Annex D

Consultation Questions & Respondent Information Form

A Consultation on the Future of Land Reform in Scotland

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
John Muir Trust

Title Mr ✓ Ms □ Mrs □ Miss □ Dr □ Please tick as appropriate

Surname Brooks

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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  
- [x] No
CONSULTATION QUESTIONS

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?

The Trust believes it is important that the government’s land rights and responsibility policy fully reflects the considerable and legitimate public interest in the management of land. Rectifying the damage to nature and ecology across much of our uplands is clearly in the public interest and would contribute to the collective benefit of the people of Scotland.

However, it should refer to both current and future generations and not just be set in the context of benefits to people in the present. Principle 1 should reflect this. The land has been exploited for too long for short term gain at the expense of sustainability in the long-term.

The Trust believes in openness and transparency and supports the improvements to publicly available information about land proposed in Principle 2.

Communities are often defined by the place they live. However many people feel part of communities around common issues or circumstances, and join together to form 'communities of interest'. The John Muir Trust is one such group with an interest in landownership – others include crofting trusts, RSPB and National Trust for Scotland.

Communities of interest are increasingly recognised in both academic research and government policy as an important, and often under-recognised, component of civic society. As landowners they are capable of bringing significant investment into local areas, and their approach to land management generally delivers extensive public benefits.

It is important to recognise that management of land has impacts well beyond those of the immediate geographical community. For example, healthy, flourishing wild places in Scotland are visited by tens of thousands of young people every year as part of the Trust’s environmental award scheme, the John Muir Award. Promoting awareness and responsibility for the natural world, the Award is one of the most successful environmental award schemes in the UK. It reaches out to all sectors of society, especially those from socially excluded backgrounds, and helps to deliver many of the government’s educational, health and environmental policies. However, at its core is taking people into inspiring wild places – without land managers who are willing to protect and care for these wild places, the Award could not exist.

Principle 5 on increasing opportunities for ownership should include...
increasing opportunities for these communities of interest to own buildings and land. This is of interest to a wide range of NGOs interested in acquiring sites of special interest to the wider public as well as a local community.

Principle 6 needs to define 'high standards of ownership' to include the protecting and enhancing the environment and natural resources on which all life (including us) depends. The Trust believes that this principle should include a duty on all landowners to protect any habitats, species, natural features, landscapes or archaeological sites that have been recognised by society as deserving special protection (e.g. Special Areas of Conservation, Special Protection Areas, Sites of Special Scientific Interest, National Scenic Areas, Wild Land Areas, Scheduled Ancient Monuments, etc.).

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 ownership of land has an impact on how it is used. For example, conservation Non-Governmental Organisations already manage land in the public interest by protecting some of our finest habitats and landscapes, restoring the ecological health of their landholdings, and repairing footpaths and supporting public access. Managing land for wider public benefits need not result in economic loss – indeed, the opposite is often the case. NGO landowners in Scotland deliver strong economic benefits to their local communities – research by the University of the Highlands and Islands¹, for example, showed total direct expenditure by NGOs on site management equating to over £37 million.

The top priority for the Scottish Government should be to encourage and require the better care and use of the land for public benefit, especially the extensive areas of wild land and upland in Scotland. Improving the ecological condition of the land and restoring its natural capital – for example, by repairing damaged peatlands and bringing back native woodlands - will increase the resilience of our natural systems to the impacts of climate change and provide communities with a more sustainable basis for development. In addition to economic benefits, this investment will also benefit the health and wellbeing of the nation.

¹ 'The socioeconomic benefits of the ownership and management of land by environmental non-governmental organisations'. UHI (2013)

Action 2:
Further to Action 1, the Trust believes that improved regulation of deer management in Scotland is necessary to improve the ecological health, economic value and wider social benefits of large areas of the Scottish Highlands.
Action 3:
Further to Action 1, empower Scottish Natural Heritage to engage all relevant communities and the public in the development of restoration and management plans for all Wild Land Areas in Scotland
Proposals for inclusion in a Land Reform Bill

Proposal 1 - A Scottish Land Reform Commission

Q. 4. Do you agree that a Scottish Land Reform Commission would help ensure Scotland continues to make progress on land reform and has the ability to respond to emergent issues?

Yes √ No □

Q. 5. What do you think the advantages or disadvantages of having a Scottish Land Reform Commission would be?

A Land Reform Commission could help take the reform agenda forward.

It is essential that the Commission includes representation from those that value and use the land not just those that own it (e.g. the hundreds of thousands of walkers, mountaineers and outdoor activities enthusiasts who are some of the major users of the uplands and wild land).

An effective Land Reform Commission would be well-placed to ensure delivery and address any unintended harmful consequences and anomalies of reform (there are sure to be some since land informs and affects so many aspects of our lives) as long as it is given the resources needed to monitor the impact of the reforms and take appropriate action when required.

Q. 6. Do you have any thoughts on the structure, type or remit of any Scottish Land Reform Commission?

See answer to Question 5. The Trust also believes that, in the interests of openness, impartiality and fairness, any Scottish Land Reform Commission should be independent of government, political parties and landowners.

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

Q. 7. Do you agree that restricting the type of legal entities that can, in future, take ownership or a long lease over land in Scotland would help improve the transparency of land ownership in Scotland?

Yes □ No □

Q. 8. Do you agree that in future land should only be owned (or a long lease taken over land) by individuals or by a legal entity formed in accordance with the law of a Member State of the EU?

Yes □ No □

Q. 9. What do you think the advantages or disadvantages of such a restriction would be?
The way in which land is managed has far more impact, both on its environmental quality and the social and economic benefits it provides, than who owns it. We therefore have no strong opinion on the merit or otherwise of restricting the range of legal entities that can own land.

We do, however, strongly support the principle of transparency of ownership that this proposal attempts to address. Transparency and accountability should be fundamental requirements of any individual, group or legal entity who owns land in Scotland.

Q. 10. How should any restriction operate and be enforced, and what consequences might follow if the restriction is breached?

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?

Detailed information about all our properties is already available to the public on our website (www.jmt.org/properties.asp).

Environmental information on all our properties is already shared through the National Biodiversity Network (https://data.nbn.org.uk).

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?

The Trust believes that transparency on land ownership, and easy access to this information, is fundamental for decision making in both the public and private sectors, and for ensuring that landowners are held accountable for their legal responsibilities.

This is a very welcome and overdue policy objective. The John Muir Trust believes that the owner of any piece of land should be easily identifiable and that there should be a duty on landowners to make publicly available contact details for themselves or their representative.

This would help in many ways – for example, for landowners such as the John Muir Trust, with several estates and many neighbours, having contact
details for neighbouring landowners is helpful during consultations and increases opportunities for collaboration and joint working.

Improved access to information on neighbouring estates and landholdings will also be helpful to communities and NGO landowners like ourselves in developing landscape scale environmental initiatives.

We do not foresee any significant disadvantages – as long as the information we are asked to provide is factual, relevant and proportionate.

**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?

We see some benefits in facilitating local developments, such as social housing and microbusiness developments, where there is a proven need in the interests of local people, and where a landowner may be reluctant to release relatively small areas of land in and around existing settlements.

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

Defining “sustainable development” is important, as this term can mean many things to many people. This definition comes from the United Nation’s “Brundtland Report” of 1987:

“Development that meets the needs of the present without compromising the ability of future generations to meet their own needs.”

This explicitly recognised that people have a range of different needs – social, environmental and economic – and sustainable development should encompass all of these. The John Muir Trust supports this widely recognised definition, in particular the acknowledgement that a healthy environment is essential to our social and economic well-being.

The Scottish Government, however, appears to support a narrower definition, focussed on economic growth:

“Sustainable development is integral to the Scottish Government's overall purpose - to focus government and public services on creating a more successful country, with opportunities for all of Scotland to flourish, through increasing sustainable economic growth.”
The Trust supports genuine sustainable development that delivers economic and social benefits for communities, whilst protecting the environment for future generations.

However, we have concerns about Proposal 4, in particular the reference in the consultation document to “the decisions of landowners” being a barrier to sustainable development. We are concerned that the government’s narrow, economic-focused definition of sustainable development could lead to pressure to ‘develop’ Scotland’s wild land from groups or individuals who feel that such land is “neglected” or “abandoned”. Inappropriate developments can, in the long term, have detrimental environmental, social and economic impacts.

The nation’s wild land is a vital environmental, social and economic asset that delivers multiple public benefits. Scottish Natural Heritage\(^1\) estimated in 2010 that the direct economic impact of nature based tourism (i.e. tourism that is related wholly or partly to Scotland’s wildlife, habitats, landscapes and natural beauty) was worth £1.4 billion per year, supported 39,000 full time equivalent jobs and accounted for 40% of all tourism spending in Scotland. The same study found that the economic value of visitors touring and enjoying Scotland’s scenery was £420 million.

Much of this expenditure will have taken place in areas close to wild land, as these include many of Scotland’s most dramatic and popular landscapes.

The importance of wild land was recognised by the Scottish Government in the revised Scottish Planning Policy and National Planning Framework, published in 2014. These should provide significant protection for the new Wild Land Areas identified by Scottish Natural Heritage.

However, the Trust would be concerned if the protection of these Wild Land Areas (and other areas of wild land) were to be undermined by proposals which resulted in a presumption in favour of any projects proposed by developers, regardless of how intrusive or inappropriate these projects may be. In our view, this would result in a loss of public benefits for private gain.

\(^1\) Assessing the Economic Impact of Nature Based Tourism in Scotland. Scottish Natural Heritage (2010).

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

Q. 17. Do you agree that public sector bodies, such as Forestry Commission Scotland, should be able to engage in a wider range of management activities in order to promote more integrated range of social, economic and environmental outcomes?

Yes [ ] No [ ]

Q. 18. What do you think the benefits would be and do you have any recommendations about how this can best be achieved?
Q. 19. Do you have any concerns or alternative ways to achieve the same aim?

The John Muir Trust does not wish to see agencies who manage publicly owned land being driven by a requirement to maximise profits and prioritise economic developments above other public benefits.

In promoting social, economic and environmental outcomes on its land a public body should not be required to maximise its financial return. The best interests of the public should take precedence over securing the best financial return. Maximising the commercial value of a piece of public land will rarely be synonymous with the public interest in it and how it should best be used.

The assessment of the public’s interest should be transparent and inclusive and should include communities of interest as well as geographically local communities, reflecting the fact that the use of land is a common interest and concern to all the people of Scotland.

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?

The John Muir Trust welcomes the inclusion of community engagement as one of the principles of land reform. It has always engaged with the local communities on and around its properties and will continue to do so. This does not mean that there is always a consensus shared by all about the use of land but the process is nevertheless necessary and worthwhile.

However, whilst we strongly support the principle of community engagement, we have a number of concerns with the proposal as set out in the consultation document.

Firstly, it is not clear why charitable organisations are being singled out for this duty of community consultation. We are supportive of the principle involved, but we believe this duty should apply to all landowners in Scotland, not just charities. Any individual, partnership, company, public body, community group or other organisation that owns a large area of land, or owns land with important natural or cultural heritage features, should be
covered by this proposal. Singling out charities is unfair and arbitrary.

Secondly, larger landowning charities employ staff to undertake much of the day to day management of their land. If the duty is to be restricted to trustees of charities, it should make clear that the trustee’s responsibility is that they or their staff should consult the local community in a pragmatic way.

Thirdly, by definition, charities already have to operate for public interest and in open, transparent and consultative manner under charity law.

Whilst we see no problem with public engagement over the transfer of land, the requirement for public consultation regarding use and management of land must be proportionate. It is essential that land managers are not restricted in their activities by constantly having to consult over every management decision.

Q. 22. How should “community” be defined?

Community engagement should not be limited to local communities but also include communities of interest. As an example, it makes sense for the John Muir Trust, who own the summit of Ben Nevis, to consult not just the people of Fort William about the access path to the top of the mountain, but also the mountaineering and outdoor activities interests that are the major users of the summit and the path up to it.

We believe that all landowners, whether private, public, NGO or community, should have a duty to consult “communities of interest” in this way.

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

See comments in Question 22.

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

Q. 24. Should the current business rate exemptions for shootings and deer forests be ended?

Yes ☐ No ☐

Q. 25. What do you think the advantages would be?

The Trust supports the recommendations on Sporting Rates contained in Section 25, para 13 - 20 of the report of the Land Reform Review Group. In particular, we agree that business rates for shooting and deerstalking should be not be used solely to raise revenue, but also to promote good environmental management of the land.
Q. 26. What do you think the disadvantages would be?

Proposal 8 - Common Good

Q. 27. Do you agree that the need for court approval for disposals or changes of use of common good property, where this currently exists, should be removed?

Q. 28. If removed, what should take the place of court approval?

Q. 29. Should there be a new legal definition of common good?

Yes ☐ No ☐

Q. 30. What might any new legal definition of common good look like?

Q. 31. Do you have any other comments?

Proposal 9 - Agricultural Holdings

Q. 32. Do you agree that the Scottish Government should take forward some of the recommendations of the Agricultural Holdings Legislation Review Group within the Land Reform Bill?

Yes ☐ No ☐

Q. 33. What do you think the advantages would be?
Q. 34. What do you think the disadvantages would be?

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?

The John Muir Trust welcomes this proposal, which recognises that Scotland’s biodiversity needs urgent protection from damage caused by high deer numbers.

The Trust supports increased regulation of the deer industry, as we believe that the voluntary approach is failing to deliver sustainable and effective management of the country’s deer populations. We agree that Scottish Natural Heritage should be given enhanced powers to intervene in deer management in the public interest, and support the suggestion that these should include requiring landowners to put in place, and carry out, sustainable deer management plans that protect the public interest.

However, we also emphasise that, in exercising its powers in relation to deer and the environment, SNH must focus on protecting the natural heritage and not use their “balancing duty” to take decisions which will further degrade designated sites and the natural heritage.

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

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 ☐
**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.

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?

**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.

See comments on Q.21.

**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.

**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.
The Trust believes that the measures contained in Proposal 10 (Wild deer) are extremely positive for the environment. If implemented in full they could potentially provide a legal framework to begin to rectify centuries of damage to our upland environments. By promoting effective deer management this proposal would improve the ecological health of many upland habitats, including a significant number of European designated sites which are currently being adversely affected by grazing and trampling impacts from large herds of red deer.