



THE LAND RIGHTS AND RESPONSIBILITIES REVIEW

A RESPONSE BY THE SCOTTISH PROPERTY FEDERATION

PREPARED AND SUBMITTED BY

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THE LAND RIGHTS AND RESPONSIBILITIES REVIEW: A SCOTTISH GOVERNMENT CONSULTATION

Background

The Land Rights and Responsibilities Statement was introduced in 2017 and followed the previous year's Land Reform Act (2016). The LRRS is subject to a review every five years and this consultation is a part of this review process.

INTRODUCTION

Information about your organisation

The Scottish Property Federation (SPF) is the voice for the real estate industry in Scotland. We include among our members: property investors, including major institutional pension and life funds; developers; landlords of commercial and residential property; and professional property consultants and advisers. Our members build Scotland's workplaces, homes, shops, schools and other facilities and the infrastructure that serves them. Our industry is therefore central to the Scottish economy.

QUESTION 1 DO YOU THINK THAT THE REVISED VISION REFLECTS THE OUTCOMES THAT WE NEED TO ACHIEVE? A) YES B) NO C) TO SOME EXTENT D) I DON'T KNOW E) I DO NOT HAVE ENOUGH INFORMATION

C)

QUESTION 2 IF YOU HAVE ANSWERED 'NO' OR 'TO SOME EXTENT', WHAT KEY CHANGES WOULD YOU LIKE TO SEE TO THE VISION?

The revised vision covers many areas of policy-making which in themselves are tied to many other objectives and interpretations. But these policies do not always co-exist well and this will limit the effective delivery of the vision's intended outcomes. The government cannot escape the conundrum that people have different views on how to use land and that for example a just transition to net zero will require significant financial resource to avoid some communities being 'left behind'. The recent example in Braemar where the authority sought to remove open fires from homes, shortly after the considerable impact on the power grid of Storm Arwen, is a classic case in point. If authorities seek to remove essential back up heating systems, then there must be reliable and accessible energy power supplies if communities are to remain warm and safe.

People tend to like change in general but not always when it particularly affects their own interests or perspectives – for example the opposition to onshore windfarms or even onshore facilities for offshore windfarms, or to new housing and perhaps less frequently, business premises despite requirements for homes and jobs. There should therefore be a direct recognition that on occasion there will need to be a trade-off between certain objectives. We will need to invest in new towns and settlements. And there should also be a recognition that sometimes, we do need to rebuild properties so that they may change their previous uses. Vacant and derelict land is not always capable of effective, efficient and economic reuse. It may need for example very extensive decontamination, or the site may no longer be in the right location for new communities or business requirements. We need to recognise as well that if we are to achieve genuinely sustainable communities where people wish to live, learn and work then on occasion, then that may need to be done on a new 'greenfield' site, rather than only consider vacant and derelict land.

QUESTION 3 DO YOU THINK THAT THE PRINCIPLES ARE STILL RELEVANT TO CURRENT SCOTTISH LAND ISSUES?

- Principle 1: No
- Principle 2: Yes
- Principle 3: Yes
- Principle 4: Yes
- Principle 5: Yes
- Principle 6: Yes

QUESTION 4 IF YOU THINK THAT THE PRINCIPLES COULD BE MADE MORE RELEVANT, OR THAT THERE ARE ANY ISSUES THAT THEY DO NOT ADDRESS, PLEASE OUTLINE THIS. PLEASE MAKE SURE YOU STATE CLEARLY WHICH EXISTING PRINCIPLE EACH SUGGESTION RELATES TO, IF APPLICABLE.

Principle 1 - It is important that the statement continues to assert both public and private rights and responsibilities. This is welcome. But we would wish to see an explicit reference to the inclusion of property rights as well, which are a fundamental tenet of law. Both private and public interests will need to collaborate to achieve the wider vision of the LRRS.

Principle 2 - We do feel that this principle has different applications in urban or rural situations. There is already a considerable level of ownership in aspects of urban locations, for example home ownership is at around 60% of the stock. Indeed, as we have said before in previous submissions, sometimes it is the fragmented nature of property ownership in urban sites that can make regeneration more challenging as the local authority strives to assemble sites. This principle is therefore one that appears to be more firmly directed towards the rural policy space.

Principle 3 - Greater roles for local communities are welcome and we also welcome the reference to seeking sustainable development. But there may come to be conflicts with alternative projects from either public or the private sector, or community bodies themselves. These conflicts, if pursued legally or via planning objections, have the potential to frustrate and delay much needed investment and delivery of new homes, business and potentially public facilities.

Principle 4 - Our only comment on this principle is really to note (again) the level of subjectivity which might be applied to different interpretations of contributing to sustainable growth, or successful land management and use. Should the LRRS be placed on a statutory basis then the wide range of subjectivity and interpretation of its policies and intentions, including within community groups, could well lead to significant legal dispute, conflict and delay. This outcome would not support the strong use of land management, rights and responsibilities envisioned by the Statement.

Principle 5 - We support the principle of transparency of land management, use and ownership. It is important that efforts are made to codify and bring together the different forms of land and property information that are already public - including the Registers of Scotland, the valuation roll and companies house information that is already open to the public. The government should also be clear in any new initiative about the purpose of 'improved transparency' measures. For example, will this be the occupier, the owners or investors, or possibly an individual property or asset manager? Depending on the answer, there could be privacy issues.

Principle 6 - The introduction under recent legislation of a formal role for local place plans (LPPs) will also be relevant to this principle. LPPs will need to be referred to therefore in accompanying Advisory Notes. Our key concern however is that while greater collaboration and community engagement is welcome in itself, Principle 6 does not recognise or account for the reality of conflicting interests among communities.

QUESTION 5

DO YOU HAVE ANY PROPOSALS AS TO HOW TO MEASURE CHANGE AS A RESULT OF IMPLEMENTATION OF THE STATEMENT, INCLUDING SUGGESTIONS FOR INDICATORS OF PROGRESS? PLEASE PROVIDE DETAILS.

The SLC should continue to engage with major landowners and their representative bodies such as SLE to support change in land use, management and diversification where it is appropriate and needed. It will be helpful to continue to work together on lessons learned and helpful guidance for other stakeholders.

The Statement is broad ranging and not always specific, which can make measurement challenging. There are some well established indicators in relation to specific aspects of the LRRS, for example:

- the annual vacant and derelict land survey
- progress on the registration of land by the Registers of Scotland
- community right to buy applications and approvals.

New measurements should add value to these established processes. It would be helpful, for example, to see updates on how land use changes support improved local economic prospects, perhaps in relation to rural towns and communities in particular.

QUESTION 6

DO YOU THINK THAT THERE IS A NEED FOR REGULAR REPORTING ON IMPLEMENTATION OF THE PRINCIPLES OF THE STATEMENT? YES/NO

No

QUESTION 7

IF YOU THINK THAT THERE IS A NEED FOR REGULAR REPORTING, HOW DO YOU THINK THIS SHOULD BE DONE AND BY WHOM?

At this stage we do not support annual reports, until there is a better idea of what it is the LRRS would wish to measure and assess. It would also be important not to simply duplicate other annual reports, such as the Vacant and Derelict Land survey. As a further general point, we would note that there is already a very high burden on local authorities to report and we expect that the LRRS could add to this burden. This suggestion is supported by the recent research undertaken by Ryden for SEPA and the SLC, which identified significant ownership of vacant land in the public sector.

QUESTION 8

IF YOU WOULD LIKE TO SUBMIT A CASE STUDY, PLEASE PROVIDE DETAILS OF A SPECIFIC EXAMPLE. YOU MAY SUBMIT MORE THAN ONE CASE STUDY.

An additional example of major private sector investment of potential interest to the LRRS is the recent investment into Aberdeenshire by Par Equity and Aviva, through their Common Transition Fund, into Natural Capital. The investment includes reforestation among other initiatives and the investors cited alignment with the Land Rights and Responsibilities Statement.

QUESTION 9 ARE THERE ANY CHANGES THAT SHOULD BE MADE TO THE ADVISORY NOTES TO MAKE IT MORE CLEAR, RELEVANT OR REFLECTIVE OF CURRENT CONTEXT? IF YOUR COMMENT RELATES TO A SPECIFIC PRINCIPLE PLEASE FLAG WHICH ONE.

The Advisory Notes must be updated regularly if they are to remain relevant to changing demands and indeed, regulatory and policy changes. For example, Parliament is currently considering the NPF4 and the associated 2019 Planning Act- reforms which introduced a number of new concepts including Local Place Plans. The experience of the pandemic also heightened issues related to the value of outdoor access as well as the use and occupation of land and buildings. There is also much greater urgency to the transition to a net zero economy including recent legislation such as the expansion of district heat networks. This complicated and intense picture of reforms related to land rights and regulations suggest that the Advisory Notes must be seen as 'living documents', which will need to be refreshed frequently as reforms to planning and other related matters come into effect.

QUESTION 10 DO YOU HAVE ANY COMMENTS ON THE LAYOUT OF THE STATEMENT?

We have no comments on the layout - it appears to be logical and clear.

QUESTION 11 PLEASE TELL US ABOUT ANY SECTORS YOU PERCEIVE TO HAVE LOWER AWARENESS OF THE STATEMENT.

Investors of major commercial or indeed residential property in urban areas would be less aware of the Statement. Or if aware, these sectors may see less apparent direct application within the LRRS for their businesses. The SPF will be pleased to continue to work with the SLC to raise awareness among our membership of the Statement.

QUESTION 12 DO YOU HAVE ANY SUGGESTIONS OF WAYS TO ENGAGE WITH SECTORS WHO DO NOT CURRENTLY SEE THE STATEMENT AS RELEVANT TO THEM?

Environmental, Social and Governance (ESG) factors are a feature of company reports and this would appear to be a relevant focus for companies in relation to the LRRS. This could be an area of interest and opportunity for SLC to raise greater awareness and tangible adoption of the Statement, where appropriate.

QUESTION 13 DO YOU HAVE ANY IDEAS FOR OTHER WAYS THAT ADOPTION OF THE STATEMENT COULD BE PROMOTED?

The Scottish Land Commission’s webinars, public communications and other events are having a positive impact to raise awareness. Engagement with those responsible for land and property, as well as community groups will continue to be crucial. It will also be vital to continue engagement with key professional and representative bodies (RICS, SLE, NFU). The SPF will be pleased to continue to support awareness raising as well with our particular interest in urban sites and locations. One sector we feel is not always apparent in SLC work is the voice of local government and it could be that further engagement with local authorities might promote greater adoption and awareness of the LRRS.

QUESTION 14 ARE YOU AWARE OF ANY EXAMPLES OF HOW THE PROPOSALS IN THIS CONSULTATION MIGHT IMPACT, POSITIVELY OR NEGATIVELY, ON ISLAND COMMUNITIES IN A WAY THAT IS DIFFERENT FROM THE IMPACT ON MAINLAND AREAS?

No comments.

QUESTION 15 ARE YOU AWARE OF ANY EXAMPLES OF PARTICULAR CURRENT OR FUTURE IMPACTS, POSITIVE OR NEGATIVE, ON YOUNG PEOPLE, (CHILDREN, PUPILS, AND YOUNG ADULTS UP TO THE AGE OF 26) OF ANY ASPECT OF THE PROPOSALS IN THIS CONSULTATION?

No comments.

QUESTION 16 ARE YOU AWARE OF ANY EXAMPLES OF HOW THE PROPOSALS IN THIS CONSULTATION MAY IMPACT, EITHER POSITIVELY OR NEGATIVELY, ON THOSE WITH PROTECTED CHARACTERISTICS (AGE, DISABILITY, GENDER REASSIGNMENT, MARRIAGE AND CIVIL PARTNERSHIP, PREGNANCY AND MATERNITY, RACE, RELIGION OR BELIEF, SEX AND SEXUAL ORIENTATION)?

No comments.

QUESTION 17 ARE YOU AWARE OF ANY EXAMPLES OF POTENTIAL IMPACTS, EITHER POSITIVE OR NEGATIVE, THAT YOU CONSIDER THAT ANY OF THE PROPOSALS IN THIS CONSULTATION MAY HAVE ON THE ENVIRONMENT?

The main risk is if the Statement leads to disputes that delay or deter positive investment to support the environment. For example, if it used to oppose major renewable energy schemes.

ARE YOU AWARE OF ANY EXAMPLES OF HOW THE PROPOSALS IN THIS CONSULTATION MIGHT IMPACT, POSITIVELY OR NEGATIVELY, ON GROUPS OR AREAS AT SOCIOECONOMIC DISADVANTAGE (SUCH AS INCOME, LOW WEALTH OR AREA DEPRIVATION)? WE DO NOT CONSIDER THAT A BUSINESS AND REGULATORY IMPACT ASSESSMENT IS REQUIRED, AS THE REVIEW OF THE LAND RIGHTS AND RESPONSIBILITIES STATEMENT WILL NOT

QUESTION 18 DIRECTLY IMPOSE NEW REGULATORY BURDENS ON BUSINESSES, CHARITIES OR THE VOLUNTARY SECTOR.

We have highlighted the risk of legal disputes and potential conflicts of interests by communities and businesses, or even authorities. There is the possibility that some individuals or groups might consider the Statement to be in favour of no change to land in their respective areas. This would be damaging to longer term aspirations to attract investment into Scotland. If a policy of seeking to preserve land without any prospect of change becomes ingrained in the decision-making process, then there will be communities who will struggle to see the successful delivery of homes, employment opportunities or indeed, a just transition to a net zero economy. All of these aspirations will require investment and resource, which may be frustrated should the LRRS become the basis of contradictory disputes between and within communities, business interests and authorities

QUESTION 19 ARE YOU AWARE OF ANY POTENTIAL COSTS AND BURDENS THAT YOU THINK MAY ARISE AS A RESULT OF THE PROPOSALS WITHIN THIS CONSULTATION? WE DO NOT CONSIDER THAT A DATA PROTECTION IMPACT ASSESSMENT IS REQUIRED, AS THE REVIEW OF THE LAND RIGHTS AND RESPONSIBILITIES STATEMENT WILL NOT DIRECTLY LEAD TO ANY NEW COLLECTION OR PROCESSING OF PERSONAL DATA.

Although there is no statutory requirement at this stage to adopt the LRRS, the LRRS could still be used by individual or group/business to oppose or object to, for example, planning applications or proposed uses of land. Should the LRRS become a statutory document and thus subject to formal actions and legal disputes, then this risk will be increased, with potentially negative outcomes for communities and businesses.

QUESTION 20 ARE YOU AWARE OF ANY IMPACTS, POSITIVE OR NEGATIVE, OF THE PROPOSALS IN THIS CONSULTATION ON DATA PROTECTION OR PRIVACY?

There is the potential for privacy concerns, but this depends on the extent and nature of any further measures to increase the transparency of land ownership or use in Scotland.

