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A CONSULTATION ON THE FUTURE OF LAND REFORM IN SCOTLAND

General comments

The Scottish Wildlife Trust welcomes the opportunity to comment on the Future of Land Reform in Scotland. The Trust owns or manages 119 reserves for wildlife covering c. 20,000 ha of land in Scotland in accordance with the Trust's charitable purpose:

to advance the conservation of Scotland's biodiversity for the benefit of present and future generations

The Trust owns 56% of the area of wildlife reserves it manages with the remainder managed under (usually 25 year) management agreements with landowners and/or in partnership with others. The purpose of the Trust's wildlife reserves is to provide a network of sites to safeguard a broad representation of wildlife found throughout Scotland, to act as exemplars to other site managers and to deliver public benefits through the provision of ecosystem services including: recreation and education, health and wellbeing, mitigating and adapting to climate change, improving water quality and regulating water flow, carbon storage and sequestration, soil protection and, of course, biodiversity conservation and restoration.

There are 136 statutory designations applied to 75 of the Trust's reserves. These designations cover a wide range of ecosystems and species and are designed to provide a legal basis for conservation. The Trust is successfully managing these areas and the results of site condition monitoring up to 2014 showed that 96% of the features are in Favourable or Favourable Recovering condition.

The Trust's response to the consultation proposals for land reform are considered in the context of achieving positive outcomes to sustain and enhance Scotland's natural capital¹, and to benefit both wildlife and the people of Scotland.

The Trust is primarily concerned with *how* land is used and managed in order to maximise public benefits such as biodiversity, carbon sequestration, improved water and air quality, and flood prevention, as opposed to *who* owns the land per se. However, the Trust is of the opinion that the historic pattern of land ownership in Scotland has often tended to encourage monocultural patterns of land use which have focused on management for one or very few private benefits, sometimes to the detriment of the public benefits which result from healthy ecosystems. Indeed, large scale land management practices common on many (but by no means all) of the larger estates are amongst the main drivers of biodiversity loss in upland Scotland^{2,3,4,5,6}. Examples include damage from burning and suppression of woodland/scrub regeneration on intensively managed grouse moors, and overgrazing by deer kept at artificially high numbers in some areas due to a lack of appropriate culling levels (and sometimes supplementary feeding and a lack of natural predators).

¹ Natural capital is the stock of natural assets which includes geology, soil, air, water and biodiversity. It is from this natural capital that humans derive a wide range of services, often called ecosystem services, which makes human life possible.

² Brown et al (2014). The Effects of Moorland Burning on the Ecohydrology of River basins. Key findings from the EMBER project. Leeds University;

³ Forestry Commission Scotland (2014). Scotland Native Woodlands – Results from the Native Woodland Survey of Scotland. Written by Gordon Patterson, Derek Nelson, Patrick Robertson and John Tullis.,

⁴ Tucker G. (2003). *Review of the impacts of heather and grassland burning in the uplands on soils, hydrology and biodiversity*. English Nature Research Report No 550. Peterborough: English Nature

⁵ Glaves et al (2013). Natural England Review of Upland Evidence 2012 - The effects of managed burning on upland peatland biodiversity, carbon and water. Natural England Evidence Review, Number 004.

⁶ LINK Deer Task Force evidence to the RACCE Committee of the Scottish Parliament Deer and Natural Heritage Impacts

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Stocking densities for sheep have also been very high in the past, and this is still the case in some areas today.

Historic monoculturalism has also been evident on land held by Scottish Ministers and other public bodies; most obviously where the Forestry Commission have created large monocultures of non-native forestry, sometimes on highly inappropriate habitats such as blanket peatlands.

So, whilst the Trust's primary focus is on ensuring land use has the right balance of rights and responsibilities to ensure genuinely sustainable land use, the Trust is also of the view that the pattern of land ownership, and the culture associated with 'traditional' management, has exacerbated the loss of biodiversity. To be clear, the Trust is not calling for such traditional practices to cease entirely, or a fundamental change in patterns of land ownership. Instead we wish to see rights over land linked with clearer responsibilities, and in particular a move away from intensive monocultures towards more naturalised ecosystems that deliver both public and private benefits, in line with the Scottish Government's vision, objectives and principles set out in the Land Use Strategy (LUS) and the ecosystems approach to land use⁷.

The Trust therefore supports the acknowledgement in the consultation that land ownership and usage are inextricably linked to responsibilities. The Trust believes the Scottish Government has already set out the principles that should govern land use choices in the LUS. A stronger connection should be made between the LUS and any Land Rights and Responsibilities Policy Statement.

The Trust believes the principles set out in the LUS and Land Rights and Responsibilities should be applied by all landowners and managers and, all those with land rights should be working towards achieving the LUS vision of:

A Scotland where we fully recognise, understand and value the importance of our land resources, and where our plans and decisions about land use deliver improved and enduring benefits, enhancing the wellbeing of our nation.

To inform the debate and continued land reform process, the Trust believes that it would be helpful to clarify some of the terminology used in the consultation document. For instance, what is meant by a 'community'? Is this defined by geographic location? This is explored in detail in Scottish Environment LINK's response⁸, which identifies at least three types of communities:

- communities of place
- communities of interest
- democratic communities

There are also other types of communities which extend beyond Scotland's borders and include, for example, the international community that influences Scottish law through legislative instruments such as Regulations, Directives and international Conventions.

The Trust also notes the Scottish Government's aspiration to achieve an arbitrary target of 1 million acres in community ownership by 2020. If the definition of community is broader than place, that target has already been achieved. Conversely, if the ambition is for local communities to achieve this target, the Trust believes this ambition may have the unintended consequence of 'budget shifting', with funding being diverted from sustainable land management subsidies into land purchase funds and Government support to ensure the economic viability of community buy-outs. The Trust believes the opportunity for ownership should extend to 'communities of interest' as well as 'communities of place'

⁷ Getting the best from our land. A land use strategy for Scotland- laid before the Scottish Parliament by the Scottish Ministers on 17 March 2011

⁸ Scottish Wildlife Trust helped shape and signed up to the LINK response.

CHAPTER 2: A DRAFT LAND RIGHTS AND RESPONSIBILITIES POLICY STATEMENT

Land Rights in a 21st Century Scotland

Q1 - Do you agree that the Scottish Government should have a stated Land Rights and Responsibilities Policy (LRRP)?

Yes.

However, clarity regarding the intended purpose of the LRRP would be augmented if the Government set out what objectives it is trying to achieve in the long term. Setting objectives would also help inform the scope of the proposed Scottish Land Reform Commission. The Trust has already stated above that the LRRP must provide a stronger connection to the LUS and Ecosystem Health Indicators.

Q 2 - Do you have any comments on the draft Land Rights and Responsibilities Policy (LRRP)?

Vision

The Scottish Wildlife Trust is broadly supportive of a land use vision, which aligns with the Scottish Government's vision in the LUS. We note that the LRRP vision aims to achieve a system that: *promotes fairness and social justice, environmental sustainability and economic prosperity*. This is, in effect, a vision for sustainable development (SD), provided each strand is considered in an equitable way. As the Government remains committed to SD⁹ and continues to support the 2005 UK shared framework on SD (One Future - Different Paths), it would be helpful if the consultation used the same language as is set out in the 2005 framework i.e.

- Living within Environmental Limits
- Ensuring a Strong, Healthy and Just Society
- Achieving a Sustainable Economy
- Promoting Good Governance
- Using Sound Science Responsibly

Having a clear definition and guidance of what is meant by SD will also be necessary whenever an SD test for land governance is applied (proposal 4). Clearly there will be a spectrum of approaches to land management from 're-wilding' to, for example, intensive arable. Care should be taken not to shut down the possibility of landowners prioritising environmental or social outcomes (e.g. re-wilding, non-profit education centre) where these do not realise private economic profit. Emphasis should be on the balance of public versus private benefit rather than forcing landowners to be economically profitable, as social and environmental goods are essentially 'profits' for society.

Principles

The Scottish Wildlife Trust is broadly supportive of the seven principles in the LRRP, but it has the following comments:

Principle 3: relates to SD and should be stated as such

Principle 4: increasing the mix of ownership of land does not automatically lead to sustainable land use

Principle 6: what is meant by 'high standards of land ownership and use'? Does such usage align with the principles of the LUS? The Trust believes such 'high standards' might usefully be measured by Ecosystem Health Indicators presently being developed by Scottish Government and its agencies in collaboration with NGOs.

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?

1. Ensure the Land Reform agenda remains first and foremost focused on the outcome of achieving sustainable land management across Scotland to the benefit of Scotland's people and environment (and not on changes to patterns of land ownership for purely political reasons).

⁹ Response to PQ S3W-38670: The Scottish Government remains committed to sustainable development, as defined in the 2005 UK shared framework for to sustainable development, One future "different paths"

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2. Provide fiscal incentives for sustainable land management and remove perverse incentives that diminish public benefits in the form of sustainably managed stocks of natural capital and the services which flow from such sustainably managed stocks.
3. Use Ecosystem Health Indicators at the sub-catchment scale (Area Advisory Groups under Water Framework Directive are an appropriate scale) to help prioritise what interventions may be needed to improve ecosystem health in a given area.

A. DEMONSTRATING LONG TERM COMMITMENT TO LAND REFORM

Proposal 1: A Scottish Land Reform Commission

Q. 4 -6. Do you agree that a Scottish Land Reform (SLR) Commission would help ensure Scotland continues to make progress on land reform and has the ability to respond to emergent issues?

The Trust had no strong views except that it needs to be clear where 'land use policy' sits within any new model i.e. does it sit within existing agencies (SNH, FCS, SEPA) or within some merged statutory authority?

For response to question 6 see Scottish Environment LINK's response which proposes that the SLR Commission is modelled on the Scottish Law Commission.

The Trust is also of the view that to assess progress of land reform and to support the long term vision, desired objectives need to be stated in the LRRP. This would help inform the SLR Commission's terms of reference.

B. IMPROVING THE TRANSPARENCY AND ACCOUNTABILITY OF LAND OWNERSHIP IN SCOTLAND

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 and accountability of land ownership in Scotland?

The Trust believes greater transparency in land ownership is more important than the type of legal entity. The Trust owns or manages 119 wildlife reserves across Scotland. Applying an ecosystem scale approach to conservation (i.e. practicing conservation beyond the Trust's reserves boundaries) on these reserves requires dialogue and cooperation amongst neighbouring land owners to achieve positive environmental outcomes (and hence public benefits). These benefits include eradication of invasive non-native species, species reintroductions, improving water quality, achieving favourable condition of SSSIs, and improving connectivity of the local ecological network. Transparency in land ownership would also help in the enforcement of wildlife crime law, particularly for pursuit of vicarious liability.

The Trust has no strong views on Q. 8 -10.

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?

As a land owner and manager, the Trust would find better coordination of information held in a central repository helpful. It may also speed up resolution of issues such as boundary disputes. See also comments in Q7.

It should also be noted that access to up-to-date information on who owns land and its value does not automatically lead to sustainable land use, although it would be a starting point for better engagement if public benefits are not being delivered.

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

The Trust has some data on its holdings but not all of this is registered with the Land Registry. To do this would incur a cost. The boundaries of the land we manage are publicly available on our website and the NBN Gateway. This information does not currently include whether we own the land, but we do share this information with enquirers.

The ability to access data on surrounding land owners would assist in boundary disputes and other queries, such as areas where we could work together with other landowners to improve sustainable use or conservation of that area.

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?

The main advantages of more accessible land information are increased delivery of public benefit and accountability by landowners, for example in cases of wildlife crime. In addition it would assist in collaboration and dispute resolution. The main disadvantages are the financial cost and increased bureaucracy.

If the Trust had access to shared land information it could work more closely with neighbours and work at the landscape scale to create habitat networks, improve public access and coordinate other conservation actions, such as removal of invasive species. A 'one stop shop' for information such as boundaries, ownership and land use would be an advantage; however setting up a completely new system would incur a financial cost and impose another level of bureaucracy.

C. ADDRESSING BARRIERS TO SUSTAINABLE DEVELOPMENT AND BEGINNING TO DIVERSIFY PATTERNS OF LAND OWNERSHIP

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?

In principle, the Trust would support Ministers taking action to overcome barriers to SD. However, the Trust questions why this power is necessary, because legislation that can help land owners achieve SD (see response to Q15 below) already exists. The Trust would also like clarity over precisely what is meant by:

- *barriers* to sustainable development
- sustainable development
- community

In particular, the Trust believes forcing landowners to release or sell land should be a last resort and only happen where there has been persistent mismanagement of the land that is clearly in conflict with the LUS and agreed land management principles. Gathering evidence may prove onerous, but the use of Ecosystem Health Indicators would be an essential part of the process.

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

As already stated, legislation, policies and guidance already exists to ensure SD of land. Examples are:

- Wildlife and Countryside Act 1981 – as amended
- The Conservation (Natural Habitats, &c.) Amendment (Scotland) Regulations 2004 - as amended
- Deer (Scotland) Act 1996 - as amended
- Wildlife and Natural Environment (Scotland) Act 2011
- The Environmental Liability (Scotland) Regulations 2009
- Nature Conservation (Scotland) Act 2004
- Environmental Impact Assessment Regulations
- Water Environment and Water Services (Scotland) Act 2003
- Land Use Strategy
- Scottish Planning Policy

- Standards of Good Agricultural and Environmental Condition

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

The Trust believes that existing legislation should be enforced, financial incentives much better targeted (for example through more modulation of funds from Pillar 1 to Pillar 2 of CAP) and perverse incentives removed to ensure land owners and managers are applying government policies and achieving a better balance between private and public goods. (See also answer to Q15 above). In terms of measuring positive environmental outcomes, the Trust supports the application of Ecosystem Health Indicators at the sub-catchment scale.

D. DEMONSTRATING COMMITMENT TO EFFECTIVELY MANAGE LAND AND RIGHTS IN LAND FOR THE COMMON GOOD

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 a more integrated range of social, economic and environmental outcomes?

Yes, we support this proposal in broad terms. Public bodies already have a duty to promote sustainable development yet it is not always evident (or evidenced) this duty is being discharged. One example is the recent disposal under the National Forest Land Scheme of a large area of forest known as 'Barracks' in Perthshire. The forest has failed to deliver social, environmental or economic benefit and now needs real investment to restore it so it may confer such benefits in the future. Instead of restoring the forest, the Commission decided to sell it. The Trust felt it had no choice other than to apply to purchase the site to prevent it from being placed on the open market and potentially falling into the hands of an absentee and unsympathetic private owner.

For clarity, it would be helpful to know what type of land uses and the range of management activities are meant here. Without this detail, it is difficult for the Trust to make an informed comment. That said, the Trust would support using public land for sustainable uses such as outdoor education, the creation of woodlots/crofts in diversified conifer plantations, and wood pasture restoration.

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

Because of lack of clarity at this point the Trust has no comment.

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

See comment in Q17 regarding existing duty.

Proposal 6: Duty of community engagement on charitable trustees when taking decisions on land management

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?

No, the Trust does not support this proposal.

The Scottish Wildlife Trust would appreciate further clarification on what this duty is intended to achieve in terms of better management decisions and outcomes. If it is meant as another tool to scrutinise a charity's purpose, we believe it is unnecessary and the Scottish charity regulator OSCR is best placed to do this. The Trust also questions why this requirement is only being applied to charities, and not to all owners and managers of land that receives public subsidies and/or tax exemptions. This is discriminatory and unfair.

In terms of engaging with communities the Trust applies the ecosystem approach (EA)¹⁰ to land management, where this is appropriate and proportionate. The EA promotes community engagement in the decision making process from the outset (EA principles 1 and 2). For example, the Trust engages with interested community groups to develop ten year management plans for wildlife reserves and/or where major

¹⁰ <http://www.cbd.int/ecosystem/principles.shtml>

changes are proposed to a site (e.g. new extensions to reserves, forest plans). The Trust is a key partner in major projects such as Saving Scotland's Red Squirrels, Scottish Beaver Trial, Edinburgh Living Landscape, Cumbernauld Living Landscape and Coigach- Assynt Living Landscape. All of these projects actively engage with the three types of communities identified on page 2. Indeed, the Trust recognises that community support is essential for the successful planning and delivery of such projects.

That said, the Trust does have some concerns that placing a duty on charities to engage in this way could lead communities to expect that they can influence how the Trust manages its land. This will not be the case if the community's wishes are in conflict with the Trust's charitable purpose: *to advance the conservation of Scotland's biodiversity for the benefit of present and future generations*. Management activities that may fall into this category include removal of invasive non- native species, deer management, felling of non-native trees, introducing / reducing grazing, and planting of trees. We believe this would be to Scotland's detriment and cause potential discord and legal wrangling between charities (who are legitimate communities of interest acting in the Scottish people's interest) and local communities which may have very different agendas.

That is in no way to say that the Trust does not want the support, full engagement and help of locals; as a member-led organisation the Trust relies on the various types of communities outlined on page 2 to help deliver the its 25-year vision and conservation strategy. For instance, the Trust has over 1000 volunteers who carry out activities such as: practical conservation tasks on reserves, engaging with the planning system to protect local biodiversity sites from inappropriate development, fundraising and campaigning, and helping local people engage with nature through guided walks and wildlife watch groups.

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

The Trust believes the duty has the following disadvantages:

- it is discriminatory and unfair towards charities
- it could lead to vexatious complaints
- increasing costs and placing a bureaucracy burden on a charity
- it is not the right policy lever to achieve sustainable land use and/or ensure charities are OSCR compliant
- increasing the level of expectation amongst local communities that engagement means controlling final land use decisions
- introducing a conflict where a charity is managing land for its charitable purpose (and public interest) which may be contrary to some community wishes

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

See comments on page 2.

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

The Scottish Wildlife Trust believes that any complaint about a charity should be dealt with by the Scottish charity regulator OSCR.

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?

The Trust agrees in principle that the business rate exception for shooting and deer forests should be ended to align with other local businesses. However, this may have the unintended consequence of reducing deer culling (see also section below on wild deer). As a result, deer densities may increase to levels that would lead to environmental damage. To ensure this does not happen, the Trust supports the Land Reform Review Group's recommendation of a fiscal incentive to promote sustainable land use:

A revised rate on deer shooting could, for example, be based on the level of deer cull required to protect public interests and then only be charged when an owner or occupier was not achieving adequate culls.

With regard to grouse shooting, we note the Land Reform Review Group's findings (see quote below) that grouse estates may rely on public services, such as local fire services, which they do not support financially:

At present, for example, grouse shooting makes no contribution to the provision of public services, when the use of muirburn as part of grouse moor management results in call-outs for local fire services. Figures for the Grampian area from the Scottish Fire and Rescue Service for the 3 years 2011-2013, for example, indicate that a third of the wildfires attended by the Service resulted from controlled burning which had got out of control.

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

See answer to Q 24

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

See answer to Q 24

E. ADDRESSING SPECIFIC ASPECTS OF LAND OWNERSHIP AND RIGHTS

Proposal 8: Common Good

Q27-Q30. The Trust has no comment on this section apart from Q31.

Q. 31. Do you have any other comments?

To avoid confusion the term “common good” should only be used when referring to “common good land” and should not be used as a synonym for public interest.

Proposal 9: Agricultural Holdings

Overview of Trust experience

The Trust has experience of tenancies and has grazing agreements for conservation purposes with tenant farmers on many of the Trust reserves. Disputes may arise however if the Trust, as a land owner, wants (or is compelled by SNH) to change the management of the site for conservation purposes. This may involve reducing grazing pressure, or removing land from grazing completely (e.g. to achieve favourable condition of a SSSI or to establish native woodland – both of which are fulfilling the public interest). In such circumstances, even after discussion with the tenant regarding why the management is changing, there may be no solution which achieves both the public conservation interest and satisfies the tenant.

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

There are 49 recommendations in this 89 page report. For brevity, the Trust has provided comments on those recommendations that we believe may have an impact on sustainable land use, based on our own experience of agricultural holdings.

Recommendation 1

Agreed; providing SG support was tangible, no cost to either party, simple to access and timely. Self-regulation should be backed up by the option of withholding grants to any party who is not communicating or delaying an agreement.

Recommendation 2

Agreed; but see answer above - more than a code of conduct will be required. If an existing agency can be used to facilitate negotiations this would be preferred to establishing a new Commission

Recommendation 3

Agreed; providing that there is as safeguard preventing the deliberate mismanagement of a holding in order to reduce the rent.

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Recommendation 4

Agreed; providing that such a non-agricultural activity is written into the tenancy agreement.

Recommendation 5

Disagree; the landlord should be able to object to any diversified activity proposed on a holding if the landlord can demonstrate that such a diversification would impact on a fixed asset owned by the landlord or have a detrimental impact on the land use agreed between the landlord and the tenant when agreeing the tenancy conditions.

Recommendation 6

Agreed; providing such housing is stipulated within the tenancy agreement.

Recommendation 7

Agreed, providing there is additional consultation on how the model rent is calculated, particularly in relation to land use which is part of a tenancy but non-agricultural, e.g.; for biodiversity.

Recommendation 8

Agreed providing such a test involves organisations with tenants, but the primary land use is not agricultural.

Recommendation 9

Disagree; 1991 tenancies should be replaced and updated in line with subsequent legislation prior to registration.

Recommendation 10

Disagree; this is not specific enough.

Recommendation 11

Agree that the tenant should be notified, but disagree that they can object in general. An improvement may be required for non-agricultural purposes or as part of the implementation of government policies.

Recommendation 13

1991 tenancies should be replaced, and improvements incorporated into tenancies post 2003 legislation.

Recommendation 14

Agree; but this depends on what is meant by 'viable unit'.

Recommendation 16

Disagree; as a charity the Trust cannot commit to providing retirement housing to former tenants, but on a broader scale LDT tenants should have first refusal on a dwelling they have leased for a minimum of 15 years.

Recommendation 17

Disagree; the landowner should be aware of a tenant's inclination to buy their agricultural holding.

Recommendation 18

Agree; the pre-emptive right to buy should be triggered prior to the land being advertised providing the tenant has registered an interest in this right.

Recommendation 22

Agree; to further consideration, but what is meant by 'sustainable development' needs to be clarified to all parties - see comment in Q2 above.

Recommendation 23

This depends on what is being considered, and only if the tenant has completed a LDT.

Recommendation 24, 25, 27, 29

Agree.

Recommendation 32

Agree with first statement. Disagree with the second statement if the conditions restrict soil 'status' at a nutrient level conducive to maximising growth. The latter is contrary to grazing/mowing regimes for nature conservation purposes which often require low nutrient inputs to create species-rich habitats with floristic diversity.

Recommendation 33

Agree, but this depends on the charity and the tenant being in agreement regarding the definition of good environmental condition.

Proposal 10: Wild Deer

The Scottish Wildlife Trust believes that light grazing by wild deer is generally beneficial to natural heritage, but uncontrolled and excessive grazing by deer is currently one of the most significant threats to the health, natural functioning and connectivity of ecosystems in Scotland, particularly in parts of the uplands. Scottish Wildlife Trust therefore supports a range of deer management measures which aim to stabilise deer numbers at ecologically acceptable and sustainable levels. These would be well below current levels in many areas.¹¹

The Trust is actively involved in the Scottish Environment LINK Deer Task Force and was invited to give evidence on deer and their impacts on natural heritage to the Rural Affairs, Climate Change and Environment Committee in 2014.

The Trust supports the proposal in Q35 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"

The text in the response to Qs35-37 has been drawn up by SE LINK Deer Task Force and is repeated below; this aligns closely with the Trust's own policy on 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.

The Rural Affairs, Climate Change and Environment Committee of the Scottish Parliament carried out a review of the impacts of wild deer populations and on the natural heritage in 2014. The LINK Deer Task Force submitted detailed evidence. There is now a substantial body of research, which demonstrates that deer populations in many parts of Scotland are having significant impacts on the natural heritage, by both excessive browsing of vegetation and trampling. This chronic and long standing problem is a contributing factor in preventing the Scottish Government from meeting a range of its public policy objectives including the delivery of the Scottish Biodiversity Strategy; the favourable condition targets for protected areas (a legal requirement); woodland expansion targets; and climate change adaptation commitments. The Native Woodland Survey of Scotland, published in 2014 by Forestry Commission Scotland¹² is the latest

¹¹ Scottish Wildlife Trust's Wild Deer policy. Available at: http://scottishwildlifetrust.org.uk/docs/002__057__publications__policies__Wild_Deer_policy___August_2012__1346425925.pdf

¹² Op cit 4

commissioned evidence to highlight that an important habitat is in poor condition, to a large extent due to the impacts of deer damage.

We accept that the RACCE Committee of the Scottish Parliament and the Minister have agreed in 2014 to continue with the voluntary approach to deer management in Scotland until 2016 following which it will be re-evaluated. We also welcome the increased investment by Scottish Natural Heritage in the deer management process in order to effect the required changes in deer management practice, and we will play a constructive role in trying to make these arrangements effective. However, we have long felt that increased regulation of deer management in Scotland will be required to deliver sustainable management and deliver the public interest. The RACCE Committee also noted, in their correspondence with the Minister, that improvements to the voluntary system of deer management had been too slow over several decades and we agree with this analysis.

In Scotland we should be learning from deer management structures that are already in place in other European countries, and North America. Characteristics of these systems that we believe could be helpful include Government setting required cull targets and deer densities; preparation and implementation of effective deer management plans; and obligatory cull returns by landowners to inform sustainable management of wild deer populations. The LINK Deer Task Force has taken independent legal advice on this issue and we understand that a similar deer management system could be constructed for Scotland by the public authorities, which protects private property rights, and is therefore compliant with the European Convention on Human Rights.

On this basis, we consider it likely that in 2016 further deer management regulation will be required, and that SNH should be given increased powers to intervene in the public interest. We also suggest that SNH should make greater use of the powers that already exist under sections 7 and 8 of the Deer (Scotland) Act 1996. At present, compulsory powers for SNH to intervene and reduce deer populations in the public interest under section 8 of the Deer Act have not been used. We believe that this is due to the complexity of the burden of proof that SNH would be required to produce in support of the case for compulsory intervention, as well as the fear of legal challenge by landowners. Any simplification of these procedures to allow effective implementation without delay would be helpful and we recommend that this is considered now as part of the legislative reforms to enhance the powers of SNH to protect the public interest.

In exercising its power in relation to deer and the environment it is important that SNH focus on protecting natural heritage, which is a legal requirement for protected areas in particular, and not use their 'balancing duty' to take decisions that will further degrade designated sites and the natural heritage. We trust that the 2016 review will include a benchmark of landowner compliance with the voluntary Code of Practice on Deer Management 2011, including the results of any quantitative and qualitative monitoring programme being carried out by SNH.

In paragraph 93 of the consultation document it is suggested that SNH powers may be increased to require landowners to put in place sustainable Deer Management Plans that protect the public interest and to ensure that the plans are fully carried out. Whilst the details of how this might work in practice are not fully explained, we support the principle of this improvement. Many Deer Management Groups in Scotland still do not have any Deer Management Plan in place, let alone a plan which is effectively implemented. The voluntary approach to putting effective deer management plans in place has been given until 2016 in which to deliver. If this fails it is likely that after 2016 SNH will need to have greater powers to intervene in the public interest.

In addition to what SE LINK have stated above, the Scottish Wildlife Trust believes that in the medium term, consideration should be given to broadening out the remit of DMGs to include responsibility for other aspects of ecosystem health, as measured by Ecosystem Health Indicators. In effect DMGs could evolve into Living Landscape Management Groups, perhaps linking or combining with Area Advisory Groups.

Finally, we note that it is recommended in the Land Reform Review Group Report that any reintroduced sporting rates are used as a tool "tailored to help deliver the Scottish Government's Land Use Strategy and other rural objectives". It is also noted in the Report that charges of this type may result in working against encouraging higher deer culls in the public interest. It is further suggested in the Report that "a revised rate on deer shooting could, for example, be based on the level of deer cull required to protect public interests, and then only be charged when an owner or occupier was not achieving adequate culls". We support this type of approach and any new system of sporting rates must lead towards helping to deliver sustainable management practice. In this context, it is also highlighted that LINK landowning bodies are primarily culling deer, not in effect for recreational purposes, rather to promote woodland regeneration and the improvement of habitats in the public interest.

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

See text above.

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

Lack of resources within SNH to ensure landowners put in place sustainable deer management – including habitat monitoring.

Proposal 11: Public Access: clarifying core paths planning process

The Trust has little comment to make about the clarification of the core path plan process and the Trust's response is the same as that of Scottish Environment LINK.

Chapter 4: Assessing impact

Environmental

The Scottish Wildlife Trust notes the comments in section 6 page 2 regarding Strategic Environment Assessment where it is stated:

We will also consider the potential environmental impacts of any proposals and if a Strategic Environmental Assessment will be required

The Trust believes the proposed Land Reform Policy and Bill programme falls within the scope of Strategic Environment Assessment (SEA) and there is a statutory requirement under the Environmental Assessment (Scotland) Act 2005 for the Scottish Government as the Responsible Authority to conduct SEA of the options in the proposed land reform programme.

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.

To help inform the SEA screening /scoping process, the Trust believes that the following policies and proposals, as presented in the consultation, will directly impact on the environment and therefore require SEA. Please note that others not identified in the list below may impact on the environment and have a positive or negative impacts. Potential effects of these proposals are discussed elsewhere in the Trust's consultation response.

- Draft Land Rights and Responsibilities Policy Statement
- Proposal 3
- Proposal 4
- Proposal 7
- Proposal 9
- Proposal 10