



Scottish Government Land Reform Review Group (LRRG): Call for Evidence

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KEY RECOMMENDATIONS

Outdoor Access and Recreation

- Local Access Forum's (LAFs) vary greatly in their levels of engagement and effectiveness. There is a need for strategic mechanisms for capacity-building and sharing good practice within and between LAFs.
- The consistency between policies that encourage and policies that regulate outdoor access in Scotland should be increased.
- Existing measures to educate stakeholders about Part 1 of the Land Reform (Scotland) Act 2003 and the Access Code reflect an outdated model of knowledge transfer. Greater emphasis should be placed on practical knowledge that aids the achievement of responsible behaviour, especially given the increasingly diverse nature of users.
- There should be greater clarity on how 'responsibility' in outdoor access and recreation ought to be carried out and enforced in areas of particular environmental sensitivity.

Water Regulation

- Land reform should be aligned with water management regulations (notably the WFD) and its implications in terms of disproportionality, distributional effects and compensation mechanisms.
- Any future Land Reform should also take into account a) property rights over land use, access and its effects on water quality, and b) current trends in relation to the implementation of Payment for Ecosystem Services schemes for resource management and conservation.

Land Taxation

- There is considerable public resentment towards the land taxation system. The Land Reform Review provides an opportunity to increase understanding of the nature of the existing land taxation system (including consideration of land-related subsidies). The review could also identify the barriers inhibiting changes in the land taxation system, and means by which it could be simplified.

Shared Land Management Arrangements

- The Land Reform (Scotland) Act (Parts 2 and 3) focuses on land ownership, rather than approaches to land management and governance but, to an extent, ownership and management are inseparable. Furthermore, research has shown the significant benefits to community resilience and empowerment which has been facilitated by the LRSA and supported by the Scottish Land Fund.
- There is potential for further investigating the role of shared land management arrangements for enhancing partnerships between rural communities and private estates.

Advisory Services

- As land reform affects land management, the relationship with and nature of advisory services is of relevance. There should be a move away from general group advice (as in the current Veterinary and Advisory Services) to a more targeted, personalised and/or on-going provision of advisory services.
- Ideally a 'one-stop shop' for advice should be available on issues related to (sustainable) land management. This would improve the effectiveness and value for money of advisory provision through the SRDP and help to facilitate the management of trade-offs between different policy objectives on a particular management unit (e.g. field, holding, catchment).
- The provision of mechanisms for access to supporting information for management of urban and rural land uses can learn from the knowledge exchange media currently used by Scottish Government, such as Knowledgescotland.

Policy “Integration” and “Transparency”

- There is a need to integrate land reform with the wider regulatory, planning and governance framework that drives land use change in Scotland. The establishment of a cadastral database system would be a major step towards aiding this integration. In the absence of this, better use could be made of existing, locally-produced information centrally coordinated and organized, to inform planning and decision-making.
- There is a need for a better understanding of how the principles, models and prescriptions included in other key regulatory and planning instrument driving land use change (e.g. Land Use Strategy 2011; NPF-3 2014; SPP 2010) affect and are affected by the Land Reform Act.

- Give greater consideration to multiple functions of land, particularly with respect to comparing current uses (e.g. single function, such as timber production), and plans for multiple functions. This is important in reducing the gap between ‘values’ in transferring ownership.
- Alternative management options for ownership or community management of land in urban areas, such as greenspaces, could address some community aspirations, and increase sensitivity to local priorities, contributing to wider roles of green infrastructure in the European Biodiversity Strategy to 2020, and the Scottish Land Use Strategy.

Renewable Energy

- One of the major challenges to community ownership or co-ownership of renewable energy developments is the failure of the planning system to consider local social and economic benefit as a material consideration. Given the magnitude of potential income associated with renewables, the Land Reform Review should consider changes to the planning system to encourage applications which offer community equity or a significant cash injection into the local economy.
- Community capacity needs to be built to enable communities to more effectively plan and manage local developments. Training courses should be provided to ensure good governance and cross-community representation in Community Interest Companies or equivalents developed for community energy projects.

1. Outdoor Access and Recreation¹

Vision(s):

- 1.1. All Local Access Forums (LAFs) function effectively, in terms of being sufficiently competent (attracting good people, employing effective procedures) and legitimate (amongst key user groups, and the general public) that they can fulfil their statutory and policy objectives consistently across geographical areas.
- 1.2. Non-statutory and community bodies (such as the Cairngorms Outdoor Access Trust, Scotways and Scottish Outdoor Access Network) work on behalf of communities/user groups to improve access, community cohesion, resilience and well-being. LAFs are aware of and work in collaboration with other groups. Initiatives (such as healthy walking groups, Paths For All and Adopt-a-Path) encourage community involvement, empowerment and sense of local identity, as well as contributing to individual health and well-being. There is more effective learning, skill development and capacity building of access users and managers.

¹ Authors: Liz Dinnie and Katrina Brown

- 1.3. Greater harmony exists between policies encouraging and policies regulating outdoor access, in order to handle future participation shifts in magnitude, diversity and geographical distribution², especially as regards synergy between outdoor access regulation through the Land Reform (Scotland) Act (and supporting policy package) and other key outdoor access policies (particularly regarding diversity of participation and health/wellbeing). This will require a more joined-up approach to the two sides of the outdoor access coin: creating demand (especially in underrepresented social groups) and coping with demand (in greater magnitude and diversity).
- 1.4. There is greater clarity on how 'responsibility' ought to be carried out and enforced in areas of particular environmental sensitivity, or in 'chicken and egg' situations of poor ground conditions where access would be irresponsible but the prevention of access would disallow repairs to existing paths or new paths from being constructed.

Barriers:

- 1.5. LAFs vary greatly in their levels of engagement and effectiveness (Brown et al., 2012). Different access authorities have different sets of human and financial resources to draw upon, and employ different procedures. Thus, some LAFs work robustly whilst others barely function at all.
- 1.6. Current measures to educate stakeholders about the Land Reform (Scotland) Act and the Access Code tend to reflect an outdated model of knowledge transfer, and focus on intellectual rather than practical knowledge that does not fully acknowledge how irresponsible behaviour arises. Current policies therefore do not sufficiently aid the achievement of responsible behaviour in practice, and focus instead on principles, which are necessary but insufficient, especially for coping with increasingly diverse users.
- 1.7. Access users' understanding of how to 'read' the environment and route conditions to ensure that their behaviour is 'responsible' is currently variable. This is sometimes a source of conflict between users and with land managers.

How barriers could be removed and progress facilitated:

- 1.8. Identify systematically the factors which constrain LAF functioning and develop strategic mechanisms for capacity-building and sharing good practice within and between LAFs. The role of the National Access Forum and SNH is critical here.
- 1.9. Identify voluntary and community groups claiming some kind of responsibility over access, to assess their integration/linkages with other

² Brown, K.M., Curry, N., Dilley, R., Taylor, K. & Clark, M. (2009). Assessing future recreation demand. Scottish Natural Heritage Commissioned Report (ROAME No. F05AC701).

bodies and with LAF, and to develop mechanisms for creating effective engagement.

- 1.10. Identify key areas of friction and potential synergy between the 'encouragement' and 'constraint' sides of outdoor access policy (particularly regarding the management of desired greater and broader participation), and develop measures to address them.
- 1.11. Develop a deeper, more rigorous understanding of how (particularly newer and diverse) users come to learn how, and have the ability, to behave responsibly including the relative roles played by formal and informal measures (e.g. Code, social peer networks, practical experience). This would usefully include knowledge of how 'responsible access' knowledge and practical skills and techniques are transferred from one geographical area to another as well within and between social groups.
- 1.12. Give greater emphasis, and take a more strategic and comprehensive approach, to the supporting measures and mechanisms upon which the Land Reform (Scotland) Act and Scottish Outdoor Access Code depend for the effective governance of outdoor access. This could include working out ways in which these supporting measures can more effectively support the Act and the Code³.
- 1.13. Identify areas of greatest ambiguity and contestation concerning environmental impacts and work with stakeholders to develop solutions.

2. Water Regulation⁴

Background:

2.1. The European Water Framework Directive (WFD) represents a major reform on water policy and water management in Europe. The key element of the WFD is that it sets ecological objectives for all European waters supported by principles of economic efficiency and public participation. In this context, economic efficiency means, among other things, that the achievement of ecological objectives can be postponed or derogated in time if the costs of achieving good ecological status are judged to be disproportionately high in relation to the benefits it would procure. The Directive is neither explicit nor particularly informative about what exactly disproportionality means: this is left to Member States.

Vision:

2.2. There is now a consensus among the scientific community (and increasingly among the decision-making community) that

³ For example, added guidance or measures on specific issues access arising, such as camping, dogs, events or mountain biking being executed and shared amongst access authorities and other stakeholders in a way that avoids duplication of effort or an *ad hoc* or piecemeal approach, but that continues to allow for geographic variation of circumstances in implementation.

⁴ Author: Julia Martin-Ortega

disproportionality has to be based on comparison of costs and the full range of benefits that water quality improvement entails, including non-market benefits and benefits associated with cultural, recreational and non-use values. Additionally, even if costs are proportionate in relation to benefits, this cannot be the only decision criterion, since equity and distributional issues may arise (i.e. it could be that benefits are greater than costs overall, but that the costs are concentrated in one sector of the population only, for example, the farming sector, while the benefits are mostly enjoyed by a different sector, such as anglers). The issues of disproportionality and the distributional effects of the WFD are intimately related to property rights over land use and water quality, and thus relevant to Land Reform.

2.3. Additionally, there is currently great interest on how an ecosystem services-based approach can help in the implementation of the WFD. In particular, the possibility of implementing so-called Payment for Ecosystem Services (PES) schemes is being explored to see if these could help to reduce the costs of the WFD and/or serve as compensating mechanisms to those bearing most of the costs of improving water quality. PES initiatives aim to reach mutually beneficial agreements between providers and users of ecosystem services, entailing a reward mechanism for ecosystem managers for maintaining or improving the provision of the services valued by beneficiaries. An increasing number of PES schemes have arisen around the world where downstream users of water (often industry) pay for catchment management that can sustain the required supply and quality of water. PESs feature prominently in DEFRA's Natural Environment White Paper, and a PES Best Practice Guide and Action Plan is being produced.

2.4. Although environmental legislation in Europe is primarily based on the 'polluter pays principle' (i.e. the public has property rights over the polluter), the Common Agricultural Policy and most recent interpretations of the WFD suggest that, in rural contexts, a tendency towards a compensatory principle is to be expected. Within the context of the CAP and national regulations and policy instruments (such as for example, the Scottish Rural Development Programme), farmers and rural land managers are compensated for the costs (foregone benefits) incurred in the implementation of environmental measures, including measures to improve water quality (for example, riparian buffer strips). PES schemes would go even further in this compensation process, by acknowledging that farmers and land managers are, by effecting changes in land practices and/or the implementation of specific measures, providing or ensuring the provisioning of ecosystem services that are of value to people and, therefore, they ought to be paid for it (i.e. the property rights lie with the land manager). Payments should correspond to the value of the externality as perceived by the beneficiary and should cover at least the opportunity costs for the farmer.

Barriers:

- 2.5. Recent research⁵ has shown that benefits that might emerge from improved ecological status of water are heavily conditioned by the structure of land ownership in Scotland, notably the estates. Indicatively, improved water quality can represent increased recreational opportunities for the local population, but if access to those activities is controlled by a private agent, such as estates whose interests are not aligned in that direction, that potential benefit might not actually occur, with implications for disproportionality, distributional effects and compensation.
- 2.6. There are some areas where the implementation of the Water Framework Directive in Scotland may be oppositional to community empowerment and community control over asset development. Arguably some interests, particularly fisheries interests, under the aegis of the CAR regulations, which are managed and implemented by SEPA, exert a strong influence on outcomes and inhibit hydropower developments. It appears that there is asymmetry in the operation of the WFD, which while recognising the proportionality principle with existing uses of land, does not apply the same criteria with new development such as hydro-power. There are a number of examples in rural Scotland where the re-use of historic water power sites which would generate long-run community income streams have been thwarted by what might to some appear to be an overzealous application of the Controlled Activity Regulations.⁶

How barriers could be removed and progress facilitated:

- 2.7. Take into consideration not only land property and rights of access, but more broadly property rights over land use and its effects on water quality.
- 2.8. Align land reform with water management regulations (notably the WFD) and its implications in terms of disproportionality, distributional effects and compensation mechanisms. Water regulation targets might be compromised if there is not an alignment with the land property system.
- 2.9. Take into consideration current trends in relation to the implementation of an ecosystem services-based approach to catchment management and recent initiatives for implementing Payment for Ecosystem Services schemes for resource management and conservation.

⁵ Martin-Ortega, J. Perni, A., McKee, A. and Helliwell, R.. (2012). Proceedings of the workshop for informing the disproportionality analysis and flagging the wider benefits of improving water quality in the Loch of Skene and Leuchar Burn sub-catchment, UK. Tasks 6.4 & 6.5 Interim Report. REFRESH Project: Adaptive Strategies to Mitigate the Impacts of Climate Change on European Freshwater Ecosystems. www.refresh.ucl.ac.uk.

⁶ Slee B, Whitfield R and Whitfield S (2011) Discourses of Power: the development of small scale hydropower in North East Scotland, *Rural Sociology*, 21(1) 54-64.

3. Land Taxation⁷

Background:

- 3.1. Land taxation has been an age-old aspect of land ownership and reform. Economic discussion goes back to the efforts in the 1940s and 1950s at land use planning and “betterment” (development gain) taxes, to Henry George (who argued in 1879 that rent was generated by and therefore belonged to the community), to Adam Smith (in 1776) and to the pre-classical Physiocrats. More recently, UK governments have made various efforts in the 1960s and 1970s at development gain taxation, and land transaction taxation (e.g. stamp duty, inheritance taxes) has been periodically adjusted. Regular property taxation such as council taxes (previously “rates”) has of course continued for many years, with revenues accruing to local authorities but under strict (in Scotland, almost complete) central government control.
- 3.2. In Scotland, the Scottish Parliament and Government have extensive powers over land taxation, and would of course have complete fiscal autonomy – though within an EU framework – in the event of Independence. The Scottish Minister has promoted a general approach to taxation “*that is equitable and that promotes economic growth*”, and has said that the consultation over the Bill “*signals our preference for a move from the UK’s slab tax approach to a progressive system of taxation where the amount paid is more closely related to the value of the property and therefore to the ability of the individual to pay*”⁸. A Land and Buildings Transactions Bill is currently in Parliament, with various related public consultations.
- 3.3. “Agricultural relief” has long been available for farming, and similar provisions exist for forestry and sporting land. Sporting rates based on the number of grouse and deer shot were abolished by the UK government in 1997. A 2001 paper⁹ argued that “[t]he reintroduction of a land tax would provide the government with an alternative mechanism for encouraging sustainable land use”.
- 3.4. Green MSPs have promoted land value taxation, which a report¹⁰ argues “*is now a mainstream part of contemporary debates over the future of public finances, local revenues and public infrastructure. In addition, the idea no longer poses any significant technical challenges (if it ever did)*”. The Scottish Institute of Revenues, Rating and Valuation (IRRV) has

⁷ Author: Ken Thomson

⁸ <http://www.scotland.gov.uk/News/Speeches/taxation07062012>.

⁹ Macmillan, D., Thomson, K. and Slee, B. (2001) *An Economic Commentary on a Proposed “Community Right to Buy Land”*. Depart. of Agriculture and Forestry, Aberdeen Univ.

¹⁰ Wightman, A. (2010) *A Land Value Tax for Scotland: Fair, Efficient, Sustainable*, report prepared for the Green MSPs in the Scottish Parliament.
<http://www.andywightman.com/docs/LVTREPORT.pdf>.

concluded¹¹ that “*that consideration should be given to the use of land value taxation for vacant sites and agricultural land*”.

Vision:

3.5. It is clear that considerable public resentment exists over “unfair” taxation in general, and over land taxation where current provisions are understood. There is also the related issue of land-related subsidies, both open and “hidden”. A better “vision” is therefore that (a) such taxation is more widely understood (which probably entails a considerable degree of simplification), and (b) is “fairer”, i.e. more widely accepted.

Barriers:

3.6. The complexity of Scottish land law and (partly in consequence) of land transactions.

3.7. Uncertainties over land ownership and fiscal treatment, e.g. tax reliefs, CAP payments.

3.8. Exemption or relief of agricultural, forestry and sporting land from taxation paid by most other property owners.

How barriers could be removed and progress facilitated:

3.9. A further examination of the reasons for the above barriers, and of methods to overcome them, is needed. In the past there has been political opposition to proposals for extending and modifying land taxation, but the current atmosphere may be more accepting, due to:

- a. the fiscal squeeze which is focussing attention on all taxation (and subsidies)
- b. the history (which continues in some Scottish regions) of rising land prices while incomes stagnate or rise more slowly
- c. the greater freedom now enjoyed (or to be enjoyed) by Scotland in fiscal matters
- d. The context of the Land Reform Review itself, i.e. a feeling that further legal movement may be desirable in promoting a more vigorous, equitable and “greener” Scotland.

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4. Shared Land Management Arrangements¹²

Background:

4.1. The Land Reform (Scotland) Act 2003 (LRSA) (Parts 2 and 3) focuses on land ownership, rather than approaches to land management and governance that accompany the motivations and objectives of different landowners. To a certain extent, ownership and management are inseparable. Furthermore, recent research illustrates the significant benefits to community resilience and empowerment with landownership¹³, which has been facilitated by the LRSA and supported by the Scottish Land Fund. An alternative perspective is presented by research within the 'Sustainable Estates for the 21st Century' (<http://www.sustainable-estates.co.uk/>) project, which explores the role of private land ownership in facilitating sustainable rural communities in upland Scotland.

Vision:

4.2. The 'Sustainable Estates' project illustrates the potential for developing partnership approaches between private estates and the rural communities who live and work on these estates, and in the associated local communities. Through promoting good practice in terms of estate-community engagement and highlighting the benefits of working together¹⁴, conflicts and uncertainty in rural 'estate communities' may be reduced, whilst maximising community access to land and associated empowerment benefits. A vision for land reform in Scotland may therefore include support from Government and other agencies for partnerships between estates (of all ownership types) and rural communities, in order to ensure that the benefits of land management are shared more widely, however without the need for land ownership transfers (and associated costs) as the only route to community empowerment.

Barriers:

4.3. Partnership working between estates and communities is constrained by several key factors, including resource and skills limitations, such as community capacity and the availability of estate management time to devote to partnership development and maintenance. Furthermore, a perceived disconnect between community and estate is also considered a limiting factor, as a result of communication difficulties, as well as apathy

¹² Author: Annie McKee

¹³ Skerratt, S. (2011) 'Community land ownership and community resilience', Rural Policy Centre Research Report, Scottish Agricultural College, June 2011

¹⁴ Glass, J.H., McKee, A. and Mc Morran, R. (2012). *Working Together for Sustainable Estate Communities: exploring the potential of collaborative initiatives between privately-owned estates, communities and other partners*. Centre for Mountain Studies, Perth College, University of the Highlands and Islands.

and a reluctance towards such processes by both landowner (who may not wish to reduce control) and by the community (who may be apathetic unless significant changes provoke reactive responses).

- 4.4. In addition, partnership approaches are limited by uncertainty on the part of both community members – for instance regarding future landownership and management styles, as personality and approachability play a key role in positive estate-community relationships – and by private landowners themselves. Landowners are uncertain regarding future policy development that may not be in their favour, of which ‘further’ land reform would likely be a good example. As a community development interviewee in the ‘Sustainable Estates’ project explained: *“[The Land Reform Act] has impacted...because we’ve got landowners running scared and instead of engaging, they are hiding. Because they think that if they engage then people will become more aware of things like the Land Reform Act, and they are more susceptible to...what they don’t appreciate is were they to engage people would be less likely to [buy-out].”*
- 4.5. On the other hand, the same research shows that partnerships between private estates and communities are constrained by a lack of community empowerment in the partnership process. This is where potential for community land acquisition with the LRSA has a positive impact on the balance of power and driving community capacity. Case study examples illustrate the role of the Act in instigating estate-community dialogue leading to conflict resolution and greater estate accountability. Given this evidence, there appears a fine balance to strike in terms of ensuring the LRSA (and any ‘further’ reform) seeks to support the positive elements of community empowerment, estate-community communication and estate accountability, whilst avoiding exacerbating a perceived disconnect between estate and community, and further barriers to engagement as described.

How barriers could be removed and progress facilitated:

- 4.6. Rural ‘estate communities’ could be supported to generate pragmatic and professional relationships and partnerships with private estates, through the building of community capacity and attitudes of proactivity. This support may be provided by community development workers, public agencies, action researchers and Government. Third party facilitation may overcome issues of the ‘personality factor’ significant in small communities and where landowner characteristics may be considered a constraint to positive engagement approaches.
- 4.7. Progress may also be facilitated by further investigation into the potential for shared land management arrangements. There are many examples of successful asset co-management; however these arrangements remain informal and largely unrecognised in the context of private estates and rural communities. Shared ownership and equity schemes contribute positively (where possible) to the provision of affordable housing in rural

areas. There is significant potential to transfer this model to the ownership and management of land resources, on agreement by the landowner and community, and where mutual benefits may be demonstrated. A final option is shareholding in estate businesses, where community members would have a financial stake and associated voice in land management decision-making, likely contributing to community empowerment whilst not requiring significant investment on the part of the Scottish tax payer.

5. Advisory Services¹⁵

Vision:

5.1. Scotland has advisory services that are accessible to (rural, private) land managers and that there is a 'one-stop shop' for advice on issues related to (sustainable) land management. This would offer advice on:

- the management of water, crops, animals, soil, biodiversity, scenic aspects of landscape, forests/woodlands
- productivity, resource/ labour sharing, what collaborative approaches can offer (set up group or use existing group structure)
- existing land use plans and programmes, and how the individual's management fits in, legal issues
- monitoring of management impact (e.g. of a species management scheme).

5.2. This advisory service would be subsidised (from SRDP and other sources) where public goods and services are likely to be produced but where private monetary benefits from adopting the advice are difficult to achieve (as in the case of environmental advice). The service would offer off- and on-farm advice targeted at groups and individual land managers.

5.3. One of the service's key roles would be to translate what the many different policies require for a particular piece of land and what best practice management options would be. Another important role would be to help integrate policies at a landscape scale (e.g. over whole catchments) by facilitating collaboration between land managers. Both functions would require a mix of on-demand advice (i.e. sought by land managers) and proactive advice coordinated by a public-private sector partnership.

5.4. The service to be established should build on (pre-)existing structures such as former FWAG advisors, SAC advisors, advice provided through SEPA, SNH and the Forestry Commission, LEADER groups where they currently include some land management advisory aspect, National Parks, local councils, community councils and other local initiatives/partnerships.

¹⁵ Authors: Katrin Prager and Marie Pages

5.5. This service would be accompanied by a data management structure for capturing the impact of advice, (social) learning and (changed) land management that has an easily accessible 'user' interface so that data can be entered by land managers and agency staff alike. The data would be shared and managed intelligently across organisations and levels.

Barriers:

5.6. Responsibility and sources of advice are currently dispersed, with limited integration of objectives and connections between policy makers, advisors and practitioners.

5.7. Advice is provided on individual components of land management (e.g. water quality, agricultural production, threatened species protection) or only in selected (target/ priority) areas. "Public benefit" advice is also often disconnected from business advice.

5.8. Advice is provided based on project basis, so that monitoring (if any) discontinues after the project ends. Further, advice is often offered on a one-off basis with limited opportunities for follow-up visits and, increasingly, has to be paid for. In These factors act as barriers to achieving the long-term benefits associated with on-going advice, e.g. through trust building and learning.

5.9. Advice is targeted at individuals rather than landscape units. There is little experience with group approach (such as Australian Landcare groups) to harness individuals motivations to improve land management.

How barriers could be removed and progress facilitated:

5.10. Moving away from general group advice (as in the current Veterinary and Advisory Services) to a more targeted, personalised and/or on-going service is likely to considerably increase costs. However, it has the potential to improve the effectiveness and value for money of the SRDP as well as reveal and help facilitate management of trade-offs between different policy objectives on a particular management unit (e.g. field, holding, catchment).

6.11 Mechanisms should be considered to enable communities to be able to access suitable data or advice to inform future plans and arrangements for land uses, under new ownership or management, in urban and rural areas. Research into climate change, is beginning to identify threats to existing land uses, and options for adaptation and mitigation through changes in land use. Communities proposing the purchase of land, with associated management plans, may not have access to the breadth of research or data available, even those designed for public or land manager audiences. The infrastructure and resilience of a community group may not be sufficient to enable best use of contemporary information. One option would be the provision of an equivalent of

www.knowledgescotland.org (designed for Scottish Government policy teams, by RESAS) designed for users more relevant to community land ownership.

6. Policy Integration and Transparency¹⁶

Background:

6.1. A clear improvement has taken place over the last few years in the number, scope and quality of public initiatives explicitly aimed at generating common socio-political frameworks and principles under which different pathways for the management of land resources are better coordinated. As a result, the attribution of roles and responsibilities to those public and private stakeholders that manage and are potentially impacted by land-use and landscape change is expected to become fairer and more efficient. These initiatives include the Scottish Land Use Strategy (2011), the National Planning Framework 2 (2009, currently in the process of transition towards the National Planning Framework 3, expected by 2014) and the Scottish Planning Policy (2010), all of which consider the set of principles, territorial models, socio-political options and prescribed actions expressed in the Scottish Land Reform (Scotland) Act 2003. Nevertheless, the spatially explicit consideration of synergies and conflicts potentially arising from the joint implementation of policy instruments is still too weak to provide an overview that accounts for the full political and planning picture and its spatial coherence with the underlying bio-physical system¹⁷ (Munoz-Rojas, *et al*, 2012).

Vision:

6.2. The Land Reform Act is clearly a regulatory instrument mostly concerned with issues of land ownership and property rights rather than with those that deal directly with land use management. However, in practice, property rights and land use are so intrinsically linked that one cannot consider one without impacting on the other. Thus, in order to better integrate further land reform within the wider regulatory, planning and governance framework that drives land use change in Scotland, a stronger emphasis should be placed on spatial aspects. In particular, there is a need to take into account geographical locations and extent, to show where the diverse rights of, and restrictions on, different stakeholders (acting at different scales to manage and transform land for multiple purposes) take place, e.g. bio-physical potentialities for forestry

¹⁶ Author: Jose Munoz-Rojas

¹⁷ Munoz-Rojas Morenes, J. Cortines Garcia, F. Gonzalez-Puente, M. Gimona, A. (2012) Spatially addressing potential conflicts and synergies on the cross-scale (& cross-level) management and planning of sustainable and multifunctional rural land-systems, In *Planet under Pressure 2012*. C. Folke & E. Boyd. *Adapting Institutions: Governance and Complexity in Social Ecological Systems*. 26-29 March 2012. London. Conference administered by Elsevier Publishing Group.

expansion, for wind farms and for the generation of ecological corridors. This would help the institutions (both public and private) at different scales to better coordinate their actions and initiatives in space and place, and to take account of the restrictions that property rights and use exclusions impose on the potential options for land-use change. Additionally, it would help to connect the Land Reform Act more directly with the wider governance framework and regime that ultimately drive land-use change in Scotland.

Barriers:

- 6.3. There are very dispersed sets of spatial information, with absence of centralized cadastral-type rural databases regarding land ownership and property rights. Substitutes such as “*Who Owns Scotland*” (<http://www.whoownsscotland.org.uk/>) are much weaker in both spatial definition and integrative capacity.
- 6.4. There is also a lack of clarity on how to better integrate, both conceptually and politically, but also spatially, (i) the bottom-up approach that is prescribed for land management across the whole Scottish political spectrum (see, e.g. Land Use Strategy 2011) and (ii) the top-down perspective that is necessarily embedded in the policy-making process through the consideration of national priorities and targets such as those prescribed in the Climate Change Act 2009 and the Scottish Forestry Strategy 2010. The key role that any Land Reform Act defining land property and use rights and restrictions ought to play by facilitating these cross-scalar linkages is clear, but is also under-achieved in the case of the present land ownership/access rights model.
- 6.5. The bio-physical and ecological necessity to act at scales larger than those of land ownership to achieve the national and regional objectives that are currently politically approved (e.g. for afforestation, carbon mitigation and Good Water Quality Status) is insufficiently facilitated by the different sets of economic incentive schemes and planning instruments that are currently operating (Munoz-Rojas *et al.*, 2012). The complexity of the (distinctive and unconnected) bio-physical, ecological and regulatory/planning frameworks for driving land and land-use change do not encourage cross-scalar and multidisciplinary attempts at coordination. By clearly assigning property and land use rights and restrictions, a Land Reform Act would facilitate a transition towards the objectives set for the Land Use system at national, regional and local scales.

How barriers could be removed and progress facilitated:

- 6.6. A cadastral system, as is common across Europe, would be a major step in overcoming the barriers identified above. Even without this, locally produced information that is centrally coordinated and organized (thus complying with the quality and reliability standards that are set in the

INSPIRE EU Directive for Spatial Information, 2007) would directly inform the planning and decision making system.

- 6.7. A clearer set of explicit linkages and considerations of the principles, models and prescriptions included in other key regulatory and planning instrument driving land use change (e.g. Land Use Strategy 2011, NPF-3 2014, SPP 2010) ought to be made, and the way these principles and models affect and are affected by the text of the Land Reform Act need to be specified. Questions should be formulated such as: How can land reform help to address the targets and objectives for land use change in Scotland through the adequate assignation and distribution of land property, access and use rights and responsibilities, including partnerships (for common land ownership for afforestation, for example)?
- 6.8. Multi-functional land use and public goods. When considering the scope for expanding and diversifying ownership of land, and considering the transfer between parties, land should be viewed in terms of the multiple functions it can support, and multiple benefits which can be obtained. For example, woodlands which provide timber, opportunities for recreation, biodiversity, a carbon sink, and contribute to the wider character of a landscape. A number of such roles are as public goods rather than means of generating direct financial benefits.
- 6.9. When assessing the transfer (e.g. sale and purchase) from one owner (e.g. a public agency) to another (e.g. a community group), consideration could be given to a 'value' of the proposed public goods to be delivered by the new owner. This would be consistent with a principle of the Land Use Strategy of providing or encouraging 'opportunities for land use to deliver multiple benefits should be encouraged'. The significance could be in bridging the financial gap between valuations of land and what a community might be able to afford.
- 6.10. Urban space, greenspace. The consideration of urban land in the review is welcomed. Gifting, buyout or leasing land for community uses is as relevant to urban areas as rural areas. Research, such as the RESAS GreenHealth project, is beginning to identify interests in communities wanting opportunities to into practice ideas regarding the provision of facilities for local people (e.g. recreation, play, relaxation). There appears to be scope for satisfying desire where it exists in similar ways to those in rural areas, from the land stock in public ownership, such as local authorities. Examples of opportunities would be alternative management or ownership arrangements for areas of greenspaces. This could encourage other means of contributing to wider green infrastructure, as envisaged in the European Biodiversity Strategy to 2020. This is also consistent with one of the objectives of the Land Use Strategy of 'Urban and rural communities better connected to the land, with more people enjoying the land and positively influencing land use'.

7. Renewable Energy¹⁸

Background:

- 7.1. Scotland is committed to decarbonising its energy system and in the Climate Change (Scotland) Act 2009 has set challenging targets for emissions reduction. Renewable energy production is supported by a range of policies, the most important of which are Renewable Obligation Certificates (ROCs) which deal with larger-scale projects and Feed-in-Tariffs which deal with smaller projects. In terms of capacity, most development to date has been undertaken by large-scale energy supply companies. There are also many mostly quite small schemes (normally less than one MW, and usually smaller) developed by farmers and a number of community-owned schemes.
- 7.2. Most renewable energy developments create few local jobs and deliver only modest benefits, normally through ground rents to landowners and trust funds (e.g. to rural communities) of £1500-£5000 per annum per MW of installed capacity.
- 7.3. One of the major challenges to community ownership or co-ownership or renewable energy (and indeed other) development is the failure of the planning system to recognise that social and economic development of an area is a material consideration in planning. Most renewables proposals are considered primarily on their environmental merits and demerits, taking little account of their inherent capacity to deliver local social and economic benefit where they are community-owned or have significant community equity. The Forestry Commission Scotland now oblige any commercial developer on FCS land to consider community equity which will create much greater scope for shared equity on developments on their landholding.
- 7.4. Because local communities have had only very modest powers in the past, they often lack the capacity to manage even a small-scale renewables development. Community ownership in places such as Gigha and in several communities in the Western Isles has helped build the capacity to enable communities to take on renewables projects which have proved enormously beneficial in terms of local income generated.
- 7.5. The Scottish Government has set a target of 500 MW of community generation by 2020 though this term is used somewhat elastically to include landowner-developed schemes as well as community-owned schemes, and has estimated that this “*could be worth up to £2.4 billion to Scottish communities and rural businesses over the lifetime of those projects.*”¹⁹

¹⁸ Author: Bill Slee

¹⁹<http://www.scotland.gov.uk/News/Releases/2012/04/2642012communityrenewables>

7.6. Recent evidence suggests that one MW of installed capacity can generate in excess of £100,000 per annum for community groups whilst loans are being repaid and substantially more after that.²⁰ Furthermore, research suggests that community-owned on-shore wind developments have a higher potential for generating “knock-on” benefits for the rural economy that alternative forms of ownership.²¹

Vision:

7.7. RPP1²² states that ‘*the Scottish Government has a clear commitment to decarbonise energy supplies, with the full decarbonisation of electricity supply by 2030 and significant decarbonisation of heat supply by 2030, consistent with the recommendations of the Committee on Climate Change.*’ To complement this vision, a greater share of the renewable energy system should be provided by community-owned enterprises.

7.8. In 2011, Scotland had nearly 5000 MW of installed renewables capacity, of which Community Energy Scotland report about 150 MW (or 3%) is community-owned using the Scottish government definition of community ownership which includes private landowners. A target of 500 MW target for community-owned energy would seem reasonable. The reason for such a vision is that the income from renewables could offer a once-in-a-lifetime opportunity for the reinvigoration of rural communities providing a long-term income stream on the back of which economic and social developments could be pursued.

Barriers:

7.9. Currently, many planners appear to lose sight of local community development as a material consideration because where trust funds are on offer they are treated as planning gain and fall outwith the remit of planning committees.

7.10. Community councils, the lowest current level democratic entity, have had very limited resources to deal with. They often have to deal with complex funding structures, deal with professionals in the renewables sector and may represent several communities in remoter parts of Scotland.

²⁰ See, for example, <http://www.greenenergy.net.com/press-release/tangible-benefits-community-wind-turbine>

²¹ Phimister, E. and Roberts, D. (2012) The role of ownership in determining the rural economic benefits of on-shore wind farms. *Journal of Agricultural Economics*, vol 63, no. 2, pp. 331-360.

²² Scottish Government (2011) *Low Carbon Scotland: Meeting the Emissions Reduction Targets 2010-2022: The Report on Proposals and Policies*. www.scotland.gov.uk/Topics/Environment/climatechange/scotlands-action/lowcarbon/rpp

How barriers could be removed and progress facilitated:

- 7.11. The planning system needs to be given a clearer direction from the Scottish Government to consider more closely local social and economic benefit as a material consideration in planning decisions and to encourage applications which offer community equity or a significant cash injection into the local economy. If applications fail to fulfil this requirement, then rejection should be the ultimate sanction.
- 7.12. Community capacity needs to be built to enable communities to more effectively plan local social and economic developments. The Community Interest Companies or equivalents developed for community energy projects need to have effective governance to deal with large sums of money. There needs to be close consideration of good governance and cross-community representation in such organisations, facilitated by the provision of training courses (as previously suggested by Rob Gibson MSP).