

# Scottish Office Land Reform Policy Group

Identifying the Problems

February 1998

Response from:

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# **Scottish Office Land Reform Policy Group Identifying the Problems February 1998**

Response by Andy Wightman

## **1 PERSONAL BACKGROUND**

- 1.1 I am a writer and researcher on land tenure and rural development with a strong interest in forestry, the environment, the social economy and public policy towards land matters.
- 1.2 I am a graduate of forestry from Aberdeen University and have worked as a forestry contractor, woodcutter, stalker's ghillie, land-use scientist, environmental regeneration project officer, environmental campaigner, public policy researcher, consultant, adviser and writer on land-related matters.
- 1.3 I am the author of Who Owns Scotland first published in 1996 by Canongate Books and have written a range of other material in the form of reports and papers for a wide range of audiences and commercial clients. I am currently consultant editor on a book on landownership in Great Britain & Ireland and contributed the foreword to How Scotland is Owned by Robin Callander and published by Canongate in April 1998.
- 1.4 I am a Director of the John Muir Trust, an organisation which owns over 40,000 acres of land in the Highlands of Scotland. I am also a part time Research Associate at Moray House College undertaking work on the social and economic impact of sporting estates.

## **2 INTRODUCTION**

- 2.1 The Land Reform Policy Group are to be congratulated on bringing out a paper on such an important topic to such a tight timetable. I sincerely welcome it as the start of a process of giving more attention to a subject that has long been neglected by government and the public policy process. Thanks to your efforts land reform can at last become an area of legitimate and regular public debate and scrutiny.
- 2.2 I have compiled a rather lengthy response which I hope does not dismay the group. Your paper covers many important topics and I am unable through lack of time to give them the attention they deserve. I have highlighted instead the areas I feel most qualified to comment on. My paper has been prepared with less time and resources than I would have liked. Please therefore forgive any grammatical slips, lack of consistency or lack of polished arguments.
- 2.3 I have outline my response to your paper and the issues it discusses using my own structure. I refer to the Brown paper by the reference LRPG. To assist your collation of responses I have listed your questions in Section 12 where I refer to any substantive comments provided earlier in the text or add some brief additional notes. In some cases I am simply mopping up areas I have not touched on earlier.

### **3 WHAT IS LAND REFORM?**

- 3.1 Land is a finite resource and there are many and varied economic and social demands placed on land in terms of how it should be used. The role of Parliament is to provide a means of reconciling these various demands by establishing a framework of land law which satisfies basic human needs, protects and enhances the environment, is socially just, equitable and fair and which provides opportunities for individuals and communities to develop economically, socially and culturally.
- 3.2 Land reform for me is about the redistribution of power over how land is owned and used. Thus it is fundamentally a process of political reform which empowers citizens by giving them a greater stake in the system and how it operates. It is about democracy and accountability as well as about better land use.
- 3.3 Land reform consists of a programme of reform of land tenure (how rights to land are held by owners and occupiers), landownership (the distribution of such rights, and the status and behaviour of those who hold them), land use (who decides how land is used, the nature and character of regulations and financial arrangements concerning land use and the standards of management in various land uses).

### **4 WHY IS LAND REFORM NEEDED?**

- 4.1 Certainly *“all too often in the past, the interests of the majority have been damaged by the interests of the few”* (LRPG 2.1). Certainly the *“present system of ownership and management ...still serves to inhibit the public good”* and certainly *“land reform is needed on the grounds of fairness and to secure the public good”* (LRPG2.2).
- 4.2 The report then goes on to say (2.4) that land reform is primarily about land use and that land reform is consequential on the need for securing fairness and public interest in land use. It is important to be clear about what we mean by land use.
- 4.3 At a broad level land use refers to how the territory of Scotland is used. Land tenure at this level is simply a mechanism for defining and distributing rights in land in pursuance of a broad public policy of ensuring that the land is used in the public interest which of course includes the private use of land for dwelling space, industrial activity, agriculture etc. At this level land tenure is important in providing a legal framework which defines rights (to minerals, occupation, game etc.) and provides mechanism for their distribution and transfer. Land tenure can promote the public interest in such matters by incorporating elements such as a duty of good stewardship and sustainability as well as providing mechanisms for ensuring the fair and equitable distribution of rights.
- 4.4 At another level land use is about the various sectoral land uses such as agriculture, forestry and recreation. At this level the use of land is influenced by many factors such as climate, soils, markets, owner motivation, economics, public policy, constitution of the owner where a legal body as well as by the land tenure system and nature and pattern of ownership. It is at this level that many of the problems of land use are experienced. To resolve such problems, however, it is often necessary to examine the underlying influence of the tenure system and the nature, character and pattern of landownership.

- 4.5 But the scope for promoting fairness and the public interest in land use is limited by the degree to which we are able to influence the various factors which determine how it is used. We are already relatively well equipped to influence how land is used by the owner or occupier through statutory legislation, grants and incentives and the planning laws. We also have vast resources dedicated to land use (research centres, grants schemes, regulatory bodies etc.).
- 4.6 There is much here that could be improved upon and I will consider this later in Section 11. But the area which in general terms has received virtually no attention in recent years is the influence on how land is used of the system of land tenure and landownership. Indeed not only has it been neglected it has been explicitly rejected and marginalised as an area of legitimate enquiry.
- 4.7 Such pressures to stifle discussion continues today and manifests itself in the frequent assertion that *“it is how land is used that matters not who owns it”*. Those who have been implanted with the computer chip responsible for this widespread view are attempting to divert attention from a difficult area of policy onto one which is more palatable to discuss. They are often defending existing power structures and it is interesting that the assertion refers to *“who owns it”*. I do not believe that who owns land (in other words their personal identity) is of much significance although their character and motivation are. What is of fundamental importance, however, is how land is owned. It defies logic to claim that how land is used is unrelated or irrelevant to how it is owned. The reason tenant farmers for example do not plant trees is because the system does not permit them to own them. The reason why the Lingerabay Superquarry is proposed is because minerals can be owned as a separate tenement from the land. The development of sporting estates was dependent on the development of specific game laws.
- 4.8 Such a relationship can be illustrated further by the case of forestry. Getting new trees planted is about promoting conditions whereby landowners are willing to plant them. Where they have been unwilling in the past to do so the state did not hesitate to alter the pattern of landownership by extending state ownership in the form of the Forestry Commission. Latterly however, and for ideological reasons, the emphasis has been put back on the private sector. Crucially however there has been no public interest articulated in what that private sector should look like in terms of ownership structure. As Professor Sandy Mather observed recently,
- 4.9 *“there has been no stated policy towards ownership structure. Whether by design or by default, the state has exerted an influence of fundamental significance for the structure of forest ownership through its choice of policy instruments. Whether by design or default, the state has facilitated the expansion of financial ownership of forests in Scotland.”*  
(A.S. Mather, 1987. The Structure of Forest Ownership in Scotland: a first approximation. Journal of Rural Studies, Vol. 3 (2) pp. 175-182.)
- 4.10 Thus we have a massive landholding in private hands of absentee investors, offshore companies and trusts exploiting forestry's favourable tax treatment not to mention generous public grants. The fact that many glens which might have continued to support thriving communities are now empty of people and full of trees has not been seen as of legitimate public interest by governments content to see the distribution and character of patterns of ownership determined by the forces of the “free” market. Had things been different we might have a very different pattern of ownership and control comprising resident farmers, local communities and public and private sector partnerships.

- 4.11 In this case land ownership matters for reasons which are nothing to do with whether the land is well managed but to do with social cohesion, cultural identity, economic development and yes, promoting thriving communities which you can't do if there are no people (not even landowners) in an area.
- 4.12 The case of forestry highlights another feature where landownership and use are related. When land use changes (from agriculture to forestry) ownership virtually always changes. Thus land use change is a process with more profound implications for rural development than perhaps standards of management may be.
- 4.13 And it is curious how this is recognised even by those who perpetuate the myth that "*it is not landownership but how the land is managed that matters*". I have on numerous occasions encountered what I would refer to as "traditional paternalistic lairds" resident on their properties who lament the changes wrought by forestry in Caithness and Sutherland for example but who cling to the notion that such change has nothing to do with the system of landownership.
- 4.14 The expansion of forestry into the so-called flow country was nothing to do with a sudden desire on the part of the FC to plaster the place in Lodgepole Pine and everything to do with land prices, and an unregulated market in land. Such change would look very different if handled not by private companies on behalf of distant investors, but by a resident farming and landowning community.
- 4.15 Much the same could be said about a lot of land use change. Its nature, intensity, extent and the benefits as well as negative impacts which flow from it have been influenced not so much by public policy towards land use (though that has not helped in many cases) but by the pattern of landownership, nature and motivation of landowners and the inability of the wider community to have any say over the changes taking place.
- 4.16 Thus the more fundamental level of land use (how should the land of Scotland be used) cannot fully be addressed through attempts to influence specific land use sectors since those attempts have to operate within a framework which is determined by Scotland's system of landownership. It is this framework which desperately needs reformed so that by the time decisions are made about specific land uses in an area the nature and distribution of property rights is not a significant barrier to those decisions being made broadly in the public interest.
- 4.17 The principal "land related barriers" to sustainable development must not therefore be regarded simply as specific technical or situational problems but as underlying features of ownership and control which inevitably lead in many cases to specific problems in specific areas.
- 4.18 Thus creating the conditions for sustainable land use involves removing land related barriers. Given that these barriers are in many cases inherent in the system of land tenure and nature of landownership, they can only be removed by reform in these areas. It is important therefore that the links between how land is owned, the pattern of ownership and what it is ultimately used for are recognised in any programme of land reform
- 4.19 Land reform therefore I would argue is certainly about fairness and about securing the public good. It is also about ensuring that the power which enables some

- people in society to have more of a say than others in matters of public interest is at the very least tempered, attenuated and constrained. I would go further and suggest that there is a clear case for it to be radically redistributed.
- 4.20 The redistribution of power is not the same as the redistribution of land or the expropriation of land. It is about allowing many more people in society to enjoy a responsible stake in how land is owned, who owns it, how much they own, how it is to be used, how it is managed and to enjoy a share of the benefits which flow from good land use. The Assynt Crofters redistributed power, the islanders of Eigg and their partners redistributed power, abolition of feudal superiorities will redistribute power, community ownership of FC plantations redistributes power, crofting communities taking over common grazings redistributes power, the right to buy for tenants redistributes power.
- 4.21 Such a principle is fundamental to promoting greater fairness, accountability, equity and participation. It is a recurring theme in democratic and constitutional reform, in economic reform and in social reform. It must also be a key principle in land reform.
- 4.22 The aim of such a redistribution of power is to ensure that property rights are derived, distributed and exercised in ways which reflect the principles of fairness and the public interest at all stages. As a matter of political philosophy therefore it is far better to ensure that as far as possible the underlying framework of land tenure and ownership is conducive to the “sustainable development of rural communities” so that by the time land use decisions are made they do not become a power struggle between the community (relatively powerless) and the landowner (relatively powerful).
- 4.23 This is illustrated well by events on the Isle of Eigg where how the land was managed and how it was used were certainly critical issues of concern but a final remedy was not secured until the ownership was changed. The LRPG’s touchstone for identification of problems (LRPG 2.8) has already demonstrated therefore in the case of Eigg that ownership and tenure are problems in their own right. Indeed the problem on Eigg was not so much who should own it or even whether those that did exercised the power they had well, but whether that power should exist in the first place in the form it did, exercisable over the extent it did, and handled in such socially unacceptable ways.
- 4.24 Land reform therefore certainly needs to remove barriers to sustainable development but it is also concerned with deeper and wider political, democratic and social reforms to empower citizens, promote participation and secure accountability. These are objectives which may have nothing to do directly with land use or land management but which are nevertheless vital in removing the great weight of landowning power, which because of its concentrated nature, currently stifles opportunity, enterprise and even freedom of speech and action in too many places and on too many occasions.
- 4.25 Land reform is about the liberation of people’s minds and attitudes as well as about removing more tightly defined barriers. It is also (and this is extremely important in the broader political debate) about liberating landowners (both existing owners and in the neutral sense simply of those who own land) from the opprobrium and sense of injustice that many of them perceive when faced with calls for land reform. The ultimate goal of land reform in this regard is to hasten the day when the statement “I am a landowner” is met with as much prejudice and

historical baggage as would be met by “I am a bus driver”, “I am a writer”, “I am a civil servant” or even “I am a Government Minister”.

- 4.26 Land reform is therefore about a coordinated, integrated and holistic programme of change in the laws of land tenure (governing how rights in land are derived, distributed, recorded and transferred), in landownership (the pattern, nature, and status of landowners including balance between private, public and not-for-profit bodies), in how land use decisions are made, who makes them, how specific land uses are regulated and supported, taxation of land and the overall standards of land and property management.
- 4.27 Land reform is also not simply a rural matter. The legal, administrative and financial consequences of owning and managing property do not make sharp distinctions between whether land is urban or rural. Land reform is about change in the way in which rights in the entire territory of Scotland are governed. The nature, scope and relevance of such changes may vary between urban and rural environments but the underlying framework is the same. Land reform measures should therefore be considered against the idea that the management of an urban garden, street or tenement has exactly the same relationship with the land tenure system, the taxation system or the land registration system as does the management of mountains, forests and fields.

## 5 AN OVERALL FRAMEWORK FOR LAND REFORM

- 5.1 I have hinted at the kind of framework which I would rather see being developed for land reform. Setting this framework is important since the results of the LRPG work will be not only to prepare the ground for a first land reform bill but will define the overall parameters of the policy area so that subsequent reforms and legislative change (whether of the planning system, wildlife protection or whatever) can be developed within the context of a broad framework of reform. The framework consists of land tenure, landownership and land use.
- 5.2 **Land tenure** governs the way in which rights to land are held. There is enormous scope to clarify and modernise Scotland’s land laws. There is also tremendous scope to develop a programme of land law reform which will improve the way in which these arrangements support the public interest (environment, social justice, basic human needs, individual freedoms, economic and social development, material well being, wealth creation etc.) in land.
- 5.3 **Landownership** is concerned with the distribution of these rights throughout society. Various measures can be put in place to promote any number of arrangements for how rights in land might be distributed.
- 5.4 **Land Use** is concerned with how land is used, who decides and how decisions are made about its use, how certain land uses should be promoted and supported, how the benefits of land use are shared and how the public interest in strategic uses can be secured.
- 5.5 Such a framework, which can be expressed in different ways, is vital in developing a programme of land reform. It enables issues to be considered in the context of the overall system through which land use outcomes are determined. In a specific situation where land use may appear to be the key issue, it allows for the influence of underlying features of the system to be considered and their significance assessed. Overall this framework represents a public interest structure. It is a

structure which belongs to society as a whole and is given effect to by statute and administrative law and other measures derived from the authority of Parliament. Landowners may own the land but the people of Scotland own the landownership system.

## **6 LAND REFORM MEASURES - INFORMATION**

### **Landownership**

- 6.1 There is a long standing need for better quality information on all matters related to land, its ownership, occupation and use. Such information also needs to be accessible in a form which is most useful to users and which is not costly to consult. Section 8 of the LRPG paper would be better titled Land Information.
- 6.2 My principle interest in recent years has been in publishing information on landownership. I have done so as a matter of academic interest, political, cultural and social relevance, and of real practical benefit. There are a wide range of instances where people need access to straightforward reliable information on the ownership of land. Utilities need to negotiate wayleaves. Local authorities need to survey new road alignments. Scientists need permission for wildlife survey work. Local people wish to contact landowners for a range of purposes. Emergency services need to contact landowners. Researchers need basic information to study the ownership and occupation of land. Many other people ranging from film companies and outdoor activities organisers to mineral prospectors and developers have similar needs.
- 6.3 Currently such needs are often met by local enquiry. This can be time consuming, unreliable and expensive where, for example, one is planning a major utility development such as a new power line, seeking to survey a new road alignment or making initial contacts for designating an SSSI. There have been cases where developers and others have given up pursuing a project because of the difficulty associated with establishing contact with owners. I am also aware of the significant waste of public money and duplicated effort within many public agencies when they attempt to gather such information.
- 6.4 Most users require (in the first instance at any rate) broad based geographical information on the pattern of ownership in a locality. They do not require a search of the legal registers. In many cases users wish simply to contact owners or to plan new infrastructure or developments.
- 6.5 I understand that, for example, West of Scotland Water recently needed to establish the ownership of land across central Scotland for a new pipeline to supply a major inward investment in Fife. It took some three months of work by professional searchers to determine this. How much easier it would have been to consult a simple map showing information on owners and occupiers. Any legal work then required in terms of conveying land or agreeing wayleaves (assuming the development went ahead) would be facilitated by additional information which provided details of the relevant Search Sheets or Land Certificates. Only then would recourse be needed to the legal registers.
- 6.6 Such information is best provided by relatively simple geographical information systems which indicate the location, extent and ownership of major landholdings (over 10 acres say) together with any further information that is available. I am aware of the SCOTLIS system being piloted by RICS and others. This is based

- simply on integrating existing datasets, however, and does not involve measures to improve the scope or quality of such data.
- 6.7 Such a system can be relatively easily developed and the work I am currently completing for Highland Council and Highlands and Islands Enterprise demonstrates this. Such information is derived directly from searches of titles (and plans where these are available). And although it is limited in resolution (it being impractical to show every house site within a large estate for example) and can be difficult to assemble due to the limited amount of information currently in the public domain, it is useful for a range of users. With access to IACS information and Land Register information as it comes on stream such a system will improve steadily with time.
  - 6.8 Going a stage further one could institute a national survey of landownership for all land over 10 acres and make it mandatory to register on the Land Register or to provide a non-legally binding return along the lines of the IACS return (much of which would derive directly from work already done for IACS). The costs need not be too great in comparison to the benefits and could be done for a sum of well under £0.5million.
  - 6.9 The existence of a public register of deeds (Sasines) and titles (Land Register) is of course a relative advantage to the situation for example in England. The 1979 Land Registration Act was an important reform but it needs to be presented in an appropriate context if people are to assess its contribution to information needs. It primarily serves a legal purpose. It provides a map-based, state-guaranteed title to replace the more cumbersome although robust system of recording deeds. It will improve the whole process of conveyancing and provide high quality information about ownership.
  - 6.10 These two registers are the most appropriate place to find information for legal purposes but are not suitable for the range of needs outlined in 6.2. The Sasines register is not plan-based and it can be difficult therefore to locate the deeds relevant to the area of enquiry. Improvements could, however, be made here by requiring all deeds which convey land to be presented with a duplicate plan. This would at least ensure that when the relevant deed was found that confirmation could be easily obtained of the area of land in question.
  - 6.11 The new Land Register will overcome this deficiency by being computerised and plan-based. It is not currently operational for most rural counties however. Even when it is, properties will only come onto the new Register following a monetary transaction. Given the scale of land held by companies and trusts and transferred through inheritance it could be nearer the end of next century before a majority of the acreage is accounted for.
  - 6.12 A further drawback which will remain for the foreseeable future is that although the records are publicly accessible it currently costs £7 +VAT to view one property in person in Edinburgh. If a postal enquiry is made it costs £25. Remote access is being introduced which will improve access but if one wishes to find out the ownership of a large area, say a parish, it is not only difficult to do so but prohibitively expensive for most people. Furthermore, repeated enquiries about the same areas of land represent a waste of public money.
  - 6.13 In time, the Land Register can provide an important source for a spatially organised cadastral survey. Meantime the process land registration could be

improved in terms of delivering more information about landownership if, in addition to introducing new properties as they are sold in “live” counties, all properties over a certain acreage were required to be transferred. There are probably around 20,000 - 40,000 properties over 10 acres in Scotland. Introducing the 2% or so which change hands each year would add little in the way of effort to a process which is already dealing with vast number of first registrations. Even adding the few thousand over, say 100 acres, would not be overwhelming if handled over a year or two.

- 6.14 If the process of Land Registration were to be accelerated in any of the ways outlined in the LRPG paper the issue of cost arises. I am disappointed at how the figures have been presented without any basis for their magnitude or of why the assumption is made that these are costs for the public purse to bear.
- 6.15 Land Registration is carried out by an executive agency, the Registers of Scotland which is a self-financing body. Whilst a first registration can involve disproportionate effort compared to subsequent transactions this is a cost which is currently absorbed, as I understand it, by the agency which in effect subsidises first registrations out of fees received for all deeds that are recorded.
- 6.16 To isolate the costs of first registration therefore is not relevant except if it was to be of such a scale as to overwhelm the workload of the agency. From figures I have seen the number of first registrations is currently running at around 20-30% of total registrations which are around 100,000 per year and growing. To add to this workload a few thousand more registrations of the largest landholdings should not therefore seriously affect internal agency costs.
- 6.17 On this basis it is disingenuous to suggest that any such extension of the Land Register would involve the expenditure of public money. Land Registration does not cost public money now and it needn't do so in future. The only circumstances where it might would be if the number of first registrations were to increase dramatically. Even in these circumstances the fee order could be reviewed to accommodate the costs.
- 6.18 I am aware that, since recording of titles is not compulsory, there is a reluctance to raise fees to a level which may inhibit people from recording deeds or titles. The straightforward solution to such concerns would be to introduce legislation which would make it compulsory. Even if it were not, the fact that the Land Register fee is the same as the Sasines fee provides a state guarantee and indemnity for any error or inaccuracy in the Register increases the value of the recording process and should therefore attract a higher level of fee to reflect this.

### **Other Information**

- 6.19 A further issue raised in LRPG 8.6 concerns beneficial owners. It is vital that reform in this area is developed. Of course if reforms are made to invalidate any title in the name of an offshore company or private trust the problem of beneficial owners largely, although not completely, disappears. If this is not done there should be a duty of disclosure.
- 6.20 One should determine the information to be disclosed (beneficial owners of companies and beneficiaries of trusts together with full addresses), make this a requirement for successful recording of deeds or titles and place the onus on the

conveyancing process to provide the detail. If people are subsequently found to have made false statements they should be punished. Is that very difficult?

- 6.21 At this stage, and as something of an aside, I am becoming a bit narked at the tone of the LRPG paper which asks respondents to address the complexities of how to enact reform. We can certainly make suggestions within the bounds of the knowledge we have about how legislation works. But we are mostly mere mortal citizens! Is this not primarily the job of civil servants? If they can develop the detail of devolution and welfare to work why not land reform? I am not a specialist in drafting legislation or in devising means of enforcing compliance and although such issues need to be addressed, people like myself are in no position to advise on such technicalities. The impression is given that such demanding questions are being asked to frustrate any reform. I hope this is not the case. Sorry, but I feel this point needs to be made!
- 6.22 A further area raised in LRPG 8.7 is information on public subsidies. Publication of the recipients and amounts of public money paid to landowners is an essential part of open and transparent government. Given, for example, that payments to QC's in England and Wales have just been revealed in England and Wales can there be any justification for withholding public money paid to farmers and landowners?
- 6.23 I am particularly interested in the claim made that "*the names of recipients...and amounts paid through...forestry grants....are made publicly available*". The only other form of public money referred to specifically is LEC grants. The impression is given that names and amounts are published regularly and placed in the public domain as a matter of routine procedure. This is certainly the case with LEC grants but I was unaware of any such practice with forestry grants.
- 6.24 Following an enquiry to the FC on this matter it appears that no such regular publication takes place. Instead, "*details of the amounts of forestry grants paid to individual recipients are made available in response to particular requests*" (FC letter 30.4.98). The FC could only cite two cases where this has been made available, one in response to a parliamentary question from Calum MacDonald MP (10 July 1995) and one in response to a query from the press. I was personally involved in both these enquiries.
- 6.25 On further enquiry I learnt that the Public Register of New Planting and Felling Applications is to be published on the Internet. This is a welcome development. But I also discovered that the names and addresses of applicants are not included on the register but can be found by visiting the relevant FC office. However, the most recent leaflet on the Register claims that names and addresses are not shown on the application. Further enquiry revealed that, although they may not be shown, they will generally be divulged if requested.
- 6.26 This is a very confused and unsatisfactory state of affairs and confirms that there is thus little credible basis for the claim that such information is currently made publicly available. Parliamentary questions and seeking information via press enquiries are not generally understood to be normal avenues of enquiry for information that is meant to be "publicly available"
- 6.27 All information on such matters should be made publicly available in the form of accessible, published material. This should include support for agriculture and tax

exemptions granted in the public interest (for example, capital and inheritance taxes).

- 6.28 The arrangements for disclosure of who receives public money is related in a very specific way also to the question of beneficial owners, particularly in the case of forestry. It is absolutely imperative that where hundreds of thousands of pounds of public money are being given to offshore trusts or companies that the taxpayer is informed as to who the beneficiaries are. If that cannot be done then no public money should be provided.
- 6.29 It is also a matter of concern that large sums of money are provided to people and yet no check is made as to whether they are actually the owners of the land in question. This is the case with forestry grants and, I suspect, with others.

## **7 LAND REFORM MEASURES - LAND TENURE**

- 7.1 The relationship between land tenure and the public interest was strong in the early days of feudalism (the public interest being the Crown) but has declined over the centuries to the point where land tenure is not even regarded by many as anything more than a system of conveyancing.
- 7.2 Scope to update and reform land tenure rests on the premise that it is a socially constructed system to secure the public interest (which includes the right to private rights and freedoms). Land tenure provides a contract between society and citizens based on the sovereign rights of an elected parliament to define, amend, reform and redistribute rights to land from time to time as it sees fit.
- 7.3 Land tenure also governs the arrangements between private interests (landlords and tenants) and the public interest in these is to ensure a fair and flexible system which satisfies the needs of society for access to land for short periods of time as well as recognising that individuals should be free to enter whatever kind of arrangement best serves their mutual needs
- 7.4 The problem with the current process of land tenure reform (LRPG 8) is that it is not informed by a land reform agenda but by a long standing land law reform agenda whose aim is to create a simpler system of land tenure principally with a view to making conveyancing easier. This emphasis must change if the public interest in land tenure is to receive adequate attention in any reformed system.
- 7.5 In particular it is vital that any new system of tenure preserves and strengthens the principle whereby land rights are held conditionally and not absolutely. Language to the effect that a system of absolute ownership is being created sits uncomfortably with Scottish traditions. I am opposed to the creation of a system of tenure which does not preserve and strengthen the principle of conditionality.
- 7.6 Furthermore the Scottish Law Commission should be provided with guidance on the aims and objectives of land reform in order for them to prepare a programme of law reform that meets these objectives. As an illustration of what I mean the following could form the starting point of such guidance.
- 7.7 Objectives for a new system of land tenure  
To provide a system of holding rights which is equitable, accountable to the wider public interest, flexible and easy to understand.

### Principles underlying such a system

The land of Scotland belongs to the people of Scotland whose interests are enshrined in the Crown and exercised by the Scottish Parliament  
Land rights are held conditional to this public interest  
Land rights provide rights & responsibilities  
Land tenure should provide security for landholders  
The system should be clear and easy to understand

### Elements of the system

Derivation of property rights  
Rights and responsibilities  
Granting and transfer of rights  
Limits to the extent of rights  
Nature of entitled persons  
Relationships between neighbours  
Information & registration

Land tenure reform guided by such a framework could therefore of itself promote land reform by providing a simpler, clearer and accountable system .

- 7.8 The LRPG Paper also refers to crofting and landlord tenant relationships. These are an integral part of land tenure but should be open to more fundamental and inclusive analysis than is provided for. Arrangements for some people to enjoy limited use (e.g. agricultural) of someone else's land for a defined period of time have been introduced in various forms (crofting, agriculture, housing) over the last century or so in response to insecurity. Such insecurity and the need to legislate to overcome it has been a response to the imbalanced distribution of power in society. Such arrangements have been developed within the existing system and pattern of landownership and in any such review of them I would suggest that not only do we review their operation but we also review their necessity in a modern social democracy.
- 7.9 I support moves to strengthen and extend the rights of tenants (4.5-4.9). I would however include all tenants and not just agricultural tenants and crofters. Housing problems in rural Scotland are serious and in terms of numbers of people affected, there are far more tenant householders than tenant farmers or crofters. In this context I support the submission of Shelter Scotland.
- 7.10 There comes a point however when strengthening the position of tenants begins to blur any meaningful distinction between tenancy and ownership and where the interest of the landowner become effectively marginal (such as might be considered the case in crofting). Any moves to strengthen the position of tenants is therefore likely to meet opposition from owners. It is my view that to move this debate forward we need to be clear about some principles.
- 7.11 First that the the appropriate role of tenancy arrangements is to provide flexible, short to medium term occupation of land for limited uses. This is an important part of a dynamic economy whether it be in agriculture, housing or industry.
- 7.12 Second that the widespread existence of tenancy arrangements in Scotland is a direct consequence of the concentrated pattern of landownership and the substantial power enjoyed by landowners over the years. Tenancy arrangements have been developed which can be accommodated within the current ownership patterns.

- 7.13 Third that tenancies are not necessarily the best arrangement for those wishing long terms occupation of the land and the freedom to use it in diverse ways.
- 7.14 Tenancy reform should therefore seek to strengthen the rights of existing tenants where appropriate (I support LRPG 4.5 to 4.9) but also to promote opportunities for those for whom secure tenancies are not the best solution. So we need more flexible arrangements for those wishing short term arrangements and we need opportunity to move from tenancy to ownership for those whose interests are best served by being a landowner. In short we need more choice.
- 7.15 I suggest that tenant farmers be given the right to buy (perhaps limited to those who have been tenants for a set period of time) and that current arrangements for landlord tenant be made more flexible and that existing rights and opportunities for tenants are strengthened and extended and that current security of tenure is protected. These reforms are indivisible from one another and could perhaps resolve the long-standing stalemate between the SLF and NFUS on the matter although I should add that reform in this area must be driven by the larger picture and the wider public interest in the long term. Tenancy law is not something which should be left to two private interest groups to resolve.

## **8 LAND REFORM MEASURES - LANDOWNERSHIP**

- 8.1 One of the principle land-related problems in Scotland is the concentrated pattern of landownership. The LRPG make reference to this in 3.1 and the impacts of such a pattern are reinforced by the conclusions of LRPG 2.1.
- 8.2 Central to many problems occurring in land use over the years are not bad land management, anti-social landowners etc but the fact that such features have been encouraged and facilitated by a system which allows substantial power to be obtained very easily and to be consolidated over large areas. With few landowners in an unregulated market and exercising powers of decision making over large areas, relatively small problems of attitude, motivation etc can have disproportionate effects.
- 8.3 The key to better land use is to secure the participation of many more people in democratic and accountable ways in the decisions which are made about it. Within such a framework landowners should be as free as possible to follow their own interests. Democracy and accountability allied with freedom, flexibility and choice are the essential ingredients of a sound system of land ownership and management and should inform the land reform debate.
- 8.4 Reforming the system should mean not only that those who have no interest in any wider social responsibility to the wider community don't even bother to become landowners in Scotland, but that those operating within the system will be far greater in number and less able or motivated to abuse their responsibilities.
- 8.5 I want now to explore some aspects of landownership reform here which promote the objectives outlined in 8.3. They are:
- Reform of the market
  - Reform of succession
  - Nature & character of ownership

## **9 REFORM OF THE LAND MARKET**

- 9.1 The land market in Scotland is virtually unregulated. This lack of regulation has led to conditions where communities are completely powerless to influence the nature, character or motivation of those who own land in and around settlements. This lack of regulation is of less importance in the kind of situation which exists in much of Western Europe where there's a healthy balance of public ownership, community ownership and small-scale private ownership. It is of major concern however where a handful of owners control the use of land over large areas. And it matters less if such owners exercise their responsibilities responsibly. As a catalogue of cases has shown it is the very existence of such an unregulated market and concentrated pattern of ownership which inevitably leads sooner or later to problems which can last for many years and affect many people.
- 9.2 The situation reaches its most unacceptable in places such as Eigg which illustrates the vulnerability of communities to the vagaries of the land market. It needs reformed. One element of reform is to consider how the market in land might be regulated to a greater or lesser degree.
- 9.3 At this stage it is worth stressing that the debate is about the extent of regulation and the kinds of functions this should fulfil. The principle is already established in crofting for example that assignments of tenancy, de-crofting, amalgamations and even the competence of an occupier is subject to regulation. The anomaly that exists is that such regulation is deemed to be appropriate for a few acres of bog and rock above Newtonmore when at the same time the transfer of 40,000 acres of internationally important land in Glen Feshie can be traded in the VIP lounge of Heathrow airport with no scrutiny whatsoever.
- 9.4 Whilst there is much scope for simplifying and rationalising the regulation of crofting tenancies no-one is suggesting abolishing them completely. There is therefore a strong case to embed the principle of regulation in the landownership system. Such regulation should be simple, clear and unambiguous in promoting the public interest at the point of land transfer. Such regulation could cover many things but in the context of the current consultation I would suggest it covers the following:
- Residency  
Amalgamations and monopolies  
Public right of pre-emption & compulsory purchase  
Succession reform
- Residency**
- 9.5 LRP 3.5 implies that absenteeism is not a problem in terms of landownership but LRP 5.2 on crofting asks what measures might help to tackle absenteeism and underworked crofts. This inconsistency is not helpful especially when it is acknowledged that crofting tenure has “played a significant role in minimising population loss in remote areas of the Highlands and Islands”.
- 9.6 The active occupation of a landholding whether it be tenanted or owned is in the public interest. The issue of absenteeism therefore is not so much about whether a landholding is well run (as LRP 3.5 suggests) but is more to do with social and economic factors. This is acknowledged in the case of crofting (sustaining population). It is equally true of landownership.

- 9.7 Generally speaking it provides better accountability and accessibility, more commitment to the local environment, community and economy, breaks down cultural barriers between landowners and others, helps sustain populations, keep schools open and ensures a greater degree of social responsibility on behalf of the landowner. Land is in demand. It seems sensible to favour those who wish to live in a place over those for whom it is either a form of conspicuous consumption, a speculative asset or a whim or fancy.
- 9.8 The land market should be regulated to ensure that residency qualifications apply not just to crofting tenancies but also to certain aspects of landownership. This may involve only holdings above a certain size or such areas as might be designated as socially & economically vulnerable. Such regulation would require owners to be resident for defined periods in line with current arrangements surrounding residency for Inland Revenue tax purposes and defined by distance from holding (as in case of crofting). Such a reform would end the absentee occupation in particular of large tracts of land. Such reform could also help to limit the extent to which entire localities can become dominated by second homes which drives up house prices and exacerbates rural homelessness.

### **Amalgamations and Monopolies**

- 9.9 Another aspect of the land market is the inability to influence the process of amalgamation of holdings which is leading to local monopolies of power and influence developing in some areas. Such monopolies already currently exist in many areas where the pattern of landownership is most concentrated. It is unhealthy in a democracy for one person, however pleasant, responsible or well-intentioned to control the use of land over extensive areas.
- 9.10 There is also an empirical relationship between concentrated patterns of landownership and standards of land management. Someone owning just one house seldom manages it badly. The poor and dilapidated housing stock seen around the countryside is most likely to be owned by someone with more than one house. Small scale patterns of ownership are invariably more likely to lead to higher standards of management overall if only because a small number of irresponsible landowners currently can affect large areas and whole communities. A similar number of owners has far lesser impact where their individual holdings amount to a tiny percentage of land in a locality.
- 9.11 There are existing mechanisms to deal with it and here it is important to make the distinction between ownership and management. Community ownership can afford control over large areas but where this is under democratic arrangements it effectively distributes power widely even although the holding may be large (as in the case of the 70,000 acre Stornoway Trust estate).
- 9.12 Furthermore it is not the intention to limit the ability to achieve economies of scale. These it should be noted do not rely on extensive holdings and can be achieved by a “proliferation of smallholdings” (LRPG 3.13) as the massive farming and forestry co-operatives in Scandinavia and other parts of Europe demonstrate. Guidance as to what constitutes a viable landholding should not be developed on the basis of simple primary production but should take into account the desirability of vertical integration (e.g. farmers and landowners owning food processing and timber processing companies) and the opportunities for diversification out of agriculture. Moves to support the same number of farmers

each to generate a steadily declining % of income from primary production will do more for rural development than an ever dwindling number of full time primary producers. Again crofting provides the evidence of the benefits of pluralism in agricultural occupation.

- 9.13 Having clarified these points it remains a matter of principle that the extent of landholdings has implications for the distribution of power and influence in a community, the opportunities for others (including smaller landowners), the diversity of attitude and approach to land management and development, and the development of indigenous skills and innovation in land related industries.
- 9.14 The simplest way to regulate the monopolisation of land would be to set a ceiling on the amount of land any one individual can own. This would be based on land quality, local demand for land, and the desired pattern of ownership in a community. The mechanics of such a measure should not involve the immediate break up of large holdings but should involve initially a framework for new owners and existing ones seeking to expand.
- 9.15 Such regulation would thus apply to all land which is transferred in the future both to limit extent of holdings (large parcels would have to be lotted) and limit amalgamation by existing holdings. The effect would be to place a brake on the trend to larger holdings, a trend which my own research evidence suggests is reasserting itself after more than a century of reduction on holding size.
- 9.16 It is worth pointing out that such conditions could equally well be satisfied by the a number of people being involved in one parcel of land where the effect would be the same.

### **Public right of pre-emption & compulsory purchase**

- 9.17 Aside from more universal interventions in the land market to secure the public interest there is also a need for selective intervention in particular areas. the cases of social housing needs and Glen Feshie are obvious examples. Such circumstances would be satisfied by the introduction of a public right of pre-emption (LRPG 3.15) and the rationalisation of existing powers of compulsory purchase (CP) (LRPG 3.14).
- 9.18 At present interventions in the public interest as you note are ad hoc and chancy. It is often easier and politically more acceptable for the public to intervene in land markets when the owner is wishing to sell than when s/he is not. A consistent set of principles should be developed which allows for such intervention and provides a choice of tools for doing so
- 9.19 It is a feature of the current system of landownership that statutory powers to intervene in the land market are limited in effect to the various powers of compulsory purchase possessed by various public bodies. In order to effect greater opportunities for intervening in cases where there is some form of public interest it would be helpful if on the one hand CP powers were simplified and made more flexible and, on the other hand, if a mechanism existed for situations where the full powers of CP are not justified. Such a mechanism is the public right of pre-emption. Such a mechanism could work as follows.
- 9.20 Any area of land which is deemed to be of potential use in satisfying social needs would be notified to an appropriate body (perhaps local authorities as an

- extension of the existing planning register). Social needs could be defined as including social housing but also other uses such as public amenity, environmental protection or public infrastructure such as roads. Applications for registration would be considered from appropriate bodies against defined criteria of what constituted social need.
- 9.21 Owners would be notified and if at any time the land or interests (e.g. shares of a company) were to be sold the owner would be required to give written notice following which those who had registered an interest could apply to the Secretary of State (or equivalent) for the right of public pre-emption. If granted this would give the interested party 6 months (or other such time) to match the best price.
- 9.22 Powers associated with CP could also be reformed in a similar fashion for circumstances which warrant a stronger power than provided by a public right of pre-emption. Currently these are spelt out in various statutes for various purposes and have been of little use in many instances. Either the political will has not been there or the body in question has baulked at the prospect of protracted legal proceedings. Three key reforms are needed. The first is to consolidate and simplify the circumstances under which CP powers can be used. The second is to reform the process of notification and execution and the third is to reform the way in which valuations are carried out.
- 9.23 Consolidating legislation could be introduced which would bring together all existing powers of CP and redefine the circumstances under which they can be used. Currently as new public interests are identified new statutes are required (railways in the 19th century, wildlife protection in the late 20th century). Instead of this rather cumbersome process of new statutes for each new purpose the consolidating legislation could simply refer to a broad class of purpose based on social needs and the public interest. This would allow the different organisations to draft and have approved their own interpretations of social need (roads, wildlife sites, harbour developments etc.) and include social housing. Future needs could be added without the necessity for new primary legislation.
- 9.24 The second reform is in process. Currently CP Orders can be dragged through the courts by the owner. The process of notification and execution should be simplified by firstly putting the burden of proof on the landowner to demonstrate greater “need” for the land and by resolving any dispute or appeal against an order by a mechanism such as Citizen’s Jury rather than by expensive court proceedings. Here also it is suggested that, having defined the public interest in CP in enabling legislation, and having had a process of government approval for guidelines of individual bodies, central government should have no role in arbitrating or judging cases where CP powers are invoked.
- 9.25 The third reform is of particular relevance in the case of CP powers for social housing. The value of house sites is far in excess of bare land agricultural values. CP powers should include rights to compensation at existing use value since their very necessity will imply a certain unwillingness to release the land voluntarily. If a landowner has resisted requests to release land for housing, is immune to a public right of pre-emption, and is confronted with a CPO then it is in now way just that they should be compensated at any more than at existing use value.
- 9.26 The provision of a public right of pre-emption together with simplified CP powers would do a great deal to ease problems associated with accessing land for new housing and bringing into use existing under-utilised property. it would put bigger

sticks in the cupboard which would in turn create a climate of greater co-operation simply through the perception by landowners of the possible consequences of obstructing real social needs

### **Succession Reform**

- 9.27 Reform of the laws of succession would add further opportunities to extend participation in the ownership of land. At present the law governing the inheritance of land and property differs from that governing the inheritance of “movable property”. Whilst spouses and children have legal rights to a defined proportion of a deceased person’s movable estate they enjoy no such right with respect to heritable property.
- 9.28 This reform is needed on the grounds of social justice (a more equitable distribution of wealth) and to promote a more inclusive culture of landowning which empowers many more people at each generation including women who are traditionally discriminated against when it comes to the inheritance of property.
- 9.29 I would stress this reform extends the legal rights of spouses and children. It is up to them whether they choose to take advantage of such rights either in circumstances where attempts are made to disinherit them or where they simply may not wish to become landowners. They can exercise such rights and transfer or sell property to other members of the family or on the open market. Such a reform would breath new life into the land market and introduce fresh initiative.

## **10 THE NATURE AND CHARACTER OF LANDOWNERSHIP**

- 10.1 The LRPG raise the question of companies and trusts (3.3), foreign ownership (3.4), public ownership (3.6), Crown Estate (3.7-3.9), environmental bodies (3.9), and community ownership (3.10). I wish to comment on these issues which I am bringing together under the above heading.
- 10.2 Inadequate research means that there is less knowledge than would be desirable regarding the particular extent, significance and circumstances in which these types of ownership develop. Thus the debate has been characterised to date by fairly shallow analysis and comment about the various forms of landownership which are emerging.

### **Companies & Trusts**

- 10.3 The reference in LRPG 3.3 to companies and trusts appears a little odd both in its priority as an issue and in the tone of the extensive list of reasons why such a prohibition would not be a good idea. I hesitate to press the case in the light of such apparently overwhelming dismissal of the notion but feel obliged to do so since I have argued such a case in my own book, *Who Owns Scotland* (pgs 207-208). Indeed a whole sentence of the paragraph is lifted straight from the book.
- 10.4 At present, in addition to real persons, a number of legal arrangements from may be employed to hold land. Two issues are relevant to the question. Trusts and companies are often used as devices to conceal the identity of beneficial owners. For this reason alone the law governing them should be amended to incorporate a requirement to disclose beneficial owners.

- 10.5 Such arrangements are also often used to perpetuate ownership indefinitely and thus avoid, for example, exposure to inheritance tax. A trust in particular can live forever even whilst the beneficiaries and trustees may change at any time. It is not in the public interest that land should effectively be sterilised for future generations whose aspirations and needs may be very different to those of today. The demands of a healthy land market, the ability to direct succession to land and the tax avoidance associated with private trusts warrant their abolition as a competent title holder in the same way as new entailment was made illegal earlier this century.
- 10.6 The case concerning companies is slightly different. I argued that companies whose prime objective (or whose parent company's prime objective) was not the occupation and use of land should be prohibited from holding title to land. I continue to support the case based on the frequency with which such arrangements are used to conceal beneficial ownership. I also made the case based on the activities of some companies to speculate in land and based on companies which own land in order to write off losses against other taxable income (a device frequently used by beneficial owners of sporting estates who have their land registered under their company).
- 10.7 Where landownership is central to the activities of a business such as a shop or factory, however, there is a case for corporate landownership. Similarly companies limited by guarantee provide ideal vehicles for not-for-profit organisations to hold land.
- 10.8 To conclude I believe there is an overwhelming case against private trusts being allowed to increasingly shelter land from both the market and from the Inland Revenue. I also believe that there is a case for looking at the range of purposes which should be deemed unsuitable for corporate ownership. The case is one which I believe is based on strong public interest arguments.

### **Foreign Ownership**

- 10.9 Foreign ownership (LRPG 3.4) has attracted comment I would suggest not because of the nationality of the individual concerned but because of the sharp focus which such events give to the unregulated market in land. They also tend to be newsworthy because of the curiosity invoked by strange people from other countries coming to buy land in Scotland. Aside from a very limited paranoia about foreigners the nationality of owners is not a substantial issue in itself.
- 10.10 It is also not an issue with respect to whether such individuals manage land well. This is no more a relevant test to apply to foreigner owners as it is to Scots. There are however issues to do with foreign ownership (by which I mean titles held by non-EU nationals, offshore companies and trusts). This definition therefore includes many UK nationals who are beneficiaries of offshore trusts, some of whom are among Scotland's leading landed families.
- 10.11 There are issues of tax. The extent of foreign ownership is growing although it is difficult to give precise figures due to lack of available information. Evidence I have assembled suggests that there is a significant move to locate ownership offshore (Grand Cayman, Panama, Bahamas, Channel Islands) purely for tax reasons. The extent of tax avoidance is unknown but may be substantial. Moreover many of these owners are recipients of large sums of public money.

Should public money be given to offshore companies to improve capital values of land which then escape tax?

- 10.12 There is also the issue of accountability and traceability. Is it unreasonable that society should be able to contact owners of land without going to the effort of tracing front companies and beneficial trusts in Liechtenstein and Grand Cayman?
- 10.13 For these reason I suggest that no title deeds to land should be held by offshore companies & trusts. At the very least I suggest that no public money should go to any legal person which is not an EU national or UK registered company.
- 10.14 Foreign nationals are slightly different although the issues raised above still apply. Under EU law all EU citizens have a right of settlement in any other EU country. EU citizens are thus excluded from any consideration of foreign nationals. Two issues seem relevant however. Firstly reducing the inflated prices paid for land in Scotland (particularly large estates in the Highlands) is not reduced by them being exposing Scottish property to a truly global market. Secondly there are issues of responsible citizenship and accountability raised by individuals who do not have a right of residence in the UK and do not pay UK taxes being able to own land and benefit from all the services of government and ultimately the protection of the state. These questions appear at the very least to justify questioning whether non-EU citizens should be entitled to own land in Scotland.
- 10.15 It is worth mentioning in this context that my advocacy of residence requirements would by default bar non-EU nationals from landownership although that is not an explicit intent.
- 10.16 The ownership of land by non-EU nationals and offshore companies and trusts raises important questions therefore. There is justification in my view to prohibit offshore companies and trusts from holding title to land and democratic arguments to prohibit non-EU nationals. There is no argument for making any reforms however simply on the basis that such individuals and organisations are foreign per se.
- 10.17 For the purposes of genuine capital investment in industry exceptions could be made since their obvious presence and activity brings obvious benefits. By contrast there is very little obvious benefit to be gained by arrangements which are designed simply to avoid tax. There are obvious disadvantages.

### **The Crown Estate**

- 10.18 The Crown Estate Commission should be enacted as a body in Scots law accountable to the Scottish Parliament. In some ways it is remarkable that it isn't given the separate constitution of the Crown in Scotland. It is unacceptable that an organisation with such important responsibilities for the territory of Scotland should remain under the control of Westminster. I support attempts to negotiate such an extension of the devolved powers and subsequent reconstitution of the CEC and its functions by the Scottish Parliament.

### **Public ownership**

- 10.19 There is a real need for a more consensual, pragmatic and rational approach to the question of which areas of land in Scotland should be held by public bodies. There is also a need for some debate as to how such bodies should function. Such

- a debate as there has been has been highly ideological in the past. It would help if it were informed by more practical considerations since there is and will continue to be a strong case for public ownership of land in appropriate circumstances.
- 10.20 Land tenure makes no distinction between private and public owners. This is an important feature to retain since in the first instance the First Minister of a Scottish Parliament should hold land under the same terms as all other citizens
- 10.21 How should we define the kinds of land which should be held by public bodies? Clearly there are strategic requirements of infrastructure and national security. There is also land of such high environmental or cultural importance that we should have no hesitation in articulating the need for public ownership. There are other cases such as state enterprise in forestry which is legitimate but perhaps not critical.
- 10.22 How land is held is also important. Currently the Secretary of State holds the title to the SOAEFD and FC estate although I understand that this will change following the establishment of the Scottish Parliament. On the other hand HIE and SNH hold land on their own account. Such differences I assume are a product of the time such bodies were constituted.
- 10.23 There is important issue also to do with accountability. How free should public bodies be to buy and sell land in the name of the public? There is an argument for holding nationally important areas such as the tops of the Cairngorms in a form of ownership which requires rigorous parliamentary scrutiny before it can be disposed of. At the other end of the scale there is little justification in burdening public bodies with complex procedures to buy and sell land for operational purposes. The former argues for some sort of inalienable title holder. It could be a reformed Crown Estate Commission. It should certainly not be in such a form as enables it to be disposed of on the whim of one particular administration as has happened with forestry privatisation.
- 10.24 Finally there are the arrangements for the day to day management of land. Here I am a firm believer in democratisation. In particular I support the Transfer of Crofting Estates legislation and believe that the FC estate should be subject to radical overhaul. There is no longer any justification in having a board of appointed commissioners running state forests. Such responsibility would be far better exercised by local or regional Forest Boards with elected members and their own operational freedom to determine the priorities for different parts of Scotland whilst operating within an overall framework of accountability to Parliament.
- 10.25 I further believe that much of the forestry estate would be better in the hands of local communities and co-operative associations of farmers and landowners. Forestry ownership needs to be diversified radically.

### **Environmental bodies & Community ownership**

- 10.26 It is unhelpful and unjustified to seek to single out environmental bodies on the one hand and community groups of the other for special treatment. Why for example should environmental bodies have to justify their approach to rural development any more than any other landowner?
- 10.27 What would be helpful is a recognition of the rapid growth in recent years of the citizen's sector or not-for-profit landowning sector. The development of this

sector in the north of Scotland is well documented in *The Emergence of the Not-for Profit Land Ownership Sector in the Highlands & Islands of Scotland* by Graham Boyd published in the Scottish Journal of Community Work and Development Vol. 3 Spring 1998.

- 10.28 This sector represents an extremely important part of moves towards land reform. Such organisations (which range from the RSPB to farming co-operatives) have democratic structures which enable participation in decision making and by definition exist to satisfy social purposes. They represent practical and ethical values of self-reliance, mutual assistance and community service and are vitally important in many situations where neither the public sector nor the private sector is able to deliver the same range of benefits.
- 10.29 The not-for-profit sector needs developed and supported. Certain purposes for which it exists (such as nature conservation) are a direct response to policy failures. These failures (to adequately protect the environment) should be rectified. Other purposes such as community development should perhaps be taken up and supported by legislation which would enable communities to take on ownership of certain types of land (in and around settlements for example) under certain conditions.

## **11 LAND USE**

- 11.1 Land use, as the LRPG imply in various places, is what land reform is, at the end of the day all about. I have stressed the significance of the land tenure system and landownership structures as fundamental ingredients of securing better land use.
- 11.2 I subscribe to the idea that making land tenure more accountable to the public interest and extending participation in the landownership will of itself improve land use since land use decisions will better reflect the public interest and the community interest.
- 11.3 Another approach is to rely on interventions which seek to modify the behaviour of landowners within the existing system without any changes to the structure of ownership and control. My contention is that this is likely to be a struggle which in many cases attempts to persuade unwilling people to act against their own interests and where the powers which are needed to do this are liable to be blunt, heavy and bureaucratic to administer.
- 11.4 As might be clear by now, my philosophy on land use is to first of all modify the structures of power and control so that land use decisions are taken by many more people (promoting diversity), more in the public interest (accountability and greater powers of public intervention), over more limited areas of land (so adverse impacts are minimised). Thus undesirable land use becomes less widespread since steps are taken early in the chain to minimise such outcomes. Land use therefore becomes more of a freedom to be enjoyed as an owner sees fit within a pluralistic and accountable system of landownership. Land reforms can thus liberate landowners.
- 11.5 Glen Feshie becomes better managed because it is owned by a body more dedicated to that purpose. Under-utilisation of land and neglect become less frequent due to measures to tackle absenteeism. Where the needs of communities are greatest the tools are already there to satisfy such needs. If land use judged to be poor does take place it will be limited in extent (over a few hundred acres

rather than thousands). The generation of a thriving culture of private landownership in the public interest will of itself begin to assert the kind of peer pressure which will resolve many problems and which is so manifestly lacking today.

- 11.6 Thus I hope I have demonstrated that reforms of land tenure and management have structural effects which improve land use outcomes. Even so, there is clearly scope for reform in the way land is used and managed. I wish to highlight three areas for reform:

standards  
decision-making  
administration.

### **Standards**

- 11.7 There is clearly a need for higher standards of land management in many cases. Guidance, voluntary codes and good practice guides all have a role but the voluntary approach is ineffective unless some sticks are available in cases of clear abuse.
- 11.8 The public right of pre-emption and powers of compulsory purchase are available where the situation warrants such intervention but in many cases the desire is not to change ownership to secure the public interest but to ensure good management.
- 11.9 Such cases would be helped if there could be powers to issue a land management order in certain situations where abuse is evident. This would help to promote a spirit of co-operation if it were available as a power of last resort (short of public intervention in the land market).

### **Decision making**

- 11.10 Land use planning and decision making has (outwith the planning system) been notoriously lacking in public scrutiny. Greater participation in such matters would improve land use planning, secure more public benefits and probably increase the value for money obtained from spending public money on private land.
- 11.11 Firstly, all quangos and public bodies should institute standard democratic practices in terms of disclosure of information relating to public support for private land use.
- 11.12 Secondly such bodies should be governed in more democratic ways.
- 11.13 Thirdly, planning for land use (in particular land use change and financial support for land use sectors) should be carried out by more democratic forms of local organisation such as local Land Councils. They can develop strategies and negotiate support packages that better reflect local needs and aspirations.
- 11.14 Fourthly cross-compliance should extend to cover social as well as environmental issues. This would involve negotiating release of land for housing for example as a condition for forestry grant aid. I do not instinctively share the LRPG's nervousness (LRPG6.3) regarding a massive increase in bureaucracy. I suspect that such arrangements could well mean efficiencies in effort and would certainly

result in greater leverage being obtained with public funds, a concept which is well understood in support measures for economic development.

### **Administration**

- 11.15 A review is needed of how to administer all matters relating to land in Scotland and the bodies which are responsible for them. These range from the Land Court to SNH, from SEPA to local government.
- 11.16 In the natural resource sector I firmly believe in a more integrated approach where public officials, whilst working to different legislation work together in the same office and talk to each other. This would promote co-operation, integration and hugely improve the service to the public. I have experienced such arrangements in Norway where on one visit a member of the public can visit a horticultural officer, a forestry official and an agricultural extension officer. It is an attractive system but any such reform would involve major structural change.
- 11.17 I suggest that early in the life of a Scottish Parliament an enquiry is undertaken to explore ways of democratising and integrating the public administration of natural resource management.

## **12 ANSWERS TO YOUR QUESTIONS**

I have provided below a response to as many of your questions as I feel moved to comment on. They are referenced by your paragraph numbers. In many cases I refer to preceding sections of my response.

- 3.2 The group should be aware of the wide range of well-documented ways in which the nature of power in the land tenure system, its distribution and how it is exercised have been the cause of a long catalogue of social, cultural, economic and environmental problems. Think about Eigg, Glen Feshie and Mar Lodge. Think about the rural homeless and the squalid conditions of many rural householders. Think about the grazing tenant (an MBE) in Ross-shire served with an eviction notice and refused land to build another for his retirement. Think about those who will not respond to this consultation process because in the dying years of the 20th century they do not feel either qualified or confident to speak out or write to you for fear of the consequences this might have in their relations with their landowner. Think about the large, empty spaces in the Highlands. Think about the decaying and neglected buildings around the countryside. Think about the future of Scotland's environment. Think about the extent of poverty in our peripheral housing schemes. Think about the high quality environment we should all be enjoying in our homes and in our leisure time. Think about social justice. Think about liberty and freedom for everyone (including landowners). Think about a sense of history and the opportunity you have initiated for both an informed debate and a better way forward.

Those are just some of the problems land reform seeks to address.

- 3.3 See 10.3-10.8. I reject the proposition that any prohibitions in this sphere would be "massively complex to devise and administer" and refer you to AW 13.3 & 13.4.
- 3.4 See 10.9 - 10.17

3.5 See 9.5 - 9.8

3.6 See 10.29 - 10.25

3.7/8 See 10.18

3.9/10 See 10.26 - 10.29

3.11 I believe that in many cases land values are hugely distorted and a real problem for local development and for those who might wish to own land. In particular, there is a massive discrepancy between economic values and market values as was demonstrated recently on Eigg. There is a case for looking at this problem in some more depth.

3.12 There is also a case for looking seriously at the role of land value taxation on promoting a more stable and just economy. I refer you to the submission by Fred Harrison of the Land Policy Council, Peter Gibb of Land Reform Scotland, Professor Roger Sandilands of the Scottish League for Land Value Taxation, and the Land Value Taxation Campaign.

3.13 Problem is the unregulated land market, the scale of properties sold and the inability to intervene effectively in the public interest. Refer to Section 9.

3.14 See 9.17 - 9.26

3.15 As above

3.16 As above

4 I support measures outlined to strengthen tenant's rights by extending the range of permitted activities they can engage in but see 7.8 - 7.15 for a wider discussion of the issue.

5 Regrettably, given the huge scope of the LRPG paper and limited time I am forced to leave crofting matters to those with more of a direct interest in the subject despite having some views on the matter

6 See Section 11. There is also a huge related question of looking fundamentally at the current planning system.

7 See Section 7. I would add here that the laws relating to incidents of landownership in particular those relating to game need to be included in any review of land tenure. Game laws are a product of 19th century legislation by landed interests. They should be reviewed for this first time by a democratically elected legislature to see if we can develop a modern legal framework for game and wildlife management.

8 See Section 8.

## **13 SOME CONCLUDING THOUGHTS**

13.1 Land reform is a process of changing the way in which land is owned and used in Scotland. It will not be concluded by one act of the Scottish Parliament but will

hopefully become a regular thematic policy area in much the same way as education, the environment, transport or health.

- 13.2 Land reform is about redistributing power over land in such a way as to increase accountability and democratic participation. Land reform is about creating a framework for change which empowers citizens and liberates communities.
- 13.3 Specific reforms should not be viewed instinctively as costly. Land reform should stimulate greater economic activity and reduce tax avoidance. Modest costs associated with it are justified after such a long period of stagnation.
- 13.4 Similarly proposals to regulate or control for example the land market or the eligibility to hold title should not be viewed necessarily as bureaucratic or cumbersome. Currently many of the arrangements surrounding such issues are handled very simply through the conveyancing process. Declarations are routinely included in title deeds to the effect that transactions do not form part of a larger transaction (to prevent avoiding stamp duty). Declarations are made with respect to the Marital Homes Act. Any further legislation to introduce further regulation is best incorporated in the form of such declarations (to the effect that the purchaser declares compliance with relevant Sections of the Land Reform (Scotland) Act 2001).
- 13.5 I have attempted to deal with as many of the issues raised in the LRPG paper as possible within a limited amount of time. I trust that they will be dealt with as a constructive contribution to the work of the LRPG and would be happy to engage in any further discussions that may be appropriate in order to clarify or expand on any of the points I raise.
- 13.6 Finally, if you have felt moved to actually read all the way to the end I really want to thank you individually for your attention and evident commitment in taking seriously the fundamental importance of land reform. If you are interested in further reading on the matter you might like to purchase my book, *Who Owns Scotland* published by Canongate, price £14.99. Signed copies are available directly from me. You may also wish to purchase a more recent Canongate publication, *How Scotland is Owned* by Robin Callander, price £9.99 and published today (30 April 1998).