

# Grasping the Nettle of Land Reform

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*Last week the Scottish Office's Land reform Policy Group published their first report. Jim Hunter assesses its significance.*

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## **Gathering Land Reform Ideas and Engaging in the Policy Debate**

Debate about the Scottish parliament has tended recently to concentrate on where the Parliament should be located and on who might, or might not, be among its members. There has been rather less debate about what the parliament might actually do. Now, with the appearance of the first report of the Scottish Office's Land Reform Policy Group, the parliament is beginning to be provided with a legislative programme –

*a programme in which the issue of how our land is owned and managed will evidently feature prominently.*

The Land Reform Policy Group is chaired by the Scottish Agriculture and Environment Minister, Lord Sewel. Its membership consists of senior civil servants from both the Scottish Office and the Forestry Commission – with Professor John Bryden, now of Aberdeen University and formerly of the Highlands and Islands Development Board, acting as the group's external assessor and advisor.

When announcing the policy group's formation, back in October, Lord Sewel, a man with his own long-standing interest in rural issues, made clear that the group's principal task would be to equip the Scottish parliament with a "*a sound basis for legislative action on land reform*". That point is reiterated in the introduction to the policy group's first report. "*With the creation of the Scottish Parliament imminent,*" the report asserts, "*the time is right for a new, comprehensive review to determine what needs to change to fit Scotland's land legislation for the twenty-first century.*"

And the report is refreshingly blunt as to why change is required. “*Land reform is needed on grounds of fairness and to secure the public good*”, the report states. It continues: “*Land is a key resource. The life chances of people living in rural areas depend on how it is used. All too often in the past, the interests of the majority have been damaged by the interests of the few who control that resource.*”

It has lately become something of a fashion among political commentators to argue that not as much changed on 1<sup>st</sup> May last year as we might initially have thought; that New Labour is just Old Conservatism in a different guise; that the prospects of radical reform are as limited today as they were 12 months ago.

The sentences quoted in the previous paragraph, however, give the lie to that. Read them again and remember, as you do, that they are abstracted from an official document published by the Scottish Office – a Scottish Office which, prior to the present Government being elected, would have been most unlikely, to put it mildly, to attach its name to these sentiments.

There is also much that is encouraging about the way that members of the Land Reform Policy Group are going about their task. Their initial report, *Identifying the Problems*, seeks principally to stimulate discussion by highlighting a range of issues on which the Scottish parliament might want to take action. But the policy group, other than very tentatively, do not – at this stage – suggest what the action might be.

The overriding aim, for the moment, is to persuade others – politicians, local authorities, interested individuals, the electorate at large – to engage with land reform. From the ensuing dialogue, it is hoped, some degree of consensus will emerge both as to the nature of problems arising from the current ownership structure and as to how these problems might best be tackled.

## **The Key Land Reform Issues**

Noting that “*the pattern of landownership in Scotland remains dominated by a small number of large (often very large) estates*”, the policy group begin by asking how the situation might be altered. Is there a need, for example, to limit foreign or absentee ownership?

Highlighting a matter of particular concern to people living in the West Highlands and Islands, the policy group query the role of the Crown Estate Commission. The Commission, the group observe, will remain the responsibility of the Westminster Parliament after devolution. But the Scottish Executive – meaning in effect, the Scottish Government – could nevertheless press for changes in the Commission’s remit. And policy group members clearly accept that there might well be a case for generating just such pressure.

There is equal acceptance of concerns arising from the purchase of more and more land by organisations like the Royal Society for the Protection of Birds (RSPB) and the John Muir Trust. “*While the number of jobs involved in managing land primarily to safeguard the natural heritage can often be greater than provided by more traditional land use,*” the policy group observe, “*there is sometimes criticism that*

*relatively little of the employment opportunities generated on the estates go to local people ..... And that local accountability is lacking.”*

There is a welcome for the formation of Highlands and Islands Enterprise’s Community Land Unit. And it is implied – correctly – that the unit may well have a role to play in resolving the difficulties which can arise as a result of the virtual impossibility in some places of obtaining land for badly-needed housing, commercial development and other purposes.

Particularly intriguing, in this regard, are the policy group’s thoughts on the possible beefing up of compulsory purchase powers: *“Local authorities and other public agencies have wide powers to acquire land either by compulsory purchase or by agreement to enable the development or use of land. But because compulsory acquisition interferes with individuals’ property rights, legislation provides for it to be used only in specific purposes”*. The group note that existing compulsory purchase powers are rarely, if ever, used. *“To what extent are existing powers defective and in need of amendment or replacement?”*

### **Crofting Reform Issues**

Turning to crofting matters, the group remark that *“many commentators have called for the creation of new crofts or smallholdings”* and go on to concede: *“The lifestyle is one which is attractive to many; and the pattern of land settlement it implies fits well with the objective of sustainable development of rural communities.”*

The group’s members are prepared to consider the possibility of amending the right-to-buy provisions of the 1976 Crofting Reform Act. They are equally prepared to consider extending to crofters on privately-owned estates the rights which crofting tenants on the Department of Agriculture’s crofting estates were given by last year’s Transfer of Crofting Estates Act.

That Act entitled crofters on these government-owned estates to move, as of right, to community ownership. The policy group comment: *“There have been calls for community ownership rights to be extended to privately-owned crofting estates. In fact, this could be done under existing legislation (through a complicated and time-consuming process of apportionment of common grazings to each crofter’s inbye, then each opting for an individual right to buy, then each vesting all the land in a community trust). Under these circumstances, would it make sense to look at ways to bring all other crofting communities into a single simplified procedure for acquiring community ownership?”*

Might it also make sense for crofting communities to take over their own administration? The policy group observe: *“Current administrative systems for crofting and crofting support are remarkably complex. From a crofter’s perspective, they are also distant and they reflect a largely outdated concept of the crofter as in need of protection and direction of the Crofters Commission (and others). Is this part of the problem? An approach which gave more power and responsibility to crofting communities themselves at local level might be more in keeping with empowering local communities as much as possible.”*

## **Conservation Designations and the Abolition of the Feudal System**

The policy group welcome the Government's decision to review the way in which Sites of Special Scientific Interest (SSSIs) are imposed by Scottish Natural Heritage (SNH). The group note that SNH will also be looking into prospects for National Parks and making recommendations on possible changes in the law regarding access.

One reform that will definitely be on the agenda of the Scottish parliament is the abolition of the feudal system. Out will go the complex, and often highly oppressive, rights which feudal superiors can currently exercise over land ostensibly in the ownership of others. In will come a system of outright ownership. *"Reform will abolish the right of a feudal superior to obstruct and hinder the development of property"*, the policy group state. *"The ability of the superior to demand significant sums of money in return for granting consents to waivers of land conditions will disappear."*

A whole series of other issues are explored by the Land Reform Policy Group's report – issues ranging from the need for an updated land register to the requirement to allow tenant farmers to exercise ownership rights over trees. But the report's overall significance undoubtedly lies in the extent to which it opens up the prospect for reforms which, for all that they have been urged in the columns of this newspaper for the last quarter of a century, sometimes seemed destined never actually to occur.

## **Gauging the Public's Response and Advocating for Further Reform**

Over the spring and summer, Lord Sewel and his colleagues on the Land Reform Policy Group will be gauging the public response to their first report. In the light of that response, they will be formulating a series of specific reform proposals. Following further debate on the detail of these proposals, policy group members will go on to produce, by the end of the year, what will amount, in effect, to a draft Land Reform Bill – a Bill which can be taken up, in due course, by the Scottish parliament.

On the basis of what has now been published, there is no reason why the Bill, as well as containing provisions for the abolition of our centuries-old feudal system, should not also be seeking, for example, to:

- **Re-define and extend compulsory purchase powers over land;**
- **Facilitate the creation of new crofts and new crofting settlements;**
- **Extend to crofters on privately-owned estates an absolute right to move towards community ownership;**
- **Introduce more locally-based forms of crofting administration;**
- **Replace the present Sites of Special Scientific Interest (SSSIs) with more people-friendly designations; and**

- **Give the Scottish people a legislatively-guaranteed right to walk on Scotland's mountains.**

It is easy, of course, to think of other things that should ideally be included in a Land Reform Bill. One of my own priorities would be the re-introduction of sporting rates or something analogous to them – preferably at a level high enough to take some of the steam out of the speculative market in Highlands and Islands estates.

But there will be plenty of opportunity, in the months ahead, to make this and other points to the Land Reform Policy Group. That opportunity must be taken. The work of the policy group will clearly go a long way to constituting the basis on which not just Labour, but other political parties also, will be seeking to obtain a mandate for land reform in the course of next year's elections for the Scottish Parliament. The more radical the Land Reform Policy Group can be persuaded to be, therefore, the more radical will be reform when it comes.

### **Further information**

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