

A Consultation on the Future of Land Reform in Scotland

The Community Woodlands Association (CWA) welcomes the opportunity to respond to the consultation on the Future of Land Reform in Scotland.

CWA was established in 2003 as the direct representative body of Scotland's 200 community woodland groups. We help 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.

We endorse many of the proposals in the consultation document, but believe that a stronger focus on realigning tax and subsidy regimes to support rather than inhibit land reform would help deliver the aims of social justice and furthering sustainable development, and ensure that the land of Scotland is managed in the public interest for the common good.

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 ✓

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

CWA welcomes the principles expressed in the consultation document.

We believe they could be strengthened by reference to the human rights context (e.g. Scotland's obligations under the International Covenant on Economic, Social and Cultural Rights) and also by explicit recognition of the linkage between land ownership and land use (thus bringing the Land Use Strategy under the umbrella of the Land Rights and Responsibilities Policy).

In addition to striking a balance between the rights of landowners and the public interest, there is need to find an appropriate balance between local and national interest. A key issue in forestry – and in particular with respect to the management of the National Forest Estate – has been the perceived tension between the interests of local communities and the apparent primacy of the national interest (which is interpreted as maintaining the supply of timber to sawmills).

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?

A number of useful proposals are detailed in the consultation document, however, the most significant **additional** action the Scottish Government

could take would be the systematic realignment of tax, grant and subsidy regimes to ensure that these support rather than inhibit the delivery of land reform objectives and the furtherance of sustainable development.

As a matter of principle, public funding for land management should be targeted, transparent, accessible to all, reward management rather than ownership, provide value for money, be consistent across land uses, & minimise unintended consequences.

This requires progress on three fronts:

1: reducing and removing the tax reliefs (capital gains, income tax, inheritance tax etc) which currently reward woodland ownership as a mechanism for tax avoidance rather than incentivising sustainable management.

2: bringing all agricultural and forestry businesses within the non-domestic rating system, and using the ratings system to incentivise positive land use (e.g. zero rating for desirable activity)

3: meaningful reform of the Common Agricultural Policy to abolish the notion of “entitlement” and progressively removing all direct payments, transferring support into funding streams which support the delivery of clearly defined public benefits.

The Scottish Government’s commitment to Land Reform as demonstrated in this consultation and elsewhere is welcome, but it needs to be acknowledged that SG is currently distributing (or rebating) hundreds of millions of pounds annually to prop up the very system that is the problem in the first place.

Realigning the tax and subsidy regime would ensure that taxpayers money was spent furthering rather than inhibiting sustainable development; it would also, in the medium term, help deflate the land price bubble which is such an obstacle to both community land acquisition and the provision of affordable housing.

We acknowledge that not all of the actions noted above are within the direct control of the Scottish Government, and that they will require a significant period to implement.

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 ✓

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

CWA welcomes the proposal to establish a Scottish Land Reform Commission, which has several advantages and no apparent disadvantages.

Creating a Scottish Land Reform Commission will:

- Maintain the momentum of the Land Reform process and agenda outwith the political climate or electoral cycle;
- Establish Land Reform as a responsibility for successive governments;
- Facilitate research and analysis and improve the evidence base for policy development;
- Ensure that the Land Reform agenda is considered in the development of policy and legislation in other areas;
- Remove responsibility for Land Reform from the Rural Affairs department, demonstrating the relevance and importance of Land Reform for all of Scotland.

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

The Scottish Land Reform Commission should be:

- Independent of government, and including expertise from outwith personnel, reporting to parliament
- Adequately resourced
- Tasked to carry out and commission research, produce guidance, develop strategy and policy.

The Commission's remit should be proactive, and enable it to investigate radical proposals, for example to examine whether it would be in the public interest and would further sustainable development to introduce in Scotland a standard right of pre-emption over land sales, such as is exercised in France by Land Development and Rural Settlement Associations (Sociétés d'Aménagement Foncier et d'Etablissement Rural = SAFER).

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 ✓

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 ✓

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

CWA supports this proposal, in the interests of greater transparency and accountability of ownership.

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

CWA believes this restriction should be applied across all landownerships, not just new acquisitions.

Title registration should only be accepted by Registers of Scotland if the proposed provisions are met.

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 ✓

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

Data on land in community ownership is generally already in the public domain, and we welcome moves to increase access to information.

CWA believes that greater transparency is required on beneficial ownership and the financial benefits accruing from tax reliefs, subsidies etc

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?

CWA believes that access information on land ownership and value is critical for developing land policies, and that the public availability of free-to-use open data about Scotland's land is one of the most important keys to unlocking informed debate and new ideas about land reform.

Broader transparency of beneficial land ownership would have significant additional advantages in thwarting money laundering and tax evasion, and in preventing owner's avoidance of legal responsibility e.g. in cases of wildlife crime.

There are various examples of integrated, publicly-available online land

information systems in operation in other countries which demonstrate what is possible: e.g. State of Montana in the USA
<http://svc.mt.gov/msl/mtcadastral>

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 ✓

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

CWA strongly supports the principle behind this proposal, and believes that the availability of such powers would act as a significant encouragement to dialogue and negotiation.

It may be preferable for reasons of political independence for such powers to be vested in e.g. the Scottish Land Reform Commission rather than in Scottish Ministers.

Where possible voluntary and consensual agreements should be sought, but it is critical that the whims of individual landowners are not permitted to frustrate the furtherance of sustainable development.

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

We think that in practice these powers will be used sparingly, as a last resort – they are welcome on this basis but will not deliver wide-ranging change, which will be delivered far more effectively by fiscal measures as detailed in the response to Q3 above.

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 ✓

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

CWA agrees in principle that public sector bodies such as Forestry Commission Scotland should be able to engage in a wide range of management activities in order to promote an integrated range of social, economic and environmental outcomes.

It would have been helpful for the purposes of this consultation for the Scottish Government to provide specific examples of the additional powers it envisages for FCS and other public sector bodies, and the wider range of management activities this would allow them to undertake.

We have identified two areas where additional duties powers for FCS (and other public bodies) would deliver enhanced outcomes:

- FCS (and other public bodies) have the power to dispose of assets to community bodies at below market value in certain circumstances but there are financial disincentives for public bodies to do so, and no clear guidance as to the calculation of any discount. CWA believes that such guidance should be provided and that FCS and other public bodies should be under a duty to factor the additional public benefits to be delivered by community ownership into the acquisition price or rental.
- FCS should have the power to delegate (or put out to contract) the management and delivery of social and environmental objectives on the National Forest Estate.

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

Our concerns are that the Scottish Government's intentions here have not been made clear – it is difficult to comment fully when we don't know what the new proactive role might entail.

CWA believes that Scottish Ministers should have the power to delegate the management of public land for the public good to properly constituted and competent community bodies.

We note that the Land Reform Review Group recommended the establishment of a Housing Land Corporation to pro-actively intervene and ensure delivery of a sufficient supply of land to meet the Scottish Government house building targets.

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?

No ✓

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

CWA does not agree that introducing this duty on charity trustees would further Land Reform.

The consultation does not explain what issues the proposal is intended to tackle or what it is expected to achieve. Imposing a general duty would add another regulatory burden to thousands of small voluntary asset-owning charities without any clear indication of there being a problem requiring to be solved.

We are aware of concerns over the operations of a very small number of private and environmental charitable Trusts and Companies whose landholdings in some areas give them an effective monopoly over local land-management, and who use their organisation's charitable purposes as an excuse to inhibit or frustrate the sustainable development of local communities.

In such cases we believe that any duty to engage or consult with the community would be a futile exercise, and what is required are genuine opportunities for local people to become involved in decision-making, e.g. through becoming members and/or Trustees of the organisations in question.

We note that the Office of the Scottish Charity Regulator (OSCR), in assessing whether a charity meets the charity test, is required to consider how the public benefit delivered by the charity balances against both private benefit and public disbenefit. We note also that whilst generally and collectively the suite of 16 charitable purposes contributes greatly to the common good, the pursuit of a single charitable purpose at the expense of all the others could work against the public interest, particularly where a charity has an effective local monopoly over land or assets. The advancement of religion is an approved charitable purpose but the public interest would not be served by converting every building in a given community into a church.

If the landholdings of a Scottish charity give it a local monopoly and its pursuit of a single charitable purpose is frustrating sustainable development, then, rather than imposing more general burdens on all, we believe that OSCR should reconsider the charitable status of such organisations and if necessary issue directions to amend their activities to further the sustainable development of the community (i.e. reduce the public disbenefit).

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

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

As noted previously, this should be dealt with by OSCR, using their existing powers (under the Charities and Trustee Investment (Scotland) Act 2005) to issue directions to charities and if necessary to remove their charitable status.

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 ✓

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

CWA agrees with the ending of business rate exemptions for shootings and deer forests.

As noted in our response to Q3 above, we agree with the Land Reform Review Group that there is no clear public interest case in maintaining the current universal exemption of agriculture, forestry and other land-based business from non-domestic rates.

Once land based businesses are brought within the rating system they should be able to apply for the same types of specific exemptions and discounts as other rural businesses, making the reliefs available to land based businesses a clearer reflection of public policy aims than the current universal exemption.

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

Care will need to be taken to ensure that the application of rates incentivises sustainable management / appropriate levels of deer cull.

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?

We agree that where the common good property is being returned to the community from whence it came, the need for court approval should be waived.

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

Appropriate guidance to Local Authorities with respect to eligible community bodies, e.g. as defined in the Community Empowerment Bill.

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

Yes ✓

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?

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

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 ✓

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

Comments

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

Comments

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.

CWA believes that the introduction of a Land Rights and Responsibilities Policy would further social justice and sustainable development, and thus would have an overwhelmingly positive impact.

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 the ability of communities to respond to the new opportunities presented by Land Reform measures will, amongst other things, reflect the capacity within that community. Provision of adequate resources and support for all Scotland’s communities, ideally through organisations that are themselves community-owned is an essential requirement of effective implementation of these measures.

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.

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.

CWA acknowledges that greater transparency and accountability of land ownership will be seen by some as impacting on their privacy, however, we believe these changes are clearly in the public interest.

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.

CWA believes the long-term environmental impacts of effective Land Reform will be overwhelmingly positive, as part of a broader delivery of public benefit and the furtherance of sustainable development.