

Written evidence from the Historic Houses Association Scotland (HHAS)

The Historic Houses Association Scotland (HHAS) represents individually owned historic castles, houses and gardens throughout Scotland; many regularly open to the public. Historic houses are not only not an expense which the public purse has to pay, but are in fact net contributors to the Scottish economy. Collectively member properties make a major contribution towards employment in Scotland, both in terms of the rural and national economy. The bulk of Scotland's built heritage is in independent ownership which means that its future stewardship is secured for the benefit of Scotland and the Scottish people at little or no public expense. We recognise the importance of preserving these assets and engage with Scottish Government and local communities across Scotland.

We welcome the opportunity to comment on the final report of the Land Reform Review Group (LRRG) which we will consider in further detail, but are pleased to advise you of our initial comments below at this stage.

General Comments

HHAS is concerned that there is a lack of consistency between the final report produced by the LRRG and their earlier Interim Report. We are disappointed that the report does not reflect the social, environmental and economic contribution which owners of heritage property and private landowners more generally make across Scotland. By concentrating so exclusively on ownership, the LRRG has missed an opportunity to make much more constructive recommendations backed by evidence and acknowledging much of the partnership and collaborative working between the private and independent sector and the Scottish Government and local authorities.

The negative approach taken towards private ownership in the report is disappointing, especially given the Interim Report by the LRRG indicated that a range of components of land tenure and governance structures would be considered. Specifically the Interim Report referred to examining "examples of shared governance, management and use of land to inform better practice". In that regard this final report falls short.

Given the extensive evidence provided to date by Scottish Land & Estates and other bodies, as well as the SRUC Rural Scotland in Focus 2014 report and the SRUC Economic Contribution of Estates research we are concerned about the absence of objective evidence throughout the report to support the findings which have been made.

HHAS believes responsible use of land – whether in public, private or community ownership – should be the determining factor in the policy landscape. There are a myriad of pluralistic models of ownership in operation and it does not appear to be properly recognised in the LRRG report that ownership by private organisations is overwhelmingly employed productively. It benefits local communities through tourism, job creation, agriculture, housing and more. The key message that private and community ownership should not be viewed as opposite ends of a spectrum, rather that both ensure the viability of our rural areas, has been lost in the report.

A large number of areas in the report are already under consideration elsewhere, including the Community Empowerment Bill shortly to be introduced to Parliament, the Agricultural Holdings Review, Private Sector Tenancy Review and the Wild Fisheries Review. We therefore find that much in the report is pre-emptive and should be judged only after conclusion of these separate expert reviews. Our comments are limited to those areas of the report which are of most relevance to our members.

Land Registration

We full support the registration of titles. However, the prevalence of the rule of law, good standards of professional governance, protection of property rights and openness in registering is more significant than having a specific National Land Information Service with associated bureaucracy.

We note that the Scottish Government would like all land on the Land Register within ten years. This is an ambitious target and while we welcome transparency in ownership it needs to be borne in mind that this target will be resource intensive and Registers of Scotland receives no income from the Government, only trading income – from search fees and registration fees/recording dues – so any further resource would need to be properly costed and budgeted for.

Historic National Properties

The reference in the report to historic or iconic national properties being held inalienably on behalf of the people of Scotland by Scottish Ministers is of serious concern to us. Aside from the extremely vague nature of what the LRRG intended, this appears to set a dangerous principle. This is a subjective matter and clearly Edinburgh or Stirling Castle could be another person's Balmoral or Scone Palace. The maintenance and preservation costs, would mean a huge potential ongoing financial burden being assumed in addition to acquisition costs. We would be astonished if the newly established Historic Environment Scotland would wish to assume this expenditure on properties not presently in the ownership of Scottish Ministers, regardless of whether in the ownership of The National Trust for Scotland or stand-alone heritage trusts.

Succession

In terms specific recommendation regarding the development of proposals for legislation to end the distinction between immovable and moveable property in Scotland's laws of succession we believe that account should be taken of the full impact on historic houses of what could amount to forced heirship rules. This requires serious consideration and we would contend that succession is best considered in a wider context than simply through the medium of land reform where there could be unintended consequences of any change.

Local Community Rights

We start from the premise that a willing seller is a prerequisite for any transaction and we therefore oppose the granting of any absolute right of purchase, such a right not being in the public interest in our view. In particular we are of the view that

consideration must be given to the impact on surrounding land and business where rights are sought over a plot of land. There is a real concern about cherry-picking of land through community right to buy or compulsory purchase powers which could potentially have serious consequences for the owner of the historic house and remainder of that land. Indeed, we find it vital that the relationship between the land and the historic house which is built upon it is absolutely key. Where a “community” is empowered to acquire land, it may well directly result in the historic house becoming unviable. It is essential that safeguards are in place to protect the viability of heritage property.

Where there is a right to request there should also be the right to reasonably refuse. There must in addition be a transparent appeals process where a right has been granted, with defined rules and timescale. Overall, empowering communities does not necessarily have to equate to transfer of title and ownership and alternative structures such as long-term leases can in certain circumstances be more appropriate for a particular community.

It is also essential that a community body should have a financially viable business plan where land rights are to be acquired by them. Presently, individual owners of historic properties save the government substantial sums of money by paying for the upkeep of some of Scotland’s finest properties and bring tourism revenue to their local communities by hosting events which often attract commercial sponsors.

Community Support Services

We consider there may be some merit in principle in a Community Land Agency being established, provided it has a clearly defined remit and functions. This is subject to it not duplicating the work of other bodies at a local or national level and also with a view to ensuring that it has a facilitative and mediation role and is not unduly onerous or bureaucratic in its operation.

We oppose outright the creation of a Land and Property Commission. This is not necessary and where any deficiencies appear in the law these are best dealt with through existing channels such as the Scottish Law Commission rather than the establishment of further bodies at cost to the public purse. SEPA, SNH and an assortment of other agencies are already involved in the management of Scotland’s land.

Land Ownership and Use

HHAS agrees that ownership can impact upon use, but it is certainly not the sole factor. We do not recognise the outdated stereotypical notion of the controlling property owner which is suggested in the LRRG report. The location of land can be just as important, if not more so, than the scale of the landholding.

The capping of the amount of land which may be held by an owner is suggested without a properly evidenced rationale and we have serious concerns that this may not be a legally competent measure. The LRRG appear not to distinguish the scale of landholding from control of land use. This approach also seems to run contrary to the direction of travel of the Scottish Government, keen to increase inward

investment to help the rural economy. Serious scrutiny of this recommendation is required.

Access

We agree with the LRRG that a suitable statutory framework is in place following implementation of Part 1 of the Land Reform (Scotland) Act 2003 Act and that guidance simply needs to be kept up-to-date by access authorities.