

SCOTTISH LAND REFORM CONSULTATION: RESPONSE FROM ROGER CROFTS

The consultation misses the major point of public policy: how the land is managed to achieve sustainability of its natural assets and provide public benefit over generations.

Ownership is not the critical issue. The consultation provides no evidence that one type of land ownership is more beneficial to securing all aspects of sustainable development than any other. Furthermore, it does not provide any definitive evidence that community ownership of land is better to achieve public benefits than private or other forms of ownership. Public, private, charitable and community owners all have examples of good, poor and inadequate management practices.

Many good examples spring to mind. The Borders Forest Trust at Carrifran has brought previously overgrazed and undermanaged land to improved ecological health. The inter-generational stewardship by the Buccleuch's has resulted in well-managed forestry of native and non-native species which is an exemplar of good arboriculture, alongside protection of ancient oaks. RSPB at Forsinard has been successfully retrieving the gross mistakes made by previous private institutional owners under previous government forestry grant schemes aimed at planting non-native species without any recognition of the international significance of the carbon-rich habitats and the internationally protected bird breeding areas. SWT at its raised mire reserves in central Scotland and SNH at its Flanders Moss reserve in Stirlingshire and its Moine Mhor reserve in Knapdale have demonstrated successful re-wetting of previously drained mire habitats that are of European nature protection priority. Community ownership through the Abriachan Forest Trust in Lochaber has resulted in improved management of the woodlands and the creation of jobs for the local community. Crofting tenure in the Lewis peatlands has resulted in the peatland habitat for breeding birds being effectively managed in a partnership with SNH, as well as allowing supplies of peat for domestic fuel use. Forestry Commission Scotland in the Galloway Forest Park has undertaken significant restructuring to give the landscape a more natural look and to allow wetland areas to become re-established as part of the core area of the UNESCO Biosphere of Galloway and Southern Ayrshire. These changes have made the tourist track through the forest a highlight for visitors and local residents. Successive Danish owners of Glenfeshie estate have adopted an ecologically-based approach to retrieving the estate from generations of overgrazing by deer. The private owner of the Alladale estate in Easter Ross has begun the implementation of a re-wilding and native fauna re-introduction programme. There are many farmers who forsake 'wall-to-wall' production. They maintain A-shaped hedges which benefit stock from wind, provide habitat for birds and improve the look of the landscape. And, there are many farmers who also have wide field margins to benefit access, to benefit ground-nesting birds, and to benefit predators on crop pests and to reduce the speed and amount of run-off from fields into water courses.

These examples demonstrate two key points. First, that it is not the type of ownership which provides the most effective stewardship of the natural resource of the land and the refocusing of management to overcome past mistakes. Rather, it is the mentality and the objectives of the owning body, be they private owner, institutional owner, public body, environmental charity or local community; and it is irrespective of the length of ownership or the nationality of the owners. Second, that these exemplary practices are undertaken largely without any financial incentives or imposition of compulsory codes or regulations, although some of these exist. As a result, it indicates the major gap in the system that there are no codes or financial

incentives to persuade others that they should be better stewards of the land resources of Scotland.

Nevertheless, these examples should not blind us to the many examples of poor stewardship which, given the importance of land as a natural and societal resource, should be regarded as unacceptable. There are many specific examples that can be seen travelling around Scotland and I shall quote, generically, the main ones I have observed in recent years.

For example, on farmland, and despite the examples being developed through the Monitor Farms Programme, there is still uprooting of hedgerows in arable areas, ploughing right to the edge of the field leaving no margin, and ploughing downhill causing soil and nutrient loss.

On many upland estates, there are still too many deer for the carrying capacity of the habitat, with hinds not culled sufficiently for fear of loss of stags despite the conclusive research which proves otherwise. The situation on deer management is made worse by the legislation and the organisations that over the years have been responsible for its implementation both formally, such as the Deer Commission, and informally principally the Deer Management Groups, proving incapable of addressing this long standing issue.

For example, there remain the consequences of overgrazing by sheep because of the previous CAP headage payment regime and the high costs of labour resulting in under-management of flocks over wide areas of the uplands.

Similarly, sporting estates are fixed on muir burn to maintain habitat for sporting birds, but do not always do this competently by abiding by the codes of good moorland management. Worse still is the continuing illegal persecution of raptors despite the progressive changes in the law in 2012.

No one should be able to avoid the conclusion, therefore, that it is not who owns the land that counts most, it is how it is managed and what responsibilities, including the set of sticks and carrots, are provided that will make the difference. That is what the Scottish Government should be addressing as the focus of land reform, not ownership.

The approach I argue for is all the more necessary because of the environmentally retrogressive nature of the revised EU CAP. It and the SRDP should be the instruments for stimulating, indeed ensuring, good stewardship of the land resource. But, this is most unlikely to occur because the CAP remains fundamentally flawed by focusing on subsidy to the most profitable farms in the east and north east of Scotland and largely ignores the land in the LFA. The concentration of resources under Pillar 1 is a grave mistake if the Scottish Government is seeking to achieve its ambitions for public goods derived from the use and management of land. In addition, the likely diminution in the environmental best practice of the GAEC, as a result of the European Parliament decisions, makes it all the more necessary for the Scottish Government to take a different approach in line with its support for defending our natural capital and espousing the cause of sustainability.

We must not go too far in placing obligations on the land owners and managers. So, I do not consider that land should be subject to the town and country planning system. Neither do I consider that all land under productive use for food and fibre of whatever sort should be reclassified as agricultural land. Such approaches would be retrogressive and not meet the

legitimate concerns that are articulated in this paper, and shared by others, of improving the stewardship of our land.

What I propose is a wide-ranging duty on all owners of land, and those who manage it on their behalf, to deliver good stewardship of the land and water resources with a requirement for a statutory code of good land stewardship. There is a precedent for a statutory basis with the enactment of the biodiversity duty in the Nature Conservation (Scotland) Act 2004, although this only applied to public bodies and was far too narrow in its approach. What is needed is a statutory duty of care to be placed on all owners and managers of land, agricultural, sporting and amenity, to good stewardship: this means caring for the productive capacity, the natural values and natural capital and all of the public goods and services which the land provides.

My recommendation to the Scottish Government and the Scottish Parliament is that, in considering the next stage in land reform in Scotland, forget who owns the land but make sure that it is managed in an exemplary manner for its own sake as part of the natural capital of Scotland and for the benefit of present and future generations. To achieve this, two fundamental clauses are needed in the legislation:

1. a statutory duty of care on all owners and managers of land for the natural values of the land and its long term productive capacity; and
2. a statutory duty to draw up and implement a code of good land stewardship led by the government and informed by land owning and managing interests in the statutory and representational sectors.

This proposal would, if implemented, significantly improve transparency by placing statutory obligation to deliver on owners. It would improve environmental sustainability through implementation of the code of practice. And it would provide for the first time a balance between owner's rights and their public responsibilities. It would therefore provide greater public benefits than at present and support 'the public good'.

In addition, there should be two major policy changes by the Scottish Government related to secure the safeguarding of land resources and stimulate their long-term beneficial use. First, the best agricultural land should be formally safeguarded from built development. It is disgraceful that a former Minister for the Environment and Rural Affairs ignored the advice of the vast majority consultees that the formal safeguarding of the best quality agriculture should continue. This is a vitally important and irreplaceable natural and societal resource for food production and it should be formally safeguarded rather than it continuing to be transferred to built development under the town and country planning system without any consideration of the consequences for the nation.

Second, there should be changes to the way the CAP is implemented in Scotland to ensure that compliance with an updated and strengthened code of practice is made compulsory on all who receive subsidy and support under any CAP measures.

Response to specific consultation Questions

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

Yes as the public responsibilities of owners are not evident and therefore there is no formal agreement that the land, however it is held, is not just a private asset but also a public good.

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?

1. Put in legislation a statutory provision of good environmental stewardship
2. Put in legislation the provision for drawing up, implementing and asking parliament to periodically review performance on a statutory code of good environmental practice
3. Develop measures for ensuring that the code is adhered to

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?

No, I do not think this is necessary. It should be the responsibility of the relevant committee of the Scottish Parliament to keep matters under review and to call the government to account if necessary action is not taken.

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

It would be a disadvantage to have another standing committee.

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 it would as there is currently no single validated source and no independent verification of the accuracy of information which has often been collected for a particular purpose.

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?

This is misguided as there are often problems with other than private owners in achieving environmental sustainability and social justice in the use and management of land. Therefore this power should not just be directed at the private owner but at all owners of land, including the public sector which has a large land holding as the consultation paper acknowledges.

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?

Most definitely as the single issue management objectives of many of these bodies has been detrimental to the natural environment and to communities.

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?

Having been a charity trustee of land holding bodies this is not quite the right approach. Too many of these bodies do not have any local liaison or governance committees for individual land holding. This is out of step with best international practice where multi-faceted governance arrangements are often in place, especially for the management of high nature value sites. So any statutory provision should place a duty on the charity to establish and effectively use management liaison bodies for their landholdings. If this were done then the consultation proposals would not be necessary as those proposed here would be much more effective.

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 certainly but this is too cautious in the light of the long-standing knowledge of poor management of the deer range habitat in the uplands and the failure of the voluntary process through the Deer Management Groups to address this. Work by SNH has shown that in some areas the overgrazing and habitat damage is at such a high level that action needs to be taken to reduce deer numbers. So we need new arrangements to be put in place now.

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

Deer would be in an ecological balance with their habitat and also aid the protection of nationally and internationally important species and habitats.

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

None, although private owners of sporting estates will presumably object.

No comments on Qs 2, 6-10, 12, 13, 15, 16, 18, 19, 21-34, 38-45