



SCOTTISH LAND COMMISSION
COIMISEAN FEARAINN NA H-ALBA

COMMISSIONED REPORT

**Research on interventions to
manage land markets and limit
the concentration of land
ownership elsewhere in the world**



Summary

Research on interventions to manage land markets and limit the concentration of land ownership elsewhere in the world

Commissioned Report No.: 001

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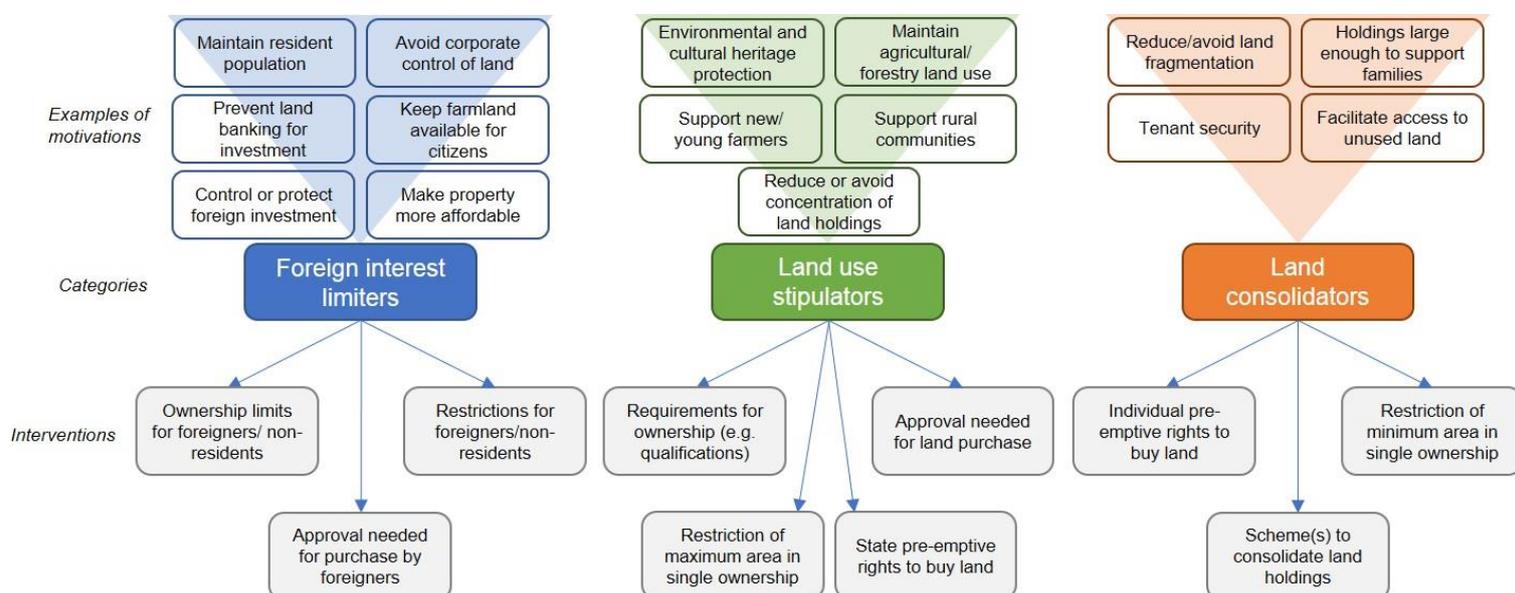
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EXECUTIVE SUMMARY

In Scotland, there are no restrictions on how much land a single individual can own, and a concentrated pattern of large-scale private land ownership exists, particularly in rural areas. The Scottish Government has made it clear that it believes there is a need for change, stating that its vision is for a fairer – or wider and more equitable – distribution of land in Scotland, where communities and individuals have access to land and there is greater diversity of land ownership. This study was commissioned to enable the Scottish Land Commission to learn from international experience of imposing limits on who can own land and/or how much land any single individual or entity can own.

The research identified and described restrictions on land ownership in 22 countries (18 in the EU/EEA). The countries were selected using a set of criteria to ensure lessons were learned from countries with a similar legislative context and characterised by strong regulation, governance and transaction processes, low levels of perceived corruption, and a strong property rights regime. Desk-based research identified the range of interventions in the countries, and findings were cross-checked with country experts to ensure accuracy.

Interventions in the countries include restrictions that relate to: foreign ownership of land; ownership approval processes; upper and lower area limits; owner characteristics and land use requirements; pre-emptive rights to buy land; and measures to reduce land fragmentation. A range of motivations underpin the implementation of interventions to achieve policy objectives related to land ownership in the various countries. Analysis of the motivations and the interventions allowed countries to be grouped according to the following typology, which identifies ‘foreign interest limiters’, ‘land use stipulators’ and ‘land consolidators’:



In 18 of the countries considered in the study, some form of approval exists in relation to who can own land. Twelve countries require foreign land acquisitions to be approved prior to completion; processes of this nature exist to check the public interest impacts related to land purchase by a non-citizen. Approval processes are not limited to land acquisitions by foreigners: six countries require the relevant authority to approve all purchases of agricultural land. Underlying concerns tend to include: the local residence of the land owner; protection of agriculture; and the avoidance of land fragmentation. A formal approval process related to

the purchase of land or property does not exist in Scotland. Based on the experience in other countries, developing such a framework would not be unusual and may present an opportunity to consolidate what is in the public interest, in terms of who can own land.

While the ownership of land by foreign interests is subject to regulatory restrictions in nine of the countries, outright bans on foreign ownership are not common (and EU law prevents EU Member States from restricting land purchases by EU citizens). Policy objectives associated with such restrictions generally include: preventing foreign-based speculation in land; controlling the amount and direction of direct foreign investment; ensuring local control over food production; and indirectly controlling immigration. In Scotland, motivations to restrict foreign ownership of large land parcels may be linked to the negative implications of a foreign land owner not being resident on the land, with purchases predominantly for recreational and/or speculative purposes. Where similar concerns have been raised in other countries, approval processes exist to restrict land purchases (regardless of the origin of the purchaser) that may lead to these concerns becoming a reality.

In the countries studied, the implementation of restrictions on land ownership was more commonly driven by land speculation than by the intention to limit concentration of ownership. Only a few examples were identified of upper limits to the amount of land that any one individual or entity can own. Where such limits exist, they tend to be targeted at foreign land acquisitions and/or used as planning control mechanisms, rather than being used to restrict ownership rights or as mechanisms for redistribution.

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1. INTRODUCTION

1.1 *Research objective*

This research was commissioned by the Scottish Land Commission to identify and describe the various approaches that other countries have taken to limit who can own land and/or how much land any single individual or entity is permitted to own. The research will be used by the Commission to inform future discussions about how the diversity of land ownership could be increased in Scotland.

1.2 *Land ownership concentration in Scotland*

Land reform in Scotland is rooted in an approach that emphasises sustainable development, human rights and public interest: the Scottish Government has a 'vision of a Scotland where the ownership, management and use of land and buildings contributes to the collective benefit of everybody'¹. Principle 2 of the Land Rights and Responsibilities Statement (LRRS: Scottish Government, 2017), states that 'there should be a more diverse pattern of land ownership and tenure, with more opportunities for citizens to own, lease and have access to land'. There are currently no specific restrictions on who can own land or how much land a single individual or entity can own.

A central topic of discussion related to land reform and Principle 2 of the LRRS continues to be the concentrated pattern of private land ownership in rural Scotland, particularly the well-documented observation that 'a relatively small number of land owners with large properties own the majority of Scotland's land area' (LRRG 2014, p.159). Despite an expansion of public land ownership in rural Scotland during the first half of the 20th century and the growth of owner-occupied farms in some lowland areas, private ownership of large properties continues to dominate². In 2014, 1,125 'estates'³ were estimated to control about 70% (4.1 million hectares) of privately-owned rural land, with 667 estates between 1,000 and 10,000 hectares in size and 87 larger than 10,000 hectares (Hindle et al., 2014, p.29). There is also a relatively high degree of intergenerational continuity amongst the owners of large estates and a strong preference among owners, regardless of whether they had inherited or purchased their estates, to pass them on to heirs (McKee et al., 2013). This is the case whether they are owners in their own right or as beneficiaries through companies and trusts (LRRG, 2014, p.177). Succession law in Scotland has generally allowed estates to stay intact without division on the death of a land owner. This would suggest that the long-term pattern of low turnover in the estate land market is 'unlikely to change in the foreseeable future' (Thomson et al., 2016, p.19).

Scottish land and assets have increasingly been bought and sold by owners who are not resident. Absenteeism, where the estate is not the owner's primary residence, is predominantly for recreational and/or investment purposes (MacMillan et al., 2010) and most absentees have not been resident land owners previously (McKee et al, 2013). Non-economic motivations (particularly recreation) can outweigh economic reasons for purchasing land (Petrzelka et al., 2013) and owners typically subsidise their estates from earnings made elsewhere. Foreign ownership is common and there is no regulation of foreign investment in UK real estate: a quarter of rural estates sold in 2016 were purchased by overseas buyers (Strutt and Parker, 2017).

¹ Scottish Land Commission [website](#) (2018).

² For a detailed overview of historical trends in the pattern of rural land ownership in Scotland, see Section 24 of the [Land Reform Review Group](#) report (2014, pp. 159-164) and [Thomson et al.](#) (2016, pp. 19-22) for more detail about land ownership churn, land settlement and ownership trends during the last century.

³ Hindle et al. (2014) define an 'estate' as 'landholdings with a range of interests that may include in hand farming, let farms, sporting interests, forestry, residential property, workspaces, tourism and community facilities' (p.14).

The lack of traceability and accountability of some legal bodies, based overseas, that own land in Scotland are now common concerns related to tax fraud and tax evasion. In examining issues related to ‘modernisation and reform’ of land ownership, the LRRG considered ‘the limited constraints on the types of legal bodies that can own land in Scotland’, recommending that it be made ‘incompetent for any legal entity not registered in a member state of the European Union to register title to land in the Land Register of Scotland, to improve traceability and accountability in the public interest’ (LRRG, 2014, p.36). This recommendation did not find legislative form in the Land Reform (Scotland) Act 2016. Instead, following a recent consultation on improving transparency in land ownership in Scotland, the Scottish Government has resolved to develop regulations to deliver a register of controlling interests⁴, which will build on the framework provided for in Part 3 of the Land Reform (Scotland) Act 2016. Recent research of archive material has revealed an earlier attempt to require landowning entities to disclose any ultimate beneficial ownership data was almost legislated for by the UK Parliament but the relevant drafting was removed from what became the Land Registration (Scotland) Act 1979 and the proposal was forgotten (Reid, 2017).

The LRRG also recommended that the Scottish Government develop proposals to establish a legal upper limit on the total amount of land in Scotland that can be held by a private land owner or single beneficial interest. It was noted by the LRRG that concern was ‘not what an upper limit should be, but the principle that there should be an established limit’ (Section 24 para 27, p.167).

1.3 Land ownership concentration elsewhere

Whereas the feudal tenure system has not existed for centuries in most western European countries, it was not formally abolished in Scotland until the Abolition of Feudal Tenure etc. (Scotland) Act 2000. Other types of reforms (constitutional and legal, as well as political and social revolution in some cases) have led to changes in patterns of land ownership in Europe. This is notable, for example, in Denmark, France, Ireland and Italy, where landholdings have decreased in size and increased in number (Pollock, 2015).

Land reform programmes exist in other countries, with ‘the purposes of the reforms defined to match the circumstances’ (LRRG, 2014, p.23). Prominent examples include: agrarian changes in Africa, Asia and Latin America since the 1950s, when land reform was made a condition of development aid by the United Nations (UN); and the restitution and privatisation of property in Eastern European countries after the collapse of the Soviet Union (Hartvigsen, 2013). In the former, the definition of land reform by the UN highlighted the importance of ‘eliminat[ing] obstacles to economic and social development’ as a basis for reform⁵. In Eastern Europe, reforms were more closely aligned with the World Bank’s definition of land reform as ‘changing the institutional structure governing man’s relationship with the land’⁶.

Since 1989, agriculture has undergone a remarkable transition in Central and Eastern European countries, from State farms or cooperatives to private farming in market economies (European Commission, 2017). In some of these countries, reforms have led to significant change in farm structures; in others, there has been little change (Hartvigsen, 2014; Bański, 2017). A prominent concern in these countries is land fragmentation, rather than concentration. Fragmentation has negative impacts on the land market by increasing negotiation and information costs, in turn reducing farm performance (Loughrey et al., 2018). Land fragmentation concerns are, however, not limited to these countries: e.g. Denmark also has a high degree of land fragmentation.

⁴ Consultation responses [analysis](#) (2017).

⁵ UN Progress in Land Reform (1962 – cited in LRRG report).

⁶ World Bank, Land Reform Sector Policy (1975 – cited in LRRG report).

Concerns in EU Member States about land concentration and land speculation⁷ have recently gained a higher profile on the political agenda: in April 2017, the European Parliament adopted a resolution on the state of play of farmland concentration in the EU⁸. Ownership of agricultural land is becoming increasingly concentrated in Europe, with one per cent of agricultural businesses controlling 20% of agricultural land in the EU and three per cent controlling 50%. Conversely, 80% of agricultural businesses control only 14.5% of agricultural land (European Economic and Social Committee, 2015). Large-scale land deals contribute to increasing land concentration (Loughrey et al., 2016), with impacts on human rights and the right to adequate food in farming communities and rural society (Franco and Borrás Jr., 2013).

Concerns around foreign investments in agricultural land are not new, but a recent rise in foreign investment in farmland has been noted in some Member States. Political debate about foreign investment relates mainly to the potential limits on access to land for local farmers, as well as the notion that that cultivable land has become vulnerable to speculators or unscrupulous investors (European Commission, 2017). Other concerns about land concentration and speculation tend to relate to the negative impacts on food security, employment, the environment, soil quality and rural development (Heubuch, 2016).

1.4 Interventions in land markets to limit land ownership

Most Western European countries do not have an explicit, overarching national land policy, with statements similar to the Scottish LRRS included in national constitutions and backed up by specific land laws (Pollock, 2015). While there are some common structures in the different legal systems governing land and property in European countries, national systems have their own unique characteristics related to land registration, land law and interests in land, sale of land and enforcement procedures (Schmid et al., 2005).

National land laws in EU Member States have various objectives, from keeping farmland in agricultural use to curbing land concentration, with a common objective of avoiding excessive land speculation (European Commission, 2017). Laws related to expropriation (compulsory purchase) of land exist in all States, to make land available to complete planned public projects (Hoops, 2017). In some countries, pre-emption rights allow an individual or the State to intervene directly for agricultural or housing policy purposes (Hengstermann and Hartmann, 2018). EU law allows restrictions on foreign investments in farmland, to protect legitimate public interests such as preventing land speculation, preserve agricultural communities or sustain and develop viable agriculture (European Commission, 2017).

EU Member States differ in their regulation of agricultural land markets: some countries have a high regulation index for both rental and sales markets (e.g. France); others have highly regulated rental markets but not sales markets (e.g. Belgium, Netherlands); the UK is one of a group of countries with very little regulation in either rental or sales markets (including the Czech Republic, Finland, Germany and Ireland) (Swinnen et al., 2013). The range of interventions applied internationally to agricultural land markets is varied and includes measures to: protect the tenant; protect the (local) owner-cultivator; protect the owner; and prevent fragmentation (Swinnen et al., 2013). In practice, policy instruments include, for example, restrictions on nationality of owners; restrictions on owners (e.g. residency, qualifications); maximum area owned; land consolidation; maximum sale price; maximum/minimum rent; maximum/minimum lease duration; continuity of tenure; land-specific court or other body for dispute resolution; rights to buy (e.g. tenant pre-emptive, tenant absolute, neighbour's pre-emptive); tax breaks on transfers, ownership and/or rental income; new entrant tenure support, finance and/or partnerships; and other non-tenure

⁷ Purchasing real estate with the hope that the price will increase.

⁸ [European Parliament Committee on Agriculture and Rural Development](#), 30 March 2017.

legislation (e.g. planning, environment) (see Thomson et al., 2014 for a review of these tenure control measures in selected countries).

The imposition of limits on maximum size of land holding is often driven by political views on social justice that prevail in the jurisdiction in question. The Food and Agriculture Organisation of the United Nations (FAO) Voluntary Guidelines on Responsible Governance of Tenure include the provision that 'States may consider land ceilings as a policy option in the context of implementing redistributive reforms' (FAO, 2012, p.25); these guidelines are supported by, amongst others, the G20 group of states including the UK (LRRG, 2014). A survey of 31 jurisdictions in Europe and North America in 2003 found that very few countries impose limits on maximum size of landholding, despite the issue being evident and the subject of debate (UNECE, 2003). Where they exist, property size restrictions tend to apply to agricultural land. Maximum or minimum sizes for other land or property that can be held in single ownership are usually established by local or regional authorities as part of planning control mechanisms, and often not perceived as restrictions of ownership rights or mechanisms for land redistribution.

In some countries, land fragmentation is an issue because of fast and sometimes unbalanced land property distribution; in others it has been slowly progressing over centuries of unrestricted transactions on the land market (UNECE, 2003). EU rural development policies and FAO activities include land consolidation among the dominant measures in their integrated rural development programmes, aiming to reduce land fragmentation and minimise the disparities between rural and urban areas (Demetriou et al., 2012). Formal land consolidation schemes are common in Europe and generally involve a comprehensive reallocation procedure of fragmented agricultural or forest holdings (Vitikainen, 2004).

1.5 Current interventions in Scotland

The closest things to interventions to restrict land ownership in Scotland are priorities conferred on certain individuals or groups that can have the effect of usurping the plans of existing owners, as follows:

- Agricultural Holdings (Scotland) Act 2003 – the pre-emptive right of an agricultural tenant to buy the land that they lease. This legislation introduced a regime for a tenant to register an interest in acquiring the land comprised in his/her lease contract and if the landowner intends to transfer the land, the landowner must notify the tenant and must not enter sale negotiations until s/he has dealt with the tenant's interest. The Land Reform (Scotland) Act 2016 has legislated to remove the need for the tenant to register an interest to establish this right and also introduces a right to force a sale when a landowner is in material breach of an obligation to a tenant, where that breach has been recognised by the Scottish Land Court or at arbitration. These reforms are not yet in force.
- Crofters (Scotland) Act 1993 – this right, which was first introduced in 1976, allows crofting tenants to acquire the landlord's interest in a compulsory sale.
- Miscellaneous other tenant rights of acquisition. For example, tenants-at-will, an idiosyncratic landholding arrangement found in certain parts of Scotland, also have a right to buy under the Land Registration Act 1979. Previously, tenants in social housing also had a right to acquire title to the house they rented, but this has been suspended across the whole of Scotland.
- Community rights to buy, in the form of: a pre-emptive right to acquire land targeted by a registered community interest (Part 2 of the Land Reform (Scotland) Act 2003); and a right for crofting communities to force a sale of certain croft land, common grazings and eligible additional land (Part 3 of the Land Reform (Scotland) Act 2003). Further rights are due to be introduced for communities to buy wholly or mainly neglected or abandoned land or environmentally mismanaged land (Part 3A of the

Land Reform (Scotland) Act 2003) and for communities or a community nominee to buy land in a situation where the owner of that land is a barrier to sustainable development and certain other conditions are met (Part 5 of the Land Reform (Scotland) Act 2016).

Special mention should also be given to the rural housing burden, a Scottish creation found in the Title Conditions (Scotland) Act 2003. This affords a right of pre-emption to recognised rural housing bodies, which runs with the land (that is to say, binds future owners) to the effect that a degree of control can be maintained by such bodies. Also of indirect relevance here are title conditions that can operate to confer a pre-emption on a neighbour (the benefited proprietor) when another neighbour sells land (the burdened proprietor), provided there is appropriate publicity of that pre-emption in both titles. The feudal system of land tenure also allowed for pre-emption rights in favour of feudal superiors, but these were abolished by the Abolition of Feudal Tenure etc. (Scotland) Act 2000. Other title conditions can operate to limit owner autonomy in specific situations, but not normally in a way that affects juridical acts such as sale or lease of property. This is because burdens of that nature would be classed as being 'repugnant with ownership'.

For completeness, it can be noted that Scotland is not an exception to the general statement above that laws relating to expropriation (compulsory purchase) of land exist in all States. These can be used to allow a local authority to acquire land for a public project, such as a transport link or for developments linked to a major event like the 2014 Commonwealth Games in Glasgow. No analysis of these powers will be made here.

2. METHODOLOGY

This research employed a rigorous methodology to identify and describe the various approaches that other countries have taken to limit who can own land and/or how much land any single individual or entity is permitted to own. In the first instance, a 'longlist' of 22 countries with current land market interventions related to ownership restrictions was developed. These countries were then filtered to a 'shortlist' of six countries that were considered in more depth. This section explains the two-stage selection process and the subsequent data collection and analysis methods that were used.

2.1 *Longlist of countries with restrictions on land ownership*

Countries were selected for study in an objective manner, rather than being selected solely based on the current knowledge of the research team and/or informed opinions regarding their applicability to the Scottish context. A 'longlist' of countries with land market interventions related to ownership restrictions was developed, with the aim of providing a wide-reaching, global understanding of the full range of interventions that exist in relevant countries. A list of global jurisdictions was used as a starting point and organised into four categories:

1. European Economic Area (EEA): the research brief anticipated that the main focus of the study be on experience from elsewhere in Europe (30 countries);
2. Jurisdictions outside the EEA with similar legal systems to Scotland: a combination of civil and common law (16 countries, Louisiana, Puerto Rico, and Québec);
3. Jurisdictions outside the EEA with similar legal systems to the rest of the UK: common law (31 countries, including the remainder of USA and Canada);
4. Rest of the world: those with a different legal system and not fitting into the categories listed above.

Jurisdictions falling into categories 1-3 were subjected to three additional filters that would allow lessons to be learned from countries characterised by strong regulation, governance and transaction processes, low levels of perceived corruption, and a strong property rights regime (jurisdictions in the fourth category were disregarded due to the different legislative contexts). Countries remained on the list if they received:

1. 'High transparency' or 'Transparent' score on the 2016 Global Real Estate Transparency Index (GRETI⁹); *and*
2. A score of greater than 50 on the latest Transparency International Corruption Perception Index (2016¹⁰); *and*
3. A score of greater than 5 on the 2017 International Property Rights Index (IPRI¹¹).

The following 22 countries comprised the resulting 'longlist' of countries¹²: Australia, Austria, Belgium, Canada, Cyprus, Czech Republic, Denmark, Finland, France, Germany, Iceland, the Netherlands, New Zealand, Norway, Poland, Portugal, Singapore, Slovakia, Spain, Sweden, Switzerland, and the USA. [Annex 1](#) explains the filters in more detail and shows the scores received for each filter in the longlist countries.

2.1.1 *Identification of interventions*

A desk-based review was carried out to identify and describe current land market interventions related to ownership restrictions in the longlist countries. A range of sources

⁹ jll.com/GRETI

¹⁰ transparency.org/news/feature/corruption_perceptions_index_2016

¹¹ internationalpropertyrightsindex.org

¹² Hong Kong and Ireland also satisfied the selection criteria but were later removed from the list as no current land market interventions relate to who can own land and how much they can own.

was used: academic books and journal articles; published government and other reports; websites of relevant public agencies; and media articles. Similar data were gathered for all countries, including descriptions of current interventions and what/where/who they apply to, the motivation(s) that led to the interventions and the legal basis of interventions. It was also noted which countries have a cadastral land register, who holds the register, and what percentage of the land mass is registered.

The constitutional protection of property rights of each country was examined to ascertain whether it has a dedicated legal instrument protecting property rights, e.g. Article 1 of the First Protocol to the European Convention on Human Rights, or the 'Takings clause' in the Fifth Amendment to the Constitution of the USA¹³. Socio-economic and environmental data were also collected to characterise the human and physical geography of each country: population density; GDP per capita; % rural population; % of land under agricultural holdings; % of land under forest cover.

2.1.2 Categorising countries and interventions

A short summary of the relevant interventions was compiled for each country, accompanied by a description of the predominant motivations (or other socio-economic factors) that led to their implementation. Where possible, each short summary was checked for accuracy with one or more academic or government contacts in the respective country (see [Annex 2](#)).

The summaries were then used to develop a typology of land market interventions and associated motivations, enabling countries to be categorised into three groups for further analysis ('Foreign interest limiters', 'Land use stipulators', 'Land consolidators'). The form and content of the typology are presented and discussed in Section 3.2.

2.2 Shortlist of countries with restrictions on land ownership

The typology of land market interventions was used to select a smaller group of countries with good 'spread' across the typology categories and the types of interventions (and interventions for agricultural and non-agricultural land). Consideration was also given to geographical characteristics, in order to learn from a range of contexts: population density, % rural population, % land under agricultural holdings and % land under forest cover (after ensuring an even spread of interventions). These countries were then studied in more detail to understand the impacts of the interventions.

As Scotland must frame its interventions to comply with Article 1 of the First Protocol to the European Convention on Human Rights, countries without similar constitutional (or constitution-like) protection of property were not included in the shortlist. This was the case for Canada, New Zealand and Singapore (see [Annex 3](#)). Longlist countries without a robust land registration system with complete or near-complete coverage of the whole landmass were also excluded from the shortlist, as the public provision of land information in a way that is broadly accessible, comprehensive, reliable and current is an indicator of 'good land governance' and secure land rights as defined within the World Bank Land Governance Assessment Framework (Deininger et al., 2012). Canada, Portugal and Spain do not have robust registration systems according to this definition (systems in Australia and Poland are currently undergoing reform).

Following the application of these criteria, the following countries were selected for the shortlist:

- Australia, Switzerland ('Foreign interest limiters');
- Germany, Norway, Poland ('Land use stipulators');

¹³ The Takings Clause of the Fifth Amendment states that private property shall not be taken for public use, without just compensation.

- Slovakia ('Land consolidators').

2.2.1 In-depth descriptions and analysis of impacts

A case study template sheet was completed for each shortlisted country. In-depth descriptions of the interventions included information about:

- When and why the intervention(s) were established;
- Any socio-economic trends that influenced establishment of the intervention(s);
- Thresholds/trigger points at which the intervention(s) come into effect (and why);
- Structures/incentives put in place to implement and monitor arrangements;
- Approval process(es) required to purchase land and efficiency of such process(es);
- Success of the intervention(s) in achieving stated objectives;
- Any unintended impacts (positive and/or negative);
- Effects of the intervention(s) on land prices and availability of land;
- Effects of the intervention(s) on the overall pattern of land ownership;
- The level of political acceptance of the intervention(s).

Legislation relevant to the intervention(s) was also noted, along with any other relevant information about legal issues that may have arisen.

2.2.2 Cross-checking with country experts

The accuracy of the information in the case study sheets was confirmed with academic and/or government contacts in each country to triangulate the data and to complete any parts that could not be completed via desk-based review. Questions were asked by phone/Skype or sent via email, accompanied by the completed case study sheet. Country contacts were identified via existing contacts held by the research team (and others that were subsequently suggested), via their contribution to documents already held on file, and via internet searches for involvement in relevant conferences, meetings, committees, etc. [Annex 2](#) shows the contacts in the longlist and shortlist countries.

3. RESULTS

The volume of material gathered for each of the countries on the longlist was substantial (for completeness, a country-specific, select reference list is in [Annex 4](#)). This section summarises this material to describe the different interventions found in the selected countries and presents the typology for categorising countries and interventions.

3.1 *Descriptions of interventions*

A range of restrictions on owning land are used in the selected countries to support the public interest and/or bring about a more equitable distribution of land. In general, current restrictions relate to:

- Foreign ownership of land;
- Ownership approval processes;
- The maximum area of land in a single ownership;
- Owner characteristics and land use requirements;
- Pre-emptive rights to buy land;
- Avoidance of land fragmentation.

These restrictions are presented and described in the remainder of this section. Background information is provided to explain the types of measures used to deliver each intervention. Practical examples are then provided from the longlist countries and the motivations for implementing restrictions in these places are explained. A distinction can often be made between interventions that affect agricultural land and those that affect non-agricultural or all land. Where relevant and possible, this distinction is made in the data that follow.

While this study focusses on measures relating directly to ownership of land, other restrictions (e.g. related to rental of land and property) are noted where they are relevant to understanding the motivations and/or impacts associated with measures focussed on ownership. It is beyond the scope of this project to consider the whole range of tenure interventions and other influences (e.g. taxation and planning restrictions). Other recent research (e.g. Swinnen et al., 2008; Ciaian et al., 2012; Thomson et al., 2014); and ongoing research commissioned by the Scottish Land Commission considers these aspects in more detail.

3.1.1 *Restrictions related to foreign ownership of land*

The ownership of land by foreign interests is subject to regulatory restrictions in many of the countries. Policy objectives associated with such restrictions generally include: preventing foreign-based speculation in land; controlling the amount and direction of direct foreign investment; ensuring local control over food production; and indirectly controlling immigration. Restrictions range from specific bans on foreign ownership of land to requirements that notice of foreign ownership be given to the relevant authority. The focus in this section is on those countries where foreigners are either not allowed to purchase land or certain limits exist.

In European countries, 'foreigners' (often termed 'third country nationals') are defined as citizens of non-EU or EEA member states. The Treaty of Rome contains provisions¹⁴ which prohibit discrimination on the grounds of nationality, guaranteeing the free movement of goods, persons, services and capital within the EU. Combined, these provisions restrict the ability of Member States to limit land acquisition by citizens of other Member States. When new Member States from Central and Eastern Europe joined the EU in 2004 and 2007, they were allowed to introduce transitory restrictions on agricultural land acquisitions by foreigners from EU Member States. These measures were to allow land markets to adjust gradually to competitive pressures from the single EU market, particularly the substantial differences in agricultural land prices. These transitory restrictions have now been revoked.

Further afield, customary international law (that is to say, international law that is not derived from treaties) places no restriction on the right of states to restrict or regulate foreign ownership of land within their territories (Hodgson et al., 1999). States have sovereignty over their natural resource and are entitled to prevent the entry of foreigners or to allow them entry only on certain terms. Reciprocal agreements exist (i.e. foreign ownership is permitted when the jurisdiction of the foreigner grants reciprocal rights to nationals from the jurisdiction where land is purchased), as do trade agreement partnerships which allow similar mutual interest. An example of the latter would be Free Trade Agreements where rules on foreign ownership by nationals from countries in such agreements are different to those applied to foreign nationals from elsewhere. Table 1 shows current restrictions on ownership by foreign interests in the longlist countries.

¹⁴ Article 7 (discrimination on grounds of nationality); Article 8a (free movements of goods, persons, services, capital); Article 9 (nationals of Member States have equal employment rights and rights of accommodation in connection with their employment); Article 54 (enabling the national of one Member State to acquire and use land and buildings situated in the territory of another Member State).

Table 1: Restrictions on land and property ownership by foreign interests in the longlist countries

| Country | Restriction on ownership by foreign interests |
|-------------|---|
| Australia | Foreign individuals are generally prohibited from purchasing established dwellings. |
| Canada | Maximum aggregate area limits for foreign interests in Alberta (20 acres), Manitoba (40 acres), Prince Edward Island (5 acres), Saskatchewan (10 acres). |
| Cyprus | Non-EU citizens can own two properties (two residences, or one residence and one shop with floor area up to 100m ²). |
| Denmark | All foreign individuals are generally restricted from buying residential property unless they have been resident in Denmark for more than five years. EU citizens/companies may be exempt if certain conditions are met (e.g. the property is a year-round residence). EU citizens working in Denmark are also exempt. Additional restrictions in some areas on all non-Danish citizens purchasing holiday homes. |
| Iceland | Residency requirements for board members of limited liability companies registered in Iceland wishing to own real property. |
| New Zealand | Foreign individuals, trusts and corporations are not allowed to purchase existing homes. |
| Singapore | Foreigners may not purchase a property with a land area greater than 15,000 square feet. |
| Switzerland | Foreigners require a 'Permit C' (four years of permanent residence) to buy property in Switzerland. |
| USA | Acreage limitations on foreigners in some states. |

Restrictions on foreign persons wishing to buy existing properties exist in **Australia** and **New Zealand**. In Australia, this is to channel foreign investment into the construction of new dwellings, to create additional jobs in the construction industry and support economic growth. However, some foreign trusts and corporations can buy existing homes where staff need to be accommodated. In New Zealand, this is a very recent policy move in response to concerns about foreign buyers inflating the property market and high vacancy rates, with regulations also applying to foreign trusts and corporations. Recent socio-economic trends of strong immigration (19% increase in the last financial year¹⁵), low interest rates and limited housing supplies, particularly in areas affected by recent earthquakes, have driven the rise in house prices.

In **Denmark**, a duty of residence is required before buying land (an EU national working in Denmark or other non-citizen may buy land without this requirement if he/she has a valid residence or business permit). Proof of five years of residence in Denmark is required to satisfy the duty of residence requirement. There are also additional restrictions on foreigners wishing to purchase property in and around popular Danish coastal areas. Similarly, annual quotas exist in some Cantons in **Switzerland** to restrict the number of holiday homes purchased by foreigners, particularly in mountain areas (for more detail about Switzerland, see Section 4.1.2). Norway also imposes restrictions on second homes to ensure occupation of the property.

¹⁵ New Zealand Ministry of Business, Innovation and Employment: [2015/2016 Trends and Outlook](#).

In **Canada**, maximum area limits exist for land purchases by foreigners in four provinces due to concerns about corporate foreign interests (from the USA, historically, and China more recently) affecting rural communities by dominating local agricultural interests, with negative impacts on the availability of farmland for residents. Restrictions can differ for individuals and legal entities: in Saskatchewan, a non-Canadian individual can hold up to ten acres, whereas a non-Canadian owned entity can hold an interest in up to 320 acres of land if the majority of issued voting shares are legally or beneficially owned by Saskatchewan residents or agricultural corporations.

A similar residency requirement applies in relation to limited liability companies registered in **Iceland**: if board members are not Icelandic nationals, they must have resided in Iceland continuously for at least five years before the company is allowed to lease or own real property. The amount of foreign direct investment is controlled in **Singapore**, where a maximum property area of 15,000 square feet exists for foreigners; and in **Cyprus**, where foreign investors can own a maximum of two properties. In the **USA**, upper area limits and other restrictions for foreigners buying agricultural land exist in Arizona, Iowa, Mississippi, Missouri, Nevada, Pennsylvania, South Carolina, South Dakota, and Wisconsin¹⁶.

3.1.2 Restrictions related to ownership approval

Foreign investors are required to gain prior authorisation for owning land in 12 of the longlist countries. This is a common method to ensure restriction and regulation of foreign ownership and check the intentions of those seeking to buy land and property. Table 2 shows the approval processes applied to foreign investors in the longlist countries.

Motivations for implementing approval processes are varied. In some countries, the approval process is designed to check the public benefit of foreign investment in land and property. In **New Zealand**, the approval process administered by the Overseas Investment Office exists to check the public benefit associated with foreign investment in 'sensitive land'. This term is generally used to describe non-urban land that exceeds five hectares, land located on specific islands, and land exceeding 0.4 hectares in an area that adjoins lakes, the foreshore and seabed, reserves, historic areas, and other listed features¹⁷. In **Singapore**, foreign investors require permanent residency for five years before being able to buy some types of property (generally larger apartments and houses). Applicants are required to prove their economic contribution to Singapore and, once purchased with the necessary permissions, the property cannot be sold again for five years.

¹⁶ Data from [National Association of Realtors](#) (2006).

¹⁷ Land Information New Zealand: [Sensitive Land](#)

Table 2: Examples of approval processes for foreigners purchasing land and property

| Country | Foreign investment approval processes | |
|-------------------------|---|--|
| | General | Specific to agricultural land |
| Australia | Required by all foreign persons before purchasing real estate and vacant residential land for development. | Required where the person's cumulative agricultural land holding exceeds A\$15 million and for <i>all</i> acquisitions of agricultural land by foreign government investors. |
| Austria | Purchase of a holiday home by non-EU/EEA citizens requires mandatory approval from local authorities. | |
| Canada (Québec) | | Permission required for non-Québec resident purchase of more than 10 acres in a designated reserve area or south of the 50 th parallel. |
| Cyprus | Non-EU citizens require permission from the Council of Ministers to acquire immovable property. | |
| Denmark | All non-Danish individuals and legal entities must apply for permission from the Minister of Justice to acquire immovable property (residency exceptions apply). | |
| Finland (Åland Islands) | Foreigners or Finns without local domicile require permission from the local administration to buy land. | |
| Iceland | Non-EEA citizens must have domicile in Iceland and require permission from the relevant Minister to purchase property. | |
| New Zealand | Foreigners require permission from the Overseas Investment Office to purchase sensitive land and high valued businesses. | |
| Poland | Foreigners require a permit from the Ministry of Internal Affairs, issued to those who can prove a connection to Poland e.g. temporary or permanent residence permit. | |
| Singapore | Foreigners buying vacant residential land and some types of residences require approval from the Singapore Land Authority. | |
| Spain | Acquisition of land by foreign governments requires approval by Spanish government. | |
| Switzerland | Prior authorisation from the appropriate Cantonal authority (does not apply to businesses buying commercial property). | |

The acquisition of agricultural land by foreigners requires specific approval in some countries. In **Australia**, approval is required for foreign investors whose cumulative agricultural land holding exceeds A\$15 million, and for all acquisitions of agricultural land by foreign government investors. This is due to concerns about foreign buyers inflating the property market and affecting the access of Australians to farms. Exceptions to this rule

apply to investors from trade agreement partners (Chile, New Zealand, Singapore, Thailand, USA) but not to purchases by the governments of these countries (for more detail about the situation in Australia, see Section 4.1.1).

In the Åland Islands of **Finland**, foreigners or Finns without local domicile in the islands (with local connection linked to five years of continuous residence in the islands) require permission from the local administration to buy land, to protect the cultural and language heritage. Permission is normally granted for house purchase if the person is living permanently in Åland in a town or city, but not for farmland (to protect local agricultural interests). Purchasing a second home in the islands requires local domicile. Approval processes in **Iceland** exist to restrict the purchase of land in national parks.

Approval processes do not apply solely to foreign investors. Table 3 lists countries with approval processes that apply to *all* purchases of certain types of land and/or property, whether by citizens or non-citizens. These approval processes generally apply to agricultural or forestry land, with underlying policy objectives of ensuring that this type of land does not become fragmented, allowing viable economic use of the land, and retaining land in families/communities to ensure the continuation of family farms.

Table 3: Examples of approval processes for all purchasers in the longlist countries

| Country | General approval processes |
|----------------|--|
| Austria | Acquisition of agricultural or forestry land requires approval by relevant federal agency. |
| Czech Republic | The sale of forests owned by state entities is approved by the Ministry of Agriculture. |
| Germany | The sale of agricultural or forestry holdings greater than a certain size must be approved by the regulatory authority in the respective federal state. |
| Iceland | Transfer of agricultural land to individuals and legal entities must be approved by the local Council, the regional farming commission and the Ministry of Agriculture. This does not apply to sales to a close relative. |
| Norway | All sales of agricultural land of a certain size require a Concession Permit from the government (unless there is an exemption). |
| Sweden | Natural and legal purchasers of agricultural land in sparsely populated areas require a permit (based on employment impacts and/or residency on the property). An acquisition permit is required for buying forestry land. |
| Switzerland | A permit is required to buy agricultural land, with some exceptions. |

In **Sweden**, permission is required to purchase land in sparsely populated areas (as classified by the regional authorities). This is to ensure that local employment and populations are retained in remote places that might otherwise experience land abandonment and outmigration. Land acquisition applications are processed by County Administrative Boards in each region. Local residents are exempt from permit requirements, as are family members and those who inherit land. There are no exceptions for legal entities wishing to purchase land in these areas.

In **Austria**, approval from the relevant federal agency is required to buy agricultural or forest land. Although restrictions vary between the federal provinces, buyers must often be farmers or have adequate farming/forestry experience. New owners are also required to be resident fairly close to the plot being purchased. There are additional approval processes for non-farmers (those who do not intend to cultivate the land themselves), who may be required to show proof of sufficient funds for managing the land appropriately.

3.1.3 Restrictions related to the maximum area of land in a single ownership

Limitations related to the maximum area of land held in private ownership provide a tool for preventing the excessive aggregation of land by an individual or entity. Restrictions related to the maximum area of land that can be held in a single ownership by foreigners have already been described in Section 3.1.1. The remainder of this section describes general approaches to limiting the maximum area of land in a single ownership, as applied to all persons/entities purchasing land in a specific country.

This type of intervention is currently present in **Poland** where an individual farmer may only own up to 300 hectares of agricultural land, in order to prevent the concentration of land in large agricultural estates. A five-year ban has also been in place since 2016 on the purchase of state land, to protect agricultural land from speculative purchase by domestic and foreign buyers following the end of transitory restrictions implemented when Poland joined the EU (for more detail about the Polish situation, see Section 4.2.3).

Until 2010, upper limits on land held in a single ownership existed in **Denmark**, to safeguard the existence of smaller, family-operated farms. A general maximum of 400 hectares across up to four properties was permitted per single owner. This restriction was removed under pressure from farm lobbying groups, who wanted more opportunities for economies of scale in agriculture, and to increase demand for farmland after Danish land values decreased following the global financial crisis in 2008. An upper limit of 150 hectares also related to the amount of additional agricultural land that could be acquired or leased via pre-emptive rights of neighbouring farmers; these rights were revoked in 2015. It should be noted that these upper limits were first established as a result of political preference for small farms. There continue to be limits on the distance of rented land from the main farm.

3.1.4 Restrictions related to owner characteristics and land use requirements

Several countries on the longlist impose restrictions on who can own agricultural land. These are generally related to farming experience and qualifications, residency and a commitment to carry out agricultural operations. These restrictions tend to exist to preserve agricultural or forestry family farms, increase productivity of small family farms, and keep farmland in agricultural use. There are some analogies here with the experience or qualification that is needed in Scotland before a new tenant can take an assignation of a secure agricultural lease from an existing tenant who is a near relative of the incoming tenant in a way that cannot be challenged by the landlord¹⁸. Separate but similar analogies can be drawn to crofting law which operates in parts of Scotland, where crofting tenants and owner-occupier crofters are subject to a residency duty and other duties (to not misuse or neglect the croft, and to cultivate the croft or put it to another purposeful use)¹⁹. Table 4 lists the countries that implement these types of restrictions.

¹⁸ Similar to Section 10A of the Agricultural Holdings (Scotland) Act 1991, regarding assignations of existing secure 1991 Act tenancies to new incoming tenants.

¹⁹ Under sections 5AA, 5A and 5B (for crofting tenants) and section 19C (for owner-occupier crofters) of the Crofters (Scotland) Act 1993.

Residency requirements exist for purchasing agricultural land in Norway, Poland and Slovakia. In **Norway**, the authorities may demand that buyers of agricultural land live on the property for a minimum of five years. In **Poland**, buyers are required to have lived in a given locality for five years before purchase and to pledge to work the purchased land themselves for a decade. In **Slovakia**, where a preference order for buyers based on residency/experience is in operation, the priority buyer must have farmed for three years in a municipality to buy a plot there (for more detail about Slovakia, see Section 4.3.1). Proof of agricultural qualifications and/or farming experience is required in Austria, Iceland, Poland, and Slovakia. In **Norway**, preference is given to buyers whose stated occupation is farming (for more detail about Norway, see Section 4.2.2).

Table 4: Examples of restrictions related to residency, qualifications of the purchaser and use of land in the longlist countries (note that all are related to agricultural land)

| Country | Land use restrictions/qualifications |
|-------------|--|
| Austria | Purchasers of agricultural land must be farmers or have adequate qualifications/experience. New owners of agricultural land must have their residence close to the plot. |
| Iceland | Two years of practical farming experience required to purchase agricultural land. |
| Norway | Authorities can demand that buyers of agricultural land live on the property for a minimum of five years, with preference given to those whose stated occupation is farming. Land owners have responsibility to ensure land is actively farmed by themselves or a tenant farmer. |
| Poland | Farming qualification required to buy agricultural land and the law requires that the purchaser has lived in a given locality for five years and pledges to work the land for a decade. |
| Slovakia | The priority purchaser must have farmed for three years in the municipality in order to buy a plot in the same municipality. Other requirements related to preference order for buyers. |
| Switzerland | Comply with principle of 'self-cultivation' – the owner/tenant must be able to cultivate the land themselves. |

3.1.5 *Pre-emptive rights to buy land*

Measures that allow a right of first refusal (pre-emptive right) to purchase land and property can be characterised in two ways:

1. Pre-emptive rights where a tenant has a priority right to buy land, either from their own landlord when offered for sale or when another parcel of land comes onto the market (these rights are normally associated with agricultural land in the longlist countries).
2. Pre-emptive rights where the State may intervene and become land owner (these rights are normally associated with interventions to assist development in the longlist countries).

While the latter (pre-emptive rights of the State) may not restrict directly who can own land, these rights may influence the decision to buy land in places that such rules apply. Table 5 summarises the existence of pre-emptive rights in the longlist countries. Pre-emptive rights exist for agricultural tenants in France, Poland and Spain. These types of rights also exist in Belgium, Norway and Switzerland, but sales to relatives of the vendor are generally given priority over sales to the tenant. Pre-emptive rights exist for neighbouring agricultural tenants/owners in Poland, Portugal and Spain, to allow consolidation of plots and increase productivity of small family farms by acquiring additional land (within the upper area limits in Poland).

Pre-emptive rights of the State (and its representatives) exist in **France** to control speculation within the farm land market when prices appear to exceed usual local farmland values. Private companies in charge of farmland management (Sociétés d'Aménagement Foncier et d'Équipement Rural – SAFERs) have rights of pre-emption under the French Rural Code to intervene in land sales and take temporary possession of land for reallocation, although these companies have not been as active in this regard as might have originally been expected.

From a development perspective, pre-emption rights may also be used by local governments in France (les départements) to acquire 'sensitive natural sites', protect 'peri-urban farmland and natural spaces', or buy land for development or regeneration projects. For example, pre-emption may be used to purchase commercial buildings to enable diversification of businesses within a neighbourhood. In **Finland**, municipalities also have a right of pre-emption to purchase land that is needed for local community infrastructure or nature protection. In metropolitan areas (the municipalities of Helsinki, Espoo, Kauniainen and Vantaa), this pre-emptive right can be used for land purchases greater than 3000m². Outside these areas, the limit is 5000m². In the **Netherlands**, some municipalities have opted for an 'active land policy', acquiring agricultural land and developing it before reselling it to developers, businesses, or individuals.

Table 5: Examples of pre-emptive rights to buy land in the longlist countries

| Country | State pre-emptive rights | Individual pre-emptive rights |
|-------------|--|--|
| Belgium | | Pre-emptive rights for agricultural tenants if the landlord sells (after priority to family member/business partner). |
| Finland | Municipal right of pre-emption for land purchase for local community infrastructure or nature protection. | |
| France | The Government can pre-empt land acquisitions for housing policy purposes or building land reserves. Land Development and Rural Settlement Companies (SAFERs) have pre-emptive right to buy agricultural land. | Housing and farm tenants have a pre-emptive right to acquire land or property when the owner plans a sale. |
| Netherlands | Some municipalities acquire agricultural land and develop it before reselling. | |
| Norway | | Family members have preferred buyer status when agricultural properties are put up for sale. |
| Poland | The National Centre for Support of Agriculture has a pre-emptive right to buy agricultural land, intervening to cap excessive local price rises. | Neighbouring farmers have a pre-emptive right to buy agricultural land when it is for sale. A tenant who has rented private land for three years has a pre-emptive right to purchase it when it is for sale. |
| Portugal | | Neighbouring farmers have right of first refusal when a plot of agricultural land is sold. |
| Spain | | Agricultural tenants (if qualified as 'professional farmers') have a pre-emptive right to purchase land for sale. Land owners of prioritised agricultural holdings have a pre-emptive right over adjoining holdings. |
| Switzerland | | Relatives have right of first refusal when an agricultural business is sold. Agricultural tenants also have a pre-emptive right, although relatives are given priority. |

3.1.6 Measures to reduce land fragmentation

While this research explores land ownership interventions in the context of addressing land concentration in Scotland, it is important to note measures to consolidate fragmented land, in order to understand the full range of land market interventions that limit who can own land and how much can be owned, and why these interventions have been applied. Land fragmentation is not a common issue in rural Scotland, although the sale of very small souvenir land plots continues, the titles for which cannot be registered in the Land Register as a result of provisions in the Land Registration etc. (Scotland) Act 2012 (Robbie and Combe, 2015).

The negative impacts of land fragmentation on land market development are widely documented (e.g. Hartvigsen, 2014) and many countries have sought to constrain the subdivision of land and promote consolidation through formal consolidation schemes. The objectives of these schemes include: improving agricultural and forest land division, enlarging farm sizes, acquiring land for the state, readjusting development areas, improving infrastructure (e.g. road networks), and improving environmental infrastructure (e.g. drainage) (Vitikainen, 2004). As explained in the introduction, this type of intervention is particularly prevalent in Central and Eastern European countries, where land has been reallocated (or readjusted) in order to change farm structures, enhance local and national infrastructure, and enhance the land market.

It is also important to note that pre-emptive rights often have an underlying aim of land consolidation and avoidance of fragmentation, for example in enabling land owners/tenants to acquire adjacent plots (as described in the previous section), as does inheritance law, which imposes restrictions on how land can be divided (or not) among heirs. Minimum area restrictions are an important tool for preventing land fragmentation: imposing limits on the growth of the number of small land holdings is usually intended to sustain the economic environment that would lead to the need for consolidation procedures if not regulated (UNECE, 2003). Minimum land parcel sizes exist in Cyprus, Slovakia, and some regions of Spain, to ensure that land does not become fragmented. Table 6 summarises measures to reduce land fragmentation in the longlist countries.

Table 6: Examples of measures to reduce land fragmentation in the longlist countries

| Country | Measures to reduce land fragmentation |
|----------------|--|
| Austria | Minimum sizes for forest parcels (usually approximately one hectare) |
| Cyprus | Minimum size regulations for parcels created after the implementation of land consolidation schemes. |
| Czech Republic | Abandoned estates can be transferred to state ownership after ten years. |
| Norway | Land that is used (or may be used) for agriculture or forestry may not be subdivided without consent of the Ministry of Agriculture. |
| Slovakia | Land parcels may not be divided into plots smaller than 0.5 hectares of forest land (except for in community forests) and 0.2 hectares of agricultural land. |
| Spain | Minimum forest area in some regions; these properties cannot be split or sold in part. |
| Sweden | Regulations to avoid forestry fragmentation and incentives to promote merging of holdings into larger units. |

3.2 Typology of land market interventions

Figure 1 shows the typology of land market interventions to restrict ownership that was developed after the initial desk-based review and cross-checking with country experts of interventions in the longlist countries. The typology allows countries to be categorised into three groups, according to the motivations for interventions and the restrictions applied. The three groups are:

- Foreign interest limiters;
- Land use stipulators; and
- Land consolidators.

[Annex 5](#) shows the interventions in the longlist countries, organised into the three categories and the remainder of this section explains each category and the dominant motivations and intervention(s) in each country. Shortlisted countries are highlighted in **bold**.

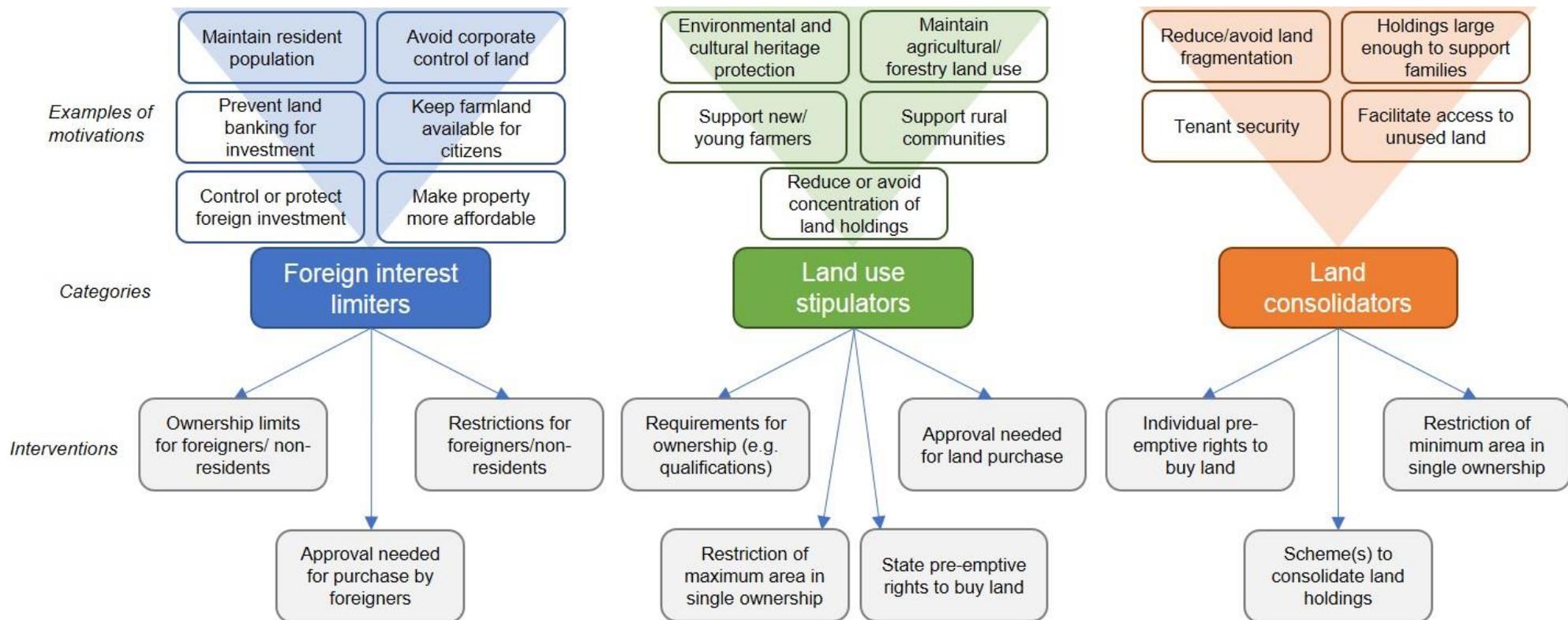


Figure 1: Typology of relevant land market interventions in the longlist countries to restrict ownership

Countries on the longlist fall into three groups: foreign interest limiters; land use stipulators and land consolidators. These groupings are based on the motivations for interventions and the restrictions in place (see [Annex 5](#) for accompanying data).

Foreign interest limiters are characterised by dominant policy objectives that relate to making land available for local interests. In practice, this includes objectives to: maintain a resident population; make property more affordable by restricting foreign investment; prevent land banking by foreign investors; keep farmland available for citizens; restrict purchase of agricultural land by foreign corporations; ensure state security; and control levels of foreign investment. The countries in this group are shown in Table 7.

The interventions applied to deliver these objectives tend to include one or more of:

1. Upper area limits for foreigners/non-residents;
2. Approval processes for purchase by foreigners;
3. Other general restrictions for foreigners/non-residents.

Table 7: Foreign interest limiters - policy objective and interventions

| Country | Dominant policy objective | Dominant intervention(s) | | |
|--------------------|--|--------------------------------|-------------------------------|----------------------------------|
| | | Upper area limits (foreigners) | Approval process (foreigners) | Other restrictions on foreigners |
| Australia | Protection of established population | | X | X |
| Canada* | Farmland availability for residents | X | X | |
| Denmark | Protection of those with residence | | X | X |
| Iceland | Keep farmland in agricultural use | | X | X |
| New Zealand | Make property more affordable for citizens | | X | X |
| Singapore | Control foreign investment in land market | X | X | |
| Switzerland | Keep/make land available for citizens | | X | X |
| USA** | Farmland availability for residents | X | | X |

*Alberta, Québec, Manitoba, Prince Edward Island, Saskatchewan.

**Applies to certain states.

Land use stipulators are characterised by dominant policy objectives that relate to developing optimum conditions for economic, environmental and/or social development. In practice, this includes objectives to: limit land speculation; protect environmental and cultural heritage; maintain agricultural/forestry land uses; develop community infrastructure; and support new/young farmers. State security can also be a motivating factor in this category, related to pre-emptive rights of the state to acquire strategic land (Finland). Reducing or avoiding land concentration is a motivating factor in this group, although generally not the dominant policy objective (see

Table 8).

The interventions applied to deliver these objectives tend to include one or more of:

1. Restrictions related to the use of land (e.g. residence, education);
2. General approval processes for land purchase;
3. Upper area limits for all purchasers;
4. Pre-emptive rights of public authorities to buy land.

Table 8: Land use stipulators - policy objective and interventions

| Country | Dominant policy objective | Dominant intervention(s) | | | |
|----------------|---|--------------------------|----------------------------|-----------------------------|---|
| | | Restrictions on land use | Approval process (general) | Upper area limits (for all) | Pre-emptive rights (public authorities) |
| Austria | Preserve and improve family farms | X | | | |
| Finland | State security | | | | X |
| France | Control land speculation | | | | X |
| Germany | Market transparency to avoid land speculation | | X | | |
| Netherlands | Market transparency | | | | X |
| Norway | Keep farmland in agricultural use | X | X | | |
| Poland | Farmland availability for residents | X | | X | X |
| Sweden | Market transparency to avoid land speculation | X | X | | |

Land consolidators are characterised by dominant policy objectives that relate to the avoidance/remediation of land fragmentation. In practice, this includes objectives to: create/maintain agricultural land holdings large enough to support families/businesses; tenant security; and facilitate ownership of unused land. The countries in this group are shown in Table 9.

The interventions applied to deliver these objectives tend to include one or more of:

1. Pre-emptive rights by individuals to buy land;
2. Minimum area limits for all purchasers;
3. Scheme(s) to consolidate land holdings.

Table 9: Land consolidators - policy objective and interventions

| Country | Dominant policy objective | Dominant intervention(s) | | |
|-----------------|--------------------------------------|----------------------------------|---------------------|-----------------------|
| | | Pre-emptive rights (individuals) | Minimum area limits | Consolidation schemes |
| Belgium | Avoid land fragmentation | X | | |
| Cyprus | Avoid land fragmentation | | X | X |
| Czech Republic | Transfer abandoned land to the state | | | X |
| Portugal | Avoid land fragmentation | X | | |
| Spain | Avoid land fragmentation | X | X | |
| Slovakia | Avoid land fragmentation | X | X | |

4. CASE STUDIES

This section considers the shortlisted countries in each group in more detail. Country case studies are presented under the following common headings to allow comparative reference and understanding: summary of restrictions; structures/incentives to monitor arrangements; and success and impacts of the intervention(s). Country-specific references for further reading can be found in [Annex 5](#).

4.1 *Foreign interest limiters*

4.1.1 *Australia*

Summary of restrictions

The majority of Australian land is held on a non-freehold basis. Much land is held by perpetual and long-term pastoral leases that can essentially be treated as if they are ownership owing to the rights conferred by such arrangements. Meanwhile, almost all metropolitan (urban) land is freehold, with disproportionately high value relative to area²⁰.

From the colonial era until the 1970s, to a greater or lesser extent there was an official 'White Australia' policy. Whilst that no longer prevails, protectionism of the established population is still evident in legislative measures that began to take shape in the 1970s (notably with the Foreign Acquisitions and Takeovers Act 1975) and reforms to the foreign investment framework that were introduced in 2015-16. Current legislation requires foreign persons to apply for investment approval before purchasing residential real estate or vacant residential land for development. Foreign persons are generally required to build new properties (rather than purchase existing ones), in order to create additional jobs in the construction industry and support economic growth.

The purchase of agricultural land by foreign persons or foreign-owned companies also requires approval where the cumulative value of the person's agricultural land holdings exceeds A\$15 million, although exceptions apply to investors from the trade agreement partners (Chile, New Zealand, Singapore, Thailand, United States). All acquisitions of agricultural land by foreign government investors or foreign state-owned companies require approval. There are rules about the acquisition of stakes of businesses, with agribusinesses subjected to special rules where the value of the investment is more than A\$57 million. The A\$15 million threshold does not apply when the land is acquired by owners or operators of wind and solar power stations (the land is treated as 'non-agricultural' in this case) or for providing facilities for tourism, outdoor education or outdoor recreation for the public.

From 1 February 2018, foreign investment will only be allowed where land has been suitably and transparently marketed. This is part of a national interest test to ensure that Australians have an opportunity to acquire a given parcel of land. Ensuring an 'open and transparent sale process' for agricultural land bought by foreign investors means²¹: the property is 'marketed widely' - it must be listed/advertised on widely-used real estate listing websites or in regional/national media; the property is advertised for a minimum of 30 days; and there was equal opportunity for offers from citizens to be made for the agricultural land while it was still available for purchase.

State or territory-level taxation can also play a role, as can be seen by the current land tax surcharge on residential properties for foreign investors in New South Wales (introduced in

²⁰ For clarity, it can be noted that land ownership is a State matter both as to Torrens (registered freehold/ownership) and non-freehold land, meaning it is the Crown in the right of the state that exercises jurisdiction over property in land, not the Commonwealth. But the Commonwealth can play a role to regulate the investment aspects of land, with reference to the power contained in s 51(xx) of the Constitution relating to 'foreign corporations, and trading or financial corporations formed within the limits of the Commonwealth'.

²¹ More information can be found on the [FIRB website](#).

2017) and the planned imposition of a similar tax increase on foreign investors in the Australian Capital Territory (ACT), to rebalance the market for local buyers. From 1 July 2018, foreign investors in the ACT will pay an additional 0.75% on the average unimproved value of residential properties²².

Structures/incentives to monitor arrangements

The Foreign Investment Review Board (FIRB), in line with related foreign investment legislation, monitors and approves foreign investment. The system relating to foreign investment is inherently discretionary, i.e. time is needed for the FIRB to make up its mind. The decision maker generally has a statutory period of 30 days to make a decision (as from the date when an application is made and the relevant fee paid), and a further ten days to notify the outcome²³.

For more complex issues, where a decision cannot be made within 30 days, an interim order within the decision period can be made, but this cannot be for a period of more than 90 days. An applicant can also voluntarily extend the 30-day period. The FIRB normally approves applications to purchase vacant land subject to construction being completed within four years (to prevent land banking). To avoid properties lying vacant, since May 2017, foreign persons who purchase residential real estate have been subject to an annual vacancy charge when they do not rent or occupy the property for more than six months per year.

The Register of Foreign Ownership of Water or Agricultural Land Act 2015 requires that information about foreign persons' holdings of agricultural land is obtained and published. It should be noted that a national strategy for cadastral reform is currently underway²⁴. This, combined with the requirements of foreign ownership registration will allow better understanding of trends in foreign land ownership. Separately, it can be noted that Queensland has a register tracking foreign ownership of land, flowing from the Foreign Ownership of Land Register Act 1988. Failure to comply with this legislation (for example, by making a false or misleading statement) is an offence.

Success and impacts of the intervention(s)

Because decisions related to foreign investment are made on a case-by-case basis and are discretionary, it is difficult to extrapolate overall effects. While the discretionary system for foreign investment tends to allow adaptation to specific circumstances, the initial starting point that so many foreign transactions are caught by potential regulation could feed into protectionist rhetoric. One high-profile foreign acquisition of a large land area (Cubby Station, a cotton farm) was approved notwithstanding the system. Matters may have been different if this had been a wheat farm (although there was a political context and other factors were also at play). This example illustrates how some commodities appear to be less valued by FIRB than others.

It is also difficult to gauge the effects of interventions on land prices and the availability of land, but country experts suggest there are perceptions that when foreign investment is in an area with a view to aggregate buying, prices can go up. Australia continues to attract a large volume of foreign investment applications (41,445 in 2015-16, compared to 37,953 in 2014-15), largely driven by residential real estate transactions. It is difficult to measure the impact of foreign investment policies on housing values/affordability. The increased regulation has impacted property developers, and demand from Chinese investors has slowed down. However, the concern that the tightening of norms by FIRB would lead to defaults on settlement has not materialised (the Australian system requires 5% payment when securing a property and 95% on completion and possession). Most settlements have happened. In

²² ['Increased land tax for foreign investors'](#) 05.02.2018, ACT Open Government website.

²³ [Foreign Acquisitions and Takeovers Act 1975](#).

²⁴ [Cadastre 2034](#): Powering Land and Real Property.

that sense, restriction has been less effective. For domestic investors, Australia allows negative gearing where losses from one investment can be offset against income from other sources thus reducing the tax liability. This tax break aids investment and the relative cost of funds and lower risk to invest in Australia is important for foreigners.

Although the flow of applications for the purchase of agricultural land has increased since thresholds were lowered in 2015, the proportion of agricultural land with a level of foreign ownership has fallen from 14.1% in June 2016 to 13.6% in June 2017. It can also be noted that FIRB limits do not always catch acquisitions, notably within the sheep/wheat belt in Western Australia, where there have been several high-profile, large transactions which have altered ownership of agricultural land. For example, the recent sale of S Kidman and Co to Australian Outback Beef has increased the level of Chinese ownership of agricultural land by 2.6 million hectares (0.7%)²⁵. The UK remains the largest foreign agricultural land holder with 2.5%.

There is some tension between the protectionist motivations that underpin the restrictions and a desire for development and expansion. Historically, that desire affected the evolution of land tenures, many of which came with requirements for improvements to land or otherwise benefitting the public, which in turn suggests that protectionist concerns might give way to desires to develop infrastructure in certain specific cases. Amidst a need for inward investment, protectionism is also perceived politically as popular, so no imminent change in the interventions is expected.

4.1.2 Switzerland

Summary of restrictions

Switzerland is a very densely populated country with a varied geography differentiated into three main regions: Alpine, Jura (upland) and plains. About 25% of the country is used for farming year round, with an additional 13% accessible in the late spring and summer for pasture. More than half of Swiss farms are between five and 20 hectares in size. The extent of agricultural land is decreasing, due to development pressure in the plains and the spread of forests in the Alpine and Jura regions. Retaining agricultural land is a policy priority.

Federal law (the 'Lex Koller') regulates the purchase of 'settlement' (non-agricultural/forest) land and property by people who do not reside in Switzerland or who are not of Swiss nationality. Foreign interests may not acquire this type of land or property if the purchase is a capital investment, if the size of the land or property exceeds what is deemed appropriate for the intended purpose, and/or if the buyer already owns land or property in the country. Both Swiss citizens and foreigners require a 'Permit C' to purchase settlement land or property: this permit is proof of four years of permanent residence in Switzerland. The acquisition of business premises is generally unrestricted, and approval for purchasing real estate for commercial purposes is not required.

There are restrictions relating to holiday properties and second homes. Each Canton²⁶ allocates annual quotas for holiday properties (generally limited to 20% of all properties), and dwellings being purchased for this purpose must be located in areas formally designated as holiday resorts. In some Cantons, foreigners can purchase second homes, but they need to demonstrate a 'close tie' with the place (mainly economic, scientific or cultural interests; not reasons related to family/friends, holidays, study, etc.). Holiday properties and second homes are subject to upper area limits: the net floor space of the building must not exceed 200m² and the land area of the whole property must not exceed 1,000m². Larger areas can

²⁵ Chinese investors have a 33% interest in Australian Outback Beef.

²⁶ Switzerland is divided into 26 Cantons of varying size.

be authorised based on additional need. Only one holiday property/second home may be owned in Switzerland at one time.

A federal law on agricultural land ownership exists to support viable family farms and agricultural businesses, as well as to improve farm structure. The division of agricultural land for non-agricultural purposes is forbidden, and division of agricultural land (and vineyards) for agricultural purposes must not result in plots smaller than 2.5 hectares (1.5 hectares for vineyards). The individual Cantons can determine a larger minimum size, if required. These rules do not apply to land improvement/fragmentation initiatives. A 'self-cultivation' principle also exists: owners and/or tenants have to be able to cultivate the land themselves and have relevant qualifications/experience. There are additional restrictions that prohibit felling of forest for settlement (development) purposes.

Structures/incentives to monitor arrangements

Each Canton has the following structures in place to monitor the purchase of all land or property in its territory:

- An authority or authorities to approve or deny the purchase of land/ property;
- An authority or authorities with the constitutional right to 'complain' about the purchase of land/ property; and
- An appeals process.

After initial approval, the application is passed to the authority with the constitutional right to complain. If there are no complaints, the application is passed to a federal authority (Federal Office of Justice), which makes the final decision.

The main reasons for rejection of applications to purchase agricultural land include: the buyer is not a farmer; the agreed land price is too high (each Canton determines the price for land within its borders, and there is also a country-wide maximum price); and/or the land to be purchased is not located within the business area of the buyer. Within-family transfer of agricultural land is preferred, with inheritance law ensuring that the closest next of kin will inherit land, as long as they intend to use the land for agricultural purposes.

Success and impacts of the intervention(s)

In contrast to neighbouring countries (France, Germany, Italy, Austria), there is no marked difference in land and property prices in Switzerland because land speculation does not generally take place. However, there is current debate about instances where the restrictions have been breached due to loopholes in the legislation and/or where the various public authorities have not applied lack of regulations or penalties. Similar situations have occurred in relation to the purchase of holiday properties by foreign investors. It has been vigorously debated recently whether the restrictions on foreigners should be abolished or made stricter. Despite a decision in 2014 by the Swiss Parliament to relax the rules of the Lex Koller, the Swiss Federal Council announced in 2015 the intention to revise and tighten the restrictions. A decision on this was delayed several times and a consultation closed in June 2017, with mostly negative feedback about the proposal to tighten the regulations.

In particular, the proposal to restrict the acquisition of commercial properties by foreigners was strongly criticised due to concerns about negative impacts on the Swiss economy. The Swiss government will soon modernise the Lex Koller. Under the new law, non-EU/EEA residents who live in Switzerland and possess a resident permit will only be able to purchase property as their main residence. When a property is no longer a main residence, non-EU/EEA residents will be required to sell their property within two years. Stricter laws are also due to be implemented regarding the conversion of business premises to residential property, and to the acquisition of land by foreign companies (only companies that have their main office in Switzerland will be able to purchase land).

Land use planning rules related to agricultural land (e.g. no commercial building, limited size of buildings, no apartments except for farm families) are becoming less strict and are often disregarded, with the relevant administrative authorities failing to impose penalties. It is also quite straightforward for the Cantons to 'swap' land from agricultural areas to settlement (development) areas. Although the federal government has to approve such changes, the federal administration is seen as weak in this regard and applications are normally approved. These swaps have therefore been a contentious issue. A new law relating to Fruchtfolgeflächen (FFF) has recently been introduced to preserve agricultural land to ensure sufficient food supply: a minimum area of 'FFF land' (i.e. the most productive land for agriculture) has been determined for each Canton.

4.2 Land use stipulators

4.2.1 Germany

Summary of restrictions

Agricultural land in Germany comprises around 80% of all personally-owned private property. Over half of this belongs to large agricultural businesses with more than 100 hectares, and the number of operating farms has fallen significantly over the past few decades. The average size of a farm is 56 hectares, ranging from 31 hectares in Baden-Württemberg to 290 hectares in new federal states (Länder) in the former East Germany (Brandenburg, Mecklenburg-Vorpommern, Sachsen, Sachsen-Anhalt and Thüringen) (Bahner, 2012). After the reunification of Germany, the German Land Use and Management Company (BVVG) was established to manage public land in the new states. It is owned by the Federal Government and was commissioned to privatise formerly public agricultural and forestry land, and to return land to previous owners whose land was expropriated during World War II. The company is still active in the land market, and leases land to farmers and others in the aforementioned states.

In Germany, interventions related to land ownership are designed to avoid land speculation, increase diversity of ownership, avoid the dominance of large land holdings, secure the future of agriculture, protect farmers' interests, and limit rises in land prices. To achieve these aims, the purchase and sale of agricultural land are regulated under the Grundstücksverkehrsgesetz (Law on the Sale of Agricultural Land). The sale of agricultural or forestry holdings greater than a certain size must be approved by the regulatory authority in the respective federal state (the lower limit for needing approval is generally between 0.25ha and 5ha). Where parcels are not part of an agricultural or forestry holding, these can be sold to other private persons or institutions without approval. Transfers of land can be denied if:

- The size of the plot would decrease below a level that does not allow economic use of the land;
- The price is unreasonably high or low²⁷; and/or
- The sale impacts negatively on 'healthy farm structure'.

For the latter, this means that non-farmers are restricted from buying land if local farmers are willing to buy the land under the same conditions. In effect, farmers who are in need of additional land have an indirect pre-emptive right over non-farmers (again, there is some variation between the federal states). Examples would include: if a farmer had recently lost some land; if a farmer is able to show that he/she will lose land in the future; and/or that he/she has a high proportion of rented land. In such cases, a state-owned public land

²⁷ Land price regulations differ between the federal states. In Baden-Württemberg, restrictions come into effect when the price is above 20% of plots with a similar agricultural quality.

agency that operates at the local level in the federal state can buy the plot at the price at which the non-farmer would buy it and then sell it to farmers in need of land. If this is not the case, the non-farmer may purchase the land. Approval is not required for the purchase of agricultural land by a public agency or by a church.

There are no special governmental or legislative procedures for the approval of foreign investors who plan to invest in agricultural companies in Germany. Neither are there any legally required controls on investments that could be considered 'foreign'. As human rights and fundamental freedoms apply equally to natural persons and entities in Germany, public authorities are unable to control investments or influence how non-German citizens or businesses invest in the agricultural sector.

Structures/incentives to monitor arrangements

Each completed purchase of agricultural and forest land must be presented to a designated committee of the relevant County Council. In Niedersachsen, for example, this committee comprises five people elected by the County Council, three of whom are nominated by the Department of Agriculture. This committee must ascertain whether the agreed sale leads to 'an unhealthy distribution of land' (i.e. whether it contradicts measures to improve agricultural structure). This generally occurs when a non-farmer buys the land despite an eligible farmer being able and willing to sign the contract of sale. If this is the case, the farmer who wishes to purchase the land can exercise a pre-emptive right (via the responsible state agency) and enter into a contract under the agreed conditions. The eligible farmer can then buy the land at the agreed price and must also pay a doubled land transfer tax. In Baden-Württemberg, the state land agency can exercise the pre-emptive right even if there is no willing farmer, under the condition that the land will be used for agricultural operations within the following ten years.

The Hofbörsen (land stock market) was introduced by the public agencies of the federal state between 2002 and 2005 to support the trade of farms between retiring farmers and new entrants. Farmers who intend to abandon their farm and land (e.g. due to the lack of a successor) can transfer their land to other existing or new farmers via this mechanism.

Success and impacts of the intervention(s)

Before 2008, when land prices were stable or rising slowly, restrictions on land sales were generally ignored. Since 2008, however, land prices have risen²⁸, the interventions have been stricter, and the pre-emption rights for agricultural land have been exerted much more than previously. In 2015, 2.15% (837) of all agricultural land sales requiring approval were checked further by the relevant committee; pre-emptive rights were exercised in 194 (23.2%) of those cases²⁹.

Farmers are often not in a financial position to exercise their pre-emptive rights, due to increased land prices and doubled land transfer taxes. As a result, there has been a marked increase in the purchase of agricultural land by non-farmers, which has become the subject of political debate. Across Germany as a whole, it has been estimated that 20-35% of agricultural land sales in 2015 were concluded by non-farmers. In Niedersachsen, non-farmers bought one third of all non-urban land sold in 2011. There also exists a significant loophole in the law, through which an investor (private person or company) can acquire shares in a large farm (mostly in eastern Germany) without needing approval, if the investor intends to continue farming. This means that the entry of non-agricultural investors into the agricultural sector is not restricted, providing indirect access to agricultural land ownership.

²⁸ Due mostly to: allocation of agricultural land to residential and road building projects; price rises near bio-gas production plants; and privatisation of previously state-owned land in East Germany.

²⁹ Bundesverband der gemeinnützigen Landgesellschaften (2017) [Entwicklung und Tätigkeit der gemeinnützigen Landgesellschaften](#).

Since 2015, the federal states have been discussing the introduction of new laws to ensure future viability of agricultural operations and to avoid land concentration by non-farmers.

4.2.2 Norway

Summary of restrictions

Most of Norway is mountainous and/or forested; only 3% of the land is used for agricultural purposes (Thomson et al., 2014). Several restrictions exist to keep farmland in agricultural use, retain agricultural land within families, maintain rural populations and avoid land fragmentation³⁰: the number of farms has decreased sharply in the past couple of decades. Farms are generally owner-occupied and small: approximately 50% of farms have less than 2.5 hectares of agricultural land.

All sales of agricultural land require a permit (concession) from the Ministry of Agriculture, and the prices of properties can be controlled and regulated in order to control who is able to acquire farm property and avoid land speculation. Farms with less than 3.5 hectares of arable land, or if the total area covers more than ten hectares, are excluded from this rule (the lower limit was increased in 2017 from 2.5 hectares to facilitate a wider range of smaller agricultural properties and reduce the number of uninhabited agricultural properties). A legal exemption from requiring a permit also exists in certain cases for family members. For example, when farmland is put up for sale, if a family member wishes to buy it, their pre-emptive interest overrides that of any non-family buyer (allodial rights³¹). Ownership of the land for 20 years allows allodial rights to be conferred. Since 2013, these rights have been restricted to direct descendants of the owner.

The 'domicile principle' requires that the purchase of agricultural holdings larger than ten hectares, or more than 3.5 hectares of arable land, is conditional on the owner residing on the property *in persona* for a minimum period of five years. This is to ensure that remote, rural areas continue to be populated. A minimum rental period of ten years exists for tenants of arable land as a prerequisite for receiving a concession to buy the land. All owners and tenants of agricultural land must farm the land, i.e. the soil must be cultivated and harvested at least once a year and pastureland must be kept in good condition. As a general rule, a land owner is not allowed to create and sell new properties by dividing the estate into smaller parcels.

Structures/incentives to monitor arrangements

If land is sold without the necessary concession, the State may take temporary ownership of the land for reallocation. The Ministry of Agriculture may give its consent to the creation of new plots if, for instance, the division facilitates a more varied farm structure. The creation of a plot of up to 0.5 hectares is allowed for residential use (and retirement of the farmer) in some cases.

Success and impacts of the intervention(s)

Recent amendments to the concession permit system (relaxing price controls and raising the lower area limits to allow a wider range of smaller agricultural properties) have not been successful in reducing the number of uninhabited agricultural properties. The rate of growth of the number of uninhabited farms has been consistent since 2001. Since 2010, fewer properties have been subject to price controls, with the aim of more properties coming on to the market. There has been some debate about this decision: farming representatives support price controls to ensure affordability of farmland, while others have raised concerns

³⁰ Formal land consolidation schemes also exist to reallocate and redistribute land to improve agricultural efficiency.

³¹ Odelsrett is the Norwegian law stipulating the right, when a farm is to be sold, of any member of the family to buy it, by the principle of primogeniture (Åsetesrett). The word 'allodial' used to prevail in Scotland as a term for non-feudal land, and as such these two meanings of 'allodial' are not to be confused.

about the price controls leading to under-investment in farms. Relaxing price controls was expected to lead to increases in sale prices and encourage owners of uninhabited properties to sell their land. Small farm properties have increased in price (and sales have been more frequent) in more populated areas and popular recreation areas, but the numbers of land transactions in more remote, rural areas remain low. Recent research has concluded that this is partially due to the greater importance of family and emotional attachment of owners to land in these places, as compared to capital gain from sale.

The requirement to reside on the land appears to have been effective in ensuring that farmland is bought by people who wish to remain on the land for at least five years. When farmers purchase land, 90% are highly likely to remain on the land for 30 years or more. Those who apply for 'delayed residency' or permanent dispensation from the domicile requirement are likely to remain for ten years or less. However, the rules have not always ensured that those residing on farms are actively farming the land, with tenants doing this instead. This reflects the fact that the system is not as strict in practice as it might appear to be: increasing numbers of people are using farms as a residence and not an active farm.

The preference for within-family transfers and the residency restriction have also reduced the opportunity for farm expansion via land purchase: the latter places an indirect limit set on the number of agricultural properties that can be owned by one person or couple (as they cannot be resident in two places), but another property can be purchased after residing for five years, while retaining the original property. Increases in the average farm size have been achieved by leasing land rather than transfer of ownership. (i.e. farmers leaving the industry retain ownership and then lease the land to others). The practical challenges imposed by allodial rights and the concession permit mean that the purchase of agricultural land in Norway by legal entities or non-resident landlords is rare.

4.2.3 Poland

Summary of restrictions

Most of the land in Poland is owned and operated by small family farms and significant regulations exist to protect these (Swinnen et al., 2013). Average farm size is approximately 10 hectares. Approximately 20% of agricultural land is leased and another 19% is owned by the state, with sales of state land limited due to restitution claims (Ciaian et al., 2012). Poland is heavily forested and 81% of forests are owned publicly. There are no restrictions on private forest owners selling forests on the open market, and the low profitability of forest land means that there is little demand for small-scale forest ownership. The privatisation process of the 1990s was hindered by restitution claims. However, since 2010, the sale of estate land with restitution claims has been possible, with first right to buy given to the former owner and their successor, and then to leaseholders (if the land had been leased for at least three years).

Until 2016, there were restrictions on ownership by foreign natural persons and legal entities with a majority of the shares owned by foreigners. Non-EU/EEA buyers were excluded from buying agricultural land although they could buy if they had previously leased (and farmed) agricultural land for 3-7 years (Thomson et al., 2014). Since 2016, legislation continues to restrict foreigners from buying land, as they require a permit from the Ministry of Internal Affairs, issued only to those who can prove a connection to Poland, e.g. holding a temporary or permanent residence permit. The sale of State-owned land has been halted for five years to all buyers. This is to protect agricultural land from speculative purchase by both domestic and foreign buyers, following the end of the transitory restrictions implemented when Poland joined the EU. There were concerns that land would not be used for agriculture if available for purchase. Instead, permanent leasing of State-owned land is promoted.

The following restrictions on the sale of private land were also introduced in 2015, prior to the expiration of the transitory arrangements:

- agricultural land parcels larger than 0.3 hectares can only be bought by an individual farmer (not a legal entity)³²;
- individual farmers may own up to 300 hectares of agricultural land;
- they must be formally qualified as a farmer (i.e. have agricultural skills);
- they must have lived in a rural municipality for at least five years; and
- they must pledge to work the land personally for a decade.

These restrictions exist to keep farmland in agricultural use, protect and increase the productivity of small family farms, and avoid land ownership concentration. There are also legislative measures in place to decrease farmland fragmentation due to small cultivated fields that are often remote from farms, and CAP subsidies are structured to incentivise land consolidation.

Structures/incentives to monitor arrangements

The Agricultural Property Agency (developed in 1992, now the National Centre for Support of Agriculture, KOWAR) was created to privatise State land (from communist era State farms) and facilitate the development of commercial family farms, functioning as a State land bank (Hartvigsen, 2013). From 2003, it has also had a pre-emptive right on all agricultural land transactions, to reduce speculation and encourage the development of commercial family farms. This is a general pre-emptive right that can be applied in the case of a sale that is not perceived to be in the public interest, although it has been used relatively rarely. Out of more than 270,000 cases related to around 400,000 hectares, pre-emption rights have been exercised on 293 holdings covering around 6,500 hectares. All sales transactions for agricultural land must be reported to KOWAR, which can intervene to cap excessive local price rises. When KOWAR uses its rights as a pre-emptive buyer, a case-by-case decision is made regarding the criteria with which to calculate land price.

Success and impacts of the intervention(s)

In the run up to the end of the transitory restrictions on foreigners purchasing agricultural land, there was popular and political concern about the ability of foreign companies to buy land in partnership with Polish citizens who then transferred ownership to companies after purchasing the land themselves. Protests by farmers in Warsaw highlighted the concerns about Western companies buying land and the impact of this for protecting family farms. The legislation enacted in 2016 appears to have allayed these concerns.

There is some concern that the restrictions on foreigners violate EU law regarding free movement of EU citizens. There are also concerns that strict measures to reduce speculation may have unintended economic consequences, such as falling land prices, although prices are now increasing and there is a high level of demand for farmland. A further potential impact of restricting land ownership for those outside Poland is a reduction in the influx of innovation and new farming approaches. Polish farmers have benefited from the presence of farmers from other parts of Europe, learning from their associated technological innovation.

The five-year restriction on the sale of State-owned land has had the effect of greatly reducing the number of sales of agricultural properties in this sector from around 100,000 hectares per annum (prior to the legislation) to 17,700 hectares in 2017. There has been a marked increase in the area of leased land and increases of an average of 10% in land rental prices (Sikorska, 2017). Farmers that already own larger areas of agricultural land have tended to take on additional leased land from smaller farmers to strengthen their

³² An individual farmer is defined as a person with agricultural skills who runs a farm not larger than 300 hectares and have lived in a rural municipality for at least five years.

market position. Farmers with small farms are unwilling to sell their land as it is viewed as an important investment, but leasing to farmers with larger holdings is popular.

An increase in non-market trade via family acquisitions of land was also recorded in 2016 (Sikorska, 2017). The reduction in the availability of farmland has led to increases in the price of all agricultural land (both private and state-owned). This is thought to be due to growing competition between the use of land for farming and non-farming purposes. Indeed, tensions can arise over the lack of availability of land for purposes such as infrastructural development and tourism. In some areas (particularly peri-urban areas), there is considerable demand for farmland, while in other areas land abandonment is an issue. Agricultural land is generally very highly valued (personally), and changing the structure of land ownership is a slow and difficult process. While it is viewed as important to create larger farms that can compete with those in other parts of Europe, there are also concerns over industrialisation as green production is favoured.

While recent legislation has been focused on ensuring the survival of small family farms and the livelihoods and ways of life associated with these, land ownership remains highly fragmented, as the uptake of consolidation schemes by farmers is low. Interest in land consolidation has declined due to the complexity of the regulations. There appears to be a reluctance of farmers to participate due to this complexity and uncertainty about cost regulations. There is also an historical lack of engagement between farmers and state actors which has presented a challenge. The issue of unresolved ownership has also led to uncertainty and a slow rate of land transactions. Recent research has suggested that there is no evidence that farmland fragmentation prevents economic productivity in Poland. Small family farms have been found to generate good profit, sometimes larger than that of a commercially-oriented land holding. However, it should be noted that there are greater areas of unused agricultural land in regions with the highest degrees of fragmentation, compared to those in the areas of the former state agricultural farms.

4.3 Land consolidators

4.3.1 Slovakia

Summary of restrictions

Land use is concentrated in Slovakia, with most of the utilised agricultural area (UAA) (76.7% in 2013) cultivated by 1.5% of the total number of farms, in holdings greater than 50 hectares (Biró, 2017). This is the legacy of the gradual liquidation of family farms under communism, when agricultural production was organised into large-scale collective and state farms. 75% of agricultural land is owned by private persons and there are many small farms (91.3% of all farms, under ten hectares in area) that cultivate only 3.4% of all agricultural land. The fragmented nature of land under this type of ownership hinders development of the land market, and land consolidation is a long-term measure for increasing agricultural production efficiency. There has been a steady increase in the number of legal entities purchasing and renting farmland in Slovakia, with corporate farms dominating the rental market. 20% of UAA remains under the administration of the Slovak Land Fund, created for the restitution of land seized historically by the state from private owners.

Rights of first refusal were established in 2014 to ensure protection of agricultural land (i.e. ownership by people with the relevant skills and experience) and to protect land from foreign interests following the end of restrictions on foreign ownership after Slovakia joined the EU. Farmers must have conducted agricultural business for at least three years in a specific municipality before being able to buy land in this municipality without requiring approval. Young farmers (aged under 40 with certain skills, purchasing for the first time) are exempt from this rule, to enable new entrants to purchase land. For other individuals or entities willing to purchase agricultural land, a preference order exists. Criteria for determining the preferred buyer include residence in Slovakia for at least ten years and, in the case of foreigners, reciprocity (i.e., the legislation of their home country allows equivalent purchases by Slovak citizens). Legal entities registered in Slovakia can purchase agricultural land if they fulfil similar conditions, including the requirement to conduct agricultural business for at least three years prior to purchase. Non-Slovak EU citizens can acquire agricultural land on the same terms as Slovaks.

Fees for land division were also established in 2014 to prevent land fragmentation. Agricultural land may not be divided into parcels smaller than 0.2 hectares, and forest land into less than 0.5 hectares (although this rule does not apply to community forests). Co-ownership shares smaller than the minimum are also prohibited. If a new plot is between 0.5 and 2 hectares, a fee amounting to 10% of the agricultural land value must be paid. For forest land, this applies to plots between 1 and 2 hectares in area. A fee amounting to 20% of the value of the land must be paid if an agricultural plot between 0.2 and 0.5 hectares is created (0.5-1 hectare for forest land). Agricultural land value is calculated by a legal regulation created for land consolidation purposes, and the fees are collected as state budget revenue. Exemptions to the minimum area rules include: subdivision for building purposes; subdivision due to restitutions; difficulties in joining land with other plots; and the establishment of gardens/recreation areas in line with municipality development plans.

Structures/incentives to monitor arrangements

The seller of agricultural or forest land must publish the sale on the Ministry of Agriculture and Rural Development website and on the notice board in the public office of the municipality in which the land is located. A potential buyer must then record interest in the land, both in the online register and at the address, within the time specified. Interested buyers are then prioritised as follows:

1. A farmer who has conducted an agricultural business for at least three years in the municipality in which the land is situated (young farmers under 40 are exempt);

2. A person who has had permanent residence or a registered office in Slovakia for at least ten years and carried out agricultural production as a business for at least three years in either (a) the municipality adjoining that where the land is being sold or (b) regardless of place of business;
3. A person who has had permanent residence or a registered office in Slovakia for at least ten years.

The sale price is non-negotiable: potential buyers may only accept or refuse the price stipulated by the land owner.

Success of the intervention(s)

The process complicates land transactions, not only for foreigners but also for farmers who want to increase their acreage of cultivated agricultural land. The process does not appear to have restricted purchases for non-agricultural purposes (e.g. development projects, other buildings), with an estimated 30% of transactions involving farmers as purchasers.

The interventions have substantially improved the amount of available information on the agricultural land market due to the obligation to advertise sales publicly. However, the interventions have impeded the development of the market by restricting the types of potential purchasers, affecting the disposal right of owners, and increasing transaction costs. The amount of bureaucracy involved in land transactions has also increased. In general, there are no statistically significant differences between land prices before the existence of the interventions and current land prices (with the exception of the Prešov region where grassland land prices are much higher than before the interventions were enacted, and in Bratislava and Nitra, where prices are lower). The ability of the seller to set a non-negotiable purchase price has also been used to exclude potential buyers who have the right of priority but who are not in a financial position to complete the sale. It is this factor that has led to little change in the land market, as most farmers do not have the capital to complete the sales. On the other hand, foreign buyers can buy agricultural land relatively easily by setting up a legal entity and satisfying the residence requirements. Foreign interests now own approximately 20,000 hectares (1% of UAA) (Kay et al., 2015).

The minimum area restrictions have also caused disputes among heirs who inherit land that cannot be subdivided. In these cases, a court process is required to award the land to the most qualified recipient (in terms of agricultural experience), and other heirs may receive compensation from him/her.

The permanent residence condition has been considered from a legal perspective by the European Commission due to concerns that the rule violates the principles of non-discrimination set out in the Treaty of Rome. The intervention condition is likely to be amended in due course to accommodate this concern, and the political acceptance of the interventions is in a state of flux.

5. DISCUSSION: LESSONS FOR SCOTLAND

Land market interventions that restrict who can own land and how much they can own are both common and varied in the 22 countries considered in this study. Many of the interventions in other countries exist to mitigate against excessive land concentration or land fragmentation. The typology of land market interventions to restrict ownership (Section 3.2) demonstrates that countries choose to implement interventions for a range of reasons.

The range of interventions in the different countries reflects different social, cultural, economic and political drivers, one or all of which may have led to the implementation of measures to deliver associated policy objectives. While it might be expected that similar types of interventions would be observed in countries that are similar in terms of economic development, geographic location and political institutions, the degree of variation in the findings presented above is in line with previous studies that have sought to understand interventions in sales markets in the EU (e.g. Ciaian et al., 2012). Interventions can be classified into six groups that relate to: foreign ownership of land; ownership approval processes; upper and lower area limits; owner characteristics and land use requirements; pre-emptive rights to buy land; and measures to reduce land fragmentation.

The remainder of this section considers the relevance of these interventions to the Scottish context and identifies lessons that Scotland could learn from the experiences of other countries.

5.1 *Aligning ownership and public interest*

It was striking that **some form of approval exists in relation to who can own land in 18 of the 22 countries considered in this study**. Twelve countries have rules that require foreign land acquisitions to be approved in some way prior to completion³³. Approval processes of this nature exist to check the public interest impacts related to land purchase by a non-citizen. Often, this is to address concerns that foreign purchases may have negative impacts on local environmental and cultural heritage, or on the socio-economic development of a region. Approval processes to protect ‘sensitive land’ in New Zealand, national parks in Iceland, and cultural and language heritage in the Finnish Åland Islands provide some examples. Similarly, very recent changes to the rules in Australia allow foreign purchases only after the land has been suitably and transparently marketed. This ensures that land cannot be sold without public awareness through an open and transparent sale process. In the case studies, the requirement for formal approval of foreign land acquisitions had the benefit that data on foreign interests were collected, allowing long-term trends to be monitored and transparency to be improved. It was not always possible to understand the other effects of approval processes, with approval often discretionary and on a case-by-case basis, which may reduce trust and/or confidence in the system, especially when high-profile land purchases that receive approval appear not to be in the public interest.

It is important to note that **approval processes are not limited to land acquisitions by foreigners**: six countries³⁴ on the longlist (two of which have already been counted in the foreign ownership approval processes) require the relevant authority to approve *all* purchases of agricultural land. Underlying concerns in these countries tend to be the local residence of the land owner, the protection of agriculture, and the avoidance of land fragmentation. The Swedish approval process for ‘sparsely populated areas’ focuses specifically on ensuring that buyers contribute to the retention of populations and employment opportunities in remote areas. In this example, buyers who do not intend to reside on the land, or who intend to use the land only for the hunting rights and not as a

³³ Australia, Austria, Canada (Québec), Cyprus, Denmark, Finland (Åland Islands), Iceland, New Zealand, Poland, Singapore, Spain, Switzerland.

³⁴ Austria, Czech Republic, Germany, Iceland, Norway, Sweden, Switzerland.

residence, would not be granted approval by the relevant regional authority. In Germany, a close eye is kept on transactions above set lower limits in order to avoid land concentration.

A formal approval process related to the purchase of land or property does not exist in Scotland. Based on the experience in other countries, developing such a framework would not be unusual and may present an opportunity to consolidate what is in the public interest in terms of who can own land. It would be worth noting the challenges experienced in Australia when the Foreign Investment Review Board was criticised for giving preferential treatment to applications from particular rural industries (see Section 4.1.1), as well as the lessons from Switzerland, where a rigorous approval process was found to be effective only with full support at the national level for approving/denying applications (see Section 4.1.2). The Swedish example of approving agricultural land purchases in remote areas is also pertinent: a land owner is required to reside on the property and contribute to local employment (see Section 3.1.2). The community right to buy for sustainable development (in Part 5 of the Land Reform (Scotland) Act 2016, which is likely to come into force in 2019) may present an opportunity to consider specific and general approval processes, and the relative importance of specific criteria for approving land purchases, in more detail. That framework only allows for a forced sale in highly particular circumstances. An analysis of how this comes to operate (alongside an analysis of the other community rights to buy, which require acquisitions to be in the public interest and compatible with sustainable development) will present an opportunity to gauge what standards community owners are being held to at the acquisition stage.

Other restrictions on foreign land acquisitions in nine of the 22 countries³⁵ exist predominantly to protect public interest, prevent land speculation, and ensure the ability of local farmers to purchase agricultural land. Countries can, to some extent, be grouped further within the ‘foreign interest limiter’ category of the land market interventions typology. Australia and New Zealand focus on the housing market, with restrictions imposed on foreign persons and legal entities to address affordability concerns. In some states/provinces in the USA and Canada, acreage limits for foreign persons and legal entities buying agricultural land are to ensure that land is available for citizens. In Europe, Denmark and Switzerland impose residency restrictions on foreign persons (and on legal entities to some extent), prior to purchasing all types of land and property.

Restricting foreign acquisitions of land and property may have negative effects on the economy by reducing inward investment: a topic of vigorous debate in Switzerland. To the extent that it could be ascertained in the case studies, restricting foreign ownership does not appear to have a direct impact on land prices, although the impact of recent interventions in Australia and New Zealand to restrict foreign purchases in the residential housing market should be monitored.

The purchase of Scottish land by foreigners is not restricted. While this is a situation that differs from some countries in this study where the ownership of land by foreign interests is restricted to some extent, outright bans on foreign ownership are not common (and in EU Member States, restrictions cannot easily be placed on EU citizens). The UK is currently restricted by EU law in terms of limiting land acquisitions by people or entities from other EU Member States. However, this situation may change after Brexit, subject to other treaty obligations that either fill any void left by the UK’s departure from the EU or are negotiated as part of a transition or final deal with the EU. As explained in the introduction, customary international law places no restrictions on limiting foreign acquisitions. In Scotland, motivations to restrict foreign ownership of large land parcels may be linked to the negative implications of a foreign land owner not being resident on the land, with purchases predominantly for recreational and/or speculative purposes (as explained in the introduction).

³⁵ Australia, Canada; Cyprus; Denmark; Iceland; New Zealand; Singapore; Switzerland; USA.

Where similar concerns have been raised in other countries, an approval process exists to restrict land purchases (regardless of the origin of the purchaser) that may lead to these concerns becoming a reality.

5.2 Sustaining agriculture and rural communities

Few countries were found to impose limits on the amount of land that can be held in a single ownership. In some cases, restrictions that affect how much agricultural land can be held in a single ownership were to ensure that agricultural land is not sold to non-agricultural investors. In many of the countries, owner-occupied family farming is currently and historically the preferred form of agricultural tenure, with minimum and maximum area limits generally in existence to protect family farms. In these countries, limits are perceived as planning control mechanisms rather than restrictions on ownership rights or mechanisms for land redistribution.

An upper limit for the ownership of land by individual farmers exists in Poland and also for foreigners in some other countries, although the political popularity of such limits appears to be time-dependent, as illustrated by the recent decision to remove such limits in Denmark. It proved challenging to ascertain the impacts of upper acreage limits imposed on foreigners in Canada, with country experts suggesting they were no longer seen 'as important as other measures'. Restrictions related to minimum area limits were more common, with land not allowed to be divided into parcels below a minimum size in six countries³⁶, in order to ensure viable agricultural and forest enterprises. In Scotland, discussions surrounding the imposition of an upper limit on land holdings have been related to land concentration rather than fragmentation, although concerns regarding the purchase of land solely for investment have also been aired.

Pre-emptive rights for individuals wishing to purchase farmland exist in seven of the 22 countries. In general, **individual pre-emptive rights exist to avoid land fragmentation as well as to offer increased security for tenants.** In Belgium, Norway, and Switzerland, close family relatives have a priority over tenants; in Poland and Portugal, neighbouring agricultural tenants have a pre-emptive right to buy, to address productivity issues related to small farm size by encouraging larger units. In Spain, a similar rule applies to neighbouring owners.

The Agricultural Holdings (Scotland) Act 2003 grants a pre-emptive right to the agricultural tenant to buy the land that they lease, and there is no rule of priority for family members. Pre-emptive rights also allow communities in Scotland to purchase land before a property is placed on the open market (see Section 1.5). A dominant motivation for the Scottish interventions is security of tenure and local control of land. In other countries, motivations for such pre-emptive rights are different and include: enabling farmers to expand farms by buying neighbouring plots; keeping farms within families; ensuring farmers are given priority over non-farmers when agricultural and/or forest land comes onto the market; and avoiding land fragmentation.

Fragmentation of land in Scotland is rare and generally not a concern. However, fragmentation can arise in instances where a land owner dies with no will and the rules of intestacy in the Succession (Scotland) Act 1964 operate to give more than one person an entitlement to relevant land, or where there is a will and for some reason the land is split up by the testator. Succession rules in Scotland allow land to be bequeathed to a single person or entity, with concerns about agricultural land fragmentation contributing to the lack of any amendment to allow family members to compulsorily share land.

³⁶ Austria, Cyprus, Norway, Slovakia, Spain, Sweden.

In the countries studied, **the implementation of restrictions on land ownership was more commonly driven by land speculation than by the intention to limit concentration of ownership**, although these two issues are often linked. In some countries, the state has a pre-emptive right to acquire and protect sensitive sites and to buy land for development and/or regeneration. In countries where price controls on sales of agricultural land exist³⁷, they tend not to be used strictly, or have limited impacts and are politically unpopular. However, the presence of such interventions allows public authorities to vary how they are applied, being stricter in times of rising land prices, when farmers cannot afford to exercise their pre-emptive right and land purchases by non-farmers may dominate. The pre-emptive right of the state is also used as a measure to reduce land speculation in some countries. For example, in Poland, where the public agency for agriculture has a pre-emptive right on all agricultural land transactions for this reason, falling land prices were expected as a result. However, this has not been the case, with prices and demand for land now rising. In the Czech Republic, the pre-emptive right of the state to agricultural land also allows abandoned land or land with an 'unknown owner' to be brought into public ownership.

A pre-emptive right of the state to purchase land does not exist in Scotland. In other countries, this right exists for a range of reasons, such as ensuring that land remains affordable (particularly for farmers) and enabling development/regeneration projects. There may be scope for such an intervention to offer an opportunity to bring vacant land in Scotland into community or public ownership, which could operate alongside the upcoming provision for the community right to buy mechanism for wholly or mainly abandoned or neglected land. Such a policy change is likely to meet with considerable opposition with concerns over how the land is to be valued.

5.3 *Legal considerations*

Constitutional treatment of property and other human rights considerations can be important brakes and perhaps even accelerants for legal measures that seek to re-allocate or control property rights in any given legal system. Scotland's particular situation owes much to the embedding of an important human rights instrument in the devolution settlement. The Scotland Act 1998 provides that legislation which is not compliant with the European Convention on Human Rights (the ECHR) is 'not law'³⁸.

As explained in the methodology and as detailed in [Annex 3](#), Scotland's devolution settlement and the wider UK's place as a signatory to the ECHR was an important factor in the selection and consideration of other countries. On that basis, two points can be set out to explain how Scotland can proceed in future (that is to say, how the Scottish Parliament *would* be entitled to proceed, not whether it *should*).

First, in terms of Article 1 of the First Protocol to the ECHR, an owner has a right to peaceful enjoyment of his/her possessions except where that is disturbed in the public interest (non-arbitrarily and generally with compensation)³⁹. As to whether a legal measure does serve a particular social purpose, when this has come to be assessed at the European Court of Human Rights judges have generally afforded a certain 'margin of appreciation' to local

³⁷ France, Germany, Norway, Poland.

³⁸ Similar constraints apply to legislation that is not compliant with European Union law: the possible implications of the UK leaving the EU on devolved law making will not be considered, save to note that Brexit will not directly impact on the UK and Scotland's obligations under the ECHR.

³⁹ Two reported legal cases provide useful examples of what is and is not acceptable in human rights terms and (in turn) the devolution settlement. What is not acceptable is made clear in a series of cases about the Agricultural Holdings (Scotland) Act 2003 and the arbitrary imposition of a heavily regulated agricultural tenancy on a landlord without compensation, culminating in the UK Supreme Court case of *Salvesen v Riddell* [2013] UKSC 22. What is acceptable is a properly considered piece of legislation that provides for the reallocation of property rights within a statutory scheme that allows a landowner to make representations throughout: *Paic Crofters Limited and Paic Renewables Limited v. The Scottish Ministers* [2012] CSIH 96.

legislatures, who tend to be regarded as better placed to gauge societal concerns than the Court itself. Second, it should be acknowledged that human rights are not just a shield that can be deployed by owners (or indeed others who can find protection under it, such as tenants). Some other considerations – such as food security, sanitation and housing – are now explicitly recognised as positive rights-based drivers for land reform in Scotland, notably via section 98 of the Land Reform (Scotland) Act 2003 (as amended by the Community Empowerment (Scotland) Act 2015). This makes explicit reference to the International Covenant on Economic, Social and Cultural Rights. Whilst that incorporation is not of the same standing in Scots law as the embedded nature of the ECHR, it is nevertheless significant.

5.4 *Impact on land prices*

It was not possible in this research to determine how the various policy changes impacted land prices, due principally to a lack of detailed time series data for the period both before and after a policy change. In any event, even with adequate property level data, causation is often difficult to determine when using econometric modelling, due to the challenges of controlling for so many other variables which might impact value, both macro and micro, such as the stage of the property cycle and the heterogeneous nature of each individual asset.

However, policy changes can clearly have both a negative and a positive impact on the price of land and buildings, even though their primary motivation was not to do so. It is thus important to consider both the intended and unintended consequences of any new policy. In simple terms, the property market is characterised as being relatively illiquid, often requiring large capital expenditure; features large lot sizes; functions without a central trading market; is impacted by significant transaction costs (both fiscal and agent based); and often requires third party borrowing. Moreover, at any one point in time only a relatively small number of buyers and sellers are active in a highly segmented marketplace. In such a scenario, policy interventions such as limiting foreign ownership reduce the number of potential buyers and may reduce the likely exchange price. Likewise, the introduction of state approval of transfer of ownership increases the length of the settlement process, reduces liquidity, and introduces the new risk of the state not granting approval. Assuming rational risk/return decision making, this negatively affects the amount a purchaser would pay. That said, future growth or decline of property prices is not necessarily the central concern of government, but is important from a welfare economics perspective.

Focusing on the adequacy of compulsory compensation in Scotland, Rao et al. (2017) adopt a capability approach advocated by Sen (1985), to argue that, when the state intervenes in private property rights, it deprives the landowner of the set of valuable functionings that land ownership brings. The particular set of functionings is unique to each land owner and includes the choice of use to which land can be put. Where the state restricts the range of land use or prevents any future alternative use, the land price can be materially affected, leading to potential legal challenges. However, it may be to the benefit of the nation that the defined use results in positive economic benefit, if the alternative is an ownership strategy which involves no active use, but instead waiting speculatively for an upturn in land values.

5.5 *Further work*

The acquisition of agricultural land by non-farmers was a concern in several of the countries considered in this report. Low ownership taxes have been found to expose farmland to non-agricultural investors, and subsidies also have an impact on land values (Swinnen et al., 2008). The LRRG (2014) noted that tax concessions and incentive payments are important factors that help to maintain the concentrated pattern of large-scale private land ownership in Scotland: rural estates are largely classified as agricultural or forestry land, with owners

receiving national taxation exemptions and reliefs, and receiving public subsidies in the form of agricultural, forestry and other grants. While some of the land ownership interventions considered in this report may increase the diversity of land owners by encouraging the sale of properties and/or restricting who may purchase properties, potential fiscal interventions that accompany any such restrictions on land ownership in the countries were not considered. Further investigation of the extent to which changes to tax and fiscal incentives may lead to increased ownership diversity would be useful.

It has been suggested that a mixture of passive interventions (issuing regulations and exercising control) and active interventions (purchasing land assets) is an important contributing factor for successful land policy (Melot, 2018). In this regard, active measures that could accompany passive interventions to regulate who can own land also require further consideration. Pre-emptive rights of the state have been considered in this report as an intervention that assigns priority to who can buy land. It is apparent that other countries use these rights with varying degrees of success to acquire land for allocation to the most appropriate users/owners, develop community infrastructure, and/or address land fragmentation. The LRRG recommended a review of Scotland's compulsory purchase legislation to allow local authorities to register a pre-emptive right over land in the public interest⁴⁰ and also considered the issue of fragmented or multiple ownership of land in urban areas⁴¹. The holding of assets in public (rather than private) land banks has also not been considered in this project (examples exist in the USA and the Netherlands); this approach to acquiring land for public benefit and addressing land fragmentation could benefit from further scrutiny for the Scottish context. The examples of pre-emptive purchase by the State in Poland, Finland, France, and the Netherlands may also warrant further examination.

Restrictions on the purchase of second or holiday homes exist in Denmark, Norway and Switzerland. This is to ensure that permanent populations remain in remote areas and that prices are not inflated to a level that would affect ownership of property by local residents. The difficulty in finding affordable housing for local people in rural areas in Scotland has been well-documented, with the prevalence of holiday properties and second homes an important factor (e.g. Thomson et al., 2016). The approaches employed in other countries to restrict/control the purchase of these types of properties also warrants further consideration.

⁴⁰ Section 8, point 14, p.44.

⁴¹ Section 5, point 49, p.128.

6. CONCLUSION

This research has revealed that many countries have legal mechanisms for limiting who can own land, in order to achieve varied policy objectives. The range of restrictions and associated motivations can be categorised using the typology of land market interventions developed in this study. This provides a useful tool for understanding the reasons for implementing restrictions. Based on the experiences in other countries, it would not be unusual if Scotland were to consider implementing restrictions on land ownership similar to those in place elsewhere. However, the findings presented above cannot be used to predict the effects of any of these interventions in Scotland, or to recommend a preferred option. While it may be challenging to 'fit' Scotland neatly into one of the three typology categories, this typology provides a road map for future discussions regarding the suitability of individual interventions in the Scottish context.

This research has found that the majority of the studied countries implement approval processes to limit land acquisitions and/or check the credentials of prospective buyers. While the motivations for approval processes are not predominantly to do with avoiding concentration of land (as would presumably be the case in Scotland), this is a relevant factor in many countries and is likely to receive further attention in the current context of increased awareness and national/European parliamentary recognition of the negative impacts of farmland concentration in the EU. Importantly, these approval processes exist to ensure that the aspirations of prospective buyers for how they will manage the land do not have negative impacts on land use policy and public interest.

A requirement to reside on purchased land is common in a number of countries, especially those where owner-occupied, family farming is the preferred model of agricultural tenure. While generally focussed on farmers, such motivations for residency requirements are strongly linked to retaining farmland in agricultural use and supporting the continuity of local communities in rural areas. Where approval processes require buyers to reside in an area, rather than manage the land from afar, the importance of a local connection to land is highlighted. Approval processes also allow consistent and rigorous data collection about land owners and any beneficial interests, improving transparency and the accuracy of land registry information. All of these aspects are relevant to the Scottish context, where concerns have been raised about the impacts of land owners' decisions on communities and the public interest, and where steps are being taken to improve transparency in land ownership data.

In the countries studied, only a few examples were identified of upper limits to the amount of land that any one individual or entity can own. Where such limits exist, they are often targeted at foreign land acquisitions and/or used as planning control mechanisms, rather than acting as restrictions on ownership rights or mechanisms for redistribution.

7. REFERENCES

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ANNEX 1: LONGLIST COUNTRIES' SCORES ON FILTER INDICES

The following table shows the scores received by the longlist countries on the Global Real Estate Transparency Index (GRETI), the Corruption Perception Index and the International Property Rights Index (IPRI).

Table 10: Filter scores for longlist countries

| Country | GRETI ¹ | Corruption Perception Index ² | IPRI ³ |
|-----------------------|---------------------------|--|-------------------|
| Australia | Highly transparent | 79 | 8.244 |
| Austria | Transparent | 75 | 8.012 |
| Belgium | Transparent | 77 | 7.839 |
| Canada | Highly transparent | 82 | 8.179 |
| Cyprus | Not listed* | 55 | 5.447 |
| Czech Republic | Transparent | 55 | 6.860 |
| Denmark | Transparent | 90 | 8.158 |
| Finland | Highly transparent | 89 | 8.626 |
| France | Highly transparent | 69 | 7.336 |
| Germany | Highly transparent | 81 | 7.959 |
| Iceland | Not listed* | 78 | 7.700 |
| Netherlands | Highly transparent | 83 | 8.296 |
| New Zealand | Highly transparent | 90 | 8.633 |
| Norway | Transparent | 85 | 8.533 |
| Poland | Transparent | 62 | 6.253 |
| Portugal | Transparent | 62 | 6.848 |
| Singapore | Transparent | 84 | 8.358 |
| Slovakia | Transparent | 51 | 6.396 |
| Spain | Transparent | 58 | 6.422 |
| Sweden | Transparent | 88 | 8.608 |
| Switzerland | Transparent | 86 | 8.561 |
| USA | Highly transparent | 74 | 8.074 |
| <i>United Kingdom</i> | <i>Highly transparent</i> | <i>81</i> | <i>8.129</i> |

¹ GRETI is a five-point scale (from 'High transparency' to 'Opaque') which quantifies the transparency of a country's real estate market. Countries listed with 'High transparency' and 'Transparent' in 2016 can be characterised by strong regulation, governance and transaction processes, with technology driving advancement and/or beneficial ownership disclosure in the spotlight. www.jll.com/GRETI

² The Corruption Perception Index provides an annual score that reflects the how corrupt the public sector of an individual country is perceived to be (100 is 'very clean' and 0 is 'highly corrupt'). https://www.transparency.org/news/feature/corruption_perceptions_index_2016

³ The IPRI scores the underlining institutions of a strong property rights regime: the legal and political environment, physical property rights, and intellectual property rights. <https://internationalpropertyrightsindex.org/>

* Cyprus and Iceland were not listed on the GRETI. They remained on the longlist as they satisfied the other criteria and it was noted that Cyprus has a similar legal system to Scotland and Iceland has a lot of common land.

ANNEX 2: CONTACTS IN OTHER COUNTRIES

The following table acknowledges the input of individuals in other countries in confirming the accuracy of the desk-based review and answering additional questions by phone, Skype or email about the motivations and impacts associated with interventions in different places.

Table 11: Contacts in other countries

| Country | Name | Affiliation |
|-----------------------|---------------------------------|--|
| <i>Australia</i> | Tina Hunter | School of Law, University of Aberdeen |
| | Kate Galloway | Faculty of Law, Bond University |
| | Piyush Tiwari | Property Group, University of Melbourne |
| <i>Austria</i> | Sophie Marie Schmidt | Institute of Law, BOKU |
| | Gerhard Weiß | Institute of Forest, Environmental and Natural Resource Policy, BOKU |
| <i>Belgium</i> | Simon-Pierre Dumont | Propriétaires Ruraux de Wallonie (NTF) |
| <i>Canada</i> | Wayne Caldwell | School of Environmental Design and Rural Development, University of Guelph |
| | Vic Adamowicz | Faculty of Agricultural, Life and Environmental Sciences, University of Alberta |
| | Wendy Aupers | Alberta Environment and Parks, Government of Alberta |
| <i>Cyprus</i> | Demetris Demetriou | Land Consolidation Department, Cyprus/ University of Leeds |
| <i>Czech Republic</i> | Petr Sklenička | Faculty of Environmental Sciences, Czech University of Life Sciences Prague |
| <i>Denmark</i> | Helle Tegner Anker | Department of Food and Resource Economics, University of Copenhagen |
| | Jakob Vesterlund Olsen | Department of Food and Resource Economics, University of Copenhagen |
| <i>Finland</i> | Kirsikka Riekkinen | Department of Built Environment, Aalto University |
| | Arvo Vitikainen | Aalto University |
| | Ilari Hovila | University of Lapland |
| <i>France</i> | André Torre | French National Institute for Agricultural Research |
| <i>Germany</i> | Alfons Balmann | Department of Structural Development of Farms and Rural Areas, Leibniz Institute of Agricultural Development in Transition Economies |
| | Martin Werneburg | Linden Partners, Berlin |
| <i>Iceland</i> | Grétar Þór Eypórssón | University of Akureyri |
| <i>Netherlands</i> | Thomas van Oosten | Over Morgen Consultancy/Faculty of Geosciences, Utrecht University |
| <i>New Zealand</i> | Graham Squires | Property Group, Massey University |
| | Mick Strack | School of Surveying, University of Otago |
| <i>Norway</i> | Tor Arnesen | Eastern Norway Research Institute |
| | Erik Neslein Mønness | Inland Norway University |
| | Erlend Nybakk | Kristiania University College |
| | Magnar Forbord | Ruralis Institut |
| <i>Poland</i> | Dominika Milczarek-Andrzejewska | Institute of Rural and Agricultural Development, Polish Academy of Sciences |
| | Jan Fałkowski | University of Warsaw |
| | Jerzy Bański | Institute of Geography, Polish Academy of Sciences |
| <i>Portugal</i> | Diana Feliciano | School of Biological Sciences, University of |

| Country | Name | Affiliation |
|--------------------|---|---|
| <i>Slovakia</i> | Anna Bandlerová | Aberdeen Faculty of European Studies and Regional Development, Slovak University of Agriculture |
| | Jarmila Laziková | Department of Law, Slovak University of Agriculture |
| <i>Spain</i> | Andres Miguel Cosialls Ubach | Centro Universitario de la Defensa de Zaragoza |
| | Dionisio Ortiz Miranda | Rural and Agri-environmental Economy Faculty, Universidad Politecnica de Valencia |
| | José M ^a García Álvarez-Coque | Research Group on International Economics, Universidad Politecnica de Valencia |
| <i>Sweden</i> | David Fridh | Lantmäteriet (Swedish Mapping, Cadaster and Land Registration Authority) |
| | Mats Snäll | Lantmäteriet (Swedish Mapping, Cadaster and Land Registration Authority) |
| | Ewa Rabinowicz | AgriFood Economics Centre, Lund University |
| <i>Switzerland</i> | Mark Brady | AgriFood Economics Centre, Lund University |
| | Thomas Egger | Schweizerische Arbeitsgemeinschaft für die Berggebiete (Swiss Working Group for Mountain Areas) |
| | Irmi Seidl | Swiss Federal Institute for Forest, Snow and Landscape Research |
| <i>USA</i> | John Lovett | College of Law, Loyola University New Orleans |

The research team is also grateful for input from:

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Andrew Newby, Department of Built Environment, Aalto University

Annie Tindley, School of History, Classics and Archaeology, Newcastle University

Biró Szabolcs, Research Institute of Agricultural Economics, Hungary

Jason Loughrey and Kevin Hanrahan, Teagasc (Agriculture and Food Development
Authority, Ireland)

Michael Maunsell, Mountain Research Ireland

ANNEX 3: LAND REGISTRATION AND CONSTITUTIONAL PROTECTION OF PROPERTY IN LONGLIST COUNTRIES

Table 12 focusses on land registration and constitutional and human rights concerns that operate as a limiting force towards reallocation of ownership. It makes no reference to devices that might be used to drive reform forward. That is not to say such devices are not important. Rather, it is to acknowledge that the Scottish devolution settlement is framed in a way that legislative competence is expressly constrained by the European Convention on Human Rights (ECHR) (amongst other things) and it is these concerns that are accordingly in the foreground when modelling any future reforms for Scotland.

Table 12: Land registration system and constitutional protection of property in the longlist countries

| Country | Robust land registration system? | Constitutional protection of property? | Comments |
|-----------------------|----------------------------------|--|--|
| <i>Australia</i> | <i>Reform in process</i> | Y | Section 51(xxxi) of the Constitution allows acquisition on just terms. Note also that there are native title rules. |
| <i>Austria</i> | Y | Y | A1P1 ECHR (subject to a reservation relating to a 1955 treaty) and Article 5 of the Basic Law (property is inviolable). |
| <i>Belgium</i> | Y | Y | A1P1 ECHR and Article 16 of the Constitution (no deprivation save for public purpose, in accordance with law and with compensation). |
| <i>Canada</i> | N | N | Limited constitutional protection, but the Canadian Charter of Rights and Freedoms has some relevant provisions against intrusion by the State (although property is not directly mentioned) and the Canadian Bill of Rights of 1960 provides for no deprivation except in accordance with law. Also relevant is the United Nations Universal Declaration on Human Rights of 1948, albeit this is not directly implemented into Canadian law. |
| <i>Cyprus</i> | Y | Y | A1P1 ECHR and Article 23 of the Constitution (only deprivation or limitation in accordance with this article, in terms of 23(3) including public safety, health, morals, planning and development etc., in accordance with clear law and with compensation. Some compulsory powers also for education, religious and other reasons, and also (in terms of 23(6)) in the event of an agricultural reform lands only to be redistributed to people from the same community as the owner from whom land has been compulsorily acquired. |
| <i>Czech Republic</i> | Y | Y | A1P1 ECHR. |
| <i>Denmark</i> | Y | Y | A1P1 ECHR. Also Basic Law (Constitution) article 73, property is inviolable (save when in public interest to deprive, with compensation). Laws relating to expropriation subject to special parliamentary procedure. |
| <i>Finland</i> | Y | Y | A1P1 ECHR and Section 15 of the Constitution (property protected, deprivation needs to be for public needs, with compensation in accordance with law). |
| <i>France</i> | Y | Y | A1P1 ECHR and property has a certain sentimental status |

| Country | Robust land registration system? | Constitutional protection of property? | Comments |
|--------------------|----------------------------------|--|--|
| | | | amongst French Constitution - see Articles 2 and 17 of the Declaration of Human and Civic Rights of 1789 (natural and imprescriptible rights/no deprivation unless public necessity, legal, obviously required, and just and prior indemnity). |
| <i>Germany</i> | Y | Y | A1P1 ECHR and Basic Law (Constitution/Grundgesetz) Articles 14 and 15. 14(1) Property guaranteed. 14(2) Property entails obligations and use will serve the public good. 14(3) Expropriation only permissible for public good, pursuant to law and with compensation. 15 Land, natural resources and means of production may be transferred to public ownership with compensation. |
| <i>Iceland</i> | Y | Y | A1P1 ECHR and Article 72 of the Constitution (property inviolate, unless in the public interest as provided for by law with compensation) AND the right of foreigners to own real property interests or businesses in Iceland may be limited by law. |
| <i>New Zealand</i> | Y | N | Like Canada (excluding Quebec), a limited amount of constitutional protection within a common law system. Attempts to introduce formal protection into the Bill of Rights failed in the 2000s. Indigenous title issues are also at play in relation to Maori communities. |
| <i>Norway</i> | Y | Y | A1P1 ECHR and Article 105 (any surrender of property must receive full compensation) |
| <i>Poland</i> | N | Y | A1P1 ECHR and Article 46 of the Constitution (deprivation only with a statute and court order) and 64 (everyone can own property, restrictions can only be by law to the extent it does not violate substance of right). |
| <i>Portugal</i> | N | Y | A1P1 ECHR and Article 62 (no deprivation except in accordance with law and with compensation). |
| <i>Singapore</i> | Y | N | Property not expressly included amongst fundamental liberties in article 9 (liberty of the person) of the Constitution, although discrimination rules are not to operate in a manner that affects property (article 12). Private ownership of residential property is separately restricted. |
| <i>Slovakia</i> | Y | Y | A1P1 ECHR and Article 20 of the Constitution (expropriation in accordance with law, for the public interest and with compensation). |
| <i>Spain</i> | N | Y | A1P1 ECHR and Article 33 (no deprivation except on recognised grounds, in accordance with the law and with compensation). See also Article 47 regarding housing and land use regulation to prevent speculation |
| <i>Sweden</i> | Y | Y | A1P1 ECHR and Article 15 of the Riksdagen (Protection of property and right of public access), property is guaranteed save when expropriation is accompanied by proper compensation. |

| Country | Robust land registration system? | Constitutional protection of property? | Comments |
|--------------------|----------------------------------|--|---|
| <i>Switzerland</i> | Y | Y | Article 26 of Constitution: deprivation or controls equivalent to that shall be compensated in full. |
| <i>USA</i> | N | Y | 5th Amendment of the Constitution, private property not to be taken for public use without compensation (the "takings clause"). "Eminent domain" allows for compulsory purchase but this is highly regulated. |

ANNEX 4: COUNTRY-SPECIFIC REFERENCE LIST

Selected academic references and published reports are provided for countries on the longlist. These sources were used in the desk-based review and/or referred to in the detailed consideration of shortlisted case studies. The reference list does not include general web articles; cross-checking information with country experts confirmed accuracy of data gathered in this way.

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Belgium

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Portugal

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Singapore

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Slovakia

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Spain

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Sweden

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USA

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ANNEX 5: LAND MARKET INTERVENTIONS TYPOLOGY DATA TABLE

Table 13 shows how countries were assigned to categories. Cells shaded in grey denote the dominant interventions in each country to explain categorisation. Where interventions spread across categories, the dominant motivations were examined. For example, Cyprus implements two interventions in each of the foreign interest limiter and land consolidator categories. While there is some control of foreign investment in Cyprus, investment is generally encouraged and limits are to ensure appropriate levels of investment rather than to restrict it. More emphasis is placed on the importance of consolidation measures in this country. Therefore, Cyprus was placed in the land consolidator category.

Table 13: Longlist countries organised according to typology of current land market interventions

| | Foreign interest limiters | | | Land use stipulators | | | | Land consolidators | | |
|---|---------------------------|-----------|-----|----------------------|--------------------------|------------|-----------|--------------------|------|-----|
| | AMAX (FOR ⁴²) | APP (FOR) | FOR | USE | APP (GEN ⁴³) | AMAX (GEN) | PRE (PUB) | PRE (IND) | AMIN | CON |
| Foreign interest limiters | | | | | | | | | | |
| Australia | | X | X | | | | | | | |
| Canada ⁴⁴ | X | X | | | | | | | | |
| New Zealand | | X | X | | | | | | | |
| Singapore | X | X | | | | | | | | |
| Iceland | | X | X | X | X | | | | | |
| Denmark | | X | X | | | | | | | X |
| Switzerland | | X | X | X | X | | | X | | |
| USA ⁴⁵ | X | | X | | | | | | | |
| Land use stipulators | | | | | | | | | | |
| Finland ⁴⁶ | | X | X | | | | X | | | |
| Austria | | X | | X | | | | | X | |
| Sweden | | | | X | X | | | | | |
| Germany | | | | | X | | | X | | |
| Poland | | | X | X | | X | X | X | | X |
| Netherlands | | | | | | | X | | | |
| France | | | | | | | X | | | |
| Norway | | | | X | X | | | X | | |
| Land consolidators | | | | | | | | | | |
| Slovakia | | | | X | | | | X | X | |
| Portugal | | | | | | | | X | | |
| Belgium | | | | | | | | X | | |
| Czech Republic | | | | | X | | | | | X |
| Spain | | X | | | | | | X | X | |
| Cyprus | X | X | | | | | | | X | X |
| Intervention codes: | | | | | | | | | | |
| AMAX: Restrictions relating to the <i>maximum</i> area of land in a single ownership | | | | | | | | | | |
| AMIN: Restrictions relating to the <i>minimum</i> area of land in a single ownership | | | | | | | | | | |
| APP: Requirements for central, regional or local government to approve ownership | | | | | | | | | | |
| CON: Scheme(s) to consolidate fragmented landholdings | | | | | | | | | | |
| FOR: Restrictions relating to land purchase by foreign citizens/companies/governments | | | | | | | | | | |
| PRE: Pre-emptive rights to buy land by a public actor (PUB) or by individuals (IND) | | | | | | | | | | |
| USE: Restrictions related to the use of land (e.g. residence, education, age, active farming etc.) | | | | | | | | | | |

⁴² Applies to foreign interests only.

⁴³ Applies generally.

⁴⁴ These interventions apply in one or more of: Alberta, Manitoba, Québec, Prince Edward Island and Saskatchewan.

⁴⁵ In some states (see Section 3.1.1)

⁴⁶ Note that APP (FOR) and FOR interventions apply to Åland Islands and not Finnish mainland.