

The Highland Council
Planning, Development and Infrastructure Committee

18 February 2014

Agenda Item	14
Report No	PDI 11/15

Consultation on the Future of Land Reform in Scotland

Report by the Director of Development and Infrastructure

Summary

This paper introduces the Scottish Government consultation on the future of land reform in Scotland. A short extension to the closing date has been granted to permit consideration by the Highland Council. The Council response should be submitted by 18 February.

A copy of the full consultation is available on the Committee bulletin. This paper also proposes priorities for land reform, for discussion at the forthcoming Convention of the Highlands and Islands meeting on Monday 9 March 2015. Committee is invited to:

- consider proposals within the Government's land reform consultation and to approve the draft response at **appendix 1** of the report subject to any additional points Member wish added; and
- approve the priorities for discussion (section 3.2) at the Convention of the Highlands and Islands meeting in March 2015.

1. Introduction and background

1.1 The Scottish Government has welcomed the overall message and direction of the Land Reform Review Group's report, "The Land of Scotland and the Common Good" which was published in May 2014. As part of an on-going commitment to land reform, and as part of its response to the report, the Government is now taking forward commitments to:

- **improve the transparency of land ownership in Scotland** by working towards a target to complete the Land Register for the whole of Scotland within 10 years, with registration of all public sector land in 5 years;
- **improve and extend existing community rights to buy**, through the current Community Empowerment (Scotland) Bill that, if passed, will allow urban communities to exercise a right to buy and will introduce a new community right to buy for neglected or abandoned land;
- **develop a strategy to achieve the target for 1 million acres in community ownership by 2020**, setting the blueprint for a dedicated resource for community ownership within the Scottish Government in line with recommendations for a Community Land Agency;
- **extend the Scottish Land Fund** over the 2016-2020 spending period; and

- **bring forward a Land Reform Bill** within this Parliamentary term.

1.2 Addressing the last point above, this consultation seeks views on a range of measures intended to further land reform in Scotland. The Scottish Government is proposing a Land Rights and Responsibilities Policy to help guide the development of public policy on the nature and character of land rights in Scotland, and a range of proposals for a Land Reform Bill designed to:

- ***demonstrate long term commitment to land reform by:***
 - setting up a Scottish Land Reform Commission to underpin land reform
 - providing the evidence base for further land reform measures; and
 - assessing the impact of existing policies.
- ***improve the transparency and accountability of land ownership by:***
 - making public sector information on land, its value, and ownership readily available to support open and transparent decision making by both the private and public sectors; and
 - limiting the legal entities that can, in future, take ownership of land in Scotland.
- ***address barriers to sustainable development and begin to diversify patterns of land ownership*** by providing powers for Scottish Ministers, or other public bodies, to intervene in situations where the scale or pattern of land ownership in an area, and the conduct of a landowner, is acting as a barrier to sustainable development.
- ***demonstrate commitment to effectively manage land and rights in land for the common good by:***
 - facilitating proactive management of public sector land in the wider public interest by extending the powers of Forestry Commissioners;
 - placing a duty of community engagement on charitable trustees, when making decisions on land under the trustees' control; and
 - to end the business (non-domestic) rates exemption for shooting and deerstalking and bring these businesses back into line with other ratepayers who help fund local services.
- ***address specific aspects of land ownership and rights by:***
 - further modernisation of Common Good to promote greater flexibility on use and remove the need for references to the Courts;
 - to improve deer management legislation;
 - to take forward legislative changes required in light of the upcoming recommendations of the Agricultural Holdings Review on the future of tenant farming; and
 - on public access, to make clarifications to the core paths planning process as set out in Part 1 of the Land Reform (Scotland) Act 2003.

2. Consultation and Highland Council response

2.1 Proposals on each of the above are set out within the consultation document and responses are sought using the online form provide. The Highland Council draft response is attached at **appendix 1** to this report.

- 2.2 Committee is invited to consider the draft response and to approve it for submission by 18 February, subject to any additional points Members may wish incorporated.

3 Convention of the Highlands and Islands

- 3.1 The next meeting of the Convention of the Highlands and Islands (COHI) will take place in Kirkwall, Orkney on Monday 9 March 2015. The agenda will include discussion on the priorities for the year ahead (2015), infrastructure investment and land reform. Highland Council has been invited to lead the discussion on land reform.
- 3.2 At the time of writing the COHI paper is in draft form being required by Convention administrators by 13 February. The paper will raise a number of issues for consideration as land reform priorities going forward. Suggested priorities are set out below (in no particular order) for Committee consideration and approval:
- supporting sustainable development within communities;
 - land value taxation;
 - the Crown Estate;
 - supporting the provision of affordable housing; and
 - management of wild deer.

4. Implications

4.1 Legal, Gaelic, Carbon Clever implications

There are no legal, Gaelic or Carbon Clever implications arising from this paper.

4.2 Resource, Climate Change and Rural Implications

There are no resource implications arising from this paper. A review of land taxation may result in additional financial resources for local authorities. Improved deer management should help ensure the contribution trees make as carbon sinks. Land reform may, in time, have a profound effect on the pattern of land ownership in rural areas.

5. Fit with the Programme for the Highland Council

- 5.1 Addressing the current Scottish Government consultation on land reform assists the Council deliver Programme land reform commitments.

6. Fit with the Single Outcome Agreement

- 6.1 This report assists the Council to deliver Single Outcome commitments delivering community sustainability.

Recommendation

Committee is invited to:

- a) consider proposals within the Government's land reform consultation and approve the draft response at **appendix 1** of the report subject to any additional points Member wish added; and
- b) approve the priorities for discussion (section 3.2) at the Convention of the Highlands and Islands meeting in March 2015.

Designation: Director of Development and Infrastructure

Date: 30 January 2015

Author: G Hamilton (Ext 2252)

Background papers

1. A Consultation on the Future of Land Reform in Scotland – Scottish Government consultation –December 2014.

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

The Highland Council

Title Mr Ms Mrs Miss Dr *Please tick as appropriate*

Surname

Hamilton

Forename

George

2. Postal Address

The Highland Council

Glenurquart Road

Inverness

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Phone 01463 702252

Email

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

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 X No

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

Highland Council welcomes the drafting of a vision for land tenure that focuses on public benefit and social justice. The Council supports the draft text. One point worth considering is that the vision and principles do not specifically mention the diversification of land ownership. This goal could be set out specifically within the supporting 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: As a result of this consultation:

- Establish a Scottish Land Reform Commission;
- Grant the Ministerial intervention powers proposed at proposal 4 below;
- Enact the proposed restrictions limiting future land ownership by legal entities to those which can demonstrate they are formed in accordance with the laws of EU Member States.

Action 2: Devolution of the Crown Estate in Scotland below the Scottish Government level to local authorities, harbour authorities and appropriately constituted community groups.

Action 3: Address the recommendations made by the Land Reform Review Group at section 25 of their report where they consider Land Taxation, Payments and Markets. This should include

- review taxation systems and the basis for taxation with a view to introducing (where appropriate) non-domestic rates for business currently exempt (recommendation 12);
- establishing sporting rates (recommendation 20)
- a review of local government taxation in Scotland including a detailed study of the scope and practicalities of introducing Land Value Taxation (recommendation 25);
- a review, and where appropriate reformation, of current tax exemptions and reliefs in order that there is clear justification for their existence, in the public interest (recommendation 43);
- a review and if appropriate reformation of the fiscal regime for land

ownership and use (recommendation 48).

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 X No

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

The proposed Land Reform Commission will be able to co-ordinate and drive forward land reform in Scotland in line with the Government's vision and strategy, and the recommendations of the Land Reform Review Group. Specifically it could

- Promote land reform
- Gather evidence and conduct necessary studies
- Monitor the impacts and effectiveness of land reform law
- Develop policy and practice on land reform in Scotland.

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

The proposed Land Reform Commission should be independent of Government but reporting to Government and the Scottish Parliament. Given their important role in meeting the 2020 target for land ownership via the transfer of public land and assets, local authorities and other public sector organisations should be represented on the Commission.

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 X 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 X No

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

Advantages would arise because it should be easier to trace or contact landowning entities and it should assist the implementation of environmental obligations. A further advantage may arise from improved traceability and accountability of land owners or lease holders, and a better understanding of business/commercial landholdings.

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

Restrictions should apply to land purchased after a date to be established by law and they should only applied to legal entities, not private individuals of any nationality. Exemptions would be required to support international obligations (e.g. Consulates). Entities should be required to demonstrate they are formed in accordance with the law of an EU Member State or non-Member within the EEA.

A detected breach of the law could result in forfeit of the land held or a requirement that the land be sold.

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 X No

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

Local authority landholdings, assets and common good information could be shared.

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 would arise from a better understanding of land and lease holding, the reduction in duplication of information and increased efficiency for the user of the information who should be able to find all the necessary information at one source.

Disadvantages might arise from the time and resources required to bring various registers of land holding together.

A single centrally held but accessible digital database seems the best approach. The establishment of the database could be remitted to the Government's Data Management Board.

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 X No

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

The main benefit would arise from the opportunity to take action on land that is neglected where there is clear public benefit in doing so. If the owner were required to lease or sell land then another advantage might be that there is greater opportunity for communities to take on the ownership, development and management of land in their community.

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

However these proposals are enacted it will be important make sure the human rights and property rights are maintained and that clear public benefit is demonstrated before taking action on landowners.

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 X No

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

Benefits would arise from the additional contribution publicly held land and assets would make to delivering social, economic and environmental outcomes.

Arrangements might involve transferring responsibility for land management and development to community groups and development trusts.

If public sector organisations lack the powers to engage effectively with community groups, or in an integrated manner, to deliver the Government's vision and policy principles then a review of existing powers and duties should provide them with new powers.

More clarity is required here and perhaps firmer proposals will provide this clarity. Membership of the proposed Land Commission might help public sector organisations operate in an integrated manner in delivering the vision.

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

Suggest integration via Land Commission meantime. The Commission could review existing powers and duties.

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 X No

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

The provision of additional opportunities to promote land reform and generate community interest in asset ownership and management. Local economic and social benefits could result from partnerships developed with communities.

If the charity is created for the purpose of managing land or an estate then consultation with the community prior to disposals should be a legal requirement.

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

For the purposes of this consultation proposal the community could be consulted via notices in the local newspapers, community buildings and via social media. Consultation could also take place with local community organisations (CCs) or development trusts where they exist.

A 'community' could be defined either geographically or by interest.

The Land Reform (Scotland) Act defines communities by means of postcode units (community right to buy) or by means of residency in a crofting township and who are eligible to vote in local government elections within the polling district (crofting community right to buy).

For the purpose of these proposals a Community Council area may be an appropriate definition of community.

However it may be important not to explicitly define 'community'. Highland Council does not have a fixed definition of community. Rather 'community' is the term used to describe how the Council relates to and engages with

people living in the Highlands. This will vary depending upon the situation and circumstances and could be used to describe both communities of interest as well as communities of geography.

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

In the worst case, if the charity failed to engage with the local community then the proposed transaction could be suspended pending engagement.

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 X No

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

Additional income via rates which help finance local services.

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

Disadvantages might arise via the additional costs on sporting estates, particularly where these are marginal businesses.

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?

Yes.

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

Approval of the trustees should be sought. The local authority following consultation with the community within the boundary of the common good.

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

Yes No X

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

N/A

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 X No

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

Moving quickly on the recommendations of the Agricultural Holdings Legislation Review Group. A more vibrant tenant farming sector, improved relations between tenants and landowners, facilitated retirement and the encouragement of new entrants to the tenanted sector. There is also an opportunity to modernise letting arrangements.

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

Don't see any major disadvantages although it may be better, given that the Review Group has not finally reported, to deal with tenant farming via a specific Bill.

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 X No

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

Improved management of deer herds resulting in enhanced economic value, safety improvements and enhanced environmental and forestry benefits.

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

Don't see any disadvantages as the new powers for SNH would only be used where existing, voluntary deer management activities had been shown to have failed.

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 X 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 X 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 X 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 identified

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?

Additional support for disadvantaged communities could be provided by HIE Community Land Unit for example.

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.

Additional setup costs of a single register of land holdings.
Additional consultation costs related to core path planning.
Additional costs deer management.
Additional costs in rates on sporting enterprises/estates.

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.

None identified.

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.

Improved deer management practices.