



Photograph: WILLIE URQUHART

TRANQUIL TIMES: Scottish Government proposals for further land reform look set to be resisted by landowners and other vested interests. Our photograph shows a typical crofting township at Skeabost in north Skye.

The year ahead for land reform in Scotland

CALUM MACLEOD
focus



haveyoursay@whfp.co.uk

Rural development consultant Calum Macleod considers some of the proposals for land reform tabled by the Scottish Government...

THIS YEAR IS shaping up to be a significant one for land reform in Scotland. The Scottish Government is consulting on the contents of a new Land Reform Act to be introduced in the current Parliamentary session. That legislation is envisaged as forming part of a land rights and responsibilities policy to fill the land reform policy vacuum that has existed in Government for a decade.

Judging by proposals in the consultation paper the policy will encompass institutional change (a new Scottish Land Reform Commission to oversee policy progress); greater transparency and accountability of land ownership (more information on who owns what land and limits to legal entities that can take future ownership of land); scope for ministerial intervention in land ownership and management (where the scale or pattern of landownership in an area or the conduct of a landowner act as barriers to sustainable development); and specific measures to manage land and land rights for the common good (including a duty of community engagement on charitable trusts regarding land-based decision-making and an end to business rates exemptions for shooting and deerstalking businesses).

That cocktail of proposed reforms is not to everyone's taste. Some of the more febrile right-wing media coverage has wasted little time in portraying them as evidence of the SNP's "socialist ideology" propelling Scotland leftward (presumably en route to hell in a handcart) and threatening the rural economy's sustainability and landowners' human rights in the process. It's a theme that predictably the Scottish Conservatives have also been quick to amplify with doom-laden pronouncements about the allegedly dire consequences of letting ideology rather than evidence drive policy. Similar terrain was traversed in a recent contribution to Scottish Land and Estates' blog by the chief executive of Buccleuch Estate, which called for an end to "the politic (sic) of division, grudge and intimidation" apparently underpinning the Government's land reform proposals.

Apocalyptic stuff. But anyone under the illusion that land reform is driving Scotland towards a socialist utopia/dystopia (delete as

appropriate) needs to pull over and check what's in the fuel tank. On the surface these ideas might seem radical but that's only because Scotland's uniquely concentrated pattern of private land ownership is so markedly different from the norm elsewhere. Scrape away the rhetoric and the Government's proposals are revealed for what they are; progressive but relatively modest attempts to usher the relationship between Scotland's people and land into the 21st century.

All of which makes some of the wilder claims regarding the repercussions of many of these proposals appear somewhat manufactured and contradictory. The Scottish Tories' apparent aversion to a Land Reform Commission seems curious given that one of the Commission's proposed roles will be to collect evidence and undertake studies on the impacts of land reform measures; precisely the sort of evidence-based approach to policy that the party claims to favour. And is anyone seriously suggesting that greater transparency and accountability regarding land ownership in Scotland is not a progressive initiative to be welcomed? Or that imposing a duty on charitable trusts to engage with communities over land-based decision-making is the dead hand of the state stifling local development?

Even the proposed powers of ministerial intervention where the scale or pattern of land ownership, or a landowner's conduct, present barriers to sustainable development are unlikely to be used as anything other than a tool of last resort to address problems when other avenues for resolution have all been exhausted. Not least because any such interventions are likely to have to meet a clear and stringent public interest test that they promote sustainable development. That suggests it would be imprudent for ministers to embark on such interventions lightly.

REMOVING BUSINESS rates exemptions from shooting and deerstalking businesses is understandably not a prospect these enterprises relish. However, it would be interesting to see evidence showing this proposal to be the economic catastrophe that some of its detractors have claimed. Other rural businesses seem able to operate perfectly well without such an exemption. Indeed, only last year Sarah-Jane Laing, Scottish Land and Estates' director of

policy and Parliamentary affairs told the UK Parliament's Scottish Affairs Committee that "if you are going to be looking at estates as land-based businesses, then there does seem to be equity in treating them the same as other businesses". The prospect of revenues from ending that tax exemption swelling the coffers of the Scottish Land Fund to the tune of £10 million per year from 2016 onwards will mean more funding for community-led local development in rural areas. Many with the interests of these areas at heart will see that as a positive rather than a retrograde step.

Of course there's a long way to go before any or all of the Government's proposals are fleshed out in the forthcoming Land Reform Act. Doubtless they will be the focus of intense lobbying from various quarters both before and after the consultation on the future of land reform closes on 10th February. Nothing about that future is confirmed or guaranteed as things stand.

Meanwhile, the Parliament's rural affairs, climate change and environment committee has been holding evidence sessions with various stakeholders on proposed amendments to the community right to buy to be included in the forthcoming Community Empowerment (Scotland) Act. They haven't captured many media headlines but these sessions have yielded some useful insights regarding the proposed amendments to the community right to buy and the wider policy context for land reform.

Some of the most interesting evidence has come from Professor Alan Miller, chair of the Scottish Human Rights Commission, who had this to say about the relationship between land reform and human rights:

"The Scotland Act 1998 calls on the Scottish ministers to observe and implement international obligations, of which one—but only one—is the International Covenant on Economic, Social and Cultural Rights, which places a duty on the Scottish ministers to use the maximum available resources to ensure progressive realisation of the right to housing, employment, food and so on—that is, it sees land as a national asset, which is to be used for the progressive realisation of what we might call sustainable development.

Therefore, what human rights provides is a broader impetus for land reform, rather than an

inhibition, as is suggested in the way that the issue is currently couched—that is, in questions about whether a landowner has a red card that can be used with reference to the ECHR to stifle discussion about different use of the land. That is what is missing from the policy framework."

Professor Miller made a broadly similar point when he spoke at Community Land Scotland's annual conference in 2013. His evidence to RACCE provides a timely and authoritative counter-weight to the view that human rights are only relevant to land reform insofar as they concern the protection of landowners' interests. That perspective is obviously important but there's clearly also a wider human rights context within which the current land reform debate and ensuing policy developments need to be located. It'll be interesting to see whether the committee makes much of this issue in its report on the relevant part of the Community Empowerment Bill.

Another area of interest relates to the Bill's proposed provisions to enable communities to buy wholly or mainly neglected or abandoned land in the absence of a willing seller. A good deal of the discussion in the committee's evidence sessions has focused on why the provisions have been included at all and whether they will be enforceable in practice. If there is a risk that they may not be, one might argue that the 'abandoned' and 'neglected' criteria should be removed from the Bill altogether and replaced with a 'sustainable development in the public interest' test for community purchase of land in the absence of a willing seller. That, after all, is the test for the current crofting community right to buy which does not require a willing seller of land. It's hard to discern a compelling argument as to why the amended community right to buy should be any different.

Yet another front of land reform activity will soon open up following publication of the final report of the Scottish Government-appointed agricultural holdings legislation review group. The UK Parliament's Scottish Affairs Committee is also due to publish the report of its inquiry into land reform before the end of March. Amid all this activity, the coming months promise to be interesting as the land reform process begins its transition from a review mode towards tangible action.