



SCOTTISH LAND COMMISSION
COIMISEAN FEARAINN NA H-ALBA

Land Rights and Responsibilities Statement Review 2022: Response to Scottish Government

26 January 2022



Land Rights and Responsibilities Statement (LRRS) review –
Questions in this consultation

Q1 Do you think that the revised vision reflects the outcomes that we need to achieve?

C) To some extent

Q2 If you have answered ‘no’ or ‘to some extent’, what key changes would you like to see to the vision?

The current vision in the Land Rights and Responsibilities Statement (LRRS) could be strengthened. The vision should be inspiring and motivating to encourage the buy-in of stakeholders to the LRRS. It should reflect key overarching principles that clearly communicate the purpose of the statement. The LRRS takes a human rights approach to the ownership, use and management of land and recognises the need to balance public and private interests in land, taking a holistic approach that leads to balanced decision-making. This has proven to be an important and useful framing but is not as well recognised in the vision as it is in later principles. The LRRS would be strengthened by focusing the vision on these points which clarify the main purpose of the Statement and principles.

To further encourage support for the LRRS and provide clarity for those seeking to put it into practice, there may be merit in complementing the vision with a set of values. A set of values would empower land owners, managers and users to make values-led decisions about how to realise land rights and responsibilities in different contexts. For example, it is easy to understand how making decisions about land underpinned by values of integrity, transparency, collaboration, fairness and sustainability would contribute to public interest and achieve positive outcomes for all parties.

In response to the specific suggested changes:

- a. Considering the human rights approach to the LRRS and in pursuit of balanced decision-making about land, it is important to recognise the value of all ‘capitals’ (‘The Four Capitals’ - natural, social, human and economic) and the role they play in achieving a wellbeing economy and a just transition (<https://www.gov.scot/publications/towards-robust-resilient-wellbeing-economy-scotland-report-advisory-group-economic-recovery/pages/4/>). To maintain this balance, the value of natural capital would be more appropriately recognised through the principles rather than specifically stated in the vision.
- b. It is important to recognise the changing context within which we operate, with climate pressures becoming more urgent. Land plays a key role in ensuring we address the climate crisis and achieve a just transition. The way in which we own, use and manage land is crucial in mitigating and adapting to climate change. We consequently support explicit recognition of the role land plays in climate change and in achieving a just transition in the LRRS vision.

Q3 Do you think that the principles are still relevant to current Scottish land issues?

Principle 1: Yes

Principle 2: Yes

Principle 3: Yes

Principle 4: Yes

Principle 5: Yes

Principle 6: Yes

Q4 If you think that the principles could be made more relevant, or that there are any issues that they do not address, please outline this. Please make sure you state clearly which existing principle each suggestion relates to, if applicable.

Overall

The LRRS principles are not always easily understood by those seeking to apply them. The Scottish Land Commission (“the Commission”) has worked extensively with stakeholders to interpret the principles and understand how they could apply in real-life situations. We have produced a series of protocols through engagement with stakeholders which are endorsed by the Good Practice Advisory Group (<https://www.landcommission.gov.scot/our-work/good-practice/good-practice-advisory-group>). There are protocols relating to each of the principles with the exception of principle 1, which is viewed as an underlining principle relevant to all protocols. We are expanding the stakeholders we work with to understand how the principles can usefully apply to further sectors and contexts and providing additional guidance as required.

Our Good Practice Programme demonstrates that, where tested, the principles as expressed through the protocols are generally helpful and manageable for land owners, managers, communities and users. Taken collectively, the principles also provide a sensible framework for addressing the vast majority of situations that the Commission has identified through casework related to land. The pilot LRRS self-assessment project was undertaken voluntarily by land owners and managers in 2020-21. It was delivered by the Commission, Scottish Land and Estates, Community Land Scotland and National Farmers’ Union Scotland, and will report in early 2022. The project identified how the principles are being delivered in real-life and any associated challenges.

In addition, there is an ongoing need to raise awareness of the LRRS principles, particularly with some sectors, and we therefore consider it important to retain a reasonable level of continuity in the principles to aid ongoing efforts to embed them in policy and practice. Our suggestions for changes to the principles focus therefore on changes that would improve clarity and assist us and stakeholders to explain how they apply to different land owners, users and managers and in different contexts.

We consider an additional principle addressing natural capital in the context of the climate and nature emergencies and a just transition would be helpful to consider. We understand that a clear reference point on this would also be welcomed by other stakeholders. Whilst this is to some extent captured within principle four, as we have outlined below this is currently one of the more wide-ranging and significant principles. An additional principle on natural capital may therefore also assist in clarifying the scope of principle four.

There is a frequent misconception that the LRRS is referring to rural land and does not include built upon land and buildings. Whilst ‘land’ is defined elsewhere in the LRRS, it is helpful to make this reference in the individual principles also, as it is in principle 3.

Principle ONE

This principle underpins the others and is complex and wide-ranging with inaccessible language. It has been particularly difficult for those seeking to implement the LRRS to understand and apply. We think it would be more appropriate to recognise the role of land in

fulfilling human rights and achieving public benefit in the vision for the Statement. This principle could then be more helpfully focused on recognising the role of public policies in achieving the objectives of the LRRS, encouraging public bodies and policy makers to proactively further land rights and responsibilities and ensure alignment and consistency in public policy, funding and action.

Principle TWO

No further comments.

Principle THREE

Community ownership, leasing or use of land and buildings should be a normal, designed part of community planning, development and regeneration (https://www.landcommission.gov.scot/downloads/5dd698fa2e391_1-Community-Ownership-Mechanisms-SRUC-Final-Report-For-Publication.pdf). There should be a clear articulation of the outcomes that community ownership delivers, recognising that it is not an end but a means to delivering wider development and regeneration outcomes, including community sustainability. This principle should recognise the role of community ownership, use and lease of land in supporting community wealth building and delivering inclusive growth. There should be a presumption for negotiated transactions between a willing seller and willing buyer being the norm, with statutory rights to buy or asset transfer being used only where this is not possible. Relevant parties should be proactive in identifying opportunities for community ownership, lease or use of land and buildings, including ensuring there is a supportive policy environment and practical support for communities to build capacity and explore suitable opportunities.

This principle could more clearly link to the concept of community sustainability, reflecting Scottish Government goals to address depopulation and ensure that there is a just transition. The Commission's proposed wording: "More local communities should have the opportunity to own, lease or use buildings and land which can contribute to their community's wellbeing and sustainability future development."

Principle FOUR

This principle is wide-ranging and our LRRS Protocol on Good Stewardship (<https://www.landcommission.gov.scot/our-work/good-practice/good-stewardship-of-land>) relating to this principle is our most complex. It can be difficult for those applying the principle to understand the core objective because this principle encompasses several significant responsibilities land owners and managers have. For example, when discussing this principle, we talk about making productive use of land, reusing vacant and derelict land, positive environmental management, recognising where land is highly suitable for a primary use such as food production or water catchment management, access to green space and more.

There may be merit in separating this principle into two. One principle could expand on the environmental aspects of decision making, including the management of natural capital and how decisions should include consideration of environmental, social and cultural benefits that could be delivered, even when these are not the primary motivation for managing the land or buildings. This may better reflect Scottish Government goals to achieve net zero and biodiversity protection and improvement in a way that ensures a just transition. This is particularly important in the current context of rapidly developing carbon and biodiversity markets which are seemingly already having an impact on the land market, including who owns and invests in land and how it is managed. Sustainable management of land should utilise a human rights approach, which recognises the need for a just transition to net zero

and protects and improves biodiversity. It is important that land use decision making reflects the breadth of benefits we get from our natural capital. These natural resources underpin our society and economy because they provide a wide range of benefits (e.g. pollution removal, carbon sequestration, flood management, food production etc.).

The other principle could then focus on the delivery of other forms of public benefit through land management, covering social and cultural impacts, productive use (including bringing vacant and derelict sites back into use), a community wealth building approach, and access to green space.

In addition, we consider this principle could be strengthened through the concept of 'active stewardship' as opposed to 'good stewardship'. It is important that a proactive approach is taken to managing land holdings to avoid harm and achieve wider benefits. Deliberate and active decision-making can tackle wide-ranging challenges facing land owners, managers and the public, and ensure appropriate engagement and collaborative opportunities are explored at the right time, leading to more informed decisions. To ensure that land and assets are managed in a way that avoids harm and adds social and economic value, landowners and managers should proactively seek opportunities to engage and collaborate on their land holdings. Greater site-level information, understanding of the opportunities and constraints can lead to more informed land use decision making and help identify suitable end uses for a site. This can help address potential future issues before they become problematic, preventing land from becoming abandoned and long term derelict (https://www.landcommission.gov.scot/downloads/5f73555fbfe93_VDL%20Task%20Force%20Recommendations.pdf).

Principle FIVE

No further comments.

Principle SIX

Open and honest collaboration between land owners, managers and those in the public, private and third sectors is critical in seeing progress against the LRRS, in achieving wider benefits and in addressing significant local and national challenges. We know that many land owners and managers already work together to bring about positive change. For example, in the rural context the landscape-scale change we need to meet our net zero ambitions is only practicable through collaboration between neighbouring land owners and managers e.g. wildlife corridors; and in the urban context, public, private and/or community collaborations are often effective in addressing vacant and derelict land and meeting housing needs.

The LRRS currently emphasises the importance of collaboration between communities and land owners and managers, which we are supportive of, but could do more to recognise the value of wider collaboration between interested parties. This would bring greater alignment with other policy such as Regional Land Use Partnerships and the Land Use Strategy (<https://www.gov.scot/publications/scotlands-third-land-use-strategy-2021-2026-getting-best-land/pages/4/>).

This principle could also be strengthened by emphasising the benefits of participation and having a more balanced narrative between engagement, collaboration and participation.

Q5 Do you have any proposals as to how to measure change as a result of implementation of the Statement, including suggestions for indicators of progress? Please provide details.

There are some ways in which Scottish Government already measures change, although these are reported on individually rather than in the context of the LRRS. For example,

Scottish Government monitor the amount of land in community ownership. Bringing key indicators together for a regular 'stock-take' of progress with stakeholders would be beneficial and help to identify how we can collectively further the LRRS.

We also note an important gap in the measurement of progress towards the LRRS vision and principle in regular and consistent reporting on the concentration of land ownership to understand how and if this is changing.

Q6 Do you think that there is a need for regular reporting on implementation of the Principles of the Statement?

Yes

Q7 If you think that there is a need for regular reporting, how do you think this should be done and by whom?

There are currently limited monitoring and reporting requirements in place for the LRRS. This restricts our understanding of the impact of the LRRS, levels of implementation and progress towards achieving the vision. Monitoring and reporting requirements would improve accountability and transparency in land ownership and management and thereby strengthen implementation of the LRRS. The regular 5-year review of the LRRS conducted by Scottish Government is a good opportunity to review relevant indicators and stakeholder feedback on progress towards achieving the LRRS.

The Commission recommends that significant land owners and managers consider how they are delivering on the LRRS as part of regular business planning. This approach is being piloted through the LRRS self-assessment process which has formally engaged 23 land owners and managers to date, although others have also completed this informally. The LRRS self-assessment project has demonstrated that a review of implementation of the LRRS at individual landholding level is achievable, although useful feedback has been collated by the Commission on the self-assessment process which identifies some practical improvements to be made to our recommended approach. The findings from the pilot will be published in 2022.

Further encouragement for land owners and managers of all types to complete a voluntary self-assessment focused on identifying actions for future development would improve transparency, accountability and aid us in understanding the impact of the LRRS. Some participants in the self-assessment process suggested incentivisation and accreditation options to be important in encouraging uptake.

Public bodies, as significant drivers of cultural change, could be encouraged to demonstrate leadership in regularly preparing and reporting on an action plan and progress towards the LRRS. The Commission has identified work to support public bodies in making an LRRS self-assessment as an area for further development in 2022/23. The Commission will be publishing practical guidance specifically tailored to the needs and context of public bodies on implementing the LRRS within a community wealth building framework by April 2022 to support this approach.

Q8 If you would like to submit a case study, please provide details of a specific example. You may submit more than one case study.

There is a wide selection of case studies available on our website, with more in development: <https://www.landcommission.gov.scot/all-case-studies>

Q9 Are there any changes that should be made to the Advisory notes to make it more clear, relevant or reflective of current context? If your comment relates to a specific principle please flag that.

The advisory notes could better provide examples relevant to different sectors to demonstrate the expectations of the LRRS and good practice in delivering land rights and responsibilities. It may also be helpful to consider common challenges in implementing the LRRS and address these where possible in the advisory notes. There are several resources now available to support implementation and linking to those in the advisory notes may also be helpful e.g. the LRRS protocols (<https://www.landcommission.gov.scot/our-work/good-practice/land-rights-and-responsibilities-protocols>).

The statistics at the beginning of the discussion of each principle in the advisory notes do not seem relevant to the content of that principle. For example, advisory notes on principle 5 (relating to transparency) start with setting out how much forest Scotland has. Indicators pertaining to progress against each principle may be helpful instead, but we think it most important to focus on assisting people to understand what the principle means for them.

Some additional definitions may also be helpful in the Advisory notes. Specifically, definitions of natural capital, just transition and integrated land use may be helpful, depending on the final content of the LRRS.

Q10 Do you have any comments on the layout of the Statement?

No.

Q11 Please tell us about any sectors you perceive to have lower awareness of the Statement.

Through the Good Practice Programme we have observed lower awareness of the LRRS in an urban context, particularly amongst the housing, development and commercial property sectors. We note that faith and charitable organisations, outside of the community ownership and environmental sectors, may have lower awareness. In addition, whilst we have had contact with an increasing range of public sector organisations, the LRRS is applicable across a number of different functions, some of which likely have lower awareness than others. Finally, a range of professional advisors have regular contact and influence the decision-making process of land owners and managers. Solicitors, sales agents and accountants working in the land and buildings sectors should also have increased awareness of the LRRS.

Consideration of how awareness of the LRRS is raised on a sectoral basis is useful, but we are also conscious that organisations within these sectors are not homogenous and vary greatly by size, context and governance structure.

Q12 Do you have any suggestions of ways to engage with sectors who do not currently see the Statement as relevant to them?

The Good Practice Programme is well placed to raise awareness and support voluntary implementation of the LRRS in sectors with less awareness, as far as resources permit. We have identified several approaches to engagement that are effective and can build on these in the future supported by communication campaigns. We have found that tailoring our training, resources and case studies to different sectors improves engagement and we could broaden out our work to include and target more sectors, where capacity allows. For example, we have recently developed guidance on the LRRS for the public sector which recognises their priorities and context. The guidance aligns with other priorities and drivers

such as community wealth building, tackling vacant and derelict land and a just transition. Early feedback has indicated that this approach is helpful and encouraging.

Sector leaders and membership organisations have supported the Good Practice Programme by enabling us to understand the contexts within which organisations operate and ensure that our expectations in the LRRS protocols and other guidance are practicable. These organisations have worked with their members to consider and implement the LRRS and supported the Good Practice Programme in reaching people in formats and settings most appropriate to their context. Their continued support is invaluable in reaching their peers and members. We intend to continue and extend our work with sector leaders and membership organisations to reach other sectors as identified above and through the review of the LRRS. Ultimately, we seek to achieve a cultural change where putting land rights and responsibilities into practice is considered a normal part of owning and managing land and buildings.

An evaluation of the Good Practice Programme will be published in 2022 and enhance our understanding of the approaches to voluntary implementation that are most beneficial and could be applied to different sectors.

Q13 Do you have any ideas for other ways that adoption of the Statement could be promoted?

1. Further promote voluntary adoption of the LRRS through the Good Practice Programme

There is more we can do through our Good Practice Programme to support and develop approaches to voluntary adoption of the LRRS. We take an encouraging and supportive approach to assisting people in aligning with or furthering the LRRS through our Good Practice Programme.

Many land owners and managers have enthusiastically adopted the LRRS and the Commission's protocols voluntarily with support through the Good Practice Programme and from sector-led organisations. Consensus over reasonable expectations for implementing land rights and responsibilities was reached with the Good Practice Advisory Group and other stakeholders through dialogue and engagement with members. Many land owners have used the protocols to assess their alignment with the LRRS and identify actions to improve or develop practice, where applicable. The aligned programme of training, guidance and support for land owners provided by the Commission and sector-led organisations has been effective in developing good practice and implementing the LRRS. The support and involvement of sector-led organisations has been essential to achieving this.

There are times when land owners, managers or community organisations need further support or information to understand or apply the protocols. Land owners, managers, community organisations and members of a community contact us about these cases and we work with them and other parties in a positive and constructive way to seek solutions to the issues. This usually includes raising awareness of the LRRS, the Commission's work, and the expectations that are set out in our protocols. It is important to note that our protocols are voluntary - we do not have any powers to compel anyone to engage or act in a certain way. This case work has proved useful in resolving issues between land owners/managers and communities. Most, but not all, land owners/managers and communities will engage with us on a voluntary basis to discuss any concerns and find a mutually acceptable solution. Case work often leads to deeper discussions with land owners/managers about their wider practice.

There is greater awareness of the LRRS and subsequent adoption of the principles in private rural, farm, NGO, and community ownership sectors where the Commission and supportive stakeholders have concentrated efforts to date. A focus on encouraging voluntary adoption of the LRRS in particular sectors is effective in ensuring land owners and managers understand the relevance and applicability of the LRRS in their context. The recent focus of the Commission, in partnership with stakeholders, has been on the public sector where awareness has increased significantly in the last year.

The Commission has noted an increasing demand for support to implement the LRRS on a voluntary basis. Over the coming year we have plans to develop our Good Practice Programme including: expanding our training programme to reach more people; revising the LRRS self-assessment process to make it more accessible; publishing guidance on implementing the land and assets pillar of community wealth building; and working with stakeholders to develop a protocol on natural capital.

2. Encourage sector membership organisations to further develop their own guidance and support for land owners and managers

The support of sector membership organisations has been invaluable in developing and delivering the Good Practice Programme. In some circumstances these organisations have carried out independent activities to support the delivery of the LRRS. For example, the Timber Transport Forum developed its own sector guide on community engagement (<https://www.landcommission.gov.scot/our-work/good-practice/community-engagement/timber-transport-forum-developing-consultation-and-engagement-guidance>).

We would encourage sector membership organisations to consider how they can continue and develop support for their members to be aware of and adopt the LRRS. The Commission can support organisations in developing their approach and suitable resources.

3. Give the LRRS greater statutory weight

Our experience of the Good Practice Programme shows that significant progress can be made through voluntary approaches. However there remain situations in which land owners or managers (in any sector) do not choose to engage with it, or do not see it as being of significance in decision making. We consider there would be benefits in giving the implementation of the LRRS greater statutory footing. We are conscious of the need for any such measures to remain proportionate and to support, rather than replace, collaborative and voluntary adoption. While a backstop measure may be necessary, the first approach should remain a supportive approach to adopting good practice.

The model and experience of the Tenant Farming Commissioner (TFC) offers useful learning. The TFC has statutory functions to prepare and promote codes of practice on agricultural holdings; and to conduct inquiries into alleged breaches of codes of practice. The codes of practice provide clear guidance on the expectations for all parties. The TFC works closely with stakeholders to develop the codes, though their content is ultimately a matter for the Commissioner. This approach has encouraged voluntary compliance with the codes of practice, creating a cultural shift in behaviour. To date there have been no formal investigations into alleged breaches of the codes of practice.

There is widespread support for the functions of the TFC to continue, and support from some stakeholders for the functions to be extended to allow the TFC to impose sanctions or fines on parties found in breach of the codes of practice. Stakeholders consider the codes of practice to be fair, robust, easy to understand and useful, and it is thought that they will improve relations between tenant farmers and landlords (<https://www.gov.scot/publications/review-functions-tenant-farming-commissioner/>).

A similar model could be applied to support implementation of the LRRS, for example by amending the functions of Land Commissioners. There are important differences in context to note, for example the agricultural holdings legislative context to which the codes relate is more tightly focused than the LRRS, but nonetheless a similar dynamic could be established in which the use of codes backed by a statutory function support culture change.

We have also drawn on this approach in our recommendations to address scale and concentration of land ownership, in recommending the introduction of a formal review mechanism, framed within the LRRS, to address cases of poor practice (https://www.landcommission.gov.scot/downloads/601acfc4ea58a_Legislative%20proposals%20to%20address%20the%20impact%20of%20Scotland%E2%80%99s%20concentration%20of%20land%20ownership%20-%20Discussion%20Paper%20Feb%202021.pdf).

4. Strengthen public sector engagement

The public sector plays an important role in delivering the LRRS. Many public bodies are significant land owners and managers, able to demonstrate leadership and move forward cultural change in the ways that they act. The sector can further play a pivotal role in delivering land reform by acting as a catalyst for further action and collaboration, playing the role of broker, aligning policy and legislation and supplying useful data (https://www.landcommission.gov.scot/downloads/5f73555fbfe93_VDL%20Task%20Force%20Recommendations.pdf). This is a mutually beneficial role as the LRRS can be seen as a tool to get the Place Principle, community wealth building, community empowerment and other approaches working more effectively and consistently.

Consideration could be given to a new duty on public bodies to report on and develop an action plan for furthering the LRRS. This would be in-line with LRRS principle 1. We anticipate that this would encourage public bodies to implement the LRRS and realise multiple benefits. We can continue through the Good Practice Programme to support implementation of the LRRS in the sector through voluntary action.

5. Improve policy alignment, including conditionality of public funding

Traction for the LRRS would be gained by further building in the LRRS to public policy and conditionality of public support. Public policy is not yet fully aligned with the LRRS and public funding can sometimes be seen to incentivise behaviour which is contrary to the LRRS (https://www.landcommission.gov.scot/downloads/5dd7d6fd9128e_Investigation-Issues-Large-Scale-and-Concentrated-Landownership-20190320.pdf). We need to ensure there is consistency in public policy and appropriate recognition of the LRRS.

This would assist in achieving benefits beyond implementing the LRRS. For example, the LRRS principles align with, and offer a practical basis for ensuring, the integration of long-term public interest in land ownership, management, and use. Adopting this into planning policy can provide a consistent approach across land use sectors in Scotland. Additionally, embracing principles such as good stewardship, community engagement, and transparency, can empower planners to act in the public interest and encourage productive land use and ownership.

Furthermore, we understand that many public bodies have not yet considered how they can further the LRRS through their outward-facing policy and conditionality of funding. Land owners and managers access a range of public support and funding and require licences or permissions for certain activities. Alignment of public policy and support with the LRRS could

be very influential in furthering its aims. A pre-requisite for public funding could be adherence to the LRRS and LRRS protocols.

6. Progress, outcomes and benefits

An improved approach to monitoring and evaluating the implementation of the LRRS would also incentivise and encourage land owners, managers and users to understand and appreciate their contribution to realising the vision of the LRRS. It would also help us to understand the outcomes achieved and the benefits to all parties of furthering the LRRS.

IMPACT ASSESSMENT QUESTIONS

Q14 Are you aware of any examples of how the proposals in this consultation might impact, positively or negatively, on island communities in a way that is different from the impact on mainland areas?

No.

Q15 Are you aware of any examples of particular current or future impacts, positive or negative, on young people, (children, pupils, and young adults up to the age of 26) of any aspect of the proposals in this consultation?

No.

Q16 Are you aware of any examples of how the proposals in this consultation may impact, either positively or negatively, on those with protected characteristics (age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation)?

No.

Q17 Are you aware of any examples of potential impacts, either positive or negative, that you consider that any of the proposals in this consultation may have on the environment?

No.

Q18 Are you aware of any examples of how the proposals in this consultation might impact, positively or negatively, on groups or areas at socioeconomic disadvantage (such as income, low wealth or area deprivation)?

No.

Q19 Are you aware of any potential costs and burdens that you think may arise as a result of the proposals within this consultation?

No.

Q20 Are you aware of any impacts, positive or negative, of the proposals in this consultation on data protection or privacy?

No.