



BRIGHT FUTURE:
Communities such as South Uist now have their destinies in their own hands

Assessing the land reform process

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focus



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Despite successes, Dr CALUM MACLEOD finds that there is still much to do to build on the achievements of land reform in Scotland...

THE LAND REFORM (Scotland) Act 2003 is widely viewed as one of the most significant pieces of legislation passed by the Scottish Parliament since devolution in 1999.

The Act introduced statutory access rights over most land for 'everyone' and the 'community right to buy' and 'crofting community right to buy' eligible land, salmon fishings and mineral rights and other assets such as buildings. Consequently, the Act is often held up as an example of progressive land reform designed to diversify the pattern of land ownership in Scotland. But to what extent has the legislation done this to date? And what are the barriers which prevent these objectives being achieved more widely in practice?

Recent research on implementation of the Land Reform Act conducted on behalf of the Rural Affairs and Environment Committee of the Scottish Parliament by the UHI Centre for Mountain Studies and partners presents a somewhat mixed picture in relation to these fundamental questions.

There is a popular misconception that the community right to buy provisions contained in Part Two of the Land Reform Act have been instrumental in securing many more community land buy-outs than has actually been the case. In fact, many of the most high profile buy-outs, such as those undertaken by the North Harris Trust, Storas Uibhist and the Isle of Gigha Heritage Trust, either pre-date the legislation or took place outwith the Act. According to Scottish Government figures the reality is that only nine community organisations have successfully used the legislation to purchase land and assets to date. These range from the Assynt Foundation's purchase of the Glencanisp and Drumunie estates, encompassing 44,400 acres of land, to Neilston Development Trust's securing of the former Clydesdale Bank premises in the town centre.

For these organisations which have successfully completed the process the community right to buy has undoubtedly been invaluable in enabling them to put land and associated assets to uses which directly benefit the communities in which they are located. However, the relatively low number of successful purchases using the Act indicates that this right has not had a significant direct transformative impact upon the pattern of land ownership in Scotland. A number of factors combine to explain the low completion rate of purchases in this regard.

Perhaps the most significant explanation lies in the way in which Part Two of the Land Reform Act is designed in relation to facilitating community ownership. The legislation contains what some would call 'safeguards' and others 'obstacles' which are intended to shape the implementation process in important respects.

Most critically, the 'community right to

buy' only gives eligible 'community bodies' a pre-emptive right to purchase land when it is placed on the market by a willing seller. This is in contrast to the 'crofting community right to buy' contained in Part Three of the Act which does not require a willing seller and which is in some respects akin to a compulsory purchase of land. Consequently, organisations using the community right to buy have to navigate a complex and highly bureaucratic process to register their interest in land but must then wait until the owner puts that land on the market before they can activate that interest and proceed to purchase. For many of these organisations this can be a deeply frustrating experience, leaving them neatly stacked like aircraft in a holding formation waiting for permission to land that may never come.

Even successful activation of an interest (effectively the 'green light' to proceed to purchase) is no guarantee that a community organisation will succeed in securing the land. Nine community organisations have activated their interest only to see their attempts to purchase flounder on a variety of barriers. Six of these organisations were unable to fund their purchases within the timescale set out in the legislation; one was competing with another community organisation; one wished to purchase ineligible land and one had the activation process terminated when the landowner withdrew the land from sale. Aside from the last-mentioned organisation, all had their registration deleted from the Register of Community Interests in Land.

Quite apart from the above, the sheer complexity of exercising the 'community right to buy' in practice gives any community organisation pause for thought when contemplating whether to embark on what many contributors to our research characterised as an exhausting and resource-intensive process. Our findings highlight the burden of work and demands on volunteer time of using the Act; issues which can be exacerbated depending on the capacity and skills set available to particular organisations.

Other elements of the process can also leave community organisations mired in a bureaucratic quagmire not of their own making. Representatives of community organisations who participated in our research noted the difficulties of meeting timescales and deadlines associated with key stages of the community right to buy process. These included the challenge of organising a community ballot within 28 days of receiving an independent valuation of the land to be purchased and difficulties in getting access to the full electoral roll to determine eligibility to participate in the ballot. Securing funding to complete purchase within a 6 month time-frame following confirmation of the community organisation's intention to proceed with purchase was also viewed as unrealistic by some participants. Some organisations also experienced problems in

setting the geographical boundaries of the community or in determining the size of the community although this was not a universal finding.

SUPPORTERS OF the community right to buy argue that it has helped to raise the profile of community land ownership generally and research participants broadly concur with that view. It's more difficult to draw any firm conclusions as to whether the legislation has indirectly stimulated greater activity in relation to the community land sector because of a lack of available data in that regard.

Interestingly, one notable feature of the community right to buy in practice is that the majority of successful purchases have resulted from 'late' registrations of interest in land, made after the land came onto the market. Such late registrations were anticipated by the legislation's architects as being the exception rather than the norm. However, their prominence suggests that the Act has served a useful 'buffer' function by ensuring that communities are afforded the opportunity to purchase, subject to meeting the stringent criteria of the 'right to buy' process, rather than being by-passed by sellers intent on avoiding the legislation being invoked.

The absence of a 'willing seller' component to the crofting community right to buy and the need to safeguard the human rights of landowners are advanced as justifications for the complexity of the provisions contained in Part Three of the Act. These exceed the demands of the community right to buy process in terms of defining the community, ballot arrangements and most strikingly of all, in relation to land mapping requirements which are far above the norm in terms of detail than would be expected for estate sales outwith the Act. A common refrain from participants in our research was for the process to be made significantly simpler.

As has been well documented in this newspaper, the Paicr Trust is currently awaiting the outcome of its application, first submitted in 2005, to purchase land and associated assets relating to the Paicr Estate in Lewis. The landowner continues to contest the validity of the application and it is testament to the tenacity of the community in Paicr that they have continued to pursue purchase through the Land Reform Act in challenging circumstances.

There is understandable and growing impatience for the Scottish Government to come to a decision as to whether the purchase can proceed. There can be little doubt that the outcome of that decision will have profound implications as to whether the crofting community right to buy is in fact workable in practice or not worth the paper it's written on.

The framework of statutory access rights, community right to buy and crofting community right to buy contained in the Land Reform (Scotland) Act 2003 has resulted in

the legislation being held up as a touchstone for progressive land reform. There's a compelling argument for that view in terms of the access element of the Act. However, the case for the community right to buy and, certainly, the crofting community right to buy is less clear cut for the reasons outlined above. In both these contexts it may be contended that the symbolic significance of these rights outweighs their practical utility.

That said, there is much that could be done to reduce the administrative complexity associated with the provisions contained in both Parts Two and Three of the Act to make them a more palatable option for community organisations to use. Increasing the flexibility of what constitutes eligible 'community bodies', simplifying ballot arrangements, recasting time-frames associated with the process in favour of community organisations and reducing the burden of mapping requirements have all been suggested by participants in our study as helpful changes to the legislation.

ULTIMATELY, the Land Reform Act is only one piece of a complex jigsaw in relation to community land ownership in Scotland. There remains much to celebrate in terms of what has already been achieved through community ownership throughout the Highlands and Islands. Moreover, the creation of Community Land Scotland as an umbrella body for the sector is a significant and very welcome development, both for sharing good practice and advice amongst community organisations and gathering and amplifying the views of the sector to Government and other stakeholders.

However, there is a pressing need to reignite the political momentum which drove the community land movement in the pre-Land Reform Act era and led to the establishing of the Community Land Unit within Highlands and Islands Enterprise and the now defunct Scottish Land Fund.

The challenge for the next Scottish Government, of whatever political hue, after the May election is to cut through the nebulous rhetoric of policy statements and position papers to show that it is serious about securing the benefits that shared ownership of land and other assets can bring to communities. Committing to a new Scottish Land Fund, removing the regulatory red tape associated with public asset transfer and reshaping the Land Reform Act to enable rather than ensnare communities' land ownership aspirations would be a good start.

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