
432:50 – Towards a comprehensive land reform agenda for Scotland

**A briefing paper for the House of Commons
Scottish Affairs Committee**

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Foreword by Ian Davidson MP

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Foreword

Ian Davidson MP, Chair, Scottish Affairs Select Committee

During our investigation of the Crown Estate it became clear that the wider issue of land reform in Scotland required to be looked at. Accordingly, the Scottish Affairs Committee agreed to request that a paper be drawn up to stimulate debate.

The Committee has now received the paper and agreed to circulate it without change or comment. Some of its comments and proposals will be seen as radical, others as commonsense, but between them they address one of the major yet underexplored areas of Scottish life: the ownership and control of the land itself.

At a time when much of Scottish political and economic discourse is dominated by debates and wrangles over constitutional proposals, these are a set of issues which can be progressed within whatever system of government might emerge and will depend for change upon the will of those involved, rather than the structures within which they operate.

The Committee will formulate its recommendations on these issues once we have had the opportunity to receive responses and to hear witnesses. At the moment, our only decisions have been to request and to publish this paper.

Our ambition, in this as in many other of our reports, is to create a mood for change which can be supported beyond the constraints of an individual political party or section of society and to build a consensus amongst the people of Scotland for actions which will improve their lives.

Accordingly, the Committee is delighted to launch this document for consultation and hopes that evidence can be submitted to the Committee by 30th September 2013.

Having received written evidence, the Committee would then intend to hold public hearings before producing a report within twelve months.

Ian Davidson MP,
Chair, Scottish Affairs Select Committee

1 Introduction

1.1. This paper was requested by Ian Davidson MP, Chair of the House of Commons Scottish Affairs Committee (SAC). The paper has been compiled by James Hunter with input and assistance from Peter Peacock, Andy Wightman and Michael Foxley.

- James Hunter, a former chair of Highlands and Islands Enterprise, is Emeritus Professor of History at the University of the Highlands and Islands.
- Peter Peacock is a policy consultant and a former MSP and Minister.
- Andy Wightman is a writer and researcher on land rights in Scotland.
- Michael Foxley is a crofter, a former Leader of Highland Council and has been involved in five successful community buy-outs.

Between them, the group have SNP, Labour, Scottish Green Party and Liberal Democrat affiliations.

1.2. The paper's purpose is to inform SAC as to the current state of the land reform debate in Scotland, to connect this debate with wider concerns about growing inequality in wealth and, in particular, to underline the extent to which SAC – in the context of UK and international efforts to combat what a recent EU Council resolution calls 'tax fraud, tax evasion and aggressive tax planning' – is well placed to explore ways in which fiscal and related arrangements contribute to and underpin inequality in Scottish land ownership.

Tax fraud and tax evasion limit countries' capacity to raise revenue and carry out their economic policies. In times of tight budgetary constraints, combating tax fraud and tax evasion is more than an issue of tax fairness – it becomes essential for the political and social acceptability of fiscal consolidation. The European Council agreed to accelerate work in the fight against tax fraud, tax evasion and aggressive tax planning. In particular, work will be taken forward as a matter of priority on promoting and broadening the scope of the automatic exchange of information at all levels.

EU Council: Conclusions, 22 May 2013

Mr Ian Davidson (Glasgow South West) (Lab/Co-op): I welcome the statement from the European Council and the Government, which says that proper information on 'who really owns and controls every company' will be provided. Will the Government co-operate with the Scottish Affairs Committee in establishing who owns and controls the great landed estates in Scotland, in order that they can minimise both tax avoidance and subsidy milking?

The Prime Minister: That is the intention of this move. Having all countries sign up to an action plan for putting together registers of beneficial ownership by companies and the rest of it will help tax authorities to make sure that people are paying tax appropriately. That is a debate that we are leading at the G8 and in the European Union.

Hansard, House of Commons, 3 June 2013: Column 1254.

1.3. The paper's starting point is the extraordinarily concentrated nature of land ownership in Scotland. The paper then turns to the way in which this concentration is reinforced by fiscal arrangements, by agricultural support, forestry grants and other taxpayer-financed payments. In the absence of previous enquiries of the sort SAC aims to mount, much remains obscure about the means by which landowners maximise their drawings on the public purse while, at the same time, minimising their contributions to it. SAC have the opportunity to look into those matters in some detail.

- 1.4. Subsequent sections are intended to help SAC make connections between its work and the various land reforms currently under consideration in Scotland. As is stressed more than once in the body of the paper – and the point is returned to in conclusion – the opportunity now exists, not least because of SAC interest in these matters, to put together a comprehensive land reform programme that would have the effect of bringing Scotland’s land ownership structure into line with practice in other western democracies.

2 Land ownership concentration and its underpinning by public, especially fiscal, policy

- 2.1. Scotland has the most concentrated pattern of private land ownership in the developed world. The degree of concentration is evident from the fact that a mere 432 landowners account for half of all Scotland’s privately owned land – such land (since not much more than 10 per cent of Scotland is in public ownership) accounting, in turn, for the bulk of the country. Hence the 432:50 of this paper’s title – the 50 of that title standing for the 50 per cent of Scotland’s privately owned land area presently in the possession of just 432 owners.
- 2.2. Inequality in wealth is an increasing concern internationally. Debate about the causes and consequences of inequality has focused, in the UK and elsewhere, on the divide between the ‘one per cent’ (who hold a large and growing proportion of available wealth) and the ‘ninety-nine per cent’ (whose share of total wealth has been falling). The inequality inherent in Scotland’s land ownership pattern, however, is of an entirely different order to the more general 1:99 divide. The disparity in this instance is not between one hundredth of the population and the other ninety-nine hundredths. Setting aside the complex ownership structures many owners have put in place (below) in order to obscure or conceal aspects of their ownership, the divide is between the equivalent of one twelve-thousandth part of the population (the part owning half of Scotland’s privately-owned land) and the remainder.

<p>The present concentration of ownership in Scotland yields some staggering statistics ... A miniscule 0.025 per cent of the population owns 67 per cent of the privately owned rural land. Thirty owners have more than 25,000 ha each, while the largest private landowner of them all, the Duke of Buccleuch, has Scottish estates covering some 124,000 ha.</p>
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<p>Charles Warren, <i>Managing Scotland’s Environment</i>, (Edinburgh University Press), Edinburgh, 2009, pp 48-49.</p>

- 2.3. Although some limited steps (below) have been taken to reduce the concentration of land ownership in Scotland, public policy serves mostly to perpetuate and reinforce the existing (and longstanding) structure. Thus there are large transfers of public money from the state to the 432 owners – in the shape, for example, of agricultural subsidies (worth more than £1 million annually to some of the 432), forestry grants, nature conservation grants and other disbursements. Although there is beginning to be anger in some quarters about such largesse (much of it directed at people of great wealth) at a time of unprecedented stringency in other areas of public spending, those arrangements have attracted surprisingly little scrutiny and accordingly merit investigation by SAC.

Most of the land here is owned by exceedingly wealthy people. Some of them are millionaires from elsewhere: sheikhs, oligarchs and mining magnates who own vast estates in this country. Although they might pay no taxes in the UK, they receive millions in farm subsidies. They are the world's most successful benefit tourists.

George Monbiot, *The Guardian*, 2 July 2013.

- 2.4. A relatively new source of such funding (albeit indirect) has been provided by Scotland's wind farm boom – Conservative MEP Struan Stevenson calculating that Scotland's largest landowners will net around £1 billion over the next few years from rental charges levied on wind farms which, Mr Stevenson asserts, exist only by virtue of public subsidy.

Scotland's wealthiest private landowners are on course to earn around £1 billion in rental fees from wind farm companies, according to a book published by a senior Tory politician. Struan Stevenson, a Conservative MEP ... suggested the wealthiest Scots are benefiting from the spread of wind farms at the expense of consumers who have to heavily subsidise the technology in their energy bills.

Daily Telegraph, 22 February 2013

Renewables is perhaps the fastest moving area of land management at the moment,' says Nigel Fraser, Inverness-based Partner in Land Management. 'You can't afford not to think about it because you'll get left behind.'

Strutt and Parker, *Scotland: Property, Land, Projects, People*, 2013

Rental payments vary and are top secret ... [But] based on estimates the Duke of Roxburghe could net around £1.5 million a year from his 48 120-metre-high turbines at Fallago Rig in the beautiful Lammermuir Hills. Sir Alastair Gordon-Cumming could be earning around £435,000 annually from 29 giant turbines on his Altyre Estate near Forres in Moray. The Earl of Seafield could get £120,000 a year from eight turbines on his estate near Banff. The Earl of Moray is estimated to receive £2 million a year from 49 turbines at Braes O'Doune near Stirling ... What we are witnessing is ... a dramatic transfer of money from the poor to the rich.

Struan Stevenson, *So Much Wind*, (Birlinn), Edinburgh, 2013, pp 43-46.

- 2.5. Adept at maximising flows of public money to their estates, landowners have been equally skilled at minimising the flow of cash in the other direction – helped greatly in this regard by successive Governments' toleration of a series of arrangements intended to reduce greatly, or even eliminate, effective taxation of landed wealth.

Those arrangements include:

- The various inheritance and capital gains tax reliefs and allowances available to landowners;
- The vesting of ownership in companies, foundations and other entities whose beneficiaries are obscured and concealed;
- The registration of such entities in offshore tax havens such as Grand Cayman, the British Virgin Islands, Panama and Guernsey;
- The transfer of ownership from individuals to family trusts and to charitable trusts (their membership strictly limited and often confined to the owning family and their associates) to gain the tax reliefs and other advantages available to such trusts;
- The offsetting of estate management losses against landowners' other (non-landed) business interests;

- The abolition of sporting rates in 1995 and the continuing failure to introduce an alternative levy on sporting estates.

2.6. Something of the complexity deriving from the widespread utilisation of such devices – in this instance concealment of beneficial ownership – has been explored by one of this paper’s contributors in relation to the Buccleuch Estate which, at some 242,000 acres, is Scotland’s largest landed property.

At first glance, Buccleuch Estates Ltd appears to be a conventional limited company with directors and shareholders. In fact, it is the ultimate parent company for a string of other companies including Buccleuch Properties Ltd which holds property worth £88 million ... Buccleuch Properties Ltd is, in turn, the parent company of companies such as Buccleuch Property (Kettering) Ltd, Tarras Park Properties (Germany) Ltd, Buccleuch Property (Moscow) Ltd and a slew of joint ventures in Cyprus, Luxembourg, Russia, Germany, Ireland and the UK.

This global empire is all ultimately owned by Buccleuch Estates Ltd. So who owns Buccleuch Estates Ltd? The answer is that it is wholly owned by a nominee company, Anderson Strathern Nominees Ltd, a company whose total paid-up share value is £4, whose shareholders are four Edinburgh lawyers and whose total assets amount to £4. The company has been dormant since its incorporation in May 1992 and it owns 100 per cent of Buccleuch Estates Ltd, a company with total assets of £275 million and a turnover of £64 million in 2008.

The purpose of Anderson Strathern Nominees Ltd is thus merely to hold the shares of Buccleuch Estates Ltd on behalf of others. Who those others are remains a mystery.

Andy Wightman, *The Poor Had No Lawyers: Who Owns Scotland and How They Got It*, (Birlinn Ltd), Edinburgh, 2010, p 272.

2.7. Some years ago, the case for enquiring into the means whereby the beneficial owners of landowning and other companies can be concealed behind nominees was put strongly by Andrew Edwards, a former deputy secretary of the UK Treasury. Although Edwards’ arguments were advanced in relation to the Land Registry in England and Wales, they apply equally to Scotland.

[In September 2001], Andrew Edwards, a former deputy secretary of the UK Treasury, [speaking] at a Cambridge International Symposium on Economic Crime ... argued: *‘As we all know, serious criminals mostly commit crime and launder its proceeds, not under their own names, but through company or trust formats. In most countries, however, tax and company registration authorities don’t even require to know who the true or beneficial owners of private companies, trusts or foundations are. In most countries, similarly, land registration authorities don’t try to establish who the true or beneficial owners of property are.’*

Edwards later carried out the Quinquennial Review of Her Majesty’s Land Registry in England and Wales. In [his review], he argued: *‘In these days when economic crime and money laundering have become major issues for the world economy and society, and when property assets are a significant vehicle for holding the proceeds of crime, the fact that the Registry neither records on the Register nor knows who the true owners of property are becomes ever harder to defend. There must be a strong case, therefore, for including in the Register details of the true or beneficial owners of registered properties where these differ from the nominal owners ... The disclosure of such information on the Register, and the index of true or beneficial property owners that the Land Registry could compile from it, would be invaluable for law enforcement, regulatory and tax authorities, as would similar information on ownership of private companies. Without such information, the transparency of land registration must always be seriously qualified.’*

Scottish Parliament: Land Registration Etc (Scotland) Bill 2011: Stage 1 Written Evidence to the

Economy, Energy and Tourism Committee from Andy Wightman, 13 January 2012.

- 2.8. While nothing has so far been done to change the position described by Andrew Edwards, this may alter as a result of the Prime Minister's determination to have what he has called (above) 'an action plan for putting together registers of beneficial ownership'.
- 2.9. For the moment, however, the hiding of beneficial ownership behind nominees remains one of the many devices available to the substantial wealth and land management industry that has developed to help landowners with tax minimisation measures – land often being marketed to the rich and super-rich in ways that are explicit about the extent to which land ownership can shrink taxation obligations.

About 257 acres of Inverness-shire are being marketed as a potentially tax-efficient investment and Highland retreat or full time home, with sporting opportunities thrown in for good measure. Savills says the property, for which offers in excess of £550,000 are sought, provides an excellent base for exploring north-west Scotland.

Savills said the potential for generating earnings from forestry could also be attractive to potential buyers: 'Timber income from commercial forestry is exempt from income tax and forestry businesses attract 100 per cent relief from inheritance tax. In addition, forests have low exposure to capital gains tax because the value of growing crop is excluded from the assessment.' Savills says prospective owners should consult financial advisers to work out how these tax concessions may be of benefit in their own particular circumstances.

Press and Journal, 25 October 2012.

A landed estate is typically held either wholly or partly in family trusts. As many estates have been in the family for generations, important and often sensitive issues arise. Thomas Westcott has built up particular expertise at dealing with matters that arise including determining the profitability of the estate, maintaining an estate as a single unit, succession and inheritance tax planning, capital gains tax planning, protection of assets through the use of family trusts and administration of the estate. Some landed estates will have conditionally exempt property and maintenance funds which are subject to detailed rules and regulations.

Thomas Westcott Chartered Accountants at <http://www.thomaswestcott.co.uk/Landed-Estates-Practice-Area.htm> (Accessed 3 July 2013).

Landed Estates owned by overseas structures face the same challenges on the ground as those in UK ownership, but the tax structuring can give significant advantages. Our team, drawn from UK and overseas offices can give you first class advice on all aspects of your investment in a UK landed estate and, most importantly, can advise on maintaining the taxation advantages of overseas ownership.

We advise overseas owners of landed estates whether they own land personally or through a company or trust structure. We help on all compliance matters including UK income tax, VAT, Corporation tax, and the non-resident landlord scheme. The tests for being an overseas entity or being a non resident person for tax purposes require constant monitoring to ensure the tax benefits continue.

Saffery Champness Business Advisers at <http://www.saffery.com/our-sectors/landed-estates-and-rural-businesses/offshore-owners.aspx> (Accessed 3 July 2013).

A billionaire Danish fashion magnate has become the second-largest private landowner in Britain with the purchase of the 20,000 acre Glaick Estate in Inverness-shire. Anders Holch Povlsen purchased the land and associated properties from Xavier-Louis Vuitton, heir to the French fashion label.

The latest acquisition by Mr Povlsen, who already owns the Glenfeshie, Ben Loyal and Kinloch Estates, has increased the 43-year old's land portfolio in Scotland to around 150,000 acres. It is second only to that of the Buccleuch Estates ... Mr Povlsen, whose family owns Bestseller, the Danish fashion company that last year had a turnover of £2 billion ... has been criticised in some quarters for mounting a 'land grab' of Scotland to take advantage of farming subsidies, though others claim he is motivated by a desire to protect wild land.

The Herald, 21 January 2013.

Danish billionaire Anders Holsch Povlsen has been putting together a collection of Highland estates like a set of Lego bricks ... What is going on? ... The answer is – money. While we conventional homeowners have been looking on in horror as our house prices plummet, it seems that people who have put their faith in mud and grass, rather than bricks and mortar, have been reaping a rich financial harvest ... It's not just the value of the land that brings in the buyers either; it's the fact that you can pass it on to your family without HM Revenue wanting a slice ...

So let's get this right. Not only are you buying a commodity that increases in value [on average] by £44 per acre per month, but you can hand it down tax-free to your children and grandchildren. Wait, though, it gets better; on top of all that, the European Union will give you money.

It's called the Common Agricultural Policy direct payment, and although we don't know what each UK farmer gets (the European Court of Justice has declared it illegal to publish how much is given to individuals), we do know that the National Trust [in England and Wales] got £2.6 million last year for its farmland ...

Daily Telegraph, Property Section, 13 May 2012.

2012 will be remembered as a period of stagnant economic growth. However, whilst governments across the world struggled to stimulate their economies, forestry continued to buck the trend, delivering excellent returns The significant tax advantages derived from timber, including the potential to benefit from significant IHT [Inheritance Tax] savings and Capital Gains Tax exemption, are among the sector's strengths.

UPM Tilhill and Savills Forest Market Report, Issue 14, 2012.

We provide pro-active and innovative advice to clients to minimise their exposure to Capital Gains Tax on disposal of business interests, land and other assets. We also have particular expertise in advising private business owners and shareholders in the lead-up to a business sale. Our tax lawyers and practitioners work closely with our land & property, business law and wealth management teams in the structuring of sales and purchases of land, businesses and investments. We advise on the use of companies, trusts, partnerships and offshore structures for capital gains tax planning purposes ... Turcan Connell's offices in Edinburgh, Glasgow, London and Guernsey serve a broad range of clients who value the focus which we can bring to their affairs.

Turcan Connell, Legal, Wealth Management and Tax at <http://www.turcanconnell.com/tax/tax-advice/capital-gains-tax/> (Accessed 3 July 2013).

A minefield at the best of times, the Inheritance Tax system has countless added pitfalls for estates failing to get their house in order. 'For landowners it has become far more favourable to ensure, where possible, that they are seen to be carrying out a trading activity, rather than what HMRC views as an investment activity,' explains David Smart, Land Management Partner based in Banchory. In practice, this means entering into joint ventures for commercial activities, such as renewable energy, rather than merely renting out the land to developers. In the agricultural sector, contract farming has increasingly become the most attractive option for landowners

looking for the tax advantages of trading.

Strutt and Parker, *Scotland: Property, Land, Projects, People*, 2013.

The Glenmearan Woodland Creation contract involved the establishment of three new native woodland blocks extending to approximately 48 ha. The first two blocks extending to approximately 19.3 ha were fenced and planted in 2011. The balance is due to be planted in 2013 with some £95,600 of capital grants available. The contract will provide some £13,500 of annual recurrent grants.

Two other woodland creation applications have been submitted under the SRDP [Scotland Rural Development] programme. Glenmearan 2 Woodland proposal covers approximately 40 ha extending to two blocks designed to screen pipelines and powerhouses of one of the consented hydro schemes. The proposals, as submitted, could generate some £210,000 of grant if approved. The Lubreoch Woodland Creation proposal covers some 85 ha ...The projects could generate an estimated total grant of around £130,000-£180,000 ...

A summary of the agricultural grants and subsidies payable in respect of Auch and Invermearan Estate in 2011 is as follows:

Grant Scheme	Budgeted Payment 2011 (£)
Single Farm Payment Scheme (SFPS)	480,251
Less Favoured Area Support Scheme (LFASS)	107,295
Scottish Beef Cattle Scheme	5,390
Land Management Option	13,973
TOTAL	£606,909

Knight Frank, Auch and Invermearan Estate Sale Particulars, 2013: Available at <http://search.knightfrank.com/edn120161> (Accessed 3 July 2013).

- 2.10. The precise nature of transfers of public money to landowners and the means used by landowners to minimise and avoid tax are not well understood outside the limited circle of those involved directly with these matters. It would consequently be a considerable advance to have such mechanisms subjected to detailed SAC scrutiny – ideally with a view to paving the way for legislative or other measures that would have the effect of bringing more land, in smaller parcels, on to the market while, at the same time, exerting downward pressure on land prices. These price are high, in substantial part, because of the twin impacts of (a) public subsidy (such subsidy being capitalised into land values) and (b) the extent to which land ownership offers tax minimisation possibilities.
- 2.11. Any SAC work in this area would be conducted in parallel with the work of the Scottish Government's Land Reform Review Group (LRRG) which is scheduled to report in April 2014 and which has been given the job of providing the Scottish Government with 'innovative and radical proposals on land reform'. Also relevant will be the work of the Scottish Government's planned review (below) of Agricultural Holdings issues.
- 2.12. The SAC, LRRG and the forthcoming Agricultural Holdings Review have between them the capacity to lay the groundwork for a comprehensive programme of land reform – a programme founded on a detailed understanding of current (and longstanding) inequalities in land ownership and an equally detailed understanding of the wide range of means (fiscal, legislative and otherwise) available to reduce these inequalities. This programme would concern itself with, and impact on, all of Scotland.

- 2.13. Because of its potential to enhance the prospects of a wide cross-section of Scottish society – from tenant farmers to young people in search of an affordable home – such a programme would be founded on a commitment to reforming land ownership in the public interest. This last point is crucial. As recognised by Winston Churchill long ago, land reform is not to be understood as an envy-driven attack on individual landowners (which is how it is often presented by existing land ownership interests) but as an attempt to make ownership more generally available by altering the legal and other arrangements underpinning today’s extraordinarily restricted possession of a fundamental resource.

I hope you will understand that, when I speak of the land monopolist, I am dealing more with the process than with the individual landowner ... It is not the individual I attack; it is the system. It is not the man who is bad; it is the law which is bad. It is not the man who is blameworthy for doing what the law allows and what other men do; it is the state which would be blameworthy if it were not to endeavour to reform the law and correct the practice. We do not want to punish the landlord. We want to alter the law.

Winston Churchill, then President of the Board of Trade, speaking in 1909.

- 2.14. In this context it is vital that land reform is not confused with land use. Beneficiaries of the status quo often contend that the use made of land matters much more than its ownership. This is to miss two key points: (a) that ownership and use are linked inextricably; and (b) that land reform is not about changing land use (though it may have that effect) but about looking to share more widely the benefits and opportunities (not least developmental opportunities) associated with land ownership.
- 2.15. The Scottish Government has a Land Use Strategy which, in response to climate change mitigation needs and other pressures, evolves through ongoing engagement with a range of stakeholders. This would continue as before in a reformed ownership system. So would the physical planning processes which influence a great deal of land use change. While these processes could doubtless be improved, especially with a view to making them more amenable to community involvement, such improvement is in no way a substitute for, or alternative to, land reform.

3 Land reform elsewhere

- 3.1. Its concentrated land ownership pattern differentiates Scotland markedly from other European countries where, typically, land is owned by very large numbers of people and where extensive estates of the Scottish sort are few or non-existent. This contrast does not go back indefinitely in time. In the eighteenth century, Scotland’s land ownership pattern (as concentrated then as now) was replicated in most European countries. In the course of the last 200 or more years, however, other countries have experienced land reforms which were intended to – and did – break up ownership patterns of the kind that Scotland alone continues to be stuck with.
- 3.2. In some countries, such as France, reform took place during periods of political and social revolution – with large estates being broken up and transferred to a plethora of new owners by confiscatory mechanisms. In other countries, however, land reform was brought about by constitutional and legal processes. Two such countries – roughly comparable to Scotland in size and population – are Denmark and Ireland.
- 3.3. Danish land reforms, starting as far back as the late eighteenth century, had the effect of transferring ownership of rural land from a tiny number of aristocratic landlords to

many thousands of owner-occupying farmers. Irish land reforms, mostly put in place in the years around 1900, when all of Ireland was still in the UK, brought about a similar diversification. As in Denmark, tenant farmers and smallholders were given an absolute right to buy (ARtB) their farms – with the UK Government advancing the cash (repayable over 50 years or longer) needed to enable them to do so. Ireland (where large estates were formerly as dominant as in Scotland) was thus transformed into a country where, both south and north of the present border, rural land is overwhelmingly owner-occupied.

- 3.4. By way of postscript to mention of Danish land reforms, it should be noted that Danes who buy landed estates in Scotland – of whom (above) there are a number – are the one set of landed proprietors in Scotland to have local taxes levied on their landholdings. The beneficiaries, however, are not Scottish local authorities – barred from levying business rates on land as such – but Denmark's 98 municipalities which are empowered to impose taxes on land owned by Danes in other countries. Danes in this category face annual levies equivalent to one per cent of the value of landholdings valued at up to DKK3,040,000 (£335,000) and equivalent to three per cent of the value of landholdings above that amount.
- 3.5. Denmark's tax authorities are consequently taking a close interest in Scotland – from whose Danish landed proprietors they expect to raise at least £1.5 million annually. Those revenues will be invested in community facilities in Denmark. By the UK tax authorities, meanwhile, the people who are the source of this substantial Scottish contribution to Danish betterment are being treated to generous taxbreaks – while also being provided, by a variety of UK and Scottish public agencies, with generous afforestation and other cash grants. The contrast is stark. It derives from a longstanding Danish conviction, traceable to eighteenth-century land reforms, that land is a resource from which the nation as a whole, not a tiny elite within it, should derive a benefit.

4 Scottish land reform prior to devolution

- 4.1. In Scotland such land reforming impetus as there has been historically has been concerned less with widening ownership than with safeguarding agricultural tenants from exploitation by their landlords. This process began in 1883 when Scottish tenant farmers were granted compensation (at outgo) for improvements made to their farms at their expense. In 1886, crofters in the Highlands and Islands were granted security of tenure and a right to have their rents determined by a quasi-judicial tribunal (nowadays the Scottish Land Court) instead of by their lairds. Security of tenure was extended to smallholders in all of Scotland in 1912 and to tenant farmers in 1949.
- 4.2. In 1976 crofters in the Highlands and Islands were given an absolute right to buy their crofts from their landlords for a sum equivalent to fifteen times their annual rents. No such ARtB has been made available to tenant farmers – though, especially in the 1920s and 1930s when demand for landed estates was weak and land prices low, a substantial number of Scotland's tenant farmers were able to buy their farms from landowners who got into financial difficulty and could find no other purchasers.
- 4.3. During the twentieth century's opening decades, legislation enacted by successive UK Governments, resulted in substantial areas of land in the Highlands and Islands being taken into public ownership with a view to promoting what was then called 'land settlement' by means of creating several thousand new crofts. A key measure in this context was the Land Settlement (Scotland) Act 1919 which empowered the Board

(afterwards the Department) of Agriculture for Scotland to acquire land for settlement by compulsion if necessary.

- 4.4. Twentieth-century UK governments also bought a great deal of land for other than settlement purposes. By the 1970s, as a result, some 17 per cent of Scotland's land area was in public ownership – much of it exercised through agencies like Forestry Commission Scotland (FCS). This proportion has since fallen considerably – mostly as a result of nationalised industry privatisations and FC land disposals.

5 Scottish land reform since devolution

- 5.1. The election of a Labour Government in 1997 was followed by the establishment by the late Donald Dewar, then Secretary of State for Scotland, of a Land Reform Policy Group (LRPG). The group's reports became, in effect, a land reform agenda for the Scottish Parliament which took shape in 1999. The Parliament's first session implemented much of what the LRPG had advocated. The two key measures, in a land reform context, were the Land Reform (Scotland) Act 2003 and the Agricultural Holdings (Scotland) Act 2003.
- 5.2. The Agricultural Holdings Act 2003 is concerned principally with tenancy arrangements. It includes, however, land reform elements. Most significantly, the Act grants secure farm tenants (now known as '1991 tenants' because of consolidating legislation passed that year) a pre-emptive right to buy their farms at point of sale. This means that if a landlord puts an estate on the market, then the landlord must offer any tenant farmers on the estate first refusal in respect of their farms – provided that the tenants in question have previously registered an interest in buying their land.
- 5.3. Part 1 of the Land Reform Act (LRA) is concerned with public access. Land reform is dealt with in Parts 2 and 3 (described in more detail below).
- 5.4. The LRA's tendency to equate land reform with community ownership can be traced to developments in the Highlands and Islands. There, in 1990, the UK's then Conservative Government offered crofters living on Government-owned estates in Skye and Raasay (estates acquired in connection with earlier land settlement) the chance to take those estates into community ownership of the sort pioneered by the Stornoway Trust Estate in Lewis – an estate gifted to its occupants by its then owner in 1923. The 1990 opportunity in Skye and Raasay was rejected. However, in 1992, when the Assynt Crofters Trust took a privately owned crofting estate into community ownership by means of mounting an open market bid, the community ownership management mechanisms developed in connection with the 1990 proposal were adopted by Assynt crofters. Those mechanisms – based on vesting ownership in a company limited by guarantee which is also registered as a charity – have since become the standard community ownership vehicle in the Highlands and Islands where community ownership on the Assynt model was subsequently established (well in advance of the 2003 Act) in places like Eigg, Knoydart and Gigha.
- 5.5. Since 1992 around half a million acres (mostly in the Highlands and Islands) have been brought into community ownership by means of community buy-outs of the Assynt type.
- 5.6. Just prior to its losing office in 1997, the UK's then Conservative Government passed a Transfer of Crofting Estates (Scotland) Act 1997 which gave tenants on the

Government's crofting estates a right to bring those estates into community ownership. There are more than fifty such estates (resulting from the land settlement measures mentioned above) and they extend to some 240,000 acres. The Crofting Estates Act of 1997 (other aspects of which are considered subsequently) has not been much used – though it was the vehicle whereby a substantial area of land in West Harris was acquired by its residents in 2010.

- 5.7. The LRA's Part 3 (in principle its most radical component) grants community ownership provisions akin to those of the Transfer of Crofting Estates Act to residents of crofting estates in private ownership by granting such residents an absolute right to buy the estates on which they live – with the proviso that Scottish Ministers determine such community purchases to be in the public interest.
- 5.8. The LRA's Part 2 does not give communities an ARtB of the kind provided by Part 3. Rather it gives communities a right to register an interest in acquiring land – this right to be exercised (at a price determined by independent valuation) only when, or if, the land in question is put on the market by its present owner. In this, Part 2 of the LRA is analogous to the tenant farming pre-emptive right to buy provided by the Agricultural Holdings Act 2003 (above).

6 Scottish Land Funds Past and Present

- 6.1. The spread of community ownership was facilitated by the UK Government (in the person of then Scottish Office Minister Brian Wilson) having asked Highlands and Islands Enterprise (HIE) in June 1997 to establish a Community Land Unit with the remit of assisting communities moving towards ownership. HIE has ever since provided such services and has also provided financial support for purchasing communities.
- 6.2. Also crucial in this connection was the Scottish Land Fund, set up in 2001 as a subset of the National Lottery's New Opportunities Fund. The Land Fund, which had a total budget of £15 million, operated between 2001 and 2006 – when its functions were transferred to the Lottery's Growing Community Assets programme.
- 6.3. A new Scottish Land Fund was established by the Scottish Government in 2012. The new Land Fund had an initial budget of £6 million to be spent over three years. A further £3 million for a fourth year, 2015-16, was announced recently by the Scottish Government. This is intended to help with the attainment of the Government's recently announced objective of bringing a further 500,000 acres into community ownership by 2020.

The Scottish Land Fund will support rural communities to become more resilient and sustainable through the ownership and management of land and land assets. It will provide practical support and funding to enable local people to work together to develop their ideas and aspirations and plan and complete viable land and land assets acquisition projects.

Scottish Land Fund website.

- 6.4. Difficulties in the way of reaching this target are illustrated by the sales particulars (quoted earlier) for the Auch and Invermearan Estate in Argyll. At 28,000 acres, this estate is equivalent to less than 6 per cent of the Scottish Government's community ownership target area. But at £11,400,000, the estate's asking price is considerable greater than the entire funding available to the Scottish Land Fund over the four years, 2012-16.

7 The case for community ownership

- 7.1. As is indicated by a wide range of submissions* to the Scottish Government's Land Reform Review Group, as well as by a series of detailed evaluations conducted by the Lottery, HIE and others, community ownership is widely seen as one of modern Scotland's success stories. It is for this reason that the Scottish Government is committed to community ownership's expansion – in towns and cities as well as in rural areas.

The Big Lottery Fund (BIG) has been an enthusiastic supporter of the community ownership of land and other assets for over eleven years now, and over that time we have provided communities with more than £65 million to help them acquire and/or develop a wide range of assets ... The in-depth valuations of the programmes we have used to support the community ownership of assets show the difference the projects we have funded are having 'on the ground' in these communities. The evaluations have convinced us that asset ownership is an extremely powerful and potent vehicle for making communities stronger, more resilient, independent and forward-looking. That is why we continue to provide substantial funding for this important purpose.

Big Lottery Fund, Submission to LRRG, January 2013.

Communities buy the land they live on because they see land as the foundation on which all other developments sit. Ownership leads directly to the development of: private enterprise, investment due to security of tenure, affordable housing for rent and purchase, renewable energy schemes and infrastructure development, as well as ongoing estate management. This combination supports increased population and school numbers. The emphasis is on long-term stewardship, investment and growth. Community land trusts are primarily volunteer run ... Boards are made up of entirely local, or a combination of local and external, people.

Sarah Skerratt, *Community Land Ownership and Community Resilience: Rural Policy Centre Research Report*, Scottish Agricultural College, 2011.

Community ownership is delivering positive social, economic and environmental outcomes. It can require significant investment, and huge amounts of voluntary input, but the rewards are shown to be long-lasting and transformational ... Today community asset ownership is no longer viewed as an experimental project but as a proven model of rural regeneration. Increasingly, asset-based community ownership is being recognised by the Scottish Government as one of the most effective means of strengthening communities and making them more resilient, prosperous and sustainable ... It is our experience that to fully empower a community through an asset-based approach to community development, the community must control the asset, being both responsible and accountable for it.

Highlands and Islands Enterprise, Submission to LRRG, January 2013.

So far, community ownership has largely been seen in terms of the buy-out of large estates in the North-West Highlands and Islands. The success of these Community Land Trusts is clear and the return on public investment is unarguable ... However, there are also many other recent examples of smaller-scale community purchases of land and land-based assets ... The common factor in the huge majority of these instances of community ownership is that they have been

* These submissions have not been published. However, many are available, with their authors' permission, on Andy Wightman's Land Matters website at http://www.andywightman.com/?page_id=2024. Submissions quoted in this paper are from this source.

resounding successes. The communities involved have been energised and activated by the experience of ownership, and have proved themselves to be capable of managing their land and land-based assets with confidence, creativity and initiative. Certainly, we have heard of none who would ever consider selling back into private ownership.

Scottish Council for Voluntary Organisations (SCVO), Submission to LRRG, January 2013.

- 7.2. It needs acknowledging that community landowners and community woodland groups can access some of the grants and tax advantages available (as outlined earlier) to privately-owned estates. There is, however, a crucial difference between the community sector's position and that of private landowners. Grants and other benefits accruing to community land trusts remain public resources that are put to public use at community level – the communities in question often utilising those resources to combat disadvantage. As already indicated, the grants and tax advantages available so extensively to private estates serve both to support individual (not community and public) wealth and to sustain an ownership pattern which constrains the possibility of more people having an economic stake in the land.
- 7.3. Despite this, there has been criticism, including criticism from private landowning interests, of public spending on community land purchases. Calculating the extent of such spending is difficult because any such calculation would ideally involve a disaggregation of taxpayer-derived cash (of the type provided by organisations like Highlands and Islands Enterprise) from National Lottery funding of the sort invested in community land acquisitions by the (original) Scottish Land Fund and the Growing Community Assets programme. When, in 2012, with the help of HIE staff, one of the contributors to this paper set out to establish the total cost, over twenty years, of bringing the better part of 500,000 acres into community ownership, this cost (when both Lottery funding and public funding are lumped together) was reckoned to be in the order of £30 million.* That is no negligible sum. But neither is it indefensibly large when compared with public funding transfers to privately owned estates – that £30 million being equivalent to spending on UK agricultural subsidies (of which private landowners, to repeat, are major beneficiaries) every three days.
- 7.4. Investment in community land acquisition, moreover, has enabled communities to secure their socio-economic betterment in ways that would have been impossible had the land around them remained in private ownership. When, in 2006, the South Uist Estate, for many years a loss-making sporting property, was acquired by its residents, its purchase price was £4.6 million. Six years later, in 2012, the estate had a fixed asset value just short of £24 million. This is because community ownership has resulted in ventures like a community-owned wind farm costing some £11 million. The bulk of that sum – £8.5 million – owes nothing to the taxpayer but to bank borrowings. Even allowing for repayment of these borrowings, the wind farm in question is expected to provide the South Uist community with revenues of at least £800,000 annually. From the perspective of an island community that has long been characterised by depopulation and disadvantage, the availability (thanks to community ownership) of locally controlled finance on such a scale – finance which will result in further diversification of the South Uist economy – is truly transformational.

* James Hunter, *From the Low Tide of the Sea to the Highest Mountain Tops: Community Ownership of Land in the Highlands and Islands of Scotland*, (Islands Book Trust), Isle of Lewis, 2012, pp 175-77.

8 Further potential reforms: Community Ownership

- 8.1. The Land Reform Act (LRA) of 2003 was promoted by a Labour/Liberal Democrat Scottish Executive (as the Scottish Government was then called). The Act had the backing of all parties (the Conservatives excepted) then represented in the Scottish Parliament. The LRA (often seen as the Scottish Parliament's single most important measure) thus sent out a strong signal that land reform, and in particular community ownership, has general political support.

The Land Reform (Scotland) Act 2003 was a bold and progressive piece of legislation of its time and it signalled a clear desire by Scotland's (then new) Parliament to encourage and facilitate change in land ownership patterns, building from the work of the Land Reform Policy Group established in 1997 by the UK government. The fact that such legislation exists and communities are given rights and routes to potential community ownership of land is of itself a very important signal to communities to know that their actions in seeking to purchase land have, as a matter of clear principle, the endorsement of the Scottish Parliament.

Community Land Scotland, Submission to LRRG, January 2013.

- 8.2. However, the LRA is now thought widely to be deficient in a number of key respects – the Scottish Government's LRRG having accordingly received numerous suggestions as to how the Act might be revised and strengthened. These suggestions include the perceived need to:

- Enable prospective purchase communities to define their boundaries rather than have boundaries defined with reference to postcode areas as laid down by the 2003 Act;
- Extend the range of community bodies considered fit to undertake land purchase – thereby eliminating the 2003 Act's insistence that (even in circumstances where arguably appropriate organisations already exist) communities considering land purchase must create new bodies which might, for many years, do no more than register and re-register an interest in acquiring land;
- Simplify drastically the time-consuming and complex mapping and other tasks that the 2003 Act requires in connection with the registration process;
- Extend to urban communities the community right to buy opportunities presently limited to rural communities (defined as localities with populations of less than 10,000).

A recurring theme in the literature on the community right to buy relates to the time-consuming and complex nature of implementing the [RtB] provisions in practice ... Comments about the 'unbelievable amount of work' involved in an application ... were not uncommon.

Post-Legislative Scrutiny of the Land Reform (Scotland) Act 2003, *Final Report*, September 2010.

- 8.3. Beyond this, there is widespread consensus among community groups and interested public agencies that community right to buy procedures be reformed more fundamentally to:

- Make it easier for communities to acquire land here and now rather than at some indeterminate point in the future – in part by replacing the heavily legalistic,

complex and somewhat confrontational mechanisms of the 2003 Act with a new emphasis on negotiation and agreement.

8.4. In this context, Community Land Scotland (representing existing and aspiring community land ownership trusts) and others suggest:

- The formation of a Land Agency which could bring together the various support services available presently from HIE, Development Trusts Association Scotland (DTAS), the Scottish Government and other organisations with a view to facilitating negotiated transfers of land from its existing owners to appropriate community bodies.

8.5. Organisations advocating such an Agency are clear that, while negotiated transfers of land are to be welcomed and encouraged, this approach, if it is to be successful, will need to be accompanied by the creation of backstop powers to bring about a compulsory transfer of ownership in situations where such transfers are determined to be in the public interest.

8.6. This would be to extend to all communities rights akin to those that the LRA of 2003 confined to crofting communities. In these circumstances, the present legislative distinction between a crofting community right to buy (Part 3 of the LRA) and a wider community right to buy (Part 2 of the LRA) would cease to exist – all communities (including urban ones) having, post-reform, the same right to buy. Such a modification, when combined with other suggested improvements to the 2003 Act, would also deal with the sheer complexity of current crofting community right to buy provisions – which, as shown by the fact that a crofting community at Pairc in Lewis has been trying in vain to acquire an estate by means of those provisions for some ten years, are proving inoperable in practice.

Recent experience in community purchase has shown a willingness of owners to negotiate arrangements with communities, encouraged by a backdrop of a right to buy being available. It may not always be the case that a community may want to own a whole estate, and there are examples of the community and private interests coming to arrangements to work together to achieve mutual interests in ownership and management of land, such as in the case of North Harris ... While this negotiated approach is already advised and encouraged [by, e.g., the Scottish Government's Community Assets Branch and HIE] no specific powers or duties exist to assist any such process and such powers would be needed if this was to become a deliberate part of policy and future practice. Such an approach may appear more consensual, and less hostile than a straight power of an absolute right to buy ... provided always such an absolute power existed as a backstop.

Community Land Scotland, Submission to LRRG, January 2013.

Additional opportunities could be created, where negotiated acquisition (for instance) has failed, if communities ultimately had a mechanism to acquire within an appropriate legislative framework ... where it can be demonstrated that an asset is underused, neglected, or where the community would take forward a development that will provide significant community benefit. Such a process would be a measure of last resort where all other (preferable) mechanisms had been exhausted.

HIE, Submission to LRRG, January 2013.

The Community Right to Buy is effectively a community right to register an interest [in buying] ... Given the increasing expectations being placed on communities to lead regeneration processes, contribute to public service delivery, provide stewardship of heritage assets, etc., then the Land Reform Act needs to be strengthened so that communities can be proactive

around asset acquisition. Where there is a well defined case, which can be justified in terms of delivering public benefit, communities need additional rights to address those property owners whose reluctance to sell, or even engage, effectively blocks or undermines the delivery of community-led regeneration efforts ... The recent consultation around the Community Empowerment and Renewal Bill explored the area of Compulsory Purchase Orders, and specifically whether communities should have rights with regard to CPOs. Other potential solutions have been emerging ... and a thorough and effective assessment needs to be made of which mechanism (or combination of mechanisms) would most effectively deliver the desired outcomes.

DTAS, Submission to LRRG, January 2013.

Overall respondents were in favour of communities having the right to request a local authority to use compulsory purchase powers on their behalf. Many community organisations and individuals expressed strong feelings on the blighting effect of derelict buildings and land on surrounding communities.

Scottish Government, *Consultation on the Proposed Community Empowerment and Renewal Bill (CERB): An Analysis of Responses*, 2012.

Highland Council would welcome further discussions on how ... a form of compulsory purchase may be made available to communities that can demonstrate that their proposals will deliver significant additional benefits when compared to continued underuse or neglect on the part of the current owner.

Highland Council, Submission to LRRG, January 2013.

Community Land Scotland proposes that there should be new legal provisions to secure the ability for land to be taken into community ownership when that can be shown to be in the public interest, and is calculated to secure furthering the achievement of sustainable development, and this should not be limited to circumstances where there is a willing seller ... Absolute rights for community purchase of land should be available across Scotland. Within the context of the Highlands and Islands, where crofting exists, it appears increasingly anomalous that different rights apply to crofting communities than to other communities which face exactly similar economic, demographic and sustainability challenges.

Community Land Scotland, Submission to LRRG, January 2013.

8.7. With regard to possible compulsory powers, it should be noted that Scottish Ministers already have powers deriving from legislation still on the statute book, such as the already-mentioned Land Settlement (Scotland) Act 1919, to acquire land compulsorily for land reform purposes.

8.8. It should also be noted that Scottish Labour Party leader Johann Lamont recently committed the party both to extend community land purchase rights to all of Scotland, adding that, 'if it is in the public interest, communities will have the right to purchase land even when the landowner is not a willing seller'.

Last year I saw community ownership at first hand when I visited the Galson Estate Trust on the Isle of Lewis. You would be surprised and impressed by what community organisations like Galson are delivering: house building, developing renewables, reversing population decline and reinvigorating their area. Community ownership of assets is a powerful vehicle to tackle not just social injustice and inequality but it also delivers economic growth. It gives power to the people and allows them to transform their communities.

It was a Labour Executive that brought in the Land Reform Act. It has allowed remarkable progress to be made in the number of communities that now own their land. But despite that Scotland's land ownership patterns are significantly out of line with what is the norm in most of

Europe and much of the world ...If we want to have any real hope of changing the current patterns of land ownership in Scotland, then we have to be bold. We have to be radical ... Scottish Labour will commit to extend rights for community purchase of land and for those rights to be available across Scotland. If it is in the public interest, communities will have the right to purchase land, even when the landowner is not a willing seller.

Johann Lamont, Scottish Labour Party Conference, 20 April 2013.

9 Further potential reforms: A tenant farming right to buy

- 9.1. While community ownership is being encouraged widely (for reasons indicated above), its expansion has not so far impacted greatly on the wider land ownership pattern. This would remain the case even if, as the Scottish Government aims, the area in community ownership doubles over the remainder of the present decade.
- 9.2. A tenant farming absolute right to buy (ARtB), of the sort (as noted above) basic to land reform internationally, would have potentially a greater and more immediate impact in this regard. This impact would be Scotland-wide – affecting several thousand farms and affecting the Borders, for example, as much as, if not more than, the Highlands and Islands.
- 9.3. Although a tenant farming ARtB was canvassed widely in the run-up to the Agricultural Holdings (Scotland) Act 2003, the case for such a right was not, in the end, accepted by the then Scottish Executive which confined itself to enacting a pre-emptive right to buy (as described above) at point of sale. The SNP, then the principal opposition party in the Scottish Parliament, disagreed with this stance and was supportive of an ARtB being included in the 2003 legislation. However, in 2008, the year following the SNP coming to power at Holyrood, Richard Lochhead, the Scottish Government's Cabinet Secretary for Rural Affairs and the Environment, took a tenant farming ARtB off the table, as it were, on the implicit understanding that landowners, in the absence of what they portray as a threat to property rights, would show greater willingness to let land – especially to new entrants to farming.
- 9.4. There the matter rested until the formation of the Scottish Government's LRRG and the group's posing the question, in its Call for Evidence of October 2012, as to whether 'the position of tenant farmers' should be enhanced 'by giving them a right (similar to the right enjoyed by crofting tenants since 1976) to buy their farms'. A number of tenant farmers accordingly pursued this possibility with the LRRG – despite some of them clearly feeling, as the group acknowledged in its Interim Report of May 2013, that they were taking a risk by so doing.

Some [farm] tenants ... indicated that they were fearful of speaking at open meetings, or even of putting their concerns on paper, because of possible recriminations should their landlord hear they were expressing these views in public.

LRRG, Interim Report, May 2013.

- 9.5. In its Interim Report, the LRRG made clear that it would not address tenant farming concerns on the grounds that, 'this aspect of rural Scotland is clearly problematic and requires sensitive and expert attention'. Tenant farming interests were critical of this decision.

Tenants who ... [made submissions to] the LRRG were full of hope for desperately needed change. It was with utter dismay we read of the contents of the [group's] Interim Report. It takes a great deal of courage for tenant farmers to speak out and we felt angry and betrayed to say the least ... Some of us try to stand up to the bullying tactics of the land agents who demand unfair rent increases from us, but that [has] frightening repercussions. We never give up hope that change will come. However, I believe there are too many powerful people who do not want change to happen and sadly we are powerless against them.

A member of a tenant farming family (name and address supplied) communicating with James Hunter following the publication of the LRRG's *Interim Report* in May 2013.

9.6. Partly as a result of this criticism, the Scottish Government's Cabinet Secretary announced in June 2013 that he would constitute a further review to deal with Agricultural Holdings issues and that the review would have on its agenda an ARtB for tenant farmers. Details of Mr Lochhead's promised review will emerge in the course of the summer.

An absolute right to buy for Scotland's tenant farmers is back on the political agenda. On the first morning of the 2013 Royal Highland Show, Scottish Rural Affairs Cabinet Secretary Richard Lochhead dropped the bombshell that the imminent Agricultural Holdings Review would include discussion on an ARtB. Back in 2008, the Cabinet Secretary agreed to take ARtB off the table in return for a landowners' pledge to let more land. Since then there have been intermittent 'expressions of frustration' from Mr Lochhead that, despite this pledge, landowners had not kept their side of the bargain.

Scottish Farmer, 29 June 2013.

We must ... move forward to a land ownership model which allows free enterprise of individuals in line with public need ... Owner-occupation would clearly allow the tenants to put things right on their family farms for the betterment of life there for man, beast, the farm itself and the community beyond.

Cllr Tom Gray (SNP), Perthshire, for the Scottish Tenant Farmers Action Group (STAG), *Scottish Farmer*, 29 June 2013.

We are pleased that ... the way is now open for an open debate over land ownership and an absolute right to buy for tenant farmers. For the last decade ARtB has been the elephant in the room, an iconic but little understood goal whose mere mention drives landlords to man the barricades, it is now time to take a good look at the detail and implications of implementing ARtB. There is a general mood to create a more diverse land ownership structure in Scotland and there are many ways of bringing it about. Extending the tenants right to buy may be part of the equation. However, an informed debate over ARtB can only take place if we know what we are talking about and so it is imperative that the government commissions a survey of land ownership and land tenure throughout Scotland as soon as possible. The Cabinet Secretary's comments on ARtB have moved the goalposts.

Christopher Nicholson, Chairman, Scottish Tenant Farmers Association (STFA), News Release, 25 June 2013.

An STFA survey revealed that over 80 per cent of respondents believed rural communities would benefit from greater diversity of landownership and as a consequence greater investment by individuals. This is apparent in areas where estates have been broken up and sold, such as Panmure Estate in Angus or Rosehaugh Estate on the Black Isle, where many of the tenants were given the opportunity and have purchased their farms and none of whom would turn the clock and revert to being tenants. The effects of a lack of diversity of ownership are most strongly felt in isolated communities where almost all the land is under the control of a handful of landowners. This is most apparent in the Highlands and on many islands such as Arran, Bute and Islay. Frequently these communities suffer from a lack of inward investment and a stifling of

local private enterprise.

STFA, Submission to LRRG, January 2013.

- 9.7. When an estate containing farmland subject to secure, or 1991, tenancies is sold, the tenanted farmland in question is priced at a discount – because it cannot be got with vacant possession. A similar discount would be available to tenant farmers taking advantage of an absolute right to buy in that any independent valuation process (likely to be integral to right to buy procedures) would take close account of tenanted farmland market prices (which, to repeat, include just such discounts). But even allowing for this, most purchasing farmers would require considerable loan finance – the servicing costs of which would often be greater (perhaps a lot greater) than present annual rent payments.
- 9.8. When Irish tenant farmers were given an ARtB more than a hundred years ago, this problem was solved by the UK Government advancing the necessary funding – with the resulting advances being repayable over fifty or more years in order to keep annual repayment instalments below the level of previous rents. Because land prices in today's Scotland are much higher in real terms than in early twentieth-century Ireland, and in the light of current (and probable future) public expenditure constraints, no analogous arrangements are likely to be on offer to Scottish tenant farmers. There might, then, be a role here for the Land Agency suggested (above) in a community ownership context. The Agency might, for example, open negotiations with banks with a view to putting in place – perhaps with the help of some sort of Government-backed loan guarantee scheme – mortgage finance of a type that would permit repayment over a longer than normal period.
- 9.9. Some such approach would be all the more essential if an ARtB were to be made available to farmers holding land under limited partnership arrangements. Those arrangements were devised in the 1970s – by the industry also specialising in subsidy maximisation and tax liability minimisation of the sort already highlighted – as a means of enabling landowners to get round the security of tenure provisions of the Agricultural Holdings (Scotland) Act 1949.
- 9.10. Prior to the 1970s, let farmland was generally subject to a lease agreement between a landlord and an individual tenant. Then and subsequently, it became increasingly common for farmland to be let instead to a partnership constituted under the Limited Partnership Act 1909. In such a partnership the landlord (the limited partner) has a nominal financial stake. The farmer (the general partner) carries all of the risk, meets all the costs and (as well as being liable to have his or her business accounts inspected by the limited partner/landlord in a way that puts the farmer at a serious disadvantage in any rent negotiation) has no security of tenure – because, when the partnership is dissolved (usually at the landlord/partner's instigation) the tenancy (in the absence of the partnership to which the farm had been let) lapses automatically.
- 9.11. Although their numbers have been diminishing as partnerships are ended, there are still some 450 or 500 farmers in Scotland holding land under limited partnership arrangements. They are the most vulnerable group in Scottish agriculture and, while legislative steps have been taken by Scottish Governments to enhance their security, those steps have not always been successful. Farmers in this category have consequently lost control of farms (which, in some instances, their families had worked for generations) in often difficult and distressing circumstances.
- 9.12. Were such farmers to have a right to buy, their purchase costs would be higher (because the land they hold is not held securely) than those of 1991 tenants. And if

serious consideration is to be given to granting right to buy provisions to this group, such consideration would arguably have to be accompanied by immediately enacted legislation of a kind intended to ensure that the prospect of such a right to buy did not at once precipitate a wave of limited partnership terminations. There is precedent for such legislation in arrangements put in place – again to prevent a rash of evictions – in the run-up to the introduction of security of tenure for tenant farmers in Scotland in 1949.

10 Land reform: The human rights dimension

- 10.1. A key reason for the acknowledged and much criticised complexity of Part 3 of the 2003 Act (the section granting crofting communities an absolute right to buy) was the then Scottish Executive's nervousness about the possibility of challenges to the legislation on the grounds that it infringed Article 1 Protocol 1 (A1P1) of the European Convention on Human Rights (ECHR) – which sets out rights to 'peaceful enjoyment' of property. Any such infringement would be in contravention of the Scotland Act 1998 (the measure creating, and governing the operations of, the Scottish Parliament) which lays down that a Scottish Parliamentary Act is not lawful if it infringes ECHR provisions.
- 10.2. But when in a recent case a challenge to the LRA's Part 3 was mounted on ECHR grounds, this challenge foundered on a Court of Session ruling that the absolute right to buy provisions of Part 3 of the 2003 Act are compatible with A1P1. This makes the point that it is perfectly possible in principle to have both community and tenant farming absolute rights to buy that are compliant with ECHR A1P1.

Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided by law and by the general principles of international law. The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or general penalties.
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Article 1 Protocol 1 (A1P1) of the European Convention of Human Rights.

I conclude therefore that when Ministers decide where the overall public interest lies, the central consideration will be that of balancing the harm to the landowner against the benefit of the proposal to the wider public, most notably in relation to strengthening the crofting economy. When they make that decision, the weight to be given to the landowner's interests is pre-eminently a matter for them. On that point, the landowner's entitlement to compensation may be a material consideration. A1P1 requires only that any assessment of the public interest should not be manifestly unreasonable.

<i>Court of Session, Opinion of the Lord President [Lord Gill] in the cause of Pairc Crofters Ltd and Pairc Renewables Ltd against the Scottish Ministers, 19 December 2012.</i>
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- 10.3. Since ECHR-related matters, and indeed the Scotland Act 1998, are firmly within the jurisdiction of the UK Parliament, SAC may wish to engage with issues of the sort raised immediately above.
- 10.4. SAC may also wish to inform itself of wider aspects of the human rights dimension to land reform. In this connection, it should be noted that, at a recent Community Land Scotland conference, Professor Alan Miller, chair of the Scottish Human Rights Commission, having first stated that the UK's ECHR obligations should in no way be seen as an obstacle to land reform, went on to say that the further body of human

rights conventions and declarations to which the UK is signatory can be interpreted as providing reasons for (not against) additional reform.

- 10.5. Those conventions and declarations cover economic and social rights – such as a right to an adequate standard of living and a right to adequate food, housing, water and sanitation. States that are signatories (as the UK is) to these conventions and declarations have an obligation to take deliberate, concrete and targeted steps – utilising resources such as land – to achieve progressively the full realisation of the rights guaranteed by the declarations and conventions in question.
- 10.6. The SAC may wish to consider whether the concentration of ownership of land in Scotland – because of the obstacles such concentration puts in the way of community and tenant farming aspirations to bring about housing and other improvements by way of acquiring land ownership – is consistent with human rights obligations deriving from the full range of international agreements to which the UK government is a signatory.

11 Further potential reforms: Land in public ownership

- 11.1. Policies designed to encourage and facilitate the transfer/sale to communities of land and other assets in the ownership of government, its agencies and local authorities have been taking shape at both a Scottish and UK level for some time. One of the earliest such measures, the Transfer of Crofting Estates (Scotland) Act 1997, makes possible (as indicated earlier) community ownership of croft land presently owned by Government. The Forestry Commission Scotland (FCS) National Forest Land Scheme (NFLS), dating from 2005, is similarly intended to enable communities to take charge of state-owned land, and has led to a number of such transfers – some of them involving substantial areas. Further such moves, this time with an urban as well as rural focus, are integral to the thinking behind the Community Empowerment and Renewal Bill (CERB) now in development by the Scottish Government.

We propose a Community Empowerment and Renewal Bill, which will make it easier for communities to take over underused or unused public sector assets, and include measures to enable communities to deal more effectively with derelict or unused property in their area. This will act as a catalyst for a wide range of community activities and enterprises.

SNP Scottish Parliamentary Election Manifesto, 2011.
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The National Forest Land Scheme gives community organisations, recognised non-governmental organisations (NGOs), and/or appropriate housing bodies the opportunity to buy or lease National Forest Land where they can provide increased public benefits.

FCS website.

In its initial design, the NFLS adopted many criteria from the community right to buy provisions contained in Part 2 of the Land Reform (Scotland) Act 2003. However, applications are assessed by an independent evaluation panel, which makes recommendations to the Director of FCS. Following Director approval, applicants have 18 months to complete the sale (or lease), rather than the six months given under the community right to buy legislation. In addition, the discretionary nature of the scheme has allowed for its considerable evolution. Eligibility criteria and the application processes have been refined in the light of experience, additional options for purchase have been created and a leasing option introduced ... A number of external
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factors have conspired to limit the effectiveness of NFLS ... However, the scheme continues to receive applications and, in relation to the number of proposals approved to date [35] “has been responsible [as stated by a 2012 review] for more successful community acquisitions than the much more vaunted Community Right to Buy.

Community Ownership Support Service, *Community Ownership in Scotland: A Baseline Study*, September 2012.

11.2. Despite this growing emphasis on the importance of getting publicly-owned land/assets into community hands, there is, on the part of groups and organisations with an interest in acquiring such land/assets, widespread feeling to the effect that the arrangements presently governing such transfers are not working well and need to be reformed. As well as repeated statements to this effect, submissions to LRRG contain detailed suggestions as to how asset transfer procedures can be improved. Among such suggestions are calls for:

- The Scottish and UK Governments to be clear that they favour public land/asset transfers to communities and that relevant departments and agencies are accordingly expected to facilitate such transfers;
- The development of integrated asset disposal strategies (along the lines of NFLS) by Government departments, public agencies and local authorities – these strategies to be accompanied and underpinned by the creation of an online Register showing such land/assets are available for disposal;
- An urgent revision (with a view to making land/asset transfers easier and speedier) of the mechanisms used to determine the value of public assets.

11.3. The current difficulties in the way of public asset transfers were well illustrated in the disposal of Government-owned estates in Harris to the West Harris Trust. This was made possible by the Transfer of Crofting Estates (Scotland) Act 1997. Although the Act’s original promoter, the then Secretary of State for Scotland, Michael (now Lord) Forsyth, wanted such transfers to take place at nominal – or zero – cost, there was Scottish Government insistence on transfer at market value and equal insistence (as explained in the West Harris Trust’s submission to LRRG) on a series of further conditions and restrictions. As a result, it took three years for the transfer to go through.

[The Bill] gives the Secretary of State the right to transfer the land, with the consent of the Treasury, on such terms as may be agreed with the [trust] body concerned. There is a need for flexibility to strike the right balance in individual cases between the interests of the local crofters and those of the taxpayer. Each application will be looked at on its merits but my right honourable friend [Michael Forsyth] has made it clear that the Government are prepared to consider transfer at no consideration where this is necessary to make sure that the trust gets off to a good start.

Scottish Office Minister Lord Jamie Lindsay, introducing the Transfer of Crofting Estates Bill: *Hansard*, House of Lords, 12 November 1996.

It is difficult to overstate the difficulty [the West Harris Trust experienced] ... It caused a lot of stress and anger to the steering group and resulted in far too much effort being spent on purchasing the land when it should have been spent on developing plans and putting these into action. In the view of the West Harris Trust, there needs to be a major change to the system so that it facilitates rather than hinders the process of transfer to community ownership. It is not an overstatement to say that we could not recommend to another community that they seek to take over their land from Scottish Ministers under the current system.

West Harris Trust, Submission to LRRG, January 2013.

It is our experience that public bodies find it very difficult to transfer assets at below market value. The Scottish Public Finance Manual does enable such transfers, but the procedures involved are complex and it rarely happens in practice. A further factor that requires consideration is that some funders have taken the policy view that they will not support the purchase of public assets at full market value. The combined effect is that it is particularly challenging for communities to acquire public assets, many of which are completely surplus to the requirements (and exceeding the budget provision) of the public body concerned. As an example ... it proved more difficult to support a community in Harris to acquire a crofting estate held in public ownership than a larger and more valuable crofting estate from an absentee landowner in Lewis. Furthermore, the amount of officers' time (Government and agency) spent on the Harris project was considerable and, it could be argued, disproportionate to the value of the asset to be acquired.

HIE, Submission to CERB Consultation, September 2012.

- 11.4. At the heart of these difficulties are matters relating to the interpretation and implementation of the Scottish Public Finance Manual (SPFM). Should SAC wish to inform itself further about constraints on public asset transfer and sale in Scotland, the Committee will find a good starting point in a paper, 'The Transfer of Government Assets to Communities', appended to Community Land Scotland's submission to LRRG. This paper draws heavily on a report prepared for Community Land Scotland by John Aldridge, formerly Head of Finance at the Scottish Executive.

The SPFM states that, in order to achieve value for money, any public sector assets that are surplus to requirements should be disposed of as soon as possible, and should normally be offered for sale on the open market. However, this presumption can be overturned.

First, all potential disposals are required to be trawled round the rest of the public sector in Scotland to see if they can be used elsewhere. If so, the asset may be transferred to the other public sector body at the price determined by the District Valuer or other professional valuer without exposing the potential sale to the open market.

Second, it is allowable for an asset to be transferred elsewhere at less than market value. But in such circumstances the disposal should be treated as a gift, requiring the explicit approval of the Accountable Officer (and of Ministers if the value is significant), and must be reported explicitly in the disposing body's accounts, thus bringing it to the attention of Audit Scotland and the Parliament's Audit Committee ...

So, in strict terms of the rules, discretion does exist to dispose of land and associated assets *outwith* the open market *and* at less than open market value. However, simply extending knowledge and a clear understanding of this within the system, while helpful, is unlikely of itself to change the current impasse, as the real problem is much more rooted in practical features of the way the governance rules operate, than in principle. A number of matters come into play and, even where [Government and agency] officials are fully aware of their potential discretion, they act against that discretion being exercised.

Community Land Scotland, Submission to LRRG, January 2013: Appendix 1: The Transfer of Government Assets to Communities. (The italicised section is from John Aldridge's report to CLS.)

- 11.5. A further matter requiring urgent attention in a public asset transfer context is the operation of EU State Aid rules. In relation to getting more public land into community hands, significant difficulties have resulted, and are resulting, from the way such rules are interpreted. Those difficulties are impacting adversely on the operation of the Scottish Land Fund and, as illustrated by experience of the Aigas Community Forest

group, they are making it practically impossible for communities to acquire forest land under NFLS provisions.

In August 2012 Aigas Community Forest [looking to acquire an area of FCS forest near Beaulieu under NFLS provisions] were given very encouraging information about the likelihood of success if they were to apply to the Scottish Land Fund (SLF) and also a suggestion of how much they should ask for. Everything was very positive. However, within a few weeks of that meeting HIE started to sound warnings about EU State Aid regulations. These rules are designed to prevent member states providing grants to companies and organisations which would then have a commercial advantage as a result ... It transpires that the Scottish Government have become 'nervous' about providing grants in the forestry and agriculture sector which may contravene State Aid regulations and so HIE have now confirmed that a grant to Aigas Community Forest would be subject to State Aid limits. This means that an application to SLF right now would only get a maximum of 20 per cent of the purchase price ... This is a non-starter.

Aigas Community Forest, Submission to LRRG, January 2013.

- 11.6. How State Aid rules are interpreted in relation to community land purchase in Scotland is a matter for which the UK Government, representing the United Kingdom in its role as an EU member state, is answerable to the European Commission. Being aware that they cannot interpret State Aid rules in ways that might lead to the UK Government facing infraction proceedings, Scottish Ministers may have become excessively cautious with regard to State Aid regulations and their implementation.
- 11.7. However that may be, the State Aid issue has become a real negative in a community ownership context and – because of the increasingly insurmountable barrier it is placing in the way of community acquisition of forest land in particular – is seriously obstructing progress towards the attainment of the Scottish Government's objective of having 500,000 more acres in community ownership by 2020.
- 11.8. The SAC could usefully inquire as to whether State Aid requirements are interpreted consistently across the UK. The SAC might also look into the extent to which restrictive interpretations of State Aid rules in Scotland – given that they are getting in the way of legitimate public policy with regard to community and economic development – are necessary from an EU Commission perspective. As the Big Lottery has observed, it is hard to believe that EU State Aid regulations were meant to stifle the sort of entrepreneurial effort that community ownership of land has so successfully released and encouraged.

Time and again the evaluations [conducted for BIG] have pointed up how important it is for community-owned assets – whatever form they take – to be sustainable, especially financially. Consequently, in order to achieve sustainability, many assets need to generate income, sometimes by carrying out very low-key, small-scale, limited and localised 'trading' in goods and services. BIG does not believe that the State Aid regulations were put in place to stifle the small-scale community 'enterprises' that many community ownership projects so badly need to help them be empowered, and to renew themselves and their local areas.

Big Lottery, Submission to LRRG.

- 11.9. Expediting FCS forest transfers to communities is all the more important in a land reform context because of the extent to which forest and woodland ownership in Scotland reflects the wider concentration of ownership. In light of Scotland's forest ownership pattern – which, like ownership more generally, is wholly at odds with the position in continental Europe – there is arguably an urgent need for ownership diversification in the forestry sector. This might be assisted by creating more (especially smaller scale) opportunities for the acquisition of FCS land by individuals (perhaps in the

shape of the 'forest crofts' to which the Scottish Government is committed but which have been slow to appear) as well as by communities.

Preliminary research using sample areas of Scotland reveals that, leaving aside the one third of Scotland's forest which is owned by Scottish Ministers and managed by the Forestry Commission:

- 91 per cent of the rest is owned either by landed estates or by investment owners;
- 55 per cent is owned by absentees;
- 32 per cent of the private owners live outside Scotland.

Scotland's forest resource is thus dominated by the state, landed estates and forestry investors. The big contrast with other European countries is the insignificant proportion owned here by individual resident owners, farmers, co-operatives, and municipalities. Of 19 European countries in a position to provide statistics, Scotland has by far the most concentrated pattern of private forest ownership, occupying the extreme end of the spectrum of forest landholding size classes, with large holdings dominating the picture, and by far the lowest proportion of the population involved in owning forests.

Andy Wightman, *Forest Ownership in Scotland: A Scoping Study*, Forest Policy Group, 2012.

12 Further potential reforms: The Crown Estate Commission

- 12.1. Just as there is community interest in acquiring FCS land, so there is community interest in acquiring the foreshore and seabed resources currently managed by the Crown Estate Commission (CEC). The SAC has already inquired into CEC operations in Scotland. The Committee might wish to return, in a land reform context, to its recommendation that CEC 'responsibilities for the seabed [and] the seashore' should be devolved to Scotland on condition that these responsibilities are then 'decentralised as far as possible'. Existing and prospective community land trusts are keen to take on such responsibilities with a view to capitalising on the developmental opportunities this would open up.

The evidence [presented to SAC] identified major issues over the CEC's management of its responsibilities, particularly in relation to the seabed and the foreshore: including the lack of accountability, the lack of communication and consultation with local communities, the inappropriateness of the CEC's statutory remit for its responsibilities in the marine environment, the cash leakage from local economies and other adverse impacts arising from the way the CEC operates, together with the limited benefits in Scotland from the CEC's involvements ...

We conclude that the only way in which to address these fundamental issues is that the CEC's responsibilities for the administration and revenues of the ancient Crown property, rights and interests in Scotland be ended. However, centralising these responsibilities in Edinburgh would be insufficient and would not address the fundamental problems identified.

The CEC's responsibilities for the seabed, the foreshore and other ancient rights in Scotland should therefore be devolved then decentralised as far as possible. Devolution to Holyrood should be conditional upon an agreement between the Secretary of State for Scotland and the Scottish Government on how such a scheme of subsidiarity to local authority and local community levels should be implemented.

Scottish Affairs Committee, *The Crown Estate in Scotland*, March 2012.

It would be difficult to consider the issue of advancing sustainable development through more community ownership of land and associated assets without also referring to the importance of the marine resource in Scotland, and of its vital strategic significance to many coastal communities. The Crown Estate manage much of Scotland's foreshore and seabed on behalf of the UK. They have been subject to considerable criticism in reports of the local authorities in the Highlands and Islands, the Scotland Bill Committees of the Scottish Parliament, and the Treasury and Scottish Affairs Committees of the House of Commons ...

At its most simple Community Land Scotland wants to see significantly more openness and transparency in the dealings of the Crown Estate at the local level and so that communities can be aware of possible leasing and other options and arrangements which may have a material bearing on the interests of the community. Further we want to see all fore-shore and a zone of seabed adjacent to community owned land being transferred to community owners, in order to contribute to the ability of those communities to secure a sustainable future.

Community Land Scotland, Submission to LRRG, January 2013.

- 12.2. So far, there has been little progress towards securing the devolution and decentralisation of Crown Estate Commission functions recommended by the SAC in March 2012. The Committee might wish to touch again on CEC matters in a land reform context – perhaps with a view to endorsing the agreed position of five local authorities with a particular interest in foreshore and seabed rights. These are Argyll and Bute Council, Highland Council, Comhairle nan Eilean Siar, Orkney Islands Council and Shetland Islands Council. Their joint view is that responsibility for the foreshore and seabed be devolved first to Scotland and next (and immediately) to local authorities which, in turn, would transfer responsibility to harbour trusts, community-owned estates and similar local bodies.

13 Succession

- 13.1. Because of succession operating in ways that result in land being transferred to single heirs rather than being distributed more widely among successive generations of landowning families, succession law as it has operated in Scotland for several centuries has contributed significantly to ownership concentration. The various attempts made over the years by the Scottish Law Commission and others to extend succession rights over landed property to all the children of the owners of such property have not, to date, been successful.

14 The Common Weal and Land Value Tax

- 14.1. The Common Weal initiative, launched by the Jimmy Reid Foundation in May 2013, has attracted interest from across the political spectrum as well as from significant segments of Scottish civic society – including business people like Jim Mather, trades unions and the Church of Scotland. As is implicit in its use of the old Scots term, 'the common weal', the initiative aims to encourage debate as to how Scotland – irrespective of the outcome of next year's independence referendum – might develop a more cohesive and more equitable society, perhaps along Scandinavian lines.

For 30 years public policy in the UK and in Scotland (though to a lesser extent) has been based on one fundamental principle: that markets should drive economic and social development, that conflict and competition are the primary drivers for that development and that the role of the state is to protect those markets and ameliorate the impact of their failings. Concepts such as that society should guide economic and social development, that development should be driven by mutuality and that the role of the state is to express the democratic will of citizens in guiding that development has been driven out of UK politics.

The current debate about Scotland's future has opened up a window to economic and social models outside the UK. There is much that we can learn from them. Many aspects of the Nordic countries, many aspects of economies such as those of Germanic countries, aspects of the large-scale cooperative model in many parts of Europe and other lessons from abroad are now informing Scottish debate. What we see in all these cases is that economic performance and social outcomes greatly outstrip the UK. There has [consequently] been much talk about how to achieve a 'more Nordic' Scotland...

While there are different forms of tax across the Nordic nations with different balances between labour, corporation and consumption taxes, the consistent pattern is that they take a larger proportion of their GDP in tax. This both enables stronger public services and (through the redistributive effect of taxes) much greater social and economic equality. However, this is combined with higher pay and much less prevalence of low-skill, low-pay work, which means that even with higher taxes, people have higher take home pay.

Scotland has much higher levels of inequality than the Nordic countries. To make progress there needs to be a process of increasing overall tax take – the alternative is major and permanent cuts to public services and the welfare state. This can be done gradually, targeting wealth inequality as a starting point. However, in tandem with this it is important to pursue strategies to increase pay and to structurally reform the economy so it is much less dominated by low-skill, low-pay work.

The Jimmy Reid Foundation, *The Common Weal: A Model for Economic and Social Development in Scotland*, May 2013.

- 14.2. Any move towards reorganising Scotland's economy and society on a more Nordic basis would necessarily involve land reform – all Scandinavian countries (as touched on earlier in the case of Denmark) having long ago taken steps to eliminate, and prohibit the re-emergence of, highly concentrated land ownership patterns of the sort that survive (unaccountably from a Nordic perspective) in Scotland.
- 14.3. According to land economist Professor John Bryden – who, between 1997 and 1999, was External Adviser to the Scottish Office's Land Reform Policy Group (above) and who now lives in Oslo – Scandinavian experience suggests that any land reform programme for Scotland, however the country is organised constitutionally, must involve, not just the elimination of the various taxbreaks (above) which landowners now enjoy, but a restructuring of Scotland's entire approach to local taxation. This would be achieved by replacing both the council tax and business rates with a Land Value Tax (LVT).

Scotland badly needs a redistribution of property if it is to build the kind of social democracy, and more equal society, that Norway has ... This is essential for the kinds of policy reforms that I – and I think many others – believe Scotland needs, whether as an independent nation within the EU, or whether under 'devo-max' or a federated structure of some kind. We cannot evolve distinctive, just, and fair policies under present UK political conditions, which are deeply affected by the structures of inequality of wealth, income and opportunity that those same political conditions have created.

Radical land reform in Scotland has to be started mainly through an indirect approach, through land taxation and other measures that progressively limit the land market in ways that inhibit speculation and investment in land as a store of (great) wealth, and encourage ownership by individuals who work the land with their families, and by communities working together.

In a more autonomous Scotland, there would be a battery of possible measures to achieve this ... First among these, and by far the most important, is Land Value Taxation which should be collected and used by local authorities ... This would scare off the speculators and lower the price of land, which will be a good thing for nearly everyone in Scotland ... If land taxation were augmented by local income tax, using the Norwegian system whereby local authorities are responsible for collecting it and retain an agreed share before sending the balance to higher levels, there would be no need for a Scottish central government to subsidize local government in general, although there would be a need for a Nordic-style fiscal equalization scheme.

John Bryden, 'Scottish Land Reform: A Comment', May 2013, available at <http://www.andyweightman.com/?p=2662>.

- 14.4. The costs and benefits of introducing LVT at the UK level were examined recently by the Mirrlees Review organised by the Institute of Fiscal Studies (IFS) with the aim of enabling, as the IFS put it, 'a high-profile group of international experts ... to identify the characteristics of a good tax system for any open developed economy in the twenty-first century'. The review (headed by Professor Sir James Mirrlees who is Emeritus Professor of Political Economy at the University of Cambridge and a member of First Minister Alex Salmond's Council of Economic Advisers) concluded that 'the economic case for a land value tax is simple and almost undeniable'.

Most taxes nowadays are levied on flows of income and of expenditure. But land and property have been taxed for centuries—certainly for longer than income—and they continue to form an important part of the tax base in most advanced economies. There are good economic reasons for this. The supply of property, and especially land, is not very responsive to its price, which means that it can be taxed without significantly distorting people's behaviour. The ownership of land is also generally visible and easily established, which makes it relatively straightforward to identify who should be paying the tax. The fact that land and property have identifiable and unchangeable geographic locations also makes them natural tax bases for the financing of local government. But deciding exactly *how* to tax land and property is particularly complex ...

The economic case for taxing land itself is very strong and there is a long history of arguments in favour of it. Taxing land ownership is equivalent to taxing an economic rent—to do so does not discourage any desirable activity. Land is not a produced input; its supply is fixed and cannot be affected by the introduction of a tax. With the same amount of land available, people would not be willing to pay any more for it than before, so (the present value of) a land value tax (LVT) would be reflected one-for-one in a lower price of land: the classic example of *tax capitalization*. Owners of land on the day such a tax is announced would suffer a windfall loss as the value of their asset was reduced. But this windfall loss is the only effect of the tax: the incentive to buy, develop, or use land would not change. Economic activity that was previously worthwhile remains worthwhile. Moreover, a tax on land value would also capture the benefits accruing to landowners from external developments rather than their own efforts ...

The economic case for a land value tax is simple, and almost undeniable. Why, then, do we not have one already? Why, indeed, is the possibility of such a tax barely part of the mainstream political debate, with proponents considered marginal and unconventional? One issue, no doubt, is the simple lack of political attractiveness. If a land tax is seen as a new and additional tax, then it is likely to be about as popular as any other new tax. So it should be seen as an

alternative to other existing property taxes, not as a way to raise additional revenue ...

A recent review of US evidence suggests that successfully implementing and administering a land value tax is feasible. We are not in a position to make such a judgement for the UK, but we propose that government should study the feasibility of such a tax ...

Institute of Fiscal Studies and James Mirrlees, *Tax by Design: The Mirrlees Review*, (Oxford University Press), Oxford, 2 vols, 2011, Vol II, pp 368-75.

14.5. One contributor to this paper has made a study of the implications of replacing council tax and business rates in Scotland with a Land Value Tax.* Those implications are not rehearsed here. However, it is suggested that SAC, in the course of its enquiry into land ownership in Scotland, should look at the possibility of such a move. This is because it is at the point where debate about land reform engages with LVT, that such debate begins to impact on one of the most urgent of all the socio-economic problems confronting modern Scotland – the need to find new ways of helping young people to get over the increasing difficulties in the way of their finding affordable homes.

Citizens Advice Scotland's latest report, *Being Young Being Heard*, outlines the impact of the recession on young people in Scotland in their own words. Key findings include:

- A growing number of young people are living with their family as the effects of the recession take hold;
- A collapse in mortgage lending, high house prices and competition with the buy-to-rent sector, ensure that first time buyers are priced out of owner-occupier housing;
- Priced out of owner-occupier housing, and unable to access social housing, many are only able to access private rented housing;
- Almost a third of homeless applications made in Scotland are made by single people under the age of 25.

Citizens Advice Scotland, *Being Young Being Heard*, February 2011.

14.6. Land reform is often thought – quite wrongly – to have to do only with rural (even remote rural) communities and other rural interest groups such as tenant farmers. This is not the case. Land reform needs to move central stage politically in Scotland because of its potential to make things better for people much more generally. And it is in this context that Land Value Tax has to be central to any meaningful Scottish land reform agenda. As recognised by the Co-operative Party, the Scottish Green Party (both committed to LVT) and a growing number of individuals within other parties, as well as by independent research bodies such as the Joseph Rowntree Foundation, a Land Value Tax, quite apart from its other attractions, would contribute greatly to making housing both cheaper and more available.

Volatility has plagued the UK housing market for four decades. The JRF Housing Market Taskforce identified ways to create a more sustainable housing market. This paper ... highlights key priorities ... [First] Government should conduct a revaluation of property for Council Tax purposes with a view to gradually transforming it into a national land and property value tax, following full modelling to identify difficulties and to inform its design.

Joseph Rowntree Foundation, *Tackling Housing Volatility in the UK: A Progress Report*, September 2012.

The Scottish Green Party's plans to replace Council Tax and Business Rates with a Land Value

* A Land Value Tax for Scotland: A Report Prepared by Andy Wightman for Green MSPs in the Scottish Parliament. Available at <http://www.andywightman.com/docs/LVTREPORT.pdf>

Tax has a key role to play in creating a sustainable economy. At present development is characterised by a cycle of boom and bust as property speculators play the market to maximise profits. A tax on land values would reduce the speculative holding of land. The owners of disused land and properties would face a levy giving incentives to the productive economic use of land, where local communities require it and where it's consistent with planning rules. A Land Value Tax would help to reduce the cost of housing and business premises, and would also recoup a share of land value increases which arise from public investment. Land Value Tax would be fairer, more environmentally friendly, and would benefit the economy. Many small businesses in particular would benefit.

Scottish Green Party, Manifesto for the Scottish Parliamentary Election, 2011.

15 A Land Reform Agenda for Scotland

- 15.1. The case for what he calls 'further and radical' land reform has been well made by David Cameron, the Harris businessman who chairs Community Land Scotland, in a recent article (below).

In any economy the use of land sits at the heart of its potential success. Who owns that land is central to how that land is used. In Scotland that places key decision making about social and economic development in the hands of very few people indeed. Scotland stands out within Europe as having the most anachronistic and concentrated land ownership patterns.

Land is of course a finite and precious resource, and it needs to be made to provide for all our societal needs, for our homes, our food supply, our industrial space, our commercial and communal centres, our biodiversity, our recreation and leisure, and for our energy. It is land which is, literally, the foundation on which our opportunities and potential for success are built. We have some devices at our disposal to influence land use, principally through our democratically controlled planning system. But ultimately land use is inextricably linked to who owns the land and what their personal preferences and economic objectives are, and this, in Scotland, is for the most part well beyond the influence of society locally or at large. The imperative to change land ownership patterns, therefore, has a democratic, economic and social purpose.

Community-owned land is owned by the democratic will of the people expressed in a ballot. That land is providing the basis for social and economic progress in those communities, and the use of that land is the stimulus for wider economic reform and local progress. After securing their land, some communities have moved to take control of their local energy needs; some are contributing to their economic futures by generating power for export, with the revenues, in part, being used to create local investment funds to help support future economic growth. Most community owners are providing land for new housing, or renovating housing to modern standards, or developing new housing themselves. Many are building work and community spaces, retailing and producing food, planting and harvesting trees, investing in the renovation of key local infrastructure, creating new agricultural and forest tenancies, all as a basis for more locally determined social and economic progress. Given the ownership model, it is the wider community that shares in all the benefits created, as profit is reinvested for future and sustainable economic opportunities.

All this new activity sits within a wider experience in Scotland which has also seen people empowered and acting for improvement. People working together, to take control of housing, or the supply of key services, or running local facilities through, for example, housing associations, community co-ops and development trusts of various shapes and sizes. These enterprises control tangible assets of some scale and value. Communities managing such

enterprises, and those managing thousands of acres of land, are evidence that there are more accountable ways available to us right now of managing key assets that allow the development of economy and society

It would be a mistake, however, to think that somehow community ownership is only about mutual and co-operative thinking. Within the framework of community-owned land many new businesses are developing, where individuals are being offered new opportunity to contribute to the greater social and economic good through their own private investment, helping create further employment, but also income to the community owner that is then turned into mutual benefit.

The early success of community ownership is just one manifestation of the need for more land reform, to allow more communities, rural and urban, to fashion a new future. There are many other ways to widen access to land and provide for its better utilisation, to create the right incentives for local economic growth. Urgently-needed reforms to tenant farming, issues with succession, the maintenance and creation of more common land are among them.

David Cameron, *Land: Not Out of Our Hands*, July 2013. Available on the Community Land Scotland website at <http://83.223.124.6/~communi1/images/uploads/Land - Not out of our hands. DC July 2013 .pdf>.

- 15.2. We are wholly supportive of the land reform case advanced by Community Land Scotland's David Cameron. We therefore welcome, like that other David Cameron, the Prime Minister, the intention of the Scottish Affairs Committee (SAC) of the House of Commons to examine Scotland's land ownership structure. We trust that the Committee will go on to recommend far-reaching change in that structure.
- 15.3. We propose that SAC should:
- *Investigate the subsidy maximisation strategies made available to landed estate owners by the industry which has developed to supply such strategies.*
- 15.4. A young unemployed person (of whom there are some 60,000 in today's Scotland) receives from the taxpayer (by way of Job Seeker's Allowance) a weekly income of £56.80.
- 15.5. As is made clear in the Knight Frank sales particulars for the Auch and Invermearan Estate (near Bridge of Orchy in Argyll) the 28,000 acre estate's new owner (who may be neither a UK resident nor a UK taxpayer) can look forward to receiving from the taxpayer (by way of agricultural subsidy and recurrent forestry grants) a weekly income of £12,000 – leaving aside the further large, and again taxpayer-backed or electricity consumer-financed, income the owner will receive by way of the feed-in tariff payments generated by the estate's renewable energy ventures.
- 15.6. The ready access which estate ownership gives to the public purse is one of the reasons why such ownership – as shown by the highlighting of those figures in the Knight Frank sales particulars for Auch and Invermearan – appeals to the rich and super-rich. It is also one of the reasons why land prices (even in times of recession and austerity) are both extremely high and rising fast – the asking price for Auch and Invermearan being £11,400,000.
- 15.7. Perhaps it is perfectly proper that someone who can afford to pay this sort of sum for a Scottish estate should be getting from the taxpayer a weekly payment more than 200 times greater than that made available to a jobless youngster. Perhaps it is equally

proper that other estate owners, all across Scotland, get even more. But the issue merits, at the minimum, some enquiry.

15.8. Also meriting enquiry are the means by which the inequalities inherent in Scotland's land ownership pattern are perpetuated and reinforced by the wide range of methods deployed to enable owners of landed estates to minimise the amounts they contribute to the national exchequer on which they draw so heavily. We therefore propose that SAC should:

- *Investigate the tax minimisation devices made available to landed estate owners by the industry which has developed to create and constantly update such devices.*

15.9. The devices in question were listed and illustrated earlier in this paper. They include:

- Ownership concealment behind nominees;
- Vesting ownership in corporate and other entities registered in offshore tax havens;
- Vesting ownership in family trusts and in limited membership charitable trusts (where membership is often confined to an owner's family and the family's associates) in order to obtain a wide range of tax exemptions;
- The offsetting of estate management losses against other (non-landed) business interests;
- Ensuring through political and other lobbying that nothing is done to interfere with the plethora of Capital Gains Tax, Inheritance Tax and other tax exemptions and reliefs to which land and forest ownership give access;
- Equally ensuring that it remains perfectly legitimate for foreign nationals and overseas-based UK nationals to have unrestricted access, by means of landed estate ownership, to UK and EU public funds while not being liable for UK or EU taxes.

15.10. We propose that SAC investigation of subsidy maximisation and tax minimisation arrangements of the sort touched on here and elsewhere in this paper should constitute the backdrop to a comprehensive land reform strategy. We propose that such a strategy should include:

- *A series of measures (based on the findings of enquiry into the fiscal and subsidy regime outlined immediately above) intended to end the uniquely generous tax concessions and subsidy payments available to owners of landed estates.*

15.11. Those measures should be accompanied, or indeed preceded, by further reforms undertaken with the specific aim of diversifying land ownership – thus making ownership of land, together with the many developmental and other opportunities such ownership opens up, available to a far greater proportion of Scotland's people. Those reforms should include:

- *Making it a lot easier for communities to take ownership of land and other assets.*

15.12. The means by which this could be done were summarised earlier in this paper. They include:

- Revising the provisions of the Land Reform (Scotland) Act 2003 in order to streamline and simplify community land acquisition procedures;
- Extending community right to buy provisions to urban communities;
- Establishing a Land Agency to facilitate and encourage the spread of community ownership;

- Creating backstop powers to enable land to be acquired compulsorily by communities where this is judged to be in the public interest.
- 15.13. Land reform, however, should not begin and end with expanding community ownership. That is why we propose:
- *Granting tenant farmers an absolute right to buy their farms.*
- 15.14. This right should certainly be available to all tenant farmers with secure (so-called 1991) tenancies. However, we believe it should also be available to farmers with limited partnership tenancies – on the basis that these were and are no more than devices (of exactly the sort in which estate owners’ advisers have long specialised) to get round the security of tenure the UK Parliament intended to make available to all Scottish tenant farmers by means of the Agricultural Holdings (Scotland) Act 1949.
- 15.15. While there is a clear public interest case (arising from the land ownership inequalities this paper highlights) for extending absolute right to buy provisions (of the sort which individual tenant crofters have had since 1976 and crofting communities have had since 2003) to tenant farmers and to communities throughout Scotland, it will be necessary to make this case with reference to the full range of international human rights conventions and declarations to which the UK is signatory. We accordingly propose that:
- *Work be undertaken urgently to provide a full understanding of the human rights dimension of land reform and the ways in which this dimension reinforces the case for such reform.*
- 15.16. Much of the foregoing touches on reforms needed to broaden the range of people owning land that is presently in private ownership. However, it is equally essential, if Scotland’s land ownership system is to be properly diversified, to make it easier and more straightforward for communities and others (such as farming and non-farming families, groups or individuals wishing to engage with forestry and woodland) to acquire, where appropriate in the public interest, land presently in public ownership. We thus propose:
- *A series of measures intended to facilitate and make easier the transfer of land and other assets in public ownership to communities and others.*
- 15.17. Those measures should include:
- A requirement that the UK and Scottish Governments make clear their commitment to public land/asset transfers and that the two Governments instruct departments and agencies accordingly;
 - The creation of an online Register showing such public land/assets as are available for disposal;
 - Revision of the mechanisms used to determine the value of public land/assets.
- 15.18. In this connection SAC might usefully enquire into:
- Whether there are any requirements within UK Treasury rules that necessitate restrictive interpretations of the sort evident in the way the Scottish Public Finance Manual is interpreted by Scottish Government officials handling land/asset disposals.

15.19. In view of recommendations SAC has already made with regard to the Scottish foreshore and seabed resources managed by the Crown Estate Commission (CEC), we suggest that SAC return to this issue. This, we propose, would be with a view to endorsing our proposal that:

- *Responsibility for Scotland's foreshore and seabed be transferred from the CEC to Scotland's local authorities who will be required, in turn and where this is possible, to hand on that responsibility to harbour trusts, community-owned estates and other appropriate local bodies.*

15.20. Finally, by way of reinforcing the overall thrust of our suggested land reform programme, and with a view to securing the housing supply improvements and other socio-economic gains such a change would bring, we propose that:

- *Serious consideration be given to having a Land Value Tax as part of the overall taxation mix and to the merits of LVT replacing the council tax and business rates.*

Any question of change in land ownership is bound to be controversial and opposed by the vested interests in private ownership. That is a given, but is not a reason to shy away from the need for further and radical reform in the interests of the common weal.
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David Cameron, <i>Land: Not Out of Our Hands</i> , July 2013. Available on the Community Land Scotland website at http://83.223.124.6/~communi1/images/uploads/Land - _Not out of our hands. DC July 2013 .pdf .
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15.21. As is stressed by David Cameron of Community Land Scotland (above), proposals for radical land reform – even detailed Parliamentary enquiry into, and scrutiny of, the current ownership system – will be controversial and will be opposed by powerful interests. But this, as David Cameron states, is no reason for shying away from the topic. That is why, to repeat, we welcome the interest being taken in these matters by Ian Davidson MP and his Scottish Affairs Committee colleagues. We wish them well with their endeavours.