

THE LAND REFORM (SCOTLAND) BILL: a response to the Scottish Parliament's Rural Affairs, Climate Change and Environment Committee

Executive Summary

- *Land is one of Scotland's most significant assets, delivering a vast range of goods and services that are crucial to local communities, to Scotland's society and to its natural heritage. The RSE, in principle, welcomes moves, within the Land Reform (Scotland) Bill and more widely, to maximise these benefits and to encourage constructive partnerships between all those with a stake in Scotland's land.*
- *The RSE's concerns arise from the failure of the Land Reform (Scotland) Bill to place land reform within the wider context of land use. Until there is a comprehensive picture of the objectives of land use in Scotland and until the levers and policies that shape land use align to incentivise responsible stewardship, the impact of land reform will be unclear.*
- *Sustainable development and enhanced benefits for communities are laudable goals. But there is no recognition within the Bill of the potentially competing elements of 'sustainable development' (social, environmental and economic) or of the potentially conflicting interests of different levels of 'community' (local, national and international) and different types of communities of interest.*
- *Judgements on what constitutes the most appropriate form of sustainable development for communities at all scales and of all types will, in reality, often require complex and nuanced deliberation of competing demands and interests. Clarity on the frameworks that would guide such decision-making would strengthen the Bill and avoid multiple interpretations of its provisions, particularly those relating to engaging communities in decisions relating to land and the right to buy land.*
- *The RSE endorses calls for a Land Commission to be entirely independent from government and from any political influence or vested interest. The Commission must have an appropriate balance of skills and expertise to make informed decisions about land use in Scotland, including in land management and ecosystem services.*

- *The RSE points to substantial independent evidence of the on-going failure to manage the deer range sustainably in Scotland due to over population of red deer. It therefore supports the inclusion of provisions on additional measures to secure the necessary changes in management, ahead of a further review of deer management in late 2016.*

Introduction

- 1 The Royal Society of Edinburgh (RSE) welcomes this opportunity to contribute to the Rural Affairs, Climate Change and Environment Committee's scrutiny of the Land Reform (Scotland) Bill. The RSE established a Working Group of Fellows with relevant expertise to produce this response.
- 2 Scotland's land is one of its most significant assets, capable of delivering a vast range of public benefits, including food and fibre production, clean and abundant water, space for housing and development, habitats for a wide variety of resident and migratory species, the ability to sequester and store carbon and to deliver other forms of climate change mitigation and adaptation, and to provide resources for tourism and informal recreation. It is a finite resource that must serve not only landowners but also the numerous communities with a stake in land, including residents of rural areas and the Scottish people as a whole.
- 3 In principle, the RSE welcomes moves, within the Land Reform (Scotland) Bill and more widely, to encourage real engagement and constructive relationships between stakeholders, to meaningfully address social inequalities, to enhance transparency of land ownership, and to clarify the rights and responsibilities of people with an interest in land.

- 4 However, the RSE is concerned that the narrow approach taken to the development of the Bill weakens its ability to deliver its own objectives. The technical and legal nature of the provisions on land ownership fail to set land reform within the crucial wider context of land use, i.e. identifying the key public services and goods that Scotland needs its land to deliver; securing good stewardship of this resource in the longer term; current Scottish Government initiatives such as the statutory requirement to produce, report on and update a Land Use Strategy; and the drivers that currently shape land use, most particularly the Common Agricultural Policy and the major EU environmental directives. The Land Reform Review Group itself recognised that Scotland's land is shaped by three main components: property laws that govern how land is owned; regulatory laws governing how land can be used; and fiscal and non-statutory measures that influence how land is owned and used¹. An integrated approach to land reform, incorporating these elements, is crucial but is not reflected in the objectives of the Bill.
- 5 In addition, the Bill and its accompanying documents appear to take a narrow definition both of communities, limited to local geographic communities, and of sustainable development, principally limited to economic development. The RSE is concerned that this represents a retrograde step from the progress made by the Scottish Government under its Land Use Strategy (2011) that placed the recognition of ecosystem services and the benefits to the people of Scotland as a whole at the heart of its principles². It also moves away from the Land Reform Review Group's definition of the common good as a balance of social justice, human rights, democracy, citizenship, stewardship and economic development³.

Land Use in context: benefits, stewardship and drivers

- 6 It is insufficient to consider land reform merely for the sake of reform itself. The political motivations of enhancing equality and social justice, and of

empowering people and communities to benefit more directly from local land are laudable. Evaluations of existing community ownership of local assets in Scotland identify a number of benefits to local communities, including the development of private enterprise, affordable housing, infrastructure, investment in local services and in renewable energy and recycling schemes⁴. These are important considerations for the long-term sustainability of Scotland's rural communities. But the studies do not identify the benefits to land stewardship for the longer term benefit of society as a whole. Without a clear 'big picture' of what Scotland as a whole needs from its land and how this can be delivered, it is not possible to anticipate what impact the proposed reforms relating specifically to land ownership will have on wider benefits.

- 7 Indeed, if Scotland is ultimately to gain maximum social, economic and environmental benefit from its land, ownership cannot be the only instrument, as good stewardship of land is a fundamental consideration. Arguments for expanding community ownership, or for maintaining the *status quo*, should be assessed on the quality of stewardship but there is little objective evidence of this being significantly different under various types or models of ownership, with many examples of good and bad practice under all types.
- 8 The quality of stewardship and use of land is shaped to a much greater extent by regulation, policy, and support programmes, i.e. levers held by government, than by ownership. Again, the Land Use Strategy recognised this to some extent, and subsequent initial attempts to align drivers have been made⁵. However, the gap between stated land objectives and the direction in which drivers are pushing land use remains large. To make no acknowledgement of this, or of the need for a commitment by government to encourage good stewardship by all landowners, whether local communities, large landholders, public bodies, charities or others, would be a significantly missed opportunity.

1 *The Land of Scotland and the Common Good*, Final report of the Land Reform Review Group, May 2014, p16, <http://www.gov.scot/Resource/0045/00451597.pdf>

2 *Getting the best from our land: a land use strategy for Scotland*, Scottish Government, 2011, <http://www.gov.scot/Resource/Doc/345946/0115155.pdf>

3 *The Land of Scotland and the Common Good*, Final report of the Land Reform Review Group, May 2014, p235, <http://www.gov.scot/Resource/0045/00451597.pdf>

4 See, for example, *Community land ownership and community resilience*, Dr Sarah Skerratt for SAC, 2011 <http://www.communitylandscotland.org.uk/wp-content/uploads/2014/06/commlandownerfulllowres.pdf> and *Growing Community Assets – Final Evaluation Report*, Big Lottery Fund, 2013, https://www.biglotteryfund.org.uk/prog_growing_community_assets

5 *Getting the best from our land: a land use strategy for Scotland*, Progress Statement 2015, Scottish Government, 2015, <http://www.gov.scot/Resource/0047/00478779.pdf>

- 9 It is crucial, therefore, that the Land Reform (Scotland) Bill is explicitly considered within the context of the full range of policies and legislation that both impact on Scotland's land use and rely on the nation's land to deliver their objectives. This will include, for example, the Land Use Strategy (due to be renewed in 2016); the Common Agricultural Policy, including both how Scotland implements Pillar 2 payments and the Scottish Rural Development Programme; the recently passed Community Empowerment (Scotland) Bill; evolving climate change and energy policies; biodiversity programmes and goals; food and waste strategies; and environmental regulations.
- Communities and sustainable development**
- 10 We recognise that there have been and continue to be instances in Scotland where the actions of those who own or control land have been barriers to the constructive use of that land. We again, in principle, welcome the intentions behind the Bill to ensure that Scotland's land, as a limited and finite resource, is brought fully into use in order to deliver as much benefit as possible, both to local communities and to the Scottish people as a whole.
- 11 Our concerns stem from the lack of clarity over what is meant throughout the Bill by 'sustainable development' and by 'community'. Examples given in the accompanying Policy Memorandum, for example the release of land to the local community for affordable housing, indicate no consideration of the complexities and tensions between different aspects of development or different levels of community.
- 12 Scotland's land is expected to provide multiple goods and services. It may be capable of generating economic returns, but it also delivers a vast range of ecosystem services (as identified in paragraph 2) which are essential to the health and well-being of Scotland's people and natural capital. As such, there will always be competing demands on land, frequently resulting in the need to prioritise one outcome to the detriment of another, if the fundamental tenets of sustainable development are not followed.
- 13 Sustainable development must entail finding the most appropriate balance between its three components within the 'big picture' of land use in Scotland at national level. Indeed, land use, and therefore land reform, in Scotland must also be considered within an international context. The UN Sustainable Development Goals post-2015 are yet to be finalised, but current drafts identify land as a cornerstone for the delivery of an end to hunger, as well as achieving security of food supply, gender equality, the sustainable use of ecosystems and the reversal of biodiversity loss⁶.
- 14 Similarly, the goods and services identified do and will deliver benefits for Scotland's population as a whole. But the impacts on local communities of the range of land uses required to provide these national or international benefits will vary greatly. What is considered in the best interests of sustainable development for Scotland, may also deliver what the local (geographic) community considers to be in the best interests of its own needs and sustainability. But inevitably, there will be occasions on which interests do not align. These tensions will be difficult to manage, but must be recognised and considered if both local and wider communities are to benefit from Scotland's land.
- 15 For example, a significant amount of land in Scotland is owned by bodies with a charitable status focused primarily on conservation and biodiversity, such as the National Trust for Scotland, the Scottish Wildlife Trust, the John Muir Trust and the RSPB. Indeed, these bodies often own and manage land on behalf of their memberships (running in aggregate to hundreds of thousands of people in Scotland). The interests of these landowners and their communities of members may be vastly different to the interests of local communities with aspirations to gain control over renewable and other resources that are presently in the hands of external interests.

⁶ For more information or to view the draft UN Sustainable Development Goals post-2015, see <https://sustainabledevelopment.un.org/post2015>

- 16** We do not advocate that the interests of any particular community should be prioritised over another. Indeed, there are many examples of community ownership trusts working closely and constructively with environmental NGOs⁷. Merely, we use this point to emphasise that judgements on what constitutes the most appropriate form of sustainable development for communities will, in reality, often require complex and nuanced deliberation of competing elements of development and of the interests of more than one community with a stake in the land.
- 17** The Land (Reform) Scotland Bill would be strengthened if it made explicit recognition of this reality, with clarity on the frameworks to guide such decision-making and mechanisms through which conflicts may be resolved.

Part 1: Land Rights and Responsibilities Statement

- 18** Clear articulation of Scottish Ministers' objectives for land reform in such a way that provides guidance for policy-making is a positive step. The draft Land Rights and Responsibilities Statement (LRRS) sets out a welcome vision of land reform that "*promotes fairness and social justice, environmental sustainability and economic prosperity*"⁸.
- 19** The key issue will be one of providing guidance on the balance that should be found between these three potentially competing objectives. Ministers' objectives must be informed by thorough consideration of the range of objectives and interests of stakeholders across the sector; together with independent, impartial evidence on the evolving challenges facing Scotland's land, the impacts of policy decisions and the potential of different forms of land use.
- 20** Everyone with an interest in Scotland's land also has responsibilities towards it. A clear picture of the 'stakeholder landscape' for the sector, and of both the rights and mutual responsibilities of stakeholders, would strengthen understanding and appreciation of the role of all in delivering maximum good from Scotland's land.

Part 2: The Land Commission

- 21** The RSE endorses calls for the Land Commission to be established as an entity that is, both in legal terms and in actuality, entirely independent from government and from any political influence or vested interest. The appointment of a senior member of the legal profession as chair of the Commission may strengthen its independence.
- 22** If it is to be effective in enhancing land reform and land use in Scotland, the Land Commission should not be limited to responding to legislation, policy and "*any such matter as the Scottish Ministers refer to them*"⁹, but must also be able to pursue its own agenda and to proactively raise issues of concern with Government and with the people of Scotland as a whole.
- 23** Where the Commission is to respond to Government action, it must have access at an early stage of policy and legislation development and its voice must be given sufficient weight to have a real impact.
- 24** However, whether pursuing its own agenda or responding to that of Government, the Commission must have the appropriate skills and expertise to make effective, informed decisions about land use in Scotland. The absence of land management, ecosystem services and environmental research are key gaps in the list of desirable expertise of Commissioners set out in Section 9 (1)(a) of the Bill.

Part 3: Information about control of land etc.

- 25** Again, the RSE welcomes moves to enhance transparency on the ownership and control of land. Clarity is needed on what is meant by 'control' of land, and therefore the individuals to whom the provisions would apply.

⁷ For example, see Knoydart Foundation <http://www.knoydart-foundation.com/>; North Harris Trust <http://www.north-harris.org/>, Eigg Heritage Trust http://www.isleofeigg.net/eigg_heritage_trust.html

⁸ A Consultation on the Future of Land Reform in Scotland, Chapter 2: A Draft Land Rights and Responsibilities Statement, Scottish Government, December 2014, <http://www.gov.scot/Publications/2014/12/9659/4>

⁹ Land Reform (Scotland) Bill Part 2 Chapter 2 Section 20(2), p9

Part 4: Engaging communities in decisions relating to land

- 26** The principle of improved engagement with communities is commendable.
- 27** However, referring to earlier comments in paragraphs 10 – 17, we re-emphasise that ‘communities’ cannot be interpreted only as local geographic communities. There will frequently be a range of stakeholders with an interest in decisions relating to land, and who stand to gain or lose from changing land use.
- 28** This will encompass not only landowners and local people, but communities of interest (for example around commercial or residential development, conservation, farming, woodlands or recreation); and the wider public good (Scottish society as a whole, or even internationally).
- 29** With no recognition of the broader definition of community or guidance on reconciling the competing interests of different communities, the implementation of the Bill will potentially become hugely complex and the achievement of its objectives more difficult.
- 30** In addition, it is difficult to assess the potential impacts of these provisions without any detail on the process of engagement that will be set out in the proposed guidance.

Part 5: Right to buy land to further sustainable development

- 31** Our comments on the definitions of communities and sustainable development are of utmost importance to the provisions relating to the right to buy land to further sustainable development.
- 32** Decisions on what constitutes the best use of land must take into account all aspects of sustainable development (social equality, maintenance of ecosystem services and economic prosperity); and the interests of all relevant stakeholders. With no guidance on the framework to guide such decisions or the mechanisms for the resolution of conflicting interests, the provisions of the Bill are too open to multiple interpretations.

- 33** Issues of human rights and obligations have increasingly been brought into the debate on land reform, particularly around the right to buy land. We note the Scottish Human Rights Commission’s position that there is no ‘absolute right to property’ for landowners and no ‘absolute right to buy’ for communities or individuals. Rather, it advocates the use of “*a human rights framework to provide a non-political and non-partisan mechanism within which a fair balance is struck*” between property rights and the public interest¹⁰. This may be a useful starting point from which to address the concerns raised above.
- 34** We recommend that responsibility for decision-making in these cases would more appropriately sit with the Land Commission, with a relevant balance of expertise, than with Ministers.
- 35** In addition, clear articulation of the rights and responsibilities of those who will own/manage land under these provisions (see paragraphs 18 – 20) would strengthen the positive impact of this aspect of reform.

Part 6: Entry in valuation roll of shootings and deer forests

- 36** We see no justification, in principle, for the continuation of the exemption.
- 37** We understand that estate owners and managers in particular have raised concerns about the viability of businesses and the potential impact on local employment of the provision to remove the exclusion from valuation rolls of shootings and deer forests.
- 38** In order to assess the extent to which these concerns are based in reality, it would be possible to gather evidence on the likely impact of the move on the sector. A similar situation arose with the banning of hunting with hounds under the Wild Mammals Protection (Scotland) Act 2002.

Part 7: Common Good Land

- 39** The RSE makes no comment on the change of use of common good land.

¹⁰ Submission – Future of Land Reform in Scotland, The Scottish Human Rights Commission, February 2015, <http://www.scottishhumanrights.com/resources/policysubmissions/landreformsubmissionfebruary2015>

Part 8: Deer management

- 40** There is substantial evidence that high deer numbers in Scotland cause significant damage to Scotland's land and forests¹¹. Indeed, the impact of deer numbers on Scotland's natural heritage assets has been identified by some as one of the most pressing conservation issues in Scotland¹². This is not a recent issue, but has been long standing, as testified by statements and evidence from a number of bodies, including the Deer Commission Scotland and Scottish Natural Heritage, over many years, perhaps most recently under the Committee for Rural Affairs, Climate Change and Environment's own evidence sessions on deer management in 2013¹³.
- 41** The argument that the voluntary principle being operated through Deer Management Groups should be allowed to be further tested and later reviewed really does not stand rigorous scrutiny. The evidence over many years has shown that the voluntary principle operated through the Deer Management Groups has not resulted in a sustainable balance between the numbers of red deer on the open hill and the ability of the natural vegetation to regenerate and to provide the habitat for the many dependent species, including the red deer themselves.
- 42** While we recognise that a review of deer management, including recent efforts to add impetus to voluntary deer management plans, is ear-marked for late 2016, the RSE is of the opinion that the overwhelming independent evidence of the continued widespread need to better manage deer in the best interests of Scotland's land means that it would be prudent to include provisions for further action in this Bill. Not to do so would prolong the problems unnecessarily.

Part 9: Access rights (core paths)

- 43** The tidying up of implementation issues raised following the Land Reform (Scotland) Act 2003 is useful. However, the current Land Reform (Scotland) Bill offers an opportunity to go further. Access to core path networks continues to be limited by practical issues such as a lack of access points, the absence of public parking and inconsistent signage.
- 44** Overcoming these issues may not require provision within the Bill, but it provides a timely point at which to obtain commitment from access authorities to design core path networks that make sense for public use and are therefore truly accessible on the ground.

Section 10: Agricultural holdings

- 45** The RSE makes no comment on the provisions relating to agricultural holdings.

¹¹ For example, see Scoping the economic benefits and costs of wild deer and their management in Scotland, Putman, R., 2012, Scottish Natural Heritage Commissioned Report No.526, http://www.snh.org.uk/pdfs/publications/commissioned_reports/526.pdf

¹² For example, see Native Woodland Survey of Scotland, Forestry Commission Scotland, February 2014, [http://www.forestry.gov.uk/PDF/FCMS126.pdf/\\$FILE/FCMS126.pdf](http://www.forestry.gov.uk/PDF/FCMS126.pdf/$FILE/FCMS126.pdf); and submission to the Rural Affairs, Climate Change Committee by Scottish Environment Link RACCE Committee, October 2013, <http://www.scotlink.org/files/policy/ConsultationResponses/LINKDeerTFEvidenceOct13.pdf>

¹³ All evidence submitted can be viewed at <http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/72729.aspx>

Additional Information

Advice papers are produced on behalf of RSE Council by an appropriately diverse working group in whose expertise and judgement the Council has confidence. This advice paper has been signed off by the RSE General Secretary on behalf of RSE Council.

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