

Five years on, what has land reform achieved?

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Five years ago, on June 14, 2004, part two of the Land Reform (Scotland) Act 2003 came into force. The Act gives communities in rural Scotland (all of Scotland outwith towns of more than 10,000 people), the right to apply to Scottish ministers to register an interest in land. Once registered, the community has first refusal to acquire it, if and when it is put up for sale.

Lauded by some politicians as one of the great achievements of devolution, it is, in fact, a monumental disappointment. The measure was designed to effect a rapid change in the pattern of land-ownership in Scotland but after five years, only five communities have managed to acquire any land despite 54 registrations being recorded by a further 31 community groups. They will have to wait for the land to come up for sale - and that could be a long time in the future.

At the current rate of progress, it will be 2025 before 1% of Scotland is in community ownership. A more ambitious target of 10% will only be achieved by 2217 - well into the 23rd century.

One of the problems is the stunningly low level of awareness. The Scottish Executive did nothing to promote the right to buy. In contrast, walk into any B&B or hotel in rural Scotland, and you'll be able to pick up a leaflet on your access rights, which are covered by part one of the Act. I even saw an advert at a bus stop on Princes Street in Edinburgh the other month promoting the Outdoor Access Code. At the same time, community councils and other local groups still know next to nothing about the community right to buy. As a consequence, communities across the country are only dimly aware of their rights. And because you have to register an interest before the land is put up for sale, you need to be somewhat speculative in thinking about what land might be of interest at some future date.

Another major problem is the complexity of the Act and the effort required to make a competent application. Even if a community body manages to get through the whole process, it is then faced with the bureaucratic processes of the Scottish Government involving civil servants and ministers having more than 20 separate decisions to make about the competency and merits of individual applications. The Act is such a complex, legalistic piece of legislation that it provides numerous opportunities for nit-picking and fine legal arguments. This keeps bureaucrats and lawyers in business but does nothing to empower communities.

A recent example of this is a successful legal challenge by a landowner in Fife which overturned a registered interest on the basis that the map did not meet the statutory requirements (a grid reference was missing). Quite why it was ever accepted and registered by Scottish ministers in the first place remains a mystery, but what is even more astonishing is that in excess of two-thirds of the applications that have been approved in the past five years

also fail to meet the standards laid down in the legislation.

Such a situation has greatly diminished both the radical intent of the Act and its practical utility. What should have been a straightforward process delivering tangible benefits to communities has turned into a time-consuming and impenetrable process of micromanagement by officialdom.

By way of contrast, tenant farmers, who have their own right-to-buy legislation, can fill in a simple four-page form and a pay fee of £40. If all the details are in order, the interest can be registered in a matter of weeks. Landowners can only appeal on matters of fact and there's no interference in the process by civil servants and ministers. As a result of this simple and straightforward process, more than 1000 registered interests have been made since December 2004.

For three years, communities in Scotland have complained about the perversity of ministerial decision-making and the difficulties in using the Act. A succession of ministers has promised to review the legislation but nothing has been done. It is time to get the process of land reform back on track.

- Andy Wightman is the author of Who Owns Scotland.

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