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Consultation response by the Scottish Environment LINK Land Use Sub-Group

LAND RIGHTS AND RESPONSIBILITIES STATEMENT

The bodies represented in Scottish Environment LINK strongly support the principle of a Land Rights and Responsibilities Statement (LRRS), which they see as a valuable platform upon which to build a new and sounder relationship between all the people of Scotland and their land. A statement of this kind has the potential to establish explicitly the fact that this relationship must be based on responsible stewardship, sustainable use and multiple benefits, and must respect the full range of interests in the land, both public and private.

As a ground-breaking attempt to tackle this task, LINK members welcome the draft LRRS. We are pleased to see that the authors have addressed several of the points that LINK raised in its comments on the outline Statement consulted upon previously. The present draft nonetheless remains very much an expression of high level aspiration. Although it lists numerous actions that the Scottish Government has in hand to give effect to its precepts, it does not assess – or set out a programme for assessing – the extent to which current Government strategies and policies conform to its principles. Nor does it offer detailed guidance as to their practical implications. From both these perspectives LINK members regard it as no more than a welcome and worthwhile first step in what will require to be a sustained effort to elaborate and apply the messages that it conveys.

We give below our answers to the specific questions raised in the consultation. First, however, we offer what we regard as some important comments on other aspects of the document:

- *Interests affected:* The Foreword to the document talks of aiming for “a collaborative process through which those whose lives are affected by decisions relating to land work together to agree on priorities and address challenges”. We would like to stress that everybody in Scotland (and indeed others outwith the country) is affected to some degree by these decisions, as earlier paragraphs in this section of the document effectively point out.
- *Definition of Community:* Although the definition offered contains a welcome recognition of “communities of common interest”, it starts by referring to “local people”. To avoid the confusion that this could create (do people have to be local to be part of a relevant community of interest?), it would be better if the Statement could make clear that communities can be of either place or interest.



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- *Definition of Land Management:* As it stands, this mixes up the objectives of management with the state of the land. It would be better to opt for one or the other and preferably to focus on objectives.
- *Ongoing nature of land reform:* LINK members welcome and endorse the Government's commitment, as expressed in paragraph 6, to end the "stop-start" nature of land reform. Like sustainable development itself, it should be seen as a journey and a quest, rather than a destination.
- *Performance measurement:* Paragraph 13 states that performance against the principles will not be measurable. Whilst this is no doubt strictly true, it should not be made an excuse for not seeking regularly to review and assess progress against the aspirations set out in the document.
- *Relationship with Land Use Strategy (LUS):* LINK has previously stressed the need to use the LRRS as a means of giving teeth to the principles set out in the Land Use Strategy. This document says that: "Consideration was given to using the LUS Principles for sustainable land use as principles for land rights and responsibilities in the Statement, but, whilst they are complementary and mutually supportive, they inform different aspects of decision making in relation to land ownership, use and management". Whilst we acknowledge that the two documents come at the management of land from rather different angles, LINK members still believe that the principles set out in the LUS are the ones that should drive society's approach to land use. Land is such a fundamental resource that the way in which it is treated is even more important to the well-being of current and future generations, and to life on earth more generally, than how it is owned. That is why, in our eyes, Principle 4 in the draft LRRS is the most vital of all and requires much fuller elaboration.
- *Policy context:* LINK members are acutely conscious of the uncertainties over future land use policy resulting from the EU referendum result and the resulting prospect of Brexit. In our view a strong LRRS would provide a firm anchor and point of reference in the development of new policies.

Question 1: Have we captured the range of policy areas to which you think the land rights and responsibilities statement should be relevant?

The document is pretty comprehensive in its listing of relevant policy areas and existing policy statements. But it is a bit haphazard: for example, it mentions biodiversity separately from natural heritage (of which it forms part) but does not mention landscape, which is another component. But for the avoidance of doubt all three should in LINK's view be listed. So too should outdoor recreation, as it cannot be taken for granted that it is subsumed within "access".

Question 2:

- a) Do you agree with the Scottish Government's proposed "human rights based approach" to the Land Rights and Responsibilities Statement? Yes/No***

Yes.

b) Please give any further thoughts on the best way to ensure that the Statement is based on human rights or gives full consideration to human rights.

A healthy environment is essential to human well-being. LINK would like to see it explicitly mentioned as an important human right.

Question 3: Do you agree with the Vision of the Land Rights and Responsibilities Statement? Please provide comments:

The draft Vision makes no mention of the environment. This is surely an extraordinary omission in a document designed to govern the relationship between people and the land. Perhaps as a consequence it fails to make clear that environmental sustainability is a prerequisite of responsible land use.

The Vision talks of realising the people of Scotland's "aspirations in relation to land". It should also underline their "dependence" on the land. As it stands, LRRS treats land too much simply as a resource for people, not as the foundation of life, requiring a long term perspective in any vision for its use.

Question 4: Do you agree with Principle 1 of the Land Rights and Responsibilities Statement? Please provide comments:

The reference to sustainability in this Principle is welcome but relatively weak. The aim should be to "ensure" rather than simply to "promote" environmental sustainability. "Outcomes" is also rather an odd term to use in relation to goals such as environmental sustainability, economic prosperity and social justice. It might be better to say that these are tests or criteria to be applied in assessing future performance.

Question 5: Do you agree with Principle 2 of the Land Rights and Responsibilities Statement? Please provide comments:

LINK members agree that society at large should seek to ensure that the legal basis on which land is held properly reflects the public interest in the way that land is managed and that it may at times be necessary to adjust both this and the distribution of land amongst owners to optimise its value to society. We see a rolling-out of the LUS through the preparation of Regional Land Use Frameworks as a practical means of identifying just how public benefit can be maximised and to convey to individual landowners and managers of whatever kind how they can best align their private interests with wider societal ones. The process of preparing them will inevitably expose the fact that communities are always multi-tiered; the best overall outcome will only be achieved if the interests of all scales, from the global to the individual household, are taken into account in decision-making.

We welcome the recognition of the value of NGO management of land to the economy but would like to underline the fact that economic goals are often not the only or even the dominant objectives of such management, which are guided by the organisations' charitable purposes.

Question 6: Do you agree with Principle 3 of the Land Rights and Responsibilities Statement? Please provide comments:

As elsewhere in the document, there is a tendency here to focus on benefits to local communities (of place) to the exclusion of those that might accrue to communities of interest. It is hard to see that the Principle itself adds much to the various legislative provisions that already exist.

Question 7: Do you agree with Principle 4 of the Land Rights and Responsibilities Statement? Please provide comments:

As mentioned previously, LINK members see this principle as absolutely central to the purpose and efficacy of the whole document. As such we welcome it. But to have any real impact it must be translated into meaningful guidance which spells out just what the "high standards" that it calls for mean in practice. In our view some form of "Code of Responsible Stewardship", akin to the Scottish Outdoor Access Code (SOAC), should be developed to articulate these obligations. This would provide all stakeholders in Scotland's land with a much clearer idea of what was expected of them, and of what they could expect of others. It should be prepared in collaboration between these interests and, like the SOAC, subject to parliamentary approval. The oversight of its development should be an early task for the Land Commission.

Question 8: Do you agree with Principle 5 of the Land Rights and Responsibilities Statement? Please provide comments:

Yes. Openness and transparency about the ownership of land is essential if the public interest is to be safeguarded and served.

Question 9: Do you agree with Principle 6 of the Land Rights and Responsibilities Statement? Please provide comments:

Yes, as a general principle. But the content of the guidance that the Scottish Government proposes to issue will be critical. It must recognise the full range of interests with a stake in the management of land.

Question 10: We would like to hear real life stories about the relationship between Scotland's land and people. Please provide any case studies which you feel illustrate the vision or principles.

Some of LINK's member bodies will offer relevant examples.

Question 11: Do you have any further comments?

See opening section of this response.

Question 12: Please tell us about any potential impacts, either positive or negative, that you consider the proposals in this consultation may have.

As indicated above, LINK members believe that the LRRS could have a very positive impact on the stewardship of Scotland's land – but only if the Principles that it sets out are translated into much more specific and concrete guidance, both for those owning and managing land and for society as a whole.

Question 13: Please tell us about any potential costs and burdens that you think may arise as a result of the proposals within this consultation.

Inevitably the preparation of the kind of guidance that we call for to give practical effect to the LRRS, for example a Code of Responsible Stewardship and Regional Land Use Frameworks, will require resources. But LINK members are convinced that this would represent an investment that would rapidly pay for itself many times over in enhancing the benefits that Scotland reaps from its land.

Question 14: Please tell us about any potential impacts, either positive or negative, that you consider that any of the proposals in this consultation may have on the environment.

If environmental sustainability is given the central place in the LRRS called for in this response, and its practical implications articulated in guidance in the ways suggested, LINK members believe that the LRRS could have a very powerful positive impact. But if insufficient emphasis is placed upon responsible stewardship, or the standards expected are too low, this opportunity will be lost and the net effect on the environment could even be negative.

This response was compiled on behalf of the Scottish Environment LINK Land Use Sub-Group and is supported by:

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