

CONSULTATION QUESTIONS

Draft Land Rights and Responsibilities Policy

Q 1. Do you agree that the Scottish Government should have a stated land rights and responsibilities policy?

Yes ☒ No ☐

Q 2. Do you have any comments on the draft land rights and responsibilities policy?

A land rights and responsibilities policy currently exists. This is through the wide range of measures currently operated by the Scottish Government however rather than a single document- these include policies for the management of agricultural holdings (through extensive legislation), designated sites (through SNH), National Parks (through National Park Authorities), planning and development (through central and local planning authorities), access rights (through SNH), forestry felling and planting (through the Forestry Commission), water courses (through SEPA), other environmental management through GAEC and cross compliance (through the Agriculture, Fisheries and Rural Communities Directorate) and statutory public consultation measures. There is a risk in creating a separate policy therefore that this could conflict with these other policies and complicate implementation and understanding of policy generally both for the public and those involved in land management. Any such policy should therefore as far as possible incorporate existing policies elsewhere within government in a consolidating way.

In terms of the proposed principles in the Statement within the Consultation document, whilst a mix of different types of land ownership is reasonable, to seek 'an increasingly diverse' pattern of this suggests implementing policy to change land ownership in areas where this is already working very effectively. This poses a potential risk to the public interest therefore and should be removed from the Statement.

Aspirations for the Future

Q. 3. Considering your long term aspirations for land reform in Scotland, what are the top three actions that you think the Scottish Government should take?

Action 1: To commission full cost-benefit analyses by truly independent experts on all proposals so these may be assessed objectively. This has apparently not been carried out to date and hence any public benefits are at this stage subjective rather than objective.

Action 2: To establish a Land Management Forum in Scotland that disperses information and ideas on good practice and methods of increasing community engagement and involvement in land where a community wishes to do this on a co-operative or partnership level.

Action 3: To target land reform to specific instances where there are problems to avoid the high risk of negative fall-out, not in the public interest, of blanket measures adversely affecting arrangements that currently work well for the common good.

Proposals for inclusion in a Land Reform Bill

Proposal 1 - A Scottish Land Reform Commission

Q. 4. Do you agree that a Scottish Land Reform Commission would help ensure Scotland continues to make progress on land reform and has the ability to respond to emergent issues?

Yes No ☒

Q. 5. What do you think the advantages or disadvantages of having a Scottish Land Reform Commission would be?

Question 4 is leading and notably does not ask 'Do you agree a Scottish Land Reform Commission should be established?'. Such a Commission *could* ensure progress on land reform but not necessarily of course *would*. The principal disadvantage of such a Commission however is that it could have a substantial destabilising influence if it ongoing. Private investment in rural areas is absolutely critical in the vast majority of rural Scotland. Change threatens this investment but ongoing uncertainty over future changes creates a significantly greater threat.

Q. 6. Do you have any thoughts on the structure, type or remit of any Scottish Land Reform Commission?

In part to limit the risks identified at Question 5 above, any Commission established must be set up for a defined period only. In addition, it should be and for a defined purpose so that the Commission is focused and targeted in its approach. Finally, the Commission must be truly independent, and seen as such by all those with an interest, otherwise it will be prejudicial to the public interest.

Proposal 2 - Limiting the legal entities that can own land in Scotland

Q. 7. Do you agree that restricting the type of legal entities that can, in future, take ownership or a long lease over land in Scotland would help improve the transparency of land ownership in Scotland?

Yes ☒ No ☐

Q. 8. Do you agree that in future land should only be owned (or a long lease taken over land) by individuals or by a legal entity formed in accordance with the law of a Member State of the EU?

Yes ☐ No ☒

Q. 9. What do you think the advantages or disadvantages of such a restriction would be?

Invercauld Estate has no issue with the ownership of land being transparent. However, by limiting ownership to a legal entity of an EU member state, this could threaten inward investment from other nationals, such as the Swiss as recognised in the Consultation document.

Q. 10. How should any restriction operate and be enforced, and what consequences might follow if the restriction is breached?

No comments.

Proposal 3 - Information on land, its value and ownership

Q. 11. Do you agree that better co-ordination of information on land, its value and ownership would lead to better decision making for both the private and public sectors?

Yes ☐ No ☒

Q. 12. Do you hold data you could share or is there any data you would wish to access?

Invercauld Estate would not have any issue sharing through an appropriate public channel the extent of its ownership. Similarly it would be useful to have access to data with regards to our neighbours' ownership and contacts. Far more important than ownership data, however, would be a public register of those responsible for the management of land as this is often very different to ownership and is more relevant.

Q. 13. What do you think the advantages or disadvantages of wider and more flexible sharing of land information would be and do you have any recommendations about how this can best be achieved?

Wider and more flexible sharing of ownership and management data on land (from individual houses to large tracts of land) would be helpful so there is ease of communication where, for example, there are boundary issues or opportunities for co-operation. The disadvantage is how this data may be used unlawfully whilst some may view it as a breach of privacy.

Proposal 4 - Sustainable development test for land governance

Q. 14. Do you agree that there should be powers given to Scottish Ministers or another public body to direct private landowners to take action to overcome barriers to sustainable development in an area?

Yes ☐ No ☒

Q. 15. What do you think the benefits would be and do you have any recommendations about how these can best be achieved?

In very specific circumstances there may be a benefit in addressing, for example, the release of land for affordable housing if this is not otherwise being undertaken by a private landowner.

Q. 16. Do you have any concerns or alternative ways to achieve the same aim?

The risk of providing a mechanism to a public body or Ministers is that it could lead to intervention which is politically motivated and not necessarily in the public interest. In addition, the circumstances are unlikely to be straightforward: for example, one individual's definition of sustainable development, being different to that of another. It could also lead to an infringement of private property rights where there could be economic reasons for not releasing land for a specific purpose at a specific time. This could, for example, seriously damage the house building market in Scotland (which is currently much needed) if the market is dissuaded from investment in such circumstances. Other investment, such as that in sporting activities and related businesses such as hotels and shops, could also be seriously affected potentially leading to a negative long term effect on the sustainability of rural communities. We can see investment in upper Deeside potentially being adversely affected if such a measure was introduced. The intention therefore, whilst with potential benefits, would be best addressed through better engagement between the likes of planning authority officials and land owners and managers, perhaps through a Land Management Forum as recommended in Question 3 above. Land manager and owner representative bodies could also be more actively encouraged by the Scottish Government to address specific issues of concern where these appear.

Proposal 5 - A more proactive role for public sector land management

Q. 17. Do you agree that public sector bodies, such as Forestry Commission Scotland, should be able to engage in a wider range of management activities in order to promote more integrated range of social, economic and environmental outcomes?

Yes ☒ No ☐

Q. 18. What do you think the benefits would be and do you have any recommendations about how this can best be achieved?

This could potentially lead to greater benefit in public land being managed for the wider public benefit rather than just the private one of an individual local community.

Q. 19. Do you have any concerns or alternative ways to achieve the same aim?

No comments.

Proposal 6 - Duty of community engagement on land management decisions to be placed on charitable trustees

Q. 20. Do you think a trustee of a charity should be required to engage with the local community before taking a decision on the management, use or transfer of land under the charity's control?

Yes ☐ No ☒

Q. 21. What do you think the advantages or disadvantages would be?

The disadvantage would be that there could be a conflict between the objectives of the charity and the desires of the local community. For example, a conservation body which owns land may wish to discourage access to a certain area of land for the benefit of conservation of a particular species of flora or fauna; the local community however may wish for the promotion of a development to increase tourist trade in the vicinity.

Q. 22. How should "community" be defined?

The 'community' will be different in every situation. The 'community' could mean all those that access an area of land, such as in the case of a very popular site such as Ben Nevis; it may elsewhere mean the people who live in an area, in others the people who work in an area (where the resident population is by comparison very low for example) and elsewhere some combination of these. One of the risks of this policy would be the difficulty of defining community and hence the unintended consequences of its definition.

Q. 23. What remedies should be available should a trustee of a charity fail to engage appropriately with the local community?

The local community must feel they have a voice. To this end a community council could be provided with a statutory option to raise its concerns in the form of a written representation to the charity concerned and any charity must have a transparent and formal mechanism for addressing this.

Proposal 7 - Removal of the exemption from business rates for shooting and deerstalking

Q. 24. Should the current business rate exemptions for shootings and deer forests be ended?

Yes ☐ No ☒

Q. 25. What do you think the advantages would be?

Short-term increase in rates from sporting activities.

Q. 26. What do you think the disadvantages would be?

Such a measure would initially increase rates from sporting activities but the risk would be an overall loss of taxation from shootings and deer forests. Sporting activity would clearly be discouraged with a resulting reduction in the taxes raised from both the associated employment (direct and indirect) and the taxable profits of sporting enterprises. It should be noted that many sporting enterprises already are financially marginal and any material additional cost could therefore be sufficient to 'tip the balance' in terms of a decision as whether or not to continue with its funding. The impact of all this would tend to hit the remotest and economically most fragile areas the most as these areas tend to be where there is a higher reliance on sporting activities in the local economy. This proposal could therefore be very damaging to the local communities affected. In addition, the transactional costs of collecting sporting rates could also be very high compared to the tax take as assessors and appeal panels will require training and additional resources to enter into a sphere of assessment that has been absent from their remit for the last 20 years.

Proposal 8 - Common Good

Q. 27. Do you agree that the need for court approval for disposals or changes of use of common good property, where this currently exists, should be removed?

No comments.

Q. 28. If removed, what should take the place of court approval?

No comments.

Q. 29. Should there be a new legal definition of common good?

Yes ☐ No ☒

Q. 30. What might any new legal definition of common good look like?

No comments.

Q. 31. Do you have any other comments?

No.

Proposal 9 - Agricultural Holdings

Q. 32. Do you agree that the Scottish Government should take forward some of the recommendations of the Agricultural Holdings Legislation Review Group within the Land Reform Bill?

Yes ☐ No ☒

Q. 33. What do you think the advantages would be?

None.

Q. 34. What do you think the disadvantages would be?

Firstly, agricultural holdings are commercial tenancies set up in the nineteenth century originally to protect the source of food, an imperative that remains today. There is no logic to looking at the review of one specific kind of commercial tenancy without looking at all commercial tenancies in the context of land reform and this is not being proposed. Secondly, the background to agricultural tenancies and the reasons for the review of them are entirely different to those of land reform. There were two different review groups, comprising entirely different members, set up with entirely different remits for different objectives. To effectively combine their separate recommendations at this very late stage is therefore inappropriate and, given the backgrounds of the associated public consultations, undemocratic. Finally, there is a risk of incorporating too much into a land reform bill at the risk of confusing the issues under discussion and the objectives of the legislation. The two matters should therefore be treated separately as the public were led to believe was the Scottish Government's intention.

Proposal 10 – Wild Deer

Q. 35. Do you agree that further deer management regulation measures should be introduced to be available in the event that the present arrangements are assessed as not protecting the public interest?

Yes ☐ No ☒

Q. 36. What do you think the advantages would be?

No comments.

Q. 37. What do you think the disadvantages would be?

As deer management plans are to be introduced on a voluntary basis for each Deer Management Group by next year, it would be inappropriate to bring in new measures at this stage. The voluntary approach has been pursued to date and an assessment of the new system of deer management plans should be properly tested before bringing in further legislation dealing with deer management.

Proposal 11 - Public Access: clarifying core paths planning process

Q. 38. At present, section 18 of the Land Reform (Scotland) 2003 Act is silent on the issue of resolving objections to a core path plan consultation. Do you agree that access authorities should be required, in the interests of transparency, to conduct a further limited consultation about proposed changes arising from objections?

Yes ☐ No ☒

Q. 39. Do you agree that section 20 of the 2003 Act should be clarified so that Ministerial direction is not required when an access authority initiates a core path plan review?

Yes ☐ No ☒

Q. 40. Do you think that the process for a minor amendment to core path plan (as set out in section 20 of the 2003 Act) should be simplified to make it less onerous than that for a full review of a core path plan?

Yes ☐ No ☒

Assessing impact

Equality Impact Assessment

Q. 41. Please tell us about any potential impacts, either positive or negative, you feel the draft Land Rights and Responsibilities Policy or any of the proposals for the Bill may have on particular groups of people, with reference to the “protected characteristics” listed above. Please be as specific as possible.

None.

Q. 42. What differences might there be in the impact of the Bill on individuals and communities with different levels of advantage or deprivation? How can we make sure that all individuals and communities can access the benefits of these proposals?

Rural economies often have lower income levels than urban areas. The disadvantages of several of the proposals outlined in the Consultation document on the rural economy as explained in this response are therefore likely to have a disproportionately negative effect on the lower income brackets of society. Invercauld Estate believes this unintended consequence of these proposals would be unjust.

Business and Regulatory Impact Assessment

Q. 43. Please tell us about any potential costs or savings that may occur as a result of the proposals for the Bill, and any increase or reduction in the burden of regulation for any sector. Please be as specific as possible.

Invercauld Estate believes there will be an increased financial burden on the state as a result of the Consultation’s proposals due to an increase in levels of government support businesses and individuals will require in rural areas where the negative impacts of the Consultation’s proposals (as highlighted in this response) have a detrimental effect on the local economy. In addition, measures of intervention by government will have a cost attached to them. Also, the apparent lack of any cost-benefit analysis of either the LRRG’s recommendation or these proposals is a serious concern and indicates that the balance of the positive and negative effects of the proposals has not been assessed.

Privacy Impact Assessment

Q. 44. Please tell us about any potential impacts upon the privacy of individuals that may arise as a result of any of the proposals contained in this consultation. Please be as specific as possible.

Some individuals may feel their rights of privacy are breached by the proposal to identify those connected with land.

Strategic Environmental Assessment

Q. 45. Please tell us about any potential impacts, either positive or negative, you feel any of the proposals contained in this consultation may have on the environment. Please be as specific as possible.

Many businesses in the rural economy, such as those involved with forestry and conservation for sporting activities, have a beneficial effect on the environment. The proposals in the Consultation document, by threatening these businesses in the ways explained earlier in this response, threaten such positive environmental management.