

Scottish Land & Estates is a membership 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.

We welcome the opportunity to respond to this consultation.

General comments.

Firstly, we would like to state that Scottish Land & Estates agrees in principle with having a Land Rights and Responsibilities Statement (LRRS). In 2014, the organisation introduced a Landowner's Commitment which sets out the basic principles of responsible modern land ownership and land management. We believe that the principles contained within the commitment align with the Land Rights & Responsibilities Statement (LRRS). Unfortunately, many others in the land reform debate sought to focus solely on the rights aspect of the debate – and mistakenly claimed that landowners were solely focused on defending property rights. The future application of the LRRS must resist the calls to focus on rights for only certain groups rather than both rights and responsibilities for all of society.

We believe that the commitment and our initial response to the Land Reform Review Group were clear examples of the culture change referred to in the Ministerial Foreword to the consultation. We hope that this culture change is also reciprocated in terms of recognition of the positive contribution made by the private sector.

In our Stage 1 evidence on the Land Reform Bill we stated that 'the LRRS must be balanced, so as not to place an unfair burden on one group of society and to ensure that both rights and responsibilities for all are included within the statement. Whilst the statement will be broad, the terminology used must be clear and meaningful.' We remain of this view and believe that amendments are required to achieve this balance, and have detailed these within our response. We would question if the terminology is indeed clear and meaningful with some phrases being ambiguous rather than simply broad or high level. Again, we make specific reference to this within our response.

Although the legislation provides for a 5 year review period, we would contend that the guiding principles of the statement should have longevity to ensure stability and allow businesses and communities to make long term plans within the land rights and responsibilities framework.

We are aware that questions have been raised regarding the status of the Land Rights & Responsibilities Statement. It is critical that the Scottish Government is clear and consistent

in relation to this – both to prevent unrealistic expectations and unwarranted dismissal. It is not meaningless but nor does it set out a statutory duty which can result in sanctions for non-compliance.

Question 1:

Have we captured the range of policy areas to which you think the land rights and responsibilities statement should be relevant?

We have always stated that the statement should not be viewed in isolation, as detailed in this section of the consultation it must complement or align with strategic documents such as the Land Use Strategy and National Planning Framework. The LRRS has a valuable role to play in pulling together the many and varied land use related policies and outcomes.

The value of the LRRS is increased through pulling all of these disparate outcomes together into a more joined up delivery framework. We would like more information on how this will be achieved in practice.

In terms of specific policy areas, we would like planning to be explicitly referred to in the diagram on page 12, although appreciate that it is referred to in the table on page 13.

Question 2:

a) Do you agree with the Scottish Government's proposed "human rights based approach" to the Land Rights and Responsibilities Statement?

Not entirely.

Whilst we do agree that the LRRS should be based on the values set out by the Scottish Human Rights Commission, we do feel that describing the LRRS as having a human rights based approach could perhaps be viewed by some as a shift in focus from land to people. The description on page 16 of how the human rights based approach adds to the 'conversations around land, and recognising it as an economic, social and cultural asset' may be understood by policy makers but is it easily understood by wider society? To achieve the culture change sought, the LRRS and the Scottish Government's approach to it must be as easily understood as possible.

The human rights approach used must be relevant to modern day Scotland and we would not wish to see the rigid application of human rights approaches developed for other countries at different developmental or societal stages. Whilst approaches can of course be shared on a global basis, application must be based on Scottish circumstances. We are therefore pleased to note that the consultation document states that national implementation of the Voluntary Guidelines on the Responsible Governance of Tenure will be guided by national circumstances.

Our final comment is that Chapter 3 is entitled a fair balance of rights and responsibilities, yet the responsibilities aspect such as the Outdoor Access code or other guidelines on how

to exercise rights responsibly are omitted from this section. We would like the approach to the statement to have greater consideration to the responsible exercising of rights. In recent times we have seen an increase in sheep worrying, flytipping, rural thefts and poaching and hare coursing. We are happy to provide the Scottish Government with specific examples of these – and would identify Midlothian as a particular hotspot. Little regard appears to be given to the rights of the landmanager to responsibly operate their business free from the detrimental interference of irresponsible access takers, or indeed those seeking to make commercial gain from other people's land. We would ask that the Scottish Government is clearer setting out how the LRRS will assist in addressing these problems – which have serious environmental and economic consequences.

We feel that the focus on A1P1 of the European Convention on Human Rights often means that other elements are overlooked, and indeed used as a basis for some to seek the application of other voluntary guidelines.

We would like to see this approach ensure that no 3rd party should be allowed to seek economic benefit or jeopardise the economic benefits of the land management without prior agreement of the owner or occupier. Again, we have specific examples which we can provide such as the creation without permission of mountain bike obstacles which have resulted in costs to the landowner in terms of removal and may even place a liability on the landowner.

Page 15 refers to responsible investment – whilst we have no issue with this concept, and indeed actively advocate responsible investment, we would like to highlight that confidence in land as an investment requires a stable political environment and anything which impacts upon the fragility of that confidence has the potential to put off investors, whether local or from abroad. The consequent economic impacts of a change in approach can be unpredictable, and rigorous impact assessments must be carried out prior to the implementation of changes in policy. To date, this has not been a particular strongpoint of the Scottish Government's approach.

b) Please give any further thoughts on the best way to ensure that the Statement is based on human rights or gives full consideration to human rights.

Question 3:

Do you agree with the Vision of the Land Rights and Responsibilities Statement?

In general, yes

Please provide comments:

Our long held position on land reform is that it is about finding a mix of rights and responsibilities which will facilitate the development of a healthy society and a healthy environment. We therefore agree with the sentiment expressed in the LRRS vision.

We believe that the outcome being sought is not simply the promotion of the rights but what those rights can then deliver. We would therefore suggest that the second part of the vision should be amended to state that 'A fair, inclusive and productive system of land rights and responsibilities should deliver greater public benefit and promote economic, social and cultural wellbeing'

Question 4:

Do you agree with Principle 1 of the Land Rights and Responsibilities Statement?

Not entirely.

Please provide comments:

We suggest that the principle should be amended to state that 'The overall framework of land rights, responsibilities and associated public policies governing the ownership, management and use of land, should contribute to delivering environmental sustainability, economic prosperity, community resilience and social justice.' The phrase fairer society is encompassed in social justice and is in our view not required. The notion of fairness by itself can be used to provide benefit to one party over another, and what appears fair from one perspective may not from another. We have added in community resilience as we believe this should be explicitly stated as a key outcome of the application of the LRSS.

Question 5:

Do you agree with Principle 2 of the Land Rights and Responsibilities Statement?

Not entirely

Please provide comments:

Given our comments on previous drafts of the LRRS we are pleased to see the addition of tenure to this principle in recognition that property rights are much more varied than just ownership. However, we do still remain of the view that calls for more diverse ownership are not based on evidence that increased diversity of ownership is necessary to deliver the outcomes referred to in Principle 1. We would point to the Scottish Government's own research to support this. We would therefore like to see this principle changed to refer to an increase in access to land and assets to assist in the delivery of national and local aspirations and need. This could of course involve ownership but would also cover the many diverse ways in which land and properties are utilised to deliver public benefits without a change in ownership or tenure.

Question 6:

Do you agree with Principle 3 of the Land Rights and Responsibilities Statement?

No

Please provide comments:

We believe that Principle 3 is simply a specific element of Principle 2 and is not required. If the Scottish Government does wish to include it then it should be widened to include lease, manage and use land rather than being limited to ownership.

Question 7:

Do you agree with Principle 4 of the Land Rights and Responsibilities Statement?

Yes

Please provide comments:

We are pleased to see that this principle explicitly refers to high standards by all those who have a relationship with land – including those who use it as well as those who own or manage it. This principle aligns with the Responsible element of our Landowners' Commitment, and we are fully supportive of a principle of good stewardship.

There may be queries regarding what high standards means – this should in our view reflect legislative requirements, industry/sectoral standards and good practice.

Question 8:

Do you agree with Principle 5 of the Land Rights and Responsibilities Statement?

We agree with the principle but not the wording

Please provide comments:

We believe that this principle should make direct reference to increase in the transparency of ownership. The wording as drafted is too blunt

Question 9:

Do you agree with Principle 6 of the Land Rights and Responsibilities Statement?

Not as currently drafted

Please provide comments:

Whilst we support an increase in effective community engagement in principle, there is no requirement to have wide community engagement on any (i.e each and every) decision about land and the LRRS should not seek to introduce this as a principle.

We do not feel that the wording reflects the Scottish Government's position on community engagement and should be amended to reflect the sentiment which will be contained in the forthcoming community engagement guidance.

The original draft LRRS contained the wording 'There should be wide public engagement in decisions relating to the development and implementation of land rights in Scotland, to ensure that wider public interest is protected.' We would question why we have moved from engagement on land rights to a principle on land decisions. If this principle is indeed about high level decisions relating to land then the wording should be amended to reflect this, as it stands it is likely to result in unrealistic expectations from those who wish to have a say in decisions relating to pieces of land, and an unfair burden on owners and managers of land.

Question 10:

We would like to hear real life stories about the relationship between Scotland's land and people. Please provide any case studies which you feel illustrate the vision or principles.

We believe that a number of the case studies developed for our Helping it Happen Initiative illustrate both the vision and our own Landowners' Commitment. These includes examples as diverse as the Queensberry Initiative which has undoubtedly delivered a new relationship between young people and the land and the Scrib Tree where the local estate has provided

premises for a local business to thrive. We would invite the Scottish Government to review all the case studies at www.helpingithappen.co.uk

Question 11:

Do you have any further comments?

We would reiterate that a great deal of work is likely to be required to communicate the LRRS and its principles to the general public. There is very little value in the LRRS if knowledge about its existence is limited to policy makers, public agencies and the 'usual' stakeholders. The case studies referred to above will help to bring the LRRS to life and illustrate how it can be delivered in practice.