

## **Land Reform**

### **An agenda for the 2007-2011 Scottish Parliament**

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#### **Introduction**

In Session 1 of the Scottish Parliament there were a number of significant Acts passed relating to land reform including the Abolition of Feudal Tenure etc. (Scotland) Act 2000, the Land Reform (Scotland) Act 2003 and the Agricultural Holdings (Scotland) Act 2003.

Session 2 of Parliament saw a number of these Statutes coming into force but no further land reform legislation.

Session 3 provides the opportunity to both review the effectiveness of this first tranche of legislation and to begin the process of taking the land reform agenda forward by initiating a series of further measures, six of which are outlined in this paper, namely;

- *Common Good Act*
- *Community right to buy - review & extension*
- *Crown Estate reform*
- *Land Value Taxation*
- *Succession reform*
- *Tenant farmer right to buy*

Each of the areas builds on existing work and thus much of the groundwork has already been done. Each of these proposals seeks to extend the opportunities for ownership and control of land to many more people across Scotland.

#### **Common Good Act**

Across Scotland there are millions of pounds of assets that were gifted to communities or acquired in their name in the former burghs of Scotland. Under the 1973 Local Government Act, title to these assets was transferred to District Councils and then in 1996 to unitary authorities. Local authorities generally have a poor record of stewarding these assets on behalf of the former burgh inhabitants. In many cases, assets have gone missing, revenue and receipts have been misappropriated and record keeping remains generally poor.

These assets belong to the 4.5 million people (over 87% of the Scottish population) who live in the 196 former burghs (as listed in Schedule One of the Local Government (Scotland) Act 1973). This Act would seek to clarify the status of these assets and provide

communities with a statutory right to take back title to property which used to belong to them in some cases for centuries prior to the 1975 re-organisation of local government.

This wealth belongs to the local community and not to the Council and can be used to begin a process of civic renewal and physical regeneration, to deliver wealth and prosperity, and to give back to towns across Scotland some self respect, belief and power to better the welfare of their community.

The Labour Party election manifesto promised Town Centre Trusts and a fund to allow local communities to take ownership of property. The Liberal Democrats promised a Common Good Act and the SNP promised a review of community council powers.

A Common Good Act would secure all three commitments and more.

Further information: -

Common Good Land in Scotland. A Review and Critique. November 2005
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<a href="#">Common Good Report</a>
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### **Community Right to Buy Review and Extension to the whole of Scotland**

Part 2 of the Land Reform (Scotland) Act 2003 provides communities in rural Scotland with a right to apply to Scottish Ministers for consent to register an interest in land. If such consent is given, the land cannot be sold without the community having a right of first refusal to acquire it.

In light of significant problems with the administration of this legislation, there is an urgent need to review the provisions of this legislation to ensure that they can be used easily and speedily by interested communities. There is also a strong case for an independent inquiry into the administration of the Act.

Furthermore, it is increasingly clear that the rationale for restricting the community right to buy to areas of Scotland outwith settlements of 10,000 people not only disenfranchises over 3.5 million citizens (the 69% of the population who live in settlements of over 10,000 population), but denies the opportunities afforded by asset ownership to some of the poorest and neediest communities where the impact could be greatest.

There is thus an opportunity to eliminate this divide and make the community right to buy available to communities across urban and rural Scotland. This does not require revisiting the Act but can be achieved by amending the existing Community Right to Buy (Definition of Excluded Land) (Scotland) Order 2006 (Scottish Statutory Instrument 2006 No. 486).

Further information: -

Land Reform (Scotland) Act 2003 (Part 2 The community right to buy) A Two Year Review.
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<a href="http://www.andywrightman.com/briefings/docs/briefing_6.pdf">http://www.andywrightman.com/briefings/docs/briefing_6.pdf</a>
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## **Crown Estate**

Under Scots law, the ownership of a number of distinct property rights is vested in the Crown. These Crown property rights are a form of public land and the powers both to change them and to regulate their use are devolved to the Scottish Parliament.

The Scottish Government is responsible for the administration of some of these Crown property rights with the revenues going to the Scottish Consolidated Fund. However, other Scottish Crown property rights are still administered by the Crown Estate Commission (CEC) as part of the UK wide Crown Estate with revenues going to the Treasury.

The property rights administered as part of the Crown Estate in Scotland include Scotland's ownership of its territorial seabed or 53% of Scotland's total territorial area, as well as around 50% of Scotland's foreshore. There are major issues about the current lack of accountability and benefits in Scotland over the CEC's management of this vital marine estate and the other Crown property rights for which the CEC is responsible.

A report by a group of public bodies operating as the Crown Estate Review Working Group, has recently provided a detailed and authoritative account of the Crown Estate in Scotland. The report set out a compelling case for changes to the current arrangements and calls for a review of the position with the Crown Estate in Scotland to implement these.

This review should be carried out by the Scottish Government without delay so that Scotland can regain control of its own seabed and the other Scottish Crown property rights still administered by the CEC. This will make substantial contribution to the delivery of public benefits in Scotland.

Further information: -

Crown Estate Review Working Group
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<a href="#">Crown Estate Review Working Group Home Page</a>
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## **Land Value Taxation**

In the midst of debates about the most appropriate way to finance local services and infrastructure, much attention has been paid to reform of the council tax. However, the one form of revenue which consistently gets neglected is the uplift in land values accruing as a consequence of growth in the economy, publicly funded infrastructure and development or planning consents. Many examples of this can be identified in recent years from the rise in house (in reality land) values brought about by new motorway extensions to the inflation in the value of land in and around cities such as Edinburgh.

A Land Value Tax would ensure that this community created value was returned to the community and could be used to finance new infrastructure such as the Borders Railway project.

It is time for a serious review of the role of land taxes in providing public revenues and financing infrastructure. For too long, politicians have been afraid of entering this debate because of the concerns of homeowners. However, a land tax would simply be a

replacement for existing taxes on labour and capital and thus most people should benefit from the reduced burden of such taxes on hard work and investment.

Further information: -

See Labour Land Campaign
<a href="#">Labour Land Campaign</a>

### **Succession reform**

One of the key reasons for the concentrated pattern of private landownership in Scotland is the law of succession which distinguishes between heritable and moveable property and affords no legal rights to children to inherit land. Elsewhere in Europe, succession law was changed centuries ago and has led to a far more diverse and pluralistic pattern of rural landownership. Rob Gibson MSP introduced a Members' Bill in 2006 to eliminate the distinction between the heritable and moveable property in relation to succession which fell at the dissolution in April 2007.

The Scottish Law Commission produced a report on the topic in 1990 (No.124), little of which has been acted upon. In August 2007, it issued a further one (Discussion Paper No. 136) which is currently out for consultation. It proposes the abolition of this distinction although it also advocates the abolition of all legal rights for adult children which, if ever enacted, would defeat the proposal made here.

Succession law is a vital tool in tackling the massively concentrated pattern of private landownership in Scotland and current proposals from the Scottish Law Commission should be viewed in that light.

This measure could be enacted relatively simply through primary legislation.

Further information: -

Succession Bill
<a href="#">Rob Gibson MSP's proposal for a Succession (Scotland) Bill</a>
Report 124, Succession, 1990
<a href="http://www.scotlawcom.gov.uk/downloads/rep124.pdf">http://www.scotlawcom.gov.uk/downloads/rep124.pdf</a>
Discussion Paper 136, Succession, 2007
<a href="http://www.scotlawcom.gov.uk/downloads/dp136.pdf">http://www.scotlawcom.gov.uk/downloads/dp136.pdf</a>

### **Tenant Farmer Right to Buy**

The Agricultural Holdings (Scotland) 2003 Act provided existing tenants holding secure tenancies (under the 1991 Act) with a right to buy their farm if and when the landowner chose to sell it. Its popularity is demonstrated by the fact that as of 29 August 2007, there were a total of 877 holdings registered.

Tenant farming as a system of land tenure was abolished right across continental Europe centuries ago. This does not mean that no-one rents land but they do so as owners in their own right with the security that this affords. It is time to afford all tenants the right to own their farm which in many cases has been in the same family for over 100 years.

Opponents have argued that any absolute right to buy would destroy rental market but this proposal is solely concerned with the acquisition by the tenant of a fixed number of secure 1991 tenancies. No other form of tenancy is covered and since no secure tenancies are being granted anymore, the proposal should have no effect on the future rental market.

Further information: -

Paper prepared by the Scottish Tenant Farmers Action Group in 2003

[http://www.andywightman.com/docs/tenant\\_humanrights.pdf](http://www.andywightman.com/docs/tenant_humanrights.pdf)

## **Conclusion**

Land reform has begun to make a difference to people in Scotland, However, much remains to be done and the process will stall unless further initiatives are taken. All of the above proposals are capable of attracting a degree of cross-party support and are commended to all MSPs to be taken forward in the 3rd Session of the Scottish Parliament.

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