Written Submission
(Anonymous)

Response to PART 1 LAND RIGHTS AND RESPONSIBILITIES STATEMENT

I would prefer to see a Statement on land governance, policy and land reform, which offers high level definition of principles governing land rights and responsibilities and incorporating international norms (as set out, e.g. in the United Nations Food and Agricultural Organisation’s Voluntary Guidelines on the Responsible Governance of Tenure, 2012). Such a Statement would provide an opportunity to endorse such international agreements and adopt them in Scottish law (after Parliamentary debate to widen the democratic engagement with principles, build cross-party support and embed more firmly in public policy). It is indefensible that Scotland’s globally-important land (and people) are currently excluded from such protections. These issues cannot continue to be approached under the delusion of exceptionalism, which places all of us at an immense competitive disadvantage in the contemporary economy.

Response to PART 2 THE SCOTTISH LAND COMMISSION

I welcome the Commission as a move that should help ensure vital topics of public interest in relation to land will be the subject of investigation and review independent of party political processes. It would be desirable for the Commission to be given the explicit statutory responsibility to formulate and draft a National Land Policy taking account of international obligations and best practice.

This is – in my experience – not in any way an abstract issue. Community landowners, communities considering becoming landowners, and private/public landowners are all hobbled, at present, by significant information deficits. These make a National Land Policy a key foundation for efficient and consensual progress, not only on land reform, but on climate change adaptation, sustainable economic development, environmental protection and enhancement, extension of affordable housing- and business- premises, ending the conceptual apartheid between Scotland’s rural and urban areas (which leads to e.g. respected academic publications on Scotland’s future omitting even a single mention of 94% of the nation) and towards innovation of all kinds. (The Land Use Strategy is useful, but difficult to apply/use in practice, as I also know from experience.) These are essential topics for public education and democratic engagement, which require a clear and concise statement now, for Scotland to develop in a fully 21st century manner.

‘Splendid isolation’ (from knowledge about international best-practice, from our own domestic rural expertise - which is significant - and of land policy from other aspects of Scottish Government policy) is holding us back, and costing us all time and money. As well as addressing all those who seek to impose such punitive costs, I also believe both the National Policy and the Land Commission should plan to engage extensively (and be required to deal productively) with the evolving Rural Parliament, and with Community Land Scotland. It would further be beneficial for the Commission to promote the formation of local associations (e.g. on the ward level) of community landowners and asset-managers, for mutual support, development of locally-relevant expertise, and transmission of best-practice.
It would, in my opinion as an experienced 'land manager', be both redundant and impractical to require a single 'land management' commissioner. Rather obviously, the full range of practical land management interests will be represented by those who engage with the Commission. That representation must not be even partially pre-empted by any individual or special interest.

Response to PART 3 INFORMATION ABOUT CONTROL OF LAND

The Scottish Government proposal that it should be incompetent in law for anyone wishing to own land in Scotland via a corporate entity to do so via any such entity that was not registered in an EU member state, must be reinstated in the Bill. (Trusts should be addressed separately.) In the context of commitments by EU member states to establish registers of beneficial ownership this proposal was indeed welcome, timely and supported by 79% of respondents to the previous Consultation. The latter alone makes its re-inclusion imperative. It is often claimed that landownership is ‘stewardship’ – a key component of this claim is the concept of responsibility, and the foundation of responsibility (especially for a national asset and a public good) is the capacity to be held responsible. It is key that this foundation be inscribed in law, and our right to hold our ‘stewards’ to metaphorical and functional account asserted. Those who truly are stewards will not object.

(Any such measure need not, in itself, fully solve for all time the issue of attempts to maintain ownership secrecy, to be proven effective and useful. Further, any refinement or improvement depends upon firm assertion of the aim - currently supported by the UK Government - at this stage. All land in private ownership is both private property and a public good; its value also being created, supported, and frequently enhanced by public investment. Investors have a right to know where their investment ends up. That this is difficult, in the current context, is a reason to proceed, not to refrain.)

Response to PART 4 ENGAGING COMMUNITIES IN DECISIONS RELATING TO LAND

This proposal is welcome. Statutory guidance to be taken into account in other processes (e.g. awarding of public subsidies) can – as noted above, on Part 2 – provide a clear incentive for landowners to ensure that community consultation is meaningful and productive. That this measure is very much at the voluntary end of the scale of intervention does not conflict with its potential to be of significant use as a means to encourage and signal expectations. Indeed, as many interests have signalled their preference for this approach, it is crucial to test this claim in practice (being a further reason for points above on Part 1 as a benchmark, and Part 2 as objective authority, to measure such progress).

It is also welcome, as it must be widely and publically acknowledged that a significant majority of land management – regardless of ownership – is always conducted by communities. The current situation is that owners receive the benefits of this activity (as well as, noted in Part 3, of public investment in their property) but need not engage with the investors/providers. This is not the case for other forms of
enterprise, and therefore should not remain so for landed property, the distinction being anti-competitive. The current situation is also iniquitous at scales of private property (e.g. home- and business-owners currently consult, via the planning system, with their community regarding the use/management of 100% of their property, a duty from which owners of larger properties are currently artificially-exempted).

Establishing pre-decision consultation as the norm (using also to full extent current requirements for e.g. EIA and SEA, planning, designations and so on, and displaying synchronicity with measures to enable landscape-scale subsidy applications and management) is a vital aspect of harnessing the full range of local expertise and engagement to benefit landowners as well as communities. It cannot rationally be perceived as an ‘erosion’ of rights, being rather an enhancement of value.

I note that this proposal is an essential part of developing the incremental spectrum of wider engagement with land use and policy (common in other nations) that both enables and justifies land reforms.

Response to Part 5 Right to buy Land to Further Sustainable Development

I agree with the proposal. However, I also agree that for land which is injurious to the local community and privately owned (or owned by public body not subject to Community Empowerment Bill rights) further thought should be given to a mechanism whereby the community could seek to assume control or management of land without assuming title. This would encourage a culture of ‘meanwhile use’ where communities routinely engage with and make beneficial use of un- or under-used sites. In many cases this will also be a more proportionate solution than non-consensual removal of ownership, and because less draconian, the threshold for allowing community use should be lower (see also Community Land Advisory Service, 4th August 2015).

I believe – from experience! – that land reform in Scotland must challenge the damaging practice of treating title to land as primarily a mechanism to monopolise and exclude. However, it is ineffective, largely symbolic, and ideologically suspect to replace one class of landowners (private speculators) with another (community trusts). Without altering the pattern or norms of landownership, such replacement can never be widespread, and its effects must also be inherently limited (in promoting a healthier and more resilient ‘ecosystem’ of land management practices, i.e. not artificially dependent on inter alia the capitalisation of tax-exemption and avoidance, or the skewing of public subsidy away from most sustainable active use).

Oftentimes, what is most required is demonstration of the potential use and its consequent benefits, at which point the (generally more conservative and innovation-averse) ownership/private/public sectors can often be persuaded to do their jobs/fulfil their responsibilities. This is obviously more desirable (not least in being already-funded).
It must be recognised that community ownership imposes vast (and often unsustainable) burdens on communities – generally those forced to it by deprivation – and that the current context leaves them relatively under-financed, under-resourced, and under-supported relative to their private peers. (Contrary claims being demonstrably no more than poor accounting. None of these things are inevitable, but as long as they remain the case, they do require recognition.) Community use/management, meanwhile, is always more practical to extend than full ownership, and often more sustainable/desirable for the communities affected (and the individuals that form them, and upon whom notable burdens thus devolve).

It must also be recognised – and the reform process should actively promote this recognition – that community owners specifically are, in spirit and practice, excluded from the primary contemporary benefits of landownership (monopoly and speculation). Therefore, communities currently receive a uniquely poor relative ROI from land purchase, by paying prices and assuming legal burdens predicated on uses they cannot make of the asset.

This means an initial phase of reform (promoting a more widespread assumption of non-title rights to use/manage) is an essential precondition for fundamental-yet-organic change to Scotland’s land-pattern. (This principle already established and accepted by Parliament in the CER process.) This will also act to normalise prices, over e.g. the coming decade, to more realistic levels, building meanwhile the capacity to successfully complete community purchases where desired. Such a phase could also usefully support better understandings of farming- and other estate-tenancies, of crofting, and of environmental and other designations. These are all categories working under additional legal burdens (artificially excised from presumptions about the ‘freedoms’ of property-rights, which in practice apply only for a miniscule privileged minority). Further, such a phase would support relatively seamless transition to accurate taxation of land-wealth, incentivising owners to minimise personal payments by widening access.

Therefore, I support the proposal (which fills a much needed gap) especially the provision enabling a community to nominate a third party to take ownership (which is potentially extremely valuable, not least in alleviating the above-mentioned burdens, but also in diversifying engagement with land-property and -management). But I also believe the section should, as did the Community Empowerment and Renewal process, further extend focus beyond ownership, to address the fundamental problem of the artificial restriction of ‘ownership’ to transfer-of-title in the case of land.

**Response to PART 6 ENTRY IN VALUATION ROLL OF SHOOTINGS AND DEER FORESTS**

Having managed such land, I support re-introducing non-domestic rates for shootings and deer forests. There is nothing onerous about these being only what is already imposed upon all local businesses. It is simply indefensible for shooting and forest managers to rely purely on other payers of non-domestic rates for the provision of the local services on which their own business depends. Our collective contribution to this will improve those local services, and therefore our own ‘sporting’
businesses. (Any such manager too short-sighted or ignorant to appreciate this has as much as declared themselves unfit!)

However, the logic of assessing the valuation on numbers of animals killed is anachronistic, and potentially conflicts with deer- and environmental-management duties elsewhere established. Therefore, I support assessing the rental value of estate lands as a whole, for levying rates at the same rate as all other non-domestic subjects. Such an approach would be simpler and more equitable (and, as simply ending an anti-competitive practice, again hardly onerous to those affected).

It is vitally important that this be only the first step in re-extending taxation to the land-based assets that existing taxation currently funds and supports, so I suggest that the principle of this be stated in the current Bill. (I personally believe that the re-introduction of such taxation – which is wholly normal internationally, and not punitive in any way – should be local, at least at first, enabling the appreciation of clear pathways of how taxes are spent, and enabling also the appropriate taxation of differing local land resources. However, given the current parlous state of ‘local’ government, a national conversation about this is essential, and therefore it should be begun by the Scottish Government.)

Response to PART 7 COMMON GOOD LAND

This is a very modest and welcome reform to remedy the illogical position that Local Authorities can sell ‘inalienable’ land but lack powers to do something potentially much more beneficial (to public and local issues) by appropriating for other uses. From personal experience, fundamental review of the legal framework governing common land is still urgently needed, particularly given the 2006 Acts in England & Wales, the preponderance of common land in crofting areas, and EU reforms currently affecting the management and support of common land. Having attempted extensively to engage with various bodies about commons issues over the past half-decade (including MSPs, Ministers, HIE, SNH, and so on) I must note that the level of ignorance about common land and commons law is startlingly woeful. This is not sustainable, and must be addressed as a matter of urgency.

Response to PART 8 DEER MANAGEMENT

Like land, deer are a public resource managed by private interests: interim measures on community involvement in deer management plans and providing the means to compel their production are necessary, and those included here are to be supported. (I note that the example of deer management can and should, given the essential similarity, be developed in concert with approaches to land. I consider this potential to be an important aspect of the synchronicities available as discussed throughout, especially under Parts 1 and 2.)

Response to PART 9 ACCESS RIGHTS

I have no objection to the proposals made. However, I note (again, from experience) that the wider Core Paths procedures are no longer fit-for-purpose in the internet age, and that changes to information-access have created new categories of path users not adequately protected or regulated by current systems.
Landowners of all types are now expected to provide, at own expense, services which are being significantly and directly exploited (for private profit) by other businesses. Meanwhile, those who host core paths have few-to-no legal protections from liabilities arising from activities promoted by those other businesses (and indeed by Local Authorities and other statutory bodies) who have no incentive to act responsibly in their promotion and/or profit-making.

Locally, there are multiple instances (at least 3 major) where this presents a proven danger to life, to safe use of the roads, and to health and safety at work. Additionally, it imposes direct costs (financial and quality of life) on:

- local communities,
- local volunteers (such as Mountain Rescue Teams, Mountain Bothy Association members, etc.)
- local services (including, but not limited to, police, fire and ambulance) and/or
- infrastructure (road maintenance and use-potential, medical services, travel-to-work times, all forms of access to essential services).

These costs are in general borne by already multiply-deprived communities. They are indefensible, not currently being met sustainably, and erode - in both principle and practice! - effective and environmentally/ socially sustainable access to land-based public goods.

I acknowledge that this issue arises in the context of our hugely restricted pattern of private landownership (which is why I raise it in consultation on land reform). However, by no means all core paths are now the responsibility of such landowners (i.e. the local 3 instances noted occur respectively on common, public and private land). I suggest that a fund must be established, immediately, to provide adequate response to specific unsustainable and damaging demands for mass-access, and that it be supplied by a levy on all those businesses and agencies which promote and benefit from this public good (including all holiday rental properties – home, car, etc. – tour companies, media authors, and any other profiteers based elsewhere than the resource they exploit) and also all local landowners (to provide against the time when their own land becomes the focus of such cluster-damage).

(I also suggest that SNH be immediately required to establish and exclude from the Core Wild Land designation all public and private roads, all farms, and all sites of business. One would think this had been done, but it was not. The promotion of such properties as ‘Wild Land’ is damaging, not to mention calling into serious question the evidence-basis of the desk-based [!] ‘research’ process involved. It also supports the existing practice of denigrating and ignoring the property-rights of people in rural areas; where theft, invasion of privacy, interference in business-activities, and nuisance by visitors are routine. That this is due more to ignorance than malice is little comfort.)

I consider both points to exemplify the urgent non-fiscal case for some form of direct taxation of land, if only to accurately quantify and support our land resource. I also
suggest, in the interim, that the current Bill impose an immediate duty on government ('local' or national) to conduct timely EIA, SEA (and scoping of direct financial and environmental costs of sustainable infrastructure provision) for all landscapes attracting over a certain level of organised and/or independent mass-tourism, seasonal or otherwise.

**Response to PART 10 AGRICULTURAL HOLDINGS**

I welcome the attention to this important topic, and the Scottish Government’s provision of improved statistics and information on Scotland’s agricultural holdings in general. However, I propose that a more fundamental review of the allocation and governance of Scotland’s agricultural land is needed and must include integral and integrated consideration of the needs of local communities, individuals and businesses. Securing equitable access to Scotland’s valuable agricultural land and its financial support system should be routine. Again, such consideration is a duty currently assumed by community landowners only, imposing an extra burden upon them relative to other owners.

I note that this consideration will be part of the remit of the SLC (Part 2) and suggest that body – ideally with democratic support and/or engagement, such as would be offered by COSLA’s proposed reforms to local government – is crucial to removing the damaging (and frankly, obviously and indefensibly anachronistic and regressive) politicisation of this debate so far.

I further note that (internationally, and in principle) changes to land taxation are proven free-market mechanisms for resolving issues around tenancies, and that any continuation of ‘deadlock’ on tenancy should be considered to constitute both demand and proven need for such tax measures.