Written submission from Historic Houses Association Scotland (HHAS)

Land Reform (Scotland) Bill

The Historic Houses Association Scotland (HHAS) represents independently owned historic castles, houses and gardens throughout Scotland; many regularly open to the public. We welcome the opportunity to respond to the call for evidence on the Land Reform (Scotland) Bill (“the Bill”).

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 both the Scottish and UK Governments and local communities across Scotland. Historic houses are net contributors to the Scottish economy and our member properties make a major contribution towards employment in Scotland, both in terms of the rural and national economy. It is therefore vital that reforms brought into force by the Bill or through secondary legislation are not burdensome and that any interpretation of them is both clear and consistent. We believe that HHAS members are already delivering the land reform objective of ensuring that many people benefit from land and property assets in Scotland.

If historic houses lose their economic viability as a consequence of ‘cherry-picking’ parts their surrounding estates, the consequences could be far-reaching and detrimental to their local communities. Should a historic house business fail or be sold and then close, the effects on local employment and incomes would be multiplied, in fragile rural economies. For example, the closure of Torosay Castle on Mull quickly led to the closure of the nearby tourist railway and ancillary shops.

We have focussed our comments on the areas of most concern and interest to our membership.

Part 1 – Land Rights and Responsibilities Statement

HHAS agrees in principle with having a Land Rights and Responsibilities Statement, but the exact detail of what is contained within the statement is of great significance. Independent owners usually regard themselves as the stewards of their properties, looking after property for the benefit of future generations and of the nation and as such are already exercising their rights responsibly, but we see no problem with this being expressly stated. Such a statement must incorporate a suitable vision which clearly sets out what success looks like, and which can be properly scrutinised and is measurable against objectives. While by its nature the statement will be broad, this needs to be counterbalanced by having clear and meaningful terminology. The vision also needs to be part of the broader vision for rural Scotland, of which historic houses play a major part, and we would agree with the provision in the Bill that five years is a suitable period for review of such a statement.

It is of serious concern to HHAS that there is no further detail at this stage as to what will actually be included in the published statement. In our view it would make sense for the statement to form part of deliberations now and to be finalised in tandem with the Land Reform legislation during the passage of the Bill. At the very
least, Scottish Ministers ought to make clear their Land Reform objectives this year so all stakeholders are aware of what is being worked towards. Overall, we would continue to stress that independent ownership is frequently the best model for successful land management, but that under no circumstances should any single model of ownership be preferred or imposed by this statement.

Part 2 – The Scottish Land Commission

HHAS was sceptical about the principle of a Scottish Land Commission in our response to the consultation on Land Reform on the basis of increased bureaucracy without provision of an obvious increased benefit. We considered that it would be more useful as an ad hoc body for consideration of particular issues. However, if the Scottish Government is determined to proceed with the formation of a Land Commission in terms of this part of the Bill we would suggest various provisos. We are pleased to note the functions of the Land Commissioners are in relation to ownership, management and use. However, “land management” experience should be required for at least one of the Commissioners, not least since land use is included as a function of the Commission. In this regard there should also be express mention of the Scottish Government’s Land Use Strategy. The Commission’s role needs to be clearly defined and should concentrate on devolved matters.

Part 3 – Information about Control of Land

HHAS is fully committed to the principle of transparency in landownership in Scotland and broadly supportive of the powers contained in this part of the Bill. The provisions regarding limiting requests to specific areas of land and requiring a reason for request are in our view eminently sensible. However, we note that much of the detail is being left to secondary legislation, which makes it understandably difficult to pass more substantive comment at this stage. HHAS is keen to be involved in discussions, through the Minister’s duty to consult before the specific regulations are laid in the Scottish Parliament.

Part 4 – Engaging communities in decisions relating to land

HHAS agrees that public engagement is frequently desirable, but that engagement should not be seen as co-decision making and should not duplicate current requirements in terms of the planning law process in Scotland. We welcome the application of the provisions to occupiers and tenants as well as owners and the recognition that those involved in land management all have a responsibility to engage with the wider community, not just the owner. HHAS also consider that historic house owners are part of their respective communities and suggests “guidance” for communities would potentially also be of use. Specifically as we indicated in our response to the consultation it would be disadvantageous for legislation coming forward to raise unrealistic expectations of the engagement process. We understand that Scottish Ministers are keen to consult on the guidance and HHAS would wish to be part of that consultation process. It will be important to ensure that engagement does not impede or unduly delay key business decisions and that an individual cannot use the pretext of the duty to engage to act in a vexatious manner; above all the requirement for engagement needs to be proportionate.
Part 5 – Right to buy land to further sustainable development

HHAS has serious concerns regarding this part of the Bill, including the fact that barriers to sustainable development are focussing on landownership and particularly the element of compulsion which is being introduced. Without further information or understanding of the basis for its introduction, HHAS is currently inclined to oppose the inclusion of this part of the Bill, especially given the legislative powers which already exist.

Bearing in mind the new powers contained in the recent Community Empowerment legislation with which HHAS was very engaged, together with longstanding Compulsory Purchase Order powers available to local and national Government (currently subject to review) we are not convinced about the requirement for the further sustainable development provisions being introduced by this part of the Bill. Indeed on reviewing the Parliamentary discussions on the Community Empowerment Bill, it seemed clear from Ministerial comment that the focus was on abandoned, neglected and detrimental land to ensure clarity and deliberately not broadened.

In terms of the Community Empowerment (Scotland) Bill the matters to which Ministers must have regard when deciding whether land is “eligible land” are set out in the draft Statutory Instrument, including the physical condition and its effect on the surrounding area, public safety and the environment; the use of the land, or lack of use as the case may be, including whether the land is a nature reserve, held for conservation purposes or used for public recreation; any designation or classification of the land, such as land which has been classed as contaminated land, or buildings which are listed buildings or scheduled monuments. HHAS considers these to be very broad categories which can deal with a range of situations and include reference to the relevant regulators. It would be sensible for these regulations to be finalised and enforced prior to looking to introduce yet further intervention.

A number of barriers to rural development have continually been identified over years, and this is acknowledged within the policy memorandum which accompanies the Bill. However, there is limited evidence to suggest that these other barriers to sustainable development are being addressed by the Bill. These other barriers include, but are not limited to planning, capacity, funding and infrastructure. On this basis the ability of businesses and communities, including historic houses, to progress sustainable development is severely restricted. Furthermore, the focus on ownership means that those other issues which have a more significant impact on rural sustainable development are effectively being neglected.

The policy memorandum refers to the powers being particularly useful in situations where the decisions taken by the landowner are not open to public scrutiny or public interest test. HHAS is of the view that such statements should be better evidenced and we would be grateful to obtain examples of such decisions to further understand the context in which these comments are made. The determination of “public interest” is of specific concern. Community ownership may be the best model to achieve environmental sustainability in conjunction with economic prosperity and social benefits in certain circumstances, but most definitely only where there is willing seller and willing purchaser. HHAS does not believe a sufficient case has been set out for the introduction of the powers proposed in the Bill.
It is concerning for owners of Historic Houses if there is now proposed an extension of powers to land which is well tended and managed if it can be forcibly passed to a community, albeit accepting that the Scottish Government has incorporated some tests. HHAS strongly suggests that the provisions here are modified and strengthened to ensure that there can be no possibility of cherry-picking land. We are clear that if estate land belonging to a historic house or castle is “cherry-picked”, there is a very significant danger that this might render the house or castle unviable. Generally, any instability or uncertainty as a consequence of the Bill may adversely impact economic prosperity and environmental sustainability.

We note that the policy memorandum claims that ECHR considerations have been addressed and landowners’ rights would be protected through a number of measures, including ensuring that landowners would be compensated. We would question that this is indeed the case as it appears that a disproportionate burden is being placed on private owners.

**Part 6 – Entry in Valuation Roll of shootings and deer forests**

Any action which places extra financial burden on land based businesses could have a negative impact on heritage. The economic contribution study carried out by Scottish Land & Estates, along with our own membership data, shows that estate activities are extremely interdependent and heritage conservation is often funded from different parts of the businesses.

**Part 7 – Common Good Land**

We have no comment to make.

**Part 8 – Deer Management**

We have no comment to make.

**Part 9 – Access Rights**

We have no comment to make.

**Part 10 – Agricultural Holdings**

We have no comment to make.