - This has three Parts: Part 1 lists improvements that need consent; Part 2 lists improvements that need notice; and, Part 3 lists improvements that need neither consent nor notice.

**Small landholdings** - Small landholdings are a form of tenanted land located across Scotland. There are approximately 59 small landholders in Scotland.

**Tenant** - The holder of land under a lease of an agricultural holding and includes the executor, assignee, legatee, disponee, guardian, curator bonis, tutor, or permanent or interim trustee (within the meaning of the Bankruptcy (Scotland) Act 1985), of a tenant

**Tenant Farming Commissioner** - The Tenant Farming Commissioner is responsible for promoting and encouraging good relations between landlords and tenants and has powers to publish codes of practice and to investigate alleged breaches of the codes.

**Waygo** - The effective date or termination date on a notice of intention to quit or a notice to quit of an agricultural leasing arrangement.

## Annex 3. Coding framework example

Table 3 provides an example taken from the coding framework, and lists the codes and sub-codes used to analyse responses to question 10:

- ‘Please identify and describe any environmental impacts associated with the Game Damage Compensation proposal’

**Table 3. Coding framework example**

Codes	Sub-codes
Positive responses	<ul style="list-style-type: none"> <li>• Support for the proposals, as game damage can be a significant concern for tenant farmers</li> <li>• Agreement with the proposal to remove black game from the definition of game</li> <li>• The need to apply a balanced approach that considers both conservation needs and impacts on agricultural businesses</li> <li>• Agreement with proposals to strengthen tenant’s rights in terms of compensation for damage (e.g. deer, game)               <ul style="list-style-type: none"> <li>– For example, it will encourage landlords to manage numbers effectively</li> </ul> </li> <li>• Proposals are reasonable</li> </ul>
Critical responses	<ul style="list-style-type: none"> <li>• Lack of sufficient detail around the potential compensation threshold per hectare of damage, the traceability of game birds and animals causing damage.</li> <li>• The need for greater clarity on how compensation can be claimed;               <ul style="list-style-type: none"> <li>– For example, its application in specific contexts, such as damage by wild animals, due to the difficulty of identifying the source of the damage, or the landowner or sporting rights holder from whom compensation is required.</li> </ul> </li> <li>• The need for a clearer definition of the ‘reasonable opportunity’ mechanism;               <ul style="list-style-type: none"> <li>– For example, to increase understanding of how these proposals will work in principle;</li> <li>– The need for further stakeholder consultation.</li> </ul> </li> <li>• Unreasonable to include compensation for damage to trees by wild deer;               <ul style="list-style-type: none"> <li>– It is the responsibility of individuals planting trees to take reasonable action to protect crops from damage.</li> </ul> </li> </ul>
Other	<ul style="list-style-type: none"> <li>• Question not relevant to respondent</li> </ul>



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