

A Comparative Study of Land Purchase Standards in Scotland and Western Europe

Tony Carty and John Ferguson

Power and Manoeuvrability: The International Implications of an Independent Scotland, Q Press 1978

In this ground breaking paper Carty and Ferguson examine how a variety of European countries control land purchase and usage through a range of laws, regulations and planning instruments. Focussing on the international dimension it raises questions of acceptable international behaviour while highlighting how small states may act effectively to protect their more vulnerable interests in land and local communities. The authors' contrast the unregulated and remarkably liberal land market in Scotland with those in smaller European states and conclude that land reform action can be taken which need not compromise Scotland's international position.

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Monday 20 June 1997

Written

House of Commons, London

- 50 Mrs Margaret Bain:** *To ask the Secretary of State for Scotland, what record is being maintained of private land transactions in Scotland in which ownership of land is transferred furth of Scotland.*
- 51 Mrs Margaret Bain:** *To ask the Secretary of State for Scotland, what estimate has been made of land in Scotland currently owned by: (a) Germans, (b) Americans, and (c) Belgians; and if he envisages a limit being place on foreign ownership in Scotland.*
- 52 Mrs Margaret Bain:** *To ask the Secretary of State for Scotland, what steps he is taking to prevent the speculative sale of Scottish land to owners and developers furth of Scotland.*

Mr Harry Ewing:

My Rt. Hon. Friend is not satisfied that there is a need for action in these directions.

Scottish Office

Content:

Introduction

Part 1: A Study in Land Purchase

- Patterns of Purchase
- Tourism and Recreation
- Investment – Genuine and Speculative
- Accumulation of Holdings and Sitting Investments
- Methods of Purchase

Part 2: Standards in Western Europe

- Monitoring
- Purchase Control
 - (a) Investment and Companies
 - (b) Tourism, Recreation and Primary Land Use
- The Problem of Discrimination
- Compensation

Appendix: Examples of Land Sales in Eight Counties of Scotland

References

Introduction

Control of the ownership and use of natural resources is frequently a major political issue. For the small state, the question can be particularly important. Lacking the domestic capital and technology for the development of resources, it must rely on foreign funds and expertise. Often these are seen as rapacious and strong internal political pressure builds up for the policing of foreign interests or for their nationalisation. Where the resources consist of mineral wealth or oil, there are major difficulties in limiting foreign control, largely because the market outlets are abroad. Where the resources are agricultural, although external control may still be a problem, the small state will be in a slightly stronger position because of a lesser degree of dependence on external markets.

In many cases, the external ownership of land is seen as a very much greater threat than the external exploitation of other natural resources. For reasons, of social psychology, the land is an asset which is vested with particular, almost symbolic significance. The external ownership of land may be perceived of as being little short of external control of territory, and there is consequently a particular sensitivity to the issue, irrespective of whether there is any real difference in the use to which land is put under external or under domestic ownership.

In the small state, the external ownership of land may be a particularly acute problem, particularly when it is under-populated and has considerable tracts of 'vacant land'. This will tend to be cheap. When such a state borders on a larger and wealthier neighbour, in which pressure on land resources are acute, the pattern of land ownership and purchase will reveal heavy external buying. The result of this will inevitably be the disruption of domestic agriculture, the weakening and eventual dispersal of rural communities and in extreme cases, emigration. That will be the pattern unless, of course, the state takes action to control land purchase and land usage. Most states retain power to do this, limiting, with varying degrees of efficiency, the extent to which external ownership will be allowed and the uses to which land will be put.

In most Western European countries, controls are placed on the purchase of land for speculative or other purposes which are not conducive to the survival of agriculture and the agrarian community. This has a direct effect on the purchase of land by aliens. The striking exception to this is the United Kingdom, where no such restraint is exercised. Anyone can purchase land in the United Kingdom, irrespective of their motive. Planning permission is necessary for certain changes of use, so it may be difficult to develop agricultural land for recreational or tourist purposes, but there is otherwise no restriction on allowing land to lie fallow, phasing out agriculture in favour of sport, or for speculating in rural land and consequently hastening inflation in land prices. Land use control through planning restrictions is, moreover, an unsatisfactory means of controlling land abuse for another reason. Frequently the only interest that a local authority will have will be the encouragement of revenue producing activities on the land. For this reason, Switzerland has recognised that this control should not be exercised by local authorities but by central government.

In Scotland, the problem of external ownership has traditionally been particularly serious. For historical reasons, land in the Scottish Highlands has long been available for '*latifundia*' purposes, as it passed out of the control of the Highland clans and as the Highland population was systematically cleared by large farming and sporting interests. Political sensitivity to the matter is widespread, although this has yet to be translated into effective political action¹. Most Scots know that vast tracts of Scotland, particularly in the Highlands, are owned by absentee landlords, and the issue occurs with great regularity in most discussions of Scottish political and social questions. This discussion can frequently be extremely emotive, relying more on unsubstantiated generalities than on facts. This may be because very few people know what is going on in land purchase today. Who owns the land and who is buying it? Politicians, even local politicians speaking of their own areas, will often be unable to give an answer. Because of the system of land conveyancing in Scotland, nobody knows who owns Scotland, in spite of the publication of useful studies such as John McEwen's *Who Owns Scotland?*

Scotland's land register, the Register of Sasines, is well known to be defective in a number of respects regarding information on land purchase. There is no legal requirement that a deed be registered with the Register, and consequently many purchases do not appear on the search sheets. Even where an estate is registered as having changed hands, the search sheets need not indicate the acreage involved and the price paid, and are even less likely to do so in the case of sub-sales. (These are sales where there is an immediate purchase between seller and the ultimate buyer, usually occurring within a few days.) Beneficial ownership is usually unascertainable where land is held by trusts or by foreign-registered companies, the latter being especially significant in this study. These defects are hardly surprising, since the Register of Sasines is merely a conveyancer's convenience and does not purport in any way to monitor the details of estates or the intentions of purchasers, as does the legislation of other countries such as Norway, Sweden, Denmark, West Germany, France, Switzerland and the Republic of Ireland. Hence information about the character and intentions of purchasers, which may be readily available in those countries, has had to be inferred either from the Register itself (where it provides any information), or gleaned from local sources.

This study aims to establish two things. Initially it deals with the pattern of land purchase. Who is buying Scottish land, and for what purposes? On the basis of empirical researches (research which is continuing: we merely state here our results to January 1978), it is shown that Scottish land is being purchased at a significant rate by external purchasers, some known, others sheltering behind trusts or companies². Nobody can ascertain precisely who owns the land, but one can identify a distinct and indeed overwhelming pattern of foreign acquisition. This fact is recognised by the Scottish Landowners' Federation in their submission to the Northfield Committee, where they point out that *'nearly all estates sold in the Highlands in the last three years have gone to foreigners. This is a significant trend which must give rise to local concern and would be quite unacceptable in the long term if continued ...'* The Committee received similar representations from the Scottish branches of the National Farmers' Union, but the Committee's brief is limited to an examination of monitoring procedures and, in view of British membership of the European Economic Community (EEC), it will be unable to do anything about the problem unless it recommends standards of control applicable to UK nationals as well as to aliens. Yet until action is taken, the predictions of one leading British land economist of the widespread acquisition by aliens of land in the United Kingdom will continue to prove correct³.

The second objective is to show how the state and even the small state can control the process of external acquisition and can decide how land is to be used. This is not a radical programme, but is something undertaken as a social duty by most Western European governments and also by certain Canadian provinces and American states. Here, at least, vulnerability can be accepted without defeat and decisive steps can be taken by a small state to dictate the way in which it wants its most significant natural resources to be used. It is possible that accusations of discrimination and xenophobia may be raised against a state undertaking such a programme, but it must be emphasised that all that such a state would be doing would be following the standards of behaviour accepted by Western European states.

Part 1: A Study in Land Purchase

Patterns of Purchase

The North of Scotland and particularly the Highlands are almost unique in Western Europe in a number of ways. Perhaps the most significant is the peculiar legal framework prevailing. The complete absence of legal control of rural land inevitably attracts foreign purchasers who are constrained by their own national laws. It is quite unusual to be able to dispose of land suitable for, or at least traditionally employed in, agriculture, forestry or other primary land uses, without any guarantees at all as to future uses to which the land might be put. However, equally remarkable is the unique character of the Scottish Highlands, the only region in Europe in which no measure of land reform has ever been attempted, save for legislation affecting crofting tenure. The sheer size of many estates makes individual purchases significant in themselves because of the vast acreages which change hands. The political, social and economic consequences of such purchases have major implications both at local and national level and yet they depend upon the personal choice of a very small number of individuals who are very often ill-informed even as to their own best economic interest let alone that of local communities.

The land use potential of much of Scotland's upland areas is, of course, a matter of hot dispute. Whether improved farming techniques, sophisticated systems of reclamation and grazing control and scientific land management could significantly increase the productive capacity of the land is open to question in a number of Highland areas. Nonetheless, informed opinion suggests that there is room for considerable improvement and the evidence of the Hill Farm Research Organisation demonstrates that productive capacity could be doubled for certain agricultural activities⁴. However, recent foreign purchases add a dimension which will hinder any political choices made by any future Scottish Government. They appear to be falling into two broad categories; some are designed to develop a tourist market which is mainly foreign and exclusive in character. This can only make more difficult any development or even regeneration of rural Scottish communities, particularly since it is well known that sporting and recreational activities conflict with primary uses of land. Perhaps even more serious are the very common speculative purchases of land which serve not merely to disrupt continuity in its use and management, but also artificially inflate the price of rural land generally. This makes it all the more difficult for local persons to engage in or expand farming activities, but it also places obstacles in the way of public authorities who may wish to acquire land compulsorily where owners, foreign or national, are proven guilty of misuse or under-use of their land. How in this situation can a satisfactory measure of compensation be found when land prices themselves are highly questionable?

Whatever controversy may exist in Scotland about land potential, it must surely cause serious misgivings that at present most of its European neighbours are agreed that recreational, tourist and investment activities in rural land, especially by companies, are very much to be discouraged.

Tourism and Recreation

There appear to be two strands in estate ownership within this category at the present time and although both require a high degree of exclusivity for sporting purposes, the basic reason for purchase are different. A purchase may be made for a profit motive arising out of the sporting potential of the estate stalking, grouse shooting, and salmon fishing. The Highlands represent one of the few remaining wilderness areas left in Western Europe, and have undoubted sporting attractions because of this. It is not therefore difficult to develop the area as an exclusive hunting, shooting and fishing preserve for those who have the financial means, and indeed, the requisite social credentials. The sums involved both for the purchase of the estate and subsequent development often appears disproportionate even to the possible yields of this exclusive tourist market.

In other cases, purchases are for private personal use although equally exclusive as the first. It may well be that in a number of cases the costs of the estate are supported by some private letting or renting of shoots or salmon fishing. Perhaps the main motive behind such purchases is that of the non-capitalist latifundist who sees his land as an object of social prestige and status, an extension of the personality of the owner, which may be so even in the case of the company purchase. In our analysis these purchases are distinguishable from straight land speculation (although not perhaps as

secure as long-term investment) by the fact that the land is not resold within a short space of time.

The evidence which allows this broad distinction to be made can be extracted from local sources and inferred from the character of the land and the identity of the purchaser. For instance the 20,000 acre Durness Estate (Sutherland, Appendix) appears to fall mainly within the first category. The estate consists of high grade salmon fishing and deer stalking. Local sources have recently stated that Katz, a Dutchman, is in the process of completely renovating Smoo Lodge, the main estate house, at considerable cost. The owner has publicly stated that the estate will afford him a personal amenity⁵. However, the fact that he has also purchased the 14,023 acre Ben Damph Estate at Loch Torridon (Ross and Cromarty, Appendix) where he has applied for planning permission for more than thirty executive type chalets easily allows the inference that he has a definite commercial interest in these areas. Indeed, he has sold off part of Durness Estate (4,858 acres) to Taekele Soepboer, a fellow Dutchman who owns a holiday complex on the 3,60 acre Brin Estate in Inverness-shire (Inverness-shire, Appendix).

An apparently clear case of individual purchase is the 14,000 acre Foich section of Braemore Estate (Ross and Cromarty, Appendix) which is collectively owned by a Dutch family and local information suggests that it is used for family leisure purposes. This analysis appears to us to lead to a similar differentiation as illustrated in Tables 1 and 2.

Table 1: Commercial Purchases

| <i>Estates</i> | <i>County</i> |
|---------------------------------------|-------------------|
| Ben Damph | Ross & Cromarty |
| Kindeace | Ross & Cromarty |
| Brin | Inverness-shire |
| Kilmartin | Inverness-shire |
| North Harris | Inverness-shire |
| Tulchan | Moray |
| Durness | Sutherland |
| Mar Lodge * | Aberdeenshire |
| Total Acreage | 180,328 |
| Total Purchase Costs | £2,376,000 |
| * <i>Mar Lodge price not included</i> | |

Table 2: Individual Purchases

| <i>Estates</i> | <i>County</i> |
|--|--------------------------------------|
| Braemore (Foich section *) | Ross & Cromarty |
| Rhiddoroch East | Ross & Cromarty |
| Dernver | Ross & Cromarty |
| Knockie & Dalachapple | Inverness-shire |
| Ardochy | Inverness-shire |
| Craskie & Invercannich | Inverness-shire |
| Black Corries | Inverness-shire, part in Argyllshire |
| Kerloch,** Tilquhillie & Invery | Kincardineshire |
| Ledmore | Sutherland |
| Lower Dess | Aberdeenshire |
| Lesmurdie*** | Banffshire |
| Dunbeath | Caithness |
| Total Acreage | 88,466 |
| Total Purchase Cost | £1,071,178 |
| * <i>Foich acreage includes Strone section</i> | |

** Kerloch price not included
*** Lesmurdie acreage not included

Of particular interest in the purchase of sporting estates is the Enessey Company Limited who are one of the biggest investors in Scottish real estate. Their purchases range from Moray to the island of Harris and include the massive Mar Lodge Estate in Aberdeenshire. Their investment in sporting land first appears in 1963 when the name of Gerald Panchaud appears in the Register of Sasines in association with the Ashdale Land and Property Company Limited, who together sold Mar Lodge to Harlow and Jones (Investments) Limited, of whom G. Panchaud is a director.

Their activities in Scotland are principally directed towards the establishment of a major tourist leisure and recreation organisation specifically catering for the upper end of the foreign market. Their acquisitions include: 61,200 acres at Mar Lodge, the 15,000 acre Tulchan Estate in Moray, and their most recent purchase being the 62,500 acre North Harris Estate in the Western Isles which they acquired in January 1977. The cost of purchase and development of these estates has been high; Harlow and Jones spent £150,000 in the early 1960s in an attempt to develop skiing at Mar Lodge; Slater Walker (Moray, Appendix) are reputed by Panchaud to have invested over £700,000 in modernising Tulchan Estate, with a further £100,000 being spent by Enessey in their first year of ownership. Enessey are currently engaged in a similar exercise at their North Harris castle, and hope to complete their development programme in time for the start of the 1978 season. Panchaud, in a letter to James McKillop of the *Glasgow Herald*,⁶ says *'Enessey's two properties, as well as Mar Lodge Estate, is an investment in tourism aimed at the top end of the market for which the highest standard is demanded. We aim for overseas visitors and their families. Individuals requiring sport only are not profitable.'* This is why Mar Lodge, Tulchan Lodge and Amhuinnsuidhe Castle, by next year, will be able to accommodate 80 people, all in bedrooms each with private bathrooms, and with *'furnishings, public rooms, service and food equal to the best anywhere'*. This is high quality accommodation and service in conjunction with access to some of the finest sporting ground in Scotland suggests that Enessey are guaranteed a thriving market, already confirmed by full bookings for Tulchan and Mar Lodges during the 1977 season.

They are basically looking towards future returns on investment and have stated that so far, even taking into account their 1977 marketing successes, their returns have not matched investment. However, with the cost of accommodation rising fairly rapidly and the actual returns on the varied sporting activities offered by Enessey, their investments seem to be assured a fairly rosy future. Fairly typical costs of field sports of the type being marketed by Enessey are likely to fall within the following range, although it should be noted that particularly good salmon beats or deer forests can generate much higher profits for the owners. A two-day grouse shoot of seven to ten guns would cost about £2,000 on an average moor, but as Her Majesty the Queen's recent purchase of Delnadamph Estate indicates, even for Royalty the cost of this exclusive sport is becoming not inconsiderable. Included in the £2,000 is an allowance of a brace of grouse per gun, the supply of beaters and transport to and from the butts. Out of a day's sport the owner retains the rest of the bag; on an average shoot about 160 brace over two days, these retail for £3 to £4 per brace. On estates in the top bracket, where 2,000 brace is not uncommon, the cost for one party

can rise to as much as £7,000 per day⁷. Stalking also attracts a well-heeled clientele. For the privilege of shooting a stag, the hunter can expect to pay between £70 and £120⁸. Hind shooting which takes place later in the year, costs less, the range being from £24 to £30 for each beast. The venison itself does not belong to the hunter, it remains the property of the estate owner and is normally sold on the European market, ultimately retailing for as much as £5 per pound (Lb). Surprisingly, Panchaud seems to be pessimistic about the potential returns from this side of the business unless his clients also avail themselves of his complete package.

The North Harris Estate is particularly well suited for the development of salmon, sea trout and sea fishing, all of which are central to this Enessey project. The cost of killing this game fish (salmon) varies but the average current costs including boat rental and the hiring of a ghillie would work out about £60 for each fish taken. Some stretches of river are rented out for £500 to £700 per week, with particularly good beats rising as high as £250 for one rod per week. Enessey are setting their tariff in the region of £500 for a double room for one week, thus the profits to be made out of their accommodation and sporting provision are by any measure fairly healthy. Nor is this limited to the stalking and salmon fishing season.

Investment – Genuine and Speculative

Genuine purchases are distinguishable from speculative ones simply by the pattern of re-sales taking place within a short period of time, eighteen months or less, or by the accumulation of numerous purchases by the same individual or company, in the same or adjacent counties. Re-sale and sub-division of holdings is a fairly common feature of recent purchase. It appears that farmland, forests and other non-sporting land are often purchased at a fairly realistic price and yet re-sold very quickly for double or treble the price with no apparent change in the land use itself. One case is that of Greengate Limited (Ross and Cromarty, Appendix) who purchased the 500 acre Tarbat farmlands and foreshore in November 1971 for £80,000. This estate changed hands twice to related companies and culminated in July 1976 with the estate being purchased for £600,000. The inflation of the initial purchase price took place within the umbrella of one parent company.

Greengate Limited was also involved in the purchase of the 20,048 acre West Highland estate of Drumchork (Ross and Cromarty, Appendix), buying the largest section of the estate in 1972 and the remainder in 1974. Both of these sections were re-sold in exactly the same way as the Tarbat Estate, the new owners being associates of the same group involved in the Tarbat purchase, the final price being double that which Greengate originally paid for the estate.

Similar inflation has also occurred where an individual has purchased an estate. One Dutchman, Hellinga, bought the 117 acre farm of Easter Brockloch (Moray, Appendix) in March 1977 for £55,000. Within the same month he sold off two sections of the farm, 25 acres fetching £15,000 while 84 acres required the purchaser to raise a standard security of £52,700.

Perhaps a more significant case of this type of speculation concerns the Camster Burn Estate in Caithness (Caithness, Appendix). On 12th April, 1972 the Camster Estate was sold by John Darmady, a local sheep farmer, to a company known as Ideal Citrus

Sales (Europe) Limited. Their purchase consisted of 1,600 acres of rough grazing lying on a deep bed of basin peat, costing £1,500. Ideal Citrus commenced business by selling off small plots of land as building sites, the sums involved at this stage being fairly small (Caithness, Appendix). In June and July 1972, they disposed of 10 acres to another property development company and a further 225 acres for £11,250 to one Leslie Roberts, described in the Register of Sasines as a director, although of what there is no indication. At this point another property investment company, Sunningdale Securities, appeared on the scene. They purchased three blocks of land between October 1972 and January 1973 (Caithness, Appendix) amounting to 1,521 acres for a total price of £4,000. Sunningdale began at once to sell off small plots for building purposes. From a total of 302 small sales they have grossed £68,261. Over and above this, they have also sold off four larger units of land to a number of property developers (Caithness, Appendix), these dealers being Mitchell's (Cuthbert & Gartland), Leslie Roberts and Cutland Properties Limited, the total sum involved being £187,274. Although Sunningdale Securities have disposed of a considerable proportion of their original purchase, they still have an interest in the estate, their most recent sales taking place in the summer of 1977. Of the secondary purchasers, the most significant groups appear to be Mitchells (Cuthbert & Gartland), Leslie Roberts and Cutland Properties.

In January 1973 Roberts sold off 73 acres to Bernard Mackeonis for £22,000. In March 1975 he sold a further 60 acres to the same purchaser for £78,000. A further 91 acres were disposed of in February 1977 to Ghazi Orfali of Abu Dhabi for £40,500. We have no information whatsoever on the United Arab Emirate's connection, how it was established or how the estate was portrayed in terms of investment, thus Arab motives remain a mystery in this context. Perhaps Orfali did not know the history of the Camster Burn site or the physical nature of the terrain. However, Orfali himself began selling in April 1977 when he parted with 5 acres to a fellow countryman for £6,500; also in April 1977 he sold another unit of similar size for the same price. His most recent sale was on 29th April 1977 when he disposed of 10 acres to another Arab buyer for £13,000. Bernard Mackeonis has also been active in the Arab market, selling off a section of his 60 acres to an Ismail Fatah for £3,900 and in December 1976 a further area to Sheik Khazal of Abu Dhabi for £17,500. Mackeonis's largest sale was to Mitchells Estate Agents, when 88 acres changed hands in September 1974 for £45,200. Both Mitchells and Cutland Properties follow a similar pattern of small sales directed at would-be home builders (Caithness, Appendix). As recently as January 1978, we made enquires to the local planning department in Wick who advised that no building had taken place on the site; outline planning permission had been granted for the site as a whole, but no detailed permission had been granted for the individual plots. Their opinion was that the site was unlikely to be built upon because of the deep blanket of peat bog and mentioned difficulties relating to road building as well as supplying domestic water, the nearest suitable supply being four miles away from the Camster morass.

Other forms of estate purchase and re-sale in small units have been evident in Scotland recently. One which has attracted considerable publicity has been the activities of Wood and Leisure Land Division of the Australian Land Sales organisation. Wood and Leisure Land got under way in 1973 after Frank Chapman, owner of Australian Land Sales, had his activities restricted in the Antipodes when British investment was curtailed with Australia no longer being a Scheduled

Territories. Through Wood and Leisure Land, Australian Land Sales launched a sophisticated campaign which laid out the attractions of investing in small sections of Scottish timberland, both in terms of the amenity value of the investment and the future profits these would realise⁹. In 1973, Australian Land Sales purchased woodland in Aberdeenshire and Banffshire (Aberdeen and Banffshire, Appendices) amounting to 592 acres for £232,000. They began selling plots of timber, 4 to 6 acres in extent, at an average price of £2,933, their total income so far being £158,083 from 57 units in Aberdeenshire and £273,190 from 90 units in Banffshire. These blocks are managed by the company on the purchaser's behalf. The purchaser has no rights on the land other than the timber itself. Potential investors were advised that at 1973 prices the total financial yield on investment could range from £750 to £1,780 per acre over a twenty time scale. There is no indication that Australian Land Sales intend to do anything more on this land. It is already wooded, and by local accounts managed competently. The invitation to purchase is on the basis that there will be a sky-rocketing of prices at a later date, as has already happened with farmland¹⁰.

Table 3: Investment and Speculation – Resale of part or total estate

| <i>Estate</i> | <i>County</i> |
|--|-------------------|
| Drumchork | Ross and Cromarty |
| Tarbat | Ross and Cromarty |
| Kindeace ** | Ross and Cromarty |
| Easter Brockloch | Moray |
| New Banchory | Kincardineshire |
| Overscraig | Sutherland |
| Backhill and Longhaven *** | Aberdeenshire |
| Cobairdy Group | Aberdeenshire |
| Glennie Group | Banffshire |
| Camster | Caithness |
| Glendessary | Inverness-shire |
| Total Acreage | 48,216 |
| Total Purchase Costs | £2,313,490 |
| * Durness Estate is not included in the total. ** Kindeace also appears in Table 1. *** Longhaven acreage not included | |

Larger profits are probably to be made in selling land to local authorities or commercial enterprises for building purposes. In Kincardineshire, S.A. Germont (whose beneficial interest is located in Geneva, although the company is incorporated in Panama) bought 52 acres of farmland at New Banchory in 1969 for £4,500 (Kincardineshire, Appendix). A number of sales took place between 1970 and 1975, mainly to Kincardine County Council and private developers; these resulted in a return of £136,297 to Germont on their investment, as well as interest on the standard securities to one particular company. This land, originally farming, has been divided up in a way which can only be inflationary both in terms of local primary land use and property development.

Land more suitable for sporting purposes has not in the main been included in this type of speculation, possibly because considerable profit can be made out of the

recreation industry itself. Nonetheless, a few cases do occur which indicate substantial short-term profits through sectional re-selling. The Dutchman, Katz, purchased the 20,000 acre Durness Estate in December 1976 for £50,000 and then resold 4,800 acres to a fellow Dutchman for £36,000 (Sutherland, Appendix). The 5,800 acre Overscraig Estate, also in Sutherland, appears to embody similar factors. Originally purchased by a Dutch company in 1965 for £7,500, it was considered worth at least £50,000 on a Bond of Credit in 1968, but fell in value in a sale in 1973 to £27,000. Finally, 2,135 acres - less than half of the estate - was sold for £105,650 in 1975 and on the same day a mere one-tenth of the estate was sold for the same sum as the original purchase price for the whole estate (Sutherland, Appendix).

Accumulation of Holdings and Sitting Investments

One series of purchases may be characterised as land accumulation. Here a company may intervene frequently on the market, gathering up a large number of holdings, perhaps without any clear intention of running them as a single unit. The scale of such operations makes it difficult for smaller farmers to bid successfully for plots adjoining their own land or acquiring single holdings as a farming unit. There may be a number of reasons for the cumulative purchase of land; one possibility is to '*sit on*' the land thereby securing a long-term profit from the rising values in farmland, another is to use it as a shield against inflation and possible instability in the national currency. A third explanation may lie in the potential of the land for purposes other than farming, which could relate to a variety of forms of development. This form of speculation is best illustrated by reference to Bocardo Societe Anonyme of Lichtenstein (Ross and Cromarty and Sutherland, Appendices) who, during a four year period have acquired extensive farmlands in the Easter Ross and East Sutherland. While their purchases do not appear to be critically significant in terms of total acreage, nor is the land especially fertile compared to other regions in Scotland, the location of their acquisitions does suggest a deliberate underlying pattern. Bocardo have bought more than 3,463 acres of farmland at a cost of £1,417,316. Much of this investment is tied up in land which Government advisers have defined as prime sites for oil and gas pipeline landfalls. It is suggested locally that Bocardo's most recent purchase, Balnagall Farm, is one of the sites currently being considered as a landfall for the Mesa oilfield. Whether this is accurate or not it is difficult to ascertain at this stage; what is certainly true is that Bocardo now have in their possession much of the land which could be brought into play in any future development of consequence in this area.

Table 4: Accumulation of Holdings

| <i>Bocardo Purchases</i> | <i>County</i> |
|---|-----------------|
| Newton Farm | Ross & Cromarty |
| North Balkeith | Ross & Cromarty |
| Mid and South Pithogarty | Ross & Cromarty |
| Fendom Hill | Ross & Cromarty |
| Kingscauseway and Heathmount | Ross & Cromarty |
| Summertown Farm | Ross & Cromarty |
| Balnagall | Ross & Cromarty |
| Balblair | Sutherland |
| <i>Hellinga Purchases</i> | <i>County</i> |
| Kindeace | Ross & Cromarty |
| Blervie | Moray |
| Easter Brockloch | Moray |
| Greenburn Farm | Moray |
| See also: Katz, Ben Damph and Durness Soepboer, Brin and Durness | |

Table 5: Sitting of Investments

| <i>Estate</i> | <i>County</i> |
|----------------------------|-------------------|
| Braemore (Stone section) | Ross & Cromarty |
| Fannich | Ross & Cromarty |
| Eishken | Ross & Cromarty |
| Pitmain | Inverness-shire |
| Struy | Inverness-shire |
| Forglen | Banffshire |
| Mey | Caithness |
| | |
| Total Acreage | 142,057 |
| Total Purchase Cost | £1,707,122 |
| | |

Bocardo is only one of a number of interlinked companies, in Britain or abroad, nominally under the control of Mohammed Al Fayed, a petrodollar millionaire of Egyptian origin, whose business tentacles spread out from Dubai his adopted home in the United Arab Emirates. The *Glasgow Herald*, in a report on Al Fayed on 1st December, 1975 gives an interesting account of the activities of this Arab group in Scotland, but the important details remain hidden in a web of associated companies and undisclosed beneficiaries protected by the laws of Switzerland and Lichtenstein.

Methods of Purchase

Many estates simply appear on the open market, either in trade magazines or through the publicity of estate agents. The attraction of land in Scotland is tied to sheer availability (especially in the absence of legal regulation), and the price itself which is often anything from 40 to 50 percent lower than on the Continent; this applies to both agricultural and sporting land. The effect of the attractive market position in this country has meant an upsurge in purchasing in the last five years. Although many of the purchases are public, a significant number are highly secretive. The only explanation can be that many individuals and companies deem it expedient to remain anonymous. What is shown here is the deliberately secretive character of some purchases which have taken place recently?

Secrecy is maintained through bearer shares in companies registered abroad. The Enessey Company of Lausanne illustrates both how this system operates and its implications. They, at the latest count, own Tulchan, Mar Lodge and North Harris estates. The negotiations which were undertaken prior to the purchase of these estates were secretive, particularly in the case of the latter, and although the knowledge that these estates were to be sold or 'change hands' was available locally or in the public press, the background information on the new purchaser was lacking. In the North

Harris deal, neither the local populace, nor the *Glasgow Herald* who were conducting an insight investigation into foreign ownership in Scotland,¹¹ were able to establish who the new owners were or what future purposes were intended. So although a background picture has been built up, it is only with the name of the directors. The names of the beneficial owners remain hidden behind the bearer shares. Panchaud of Enessey (Executive Director) has stated in a letter to James McKillop of the *Glasgow Herald*, that he personally has no shares in the company, nor is he a nominee for anyone. He will not divulge who, in fact, the beneficial owners are, except that they are Swiss. He claims that this anonymity is not unusual in so far as it is the invariable custom in Switzerland in both private and public companies to guarantee anonymity. This being so, he maintains that there is no case for disclosure in Scotland. Although Enessey appear in the Register of Sasines as being registered in Switzerland, the address being 1, Galeries Benjamin Constant, 1002 Lausanne, further investigation has revealed that Enessey are, in fact, a company incorporated in Panama. Enessey Panama was set up in March 1975, its stated business '*to engage in any commercial or industrial enterprise*', with directors in Montreal and London, including Gerald and Panchaud in Lausanne.

Somewhat similar secrecy surrounds the Tarbat Estate in Easter Ross (Ross and Cromarty, Appendix) which was sold by the Trustees of Lord Elphinstone in November 1971. This estate comprises 500 acres of farm, woodland and foreshore. The purchaser, Greengate Limited, registered in Jersey, paid £80,000. In November 1971, Greengate also bought the adjacent area, the 178 acre Croy Wood (Ross and Cromarty, Appendix) for £15,000. Most of their acquisition was sold in May 1975 to a company known as Quartet Holdings, registered at Suites 2/3 Gibraltar Heights, Gibraltar, the selling price at this stage being £50,000. In July 1976, Quartet Holdings disposed of their property to Garrulus Glandarius Limited, a company registered in the Channel Islands. The transaction covered the 500 acres including the mudflats and foreshore area. The price was now £600,000. Greengate have also been active elsewhere in Scotland, having made significant purchases in the Gairloch area of Wester Ross (Ross and Cromarty, Appendix). In October 1972 they bought most of the Drumchork Estate for £17,500, following this up in May 1974 with a further section of Drumchork costing £8,000, the total amounting to just over 20,000 acres. In February 1975 they disposed of the larger part of the estate to Longfields Investments for £50,000, and in March the residue passed to Ballina Investments for £8,000, both of whom are reputed by local sources to be associate companies of Greengate. Greengate are recorded in the Register of Foreign Companies in Edinburgh as being located at Regency House, Saint Helier, Jersey, as are Ballina Investments and Longfields Investments. In the Tarbat Estate transaction, a feature of considerable significance is that Greengate Limited, Quartet Holdings and Garrulus Glandarius all share the same parent company, Turquand, Barton, Mayhew and Company, a firm of chartered accountants based in London, all being nominees of this organisation¹².

Consequently, it appears reasonable to assume that local sources are correct in suggesting that Ballina Investments and Longfields Investments Limited, by their association with Greengate Limited, are also subsidiaries or nominees of Turquand, Barton, Mayhew and Company. Laurence Monument, a senior partner in Turquand's Jersey office, who also appears as a shareholding beneficiary in Garrulus Glandarius, has stated that he has no idea what Turquand's development plans for these estates are, and further insists that Garrulus Glandarius are not beneficial shareholders in the

purchase of Tarbat Estate. They are merely acting as nominees for the parent company. It also appears that Tarquand's Jersey office are reluctant to divulge who has beneficial interests in these companies and who subsequently profited from the vast price increases resulting from the internal transactions which have taken place between them.

In none of these purchases does Turquand's name appear; all the deeds in the Register of Sasines are recorded under the names of their nominees. One possible explanation for this seeming confusion is that a British parent company may avoid its disclosure duty when having 5 percent or more of its shares in beneficial interest located in nominee companies registered in Jersey and Gibraltar where there are no disclosure duties. Not merely is the cumulative purchase of land concealed but also at least two other possible disadvantages arise. Firstly, these transactions are bound to inflate the prices of neighbouring land, and secondly, although up until now they are merely accounting transactions, one must suppose that at some stage the land itself will be put onto the open market; how otherwise can one explain the fact that the land is being put to no use at all? Although these transactions are recorded in the Register of Sasines, Tarbat and Drumchork Estates were never advertised in the normal way, perhaps an inevitable aspect of internal selling.

Secrecy is obviously a matter of degree. The absence of public monitoring allows an individual to sell land abroad to his own nationals who may or may not be able to assess what the local '*real*' price for the land should be. It allows the accumulation of holdings without attendant unfavourable publicity and the selling off of land at apparently improbable prices. The purchases and sales of Dutchman, Hellinga, illustrate this point. In these instances, effective ownership does change hands but resale seems to be restricted to fellow countrymen of the seller, at least in the case of Kindeace Estate (Ross and Cromarty, Appendix). In December 1976 this farming estate was bought by a Dutch cattle breeder, Johannes Hellinga, for £460,000. It would appear that Hellinga initially intended establishing a cattle breeding and collection station in which he would purchase cattle in the Highland markets and would keep them at Kindeace until sufficient numbers had been gathered for transportation to European markets. These plans seem to have altered and Hellinga has been selling off sections of Kindeace to fellow Dutchmen in a system of closed selling. The sense in which it is closed is not known, since no information is available as to whether Hellinga knows the subsequent purchasers personally, or whether the land is being advertised for sale out with Scotland. These sales have brought in no more than £418,343. It is not known what proportion of the whole estate this represents, although it has been established that they were sold between March and October 1977.

The most recent occurrence of significance at Kindeace has been Hellinga's application to the local council for planning permission to develop what appears to be a large-scale tourist enterprise. Local sources state that he first sought permission to build 400 chalet type houses on the Burrock's section of the estate. This was modified a few weeks later, and planning consent was sought for 10 housing units which were scheduled for residential purposes, these being phase 1 of a reduced building programme which grew out of the initial planning application. Hellinga is reputed to be acting as an agent for two unnamed Dutchmen and a series of companies have been set up with their registered offices in Inverness.

Hellinga also bought Blervie Estate in February 1977 for £75,000 and in March he bought the 117 acre Easter Brochloch Farm for £25,000. (Moray, Appendix) In the same month he once again sold off part of the latter, 25 acres for £15,000, the buyer being a Scot, and in April of the same year a further 84 acres were released to one James Munro who raised a standard bank security in that property of £52,700. Hellinga continued to be active in the field of farm purchase, buying the 163 acre Greenburn Farm in Aberdeenshire in June 1977 for £67,000, and is stated by local sources to have purchased the farm of Edderton Mains in Easter Ross, although this has not yet been confirmed in the Register of Sasines.

Part 2: Standards in Western Europe

Monitoring

How could there be any objections to knowing, who are the beneficial or effective owners of Scottish rural land? It is true that neither a Register of Deeds (Sasines, as in Scotland) nor a Register of Title need fulfil this function. Their function is merely to ensure a private purchaser that his newly acquired title is secure. As such, neither need be public at all. However, once it appears open to question that land mobility is always working to the benefit of the community, the very least one can ask is simply who are the purchasers of land and perhaps even their intentions. This does not in itself imply control or restriction, but merely that the information should exist. It constitutes the very basis of a considered judgement about what the public interest may require.

In Scotland at present the primary obstacle in the way of obtaining this information is that many companies buying land are not subject to the Companies Act of 1976 which requires that shareholders of more than 5 percent have to declare their beneficial ownership. The Act does not apply to the Channel Islands and Gibraltar. Nor is it applicable to alien companies particularly bearer-shareholding companies. The effect is not quite that one does not know the future intentions of the companies. The same is true in the case of individuals. This uncertainty is merely an aspect of the absence of any public control of rural land sales. Rather, the danger is that secrecy may be concealing the fact that in a given number of land transactions the same persons may be operating through different companies. Even if no objection is taken to accumulation or subdivision of land holdings the possible inflation of prices resulting from '*unreal*' sales may be thought to serve no useful purpose.

This is a problem which most Western European countries and even a few of the states of the United States and provinces of Canada do not have to face, simply because they do not consider it sensible that rural and especially agricultural land should be sold to companies at all except in very limited circumstances. There are laws in Switzerland and Canada especially designed to prevent foreign controlled companies from purchasing land. They contain elaborate attempts to define how much influence aliens must have before they can be said to control a company¹³. However, these definitions assume that alien ownership is itself undesirable. Perhaps the most suitable monitoring legislation is the Irish Land Act 1965¹⁴. Section 54 as a whole is designed to ensure that purchases, particularly of farmland by aliens, occur only when the Irish Land Commission considers them to be in the public interest. To forestall the

possibility that the alien avoids all monitoring by setting up an Irish company, the Act effectively places the onus on all companies to indicate who their beneficial owners are. In this way the Land Commission can learn of the hazards likely to arise from the character of the effective ownership of the company.

In Ireland, whenever a body corporate wishes to buy land, it must come to the Irish Land Commission and indicate to it the persons who control the company. Control means the power of a person to secure by voting shares in that company or a voting power in relation to that *or any other body corporate*, or by the Articles of Association or other document regulating that *or any other body corporate* that the affairs of the first mentioned body are conducted in accordance with the wishes of that person. The simplicity of the procedure is that should it appear at a latter stage that the Land Commission was for any reason misled, *e.g.* as to the true nature of the effective ownership of the company, or dissatisfied with the use to which the land is put, it has very wide powers of compulsory acquisition¹⁵.

Monitoring could be made more complete by requiring that any person, trust or institution which could possibly be acting on behalf of an alien, should declare for whom he or it is acting. If one wishes to preserve confidentiality, the sale need not proceed. This minimum level of publicity has been regarded as essential in Switzerland in order to supervise adequately the spread of foreign tourism within the country. Swiss Law presumes that notaries, legal advisers and companies, particularly those engaged in property dealings, are acting for aliens until they prove otherwise. In Sweden, a special Nominee Company Act of 1925 provides that where any person or company acts as a decoy for someone ineligible to purchase property, a court may divest the property. This is over and above the rule that companies dealing in real property must declare who benefit from its bearer shares in order to give the State a clear picture of the extent of alien ownership.

The monitoring process is facilitated on the continent by the Cadastre. This is a public register of the quantity and value as well as ownership of immovable property compiled to serve as a basis for taxation. Its public function inevitably makes it much more informative than the conveyancer's register of deeds or titles. The latter may give some general description of land use but will not provide a fertility classification. Nor will it provide a list of the properties belonging to each owner¹⁶.

Obviously the whole issue of monitoring is a matter of balancing the value of confidentiality with that of publicity in the interests of possible public supervision for whatever reason. The UK Inland Revenue authorities have the power to pierce the veil of foreign registered bearer-shareholding companies for the purpose of capital transfer tax when the companies are acting for the benefit of persons in the UK. This information is not, however, available to the public¹⁷.

Purchase Control

The pattern of purchases of rural land described in this study is very widely regarded in other countries as warranting close control, if not complete prohibition. In Scotland, estates are being bought by individuals and companies with a view to resale by lots within a short space of time. Estates are accumulated for no obvious economic or social purpose. Land which is possibly of agricultural or other primary land use is

being developed commercially as a tourist enterprise without any effective public judgement as to the economic or social value of this activity. It is well-established international practice that states may control or exclude any alien individual or company engaged in such activities without fear of accusations of xenophobia, commercial protectionism or any other form of isolationism. This is because most states regard such practices as clearly contrary to their own public policy regardless of whether they are perpetrated by aliens or by their own nationals. Indeed, provinces and states within federations usually have the power to control the character of rural landownership regardless of the incidental effect which this may have on aliens.

Rural land is very widely seen as outside the normal course of commerce, national or international. The farming community needs at least some protection from the business community and the recreational or other demands of urban society. The political and social processes which have facilitated this development are perhaps not as important to Scotland as an understanding of the exact nature of what has now become common practice. Scotland's room for manoeuvre in terms of the reactions which it might provoke is very wide provided any proposed restrictions are not directed against aliens and alien companies as such.

(a) Investment and Companies

Hostility to companies investing in land has its roots in the basic political judgement that only those actually intending to work land should be allowed to purchase it. Concern at a rural community of owner-occupiers being transformed into tenants of managers of absentee landlords looms very much larger than any attempt to assess exactly the benefits of stimulating private investment in agriculture, forestry or even recreational activities. The most common world-wide public control of land use is the prohibition on the holding of land by other than physical persons. As J. Masrevery, a leading lawyer in the United Nations Food and Agricultural Organisation (FAO), put it: *".... by creating the obligation to farm one's land directly and personally the legislator has sought to make the tenure of land a matter of individuals and to create and strengthen the physical links between man and land."*¹⁸

An illustration of the introduction and history of such legislation may be found in developments in forestry in Sweden at the turn of the 20th century. Major sawmill companies acquired so much forest land from yeomen that by 1906 the companies had accumulated 5 million hectares of land or 36 percent of all privately owned land in Northern Sweden. As is usual in questions of land politics, a violent reaction occurred. *"People were afraid that too much felling would occur and also that the agricultural holdings in the northern province of Norrland would disappear. But above all, they pointed to the social perils of replacing the landowning farmers by a poor and dependent class of tenant farmers."*¹⁹

In 1906, a Company Act was passed banning the acquisition of real estate by companies and associations. A Surveillance Act of 1909 was designed to provide a guarantee that farming on land owned by timber companies would not be discontinued. By the 1960's, rapid progress in mechanisation of forestry appeared to give new advantages to large-scale enterprise. So the Land Acquisition Act 1965 granted county agricultural boards a discretion to admit persons, physical or judicial, engaged in an industrial or commercial activity for processing of agricultural or forestry products or for distribution of agricultural products, where the main intention

is to permanently utilise the products from the property acquired in the business activity. Farmland was in fact being abandoned and it was felt that only the introduction of processing companies could ensure rational land use. However, the boards have a wide power to favour private farmers wishing to purchase land, especially where this would lead to more rational holdings for them. In fact industry has not been interested in purchasing rural land for the purposes envisaged by the Act because the profits, particularly the international markets in forestry products up to 1969, have not been adequate.²⁰

Legislative policy is much more unambiguous where a company purchase is supposed to have a character of passive investment, though here the prohibition applies equally to individuals. Of course a distinction between *active* and *passive* investment is very difficult to draw. A company will purchase land with a view to eventual sale presumably taking advantage of an increase in land prices (*i.e.* not directly connected with a primary land use enterprise *e.g.* a *hedging* against inflation). Assets superior to those of an individual farmer will allow a company to bid so much more than an individual farmer. This serves to accentuate further the basic objection to passive investment in land, that the difference between capital tied up in land and the return which a productive use will yield is unnecessarily enlarged.²¹ The view taken of the effects of company investment as such will inevitably be tied to a political judgement about the importance of maintaining farmers as owner-occupiers or of furthering the goal of family farms. In Denmark, Norway, France, and perhaps to a lesser extent, West Germany, there is very little possibility of an individual, not to mention a company, making a purchase which has the character of a passive investment.

Definition need not be difficult if it is assumed that a non-farmer's intentions in purchasing land will in some sense amount to a passive investment. The Danish Agriculture Act 1973 prohibits companies, cooperatives or other institutions from acquiring land without special permission, and permission is only granted for special purposes such as agricultural research and experiments, etc. A purchaser must *inter alia* have farming as a main occupation and take up residence within six months from the time of purchase. This legislation has received support from farmers primarily because it serves to reduce the inflation of land prices though the public policy is more generally to ensure that land is kept in good agricultural use.²²

Investment may be attacked more directly in terms of the intention of an owner to resell the land or part of it within a short space of time, or simply to buy or sell land at a price judged, in some way or another, to be out of proportion to the return which a productive use of the land might yield. In Norway, the licensing authority must be satisfied that the purchase is not an investment, for instance that it is intended to resell the land shortly or that the purchase is itself one of a series, leading to an accumulation of holdings. Furthermore, the County Agriculture Committees have a duty to intervene where a property is being offered for sale at a disproportionately high price.²³ The French *Societes d'Amenagement Foncier d'Entablissement Rural*, better known by its initials SAFER occupies a position very similar to the County Agriculture Committees. They may intervene when a price is too high and exercise a prior right of purchase at an adjudicated price. Their resale prices are comparatively low and, being taken as reference prices for the region, have a definite stabilising effect on the agricultural market.²⁴

A purchase may be thought to have an unsound effect on the distribution of agricultural units. There is undoubtedly a political judgement involved in supposing that an accumulation of holdings could lead to a reversion of the '*credo*' of the French Revolution. This explains the strict rules on amassing of holdings in many Western European countries.²⁵ However, the restrictions are themselves only part of a more general public power to prevent rural land transactions which are considered to be economically unsound. For instance the Danish and West German legislation both ask in almost identical terms whether the sale leads to an unsound division of land and in particular whether, in the case of subdivisions, the remaining units are viable. These controls are an integral part of the system which allows objection that the price paid is excessive and which invites agricultural authorities to exercise the right of pre-emption to ensure more rational economic use of rural land. Undoubtedly the context in which this public control is usually exercised is a land policy of consolidation of small holdings. Re-sales might only undo this policy. Yet the general legal regime clearly assumes that patterns of sales of rural land can be disruptive of rural land use and as such they need to be monitored.²⁶

(b) Tourism, Recreation and Primary Land Use

Tourism and recreation needs are normally understood as simply two possible uneconomic uses of land. As such they are prevented by not allowing a person without farming or forestry competence to acquire land. Because of the relatively small size of the land holdings in Western Europe, the problem does not take on the same dimensions as in Scotland. In Sweden, West Germany, France and Ireland, it is the part-time or '*hobby*' farmer and the '*week-end*' or '*second residence*' which are resisted as clearly uneconomic uses of rural land. However, Ireland and Switzerland afford more particular policies towards the '*recreational industry*'.

Swiss policy is that land sales ought to be confined to Swiss citizens and those aliens who work on the land or in some other way are permanently bound to it.

In 1972 the Federal Council reported to the Federal Assembly that a national solution to the problem continued to be necessary. The local planning authority was inadequate. It was essential to make clear that resistance to the powerful purchasing power of aliens was much more important than short-term profits to be obtained from speculation in land prices. Mountain areas are not benefited if large areas are occupied by people who are only there on vacation, clinging together in groups disrupting the local community, whose infrastructure they do nothing to maintain. The powerful foreign purchasing powers have been leading to a factual monopoly of land. Indeed, the absence of a ceiling on the price they are willing to pay for land serves only to cause a general inflation in the economy given the central importance of land prices.²⁷

Residences may be purchased by aliens who show that they will have a genuine connection with their chosen district. For instance they may intend to exercise a profession there on a permanent basis or contribute to cultural and educational institutions, have relations or a business which warrants actually living on the spot. The would-be purchaser may justify their connection in any other way which does not amount to an admission that it is no more than a holiday or other temporary interest. However, the connection must be very close and the Federal/Cantonal authorities must be consulted before permission is granted. These are responsible for safeguarding the public interest. Of course, the alien who settles permanently in

Switzerland is not subject to these restrictions. However, they may buy only one residence, may not resell it for 10 years, and may not lease it. In areas already dependent upon tourism, the Swiss have found it useful to qualify certain places as especially vulnerable. Where there has been a considerable increase in alien influx, e.g. more than 10 percent already, or more than 100 cases within 10 years, no more permissions' are allowed. In some towns, such as Lucerne and Montreux, purchase is completely prohibited.²⁸

In Ireland the policy of the Land Act 1965 is primarily to discourage the view that there is farmland easily available. An Irish policy of land consolidation makes it desirable that land which comes on the market should be used to enlarge existing uneconomic holdings. However, the Land Commission will exercise its discretion under the Land Act 1965 section 45 to allow aliens to purchase land where no primary land use is in issue. Though the matter is entirely within the judgement of the Commission, a number of examples are given.

These do appear to afford a possible characterisation of remote, very marginal land as distinct from farmland, even if they do not take adequately into account social consequences of tourism and the recreation industry. Perhaps they are worth listing:

- (a) Parcels of land not of any significant size having regard to the quality of the land and local conditions generally.
- (b) Large mansions and grounds which have become insupportable for the local purchaser.
- (c) Remote estates of low agricultural value, unsuitable for afforestation.
- (d) Existing *bona fide* stud farms (with reservations as to acreage) being sold as going concerns.
- (e) Transactions in which the applicant can show that they are going in for some special line – preferably one with export possibilities – and that they have the necessary expertise and capital to back it up.²⁹

Some modifications of Irish policy are having to be made as a result of European Economic Community (EEC) membership.

The Problem of Discrimination

Are there not considerable hazards in a small state with an open economy choosing to close most if not all of its rural land to aliens, whose purchase money could possibly be described as foreign investment, at least in the literal sense that foreign money is coming into Scotland? The Western community is drawn together in a series of bilateral and multilateral conventions, the most important of which, for Scotland is the Treaty of Rome.

These guarantee freedom of commerce and a right of establishment. In fact, this objection is very easily met except perhaps in the case of individuals purchasing holiday homes (see below). Scotland needs only ensure that the control it introduces are not discriminatory against any particular category of persons *per se*.

The question of discrimination has arisen recently at constitutional level in Canada and Ireland. In Canada, the British North America Act gives the Dominion competence with respect to the admission of aliens, including foreign companies (Article (91) 25 BNA), while the provinces are competent to define property rights (Article (92) 13). Prince Edward Island (PEI) has passed legislation excluding non-residents of PEI holding title to property beyond 10 acres or shore land beyond 5 chains. The objects of the legislation are to combat declining agriculture, holiday homes and land price inflation. Its constitutionality has been upheld by the Canadian Supreme Court.³⁰ The Province of Ontario has resorted to taxation to control non-resident ownership. But this roundabout approach now seems superseded by the Supreme Court decision.

In Ireland, an Inter-departmental Committee on Land Structure Reform has also been concerned by the problem of discrimination. In Ireland it is accepted that about half the agricultural land transactions on the open market represent purchases by persons not farming full time. This factor, along with speculative and sitting investment purchases, contributes to inflated land prices and diminishes the capacity of smaller landholders to compete for land. The Committee has been advised that to declare categorically that purchases by certain designated classes would be disallowed is probably contrary to Articles 40 and 43 of the Constitution. However, it recommends that a new land agency should regulate sales (the Land Commission has merely a power of compulsory purchase) to improve the competitive position of the smaller farmer and to ensure that land passes into the control of those most likely to use it effectively. The grounds of possible prohibition are familiar, amassing of land, possible absenteeism or part-time farming and incompetence.³¹

The Treaty of Rome Article 52 guarantees a right of establishment to citizens of member states, *i.e.* to participate in non-salaried activities, the running of businesses and companies, but only within the conditions established by the law of the host state for its own nationals. The EEC Commission has already approved the Danish Agriculture Act 1973 despite its exclusion of investments, land accumulations and purchases by non-farmers.³² The legislation was intended to exclude not merely large numbers of Dutch and Germans purchasing land on the west coast of Denmark, but also urban Danes, especially of course from Copenhagen.

The Norwegians and Swedes have legislation expressly discriminating against aliens. The Norwegians passed legislation very soon after independence with a view to excluding Swedes from purchasing land. However, they find now that the controls of the Koncession Act are quite adequate. The Swedish Law was concerned with foreign companies which had begun to buy forest and mining land. This is now, in any case, very difficult. Exceptions for aliens bring the law very close to other rural public law in its effect. If the alien wishes to farm and is domiciled in Sweden, or if he needs the estate for another trade activity in Sweden, he may be allowed to buy the land. The authorities administer this legislation closely in co-ordination with the Land Acquisition Act.³³

Although the legality of the Danish legislation has not been adjudicated by the Court of Justice of the European Communities, one may assume that it would take into account international practice with respect to the scope of a right of establishment. Given the importance of the US in world agriculture it merits particular attention. In an exhaustive study of US practice it has been shown that even with a broadening of the right of establishment after 1945, the United States expressly reserves the right of the US to limit or exclude alien activity in the exploitation of land and natural resources. If exercised, this reservation could prohibit aliens from agricultural and mineral resource development. The effect is that treaties do not limit State statutes on agricultural or other rural land. For the most part the States do not exclude aliens but the policy has been at various stages in US history, especially the 1870's and 80's, used to exclude aliens, *e.g.* English nobility, acquiring large holdings. At present the Family-farms Acts of eight States in the upper Mid-West and the Great Plains discourage investment in agricultural activities or closely held family-farm corporations.³⁴

The Scandinavian legislation should be perfectly adequate to exclude most of the purchases described in this study. It would be entirely open to a Scottish Government to restrict rural land purchases by aliens to a certain size, to require that they themselves come to Scotland, reside on the land and exploit it as their main occupation, provided only that it does not subject aliens to any special treatment.

However, somewhat different questions are posed by restrictions on individual recreation *per se*. In an independent Scotland these are much more likely to be directed specifically against aliens. Complete prohibition of purchases of holiday homes, etc. by aliens is certainly within the competence of a sovereign state but it would be an unusual development in Western Europe.³⁵ It might be more diplomatic for Scotland to accept the moderate restraints imposed by the Treaty of Rome, which does allow restrictions on all the common market freedoms (of goods, labour, capital, Articles 38, 483, 56(1)) wherever public policy requires it. A recent court decision has said that the treaty requires: '*... in addition to the perturbation of the social order which any infringement of the law involves ... a genuine and sufficiently serious threat to the requirements of public policy affecting one of the fundamental interests of society....*'.³⁶

Discussion in Sweden in 1975 concerning the tightening of the law on alien purchase of holiday homes indicates how even a state not a party to the Treaty of Rome feels constrained by a notion of international public policy. More than 50 percent of alien purchasers were German and they tended to concentrate in the most densely populated parts of Sweden. Swedes felt that such a pattern of purchases could lead to the formation of ghettos where not only other aliens but even Swedes would be unwelcome. The law did not react crudely. It distinguished aliens who had a special connection with Sweden (*e.g.* regular holidaying for many years), from other aliens. The former could purchase homes where they pleased while the latter were confined to less densely populated areas.³⁷

Compensation

Suppose that a Scottish Government decided to 'roll-back' the pattern of alien purchases which has already occurred, what kind of reaction could it expect from abroad? Would it have to pay full market value of the land or the price which a seller would be prepared to sell at? Could it achieve acceptable use of the land through taxation or primary land use regulations without having an accusation of 'creeping nationalisation' levied against it. In all probability Scotland's room for manoeuvre would be extremely wide. Compulsory purchase legislation need merely form part of a much wider legislative programme which introduces standards of control of rural land regarded as unproblematic elsewhere. Cries of acquired rights and the sanctity of property enjoy very much less international support in this area than in others such as a taking of businesses or urban property.³⁸

Legal standards concerning primary land use *i.e.* quite simply obligations to plant crops, graze animals, etc. are very uncommon in Western Europe largely because the land tenure system renders them unnecessary. However, where special regulations on land use do exist, they are not considered to justify compensation being paid for inconvenience. For instance, when a West German state recently passed a statute compelling landowners to maintain a minimum level of cultivation of marginal land for environmental purposes no compensation was paid. The duty of the landowner arose out of a social obligation of property.³⁹ In Switzerland regulations which require that land remain in agricultural use are not regarded as necessitating any recompense except perhaps where it is clear that particular owners were on the point of converting the land to another more profitable and, of course, publicly accepted form of use. Indeed, it is proposed to compulsorily lease marginal land which is being neglected, without paying compensation. The reason is simply that in no way can it be said that such a law '*... prevents an existing use or a very probable use in the near future, or renders very difficult a use for which the property is suitable.*'⁴⁰

In developing countries outright expropriation of rural land owned by aliens has been much more common than what might be called 'creeping nationalisation'. However, this has largely been due to factors which need not affect Scotland. The emotive or symbolic effect of treating the alien as especially harmful could not so easily be achieved by the imposition of regulations for which there is not an adequate administration to enforce. It is nonetheless accepted that a state may impose maximum/minimum levels of production in a crop considered socially desirable, *e.g.* in conformity with national food policy it may introduce price controls, marketing restrictions and even progressive *ad valorem* taxes on land with higher rates on high acreage-units, which can nonetheless be avoided by selling off the land.⁴¹

The enforcement of standards respecting land use is notoriously difficult. There is not much room for disagreement about the best possible use to which land might be put. It is not only developing countries which despair of deciding – *i.e.* conclusively for the sake of a once and for all court litigation – how much different communities or persons could make so many types of land yield. The Swedes and the Irish have both experienced great difficulty in attempts at effective control.⁴² So it might be more realistic for a Scottish Government to accept that it cannot hope to persuade many of the individuals or companies to conform to its social and economic policies by anything short of a compulsory taking. What will then be the measure of compensation?

In Western Europe perhaps the standard imposed by Norwegian law could be taken as most appropriate for Scotland. It arises within a context common to Denmark, France and, to a lesser extent, West Germany. In Norway, as has been seen already, when the County Agricultural Committee exercises a right of pre-emption it may object that the purchase price of the property exceeds its operative agricultural value and require that the amount due shall be determined by valuation. The background to this is the Norwegian Expropriation Compensation Act (26/1-73 No. 4 esp. sect.4) which applies to all compulsory acquisition of land. Valuation is based on the current use of the land, and changes in land use may be taken into account if they are within the framework of existing operations. Thus profits obtainable from better agricultural methods would be owing but not from a different use which is regarded as contrary to public policy, such as an exclusive and large-scale tourist or recreation enterprise. In any event market price is not a determining criterion for the simple reason that, with respect to rural land sales, prices are controlled.

In developing countries the problem of compensation to aliens does not present itself in quite the same way. Land reform legislation is usually punitive in the case of completely or partially neglected land. The reasoning is that even the theory of acquired property rights supposes that land will be put to some use, that the owner will not simply '*sit on*' the land, but work it to provide a return. If he does not, there is no occasion to compensate him. This underlies the 1967 Land Reform of the Christian Democrats in Chile.⁴³ However, aliens are usually active in quite intensive cash-crop plantation agriculture. These enterprises will, in all probability, have been in existence for many decades. They may well pose questions about foreign control over natural resources which cannot be resolved by improved standards of primary land use and labour conditions. Tea and rubber plantations resemble oil fields much more than rural land speculation or a recently developed tourism which may disrupt local communities and future land development plans. They date back to colonial and neo-colonial times and raise much wider questions about unjust enrichment of Western companies in the past and unfavourable terms of trade between the West and the Third World at present. Needless to say, compensation which is paid is never the full market price, but it is difficult to draw conclusions from such practice, which are relevant to the Scottish situation.

Appendix: Examples of Land Sales in Eight Counties of Scotland

Caithness

| Seller | Purchaser | Estate | Type | Acreage | Date | Price Resale |
|---|---------------------------------------|----------|---------------------------|---------|----------|--------------|
| Trustees of Bretram Currie | Harry E. Blyth (American) | Dunbeath | Sporting | 32,000 | 11/04/68 | £83,000 |
| Harry E. Blyth | Dunbeath Estate Ltd | Dunbeath | Sporting | 32,000 | | |
| William Sinclair | Marinus Kloet (Dutch) | Mey | Farmland | 2,972 | 02/03/77 | £120,000 |
| John Darmady | Ideal Citrus Sales Europe Ltd | Camster | Rough Grazing & Peat Moor | 1,600 | 12/04/72 | £7,500 |
| Ideal Citrus | Lewferran Property Co. Ltd | Camster | Rough Grazing & Peat Moor | 10 | 23/06/72 | £600 |
| Ideal Citrus | Anthony Leslie Roberts | Camster | Rough Grazing & Peat Moor | 225 | 19/07/72 | £11,250 |
| Ideal Citrus | Sunningdale Securities Ltd | Camster | Rough Grazing & Peat Moor | 696 | 11/10/72 | £2,000 |
| Ideal Citrus | Sunningdale Securities Ltd | Camster | Rough Grazing & Peat Moor | 600 | 08/11/72 | £1,500 |
| Ideal Citrus | Sunningdale Securities Ltd | Camster | Rough Grazing & Peat Moor | 225 | 18/01/73 | £500 |
| Sunningdale Securities Ltd | Cuthbert & Gartland (Estate Agents) | Camster | Rough Grazing & Peat Moor | 41 | 24/01/73 | £4,750 |
| Sunningdale Securities Ltd | Anthony Leslie Roberts | Camster | Rough Grazing & Peat Moor | 29 | 30/03/73 | £6,264 |
| Sunningdale Securities Ltd | Cuthbert & Gartland | Camster | Rough Grazing & Peat Moor | 28 | 14/03/74 | £11,260 |
| Sunningdale Securities Ltd | Cutland Properties Ltd | Camster | Rough Grazing & Peat Moor | 450 | 14/11/74 | £165,000 |
| Cutland Properties Ltd <i>Standard Security to</i> | Property & Financial Syndications Ltd | Camster | Rough Grazing & Peat Moor | 450 | 18/09/75 | £162,000 |
| Anthony Leslie Roberts | Bernard Paul Mackeonis | Camster | Rough Grazing & Peat Moor | 73 | 16/01/73 | £22,000 |
| Anthony Leslie Roberts | Bernard Paul Mackeonis | Camster | Rough Grazing & Peat Moor | 60 | 05/03/75 | £18,000 |
| Anthony Leslie Roberts | Ghazi Orfali (Abu Dhabi) | Camster | Rough Grazing & Peat Moor | 91 | 24/02/77 | £40,500 |
| Ghazi Orfali <i>Standard Security to</i> | Anthony Leslie Roberts | Camster | Rough Grazing & Peat Moor | 91 | 24/02/77 | £34,500 |
| Bernard Paul Mackeonis | Cuthbert & Gartland | Camster | Rough Grazing & Peat Moor | 88 | 20/09/74 | £45,200 |
| Cuthbert & Gartland <i>Standard Security to</i> | Bernard Paul Mackeonis | Camster | Rough Grazing & Peat Moor | 88 | 20/09/74 | £26,000 |

| | | | | | | |
|--------------------------|--------------------------------------|---------|---------------------------|----|----------|---------|
| Bernard Paul Mackeonis | Ismail Abdul Fatah (Abu Dhabi) | Camster | Rough Grazing & Peat Moor | | 25/10/76 | £3,900 |
| Bernard Paul Mackeonis | Majid Sheakh Khazal (Abu Dhabi) | Camster | Rough Grazing & Peat Moor | | 06/12/76 | £17,550 |
| Ghazi Orfali (Abu Dhabi) | Mohammad Taiseer Sheheda (Abu Dhabi) | Camster | Rough Grazing & Peat Moor | 5 | 06/04/77 | £6,500 |
| Ghazi Orfali (Abu Dhabi) | Lufti Hassan Abu Hishmeh (Abu Dhabi) | Camster | Rough Grazing & Peat Moor | 5 | 06/04/77 | £6,500 |
| Ghazi Orfali (Abu Dhabi) | Tamima Tawfik Al-Dabbas | Camster | Rough Grazing & Peat Moor | 10 | 29/04/77 | £13,000 |

Sample of Typical Small Purchases

| | | | | | | |
|---------------------|------------------------|---------|---------------------------|--|----------|--------|
| Cuthbert & Gartland | Eric Leslie Smith | Camster | Rough Grazing & Peat Moor | | 18/08/73 | £1,000 |
| Cuthbert & Gartland | Peter Charles Norman | Camster | Rough Grazing & Peat Moor | | 17/08/73 | £120 |
| Cuthbert & Gartland | David Michael Page | Camster | Rough Grazing & Peat Moor | | 17/08/73 | £240 |
| Cuthbert & Gartland | James Lang Reid | Camster | Rough Grazing & Peat Moor | | 17/08/73 | £340 |
| Cuthbert & Gartland | Graham George Langford | Camster | Rough Grazing & Peat Moor | | 03/06/75 | £550 |
| Cuthbert & Gartland | Ian Batchelor | Camster | Rough Grazing & Peat Moor | | 06/08/75 | £220 |

No indication is given in these sales of acreage, merely a plot number.

Total number of small sales **70**

Total purchase costs **£29,202**

Sample of Typical Small Purchases

| | | | | | | |
|----------------------------|------------------------|---------|---------------------------|-------|----------|--------|
| Sunningdale Securities Ltd | Susan May Benns | Camster | Rough Grazing & Peat Moor | 2 | 29/04/76 | £165 |
| Sunningdale Securities Ltd | Francis Ian Dochert | Camster | Rough Grazing & Peat Moor | 6 | 28/05/76 | £850 |
| Sunningdale Securities Ltd | Kenneth Walter Simpson | Camster | Rough Grazing & Peat Moor | 1/3 | 08/06/76 | £240 |
| Sunningdale Securities Ltd | Shakuntla Devi Nandi | Camster | Rough Grazing & Peat Moor | 5 | 09/06/76 | £2,780 |
| Sunningdale Securities Ltd | Peggy Joan Tewkesbury | Camster | Rough Grazing & Peat Moor | 1/6 | 11/06/76 | £90 |
| Sunningdale Securities Ltd | Shifau Abimbola Kazeen | Camster | Rough Grazing & Peat Moor | 1/2 | 14/06/76 | £270 |
| Sunningdale Securities Ltd | Bertha Mary Stearn | Camster | Rough Grazing & Peat Moor | 1/3 | 17/06/76 | £180 |
| Sunningdale Securities Ltd | Barry John Edmonds | Camster | Rough Grazing & Peat Moor | 1&1/3 | 25/04/77 | £231 |
| Sunningdale | Michael Seager Harvey | Camster | Rough | 1 | 27/05/77 | £165 |

| | | | | | | |
|------------------------------------|------------------------|---------|---------------------------|-----|----------|----------------|
| Securities Ltd | | | Grazing & Peat Moor | | | |
| Sunningdale Securities Ltd | Gerald Brooks | Camster | Rough Grazing & Peat Moor | 1/2 | 19/07/77 | £280 |
| Sunningdale Securities Ltd | Charles Ejimofa Osakwe | Camster | Rough Grazing & Peat Moor | 1/2 | 18/08/77 | £270 |
| Total number of small sales | | | | | | 302 |
| Total purchase costs | | | | | | £68,261 |

Banffshire

| Seller | Purchaser | Estate | Type | Acreage | Date | Price Resale |
|--------------------------------------|---|------------|----------------------|---------|----------|---------------------|
| David George Sharp | Dr Viet Christian Aldinger (German) | Lesurdie | Sporting | | 20/03/74 | £10,000 |
| Trustees of Sir George Wm Abercromby | Cement Industries now Forglen Estate (Hong Kong) Ltd (Hong Kong & Kuala Lumpur) | Forglen | Sporting and Framing | 285 | 02/12/74 | £300,122 |
| Johanna Mary Riddoch | Australian Land Sales Ltd | Glennie | Woodland | 275 | 12/02/74 | £232,000 |
| Executors of Joseph Riddoch | Australian Land Sales Ltd | Towie | Woodland | 65 | 07/03/74 | In Cummulo Aberdeen |
| | | Saterslack | Woodland | 26 | 07/03/74 | |
| | | Rennies | Woodland | 8 | 07/03/74 | |
| | | South | Woodland | 22 | 07/03/74 | |
| | | Catstone | Woodland | 4 | 07/03/74 | |
| <i>See also Aberdeenshire</i> | | | | | | |
| Total number of small sales | | | | | | 90 |
| Total purchase costs | | | | | | £273,190 |

Aberdeenshire

| Seller | Purchaser | Estate | Type | Acreage | Date | Price Resale |
|--|--|----------------|---------------------|---------|----------|--------------|
| Major Henry Charlton Park | Barnard Robert van der Ham & Alida Moerman van der Ham (Dutch) | Lower Dess | Farmland & Sporting | 404 | 27/08/76 | £256,400 |
| Gordon Rhind | Johannes Hellinga (Dutch) | Greenburn Farm | Farmland | 163 | 30/06/77 | £67,000 |
| <i>See also Ross and Cromarty</i> | | | | | | |
| Trustees of Princess Arthur of Connaught | Enessey Company through Gerald Panchaud | Mar Lodge | Sporting | 61,500 | 01/09/63 | |
| <i>See also Ross and Cromarty</i> | | | | | | |
| Ronald | Mayfair | Blackhill, | Quarry | 112 | 19/08/77 | £3,000 |

| | | | | | | |
|---|--|--------------------|-------------------|--------|----------------------|---------------------|
| Mervyn Titcombe (Australian) | Commercial Services Ltd 9 Rue d'Anjou, Paris 75008 | Cruden Bay | | | | |
| Johanna Mary Riddoch | Australian Land Sales Ltd | Longhaven Cobairdy | Farmland Woodland | 297 | 21/10/77 12/02/74 | £10,000 £232,000 |
| Johanna Mary Riddoch | Australian Land Sales Ltd | Huntly Lodge | Woodland | 24 | 12/02/74 | In Cummulo Banff |
| Executors of Joseph Riddoch | Australian Land Sales Ltd | Slobach | Woodland | 17 | 07/03/74 | In Cummulo Banff |
| Executors of Joseph Riddoch | Australian Land Sales Ltd | Ardmiddle | Woodland | 35 | 07/03/74 | In Cummulo Banff |
| Executors of Joseph Riddoch | Australian Land Sales Ltd | Raemurrack | Woodland | 14 | 07/03/74 | In Cummulo Banff |
| <i>See also Banffshire</i> | | | | | | |
| Sample of Typical; Small Purchases | | | | | | |
| Australian Land Sales Ltd | Malcolm Rutland Shaw | Cobairdy | Woodland | 4&1/4 | 21/03/74 | £2,800 |
| Australian Land Sales Ltd | Mary Gay Platt | Cobairdy | Woodland | 7&1/2 | 21/03/74 | £4,850 |
| Australian Land Sales Ltd | Roy Brealey | Cobairdy | Woodland | 3& 3/4 | 21/03/74 | £1,901 |
| Australian Land Sales Ltd | George Richardson | Cobairdy | Woodland | 5&1/2 | 21/03/74 | £2,325 |
| Australian Land Sales Ltd | Michael Barker | Cobairdy | Woodland | 5 | 07/01/75 | £2,650 |
| Australian Land Sales Ltd | Annelore Haseler | Cobairdy | Woodland | 6 | 10/03/75 | £3,325 |
| Australian Land Sales Ltd | Raymond Cappi | Cobairdy | Woodland | 3&3/4 | 12/03/77 | £1,900 |
| Australian Land Sales Ltd | Samuel Davidson | Cobairdy | Woodland | 5 | 30/06/77 | £2,632 |
| Australian Land Sales Ltd | Christopher Berkley | Cobairdy | Woodland | 5 | 12/08/77 | £2,100 |
| Total number of small sales | | | | | | 57 |
| Total purchase costs | | | | | | £158,083 |

Sutherland

| Seller | Purchaser | Estate | Type | Acreage | Date | Price Resale |
|-----------------------------------|---------------------------------|----------|-----------------------|---------|----------|--------------|
| Trustees of Ian McGregor Campbell | Balnagown Castle Properties Ltd | Balblair | Farming & Hill Ground | 1,856 | 20/08/76 | £235,100 |
| Balnagown Castle | Bocado SA (Lichtenstein) | Balblair | Farming & Hill Ground | 1,856 | 21/07/77 | £466,908 |

| | | | | | | |
|--|--|-------------------|----------|---------|----------|------------|
| Properties Ltd | | | | | | |
| Thomas Ian Robinson | Sijtze Katz (Dutch) | Durness | Sporting | 20,000 | 20/12/76 | £49,200 |
| Sijtze Katz | Taekele Soepboer (Dutch) | Durness | Sporting | 4,858 | 19/01/77 | £36,000 |
| Blue Star Line | Ursula Schwab (German) | Ledmore (part of) | Sporting | 9,000 | 01/07/77 | £69,000 |
| Ursula Schwab <i>Standard Security to</i> | Nicolaus Stark Bank (German) | Ledmore (part of) | Sporting | 9,000 | 01/07/77 | £69,000 |
| Rural Reconstruction Ltd | N.V. Landbouw Exploitatie Maatschappij (Dutch) | Overscaig | Sporting | 5,800 | 04/04/68 | 50,000 |
| N.V. Landbouw <i>Bond of Credit to</i> | Hollandsche Bank-Unie N.V. (Dutch) | Overscaig | Sporting | 5,800 | 14/02/73 | Discharged |
| N.V. Landbouw | W. Duits B.V. (Dutch) | Overscaig | Sporting | 5,800 | 14/02/73 | £27,000 |
| W. Duits B.V. | Exploitatie Maatschappij (Dutch) | Overscaig | Sporting | 2,135ha | 05/06/75 | £105,650 |
| W. Duits B.V. | Doeke Bakhuizen (Dutch) | Overscaig | Sporting | 165ha | 05/06/75 | £7,728 |

Kincardineshire

| Seller | Purchaser | Estate | Type | Acreage | Date | Price Resale |
|--------------------------|--------------------------------------|--------------|----------|---------|----------|--------------|
| Johnstone & McCombie Ltd | Germont SA (Switzerland & Panama) | New Banchory | Farmland | 52 | 24/02/69 | £4,500 |
| Germont SA | Kincardine County Council | New Banchory | Farmland | 2 | 09/02/70 | £2,500 |
| Germont SA | Cumming & Dempster Motor Engineering | New Banchory | Farmland | 3 | 10/01/73 | £1,000 |
| Germont SA | George Wimpey & Company | New Banchory | Farmland | 5 | 23/07/73 | £10,725 |
| Germont SA | Ingasetter Ltd | New Banchory | Farmland | 4 | 05/12/74 | £1,000 |
| Germont SA | Kincardine County Council | New Banchory | Farmland | 4 | 20/01/75 | £32,025 |
| Germont SA | George Wimpey & Company | New Banchory | Farmland | 18 | 31/03/75 | £32,297 |
| Germont SA | Muir tack Estates Ltd | New Banchory | Farmland | 5 | 05/12/75 | £37,750 |
| Germont SA | Albert McIntosh Builder | New Banchory | Farmland | 7 | 09/12/75 | £19,000 |
| Muir tack Estates Ltd | Albert McIntosh Builder | New Banchory | Farmland | 2 | 06/02/76 | £1,000 |
| Muir tack | Germont SA | New | Farmland | 3 | 25/03/76 | £37,750 |

| | | | | | | |
|--|----------------------------|---------------------------------|-----------------------|---------|----------|---------|
| Estates Ltd <i>Standard Security to</i> | | Banchory | | | | |
| Muirtack Estates Ltd | Pitlochry Knitwear Company | New Banchory | Farmland | 0.224ha | 16/08/76 | £30,000 |
| Sir William Gladstone | Per Hegard (Norwegian) | Kerloch, Tilquhillie and Invery | Sporting and Farmland | 10,000 | 01/06/77 | |

Moray

| Seller | Purchaser | Estate | Type | Acreage | Date | Price Resale |
|---|---|-----------------------|---------------------|----------------|----------|------------------------------------|
| Trustees of Countess & Earl of Seafield | Tulchan Estate Company Ltd | Tulchan | Sporting | 15,000 | 26/04/73 | £1,425,000 |
| Tulchan Estate Company Ltd <i>Standard Security to</i> | Slater Walker Ltd | Tulchan | Sporting | | 06/11/73 | |
| Trustees of Countess & Earl of Seafield | Tulchan Estate Company Ltd | Straan | Woodland | 134 | 27/03/75 | £8,716 |
| <i>Slater Walker discharge Standard Security 09/03/76</i> | | | | | | |
| Slater Walker Ltd | Bestward Estate Company Ltd (formerly Tulchan Estate Company Ltd) and Sermon Lane Investments Ltd | Tulchan & Straan Wood | Sporting & Woodland | | | |
| Bestward Estate Company Ltd | Enessey Company SA (Switzerland & Panama) | Tulchan & Straan Wood | Sporting & Woodland | | 09/03/76 | £1,225,300 |
| <i>See also Aberdeenshire and Inverness-shire</i> | | | | | | |
| Enessey Company SA <i>Standard Security to</i> | Bestward Estate Company Ltd | Tulchan & Straan Wood | Sporting & Woodland | | 09/03/76 | £493,300 |
| Enessey Company SA | James McDonald | Tulchan Dalvey Farm | Farmland | (part of) 2.25 | 02/12/76 | £6,000 |
| Enessey Company SA | Bestward Estate Company Ltd | Tulchan | Sporting | | 15/03/77 | <i>Discharge Standard Security</i> |
| Enessey Company SA | Frederick Roy Rutter | Tulchan Shennach | Farmland | (part of) 0.50 | 28/03/77 | £6,000 |

| | | | | | | |
|---|---------------------------|------------------|-------------------|----------------|----------|-------------------------------------|
| | | Farm | | | | |
| Enessey Company SA | Major John Keith Hayes | Tulchan | Farmland | (part of) 0.50 | 18/07/77 | £2,500 |
| Col. Michael Hardinge Houssemayne du Boulay | Johannes Hellinga (Dutch) | Blervie | Farm and Woodland | | 23/02/77 | £75,000 |
| Col. Michael Hardinge Houssemayne du Boulay | Johannes Hellinga (Dutch) | Easter Brockloch | Farmland | 117 | 07/03/77 | £25,000 |
| Johannes Hellinga | Alexander Mackenzie | Easter Brockloch | Farmland | (part of) 25 | 24/03/77 | £15,000 |
| Johannes Hellinga | James Munro | Easter Brockloch | Farmland | (part of) 84 | 11/04/77 | £52,700 <i>Standard Security</i> |
| <i>See also Ross and Cromarty and Aberdeenshire</i> | | | | | | |

Inverness-shire

| Seller | Purchaser | Estate | Type | Acreage | Date | Price Resale |
|---|---|-------------------------------------|---------------------|---------|----------|-------------------------------|
| John Trotter | Taekele Soepboer (Dutch) | Brin | Sporting & Farmland | 360 | 14/01/77 | £57,000 |
| <i>See also Sutherland</i> | | | | | | |
| David Wathen | Scotrex BV (Dutch) | Kilmartin | Holiday Centre | 15 | 01/08/77 | £55,000 |
| David Wathen | Scotrex BV (Dutch) | Kilmartin | Farmland | 1,930 | 23/09/77 | £135,000 |
| Ashdale Land & Property Co. | Samuel Clifford Hardy (American) | Knockie & Dalachapple | Sporting | 2,597 | 27/08/70 | £60,000 |
| Silversands Holiday Parks Lossiemouth Ltd | Luc Marie Joseph Delamaire (French) | Ardochy | Sporting | 310 | 18/01/77 | £39,900 |
| Frederick Wm. Dalgety | Guenther Ernst Roedel (German) | Craskie and Invercannich | Sporting | 155 | 06/05/77 | £50,000 |
| Sir Hereward Wake | Enessey Company SA (Switzerland & Panama) | North Harris | Sporting | | 10/01/77 | £235,000 |
| Trustees of Henry Rice Nichol | Rodolphe Roger Baudouin de Spoelberch (Belgian) | Black Corries (Part in Argyllshire) | Sporting | 10,000 | 01/10/75 | £87,900 |
| Teocarolo Ltd | Jacob Cremer (Dutch) | Pitmain | Sporting | 9,900 | 1968 | £41,000 |
| Jacob Cremer | Cremer Oil Co. Texas, USA | Pitmain | Sporting | 9,900 | 1972 | £182,000 |
| Donald Cameron of Locheil | No 26 Trustee Company Incorporated | Glendessary | Sporting | 13,200 | 29/11/73 | £905,165 |
| No 26 Trustee Company | Slater Walker Securities | Glendessary | Sporting | 13,200 | 14/03/77 | £106,237 <i>Discharged</i> |

| | | | | | | |
|---|--|------------------------------|----------|------------------|----------|----------|
| <i>Standard Security to</i> | | | | | | |
| No 26 Trustee Company and Mathews Wrightson Land Ltd | Viscount Pollington | Glendessary North | Sporting | (part of) 860 | 20/01/75 | £84,991 |
| No 26 Trustee Company and Mathews Wrightson Land Ltd | Post Office Staff Superannuation Scheme | Glendessary North West | Sporting | (part of) 702 | 20/12/75 | £36,500 |
| Viscount Pollington | Post Office Staff Superannuation Scheme | Glendessary North | Sporting | 860 | 20/12/76 | £48,890 |
| No 26 Trustee Company | Perfidia Investments Ltd (UK Channel Isles) | Glendessary | Sporting | 10,600 | 14/03/77 | £106,000 |
| Perfidia Investments Ltd <i>Standard Security to</i> | Brothock Trustees Ltd | Glendessary | Sporting | 10,600 | 14/03/77 | £30,000 |
| Angus Spencer Nairn | Over Rankeilour Farms Ltd (UK Channel Isles) | Struy | Sporting | 20,000 | 05/08/73 | £200,000 |
| Eishken Estate Co. Ltd | Ralph Austin Dubery (French) | Eishken and Parc Deer Forest | Sporting | 41,000 | 12/09/77 | £50,000 |
| Eishken Estate Co. Ltd | Constuctions Architectures Urbanisme SA (French) | Eishken and Parc Deer Forest | Sporting | (part of) 40,000 | 12/09/77 | £190,000 |

Ross and Cromarty

| Seller | Purchaser | Estate | Type | Acreage | Date | Price Resale |
|-------------------------|---|--------------------------------|----------|---------|----------|--------------|
| Volstead Properties Ltd | Bocado SA (Lichtenstein) Business address: Rue du Rhone, 92 Geneva | Newton Farm | Farmland | 63 | 06/09/73 | £15,000 |
| Sir Hugh Rose | Bocado SA | North Balkeith Farm | Farmland | | 30/10/74 | £276,000 |
| Sir Hugh Rose | Bocado SA | Mid and South Pithogarty Farms | Farmland | 247 | 30/10/74 | In Cummulo |
| Sir Hugh Rose | Bocado SA | Fendon Hill | Farmland | 85 | 30/10/74 | In Cummulo |
| Trustees of | Bocado SA | Kingscauseway | Farmland | 567+ | 26/05/75 | £105,000 |

| | | | | | | |
|------------------------------------|--|----------------------------|-----------------|------------------|----------|----------------------------|
| Wm. Alexander Mackay | | Heathmount | | | | |
| Balnagown Castle Properties Eire | Bocado SA | Balnagown Castle | Castle Policies | | 16/09/75 | £466,908 |
| Executors John Ormiston Gordon | Bocado SA | Summertown Farm | Farmland | | 16/10/75 | £27,500 |
| Ross Estates Company Inc. Eire | Bocado SA | Balnagown Castle (part of) | Grounds | | 26/10/76 | £1,000 |
| Executors John Ormiston Gordon | Bocado SA | Balnagall Farm | Farmland | 340+ | 05/09/77 | £66,000 |
| <i>Bacardo see also Sutherland</i> | | | | | | |
| Jermeh Hugh Dewhurst | Hendrik Jan Engelbert van Beuningen and relatives (Dutch) | Braemore (Foich section) | Sporting | (part of) 14,000 | 21/10/76 | £55,000 |
| Jermeh Hugh Dewhurst | NV Beheersmat Schappij Festeyn (Dutch) now Belegginismatt Schappij Festeyn (Dutch) | Braemore (Strone section) | Sporting | (part of) 14,000 | 21/10/76 | £100,000 |
| Timothy Walter Sandeman | Malie-Geod BV (Dutch) | Fannich | Sporting | 10,000 | 19/05/76 | £140,000 |
| Major Cecil Geoffrey Braithwaite | Anne Arnoldus Nicolai (Dutch) | Ben Damph | Sporting | 14,023 | 10/09/76 | Price not known (Sub sale) |
| Anne Arnoldus Nicolai | Saitjze Katz (Dutch) | Ben Damph | Sporting | 14,023 | 10/09/76 | £160,000 |
| Peter Esme Brassey | Gerardus van (Dutch) | Rhiddoroch East | Sporting | 10,000 | 19/06/61 | £225,000 |
| Dorothy Anne Balean | Greengate Ltd (UK Channel Isles) | Drumchork | Sporting | 20,048 | 13/10/72 | £17,500 |
| W. McLean and Bank of Scotland | Greengate Ltd (UK Channel Isles) | Drumchork | Sporting | (part of) | 17/05/74 | £8,000 |
| Greengate Ltd | Longfield Investments Ltd (UK Channel Isles) | Drumchork | Sporting | 20,048 | 10/02/75 | £50,000 |
| Greengate Ltd | Ballina Investments (UK Channel | Drumchork | Sporting | (part of) | 05/03/75 | £8,000 |

| | | | | | | |
|--|--|------------------------------------|----------------------|---------------|----------|----------|
| | Isles) | | | | | |
| Trustees of Lord Elphinstone | Greengate Ltd (UK Channel Isles) | Tarbat | Farmland & Foreshore | 500 | 24/11/71 | £80,000 |
| Trustees of Lord Elphinstone | Greengate Ltd (UK Channel Isles) | Croy | Woodland | 178 | 24/11/71 | £15,000 |
| Greengate Ltd | Quartet Holdings Ltd (Gibraltar) | Tarbat | Farmland & Foreshore | 500 | 13/05/75 | £50,000 |
| Quartet Holdings Ltd | Garrulus Glendarius Ltd (UK Channel Isles) | Tarbat | Farmland & Foreshore | 500 | 22/07/76 | £600,000 |
| Major Robert George Pollock-McCall | Johannes Hellinga (Dutch) | Kindeace | Farmland | | 21/12/76 | £460,000 |
| Johannes Hellinga | Johannes and Hermanus Huis in Het Veld (Dutch) | Kindeace Easter Coillymore Farm | Farmland | (part of) 147 | 02/03/77 | £25,238 |
| Johannes Hellinga | Johannes and Hermanus Huis in Het Veld (Dutch) | Kindeace Bardentyre House and Farm | Farmland | (part of) 190 | 10/06/77 | £47,058 |
| Johannes Hellinga | Tjeert Zijlstra (Dutch) | Kindeace Inchfuir Farm | Farmland | (part of) 255 | 25/08/77 | £148,900 |
| Johannes Hellinga | Marius van Ooijen (Dutch) | Kindeace | Farmland | (part of) 429 | 09/09/77 | £169,767 |
| Johannes Hellinga | Den Heuvel (Dutch) | Kindeace | Farmland | (part of) | 04/10/77 | £27,380 |
| <i>Hellinga see also Aberdeenshire</i> | | | | | | |
| Derrick Thomas Allan | Claude Marie Balteau (Belgian) | Dervner | | | 25/07/75 | £20,000 |

References

¹ *Glasgow Herald*, *Who Owns Scotland*, 7th, 9th, and 23rd February and 8th June, 1977; *The Scotsman*, 7th, 25th and 28th October, 1977; SNP discussion paper on Land Ownership and Use in Scotland, Edinburgh, 1977; Highlands and Islands Development Board Occasional Paper, Inverness, May 1977.

² For reasons of consistency the date of sale has been taken as the date of registration in the Register of Sasines.

³ Denman, 'Who Owns Britain', *The Countryman*, 1977-78, pp23-32.

⁴ Bryden and Houston, *Agrarian Change in the Scottish Highlands*, London (1976); Highland Regional Council, Regional Report, part II, Inverness, 1977, p30; White Paper: The Scottish Economy 1965 to 1970, Edinburgh (1966), pp139-43.

⁵ *Glasgow Herald*, 7th February, 1977.

⁶ *Ibid*, 11th March, 1977.

⁷ *Ibid*, 8th February 1977.

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- ⁸ One Perthshire estate has recently concluded a deal with an Arab syndicate who will be paying £500 per head per day's stalking.
- ⁹ *Daily Telegraph*, 7th November, 1973; *Financial Times*, 27th October, 1973; *Estates Gazette*, 17th November, 1973; Wood and Leisure Land, *An Investment in Woodland*, London (1973).
- ¹⁰ *An Investment in Woodland*, op. cit., p11.
- ¹¹ See n.1 op. cit.
- ¹² *Glasgow Herald*, 8th June, 1977.
- ¹³ Canadian Foreign Investment Review Act, 1973 s.3; Bundesbeschlusse von 23 Marz 1961/23Marz 1973 uber den Erwerb von Grundstucken durch Personen in Ausland, art.3
- ¹⁴ s.45(5) (b).
- ¹⁵ Irish Land Acts, 1923 s.24(1); Land Act, 1933, s. 32(3) as amended by the Land Act, 1965, s.35(1).
- ¹⁶ Routon Simpson, *Land Law and Registration* especially Appendices A and B on France and Germany, Cambridge (1976).
- ¹⁷ Finance Act, 1975, Schedule 4s.5
- ¹⁸ *Agrarian Law and Judicial Systems*, FAO Legislative Study No 5, Rome (1975), p24.
- ¹⁹ Heimburger, *Land Policy in Sweden*, Stockholm (1976), pp13-16.
- ²⁰ *Structural Reform Measures in Agriculture*, OECD. Paris (1972), pp228-32.
- ²¹ Congress Europeen de Droit Rural, 6th – 8th November, 1975, Rapport General, Pikalo, especially pp25, 29-31.
- ²² Danish Agricultural Act 1973, s.16 and 18; OECD Agricultural Policy Report (Denmark), Paris (1974), pp45-46.
- ²³ Norwegian Koncession Act 1974, no.19, 13th May s.7,14.
- ²⁴ Structural Reform Measures, op.cit., pp118, 122; la loi du 8 Aout 1962, art.7, modified by art.3 of ordinance no.67-824, 23rd September, 1967; art.10 of decree of 14th June, 1961; the German attitude to companies is closer to Sweden's, Lange, *Grundstückverkehrsgesetz*, Munich, 1964, pp168-9.
- ²⁵ France, la loi du Aout 1962, no.62-933, Code Rural art.188-1; West Gremany, *Grundstückverkehrsgesetz*, 1961, s.9(i), (ii), both discussed in Pikalo op.cit., p30. See also Danish Agriculture Act, 1973, paras 9,13,16 and Norwegian Koncession Act, 1974, op.cit., s.7.
- ²⁶ . See especially Lange, op.cit., pp161-2, 166-7; *Grundstückverkehrsgesetz*, 1961 op.cit., s.9(1)/I, (2), (3); Norwegian Land Act Lov Av, 18th March, 1955 (translated FAO Legislation Series, 1955, vol.14)s.1,10,14,20; Danish Agriculture Act, 1973, para 18; for Ireland see op.cit. n.14.
- ²⁷ Botschaft des Bundesrates an die Bundesversammlung uber den Erwerb von Grundstrucken durch Personen in Ausland, 25th October, 1972, 11405, pp9-13.
- ²⁸ Bundesbeschluss uber den Erwerb von Grundstucken durch Personen in Ausland, Anderung von 21st March, 1973 in force since 1st February, 1974; for the Swiss position, Dagon, Erwerb van Grundstucken durch Auslander in der Schweiz, in A.W.D. des Betriebs-Beraters, August/September, 1974, pp453-4 and 457.
- ²⁹ Advice of the Irish Land Commission: Purchase of Land in Ireland by Non-Citizens. Leaflet currently distributed by Irish Land Commission.
- ³⁰ *Morgan v A-G for Prince Edward Island* 55 D.L.R. (1975) S.C.C. 527 re s.3 of the Real Property Act R.S.P.E.I. 1951, Ch.138 as re-enacted by the R.P.A. 1970 c.40.1; for a discussion, Spencer, The Alien Landowner in Canada, 51, *Canadian Bar Review*, p389 and at pp396, 408.
- ³¹ Interim Report, Dublin (May 1977) pp10-12.
- ³² For a contrary view, see Kolbert, Land Reform, *Land Settlement and Cooperatives*, FAO, Rome (1974), No 1/2, at pp106, 110.
- ³³ Norway Act no.16, 14th December, 1917 on the acquisition of waterfalls, mines and real properties; Swedish Act of 30th May, 1916, amended by Government Bill 65, 1975; see Bogdan, Restrictions limiting the right of foreigners to acquire real estate property in Sweden, *Rabels Zeitschrift* (1977), p536.

³⁴ Morrison, Alien investment in Real Estate in the US, 1976. *Minnesota Law Review*, pp657-81, also pp625-6, 635-6. The writer participated in two US Government reports; Albuquerque, International Legal Practitioner, May 1977, p30. For West Germany see Weber, *ibid.*, at p27.

³⁵ Kolbert, *op.cit.*

³⁶ *R v Bouchereau* (unreported) Case 30/77, see Usher, *European Law Review*, December 1977, pp449-53.

³⁷ Bogdan, *op.cit.*, p536 at pp538, 543.

³⁸ The latter formula is much used in UK compulsory acquisition legislation, *e.g.* Land Clauses (Scotland) Act, 1845 and Land Compensation (Scotland) Acts of 1963 and 1973. Cf. Community Land Act, 1975, s.24, 25 and Crofting Reform (Scotland) Act, 1976, s.2.3.

³⁹ Baden-Wurtemberg, Landwirtschafts und Landeskulturgesetz 14th March, 1972, and explanatory Memorandum; see more generally Dolzer, *The Social Obligation of Property*, Basel (1976)

⁴⁰ A formula of the Federal Supreme Court expressed in s.48 of the Swiss Federal Planning Bill, 1974; Friedrich, Eigentumsguarantie und Landwirtschaftliches Bodenrecht, in *Blatter fur Agrarrecht* (1976) p1.

⁴¹ Karst, *Land reform in international law*, in *Essays in Expropriation*, Miller and Stranger (eds), Chicago (1976) pp51,65,67; also Karst Latin American land reform: the users of confiscation, 63 *Michigan Law Review* (1964/1965), p327 at pp349-55.

⁴² Interim Report, *op.cit.*, para 27; the Swedish Land Maintenance Act is under complete revision at present.

⁴³ Goldman, Pascam, Real Property Valuations in Argentine, Chile and Mexico, in R. Lillich (ed) *Valuation of Nationalised Property in International Law*, Virginia, 1976, p129 at p143; also Karst, *op. cit.*, pp62-3.