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LAND REFORM POLICY GROUP

RECOMMENDATIONS FOR ACTION

January 1999



THE SCOTTISH OFFICE

LAND REFORM POLICY GROUP

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FOREWORD



The Government's approach to land reform has been to focus on the future, not the past. We need to sweep away outdated land laws which have no place in modern society. We need to put in place new and innovative means of properly securing the public interest in land use and land ownership. We need to secure greater local involvement and local accountability. In this way, we provide the essential underpinning for a modern Scotland, where all, not just some, have access to the widest possible range of opportunities.

The work of the Land Reform Policy Group under my chairmanship has been an essential preparatory stage: it has systematically analysed the problems which land reform needs to tackle; and then sifted through a wide range of options for action to identify the best solutions to these problems. What has clearly emerged from that process is that land reform has many dimensions. It is not reducible to a few simple prescriptions. This is why the recommendations in this document are wide-ranging.

My role as Chair has been to ensure that the Group's work constantly strikes the right balance between vision and deliverability: on the one hand never losing sight of our essential purpose which is to best utilise the land resource so as to enhance the lifechances of people living and working in rural areas, and on the other asking hard questions about what are the most practicable and cost-effective ways of achieving this. I am confident that the recommendations set out in this document meet both criteria. Together they provide a statement of Government policy and intent for future land reform in rural Scotland.

The next stage is to turn these recommendations into action.

The initial focus must be the Scottish Parliament which comes into being next Summer, and the opportunity that this will provide for an integrated programme of law-making on land issues.

But it is crucial that we regard land reform not as a once-for-all issue but as an ongoing process. The Parliament will be able to test how this early legislation works and how it effects change. They will then have the opportunity to revisit and refine their initial achievement. And in addition there is a range of recommendations for further work, which will generate a longer-term agenda for further legislation.

These present recommendations are therefore by no means the final word on land reform; they are a platform upon which we can build for the future.

John Sewel.

John Sewel
Minister for Agriculture, the Environment and Fisheries at The Scottish Office
Chair of the Land Reform Policy Group

1 INTRODUCTION

1.1 With the advent of the Scottish Parliament, there will at last be the means to legislate in Scotland for Scottish land reform. To that end, the Government in October 1997 set up the Land Reform Policy Group, with the remit:

“to identify and assess proposals for land reform in rural Scotland, taking account of their cost, legislative and administrative implications and their likely impact on the social and economic development of rural communities and on the natural heritage.”

Lord Sewel, Minister for Agriculture, the Environment and Fisheries, chaired the Group personally, and other core members were:

- Isabelle Low (Deputy Chair), Head of Land Use Division, Scottish Office
- Professor John Bryden, Arkleton Centre, University of Aberdeen
- Murray Elder, Special Adviser to the Secretary of State for Scotland
- Alan Fraser, Head of Enterprise and Tourism Division, Scottish Office
- Douglas Greig, Chief Economist, Agriculture, Environment and Fisheries Department, Scottish Office
- David Henderson-Howat, Chief Conservator, Forestry Commission
- Joyce Lugton, Civil Law Division, Scottish Office
- Hugh MacDiarmid, Solicitor's Office, Scottish Office
- John Randall, Head of Countryside and Natural Heritage Unit, Scottish Office
- Philip Rycroft (until end August 1998) then Jan Polley (from September 1998), Head of Agricultural Policy Co-ordination and Rural Development Division, Scottish Office.

The consultation process

1.2 Land reform is an issue which impacts directly on the lives of the people of Scotland, particularly those who live in rural areas. The Group has therefore aimed to involve as wide an audience as possible in developing its recommendations for action. In February the Group issued a first consultation paper on identifying the problems and opportunities which land reform should address, attracting 364 responses. Then in September the Group issued a second consultation paper on identifying the solutions, assessing possible options for action in terms of what would

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be achieved by the proposed change; the legislative implications; and the administrative implications; and the cost. 846 responses were received to this second consultation phase (summarised in Annex A), and they are reflected in these final recommendations. The Group is most grateful to all respondents to its consultation papers.

Vision for the future

1.3 The objective for land reform is to remove the land-based barriers to the sustainable development of rural communities. Sustainable development is not something that can be readily defined in the abstract; but in practice it will consist of development which is planned with appropriate regard for local communities, local employment and the environment. It therefore needs an integrated approach which takes account of social and economic as well as environmental aspects. To achieve this, there needs to be:

- increased **diversity** in the way land is owned and used: in other words, more variety in ownership and management arrangements (private, public, partnership, community, not-for-profit) which will lead to less concentration of ownership and management in a limited number of hands, particularly at local level, as the best way of encouraging sustainable rural development; and
- increased **community involvement** in the way land is owned and used, so that local people are not excluded from decisions which affect their lives and the lives of their communities. What is meant by “community” will depend on the context. In some cases it will be right to define this quite narrowly, in terms of those who live and/or work on the land in question. In other cases, it should also include those whose livelihoods are affected by the management of an area of land. In other circumstances the issue is community involvement in wider decision-making, where the right definition may be in terms of the local rural partnership or community council. Broader communities of interest also exist, for example those with a specific conservation interest, and those visiting the area. There will be further discussions on the right definition for each individual proposal.

1.4 This translates into the detailed vision for the future shown in the box opposite. This has been enthusiastically endorsed by many respondents.

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- More local involvement, greater commitment and accountability by private landowners in rural Scotland
- More scope for community ownership and management of local land where this can be sustainable
- More scope for releasing land for housing and local development where this is sustainable and secures the retention and if possible the expansion of fragile rural communities
- More scope for smallholdings supporting a wide range of land-based and other economic activity where this is sustainable and secures the retention and if possible the expansion of fragile rural communities
- About the same level of ownership by public bodies, but with more local involvement and accountability and optimal employment of local people
- More local involvement and accountability and optimal employment of local people by non-Governmental organisations who own land in Scotland

- Outdated and unfair feudal arrangements swept away
- Conditionality of land ownership where appropriate to reflect modern circumstances
- A more constructive approach to problem cases, including those relating to the foreshore and the seabed

- More definitive information readily available about land ownership
- More broad-brush information readily available about land ownership
- More information readily available about beneficial owners
- More information readily available about public support relating to land

- Better integration of policy for rural land use at national level
- More integrated planning of rural land use at local level
- More community involvement in decisions about rural land use
- More public access on a responsible basis

- More scope for diversity of agricultural tenancy arrangements
- Simpler and cheaper arrangements for resolution of disputes between agricultural tenants and their landlords
- Wider opportunities for tenant farmers to diversify
- Greater protection for those who own property built on leased land

- More sustainable crofting communities
- More local involvement in and accountability for crofting administration
- Much simplified crofting legislation and administration
- More (or at least not fewer) active crofters
- Undertaking a wider range of land-based and other economic activity rather than predominantly agriculture

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1.5 Recommendations for achieving this are set out in the Chapters that follow. A summary of these final recommendations as compared with the provisional views set out in the second consultation paper is at Annex B.

1.6 Overall, the scale of change required suggests that what is needed is not a single Bill but an integrated programme of land reform legislation over the next 4 or 5 years. Such a programme might comprise the following elements:

- abolition of feudal tenure;
- measures to secure the public interest and increase community involvement;
- access;
- leasehold casualty reform;
- reform of real burdens;
- nature conservation reform;
- national parks;
- agricultural holdings reform;
- crofting reform; and
- further land reform measures in due course flowing from an ongoing programme of further study.

2 LAW REFORM LEGISLATION

2.1 More than anything else, land reform is about modernising the archaic base of property law which has constrained Scottish life for far too long. It is wholly unacceptable that these outdated laws – at best irrelevant, at worst onerous and oppressive – should remain in being a moment longer than necessary. There is no place in a modern society for such laws.

Feudal reform

2.2 A key element in the land reform programme will therefore be a series of measures currently being prepared by the Scottish Law Commission to remove outdated and unfair land law. Firstly, by the time that the Scottish Parliament is in being, a draft Bill will be available to abolish the feudal system (which is still susceptible to abuse) and to replace it with a system of outright ownership of land. The Scottish Law Commission's final Report on abolition of feudalism will be published shortly.

Leasehold casualties

2.3 There will also be available to the Parliament a draft Bill to reform leasehold casualties (whereby landlords can demand payments additional to rent from tenants under very long leases); these have been the cause of much concern recently following the actions of unscrupulous landlords. The Scottish Law Commission has recommended the abolition of casualties in its recent Report (Scot Law Com No 165).

Real burdens

2.4 But this is just a beginning. Even more significant will be the reform of real burdens, which will do away with obsolete and outdated conditions on properties, and modernise the basis on which remaining and new conditions should apply. Many burdens are only too aptly named: arbitrary and unfair in their application; onerous and an impediment to development in modern circumstances. But there are some which are beneficial, and indeed essential in the interests of occupants and their neighbours. The Scottish Law Commission issued a Discussion Paper (No 106) in October 1998 on Real Burdens. This proposes to retain the benefits – and only the benefits – of the present arrangements by creating a new system of community and neighbour burdens focused on modern circumstances. The paper also sets out proposals for handling the transition from the past to the future covering such matters as title to enforce burdens, the creation, variation and extinction of burdens, pre-emption, redemption and other options to acquire. The Commission has invited comments on possible reforms by the end of January and, in the light of comments received, draft legislation could be ready by the end of 1999.

2.5 The significant contribution which these law reforms could make towards comprehensive land reform is welcomed.

3 LAND REFORM LEGISLATION

3.1 To complement these law reforms, new legislation is needed, to secure the public interest in land use and land ownership, and to increase local involvement and accountability.

3.2 There is now general agreement that it would be fitting if a Land Reform Bill were amongst the earliest legislation to be considered by the new Scottish Parliament. The Land Reform Policy Group has identified the following possible agenda for early legislation.

Time to assess the public interest

- Legislation to allow time to assess the public interest when major properties change hands. The most important factors are that the operation of the restriction should be predictable by all concerned, and that it should be focused on those areas where it would have most effect in terms of the objective of removing barriers to sustainable rural development. The criteria for selection of areas where this would apply would therefore be that they consist predominantly of remote fragile communities in need of special help and protection. The legislation should be so structured as to allow the Government to vary the areas selected over time, in the light of experience and changes in circumstances. Within these selected areas, the requirements would apply to all land offered for sale, above a chosen threshold. There will be further discussions on what this threshold should be. The legislation would require owners to give notice of the forthcoming sale; a minimum period between notice to sell and closing date would be set; and a new power would be created for Government to intervene in the public interest to impose a further period of delay to the closing date. The provisions would apply to all transfers for value, whether or not the property was offered on the open market.

Community right to buy

- Legislation to give duly constituted community bodies a community right to buy land in areas of special importance in rural Scotland as and when it changes hands. This would apply to the same land as would the power to allow time to assess the public interest. The community right to buy would apply to property only at the point when the owner chooses to dispose of it. In addition, the right to buy would apply only to property on the basis the owner chooses ie not more or less or different from the lot(s) offered for disposal. Transfers for value when the property does not come on the open market would also be covered by means of the notification system

proposed above. The legislation would provide that, when relevant property in the areas concerned is offered for sale, a community group which satisfied a Scottish Minister that community purchase by that group would be in the public interest could exercise a right to buy at a price to be set by a Government Appointed Valuer provided that they came up with the necessary funding within a given period. Any disputes as to valuation would, as with compulsory purchase compensation, be settled by the Lands Tribunal for Scotland. Such community bodies would have to demonstrate that they were representative of and supported by the local community, had the sustainable development of that community as their primary object, and were properly constituted.

Compulsory purchase power

- Legislation would give Scottish Ministers a new compulsory purchase power exercisable where it appeared to them to be in the public interest. Such a provision would, for example, deter evasion of the community right to buy in circumstances such as those where shares in a company are traded, rather than the land itself. This would mean that, where the beneficial ownership of relevant land had been transferred for value without the community having been given the opportunity to purchase it, a Scottish Minister would be able to acquire the land on compulsory purchase terms for transfer to that community.

Beneficial ownership

- A reserve power to enable the Secretary of State to investigate beneficial ownership of land, where a clear need for such information exists in the public interest.

Database on rural landholdings

- Legislation for disclosure so far as possible of data held by relevant public bodies and public utilities to supplement action to create a publicly accessible (non-authoritative) database on rural landholdings (see Chapter 7). Information obtained in this way should be combined with the new database containing information that can be disclosed without legislation. Similar legislation would be needed to extend the current Scottish Land Information Service (ScotLIS) project, in the event of the pilot being successful. It will be necessary to look at how ScotLIS information might be integrated with the database mentioned above.

3.3 Early legislation on this basis is expected to be widely welcomed, and would make a significant contribution towards comprehensive land reform.

4 LEGISLATION ON COUNTRYSIDE AND NATURAL HERITAGE ISSUES

4.1 Related elements in the land reform programme will be proposals:

- to reform access arrangements;
- to revise the system of Sites of Special Scientific Interest (SSSIs); and
- to create National Parks.

Access

4.2 Greater freedom for people to enjoy the countryside is an important aspect of the wider land reform agenda. The Government asked Scottish Natural Heritage (SNH) last year to consult widely, through an extended Access Forum, on the need for changes in the law on access in Scotland, and their advice has recently been published. There is a compelling case for change in the current arrangements for access in Scotland. A right of responsible access to land for informal recreation and passage, on enclosed as well as open and hill ground, should be enshrined in law. This right should be subject in appropriate circumstances to measures to protect privacy, land management, and conservation needs. Such a new right of access would be an essential element in a new relationship between Scotland's people and the land. It may well be appropriate for legislation on access to be included as part of the main land reform legislation.

The SSSI system

4.3 The Government published a consultation paper on the future of the SSSI system in Scotland in September. Taking full account of responses to the consultation paper, the Government proposes changes in legislation to introduce a more user-friendly system, with greater local involvement in decisions on the management of SSSIs, which will protect priority nature conservation sites and contribute to sustainable rural development. Details will be announced shortly.

National Parks

4.4 Following consultations carried out by SNH, the Government proposes that National Parks should be introduced in Scotland to ensure a more integrated approach to the management of areas of outstanding heritage value such as Loch Lomond and the Trossachs, in support of sustainable development objectives. Details will be announced shortly.

4.5 Such legislation would usefully complement the land reform legislation, and would be an invaluable part of the comprehensive programme to ensure that Scotland's land is used wisely and well for the benefit of the people of Scotland.

5 AGRICULTURAL HOLDINGS LEGISLATION

5.1 Current agricultural holdings legislation provides excellent protection for existing tenants, but at the cost of minimising the opportunity for new tenancies. There is also only limited scope for diversification. Reform is needed to introduce more scope for diversity of agricultural tenancy arrangements; simpler and cheaper arrangements for resolution of disputes between tenant and landlord; and wider opportunities for tenants to diversify.

5.2 The Land Reform Policy Group has identified the following possible agenda for reforming existing agricultural holdings legislation.

Limited duration tenancies

- Legislation to amend the Agricultural Holdings (Scotland) Act 1991, in respect of new tenancies only, to provide the option of limited duration tenancies, thus permitting secure leases for a fixed term to be agreed between the parties. In other respects, the tenant would enjoy the same rights and responsibilities accorded to existing secure tenants until the end of the agreed period, similar to short assured housing tenancies. There should also be specific provisions to reduce the restrictions on using short-term lets for less than one year, by replacing the requirement to seek the Secretary of State's approval each year with a requirement that after 5 successive short-term lets involving some or all of the same land to the same farmer, the parties must agree a limited duration lease subject to consent of the Scottish Land Court (SLC).

Simplified arbitration procedures

- Legislation to simplify the arbitration procedures, by providing for use of simpler methods, including mediation, to resolve disputes, reducing the volume of detailed evidence needed in the award, permitting hearings to be dispensed with, limiting the way in which the parties may be represented, and restricting the scope for appeal. There should also be stricter controls over the cost of arbitrations and the fair allocation of costs between the parties. The opportunity should also be taken to update and simplify other existing statutory provisions, including valuation of bound sheep stocks, and responsibility for fixed equipment. These changes should be linked to extension of the role of the SLC to cover appointment of arbiters, allowing applications to be made by one party only, giving the SLC an investigative role, and providing for all stated cases to go to the SLC. Stricter time limits should also be introduced for issue of arbiters' findings, providing for ending or transfer to the SLC if cases are unduly prolonged, and introducing provision for the SLC to order immediate removal of the tenant in extreme cases of bad husbandry.

*Wider
opportunities for
diversification*

- Legislation to introduce a statutory provision into leases to permit wider diversification by farm tenants, with arrangements for resolving disputed cases, providing a right for tenants to seek arbitration or to appeal to the SLC if the landlord refuses consent for diversified activities, and requiring landlord's consent if the effects of the diversification would outlast the lease. There should also be an amendment to the existing provisions for operation of notices to quit, in the interests of good husbandry and sound management of the land, to ensure that it is acceptable for a tenant to operate the farm on a part-time basis.
- Legislation to provide greater protection for tenants against the operation of contested notices to quit by landlords intending to use the land for non-agricultural purposes. The rules of the Woodland Grant Scheme (WGS), Environmentally Sensitive Areas (ESA) and the Countryside Premium Scheme (CPS) etc should also be amended to make land taken back from a tenant in this way ineligible for scheme payments, as is currently the case for the Farm Woodland Premium Scheme, and the basis of nature conservation management agreements for SSSIs etc should be changed to exclude land taken back from tenants.
- Legislation to give rights for secure tenants to plant trees, to cut and sell timber, and so to derive income from farm woodlands integrated with their agricultural business. Income would come from the sale of timber (including thinnings) during the period of the lease, and from grants. Trees standing at the end of the lease would revert to the landowner, as for fixed equipment on the farm. Provision should also be made for a clear and fair framework for payment of compensation in respect of afforested land. The statutory rules of good husbandry should also be amended to encourage good conservation practice by tenants, restricting the scope of certificates of 'bad husbandry' to disregard conservation practices, defined by reference to a list of specified or permitted activities, such as those covered by ESA or CPS. In addition, farm tenants' rights to compensation for game damage and in respect of mineral developments should be strengthened.

5.3 Such agricultural holdings legislation would be an important element of land reform.

6 CROFTING LEGISLATION

6.1 Existing crofting legislation has, over the past century and more, effectively protected the interests of crofters and helped minimise population loss in the remote crofting areas. But much of the detail of the legislation is increasingly outdated and unsuited to modern circumstances of rural development. In particular, there needs to be more local involvement in and accountability for crofting administration, and much simplified crofting legislation and administration.

6.2 The Land Reform Policy Group has identified the following possible agenda for reforming existing crofting legislation.

Crofting trusts

- Legislation to give all crofting communities who create a properly constituted crofting trust a right to have ownership of their croft land transferred to that trust on fair financial terms. This legislation will aim to give to all other crofting communities the same basic rights to acquire their croft land as are already available to the Secretary of State's croft tenants through the provisions of the Transfer of Crofting Estates (Scotland) Act 1997. New legislation must however also address the need to ensure that the landlord is properly compensated, deal with associated property rights (such as minerals, sporting rights and the position of sporting tenants) and liabilities, and cater for impacts on associated properties and residual properties.

Creation of new crofts and new crofting lands

- Legislation to allow the creation of new crofts by removing the barrier to the creation of crofts contained in present legislation and allowing landowners in crofting areas to create crofts and new crofting common grazings on land which is not currently in crofting tenure including, with the consent of tenants, the conversion of existing non-croft holdings to crofting tenure. The legislation would set out a procedure whereby the proposal to create new croft land is notified to the Crofters Commission who will, if satisfied that the proposal is of benefit to rural development, make a direction that the land is croft land and record that in the Register of Crofts.
- Legislation to allow the creation of new crofting lands by modifying the existing legislative definition of a croft so that the area in which crofting tenure operates can be readily extended by order by the Scottish Parliament to include areas which are not within the existing crofting counties. The legislation would prescribe how the new areas are to be defined and provide that land within these new areas may only come into crofting tenure through the operation of the proposed procedures for creating new crofts.

CROFTING LEGISLATION

Devolution of crofting regulation

- Legislation to allow responsibility for regulatory decisions to be devolved to local bodies. Such legislation would be an enabling provision to allow the Crofters Commission to delegate its regulatory responsibilities over time to local bodies that are willing to undertake this work and fully capable of doing it properly. The legislation would also permit the Crofters Commission to adopt and follow different regulatory policies in different areas, depending on local circumstances and the level of interest locally in devolution of regulation.

Updated crofting law

- Legislation to update the existing laws regulating crofting: to tighten control over decrofting by redefining “reasonable purpose”; to curtail controls over subdivision of crofts and simplify controls over subletting of crofts by replacing the requirement to have Crofters Commission consent to change with a requirement to notify the change to the Commission; to put in place new arrangements which will enable owner occupiers to let their croft lands without creating a crofting tenancy; to simplify controls over croft assignments and reduce Crofters Commission involvement in croft re-lets and in succession matters by changing consent requirements and associated procedures so that routine changes do not need the specific consent of the Commission. The changes would be directed at reducing the administrative burden of controls over crofting whilst enhancing flexibility and effectiveness.
- Legislation to remove the existing requirement that grants to crofters should be linked to agricultural production thereby allowing assistance to be directed specifically at supporting rural development rather than simply agricultural production.
- Legislation to clarify the right of crofters to plant trees on their land and to give them a clear right to exploit the trees they plant for timber and other purposes including the right to sell the timber and timber products.

6.3 Such crofting legislation, augmented as appropriate by the detailed work of the Crofting Legislation Reform Group set up by the Crofters Commission, would play a crucial part within the overall comprehensive land reform agenda.

7 ACTION WITHOUT NEW LEGISLATION

7.1 Some action to help deliver the vision is possible now, without having to enact new legislation. Across the board, there is considerable scope for using existing machinery in new and more appropriate ways to make a real difference.

7.2 The Group has identified a number of further initiatives that could also be taken now.

Public landowners

- New requirements for all public bodies with rural landholdings in Scotland, which are answerable to the Secretary of State, should be set to ensure that they: have clearly identifiable and accessible local representation; develop and maintain a good relationship with those who live and work on or near their property; consult them over the development of land management plans; inform them and consult them about any significant changes; otherwise involve them in the management of their land; optimise the opportunities for employment of local people; and in general ensure a positive impact on local sustainable development. This could readily be done through the issue of guidance letters from the Secretary of State to these bodies. Discussions with each of the bodies concerned would be necessary to consider the practical implications of such requirements for their objectives. The aim would be to ensure that in general their actions have as positive an impact as possible on local sustainable development. Other public bodies with significant landholdings in Scotland such as the Crown Estate and the Ministry of Defence should be invited to do likewise.

Private landowners

- A Code of Good Practice for rural landownership should be developed, compliance with which should wherever possible become a condition of public assistance. The Code should provide that major landowners (including non-Governmental organisations which are major landowners in Scotland) should be known locally and as far as possible should be readily available to the local community or, if not available personally, should have clearly identifiable and accessible local representation. The Code should also set out best practice for major landowners in terms of developing and maintaining a good relationship with those who live and work on or near their property, for example informing them and in some circumstances consulting them about any significant changes; otherwise involving them as appropriate in the management of their land; optimising the opportunities

for employment of local people; and in general ensuring a positive impact on local sustainable development. The Scottish Office should seek contributions to the development of such a Code, both from rural and environmental bodies and interest groups and from relevant representative bodies including the Scottish Landowners' Federation, the Royal Institution of Chartered Surveyors, the National Farmers' Union of Scotland and the Scottish Crofters' Union.

Support for communities

- A Scottish Land Fund is needed (funded from the National Lottery) to ensure that the scope for supporting viable community action is not unduly constrained by resource implications. This is expected to be set up shortly as a major new initiative under the New Opportunities Fund. Scottish Enterprise should also set up a Community Land Unit to support community land involvement outside of the Highlands and Islands area, within the terms of its existing remit to promote economic growth.

Compulsory purchase

- The Government should give explicit support for the use of compulsory purchase powers as a last resort where this will assist implementation of local plans or other strategies (eg by SNH, Highlands and Islands Enterprise etc) adopted by public bodies such as Scottish Natural Heritage, Scottish Homes or the enterprise bodies. Possible changes must await the outcome of the comprehensive study of such powers already under way; but that should not impede the Government signalling in what circumstances it would expect local authorities and other public bodies to use their existing powers.

Land use

- The integrated planning of rural land use at local level, involving all relevant interests including the local community, should be taken forward in the context of community planning. In rural areas, rural development strategies should be developed, and community aspirations and wishes should be taken account of by liaison at the local level.
- A Code of Good Practice on rural land use should be developed, clearly setting out standards for land uses such as agriculture, forestry, sporting and conservation as appropriate. A flexible approach will be needed, to keep pace with changing practice and for application across Scotland. Again, compliance with this Code should wherever possible become a condition of public assistance. Such a Code should draw out existing examples of sustainable development, presented as good practice to be followed. A Code pitched at a more strategic level could most usefully examine issues of integration of social, economic and environmental aspects, recommending a 'joined-up' approach towards rural land use. Current codes of practice and reference material in this area tend to deal with specific subjects at a greater level of detail. They might usefully be cross-referenced to a new overarching document. It will be important to involve land use practitioners and bodies with appropriate expertise in the compiling of such a Code, and research may be needed to develop it further.

Information about land

- Initial steps should be taken to improve co-ordination of activity between public bodies responsible for land use matters and rural development. Further study should follow to refine the approaches taken in the light of experience.
- A new (non-authoritative) database on rural landholdings should be set up, as a publicly accessible, map-based record. It would consist of information which can be disclosed without new legislation, such as data currently held in the Register of Sasines and information volunteered by private sources. An existing public body should be given the task of collating and publishing the data, and this could also include information on land uses and official site designations.

Landlord and tenant

- Some initial action to simplify agricultural arbitration could and should be taken, including appointing a smaller, more experienced arbiters' panel, with more training and general guidance. This would involve changes in the way the arbiters' panel is constituted, in the process of selecting members and in the simplification of documentation. In the same way, there should also be early action to promote wider opportunities for diversification, such as provision of model forms of agreement for tenants to obtain landowners' consent for diversified uses of land on the farm; amendments to grant scheme literature to clarify the position; and new guidance to arbiters or valuers in assessing the level of compensation at the termination of a tenancy in respect of woodlands established by the tenant.

Crofting

- The Crofters Commission should act to encourage more community management of croft land by issuing guidance which illustrates the economies of scale and savings in individual time and effort which can be gained through pooling of resources, and highlights the successes achieved by community based businesses such as stock clubs and machinery pools. It should also take action to ensure that there is no bias against newcomers in crofting administration by adopting a policy to underlie its decisions on assignments and relets which allows greater transparency in decision making, gives no special priority to existing members of the crofting community and judges applicants for crofts primarily on the basis of their plans for the croft and the benefits their presence on the croft will bring to the wider local community. In addition, it should tackle absenteeism vigorously by continuing the present intensive review process and by following up cases of absenteeism identified which adversely affect local development so as to reach in each case a conclusion which is to the long-term benefit of the local community as a whole.

7.3 Such action would complement early land reform legislation.

8 ISSUES FOR FURTHER STUDY

8.1 There are aspects of land reform which will require further work, either to sort out the technical implications or to explore whether or not some ideas should be pursued. It is hoped that this further work can be taken forward on as open a basis as possible, through the commissioning of research and development work from universities and other consultancy sources, and through a continuation of structured dialogue with all interests.

8.2 The Land Reform Policy Group has identified the following possible agenda for further study and development.

Public assistance

- The best means of streamlining public assistance supporting land uses, of making it more user-friendly and providing more information about recipients should be systematically followed up. The scope for making more information readily available about public assistance relating to land should also be studied; and the scope for making such public assistance conditional on compliance with the Code of Practice on rural land use, on consistency with rural development strategies, on information about such assistance being made public, and on community consultation should be investigated on a scheme by scheme basis.

Planning

- Evaluation of the impact of new planning guidance on rural development should be undertaken, with a view to further fine-tuning as necessary.

Compulsory purchase

- Following the comprehensive review of compulsory purchase and compensation legislation currently under way, the implications for Scottish legislation should be considered.

Protection

- There should be investigation of the legal scope and nature of possible legislation to give greater protection for those who own property built on leased land.

Law of the foreshore and seabed

- The Scottish Law Commission should be invited to undertake a comprehensive review of the law of the foreshore and seabed, with a view to reform.

ISSUES FOR FURTHER STUDY

Information about land

- There should be further study of the best and most cost-effective ways of making information about land ownership as comprehensive as possible.

Land taxation

- The scope for abolishing national non-domestic rate relief on sporting land and for reducing or abolishing national non-domestic rate relief on agriculture and forestry should be considered further, in the light of current and prospective economic circumstances. The economic impact should be thoroughly evaluated before any change is made.
- A comprehensive economic evaluation of the possible impact of moving in the longer term to a land value taxation basis should be undertaken.

Crofting

- Research should be undertaken on the most appropriate arrangements for bringing crofting regulation into local community control. Using the community planning process, a regulatory framework could be set within which the Crofters Commission would operate, with decisions on individual regulatory cases devolved to local community bodies wherever possible.

Deer control

- In the light of further experience, the need for stronger enforcement of deer control measures by the Deer Commission for Scotland should be reviewed.

8.3 The comprehensive land reform agenda would be much enhanced by an ongoing research and development programme of this sort.

9 SUMMARY OF RECOMMENDATIONS

Law reform legislation

- Legislation to abolish the feudal system and to replace it with a system of outright ownership of land.
- Legislation to reform leasehold casualties.
- Legislation to reform real burdens to do away with outdated conditions on properties and to modernise the basis on which remaining and new conditions should apply.

Land reform legislation

- Legislation to allow time to assess the public interest when major properties change hands.
- Legislation to give a community right to buy such land as and when it changes hands.
- A back-up compulsory purchase power to deter evasion.
- A reserve power to investigate beneficial ownership of land.
- Legislation to supplement action to create a publicly accessible non-authoritative database on rural landholdings with data held by public bodies; and similar legislation to extend ScotLIS (in the event of that pilot being successful).

Legislation on countryside and natural heritage issues

- Legislation to reform access arrangements.
- Legislation to revise the SSSI system.
- Legislation to create National Parks.

Agricultural holdings legislation

- Legislation to provide more flexible tenancy arrangements.
- Legislation to simplify and reduce the cost of dispute resolution and to extend the role of the Scottish Land Court.
- Legislation to permit wider diversification by farm tenants and to facilitate part-time farming by tenants.
- Legislation to provide greater protection for tenants against the operation of contested notices to quit, where the landlord intends to use the land for non-agricultural purposes.

SUMMARY OF RECOMMENDATIONS

- Legislation to introduce rights for tenants to develop woodland; to encourage good conservation practice by tenants; and to strengthen tenants' rights to compensation for game damage and minerals.
- Crofting legislation*
- Legislation to give all crofting communities a right to acquire their croft land.
 - Legislation to allow creation of new crofts.
 - Legislation to allow the extension of crofting tenure to new areas.
 - Legislation to devolve regulatory decisions to local bodies.
 - Legislation to update crofting legislation by tightening control over decrofting, curtailing control of subdivision, simplifying subletting, enabling owner occupiers to let their crofts without creating a crofting tenancy and simplifying assignations, re-lets and succession.
 - Legislation to remove the link between crofting grants and agricultural production.
 - Legislation to clarify the law on crofter forestry.
- Action without new legislation*
- New requirements for all public bodies with rural landholdings answerable to the Secretary of State should be set so that they increase local community involvement in the management of their land. Other public bodies should also be invited to do likewise.
 - A Code of Good Practice for rural landownership (including non-Governmental organisations) should be developed.
 - An enhanced Land Fund is needed. Scottish Enterprise should set up a Community Land Unit.
 - The Government should give explicit support for the use of compulsory purchase powers as a last resort where this will assist implementation of local plans or other strategies.
 - The integrated planning of rural land use at local level should be taken forward in the context of community planning.
 - A Code of Good Practice on rural land use should be developed.
 - Steps should be taken to improve co-ordination of activity between public bodies responsible for land use matters and rural development.
 - A new (non-authoritative) database on rural landholdings should be set up.

SUMMARY OF RECOMMENDATIONS

Issues for further study

- Some initial action to simplify agricultural arbitration can and should be taken; also action to provide wider opportunities for diversification by farm tenants.
- The Crofters Commission should act to encourage more community management of croft land, to ensure that there is no bias against newcomers in crofting administration and to tackle absenteeism vigorously.
- The scope for streamlining public assistance supporting land uses; the scope for making more information readily available about public assistance relating to land; and the scope for attaching certain conditions to such public assistance should be studied systematically.
- Evaluation of the impact of new planning guidance on rural development.
- Consideration of the implications for Scotland following current comprehensive review of compulsory purchase and compensation legislation.
- Investigation of the legal scope and nature of possible legislation to give greater protection for those who own property built on leased land.
- Comprehensive review of the law of the foreshore and seabed, with a view to reform.
- How best and most cost-effectively to make information about land ownership as comprehensive as possible.
- The economic impact of abolishing national non-domestic rate relief on sporting land and reducing or abolishing national non-domestic rate relief on agriculture and forestry should be thoroughly evaluated.
- A comprehensive economic evaluation of the possible impact of moving to a land value taxation basis.
- Research on bringing crofting regulation into local community control.
- Review in due course of the need for stronger enforcement of deer control measures.

10 THE WAY FORWARD

10.1 The vision for the future pattern of land ownership and use most likely to support sustainable rural development has been widely endorsed. There is now a clear consensus as to what land reform in Scotland should achieve.

10.2 The recommendations set out in this document are submitted as the best means of delivering that vision. Each is well focused on a particular problem; is practicable in legislative and administrative terms; and is affordable. They are workable solutions to real problems currently faced by rural communities.

10.3 Taken together, the recommendations comprise a comprehensive agenda for land reform for the 21st century. They are commended to the new Scottish Parliament.

ANNEX A SUMMARY OF RESPONSES TO THE SECOND CONSULTATION PAPER

1 The Group received a large number of responses (846 in total) to its second consultation paper. The overall breakdown of the responses is as follows:

- 14 **public bodies** (Crofters Commission, Crown Estate, Forestry Commission, Highlands and Islands Enterprise, Historic Scotland, Ministry of Defence, North of Scotland Water, Scottish Borders Enterprise, Scottish Environmental Protection Agency, Scottish Homes, Scottish Land Court, Scottish Natural Heritage, Scottish Office Agricultural Staff and Directorate of Administrative Services Land and Property Division);
- 17 **local authorities** (Aberdeenshire, Angus, Argyll & Bute, Comhairle nan Eilean Siar, East Ayrshire, North Ayrshire, South Ayrshire, Fife, Highland, North Lanarkshire, South Lanarkshire, Moray, Orkney, Perth & Kinross, Renfrewshire, Scottish Borders and COSLA);
- 5 **political bodies** (Scottish Conservative and Unionist Party Rural Policy Group, Scottish Liberal Democrats, Scottish National Party, Scottish Land Commission and Arran Labour Party);
- 10 **non-Governmental organisations** (Friends of the Earth, John Muir Trust, Game Conservancy Trust, National Trust for Scotland, RSPB, Scottish Council for National Parks, Scottish Council for Voluntary Organisations, Shelter, WWF Scotland and Woodland Trust);
- 18 **professional or representative bodies** (Association of Professional Foresters, Institute of Chartered Foresters, Law Society of Scotland, National Farmers' Union of Scotland (2), Farmers Union Crofters' Committee, National Sheep Association, Royal Institution of Chartered Surveyors, Scottish Agricultural Arbiters' Association, Scottish Anglers National Association, Scottish Council Development & Industry, Scottish Crofters' Union (4), Scottish Landowners' Federation, Strathspey Crofters & Tenant Farmers' Association, and the Tenant Farmers' Association);
- 74 **community councils**;
- 87 **other organisations**;
- 224 **landowners**;
- 63 **land agents**;
- 31 **tenant farmers**;
- 46 **crofters**;
- 257 **other individuals**.

In general:

- **public bodies** mostly restrict their comments to specific topics related to their own remit, but there is general agreement and endorsement for the overall vision being in line with their own strategies;
- **local authorities** strongly endorse in principle the key themes and vision, but there is some concern about the resource implications for local authorities themselves;
- **political bodies** all find the vision laudable and are broadly supportive, but there are inevitably different approaches as to the means of transforming this vision into reality;
- **non-Governmental organisations** (NGOs) are very supportive of increased diversity and community involvement, but conservation bodies feel that environmental concerns were not given enough weight;
- **professional or representative bodies** tend to concentrate on single issues, but where a wider view is taken there is general endorsement of the key themes and vision. The emphasis on local focus and community involvement is welcomed, with recognition that no single solution would suit all circumstances. However, many bodies are concerned about how the 'community' would be defined;
- **community councils** have given a much stronger response to this second paper as a result of targeting them directly; many express their appreciation of the chance to contribute to the debate and had convened special meetings to discuss the paper. Overall there is broad support for the vision, but several state that views of their members vary widely regarding the detail, making it difficult to present a consensus response;
- **other organisations:** a large proportion of these are concerned with single issues. There is strong representation from fishery boards and trusts opposed to the abolition of sporting rate relief. Similarly there are a number of bodies lobbying for land value taxation. However, amongst the diverse other organisations represented there is broad agreement with the overall vision and key themes;
- **landowners:** as with the last paper, landowners represent a significant proportion of respondents. Overall there is a very mixed response. Some are totally opposed to any kind of change (several commenting on a move towards a communist state), whilst others embrace the need for reform and feel proposals do not go far enough. A significant number question definitions, especially of community involvement;
- **land agents** present a much wider spectrum of views than was the case for the first paper, with some wholeheartedly supporting the overall vision, whilst others disagree strongly with the underlying 'assumptions' and find the vision flawed. Many do not give a clear opinion, being concerned

about the lack of definition of 'community', 'sustainability' and 'rural'. There is uniform opposition to changes in taxation;

- **tenant farmers** in the main do not comment on the vision *per se*, although many are pleased with the proposals for simpler dispute resolution arrangements and are keen to be able to diversify. Concerns are voiced about how community involvement would apply to them - a number of tenant farmers feel this would be giving people control who know little about agriculture;
- **crofters** give clear support to the concepts of sustainable crofting communities, diversification and more active crofters, but there are very mixed views on the amount of local involvement in crofting administration and degree of control. Where views are expressed on the wider themes within the paper, there is broad support;
- **other individuals**: as with "Identifying the Problems", individuals represent nearly a third of responses and a wide spectrum of views. 20% had responded to both papers. In general there is clear support for reform and a majority of individuals could relate to and agree with the key themes and vision for the future. Some want to go further; but others advocate cautious, incremental change.

Land ownership

3 The main themes are as follows:

- The options which attract most support across the board are LO1, LO13, LO14 and LO15 (greater local accountability for private landowners, public bodies and NGOs); and LO8 (support for those considering community ownership or management). Landowners predictably tend not to be in favour of change, but a significant majority would find greater local accountability (LO1) acceptable provided that this was by means of a voluntary code, though there are frequent questions about the detailed definition of the local community and about how community involvement might operate.
- The proposals LO2 (time for the assessment of the public interest) and LO9 (community right to buy) receive a mixed reception, with most landowning interests opposed and most others in favour. There are many detailed comments as to operational difficulties. A similar pattern of landowning interests opposed and others in favour emerges in relation to compulsory purchase powers (LO3 and LO10); and landowners, land agents and tenant farmers all tend to reject LO13 (smallholdings) as inappropriate in current agricultural circumstances.
- The options most strenuously opposed are LO5, LO6 and LO7 (changes in land taxation): even those landowners, farmers and land agents who are relatively relaxed about or supportive of change otherwise are firmly opposed to re-introduction of sporting rates or other changes which would

add to land costs, most referring to the current drop in agricultural prices and/or the impact on salmon fishing. There are however some individual respondents (often non-UK) who favour the immediate introduction of land value taxation, as an alternative to other types of measures.

- The other options which attract least support across the board are LO12 (compulsory leasing); and LO4 (regulation of land sales). Those who do support this last often also express support for banning foreign and/or absentee ownership, or forcibly breaking up large landholdings.

Law reform

4 The main themes are as follows:

- A large majority of respondents welcome reform of the feudal system and the end of the use of terms such as “superior” and “vassal”. They strongly favour the retention of the beneficial aspects of the feudal system: burdens which protect the amenity of a neighbourhood. There does, however, appear to be a widespread misconception that all burdens are imposed under the feudal system, whereas in practice around half of all burdens and conditions affecting property are imposed in non-feudal deeds. The adage of not “throwing out the baby with the bath water” is quoted by a number of respondents who are insistent that the good features in the present system should be retained for the future. There is widespread consensus that burdens will continue to have an important function in both rural and urban areas in the future.
- These views are expressed across the whole range of respondents, though some landowners express support for the retention of a private system of land regulation separate from the planning system which might be susceptible to political pressure. A number of landowners argue for compensation for superiors where land has originally been sold at a reduced price due to the conditions imposed upon it.
- A minority of respondents favour complete abolition of the feudal system and of all burdens and conditions on property. These views tend to be localised and seem to be the result of dissatisfaction with local landowners/superiors. Some suggest that legislation would need to provide for the public interest as well as the private needs of local residents. A minority of respondents doubt whether it is necessary to review the law of the foreshore and seabed.

Information about land

5 The main themes are as follows:

- Options INF4 (combine existing information into non-authoritative map-based system) and INF5 (ScotLIS), attract most support across the board. Predictably the vast majority of those against these proposals are landowners and land agents, but on INF5 particularly, many landowners who oppose other options support this one.

- A smaller majority are in favour of INF7 (publication of existing grant details) and INF8 (future grants conditional on publication of details). Most landowners against proposals INF7 and INF8 complain that publishing details of grants would give the public a false impression, since details of the expenses they incur would not be published with the grant information. Many landowners however feel this is a reasonable *quid pro quo*, providing that it is not done retrospectively.
- Options INF1 to INF3 (measures for increasing the scope of the Land Register - INF1: holdings over a certain size to be registered; INF2: incentives for voluntary registration; INF3: public assistance conditional on registration) receive a mixed reception, with a significant minority across the board against all three on the grounds of cost. Many respondents consider the idea of a fully comprehensive Land Register is excellent, but may not fully understand the current system. Many people also query the need for further information in view of the statistics compiled for the IACS returns.
- INF6 (disclosure of beneficial owners) is the most strenuously opposed option with most landowners and land agents opposing it.
- Overall, respondents are in favour of more information, but generally do not feel that it is worth spending a lot of money on it.

Land use

6 The main themes are as follows:

- The options which attract most support across the board are LU1 to LU5: those which propose to take forward the theme of better integration of policy for rural land use at national level. Specifically, these include: improving co-ordination of activity between public bodies; clarifying and streamlining public assistance, and making it more user-friendly; introducing a code of practice, and making public assistance conditional on its application. Also popular was LU11 (requiring all public landowners to develop land management plans in consultation with the local community).
- Landowners are split between those favouring change and those resisting it, with others questioning the need for certain options and some registering qualified support for change. Some landowners support the use of rural development strategies as a local planning tool to encourage integration, but others are more guarded. While landowners express clear resistance to the introduction of new conditions for public assistance, their responses indicate the most acceptable form of conditionality is that requiring adherence to a code of land use practice.
- The most strenuously opposed options are LU7 (the use of local land councils) and LU9 (extending planning control to more rural land use developments). On LU7, opposition is widespread, across all interest

groups. On LU9, it is mainly (but not exclusively) the landowners who are against change. Some respondents (not solely landowners) comment that extended planning controls might serve to hinder rural development.

- Opinion is divided over whether or not stronger enforcement of deer control measures is required, with most landowners against the option or questioning the need for such change.

*Landlord and
tenant*

7 The main themes are as follows:

- The idea of introducing greater flexibility into tenancy arrangements for new tenancies - LT1, LT2 and LT3 - is generally welcomed. However, of those three options, LT3 (adaptation of the existing legislation) attracts much the strongest support across the board. LT1 (separate legislation for farm business tenancies) and/or LT2 (abolition of the existing legislation for new tenancies) are supported by landowners and agents, but are not favoured more widely.
- The option that draws most frequent and vehement opposition from landowners and agents is LT4 (the introduction of a right for tenants to buy their farms), although this is supported by tenant farmers and some other individuals and organisations.
- There is very wide support for LT5 (simplifying the procedures for resolving disputes) and for LT6 (giving the Scottish Land Court a greater role), although the latter is criticised by some land agents.
- The various options aimed at providing wider opportunities for tenant farmers to diversify (LT7 to LT14) draw a more mixed response. There is widespread support for LT7 (introducing statutory provision for diversification), LT8 (part-time farming by tenants), and LT11 (management by tenants for nature conservation). However, reactions are polarised on LT9 (providing greater protection for tenants against operation of notices to quit), LT10 (introducing rights for tenants to benefit from farm woodlands), and LT13 (strengthening farm tenants' rights to compensation for game damage and in respect of mineral developments): tenant farmers and other individuals generally favour these options, whilst landowners, agents and other organisations are opposed. LT12 (introducing a pre-emption right for farm tenants to acquire vacant sporting leases), and LT14 (providing for landlords and tenants to share royalties for mineral developments), are generally opposed, particularly amongst landowning interests.
- Greater protection for those who own property built on leased land (LT15), is opposed by landowning interests, but favoured by others.

Crofting

- 8 The main themes are as follows:
- The options which attract most support are CR2 (community management), CR3 (newcomers), CR8 (subdivision), CR9 (subletting), CR11 (succession), CR12 (absentee action), CR13 (multiple tenancies) and CR16 (grants). In every case there are respondents who oppose the option with CR3 attracting the least opposition and CR12 the most support. Opposition is not confined to any one group and there is identifiable crofter opposition to all these options.
 - There are small majorities in favour of CR1 (community right to buy) and CR14 (decrofting). The greatest opposition to both these options is from landowners and land agents.
 - There is a large majority against CR5 (extension of crofting) and a smaller but clear majority against CR4 (create new crofts) with the vast bulk of the opposition from landowners and land agents and a mixed or marginally favourable reaction from some other groups.
 - There is overwhelming dislike of CR6 (local authority involvement in regulation) and mixed reaction to CR7 (devolve regulation). A majority of crofters oppose both.
 - There is a mixed reaction to CR10 (assignments) with crofters mostly opposing change.
 - There is also a clear majority against CR15 (end right to buy) with opposition spread across most groups although crofter opposition is particularly significant.
- 9 All responses (apart from those which senders have asked to be regarded as confidential) may be viewed at The Scottish Office Library in St Andrew's House, Edinburgh.

ANNEX B SUMMARY OF FINAL RECOMMENDATIONS AS COMPARED TO PROVISIONAL VIEWS

LAND OWNERSHIP

Vision for the future	Possible legislation and other action to achieve this	Provisional view	Final recommendation
Private landowners in rural Scotland with more local involvement, greater commitment and accountability	LO1 Encourage private owners to be more locally accountable and to be available or have accessible local representation	<i>Probably yes</i>	Yes: action without legislation
	LO2 Introduce time for the assessment of the public interest in strategic sales	<i>Probably yes</i>	Yes: early legislation
	LO3 Make more explicit Government support for use of compulsory purchase powers as a last resort to acquire land where this will assist implementation of local plans or other strategies	<i>Probably yes</i>	Yes: action without legislation
	LO4 Regulate all (or major) land sales	<i>Probably not</i>	No: too bureaucratic and costly
	LO5 Abolish national non-domestic rate relief on sporting land	<i>Maybe</i>	Further study
	LO6 Reduce or abolish national non-domestic rate relief on agriculture and forestry	<i>Maybe but not yet</i>	Further study
	LO7 Introduce land value taxation	<i>Maybe but not yet</i>	Further study
More scope for community ownership and management of local land where this can be sustainable	LO8 Provide advice and support (including an enhanced Land Fund) for those considering community ownership or management	<i>Probably yes</i>	Yes: action without legislation
	LO9 Introduce community right to buy at market value	<i>Probably yes</i>	Yes: early legislation

LAND OWNERSHIP (cont.)

Vision for the future	Possible legislation and other action to achieve this	Provisional view	Final recommendation
More scope for releasing land for housing and local development where this is sustainable and secures the retention and if possible the expansion of fragile rural communities	LO10 Streamline compulsory purchase powers to make acquisition of key sites as a last resort more effective where this will assist implementation of local plans or other strategies	<i>Probably yes following review</i>	Further study
More scope for smallholdings supporting a wide range of land-based and other economic activity where this is sustainable and secures the retention and if possible the expansion of fragile rural communities	LO11 Buy land on the open market for transfer to smallholders LO12 Introduce compulsory leasing of land	<i>Probably yes</i> <i>Probably not</i>	Not a priority in current agricultural circumstances No: difficulties outweigh possible benefits
About the same level of ownership by public bodies, but with more local involvement and accountability and more employment of local people	LO13 Issue guidance letters from Ministers to public bodies to require community involvement in management of all public land and to maximise employment of local people LO14 Encourage increased Crown Estate accountability in Scotland	<i>Probably yes</i> <i>Probably yes</i>	Yes: action without legislation Yes: action without legislation
More local involvement and accountability and more employment of local people by non-Governmental organisations who own land in rural Scotland	LO15 Encourage non-Governmental organisations to secure community involvement and employment of local people	<i>Probably yes</i>	Yes: action without legislation

LAW REFORM

Vision for the future	Possible legislation and other action to achieve this
Outdated and unfair feudal arrangements swept away	<p>Scottish Law Commission will bring forward proposals for feudal reform</p> <p>Scottish Law Commission has brought forward proposals for leasehold casualty reform</p>
Conditionality of land ownership where appropriate to reflect modern circumstances	Scottish Law Commission will bring forward proposals for reform of real burdens
A more constructive approach to problem cases, including those relating to the foreshore and the seabed	Scottish Law Commission to be invited to review and revise law of the foreshore and seabed

INFORMATION ABOUT LAND

Vision for the future	Possible legislation and other action to achieve this	Provisional view	Final recommendation
More definitive information readily available about land ownership	INF1 Require all holdings above given size to be registered in the Land Register, regardless of change in ownership	<i>Probably yes in the longer term</i>	Further study
	INF2 Provide incentives for voluntary registration	<i>Maybe but not yet</i>	Further study
	INF3 Make access to public assistance conditional on registration	<i>Probably yes but not yet</i>	Further study
More broad-brush information readily available about land ownership	INF4 Produce map-based (non-authoritative) information on land holdings based on information from the Register of Sasines, by combining and publishing all existing data held by public bodies, including relevant public utilities (unless of particular sensitivity), and encouraging rural landowners to assist by providing information about their holdings	<i>Probably yes</i>	Yes: action without legislation, plus legislation to supplement the database
	INF5 Extend current ScotLIS (Scottish Land Information Service) project to include all public body datasets including those of relevant public utilities	<i>Probably yes if pilot successful</i>	Yes: if pilot successful
More information readily available about beneficial owners	INF6 Introduce a power to investigate beneficial ownership of land	<i>Maybe</i>	Yes: early legislation
More information readily available about public support relating to land	INF7 Make existing information on recipients of public assistance available	<i>Probably yes so far as possible</i>	Further study
	INF8 Make provision of public assistance conditional on agreement for information on such assistance to be made public	<i>Probably yes so far as possible</i>	Further study

LAND USE

Vision for the future	Possible legislation and other action to achieve this	Provisional view	Final recommendation
Better integration of policy for rural land use at national level	LU1 Improve co-ordination of activity between public bodies responsible for conservation of the natural and cultural heritage, environmental, agricultural and other land use matters	<i>Probably yes</i>	Action without legislation
	LU2 Clarify and streamline public assistance and its objectives to achieve desirable land use	<i>Probably yes so far as possible</i>	Further study
	LU3 Make existing public assistance supporting land uses such as agriculture, forestry and conservation more user-friendly	<i>Probably yes so far as possible</i>	Further study
	LU4 Introduce a code of practice on rural land use	<i>Probably yes</i>	Yes: action without legislation
	LU5 Make provision of public assistance conditional on land uses such as agriculture, forestry, sporting and conservation being consistent with the code of practice	<i>Probably yes so far as possible</i>	Further study
More integrated planning of rural land use at local level	LU6 Use rural development strategies to deal with rural land use on an integrated basis	<i>Probably yes</i>	Yes: action without legislation
	LU7 Regulate local land use through local land councils	<i>Probably not</i>	No: better as local authority function
	LU8 Make provision of public assistance conditional on rural land use being consistent with rural development strategies	<i>Probably yes so far as possible</i>	Further study
	LU9 Extend planning control to agricultural, forestry, sporting and conservation-related developments	<i>Probably yes: consider scope and definition</i>	Further study to evaluate development of planning
	LU10 Provide for stronger enforcement of deer control measures	<i>Probably yes</i>	Further study

LAND USE (cont.)

Vision for the future	Possible legislation and other action to achieve this	Provisional view	Final recommendation
More community involvement in decisions about rural land use	LU11 Require all public landowners to develop land management plans in consultation with the local community	<i>Probably yes</i>	Yes: action without legislation
	LU12 Make provision of public assistance to landowners/tenants conditional on them consulting the community about the activities for which they are seeking assistance	<i>Probably yes so far as possible</i>	Further study

More public access on a responsible basis	Scottish Natural Heritage will bring forward proposals for reform
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LANDLORD AND TENANT

Vision for the future	Possible legislation and other action to achieve this	Provisional view	Final recommendation
More scope for diversity of agricultural tenancy arrangements	LT1 Introduce farm business tenancies as in the Agricultural Tenancies Act 1995 in England and Wales	<i>Probably not</i>	No: the desired flexibility can be achieved by amending existing legislation
	LT2 Abolish the Agricultural Holdings (Scotland) Act 1991 for new tenancies	<i>Probably not</i>	No: unacceptable to entirely remove statutory protection for tenants
	LT3 Amend the 1991 Act to provide for limited duration tenancies, to include specific provisions to control the use of limited partnerships, and to reduce the restrictions on using short-term lets	<i>Probably yes</i>	Yes: legislation in due course
	LT4 Introduce a right for secure tenants to buy their farms, including a provision to enable smallholders or tenants to acquire ownership of their farm buildings, and a right of pre-emptive purchase by the tenant when sale by the landowner is in prospect	<i>Maybe in particular circumstances</i>	No: it would halt letting of land, and so conflict with a key land reform objective; might also result in fragmentation of land holdings, endangering their viability
Simpler and cheaper arrangements for resolution of disputes between agricultural tenants and their landlords	LT5 Simplify the arbitration procedures, introducing stricter controls over the cost of arbitrations, and appointing a smaller, more experienced arbiters' panel, with more training and general guidance	<i>Probably yes</i>	Yes: action without legislation and legislation in due course
	LT6 Extend the role of the Scottish Land Court (SLC) to cover appointment of arbiters, providing for all stated cases to go to the SLC, and introduce stricter time limits	<i>Probably yes</i>	Yes: legislation in due course

LANDLORD AND TENANT (cont.)

Vision for the future	Possible legislation and other action to achieve this	Provisional view	Final recommendation
Wider opportunities for tenant farmers to diversify	LT7 Introduce a statutory provision into new leases to permit wider diversification, and provide model forms of agreement for tenants to obtain landowners' consent	<i>Probably yes</i>	Yes: action without legislation and legislation in due course
	LT8 Amend the existing provisions for resumption and efficient farming to permit operation on a part-time basis	<i>Probably yes</i>	Yes: legislation in due course
	LT9 Provide greater protection for tenants against resumption by landlords for non-agricultural land uses by restricting the operation of notices to quit and amending the rules of relevant public assistance schemes	<i>Probably yes</i>	Yes: legislation in due course
	LT10 Introduce rights for tenants/crofters to plant trees, to cut and sell timber, and to derive income from farm woodlands, and provide a clear and fair framework for payment of compensation at waygo	<i>Probably yes</i>	Yes: legislation in due course
	LT11 Amend the statutory rules of good husbandry to encourage management for nature conservation	<i>Probably yes</i>	Yes: legislation in due course
	LT12 Introduce a pre-emption right for agricultural tenants to acquire vacant sporting leases	<i>Maybe in particular circumstances</i>	No: it could result in fragmentation of sporting rights which are better exercised over an entire landholding
	LT13 Strengthen farm tenants' rights to compensation for game damage and in respect of mineral developments	<i>Probably yes</i>	Yes: legislation in due course
	LT14 Introduce provision for landlords and tenants to share the royalties in respect of mineral developments	<i>Maybe</i>	No: not appropriate as part of an agricultural lease
Greater protection for those who own property built on leased land	LT15 Introduce legislation to provide security of tenure and rights of access plus mechanism for setting rents and for settling other disputes	<i>Maybe</i>	Further study

CROFTING

Vision for the future	Possible legislation and other action to achieve this	Provisional view	Final recommendation
More sustainable crofting communities	CR1 Give all crofting communities the right to take control of the land CR2 Encourage more community management of croft land CR3 Ensure there is no bias against newcomers in crofting administration CR4 Create new crofts CR5 Extend crofting tenure to other parts of Scotland	<i>Probably yes</i> <i>Probably yes</i> <i>Probably yes</i> <i>Maybe in particular circumstances</i> <i>Maybe in particular circumstances</i>	Yes: legislation in due course Yes: action without legislation Yes: action without legislation Yes: legislation in due course Yes: legislation in due course
More local involvement in and accountability for crofting administration	CR6 Transfer responsibility for crofting regulation to local authorities CR7 Devolve significant crofting regulation responsibilities to local communities	<i>Maybe</i> <i>Maybe</i>	No: better to devolve regulation to local communities Yes: legislation in due course and further study
Much simplified crofting legislation and administration	CR8 End control over subdivision CR9 Simplify controls over subletting CR10 Simplify control over most assignations and reduce control over re-lets CR11 Reduce Crofters Commission involvement in succession matters	<i>Probably yes</i> <i>Probably yes</i> <i>Maybe</i> <i>Probably yes</i>	Yes: legislation in due course Yes: legislation in due course Yes: legislation in due course Yes: legislation in due course

CROFTING (cont.)

Vision for the future	Possible legislation and other action to achieve this	Provisional view	Final recommendation
More (or at least not fewer) active crofters	CR12 More rigorous action on absenteeism by Crofters Commission	<i>Probably yes</i>	Yes: action without legislation
	CR13 Restrict the size of multiple tenancy holdings	<i>Probably not</i>	No: not a significant problem and would entail extra bureaucracy
	CR14 Reduce scope for resumption and decrofting of croft land	<i>Probably yes</i>	Yes: legislation in due course
	CR15 End or modify right to buy croft or croft house and garden ground	<i>Probably not</i>	No: the right to buy is of great benefit to individual crofters
Undertaking a wider range of land-based and other economic activity rather than predominantly agriculture	CR16 Decouple link between crofting grants and agricultural production	<i>Probably yes</i>	Yes: legislation in due course

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