

CALEDONIA BRIEFING No. 1

Land Reform White Paper July 1999

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INTRODUCTION AND BACKGROUND

- 1.0 This briefing provides an analysis of the Land Reform White Paper published by the Scottish Executive on 8 July 1999. It covers community right-to-buy and information on land but *not* the proposals relating to access (Chapter 7 of the White Paper). It is intended to be of use to everyone interested in the topic and in particular to those who will be involved in making a formal response to it and/or involved in the legislative stages. It should be read in conjunction with the White Paper. Copies of the White Paper can be obtained from Brian Lawson, Land Reform Branch. Room 106, Pentland House, 47 Robb's Loan, Edinburgh EH14 1TY. Tel 0131 244 6395. Email: brian.lawson2@scotland.gov.uk
- 1.1 The briefing explains the background to the White Paper and summarises its contents. It analyses the paper and explores the detail, the aims and impacts, and critiques the approach adopted within the wider framework of land reform.
- 1.2 This briefing is the first to be prepared under the Land Programme of the Caledonia Centre for Social Development. A copy of it is available on our web site at www.caledonia.org.uk/land. You are welcome to copy and distribute the contents of this briefing freely on the condition that the source and author are acknowledged.
- 1.3 The paper raises a number of issues concerned with the effectiveness of proposals in the White Paper but it is by no means a definitive analysis and is intended to assist in the further development of public policy.
- 1.4 The author would be happy to engage with any interested party in further discussions on any of the points raised and can be contacted by email at andywrightman@caledonia.org.uk

Background to the White Paper

- 1.5 Labour's manifesto for the 1997 General Election made a commitment to 'initiate a study into the system of landownership and management in Scotland'. That commitment was met by the establishment in October 1997 of the Land Reform Policy Group (LRPG) which published two consultation papers and a final report, namely:

Identifying the Problems (the Brown Paper) in February 1998
Identifying the Solutions (the Orange Paper) in September 1998
Recommendations for Action (the Green Paper) in January 1999

- 1.6 The Green Paper contained the final recommendations of the LRPG and formed the basis of the Labour Party's manifesto for the Scottish elections in May 1999 and was subsequently adopted as part of the Partnership for Scotland agreement between the Liberal Democrats and Labour.
- 1.7 Implementation of the Green Paper will be in stages throughout the Parliament. In its first legislative programme the Government has proposed three bills on land - a bill to introduce National Parks, a bill to abolish the feudal system and a bill to implement the Green Paper recommendations on community right-to buy, access, and information on land.
- 1.8 It is this third bill, now being prepared for introduction to Parliament in early 2000, which is the subject of the White paper published on 8 July 1999.

What does the White Paper propose?

- 1.9 It proposes that properly constituted community bodies be able to register an interest in the land where their members live and/or work. In the event that this land is offered for sale in the future, the community body will be able to exercise a right-to-buy at a price to be set by a Government-appointed valuer. It proposes reserve powers of compulsory purchase to deter landowners from evading their obligation to notify Scottish Ministers of their intention to sell land on the register.
- 1.10 On information, there is a proposal to set up a landownership database possibly modelled on the Highland Council Landownership Database which covers 95% of privately-owned land in the Highland Council area. On the question of beneficial ownership the White Paper concludes that it would be difficult if not impossible to introduce any power to investigate the beneficial ownership of land.

What difference is there between the White Paper and the Green Paper?

- 1.11 Quite a bit. The Green paper argued that the right-to-buy would be restricted to certain parts of the country and to properties above a certain threshold size. These proposals have now been dropped and the right will apply across the whole of rural Scotland and to all land within it.
- 1.12 The White Paper introduces the concept of registration of interest in advance of the land coming onto the market. This means that the right-to-buy will only be available to those community bodies who have registered (and had accepted) their interest in land.
- 1.13 It has also been confirmed (though it is not explicitly referred to in the White Paper) that the right-to-buy can be used to purchase solely that

parcel of land in which an interest has been registered. The Green Paper stressed that the right could only be exercised over the land as it was offered for sale i.e. if a community were interested in a small area of woodland they would have to buy the entire estate of which that woodland was a part.

- 1.14 Dropping this requirement is a major step forward although landowning interests claim that this will allow communities to ‘cherry-pick land’ and will inhibit investment in land on the register.

AN ANALYSIS OF COMMUNITY RIGHT-TO-BUY

Political commitment

- 2.1 The proposed community right-to-buy has been part of the Government’s thinking for a long time. Donald Dewar, when he launched the Orange paper following his 1998 McEwen Lecture in Aviemore, was adamant that the proposal would be implemented:

“I wish to be absolutely clear that I regard this right (the community right to buy) as an essential prerequisite of land reform. The problems must be overcome and the right must be established.”(1)

- 2.2 The proposal is being vigorously promoted by Government. Deputy First Minister, Jim Wallace, claims in his introduction to the White Paper that:

‘These proposals have been the result of an unprecedented level of consultation over the past 2 years. The breadth and depth of that consultation means that we can be confident that the solutions proposed are the right ones.’

- 2.3 Proposals which were regarded as an essential prerequisite of land reform *before* the consultation started *may not*, however, be the most appropriate response to the need for land reform because, as a proposals, they have not been subject to appropriate scrutiny and analysis. This perspective should be borne in mind when considering the detail of the measures outlined in the White Paper.

What will be the impact of these proposals?

- 2.4 It is hard to say what impact the community right-to-buy will have. Indeed it is one of the shortcomings of the proposal as it has been developed that no specific aims or objectives have been articulated. The closest Government has come is to highlight two advantages for the proposal in the Orange Paper. These were that it would ‘greatly empower communities’ and ‘effect rapid change in the pattern of landownership’(2). Will it?

- 2.5 Most privately-owned land in Scotland has never been exposed for sale (privately or openly) for over 100 years. It is estimated, for example, that at least 25 % of estates of over 1000 acres have been held by the same families for over 400 years (3). Even in parts of Scotland where turnover is higher such as the Highlands, over 50 per cent of private land has never been exposed since the war and 25 per cent has not been exposed at any time in the 20th century.
- 2.6 The community right-to-buy might better be described in such circumstances as the right-to-buy for the great-grandchildren of the community and it is hard to see how the proposal enjoys the advantages attributed to it. The legislation will certainly not empower individuals and groups of individuals within communities and no community is likely to be empowered through speculation that at some point in the future they might be able to take over control of the land. Neither will there be any rapid change in the pattern of landownership. If, as Government seemed to indicate in the Orange Paper, these are the *only two advantages* of the proposal, it is hard to see the justification for pursuing it with any determination.
- 2.7 It is possible, however, that the proposals will be of value in helping with the purchase of small areas of land of strategic importance to communities in and around settlements. Previous proposals based on thresholds and buying the whole holding on the market would have prevented the exercise of the right-to-buy in almost all of these circumstances. Now, however, communities will have the ability to purchase solely the parcel of land in which they have registered an interest. However, because the right to buy only applies when land is on the market, there will still be frustration at the inability to access strategic parcels of land.
- 2.8 The requirement for registration of interest is a useful way of reducing the pressure on communities at the time of sale. The case for purchase will already have been made and the community body set up. Registration will also help avoid the undue influence of a Government hostile to land reform when the right-to-buy comes to be exercised since by that time there appears to be less discretion required of Ministers. A Government could of course seek to frustrate the registration of land but as this is not so time sensitive (i.e. a community could wait for a few years and hope for a change of Government), it matters less than if such hostility were to be expressed at the critical period during which right-to-buy powers have to be exercised.
- 2.9 However, in many cases it is only the threat of an uncertain future created by the marketing of land that prompts community concerns for the future. At the time of writing the island of Great Cumbrae is reported to be being offered for sale. As part of a long established landed estate people who live on such properties tend not to think about the consequences of a future sale. When it happens, however, people often realise that there are

opportunities and threats and it appears unreasonable to deny the right-to-buy simply because a previous interest has not been registered.

- 2.10 In terms of the overall impact of the proposed community right-to-buy, a lot will depend on how the details are developed since these have a bearing on the operation of the proposal. Only when these are sorted out that it will be possible to assess properly the impact of the proposals.

The definition of community

- 2.11 The definition of community was always going to be difficult. What was never expected, however, was that the White Paper would solve the problem by going for the narrowest definition possible.
- 2.12 The single greatest weakness of the White Paper is its focus on ‘those who live and/or work on the land’. This is the narrowest definition of community as outlined in para. 1.3 of the Green Paper and means tenants and employees. The thinking behind this appears to be that tenants and employees are in the greatest need of some form of extra statutory protection when it comes to the land market. People living in their own homes and gardens are already secure and therefore are in no need of special arrangements.
- 2.13 The White Paper makes clear that the community body must have as its members, a majority of those who live and/or work on the land in question (White Paper para. 2.5). In other words tenants and employees must be in the majority.
- 2.14 This is most unlikely to be possible since tenants and employees are likely to number only a very few on land in which a community might be interested. Indeed in many cases tenants and employees may number only single figures in a wider community of several hundred. Any community body may, therefore, only have a total membership of 20 or so. This approach seems to rule out the kinds of initiatives which have been taken in recent years to secure access to land.
- 2.15 Most of these initiatives have involved entire geographical communities such as the Isle of Eigg Residents Association, Knoydart Community Association, Laggan Community Association or a host of other community groups. Most members of these groups live in their own homes (either rented or owned) and live in small, dispersed settlements.
- 2.16 Indeed it is worth noting that, not only would many previous initiatives such as Knoydart fail to meet the proposed criteria for eligibility, but the Abriachan Forest Trust, whose project provided the setting for the launch of the White Paper, would never have even got off the ground. Not only did nobody in Abriachan live and/or work in Abriachan Forest but the Forestry Commission (from whom they bought the land) no longer

disposes of such properties. There is thus a particular issue to address of how such opportunities can be taken forward in future under a Government whose policy rules out *on two counts* (if it were to happen today), the very initiative Ministers so publicly lauded on 8 July 1999.

- 2.17 Not only is it suggested that tenants and employees be in a majority but the community body must be representative of and supported by the local community. Presumably the local community is the wider geographic community and if there are, say, 300 members of this community and only 6 or so tenants and employees on the land, it is hard to see how the 6 can be in a majority or be representative of the wider community (though they could of course have their support).
- 2.18 The White paper goes on to suggest in para. 2.8 that, in addition to the ‘core membership being those individuals aged 18 and over who live and/or work on the land in question’, members of the community body ‘must constitute a voting majority’ in any situation where they set up a partnership with other organisations such as a conservation body or local authority.
- 2.19 This requirement will frustrate the kinds of partnerships that have developed in many parts of Scotland where a range of interests including the community, conservation bodies, and other landowners have come together to form landowning bodies. In no known instance of such partnerships does the community or any other party have a majority control of the landowning body. Indeed such a constraint would have *ruled out* major community landownership initiatives such as Eigg and Knoydart.
- 2.20 Placing so much emphasis on tenants and employees represents a major misreading of the scope and opportunity which community right-to-buy offers rural communities. In some cases there will be nobody at all working on or living on the land. Paragraph 2.9 means that in such circumstances *there can be no registration of interest*. But in such cases it might be precisely to *reverse* this state of affairs (i.e. *to create* employment) that a community might wish to purchase the land!

Assessing the Community Interest and Right-to-Buy

- 2.21 The details proposed in Chapters 3 and 4 of the White Paper appear to be sensibly thought through. There are, however, various points which should be given some more thought.
- 2.22 Paragraph 3.7 raises the difficult question of what happens when title to the land is not sold but beneficial interests in it are. A lot of land in Scotland is held by companies with share capital or by individuals jointly and in common through pro-indiviso shares. Shares in the company that own the land can be sold as can pro indiviso shares in certain

circumstances. Where the whole interest has been sold then clearly the right-to-buy legislation is intended to apply and where there has clearly been an attempt to circumvent this legislation, then a power of compulsory purchase is proposed.

- 2.23 However, transfers of these shares frequently takes place through the sale of individual shareholdings which represent a small fraction (often 1-10%) of the whole interest in the landholding. Thought is apparently being given to setting thresholds above which part-share transfers would trigger right-to-buy powers. It is unclear as yet whether a satisfactory solution exists and the restructuring of land into shareholding entities whereby shares are then sold piecemeal over a period of time could provide plenty scope for dispute and appeal if no clear provision is made in the legislation.
- 2.24 Paragraph 4.6 highlights the question of the sale price set by the Government-appointed valuer. When this was proposed in the Green Paper there was an expectation that this valuation would be based on some compromise between the economic value and the open market value. It is now being proposed that communities must pay the full open market value. Given the inflated value of so much land this may be problematic.
- 2.25 Paragraph 4.7 highlights again the question of defining the community and provides a good example of the unworkability of the definition as proposed. In circumstances where there are, say, 6 people living and/or working on the land among a wider community of, say, 200, what is the relevance of setting any percentage of such a tiny number at all? If all 6 individuals support the purchase (100% support) but the rest of the community are denied the opportunity to become involved, then this wider community is hardly going to be in a position to demonstrate the clear commitment to purchase which the White Paper makes clear is necessary for success.
- 2.26 Paragraph 4.8 refers to a period of 6 months to raise finance. This seems a sensible and workable compromise between not allowing sufficient time and drawing matters out for too long

Compulsory Purchase

- 2.27 Contrary to much spin and hype in the earlier part of this year there was clearly never any intention to introduce a power of compulsory purchase to expropriate the land of so-called bad landowners (4). As the Green Paper hinted, such powers would only be used to deal with attempts by landowners to circumvent the proposed community right-to-buy legislation.
- 2.28 This power is vital to prevent circumvention but has at least one significant flaw - a flaw related to the question of beneficial ownership of land and linked to paras. 6.6 and 6.7 on information (of which more later).

- 2.29 Where the beneficial ownership of land is transferred for value, for example though the sale of shares in a landowning company, the landowner will be obliged to notify Scottish Ministers of any intention to sell land in which a community has registered an interest. A landowner will, however, be able to avoid such an obligation where the title is held by an offshore trust or company. This is because, as paras. 6.6. and 6.7 make clear, there is no means of determining the beneficial ownership of organisations based in Liechtenstein, Panama or Grand Cayman. Paragraphs. 5.3 and 5.4 place the onus on communities to present evidence to Ministers that a change of ownership has taken place. Ministers must then be satisfied that ‘there has indeed been a change of ownership’. Where offshore trusts and companies are concerned this will be impossible and evasion of the right to buy could take place.

The New Opportunities Fund

- 2.30 One issue which is not mentioned in the White Paper but which will be critical to the success of the proposals is the role of the New Opportunities Lottery Fund. It is clear that in order to successfully exercise the right-to-buy power, communities will have to raise money and it has been proposed that this Fund will be the main source of this money. It is important therefore to pay close attention to the kind of constraints which that body might put on communities wishing to apply for money. They may, for example, insist on charitable status, something which is not appropriate in many cases where economic regeneration is involved. They may wish to place constraints on the future use of or disposal of land. They may wish to put in place clawback powers. They may, indeed, not wish to prioritise the community purchase of land in the first place.

Community right-to-buy vs crofter right-to-buy

- 2.31 Land under crofting tenure will be subject to the community right-to-buy in the same way as non-crofting land. However, the proposals in the Green Paper provide for a crofting right-to-buy for crofting tenants on privately-owned estates under the same terms as are already available to the tenants on the First Minister’s crofting estates through the provisions of the Transfer of Crofting Estates (Scotland) Act 1997.
- 2.32 There is the potential for the community right-to-buy to conflict with the crofting right-to-buy where the definition of community in each case is different. As the proposals stand, the community right-to-buy is focussed on tenants and thus there may be little conflict. If the definition of community is extended, however, there will need to be clear guidelines on how, and in what circumstances, each right can be exercised.
- 2.33 In practice it is assumed that the crofting right-to-buy will take precedence since it is proposed that this can be exercised at any time whereas the community right-to-buy is only available when the land is offered for sale.

Is this really land reform?

2.34 Yes and no.

Community right-to buy is one important reform among many others. The underlying factors which necessitate such a reform are the concentrated pattern of private landownership in Scotland and the completely unregulated market in land. In the Highlands and Islands *fully half* of the private land – over 3.6 *million* acres - is owned by fewer than 100 landowners and three-quarters of it is owned by around 300. This pattern of ownership stands in stark contrast to other west European countries where, typically, the pattern is around 1,000 times less concentrated and where communal forms of ownership are commonplace.

2.35 Community right-to-buy offers a modest tactical intervention in the status quo but offers limited opportunities to break down land monopolies and offers no opportunities to individuals and groups of individuals to get hold of land. A wider programme of reform would deliver this. Unfortunately this wider programme, involving reforms in the law of succession, limits to holding size, tenant right-to-buy, residency obligations and regulation of the land market has not yet been developed (5).

2.36 Community right-to-buy is thus one part of land reform. It is a dramatic move forward from the status quo and will, if suitably amended, be of some benefit to communities. It will not, however, achieve a rapid change in the pattern of ownership of land and will do little to truly empower communities. It will, however, if suitably amended, prevent land of vital interest to communities being sold without their knowledge although their opportunity to influence matters is restricted to the opportunity to become the landowners themselves and then only if they (or previous generations) had the foresight to register their interest.

2.37 Given the current definition of community and assuming land is not going to turnover any faster than it has done to date (remembering also that inherited interests in land will not trigger right-to-buy powers) it is hard to predict the impact of these reforms. The extent of land which might be transferred over the coming years or the degree to which the aspirations of communities will be met both remain open to considerable speculation.

ANALYSIS OF INFORMATION ABOUT LAND

A national database on landownership

3.1 Chapter 6 of the White Paper proposes the setting up of a national database on landownership. It also, after having explored the idea, suggests that the recommendation contained in the Green Paper to give

Scottish Ministers a power to investigate the beneficial ownership of land, will be 'difficult, if not impossible' to implement.

- 3.2 The database proposal will be taken forward if Ministers consider it to be good value for money. This is partly dependent on how soon the Land Register can deliver similar benefits and here, some clarification is needed.
- 3.3 The Land Register will become fully operational across Scotland by 2003 (although the timetable has slipped in the past and 2005-2010 might be nearer the mark). At that point all sales of land will trigger registration on a modern, digital, map-based system.
- 3.4 However, large areas of land have not been sold for decades and centuries and it might be nearer the end of the 21st century before most land is on the Land Register. The claim in the White Paper that 'after 10 to 15 years of the operation of Registration of Title in any country (sic), most properties will have been registered on sale' is true. However, whilst the majority of properties might be on the Register, the majority of land will almost certainly not be. This is because, of the total number of properties in a county, the vast majority are domestic dwellings and these change hands relatively frequently. Farms and estates, on the other hand, do not. Thus even where over 70% of 80% of *properties* may be registered this can still represent only 5% or 10% of the *land area*.
- 3.5 Furthermore, the function of a national database is to act as an information resource on a range of areas not covered by the Land Register. For example, where information is being sought on landowning patterns over a wide area perhaps in the course of planning the routes of new pipelines, or in preliminary investigations for mineral exploitation, data is primarily needed which will reveal the name and address of the current owner and the managing agents of land or local point of contact. None of this information is held by the Land Register. Even where the identity of the owner is concerned, the Land Register only reveals their name and address at the time they signed the title deeds. Their whereabouts 5, 10 or 20 years later may be entirely different.
- 3.6 The national database proposal could therefore provide a useful resource for a range of public and private interests as well as enabling a better understanding of the nature, pattern and dynamics of landownership across the country. It will also be of some significant use in the practical implementation of the community right-to-buy proposals which involve the identification of landownership units and landowners. This remains difficult and, in some cases, impossible, using only the Register of Sasines.
- 3.7 One other issue which has been raised before but which has not been resolved is how to supplement the gathering of data on landownership where the Registers of Scotland cannot provide the full details (usually

with respect to boundaries since the Register of Sasines is not map-based). The Scottish Executive already have over 30,000 agricultural returns (IACS forms) which provide digital boundary information on farm businesses. These would be invaluable as a template on which to build the database but are currently held in conditions of total secrecy by the Scottish Office Rural Affairs Department.

- 3.8 The other source of information in such circumstances is landowners themselves but they can be notoriously reluctant to divulge details of property ownership. In 1872 a survey of landownership was conducted across the whole of Great Britain and Ireland in which all owners of more than 1 acre of land had to disclose their property holdings. This was conducted in the era of quill pens, pigeon-post, and the horse and cart. It was also a statutory return in that owners were legally obliged to provide the relevant information. If such an exercise could be carried out over 100 years ago, should there be any hesitation or difficulty in demanding a similar return from landowners today?

Beneficial Ownership

- 3.9 The White Paper all but rules out any action to improve the level of information about beneficial interests in land (the individuals behind companies and trusts and who are the true beneficiaries of the entity which, on paper, owns the land). The power to investigate beneficial ownership has been dropped because such a power would be impotent in the face of the company and trust laws of Liberia, Liechtenstein, Bermuda, Panama and the British Virgin Islands where an increasing proportion of the ownership of Scottish land is registered (often on behalf of Scottish landowners it should be added).
- 3.10 More radical solutions to this problem are either to make certain bodies incompetent to hold land or to require them to disclose beneficial interests. Disclosure was raised as an option in the Orange Paper (p.39) but was claimed to be problematic to introduce for various reasons, none of them entirely convincing. Disadvantages included the difficulty in defining the type of ownership to be covered, the difficulty of introducing water-tight legislation, the difficulty of enforcement, and the difficulty in identifying cases where the obligation had been breached.
- 3.11 None of these though are reasons for not having a tax system or other systems of disclosure such as the Data Protection Act all of which rely on voluntary compliance. Indeed if the type of ownership were, for example, restricted to all offshore trusts and companies, it would be simple to identify at the conveyancing stage those owners covered and to insist on a duty to disclose as a prerequisite of obtaining good title. Indeed just this condition is proposed as part of the arrangements covering right-to-buy (White Paper para. 3.6) whereby a new owner of land will be unable to obtain valid title without having possession of an acknowledgment from

Government that right-to-buy obligations have been discharged. Current conveyancing practice also includes the obligation on sellers to make certain pledges, for example in relation to the Matrimonial homes Act. Tying disclosure to the process of conveyancing or acceptance of title for recording in the Registers of Scotland would appear to offer perfectly workable means of improving transparency in beneficial ownership arrangements.

SOME RECOMMENDATIONS FOR AMENDING EXISTING PROPOSALS

Definition of Community

- 4.1 The definition of community **must** be broadened and made more flexible to accommodate new and innovative arrangements which go beyond the narrow definition proposed. The definition should accommodate the range of circumstances identified by the Land Reform Policy Group themselves in their Green Paper. The Group could hardly be more explicit when they argued that:
- 4.2 ‘What is meant by community will depend on the context. In some cases it will be right to define this quite narrowly, in terms of those who live and/or work on the land in question. In other cases, it should also include those whose livelihoods are affected by the management of an area of land. In other circumstances the issue is community involvement in wider decision-making, where the right definition may be in terms of the local rural partnership or community council. Broader communities of interest also exist, for example those with a specific conservation interest, and those visiting the area. There will be further discussions on the right definition for each individual proposal’ (Paragraph 1.3 of the Green Paper).
- 4.3 **That discussion is urgent and should, in the context of community right-to buy, be broadened considerably to adequately deal with the wide range of circumstances the proposed legislation is likely to have to deal with.**
- 4.4 If, as appears to be being argued by the Scottish Executive, tenants and employees are most vulnerable when land is sold, the appropriate solution is to strengthen the relevant tenancy and employment laws. Expecting tenants and employees to register advance interests and promote possible discord and tension with both their landlord and/or employer as well as possible political difficulties within the community seems a rather extreme and unlikely prospect.

Strategic Sites

- 4.5 Many cases in which communities are trying to acquire control or title to land involve relatively small sites of strategic value for the development of facilities in and around settlements. In allowing for the registration and right-to-buy of only that land in which the community has an interest (notwithstanding the problems associated with the narrow definition of community), the White Paper moves a substantial way towards addressing these circumstances.
- 4.6 However, as pointed out earlier, the right-to-buy is only available when such land comes to be sold. It would be more appropriate in such circumstances for communities to be able to acquire such modest parcels of land at the time when they are needed rather than have to wait for decades.
- 4.7 **More flexible powers of compulsory purchase should be developed which would enable small parcels of land needed for public/community use to be bought at any time.** This would ensure that the benefits associated with being able to register an interest in small strategic sites is not frustrated by having to wait for as much as a generation or more for vital development.

The Wider Public Interest

- 4.8 There is, as the Green Paper makes clear in para 1.3, a series of wider definitions of community including the kind of community of interest which was involved in the attempts to purchase Glen Feshie estate, Mar Lodge estate, and Castle Tioram in Moidart. Mechanisms should also be developed to enable these communities of interest to purchase land where it is generally agreed to be in the public interest.
- 4.9 **It is recommended that Scottish Ministers be given a general public right of pre-emption over all land to be exercised (according to criteria to be agreed) in a range of public interest situations.** In conjunction with more flexible powers of compulsory purchase this would improve the chances of such important areas of land being brought into appropriate forms of ownership. In particular, a general public right of pre-emption would provide a valuable power in situations which do not warrant the exercise of full compulsory purchase powers and where, at present, there is no mechanism which can be deployed.

Emergency right-to-buy powers

- 4.10 Where a community has not registered an interest in land it will not have the right-to-buy when the land comes to be sold. This may disadvantage certain communities who, whilst their circumstances remain stable, may have no interest in land in their locality but who may, if and when land is

unexpectedly put on the market, decide that there are threats and opportunities arising from the sale. The sale of the island of Great Cumbrae is a good example of a community which had no reason to expect Bute Estates ever to sell but, when the situation arises, might decide that they have an interest after all.

- 4.11 It seems ludicrous to expect communities always to be able to predict the circumstances in which they might be interested in exercising right-to-buy powers. Under current proposals the only way of ensuring the option is available in future is to register land in advance. But whilst land may be of strategic and community interest at some date in the future when a community is faced with the uncertainties of the international market, it may not be deemed to be so in present circumstances.
- 4.12 **The right-to-buy should also be available in exceptional circumstances where a registration of interest has not taken place.** As things stand the only way of covering for future circumstances is to register large areas of land essentially speculatively. This is unlikely to happen or to be accepted by Scottish Ministers.

Compulsory Purchase and Avoidance

- 4.13 If the law continues to permit the holding of land by offshore companies and trusts, Scottish Ministers may find it difficult to implement compulsory purchase powers as outlined in the White Paper (para. 5.3 & 5.4). To help to overcome this problem, **Ministers should be entitled to make the presumption that land has been sold unless the owner can demonstrate otherwise.**

Information

- 4.14 **The Scottish Executive Rural Affairs Department should release digital information on farm boundaries generated as part of the process of agricultural administration.** If this contravenes existing Data Protection procedures, the Department should amend these procedures and inform respondents that in future, such information may be used in the creation of a national landownership database.
- 4.15 Furthermore, **legal powers should be given to Scottish Ministers to require the owners of land to make a return containing details of landownership.**

Beneficial Ownership

- 4.16 **It is recommended that all offshore companies and trusts be rendered incompetent to take title to land in Scotland.** There are plenty of other devices available under company law and Scottish trust law which can be

used instead which prevent the tax avoidance and anonymity which runs so much against the public interest.

- 4.17 If this proves politically unacceptable, **there should be, as a bare minimum, a legal obligation to disclose all beneficial interests.** This obligation should be discharged at the time of exchanging missives, signing title deeds, or recording title in the Registers of Scotland.

REFERENCES

(1) See page 19 in: Donald Dewar, 1998. *Land Reform for the 21st Century*. The 5th John McEwen Memorial Lecture, Aviemore. AK Bell Library, Perth.

(2) See *Identifying the Solutions* p. 23.

(3) See page 11 in: Robin Callander, 1987. *A Pattern of Landownership in Scotland*. Haughend Publications, Finzean.

(4) See for example Scotland on Sunday, 3 January 1999. *Rogue Lairds to have their land sold off – abolition of the feudal system a radical move against abuses by absentee owners.* ‘Absentee lairds’, it reported, ‘who mismanage their estates will be forced to sell their land to the state under radical new plans to be announced this week.’

(5) For a discussion of this see: Andy Wightman, 1999. *Scotland: Land & Power. The Agenda for Land Reform*. Luath Press, Edinburgh.