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SUBMISSION TO THE SCOTTISH GOVERNMENT'S LAND REFORM CONSULTATION

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 comment on the Scottish Government's Land Reform consultation. 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 commends the work of the Land Reform Review Group in this area. The report that the group produced was balanced, readable and contributed greatly to the debate on how Scotland's land based resources can be used to deliver maximum public benefit. Nourish welcomes the Scottish Government's positive and constructive response to the report along with the recognition that land reform is an on-going process and not a one-off event.
4. We are 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;
 - our food security is protected by applying food sovereignty principles to the current discussions;
 - 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 set out in the statement and we are particularly pleased to see the strong emphasis which is placed on the public

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benefits to be derived from land reform and the recognition of the importance of locating land reform within a rights based framework. We also support the consideration of rural and urban, terrestrial and marine issues being brought into a single overarching context.

6. We share the Scottish Government's desire to see 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. All these matters are dealt with in the draft principles.
7. As a brief aside, we note that point 5 currently refers to "a growing number of local communities in Scotland [who] should be given the opportunity to own buildings and land". However, in light of the Community Empowerment (Scotland) Bill's proposals, which include the potential transfer of management rights as well as the ownership of assets, should this point not be broadened to include the management or use of assets as well as ownership? We would also endorse the point made in the SE Link submission, which emphasises that land use may be as important as ownership.
8. Nourish otherwise supports the vision and principles outlined in the consultation paper and agrees that articulating these principles is a helpful step forward. Nourish also notes and agrees with the comments made by Andy Wightman in his paper "The Future of Land Reform in Scotland" (January 2015). The paper notes that the principles are not in themselves a policy, or a legal framework. They are a set of principles to guide policy development in this area and are therefore a first step.
9. We also note his observation that the principles have no legal force and that there is no guarantee that they will be adopted by successive administrations. We support his call for the principles to be subject to a Parliamentary debate and vote in the interests of developing consensus and of lending them further weight. We also concur with SE Link that the statement of principles should be specifically referenced within the structure of the National Performance Framework and the hierarchy of the strategic policy aims of the Scottish Government;

Priority Scottish Government Actions

10. The paper asks, "What are the top 3 actions that the Scottish Government should take?" Nourish believes that establishing a Land Reform Commission, applying sustainable development tests to land governance and developing new systems to enable a more diverse land ownership base will go a long way to achieving our land reform aims.

A Scottish Land Reform Commission

11. The land reform picture 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.
12. Given this, Nourish supports the proposal to establish a Scottish Land Reform Commission, whose task it could be to scrutinise developments in these areas,

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examine the evidence, monitor the impact of land reform and suggest further changes and to ensure overall policy coherence. It could also develop proposals for a national land policy based on the principles outlined above. It will be important for any Commission to command the confidence of both government and communities. It must be independent of government, able to draw upon expert advice and assistance and have access to government data upon which to base decisions.

Sustainable development tests for land use

13. In his 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 consultation paper suggests that in some instances the nature or pattern of land ownership, or the decisions made by an individual landowner may be contrary to sustainable development. In these circumstances the consultation paper suggests that there may be a case for Ministers taking action to ensure that sustainable development can occur. In some instances this might include requiring land to be released or sold.
15. In principle, Nourish would support this power. We agree with Andy Wightman that a power of intervention, in the public interest, could be a very useful sanction that would give confidence to communities and stimulus to landowners to work together for a mutually beneficial outcome. Crucially it would help balance the power disparity between local communities and landowners and provide greater leverage.
16. 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.
17. Nourish believes that all land owners and managers – be they public, private 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 brought into law, or at the very least, be made explicit in land reform policy. 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.
18. Nourish would also support a reconsideration of the current model of land ownership, which presumes that landowners have exclusive rights to the use of all of the common resources associated with the land which is owned - minerals, water, game and even wind. This often results in huge benefits without the landowner being required to manage, create, or add value to the asset. 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 used to reward landowners or managers.
19. The right of public benefit from all land would have to reflect the fact that different parcels of land have different capabilities – whilst some land has a higher capability in terms of access and recreation; other land has a higher capability for supporting

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biodiversity, generating employment or producing local food. A baseline would need to be drawn identifying the potential public benefits of different land parcels, and the communities that should benefit from them.

20. Like most legal compliance systems, this would need clear requirements backed up by both incentives and sanctions where needed. Mapping of potential public benefit from differing land types and uses would be needed – along the lines of the Macaulay Land Use Classification system or similar. And there would be the legal requirement to produce these benefits or allow others to access them. Incentives and rewards should be available for those who deliver significantly above the baseline, through public support from CAP and SRDP. Nourish would support measures to sanction land managers who delivered less than the baseline public goods. Such measures could include fines, reduced public funding – or, in extreme cases, forfeiting the right to manage land if public goods and land quality are compromised.
21. Nourish would also support measures suggested in the consultation paper to allow public sector land owners and managers to undertake a wider range of management activities in order to promote a more integrated range of economic, social and environmental outcomes. A land use classification system as outlined above would assist in providing a reasoned basis for whatever management activities were decided upon in relation to publicly owned land.
22. A requirement to use land in support of sustainable development could also be linked to the imposition of land value or land use taxes. A land value tax charges land owners relative to the value of what they own. Experience in other jurisdictions (Australia, Taiwan and Hong Kong) has shown a direct reduction in land values, and has also led to owners selling land to their tenants. More recently, land value taxes have been proposed in combination with land use taxes. This would see variable amounts of tax levied for different types of land use with those landowners producing desirable environmental and social benefits being taxed at a lower rate than those creating adverse impacts and resource depletion. Such a tax could be a very potent tool to guide land ownership and usage changes.

Support for access to land and encouraging more diverse land ownership

23. We welcome the Scottish Government's announcement that it is extending the Scottish Land Fund until 2020. We are aware that the issue of support for obtaining land is being considered as part of the Short Life Working Group on achieving the "1 million acres in community ownership" target.
24. Nourish is entirely supportive of efforts to encourage community ownership and management of land. However, there is also a wider need to change the pattern of land ownership more generally. Much of the supply of land in Scotland is dominated by large estates and corporate entities who own large tracts of land. This makes it difficult for community groups or individuals to access land for activities such as smaller scale farming and food production.
25. 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 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

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delivers many public benefits.

26. 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, especially women, from non-farming backgrounds. 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) Bill takes some steps towards this objective, albeit without imposing any sanctions on local authorities that fail to meet demand. In rural areas, consideration could also be given to extending crofting tenure and availability of crofts to other parts of Scotland.
27. Nourish recommends that serious thought be given to creating new investment models which will 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 address the difficulties faced by 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.
28. In tandem with providing initial funding for new land purchases, and encouraging the breakup of large parcels of land into smaller blocks, 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. Rural Development funds could also be used (as in Denmark) to stimulate demand for public procurement of organic and local food, underpinning the viability and growth of right-size farming and growing businesses.

Other Proposals

29. Nourish welcomes the proposals, set out in the paper, to make it incompetent for any legal person not registered in a member state of the EU or EEA to register a title to land in Scotland in the Land Register. We appreciate that there will be technical issues to overcome and offer no comment on how best to resolve these as it is not our area of expertise. However, we note that Andy Wightman sets out the view that it would be possible to apply these provisions to existing owners of land in Scotland, with, for example, a 5 year window for compliance to be achieved. In Nourish's view that would vastly increase the effectiveness of the proposed reforms.
30. Nourish also agrees with the proposals to
 - make public sector information on land value and ownership readily available to support open and transparent decision making by both the private and public sectors,
 - clarify aspects of the common good laws;

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- end the business (non-domestic) rates exemption for shooting and deerstalking;
 - clarify some aspects of the Core Path planning process; and
 - make provision for further deer management regulation measures in the event that the present voluntary arrangements are deemed to not protect the public interest sufficiently.
31. In principle, Nourish agrees that the Scottish Government should take forward some of the recommendations of the Agricultural Holdings Legislation Review Group within the proposed Land Reform Bill. However, as these proposals are only recently published, it is difficult to give precise views. In addition, this is a notoriously complex area of law. Proposals should only go forward to the Bill where there has been sufficient time to think through these complex areas and arrive at clear proposals, which have been subject to adequate consultation. We note the view of the review group that the existing legislation will require detailed amendment, if not formal consolidation. We have no comment to make regarding the proposals requiring charities to engage with local communities.

Conclusion

32. Nourish welcomes the proposals set out in the paper. Many proposals are clearly at an early stage. Some will require significant further thought, and complex drafting, to achieve in legislative form. Taken together, along with the other measures outlined in the consultation, Nourish believes that they have the potential to create transformative change in our land ownership and management.