

Land Rights and Responsibilities Statement: a consultation

16 December 2016

Ministerial Foreword

Our land forms part of our national character and pride. From magnificent glens and majestic lochs to open fields and ancient forests, from medieval castles and grand Georgian streets to our great industrial buildings and even our Parliament, Scotland is known throughout the world for its land and cityscapes.

Land is a resource for those who live in Scotland and who visit it. It contributes to the realisation of our economic, social and environmental ambitions, at both a local and national level. Land and buildings help to shape our urban and rural communities, across the length and breadth of Scotland.

The Land Rights and Responsibilities Statement is a set of principles intended to both guide public policy and inform the practices of all those who own, manage and use land. In recent years, the land reform debate has evolved, and a positive change in the tone and emphasis is emerging. We are increasingly seeing the benefits of productive partnerships between land owners and local communities, as the considerable mutual advantages of engaging and collaborating are becoming better appreciated. Active community organisations provide significant opportunities for both urban and rural communities, often reaching the most vulnerable and isolated through their work. Farmers and land managers underpin our successful food and drink industry, whilst also providing valuable stewardship of our environment.

The Scottish Government is keen to celebrate the success stories, and wants to see more like them. The Land Rights and Responsibilities Statement will build on, and help embed, this culture change. The Statement signals our direction of travel on land rights and responsibilities. The Statement aims at a collaborative process through which those whose lives are affected by decisions relating to land work together to agree on priorities and address challenges. It aims to enable land owners, land managers and land users to meet the responsibilities which are coupled to their enjoyment of land rights.

We must recognise that the continued uncertainty following the EU referendum adds further complexity to many aspects of our work as a Government. This does not affect the driving forward of the land reform agenda. The Scottish Government's priority is to protect Scotland's interests, promoting reform and actively participating in and strengthening our European partnerships. We continue to be committed to maintaining, protecting and enhancing our environment, and the EU referendum result does not reduce our ability – nor our desire – to do so.

When we consulted on a first draft of the Land Rights and Responsibilities Statement two years ago as part of the consultation on the Land Reform (Scotland) Act, we received strong support from a wide range of respondents. We listened to what you had to say, and to the views of the Scottish Parliament expressed throughout the passage of the Land Reform (Scotland) Bill. This consultation is a further opportunity to express your views on the content of the world's first Land Rights and Responsibilities Statement.

When you have rights over land or buildings in Scotland, you also have responsibilities towards the people of our country. In developing the Land Rights and

Responsibilities Statement, Scotland is leading the way in setting out the value we place on our land, and the responsibilities that our rights to this land entail.

I would strongly encourage everyone with an interest in land rights and responsibilities to respond to this consultation, and I wish in advance to thank you for taking the time to do so.

Roseanna Cunningham, MSP
Cabinet Secretary for Environment, Climate Change and Land Reform

Contents

Ministerial Foreword	2
Contents	4
Glossary	5
Chapter 1: Context	6
Land reform in Scotland: a brief introduction	6
Land Reform (Scotland) Act 2016.....	6
Chapter 2: Taking Forward the Land Rights and Responsibilities Statement	8
Public consultation 2014.....	8
Parliamentary Process 2015-2016.....	8
Drafting the proposed Statement.....	9
The relationship between the Land Rights and Responsibility Statement and other Scottish Government strategies and policies.....	10
The Land Rights and Responsibilities Statement Policy Context	13
Chapter 3: A fair balance of rights and responsibilities	14
Scope of the Land Rights and Responsibilities Statement	14
International instruments and human rights.....	14
A human rights based approach.....	16
Chapter 4: Proposed Land Rights and Responsibilities Statement	18
Chapter 5: Impact Assessment	30
Equality.....	30
Business and regulation	30
Environmental.....	30
Chapter 6: Next Steps	31
Analysis	31
Publishing the Statement.....	31
Review period.....	31
Chapter 7: Responding to this Consultation	32
Annex 1: First draft of the Land Rights and Responsibilities Statement	34
Annex 2: Part 1 of the Land Reform (Scotland) Act 2016	35
Annex 3: A Consultation on the Future of Land Reform in Scotland: Analysis of Consultation Responses (Pages 17 -22)	38
Annex 4: Respondent Information Form	44

Glossary

This document uses the following definitions throughout. These definitions are specific to this document.

Community: refers to local people, and includes communities based on geography and common interest. To benefit from Community Empowerment and Community Right to Buy legislation, a local community group will have to take on a formal legal structure, by setting up a company limited by guarantee, a SCIO or a community benefit society.

Land: Land refers to all land in Scotland, including urban and rural. Land includes any buildings on that land.

Land management: land management refers to the manner in which land is managed, for example: to maximise biodiversity; for maximum crop yield; developed; regenerated; left derelict.

Land manager: Land manager refers to those who make decisions relating to land and buildings. This may be land owners, but may also be tenants, agents or employees of the land owner, for example: tenant farmers; estate managers; crofters; factors; letting agents; commercial lease holders. This may be individuals, public, private or third-sector organisations.

Land owner: Land owner refers to those who own land. This may be individuals, public, private or third-sector organisations.

Land user: land user refers to those who enjoy legitimate rights to use land.

Land use: land use refers to category of use, for example: farming; forestry; housing; recreation; nature reserve.

Chapter 1: Context

Land reform in Scotland: a brief introduction

1. Land is one of Scotland's greatest resources, and is central to the Scottish Government's purpose of achieving a more successful country through increasing sustainable economic growth, with opportunities for all of Scotland to flourish.
2. Since devolution, the Scottish Parliament has passed a number of land reform measures. In the late 1990s, the Land Reform Policy Group began researching the policies and legislative changes that might be needed to meet Scotland's rural communities' aspirations for change and sustainable development. The Group's report, *Recommendations for Action*,¹ led to the Abolition of Feudal Tenure (Scotland) Act 2000.² Following this, the Land Reform (Scotland) Act 2003³ gave the people of Scotland the right of responsible access to land and inland water, and granted rural and crofting communities the right to buy land in their communities. Since 2003, there have been various new legislative and regulatory measures, with the aim of modernising the nation's relationship with its land, and giving communities the opportunity to influence the development of the land in their area.
3. In 2012, the Scottish Government commissioned an independent review of land reform. The Land Reform Review Group ("LRRG") took evidence from over 400 people, communities and organisations, before publishing their report, *The Land of Scotland and the Common Good*,⁴ in May 2014. The report noted an evolution of the land reform debate and widened the conversation to include urban communities. The report states that land reform should be a continual process, focused on achieving the aim of a fairer society.
4. The Scottish Government welcomed the overall findings of the LRRG's report and committed to bringing forward a Land Reform Bill within the Parliamentary term 2011 - 2016. *The Future of Land Reform in Scotland*⁵ consultation was published in December 2014 to gather the views of the people of Scotland on the proposed legislation. Amongst many wide-ranging questions on land reform, the consultation asked whether Scotland should have a Land Rights and Responsibilities Policy Statement. A draft version of the statement was published with the consultation.⁶ The question received the highest level of response (87%, or 1018 of the responses analysed), of which 87% expressed agreement to the proposal to have a stated Land Rights and Responsibilities Policy Statement.⁷

Land Reform (Scotland) Act 2016

5. The Land Reform (Scotland) Bill was introduced to the Scottish Parliament in June 2015. Part 1 of the Bill proposed the creation of a Land Rights and

¹[Recommendations for Action](#), Land Reform Policy Group, Jan. 1999.

²<http://www.legislation.gov.uk/asp/2000/5/contents>

³<http://www.legislation.gov.uk/asp/2003/2/contents>

⁴[The Land of Scotland and the Common Good](#), Land Reform Review Group, May 2014.

⁵[A Consultation on the Future of Land Reform in Scotland](#), The Scottish Government, Dec. 2014.

⁶See Annex 1 for the first draft of the Statement. This first draft should not be confused with the new "Proposed Statement" in Chapter 4.

⁷These figures exclude campaign responses. Campaign responses are responses with the same wording, submitted by many people. These are excluded from quantitative analysis.

Responsibilities Statement (“the Statement”), and during the passage of the Bill the Scottish Parliament was unanimous in its support for amendments to part 1 of the Bill that provided for the introduction of such a Statement. The Land Reform (Scotland) Act 2016⁸ (“the Act”) was given Royal Assent on 22 April 2016.

6. The Act obliges the Scottish Ministers to prepare, consult upon and publish a Land Rights and Responsibilities Statement. This forms a key part of the Scottish Government’s commitment to end the ‘stop-start’ nature of land reform. The Statement is a set of principles with an overarching vision that will guide the development of public policy on the nature and character of land rights and responsibilities in Scotland. The aim is to ensure a proactive approach is taken with land policy and to provide the context within which to consider the ongoing development and balance of rights and responsibilities relating to land ownership, management and use, in order to realise the full public benefits of land in Scotland. The Act requires that the Scottish Ministers must promote the principles of the Statement in exercising their functions.

⁸See Annex 2 for Part 1 of the [Land Reform \(Scotland\) Act 2016](#).

Chapter 2: Taking Forward the Land Rights and Responsibilities Statement

Public consultation 2014

7. In response to *The Future of Land Reform in Scotland* consultation, 844 respondents commented on the content of the first draft Statement. These comments were analysed by independent researchers in the report *A Consultation on the Future of Land Reform in Scotland: Analysis of Consultation Responses*.⁹ The report found that the draft Land Rights and Responsibilities Statement was supported by 87% of respondents. General comments called the Statement “progressive,” “future-focused” and “comprehensive”.¹⁰ Comments were also received on how to make the Statement more helpful and successful in achieving its aims.

Parliamentary Process 2015-2016

8. During the Parliamentary consideration of the Land Reform (Scotland) Act 2016 a number of amendments were made to the provisions pertinent to the Land Rights and Responsibilities Statement including:

- The definition of the Statement was changed from “a statement of the Scottish Ministers’ objectives for land reform” to “a statement of principles for land rights and responsibilities in Scotland,” clarifying that its purpose is to guide the development of public policy on the nature and character of land rights and responsibilities.
- The introduction of certain aims which Ministers, when preparing the Statement, must have regard to the desirability of:
 - a) promoting respect for, and observance of, relevant human rights;
 - b) promoting respect for relevant internationally accepted principles and standards for responsible practices in relation to land;
 - c) encouraging equal opportunities;
 - d) furthering the reduction of inequalities from socioeconomic disadvantage;
 - e) supporting and facilitating community empowerment;
 - f) increasing the diversity of land ownership; and
 - g) furthering the achievement of sustainable development in relation to land.
- Defining (a) “human rights” as including those contained within the *Human Rights Act 1998* and the *International Covenant on Economic, Social and Cultural Rights* (“ICESCR”), as well as other relevant legislative instruments. Scottish Ministers, in preparing the Statement, must decide which human rights are relevant.

⁹See Annex 3 for the relevant excerpt from the consultation analysis report.

¹⁰[A Consultation on the Future of Land Reform in Scotland: Analysis of Consultation Responses](#), The Research Shop, May 2015.

- Defining (b) the “internationally accepted principles and standards for responsible practices in relation to land” as including the *Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests* (“VGGTs”), issued by the Food and Agriculture Organisation of the United Nations.

9. Two open stakeholder engagement events were held, one each in Glasgow and Perth, in October 2016. This was an opportunity for key stakeholders and members of the public to re-examine the first draft of the Statement and comment on how a revised draft might be prepared, following the amendments made by the Scottish Parliament. The comments made at these sessions have been taken into account in drafting the proposed Statement.

Drafting the proposed Statement

10. In drafting the proposed Land Rights and Responsibilities Statement we have taken into account: the responses to the *Future of Land Reform* consultation; the amendments made during the passage of the Land Reform (Scotland) Bill; and comments received at stakeholder sessions. Some specific considerations that we have aimed to reflect are:

- it would be helpful to explain key terms further and provide specific examples for the implementation of the principles;
- the Statement should be clearly situated within wider policy frameworks;
- the role of human rights should be clearly incorporated into the principles, including the relevant economic, social and cultural rights as laid out in ICESCR; and
- the role of responsible practices in relation to land should be clearly stated, including the principles and standards of the VGGTs.

11. We consider it important that the Statement be strategic in nature, and that it should guide, but not prescribe or pre-empt, the detailed and specific policy work that will be needed to develop explanations of the principles. We think that providing exhaustive definitions for some of the terms within the Statement could be counterproductive as potentially it could exclude ideas or circumstances which might become more relevant as contexts change.

12. We recognise that for the Statement to be meaningful, we should be able to point to examples of the principles in action. In the proposed Statement we have refined certain elements, and elaborated on others, with the aim of bringing clarity to the meaning of each principle. We have provided examples of current and future policy, which illustrate how the aims of the principles are interrelated and coherent with the Scottish Government’s wider work.

13. However, this does not mean that the Statement should be interpreted as setting measurable objectives for Land Reform. When giving evidence to the Scottish Parliament Rural Affairs, Climate Change and Environment Committee, the then Minister for Environment, Climate Change and Land Reform, Dr Aileen McLeod said the Statement “is not the type of document in relation to which it would be easy or even possible to assess achievement. [...] The principles are high-level and their purpose is to guide other relevant policies. As a result, I do not think that it will be

possible to assess the extent to which the principles in the statement have been achieved.”¹¹

The relationship between the Land Rights and Responsibility Statement and other Scottish Government strategies and policies

14. The Statement sets out high-level principles to inform detailed policy work, and will interrelate with many existing and future strategy and policy documents. As Dr McLeod stated during the passage of the Land Reform (Scotland) Bill: “It is intended that the Statement complement existing frameworks, as well as guiding the creation of future land-related policies, including Scotland’s Economic Strategy, the Land Use Strategy and the National Planning Framework. Taken together, those will set out a consistent and holistic approach to how the land of Scotland should be used, controlled and managed.”¹²

National Performance Framework

15. The National Performance Framework, introduced in 2007 and revised in 2011 and 2016, is a single framework to which all public services in Scotland are aligned. It contains 16 National Outcomes that provide a high-level overarching policy framework for what the Scottish Government wants to achieve and the kind of Scotland we want to see. The progress towards these Outcomes is measured by National Indicators. Each Outcome contributes to the Scottish Government’s Purpose: “To focus government and public services on creating a more successful country, with opportunities for all of Scotland to flourish, through increasing sustainable economic growth.”¹³

16. The Land Rights and Responsibilities Statement responds to 7 of the Scottish Government’s National Outcomes:

- We live in a Scotland that is the most attractive place for doing business in Europe.
- We have tackled the significant inequalities in Scottish society.
- We live in well-designed sustainable places where we are able to access the amenities and services we need.
- We have strong, resilient and supportive communities where people take responsibility for their own actions and how they affect others.
- We value and enjoy our built and natural environment and protect and enhance it for future generations.
- We reduce the local and global environmental impact of our consumption and production.

¹¹ [Rural Affairs, Climate Change and Environment Committee 2nd Meeting 2016 Official Report](#), Session 4. 20 January 2016.

¹² [Rural Affairs, Climate Change and Environment Committee 32nd Meeting 2015 Official Report](#), Session 4. 2 November 2015.

¹³ For more information see: [An introduction to Scotland’s National Performance Framework \(NPF\)](#), The Scottish Government, Mar. 2016.

- Our public services are high quality, continually improving, efficient and responsive to local people's needs.

Scotland's Economic Strategy

17. Scotland's Economic Strategy ("SES"), published in March 2015, states that: "Scotland's economic prosperity depends upon the strengths and talent of our people, our natural resources, our infrastructure and how we are governed. The overarching economic and regulatory environment in which we operate also determines key social and environmental outcomes."¹⁴ Inclusive growth is a core priority of SES (the others are investment, innovation and internationalisation), underpinning the mutually supportive pillars of competitiveness and tackling inequality. The Scottish Government defines inclusive growth as growth that combines increased prosperity with greater equity; that creates opportunities for all and distributes the dividends of increased prosperity fairly.

Land Use Strategy

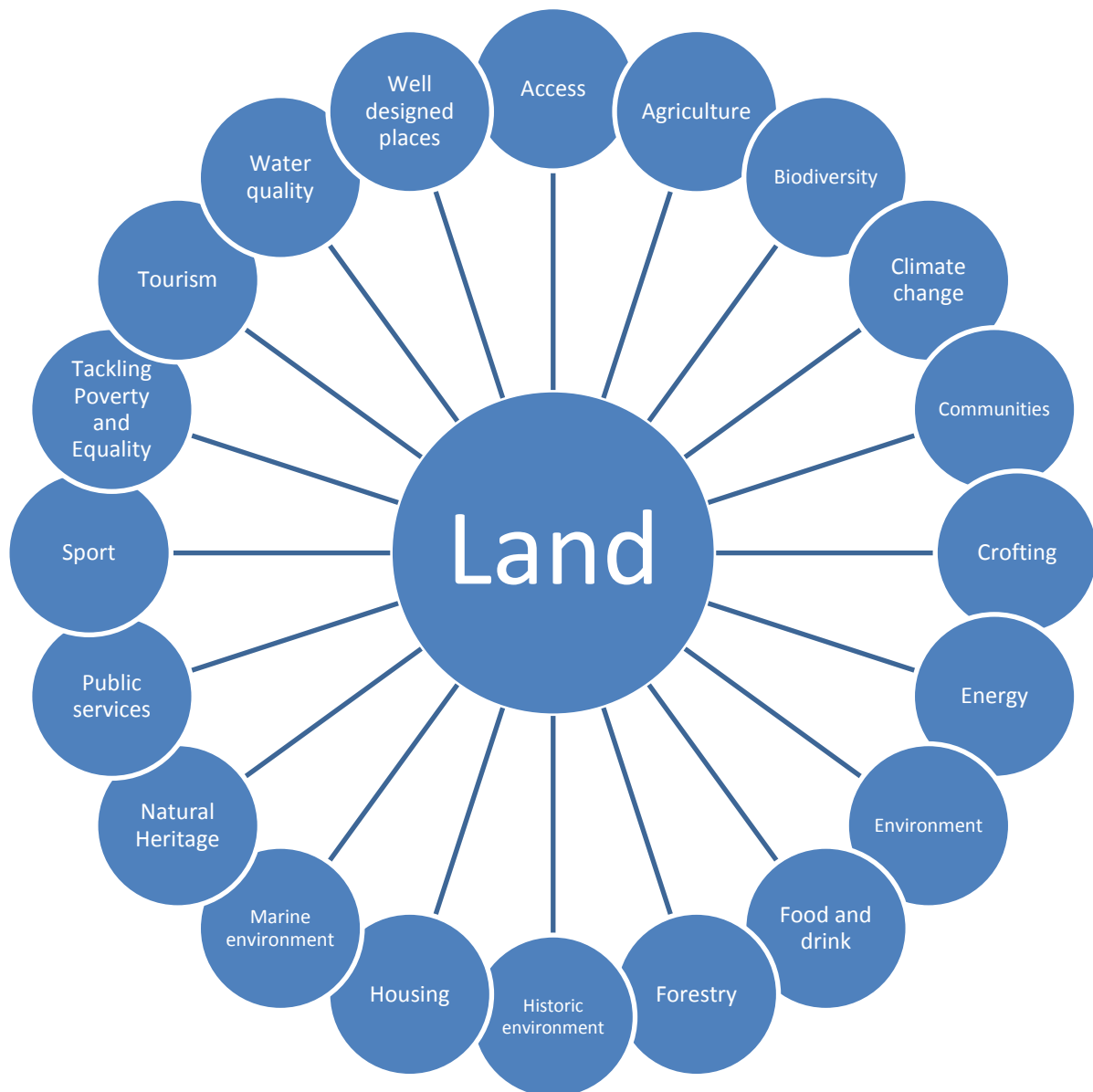
18. The Land Use Strategy 2016-2021 ("LUS") supports the goal of achieving well-integrated, sustainable land use which delivers multiple benefits for all in society. The LUS provides a clear strategic framework to guide the development of more specific policies through its Vision to 2050, and three overarching Objectives relating to economic prosperity, environmental quality and to communities. The LUS also provides ten Principles for Sustainable Land Use, which should inform land use choices and significant decisions affecting the use of land, and a set of proposals. The LUS recognises the interrelated nature of land ownership, use and management and Policy 5 cross-refers to the commitment to develop a Land Rights and Responsibilities Statement which integrates these three aspects. 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.

National Planning Framework

19. The National Planning Framework ("NPF"), published in June 2014 and currently in its third version, sets out a long-term vision for development and investment across Scotland over the next 20 to 30 years. The NPF brings Scotland's Economic Strategy to life by identifying where there are key opportunities for change and what those changes could be. It sets the context for development planning in Scotland, and establishes the need for those developments to happen. It supports growth that increases solidarity, reducing inequalities between regions. The NPF must be taken into account by planning authorities in the preparation of development plans for their areas, which set a vision for growth and form the basis of deciding whether planning applications should be approved or refused.

¹⁴ [Scotland's Economic Strategy: March 2015](#), The Scottish Government, Mar. 2015.

20. The diagram below captures the main topics which interact with land rights and responsibilities. It should be noted though that this diagram cannot be entirely comprehensive, due to the breadth of policy areas and topics to which land can be relevant.



The Land Rights and Responsibilities Statement Policy Context

21. This table sets out the relationship between the Land Rights and Responsibilities Statement and other key Government policy and strategy documents. The table includes those documents most closely related to the Land Rights and Responsibilities Statement, however, due to breadth of policy areas and topics which are relevant to land, the table cannot be fully comprehensive. It should be noted that the influence of related policies and strategies may run up and down the vertical hierarchy, as well as horizontally.

Human Rights and International Standards	European Convention on Human Rights International Covenant on Economic, Social and Cultural Rights Voluntary Guidelines on the Governance of Tenure Sustainable Development Goals										
National Performance Framework	Purpose	The Purpose of the Scottish Government is to focus government and public services on creating a more successful country, with opportunities for all of Scotland to flourish, through increasing sustainable economic growth.									
	National Outcomes	<ul style="list-style-type: none"> • We live in a Scotland that is the most attractive place for doing business in Europe. • We have tackled the significant inequalities in Scottish society • We reduce the local and global environmental impact of our consumption and production. • We live in well-designed sustainable places where we are able to access the amenities and services we need. • We value and enjoy our built and natural environment and protect and enhance it for future generations. • We have strong, resilient and supportive communities where people take responsibility for their own actions and how they affect others. • Our public services are high quality, continually improving, efficient and responsive to local people's needs. 									
National Plans and Strategies	Scotland's Economic Strategy										
	Fairer Scotland Action Plan										
	Scotland's National Action Plan for Human Rights										
Land Strategies	Land Rights and Responsibilities Statement	Land Use Strategy				National Marine Plan			National Planning Framework 3		
Related National Policies	2020 Challenge for Scotland's Biodiversity	Climate Change Plan 2017*	Creating Places: a policy statement on architecture and place	Flood risk Management Plan for Scotland	Guidance on Engaging Communities*	Homes Fit for a 21 Century	Low Carbon Scotland	National Islands Plan*	National Peatland Plan	National Transport Strategy	Our Place in Time: the Historic Environment Strategy for Scotland
	Physical Activity Implementation Plan: A More Active Scotland	Pollinators Strategy*	Regeneration Strategy	River Basin Management Plans	Scottish Rural Development Plan	Scotland's National Food & Drink Policy: Becoming a Good Food Nation	Scottish Forestry Strategy	Scottish Planning Policy	Strategic Vision for the Uplands*	The Future of Scottish Agriculture: a discussion document	The Scottish Plant Health Strategy

*the document is proposed or under development.

Question 1:

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

Chapter 3: A fair balance of rights and responsibilities

Scope of the Land Rights and Responsibilities Statement

22. The Statement will be relevant to all land and buildings in Scotland, both urban and rural. It will be equally relevant to all the people and communities of Scotland, whether land owner, land manager, tenant or land user, including government, public bodies, community groups, businesses and individuals. It is the Scottish Government's intention that the vision and principles in the Statement will inform policy and practice around land issues, operating in concert with other relevant strategies and policies.

23. The aim of the Statement is to set out principles that reflect a fair and proportionate balance of rights and responsibilities. First Minister Nicola Sturgeon MSP opens the Scotland's Economic Strategy with the statement that: "Creating a fairer society is not just a desirable goal in itself, but is essential to the sustained, long-term prosperity of the Scottish economy. Our approach to economic policy is based on the principle that delivering sustainable growth and addressing long-standing inequalities are reinforcing – and not competing – objectives."¹⁵ The Scottish Government considers that we all benefit when more people have the opportunity to flourish, and a fairer nation is a more prosperous one and offers better quality of life for everyone.

International instruments and human rights

24. The Scotland Act 1998 requires that all legislation of the Scottish Parliament and all actions of the Scottish Ministers be compatible with certain core rights contained in the European Convention on Human Rights ("the Convention rights"). The Human Rights Act 1998 requires every public authority in Scotland to act compatibly with the Convention rights and enables human rights cases to be taken in domestic courts. The Convention rights are relevant to rights and responsibilities in relation to land. In particular the right to property is protected under Article 1 of Protocol 1 of the European Convention on Human Rights ("A1P1"). However, A1P1 rights are not absolute rights. Interference with the right to the peaceful enjoyment of possessions can be permitted in certain circumstances if certain conditions are met, including that the interference is proportionate and in the public interest.

25. The Scottish Government recognises that land rights are involved in the realisation of a broad spectrum of human rights. The *International Covenant on Economic, Social and Cultural Rights* is at the heart of the Land Rights and Responsibilities Statement, and more widely in our land-related policies. Economic, social and cultural rights are fundamental to a life of dignity. The Covenant contains rights relating to:

- work in just and favourable conditions
- social security
- an adequate standard of living (including food and housing)
- the highest attainable standard of physical and mental health

¹⁵[Scotland's Economic Strategy: March 2015](#), The Scottish Government, Mar. 2015.

- education
- participation in cultural life and enjoyment of the benefits of scientific progress

26. The interrelation of property and tenure rights with wider human rights underpins the Food and Agriculture Organisation of the United Nations' *Voluntary Guidelines on the Responsible Governance of Tenure*. The goal of the VGGTs is to support the progressive realisation of the right to adequate food and national food security. Within this context they promote secure tenure rights and equitable access to land, fisheries and forests, as a means of eradicating hunger and poverty, supporting sustainable development and enhancing the environment. The VGGTs are voluntary guidelines and do not have any legal force. It is also important to note that national implementation will be guided by national circumstances. The VGGTs contain the principle of "responsible investment." They state that responsible investments "should do no harm," and are defined as recognising wider policy objectives around providing benefit to the country and its people; responsible investments should be acknowledged by Government and non-government bodies.

27. The United Nations Sustainable Development Goals ("SDGs") have also been taken into consideration in the drafting of the proposed Statement. Scotland was one of the first nations in the World to sign up to the SDGs, and make a dual commitment to tackle poverty and inequality in Scotland, and to help developing countries to grow in a fair and sustainable manner.¹⁶ The Scottish Government will implement the SDGs domestically through the National Performance Framework and Scotland's National Action Plan for Human Rights. The 17 Goals aim to tackle key barriers to sustainable development such as inequality, unsustainable consumption and production patterns, inadequate infrastructure and lack of adequate employment. These issues are also reflected in the Land Rights and Responsibilities Statement.

28. The principles of the ICESCR, the VGGTs and the SDGs are central to the Land Rights and Responsibilities Statement's aim of providing a context within which to consider the ongoing development and balance of rights and responsibilities relating to land, in order to realise the full public benefits of land in Scotland.

29. It should be noted that, in addition to human rights there are further rights related to land protected under Scots law. For example, individuals have the right to responsible access to land,¹⁷ and communities can apply for a pre-emptive right to buy,¹⁸ or a right-to-buy for the purposes of sustainable development,¹⁹ or request asset transfer from public sector bodies.²⁰ Rights can also be granted by contracts, such as under tenancy or loan agreements. These rights can interact in complex ways, for instance landlords and tenants have A1P1 property rights and a community group may have rights both as a tenant, and through a pre-emptive right to buy.

¹⁶For more information see: Sustainable Development Goals Background Note, The Scottish Government, Feb. 2016. <http://www.gov.scot/Topics/International/int-dev/IDconsultation/SDGsbackground>

¹⁷Part 1 of the [Land Reform \(Scotland\) Act 2003](#).

¹⁸Part 2 of the [Land Reform \(Scotland\) Act 2003](#), as amended by Part 4 of the [Community Empowerment \(Scotland\) Act 2015](#).

¹⁹Part 5 of the [Land Reform \(Scotland\) Act 2016](#).

²⁰Part 5 of the [Community Empowerment \(Scotland\) Act 2015](#).

30. The Land Rights and Responsibilities Statement is not intended to be a means of listing these rights, but rather an opportunity to express the link between these rights and the responsibilities that derive from them.

A human rights based approach

31. The Scottish Government proposes a human rights based approach to the Land Rights and Responsibilities Statement. Such an approach puts people and their fundamental human rights at the centre of policies, adding this perspective to conversations around land, and recognising it as an economic, social and cultural asset. The Scottish Human Rights Commission sets out the following values for what a human rights approach should mean in practice:

- Participation: People should be involved in decisions that affect their rights.
- Accountability: There should be monitoring of how people's rights are being affected, as well as remedies when things go wrong.
- Non-discrimination: All forms of discrimination must be prohibited, prevented and eliminated. People who face the biggest barriers to realising their rights should be prioritised.
- Empowerment: Everyone should understand their rights, and be fully supported to take part in developing policy and practices which affect their lives.
- Legality: Approaches should be grounded in the legal rights that are set out in domestic and international laws.²¹

These values run throughout the vision and principles of the proposed Land Rights and Responsibilities Statement.

32. The Land Rights and Responsibilities Statement sets the direction of travel for public policy relating to land and nature of the relationship between the people of Scotland and the land of Scotland. It is the intention of the Scottish Government that, along with the other strategies and policies referred to earlier, the Land Rights and Responsibilities Statement should inform the practices of all those who own, manage and use land, in order to achieve culture change through the continued realisation of the vision and principles of the Statement.

²¹For more information see the Scottish Human Rights Commission website:
<http://www.scottishhumanrights.com/in-practice/human-rights-based-approach/>

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

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.

Chapter 4: Proposed Land Rights and Responsibilities Statement

33. We present the proposed Land Rights and Responsibilities Statement below. It is followed by an elaboration of the vision and each of the principles, along with examples of current and future policy, to illustrate how the principles are interrelated and coherent with the Scottish Government's wider work.

Vision for a strong relationship between the people of Scotland and the land of Scotland

The ownership, management and use of land and buildings in Scotland should contribute to the collective benefit of the people of Scotland. A fair, inclusive and productive system of land rights and responsibilities should deliver greater public benefits and promote economic, social and cultural rights.

Principles

1. The overall framework of land rights, responsibilities and associated public policies governing the ownership, management and use of land, should contribute to building a fairer society in Scotland and promote environmental sustainability, economic prosperity and social justice.
2. There should be an increasingly diverse and widely dispersed pattern of land ownership and tenure, which properly reflects national and local aspirations and needs.
3. More local communities should be given the opportunity to own buildings and land which contribute to their community's wellbeing and future development.
4. The holders of land rights should recognise their responsibilities to meet high standards of land ownership, management and use, acting as the stewards of Scotland's land resource for future generations.
5. Information on land should be publicly available, clear and detailed.
6. There should be wide community engagement in decisions about land.

Vision for a strong relationship between the people of Scotland and the land of Scotland

The ownership, management and use of land and buildings in Scotland should contribute to the collective benefit of the people of Scotland. A fair, inclusive and productive system of land rights and responsibilities should deliver greater public benefits and promote economic, social and cultural rights.

When the First Minister spoke at the opening of the Scottish Parliament on 25 May 2016, she put one central ambition at the heart of the Scottish Government's programme: "to make real and lasting progress towards true equality of opportunity for all."²²

As part of [Scotland's Economic Strategy](#) and the [Fairer Scotland Action Plan](#), the Scottish Government has made a commitment to the people of Scotland to take long-term action to change our society and make it a fairer and more productive place to live. The Scottish Government envisages a fairer society which allows those who suffer from disadvantage to participate, and empowers individuals and communities.

The Scottish Government recognises the relationship between land and the enjoyment of economic, social and cultural rights. We envisage a future where the framework of land rights and responsibilities allows the people of Scotland the opportunity to realise their aspirations in relation to land.

Adopting a human rights based approach and a wider definition of human rights helps to focus on the means of achieving the desired outcomes. This is reflected in the Statement through the balance of the vision and the principles, with the principles laying out a route map to achieving the vision. From 1 October 2017, the Scottish Ministers will have a duty to promote the principles of the Statement.

The Scottish Land Commission will have the overarching objective to monitor, advise on and improve understanding of matters relating to land in Scotland. The Commission will determine its own work plan and agenda, including conducting research reviewing the impact and effectiveness of laws or policies, and recommending changes. The Commission's remit will extend to all land in Scotland, whether urban or rural and will cover, among other things, ownership and other rights in land, management of land and use of land. The Commissioners will have regard to the Statement in fulfilling their functions.

²² <http://news.gov.scot/speeches-and-briefings/priorities-speech-taking-scotland-forward>

Principle 1: The overall framework of land rights, responsibilities and associated public policies governing the ownership, management and use of land, should contribute to building a fairer society in Scotland and promote environmental sustainability, economic prosperity and social justice.

Scotland's land is a resource for Scotland's people. The ownership and management of our land and buildings should acknowledge that the wellbeing of our communities is dependent on the good stewardship of this resource.

Sustainability is a duty we owe to future generations. Inclusive growth is a long-term aim, and decisions taken about how to realise the full public benefits from Scotland's land and buildings must take the wellbeing of our environment and communities into consideration.

Viewing land rights and responsibilities through environmental sustainability, economic prosperity and social justice is central to the Scottish Government's aim of long-term sustainable development for Scotland. Decisions made on land ownership, management and use should consider these three outcomes.

What we are doing

- [Scotland's Economic Strategy](#) has inclusive growth as a core priority. This combines the mutually supportive pillars of increasing competitiveness and tackling inequality.
- The [Fairer Scotland Action Plan](#) outlines 50 actions around tackling poverty, reducing inequality and building a fairer and more inclusive Scotland.
- The [2020 Challenge for Scotland's Biodiversity](#) is Scotland's response to the United Nations Aichi Targets. It calls for increased efforts to halt the loss of biodiversity and to protect the wider benefits that a healthy natural environment provides.
- The [Low Carbon Economic Strategy](#) sets the policy direction for low carbon economic opportunities, sets out proposals and policies for meeting annual emissions reduction targets.
- The Scottish Government's [Regeneration Strategy](#) provides a framework for local action to tackle area inequality, create opportunities and improve communities. The strategy is supported by various targeted funding streams, aimed at meeting the needs of communities.
- [Marine Scotland's Strategic Framework 2013-16](#) categorises its objectives under the three themes of economic, environmental and social.
- The [Scottish Rural Development Programme 2014 - 2020](#) delivers Pillar 2 of the EU Common Agricultural Policy (CAP). It funds economic, environmental and social measures for the benefit of rural Scotland.

- The Scottish Government's plans to complete the devolution of forestry are driven by our ambition to maximise the sector's contribution to economic, environmental and social outcomes.
- The Scottish Forestry Strategy will be reviewed during the period of the current Land Use Strategy (2016-2021), to ensure that the Strategy reflects changing priorities and aligns with key policies.
- Scotland supports the United Nations Sustainable Development Goals internationally, via our [International Development Fund](#) and [Climate Justice Fund](#), which were worth £9 million and £3 million respectively in 2016-17.

Principle 2: There should be an increasingly diverse and widely dispersed pattern of land ownership and tenure, which properly reflects national and local aspirations and needs.

There may be occasions when the scale or pattern of land ownership and control, and the decisions of land managers, can be a barrier to sustainable development for a community. A wide and diverse availability of land and buildings allows businesses, organisations and individuals to pursue projects of all scales and purposes.

Scotland needs to grow its existing businesses and encourage start-ups, including new business models such as social enterprise and development trusts. Access to land and premises is a key requirement for all forms of enterprise. We need to increase the number of houses in Scotland, and ensure the availability of a variety of tenure and ownership options which cater for the full range of people's needs, so that everyone in Scotland has a secure, comfortable and affordable home. In our rural communities a variety of farming models, from crofts and smallholdings to larger tenant farms and estates, provides greater choice to those looking to enter agriculture and is essential for the sustainability of the industry. In addition, a wide variety of charitable and public bodies manages our natural and built heritage and provides a valuable service to Scotland's economy.

What we are doing

- [Community Right to Buy legislation](#)²³ allows community organisations to apply to register their interest in buying the land and building assets that would help them in achieving their aims.
- Asset Transfer powers in the [Community Empowerment \(Scotland\) Act 2015](#) give community organisations a right to request the transfer of ownership or other rights in land from public sector bodies, where they can make better use of that land.
- Forestry Commission Scotland has published [draft guidance](#) for a new Community Asset Transfer Scheme for the National Forest Estate.
- The Scottish Government's [More Homes Scotland](#) approach brings together several initiatives with the aim of making more land available for housing, increasing public and private investment in housing, and ensuring that this housing responds to the people of Scotland's needs.
- [Small Farms Grant Scheme](#) and the [Crofting Agricultural Grant Scheme](#) provide grants to smaller agricultural businesses.
- Since 2007, the Scottish Rural Development Programme's [LEADER](#) programme has supported over 2,200 initiatives across rural Scotland, including such diverse areas as food, tourism, transport, digital, access,

²³ Part 2 of the [Land Reform \(Scotland\) Act 2003](#), as amended by Part 4 of the [Community Empowerment \(Scotland\) Act 2015](#).

biodiversity, landscape, culture, health, employment, leisure, youth, services, regeneration and historic environment.

- The [Land Reform \(Scotland\) Act 2016](#) amends the pre-emptive right to buy for tenant farmers of certain agricultural holdings to remove the requirement for tenant farmers to register their interest in land, making their pre-emptive right to buy automatic, should their landlord decide to sell.
- In addition, the Scottish Government and a range of public, private and third-sector partners deliver a range of initiatives to encourage business start-ups and grow existing businesses, including financial support and advice.

Principle 3: More local communities should be given the opportunity to own buildings and land which contribute to their community's wellbeing and future development.

Land is a key asset for delivering a range of economic and community activities that contribute to sustainable economic growth. Land and buildings are required for projects such as housing, allotments, renewable energy generation, and community businesses and these activities give communities greater opportunities to realise their economic, social and cultural human rights. The ownership or lease of land and buildings empowers communities, by strengthening local people's voices in the decisions about the resources and services that matter to them.

Community-based organisations deliver countless benefits for their local communities, in both rural and urban areas. Community ownership supports community wellbeing by giving local people the opportunity to identify and respond to their own needs. This can mean creating jobs through enterprise, supporting vulnerable people, giving children opportunities, or celebrating local culture, food or sport.

What we are doing

- Under the [Community Empowerment \(Scotland\) Act 2015](#) the Community Right to Buy powers have been extended to urban Scotland, so that every local community has the opportunity to benefit from the advantages of community ownership under this right to buy.
- The [Scottish Land Fund](#) supports communities to buy land and buildings which will enable that community to become more sustainable and resilient. The Fund has been increased to £10 million for 2016-17.
- Since 2008, the [Climate Challenge Fund](#) has awarded over £61 million of funding to 696 community led projects which reduce carbon, and create a legacy of low carbon behaviour assets.
- The [Community Energy Policy Statement](#) lays out Scottish Government's target of 500 MW community and locally-owned renewable energy by 2020.
- The Scottish Government continues to support and encourage communities and organisations towards the ambitious target of having one million acres of land in Scotland in community ownership by 2020.
- The [Regeneration Capital Grant Fund](#) provides £25 million per annum for projects where local communities and local authorities work together and the community is empowered to undertake the management and ownership of newly created or refurbished assets.
- The Empowering Communities Fund supports community-led regeneration activity throughout the country to help tackle inequality, empowering communities to deliver on the priorities that matter to them the most.
- The [Community Ownership Support Service](#) provides advice and information to those communities considering asset ownership.

Principle 4: The holders of land rights should recognise their responsibilities to meet high standards of land ownership, management and use, acting as the stewards of Scotland's land resource for future generations.

Those who own or manage land are responsible for the good stewardship of that land, and ensuring that Scotland's resource is maintained for future generations.

The Scottish Government considers that the goal of sustainable development is to enable all people to satisfy their basic needs and enjoy a better quality of life, without compromising the quality of life of future generations.

This links with the *Voluntary Guidelines on the Responsible Governance of Tenure*, which states that the principle of "responsible investment" should be acknowledged by Government and non-government bodies. Responsible investment recognises the land as a resource, which should be invested in so as to ensure a sustainable future and continued prosperity.

What we are doing

- The [Land Use Strategy for Scotland 2016-2021](#) provides a policy agenda for all land in Scotland and a set of principles for sustainable land use.
- Scotland's [National Food & Drink Policy - Becoming a Good Food Nation](#) reaffirms the Scottish Government's commitment to promoting the sustainable economic growth of the food and drink industry, which is underpinned by our farming and natural environment.
- The [National Planning Framework 3](#) provides a clear long-term national vision for development and investment across Scotland for the next 20-30 years, with a focus on supporting sustainable growth and a low carbon economy.
- The [Future of Scottish Agriculture: a discussion document](#) lays out a vision for a resilient agricultural community and details the next steps to be taken for a sustainable and prosperous agricultural sector.
- Since 2013, the Scottish Natural Heritage led [Peatland Action](#) initiative has supported restoration of over 10,000 hectares of peat.
- The [Scottish Plant Health Strategy](#) recognises that plant health is at the heart of Scotland's rural economy, natural environment and wellbeing and it sets out how, by working together, we can protect crops, trees, and other plants from new and existing pests and diseases.
- The Scottish Government has agreed to bring forward proposals for Compulsory Sales Orders which will provide a further tool to address the problem of abandoned buildings and small plots of land in town centres and communities whilst also adequately protecting the rights of owners.

Principle 5: Information on land should be publicly available, clear and detailed.

Information about land and buildings provides the foundation for open and transparent decision-making for public and private sector organisations, communities and individuals.

It is the first step to empowering communities to have more influence over decisions which affect them in both our rural and urban settings, and which can impact on local businesses, employment, housing, and public services.

When more information about land is available it assists organisations and individuals to influence land ownership, management and use in a positive manner and enables more informed decision making, and efficient land use and management, creating benefit for the local economy, environment and society.

What we are doing

- The Scottish Government's [Open Data Strategy](#) states our aim to make non-personal and non-commercially sensitive data available, via the internet, in a format which allows it to be easily used.
- The Scottish Government and the Registers of Scotland are currently developing ScotLIS, an online land and information system that will allow anyone access to comprehensive information about any piece of land or property in Scotland through a simple, single online search.
- In May 2014, Scottish Ministers announced the target of registering the ownership of all of Scotland's land within 10 years. All public land is to be registered within five years.
- The Scottish Government is developing proposals for a Register of Controlling Interests, which will give further information about persons who have controlling interests in owners and tenants of land.
- Other publicly held data is made accessible by mapping tools such the National Biodiversity Network's [Atlas of Living Scotland](#), and those managed by [Marine Scotland](#) and [Scotland's Environmental Web](#).
- Forest Enterprise Scotland is working on making information on the National Forest Estate, currently available through the [Forestry Commission Scotland map browser](#) more accessible, and will publish a new map-based Register of Land for the National Forest Estate in January 2017.

Principle 6: There should be wide community engagement in decisions about land.

Decisions relating to land and buildings can have social, economic and environmental impacts that are felt by the local community. Wide public engagement on decisions taken in relation to land and buildings can help to build trust between the land owner or land manager, and the community.

Strong relationships between those who manage or own land and buildings and the affected communities helps both to understand the issues that the other is facing. Good engagement supports communities to express themselves on local issues and become involved in the decisions that affect them.

Engagement enables land owners, land managers and communities to develop positive and co-operative working relationships. This can lead to creative and innovative solutions to issues, and better economic, environmental, social and cultural outcomes for all parties.

What we are doing

- The Scottish Parliament has built in public engagement to the Land Rights and Responsibilities Statement, by requiring that it undergo consultation and review every 5 years.
- The [National Standards for Community Engagement](#) were reviewed and updated in 2015-16 in order to reflect the developing legislation and policy relating to community empowerment.
- The National Standards for Community Engagement are supported by [VOICE](#), a digital tool to assist individuals, organisations and partnerships with delivering meaningful community engagement.
- In 2017, the Scottish Government will consult on and publish specific guidance on engaging communities in decisions relating to land which may affect communities.
- The [Low Carbon Scotland: Public Engagement Strategy](#) was created in recognition of the fact that achieving Scotland's climate change targets can only be done through a joint approach, with contribution from government, private, public and community organisations and individuals.
- The [Place Standard](#) is an assessment tool for evaluating the strengths and challenges that exist in a particular place, in order to support communities and the public sector, private sector and third sector to work together to deliver high quality, sustainable places.
- The Design Charrettes Programme and Activating Ideas Fund provide funding to help community groups, local authorities and third sector organisations improve the design and quality of their areas. For 2016-17, £300,000 is available across the two grant schemes to help support design-led participation and empowerment initiatives, with a focus on improving outcomes in disadvantaged areas.

- Under the [Local Government in Scotland Act 2003](#), local authorities, health boards, the enterprise networks, police, fire and regional transport partnerships have a duty to carry out Community Planning, working in concert with the community to plan and deliver better services
- Participation requests are a new process which will allow a community body to enter into dialogue with public authorities about local issues and local services.

Question 3:

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

Question 4:

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

Question 5:

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

Question 6:

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

Question 7:

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

Question 8:

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

Question 9:

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

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.

Question 11:

Do you have any further comments?

Chapter 5: Impact Assessment

Equality

34. The Scottish Government is committed to promoting equality and removing or minimising disadvantage which may be experienced by different groups of people. We have a legal duty to consider the impact of policies on people who may be differently affected in relation to the “protected characteristics” under the Equality Act 2010.²⁴ The protected characteristics are age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

Question 12:

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

Business and regulation

35. We do not consider that a business and regulatory impact assessment is required, as the Land Rights and Responsibilities Statement will not directly impose new regulatory burdens on businesses, charities or the voluntary sector. Any new measures which arise in relation to the Statement will be subject to assessment as appropriate.

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.

Environmental

36. The Environmental Assessment (Scotland) Act 2005²⁵ ensures those public plans that are likely to have a significant impact on the environment are assessed and measures to prevent or reduce adverse impacts are sought, where possible, prior to implementation of the plan in question.

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.

²⁴ <http://www.legislation.gov.uk/ukpga/2010/15/contents>

²⁵ <http://www.legislation.gov.uk/asp/2005/15/contents>

Chapter 6: Next Steps

Analysis

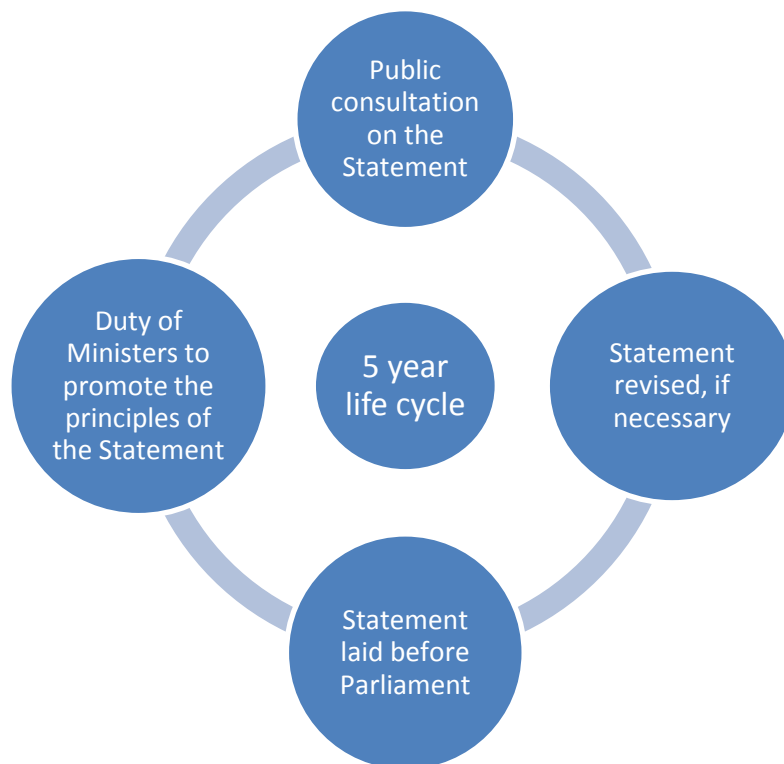
37. The responses to this consultation will undergo independent analysis. The results of the analysis will be taken into consideration when drafting the final Statement.

Publishing the Statement

38. The finalised Statement will be laid before the Scottish Parliament, alongside a report setting out the consultation process undertaken and the ways in which views expressed during that process have been taken account of in preparing the Statement. The duty on the Scottish Ministers to promote the principles of the Statement will come into force on 1 October 2017.

Review period

39. The legislation requires that the Statement is reviewed and consulted upon every 5 years and if necessary revised, taking into account comments received, before being laid before the Scottish Parliament.



Chapter 7: Responding to this Consultation

We are inviting responses to this consultation by **Friday 10 March 2017**.

Please respond to this consultation using the Scottish Government's consultation platform, Citizen Space. You can view and respond to this consultation online at:

<https://consult.scotland.gov.uk/land-reform-and-tenancy-unit/land-rights-and-responsibilities-statement/>

You can save and return to your responses while the consultation is still open. Please ensure that consultation responses are submitted before the closing date of Friday 10 March 2017.

If you are unable to respond online, please complete the Respondent Information Form (see "Handling your Response" below) to:

Land Reform Team,
Area 1-C (North)
Scottish Government
Victoria Quay
Edinburgh
EH6 6QQ

We can also accept responses via e-mail or fax.

Email: landreform@gov.scot

Fax: 0131 244 0211

Responses should reach us by Friday 10 March 2017. Earlier responses would be welcome.

Handling your response

If you respond using Citizen Space (<http://consult.scotland.gov.uk/>), you will be directed to the Respondent Information Form. Please indicate how you wish your response to be handled and, in particular, whether you are happy for your response to be published.

If you are unable to respond via Citizen Space, please complete and return the Respondent Information Form included in this document at Annex 4. If you ask for your response not to be published, we will regard it as confidential, and we will treat it accordingly.

All respondents should be aware that the Scottish Government is subject to the provisions of the Freedom of Information (Scotland) Act 2002 and would therefore have to consider any request made to it under the Act for information relating to responses made to this consultation exercise.

Next steps in the process

Where respondents have given permission for their response to be made public, and after we have checked that they contain no potentially defamatory material,

responses will be made available to the public at <http://consult.scotland.gov.uk>. If you use Citizen Space to respond, you will receive a copy of your response via email.

Following the closing date, all responses will be analysed and considered along with any other available evidence to help us. Responses will be published where we have been given permission to do so.

Comments and complaints

If you have any comments about how this consultation exercise has been conducted, please send them to

Land Reform Team,
Area 1-C (North)
Scottish Government
Victoria Quay
Edinburgh
EH6 6QQ

Email: landreform@gov.scot Fax: 0131 244 0211

Scottish Government consultation process

Consultation is an essential part of the policy-making process. It gives us the opportunity to consider your opinion and expertise on a proposed area of work.

You can find all our consultations online: <http://consult.scotland.gov.uk>. Each consultation details the issues under consideration, as well as a way for you to give us your views, either online, by email or by post.

Consultations may involve seeking views in a number of different ways, such as public meetings, focus groups, or other online methods such as Dialogue (<https://www.ideas.gov.scot>)

Responses will be analysed and used as part of the decision making process, along with a range of other available information and evidence. We will publish a report of this analysis for every consultation. Depending on the nature of the consultation exercise the responses received may:

- indicate the need for policy development or review
- inform the development of a particular policy
- help decisions to be made between alternative policy proposals
- be used to finalise legislation before it is implemented

While details of particular circumstances described in a response to a consultation exercise may usefully inform the policy process, consultation exercises cannot address individual concerns and comments, which should be directed to the relevant public body.

Annex 1: First draft of the Land Rights and Responsibilities Statement

This draft of the Statement was published in the Future of Land Reform in Scotland consultation in December 2014.

Vision

For a strong relationship between the people of Scotland and the land of Scotland, where ownership and use of the land delivers greater public benefits through a democratically accountable and transparent system of land rights that promotes fairness and social justice, environmental sustainability and economic prosperity.

Principles

1. The ownership and use of land in Scotland should be in the public interest and contribute to the collective benefit of the people of Scotland.
2. There should be clear and detailed information that is publicly available on land in Scotland.
3. The framework of land rights and associated public policies governing the ownership and use of land, should contribute to building a fairer society in Scotland and promoting environmental sustainability, economic prosperity and social justice.
4. The ownership of land in Scotland should reflect a mix of different types of public and private ownership in an increasingly diverse and widely dispersed pattern, which properly reflects national and local aspirations and needs.
5. That a growing number of local communities in Scotland should be given the opportunity to own buildings and land which contribute to their community's wellbeing and future development.
6. The holders of land rights in Scotland should exercise these rights in ways that recognise their responsibilities to meet high standards of land ownership and use.
7. There should be wide public engagement in decisions relating to the development and implementation of land rights in Scotland, to ensure that wider public interest is protected.

Annex 2: Part 1 of the Land Reform (Scotland) Act 2016

1 Land rights and responsibilities statement

- (1) The Scottish Ministers must prepare and publish a land rights and responsibilities statement.
- (2) A “land rights and responsibilities statement” is a statement of principles for land rights and responsibilities in Scotland.
- (3) In preparing the statement, the Scottish Ministers must have regard to the desirability of—
 - (a) promoting respect for, and observance of, relevant human rights,
 - (b) promoting respect for such internationally accepted principles and standards for responsible practices in relation to land as the Scottish Ministers consider to be relevant,
 - (c) encouraging equal opportunities (within the meaning of Section L2 of Part 2 of schedule 5 of the Scotland Act 1998),
 - (d) furthering the reduction of inequalities of outcome which result from socioeconomic disadvantage,
 - (e) supporting and facilitating community empowerment,
 - (f) increasing the diversity of land ownership, and
 - (g) furthering the achievement of sustainable development in relation to land.
- (4) For the purposes of subsection (3)(a)—
 - (a) “relevant human rights” means such human rights as the Scottish Ministers consider to be relevant to the preparation of the statement, and
 - (b) in considering what human rights are relevant human rights, Ministers may consult the Scottish Commission for Human Rights and such other persons or bodies as they consider appropriate.
- (5) For the purposes of subsection (3)(b), “internationally accepted principles and standards for responsible practices in relation to land” include the principles and standards contained in the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the context of National Food Security issued by the Food and Agriculture Organization of the United Nations and endorsed by the Committee on World Food Security on 11 May 2012.
- (6) In this section “human rights” means—
 - (a) the Convention rights (within the meaning of section 1 of the Human Rights Act 1998), and
 - (b) other human rights contained in any international convention, treaty or other international instrument ratified by the United Kingdom, including the International Covenant on Economic, Social and Cultural Rights adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966 subject to—
 - (i) any amendments in force in relation to the United Kingdom for the time being, and

- (ii) any reservations, objections or interpretative declarations by the United Kingdom for the time being in force.

2 Publication and review of land rights and responsibilities statement

- (1) The Scottish Ministers must publish the first land rights and responsibilities statement and lay it before the Scottish Parliament before the end of the period of 12 months beginning with the day on which this section comes into force.
- (2) Before complying with subsection (1), the Scottish Ministers must publish a draft of the statement and consult such persons as they consider appropriate.
- (3) The Scottish Ministers must lay before the Scottish Parliament a report setting out—
 - (a) the consultation process undertaken in order to comply with subsection (2), and
 - (b) the ways in which views expressed during that process have been taken account of in preparing the statement (or stating that no account has been taken of such views).
- (4) The Scottish Ministers must review the first statement before the end of the period of 5 years beginning with the day on which the Scottish Ministers published the statement.
- (5) In carrying out the review of the statement, the Scottish Ministers must consult such persons as they consider appropriate.
- (6) If, following the review under subsection (4), the Scottish Ministers consider that it is not appropriate to prepare a revised statement, they must lay before the Scottish Parliament a report setting out—
 - (a) the consultation process undertaken in order to comply with subsection (5), and
 - (b) the reasons why they consider that it is not appropriate to prepare a revised statement.
- (7) If, following the review under subsection (4), the Scottish Ministers consider that it is appropriate to prepare a revised statement, they must—
 - (a) publish the revised statement and lay it before the Scottish Parliament, and
 - (b) lay before the Scottish Parliament a report setting out—
 - (i) the consultation process undertaken in order to comply with subsection (5), and
 - (ii) the reasons why they consider that it is appropriate to prepare a revised statement.
- (8) The Scottish Ministers must review the statement, or revised statement, before the end of each period of 5 years beginning with the day on which they last laid before the Scottish Parliament the report under subsection (6) or, as the case may be, (7)(b).

(9) Subsections (5) to (7) apply to the review of a statement, or revised statement, under subsection (8) as they apply to the review of the first statement under subsection (4).

3 Duty to promote land rights and responsibilities statement

The Scottish Ministers must, in exercising their functions and so far as reasonably practicable, promote the principles set out in the land rights and responsibilities statement.

Annex 3: A Consultation on the Future of Land Reform in Scotland: Analysis of Consultation Responses (Pages 17 -22)

3. A DRAFT LAND RIGHTS AND RESPONSIBILITIES POLICY STATEMENT

Background

The Scottish Government considers that the relationship between the people living in Scotland and the land of Scotland is of fundamental importance. The land of Scotland is viewed as a finite resource and the land rights that govern how the land is owned and used seen as crucial in influencing well-being, economic success, environmental sustainability and social justice in Scotland. The Scottish Government proposes a vision and set of principles to guide the development of public policy on the nature and character of land rights in Scotland.

Question 1: Do you agree that the Scottish Government should have a stated Land Rights and Responsibilities Policy?

3.1 This question attracted the highest volume of response of all questions in the consultation. 1018 respondents (87% of all respondents) provided an answer with the majority (87%) agreeing that the Scottish Government should have a stated Land Rights and Responsibilities Policy (LRRP). Table 3.1 presents views by category of respondent.

Table 3.1: Views on whether the Scottish Government should have a stated Land Rights and Responsibilities Policy (Question 1)

Respondent category	Agree		Disagree		Total no. of respondents
	No. of respondents	%	No. of respondents	%	
National non-government organisations	42	100	0	0	42
Private landowner organisations	20	47	23	53	43
Private sector and professional bodies	21	84	4	16	25
Community organisations and representative bodies	21	100	0	0	21
Government and NDPBs	11	100	0	0	11
Local non-government organisations	8	n/a	0	n/a	8
Local Government	9	n/a	0	n/a	9
Academic	1	n/a	1	n/a	2
Total organisations	133	83	28	17	161
Individuals	753	88	104	12	857
Grand total	886	87	132	13	1018

* Throughout the report percentages are only used when the number of respondents is more than 10.

3.2 The only category of respondent where there was significant disagreement with the proposal was private landowner organisations. The majority of landowners who responded to the consultation addressed this question with just over half of these (53%) disagreeing.

3.3 All campaign responses agreed with the proposal.

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

3.4 844 respondents (72% of all respondents) addressed this question. Comments varied from broad support for, or opposition to, the proposed overall vision and principles, to more specific, detailed views and suggestions relating to individual draft principles. Amongst the comments of individuals were those which concurred with the views of key stakeholders such as Scotland's Rural College²⁶, the response of which was referred to repeatedly.

Summary of general views in support of the overall LRRP

3.5 Respondents from a range of different respondent categories expressed their general support for the draft LRRP as a whole. Comments included:

“I think it is the most progressive set of proposals I've seen from any Government” (Ind).

“I welcome the draft statement and think it is valuable to have such a statement to guide future policy” (Ind).

3.6 Many respondents provided a general rationale to underpin their support. The most common statements were that the proposal constituted a “good start” and “a step in the right direction”, with many respondents considering this to be **long overdue**. A recurring theme across a few sectors was that the draft provided a robust framework upon which new policy could be constructed. The draft was viewed by some supporters as **future-focused and comprehensive**, with the potential to **reduce inequalities and promote transparency**. 17 respondents provided their view that the draft was not ambitious enough.

Summary of views criticising the overall LRRP

3.7 Four main criticisms dominated responses. The most common criticism (emerging from supporters and opponents alike) was that **phrases and words within the vision and principles were not clearly defined** within the context of the proposal leaving them open to various interpretations.

3.8 A second prevailing criticism specified by 31 respondents (largely individuals and landowning organisations) was that **in their view there is no evidence that land reform is required**, with existing legislation working well. One private landowner organisation remarked:

“The vision proposed implies a current failure though this failure is not set out or demonstrated. The principles are clearly directed at changing

²⁶ The response of Scotland's Rural College contained detailed points relating to the proposed vision and principles and can be viewed at https://consult.scotland.gov.uk/land-reform-and-tenancy-unit/land-reform-scotland/consultation/published_select_respondent

landownership patterns but we are not aware of, nor is any presented, any evidence that such a change would, in itself, deliver benefits to the people of Scotland” (Moray Estates Development Company Ltd).

3.9 Related to the previous argument, a further 30 respondents provided their general view that the **proposal fails to recognise the huge contribution currently being made by landowners** in terms of responsible stewardship of large tracts of land.

3.10 One further repeated view (14 respondents) was that the proposal represented **too much control by the Scottish Government**, the perceived centralisation of powers creating potential for future misuse, and unwanted interference with landowners’ rights to utilise their land as they deem most appropriate for both environmental and business interests.

Summary of further general reflections on the LRRP

3.11 A number of other general comments were made by supporters and opponents alike. A repeated view was that what was proposed did not constitute a policy in its own right, but rather comprised **high-level aspirations**. Without further detail, the principles were perceived to be ideological rather than practical goals. Comments included:

“The draft principles as noted appear to be ‘high-level’, in part subjective and hence potentially open to different interpretation. It would be helpful to see further specific proposals e.g. in terms of how it is suggested these objectives might be implemented and achieved to assist more informed comment” (Falkirk Council).

“To convert these from the abstract into the tangible there needs to be action to tackle both wider inequalities in society and the lack of capital availability to community groups and individuals” (Ind).

3.12 11 respondents emphasised what they considered was the need to position the LRRP within the context of other **related policies** such as those on land use, forestry and rural issues, and link them in a cross-cutting manner.

3.13 The issue of **human rights** emerged in various guises in responses, with a general theme to emerge that a rights-based approach to developing land reform policy is in keeping with international approaches, and the European Convention on Human Rights (ECHR). The Common Weal campaign view was that the policy is consistent with international best practice and the rights-based approach of international development.

Specific comments on the proposed vision and principles

3.14 A multitude of very specific comments were made by respondents about aspects of the proposed vision and individual principles. A summary of the most prevailing and relevant views is presented in Table 3.2 overleaf.

Table 3.2: Summary of prevailing views on the proposed vision and principles

<p><i>Vision: For a strong relationship between the people of Scotland and the land of Scotland, where ownership and use of the land delivers greater public benefits through a democratically accountable and transparent system of land rights that promotes fairness and social justice, environmentally sustainable and economic prosperity.</i></p>
<ul style="list-style-type: none"> • Support for recognition of the relationship between people and the land. • Need clarity on whether this applies to urban and rural land • Meaning of “greater public benefits”? • Determination of “fairness”?
<p><i>Principle 1: The ownership and use of land in Scotland should be in the public interest and contribute to the collective benefit of the people of Scotland.</i></p>
<ul style="list-style-type: none"> • General support that this refers to benefitting the many and not just a few. • Perhaps add that this should also benefit future generations of people in Scotland. • Perhaps add that the principle should balance the interests of local and national public interest. • Need to define public interest – different groups may have conflicting interests. • General view particularly from landowners that the principle is too “sweeping” and that attempting to place ownership and use of land in the public interest can lead to degradation and neglect of previously well attended land. • General view largely from individuals that the needs of property owners should be balanced against a wider “public interest”.
<p><i>Principle 2: There should be clear and detailed information that is publicly available on land in Scotland.</i></p>
<ul style="list-style-type: none"> • Much support from individuals in particular for this principle. Repeated calls for this information to be made freely available and readily accessible to all, with some form of interactive map a repeated suggestion. • Recurring view that the principle will promote a transparent system of land rights. • Other merits viewed as empowering communities and individuals to make more informed decisions; being able to establish who owns pieces of land; easier to identify relevant contacts over, for example, permissions to access land. • A request from an individual that the information encompasses all water courses and lochs. • Emphasis on the need to update the register regularly. • Concerns expressed by a small minority over: costs of set up and maintenance outweighing benefits; need to protect rights of owners from potential abuse of information which is made publicly available; impact on the workload of local authorities; information may be available elsewhere so no need to pursue this.
<p><i>Principle 3: The framework of land rights and associated public policies governing the ownership and use of land, should contribute to building a fairer society in Scotland and promoting environmental sustainability,</i></p>

economic prosperity and social justice.

- Relatively few specific comments regarding this principle. General support largely from individuals.
- Most frequent comment, particularly amongst landowners, was that “building a fairer society” is an abstract concept, with many advocating its deletion from the principle.
- Notion of “fair” may benefit one party over another; what appears fair from one perspective may not appear so from another.

Principle 4: The ownership of land in Scotland should reflect a mix of different types of public and private ownership in an increasingly diverse and widely dispersed pattern, which properly reflects national and local aspirations and needs.

- Support largely from individuals, some of whom expressed views in strong language, over so few people owning so much of the land in Scotland
- Suggestion made by a small number of respondents that a restriction on the amount of land one person can own should be implemented.
- Term “increasingly diverse” attracted criticism from some. Comments included: “There is a need for its terminology to be clear and meaningful. While not in argument with “fairness” per se this is an abstract concept that will have different interpretations to different groups and specifically how it is attained in both rural and urban Scotland” (Scottish Land and Estates). “...would question the merits of such a policy where multiple ownerships, as seen in a European context, can hinder rural and urban development and go against the economies of scale that are essential to viable modern agriculture” (Brodie LLP).
- Concerns that diverse ownership requires supporting into the future with ongoing funding and expertise, to prevent neglect.

Principle 5: That a growing number of local communities in Scotland should be given the opportunity to own buildings and land which contribute to their community’s well-being and future development.

- Balance of views between those highlighting their agreement with this principle in particular, and those expressing caution.
- Repeated views that: this principle should be actioned only where there are clear benefits; consideration has been given to whether the funding could be better spent on other benefits for the public such as social services or educational.
- Repeated concern that this principle could lead to disputes within communities.
- Calls for the principle to encompass communities of interest in addition to those of place.
- Suggestions of adding other types of resources for community ownership such as water, wind, inland and seabed resources.
- Consider benefits to communities of leasing and management agreements as alternatives to owning.
- The principle should be linked to the Community Empowerment policy due to its relevance in delivery.

Principle 6: The holders of land rights in Scotland should exercise these rights in ways that recognise their responsibilities to meet high standards of land ownership and use.

- Much support expressed largely by individuals.
- Owners in particular emphasised that they already adhere to this principle.
- A recurring comment was to request clarification on meaning of “high standards” and seek information on who will determine these.
- A few requests for “responsibilities” to be made more explicit.

Principle 7: There should be wide public engagement in decisions relating to the development and implementation of land rights in Scotland, to ensure that wider public interest is protected.

- Some general support expressed largely from individuals.
- Two prominent concerns: legislation already exists which encompasses public engagement in such decisions; does not offer adequate protection for property owners.
- Concerns mentioned by only a few respondents: could become dominated by the vocal few in the community; could result in too much bureaucracy with worthwhile development proposals being lost; need to ensure community volunteers involved are adequately supported and empowered to take part.
- Relevance of “public interest” questioned by a few, with one suggestion that the word “public” is removed, leaving “wider interest”.

Cross-cutting additional themes to emerge

3.15 Other significant cross-cutting themes which emerged less frequently included:

- Need for a reference to food and food security; forestry; and agriculture as underpinning rural economies.
- Include reference to access to land, in addition to land ownership.
- LRRP requires a review cycle, possibly every five years.
- Introduce and reference minimum standards of stewardship that landowners and managers are required to meet.
- Consider an appeal system to run alongside the LRRP (although some mention that there is already an appeal system for development decisions).



Annex 4: Respondent Information Form

Land Rights and Responsibilities Statement: a consultation

RESPONDENT INFORMATION FORM

Please Note this form **must** be completed and returned with your response.

Are you responding as an individual or an organisation?

- Individual
 Organisation

Full name or organisation's name

Phone number

Address

Postcode

Email

The Scottish Government would like your permission to publish your consultation response.

Please indicate your publishing preference:

- Publish response with name
 Publish response only (anonymous) – Individuals only
 Do not publish response

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

- Yes
 No



Scottish Government
Riaghaltas na h-Alba
gov.scot

© Crown copyright 2016

OGL

This publication is licensed under the terms of the Open Government Licence v3.0 except where otherwise stated. To view this licence, visit nationalarchives.gov.uk/doc/open-government-licence/version/3 or write to the Information Policy Team, The National Archives, Kew, London TW9 4DU, or email: psi@nationalarchives.gsi.gov.uk.

Where we have identified any third party copyright information you will need to obtain permission from the copyright holders concerned.

This publication is available at www.gov.scot

Any enquiries regarding this publication should be sent to us at
The Scottish Government
St Andrew's House
Edinburgh
EH1 3DG

ISBN: 978-1-78652-705-9 (web only)

Published by The Scottish Government, December 2016

Produced for The Scottish Government by APS Group Scotland, 21 Tennant Street, Edinburgh EH6 5NA
PPDAS84830 (12/16)

W W W . G O V . S C O T