

The voice of  
Scotland's  
environment  
community



## Scottish Environment LINK submission of evidence to the House of Commons' Scottish Affairs Committee consultation on comprehensive land reform in Scotland

### Land, sea and air

Land, sea and air are the spaces where life exists on our planet. They are the fundamental spheres of our environment and together constitute the biosphere. As a species, we share these spaces with the other species and the natural, physical universe. In this shared space, whether urban, rural or wild, we depend upon the other species, as they depend upon us. The principles we offer for the land in this submission (and the suggestions as to how they might be applied) underlie our approach to the land, but to the seas and the air also.

LINK welcomes the opportunity to contribute to the House of Commons' Scottish Affairs Committee consultation on comprehensive land reform in Scotland. We have only a limited mandate to offer comments on the economic and social aspects of land reform, but we hope that we might offer a significant perspective with regard to many of these concerns and, in particular, to environmental concerns.

In this submission we seek to outline our broad views on:

- what constitutes land reform;
- the definition of community;
- land ownership;
- stewardship and sustainable development;

We then summarise our aspirations for public policy governing the relationship between the land and the people of Scotland.

### What constitutes Land Reform?

Much of the debate on land reform has been about land ownership, almost always acknowledging that ownership affects land use, but paying so little attention to the way we use land as to amount to ignoring the issue. It is land use which most concerns LINK and its members. We are aware that a new type of owner *might* change the use they make of a piece of land, but we are also aware that the new owner might stick, to all intents and purposes, to exactly the same usage. From an ecological perspective it is NOT the ownership of the land that is important, but the way the land is used.

In LINK we start from the position that much of the way we use the land of Scotland currently is not sustainable. Huge economic, social and environmental benefits could be obtained from improving the levels of sustainability in the way we use the land – but if land reform does not lead to a major change in attitudes to land use it might be a missed opportunity, and, at worst positively harmful to our environment.

While as LINK we are primarily interested in the use of the land rather than necessarily who owns it (since you can have good and bad examples of all kinds of ownership), we readily acknowledge that the way most of the land is currently used is being driven by the historic patterns of usage and by subsidy systems. These historically established patterns of ownership and our public institutions and policies have led to most of the problems and solutions we have identified in the section on 'our aspirations' at the end of this submission. We call for much needed legal protections for the ecosystems, public accountability of landowners, equitable taxation and balanced subsidy regimes, because so much current ownership is for single or limited land uses, with little or no reference to the public interest and the principles of sustainability.

**It is time for the land debate to give equal space to land ownership and to land use.**

### **Defining Communities**

LINK believes that the health of our democracy relies on recognition of the existence of communities of both place, and interest, and the representative function of people who have the assent of both types of community. We hope that the concept of "community ownership" is interpreted by the Committee to the ownership of land by communities in both senses. We ask that it be noted that some LINK members own significant areas of land in Scotland and that we consider this to be land held in trust for the communities of citizens who are our members – and for the community that is the nation. A fuller explanation of our views on the definition of community can be found in our MSP and Councillors briefing:

<http://www.scotlink.org/files/policy/ParliamentaryBriefings/LINKDefiningCommunityEpwrmt.pdf>

### **Ownership**

You can't "own" a cloud, or the rain, or a river. Nobody "owns" a wild animal under Scots law. For these reasons, you can't "own" the land, the sea or the air in the same way you can exclusively own a piece of moveable property. Nor can you own land intimately (albeit for a limited period of time) as you can intellectual property. When land, sea and air are "owned", it is conditional on the understanding that they are already, in fact rather than a legal construct, shared jointly by all members of all species who use that space. This joint space is the ecosystem, and for both legal and scientific purposes, we all live in one space. We all live in an ecosystem – the biosphere - and a small part of this ecosystem can be "owned" purely within the legal limitations, and with the very real inclusion of all others. Legal ownership of land is conditional, therefore, on the understanding that such "ownership" is subsidiary to land being a part of the common wealth of all people and all species.

Several members of LINK "own" land (as do many other non-Governmental organisations representing communities of place and interest in urban and rural settings). Such ownership is an important means to achieving environmental and cultural conservation objectives. The legal rights from such ownership are important in this respect, and should be protected. The land concerned is managed in full recognition of the limitations and duties of such "ownership", including the responsibilities to other people and other species.

Some of the LINK members with Scottish land holdings have undertaken a joint study of their ownership of land and the results of this project are available at:

<http://www.perth.uhi.ac.uk/specialistcentres/cms/activities/Documents/Final%20NGO%20Land%20Report%2024%2004%2013.pdf>

### **Stewardship and Sustainability**

Many environmentalists and conservationists do not readily accept the notion of human dominion over the biosphere held by some religious or humanist groups, but we all recognise the simple fact of human history and presence. People have an enormous impact on the biosphere and a duty to manage our activities responsibly, particularly where our use of space threatens the very existence of other species. We believe that our history

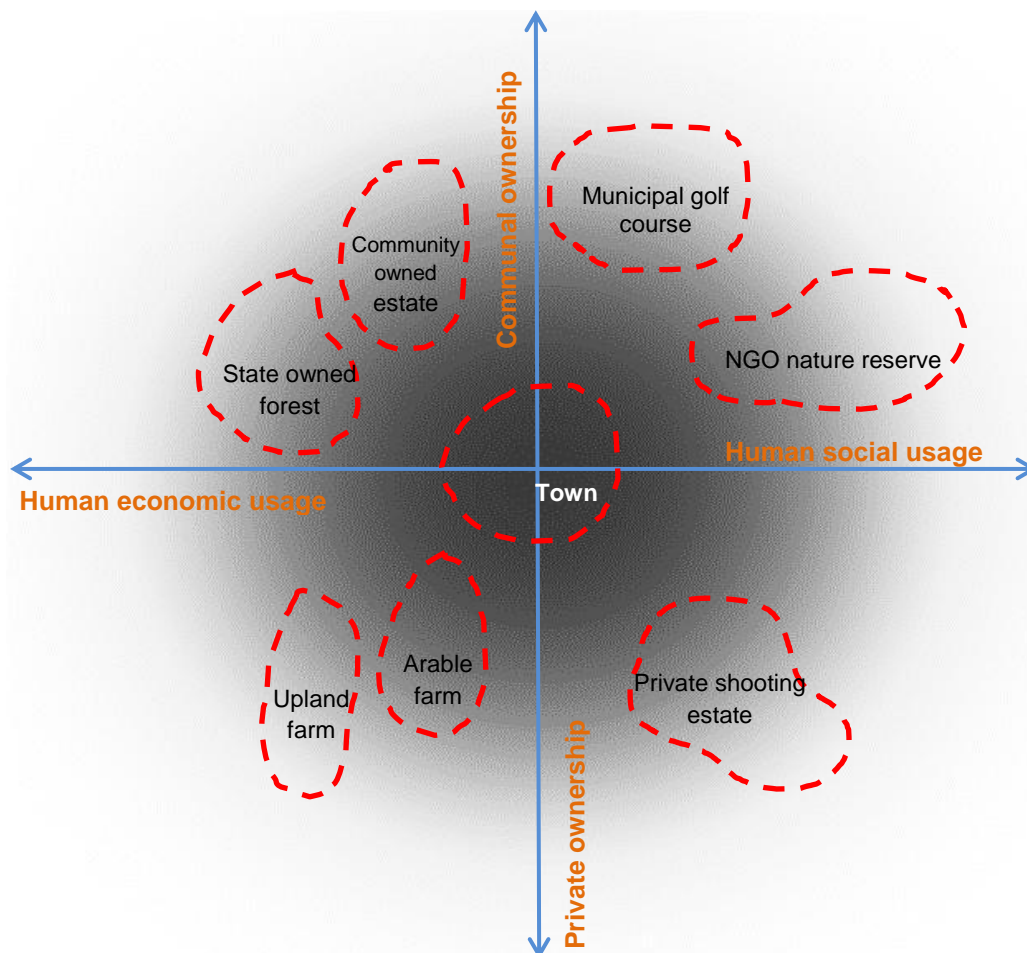
demonstrates the need for an acceptance of the idea that our species has a duty of “stewardship” of the environment, however that might be defined. Since the last ice age human society has used and changed the vast bulk of Scottish land directly – through agriculture, deforestation, reforestation, urbanisation, mineral extraction and other uses. Indirectly, all of the land of Scotland is farther affected by human activity through global processes such as climate change or damage to the ozone layer.

LINK has no preference between the many types of limited legal ownership or dominion of land by people. All such forms can provide either benign or malign stewardship within the principles of sustainability we believe in. We have, however, set out our wish to see “real subsidiarity, where decisions are taken at the nearest appropriate and practical level, and where communities of place and interest can assess the long-term economic, social and environmental consequences for their lives and the lives of future generations before decisions are made.” This view and other details of our broader manifesto can be seen at: <http://www.scotlink.org/files/publication/other/LINKReferendumChallenge2012.pdf>

Environmentalists and conservationists do not seek, generally or widely, to “re-establish wilderness” or “reclaim all land from human use”, as has been sometimes claimed - but we do seek to ensure that human land use respects the ecosystem and biodiversity, together with our landscape, cultural and historic legacy, and that the land is sustained for future generations. This aim includes our mainly limited, or sometimes zero, intervention in areas of land we “own” as a community of interest. Scotland has obligations in international law to achieve sustainability – and in this we believe Scotland must follow the precepts and definitions laid out in the 1987 report of the Brundtland Commission, ‘Our Common Future’.

**A model of an ecosystem space**

overlaid with indices of human dominion/ownership - and **indicative** examples of usage



Decreasing intensity of human usage and/or ecosystem impact from most intense to least intense

## **Our Aspirations**

Please find here a summary of our aspirations for public policy governing the relationship between the land and the people of Scotland. We believe that this area of public policy is in need of reform urgently if we are to achieve truly sustainable development.

## **We want a Scotland where.....**

**..... all land owners and managers understand and observe defined environmental rights and responsibilities.** We recognise and understand that the Scottish community has the right and shall decide upon the system for the economic and social division of the land between people. This division, however constituted, must be balanced by a full understanding of the shared aspects of our dominion over land - the ecosystem cycles and services and the biodiversity that are an inseparable function of the space. Legal protections must be put in place to ensure the integrity of these cycles, services and biodiversity.

**..... the ownership or dominion over land is open and transparent.** We need public registers of land that allow us to know exactly who bears the legal duties and responsibilities for ecosystem cycles and services within any defined space – in order that these duties and responsibilities can be enforced and the ecosystem services protected. This transparency must cover all land, and ownership and management by communities, individuals and corporate entities. It should allow for the identification of ‘absentee’ owners who do not live on the land owned.

**..... all public policy for land is set out in a democratically established Land Use Strategy.** The strategy should be developed from that established in the Climate Change (Scotland) Act (2009) and should continue to be based upon the principles of environmental, social and economic sustainability. It should ensure that both communities and the ecosystem are sustained for future generations. It should include efficient processes to ensure the accountability of land managers for their performance in delivering the strategy and refer to effective regulatory systems. We set out our view of these principles in the paper ‘Living with the Land’ which can be found at:  
<http://www.scotlink.org/files/publication/LINKReports/LINKReportLivingwithLand.pdf>

**..... the planning and regulatory systems for land use take account of global, national and local terrestrial, freshwater and marine ecosystem impacts.** We need protections for ecosystem cycles, services and biodiversity which are based on the best available science - including the clear designation of spaces and appropriate management responsibilities where threatened species are located, in order that biodiversity is maintained.

**..... any land taxation is designed to be economically, socially and environmentally sustainable.** It should be equitable, and underpinned by an awareness of the effect of the fiscal regime on the ecosystem and biodiversity. Alongside the promotion of economic and social development, one of the core purposes of any land taxation should be the protection of the ecosystem and biodiversity.

**..... any public policy subsidy for land use fully balances economic, social and environmental concerns.** Public policy should recognise that unbalanced subsidy regimes can cause severely dangerous impacts to communities, the ecosystem and biodiversity. Such public policy should also be consistent and coherent in all its many strands.

**..... openness and public participation are central features of our governance for land use.** We want the methods and processes of government at local and national levels to be

open and properly transparent and, as a matter of course, to include genuine representatives of our communities of place and interest in all political decision-making

..... **recognition that the term ‘community’ applies to both communities of place and communities of interest.** We want to see a balance between the views of local communities and communities that seek to apply principles relating to national and global issues of concern such as the fight against climate change or the protection of ecosystems and biodiversity. We believe that the community interest is best represented when communities of place and interest co-operate.

..... **the traditional right to roam of Scots is maintained.** The Land Reform (Scotland) Act (2003) set out in legislation for the first time the right of public access to land in Scotland, with the attendant responsibilities of the public and land managers. We want to see this right jealously guarded and full and continuing recognition of the underlying principle that land ‘ownership’ is conditional and limited in Scotland – and subject to public rights and interest.

..... **the establishment of adequate procedures for the resolution of conflicts concerning land and environmental protection.** This should include provision for the required legal and scientific expertise in Scotland’s courts and tribunals, and for specialist courts or tribunals if necessary.

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This LINK submission to LRRG was endorsed by:

- Woodland Trust Scotland
- Scottish Badgers
- RSPB Scotland
- Archaeology Scotland
- Marine Conservation Society
- Ramblers Scotland
- Association for the Protection of Rural Scotland
- Scottish Wild Land Group
- Scottish Allotments and Gardens Society
- John Muir Trust
- Froglife Trust (Scotland)
- The Bumblebee Conservation Trust

Scottish Environment LINK is the forum for Scotland's voluntary environment community, with over 30 member bodies representing a broad spectrum of environmental interests with the common goal of contributing to a more environmentally sustainable society.

Its member bodies represent a wide community of environmental interest, sharing the common goal of contributing to a more sustainable society. LINK provides a forum for these organizations, enabling informed debate, assisting co-operation within the voluntary sector, and acting as a strong voice for this community in communications with decision-makers in Government and its agencies, Parliaments, the civic sector, the media and with the public.

Acting at local, national and international levels, LINK aims to ensure that the environmental community participates in the development of policy and legislation affecting Scotland. LINK works mainly through Taskforces – groups of members working together on topics of mutual interest, exploring the issues and developing advocacy to promote sustainable development, respecting environmental limits.

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