**Annex D**

Consultation Questions & Respondent Information Form



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

RESPONDENT INFORMATION FORM

Please Note this form **must** be returned with your response to ensure that we handle your response appropriately

***1. Name/Organisation***

**Organisation Name**

|  |
| --- |
| Scottish Wild Land Group |

**Title**  **Mr x Ms [ ]  Mrs [ ]  Miss [ ]  Dr [ ]   *Please tick as appropriate***

**Surname**

|  |
| --- |
| Milne |

**Forename**

|  |
| --- |
| John |

***2. Postal Address***

|  |
| --- |
| 8 Cleveden Road |
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|       |
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***3. Permissions* - I am responding as…**

|  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- |
|  |  |  | **Individual** | **/** | **Group/Organisation** |  |  |  |
|  |  |  | *[ ]*  |  | ***Please tick as appropriate*** |  | *x* |  |  |  |
|  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
| **(a)** | Do you agree to your response being made available to the public (in Scottish Government library and/or on the Scottish Government web site)?***Please tick as appropriate [ ]* Yes *[ ]*  No** |  | **(c)** | The name and address of your organisation ***will be*** made available to the public (in the Scottish Government library and/or on the Scottish Government web site). |
| **(b)** | Where confidentiality is not requested, we will make your responses available to the public on the following basis |  |  | Are you content for your ***response*** to be made available? |
|  | ***Please tick ONE of the following boxes*** |  |  | ***Please tick as appropriate*** ***x*Yes *[ ]* No** |
|  | Yes, make my response, name and address all available | *[ ]*  |  |  |  |  |
|  |  | ***or*** |  |  |  |  |
|  | Yes, make my response available, but not my name and address | *[ ]*  |  |  |  |  |
|  |  | ***or*** |  |  |  |  |
|  | Yes, make my response and name available, but not my address | *[ ]*  |  |  |  |  |
|  |  |  |  |  |  |  |
| **(d)** | We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?***Please tick as appropriate x*Yes *[ ]* No** |

**Q 1. Do you agree that the Scottish Government should have a stated Land**

**Rights and Responsibilities Policy?**

We certainly agree that the Government should have a stated policy concerning land use and ownership. In fact, we believe that the Government should take areas of wild land into public ownership (see below). However, we are concerned by the potential vagueness of this policy. In particular, it would be essential that it accurately and completely described the full range of land rights and responsibilities, especially concerning societal/common interests in land management and ownership, and didn’t place undue weight on development, economic benefits or the interests of particular groups. We would also argue that the most important of these ‘rights and responsibilities’ should be adopted in law, and others must be consistent with Scottish, English and EU law.

**Q 2. Do you have any comments on the draft Land Rights and**

**Responsibilities Policy?**

We are concerned about the idea of land management for ‘public benefit’ being encouraged or required, especially given the track record of successive governments in interpreting ‘benefit’ only in narrow economic terms. We note that many of the benefits that people derive from land are not easily or directly measurable in economic or, perhaps, any other terms, but these should certainly not be neglected. Scotland’s landscapes, for instance, are a fundamental part of national identity and provide a wide range of essential and desirable ecosystem services, including mental and physical health benefits. Any attempt to measure all of these and so calculate ‘public benefit’ would be extremely difficult, and likely to drive land use change towards those benefits for which simple metrics exist (such as economic benefit, again). We believe that the phrase ‘in the public interest’ is preferable, as it does not lend itself so easily to misinterpretation.

We are also concerned that the draft policy leaves no room for a lack of management. Historically, much of Scotland’s land was effectively unmanaged and, indeed, un-owned (in the modern sense), and it is still the least managed areas that often produce some of the most substantial public benefits (including economic benefits derived from tourism etc.). A requirement that land should be managed for public benefit would therefore be doubly damaging, preventing land from being entirely unmanaged for environmental or other purposes, and instead forcing some form of management to be implemented with potentially inferior outcomes.

We strongly agree that land ownership information should be freely available.

We believe that public ownership is inherently and clearly preferable to community ownership for ensuring that the public interest is respected and satisfied. By its very nature, community ownership involves the prioritisation of the interests of people located close to an area of land; interests that may differ greatly from, or even be opposed to, the interests of the wider community. Further, in many remote areas of Scotland it makes little sense to speak of a local community, and even less sense to suggest that the management of large areas that are of national and international significance should be largely determined by a few people currently living close to those areas.

We are very uneasy about the proposed condition that land should be used to ‘contribute to building a fairer society in Scotland and promoting environmental sustainability, economic prosperity and social justice’. As a national-level aspiration this is a reasonable, if rather platitudinous, statement, but at the scale of individual land holdings it is effectively meaningless, and could allow any form of management to be imposed on the grounds that it contributes to one or more of these vague, undefined and potentially contradictory objectives. If the Government has a clear idea about how land can be used to contribute to some definite form of social justice, economic prosperity or environmental sustainability, then perhaps this could be used in the policy statement instead. Consultees would then be able to make informed comments on the draft policy.

**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?**

Take more land into public ownership for conservation purposes. As in other countries, publicly-owned National Parks should be established.

Monitoring stewardship to ensure that it is appropriate for the location (including geological, environmental, social and other characteristics), especially in the case of community ownership

Introduce land value taxation, with a reduction or waiver for democratically-run charities which provide conservation services.

**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?**

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

**Land Reform Commission?**

The remit must include ensuring that there is good stewardship of the land and that its use is sustainable and ecologically sound in all cases.

The Commission must also include an environmental remit which, in part, ensures that the Government’s stated policies on wild land (see e.g. NPF3) are fulfilled.

**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?**

Yes. It is crucial in a modern democracy that secretive companies registered overseas cannot be used to conceal true ownership of large areas of the country.

**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?**

We agree, although we note that this is not, in itself, sufficient (scope would still remain for secretive ownership in other parts of Europe, for instance). We believe that transparency in land ownership is the main objective.

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

**would be?**

**Q. 10. How should any restriction operate and be enforced, and what**

**consequences might follow if the restriction is breached?**

The existence of the suggested restriction would imply that other forms of entity cannot own land in Scotland. In the case where some other, non-permitted entity is found to own land, an immediate requirement for proper registration should exist, and, if this requirement is not satisfied, the land should revert to government 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?**

Not necessarily, but we believe it is a good idea in any case.

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

**to access?**

We do not hold any relevant data, but would access data on land ownership, use and future plans, if available. We currently use the ‘Who Owns Scotland’ online resource, which is necessarily incomplete. This information should be in the public domain.

**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 would be most valuable as a statement of the Government’s recognition of land as a common resource, subject to legitimate societal interests in its ownership and use. Information should be freely publicly available online and at specified locations.

**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?**

We think that ‘sustainable development’ is an excessively vague term here, and do not believe powers should be defined in these terms. If implemented, such a measure would effectively allow future governments to compel landowners to do anything at all, as long as the government described it as ‘sustainable development’ (we note the current Government’s erroneous conflation of sustainable development, sustained development, and ‘sustainable economic growth’).

If implemented, such powers would be more appropriately defined in terms of environmental protection or enhancement than development. There would also need to be powers to require owners to do nothing on their land – i.e. to keep it wild – especially in core wild land areas.

**Q. 15. What do you think the benefits would be and do you have any**

**recommendations about how these can best be achieved?**

It is not clear what any benefits might me, and the risks of damage caused by such a poorly-planned power are too great.

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

**aim?**

We do not believe that legislation is required to encourage development of land. If sustainability is the aim, stronger environmental protections are crucial, but these can be applied through existing planning and legal systems, provided there is full implementation of these. Grants also represent a proven method of achieving desired land use outcomes.

**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?**

We do not see the need for the Forestry Commission to engage in a wider range of management activities, when those it practices are able to generate social, economic and environmental benefits. Given this, it is difficult to respond to a question posed in such general terms but, to try and be specific, we believe that management activities to promote recreation, environmental health and conservation, community ownership, and wood lot rentals are, overall, acceptable, but that management directed to industrial development would be inappropriate. Any management that damages wild land qualities of core areas of wild land should not be permitted.

**Q. 18. What do you think the benefits would be and do you have any**

**recommendations about how this can best be achieved?**

We are unsure of what benefits are expected, but we do not know of any.

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

**aim?**

We find the aim very unclear, and so we are unable to suggest alternatives.

**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?**

The terms of engagement are crucial here, but we tend to think not. Certainly in the case of charities with democratic structures, a requirement to *consult* local communities is appropriate, with tougher restrictions on charities with non-democratic structures. We also think that engagement of all landowners with wider communities of interest is to be encouraged. This should certainly also apply to local communities that receive public support for purchasing land, and other landowners who receive very substantial support from public money.

Nevertheless, we are concerned that undue weight should not be given to the views of a particular group when land is under charitable ownership. Introducing a compulsion for democratic charities to take account of community views would tend to encourage development that may be contrary to the charities’ aims and also to the interests of the wider community. This is especially worrying given that landowning charities are responsible for most of the practical conservation programmes in Scotland, at their own expense and in the wider public interest, delivering huge environmental, social and economic benefits to society at large. In the absence of more widespread public ownership for environmental protection, the work of such charities should not be undermined in the interests of a very small sub-group of the population.

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

Again, the results depend entirely on details that are not specified here. On one hand ‘engagement’ should have the benefit of making communities feel more engaged, but on the other hand it may generate anger when views are engaged with but subsequently rejected. It may also lead to views that are currently not heard being taken into account. However, the disadvantages are clearer: the potential for undermining the important work of conservation charities managing land in the public interest, and a likely failure to give due weight to the interests of people and groups who do not happen to live nearby.

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

Community should not be defined geographically. Local communities do, of course, have very substantial and legitimate interests in the management of land near to them but very much larger communities of interest exist nationally and beyond, and undue weight should not be given to the view of any. For example, the tendency of local communities will be to develop land in their own area for economic benefit, while a strong national interest exists in some areas not being developed for environmental or other reasons. In many of these areas (e.g. Core Areas of Wild Land), no community can be meaningfully identified as ‘local’, while the areas are important to much of society in general. We would therefore suggest that it is unclear whether ‘community’ is a useful word to use, in this context.

**Q. 23. What remedies should be available should a trustee of a charity fail to**

**engage appropriately with the local community?**

It is impossible to answer this question properly without knowing what ‘engage appropriately’ mean. As in our answer to question 20, we believe that non-democratic charities should be subject to more rigorous requirements than democratic charities, but still feel that engagement should not be enforced for one type of landowning body, and that the views of local communities should not be promoted above those of the wider community or the landowning body. It is particularly important to distinguish engagement from submission – it may be argued that charities should engage with the views of a community, but certainly not that they should submit to them.

**Q. 24. Should the current business rate exemptions for shootings and deer**

**forests be ended?**

We believe so, as a basic matter of fairness, to bring these into line with other forms of rural business. The exemptions are relatively recent and there is nothing to suggest that businesses subject to them would suffer significantly if they were removed. Nevertheless, we have practical concerns about the effects on landowning charities and others where these activities are not undertaken as a traditional business. We are therefore unable to give a definite answer in the absence of more details.

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

To encourage diversification of land ownership and management, and to prevent the artificial advancement of certain forms of land management.

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

Depending on the implementation, the measure may jeopardise the ability of landowning charities to subsidise their (loss-making) conservation work with income from these activities.

**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?**

No. Common good should be retained, not disposed of, and a court order should certainly be required if it is.

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

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

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

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

**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 proposed Land Reform Bill?**

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

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

**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 – the need for this is clear. Whatever form of management is/is not required, it must be possible to ensure it in a far more robust way than is currently possible. In particular, SNH should be able to enforce culls where necessary, without fear of legal challenge.

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

It would allow effective public oversight and coordinated deer management in the interests of ecosystem health.

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

None

**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?**

Any further consultation should be limited in scope and precisely targeted. This would be required in the interests of democracy but there must also be a decision making process drawn up, in order to finalise matters and move forwards. What is needed is a requirement for all Local Authorities to have at least one access officer in place, as not all LAs do and some of those in post are only part time. In some LAs access matters are even dealt with by a member of staff who may not have any relevant knowledge or expertise in this area as an addition to their main job, which might be quite unrelated. Without trained and qualified access officers in post at an appropriate level to give sufficient capacity to do the work then there would be nobody to carry out this CPP consultation, so this wouldn’t be deliverable in a large part of Scotland. LA access authorities should be expected to fully implement and fund the Land Reform [Scotland] Act 2003 in these areas. At the moment there are several long standing access problems in Scotland where local authorities have not honoured their responsibilities in addressing them. There is a reluctance to do so as in situations where negotiations have failed [and in those LAs with no dedicated access officer there may well be no-one else able to do this effectively] application to the courts is seen as a last resort and too costly. Hence these unsatisfactory situations persist and cause constant frustration for those who wish to exercise their access rights responsibly.

**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?**

Possibly, but some route must be maintained should disputes arise.

**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 do not feel that the process is necessarily onerous as it stands, and suggest that it is left as it is. In some LAs this process is handled quite efficiently, with democratic public engagement - there are examples of good practice.

**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.**

**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?**

**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.**

**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.**

We suggest that individual privacy should not extend to the secret ownership of large areas of a common resource such as land (and note that it does not extend even to house ownership).

**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.**

Many of the proposals appear designed or destined to encourage development of land for economic gain. The potential for environmental damage is great, as is the associated potential for net economic losses. Much of the Highland landscape has always been wild, undeveloped land. This wildness has helped shape the psyche of the people of Scotland who hold strongly to the concept of the wild Highlands, even if living in the Central Belt. Hence any approach to land ownership or management which always puts the onus on development of land will, in the long term, be detrimental both to the people of Scotland and the perception of Scotland abroad. Any new legislation must allow for wildness to continue to be a characteristic that is cherished – and still exists in reality(as promoted in government current planning policy). Excessive development would also run contrary to the Government’s own stated policies on, for example, wild land protection, mental and physical wellbeing, and so on. We believe strongly that any attempt to regulate land management and ownership must carefully take account of the range of benefits, interests and values found in the land resource.

**Other necessary considerations not currently covered by this consultation**

The consultation fails to take into account some matters that we would have thought are relevant to the ways in which land is used. It could be considered that these are quite glaring omissions. These would include

**The European Landscape Convention**: The UK has signed up to this and this current document should indicate how Scotland is planning to support and implement the Convention, which applies to both urban and rural landscapes.

**Scottish Biodiversity Strategy:** Maintaining and enhancing Biodiveristy is crucial to a healthy, well-managed environment. The aims of the Strategy and commitment to its delivery should feature in this consultation. In this context it would be appropriate to also consider the role of Protected Areas [we are aware that these are the subject of consultation].

**European Directives:** There should be consideration of the implications for land reform of the Water Framework Directive, which requires delivery via River Basin Management Plans. In addition the Birds and Habitats Directives have further land reform and use implications.