

Consultation Questions & Respondent Information Form

A Consultation on the Future of Land Reform in Scotland



The Scottish Government
Riaghaltas na h-Alba

RESPONDENT INFORMATION FORM

Please Note this form **must** be returned with your response to ensure that we handle your response appropriately

1. Name/Organisation

Organisation Name

Woodland Crofts Partnership

Title Mr Ms Mrs Miss Dr Please tick as appropriate

Surname

MacRae

Forename

Ronnie

2. Postal Address

c/o HSCHT

7 Ardross Terrace

INVERNESS

Postcode IV3 5NQ

Phone 01463 233548

Email ronnie.macrae@hscht.co.uk

3. Permissions - I am responding as...

Individual

/ Group/Organisation

Please tick as appropriate

- (a) Do you agree to your response being made available to the public (in Scottish Government library and/or on the Scottish Government web site)?

Please tick as appropriate Yes No

- (b) Where confidentiality is not requested, we will make your responses available to the public on the following basis

Please tick ONE of the following boxes

Yes, make my response, name and address all available

or

Yes, make my response available, but not my name and address

or

Yes, make my response and name available, but not my address

- (c) The name and address of your organisation **will be** made available to the public (in the Scottish Government library and/or on the Scottish Government web site).

Are you content for your **response** to be made available?

Please tick as appropriate Yes No

(d) We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

Please tick as appropriate

Yes

No

The Woodland Crofts Partnership

The Woodland Crofts Partnership (WCP) is a partnership of 4 third-sector organisations, seeking to promote and develop woodland crofts. It comprises the Scottish Crofting Federation, the Community Woodlands Association, the Highlands Small Communities Housing Trust and Woodland Trust Scotland. We welcome this opportunity to submit evidence to this Consultation on the Future of Land Reform in Scotland.

The Scottish Crofting Federation is the only member-led organisation dedicated to promoting crofting and it is the largest association of small scale food producers in the UK. Its mission is to safeguard and promote the rights, livelihoods and culture of crofters and their communities. Tel: 01599 530 005, www.crofting.org

The Community Woodlands Association is the direct representative body of Scotland's community woodland groups. It helps community woodland groups across the country achieve their aspirations and potential, providing advice, assistance and information, facilitating networking and training, and representing and promoting community woodlands to the wider world. Tel: 01309 674 004, www.communitywoods.org

The Highlands Small Communities Housing Trust is a registered charity helping rural communities secure long term solutions to their local housing needs. It represents a wide range of interests including communities, local government, landowners, crofters and housing associations. By helping rural communities meet their needs for additional affordable housing it plays an important role in actively supporting their long term viability. Tel: 01463 233 549, www.hscht.co.uk

Woodland Trust Scotland is part of the Woodland Trust, the UK's leading woodland conservation charity. Its vision is a UK rich in native woods and trees, enjoyed and valued by everyone. Tel: 01738 635544, www.woodlandtrust.org.uk

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?

We are broadly content with it.

However, we feel that reference to the 'public interest' should be defined more explicitly, in particular to recognise the 'local' interest which at present is only mentioned briefly in Principle 4.

One of the current issues in forestry - and wider - is that policy is often delivered primarily in the 'national' interest rather than the local, resulting in fewer benefits accruing to local communities than is desirable.

An appropriate balance between local and national interest should be enshrined in the principles.

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: Review and amend public incentives for land management (grants, subsidies & tax reliefs) to ensure they are: targeted; transparent; accessible to all; reward management rather than ownership; provide value for money; are consistent across land uses; & minimise unintended consequences.

Action 2: Establish a single source of integrated land information, including ownership details, freely accessible to the public through an online portal.

Action 3: Introduce new powers for Forestry Commission Scotland (FCS) to lease land for forestry purposes to a wider range of groups than at present, and for the first time, to individuals (to allow FCS to better support Rural Development Forestry, and in particular, to let woodland crofts directly to individuals). This might best be done within a new Forestry Act for Scotland, which is needed to reflect the priorities of Scotland's people for forestry, in the 21st century.

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?

Advantages:

It would allow land reform proposals to be developed coherently across all areas of public policy, rather than in an ad hoc manner.

It would signify that land reform is an ongoing process for the long-term, and not merely a political whim subscribed to by any particular Government. Free from the 'political cycle' it could develop a long term strategy for land reform.

Disadvantages: none, if adequately resourced.

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

It should be independent of Government as inevitably Government, both national & local, will be subject to its measures and scrutiny; it should however be accountable to the Scottish Parliament.

It should be a national organisation, but with an area office structure to provide local accessibility and reflect local circumstances.

It should carry out/commission research; develop strategy; provide advice & guidance; and have a regulatory/enforcement function.

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?

Advantages:

Greater transparency regarding who is the beneficial owner of land, and therefore who is ultimately responsible for delivering land management in the public good (or not).

Disadvantages: none.

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

Registration of titles should only be accepted by Registers of Scotland if they meet the provisions proposed in Q8.

If the requirement in Q8 was applied retrospectively and the owner failed to meet the requirements within the required timescale, the property could be purchased at District Valuer's valuation by the Scottish Government, and then sold on in such a way as to increase diversity and thereby further land reform.

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?

We hold data on the number and type of individuals looking to obtain a woodland croft, and their aspirations. Subject to Data Protection considerations, we could share this in a non personally-identifiable way.

We would like to be able to access land ownership information, as per Q3 above.

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?

Advantages:

Transparency; the ability for local individuals and communities to make contact with owners of land to discuss its management; the facilitation of a wider debate on what types of landownership are delivering which public benefits, and at what cost to the public.

Disadvantages: none.

All information should be freely available via a web-based portal.

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?

A power of intervention would be helpful in bringing uncooperative landowners to the negotiation table – paradoxically the existence of the power would reduce the chances of it needing to be used (as has been the experience of the Land Reform Act to date).

The power of intervention might best lie with the proposed Scottish Land Reform Commission, rather than Scottish Ministers, in order to be independent of Government and free from the risk of political lobbying.

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

Our main concern would be to have a process which is simple, clear and effective. The main difficulty might be in defining what we mean by ‘sustainable development’ – there are already varying approaches being taken, not least by planning authorities.

In the context of forestry, all forestry in Scotland is considered to be ‘sustainable’ yet the forest industry – like most others currently – is heavily dependent on fossil fuel use, particularly for timber transport. A more robust appraisal of sustainability might tend to encourage a more local approach to forestry – such as through woodland crofts - bringing rural development benefits to communities.

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?

We strongly support this.

In the case of the Forestry Commission Scotland (FCS), we support not just a more integrated range of outcomes but also a more balanced one: it remains the case that despite having social, environmental and economic objectives, the majority of the national forest estate, and the bulk of FCS budgets, are devoted to

spruce production to support the mainstream forest industry. It could be argued that as a public sector body, this objective should be the least significant of the three with social and environmental objectives being higher priorities, and economic objectives being focused on support for local rural development.

Indeed, due the scale of its landholdings, and the general difficulty of access to woodland to manage, FCS has a unique opportunity to make woodland available not just to communities but to individuals as well (for lease or even purchase). This could include the letting of woodland crofts directly to individuals.

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

We highlight two key concerns where policy/legislative changes would help FCS support communities and individuals:

Firstly, where communities are seeking to acquire land/woodland by purchase or lease, valuations are based on 'market value'. This often results in communities having to pay in excess of the productive value of the land, for example to reflect tax advantages which they themselves may not be able to benefit from.

At the same time the valuation takes no account of the public benefits which may arise from the transfer of the land (and which have to be demonstrated in order to receive approval under the National Forest Land Scheme). It would greatly assist communities seeking to acquire land/woodland from FCS to have a more holistic view taken as the basis of valuation, than a narrow view of 'market value'.

Secondly, it is not currently possible for FCS to lease woodland for forestry purposes to anyone other than a limited range of community bodies. We understand that measures being considered in the Community Empowerment Bill may extend the range of eligible bodies. However, even if introduced, leasing to individuals will not be allowed.

We propose that a power to lease woodland for forestry purposes be introduced for individuals, where public benefit can be demonstrated (if necessary subject to a maximum area cap). This would bring rural development benefits, and would also allow the letting of woodland crofts directly to individuals as suggested in Q18 above.

We maintain a database of all those interested in obtaining a woodland croft, and through this are aware that the demand from individuals greatly exceeds the current numbers of woodland crofts being developed by community groups. The creation of woodland crofts by FCS, for letting to individuals directly, would go some way towards meeting this demand.

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?

We qualify here our positive answer to Q20 above.

Such a requirement to engage needs to be targeted, as it is clearly not appropriate to require every one of the thousands of registered charities to undertake the same degree of consultation.

We believe the appropriate target for such a requirement should be landowning charities with more than a minimum area of land under their control (say 100ha). The difficulty we would see is ensuring that any consultation is meaningful, and that if not, sanctions can sensibly be applied.

We wonder whether a better approach to this issue would be to require, as a condition of their charitable status, such landowning trusts to allow local people to become members and/or trustees of the charity and thereby more fully involved in its governance. It would seem entirely reasonable for example to require that the trustees included appointees from the local community council, and/or community company.

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

We believe the primary community should be defined geographically and comprise all those ordinarily resident (including children/young people who are the future of any community – not just those registered to vote).

Depending on the charity (eg in the case of environmental charities), there may also be a wider 'community of interest'. However, members of this community are likely have other routes to influence the operation of the charity, and therefore need not be included in any formal duty to consult.

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

If the new duty is to be enshrined in charities legislation as a duty on charity trustees, the ultimate sanction could be loss of charitable status. However it is likely there would need to be preliminary stages before reaching this point, which could involve financial penalties.

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?

Would provide greater consistency & fairness across rural businesses in the raising of non-domestic rates.

Would provide a source of additional revenue for local community development.

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

The design and implementation of new 'sporting rates' needs to be carefully thought through, and straightforward to administer. Otherwise there is the potential for landowners to escape re-imposed charges by re-classifying their activities, or arguing that land use is mixed and therefore sporting rates should not apply.

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?

Comments

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

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?

Comments

Q. 31. Do you have any other comments?

Comments

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?

Comments

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

Comments

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?

Ultimately this should result in better deer management: either voluntarily (encouraged by potential for enforcement), or as a result of the new measures being actually enforced if regulations are breached.

This will improve animal welfare & environmental condition, but significantly will also shift the financial burden of deer management away from the majority of other land users, who do not benefit from the presence of excessive deer numbers (foresters, farmers, crofters etc) but nevertheless have to pay for expensive protection (eg fencing) – in many cases ultimately funded by the tax-payer.

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

New regulations need to be robust and consistently enforced, otherwise the 'deer problem' will simply be perpetuated and not resolved.

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.

No direct impact.

However, the consequences of land reform will provide new opportunities for people and communities, which include within them a proportion of people with ‘protected characteristics’. Indirectly, land reform proposals will provide benefit to these groups.

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?

Inevitably, taking advantage of the opportunities presented by land reform requires a certain level of confidence and capacity within individuals and communities. If this is lacking, positive and important development can be held back. It is therefore important that support remains available (and in fact is increased) through bodies such as Highlands & Islands Enterprise, third sector support bodies, and indeed the proposed Scottish Land Reform Commission.

A difficulty sometimes arises with the way in which legislation is drafted, where narrow legal/technical definitions exclude a range of groups who should otherwise be included. An example of this is the requirement under the Land Reform Act that an eligible community body should be a Company Limited by Guarantee only (and no other structure) – a situation hopefully now being remedied via the Community Empowerment Bill.

We believe it would be better if, where possible, new legislation defined principles/criteria, but left ultimate discretion to Scottish Ministers to take decisions in any particular situation.

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.

It is important to emphasise that regulation should not be increased for its own sake, but to enable our land and marine resources to deliver better, for all of Scotland’s people. Any increased cost and regulation (which in any event will not be universal, and should also be offset by savings/reductions) needs to be set in the context of the enhanced public benefits arising through the implementation of land reform.

Furthermore, empowering local individuals and communities through land reform gives the potential for a whole range of goods and services to be delivered better and more efficiently than under current arrangements.

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.

Greater transparency over land ownership may concern owners who would prefer their identity to remain unknown, as would greater transparency over the financial support received by them from public funding.

However such openness is essential for the proper debate and development of land reform into the future, and is the norm in many other countries of the world.

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.

We believe the proposals will ultimately have a positive environmental impact.

Allowing more people to engage with land management, making it easier for individuals and communities to access land and woodland to manage for themselves, will result in a greater management input (more 'boots on the ground'). This should lead to better management and better environmental outcomes.

Specifically in relation to woodland crofts, the 'intensity' of management offered by woodland crofters far exceeds the mainstream alternative and has potential to deliver better outcomes, as recognised by the original Steering Group which recommended their establishment using Forestry Commission land

<http://scotland.forestry.gov.uk/images/corporate/pdf/WoodlandCroftsSteeringGroupFinalReport.pdf>

At the same time, use of extensive tracts of land primarily for wealth management or sporting interest, where management is either minimal, or focused on a narrow set of objectives, will to some degree be discouraged by these proposals and thus encourage a shift to a more balanced set of environmental outcomes.