

Unfinished business surrounds the land question in Scotland



Photograph: WILLIE URQUHART

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focus



**Rural policy advisor
Dr CALUM MACLEOD
examines the new
Land Reform Act
which was passed in
Parliament last
week...**

FOR MOST OF the last decade the political answer to Scotland's 'land question' seems to have been "pass".

Back in 2003 the Scottish Parliament launched its 'flagship' Land Reform (Scotland) Act with a cargo of access rights, community and crofting community rights to buy amid much overblown chatter about the legislation's symbolic significance as the lodestar for a new politics in Scotland; then watched with apparent indifference as land reform drifted beyond the horizon as an issue of serious policy concern.

Parliament's passing of a new Land Reform Act last week confirms that this most emotive of issues was carrying a return ticket.

Much of the rhetoric emanating from Government in the run-up to the new legislation's arrival on the statute book sought to talk up the Act's radical credentials. That's hardly surprising given that the SNP has spent much of the last year promoting land reform as being in the vanguard of the progressive, left-of-centre policies to which it apparently aspires. Even less so in light of the rude awakening delivered to Ministers by the party's membership at its conference last October when they voted to reject the legislation as too timid in its early draft form. That, together with demands for more detail on key proposals from the Parliament's influential Rural Affairs, Climate Change and Environment Committee responsible for scrutinising the Bill, undoubtedly helped beef up some of its contents.

Still, the Land Reform Act that has emerged from an intensive period of scrutiny and hundreds of tabled amendments only appears radical when viewed within the context of Scotland's extraordinarily concentrated pattern of land ownership; one where 50 per cent of the country's private land is controlled by 432 owners.

There's nothing in the Act's cocktail of institutional, administrative and fiscal measures to suggest that particular statistic will change any time soon. Despite the recommendations of the Government's own Land Reform Review Group and extensive lobbying by an increasingly-organised grass-roots land reform movement, Scottish Ministers have resisted introducing genuinely radical measures such as limiting the size of land holdings in Scotland, banning non-EU registered entities from owning land or providing a right to buy for agricultural tenants.

Anyone under the illusion that the Act was ever going to deliver a Great Leap Forward

towards a socialist nirvana really should have read the small print of the pragmatic land reform prospectus on offer from the SNP Government. However, that shouldn't obscure the fact that the legislation provides an encouraging basis for ensuring that land reform becomes an increasingly-significant force for progressive change in support of sustainable development throughout Scotland; albeit one which is strongly contested by the country's landed elite.

It's particularly important that land reform becomes entrenched as a permanent feature of Scottish public policy rather than periodically falling off the political radar as has happened in the past. Two measures in the Act can help to ensure that entrenchment occurs.

One involves an obligation on the Scottish Government to produce a Land Rights and Responsibilities statement underpinned by principles of human rights, equal opportunities, reducing inequalities due to socio-economic disadvantage, community empowerment, diversity of land ownership and sustainable development in relation to land. The other involves creation of a Scottish Land Commission — with scope for including at least one Gaelic-speaking Commissioner if practicable — to provide oversight and input to any matter of law or policy relating to land in Scotland.

The need for transparency regarding land ownership is also vital so it's good to see there has been movement on that issue too. A new Register of Controlling Interests in Land should make it easier to find out who actually does own Scotland; a basic requirement to enable proper scrutiny of land use decisions and the beneficiaries of these decisions. This type of information has long been available in various mainland European countries and elsewhere.

THE ACT contains yet another community right to buy to sit alongside the community and crofting community rights to buy originally introduced in the Land Reform (Scotland) Act 2003 and subsequently amended in the Community Empowerment (Scotland) Act 2015 to make them more straightforward to use.

The new community right to buy in the Land Reform Act 2016 enables Scottish Ministers to sanction a community purchase of land in the absence of a willing seller if it will further sustainable development and is in the public interest. On first inspection that seems quite similar to the purpose of the crofting community right to buy, only this time rolled out across Scotland. In which case it will be

intriguing to see how the new right is implemented in practice.

There is also a requirement in the legislation for the Scottish Government to issue guidance to landowners on community engagement. The guidance is intended to enhance recalcitrant landowners' local accountability if they are inclined to ride roughshod over the local community's views regarding land management decisions, assuming they seek these views at all. Its practical effectiveness will depend on the type of sanctions available for non-compliance, an issue on which the Act is silent.

Interestingly, the Policy Memorandum issued by the Government to accompany the Bill at stage one of the legislative process suggested that such sanctions might include triggering the new community right to buy or withholding of future discretionary land grants, amongst other options.

Despite vehement opposition from Scottish Land & Estates, the membership organisation for private landowners, Scottish Ministers haven't blinked on the issue of removing the exemption for shootings and deer forests regarding payment of non-domestic rates. It remains to be seen whether reintroducing these rates will be the ruin of Scotland's rural economy as opponents of the measure contend. Perhaps not, given that countless other rural businesses seem to survive despite paying them.

It remains to be seen, too, whether changes to agricultural holdings legislation contained in the Act will be the ruin or the making of the tenanted agricultural sector. Amongst other provisions in a mammoth and complex part of the new Act is a measure to enable retiring farming tenants to sell their tenancy under the Agricultural Holdings (Scotland) Act 1991 back to the landlord or assign it to "an individual who is a new entrant to, or who is progressing in, farming" if the landlord does not wish to buy out the tenancy.

Scottish Land & Estates has been highly critical of this development, arguing that it will deter landlords from leasing farmland with disastrous effects for the tenanted sector. In contrast, the Scottish Tenant Farmers Association has warmly welcomed what it sees as a well thought-out proposal.

GIVEN the deeply-contentious nature of land reform, reaction to the new Act has split along predictable lines.

Community Land Scotland hailed it as "representing important progress in taking Scotland further down the road toward more

enlightened land laws and in extending the rights of communities to own land".

In contrast, Scottish Land & Estates' appraisal has been rather less enthusiastic, especially in relation to what it sees as "the prospect [of] enforced sale of productive land by Government Ministers; changes to tenant farming legislation that jeopardise the future of the sector; [and] the 'chaotic' re-introduction of non-domestic rates on sporting estates".

Andy Wightman, Scotland's foremost land reform campaigner, has described the legislation as "a watershed in land relations in Scotland".

It's hard to disagree with Wightman's assessment given that land reform appeared dead in the water as a policy issue as recently as four years ago. The new legislation may not please everyone but along with the Community Empowerment Act of 2015 it sends out a powerful message that land reform is an issue for Highland, Lowland, rural and urban Scotland alike; one requiring careful balancing of individual and collective property and human rights in the pursuit of environmentally sustainable, economically and socially progressive change that reflects the public interest.

Nevertheless much remains to be done. Following the Parliamentary election next May the new Scottish Government must ensure that the great swathe of secondary legislation required to fill in the detail of many of the Land Reform Act's provisions is fit for purpose. That means avoiding the kind of implementation barriers associated with unnecessary complexity that have bedevilled the 2003 Land Reform Act's community and, especially, crofting community rights to buy. It also means guaranteeing that adequate financial and other resources are made available to ensure that new initiatives such as the Scottish Land Commission are able to pursue their remit effectively. There's also a vital scrutiny role for Parliament to perform in that context.

More generally, the new Scottish Government will doubtless also be encouraged by land reformers to examine what other fiscal and legislative policy levers might be deployed to place land reform on to a genuinely radical footing. In that regard it will be instructive to see what, if any, further land reform proposals the various political parties include in their manifestos for the forthcoming Holyrood election.

There may be freshly-minted legislation on the statute book but, for those of a progressive disposition in Scotland, addressing the land question remains unfinished business.