Written submission from RSPB

Land Reform (Scotland) Bill

Evidence at stage 1 from RSPB Scotland

Summary

RSPB Scotland welcomes the opportunity to provide comment on this Bill. In general, we are supportive or neutral in relation to the majority of measures in this Bill. However, the comments below are intended to inform the Committee’s deliberations at stage 1 and, we hope, enable the Government to provide clarification and/or re-assurance on a number of issues/questions we raise. These include the need for:

- Greater clarity as to how the public interest, particularly environmental sustainability, is to be built into land reform deliberations – and the implementation of the bill’s provisions; in particular, there needs to be greater policy connect between land reform and land use;

- Clearer provisions for consultation on the Land rights and responsibilities policy statement, and on the guidance on engaging with communities;

- Greater clarity on the purpose and the application of the guidance on engaging with communities;

- Clearer definition of sustainable development, and the key need to ensure environmental sustainability in the public interest, as part of any right to buy;

Notwithstanding the above comments/concerns, we will follow the bill’s progress with interest and would be pleased to provide further information, should this be helpful to the Committee, or meet with Scottish Government officials to discuss the issues we have raised.

Background

RSPB Scotland is part of the RSPB, the largest wildlife conservation charity in Europe with over one million members from both urban and rural areas, over 80,000 of which are in Scotland. We campaign on issues affecting wildlife and the natural environment both at home and abroad, carry out scientific research, education, land management and policy advocacy, and promote the conservation of birds and biodiversity, as well as their enjoyment to people of all ages and backgrounds. We benefit from the support of over 1200 volunteers from across Scotland. We are part of the UK partner of Birdlife International.

RSPB Scotland manages 80 nature reserves across Scotland which extend to some 72,000ha. These sites are acquired and managed in pursuance of our charitable objectives, under a variety of tenure arrangements, including freehold, lease, and management agreements (see box 1)
Our reserve management is carried out by RSPB Scotland staff, by local and residential volunteers, and by partners (tenants, graziers, etc) from local land management communities. Livestock, other agricultural products, timber and venison from our land contribute to local economies. As well as our direct investment, our activities contribute to the delivery of Scottish Government policies and duties, such as internationally-agreed biodiversity targets and site conservation targets that form part of the Government's National Performance Framework, and support tourism and other local businesses. As a charity, our work is recognised as being for the public benefit – as ‘tested’ and regulated, in Scotland, by the Scottish Charity Regulator (OSCR).

Box 1. RSPB Scotland nature reserves – examples of our diverse management arrangements

**Balranald, North Uist** – a partnership agreement with the Church of Scotland, several crofting townships and individual crofters, this area of managed machair is outstanding for its breeding waders and corncrakes, as well as flowering plants and butterflies. It attracts over 5,000 visitors per year, helping add significant value to the local agricultural economy.

**Loch Gruinart, Islay** – managed in-hand, this successful farming operation raises prize-winning cattle alongside supporting a large proportion of the island’s overwintering geese, as well as breeding waders and corncrakes. It is an example of best practice in conservation farming and wetland management, as well as a facility used by the local community and a major part of Islay’s attraction to wildlife tourists (especially in the important “off season” months).

**Mull of Galloway, Dumfries and Galloway** – the southernmost tip of Scotland and a significant seabird colony, this site is managed in partnership with community owners (the Mull of Galloway Trust). The site attracts around 20,000 visitors a year, contributing over half a million pounds to the local economy (2009 study).

**Inner Forth, Falkirk, Stirling and Clackmannanshire** – Here, our two small reserves, at Skinflats and Black Devon Wetlands are managed as integral parts of the wider Inner Forth Landscape Initiative (IFLI) – a partnership of three local authorities, SNH, Central Scotland Green Network and Historic Scotland. IFLI is a HLF-funded programme of work that is conserving, enhancing and celebrating the unique landscape and heritage of the Inner Forth, it supports fifty discrete but inter-related projects to enhance and interpret the natural, cultural and historic heritage of the area, for both local people and visitors.

We have been fully aware that we do not manage land in isolation for a very long time. For the past 15 years, we have had a formal policy and set of standards that mean we work closely and proactively with neighbours and local communities. Our management plans are public documents and, where appropriate, we involve local community organisations in their development. We have an approach of using local contractors and suppliers even when there is a cost penalty in carrying out management work, such as fencing and building maintenance, on our nature reserves. We work hard on being a “good neighbour” in the areas where we own or manage land, including the provision of access and other facilities to encourage public engagement with nature. We support local initiatives and projects, and
encourage our staff to achieve a sensitive balance between being a good neighbour and pursuing our charitable objectives. Many of our staff are active in the communities in which they live and work, something which we encourage. We have had a long relationship with community ownership. This was most clearly demonstrated with our involvement in the ‘Not for Profit Landowners Group’. Our staff were office bearers in this group, which cross-fertilised experience between community, crofting and NGO owners of land.

RSPB Scotland is therefore pleased to submit this evidence to the Committee as part of its stage 1 consideration of the current Land Reform (Scotland) Bill. If invited, we would be pleased to present additional oral evidence – or, if it would be helpful, provide additional written information on any of the issues raised here.

The development of the current Land Reform (Scotland) Bill

This bill has been introduced following the work of the Land Reform Review Group (LRRG), and its report The Land of Scotland and the Common Good, as well as a consultation by the Scottish Government itself. RSPB Scotland was pleased to contribute evidence to both processes¹.

In particular, RSPB Scotland welcomed the emphasis accorded by the LRRG to the common good and the public interest – and its explicit indication that the protection of the environment, including natural resources such as biodiversity, formed part of that common good and/or public interest. In addition, the Scottish Government’s consultation paper observed (para 33) that:

“The land of Scotland is a finite resource and the land rights that govern how the land is owned and used have a crucial influence on the wellbeing, economic success, environmental sustainability and social justice of the country.” (emphasis added)

We would urge that, in considering this bill, the Committee use the opportunity of Parliamentary scrutiny to consider the extent to which the proposals, if enacted, would advance the common good and public interest, and in particular ensure environmental sustainability including the conservation of biodiversity.

Parts 1 & 2: Land rights and responsibilities statement and Scottish Land Commission

In the context of a continuing programme of Land Reform – both new legislation and the implementation of this and previous legislation, RSPB Scotland welcomes these proposals, and supports the bill as drafted.

A clear policy statement should provide greater certainty about the purpose and objectives for land reform, as well as criteria for success. In particular, it should underline the Government’s commitment to environmental sustainability as part of the process – and set out, in detail, what is meant by “the common good” and the “public interest” in the context of land ownership and management matters.

The establishment of a Scottish Land Commission provides a valuable expert resource to develop, test and scrutinise the implementation of legislation and policy – as well as to make recommendations as to future direction.

In supporting these measures, we would urge the Committee to seek re-assurances from the Minister that:-

- Environmental sustainability will be at the heart of the Government’s policy statement;
- Membership of the Commission will include environmental expertise – or that it will have the resources and requirement to acquire such expertise; and
- Both the development of the policy statement and the work of the Commission will be open and transparent, and subject to consultation with interested parties.

In particular, as land ownership and land use are so inseparable, they should not be considered in isolation, and it is important that the land rights and responsibilities statement should be specifically legislatively linked to the existing, statutory Land Use Strategy. This strategy must set out Ministers’ objectives in relation to climate change and sustainable land use, and their proposals and policies for meeting those objectives. The Bill might be amended to ensure that the statement and the strategy are reviewed and consulted upon side-by-side at the same time. Such an approach would be a demonstrable application of the opening sentences of the draft statement suggested in the Government’s consultation paper.

“The relationship between the people living in Scotland and the land of Scotland is of fundamental importance. The land of Scotland is a finite resource and the land rights that govern how the land is owned and used have a crucial influence on the wellbeing, economic success, environmental sustainability and social justice of the country.” [emphasis added]

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2 S.57, Climate Change (Scotland) Act 2009.
Part 3: Information about land

In principle, RSPB Scotland has no concerns about this proposal – where we are involved in land ownership and/or management, it is well-known and publicised, as is the identity of our Directors and Trustees. Moreover, our governance and reporting is regulated by both the Charity Commission (England and Wales) and OSCR in Scotland to ensure our operations are in accordance with our charitable objectives.

However, we would welcome greater clarification on the detail of s.35, as to whom such a right would apply, the procedures that would operate, the information to be supplied and on whom the duty to provide such information would fall. This will be clearly a matter for any regulations made under this section – on which Ministers are required to consult (s.35(6)) – but it would be welcome to hear the Ministers’ intentions at this stage. In particular, **we would welcome re-assurance that these process will not, for charities, duplicate the existing reporting mechanisms implemented by regulators.** For instance, information on “persons in control of (a charity’s) land” is normally available in publicly available annual reports – and, for many, their local offices and staff are usually widely advertised. Any problems with a charity not complying with existing regulations should be addressed by the current regulator.

Part 4: Engaging communities in decisions relating to land

This proposal is one that, it appears, has been developed from that originally proposed by the Government (although not by the LRRG) to apply only to charities – and then by means of an additional statutory duty. First, **we welcome the change of emphasis – this is a positive move by the Scottish Government, in response to stakeholder concern.**

Second, we have, in principle, no objections to the concept of engaging with communities, or of Ministerial guidance on best practice. Indeed, as is clear from our preamble above (as well as our responses to the Government consultation and the LRRG\(^4\)), it is an approach to which we are committed. Moreover, there is already a good deal of non-statutory guidance on best practice\(^5\) that could be built on.

Notwithstanding the above, we do have some concerns as to the lack of clarity in the provisions, as drafted, as to how they will operate and enforced – including how, when and by whom such enforcement might take place. The proposed statute (s.37) places no duty or requirement on any landowner to comply, or take account of, the guidance; neither is there any duty or power conferred on any statutory body. Yet, in the policy memorandum, it is suggested that, in relation to charities (and charities alone), there will be a role for OSCR in ‘enforcement’. Yet, neither the duties of OCSR or of charities, nor the terms of the 2005 Act, are altered by the proposed provisions. Therefore, not only does this suggest that, once again, charities are being treated differently to other landowners/managers – but also there is a disconnect between the bill’s drafting and the policy memorandum. **We would, therefore, welcome clarification from the Scottish Government as to its intent in relation to how this guidance will be applied to all landowners/managers.**


In addition, the content of the guidance – and its suitability for the wide range of conditions and situations across Scotland – will be crucial to its success, both for communities and for landowners/managers. We therefore welcome the provision, under s.37(4), that Scottish Ministers must consult “such persons as they consider appropriate” before issuing the guidance. **We would, however, welcome re-assurance from Ministers that such consultation will be widespread, allow good time for responses and discussion, and be genuinely participative.** It would be ironic, indeed, were guidance on engaging communities developed without engaging the communities, of place and interest, that it will affect!

**Part 5: Right to buy to further sustainable development**

State intervention for the public good in how land is run is not a new thing and is broadly welcome if it delivers defined and measurable public benefits. Intervention in ownership is also well established, through the compulsory purchase powers of the Scottish Government, local authorities and other public bodies. Both CPO and other intervention powers (e.g. Land Management Orders or deer management) may only be used in the public interest, and are subject to appropriate legal safeguards.

Sustainable development, if well defined and interpreted (see our response to government consultation[^6]), is in the public interest and should be a valid reason for state intervention. RSPB Scotland therefore cautiously welcomes the principle of this part. However, this welcome is subject to understanding far more than is available in the bill (or even in the policy memorandum or original consultation paper) of the detail of when and how such a new power would be used. In particular, **we believe that Government should be much clearer in its definition of sustainable development, and what it means to manage land in the public interest.** The Government should set out how it will ensure social, economic and environmental matters are all secured as part of sustainable development – and how existing (actual) social, economic and environmental activities will be compared to (potential) future activities, including how the public interest will be determined in this comparison.

There may be a role, to help answer these concerns, for the Scottish Land Commission to develop detailed guidance, and criteria, on the operation of this part. If the Committee and/or Government considered this appropriate, a duty on the Commission to undertake such a task could be added to this part of bill.

**Part 6: Re-introduction of rates for shootings and deer forests**

In principle, RSPB Scotland supports this proposal. This support is however subject to the application of charitable relief to these rates as it is to other non-domestic rates[^7]. Moreover, there are occasions where we, as an environmental body, acquire the shooting or stalking rights on land, but – for conservation reasons - do not exercise them. **We would welcome clarity from the Scottish Government that rates would not be applied in such cases** (irrespective of any commercial potential, that is not being realised).

In addition, in our view, the proposal would gain greater advantages and, for progressive businesses, reduce costs, if the opportunity was taken to use the re-introduction of this fiscal mechanism to incentivise improved land management. Thus, as well as simply removing the current exemption, we would recommend that the Scottish Government introduce new reliefs, available to shooting or stalking businesses that meet high land management standards. For instance, reliefs might be applied for meeting cull targets to benefit woodland regeneration or the delivery of SSSI site condition. This would thus ensure the delivery of additional public benefit. While we understand this might not be possible immediately, we would welcome assurances from the Scottish Government that they will consider such measures in the future.

Notwithstanding the above, as well as this new fiscal incentive to better manage shooting or stalking businesses, we continue to support improved, statutory deer management planning (see part 8) and the introduction of licensing for shooting estates. These measures should be included the Government’s longer term land reform programme – and would be consistent with the clear direction of travel suggested by the LRRG, of statutory oversight and regulation of the management of common resources, such as water, deer, salmon, etc in recognition that their status contributes to the common good.

Part 7: Common Good Land

RSPB Scotland has no comments to make on this part.

Part 8: Deer management

RSPB Scotland continues to support the principle of treating deer as a natural resource to be managed in the public interest. In principle, therefore, we favour a move towards statutory deer management planning – in the manner we advocated during the passage of the (then) Wildlife and Natural Environment (Scotland) Bill. Despite the passage of that Bill into the 2011 Act and the introduction of its measures related to deer, progress towards genuinely sustainable deer management continues to be slow - as was clearly recognised in the LRRG report.

We therefore welcome and support the additional measures proposed in this bill, especially the enhanced powers for SNH to deliver more effective deer management planning and for the wider use of deer panels for public engagement. Where public funding for deer management planning is in place, either through SNH or SRDP, we think that it is appropriate that deer management plans undergo thorough and transparent public consultation, and final endorsement by SNH, to ensure that the public interest is supported.

We are concerned that the measures relating to wild deer, proposed in this bill, will not come into effect for at least a year. In section 32.2, paragraph16 of the LRRG report, it is stated that “the Scottish government should be examining potential improvements to the statutory arrangements governing the management of wild deer in Scotland now, rather than waiting until the end of 2016”. We agree with this assessment. Moreover, we note that the LRRG
report proposed additional measures for improving deer management, such as SNH setting cull targets in the public interest, and we look forward to these suggestions being considered by Scottish Government for implementation in due course.

Part 9: Access rights

RSPB Scotland is a full member of the National Access Forum, where we represent the interests of nature conservation. Both in this role, and via consultation, we have been engaged in the development of these modest improvements to the legislation around core paths. The proposed changes are logical and will enable local authorities to better manage their implementation of core path processes. We are content that the interests of conservation have, or will, be taken into account and have no detailed comments on this part, as drafted.

Part 10: Agricultural Holdings

Most of these provisions have little or no impact on nature conservation, and no adverse impact on the operations of RSPB Scotland land management, and thus RSPB Scotland has no comments.

We note, however, that these provisions arise from the recommendations of the Agricultural Holdings Legislation Review Group (AHLRG). In this report, recommendation 33 proposes that consideration be given to the concept of “conservation tenancies.” Such an idea, previously proposed by RSPB Scotland, has been supported in principle by the Cabinet Secretary. Such a provision would enable a conservation land manager, such as RSPB Scotland, to enter into longer term and more secure arrangements with our farming partners, benefiting both parties. We therefore supported this recommendation from the AHLRG, subject to clarity on the detail, and are disappointed that this has not been taken forward at this time.

Notwithstanding the above, we welcome the Scottish Government’s support in principle for this idea (policy memorandum para. 327) and intent to bring forward proposals at a later date. We look forward to discussions with Ministers and officials as to the detail and timescale.

RSPB Scotland

August 2015

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