



SCOTTISH LAND COMMISSION
COIMISEAN FEARAINN NA H-ALBA

**DRAFT LAND RIGHTS AND RESPONSIBILITIES STATEMENT
RECOMMENDATIONS TO THE SCOTTISH GOVERNMENT**

Introduction

1. The Scottish Land Commission came into being on 1st April 2017 in accordance with provisions in the Land Reform (Scotland) Act 2016, and with the purpose of providing the support services necessary to enable the Land Commissioners and Tenant Farming Commissioner to perform their respective functions.
2. In exercising their functions the Land Commissioners must have regard to the Land Rights and Responsibilities Statement prepared under part 1 of the Act. The Scottish Government has issued a detailed consultation on a Draft Statement which closed on 10th March 2017.
3. The Statement is intended to be a statement of principles for land rights and responsibilities in Scotland. We understand that in legal terms the Statement is expected to comprise only a Vision and concise supporting Principles, but that associated explanatory notes will be provided to assist interpretation.
4. We have reviewed the likely impact and effectiveness of the Draft Statement in relation to what we understand to be its intended outcomes, and we offer the following recommendations to Ministers.

Intended Outcomes

5. In considering the likely impact and effectiveness of the Draft Statement we have first sought to understand the outcomes that Ministers intend to arise from its implementation. We note that under the terms of the Act Ministers must review the Statement within five years, and we anticipate contributing evidence to that review concerning the Statement's impact and effectiveness.
6. Our understanding is that there are four broad outcomes that are expected to flow from the Statement within the wider context of the National Performance Framework. These have been summarised by the Cabinet Secretary for

Environment, Climate Change and Land Reform as an approach (to taking forward land reform) that has four key themes –

- Collaboration
- Diversity
- Social justice and sustainable development (including human rights)
- A breadth of coverage to include urban and rural land across Scotland

In terms of outcomes we interpret these themes to imply that there will be -

- Higher levels of collaboration between all parties who are involved in the ownership, management and use of land.
- Greater diversity of ownership, management and use of land, improving its productivity and building more resilient local communities.
- Progressive realisation of economic, social and cultural human rights in relation to land.
- More opportunities arising from land reform to empower urban communities and overcome urban development challenges.

Recommendation 1 – It might be helpful if the Vision more clearly encapsulated and articulated the four broad outcomes that Minister’s intend to result from policies that are to be derived from the Statement.

Human Rights Based Approach

7. We note the intention of Ministers to take a “human rights based approach” in the Statement. We understand this to mean an intention to not only protect rights under the European Convention on Human Rights (ECHR) in accordance with the Scotland Act 1998, but also other human rights such as those under the International Covenant on Economic, Social and Cultural Rights (ICESCR).
8. We note that the Scottish Human Rights Commission (SHRC) has emphasised that Ministers are empowered by the Scotland Act 1998 to observe and implement international human rights obligations. In addition to the ECHR the SHRC has specifically highlighted the ICESCR, and the obligation that it places on signatories to use the maximum available resources to ensure the progressive realisation of rights like the right to housing, food and employment.
9. We note that the Act requires Ministers to consider promoting respect for such internationally accepted principles and standards for responsible practices in relation to land as they consider to be relevant, including the principles and standards contained in the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the context of National Food Security issued by the Food and Agriculture Organization of the United Nations and endorsed by the Committee on World Food Security on 11 May 2012.

Recommendation 2 – While it is important to ensure that the Statement itself is written in concise plain English (see recommendation 4 below), it might be helpful if there were explicit reference to human rights in the Vision, with additional information

about the intentions of Ministers with respect to human rights provided through explanatory notes that use standard human rights language throughout.

Risk of Ambiguity

10. We understand that Ministers expect the Statement to have wide applicability to public policy making, and for it to also influence directly the actions of owners, managers and users of land. If this is to be effective it will be important that the broad range of audiences that are involved interpret the Statement in the same way, and that there is no ambiguity about this.
11. We note that some words and phrases used within the draft Statement could be open to different interpretations, and/or could be unclear in their meaning. Examples include “diverse and widely dispersed pattern” in Principle 2, “recognise” and “high standards” in Principle 4, “publicly available” and “detailed” in Principle 5, and the inconsistent use of “land” and “buildings and land” between Principle 3 and the others.
12. We note that the Act requires Ministers to consider promoting respect for such internationally accepted principles and standards for responsible practices in relation to land as they consider to be relevant, including the principles and standards contained in the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests (VGRGTLFF) in the context of National Food Security issued by the Food and Agriculture Organization of the United Nations.

Recommendation 3 – Throughout the Statement it might be helpful if the use of language were tightened up as much as possible to reduce the risk of ambiguity, providing cross references to existing published standards and to other sources of information where that is likely to be useful in providing clarification.

Accessibility and Reach

13. The format and language used in the Statement will need to be understandable and accessible to a wide range of different readers if it is to be effective in delivering the outcomes expected. Moreover, and however well written, it is the mechanisms used to deliver the Statement to priority audiences that will largely determine whether it achieves the reach that is required.

Recommendation 4 – Given the diversity of audiences involved it would be helpful if the formal Statement was written in plain English, and in a concise, clear and compelling style that lends itself to dissemination through a variety of media. Supporting detail (for example to help public officials to apply the Statement to policy making) might usefully be provided through explanatory notes with practical examples.

Comprehensive and Integrated

14. We have sought to cross refer the six Principles against the four themes outlined by the Minister (referred to in para 6 above) to ensure that collectively the Statement comprises a comprehensive package. In doing that we have noted that there is no explicit reference to “collaboration” or to “a breadth of coverage to include urban and rural land across Scotland”.
15. We have also sought to test the extent to which the six Principles collectively comprise an integrated package that fits logically with the Vision. We note that the Vision could be read as a seventh Principle, and that it does not obviously describe an outcome based Vision built on the six Principles.

Recommendation 5 – It might be helpful if the Principles were to more explicitly address all four stated intentions of Ministers in a balanced manner, and linking logically to a single outcome based Vision (see recommendation 1).

Reciprocity

16. The idea that all rights have associated with them corresponding or reciprocal responsibilities is not a new one. It is a recurring theme in many philosophical writings, and it emerges strongly in wider thinking about corporate responsibility such as is found in the UN Guiding Principles on Business and Human Rights. It is made almost explicit in Principle 4 of the draft Statement, but we note that it does not emerge strongly in the Vision or in any of the other Principles.

Recommendation 6 – It might be helpful if the idea of reciprocity between rights and responsibilities in relation to land were more explicit in the Statement, for example by re-wording Principle 4 and by reference in an explanatory note to relevant existing tools such as the Good Agricultural Environmental Conditions (GAEC), the Scottish Outdoor Access Code (SOAC), and the ISO 26000 Guidance Standard on Social Responsibility.

Implementation

17. We note that the Act describes the Statement as being “a statement of principles for land rights and responsibilities in Scotland”. The intention of Ministers is that the Statement should provide a set of Principles on which public policy is based, but we understand that the Statement is also intended to fulfil a wider leadership and influencing function through signalling high level expectations of all land owners, managers and users.

Recommendation 7 – It might be helpful, perhaps within an explanatory note, if the Statement made clear what Ministers expect in terms of its application to public policy making within the Scottish Government and in (for example) non-departmental public bodies. The Statement might also indicate how Ministers intend it to fulfil a wider leadership function beyond the public sector. For example it might be useful to

suggest the sort of tools that could be used – codes of practice, guidance notes, cross compliance, etc. – including by the Land Commission.

Monitoring Progress

18. We anticipate that an important task for the Land Commissioners will be to gather evidence on which to review the effectiveness and impact of the Statement going forward. This might involve establishing baseline studies combined with time series monitoring of progress against the four outcomes prioritised by Ministers.

19. We anticipate that a cost effective approach to this might be included in our Programme of Work, and that information from these studies could be used to inform progress monitoring, help engage with stakeholders, and identify emerging areas of weakness where additional policy emphasis may be needed.

Recommendation 8 – It might be helpful, perhaps within an explanatory note, if the Statement were to note which of the National Outcomes and Indicators in the National Performance Framework are felt by Ministers to be of primary relevance in this instance.

Road Testing

20. We note the emphasis being placed on this consultation to ensure that the Statement is fully fit for purpose – i.e. that it will be effective and have the impact that is intended of it. There are other tools available to help in achieving this, including a range of direct “road testing” tools that might enable challenges around ambiguity and interpretation to be more fully addressed.

Recommendation 9 – In refining the final language to be used in the Statement, and especially in testing its effectiveness with non-government users, it might be helpful if a small amount of end user testing were undertaken as a form of final quality control check, perhaps in association with the Land Commission.

**Scottish Land Commission
April 2017**