

Consultation Questions & Respondent Information Form

A Consultation on the Future of Land Reform in Scotland



The Scottish Government
Riaghaltas na h-Alba

RESPONDENT INFORMATION FORM

Please Note this form **must** be returned with your response to ensure that we handle your response appropriately

1. Name/Organisation

Organisation Name

The Mountaineering Council of Scotland

Title Mr Ms Mrs Miss Dr Please tick as appropriate

Surname

Gibson

Forename

David

2. Postal Address

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3. Permissions - I am responding as...

Individual

/ Group/Organisation

Please tick as appropriate

- (a) Do you agree to your response being made available to the public (in Scottish Government library and/or on the Scottish Government web site)?

Please tick as appropriate Yes No

- (b) Where confidentiality is not requested, we will make your responses available to the public on the following basis

Please tick ONE of the following boxes

Yes, make my response, name and address all available

or

Yes, make my response available, but not my name and address

or

Yes, make my response and name available, but not my address

- (c) The name and address of your organisation **will be** made available to the public (in the Scottish Government library and/or on the Scottish Government web site).

Are you content for your **response** to be made available?

Please tick as appropriate Yes No

- (d) 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?

Please tick as appropriate Yes No

CONSULTATION QUESTIONS

Preface

The Mountaineering Council of Scotland (MCofS) represents the interests of mountaineers in Scotland. It has a diverse membership of over 12,000 people, united by their interest in Scotland's mountains but with a wide range of views on other matters. In representing the interests of its members and of Scottish mountaineering more generally on any issue, therefore, the MCofS asks itself: What is the impact of this issue on the quality of mountaineering experience in Scotland?

In respect of land reform, there are four relevant attributes of quality of the mountaineering experience:

1. Responsible public access
2. Attractive natural-looking landscapes, especially in 'wild' areas
3. Flourishing ecosystems (biodiversity)
4. Prosperous local communities.

None of these attributes is the prerogative of any particular system of land ownership. It is arguable that each is the result of land management processes rather than of ownership structures. However, it is also arguable that management processes cannot be dissociated from land ownership structures. Although mountaineering quality can be built or degraded under all tenures, there are more examples of the latter among (often large) private estates because of the land management practices they pursue.

The MCofS supports a diverse pattern of land ownership. We believe that this will encourage an element of competition between landowners to demonstrate their effective stewardship of a national resource. Intervention by government should be based on a failure of land management to achieve desired public interest outcomes through appropriate land management processes, not on the ownership structure *per se*. In areas of mountaineering interest* desired outcomes should include the four attributes listed above.

* There can be no simple definition of 'mountain areas' in Scotland. Mountain tops and slopes cannot be divorced from the glens or coastline at their foot. Wild land at sea level can give a mountaineering experience in places such as northwest Sutherland. Climbing crags and bouldering venues can be found at all heights and in all areas of Scotland, such as Traprain Law in East Lothian. Large structures adjacent to mountain areas can have a visual impact upon the perceived quality of the areas affected.

Less than 1% of Scotland lies above 900m, only 15% above 450m, and 32% above 300m. Coincidentally, 31% of Scotland lies within National Parks, National Scenic Areas and Wild Land Areas combined (<http://snh.presscentre.com/Briefings/Wild-Land-a6.aspx>). In broad terms, it appears reasonable to suggest that there is mountaineering interest in around half of Scotland's land because of its height, relative wildness or climbing resource.

Draft Land Rights and Responsibilities Policy

Q 1. Do you agree that the Scottish Government should have a stated land rights and responsibilities policy?

Yes No

Q 2. Do you have any comments on the draft land rights and responsibilities policy?

Comments

We believe such a policy should set out a minimum standard of stewardship that all land owners and managers should be expected to meet and a higher standard to which they should aspire.

Aspirations for the Future

Q. 3. Considering your long term aspirations for land reform in Scotland, what are the top three actions that you think the Scottish Government should take?

Action 1:

The right of responsible access has been codified in legislation for a decade yet there are still cases where access authorities refuse to uphold the public interest. Ambition in land reform is sullied by failure to ensure that previous reforms are working effectively for everyone everywhere in Scotland.

Action 2:

All significant proposed development should go through an open and democratic process of consultation and consideration before it is approved or rejected. Social justice and democracy are ill-served by the present exemptions from the planning system for forestry schemes, private ways and agricultural buildings. Persisting with these exemptions sits uncomfortably with the rightful emphasis given to public engagement in the context of land rights and responsibilities.

Action 3:

Proposals for inclusion in a Land Reform Bill

The MCoFS has no view on:

Proposal 1 - A Scottish Land Reform Commission

Proposal 2 - Limiting the legal entities that can own land in Scotland

Proposal 3 - Information on land, its value and ownership

Q. 11. Do you agree that better co-ordination of information on land, its value and ownership would lead to better decision making for both the private and public sectors?

Yes No

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

Comments

No data held.

The MCoFS would welcome easy access (on-line, nil-cost) to information on land ownership. This would help us to make appropriate contact when, for example, an access issue is reported to us.

Q. 13. What do you think the advantages or disadvantages of wider and more flexible sharing of land information would be and do you have any recommendations about how this can best be achieved?

Comments

See previous comment.

Proposal 4 - Sustainable development test for land governance

Q. 14. Do you agree that there should be powers given to Scottish Ministers or another public body to direct private landowners to take action to overcome barriers to sustainable development in an area?

Yes No

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

Comments

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

Comments

If pursued, the powers should be exercised by a court or independent tribunal not by Scottish Ministers. It is our observation with respect to wind farms decisions that Ministers are neither rational nor consistent in their decision-making but are swayed by political considerations.

The MCoFS has no view on:

Proposal 5 - A more proactive role for public sector land management

Proposal 6 - Duty of community engagement on land management decisions to be placed on charitable trustees

Q. 20. Do you think a trustee of a charity should be required to engage with the local community before taking a decision on the management, use or transfer of land under the charity's control?

Yes No

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

Comments

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

Comments

While it is understandable that local communities are deeply concerned with control of the land on which or near which they live, we are concerned that the Scottish Government in its thinking privileges local communities over what may sometimes be much more numerous but widely dispersed communities of interest. This is of particular relevance to charities with a conservation aim which represent a substantial community of interest (their members and supporters). We would welcome greater recognition that multiple 'communities' may have an interest in an area and not only its current residents.

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

Comments

The MCoFS has no view on:

Proposal 7 - Removal of the exemption from business rates for shooting and deerstalking

Proposal 8 - Common Good

Proposal 9 - Agricultural Holdings

Proposal 10 – Wild Deer

Q. 35. Do you agree that further deer management regulation measures should be introduced to be available in the event that the present arrangements are assessed as not protecting the public interest?

Yes No

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

Comments

Excessive deer numbers are ecologically damaging and it is reasonable that, should the present voluntary arrangement fail to deliver the reduction in numbers needed, there are alternative measures in place to enable the reduction to be delivered.

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

Comments

Proposal 11 - Public Access: clarifying core paths planning process

Q. 38. At present, section 18 of the Land Reform (Scotland) 2003 Act is silent on the issue of resolving objections to a core path plan consultation. Do you agree that access authorities should be required, in the interests of transparency, to conduct a further limited consultation about proposed changes arising from objections?

Yes No

Q. 39. Do you agree that section 20 of the 2003 Act should be clarified so that Ministerial direction is not required when an access authority initiates a core path plan review?

Yes No

Q. 40. Do you think that the process for a minor amendment to core path plan (as set out in section 20 of the 2003 Act) should be simplified to make it less onerous than that for a full review of a core path plan?

Yes No

While the MCoFS is content with the proposed administrative tweaks. the much bigger access issue is what can be done when an access authority fails in its duty to uphold access rights. This has been brought about, at least to some extent, by the expense to the public purse of taking robust action, ultimately court action, against any landowner who flaunts the law. The failure to remedy such cases sends a message that a landowner only need to be determinedly unco-operative and s/he can restrict access

without fear of legal challenge.

Assessing impact

Equality Impact Assessment

Q. 41. Please tell us about any potential impacts, either positive or negative, you feel the draft Land Rights and Responsibilities Policy or any of the proposals for the Bill may have on particular groups of people, with reference to the “protected characteristics” listed above. Please be as specific as possible.

Comments

Q. 42. What differences might there be in the impact of the Bill on individuals and communities with different levels of advantage or deprivation? How can we make sure that all individuals and communities can access the benefits of these proposals?

Comments

Business and Regulatory Impact Assessment

Q. 43. Please tell us about any potential costs or savings that may occur as a result of the proposals for the Bill, and any increase or reduction in the burden of regulation for any sector. Please be as specific as possible.

Comments

Privacy Impact Assessment

Q. 44. Please tell us about any potential impacts upon the privacy of individuals that may arise as a result of any of the proposals contained in this consultation. Please be as specific as possible.

Comments

Strategic Environmental Assessment

Q. 45. Please tell us about any potential impacts, either positive or negative, you feel any of the proposals contained in this consultation may have on the environment. Please be as specific as possible.

Sustainable development (cf Q14) is a term used flexibly by many bodies to justify whatever development they want to pursue. Giving government

powers to intervene, which we do not oppose in principle, could in practice be used to pursue developments that are ultimately environmentally harmful.