Land Reform (Scotland) Bill
Call for views

Highlands and Islands Enterprise
14 August 2015
INTRODUCTION

Highlands and Islands Enterprise (HIE) is an ambitious organisation with a unique remit which integrates economic and community development. We work in a diverse region which extends from Shetland to Argyll, and from the Outer Hebrides to Moray, covering more than half of Scotland’s land mass. As a Scottish Government agency, our role is to lead regional growth and development in line with Scotland’s Economic Strategy, improving competitiveness and helping to build a fairer society.

Scotland’s Economic Strategy highlights the mutual importance of developing a competitive economy and addressing inequalities. This twin focus complements our unique remit and also the policy drivers in the Bill to make the most of Scotland’s land assets by strengthening the relationship between the people of Scotland and the land of Scotland; where greater diversity of ownership leads to additional investment and increased sustainable economic growth.

We welcome the Bill as we consider on-going land reform, where underpinned by evidence demonstrating social and economic benefits, can materially strengthen Scotland’s system of land governance. We support the Bill’s desired outcomes to deliver greater public benefits, a more diverse pattern of land ownership and a more accountable and transparent system of land rights.

We have focused our submission to commenting on those areas of the Bill most related to our 4 organisational priorities; as detailed below:

- Supporting businesses and social enterprises to shape and realise their growth aspirations
- Strengthening communities and fragile areas
- Developing growth sectors, particularly distinctive regional opportunities
- Creating the conditions for a competitive and low carbon region

As the Scottish Government’s agency for more than half of Scotland's land mass, we would welcome the opportunity to work closely with Scottish Government and partners as the Bill process continues, to enable the considerable expertise within our agency across relevant matters pertinent to the land reform agenda to best inform the development work for delivery of the Bill’s policy objectives.
PART 1       LAND RIGHTS AND RESPONSIBILITIES STATEMENT (LRRS)

1.1 We strongly support the proposal that the Scottish Government be required to publish a LRRS, renewable every five years. As noted in our introduction, evolving Scotland’s system of land governance to increase the contribution of Scotland’s land to sustainable economic growth, to ensure a more diversified pattern of land ownership (bringing increased investment), and to meet the needs of a modern economy requires a long-term commitment to an holistic programme of land reform.

1.2 We suggest Part 1 be strengthened by including in Section 1(2) the objectives (outcomes) to be delivered by the LRRS. We further suggest these objectives might include the following:

- The furtherance of ‘sustainable economic growth’ or ‘sustainable development’
- Increasing diversity of land ownership – reducing Scotland’s concentrated pattern of land ownership through more private, public and community ownership
- Increased public benefit delivered from Scotland’s land resource
- Increased transparency of landownership

1.3 We welcome the Ministers’ intention to consult further on the LRRS, as detailed in the policy memorandum. We suggest a requirement to consult publicly on the LRRS, and reviews thereafter, be included in this part to the Bill.

1.4 The LRRS will guide public policy relating to land rights, responsibilities and use, and the work of the Scottish Land Commission (Part 2). It will therefore, in our view, play a key role towards the realisation of an ambitious and effective programme of land reform in Scotland. Due to its importance as a driver for change, we suggest the Bill includes a requirement for Ministers to report to Parliament on the impact of the LRRS. The report will provide useful evidence and benchmarking to facilitate the proposed five year review of the LRRS.

PART 2       THE SCOTTISH LAND COMMISSION

Please note: Our response to Part 2 is concerned only with The Commission (Chapter 1) and The Land Commissioners (Chapter 2).

2.1 We support the proposals to create a Scottish Land Commission comprising Land Commissioners and a Tenant Farming Commissioner with distinct functions, and the proposed status of the Commission.

2.2 We suggest the Commission be charged with consulting on the strategic plan as detailed in Section 6. A focused remit to proactively enable public participation in the preparation of the strategic plan, through a participatory obligation, will contribute to the vision to strengthen the relationship between the people of Scotland and the land of Scotland. This will ensure that the views of interest groups and interested parties can be represented and given due consideration by the Commissioners. It will be essential, if the Commission is to be effective, that the Commission
is resourced and fully enabled as a body to dynamically engage with stakeholders across Scotland.

2.3 We agree with the view, as set out in the policy memorandum, that the Commissioners are to be impartial. Indeed, we consider it essential that the Commissioners are independent to enable a single and cohesive focus on their Commissioner duties, taking due regard of the published LRRS, the strategic plan and the Commissioners’ programme of work. A specific duty to enable public participation in the preparation of the strategic plan (as detailed in 2.2 above) will address the rightful need for a full range of interests, often conflicting, to be considered. This will enable the Commissioner role to be impartial, working to an evidence base and unfettered by particular interests.

2.4 The impartiality of Commissioners needs to be set also in the context of what we consider to be the essential broad, inclusive base of expertise within the Commission which will be necessary in order for impartial function of the Commission to be achieved. We agree with the proposed areas of professional/technical expertise, as detailed in Section 9(1)(a), and suggest the addition of human rights expertise to this list. We would further advocate consideration of the wider principles of community and social resilience as knowledge foundations within the Commission.

2.5 We also support the proposed functions of the Land Commissioners as detailed in Section 20(1). Whilst fully supportive of a programme of land reform, we consider it important to recognise the possibility that continued and on-going land reform could lead to uncertainty and so inhibit investment. We therefore suggest that, when ‘reviewing the impact and effectiveness of any law or policy’ in section 20(1)(a), negative and positive impacts and also unintended consequences (positive and negative) are fully considered and research enquiry areas are sufficiently broad to capture these at the outset.

PART 3 INFORMATION ABOUT THE CONTROL OF LAND ETC

3.1 We support measures to provide accurate and accessible information on the control, interest and ownership of land in Scotland. We note that a proportionately large number of regulations are proposed to enable the implementation of Section 35. Whilst appreciating that a balance of interests needs to be struck - a public interest re transparency of land ownership/controlling interests against a right to privacy – we favour as straightforward and efficient a process as is possible.

3.2 We support the principle of the measures contained in Section 36 to give the Keeper a power to request additional information from land proprietors and those with a controlling interest in the land. However, there do not appear to be any measures to require asset owners and those with a controlling interest in the land to provide this information, and we suggest this be remedied.

PART 4 ENGAGING COMMUNITIES IN DECISIONS RELATING TO LAND
4.1 We are very supportive of the principle of landowners and those with a controlling interest in land engaging with communities to take their needs into account. As a stand-alone measure Part 4, which instructs Ministers to issue guidance on engaging with communities, may have limited efficacy.

4.2 However, we note that lack of community engagement in Part 4 could be a factor that Ministers consider as part of the evidence provided by a community body to support a right to buy application in Part 5 of the Bill. Because of this, we favour retention of Part 4 as a stand-alone measure.

4.3 We suggest that Section 37(2) and 47(2)(a) be amended to require Ministers to have regard to the furthering of sustainable development of the ‘community’ as opposed to the ‘land’. Meeting the development needs of the community is the policy driver for this Part of the Bill; indeed Section 37(1) refers to, ‘... decisions relating to land which may affect communities’, and Part 5 (closely linked to Part 4) refers only to ‘sustainable development’ rather than ‘sustainable development of the land’.

PART 5 RIGHT TO BUY LAND TO FURTHER SUSTAINABLE DEVELOPMENT

5.1 We support the proposed right to buy land to further sustainable development which we consider to be additional and complementary to the Part 3A provisions of the Community Empowerment Bill (community right to buy abandoned or neglected land).

5.2 We welcome these provisions which, in our view, will essentially serve to underpin voluntary arrangements between the landowner and community (Part 4). We anticipate that these provisions will be used in exceptional circumstances only, which are demonstrably in the public interest.

5.3 To ensure that public benefits are retained in the longer term, we suggest appropriate, binding conditions be applied to nominated third party purchasers [Section 41(1)(b)].

5.4 The proposals for mediation in Section 64 are particularly welcomed and further reinforce the use of this part of the Bill as a ‘measure of last resort’.

5.5 We note that these provisions only apply to community bodies (and third parties nominated by community bodies). However, there are vast tracts of rural land without a resident community, or a community with a significant connection to the land. In such areas these provisions could not be exercised. We therefore suggest that consideration be given for Scottish Ministers to benefit from these powers.

PART 6 ENTRY IN VALUATION ROLL OF SHOOTINGS AND DEER FORESTS
We agree with proposals to end the current exclusion from valuation rolls of shootings and deer forests. This is because we are unaware of a justification to continue with the current exemption.

PARTS 7 - 10

No comment.