

Written evidence from Scottish Land & Estates

Scottish Land & Estates represents land owners, landmanagers and rural businesses across Scotland with wide ranging interests including agriculture, forestry, housing, moorland management and tourism provision. We welcome the opportunity to comment on the Land Reform Review Group (LRRG). Like the Scottish Government, and others we will be taking time to consider all the recommendations contained within the report. However, we would wish to make the following initial comments.

General Comments

Scottish Land & Estates and its membership are committed to playing a key role in a successful Scotland and views rural landowners and rural businesses as delivery partners for achieving many of the Scottish Government's aspirations. We are supporters of community ownership as a means of delivering rural development and other benefits rather than as an end in itself, but firmly believe that these benefits can also be delivered by the private sector. Community and private should not be viewed as opposite ends of the spectrum. We believe responsible use of land – whether in public, private or community ownership – should be the determining factor in the policy landscape.

Lack of Vision

Scottish Land & Estates believes that one of the major weaknesses in the LRRG report is a lack of a vision for what a successful Scotland looks like and specifically what our vision is for rural Scotland.

Ironically this same lack of vision has been highlighted this week within Scottish Government policy in general by the SRUC Rural Scotland in Focus 2014 report. The report states there is currently no agreed vision as to what Scottish countryside is for, and that the lack of such a vision can hamper developments of potential benefit to communities and the environment in rural areas. The report suggests that an overarching vision and strategy for rural Scotland must be developed, based on 10 underpinning principles: Comprehensive; strategic; appropriate; significant; integrative; collaborative; people-centred; holistic; dynamic and innovative.

The report also highlights the importance of diversified portfolios of employment to ensure that downturn in a single sector does not have significant adverse impacts on the economic prospects of the area. The recent Rural Solutions/SRUC research into the Economic Contribution of Estates found that their business activities are extremely varied, with estates in the sample being involved in 20 different activities. This underlines the contribution made to an area's resilience of well managed diverse estate businesses.

The importance of integrated spatial planning in rural areas is underlined in the report – aligning with many of the points made to the LRRG by Scottish Land & Estates. The disconnect between national planning policy aspirations and local level implementation of planning in rural areas is a significant barrier to rural development. Like the LRRG report, the SRUC report recognises that not all land use is covered by the formal planning system and that decisions taken at an individual farm or forest

level do not always reflect the economic, environmental or social aspirations for the surrounding rural communities. However, unlike the LRRG which appears to view this as solely a land ownership issue, the SRUC identifies the need for a strategic framework setting out specific rural outcomes, a baseline; targets, indicators, monitoring or review processes to see whether targets are being met; and the identification of the means by which collaborative working would be put in place to achieve them. These would cover all elements of the rural vision and strategy rather than taking the limited approach of the National Land Policy recommended by the LRRG.

The SRUC report rightly highlights the importance of the contributions made by community owners, private businesses and the third sector. The report states that in order to maximise the collective impact of their efforts and achievements it is important that they are integrated and supported within an overall vision and framework for rural Scotland. This collaborative and integrative approach appears to be at odds with the divisive approach prevalent in the LRRG report.

Scottish Land & Estates has expressed its disappointment that the report does not reflect the very substantial social, economic and environmental contribution made to Scotland by private landownership of all scales. Nor does it address many of the real issues to successful rural communities such as infrastructure, planning and funding. We believe that the report focuses far too much on ownership rather than how land can be used to provide multiple benefits and the Group has missed the opportunity to make more constructive proposals around community planning – which is critical to empowering communities and rural development. The report appears to convey a very negative picture of Scottish landowners, which is contrary to the wealth of evidence presented to the Group and reflected within its Interim report. Thus, the opportunities to pursue further collaboration and innovative partnership approaches involving the private sector, which we welcomed in relation to our involvement for instance with the Community Empowerment Bill Terms of Reference Group have been largely ignored.

Change of Approach

The LRRG's interim report stated that the review was taking place in the context of a wider concern for community empowerment, which can in some cases be facilitated through ownership of land and assets, but which can also be enhanced by other relationships between land and community, such as leasing or partnership or other models. Despite the LRRG stating in its interim report that it planned to 'examine examples of shared governance, management and use of land to inform better practice', in the final report the Group appears to disappointingly only focus on ownership.

There are a myriad of ways in which communities can have a stake in the governance, management and use of land, which the LRRG was tasked to consider alongside community ownership.

We believe that this narrow focus on only one component of land tenure, largely ignoring the other 2 (the system of regulatory laws governing how land can be used and the system of non-statutory public sector measures to influence how land is owned and used in the public interest) limits the report's ability to deliver successful

communities. Robin Callander and Alison Elliot gave evidence to the RACCE Committee in June 2013, and stated that the 6 work stream approach outlined only 6 weeks earlier in the Interim report was to be widened to take a broader sweep of land reform issues. This broad sweep does not appear to have included looking at issues other than ownership.

There also seems to have been a distinct change in approach to consultation and engagement between Phase 1 and Phase 2 of the LRRG's approach. The LRRG undertook extensive engagement in the first Phase and also visited a significant number of groups and individuals across Scotland, as well as meeting with a plethora of stakeholder organisations. Phase 2 was to have been a more targeted and focused review based on emerging themes with Phase 3 being concerned with refining the recommendations. Dr Elliot and Mr Callander were asked by the RACCE to confirm the LRRG's planned approach to Phase 2 – with Mr Callander advising that the group will undertake a systematic and strategic analysis of the topics, putting those issues within a coherent framework and narrative. We would suggest that the LRRG has focused largely in the narrative and framework. The lack of engagement and consultation during Phases 2 and 3 has been very disappointing, especially for those private estate owners who enthusiastically played an active part in the first phase of the review.

Community Planning

An effective community planning framework, underpinned by robust community needs assessments, are critical in delivering 'stronger, more resilient, and independent communities.' Sadly this critical area is not addressed by the report. We believe that the work of the National Community Planning Group could have been enhanced by the LRRG considering the community planning issue. Research has noted the difficulties of involving private sector organisations in local governance but there are some good practice examples such as North Ayrshire Community Planning Partnership, Marr Community Planning Group and Scottish Borders' Working Countryside which have been able to overcome these difficulties to the benefit of communities. Research has also shown that the role of the third sector and community organisations in community planning can be greatly enhanced – again it is disappointing that the role this can play in improving the lives of people in Scotland and increasing the way in which they can be involved in governance, land use and service delivery has not been looked at by the group. It is imperative that the needs of rural communities are adequately reflected in local authorities' Single Outcome Agreements. We made a number of recommendations to the LRRG on this issue and it has also formed a key element of discussions around the Community Empowerment Bill.

We are heartened that the Minister for Local Government and Planning has stated that he will put Community Planning Partnerships and their key roles and responsibilities on a statutory basis, and hopes that this is the first step to an effective community planning system.

Evidence Base, Costs to Public Purse and ECHR

We would suggest that the report contains a number of unfounded assertions and also that the LRRG appears to take a number of positions based on subjective views

rather than evidence. This is particularly true in relation to 'grouse moors' where the integrated management approach and the multiple benefits delivered by good moorland management are ignored. We are disappointed by the apparent lack of due diligence in the evidence presented and assertions made, particularly in relation to wildfire. We support the comments made within the submission of the Scottish Moorland Group.

The report appears to fail to acknowledge the outcomes of other recent reviews such as the review of non-domestic rates and the recent private sector tenancy review. In addition, the report appears to pre-empt the ongoing fisheries review. The Scottish Government will obviously have to consider all the review findings in the round.

It also seeks to introduce measures which we believe would place a significant burden on the public purse. Failing to see the private sector as delivery partners for the ambitions of land reform will add to this burden as the onus for delivery will fall on the public sector or third sector agencies supported by the public purse.

Many of the recommendations contained within the report will undoubtedly have ECHR implications which will have to be fully considered. The recommendations also appear to place a significant burden on the public purse, and the opportunity to lever in private finance through partnership approaches has been largely overlooked.

Specific Comments on recommendations contained within the report:

Ownership of Land

We welcome the Scottish Government's announcement that it will progress the LRRG's recommendation to increase the rate of registration of land, but have underlined the cost of achieving this. The organisation will continue to work with the government, our members and Registers of Scotland to achieve this, but for this to be completed within the ten years target timescale will require considerable extra resources and funding support to make it happen. There will also be significant issues in relation to indemnity of title.

As previously stated we believe that the succession reforms suggested could adversely affect the long term viability of family farms.

Public Land Ownership

The report contains references to historic or iconic national properties being held inalienably on behalf of the people of Scotland by Scottish Ministers. Whilst this is included within a section on public landownership, we have grave concerns about this principle being extended to privately owned historic properties. The role played by the private heritage sector is well evidenced and should not be put at risk. The maintenance and conservation costs do not appear to have been considered and we would be extremely surprised if the soon to be established Historic Environment Scotland would wish to assume the financial burdens of acquiring and looking after a range of properties not currently in the ownership of Scottish Ministers including properties already owned by The National Trust for Scotland and stand-alone heritage trusts.

Local Community Land Ownership

We support the recommendations relating to the improvement of the operation of the current Community Right to Buy provisions. There are communities and willing sellers of land across Scotland who are facing problems as a result to the current legislative process, and we have been very supportive of addressing these through the Community Empowerment Bill, which will be introduced to the Scottish Parliament next week.

In relation to the community land rights recommended by the LRRG report, we do not agree that the community should be able to exercise an absolute right to buy. If the transfer of land is deemed to be required to deliver the public interest then this should be done through the CPO mechanisms of the local authority, which we agree are in need of improvement.

In addition, it is vital the impact of any transfer of land takes into consideration the impact on the wider land or property business. It is critical that any right to buy provisions do not allow cherry picking of assets which render a business unviable.

We agree that communities should be able to request a compulsory purchase over land, but there should also be the right on the part of the local authority or other relevant authority to reasonably refuse the request where it is inappropriate.

As stated earlier ownership is not the only option for communities, and indeed there are many communities who do not want to exercise rights that they have. This should not be viewed as a failure of the legislation – empowering communities allows them to consider and exercise options it does not mean that all communities have to become community owners.

The focus on “right to buy” means that alternative structures which may be more appropriate for communities such as long-term lease rather than transfer of title itself have not been explored.

We believe that the recommendation in favour of the establishment of a Community Land Agency with a supportive mediation type-role is welcome in principle. However, it is important that this Agency does not duplicate existing work and that the role of current agencies is considered fully. The CLA must also provide support to landowners who are looking to transfer assets to communities. We would also like to suggest that advice and support must be provided to communities who wish to pursue options other than ownership.

However, we cannot see the merit in creating a Land and Property Commission. As set out elsewhere in this response Scotland has a stable and mature land system and any deficiencies in land and property law would be best taken forward through the Scottish Law Commission as at present. there are also a myriad of agencies which understand and monitor the management of Scotland’s land, including SNH, SEPA.

We do support the recommendation of a national land policy but believe that this should be more akin to that outlined in the SRUC report than the narrowly focused framework outlined in the LRRG report.

Land Development and Housing

Whilst much of the section on New Housing mirrors representation from Scottish Land & Estates and others in terms of adequately meeting the housing needs of rural communities and encouraging self build, we believe that focus on land supply has ignored some of the major barriers to rural housing provision.

Feedback from the Highland Housing Alliance suggests that land supply is not necessarily the issue at the moment, but the ability to bring zoned sites into economically functioning use through infrastructure investment is key.

The report states its support for small scale interventions but disappointingly fails to reference the innovative delivery mechanisms which have been developed or piloted by private landowners in partnership with the Highland Small Communities Housing Trust. We agree with the LRRG that this innovation should be supported, as should the Rural Housing Enabler approach which allows community led housing solutions to be delivered. In addition, the Scottish Government must reintroduce targeted rural housing grants. We would suggest that supporting these measures would be a better use of limited affordable housing budget than the establishment of a new national body.

With regards to the current supply there are a number of points we would like to make. Firstly, tied housing is covered by the repairing standard and as such must meet the same quality standards as the rest of the sector. Secondly, tied housing is tied to the employment of the person thus the person will have a service tenancy or a service occupancy. Whilst the person will not have a assured or short assured tenancy, it is incorrect to state that there is not a 'proper tenancy agreement'. If the group is suggesting that housing for employees should be separate from their employment then the implications of this must be fully considered, particularly in terms of agricultural wages regulations and for rural teachers, police officers etc.

Thirdly, the report provides a slightly misleading representation to the deliberations of the PRS Strategy Group and the PRS tenancy review group. The PRS review group met frequently over the last 6 months and presented its recommendations to the Minister a few weeks ago. As a member of the Group, I am surprised that the LRRG did not contact us if it intended to include a recommendation on this matter as obviously we have considered the matter in great detail. The PRS review group has suggested that a new tenancy regime is established which offers clarity, ease of use and flexibility. The following is an extract from the recommendation report from the group:

'The Review Group makes the following recommendations. The reformed tenancy would need to contain a modernised and simplified right of possession, providing clarity for both tenants and landlords; the removal of out-dated repossession grounds and the accompanying complicated notices, so there would be a need to address the confusion over 'ish' dates, the issuing of pre-tenancy notices, and also the issuing of multiple notices. What would be put in its place, following this modernisation exercise, would be a clear route for landlord re-possession, where the tenant was found to be in breach of the new private tenancy, or following expiry of the agreed tenancy term. This would also make it very clear to tenants what the legal position is in relation to security and re-possession by the landlord.

On length of tenancy, the new tenancy would set a minimum period, as is currently the case. There are a variety of reasons why either party would want a specific minimum term for the tenancy, take for example students, or people letting a home while they are working away. However, the evidence also shows that very few tenants only stay for the current statutory minimum of six months. So the minimum could stay at six months, it is sorting out the roll-over arrangements, or having a requirement to issue a new tenancy, within a defined period, that will be more important to both tenants and landlords. Lenders to the PRS sector, if their confidence in the sector is to be maintained, are also likely to require certainty that they can obtain vacant possession in the event of a default by a landlord.'

We would suggest that the recommendations of the PRS Tenancy Review Group are supported.

Land Ownership and Use

We feel that the section on the Land Use Strategy should be considered in conjunction with the recent Land Use Strategy Delivery Evaluation Report. This report states that there is significant capacity to deliver sustainable land use, as advocated by the LUS, within Scotland's existing land use delivery mechanism landscape. The report also identified key barriers to deliver of the Land use Strategy across the following broad categories: 1) methods and data; 2) grants, incentives and revenue; 3) land manager skills, awareness and training; 4) public awareness of land use issues; 5) partnerships, governance and leadership; 6) land use decision-making; and 7) land use policy interactions and constraints. We accept the LRRG's assertion that ownership can impact on use but it should not be viewed as the controlling factor in relation to land use. Also in the section we are concerned regarding the sentiments expressed in relation to farmland concentration, and question why the fact that 75% of good farmland being sold to other farmers is viewed negatively by the group.

We cannot see what the group is really trying to achieve with the recommendation in relation to capping the amount of land one individual owns and question the legal competence of such a measure. The group appears to be confusing the scale of ownership with control of land use or a monopoly as is referred to within the document. The reality is that someone owning 20 acres around a village can have much more of a monopoly of control over community land use in the local area than someone with thousands of acres of hill, rock and bog. In addition, we would refer the committee to the recent research report from Rural Solutions and the SRUC which stated that integrated land management of a single and coherent unit at landscape scale adds value and that integrated land management delivers more additionality as the area under single management increases.

The stable and mature land ownership system here in Scotland is one of things which attracts investors to our country and helps the rural economy. The recommendations contained in this part of the LRRG report run contrary to the First Minister's message that Scotland is open for business. The LRRG's conclusions would also appear to be at odds with the experience elsewhere, with countries opening up land ownership as part of EU membership requirements.

We are currently considering the recommendations relating to taxation contained within the LRRG but would reiterate the point that fiscal measures both payments and reliefs are there to deliver public policies.

Agricultural Land Holdings

A Review of Agricultural Holdings established by the Scottish Government is underway and we have directed our comments regarding that topic to the Agricultural Holdings Review Group.

We believe that there are factual inaccuracies in the report in relation to small landholdings. However we recognise there are anomalies in terms of the legislation which governs small landholders and believe that that is something that the Agricultural Holdings Review Group should look at within the context of its review.

We are particularly concerned at the LRRG's recommendation in relation to furthering the right to buy for tenant farmers. We believe that this displays a lack of insight into the sector and does not reflect the views of the farming industry.

In addition, we do not believe the forced transfer of an asset from one individual to another can be justified on social or public interest grounds. Intergenerational ties with land are not the preserve of a small group of tenant farmers and are applicable to owner occupiers, landlords and many private family businesses in rural areas. Ironically the recommendations made in relation to succession and for an actual right to buy for communities could have a significant impact on these intergenerational ties, particularly for owner occupier farmers.

Common Property Resources

Access

We support the recommendation at 29.1 and believe that Part 1 of the 2003 Act has delivered a suitable statutory framework and we support an update to the guidance provided to access authorities as a welcome step.

Fisheries

As the final report recognises, the Scottish Government has only recently commissioned a Wild Fisheries Review under the Chairmanship of Andrew Thin. We would suggest that it is appropriate for fisheries matters to be considered within the context of that review, rather than pre-empting its outcome.

In terms of the reintroduction of sporting rates there is an issue of equity. If rates were to be reintroduced, how the levy would apply to a small river or one on the west coast of Scotland whose catches may have been affected by fish farms in contrast to the River Spey for example would require full consideration.

Owners should be supported in their continued investment in fishery management and proprietors need to be involved in local management. In any proposed governance structure for fishing the role of the private landowner is vital and there needs to be a proper balance with the rights of others.

Should the system of District Salmon Fishing Boards be abolished or phased out then there needs to be proper consideration as to how the functions would be undertaken. We would have concerns as to whether a more centralised system could be introduced without affecting local catchment work or adding to costs.

Fundamental changes to property rights are proposed in relation to the ending of the separation of new ownership of salmon fishing rights from the land over which the rights exist, without any substantive reasoning or evidence base for such a significant change.

There are a number of other issues, and we believe that it would be inappropriate to take forward any recommendations in section 31 of the report until after the publication of the Government review.

Deer

We are disappointed that the report does not consider the history of collaborative working and long-term close relationship developed in relation to deer management between private landowners, SNH and the Scottish Government. This Committee conducted an inquiry into deer management and the environment in Autumn last year and we were encouraged by the recommendations from the Committee to the Minister, and agreed that the impacts of deer rather than numbers are most important, and that it is premature to undertake a review of the Code of Practice on Deer Management at this time.

We would suggest that the conclusions reached on deer populations in the LRRG report are not up-to-date and do not support the proposals in relation to deer culls. We would respectfully suggest a thorough consideration of the extent of collaborative and partnership work undertaken to date, including the review by your Committee prior to considering implementing the recommendation in section 32. Like the ADMG, we will continue to work with Government and its Agencies to show that the voluntary system, with their appropriate support, can be entrusted to deliver.