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**SUBMISSION TO THE SCOTTISH PARLIAMENT
RURAL AFFAIRS, CLIMATE CHANGE AND ENVIRONMENT COMMITTEE**

CONSULTATION ON THE LAND REFORM (SCOTLAND) BILL

About Nourish

1. Nourish Scotland is a not-for-profit organisation campaigning for a fairer food system in Scotland. Nourish facilitates this change through engaging with organisations, community initiatives, politicians and officials, producers and individuals. We work to influence policies from local to EU level and provide a platform for networking and sharing best practice. We make sure that food is brought to the fore in public debates of various kinds, making the link between a localised food system and its positive outcomes for economic development, community cohesion, job creation, skills development, public health, environmental stewardship and justice.
2. Nourish is pleased to be able to provide written evidence to the RACCE Committee on the Scottish Government's Land Reform (Scotland) Bill. The consultation is wide-ranging in its scope and Nourish only comments here on the sections on which we feel we have interest or expertise.

General Comments

3. Nourish welcomes the renewed political attention given to the Land Reform agenda. The Land Reform Review Group's report provided a balanced, nuanced set of recommendations on how to move the land reform process forward. Nourish welcomes the Scottish Government's positive and constructive response to that report along with the recognition that land reform is an on-going process and not a one-off event.
4. Nourish is submitting this evidence because of the fundamental role that we believe land ownership and access to land plays in achieving food security and food sovereignty for all in Scotland. Nourish supports land reform measures that will ensure that:
 - Scotland's land is owned and managed in a way that can deliver public benefits;
 - the system of land ownership is made more transparent;
 - people who want to access land to produce food sustainably can do so;
 - a wider range of communities is able to take advantage of the opportunities available as a result of current and future land reform programmes.

Land Rights and Responsibilities

5. Nourish welcomes the Scottish Government's draft Land Rights and Responsibilities statement. Nourish endorses the principles as set out during the previous Scottish Government consultation. We are particularly pleased to see such strong emphasis placed on the public benefits to be derived from land ownership and usage and the recognition of the importance of locating land reform within a human rights based

framework. We also support the consideration of rural and urban, terrestrial and marine issues being brought into a single overarching context. As Andy Wightman suggests, there may also be a case for using the statement to reference our international obligations on land management and reform and thus to anchor the statement within a higher-level framework. These may include, for example, the voluntary guidelines on the responsible governance of tenure' developed by the Committee on World Food Security and/or other UN charters and guidelines.

6. We share the Scottish Government's desire to see a transparent system of land ownership that contributes to building a fairer society in Scotland and promotes environmental sustainability, economic prosperity and social justice. Such a system would also include a more diverse pattern of land ownership, greater community involvement in the management and ownership of our land based assets, and better consultation and engagement with communities who are affected by land management decisions.
7. Nourish supports the vision and principles outlined in the consultation paper and agrees that articulating these principles is a helpful step forward. We support the requirement in the Bill for these principles to be published and to be reviewed every 5 years. This goes some way towards meeting previous criticisms that the principles lack legal force and could be abandoned by successive administrations. It might also be useful to consider whether the statement should be specifically referenced within the structure of the National Performance Framework and the hierarchy of the strategic policy aims of the Scottish Government. In addition we believe there is merit in considering Andy Wightman's suggestion that the statement must be laid before, debated and/or endorsed by the Parliament in order to provide it with more weight or political commitment.

Scottish Land Commission

8. The history of land reform in Scotland is complex and fragmented. Rights and responsibilities are set out in numerous statutes ranging from Crofting, Agricultural Holdings, Land Reform, Feudal Tenure and Land Registration through to Nature Conservation. Moving beyond the legal provisions there is an equally complex array of policy areas, from Common Agricultural Policy (CAP) funding, to land use and taxation, planning, housing, energy and environment. Maintaining any form of coherence across these policy and legislative provisions will continue to be challenging and prone to unintended consequences where changes to one area have knock on effects on another.
9. Given this, Nourish supports the Bill's proposal to establish a Scottish Land Commission, incorporating 5 Land Commissioners and a Tenant Farming Commissioner. Nourish believes that the decision to structure these bodies as one Commission, with the status of an NDPB, is a sensible one. It should enable the role and work of the body to have sufficient independence, weight and authority, without creating unnecessary bureaucracy.
10. Nourish is broadly content with the range of powers, functions and working practices set out in the Bill in relation to the Land Commission. However, given the emphasis on transparency that has emerged during previous consultation processes we are surprised that there are few, if any, requirements for the Commission to consult more widely before determining its work programme or strategic plan. While this may happen as a matter of practice, we would prefer to see this set out on the face of the Bill. We do not offer comment on the Tenant Farming Commissioner provisions, other than noting the importance of these provisions, and the office, being able to maintain the confidence of both landlords and tenants.

Transparency of Land Ownership

11. Nourish supports any steps to improve the availability of better information on the ownership and control of Scottish land. This should provide us with a better understanding of the patterns of land ownership, use and control and thus contribute both to more informed public debate and to better policy being developed, based on higher quality, more reliable information. While we support the measures set out in Part 3 of this Bill, they do not remove the need for a comprehensive, free-to-access system which can provide accurate, up to date information on land ownership and control. We believe that there is a strong public interest in setting up and maintaining such a system as the current system remains fragmented and sometimes expensive to access.
12. Nourish is also disappointed that the Scottish Government has shelved previous proposals that it should be incompetent in law for anyone wishing to own land in Scotland via a corporate entity to do so via an entity that is not registered in an EU member state. Whilst we accept that this proposal will be challenging to implement we do not believe that it is impossible. Indeed the LRRG gave very careful consideration to the issue before recommending this action. Given that other jurisdictions in the UK have announced plans to publish details of offshore corporate ownership of land, it is important that Scotland does not lag further behind in the reform of land ownership and the transparency of the information available. We would welcome further parliamentary scrutiny and debate on this issue.

Sustainable development and land use

13. In his January 2015 briefing paper, Andy Wightman points out that a human rights approach is now widely entrenched within policy and practice on sustainable development but it is yet to feature much in the debate on land reform. Drawing on comments from Professor Alan Miller, he suggests that, given our obligations under *the International Covenant on Economic, Social and Cultural Rights*, we should treat land as a national asset to be used for the progressive realisation of sustainable development.
14. The Bill appears to develop this theme, providing that Scottish Ministers may set out guidance about engaging communities in land management decisions that affect them. This as a useful step forward, not least in beginning to define some of the responsibilities that might attach to land owners under the statement of statement of land rights and responsibilities.
15. In preparing this guidance, Scottish Ministers are to have regard to the desirability of furthering the achievement of sustainable development in relation to land. While we believe the intention of section 37 is broadly positive, the wording seems inelegant, passive and subject to confusion over its actual meaning. We would encourage the parliamentary drafters to consider whether a more active and straightforward statement could be developed within the constraints of statutory language.
16. The Bill creates a new right for certain community bodies to buy certain classes of land in order to further sustainable development. This is dependent on the identification of significant harm if the land is not transferred together with significant benefit if the land is transferred. In principle, Nourish supports this power. The proposal creates tests which are not easy to meet; they are likely to be used as a power of last resort. However, a power of intervention, in the public interest, is a useful sanction that would give stimulus to landowners to work together with communities for a mutually beneficial outcome. It would help balance the power disparity between local communities and landowners and provide greater leverage.

17. Nourish is aware that this new proposed right to buy will sit alongside another newly created right to buy, enacted as part of the Community Empowerment Act. This latter power applies to land that is abandoned, neglected or being managed in ways that cause harm to the environmental wellbeing of a community. While sustainable development considerations also apply, these (as yet untested) provisions are not the same as those in the Bill. Careful consideration will need to be given to the “fit” between these provisions, and guidance will have to make it clear what powers are appropriate to use in various circumstances.
18. Any restriction on the exercise of private property rights must demonstrate a clear public interest or benefit. However, this issue is not just about the rights of landowners to enjoy their property but also about our right to receive public benefit from land. Nourish believes that all land owners and managers – be they public, private, charitable or community – should be responsible for the delivery of public goods that the community around them reasonably needs, and that they should safeguard the capacity of their land to continue delivering public benefit into the future. The right of public benefit from all land should be made explicit in the statement of land rights and responsibilities. Landowners and managers must be held accountable for delivering, through their actions, an appropriate supply of public goods – which include biodiversity, ecosystem services, access and recreation, employment and sustainably produced food.
19. Fundamentally, Nourish would argue that there should be no reward where there have been no positive steps taken to manage assets for the public good. This particularly applies where public monies are being paid to landowners or managers. We therefore welcome the statement in the policy memorandum that the Scottish Government is considering the ways in which a failure to engage with communities on land-based decisions might be taken into account in future decisions on the award of discretionary grants in relation to land.

Support for access to land and encouraging more diverse land ownership

20. We welcome the provisions in part 6 of the Bill which repeal the current exclusions for rates liabilities for shooting and deer forests from 2017 onwards. We especially welcome the use of these additional funds to top-up the Scottish Land Fund and provide further funds for community buy-outs. This is essential if the “1 million acres in community ownership” target is to be achieved. In addition to funding, communities will continue to require access to specialist support and advice on putting together appropriate applications and bids.
21. We agree with Andy Wightman that would be value in examining the whole issue of land and rateable values, including the issue of whether agricultural land should be subject to rates. Nourish generally supports efforts to encourage community ownership and management of land. Large estates and corporate entities that own large tracts of land dominate much of the supply of land in Scotland. This makes it difficult for community groups or individuals to access land for activities such as smaller scale farming and food production. A more realistic valuation of land, and more affordable rents for tenants, would assist the provision of land for affordable food production.
22. Demand for affordable local food in Scotland far exceeds current supply, and there are significant economic as well as social and environmental gains to be made from developing this market. Research shows that, other things being equal, small farms are more productive per hectare and create more employment per hectare than larger holdings. Short supply chains - underpinned by cooperative marketing and

distribution - offer gains in terms of freshness, waste reduction, and less requirement for processing, packaging, chilling and transport. They also have a larger local economic multiplier, with more money being recycled locally. A vibrant local food economy therefore delivers many public benefits. Access to suitable land is one of the most significant barriers to developing vibrant local food economies. It is especially a barrier for young people, in particular women, from non-farming backgrounds.

23. The Scottish farming sector is dominated by the older generation and would benefit from the introduction of new entrants. Nourish therefore wants to see new parcels of land made available for food production. There are various ways in which this can be done. In urban areas, this might take the form of creating sufficient new allotments and community growing sites to meet demand. The Community Empowerment (Scotland) Act takes some steps towards this objective. In rural areas, consideration could also be given to extending crofting tenure and availability of crofts to other parts of Scotland.
24. Nourish wants to see the creation of new investment models to encourage new entrants into farming and new patterns of more diverse land ownership. Some models exist elsewhere in Europe. For example, Terre de Liens is a civil society organisation created in France in 2003 to assist small farmers in securing agricultural land. Terre de Liens supports collective ownership schemes, and has also directly acquired farmland, which it holds in perpetuity for the sake of current and future generations. Terre de Liens' land is let to farmers who undertake to farm organically or biodynamically or who are otherwise committed to respecting the environment. To acquire land, Terre de Liens has created two financial tools: la Foncière, a solidarity investment company; and le Fonds, an Endowment Trust which collects investment or donations in cash or kind. Through these vehicles, Terre de Liens now owns 71 farm estates, amounting to 1900 hectares, where 220 adults live and/or work. This has been made possible by the support of 1200 members and about 5000 (mostly individual) shareholders. A similar model could make made significant progress towards freeing land from the commodity market so that it can be preserved in sustainable agricultural production here.
25. In tandem with providing initial funding for new land purchases, and encouraging the breakup of large parcels of land into smaller blocks, subject to more diverse ownership, we should be shifting as much CAP money as possible away from historic channels which benefit larger, wealthier farms and towards rural development, encouraging rural enterprise and repopulation and supporting new entrants.

Conclusion

26. Nourish welcomes the proposals set out in the Bill. In particular, we welcome a principled approach to land management and control being developed, based on the use of land to further sustainable development for the collective public good. We urge cross-party support for any measures which will:
 - Contribute towards placing better information about Scotland's landholdings in the public domain,
 - Encourage public, private, charitable and community groups to work together to manage our land for the collective good;
 - Encourage a greater diversity of land ownership and greater opportunities for new entrants to farming and new rural development businesses and social enterprises;
 - Balance the interests of private landowners with those of the communities that surround the land in the interests of a fairer, more socially just Scotland.