

THE BIG READ

The Land Reform Bill – vision or rhetoric

Dr Calum MacLeod
news@stornowaygazette.co.uk

January 23rd of this year marked the twentieth anniversary of the Scottish Parliament passing the Land Reform (Scotland) Act 2003, introduced by the Labour-Liberal Democrat coalition Scottish Executive during its first term in office. The Act is often cited as an important step in what politicians are fond of referring to as Scotland's ongoing land reform journey.

It's easy to see why. The 2003 Act removed legal ambiguity about the 'right to roam' by introducing statutory non-motorised public access rights over most land in Scotland. It also sought to diversify Scotland's highly concentrated pattern of predominantly private rural land ownership by introducing a pre-emptive Community Right to Buy (CRtB) for eligible community bodies to buy land and associated salmon fishings and some mineral rights when the owner is willing to sell the land or associated rights.

More controversially, the Act also included a Crofting Community Right to Buy enabling croft land, salmon fishings and some mineral rights to be bought by eligible crofting community bodies without requiring a willing seller.

The totemic status of Scotland's Land Question long foreshadowed the passing of 2003 Act. In his 1998 McEwen Lecture on 'Land Reform for the 21st Century', the then Secretary of

State for Scotland, Donald Dewar remarked, "There is undoubtedly a powerful symbolism – which attracts me greatly – of land reform being amongst the first actions of our new Scottish Parliament".

Ross Finnie, Minister for Environment and Rural Development in the Labour-Liberal Democrat Scottish Executive tapped into that symbolism when introducing the Land Reform (Scotland) Bill to Parliament during its Stage 1 debate in March 2002, claiming that "... the historic importance of today's debate cannot be overstated. In the past 60 years, land reform did not get on to the Westminster parliamentary agenda, although it has consistently been on the agenda of the people of Scotland. There is no doubt that devolution and the creation of the Scottish Parliament have brought forward land reform."

The Minister was overegging things slightly. The Highlands and Islands' land reform 'journey' was already over a hundred years old, spanning the Crofters Holdings (Scotland) Act of 1886 and subsequent crofting and related legislation over the course of the 20th century, including the Transfer of Crofting Estates (Scotland) Act 1997 passed in the dying days of the then Conservative UK Government.

Nor was community ownership a creature of devolution, given that its antecedents stretched back to 1923 and the formation of the Stornoway Trust. Following the Assynt Crofters' Trust's high-profile pur-

chase of the North Lochinver Estate in 1992, the community buyouts of Eigg, the Knoydart Estate and Gigha formed the vanguard of a community land movement that has subsequently flourished in the Highlands and Islands. That success is attributable in no small part to Highlands and Islands Enterprise creating a Community Land Unit to support community buyouts following an instruction in 1997 from Brian Wilson, then a Scottish Office Minister in the newly elected UK Labour Government.

Notwithstanding the 2003 Land Reform Act's pre-devolution lineage, it nevertheless signalled the new Parliament's intention to chart a progressive legislative course on the Land Question.

Not every Parliamentarian saw the Bill that way. In his contribution to the Stage 1 debate introducing the Land Reform Bill to Parliament, Conservative MSP, Bill Aitken channelled his party's implacable opposition to the legislation, floridly describing it as "a deadly cocktail of restriction, inhibition to investment and downright legalised theft."

Other MSPs felt it didn't go far enough. Roseanna Cunningham, speaking during the Bill's Stage 1 debate on behalf of an SNP yet to exert its near-hegemony on the Scottish political landscape, bemoaned the legislation's "apparent lack of ambition" and called for a right to buy for tenant farmers, together with a "right-to-buy trigger on transfers of land, rather than just on the sale of land". During

the Bill's Stage 2 committee scrutiny she went further, tabling a subsequently defeated amendment to enable community bodies with a registered interest in land to apply to their local authority to purchase such land on their behalf if the right to buy had not arisen within five years of their interest being registered.

In a sign of the febrile atmosphere surrounding the Act, the Scottish Daily Mail summoned Aitken-esque levels of outrage with a front-page story headlined, 'Let The Grab Begin' accompanied by the current owner and an extremely complex administrative process is successfully navigated. The interference with individuals' property rights against their will associated with the Crofting Community Right to Buy makes its use even more complex and time-consuming, as the Paicr Trust's experience of using the legislation attests.

Our 2010 review for the Rural Affairs and Environment Committee highlighted several ways to amend both Rights to Buy in favour

of communities seeking to use them. They included increasing the flexibility of what constitutes eligible 'community bodies'; simplifying ballot arrangements; recasting timeframes associated with the process in favour of community organisations; and reducing the burden of mapping requirements. A subsequent 2018 review of the effectiveness of current community ownership mechanisms undertaken by SRUC on behalf of the Scottish Land Commission echoed several of these findings.

A new Land Reform Bill, due to be introduced to the Scottish Parliament by the end of this year, offers an opportunity to address these shortcomings. In her foreword to 'Land Reform in a Net Zero Nation', the Scottish Government's 2022 consultation paper on the forthcoming Bill, Màiri McAllan, the then Minister for Land Reform stated, "Private ownership of land – particularly at scale – has in the past conferred significant prestige, associated with for example hereditary titles,

status and ability to influence policy and law. While many aspects of society have become more equitable, the privilege associated with the ownership of land at scale remains and takes new forms".

of community buyouts.

North Harris Estate was purchased by the community 20 years ago



The value of Scottish land has rocketed on the back of the "green" agenda, placing them even further out of reach



North Harris Estate was purchased by the community 20 years ago



Dr Calum MacLeod

sales completed off-market in 2020 (an increase on the last 4-5 years)" and "a further marked increase [occurring] in 2021, with 64% of successful sales occurring off market".

The focus of the Government's legislative proposals for the forthcoming Bill is squarely on large-scale rural landholdings, partly defined in the consultation paper as holdings over 3000 hectares. The proposals include introducing a Public Interest Test on transfers of such 'large-scale' landholdings; a duty to provide prior notification of an in-

attention to sell and a linked pre-emptive right to buy for communities; compulsory compliance with aspects of the currently voluntary Land Rights and Responsibilities Statement; compulsory Land Management Plans; and conditionality regarding receipt of public funding for land-based activities.

These are welcome proposals, but they don't inspire confidence that the structural inequalities associated with Scotland's concentrated pattern of rural landownership will be significantly reduced anytime soon. The 3000 hectares threshold for 'large-scale' rural landholdings is far too high to have meaningful impact. It should be reduced to 1000 hectares at most and include aggregate landholdings rather than only single units.

The consultation proposals are curiously silent on how the Community and Crofting Community Rights to Buy can be made more straightforward for communities to use, despite

the evidence of previous reviews. The SNP may wish to consider revisiting Roseanna Cunningham's defeated CRtB amendment to the 2003 Act given that they currently hold the levers of Governmental power. Neither do the proposals have much to say about the pivotal role of taxation as a driver for land reform; a curious omission from a legislative prospectus apparently intent on tackling wealth inequalities associated with land.

All these areas deserve further consideration when drafting the Bill to be introduced to Parliament. Only then will we know if the SNP-Greens coalition Government is serious about nailing its colours to the mast of boldly progressive land reform, rather than directing that journey towards a legislative cul-de-sac of marginal change that is long on rhetoric but short on vision.

(Dr Calum MacLeod is a freelance sustainable development consultant. @CalumMacLeod07)

HOMES



LOOKING FOR A NEW HOME?

VIEW PROPERTY FOR SALE IN YOUR LOCAL AREA

DISCOVER HOMES

EVERY WEEK IN PAPER AND ONLINE