

The Scottish Government
Land Reform Review Group – Call for Evidence

Highland Council submission

Introduction

Highland Council welcomes the establishment of the Land Reform Review Group and the opportunity to contribute to current thinking on this important topic. The Programme for the Highland Council (*Working together for the Highlands 2012 – 2017*) commits the Council to promoting land reform in Scotland. Addressing this commitment Highland Council is an affiliate member of Community Land Scotland (CLS) and has been working with CLS on joint objectives for the review.

Highland Council has a long history of campaigning on land reform. It has been proud to support community land purchases such as those which have taken place on Eigg and Assynt, and has contributed to previous government reviews of land reform legislation.

The Council hosted a land reform conference on 23rd March 2010 in Inverness and the report of that conference is included as part of this submission. The report of the conference provides evidence of the benefits that can be realised, in sustainability and economic development terms, by communities who own their land and resources.

Linked to the land reform debate, Highland Council has recently responded to the Government's Community Empowerment and Renewal Bill. A copy of the Council response is included here for information.

Highland Council would welcome an opportunity to discuss the land reform review with the Group and particularly some of the wider aspects of land reform not developed further here. The Council would be happy to host a meeting with the Review Group if considered appropriate.

The submission which follows is split into the following sections:

- Access - Part 1 of the Land Reform (Scotland) Act
- Rights to buy - Parts 2 and 3 of the Land Reform (Scotland) Act
- Wider aspects of land reform

Access - Part 1 of the land reform (Scotland) Act 2003

There seems to be a general feeling that all is well with Part 1 of the Land Reform (Scotland) Act and that the access provisions of the Act have delivered for Scotland. While the Council recognises the improvements delivered by the access provisions, particularly in terms of freedom of responsible access and the heightened awareness of access takers in respect of their responsibilities, the Council feels that there remain major difficulties that cause concern for the access authority, access takers and landowners. Four strategic concerns are set out below. The Council hopes that the current inquiry is an opportunity to address these concerns.

Resources available to access authorities

As we approach 8 years of implementation of Part 1 of the Act, access authorities still have major difficulties resolving locked gates and inappropriate signage. The legislation is cumbersome, costly (financially) and hugely resource intensive to apply, particularly when what are relatively simple issues have to be taken through the Court processes to be

resolved. The Council feels that the legislation now needs to be streamlined to permit swifter resolution of what are often annually recurring problems where land managers fail to respond or to enter into dialogue with the Access Authority.

Wild camping

Clarification on what exactly constitutes 'wild camping' should be provided as guidance for access authorities, land managers and access takers. The spirit of the 2003 legislation and the guidance in the Scottish Outdoor Access Code expected this to be lightweight camping undertaken as part of a multi-day trip in remoter areas. It is not anticipated as an opportunity for families or groups to pitch up with frame tents for a two week holiday camping by rivers or beaches where there are no amenities or facilities. As you will imagine such activity causes major management issues.

Responsibilities of developers to maintain access provision

Increasingly we experience developers of wind farms and hydro schemes and now forest operators hiding behind 'Health & safety' legislation to close off extensive areas of hill and forest under the pretext that it is unsafe for the public to take responsible access into these areas because of personal risk of injury. Whilst public safety is paramount and no one disputes this, there is a general feeling that developers are misinterpreting the H & S legislation and unnecessarily closing off areas as an easy way out of managing their sites.

SNH, the Scottish Government's advisors on the access legislation and the Health & Safety Executive have met to discuss this and the consensus is that action to reduce the risk should be taken by developers and land managers to mitigate risks and that these should be proportionate, dynamic and flexible and focussed on the areas of activity where the risk may be highest. Seldom should there be a need to close a path and this should be the exception rather than the rule and enshrined in the legislation.

Notification of core paths existence and owner occupier responsibilities

On this topic the Council urges the Scottish Government to legislate requiring the Law Commission and the RICS to inform all purchasers of land about the requirements of 'responsible access' and their reciprocal duties as land owners. One of the major difficulties access authorities face is where purchasers and buyers from outside of Scotland, where different legislation applies, expect exclusivity and want to keep responsible access takers out of their estates and to ignore their access responsibilities.

Rights to buy - Parts 2 and 3 Land Reform (Scotland) Act 2003

- a) How can land reform enable more people in rural and urban Scotland to have a stake in the ownership, governance, management and use of land, which will lead to a greater diversity of land ownership, and ownership types, in Scotland?***
- b) How can land reform assist with the acquisition and management of land (and also land assets) by communities, to make stronger, more resilient and independent communities which have an even greater stake in their environment?***
- c) How can land reform generate, support, promote and deliver new relationships between land, people, economy and environment in Scotland?***

Addressing these questions together, there are a number of key points that Highland Council would like the Review Group to consider when making recommendations to the Scottish Government. These are set out below.

Promotion of the legislation and of the benefits it can deliver

Research undertaken in 2010 for the Scottish Parliament in by the centre for Mountain Studies contributed to the Parliament's post legislative scrutiny of the Land Reform Scotland Act. Among other key findings was concern among those who had experience of the legislation in communities that the Act, and the benefits it could deliver, were not being promoted sufficiently. In addition insufficient support and advice was available to assist communities work their way through complex processes. These points were made in the context of Parts 2 and 3 of the Act and remain valid today. Highland Council suggests that these issues could be tackled by:

- Publication and promotion of Scottish Government policy on land reform alongside the Government's vision for land reform
- Publication of information setting out the process communities are required to follow and the where they can obtain the help and support they need
- Provision of resources and case officers equipped to work with communities requiring support through the processes leading to community acquisition
- Publication and promotion of case studies, which clearly indicate best practice and the benefits that can be realised by successful communities
- Ensuring that the role played by HIE in the Highlands and Islands is available across Scotland and is maintained and enhanced. Since the original Scottish Land Fund in 2001 to the present HIE has played a vital role in supporting community development via land reform. Throughout this period HIE has worked closely with the Scottish Government and the BIG Lottery Fund to ensure that limited resources make the maximum impact and as a result has developed considerable expertise in this field

Valuation and funding for acquisition and development

One of the main barriers to the growth of community ownership is the cost of acquiring and developing community assets. Communities find it very difficult to raise the necessary funding to buy assets and to develop and grow the value of the assets once acquired. Initial purchase rarely provides much by way of an income stream which could be used to develop the asset and service commercial loans. In addition, public bodies find it very difficult to transfer assets at below market value or have established a policy position which prevents them from doing so. The Scottish Public Finance Manual permits transfer of assets at below market value but the procedures involved are complex and time consuming. Highland Council suggests that these issues could be addressed by:

- Increasing the value of the current Scottish Land Fund (suggest £10M initially) and maintaining high intervention rates (95%) for acquisition costs
- Publish Scottish Government guidance to public bodies on the transfer of their assets at below market value or 'best value'
- Permitting other funding organisations e.g. (BIG Lottery) to contribute towards acquisition costs rather than focusing on development costs post acquisition
- Review of the regulations governing public asset transfer to simplify procedures supporting transfer at below market value, where there is a clear public benefit to be achieved by doing so
- Implementing new schemes such as the current National Forest Land Scheme for other publicly owned land and assets outwith the national forest estate
- The establishment of a public register including details of all public assets deemed surplus to requirement, where the owner would welcome proposals from the community

The onerous nature and complexity of the legislation

There is no doubt that community groups and crofting bodies find the practical application of the legislation extremely complex, time consuming and expensive to comply with. This is another point arising from the earlier work of the Centre for Mountain Studies and features in the report of the 23rd March 2010 conference hosted by the Council.

A good example of the complexity of the legislative requirements is (in Part 3) the onerous mapping requirements, where much more limited requirements exist for land registration. Another is the complicated Part 2 community definition procedures involving the electoral register and ballot turn out requirements.

A further barrier appears to be the growing influence of State Aid concerns among public sector organisations involved in promoting land reform. There appears to be a lack of clarity around whether state aid regulation are a legitimate concern among land reform funders and if so, how they should be dealt with positively.

Addressing these concerns, Highland Council suggests that there is a need to:

- Simplify the legislation to make it less complex and easier to use, including the Part 3 mapping requirements which could easily be aligned with land registry requirements
- Review community definitions to allow a more flexible approach to community membership, including potentially individuals with clear community objectives
- Ensure that there are resources allocated nationally to support and advise communities and to lead them through the land reform process and to provide necessary after care. HIE are already experts in this field.
- Publish guidance on State Aid rules and their relevance in relation to community asset purchases receiving public sector support, and if necessary seek the approval from the European Commission for an appropriate notified scheme

Adversarial nature of the process and underused/neglected assets

It has also been reported that communities believe they have greater flexibility in purchase negotiations and more amicable relationships with landowners if purchases can be concluded outwith the Act. Allied to this, the Council notes that Part 3 of the Act has been used on only a few occasions and that what may be termed among the successful purchases (E.g. Isle of Eigg Heritage Trust and North Harris Trust) have been concluded outwith the Act. There may be occasion therefore where more can be achieved via private negotiated sales between a private (or public) willing seller and a community buyer

There may also be occasions where land or buildings are underused or unused and thereby contribute little to the local community.

Highland Council would welcome further discussion on how:

- Private sales between willing seller and community buyer could be incentivised where they are deemed more appropriate, quicker and less costly to conclude
- A form of compulsory purchase may be made available to communities that can demonstrate that their proposals will deliver significant additional benefits when compared to continued underuse or neglect on the part of the current owner

Defining a community

The Land Reform Act only applies to rural areas, defined by settlements of up to 10,000 people and can only be utilised by community bodies and crofting communities. The Act does not support individuals or public bodies to acquire land even though they may have clearly defined community objectives, and doesn't support urban communities who may wish to acquire land. Highland Council believes that the legislation should be extended to support acquisition by a range of community, public or non-governmental organisations to acquire land in rural and urban areas.

Wider aspects of land reform

The Crown Estate in Scotland

The Programme for the Highland Council commits the Council to working for the reform of the Crown Estate in Scotland. The Council has long campaigned on this issue, initially via

the Crown Estate Review Working Group and latterly via its contribution to the inquiries undertaken by the UK Governments Treasury Select Committee and Scottish Affairs Committee, the Scottish Government Scotland Bill Committee and the Scottish Government consultation titled '*Securing the benefits of Scotland's next energy revolution*'.

Highland Council supported the findings of UK and Scottish Parliamentary committees on the Crown Estate

Highland Council also submitted evidence on the Crown Estate in Scotland to the Calman Commission on Scottish devolution and was extremely disappointed that the Commission reported so weakly on the matter.

The above submissions can be provided to the Review Group if required. Meantime and for further background on the Crown Estate in Scotland the Review Group is referred to the February 2007 report of the Crown Estate Review Working Group titled: *The Crown Estate in Scotland – New Opportunities for Public Benefit*

Specific to the remit of the Land Reform Review Group, Highland Council believes that review of the management and administration of the Crown Estate in Scotland could support further development of land reform by creating opportunities for:

- appropriately constituted communities to own and manage seabed and foreshore resources
- community owned renewable energy projects in the marine and coastal environment
- additional funding for community development projects in the coastal areas, via the Coastal Communities Fund, including asset acquisition and development.