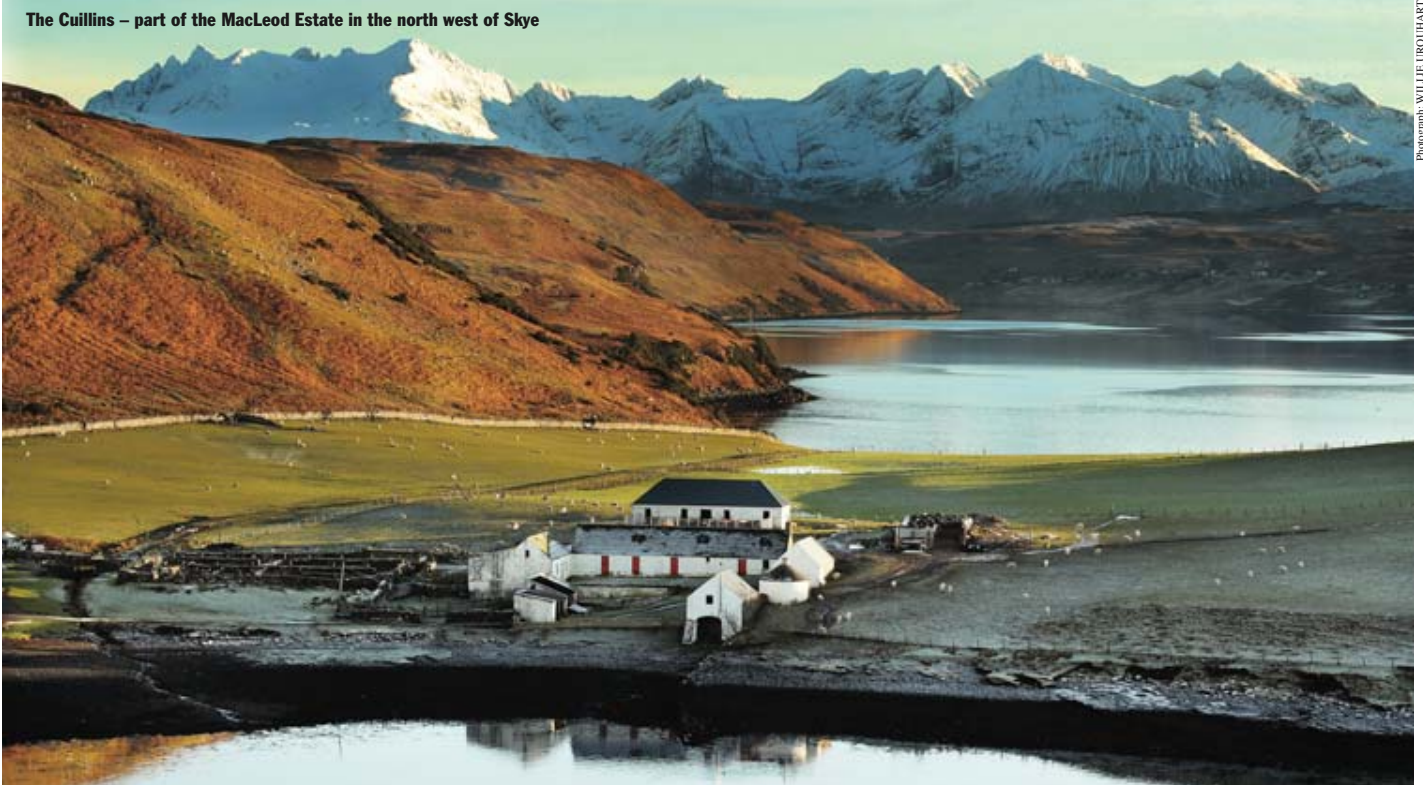


The Cuillins – part of the MacLeod Estate in the north west of Skye



Photograph: WILFIE URQUHART

Echoes from history have repercussions for the present



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The Scottish Government should heed the findings of a new report and introduce more stringent land ownership tests, argues DR CALUM MACLEOD

Last week the Scottish Land Commission published a discussion paper titled ‘Legislative proposals to address the impact of Scotland’s concentration of land ownership’.

It builds on recommendations in the commission’s March 2019 research report that surveyed peoples’ experience of living under conditions of large scale and concentrated land ownership. That report made for grim reading, documenting fear of repercussions for “going against the landowner” expressed by some respondents.

“This fear” the commission asserted, “was rooted firmly in the concentration of power in some communities and the perceived ability of landowners to inflict consequences such as eviction or blacklisting for employment/contracts on residents should they so wish”.

Pause for a moment to digest the fact that this is happening in Scotland. In the 21st century.

Little wonder therefore that the commission’s 2019 report concluded that there is “an urgent need” for formal mechanisms to identify “harmful land monopolies” and to change either land ownership and/or management practice to “protect fragile rural communities from the irresponsible exercise of power”.

RIGHTS AND RESPONSIBILITIES

Fast forward two years and the Scottish Land Commission’s new discussion paper gives a clearer idea of what these formal mechanisms might look like. It proposes that landholdings above a defined scale threshold be legally required to produce a land management plan incorporating community engagement. The commission also calls for statutory land rights and responsibilities reviews that are beyond “normal, responsible management approaches” to address negative effects of concentrated land ownership power.

Such reviews should be underpinned by a range of enforcement powers including the disposal of land assets in the absence of compliance by the relevant landowner.

One feature of Scotland’s distinctive rural land market is that anyone with deep enough pockets can buy as much land as they like without the batting of a regulatory eyelid.

The commission’s third proposal is that a public

interest test be applied to the acquisition of “significant” landholdings on the basis of one of the following three criteria: being above a specified scale threshold (although it comes to no firm conclusion as to what that threshold should be); accounting for more than a specified minimum proportion of a remote rural area (as per the Scottish Government’s urban-rural classification) or an island; or having previously been subject of a statutory land rights and responsibilities review.

Coincidentally, on the same day last week that the Scottish Land Commission published its discussion paper, parliament debated a motion tabled by Alasdair Allan, MSP for the Western Isles, commending a research report titled ‘Plantation slavery and land ownership in the west Highlands and Islands: legacies and lessons’, written by Dr Iain Mackinnon of Coventry University and Dr Andrew Mackillop of the University of Glasgow and published by Community Land Scotland.

The paper reveals for the first time the close historical relationship between plantation slavery and land ownership in the region in eye-watering detail. The authors calculate that 63 estates were bought by significant beneficiaries of ‘slavery-derived wealth’, between 1729 and 1939, with most of these acquisitions taking place between 1790 and 1855, the main period of the Highland Clearances.

The report also shows that estate purchases in the region peaked during the period immediately after establishment of a £20 million fund (more than £16 billion in today’s terms) by the British Government under the terms of the Slavery Abolition Act 1833 to compensate slaveowners for the loss of their ‘property’ when slavery was abolished in the British empire.

Mackinnon and Mackillop show that estate purchasers who were direct beneficiaries of the compensation fund received £110,080,000 (in today’s terms) and that almost 1.2 million acres (over a third of the total area of the west Highlands and Islands) passed through the hands of people enriched by slavery.

At first inspection there appears little to link the Scottish Land Commission’s present-day focus on injecting regulatory oversight into concentrated rural land ownership and the moral ambiguities of a bygone age. Certainly, it would stretch credulity beyond breaking point to suggest that today’s landed elite bears any responsibility for the actions of their

predecessors, however reprehensible the latter’s activities — and those of a British Government that compensated them — appear when viewed through the prism of modern-day society.

Similarly, and notwithstanding the abuses of landed power documented in the commission’s 2019 report, it would be disingenuous to assert that there are no instances of individual private landowners making positive contributions to their local communities.

WILD LANDSCAPES

However, that misses a deeper point. Scotland’s highly concentrated land ownership pattern is in essence a deep-seated and long-standing structural problem that — as the Scottish Land Commission’s 2019 report and new discussion paper illustrate — produces negative monopoly effects that run contrary to the public interest. And however unpalatable or inconvenient a truth it may be for some, Iain Mackinnon and Andrew Mackillop’s groundbreaking research shows how slavery-derived wealth helped the landed elite to shape and sustain the structure and associated power relations of concentrated land ownership in the west Highlands and Islands, together with a fetishising of so-called ‘wild’ landscapes, that exist to this day. In these important respects, apparently distant echoes from history have repercussions for the present.

The Scottish Land Commission’s proposals for legislation to address concentrated land ownership will doubtless be portrayed as dangerously radical by those in whose interest it is to defend the status quo. Stand by for the rickety old trope that ‘it’s land use rather than land ownership that matters’ to be dusted down and given another hollow airing.

But if the commission’s proposals do seem radical it is only because the highly concentrated pattern of rural land ownership and absence of public interest-led land market controls make Scotland such a conspicuous outlier by international comparison.

A new Land Reform Act after the May parliamentary election with the commission’s proposals at its centre would be a powerful signal that the next Scottish Government does not intend that to remain the case.

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Proposals “not reflective” of modern ownership, says estate body

Following publication by the Scottish Land Commission of a new discussion paper on land reform legislative proposals, Scottish Land and Estates, which represents land businesses across Scotland, has insisted it has its own part to play in helping rural communities thrive

Mark Tennant (pictured), chairman of Scottish Land and Estates, said: “We have now had 20 years of intensive land reform legislation in the Scottish Parliament. During that time, land businesses have embraced massive change and there are so many positive outcomes from multiple ownership models including public, private and community. They are all playing their part in delivering Scottish Government policy in key areas such as renewable energy, farming, forestry and housing.

“This new discussion paper does not reflect the great changes that have taken place. The report is rich in emotive description but does not offer new thinking on its key findings. Where there are issues raised, it is in everyone’s interests that we move on from vague opinions and feelings to crystal-clear evidence of negative impacts that can be verified and acted upon.

“Landowners of any type or scale may be delivering government objectives but that may not sit well with a local community. That does not mean to say the ownership model or the business model is wrong. This paper does not address the conflict which often exists between the Scottish Government’s view of what is in the public interest and how a local community would define it.



Photograph: WILLIE URQUHART

In the future, large land sales could be subject to conditions seeking, for example, guarantees over affordable housing



“We wholeheartedly support community engagement over land use and have been actively engaged with the Scottish Land Commission in developing plans and protocols to encourage this.

“If there is a negative issue in a particular location that is causing concern, there is an argument for very targeted intervention. However, so many remedies already exist and it would be disproportionate to bring in

legislation that could affect a whole business sector for very isolated issues. We have already seen the consequences with proposals that could adversely affect the short-term lets sector.

“Nearly two years ago, the cabinet secretary for land reform highlighted the fact that introducing a public interest test on the acquisition of property raised serious Equality and Human Rights Commission and property rights issues. This new discussion paper does not take

the matter forward nor offer new thinking on how such an idea — first mooted several years ago — would work in practice.

“We already have unprecedented rights in place regarding intervention on land sales and management. Community groups which express an interest in acquiring land enjoy first refusal, abandoned or neglected land can be subject to ministerial intervention and measures are in the

pipeline where landowners blocking sustainable development could be forced to sell. All this is in addition to the substantial regulation that covers land management standards.

“Land businesses have adapted to a barrage of legislation and regulation and have taken a very constructive approach to land reform. They are unwavering in their efforts to help rural Scotland thrive and, for us, this is and will be the greatest challenge in the years ahead.”

Land sales should be subject to public interest test new study concludes

Measures to subject large sales to a public interest test are being recommended to Scottish Government ministers.

Research published by the Scottish Land Commission, the body set up to inform policy on land, proposes three new legislative measures to modernise land ownership in Scotland.

In 2019 the commission produced a study which concluded that concentrated power of ownership had an adverse impact.

The three proposals are based on ideas which the SLC say are normal in other countries and would safeguard the public interest. They include the requirement for significant land holdings to publicly engage on, and publish, a management plan; and a new public interest test that could determine whether significant land acquisitions create risks of concentrated power.

The public interest test could include conditions over land for housing, and sales could be blocked if certain criteria were not met.

Hamish Trench (pictured), chief executive of the Scottish Land Commission, said: “History has given us a pattern of land ownership in which localised ‘monopoly’ power can and does exist. This creates risks that run counter to the needs of a modern, dynamic economy. The measures explored in this paper are proposed as targeted and proportionate ways to address these risks.

“The proposals are based on measures that are quite normal in other sectors of the economy and have parallels across Europe in the ways countries regulate land ownership. Our research has shown that Scotland is unusual in not having similar measures to safeguard the public interest.

“These proposals are part of an ongoing programme of reform. They will not transform the patterns of land ownership on their own. That will require wider reforms, for example on taxation, as well as non-statutory action, all of which the land commission is addressing in our current work.

“They do offer an effective next step in modernising land ownership, ensuring the ways our land markets work keep pace with society’s needs and expectations, supporting a fair and dynamic economy.”

The 2019 report, which first proposed these measures, presented evidence that concentrated ownership is impeding economic development and causing serious and long-term harm to the communities affected in rural Scotland.

Progressing the proposals will ultimately be a matter for the Scottish Government and parliament.



Photograph: SCOTTISH LAND COMMISSION