

Scottish land reform: the first act

Charles Warren

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In this article *Charles Warren* examines the contents of the proposed land reform legislation in Scotland and the competing claims of the various stakeholders.

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Defence of the *status quo* is a lost battle

In a year when land reform has led to tragic bloodshed in Zimbabwe, we can be profoundly grateful that the process of Scottish land reform is contained within a peaceful, democratic framework. Nevertheless, Scotland's '*white farmers*' (private owners of large estates) have looked on with alarm as the '*war veterans*' (land reformers) have metaphorically arrived to squat at their gates. Though no blood has been spilt over Scottish land reform, current debates are certainly characterised by high blood pressures and verbal assassinations. At the same time, all now accept that the ball of land reform is rolling with considerable momentum. Defence of the *status quo* is a lost battle; the question now is how far – and in what direction(s) – the ball will roll.

Legislation focuses on community ownership and public access

The background to Scottish land reform, and progress to mid-1999, was discussed in an earlier article¹. A White Paper was published in July 1999², and a Draft Bill originally promised for early 2000 is now expected later in the year. Separate legislation to abolish the feudal system is already making its way through the Scottish Parliament. The flagship measures of the proposed legislation focus on community ownership and public access to

private land. The first will give local communities a right of first refusal when land comes on the market. The asking price will be set by a government-appointed valuer, and only if communities fail to raise the necessary sum within 6 months will the owner be free to sell on the open market. A community's quest for funds for land purchase and management will be boosted by the Scottish Land Fund, established early in 2000 by the Lottery's New Opportunities Fund with a pledge of £10.8 million for the first three years. The right to buy will be backed by a new power of compulsory purchase to deter evasion.

The delay to the Draft Bill has been caused primarily by the decision to incorporate a specific right to buy for crofting communities, a measure which is by far the most radical element of the entire package³. Whereas the community right to buy will apply only when properties come onto the market, the crofting provisions will give the initiative to the purchaser: thus at any time crofters will potentially be able to take ownership of almost one million hectares of land in the crofting counties.

The inclusion of access as the second pillar of the initial land reform legislation has been controversial. Arguments that the hard-won agreements of the recent Access Concordat should be given time to work - or, at the very least, that the issue merited separate legislation - have fallen on deaf ears. The proposal is to create a statutory '*right of responsible access to all land in Scotland for informal recreation and passage*', subject to certain exceptions and safeguards. SNH is preparing a Scottish Countryside Access Code to accompany this measure.

What's not been included?

Several of the recommendations made by the Government's Land Reform Policy Group⁴ (LRPG) were not included in the White Paper. Proposals for compulsory state purchase of private estates run by '*bad*' landowners have been dropped, partly because of definition problems, and the vexed issue of agricultural tenure arrangements is now the subject of separate consultation. The legislation will nevertheless be a significant first step down the road of land reform.

The creation of national parks

Swept up with the central matter of land tenure reform *per se* have been a number of wider issues of land policy, notably the creation of national parks⁵. The long decades of campaigning are now within touching distance of bearing fruit. Enabling legislation in the form of the National Parks (Scotland) Bill is progressing through the Scottish Parliament and is likely to receive Royal Assent later this year. The first two national parks are likely to be

created under separate designation orders within the next 18 months. The establishment cost of these parks – Loch Lomond and the Trossachs, and the Cairngorms – is now put at £9.8 million, with annual running costs of £2.4 m and £1.96 m respectively. The overarching aim within these parks will be to strike a balance between conservation, recreation, sustainable use of natural resources, and economic and social development. However, where these aims conflict protection of natural resources will be given priority⁶.

Predicable and divergent views

Predictably, reactions to the land reform proposals have been outspoken and divergent. While the Scottish Landowners Federation has expressed support for the central themes of increased diversity of land ownership and use, and more community involvement, it takes issue with much of the detail, especially with the proposed community right-to-buy. It fears that the reforms will depress land values and lead to a haemorrhage of jobs and investment from rural Scotland, as well as risking damage to the natural heritage. In the view of *The Times*⁷, the proposals '*raise fundamental questions, both of equity and of practicality*', constituting '*a revolutionary experiment in social engineering*'. The Scottish Tories go further, describing the planned crofting reforms as Stalinist.

At the other end of the spectrum are those who view the current proposals as wholly inadequate. Prominent amongst these is Andy Wightman, a long-term campaigner for radical reform, who has subjected the proposals to detailed analysis^{3, 8}. While welcoming the prospect of legislation, he is deeply critical of the fact that 'the fashionable idea of community' has become 'the holy grail of land reform'. Given his own active advocacy of an expansion of community ownership this is surprising, but in his view, community ownership is to the current debate what land nationalisation was to the debate in the 1970s. Given that most private land has not been on the market for over a century (and some for over four centuries), he describes as '*plain nonsense*' and '*mere rhetoric*' the claims made by the LRPG that a right-to-buy would greatly empower communities and effect rapid change in the pattern of land ownership. Building such a right into land law would put communities in the unenviable position of having to choose between the uncertainties of the market and the uncertainties of community ownership, polar opposites which may repel in equal measure. The recent high-profile cases of Eigg and Knoydart have reinforced the perception that community ownership is the best and only antidote to the abuse of landed power, but both were unusual cases.

The radical land agenda

His argument is that current proposals treat symptoms, not causes, and that the chief cause is the great size of most private estates – or, in the words of Donald Dewar⁹, '*too much*

control in too few hands'. Instead of opening up the ownership of established holdings to the many, Wightman argues that land reform should aim to break up these large holdings and establish a tight regulatory framework for land ownership. His own radical agenda includes:

- upper size limits on holdings;
- residency obligations for landowners;
- reform of succession law;
- restrictions on absenteeism and foreign ownership;
- giving agricultural tenants the right to buy, plus more flexible leasing arrangements; and
- the introduction of Land Value Taxation.

A significant and symbolic break with the past

Clearly, the advent of land reform legislation is a momentous watershed, a significant and symbolic break with the past. Equally clearly, however, the legislation is likely to have nothing like as radical and far-reaching an impact as some politicians like to pretend, nor will it lead to rapid changes in the pattern of ownership. Effective land reform must always be a process, not a quick fix; the scheduled Bill will be just the first act of an extended saga.

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Further information

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