

Proposals for changes in the Highlands and Islands Development (Scotland) Act 1965 to allow more effective powers over rural land use

Highlands and Islands Development Board
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Preface

1. During 1976 the Board reviewed and revised its strategy for land development. The Board's recommendations were largely accepted by its Consultative Council and, following consultations with farming and other interests, were subsequently published in *Occasional Bulletin 7, Highland Agriculture and Land Use: Past Activities and Future Policies of the Highlands and Islands Development Board*.
2. Proposals relating to land use and acquisition constituted an important part of this strategy paper. Agreement *in principle* to these proposals was obtained from the Consultative Council, who accepted that the Board "*must have the ultimate sanction as a spur to realistic negotiations and agreements*" on land use, and that the existing procedures were "*clumsy, ineffective and expensive, and in need of suitable strengthening*".

The principle of improved powers was also supported by the Highlands and Islands Committee of the National Farmers' Union. Meetings with the Scottish Office were held in September 1976 and January 1977. These meetings established that practical proof of the inadequacy of the Board's compulsory purchase powers was not an essential

preliminary to the consideration of legislation amending the Board's powers. They were influential in determining the subsequent action taken by the Board to frame the detailed case for changes to the Board's 1965 Act, including a detailed set of proposals, which would be put to the Secretary of State for Scotland.

This action included the commissioning of Dr J A Carty of the Department of Public International Law at Glasgow University to carry out research into compulsory purchase powers, procedures and other methods of control of land ownership and use in Norway, Sweden, Switzerland, Spain, France, Italy, Germany and the Irish Republic, and the establishment of a Working Party to frame proposals and prepare a case for the Board's consideration.

At the same time, further preliminary consultations took place at Area and Branch level with the National Farmers' Union (NFU) membership (covering about 70 percent of HIBD area membership), with the Legal and Commercial Committee of the National Farmers' Union and with the Highland Branch of the Scottish Landowners' Federation (SLF). Early this year further informal consultations took place with representatives of the NFU and of the Scottish Landowners' Federation.

3. The Board is convinced that a wide measure of support exists for some strengthening of the Board's powers, and this view was confirmed when the Consultative Council, under the Chairmanship of the Hon Lord Cameron, DSC, LLD (previously Chairman of the Highland Panel), considered the detailed proposals on 17 March 1978. This Council contains wide representation from all walks of life in the Highlands and Islands, and supported the proposals unanimously. Lord Cameron concluded that "*the proposals were the most important step that the Board had made If they succeeded, a turning point in the development of the Highland agricultural economy could be provided, dependent upon the will and the money being made available and that the procedures were applied in a democratic way.*"

The Board's Approach

4. The underlying approach of the Board has been that it should only consider action of a compulsory nature where there exist proposals, which are first of all accepted by the local community and, secondly, are accepted as technically feasible. Since the Board cannot be (or will not be) accepted as both the judge and jury on either of these issues, it has been necessary to spell out in some detail the institutional involvement of the community and of the technical input in preparing proposals which might lead to compulsory action.
5. The Board has therefore agreed that augmented powers should apply only in *designated areas* which are defined by special procedures and, further, that it should seek powers of control over land sales, of nominated leasing and, as a last resort, of compulsory purchase of these areas. The Board sees these powers as a *package* which will cover most of the problems of tenure, occupation and use in non-crofting areas which have come to its notice, and which will enable land use plans in such areas to be implemented. Democratic property is observed at the planning stage through the designation procedure and the planning process itself. It is felt that these procedures are such as to avoid the need for subsequent control over the exercise of powers within the areas designated, thus allowing speed and certainty in implementation.
6. In conclusion, I would emphasise that the Board sees the proposed powers as follows:
 - As a means of making effective the powers of land acquisition and use which Parliament voted to the Board in 1965.

- The proposed powers are designed exclusively to deal with extreme cases of under-use or misuse of land which have led to loss of employment or income in the local community or which are significantly hampering the provision of such employment and increases in local incomes.
 - The processes envisaged will ensure that the development plan for a designated area will reflect a consensus of opinion from both professional and local sources.
 - More specifically, the powers could offer a solution to problems arising from the conflicting interests of landowners and tenant farmers or those with grazing rights to land.
 - The means of implementation would also prevent land being acquired by people or companies with no agricultural interests or plans for tending the land in an agriculturally acceptable way. This should have the effect both of ensuring better use of the land and of keeping land values in line with their agricultural potential.
 - One effect of the proposals could be the revitalisation of one-time tenanted units.
7. The Board does *not* intend, by the proposed powers, any of the following:
- The nationalising of land.
 - The Board becoming a large landowner – it is not acquisitive in this context.
 - The removal of land from those who have grown too old or infirm to work it.
 - The Board having the absolute power to decree how land should be used.
 - The over-riding of any kind of existing crofting or urban legislation.
 - Preventing any person from selling their land, should they wish to do so.
 - Rendering any landowner worse off financially than before the implementation of development proposals.
8. The proposals set out in section D of the Submission have similarities with legislation already extant in several European countries and with parts of existing UK legislation. Section C deals with the main legislative parallels.
9. These proposals were submitted to the Secretary of State earlier this year and he has now asked the Board to initiate formal consultations on the proposals which are outlined in Section D and E of this paper.

Kenneth Alexander

A: Parliament's Intentions and the Effectiveness of the Board's Existing Powers

- (i) From speeches made by Ministers in the course of the Parliamentary Debates on the Highlands and Islands Development (Scotland) Bill (1965) it seems clear that they accepted the conclusion reached in the *Report on Land Use in the Highlands and*

Islands by the Advisory Panel on the Highlands and Islands (1964) that there was much underused, and in some cases grossly misused, land in the Highlands and Islands, and furthermore that better use of a basic resource should be one of the Board's main concerns. Speeches reported in Hansard further make it clear (i) that it was the Government and Parliament's intent to give the new Board powers of compulsory purchase which would enable it to implement development plans; (ii) that the Secretary of State believed the application of existing procedural legislation would provide adequate powers for this implementation (Case, para 1 to 7).

- (ii) For the Board's purposes in relation to such cases of under-use and misuse, the present legislation conferring compulsory powers of acquisition (Section 4 of the Highlands and Islands Development (Scotland) Act 1965) is inappropriate in two broad areas: the criteria to be met in order to justify a Compulsory Purchase Order (CPO) under the Land Acquisition (Authorisation Procedure) (Scotland) Act 1947 and the considerable delays associated with implementing the CPO procedure under that act.

Criteria:

The 1965 Act powers were related to the acquisition of land required for the implementation of existing proposals for a change of use of that land. These powers focussed on the need to implement a current proposal for the use of that land in the future irrespective of the land's present use. Moreover, the 1947 Act has been mainly used for procuring land in order to provide public utilities, services and amenities, normally in an urban and or infrastructural context, where the change of use is precise. So far as the Board is concerned, however, the need for land arises only from its present (mis)use; the use to which the land will be put in the future does not uniquely require that particular land. The Board has therefore been trying to function with an Act designed for other purposes (para 8 & 9).

Delays:

Under present legislation, delays are caused by the public local inquiry, the report and consideration of it, and on occasion appeals to the Court of Session and the House of Lords. The Board are aware of one CPO which took more than three years to complete. They believe such a period to be longer than usual but they understand that a keenly contested case may well take about two years to complete. Again, because the Board's focus is on remedying the previous misuse, the probability of such delays undermines its ability to act positively (paras 10 & 11).

- (iii) The Highland Panel reported thirteen years ago; the region's land use problems have changed little since then, despite what was said during the passage of the 1965 Bill. If anything, the Board's need for more effective powers over rural land use is becoming greater than it was in 1965, given the gradual change in policy to one which gives greater emphasis to the long-term development of primary sectors in the economy of the Highlands and Islands.

B: The Board's Experience

- (i) The Highland Panel bequeathed to the Board in 1965 the task of investigating the Strath of Kildonan (see <http://www.caledonia.org.uk/land/hidb.htm>) and Mull. The Board published reports and recommendations on both areas, following extensive survey and consultation work, and attempted to persuade key people to implement the recommendations. Years later, only small advances can be seen in respect of land in private ownership. In both areas, a relatively small number of landowners is involved

in key developments, but the Board is not empowered under present legislation to push through the crucial measures (paras 13 to 22).

- (ii) Detailed case studies both in areas subject to detailed land use and capability reports and elsewhere on islands and the mainland of the Highlands and Islands have illustrated the effects of losses of production, tenancies and employment in fragile areas on the structure and viability of local communities. In some cases, whole communities have been put at risk. These studies illustrate the clash which can, and does, occur between the interests of owner and community in the Highlands and Islands, and emphasises the measure of power, for good or ill, which can be wrought by one private individual over the lives of whole communities. Under present legislation, the only necessary qualification for wielding this power is sufficient means to purchase the land (paras 23 & 24).
- (iii) Cases are known to the Board where the owner of land impedes his tenant from improving his farm despite the rights conferred on tenants by the Agricultural Holdings Acts. Sometimes the reasons attach to conflicting interests (usually sporting or speculative) which do not often bring either financial or employment returns of significance to the local community; at other times it is hard to discern any reason at all, or even to extract from the owner a reply to correspondence. At present the Board can exert little influence in such circumstances (paras 25 to 29).
- (iv) In all these and other similar cases discussed by the Board, it sees a remedy in terms of designation of areas in which such problems are of real significance for the development or indeed survival of communities, and the Board being given control over land sales and powers of nominated leasing and compulsory purchase in such *designated areas*. Steps could then be taken quickly to ensure the development of the land.

C: Legislation Relating to Special Powers over Rural Land Use, UK and Europe

- (i) The additional powers, which it is recommended that the Board should seek, are set out in Section D: *Proposed Legislative Changes*. In arriving at the *package* of powers proposed in Section D, the Board was mindful of other legislation in the UK and Europe, which paralleled those powers (para 30).
- (ii) In the United Kingdom, legislation already exists which can act as precedent for many parts of the *package* of powers, which the Board now seeks. One such piece of legislation is in connection with the proposed control of land sales. Section 49(1) of the Agriculture Act 1967 provides that the written consent of a Rural Development Board is required prior to any sale of land within its area (paras 31 & 32).
- (iii) The Board's nominated leasing proposals have significant similarities with powers enjoyed already by the Crofters Commission under Section 16(4) of the Crofters (Scotland) Act 1955, and also the Crofters (Scotland) Act 1961. A precedent also exists in the Small Landholders (Scotland) Act 1911, Section 7(11), as amended by Section 9 of the Land Settlement (Scotland) Act 1919 (paras 33 to 35).
- (iv) The Crofters (Scotland) Act of 1961 gives the Secretary of State powers of compulsory purchase in the context of implementing a re-organisation scheme (Sections 8 & 9 of the 1961 Act). There are parallels between such a scheme and the development plan for a designated area in the Board's proposed procedure. Section 15 of the Community Land Act 1975 is also apt in allowing for compulsory purchase

without a public local inquiry if the purchase (and presumably, were it relevant to that Act, any nominated leasing as well) is in line with an approved development plan. Further objections on the basis of inexpediency or lack of necessity can be disregarded by the Secretary of State. Given the evolution of the development plan in the Board's proposals and the proposed method of consulting local democratic and institutional interests as well as those directly affected by any changes proposed, the Board sees this legislation as precedent for enabling it to proceed with nominated leasing or compulsory purchase without the delays involved in additional public inquiries (paras 36 to 39).

- (v) In many European countries control of the sale of land is seen as the most acceptable and frequent means of bringing land into acceptable use. Farmers favour such control as it keeps land in agricultural use and by excluding acquisition for investment purposes helps to keep land prices down. Compulsory leasing is also used in at least five European countries and is currently under consideration by others. The involvement of the local community is marked in the method of implementing compulsory leasing and the measure is preferred to compulsory purchase by the rural population. As in the Board's case, the European countries which possess powers of compulsory purchase (France, Norway, Ireland and Spain) see these as important reserve powers which are used only very rarely (paras 40 to 43 and *Methods of Compulsory Purchase of Rural Land and Other Public Laws relating to Rural Land in Western Europe*).

D: Proposed Legislative Changes – Area Designation Procedures; The Establishment of a Local Advisory Committee and Technical Panel; The Powers to be sought within a Designated Area

- (i) A proposal to designate any area would normally come from the Board but a case for designating might also be made to the Board by local Councils, the National Farmers' Union of Scotland (SNFU) and the Scottish Landowners' Federation (SLF) via their local branches, or any group resident in the area provided they represent at least 10 percent of the electoral role (para 47).
- (ii) The Board could accept, reject or advise revision of any such case. For acceptance any proposal would have to demonstrate in a general way that use of the powers applicable in designated areas would lead to changes in land use which were consistent with the Board's land use strategy, i.e. show prospects of real gains in local incomes, employment generated and in general economic and social conditions of the area proposed for designation (paras 44 & 48).
- (iii) When a case for designation is accepted by the Board two bodies will be set up, a Local Advisory Committee (LAC) and a Technical Panel. The LAC will be made up of nominees of Regional/Island, District and Community Councils (these sources always constitute a majority of the membership), the SLF, the SNFU, STUC (Scottish Trade Union Congress), and the Board. Members shall normally be local people (throughout this paper a local person is one who is resident in the proposed designated area as well as owning, occupying or working on the land in that area). The Technical Panel will have representatives from the Colleges of Agriculture, the Department of Agriculture and Fisheries for Scotland, the Hill Farming Research Organisation, the Royal Institution of Chartered Surveyors, Forestry (normally the Institute of Foresters of Great Britain) and – where the proposed designation area warrants it – the Red Deer Commission and the Crofters Commission (paras 49 to 53).

- (iv) The Board will draw up a draft outline development plan for the area, in consultation with the LAC and Technical Panel. This draft plan will be sent to all owners and occupiers of land in the area and discussions initiated with all owners and occupiers of land affected by the proposals. Where the proposals in the plan are contested by an owner or occupier the LAC may afford him a Hearing. The LAC and the Board will arrange for a local public meeting at this stage and thereafter submit the proposal to the Secretary of State with or without amendments and with a record of any Hearings related to unresolved issues. In addition to the right which this procedure gives to an objecting owner or occupier to have his views put before the Secretary of State, the Local Advisory Committee will also have a right to submit its own views on the plan to the Secretary of State at this stage (paras 54 to 58).

Means of Implementing

- (v) If the Secretary of State approves the development plan, the area in question will be designated by order of the Secretary of State and the Board will be empowered to implement the plan via any of the powers below in addition to its existing Section 8 financial assistance and other powers (paras 59 to 63).

Nominated Leasing

- (vi) Land may be leased out if the Board schedules it. This will take place if the owner is not prepared to implement the plan's proposals for his land. A conventional tenancy agreement will be used, rent will be set in line with local levels and the Board will offer to the owner a short list of candidates for his selection. Failing selection by the landowner, the Board will select. A neutral body (the Lands Tribunal for Scotland) will determine whether compensation to the owner is warranted. Its decision will be based on the rent paid, income from land under its existing use and, if the owner sells, the difference between the value of the land when leased and its value *in hand*. The Board shall pay whatever compensation the neutral body decides (paras 66 & 67).

Mechanism of Control over the Sale of Land

- (vii) Land transactions in the designated area must be reported to the Board and the proposed buyer's plans for the land approved in the light of proposals in the development plan. If approval is withheld, the seller has the right to insist that the Board purchase at a price fixed by the Lands tribunal of Scotland. The basis for the purchase price will be a sum equal to the amount of compensation payable by an authority possessing compulsory purchase powers.

Compulsory Purchase

- (viii) Given other powers, the Board sees this as being rarely, if ever, used. Should it become necessary, the price would be determined as in (vii) above (para 69).
- (ix) The Board's proposals for designating a rural area can cover crofting land, should this be part of a larger area under consideration for designation. However, the additional power of nominated leasing sought by the Board for implementing development proposals in the area will not be applicable to land under crofting tenure, due to powers in the Crofting Acts to which crofting land is already subject. Nonetheless, those powers relating to control over land sales and, in rare cases, compulsory purchase may be necessary in some cases. Any urban areas which fall within a designated area will remain subject to existing legislation and not to the powers of the Board as set out above. Development plans will concentrate on the potential for agriculture and forestry but will also consider complementary developments in other fields, *e.g.* tourism, recreation, crafts (para 45).

E: The Future Use of Land in Designated Areas

- (i) The development plan for a designated area will have been finalised and approved by the Secretary of State only after technical consultation and widespread discussion and comments from the community affected. The Board will thereafter seek to develop the designated area by means of encouraging the implementation of the plan by all means in its power. Inducements such as a Section 8 and other means of assistance will be used as widely as possible. Where these fail to persuade an owner to develop his land along the lines suggested in the plan, the Board will have the power to arrange for a nominated lease. In selecting possible tenants the Board will be guided by applicants' readiness to carry out the development plan and their abilities to do so. Other things being equal, preference will be given to young local applicants. Section 8 assistance will be available to both the landowner and tenant for fixed equipment and in-go costs and also to the tenant for his development projects (paras 70 & 71(a) & (c)).
- (ii) As a means of preventing frustration of the development plan, the Board will also have control over the sale of land, and approval will be given only where the buyer can satisfy the Board that he intends, and is able to carry out approved developments on the land (para 74 (b)).
- (iii) As an instrument of last resort, the power of compulsory purchase will be available to the Board. If all other means, as outlined above, have proved ineffective, the Board would compulsorily buy the land from the owner and lease it out on lines similar to those for nominated leasing (para 71(d)).
- (iv) Notwithstanding any of the above, the Board as policy will never seek to dispossess a person of his land if he has in the past worked that land in an approved manner but can no longer do so due to age or infirmity. In such cases the Board would discuss his position with the aged or infirm person or his representative and would seek a solution which, while acceptable to the person in question, would ensure that the land is kept in good heart (para 72).