

# ***‘What Evidence’ said the one-eyed public policy maker?***

## ***A Brief Review of Recent Community Land Ownership Trends in Scotland***

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### **Contents**

Summary

Other Research Findings

Lack of Policy Harmonisation and Subsidiarity

Analysis of Community Land Ownership Trends

- Community-based Organisations or Trusts
- Community Partnerships
- Crofting Trusts
- Club Farms and Sheep Stock Clubs

Conclusion

Footnotes

Acknowledgements

### **Summary**

Both the UK government and the Scottish Executive are keen on promoting the concept of evidence-based and joined-up approaches to policy making. However, is this in fact the way in which policy is actually made? An examination of current social development policy in Scotland and trends in community ownership - *purchase, lease and management by agreement* - begins to reveal a distinct lack of fit between Part 2 of the Land Reform (Scotland) Act<sup>1</sup> 2003 – *Community Right to Buy* - and the reality of what is in fact actually happening.

An overly narrow focus on community land ownership trends in the northwest Highlands and Western Isles - *the land republic phenomena* - has contributed to a skewing of understanding. This has been exacerbated by political, community and media rhetoric which has placed too much stress on land purchase in these peripheral

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<sup>1</sup> This paper uses LRA as a short form for the Act.

areas as being indicative of a wider national trend. Unfortunately the unquestioning projection of the community land purchase solution across the whole of rural Scotland has masked the fact that leasing and management by agreement has seen the most significant growth both in terms of the number of community bodies engaging in land-based activities through this means and the amounts of land involved. Furthermore the distribution of these leasing and management initiatives is much more evenly spread across both the Highlands and the rest of rural Scotland.

In this short paper the Centre reviews the current suite of social development policies and concludes that there is a distinct lack of harmonisation and synergy between urban and rural approaches. The paper then moves on to examine and compare community land ownership during two distinct periods - prior to 1990 and between 1990 and the end of 2002.

The findings reveal that out of some 7.5 million hectares of rural land in Scotland community land ownership comprises less than 1.68 percent or some 126,249 ha. However, when these facts are set within the wider land ownership context where some 12.3 percent of rural land is in public ownership, an estimated 6 percent is held by non-profit voluntary bodies while the balance 80 percent is in private ownership (Wightman, 1996) then clearly this imperceptible transfer of land into community ownership is unlikely to be the predicted harbinger of '*radical land reform*'.

In making this analysis the Centre acknowledges that the Land Reform Act is as of yet not in operation. However, given the extensive public consultations, legislative priority and significant amounts of publicity that the Scottish Executive has lavished on the community right to buy component of the LRA it is revealing to find that the Executive's aspirations with regard to the impact of the Act are so low. It's predictions for such a landmark piece of legislation is for some 25 community registrations in the first year and 5 per year thereafter. But registration is only the first step while the really important stage is in fact the next step which is the acquisition of the land and its translation into community-owned property. Here the Scottish Executive's LRA aspirations become even less inspiring with figures of 2 community purchases per year and 1 crofting purchase per year (Scottish Parliament, 27 November, 2001).

A total of 3 community land purchases a year falls a long way short of what the '*Great Helmsman*' of the community right to buy project Donald Dewar had in mind when he formal announced in his 1998 McEwen Lecture the government's intention to explore ways of turning such a right into legislation. "*I am determined to find the most effective way of giving communities a right to buy the land where they live, and time to put together the necessary bid. It would go further than any other step to change the whole atmosphere surrounding the land ownership argument..... giving them real rights, and a real say over their own destiny*" (Dewar, 1998).

It is possible to compare these estimates with those set for HIE's Community Land Unit during the period 1998 to 2001 which were a total of 10 to 15 major land purchases or around 5 acquisitions per year (HIE, 2000). In addition it is now possible to begin to gauge what the underlying demand is through the analysis of social land information (Wightman & Boyd, 2001; Reforesting Scotland, 2003 & Scottish Land Fund, 2003). For instance in April 2001 HIE's Community Land Unit reported that

*“since its establishment in June 1997 it had responded to over 400 enquiries and provided financial assistance to 70 projects”* of which some 37 were acquisitions and management agreements (Campbell, 2001). Thus over the 4-year period, HIE which covers around a third of rural Scotland, was supporting on average 9 acquisitions per year. This can be contrasted with the Scottish Executive’s published target of 3 acquisitions per year for the whole of rural Scotland.

When these low Scottish Executive aspirations for the LRA are combined with landownership research findings indicating *“that over half of the private rural land in Scotland has not been on the market in over 100 years”* (Wightman, 1999) then the reality of the country moving rapidly in the short term to a less concentrated pattern of private land ownership through the development of a more pluralistic and diverse pattern which embraces - *private, public, community and non-profit forms* - becomes stark. It becomes even starker when this information is combined with the actual workings of the land market which suggests that of the 1 to 2 percent of land annually coming onto the market only a small minority (say less than 5 percent) will be registered under the LRA scheme of which a very small portion of this (say 75 percent) will then be bought by community bodies<sup>2</sup>. Recently Land Reform Scotland has calculated that *“on current funding, if all rural communities were supported like Gigha<sup>3</sup>, it would take 3,000 years to buy back Scotland”* (Land & Liberty 2002/3).

While Triodos - a social bank - in a press release titled *Finance the Real Barrier to Radical Land Reform in Scotland* warned that the opportunities for land ownership could be lost without commercial, non-public funding. *“The potential for rural communities to take control of their land and their economic futures is now in place, but the challenges these changes present are immense. The benefits of land reform to rural communities will be meaningless unless rural people can access the right funding.”*

*“Grant funding alone will not be enough. Additional funding will need to be found and it is available. Increasingly, experienced but unconventional financial institutions can provide solid financial backing for community led initiatives that benefit people and their land. Alongside grant funding providers, ethical institutions like the Triodos Bank, and others, are at the forefront of these efforts.”* (Triodos Bank, March 2003).

What is clear from all these varying sources of analysis is that the Land Reform Policy Group’s and by implication the Scottish Executive’s two explicitly stated objectives for pursuing the introduction of the community right to buy component of the LRA so as to *“greatly empower communities”* and to *“effect rapid change in the pattern of land ownership”* are policy objectives (HMSO, 1999) based on a combination of:

- ***a serious lack of understanding about the functioning of the land market;***
- ***inadequate information and analysis of land data*** (titles, registration, etc) and the frequencies and means by which their transfer occurs;

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<sup>2</sup> Andy Wightman commentary on the paper.

<sup>3</sup> The 3,400acre island of Gigha cost £4m to buy back for its people - £36,500 per person or £1,177 per acre.

- ***a ‘talking up’ of the abilities*** and extent to which small poorly resourced rural community bodies can and are willing to intervene in the land market given the current ‘*scant policy and financial incentives*’ provided by the Scottish Executive;
- ***the failure to provide a wide ranging and inclusive civil society ‘open skies approach’ to the non-profit social land sector in its totality*** – opening the process up to cooperatives and mutuals, voluntary associations, community bodies, foundations and charitable trusts;
- ***a failure to devise an appropriate financing and investment framework*** linked to existing UK government social investment and community development finance initiatives (SITF, 2000 & BoE, 2003); and
- ***a clear failure by the Scottish Executive to live up to its stated objectives of doing less at its own hand through devolving the registration and implementation of the LRA community right to buy to local planning authorities.***

The Centre concludes from these lessons that other more substantive land reform measures are clearly needed if a balanced land ownership market is to be achieved in Scotland within the short rather than the long term.

## Other Research Findings

A significant research finding is that since 1990 the largest increase in local community involvement in land has not been through the purchasing of property but through leasing and management by agreement where the ratio of leasing to land purchase is 2.8 to 1.

The research also reveals that the two specialised land support programmes – *HIE’s Community Land Unit project* and the *Scottish Land Fund* - have been instrumental in assisting virtually all of the community land purchases since 1997. The former is publicly funded out of government tax revenue while the latter is funded through a charitable levy deducted from the voluntary purchase of lottery (gambling) tickets. The findings also indicate that the greatest number of community trusts is to be found in the community woodland sector - some 64 out of a total of 79 community organisations.

Evidence indicates that the large ‘*whole estate*’ buyouts such as Eigg, Knoydart and Kinlochleven would not have met the LRA legislation’s eligibility criteria for support. These successful interventions were only made possible through the mobilisation of substantial non-state financial resources operationalised through consortium type arrangements in the form of ‘*community partnerships*’ involving local bodies, public agencies, private business and national conservation organisations.

In the areas where crofting legislation has jurisdiction no use has been made of the 1997 'Forsyth' legislation<sup>4</sup> which enables a crofting trust representative of the 'whole' community to purchase that particular community's part of the Scottish Executive's crofting estate. However, a significant issue of concern in the crofting areas is the decline in the use of common grazings. To successfully address this problem changes are required in the legislation on Crofting Common Grazings regulations. In particular changes need to be introduced through which the wider local community can have a stake in the common grazings when they fall into decline and disuse. These changes are required to enable both crofters and the non-crofting community to take advantage of new land use opportunities – *forestry, nature conservation, renewable energy and carbon credit transfers*. It is also argued that neglected *ancient* common-pool resource rights that extend to many other local communities need also to be legislatively reviewed and consideration be given to both overhauling them and developing new common rights (Wightman, Callander & Boyd, 2003).

## **Lack of Policy Harmonisation and Subsidiarity**

It is the current Scottish Executive's vision to make Scotland a prosperous, inclusive, entrepreneurial and sustainable country. To achieve this end the Scottish Executive and UK government have introduced various new policies and strategies (SITF, 2000; DTI, 2002; & SEDD 2003). However it is the view of the Centre that the current LRA legislation needs to be reviewed with regard to its lack of harmonisation with the current suite of policies on:

- empowering communities;
- social inclusion;
- promoting the social economy; and
- community-asset transfer (asset-democracy).

These policies apply across the whole of Scotland. The Centre is concerned as to why such an important asset as land and the central role it plays in sustainable community development, wealth creation and community well-being has been narrowly defined as a rural issue when it applies to all communities both urban and rural. Furthermore the Centre is inclined to the view that land is a matter similar to planning and development control that should be handled by Local Authorities. The community right to buy registration and vetting process should not be administered centrally in Edinburgh by the Environment and Rural Affairs Department but by local authorities. The Department's and Minister's functions should be those of *policy guidance, regulatory oversight and administering an appeals process*.

## **Analysis of Community Land Ownership Trends**

Research and analysis carried out by the Centre reveals that the rural community land ownership sector in Scotland is comprised of 4 distinct types of community land owners. These are:

- *community-based organisations or trusts;*

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<sup>4</sup> Transfer of Crofting Estates (Scotland) Act 1997.

- *community partnerships;*
- *crofting trusts; and*
- *club farms and sheep stock clubs.*

As of 31 December 2002 this sector controlled some 126,249ha or around 1.68 percent of the rural land<sup>5</sup> in Scotland. Out of the overall total some 96,771ha were owned (76.65 percent) while the balance 29,478ha (23.35 percent) was either leased or managed by agreement. See the table below for further details.

### **Community-based Organisations or Trusts**

Some 79 community-based organisations or trusts control around 58,122ha or 46 percent of the total community land holding estate. Of this some 39,682ha (68.3 percent) is owned while the balance 18,440ha (31.7 percent) is held under a combination of lease and management agreements.

Three aspects are of particular interest. First, is the fact that some 33,143ha or 83.5 percent of community trust owned land was held prior to 1990 and is owned by just 2 trusts<sup>6</sup>. Secondly, only 6,539ha or 16.5 percent of community trust owned land has been purchased since 1990 all of which has in fact been purchased post-1997 with varying levels of financial assistance from HIE's Community Land Unit and/or the Scottish Land Fund. And thirdly that in the 1990s leasing and management agreements for 18,440ha have very significantly overshadowed local community land trust purchases by a ratio of 2.8 to 1.

In examining the pattern of local community land purchases these appear to directly coincide with the establishment in 1997 and 1998 of both HIE's and the Scottish Land Fund's grant aid and technical assistance programmes. It can be argued with a degree of certainty that virtually all of these recent land purchases have benefited from the intervention of these programmes in the land market. This has occurred without the LRA legislation and it will be important to ensure that any monitoring of the impact of the legislation takes account of these other significant factors.

Since 1990 some 64 of the 77 rural community-based organisations that have obtained access to land and property are in the community woodland sector. Of these 64 organisations only 19 own land while the balance 45 either lease or manage land by agreement mostly from Forest Enterprise or Local Authorities. In the case of Forest Enterprise it can be argued that their community leasing and/or agreement policy motivations have more to do with increased public scrutiny and their need to demonstrate greater local community involvement. Both the Forestry Commission and Forest Enterprise have faced significant public criticism over the way in which the state forestry holding has been operated during the last 20 or so years. State forestry operations have shifted from locally managed labour intensive operations to one in which centralised management systems involving capital intensive and hi-tech machinery-based approaches dominate. Much of the labour for this centralised system is provided by a range of specialised forestry contractors who employ few full time workers and undertake most of the work using itinerant self-employed labour squads.

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<sup>5</sup> Of the 7,771,969 ha of land in Scotland some 3 percent is urban and 97 percent is rural (7,538,810 ha)

<sup>6</sup> Stornoway Trust (est. 1923) with 28,085ha and Hoy Trust (est. 1973) with 5,058ha

The emergence of the community woodland phenomena in the early 1990s has provided Forest Enterprise with a means by which they can neatly demonstrate to the Scottish Executive and Parliament much greater public and local community benefit but without having to fully empower communities through any real transfer of the state forest asset to community bodies. Of the remaining 13 community-based organisations: 6 own less than 10 acres; 3 own between 15 to 50 acres; and only 3 own more than 1,000 acres.

The Centre is of the view that given the emerging pattern of community ownership and use that the LRA requires to be supplemented by legislation on *nominated leasing*<sup>7</sup> and that more attention requires to be given to *ancient* common property rights (Wightman, Callander & Boyd, 2003) such as common grazings, mosses, fisheries, burgh commons, etc.

### **Community Partnerships**

Of the 4 Community partnerships – Eigg, Knoydart, North Harris and Kinlochleven - who dominate this segment of the community ownership sector only North Harris would meet the LRA's current eligibility criteria on a constituted "*community body*". In addition, Section 34(1) of the LRA requires the community body to have a majority of community members and for those members to have '*control*' of the company.

'*Community partnerships*' or consortium arrangements own some 34,236ha which amounts to just over 27 percent of the total community land holding estate. These properties typical comprise a range of significant estate assets and property (buildings, farms, forests, mineral and sporting rights, etc). They range in acreage from 1,000 acres > 7,400 acres > 17,200 acres to 50,000 acres.

The scale of these undertakings both in financial and business terms clearly requires in most cases that the local community or communities forge realistic stakeholder partnerships with other public, private and voluntary bodies if they are going to be able to firstly bid for the purchase of the asset and secondly successfully run it. The current LRA makes the likelihood of support to future community partnerships somewhat problematic due to the overly rigid criteria in which the community body must have the controlling stake in the company. External partners who in most instances are the ones putting up a substantial share of both the purchase and development capital require to have their investment safeguarded and their views taken into account whether it be a public, private or non-profit voluntary body. The current LRA does not provide the necessary flexibility to enable the various parties to negotiate these important partnership details.

A means of overcoming these current limitations needs to be devised and the newly enacted Limited Liability Partnerships (LLP) Act of 2000 may provide a suitable vehicle (HMSO, 2000). The Act creates a new and separate legal entity closely akin to

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<sup>7</sup> *Nominated leasing* sometimes also referred to as '*compulsory leasing*' is a process commonly used in a number of European countries – Norway, France, Spain, Germany, Italy and Switzerland. It involves the owner of land being instructed by the authorities to comply with the approved statutory local development plan. A number of choices are then offered to the owner: they can privately lease the land to a tenant of their choice; or sell the land or failing this the authorities will step in using a procedure called *nominated leasing* and lease the land to a tenant of their choice.

a company but with the organisational flexibility of a partnership arrangement. Partners can be individuals or legal persons such as a company. A LLP has the power to enter into contracts, hold property and undertake the full range of business activities. Further study on governance and legal incorporation options is required to ensure that the emergent *community partnership* form of asset ownership is not unnecessarily undermined by the narrowly drawn LRA regulations.

### **Crofting Trusts**

Crofting Trusts own some 22,803ha which amounts to just over 18 percent of the total community land holding estate. It is comprised of two distinct types those which were purchased prior to 1990 of which Glendale (1908 – ‘50-year purchase crofters’)<sup>8</sup> is the oldest plus a group of 4 Crofting common grazings which were purchased during the early 1980s. These properties comprise around 48.4 percent of the total crofting trust land holding estate. Since 1990 a further 5 ‘new’ Crofting trusts have emerged with a total land holding of 11,761ha which comprises the balance 51.6 percent.

It is interesting to note that no use has been made of the 1997 ‘Forsyth’ legislation<sup>9</sup> that enables the transfer of dispersed parts of the Scottish Executive Crofting estate to local crofting trusts representative of the ‘whole’ community. Despite the work of the Crofting Trusts Advisory Service in the late 1990s, which provides advice and support to crofting communities thinking about community ownership, so far most crofting communities have concluded that they prefer to remain tenants of the Scottish Executive, without the burdens of ownership.

The Centre is of the view that the focus in crofting reform should shift to reviewing the legislation on Common Grazings Regulations. In particular the need to create a new *community class* of common grazings that includes ‘whole’ community benefit not just registered crofters as the sole shareholders. The Centre considers such an overhaul of the legislation to be important given the declining agricultural utilisation of these common-pool resources (Brown & Slee, 2002). In addition any revision should focus on new land use opportunities such as *community benefit rents* from renewable energy installations and carbon transfer credits for peatlands and how these should be apportioned between the wider community, crofting shareholders and the landowner.

### **Club Farms and Sheep Stock Clubs**

This last category is a special community interest group and is comprised of club farms and sheep stock clubs. This grouping owns very little land but leases around 11,032ha which amounts to less than 8.8 percent of the total land area under community control. Its operations date from two distinct periods: the 1920s for sheep stock clubs and the early 1980s and 1990s for the ‘new’ club farms (including community supported agriculture). The earlier club farm period dates from 1820 to 1850.

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<sup>8</sup> The Glendale estate or *club property* was owned by the Department of Agriculture and purchased by the crofting tenants through a Department loan (1908 to 1956). The loan was repaid over a 50-year period through annual installments thus the term ‘50-year purchase crofters’.

<sup>9</sup> Transfer of Crofting Estates (Scotland) Act 1997.



In recent decades sheep stock clubs have been in decline however since the mid-1990s there has been growing interest in community supported agriculture (CAP). The emphasis in CAP schemes is on organic produce mainly fruit and vegetables which are sold through farmers' markets, farm shops and through delivery box schemes. Sales in these areas have increased in the past year and now account for 10 percent of all organic food sold in the UK (Guardian Weekly, 2003). Given the current state of mainstream agriculture practice and the operational principles behind community supported agriculture there is every likelihood that this new form will see a steady growth in future years.

## **Conclusion**

The Centre estimates that during the last decade lottery and public bodies, primarily the Scottish Land Fund, Highlands and Islands Enterprise, Scottish Natural Heritage, Crofters Commission, Forest Enterprise, Scottish Enterprise, Highland Council, Western Isles Council, etc have invested between £12 to £15million of public funds in community land initiatives in Scotland. However little published research or evaluation material has been produced by government which provides any form of:

- strategic analysis of the impact and effects of this investment;
- whether its policy assumptions are accurate or need to be revised; and
- what lessons can be drawn for future land reform and social development policy work.

The scant published research that has been undertaken has been small scale, ad hoc and limited in either scope or geographical coverage. It has been produced by either independent researchers or by civil society organisations using very modest research budgets. Given the findings and signals emanating from this small piece of research undertaken by the Centre it is clear that government land reform and social development policies and their interpretation, harmonisation and execution by public agencies leaves much to be desired. Furthermore, it is very clear that government and public agencies have a weak and inadequate policy research and evidence base from which to both formulate and evaluate the effects of its land reform and social development policies.

*Thus in the country of the blind the one-eyed public policy-maker is king.*

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**Table 1: Before & After 1990 Rural Community Land Comparison plus a Summary of Rural Community Landownership to end of 2002<sup>10</sup>**

| Type of Community Trusts                  | Before 1990  |                   |                  |                                 | After 1990 to end 2002 |                   |                  |                                 | Before & After Totals |                           |                           |                                 | GRAND TOTALS (ha)                        |
|-------------------------------------------|--------------|-------------------|------------------|---------------------------------|------------------------|-------------------|------------------|---------------------------------|-----------------------|---------------------------|---------------------------|---------------------------------|------------------------------------------|
|                                           | No of Trusts | Land Owned (ha)   | Land Leased (ha) | Land Managed by Agreements (ha) | No of Trusts           | Land Owned (ha)   | Land Leased (ha) | Land Managed by Agreements (ha) | No of Trusts          | Land Owned (ha)           | Land Leased (ha)          | Land Managed by Agreements (ha) |                                          |
| <b>Community Land Trusts</b>              | <b>2</b>     | 33,143 ha (83.5%) |                  |                                 | <b>77</b>              | 6,539 ha (16.5%)  | 3,427 ha         | 15,013 ha                       | <b>79</b>             | 39,682 ha (68.3%)         | 3,427 ha (5.89%)          | 15,013 ha (25.83%)              | <b>58,122 ha (46.04%)</b>                |
| <b>Community Partnerships</b>             |              |                   |                  |                                 | <b>4</b>               | 34,236 ha         |                  |                                 | <b>4</b>              | 34,236 ha                 |                           |                                 | <b>34,236 ha (27.12%)</b>                |
| <b>Crofting Trusts</b>                    | <b>5</b>     | 11,042 ha (48.4%) |                  |                                 | <b>5</b>               | 11,761 ha (51.6%) |                  |                                 | <b>10</b>             | 22,803 ha                 |                           |                                 | <b>22,803 ha (18.06%)</b>                |
| <b>Club Farms &amp; Sheep Stock Clubs</b> | <b>2</b>     | 50 ha             | 11,032 ha        |                                 | <b>1</b>               |                   | 6 ha             |                                 | <b>3</b>              | 50 ha                     | 11,038 ha                 |                                 | <b>11,088 ha (8.78%)</b>                 |
| <b>RUNNING TOTALS</b>                     | <b>9</b>     | <b>44,235 ha</b>  | <b>11,032 ha</b> |                                 | <b>87</b>              | <b>52,536 ha</b>  | <b>3,433 ha</b>  | <b>15,013 ha</b>                | <b>96</b>             | <b>96,771 ha (76.65%)</b> | <b>14,465 ha (11.46%)</b> | <b>15,013ha (11.89%)</b>        | <b>126,249 ha (1.68% of rural land).</b> |

Caledonia Centre for Social Development, November 2003

**Note:** Of the 7,771,969 ha of land in Scotland some 3 percent is urban and 97 percent is rural (7,538,810 ha).

<sup>10</sup> **Sources:** *Sector Review – Not-for-Profit Landowning Organisations in the Highlands and Islands of Scotland*, A. Wightman & G. Boyd, Caledonia Centre for Social Development, April 2001; *A Review of Community Woodlands in Scotland*, Reforesting Scotland, May 2003; *Scottish Land Fund Approvals up until January 2003*, Scottish Land Fund, Glasgow.