

PEOPLE, COMMUNITIES AND PLACES

A CONSULTATION ON THE FUTURE OF LAND REFORM IN SCOTLAND

Summary Findings from the Analysis of Consultation Responses

Introduction

The Scottish Government views Scotland's land as an asset that should benefit the many, not the few. In its 2011 manifesto the Scottish Government committed to establishing an independent review of land reform in Scotland. The Land Reform Review Group was established and in 2014 published its report, *The Land of Scotland and the Common Good*, containing 62 recommendations that have been central to placing the debate on land reform in a modern context reflecting the emphasis on public interest and common good. The Scottish Government welcomed this report and has already taken steps to progress many of the Review Group's recommendations. In addition the Scottish Government wished to hear views on a range of additional land reform proposals that have the potential to be taken forward in a Land Reform Bill in the current parliamentary term.

A consultation paper was published on 2 December 2014, which invited the people of Scotland and other interested parties to provide their views on a number of proposals including a Land Rights and Responsibilities Policy and other potential legislative measures to further land reform in Scotland. 1269 responses to the consultation were received. Of these, 104 were identified as campaign responses, with the remaining 1165 constituting standard responses. Most (82%) of the standard responses were submitted by individuals; 18% were submitted by organisations.

The responses were independently analysed by Linda Nicholson from the Research Shop and a summary of this analysis follows. Organisations were grouped by sector to aid analysis. However it is important to note that the comments and numbers refer to those individuals and organisations who responded to this consultation and therefore cannot be considered as representative of the wider population.

Draft Land Rights and Responsibilities Policy statement

The land reform consultation document outlined a proposed vision and set of principles to guide the development of public policy on land rights. Respondents were asked for their views on a draft Land Rights and Responsibilities Policy (LRRP) as well as their top priority actions for land reform in Scotland.

In response, 87% of respondents who provided a view agreed that the Scottish Government should have a stated policy and there was much articulated support for

the visions and principles in the draft LRRP which was viewed as constituting a robust framework for future development and a step in the right direction.

However, one general concern to emerge from both supporters and opponents was that the vision and principles set out in the draft required to be defined more clearly and that the LRRP appeared to present high level aspirations rather than a policy statement. Broad recommendations were made for the LRRP to take into consideration use and stewardship of land in addition to its ownership; and for a human rights perspective to be a key consideration in future developments in land reform.

When asked to identify their top three priority actions for land reform in Scotland, those most frequently raised by respondents were: ensuring transparency of ownership of land; greater diversification of ownership; and establishing a supporting system of taxation.

Proposal 1: A Scottish Land Reform Commission (SLRC)

This proposal was for the creation of a Scottish Land Reform Commission to allow for oversight of a wide spectrum of land reform issues. The consultation document noted that the exact structure and remit were still to be defined but proposed some responsibilities such as promoting land reform, collecting evidence and monitoring the impact of law, policies and practices.

75% of all respondents who provided a view agreed that a SLRC would help ensure that Scotland continues to make progress on land reform and has the ability to respond to emergent issues. Most (68%) of the 54 private landowner organisations who responded to this consultation disagreed.

There was much support for the remit of the SLRC to encompass land reform promotion and oversight. The predominant view was that its remit should be wide-ranging, although a minority of respondents called for restriction to short-term policy issues to ensure early achievement and tangible progress.

The main advantages to the SLRC were identified as ensuring land reform has a high profile, with developments driven forward irrespective of changes of government; and provision of an impartial resource for objective evidence-building on issues of land reform. Other advantages were identified as greater cohesion and co-ordination in policy-making on land reform; ensuring greater clarity on ownership of land; representing the people's voice; adjudicating where disputes arise; and provision of a forum for open debate amongst stakeholders. The potential independence of the SLRC, at arms-length from Government, was also welcomed.

Concerns were raised over the costs of establishing and operating the new body and its potential to become overly bureaucratic, leading to delays in progress. Questions were also posed relating to its membership and in particular how it can be seen to represent all parties and interests fairly. Other dominant concerns related to the perceived potential of the SLRC to de-stabilise the rural economy by creating uncertainty; and the risk that it becomes little more than a “talking shop” with decisions hard to reach and delays inevitable.

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

The second proposal referred to the Scottish Government’s understanding that in some cases it can be difficult to trace and contact landowners and that this can lead to practical difficulties for those seeking to engage with landowners or enforce fiscal or environmental obligations. The Land Reform Review Group had recommended that ownership should be restricted to increase accountability. The document sets out some of the issues to be considered in restricting ownership and asks for views.

The majority (79%) of those who provided a view agreed that restricting the type of legal entities that can, in future, take ownership (or a long lease over land) in Scotland would help to improve the transparency and accountability of land ownership. 82% of those addressing the issue agreed that in future land should be owned (or a long lease taken over land) only by individuals or by a legal entity formed in accordance with the law of a Member State of the European Union (EU). Amongst respondent sectors, individuals were most supportive of the proposals, with private landowner organisations and private sector and professional bodies least supportive.

The three advantages to the proposal to restrict ownership in this manner identified most frequently by respondents were: increased transparency of ownership; addressing tax avoidance; and promotion of wider ownership of land in Scotland.

The three most commonly identified disadvantages to the proposal were: potential loss of inward investment; exploitation of loopholes by those intent on circumventing the restriction; and discouragement of a free market.

Proposal 3: Information on land, its value and ownership

According to the consultation document clear and up-to-date information about land, its value and ownership provides a good basis for open and transparent decision making. The document asked for respondents views on this issue as well as information on any data that they may hold or any data that they would wish to access.

88% of those providing a view agreed 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. 37% of those responding to the consultation indicated that they held data they could share and/or they had comments relating to data they or others would wish to access. A common view was that much more information could be made available for wider access, but that care should be taken over data protection to prevent misuse of data.

The advantages to wider and more flexible sharing of land information most frequently raised by respondents were: transparency of ownership; increased knowledge about land ownership leading to greater empowerment of communities to engage on land reform issues in an informed manner; and efficiency of working in that owners can be contacted more readily, leading to speedier resolution of issues. The disadvantages of wider and more flexible sharing of land information most frequently identified were: cost of establishing and maintaining databases; risk of breach of confidentiality of sensitive information; and time required to set up key databases.

A common view was that the land register should be completed as soon as possible. Some respondents recommended that secondary sources of land information should be identified and coordinated to support the main database of information, with calls made for more open access to relevant websites. A recurring theme was that sharing of data could be aided by establishing a dedicated, online mapping system of land information.

Proposal 4: Sustainable development test for land governance

The fourth proposal referred to instances where the scale or pattern of land ownership, and the decisions of landowners, could be a barrier to sustainable development in an area. It proposed that where there was sufficient evidence that current ownership patterns were causing barriers to sustainable development then steps could be taken to remove the barriers.

72% of those who provided a view agreed that there should be powers given to Scottish Ministers or to another public body to direct private landowners to take action to overcome barriers to sustainable development in an area. However, whilst most (75%) individual respondents supported this proposal, 93% of the 41 private landowner organisations who addressed the issue disagreed, as did over half (57%) of private sector and professional bodies.

Commonly identified benefits of the proposal were: greater sustainability of land due to more diverse and improved land use; benefits for local communities such as greater feelings of empowerment as well as greater access to opportunities for employment,

housing, energy production etc; and priority of public good over private interests of landowners.

Commonly identified concerns were that legislation such as compulsory purchase provision already existed; that giving powers to Scottish Ministers was overly centralised and open to political influence; and that it would be difficult to resolve tensions between different aspects of sustainable development (social, economic, environmental) or local and national priorities. Legal challenges by landowners were predicted with the potential for delays and expensive court actions.

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

The fifth proposal noted that public land should be managed for the greatest overall benefit but sometimes the legal framework for public bodies placed a constraint on the range of operations that they could undertake. Respondents were asked whether they thought public bodies should be able to engage in a wider range of land management activities and whether any alternative mechanisms could achieve the same aim.

79% of those who provided a view agreed 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 a more integrated range of social, economic and environmental outcomes. The most commonly identified benefit was better land use in terms of greater diversity and more sustainable outcomes. Other key benefits identified were greater integration of land use and land management and ensuring that land is managed in the public interest rather than serving the interests of the few.

Contrasting views were that public sector bodies already have sufficient powers to engage in a wider range of management activities, with bodies making use of these to a greater or lesser extent. Some respondents felt that by extending functions too broadly such bodies ran the risk of reducing their overall effectiveness. A common view was that the proposal that public bodies engage in a wider range of management activities would be costly in terms of finance and human resources and could generate conflicts, for example if different groups and sectors competed against each other for their own interests.

A common view was that greater ownership/leasing of land or management of land by the private sector or community bodies was an alternative way to achieve the same aim.

Proposal 6: Duty of community engagement on charitable trustees when taking decisions on land management

This proposal considered the relationship between charitable organisations that own land and the local communities who may be affected by decisions taken on the use, management or transfer of that land.

Most (76%) of those who addressed the issue agreed that 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. All, or the majority of respondents in all categories, favoured the proposal, except for private landowner organisations and private sector and professional bodies, the majority of whom opposed the proposal.

The main benefits identified were improved community engagement; awareness of land management issues; and the opportunity for the community to have a say in the management, use or transfer of land under the charity's control. Other key advantages were identified as: greater community empowerment; more informed decision-making by charities; promotion of harmonious relationships between charities and local people; greater transparency and openness in decision-making; and increased accountability.

The main concern was that the proposal had the potential to become overly cumbersome, resulting in delay, costs and bureaucracy. Another common concern was that the duty on charities and trusts to abide by their respective organisation's constitution would be compromised by the proposal. A recurring view was that there was no guarantee that by engaging with a community, an overarching community-representative view would emerge. Questions were also raised over the meanings of terms such as "engage with" and "community" and also on why the proposal referred only to charities rather than extending to all landowning entities.

Should a trustee of a charity fail to engage appropriately with the local community a recurring view was that the organisation's charitable status should be removed. Other commonly identified remedies for such a breach included: blocking progress until engagement has taken place; fining the charity; removal of the trustee from office; mediation; and confiscation of the charity's land. In contrast, many respondents were of the view that rather than impose punitive action on the charity, it should be supported in its duty to engage.

Proposal 7: Removal of the exemption from business rates for shootings and deerstalking

An exemption from business rates for shootings and deer forests has been in place since 1955. This proposal suggests ending the business rate exemptions and asks for views on the likely advantages and disadvantages.

The majority (71%) of those who provided a view considered that current business rate exemptions for shootings and deer forests should be ended. However, of the 51 private landowning organisations who expressed a view on this issue, all but one opposed this proposal.

The main advantages to the proposal were perceived to be ensuring parity and fairness with other rural businesses in terms of paying tax; increased tax revenue for local and national government; and better use of land with opportunities for diversification as land values become lower.

The key disadvantages envisaged included potential loss of local jobs, tourism and inward investment; reduced land maintenance with a rise in the deer population; and the possibility of local estates and related businesses failing.

Proposal 8: Common good

Common good is a form of land ownership that has a long history in Scotland and often plays an important part in the historic, cultural and economic heritage of communities where such property exists. This proposal raised a number of detailed issues around the definition of common good and its use.

The majority (65%) of those who provided a view opposed the proposal that the need for court approval for disposals, or changes of use of common good property, should be removed.

If court approval was removed, frequently identified alternatives were: community approval; SLRC approval; or local authority approval. Some felt that local panels and committees could have a role in this respect, particularly if they involved community councils with democratically elected members.

71% of those providing a view considered that there should be a new, legal definition of common good. It was commonly thought that any new definition should refer explicitly to common good as being of benefit to everyone in the local population in terms of their well-being. There were contrasting views, however, on whether this should include economic well-being in addition to social and environmental well-being. Many respondents called for further consultation on a legal definition of common good.

A recurring view was that common good property should be protected from being taken for other purposes, and that property taken previously for purposes other than the common good should be retrieved. Many considered that it should be possible to add to common good property in the future. Repeated calls were made for a searchable register of all common good property, with this publicised and promoted.

Proposal 9: Agricultural holdings

The Agricultural Holdings and Legislation Review Group has worked over the last year to develop a range of recommendations designed to address concerns and promote a vibrant agricultural tenanted sector. The recommendations have been developed on the basis of detailed consultation with tenants, landowners and others in the sector and were published during the Land Reform consultation period. This proposal asked whether the Scottish Government should take forward some of the recommendations requiring legislative change in the Land Reform Bill.

The majority (64%) of those addressing the issue agreed that the Scottish Government should take forward some of the recommendations of the Agricultural Holdings Legislation Review Group within the proposed Land Reform Bill. However, whilst 68% of individual respondents supported this proposal, 65% of organisations opposed it.

Those supporting the proposal considered that the Land Reform Bill provided a vehicle for early establishment into statute of very important recommendations. They also thought that it would result in more coherent, integrated land legislation and that this integration may enable wider interest and support.

The main disadvantage to the proposal was viewed as potentially rushing through complex legislation which may not do justice to the important topics at stake. Another dominant theme was that issues associated with agricultural holdings are distinct from land reform issues and should be packaged coherently in a separate Bill.

Proposal 10: Wild deer

Wild deer in Scotland are not owned, but the right to take or kill deer rests with the owner or occupier of land. There is no legal obligation on landowners to manage deer. However, the Deer (Scotland) Act 1996 contains powers for Scottish Natural Heritage to intervene and impose management measures where they consider that deer management is detrimental to the public interest and there is a code of practice on Deer Management that sets out responsibilities for landowners. The consultation document notes that this voluntary approach has been criticised and asks whether new provisions to build on these existing public powers should be brought forward.

69% of those providing a view agreed 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. Whilst the majority (72%) of individuals supported this proposal, organisations held more mixed views with 52% in opposition.

The most commonly highlighted advantage was that the proposal would ensure greater protection of the environment and a return to more natural local ecosystems due to a reduction in what was seen to be the current over-grazing by deer populations.

Another key benefit identified was that deer management would become cohesive and organised within a strategic, coherent framework, contributing to consistency and transparency of approach. Other commonly perceived benefits included: a healthier, better maintained deer population; meeting the public interest; improved local economy; and fewer road and rail accidents.

In contrast, many respondents considered that there was no need to introduce further deer management regulation measures as there was no demonstrated need for such action. A common view was that the outcome of the review planned for 2016 should be considered before developing more regulation. Some felt that landowners should be left to manage deer as they see fit, without interference from centralised officials. Concerns were raised over increased costs and bureaucracy which were associated with more regulation. A common view was that there may be negative public reaction to the notion of more deer being culled.

Proposal 11: Public access – clarifying core paths planning process

Part 1 of the Land Reform (Scotland) Act 2003 formalised rights of public access in a statutory framework. The Land Reform Review Group said that this statutory framework should be judged a considerable success. However, it suggested there was a need to clarify some aspects of core path planning and it is proposed to contain these within the Land Reform Bill.

81% of those providing a view agreed that access authorities should be required, in the interests of transparency, to conduct a further limited consultation about proposed core paths changes arising from objections. However, private landowner organisations on the whole opposed the proposal.

85% of those providing a view agreed that section 20 of the 2003 Act should be clarified so that Ministerial direction is not required to initiate a core path plan review. This was the majority view across all respondents.

78% of those providing a view agreed that the process for a minor amendment to a core paths plan (as set out in section 20 of the 2003 Act) should be simplified to make it less onerous than for a full core paths plan review. Agreement with this proposal emerged across all respondent sectors except for private landowner organisations where the majority view (63%) was in opposition.

Assessing impact

Scottish Government set out its belief that by developing a clear Land Rights and Responsibilities policy and by implementing a broad range of land reform measures it can deliver a range of social, economic and environmental benefits. Respondents to the consultation were asked to consider and provide views on the potential positive and negative effects of the proposals in terms of equality and social justice, business and regulation and the environment.

Equality and Social Justice

A few prevailing themes emerged from responses relating to the potential impacts of the LRRP and other aspects of the Bill on different communities and groups of people. Most common was concern that the proposals appeared to be rural focused, and appeared to neglect the particular circumstances of urban areas of deprivation. Another was that local communities may not be equipped to engage with the provisions and that training and support would be required to empower local people to take up the opportunities provided by the Bill.

Broad benefits identified for individuals and communities with different levels of advantage or deprivation included: increased social justice; better balance between landowners and local communities; increased local employment opportunities; greater opportunity for diversification of land use and community and individual ownership of land; community empowerment opportunities; and greater access to land with potential for positive impacts on health and wellbeing.

Potential negative impacts were identified as: increased costs taking funds away from higher priorities such as healthcare and employment; reduction in inward investment; loss of local employment; communities failing to maintain assets over the longer-term; negative impact on landowners who are currently managing land successfully; risk of estates going bankrupt; risk of local engagement becoming dominated by loudest voices.

Business and regulation

Many respondents expected that costs will be incurred initially as the proposals are implemented, but they considered that over time the benefits generated would outweigh the initial costs and/or would be money well invested.

The costs identified most frequently were associated with: monitoring and enforcement; establishing and operating the SLRC; completing and operating the land register; landowner costs relating to registering land; legal advice; and deer management if no longer undertaken by sporting estates.

The most commonly identified savings were from increased tax revenue due to the removal of business rates exemption on deerstalking and shooting; increased tax revenue due to closing loopholes in the tax system; rationalisation of databases leading to easier use and clarity of ownership.

Privacy

An overarching theme was that a balance should be struck between the need for freedom and transparency in information on land ownership and individual rights to privacy. Many felt that consideration of human rights should provide a backcloth to developing the reforms.

Environmental

The potential positive impacts on the environment resulting from reform which were most frequently highlighted by respondents were: greater diversification of land use/more sustainable land use; better management of the deer population; greater community ownership over and responsibility for the local environment; and increased natural regeneration of forest and increased tree cover.

By far the most commonly identified negative impact on the environment was reduced spend on land management by private owners due largely to the abolition of the business rate exemption on shooting and stalking, potentially leading to deterioration of land and the environment.

How to access background or source data

The data collected for this social research publication

are available in more detail through Scottish Neighbourhood Statistics

are available via an alternative

route <http://www.gov.scot/Topics/Environment/land-reform/consultation>

may be made available on request, subject to consideration of legal and ethical factors. Please contact <email address> for further information.

cannot be made available by Scottish Government for further analysis as Scottish Government is not the data controller.



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