

Consultation Questions & Respondent Information Form

**A Consultation on the Future of Land Reform in Scotland**



**RESPONDENT INFORMATION FORM**

Please Note this form **must** be returned with your response to ensure that we handle your response appropriately

**1. Name/Organisation**

Organisation Name

Forest Policy Group

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**3. Permissions - I am responding as...**



**(a)** Do you agree to your response being made available to the public (in Scottish Government library and/or on the Scottish Government web site)?

Please tick as appropriate  Yes  No

**(b)** Where confidentiality is not requested, we will make your responses available to the public on the following basis

Please tick **ONE** of the following boxes

Yes, make my response, name and address all available

or

Yes, make my response available, but not my name and address

or

Yes, make my response and name available, but not my address

**(c)** The name and address of your organisation **will be** made available to the public (in the Scottish Government library and/or on the Scottish Government web site).

Are you content for your **response** to be made available?

Please tick as appropriate  Yes  No

**(d)** We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

Please tick as appropriate  Yes  No

## Forest Policy Group

The Forest Policy Group (FPG) seeks to further the development of sustainable forestry in Scotland, by contributing informed inputs to the policy debate. Its membership is drawn from woodland organisations, forestry and land use professionals and timber users, who subscribe to a view of forestry in which:

- environmental and social issues are treated as core parts of forestry on an equal footing with economic interests; and
- diversity is actively fostered – diversity of tree species and woodland types, woodland tenure, management approaches, timber production and processing, and wider economic opportunities.

In 2012 FPG published a review of forest ownership in Scotland called “Forest Ownership in Scotland - A Scoping Study”; the only paper to have explored this issue for many years. FPG also published “Woods for People”, a plea for a new emphasis in public support for forestry in Scotland - 'forestry with a belief in people' - accompanied by a suite of briefing papers in support covering rural development, grants, forest ownership, the National Forest Land Scheme, restocking, deer, & quality broadleaves (2011).

This submission draws on these papers which are available from the Group’s website at [www.forestpolicygroup.org](http://www.forestpolicygroup.org)

### Why is the Forest Policy Group interested in Land Reform?

Much attention has been given to the concentrated pattern of land ownership in Scotland. FPG’s own research in 2012 (above) indicated that forest ownership is similarly concentrated: there are just an estimated 4,000 forest owners, half of who are absentee, and one third living outwith Scotland. Moreover, over 90% of our privately-owned woodland is held by landed estates and investment owners, in large parcels. The current pattern of ownership is not suitable for delivering the best outcomes for the people of Scotland; and the scale and price of woodland properties simply excludes many people from owning or managing woodlands at all.

This is very different from the situation in other countries where ownership or management of woodland is far more equitably shared across all sectors of society. A greater number and diversity of owners/tenants would result in people **“better connected to the land, with more people enjoying the land and positively influencing land use”** – one of the 3 key objectives of the Scottish Land Use Strategy. It would also deliver a more diverse woodland resource, delivering a wider range of benefits, and potentially more resilient to emerging threats.

FPG supports a wide programme of land reform focussing primarily on land ownership/tenure arrangements, in order to secure a more socially just and diverse pattern of ownership/tenure. Alongside ownership, FPG would like to highlight the importance of supporting and developing an affordable rental sector, to offer opportunities for those who cannot afford to buy land. The rights and responsibilities conferred on those who hold land, including the quality of land management, are an important part of land reform, and these are often linked with the way that land is held or regulated.

## CONSULTATION QUESTIONS

### Draft Land Rights and Responsibilities Policy

Q 1. Do you agree that the Scottish Government should have a stated land rights and responsibilities policy?

Yes  No

Q 2. Do you have any comments on the draft land rights and responsibilities policy?

It is a useful underpinning for government action on all aspects of ownership, tenure and use of land. Getting agreement on these underlying principles is an important first step towards a National Land Policy, which is badly needed. Current wording is a good start and FPG broadly agrees with all 7 points.

The inclusion of reference to “fairness and social justice” (para 2) and “building a fairer society” (point 3) is vital.

It would be useful to include reference to the legitimacy of private ownership of land, and acknowledge its role in society. An aim of land reform should be to address the long standing dominance of private interest, and to promote public interest, in all aspects of land tenure. Forestry has a better record in terms of public interest than many other rural land use sectors in this respect.

There should be reference to an aspiration simply to *increase the range and number of people owning land* i.e. in addition to reference to *communities* in point 5. There should be particular reference to the need to increase the number of *locally resident people* owning land (whilst acknowledging that ownership of land cannot be local in all cases). An owner who lives locally is likely to be more accessible and approachable, thereby more likely to be more sensitive and understanding of the interests to the local community and area.

Similarly, the draft land rights and responsibilities should specifically aspire to increasing the number and range of opportunities *for people to rent land or otherwise attain rights to use or manage land*, with a particular emphasis on small-scale opportunities (e.g. small farms, smallholdings, woodland crofts and woodlots, business premises and housing) and other forms of rights such as hunting and harvesting of firewood.

It would be useful to highlight the “local interest” as an important component of the wider “national interest”; and that in order to deliver greater social justice, more emphasis will be required on local interest.

The wording in 4 “*increasingly diverse and widely dispersed pattern*” could be clarified. In some situations it would be better to replace the term *land use* with *land management*.

## *Aspirations for the Future*

Q. 3. Considering your long term aspirations for land reform in Scotland, what are the top three actions that you think the Scottish Government should take?

### Action 1:

#### **To review existing tax & subsidy arrangements for rural land and develop a regime that encourages large land owners to dispose of surplus land**

The aim would be to increase the number of people/bodies owning or managing land and incentivise socially just patterns of ownership/tenure.

In the short term, the review should deliver a 'level playing field', on the grounds that current tax and subsidy arrangements, including tax reliefs, distort the land market – for example, inheritance tax relief provides substantial support for wealthy individuals to acquire land, but not for people of ordinary means, nor communities. This could have the effect of lowering land values in the longer term so that land became more affordable to a greater number of people.

Public support should be clearly targeted at management which delivers public benefit, and shift away from generic support which tends to reward ownership rather than activity.

Longer term, new arrangements should make it increasingly expensive to own land as holding size increases, with the aim of encouraging large land owners to dispose of surplus land. Whilst targeting the larger land holdings, provisions should not penalize ownership at appropriate scales that are required for rational land management. Consideration could be given to a cap on the total tax relief/subsidy available to any individual or business – at present it is unlimited – to ensure a more equitable distribution of public funding.

Where tax raising powers are reserved to Westminster at present, compensating mechanisms to negate their effects in Scotland could be introduced.

The ongoing evolution of land-related support mechanisms is an obvious process for development and oversight by the proposed Scottish Land Reform Commission.

### Action 2:

Policy and legislative changes are needed that would enable all public land i.e. that held by the Scottish Ministers and local authorities, to be managed for the public good by a wider range of properly constituted and competent organisations, not just those government bodies who currently manage them.

This should be developed in a way that allows land management rights to be passed between bodies without the need for sale and purchase of land. In particular, Scottish Ministers should review arrangements for putting land owned by them and placed (under the terms of the Forestry Act 1967) at the disposal of the Forestry Commissioners to manage, and placing it at the disposal of other bodies to manage instead. This would address the unsatisfactory situation where such bodies are required to purchase or lease the land in order to manage it for enhanced public benefit.

**Action 3:**

Initiate an international study of best practice in land ownership and tenure arrangements in comparable countries. This would focus primarily on effective and balanced arrangements for government to intervene in the land market in order to achieve a suitable balance between private and public interest; and between the rights and responsibilities of owners. Topics could include:

- methods of ensuring a reasonable proportion of land and property is held or controlled by local people, including the potential role of residency requirements;
- the role of tax and subsidy arrangements in influencing patterns of land ownership and use;
- arrangements for encouraging land to be in the ownership of people and bodies whose primary interest and competence is in land management;
- arrangements for the inheritance of land and property that balance the rights and interests of owners and their families with the wider public interest;
- the effects of land and housing being treated as investment vehicles;
- the different levels (national, regional, local) at which government intervene to secure the public interest in land;

## **Proposals for inclusion in a Land Reform Bill**

### **Proposal 1 - A Scottish Land Reform Commission**

Q. 4. Do you agree that a Scottish Land Reform Commission would help ensure Scotland continues to make progress on land reform and has the ability to respond to emergent issues?

Yes  No

Q. 5. What do you think the advantages or disadvantages of having a Scottish Land Reform Commission would be?

There are many advantages and no substantial disadvantages.

It would allow careful analysis of the complex issues around land ownership and so would increase society's and the Scottish Government's understanding of the advantages and disadvantages of various policy options. It would allow policy and legislative actions to be formulated that would deliver viable land reform.

It would signal serious intent on the part of the Scottish Government on land reform, because it would not be possible to advance land reform without such a body; and would demonstrate that Land Reform is an ongoing process for the long-term, and not merely a political whim subscribed to by any particular Government.

Q. 6. Do you have any thoughts on the structure, type or remit of any Scottish Land Reform Commission?

It should be independent of government, yet with a clear permanent locus within government structures.

It should have serious regional as well as local presence.

Its remit should be to develop a National Land Policy so that land reform is integrated across all public policy areas.

Proposal 2 - Limiting the legal entities that can own land in Scotland

Q. 7. Do you agree that restricting the type of legal entities that can, in future, take ownership or a long lease over land in Scotland would help improve the transparency of land ownership in Scotland?

Yes  No

Q. 8. Do you agree that in future land should only be owned (or a long lease taken over land) by individuals or by a legal entity formed in accordance with the law of a Member State of the EU?

Yes  No

Q. 9. What do you think the advantages or disadvantages of such a restriction would be?

Greater transparency regarding who is the beneficial owner of land, and therefore who is ultimately responsible for delivering land management in the public good.

Q. 10. How should any restriction operate and be enforced, and what consequences might follow if the restriction is breached?

Registration of titles should only be accepted by Registers of Scotland if they meet the provisions proposed in Q8.

FPG also believes such provisions should be applied retrospectively: if the owner failed to take the appropriate steps to meet the requirements within a pre-determined timescale, the property could be purchased at District Valuer's valuation by the Scottish Government, and then sold on in such a way as to increase diversity and thereby further land reform.

Proposal 3 - Information on land, its value and ownership

Q. 11. Do you agree that better co-ordination of information on land, its value and ownership would lead to better decision making for both the private and public sectors?

Yes  No

Q. 12. Do you hold data you could share or is there any data you would wish to access?

FPG would like to access authoritative information on who owns forest land in Scotland. This information should include the amounts of public funding received by the owner for the land in question.

Q. 13. What do you think the advantages or disadvantages of wider and more flexible sharing of land information would be and do you have any recommendations about how this can best be achieved?

Advantages:  
Transparency;  
The ability for local individuals and communities to make contact with owners of land to discuss its management;  
The facilitation of a wider debate on what types of landownership are delivering which public benefits, and at what cost to the public.

Disadvantages: None, and the considerable up-front costs are merited by the long term outcomes

All information should be held in a consistent format, and freely available via a web-based portal to allow for ease of access.

Proposal 4 - Sustainable development test for land governance

Q. 14. Do you agree that there should be powers given to Scottish Ministers or another public body to direct private landowners to take action to overcome barriers to sustainable development in an area?

Yes  No

Q. 15. What do you think the benefits would be and do you have any recommendations about how these can best be achieved?

This should be conceived of as a fall-back power for use in extreme circumstances. It could not be usefully developed as a general test of the quality of sustainable development / sustainable management of individual land holdings, because that is not feasible.

If a realistically useable power of intervention could be developed when public interest was clearly being thwarted, it could act as a sanction or deterrent; and the very existence of such a measure might help prevent such situations arising.

In the form of a limited fall-back power, it should apply equally to all types of land owner, not just private owners.

Management that thwarts the public interest can occur on land holdings of any size; however poor land management on large holdings has disproportionate local impacts, especially if the ownership in question has local monopoly status.

Q. 16. Do you have any concerns or alternative ways to achieve the same aim?

FPG considers that “sustainable development” should clearly not be the only, nor even the main, indicator for expressing the public interest in issues that arise from the ownership patterns of land. Other arguably more significant aspects of public interest are:

1. “Local monopoly control”; locations where ownership of land is so concentrated that local monopoly conditions arise in resources beneficial to local people or communities (e.g. land for building and recreational activity; or products such as firewood);
2. “Social justice concerns”; i.e. in locations where there is unduly concentrated ownership of land (though not concentrated enough for monopoly control) which leads to a situation where local people interested in acquiring and managing land are effectively permanently excluded by the small number and large size (and therefore value) of land holdings.
- 3.

It might be possible to signal potential local monopoly control and social justice problems in rural areas when the numbers of land holdings within a certain distance of local population centres fall below a critical threshold, and/or their market value rises above a certain threshold.

More work would need to be done in order to demonstrate that “sustainable development” is a suitable indicator for expressing the public interest issues that arise from the concentrated pattern of ownership of land.

Care needs to be taken to ensure that the measures are proportionate and the process of assessment fair. The preparation of a suitable test should perhaps be in the remit of the Scottish Land Reform Commission.

Notwithstanding the above, the Scottish Government should seek to enforce the provisions already available to it, in existing legislation and regulations, to ensure that all land holders abide by their responsibilities.

### *Proposal 5 - A more proactive role for public sector land management*

Q. 17. Do you agree that public sector bodies, such as Forestry Commission Scotland, should be able to engage in a wider range of management activities in order to promote more integrated range of social, economic and environmental outcomes?

Yes  No

Q. 18. What do you think the benefits would be and do you have any recommendations about how this can best be achieved?

This would rationalise and remove unnecessary constraints on management of public land in the public interest; it would allow public bodies the freedom to progress opportunities to serve a wider public good, outwith their core responsibilities.

Furthermore, the welcome measures being proposed in the Community Empowerment Bill should be implemented and built on such that public land can be managed for the public good by a wider range of properly constituted and competent organisations, not just those government bodies who currently manage them.

In respect of the public forest estate managed by Forestry Commission Scotland, steps should be taken to improve local accountability. Options to deliver this need to be explored but could include making the current Forest Districts semi-autonomous but accountable to locally elected Forest Boards. This is likely to make FCS activities more integrated locally, and more balanced across social, environmental and economic objectives.

#### Q. 19. Do you have any concerns or alternative ways to achieve the same aim?

We have two key concerns regarding Forestry Commission Scotland.

Firstly, though there have been subsequent pieces of legislation, the core Forestry Act underpinning forestry, and the role and remit of the Forestry Commission, dates from 1967. We consider further legislative tweaks to be undesirable, and what is now needed to reflect the needs of 21<sup>st</sup> century Scotland, is a new forestry act.

A new forestry act for Scotland would be an opportunity to update and rebalance the relationship among stakeholders in forestry.

FPG considers more emphasis in management of public forests should be given to supporting a more local, rural development forestry (RDF) model, where particular market failure exists, in part due to current forest ownership patterns. FPG considers such an RDF model of forestry would deliver greater numbers of forestry jobs, especially in the rural communities which host the forests, than the current more centralized model of forestry, and deliver greater public benefit.

One key way to deliver this would be to give FCS greater powers to lease forest land to individuals and small businesses (FPG welcomes the proposals contained in Community Empowerment Bill, and especially the recommendations of the SP Local Government Committee on the Draft Bill, but note that these apply essentially to community groups).

Secondly, where communities are seeking to acquire woodland by purchase or lease under the National Forest Land Scheme, the valuation process currently takes no account of the public benefits which may arise from the transfer of the land. It would greatly assist communities seeking to acquire woodland from FCS if transfers below 'market value' were permitted, to reflect the net benefits expected to arise from the transfer.

Proposal 6 - Duty of community engagement on land management decisions to be placed on charitable trustees

Q. 20. Do you think a trustee of a charity should be required to engage with the local community before taking a decision on the management, use or transfer of land under the charity's control?

Yes  No

Q. 21. What do you think the advantages or disadvantages would be?

Advantages:

Would improve local engagement and prevent the abuse of charitable status by private owners for whom this is primarily driven by tax-planning considerations.

Disadvantages:

It could be potentially unworkable and unenforceable if it was extended from the presumed target group of land owning private charities to cover all charities owning land or property (e.g. village hall committee?). A simple and effective solution would be to require, as a condition of their charitable status, landowning charities above a certain threshold, say 100ha, to require local people to be members and trustees of the charity and so play a meaningful part in its governance.

Q. 22. How should "community" be defined?

Primarily geographically defined residents as per the Land Reform Act, but more holistically – e.g. young people not eligible to vote should be included as they are key to any community's future; and not with 'artificial' distinction between different types of resident e.g. between 'crofting community' and 'community'.

Q. 23. What remedies should be available should a trustee of a charity fail to engage appropriately with the local community?

Loss of charitable status; or financial penalties such as surcharge (or imposition, if currently exempt) on non-domestic rates. There may need to be a progression in applying any sanction, with loss of charitable status being the measure of last resort. Alternatively legislation should be developed simply to ban certain types of private charitable trusts where their aim is clearly to avoid tax.

Proposal 7 - Removal of the exemption from business rates for shooting and deerstalking

Q. 24. Should the current business rate exemptions for shootings and deer forests be ended?

Yes  No

Q. 25. What do you think the advantages would be?

It would introduce a greater level of consistency and fairness in raising non-domestic rates, and provide increase local tax revenues.

Q. 26. What do you think the disadvantages would be?

There is a risk that landowners might be able to escape re-imposed charges by reclassifying their activities, or arguing that land use is mixed and therefore sporting rates should not apply.

Logically all land-use should in time be included in non-domestic rating, with appropriate reductions (or nil-rating) to encourage land ownership and management that was clearly in the public interest and to help to overcome market failure.

Whilst the implications of this proposal are understood to relate to commercial sporting estates, it would need to avoid adverse economic impact upon some more marginal landowners/land-managers who are trying to manage deer.

### Proposal 8 - Common Good

Q. 27. Do you agree that the need for court approval for disposals or changes of use of common good property, where this currently exists, should be removed?

Comments

Q. 28. If removed, what should take the place of court approval?

Comments

Q. 29. Should there be a new legal definition of common good?

Yes  No

Q. 30. What might any new legal definition of common good look like?

Comments

Q. 31. Do you have any other comments?

Comments

Proposal 9 - Agricultural Holdings

Q. 32. Do you agree that the Scottish Government should take forward some of the recommendations of the Agricultural Holdings Legislation Review Group within the Land Reform Bill?

Yes  No

Q. 33. What do you think the advantages would be?

It is better to include provisions on *how agricultural land* is held in the context of the wider land reform agenda, where these relate to other proposals in the Land Reform Bill and where there is general support - rather than make this a separate provision for agriculture. However we suspect there will still require to be a dedicated Agricultural Holdings Bill.

Q. 34. What do you think the disadvantages would be?

Comments

Proposal 10 – Wild Deer

Q. 35. Do you agree that further deer management regulation measures should be introduced to be available in the event that the present arrangements are assessed as not protecting the public interest?

Yes  No

Q. 36. What do you think the advantages would be?

This measure would introduce the vital ingredient of backstop compulsion. If owners of land deliver the progress needed, the powers will not be used on them. But if they are used, it will only be to hasten the progress on commitments which enlightened owners acknowledge to be necessary. The reality is that even 'enlightened' owners find difficulty

in ensuring that targets are met when there is no threat of compulsion.

Whatever advances are made by 2016, the principal issue is that deer management is a pervasive problem across most of the country (not just hill red deer); in the absence of any obligation - owners tend to be reluctant to do any more than suits their own private interests, which are often inconsistent with the public interest.

At present, the costs of inadequate deer management leading to unsustainable deer numbers, fall mainly on those who do not benefit from the presence of the deer: neighbouring farmers, foresters & crofters; road users who suffer accidents. These other owners, or the government, can then also end up paying the bill for deer control.

In addition a coherent policy framework needs to be developed that encompasses all deer in all situations; and sets out all the public interest issues arising from deer.

Q. 37. What do you think the disadvantages would be?

The important thing is that the powers are credible, and if necessary used robustly. If they are not, this initiative will only perpetuate the problem which has prevailed for at least 55 years, in which land owners are free to ignore the public interest in limiting deer numbers.

It is important that the powers are not limited to protection of designated sites, but the public interest in general, wherever appropriate.

*Proposal 11 - Public Access: clarifying core paths planning process*

Q. 38. At present, section 18 of the Land Reform (Scotland) 2003 Act is silent on the issue of resolving objections to a core path plan consultation. Do you agree that access authorities should be required, in the interests of transparency, to conduct a further limited consultation about proposed changes arising from objections?

Yes  No

Q. 39. Do you agree that section 20 of the 2003 Act should be clarified so that Ministerial direction is not required when an access authority initiates a core path plan review?

Yes  No

Q. 40. Do you think that the process for a minor amendment to core path plan (as set out in section 20 of the 2003 Act) should be simplified to make it less onerous than that for a full review of a core path plan?

Yes  No

## **Assessing impact**

### **Equality Impact Assessment**

Q. 41. Please tell us about any potential impacts, either positive or negative, you feel the draft Land Rights and Responsibilities Policy or any of the proposals for the Bill may have on particular groups of people, with reference to the “protected characteristics” listed above. Please be as specific as possible.

The widening out of land ownership, linked to Scottish Government’s proposals to radically overhaul the law of succession, will have positive impact on women’s access and involvement in land ownership.

FPG believes this would have a positive impact on the way that land is managed, in the way that land-owning power is used and in the relationship between landowners and communities.

Q. 42. What differences might there be in the impact of the Bill on individuals and communities with different levels of advantage or deprivation? How can we make sure that all individuals and communities can access the benefits of these proposals?

The broadening of ownership could have a positive impact upon communities with experience of disadvantage or deprivation.

### **Business and Regulatory Impact Assessment**

Q. 43. Please tell us about any potential costs or savings that may occur as a result of the proposals for the Bill, and any increase or reduction in the burden of regulation for any sector. Please be as specific as possible.

Comments

### **Privacy Impact Assessment**

Q. 44. Please tell us about any potential impacts upon the privacy of individuals that may arise as a result of any of the proposals contained in this consultation. Please be as specific as possible.

Comments

*Strategic Environmental Assessment*

Q. 45. Please tell us about any potential impacts, either positive or negative, you feel any of the proposals contained in this consultation may have on the environment. Please be as specific as possible.