

Whither Land Reform?

Alistair Cant

October 2002

Contents

- Time to Reflect
- What has been achieved?
- Is it all progress? What about the setbacks?
- Let's go back to the original reports?
- What has happened to these issues?
- What was special about the Land Reform Policy Group?
- Why did things slow down?
- What else has been going on?
- Where to go from here?
- Ideas for the future
- Conclusion
- Further Information

Time to Reflect

It seems appropriate to stop and reflect on progress or otherwise on land reform in Scotland in the last 5 years. This period of time is significant in that it was October 1997 that the Scottish Office Land Reform Policy Group (LRPG) was first established. The Group was very active and over a two year period produced three large documents:

- *Identifying the Problems* (February 1998);
- *Identifying the Solutions* (September 1998); and
- *Proposals for Legislation* (July 1999).

This period also saw the establishment of the Scottish Parliament, the election of MSPs and the formation of the Scottish Executive.

What has been achieved?

The end product so far, in terms of legislative change, has been the abolition of the feudal tenure system for land ownership, legislation which is allowing two National Parks to be created, and the Land Reform Bill currently going through parliament, which proposes a crofter's right to buy, a community right to buy, and access legislation. In addition, the Title Conditions Bill is progressing.

Compared to the previous 5 years before 1997, or should I say 25 years, this is a huge amount of progress on a topic which forms a key element in the Scottish psyche – the relationship between the Scots people and the land – their land.

Is it all progress? What about the setbacks?

There are of course, as usual in conservation/wild land issues, one or two steps backwards as well as the two or three steps forwards. We have seen, as part of this legislative and bureaucratic process, the loss of the role of the Crown as Paramount Superior at the head of the land tenure system. This concerned many commentators as the Crown could be seen as holding land on behalf of the Scottish nation or people. The national park in the Cairngorms is very likely to be smaller than expected with much weaker planning control powers than hoped for. Is this a *unique Scottish solution* as promised on national parks, or the usual British fudge on controversial issues affecting vested interests?

The crofting right to buy and community right to buy proposals have deep flaws and many commentators have stated that for the latter proposal, it would not have been applicable to any of the successful buy-outs – Assynt, Eigg or Knoydart for example, had the proposal been in place when these buy-outs arose in the past.

The access legislation holds out much promise, but this is not yet complete and is a massive tussle between opposing forces, made more murky by civil service and Executive rearguard actions to blunt the already negotiated proposals from the Scottish Natural Heritage (SNH) Access Forum. The access legislation progress is showing the maturity and wisdom, however, of the Scottish Parliamentary process, where Parliamentary Committees considering legislation can appoint expert advisors and take evidence to fathom, in this case, the riddles and obscurities of Scots laws and traditions. The tenacity and clarity of the analyses by the Justice 2 Committee is a credit to all concerned.

Let's go back to the original reports?

But what about other issues identified at the outset by the Land Reform Policy Group (LRPG), and the possible solutions. Have these been tried, have they been discounted, have these been left to wither, hidden under the glow from the heat generated by the issues described above? I am keen to shed some light on these and revive them in the context of the land reform debate.

The problems identified by the LRPG were categorised under the headings of:

- *Land ownership;*
- *Landlord and Tenant;*
- *Land Use;*
- *Law reform;* and
- *Land registration.*

The solutions were brought together under the *Vision for the Future* with two key themes of *Increased Diversity* and more *Community Involvement* in the way land is owned and used.

The report on how to move towards the Vision had a checklist for legislative and other actions to achieve change. Some have been implemented, but what about others, some of which are vital to affirming the public interest in the land resource. Examples are not difficult to find when looking through the *Identifying the Solutions* document

What has happened to these issues?

What about more explicit use of compulsory purchase powers and the streamlining of them to be more effective? What about buying land on the open market for transfer to smallholdings? What about making registration with the Land Register compulsory for all holdings above a certain size? What about making the receipt of grant aid dependent upon the registration of land? What about proposals to investigate the beneficial ownership of land (*i.e.* who actually has control over land, not just the names of a faceless company)?

What about extending planning control over agricultural, forestry, sporting and conservation related developments? What about stronger enforcement of deer control measures? What about a serious analysis of the possibility of the land value taxation system in Scotland?

What was special about the Land Reform Policy Group?

The LRPG worked well for several reasons. It had senior members, had a clear remit, undertook wide and repeated consultation, cut across departmental boundaries and delivered the reports within a very tight time scale. It also operated during a period where there was a huge expectation, nay, even demand, for a thorough analysis of Scotland's land issues to enable the new Scottish Parliament to act quickly and accurately to lance one of the key running sores of Scotland's history.

Why did things slow down?

Unfortunately, as the LRPG completed its work, the huge effort needed to bring a new style of democracy into being was beginning to show. Party political sparring came to the fore. Doubts arose as to the capacity and desire for change by members of the entrenched civil service. The dominance of issues high on the UK national agenda – employment, health, benefits, crime – pushed land reform aside. Then of course there was the issue of the new parliament building and some other '*scandals*' and incompetences the media loved to uncover (and sometimes over-inflate). All these factors have led to a weakening of a central thrust expected of the new Parliament – sorting out Scotland's problems at their root with no allowance for old ways that did not work, nor for vested interests.

What else has been going on?

There has been an enormous amount going on in Scotland in terms of land reform, away from the corridors of Holyrood and Victoria Quay. We have seen more community purchases, of estates large and small, some helped enormously by the selling landowner. We have seen more acquisitions by Conservation, Recreational and Amenity Trusts (CARTs), some being controversial. We have seen the establishment

of (a £10 million) Scottish Land Fund, and the Community Land Unit (*project*) of Highland and Islands Enterprise. This latter body in particular has been delivering expertise, training, funding and crucially, confidence to groups large and small.

It seems that many of the developments on the ground have been a product of the original land reform movement of 5 to 8 years ago, and the momentum it gathered. The legislative process is an arena where activity is likely to wane soon, with some of the outcomes perhaps being of little practical use, for example the community right to buy.

There are still outcries in the population and the media – over the Cuillin, over Glenfeshie, over the Cairngorm funicular. For many people, the foot and mouth outbreak, with the subsequent shutdown of the countryside, the catastrophic effect on tourism and the practices of some farmers and landowners after the outbreak, has opened a few eyes. We need to re-focus on what has been learnt from the recent past, and get back on to the root causes, get back on to land reform and the need for sustained change.

Where to go from here?

It seems clear that what is needed is to re-establish many of the approaches and values of the LRPG and rekindle the debate. We have to bring land reform back into the political agenda, developing the arguments across different departments, and bridging the gaps between other agencies and groups. We need to reaffirm to Non-governmental organisations (NGOs) and others that land reform is not Political with a big P, but political and vital to achieving real change.

We need to enthuse, inform and involve the Scots people and bring the issue back into the media. We need to say to politicians, civil servants and local government bureaucrats that they can and must embrace change and progress. And of course we need to target those vested interests and prod them hard and strong, to expose their influence and hindrance to change.

Ideas for the future

Some of the proposals for change in themselves are not huge but require a commitment in heading off objections from vested interests. Take the issue of streamlining compulsory purchase powers. Tackling this issue, for example, could send clear messages to landowners and managers. When creating footpath networks and walking, riding or cycling routes, why not use Compulsory Purchase Order (CPO) powers with the same vigour as for major road projects? Why not get local authorities to CPO the privately owned land required for development in rural communities, and feed the benefit from any gain in land values back into the community?

Why not remove the obligation to shoot deer from estate owners and replace this with a licence system? If the owner does not reduce numbers sufficiently, then allocate the licences to others to try and manage the process better, *e.g.* the local community or a crofting township or a conservation body.

If the landowners and farmers can fill in massively complex forms on farm outputs, animal numbers, acreage, etc to claim subsidies, how is it so difficult to get them to fill in a form detailing what land they own and where it is located?

Conclusion

The key is political will, which can be driven by pressure from the electorate, from organisations, and from the media. We all need to recreate this agenda, to reaffirm the centrality of land reform to changing Scotland. The good thing is that there are plenty of success stories to publicise. The bad news is that our opponents are not daft and they are very wily at hiding, smoke-screening and scare-mongering. Five years have seen a lot of gains but also new levels and complexities of barriers to change. It's a battle out there still.

Further Information

This article by Alistair Cant was originally published as one of a series of 10 in a booklet – *Scotland's wild land – what future?* The Scottish Wild Land Group devised and published the booklet as their contribution to raising awareness and understand about Scotland's wild land as part of the International Year of Mountains 2002.

Copies of the booklet are available at a cost of £5.00 including postage and packing (UK only) from: **John Digney, Creagmhor Lodge, Lochard Road, Aberfoyle, Stirling, FK8 3TD, Scotland**

For information on the Scottish Wild Land Group see their website: www.swlg.org.uk or e-mail: enquiries@swlg.org.uk

Online Source www.caledonia.org.uk