

**Consultation Title: A Consultation on the Future of Land Reform in Scotland**

**Date: 26 January 2015**  
**From: Scottish Land & Estates**  
**Stuart House**  
**Eskmills**  
**Musselburgh**  
**EH21 7PB**

**Telephone: 0131 653 5412**

**E Mail: [jason.rust@scottishlandandestates.co.uk](mailto:jason.rust@scottishlandandestates.co.uk)**

Scottish Land & Estates is a member organisation that uniquely represents the interests of landowners and land-based businesses in rural Scotland. Our members make a substantial social, economic and environmental contribution to rural Scotland, and landowners and land based businesses play an instrumental role in the delivery of key national and local government objectives for the benefit of the entire rural economy and the communities of which they are an integral part.

Landowners play a critical role in ensuring sustainable, healthy and empowered rural communities, providing housing, employment and a wide range of other public benefits. We believe much could be achieved by utilising existing structures and stimulating partnership working rather than simply considering landownership matters from an activist perspective or ideological stance. Our organisation enthusiastically supports a range of landownership and management types based on the fundamental principles of legitimate ownership and the best use of land.

We welcome the opportunity to respond to this consultation, although regret that so many diverse areas have been included and categorised within the “land reform” agenda. Specifically we would strongly argue that Agricultural Holdings should be excluded from the Land Reform Bill and given its own deserved legislative slot after such a lengthy and detailed separate process.

**Q 1. Do you agree that the Scottish Government should have a stated Land Rights and Responsibilities Policy?**

We do not feel that a Land Rights and Responsibilities Policy is essential, but provided the policy is clear and presents an appropriate vision or aspiration for Land Rights and Responsibilities then we would support this, but not if it is simply an emotive ideological statement.

We have called, along with SRUC, for a national Rural Policy which outlines a clear vision for rural Scotland and would query why this has not been delivered. The Cabinet Secretary referred to the development of such a policy at the recent Scottish Rural Parliament. It

would be very disappointing if it is to be limited to a statement on land rights which does not deal with land use issues and is of course applicable to all of Scotland.

## **Q 2. Do you have any comments on the draft Land Rights and Responsibilities Policy?**

Principle 1 – We strongly disagree with this principle which should not feature in the policy in its current form. It is important that that any policy respects the rights of property owners too. As this is a core statement it is important to have much better balance. “Recognition” of the public interest would be a more appropriate basis for this principle. Surely the Scottish Government cannot be suggesting that all private land (regardless of site or location) is to be required to deliver public benefit.

Principle 2 – We agree with this principle. Openness and transparency in land ownership are supported by us and we have met with the Keeper and had discussions with Registers of Scotland. We are fully supportive of land being covered by the Land Register, our members have assisted with voluntary registration and have also undertaken work with Registers of Scotland to raise awareness of services. It should also be borne in mind that frequently, the overriding factor is visibility and transparency about who is making land use management decisions.

Principle 3 – We would suggest that subject to the deletion of the words “building a fairer society in Scotland” this principle is acceptable. While a policy statement will necessarily be broad in its terms there is a need for its terminology to be clear and meaningful. While not in argument with “fairness” per se this is an abstract concept that will have different interpretations to different groups and specifically how it is attained in both rural and urban Scotland.

Principle 4 – We would contend that the ownership of land in Scotland already reflects a mix of different types of public and private ownership and as such have no problem with this being incorporated in any policy formulated. Today, landowners’ business interests are very diverse and for the majority of our members their holding is relatively modest: over half of our members own less than 450 hectares of land. However, we would disagree with the assertion that ownership should be “increasingly diverse” for the sake of any ideological agenda, without proper cognizance to robust evidence since the outcome could well be a reduction of affordable housing and sustainable land management to give two examples.

Principle 5 - We are concerned that this principle could lead to an increase in the number of disputes and differences of opinion with communities. From a financial perspective, if public funding or resources are involved, the opportunity needs to be measured against other uses of that money which produces a social benefit such as education and social services.

Principle 6 – We consider this commendable and the manner in which our members already seek to exercise their rights currently.

Principle 7 – This principle appears to neglect protection of the property owners’ right which should be referenced here. The interaction between this principle and existing obligations under planning law should also be fully considered.

## **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?**

Recent Land Registration changes together with Scottish Government proposals on Land Registration need to be fully monitored as they are implemented and developed. Scotland was the first country in which the state took responsibility for recording land ownership and property rights and the validity of titles in the Land Register is normally guaranteed so it is especially important that the accuracy of the register is maintained and that Registers of Scotland is suitably resourced. Registers of Scotland receives no income from the Government, only trading income – from search fees and registration fees/recording dues – so it is vital that the important processes underway are properly resourced, costed and budgeted for.

The Scottish Government should ensure that existing powers are fit for purpose and fully utilised before introducing further powers. Specifically on areas like compulsory purchase, if powers are not being used then it needs to be ascertained why this is the case. We support improvements to current community right to buy processes. There needs to be due reference generally to the actual owners of land and their wishes and objectives as befits a property owning democracy.

Encouraging better community planning through involvement of all stakeholders. Improvements to local decision making have not been addressed in either the Community Empowerment Bill or these proposals. Land use planning should be better aligned with community aspirations and outcomes more carefully considered.

## **PROPOSAL 1 – 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?**

In principle we have no objection to the establishment of a “Scottish Land Commission”, but that is subject to the circumstances, structure, type and remit of the Commission being considered extremely carefully and we reserve the right to oppose the formation of a Commission if the proposal does not address the points made in our submission.

Specifically we are concerned about the prioritisation in paragraph 43 of the consultation document. We would suggest that “promoting land reform” should not be the first stated responsibility and we are concerned that this should not become the overriding factor. If the Commission is actively promoting land reform, then this would appear to conflict with objectively monitoring the impact. Collecting robust evidence followed by appropriate monitoring and evaluation would be the necessary first steps. Promotion or implementation should only take place where the hard evidence and suitable evaluation has taken place.

The effectiveness of a Scottish Land Reform Commission would depend upon the land policy formulated.

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

If properly structured and with a clear remit, an advantage would be consistent evaluation and development of Scottish land law and policy in a constructive way, taking on board stakeholder feedback.

In terms of disadvantages we have concerns that if not given an appropriate remit the Commission would intervene in an excessive manner which could longer-term disrupt confidence in land ownership in Scotland to the detriment of investment and business decisions, specifically if changes were put forward without suitable trialling or monitoring and without time to assess the impact thereof. Landowning businesses require certainty so we would be concerned if the Commission was not fully independent, but politically influenced in any way and if Commissioners pursued their own personal interests in conflict with or at the expense of the wider rural economy. There is generally a danger that the Commission increases red tape and bureaucracy and if it goes against the general policy thrust of empowering local communities by becoming a top down centralised body.

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

The composition of the Commission would be vital to its success or otherwise. Commissioners would require to be independent and completely apolitical, with expert and practical knowledge and constituted from a balanced broadbase, including the private and legal sectors. The Commission would also require to have specific, measurable and realistic objectives so that outcomes could be monitored. Those objectives should relate to economic indicators as well as social and environmental ones. In terms of overall structure, while it would need to be properly resourced a monolith would need to be avoided at all cost. Engagement with key stakeholders and accessibility in terms of approach would be important.

As regards the administrative framework, it is important to ensure that performance of functions is not doubled, organisation of internal work not ambiguous, and that no lack of cooperation and coordination of activities is widely observed. We believe that the Commission should not have any statutory intervention measures.

## **PROPOSAL 2 – LIMITING LEGAL ENTITIES OWNING LAND**

**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 and accountability of land ownership in Scotland?**

We are fully committed to transparency and accountability of land ownership in Scotland and do not have any particular objection to this restriction, although do recognise that the world is becoming a smaller place with barriers being broken down.

**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?**

Provided the Scottish Government is content that inward investment to Scotland's economy will not be significantly impacted to the detriment of jobs or other opportunities we are relaxed about such a restriction. Information on the extent of land owned by entities which would be effected by this proposal should be published.

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

We would be concerned if inward investment into Scotland was being deterred.

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

We have no specific suggestions to make on this. We consider that the operation and enforcement of such a restriction would be a matter for the Scottish Government to investigate more fully in conjunction with their legal advisers.

### **PROPOSAL 3 – INFORMATION ON LAND, OWNERSHIP AND VALUE**

**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?**

Scottish Land & Estates supports openness and transparency in landownership as per our response to Question 2, principle 2. This has been demonstrated by our Landowners' Commitment.

However, we would contend that data on land values would be of little use. We can foresee major problems with the monitoring and assessing of values, which may in many cases be subjective and changed with high frequency. It would therefore be of little public value trying to compile up to date land values if that is what is sought, which can and do alter substantially with changing circumstances and be extremely expensive to maintain and result in top-heavy administration to keep accurate records which could be relied upon.

It should be recalled specifically regarding land prices that the Valuation Office Agency, an executive agency of HMRC stopped collecting and publishing land price indices in 2011; the Valuation Office Agency website states that the Property Market Report was never designed or intended to provide representative land prices or to be used for policy making; the information was based on discrete locations which altogether provided very few data points across the UK; there were clear limitations in the data; the indices were not produced with regard to any of the standards set out in the Code of Practice for Official Statistics. Any information regarding value should bear in mind these limitations.

Generally we would surmise that there is no evidence that the absence of a National Land Information System harms either the economy or the workings of the property market. The prevalence of the rule of law, good standards of professional governance, protection of property rights and openness in registering is more significant than having a specific National Land Information Service with associated bureaucracy. By and large the information is already there and we would agree that it is perhaps a case of co-ordinating it better, but the value added by any National Land Information System would be small relative to its cost.

It should also be noted that The European Land Information Service project aims to provide on-line and updated information about land across European borders and Scotland is one of the project partners – it is not about harmonising a European Land Register, but a platform for the various existing national registers, because they recognise that format of presentation will differ from state to state.

Overall, we do accept that there requires to be a much better understanding at all levels that ownership of large areas does not necessarily equate to large values and productivity. It is important that any research commissioned properly addresses the myth that scale and value/productivity directly relate which is the position misguidedly relayed by some land reformers.

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

Landowners are currently obliged to provide data on a range of matters including agricultural production, woodland planting and designated sites to which the Scottish Government currently has access. We are not aware of any substantial demand from our members for further data which they would wish to access. We assume that the Scottish Government currently collaborates with the Forestry Commission Scotland and Scottish National Heritage and other bodies which hold pertinent information where appropriate.

We do not hold our membership details on a spatial basis, but individual owners already have basic information on websites or as part of projects such as The Economic, Social and Environmental Contribution of Landowners in the Cairngorms National Park.

**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?**

It is important that ownership is reliably and accurately registered to ensure that correct information is relied upon and therefore any breadth or flexibility in sharing has to be balanced by levels of accuracy being maintained.

As per our response to question 11 we do not think that there is any need for a complex National Land Information system being introduced. This is likely to adversely impact on Land Register targets.

## **PROPOSAL 4 – SUSTAINABLE DEVELOPMENT TEST**

**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?**

Scottish Land & Estates is extremely concerned about the premise of this proposal, that private landowners are somehow the barrier to sustainable development. We also feel that any power of intervention would need to be clearly defined, proportionate and based on robust evidence and not simply left to the discretion of a Minister. Behaviour as opposed to scale of ownership is the key issue, although we do accept that scale (in terms of percentage rather than size) can amplify the impact of behaviour. If you own a two acre field in a village which equates to 100% of potential development land then the impact of not bringing this forward for development is greater than if your site is one of ten development sites in the village. There are also ECHR considerations which will need to be observed.

This proposal does not address the plethora of barriers which exist to rural development, focusing purely on a small subset of instances. We believe that the contribution of privately owned estates to sustainable development is clearly evidenced – as are the benefits which

can be, and are, delivered by other ownership types. The Scottish Government ought to bear in mind that the contribution to or inhibition of economic and community development depend largely on how the land is managed and not the ownership type. Recent research from Scottish Rural University College found that a vibrant and strong family estate can contribute to the on-going vibrancy of rural communities. This is also covered in the 'Sustainable Estates' research from Perth College which evidences the benefits of partnerships between private estates and local communities, and the widespread desire for them.

Land in the ownership of private organisations is overwhelmingly employed productively. It benefits local communities through tourism, job creation, agriculture, housing and more. Private and community ownership should not be viewed as opposite ends of a spectrum – both ensure the viability of our rural areas.

Scottish Land & Estates would also like to make reference to the ability of large scale integrated landowner (regardless of whether private, public or community) to deliver multiple public benefits. This was exemplified at the SNH Specis Action Framework conference in 2012, where case study after case study highlighted that one of the biggest threats to species conservation was the fragmentation of landholdings and the consequential break-up of coherent and unified management.

We firmly believe, and the evidence backs this up, that private landownership is a conduit to sustainable, healthy and empowered rural communities. Private landowners are significant enablers of rural development and play an important role in maintaining rural community cohesion.

A myriad of research into barriers to rural development has been carried out over the years which indicate that numerous barriers exist – none of which involve landownership. In 2008, research for Scottish Enterprise on barriers to rural development in Scotland identified planning regulations, other regulations, broadband, housing and transport.

The Rural Development Council (RDC) established by the Cabinet Secretary for Rural Affairs and the Environment, detailed 37 Step Changes. RDC's "Speak Up for Rural Scotland" was published in 2010. These covered areas such as broadband, public procurement, training and skills development, empowering communities, affordable housing and social enterprises. Land ownership was not raised as a barrier. All of the step changes were designed to deliver a vision of:

- Active and confident communities
- The best connected place
- Competitive enterprises creating employment opportunities
- World rated natural and built environments

The Scottish Government subsequently produced a response to this entitled 'Our Rural Future' which stressed the need to work together for the future of rural Scotland, and underlining the Scottish Government's commitment to working with rural businesses and communities to make rural Scotland even more successful. This report included the commitment to actively monitor and promote the provisions within the 2003 Act, and also to keep under consideration the wide range of tools that are available to communities to achieve ownership. Whilst this is happening through the Land Reform Review, it would appear that many of the other areas were either lacking in clear actions from the Scottish

Government or progress has been limited. Our Rural Future valued ‘the fresh ideas and energy that our increasingly diverse rural population and businesses can bring.’

Scottish Land & Estates believes that equal weight should be given to the fresh ideas across all the step changes proposed by the RDC and are disappointed that some have been ignored to date.

There is ample evidence that private landowners play an active role in terms of rural development and are willing partners in making rural Scotland a better place. Engagement with communities is a fundamental element of our recently launched Landowners’ Commitment and we will continue to do what we can to achieve that objective.

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

The best way to achieve the recommendations would be to consider all of the evidence based research and studies which we have referenced in response to question 14, which would allow a proper focus on what the real barriers are or can be to sustainable development.

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

We would suggest that existing powers be used rather than further powers being added. Until government address the disconnect between local planning and local land use so there is an effective means of translating regional strategic ambitions to the local level and marry them with local community ambition - to form meaningful community plans which are related to place, any power would be a blunt instrument open to exploitation, seriously undermining confidence in property rights - which is fundamental to a market based free economy. Certainly, no penalties are worth considering until the link between community plans, local plans and regional plans is established in an effective and transparent way.

ECHR legislation will also need to be observed in any recommendation brought forward.

## **PROPOSAL 5 – 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 a more integrated range of social, economic and environmental outcomes?**

Scottish Land & Estates believes that public sector bodies already deliver excellent social, environmental and economic outcomes and would question what sort of “wider range of management activities” are being sought. These bodies should be permitted and indeed encouraged to manage their land in the best and most integrated way, subject to their remit and constitution. The Scottish Government needs to be very careful how much they devalue their land assets to provide local benefit out of any proportion to the cost per person during a time when there are such immense demands on public money to finance infrastructure and social services. Bearing in mind the concepts of “social justice” and “fairness”, the return on investment to wider rural and urban society should be considered as part of any outcome.

We are aware of the announcement last year by the former Community Empowerment Minister, Mr MacKay, in relation to reforming the Scottish Public Finance Manual. Consideration as to how this will be amended and its consequent impact on activities requires to be looked at in tandem with this area.

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

Any benefits require to be actual rather than simply perceived. The economic outcomes require to be considered on a par with the social and environmental outcomes.

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

The Scottish Government as the biggest landowner in Scotland could continue to transfer its assets to communities and also to private owners. The Scottish Government and its agencies can also engage further through the Community Planning process.

## **PROPOSAL 6 – 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?**

Charity Trustees have an overriding statutory duty to act in the best interests of the charity and it will be important to ensure that this duty is not compromised by this proposed duty of community engagement.

It should be noted that property can only be awarded charitable status if it has some exceptional worth to society, either environmental or historic, or if an existing charity, subject to its own charitable obligations, purchases it in which case those obligations transfer. Charity trustees are already under much heavier public scrutiny than private owners, under charitable objectives which they are obliged to define clearly and work to. Charitable companies must make returns and submit accounts on an annual basis to both Companies House and OSCR and the objects of a charity require to be set out in its Articles of Association if it is a company. It therefore seems illogical to place them under a special burden of community engagement. The burden of managing and funding a charity is significantly greater than that of a private company or personal ownership and there is frequently no link between the charitable objectives e.g. historic or environmental relevance and the community aspirations. We would argue that charitable trustees should be under no greater obligation to engage than any other type of ownership.

We have publicly promoted community engagement and would cite both the National Standards for Community Engagement and the Sustainable Estates toolkit as examples of good practice to be used by landowners when engaging with local communities. Scottish Land & Estates' Landowners' Commitment states that landowners should:

- Communicate estate plans to those who will be affected by them
- Provide the wider estate community with an opportunity to contribute to relevant decision making
- Have regard to community aspirations as part of estate planning

We would hope that all landowners would follow this Commitment.

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

A disadvantage would be potentially unnecessary cost and time commitment for the charities, especially where there was public disinterest and limited public engagement in relation to the proposed change. This may impact on the viability of the charity. The guidance on engaging in remote rural areas produced by Communities Scotland outlines a number of specific issues and how these can be addressed or mitigated. There may also be concerns about a group within a community acting in a vexatious manner to stymie the trustees work or generally exploitation of a situation by those who have negative intentions towards a particular charity.

**Q. 22. How should “community” be defined?**

Community should continue to be defined as a geographic area. It should not be defined by reference to a “community of interest”.

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

This proposal should be about dialogue and facilitating that and not about compulsion. As such we do not feel that the introduction of “remedies” is relevant. In particular, as mentioned in response to question 20, Charity Trustees have an overriding statutory duty to act in the best interests of the charity and so this duty would need to be borne in mind when considering any “remedy”.

## **PROPOSAL 7 – SPORTING RATES**

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

Scottish Land & Estates do not believe that the current business rates exemption should be ended. Sporting estates are too readily singled out in a negative light when in fact they are businesses that make a key contribution to rural tourism, local employment and the environment. The removal of the business rates exemption for sporting estates does not take into account the current voluntary payments made for river and deer management. The perception that sporting estates do not pay their dues is not accurate. Estate businesses, whose activities generally extend beyond sporting, pay business rates and other taxes where they are due. Exemptions were put in place to support the industry in the same way that the Scottish Government is taking steps to support sectors such as construction. To suggest that the Conservative Government abolished sporting rates to keep landowners happy is untrue and misleading.

Both shooting and stalking in the Scottish context is a low margin operation which, like agriculture, provides significant social, environmental and economic contributions within mainly remote, fragile communities. Imposing a tax which is expensive to collect and insignificant (within a national perspective) in extent seems pejorative to the sector. The costs of maintaining deer forests, grouse moors and low ground shoots, both at the abolition

and now, nearly always exceed the maximum potential revenue that can be obtained from shooting. Indeed the amount of regulation has increased since the abolition of sporting rates.

The Scottish Government requires to undertake thorough research prior to proceeding with any proposal to introduce sporting rates. A comprehensive impact assessment on the economic and environmental impact is required. When the possible reintroduction of sporting rates was last considered in 1999 by Lord Sewel's Land Reform Policy Group, the recommendation was that there should be further study as to the effect of such reintroduction. We are not aware of any such study having taken place and this proposal is therefore premature. The research should include not only the revenue and costs of shootings and deer stalkings, but the benefits to the community of these activities and the effect that the imposition of rates would have. It should also encompass farms, woodlands and crofts and potentially a body such as RICS could be involved in order to ensure professional expertise and impartiality. Only once this study has been undertaken should the form of rates, if any, be considered, although to assess this we would require further clarification as to the sort of rates being discussed.

If the Scottish Government is determined to press ahead with the reintroduction of sporting rates, regardless of the lack of appropriate economic and environmental impact studies, they will require to consider a swathe of factors, including ensuring parity for upland and lowland ground, consideration of the non-commercial basis upon which sportings are run and the Government's concepts of fairness and social justice.

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

Scottish Land & Estates does not consider that there would be any advantages to removal of the exemption.

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

Any profit made is already subject to tax. Rates will be offset against profit and therefore tax take will decline as a result. The suggested 'income' from reintroducing rates will partly be offset by loss of tax revenue and much of the rest will be soaked up in costs of administration and the loss of jobs etc. Net margins would be low if at all. The cost for those who wished to remain would have to be added to existing sale prices which would price Scotland even further out of the global field sports market.

The range of taxes and costs facing private landowners has increased over the period since abolition of the rates, including regulations in relation to deer/game larders. Private landowners of sporting estates make a substantial contribution to HMRC and local authorities. Typically an estate will pay the following Income tax on profits (or corporation tax as appropriate) at up to 45%; PAYE and NIC on staff costs at up to 45%/ 12% employee NI/ 13.8% employer NI; PAYE and NIC on benefits in kind such as cars, medical insurance, accommodation, other perks; VAT on exempt property and private use of any expenses such as fuel at 20%; Rates on on farm commercial property (but not if agricultural); Capital Gains Tax on sales of assets at 28%; Inheritance Tax on non-relieved property such as 30% of the value of farmhouses, 100% of value of non-trading property such cottages and larger houses, commercial property, renewables leases – at 40%; Stamp Duty Land Tax on purchases of property or leases - rates up to 7% (or 15% for Annual Tax on Enveloped Dwellings property); Council tax; Insurance premium tax; Landfill Tax; Road Tax; Fishery

Board assessments; Petroleum revenue tax on fuel purchased; other licencing board taxes and costs; and Annual Tax on Enveloped Dwellings on enveloped property.

It should be observed that the Scottish Government has recently undertaken a public consultation on non-domestic rating and valuation appeals systems and analysis of the responses noted that comments on this issue were mixed with some supporting the exemption because of the benefit to the rural economy. Following the consultation, Scottish Government concluded that *"the Scottish Government has on balance decided that all current exemptions provided, including to agriculture, should be retained"*. These exemptions include the exemption introduced in 1994 for sporting rates on shootings. This matter has therefore only recently been considered and dismissed by the Scottish Government, in the round with non-domestic rates generally as it should be.

The reasoning as to why sporting rates were abolished in 1994 also needs to be fully explored and examined as many of the reasons remain relevant today, if not more so. The exemption on shooting rates was introduced to assist funding for Deer Management Groups which are currently working effectively in Scotland. It was also noted that the charges then in place worked against encouraging higher deer culls in the public interest.

The former tax cost local authorities almost as much to collect (value and through administration of appeals) as it raised and was a disincentive to improve conservation measures and thus a tax against the environment. Collection and potential appeal costs would need to be thoroughly considered. It is worth remembering that there were a mass of appeals in 1993, shortly before abolition and further appeals to the Court of Session did not proceed due to the imminent abolition.

## **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?**

Scottish Land & Estates has no comment to make.

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

Scottish Land & Estates has no comment to make.

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

Scottish Land & Estates has no comment to make.

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

Scottish Land & Estates has no comment to make.

**Q. 31. Do you have any other comments?**

Scottish Land & Estates has no comment to make.

## 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?**

Scottish Land & Estates completely disagrees with this proposal. There is one issue on which the farming industry should be united - and that is ensuring that the needs of the tenanted sector are enshrined in legislation that fully considers the sector in the round and is fit for purpose.

We want to see all these issues resolved as quickly as possible after two separate, but equally lengthy processes: the Agricultural Holdings Review and the Land Reform Review. Scottish Land & Estates do not believe that incorporating detailed agricultural holdings legislation in a Land Reform Bill is the best way forward for the sector and would in fact be to the tenant farming sector's detriment.

Agricultural holdings warrants its own priority and a separate legislative slot. Many of the legislative changes which are likely to come out of the review such as the inclusion of slurry stores in eligible improvement, have no connection whatsoever with land reform.

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

Scottish Land & Estates does not consider that there would be any advantages in taking forward any recommendations of the Agricultural Holdings Legislation Review Group within the proposed Land Reform Bill, but instead there would be serious and significant disadvantages as noted in response to question 34.

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

Agricultural legislation is complex and is already scattered across too many pieces of legislation. There is in fact a strong case to be made for a Consolidation Bill to be introduced that would bring everything under one roof.

However, the argument for not including the Review Group's report in a Land Reform Bill goes wider than that. The Scottish Government embarked on lengthy land reform review process and will be introducing a Land Reform Bill which it is entitled to do. But what has the future prosperity of the tenant farming sector – the avenue through which most people get started in farming – have to do with land reform? The rights of agricultural tenants are already well protected through various specific pieces of agricultural legislation, so why then include them in a totally separate Land Reform Bill? Associating what should be progressive new measures to deliver a more vibrant tenanted sector for both tenants and landlords with a land reform agenda will be interpreted as a threat to the very people who let land now and may wish to in the future. Being seen as a threat rather than a set of collaborative measures to modernise the sector for all will be to the detriment of the sector. On one hand politicians call for a vibrant tenanted yet proceeding in the way envisaged they would inhibit the estates that are in a position to let farms.

There has also been a tremendous amount of time and effort put into the Agricultural Holdings Review process by the group itself, tenants and landowners. It would be a

disservice to that collective effort – whichever side of the argument one is on – for the various recommendations to be distilled into a convenient addendum to a Land Reform Bill. Those involved in the tenant farming sector deserve better than that.

Confidence in the let sector by existing and potential land owners is at an all-time low due to let farming being used by land reform ideologists as a means of delivering significant redistribution of land via the absolute right to buy or assignation. Containing legislation that has the stated aim of rejuvenating the let sector in a bill which has heavy connotations of redistribution clearly will undermine this opportunity to breathe new confidence into let farming.

It needs to be remembered that let farming reform is about repairing certain parts of the existing legislation to make existing leases more fit for purpose while providing more attractive letting vehicles for new tenants and owners, thereby stimulating the market. This has absolutely nothing to do with the land reform process or agenda and attempting to include agricultural holdings in a Land Reform Bill would create significant risk of undermining any benefit from the Agricultural Holdings Review Group recommendations.

## **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?**

Scottish Land & Estates was surprised to note that this Land Reform consultation includes a proposal relating to wild deer as the Scottish Government already has a programme in place to develop and review deer management based on the recommendations of the RACCE Committee following their 2013 Review. In our view it would have been sufficient and consistent to have referred to this separate process, similar to the Agricultural Holdings and Fisheries reviews, and not to have included wild deer within this consultation.

We believe that the Association of Deer Management Groups (ADMG) which represents Deer Management Groups across the Highlands and islands of Scotland, including among its membership not only private owners but also environmental charities, community bodies and public agencies, is best placed to consider this proposal, along with Lowland Deer Network Scotland (LDNS).

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

We do not feel that there is sufficient detailed information at this stage to be able to properly comment on this proposal and as stated above believe that ADMG and LDNS input should be sought at an early stage.

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

As per our response to question 36 we do not believe that there is sufficient detail to be able to comment fully.

## **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?**

Scottish Land & Estates does not agree that a change is needed here. The current process is clear, i.e. if a local authority has an objection that, after discussion, if the objector is not prepared to withdraw, the matter goes to the Directorate of Planning and Environmental Appeals and is resolved through the local inquiry process. Any confusion can be cleared up by improving the statutory guidance document.

**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?**

We agree that this change makes sense and that the section should be amended accordingly.

**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?**

We are not clear about the basis for this question and do not consider that any change is needed. Specifically what is meant by the term “minor amendment”? We would be extremely wary about new paths being added to a Plan without consultation, whereby a local authority could designate a route as a core path without consulting or even informing the landowner. There is no “onerous” process set out in terms of reviewing a Core Paths Plan. Nowhere in section 20 is a “full” review mentioned. A local authority could therefore review all or part of its Plan at any time it likes. Section 20 sets out a fairly simple process for removing and diverting a core path. We consider this to be entirely appropriate and believe the Section should be left as it is. This proposal appears to be based on perception of problems rather than the reality of the legislative process.

## **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.**

Scottish Land & Estates has no comment to make.

**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?**

There will be concern that deprived urban communities with great social needs are disadvantaged by the focus on some of these proposals. A focus on urban Scotland as well as rural Scotland is therefore needed.

## **BUSINESS AND REGULATORY IMPACT ASSESSMENT**

# Consultation Response

**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.**

There will be undoubted costs in setting up a Scottish Land Reform Commission and these would need to be kept in check. Generally there may well be increased legal costs as advice is sought on the various measures.

Taxation on field sports will have a significant impact on already marginal enterprises and a specific business impact assessment should be carried out by Government on this initiative before it is given serious consideration within the context of the Land Reform Bill.

More generally, additional regulation inevitably means increased cost, the extent of that cost will depend on the extent of the regulation.

On the basis of the information provided in the consultation it is difficult to assess the financial impact of amendment to deer management legislation but the Scottish Government should be aware that it could have significant consequences and they therefore should initiate business impact assessments along the way.

Environmental improvement from reduced deer numbers where overgrazing occurs will happen over a period of time and that period of time can be elastic to allow for economic and social impacts to be managed without undue hardship on communities or land businesses. Equally, the business contribution to Scotland by its deer stalking sector is important along with its downstream benefits and discretionary environmental measurements should not be allowed to decimate a land use model which in many ways defines Scotland to the outside world.

If Agricultural Holdings were to be included within the Bill this may result in costs, particularly in compensation where ill-considered proposals are challenged by either landlords or tenants through ECHR legislation.

Increased land registration coverage brings with it additional costs to private landowners and to Registers of Scotland itself which will require to be sufficiently resourced.

## **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.**

Clearly where private property rights are involved ECHR rules should be contemplated. Where information is to be provided voluntarily we do not see a significant impact in this respect. Obviously the target to Land Register all landownership rather than through purchase will impact on privacy of the individual, but as mentioned we are supportive of this and believe that there is a justifiable case under public interest. However, much will depend upon the level of intervention by the Scottish Government in other areas and we will need to reserve our position until we see more detailed proposals.

## **STRATEGIC ENVIRONMENTAL ASSESSMENT**

# Consultation Response

**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.**

Scottish Land & Estates can perceive damage to the environment, particularly on heather moorland, resulting from reductions in land management for shooting and stalking as a result of sporting rates changes; this in turn will have a negative impact on tourism, not only from a reduction in sporting tourists coming to shoot/stalk in Scotland, but also possibly from other tourists who come to see the “iconic” landscape as it is. There could potentially follow a reduction in inward investment by landowners from earnings outside Scotland with a consequent reduction in rural employment. The gradual transfer of land use from grouse moor to commercial forestry may in all probability be inevitable, although many grouse moors incorporate areas of deep peat, which are likely to be no-go areas for forestry and so abandonment of land would result.