

# **The Battle to Buy – Community Buyouts**

**Jamie Carpenter**

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*Last month the Westminster Government floated plans to let English communities have first refusal on land coming onto the market. But similar legislation in Scotland has been giving both communities and landowners a bumpy ride.*

# The Battle to Buy – Community Buyouts

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Next week, a small Scottish community will take on the might of the Scottish Executive and the Hilton Hotel Group in a landmark court case. According to the representatives of Dunblane's Holmehill Community Trust, which is challenging a Scottish Executive ruling, it's a re-run of David and Goliath: "*Big government and international business ranged against a local community,*" says the trust's chairman, Jim Bennett.

It looks like a classic battle of the little people against the big powers – the kind of clash that most governments go far out of their way to avoid. Yet south of the border, the leaders of an even bigger government are signalling that they may be willing to risk similar conflicts themselves. Local communities' right to have first refusal on land coming onto the market, enshrined north of the border in the Land Reform (Scotland) Act 2003 may well be coming to England.

In a speech delivered last month, communities minister David Miliband said the Government was examining the potential to introduce the right to buy to English cities, to help build up the asset base of local communities and the voluntary sector (R&R, 14 October 2005, p1). Voluntary and community sector bodies have welcomed the plans. "*We know that asset ownership, done well, can achieve fantastic results,*" says Steve Wyler, director of the Development Trust Association. "*We're delighted that the Government is looking at this with such a high level of interest.*"

It's fair to say that the Government's interest in the Scottish court case will be just as keen. The Scottish law allows communities of fewer than 10,000 people to register an interest in a piece of land, and then buy it if it comes on the market. When a registration is *activated* by a landowner's decision to sell, the community has six months to complete the purchase before the landowner may offer their land on the open market. However, an emergency provision in the legislation allows registrations to be accepted on previously unregistered land after it comes on the open market in *exceptional circumstances*: it is the Executive's refusal to allow the Holmehill Trust to make a late registration of interest in a wooded hillside put up for sale by the Hilton Hotel Group that has prompted the trust's legal challenge.

The trust's case rests on the fact that, as Bennett says: "*Late registration is the norm rather than the exception.*" As of February this year, he says, 15 out of 18 registrations under the Act came in late – and Holmehill's was the first to be vetoed on those grounds by the Executive. "*It's how communities work – they work in a reactive way,*" he adds, arguing that the Executive is trying to "*close off the*

*alleyway*” to late registration. “*If we lose this case, the reality is that there will be little chance that anyone else will be able to put in a late registration*” he says.

For its part, the Executive says that Holmehill’s application was refused because it did not demonstrate any good reason why it was late. But the struggle with Holmehill is not the only problem afflicting the land reform legislation. There has been little take-up since the Act came into force in summer 2004, with only 25 registrations of community interest in land. Of these, fewer than ten are currently still in progress – neither having yet been accepted nor rejected. Only three purchases have actually taken place due to the legislation. And Scottish landowners are arguing that the Act is greatly increasing the expense and complexity of buying and selling land.

Andy Wightman, a Scottish land reform expert, says that the low numbers are partly due to a lack of awareness. The Act covers all of rural Scotland, but Wightman argues there is a misperception that it only applies to Highland areas and crofting communities. Another reason for the low take-up, he says, is that registration requires people to engage in a “*highly speculative endeavour, at the end of which nothing might happen*”.

Registering an interest, says Wightman, is a “*cumbersome, bureaucratic procedure*”. Communities must set up a company limited by guarantee, which must define the community that it serves using postcode units. The body has to demonstrate that buying the land would secure social and environmental benefits, and must also show that there is support for the proposal within the community.

The most high-profile sale to take place under the Act to date saw residents of a remote Highland community buy two sprawling estates for £2.9 million. The Glencanisp and Drumrunie estates in Sutherland, covering 17,800ha of spectacular mountain terrain, were sold to the Assynt Foundation in June this year (R&R, 10 June 2005, p8).

Iain Russell, a partner at property consultancy CKD Galbraith, acted on behalf of the Vestey family, who were selling the estates. The sale, he says, was an “*agonising and drawn-out process*”. The seller had embarked on a costly advertising campaign, which was brought to a standstill when the local community lodged a late registration of interest in the land. The Executive rejected the registration, and the seller’s advertising campaign resumed. But under the legislation, the community was allowed to submit a further application – the Government’s guidance suggests that it may do so if it is “*in the public interest*” – and the sale stalled again. A rival bid from another nearby community added further delays.

The community’s second late registration got the green light from the Executive, but the sale nearly fell through because the Assynt Foundation struggled to find the cash needed to fund the purchase. “*We had to raise nearly £1 million within weeks,*” says its chair Alastair Macaskill. The foundation had anticipated that it would have to raise £200,000, believing the lottery-backed Scottish Land Fund (SLF) and economic development agency – Highlands and Islands Enterprise (HIE) – would meet most of the cost. But when it emerged that the contribution from the SLF would total half of the asking price instead of the expected three-quarters, the foundation’s plans were

left hanging in the balance. It finally raised the funds needed to carry out the purchase within the Act's timescale – with 24 hours to spare.

Macaskill says that a large amount of the cash needed was “*raised on the back of the environmental lobby*”. Impressed by plans to establish the UK's first community-owned and managed national nature reserve on part of the estate, the Tubney Charitable Trust awarded a grant of £550,000 and the John Muir Trust stepped up with £50,000.

However, another sale under the Act, in Inverness-shire, collapsed after the Newtonhill Trust failed to find the funds needed to complete the purchase. In that instance, CKD Galbraith was acting for the owners of Newtonhill Woodlands and had received an offer when the community registered an interest in the land and brought the sale to a halt.

As a result, says CKD Galbraith, the buyer withdrew. Russell claims that the property has been blighted as an investment. “*It has been dragged through the marketplace and there is considerable anxiety in the minds of anybody still in the market for the woodland that community interest will resurface,*” he says.

What's more, says Russell, some landowners feel that selling to a community group prevents them from realising a market price for their land. In the normal Scottish system for land sales, buyers put in blind bids before a closing date – but when a community's registration is activated, the Executive appoints a district valuer to value the land according to historical data. This tends to disadvantage the vendor, says Russell: “*What it has done is distort the market and make people slightly reluctant to invest in areas where communities may be interested.*”

Despite these problems, Scotland's new legislation has many supporters. In a country where rural land ownership is dominated by a handful of powerful landowners, the Act has placed real power in the hands of communities. And according to Andrew Anderson, head of HIE's Community Land Unit, one of the unexpected pluses is that the Act is encouraging those landowners to talk to local people. The very existence of the legislation, he says, may have enabled more sales to communities to take place on the open market.

Clearly, the Scottish legislation has its structural problems: both sides of the debate have strong arguments for reform. So as it moves towards the drafting of new legislation, English policymakers will be keeping a close eye on developments in Scotland – and both community groups and landowners will keep an even closer eye on the policymakers. The courtroom struggles over Holmehill's bid for Hilton Hotel Group's woodlands, it seems, are merely the first shots in a long battle over the shape of English right-to-buy legislation.

## Five Lessons from Scotland

1. **Funding is vital.** “*It's not just about having the right-to-buy; it's about having the resources,*” says Jonathan Band, chief executive of the Social Enterprise Coalition. The Scottish Land Fund has helped over 60 community

groups to buy land and property since its launch in 2001. English communities would require a similar funding pot.

2. **Communities need expert advice.** *“It’s about much more than just handing over a cheque,”* says Andrew Anderson, head of Highlands and Islands Enterprise’s Community Land Unit. Communities need help with the complex registration procedure and business planning after the purchase.
3. **Smooth the buyout process.** If pre-registration were easier, the legislation might work as intended, cutting uncertainty for landlords and easing the buying process. There has also been little take-up of local communities’ new powers, partly due to their limited awareness of them.
4. **Landowners dislike forced sales.** *“Scottish landowners feel they are missing out on an open market price.”* Iain Russell, partner at CKD Galbraith, says the ability of communities to lodge late registrations has created uncertainty for sellers.
5. **Make the process fair for landowners.** *“Sale prices must be set by independent valuers to ensure landowners get a decent deal,”* says Andy Wightman, a Scottish land reform expert. The process must be transparent to reassure them: *“they must know what land has been registered and by who,”* he says.

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