

# SPICe

The Information Centre

## SPICe Briefing Land Reform in Scotland

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Clockwise from top: Isle of Gigha (Scottish Government [2012a](#)); Integrated Landscape Buccleuch Estates (Scottish Land and Estates [2014a](#)); Lambhill Stables and Forth and Clyde Canal, Glasgow (Lambhill Stables [2015](#)).



The Scottish Parliament  
Pàrlamaid na h-Alba

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## EXECUTIVE SUMMARY

- Land is a finite, national resource, and the current pattern of ownership and use largely reflects historical forces and events of the second half of the nineteenth century, however opinions differ about the role that land ownership plays in the 'Scottish psyche'.
- Opinions also differ on whether ownership is the key determinant of how land is used.
- Land reform, and the role of human rights in land reform, has recently moved back up the policy agenda, and been defined in a Scottish context as "measures that modify or change the arrangements governing the possession and use of land in Scotland in the public interest".
- Before Scottish devolution key reforms sought to safeguard agricultural tenants.
- Post devolution, the Land Reform Policy Group published Recommendations for Action in 1999, and a series of legislation was enacted, including the Abolition of Feudal Tenure etc. (Scotland) Act 2000, the Land Reform (Scotland) Act 2003, and the Agricultural Holdings (Scotland) Act 2003.
- The 2003 Land Reform Act introduced a public right of responsible access to land, a Community Right to Buy rural land when it was put on the market, and a Crofting Community Right to Buy regardless of whether it was for sale. At present approximately 500,000 acres are in community ownership.
- Recent scrutiny of the 2003 Land Reform Act highlighted a range of problems with the Community Right to Buy and Crofting Community Right to Buy provisions, including concerns about administrative complexity and unwieldiness.
- In 2012 the Scottish Government established the Land Reform Review Group, who were asked to identify how land reform might: enable more people in rural and urban Scotland to have a stake in the ownership, governance, management and use of land; assist with the acquisition and management of land and assets by communities; and generate support, promote, and deliver new relationships between land, people, economy and environment in Scotland. The Group reported in 2014 with over 60 recommendations, noting that there was "no single measure, or 'silver bullet', which would modernise land ownership patterns in Scotland and deliver land reform measures which would better serve the public interest".
- Recent Scottish Government action includes asking the Registers of Scotland to complete the Land Register by 2024, setting a target of 1 million acres in community ownership by 2020, and introducing the Community Empowerment (Scotland) Bill (Stage 3 is imminent) which extends the Community Right to Buy to urban Scotland, amends and simplifies the 2003 Land Reform Act and introduces a right to buy "abandoned or neglected" land in certain circumstances without a willing seller.
- Following a Consultation on the Future of Land Reform in Scotland, a new Land Reform (Scotland) Bill is expected to be introduced before the end of June 2015. The consultation sought views on a number of areas, including a Land Rights and Responsibilities Policy, the establishment of a Scottish Land Reform Commission, transparency of land ownership, and addressing the barriers to sustainable development and beginning to diversify patterns of land ownership.

## INTRODUCTION

In practice, what land reform actually entails depends largely on a range of environmental, social, economic and cultural factors that are specific to the country where reforms are taking place. Whilst Scotland's system of land ownership is defined by Scots law, a contextual definition of land reform has only recently been set out (Land Reform Review Group (LRRG) [2014](#)) as:

[...] measures that modify or change the arrangements governing the possession and use of land in Scotland in the public interest.

This SPICe Briefing provides an introduction to the broad subject of land reform in Scotland, covering a range of topics, devolved and reserved, urban and rural. The Briefing also considers how internationally recognised human rights have recently begun to be a factor in the debate. Key pieces of legislation and scrutiny of the land reform agenda are also explored.

## SCOTLAND'S LAND

In 'Managing Scotland's Environment', Warren (2009) states that land "is the most basic resource of all and is unlike any other commodity", and goes on to note that Scotland has the most concentrated pattern of private ownership in the world as "a direct result of certain key historical events". These include the Highland Clearances of the eighteenth and nineteenth centuries, the purchase of sporting estates by "newly rich industrial magnates" in the second half of the nineteenth century, as well as the "collapse of sheep prices in the 1870s [which] released cheap land for sporting use" leading to almost 60% of Scotland being used for deer stalking or grouse shooting at that time, and giving "birth to a richly developed set of mythologies, traditions and perceptions which surround sporting land ownership".

Warren (2009) concludes that "the pattern of land ownership at the start of the third millennium still reflects the historical forces of the early and middle parts of the second", with a "core of fewer than 1,500 private estates" holding much of Scotland, and considers that in current terms, how the land is owned is of fundamental importance for economic, environmental, cultural, political and spiritual reasons which "explain why land issues, though often subliminal, remain 'central to the Scottish psyche'".

An independent study of Public Attitudes Towards Estates in Scotland (commissioned by the precursor organisations to Scottish Land and Estates (SL&E)) (George Street Research [2010](#)) however found that "land ownership per se is not a top-of-mind issue for the general public and that limited consideration is given as to what land, or how much land is privately owned". Furthermore, the:

[...] findings suggest that the public rather treasure a traditional view of estates and their owners. It is more likely to be news of absentee landlords, foreign buyers or celebrity landlords that prompt criticism or negative comment, either linked to issues of access or to perceived lack of hands-on interest and involvement.

At present it is estimated (Hunter et al [2014](#)) that "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", and the Minister for Environment, Climate Change and Land Reform recently noted that if "Scotland were starting afresh we would not be designing the pattern of land ownership we see today" (Scottish Government [2014a](#)).

SL&E does not dispute the Hunter et al (2014) figures, however also notes that from a membership of 2,500, over half own fewer than 450 hectares, and states ([2014b](#)):

Much is made of the fact that some individuals in Scotland own large landholdings, but large landholdings are equally as common in other countries, especially in countries where the productive value of the land is low. The figure of 432:50 is used as a convenient headline figure but does not give a true reflection of Scottish land ownership – the 432 owners are not individuals, but are legal entities which may include a large number of joint owners, trustees (including professional advisers and community representatives) or in the case of companies, shareholders. The other 50% of the privately owned land in Scotland is owned by many tens of thousands [...].

The LRRG (2014) recognises that land is a finite, national resource and states that:

Ownership is the key determinant of how land is used, and the concentration of private ownership in rural Scotland can often stifle entrepreneurial ambition, local aspirations and the ability to address identified community need. The concentrated ownership of private land in rural communities places considerable power in the hands of relatively few individuals, which can in turn have a huge impact on the lives of local people and jars with the idea of Scotland being a modern democracy.

Hunter et al (2014) also argue that 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”. Furthermore, “inequality in wealth is an increasing concern internationally”, and that in spite of some changes to legislation in this area, “public policy serves mostly to perpetuate and reinforce the existing (and longstanding) structure”. SL&E (2015) take a different view, stating that:

Landowners play a critical role in ensuring sustainable, healthy and empowered rural communities, providing housing, employment and a wide range of other public benefits. We believe much could be achieved by utilising existing structures and stimulating partnership working rather than simply considering landownership matters from an activist perspective or ideological stance. Our organisation enthusiastically supports a range of landownership and management types based on the fundamental principles of legitimate ownership and the best use of land.

## WHAT IS LAND REFORM?

The LRRG (2014) recognises the long history and international dimensions of land reform noting prominent 20<sup>th</sup> century examples in African, Asian and Latin American countries since the 1950s, when the United Nations (UN) made land reform a condition of development aid. At that time, the UN defined land reform as “an integrated programme of measures to eliminate obstacles to economic and social development arising out of defects in agrarian structure”. In the 1970’s the World Bank considered land reform to be “concerned with changing the institutional structure governing man’s relationship with the land”.

The LRRG (2014) goes on to note that “in common with most other countries, Scotland’s system of land tenure has three main components”, as follows:

- A system of property laws governing how the land is owned.
- A system of regulatory laws governing how land can be used.
- A system of non-statutory public sector measures to influence how land is owned and used in the public interest.

Therefore:

Changes to the components of the land tenure system to improve the outcomes in the public interest are land reform, with land reform broadly defined [...] as measures that modify or change the arrangements governing the possession and use of land in Scotland in the public interest.

In November 2014, the First Minister, as part of the Programme for Government (Scottish Government [2014b](#)), set out the Scottish Government's vision that Scotland's land “must be an asset that benefits the many, not the few”. This vision promotes a “strong relationship between the people of Scotland and the land of Scotland, where ownership and use of land delivers greater public benefits through a democratically accountable and transparent system of land rights that promotes fairness and social justice, environmental sustainability and economic prosperity”.

The First Minister stated (Scottish Government 2014b) that:

The relationship between the people living in Scotland and the land of Scotland is of fundamental importance. Our aim is to move the debate on land reform from one focused on historic injustices to a modern debate about the current balance of land rights in Scotland and how this can be managed to best deliver for the people of Scotland.

In the foreword to the recent Consultation on the Future of Land Reform in Scotland (Scottish Government 2014a) the Minister for Environment, Climate Change and Land Reform added:

Our aspiration is for a fairer and more equitable distribution of land in Scotland where communities and individuals can own and use land to realise their potential. Scotland's land must be an asset that benefits the many, not the few.

## **LAND REFORM BEFORE SCOTTISH DEVOLUTION**

Given the broad range of subjects that the land reform agenda now covers, it is difficult to comprehensively set out policies and changes to the law that might be considered as land reform. However at a UK level the New Statesman (NS) ([2010](#)) summarises historical proposals and changes to land and property law and tax; and in Scotland, Hunter et al (H) (2014) set out the few rural reforms that there have been, which principally focussed on safeguarding agricultural tenants. These are summarised in the following table:

In **1883** tenant farmers were granted compensation (on departure from the farm) for improvements made at their expense, and three years later (1886) crofters in the Highlands and Islands were granted security of tenure and a right to have their rents determined by tribunal, instead of by their lairds; this was extended to smallholders across Scotland in 1912. (H)



The introduction of death duties in **1894**, which is considered as a forerunner to inheritance tax, was part of William Gladstone's programme for redistributionist policies challenging aristocratic privilege. (NS)



From **1906 – 14** Lloyd George "campaigning vigorously for land reform", and was stopped from establishing a ministry of lands and forestry with proposals for intensive rural development, compulsory purchase of uncultivated or under cultivated land, and leasehold enfranchisement due to the outbreak of the First World War. The Scottish Land Court was however established in 1911, and has authority to resolve a range of disputes, including those between landlords and tenants, in agriculture and crofting. (NS)



In the early decades of the twentieth century successive UK Governments took land in the Highlands and Islands into public ownership with the intention of creating several thousand new crofts. The **Land Settlement (Scotland) Act 1919** allowed the Government to acquire land for settlement by compulsion if necessary; however fewer than 6000 new crofts were created (Leneman [1989](#)). More recently, land was purchased for industry, military use and forestry – by the 1970s, 17% of Scotland's land area was in public ownership. This has fallen in recent years to around 12%, mostly as a result of the privatisation of nationally owned industries with large landholdings (e.g. steel) and Forestry Commission land disposals. (H)



Clement Attlee introduced security of tenure for tenant farmers, and minimum agricultural wages from **1945 - 51**, however the creation of the National Health Service meant that rural land nationalisation, and land value taxation on urban land, policies broadly supported by his MPs and activists, were not implemented. (NS)



Margaret Thatcher, whilst not recognised by many as a land reformer, "instigated a kind of land reform all of her own" in **1980**, by allowing council tenants the right to buy the houses they occupied. This "was a direct challenge to the vested interests of that great citizen landlord, the state". (NS)



An absolute right to buy (ARtB) was given to crofters in the Highlands and Islands in **1976**, and due to low demand and prices for estates in the 1920s and 1930s many tenant farmers bought their properties, however they have never been afforded an ARtB. (H)



In **1999**, Tony Blair removed the majority of hereditary peers from the House of Lords, thus the "explicit connection between land ownership and political power" was cut. (NS)

# LAND REFORM SINCE DEVOLUTION

## LAND REFORM POLICY GROUP

More recently, discussions and policy development in this area started with the establishment of the Scottish Office's Land Reform Policy Group (LRPG) chaired by Lord Sewell in 1997. The LRRG (2014) provides some background information as follows:

The Government's decision to set up the LRPG reflected widespread recognition that many aspects of Scotland's system of land ownership needed to be modernised, as symbolised by the survival of feudal tenure, as the main form of land ownership. This out of date position resulted, in significant part, from the limited opportunities for legislation at Westminster for updating Scots property law, and also from the potential influence of the House of Lords on measures that might be brought forward. The new Scottish Parliament, with devolved responsibility for Scots law, was seen as offering the opportunity to achieve overdue changes and introduce new land reform measures.

In Identifying the Problems (LRPG [1998a](#)) the Group set out to "identify and assess proposals for land reform in rural Scotland, taking account of their cost, legislative and administrative implications and their likely impact on the social and economic development of rural communities and on the natural heritage". The LRPG went on to publish Identifying the Solutions ([1998b](#)), and Recommendations for Action ([1999](#)).

This final report (LRPG 1999) contained recommendations outwith the original scope of the group, by widening proposals for reforms to include urban as well as rural Scotland. Lord Sewell stated (LRPG 1999):

It is crucial that we regard land reform not as a once-for-all issue but as an ongoing process. The parliament will be able to test how this early legislation works and how it effects change. They will then have the opportunity to revisit and refine their initial achievement. [...]

These present recommendations are therefore by no means the final word on land reform; they are a platform upon which we can build for the future"

Recommendations were collated into seven distinct, but interlinked policy areas; e.g. law reform, land reform, countryside and natural heritage, agricultural holdings and crofting, and resulted in changes such as abolition of feudal tenure (explained below) across all Scotland, establishment of national parks, crofting community right-to-buy, and a right of responsible access to the countryside – Annexe A sets these out in full.

## LEGISLATION SINCE DEVOLUTION

Since the Sewell Report (LRPG 1999) there have been various legislative and other measures put in place to deliver land reform. The LRRG lists 19 Acts of the Scottish Parliament containing land reform measures (Annexe B). Of these, Hunter et al (2014) consider that the two key measures were the Land Reform (Scotland) Act 2003 and the Agricultural Holdings (Scotland) Act 2003 – these give rural communities, crofting communities and certain agricultural tenants qualified rights to buy.

### **Abolition of Feudal Tenure etc. (Scotland) Act 2000**

Until the passage of this Act, the system of land tenure in Scotland was overwhelmingly feudal in nature. This meant that the land was theoretically held under the Crown as ultimate feudal superior. Historically, the Crown would make a grant of land in return for military or other services and the grantees would in turn make sub-grants for other services and so on. Those

making grants, the “superiors”, retained a legal interest in the land, and so a hierarchical structure was created with each property having a number of owners, co-existing simultaneously. The service which the subordinate (vassal) had to perform for the superior was gradually replaced by a financial payment known as feu duty.

Another significant right which the superior retained until feudal abolition was the right to enforce “real burdens”. These are obligations restricting an owner’s use of land or property or obliging the owner to do something in relation to land or property. They survive changes of ownership of the land or property in question.

The 2000 Act abolished feudal superiorities and replaced feudal tenure with a system of outright ownership. It extinguished the superior's right to collect feu duties and provided compensation for former superiors for the loss of their rights. It also extinguished a superior's right to enforce real burdens, although many real burdens did survive feudal abolition and become enforceable by other people or organisations, e.g. owners of neighbouring land or property. The Act also abolished related systems of land tenure, and prohibited, with certain exceptions, the granting of leases over land for periods exceeding 175 years.

The 2000 Act was brought into force in November 2004 at the same time as the **Title Conditions (Scotland) Act 2003** and the **Tenements (Scotland) Act 2004**. Whereas the 2000 Act focused mainly on sweeping away the old system, the 2003 Act and the 2004 Act aimed to put in place a coherent system for the post-feudal world. Specifically, the 2003 Act clarified and reformed the law relating to real burdens. The 2004 Act related to feudal tenure and clarified and re-stated common law rules which demarcate ownership of various parts of a tenement<sup>1</sup>, removed a number of anomalies and uncertainties in existing law, and provided a statutory system for the management and maintenance of tenements, known as a Tenement Management Scheme (which applies to the extent the title deeds for a particular tenement are silent or incomplete on these topics). The LRRG (2014) considers the 2000 Act to be the “core element” of reform of property law, and states:

The Abolition of Feudal Tenure etc (Scotland) Act 2000 had the effect of making other land owners in Scotland more like udal owners, in the sense that it made them outright owners rather than vassals with a feudal superior having an interest in their land. The end of feudal tenure has radically simplified titles to land, while the associated Title Conditions (Scotland) Act 2003 has had a similar effect by modernising the types of interests and conditions or ‘real burdens’ that can be attached to titles to land. Scotland’s new and more straightforward system of ‘outright ownership’ has been a substantial improvement since devolution. The abolition of feudal tenure in Scotland by the Scottish Parliament ended the Crown’s position as the Paramount Superior or ultimate owner of all land under feudal tenure.

## **Land Reform (Scotland) Act 2003**

The 2003 Act has three parts, as follows:

**Access Rights:** A public right of responsible access to land is established in Part 1, including inland waterways, for educational and recreational purposes or commercial purposes relating to the exercise of access rights by others, e.g. a mountain, or river guide. The Act also outlines obligations on landowners to ensure such access rights can be reasonably exercised. The carrying out of certain activities are specifically prevented e.g. hunting, shooting or fishing, and all rights and responsibilities are set out in the Scottish Outdoor Access Code (Scottish Natural Heritage (SNH) [2005](#)).

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<sup>1</sup> The definition of a tenement also includes modern blocks of flats and sub-divided houses.

**Community Right to Buy:** Part 2 of the Act provides for Community Bodies (CBs) to register an interest in rural land, to which they have a direct connection. Land is defined as to include fishing and mineral rights. Registration gives a CB the right of ‘first refusal’ to purchase the land when the owner puts it on the market or intends to transfer ownership. The LRRG (2014) considers this part of the Act to be “a major milestone in the promotion of community land ownership in Scotland”.

**Crofting Community Right to Buy:** Part 3 allows Crofting Community Bodies (CCBs) to purchase crofting land, eligible additional land and associated fishing, mineral and sporting rights at any time, i.e. without the need to wait for the land to come onto the market. This right can only be exercised with the consent of Scottish Ministers and after a ballot of the crofting community produces a simple majority in favour of purchasing the land.

### **Agricultural Holdings (Scotland) Act 2003**

The Agricultural Holdings (Scotland) Act 2003 is concerned principally with farm tenancy arrangements, and Part 1 creates two new types of farm tenancy: Limited Duration Tenancies (LDTs) which must have a minimum term of 15 years; and Short Limited Duration Tenancies, which cannot be any longer than 5 years.

It also includes land reform elements in Part 2, introducing a pre-emptive right to buy for secure tenants who have tenancies under the Agricultural Holdings (Scotland) Act 1991 or earlier legislation. This means that tenants will have first refusal on buying their farm when the landlord wants to sell.

Part 3 gives tenant farmers a right to diversify, subject to consent from the landlord, and Parts 4 and 5 strengthen the rights of existing farm tenants, and extend these rights to the new forms of tenancy. These rights improve tenants’ right to compensation at the end of their tenancy for improvements they have made; for example, they may have erected a new farm building.

Further information on Tenant Farming is available in SPICe Briefing 14/52 (Edwards & Kenyon [2014](#)).

### **Nature Conservation (Scotland) Act 2004**

This is considered to be part of the land reform agenda because Part 2 provides for an enhanced system of protection for Sites of Special Scientific Interest (SSSIs), requiring the preparation of site management statements and amending notification procedures. The provisions also place a duty on public bodies for the further conservation and enhancement of SSSIs, provide a new offence whereby third parties can be convicted for damaging SSSIs, and enable the making of byelaws for the protection of SSSIs.

### **Crofting Reform etc. Act 2007**

Large parts of crofting law remain as they were when introduced at the end of the nineteenth century. The 2007 Act simplifies and modernises crofting legislation and the administration of crofting, as follows:

- Allowing new crofts to be created within the seven traditional crofting counties, and in other parts of Scotland (e.g. Arran, Bute, Cumbrae and Moray). Statutory small landholders in these areas will be able to turn their holdings into crofts.
- Enabling crofters to use their crofts for ‘purposeful uses’ other than grazing livestock or forestry. Crofters are also able to use common grazing land for wider purposes.
- Landowners are able to remove land from crofting tenure temporarily, instead of permanently, and land which is not used will revert to crofting tenure. Landowners or developers are able to apply to the Land Court for a development scheme, e.g. for a wind

farm development. The Land Court will decide if crofters would be fairly compensated before approving a scheme.

- Following the enactment of the Land Reform (Scotland) Act 2003, evidence showed that landowners had been leasing certain rights e.g. rights to develop renewable energy, to intermediary companies, and so exclude these rights from the Crofting Community Right to Buy. To prevent this, the Act allows crofting communities to buy any leases which exist over crofting land, as well as the land itself.

### **Crofting Reform (Scotland) Act 2010**

This Act contains four key parts, as follows:

- Reorganises the Crofters Commission into a Crofting Commission with a focus on regulation.
- Requires the Keeper of the Registers of Scotland to establish and keep a map-based new Crofting Register which shows an accurate, legal register of interests in, and extent (boundaries) of, crofts and common grazings.
- New provisions on absentee crofters and misuse and neglect of crofts to ensure that crofts are occupied and worked and, if not, that they are made available to those who want to croft.
- Amendments to existing legislation to help tackle pressure on croft land from speculation by strengthening the grounds on which the Commission may reject a decrofting application.

### **Wildlife and Natural Environment (Scotland) Act 2011**

Section 27 of this Act amends existing legislation and requires SNH to draw up a Code of Practice on Deer Management. This was approved by the Parliament in December 2011, and

- Sets out how land managers can deliver sustainable deer management.
- Puts new responsibilities on land managers and helps them to identify what should be done to manage deer sustainably.
- Stresses the importance of managing deer collaboratively.

Further information on Wild Deer in Scotland is available in SPICe Briefing 13/74 (Edwards & Kenyon [2013](#)).

### **Land Registration etc. (Scotland) Act 2012**

The Act provides a statutory framework for the continuation and improvement of the land registration system in Scotland. In particular, it:

- Provides for the eventual completion of the Land Register.
- Introduces amendments to the Requirements of Writing (Scotland) Act 1995 to promote electronic conveyancing and electronic registration.
- Realigns land registration law with the general principles of property law.
- Places the administrative practices of the Keeper of the Registers of Scotland that have evolved since the passing of the Land Registration (Scotland) Act 1979 on a statutory footing.

### **Long Leases (Scotland) Act 2012**

This Act converts tenants' rights under very long leases into ownership and, in so doing, implements the recommendations of a Report on Conversion of Long Leases (Scottish Law Commission (SLC) [2006](#)), which states:

An ultra-long lease suffers from many of the disadvantages already familiar from feus. The hierarchical structure of leases and subleases is needlessly complex in circumstances where the only right of value is that held by the ultimate tenant. Yet a lease may be vulnerable to irritancy (i.e. unilateral termination by the landlord, without compensation) in the event of non-payment of rent or a failure to observe one of the conditions of the lease. The conditions themselves may verge on unacceptable. They allow an inappropriate degree of control by a person who, unless a close neighbour, has little or no interest in the land; or if actual control is eschewed they provide an opportunity to charge money for waivers. This can make the landlord's interest attractive to title raiders.

The automatic conversion scheme applies to 'qualifying' long leases i.e. a registered lease of over 175 years which has a) more than 100 years left to run, in the case of a lease of residential property; or b) more than 175 years left to run, in any other case.

A compensation scheme for former landlords relating to the loss of their rights of ownership, a tenant's right to opt-out of the conversion scheme, and the opportunity for former landlords to preserve sporting rights associated with qualifying leases were also established.

## RECENT SCRUTINY

A number of recent reports have scrutinised and reviewed different aspects of the land reform process in Scotland in recent years. This section provides a summary.

### POST LEGISLATIVE SCRUTINY OF THE LAND REFORM (SCOTLAND) ACT 2003

In April 2010 the Centre for Mountain Studies based at Perth College UHI was commissioned by the Scottish Parliament's Rural Affairs and Environment Committee to undertake post legislative scrutiny of the Land Reform (Scotland) Act 2003. This was published in September 2010 (Centre for Mountain Studies [2010](#)), and is summarised as follows:

**Part 1 Access:** For the most part provisions appeared to be working well. The Act clarified access rights and responsibilities and whilst research findings suggested some concern regarding emboldened access-takers placing emphasis on their rights over an appreciation of their responsibilities, on the whole such behaviour appeared to be a minority activity. There remained 'hotspot' access issues such as irresponsible wild camping, fire-lighting and the perceived inadequate control of dogs, particularly near livestock or wildlife habitats. However such issues were thought to pre-date the introduction of statutory access rights.

**Part 2 Community Right to Buy:** In spite of it being recognised as a challenging process, most of those interviewed were positive about the Community Right to Buy (CRtB) as it enabled some control over the future of a valuable local asset. However concerns were raised about the administrative complexity and unwieldiness of the Act, as well as the availability of funding and other resources to CBs. The report notes that an uncooperative landowner could make it difficult for a community group to use the Act, and that:

A registration does not in itself compel a landowner to do anything. Some groups expressed great frustration at having gone through the registration process but still being powerless to prevent what they see as the waste of local assets or opportunities, especially regarding derelict or run down local facilities.

**Part 3 Crofting Community Right to Buy:** Many of the observations made in relation to Part 2 were felt to be equally applicable to the Crofting Community Right to Buy (CCRtB). These included challenges associated with the definition of the 'crofting community', significant

difficulties of mapping the land to the standards specified by the Act which are “above the norm for estate sales”, and balloting of the community. The report goes on to note that the compulsory “nature of the crofting right to buy provisions means that efforts to use them risk an accelerated deterioration in crofting community group-landowner relations”, and argues that the most significant impact has been to help create a negotiating environment which encourages crofting community ownership without recourse to the CCRtB provisions.

## OVERVIEW OF EVIDENCE ON LAND REFORM IN SCOTLAND

The Scottish Government’s Rural Analytical Unit ([2012](#)) published an Overview of Evidence on Land Reform in Scotland which drew on the above study, as well as a number of other publications, and found that Lowland Scotland is an important area for community ownership, and community purchase should not solely be associated with the Highlands and Islands. It also found that the areas of land purchased have generally been small, often constituting specific facilities and/or buildings rather than larger land areas and estates. Other conclusions are summarised as follows:

In relation to **Part 1 Access**, it was found that there was little appetite amongst stakeholders for significant changes to the provisions.

Many of the concerns relating to **Part 2 Community Right to Buy**, highlighted by the Centre for Mountain Studies (2010) are repeated, including land not coming on to the market, or being withdrawn from it; legislation being too complex and resource-intensive; and applications being rejected due to their being late or failing to meet particular requirements. The Rural Analytical Unit (2012) also notes that:

There are also a number of barriers limiting the realisation of benefits linked to CRtB, including: a lack of appropriate guidance and support; a lack of comprehensive information regarding the condition of an asset and/or the full costs of asset ownership; poor management and leadership; and the lack of a strategic approach to local community development in some areas.

As noted above, many of the concerns about **Part 3 Crofting Community Right to Buy** are mirrored in Part 2, as it was viewed as “onerous, complex and resource intensive, which in part may explain the rate of uptake, which is much lower than had originally been anticipated”. Other barriers to the successful implementation of the CCRtB include:

- Concerns that the provisions may be unworkable in practice.
- Insufficient awareness and promotion of the provisions.
- Lack of funding support and advice.
- A perceived lack of fit between the CCRtB and other recent reforms of crofting legislation and policy.

The Community Empowerment (Scotland) Bill 2014 seeks to address many of the concerns and problems raised by this and the Centre for Mountain Studies (2010) report, further detail is available in the section on Current Scottish Government Policy.

## LAND REFORM REVIEW GROUP

In August 2012 the Scottish Government ([2012b](#)) announced the establishment of the LRRG, and stated:

The relationship between the land and the people of Scotland is fundamental to the wellbeing, economic success, environmental sustainability and social justice of the country. The structure of land ownership is a defining factor in that relationship: it can facilitate and promote development, but it can also hinder it. In recent years, various

approaches to land reform, not least the expansion of community ownership, have contributed positively to a more successful Scotland by assisting in the reduction of barriers to sustainable development, by strengthening communities and by giving them a greater stake in their future. The various strands of land reform that exist in Scotland provide a firm foundation for further developments.

The Group had a remit to identify how land reform might:

- Enable more people in rural and urban Scotland to have a stake in the ownership, governance, management and use of land, which will lead to a greater diversity of land ownership, and ownership types, in Scotland.
- Assist with the acquisition and management of land (and also land assets) by communities, to make stronger, more resilient and independent communities which have an even greater stake in their development.
- Generate, support, promote, and deliver new relationships between land, people, economy and environment in Scotland.

The subsequent report, entitled *Land of Scotland and the Common Good* (LRRG 2014) provides over 250 pages of background information and analysis, as well as over 60 recommendations which are set out in Annex C. The LRRG provided the following final remarks:

- There is no single measure, or ‘silver bullet’, which would modernise land ownership patterns in Scotland and deliver land reform measures which would better serve the public interest.
- In addition to making specific recommendations, the Report offers a particular approach to future decisions about the possession and use of land in Scotland. This approach is orientated towards serving the common good, and can be encapsulated within the phrase people centred land governance.
- The Group believes that we have reached a critical point in relation to land issues. [...], and we encourage [the Government] to be radical in its thinking and bold in its action. The prize to the nation will be significant.

Reaction to the publication of the report was mixed, with Wightman (2014) noting that the recommendations are wide ranging, and stating:

Some will be regarded as radical and perhaps even controversial in certain quarters but there is in fact not one which is anything other than plain common sense and certainly none that citizens of most other European countries would be surprised at.

[...]

Hopefully, this report will serve to shift the baseline – to move the agenda forward and to deliver a consensus that these recommendations provide the minimum necessary to re-frame and modernise Scotland’s system of land governance to one which is people-centred and in which the land of Scotland serves the common good of all of its citizens.

Macleod (2014) concludes that the LRRG “succeeds in fulfilling its remit”, that it debunks myths relating to land use rather than ownership, and that it revitalises “the LRRG’s broad modernising agenda by placing land reform front and centre as an issue of public policy in Scotland”.

Scottish Land and Estates (2014c) however considered that the report had “missed the opportunity to deliver constructive land reform and fails to address the real challenges facing rural Scotland”. Furthermore:

- It appears to be biased against private landownership and makes a series of unfounded recommendations that will create more publicly funded bodies, increase bureaucracy and place an even heavier burden on the public purse.

- It does not reflect the very substantial social, economic and environmental contribution made to Scotland by private landownership of all scales.
- It has focused far too much on ownership rather than how land can be used to provide multiple benefits.
- SL&E agrees that the process of CRtB should be streamlined but the suggestion that communities could enforce the sale of land against an owner's wishes is completely unwarranted and we suspect would struggle to meet ECHR requirements.

## SCOTTISH AFFAIRS COMMITTEE

From July 2013 to March 2015 the House of Commons Scottish Affairs Committee carried out an inquiry into Land Reform in Scotland (Scottish Affairs Committee [2013](#)). This inquiry asked for evidence on all aspects of land reform; however it was particularly interested in reserved matters including taxation and subsidy. Recommendations were made in eight separate areas in the Final Report published in late March 2015 (Scottish Affairs Committee [2015](#)), including:

- A call for better data on land values.
- A call for greater transparency on tax exemptions.
- Asking for the rationale for Agricultural Property Relief from Inheritance Tax to be clearly set out, and for the Government to undertake a review of whether it is achieving its purpose.
- Calling for an analysis of the impact of tax reliefs on land value and that this information is included in consideration of which tax reliefs should be retained and which should be abolished.
- The need for proper oversight and scrutiny of tax reliefs and exemptions. The Government must ensure that both new and existing tax reliefs are properly monitored and assessed, as the case for their retention is not proven at present.
- Welcoming efforts to encourage new entrants to farming through the Common Agricultural Policy.
- Welcoming the introduction of a publicly available register of people with significant control of a company as the first step in understanding complex ownership arrangements used to avoid tax obligations; however not ensuring public access to information on beneficial ownership of land held by trusts is disappointing.
- Ensuring that tax reliefs where a clear and proven benefit cannot be demonstrated are abolished. The UK Government should improve its oversight of tax reliefs, and work with the Scottish Government on areas of shared interest in order to ensure a tax system that supports the Scottish Government's stated aim of increased community ownership of land.

The Committee concluded that:

Land reform is an intensely political area of public policy which has previously been neglected for too long. By removing land-based barriers to the sustainable development of communities, particularly in rural areas, land reform can have a profound social impact. Any land reform programme should also ensure that effective land use and management are encouraged.

This report was published two days before the dissolution of the UK Parliament; therefore there was no Government response.

## CURRENT SCOTTISH GOVERNMENT POLICY

At present, the Scottish Government's key land reform policy is the Community Right to Buy and Crofting Community Right to Buy under Parts 2 and 3 of the Land Reform (Scotland) Act 2003.

It is currently estimated that around 500,000 acres of land are in community and crofting community ownership across Scotland (Scottish Government [2015a](#)). The Scottish Government states:

Scotland's communities can be stronger, more resilient and more independent through the acquisition and management of their land. The Scottish Government has an important role in ensuring that communities who have the ambition to take on ownership of their land can access the support they need to do so.

It has therefore committed to a target of 1 million acres (approximately 405,000 hectares) of land in community ownership by 2020, and has set up a short life working group to produce (Scottish Government 2015a):

- A summary of the benefits of community ownership and a vision and agreed set of principles to guide the 1 million acre strategy.
- A definition of community ownership to be measured for the 1m acre target.
- A methodology for measuring progress towards the target.
- A strategy outlining how to achieve the target by 2020.
- An action plan outlining how to implement the target strategy to shape the functions of a new dedicated community land ownership resource.

The group commenced work in March 2015, and is expected to report by the end of summer 2015.

## COMPLETION OF THE LAND REGISTER

In May 2014 the Scottish Government ([2014c](#)) stated that an "efficient, effective and indemnified land registration system is recognised by the World Bank as one of the most important factors in achieving economic development and business growth", and "asked the Registers of Scotland to prepare to complete Scotland's land register within 10 years", as well as committing "to registering all public land within 5 years". At present, around 58% of all Scottish properties are on the Land Register representing approximately 26% of Scotland's land mass. Almost all the remaining properties are held on the General Register of Sasines. Property currently transfers from the Sasine to the Land Register through change in ownership, or by the owner voluntarily applying for registration (Registers of Scotland [2015](#)).

### *Funding Community Land Ownership*

The LRRG (2014) estimates that around £35m of public funding has been spent directly on supporting community land ownership acquisitions from 1997 – 2013, an average of just over £2m per annum. This breaks down as follows:

- £7.5m from Highlands and Islands Enterprise
- £12m from the first Scottish Land Fund (SLF) (2001-06)
- £6.5m from Big Lottery Fund Scotland's Growing Community Assets Scheme (2006-10)
- £1.5m from the second SLF (2010 to date)

Over and above capital grants, the main funders have also given grants to support new community land owners e.g. by supporting a development officer for a fixed period. These grants were not recorded separately from the acquisition payments until 2006, there has however been a further £1.5m spent in this area since. There has also been an estimated £5m of funding over the 15 years on technical assistance for local communities on matters such as valuations, feasibility plans and legal costs. It is estimated that a further £1m has been provided by grants from other public bodies, including the EU, Scottish Government departments and agencies and local authorities. For comparison, the LRRG (2014) notes the "£533m a year (or an average of around £1.5m a day) of agricultural subsidies paid to Scottish farmers during 2007-13".

The current Scottish Land Fund (2012 – 16) amounts to £9m, this will increase to £10m per annum for the following four year period (2016 – 20) (Scottish Government [2015b](#)).

## **COMMUNITY EMPOWERMENT (SCOTLAND) BILL 2014**

The Community Empowerment (Scotland) Bill was introduced in June 2014; it completed Stage 1 in February 2015 and Stage 2 in March 2015. Stage 3 of the Bill is expected to be considered by the end of June 2015 (Scottish Parliament [2015](#)).

The Bill proposes a number of amendments and additions to the Community Right to Buy (Part 2) and Crofting Community Right to Buy (Part 3) of the Land Reform (Scotland) Act 2003, including:

- Extending the CRtB from rural areas to cover all of Scotland.
- Amending and simplifying the procedure for "late" applications.
- Simplifying balloting procedures.
- Introducing a new Part 3A into the Act which allows Community Bodies a right to buy "abandoned or neglected" land in certain circumstances without a willing seller.
- Amending and simplifying CCRtB procedures relating to the purchase; including mapping requirements, and identifying the owner, tenants and certain creditors.

SPICe Briefings on the Community Empowerment (Scotland) Bill (Campbell et al [2014](#)) and Community Empowerment (Scotland) Bill – Parliamentary consideration prior to Stage 3 (Campbell and Reid [2015](#)) are relevant.

## **FORTHCOMING LAND REFORM BILL**

In December 2014 the Scottish Government (2014a) published a Consultation on the Future of Land Reform in Scotland. Following on from the work of the LRRG (2014), this sought views on a range of measures, including:

**A Land Rights and Responsibilities Policy:** This statement proposes a draft vision and set of principles to guide policy on the nature and character of land rights in Scotland. The vision states:

For a strong relationship between the people of Scotland and the land of Scotland, where ownership and use of the land delivers greater public benefits through a democratically accountable and transparent system of land rights that promotes fairness and social justice, environmental sustainability and economic prosperity.

The principles recognise that:

- Ownership and use of land should be in the public interest.
- There should be clear and detailed publicly available information on land.
- Land rights and governance should contribute to building a fairer society and promoting environmental sustainability, economic prosperity and social justice.
- The ownership of land should reflect an increasingly diverse mix of different types of public and private ownership.
- A growing number of local communities should be given the opportunity to own assets.
- There should be wide public engagement in decisions relating to the development and implementation of land rights in Scotland.

**A Scottish Land Reform Commission:** Underpinning land reform, by providing the evidence base for further land reform measures and assessing the impact of existing policies.

**Transparency of Land Ownership:** Making public sector information on land, its value and ownership readily available to support open and transparent decision making by both the private and public sectors; and limit the legal entities that can, in future, take ownership of land in Scotland.

**Address barriers to sustainable development and begin to diversify patterns of land ownership:** Providing powers for Scottish Ministers, or other public bodies, to intervene in situations where the scale or pattern of land ownership in an area, and the conduct of a landowner, is acting as a barrier to sustainable development.

**Demonstrate commitment to effectively manage land and rights in land for the common good:** Facilitating proactive management of public sector land in the wider public interest by extending the powers of Forestry Commissioners; placing a duty of community engagement on charitable trustees, when making decisions on land under the trustees control; and ending the business (non-domestic) rates exemption for shooting and deerstalking and bringing these businesses back into line with other ratepayers who help fund local services.

**Address specific aspects of land ownership and rights:** Further modernising Common Good to promote greater flexibility of use and remove the need for references to the Courts; improving deer management legislation; taking forward legislative changes required in light of the upcoming recommendations of the Agricultural Holdings Review on the future of tenant farming; and making clarifications to the core paths planning process as set out in Part 1 of the Land Reform (Scotland) Act 2003.

The Consultation closed on 10 February 2015 with over 1200 responses received (over 80% from individuals), and the Consultation Analysis (Scottish Government [2015c](#)) was published on 15 May 2015. This showed that the majority of proposals were supported, but with some reservations, in particular “private landowning organisations and private sector and professional bodies expressed negative views to several of the proposals”.

The Land Reform (Scotland) Bill is expected to be introduced in the Scottish Parliament before the end of June 2015.

## A Human Rights Based Approach to Land Reform

The role of internationally recognised human rights in the land reform debate has increased recently. In March 2014 Community Land Scotland ([2014](#)) published the Bunchcrew Land Declaration which offers 16 observations and commitments in relation to land reform in Scotland within an international context and with particular reference to the achievement of greater social justice and the realisation of human rights.

In 2014 the Scottish Parliament passed the Agricultural Holdings (Scotland) Act 2003 Remedial Order 2014 (sometimes referred to as the ECHR Order). The order was required following a judgement from the UK Supreme Court on the *Salvesen v Riddell* case. The Supreme Court ruled that a small part of the Agricultural Holdings (Scotland) Act 2003 was incompatible with the European Convention of Human Rights. The 2014 Remedial Order corrected this defect (Scottish Parliament [2014](#)).

During the passage of Stage 1 of the Community Empowerment (Scotland) Bill 2014, Professor Allan Miller, Chair of the Scottish Human Rights Commission (Rural Affairs, Climate Change and Environment Committee ([2014](#))) expressed “frustration” at the “narrowly framed debate” around the current policy framework, stating that “human rights does not begin and end at the European Court of Human Rights in Strasbourg”. Furthermore:

The Scotland Act 1998 calls on the Scottish ministers to observe and implement international obligations, of which one—but only one—is the International Covenant on Economic, Social and Cultural Rights, which places a duty on the Scottish ministers to use the maximum available resources to ensure progressive realisation of the right to housing, employment, food and so on—that is, it sees land as a national asset, which is to be used for the progressive realisation of what we might call sustainable development.

At Stage 2, an amendment was agreed to which requires Ministers to have regard to the International Covenant on Economic, Social and Cultural Rights” when making decisions relating to CRtB and CCRtB under the 2003 Land Reform Act.

Shields ([2015](#)) offers further detailed analysis, and also warns against adopting a narrow European Convention on Human Rights (ECHR) compliance approach, and the benefits of grounding practice, policy and law in the broader human rights framework. She goes on to note that the “misrepresentation of rights in the land reform bill debate reveals a pervasive misunderstanding concerning how human rights are designed and applied. To waive [...] the right to property as a trump card, imbued with some special significance above competing interests, to be readily received by the European Court of Human Rights in Strasbourg, is fundamentally inaccurate”. However, “similar inaccuracies emerge in discussion of the proposed community right to buy”, noting that use of language referring to an ‘absolute right to buy’ polarises the debate and does not reflect a clear understanding of what the ECHR contributes to the debate.

She concludes that “If the body of ECHR law is incorporated appropriately, the land reform debate offers an opportunity to rescue rights from their misrepresentation and to re-establish the ECHR as an institution which responds to the prevailing needs of societies and aligns State power to address those needs.

## CROWN ESTATE

The Crown Estate is the Crown property, rights and interests that are managed, but not owned, by the Crown Estate Commissioners in England, Wales, Northern Ireland and Scotland. The Crown Estate is not the personal property of HM the Queen. It is owned by the Sovereign in right of the Crown as an institution, though the Sovereign has no powers of management or

control. “The Crown Estate” as a brand, is a term often used to describe the Commissioners together with the Crown property, rights and interests. The Crown Estate Commissioners is a statutory corporation constituted by the Crown Estate Act 1956. Under the Crown Estate Act 1961, Commissioners must follow directions from the Chancellor of the Exchequer and the Secretary of State for Scotland.

In Scotland, the Crown Estate Commissioners manage four rural estates, mineral rights and salmon fishing rights, about half of the coastal foreshore and almost all seabed to 12 nautical miles. These rights allow the Commissioners to require leases for moorings, aquaculture, some cables and pipelines, and for renewable energy projects. The latter are primarily in the far more extensive Exclusive Economic Zone which extends to 200 nautical miles at its furthest point. The urban estate comprises 39-41 George Street, Edinburgh, and a 50% interest in an English Limited Partnership which owns Fort Kinnaird Retail Park in Edinburgh – the other half is owned by a Jersey based unit trust.

The Smith Commission recommended that the management of Crown Estate assets in Scotland be transferred to the Scottish Parliament. In January 2015 the UK Government published draft clauses for proposed UK legislation to implement this proposal. The Devolution (Further Powers) Committee ([2014](#)) scrutinised these clauses, reporting on 14 May 2015 with a number of recommendations; at the time of writing the Rural Affairs, Climate Change and Environment Committee is also taking evidence on the Crown Estate. On 29 May 2015 the UK Government introduced the Scotland Bill to the UK Parliament. This includes proposals to devolve management of the Crown Estate, though some issues raised by the Devolution (Further Powers) Committee remain. The Scotland Bill is expected to complete its parliamentary passage by the end of February 2016.

## ANNEXE A - LAND REFORM POLICY GROUP RECOMMENDATIONS FOR ACTION

Policy Area	Recommendation
Law reform legislation	<p>Legislation to abolish the feudal system and to replace it with a system of outright ownership of land.</p> <p>Legislation to reform leasehold casualties.</p> <p>Legislation to reform real burdens to do away with outdated conditions on properties and to modernise the basis on which remaining and new conditions apply.</p>
Land reform legislation	<p>Legislation to allow time to assess the public interest when major properties change hands.</p> <p>Legislation to give a community right to buy such land as and when it changes hands.</p> <p>A back-up compulsory purchase power to deter evasion.</p> <p>A reserve power to investigate beneficial ownership of land.</p> <p>Legislation to supplement action to create a publicly accessible non-authoritative database on rural landholdings with data held by public bodies; and similar legislation to extend the national land information service ScotLIS (in the event of that pilot being successful).</p>
Legislation on countryside and natural heritage issues	<p>Legislation to reform access arrangements.</p> <p>Legislation to revise the Sites of Special Scientific Interest (SSSI) system.</p> <p>Legislation to create National Parks.</p>

<p>Agricultural holdings legislation</p>	<p>Legislation to provide more flexible tenancy arrangements.</p> <p>Legislation to simplify and reduce the cost of dispute resolution and to extend the role of the Scottish Land Court.</p> <p>Legislation to permit wider diversification by farm tenants and to facilitate part-time farming by tenants.</p> <p>Legislation to provide greater protection for tenants against the operation of contested notices to quit, where the landlord intends to use the land for non-agricultural purposes.</p> <p>Legislation to introduce rights for tenants to develop woodland; to encourage good conservation practice by tenants; and to strengthen tenants' rights to compensation for game damage and minerals.</p>
<p>Crofting legislation</p>	<p>Legislation to give all crofting communities a right to acquire their croft land.</p> <p>Legislation to allow creation of new crofts.</p> <p>Legislation to allow the extension of crofting tenure to new areas.</p> <p>Legislation to devolve regulatory decisions to local bodies.</p> <p>Legislation to update crofting legislation by tightening control over decrofting, curtailing control of subdivision, simplifying subletting, enabling owner occupiers to let their crofts without creating a crofting tenancy and simplifying assignments, re-lets and succession.</p> <p>Legislation to remove the link between crofting grants and agricultural production.</p> <p>Legislation to clarify the law on crofter forestry.</p>
<p>Action without legislation</p>	<p>New requirements for all public bodies with rural landholdings answerable to the Secretary of State should be set so that they increase local community involvement in the management of their land. Other public bodies should also be invited to do likewise.</p> <p>A Code of Good Practice for rural landownership (including non-Governmental organisations) should be developed.</p> <p>An enhanced Land Fund is needed. Scottish Enterprise should set up a Community Land Unit.</p> <p>The Government should give explicit support for the use of compulsory purchase powers as</p>

	<p>a last resort where this will assist implementation of local plans or other strategies.</p> <p>The integrated planning of rural land use at local level should be taken forward in the context of community planning.</p> <p>A Code of Good Practice on rural land use should be developed.</p> <p>Steps should be taken to improve co-ordination of activity between public bodies responsible for land use matters and rural development.</p> <p>A new (non-authoritative) database on rural landholdings should be set up.</p> <p>Some initial action to simplify agricultural arbitration can and should be taken; also action to provide wider opportunities for diversification by farm tenants.</p> <p>The Crofters Commission should act to encourage more community management of croft land, to ensure that there is no bias against newcomers in crofting administration and to tackle absenteeism vigorously.</p>
<p>Issues for further study</p>	<p>The scope for streamlining public assistance supporting land uses; the scope for making more information readily available about public assistance relating to land; and the scope for attaching certain conditions to such public assistance should be studied systematically.</p> <p>Evaluation of the impact of new planning guidance on rural development.</p> <p>Consideration of the implications for Scotland following current comprehensive review of compulsory purchase and compensation legislation.</p> <p>Investigation of the legal scope and nature of possible legislation to give greater protection for those who own property built on leased land.</p> <p>Comprehensive review of the law of the foreshore and seabed, with a view to reform.</p> <p>How best and most cost effectively to make information about land ownership as comprehensive as possible.</p> <p>The economic impact of abolishing national non-domestic rate relief on sporting land and reducing or abolishing national non-domestic rate relief on agriculture and forestry should be</p>

thoroughly evaluated.

A comprehensive economic evaluation of the possible impact of moving to a land value taxation basis.

Research on bringing crofting regulation into local community control.

Review in due course of the need for stronger enforcement of deer control measures.

## **ANNEXE B - ACTS OF THE SCOTTISH PARLIAMENT CONTAINING LAND REFORM MEASURES**

Abolition of Feudal Tenure etc. (Scotland) Act 2000

Leasehold Casualties (Scotland) Act 2001

Housing (Scotland) Act 2001

Land Reform (Scotland) Act 2003

Title Conditions (Scotland) Act 2003

Agricultural Holdings (Scotland) Act 2003

Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003

Nature Conservation (Scotland) Act 2004

Tenements (Scotland) Act 2004

Crofting Reform etc. Act 2007

Crofting Reform (Scotland) Act 2010

Wildlife and Natural Environment (Scotland) Act 2011

Private Rented Housing (Scotland) Act 2011

Land Registration etc. (Scotland) Act 2012

Agricultural Holdings (Amendment) (Scotland) Act 2012

Long Leases (Scotland) Act 2012

Aquaculture and Fisheries (Scotland) Act 2013

Crofting (Amendment) (Scotland) Act 2013

Land and Buildings Transaction Tax (Scotland) Act 2013

## ANNEXE C – LAND REFORM REVIEW GROUP RECOMMENDATIONS

<b>LAND REGISTRATION</b>	The Review Group considers the limited progress to date in the coverage of Scotland's Land Register is a major issue. Given the economic and wider public benefits this will deliver, the Group recommends that the Scottish Government should be doing more to increase the rate of registrations to complete the Land Register, including a Government target date for completion of the Register, a planned programme to register public lands and additional triggers to induce the first registration of other lands.
<b>OWNERS OF LAND</b>	The Review Group recommends that the Scottish Government should make it incompetent for any legal entity not registered in a member state of the European Union to register title to land in the Land Register of Scotland, to improve traceability and accountability in the public interest.
<b>SUCCESSION LAW</b>	The Review Group recommends that the Scottish Government should, in the interests of social justice, develop proposals in consultation with the Scottish Law Commission for legislation to end the distinction between immoveable and moveable property in Scotland's laws of succession.
<b>OWNERLESS LAND</b>	The Review Group considers that the expansion of land registration is likely to result in surviving examples of common land and commonties coming to light. The Group recommends that these distinctive forms of land tenure should be identified and safeguarded as part of modernising Scotland's system of land ownership.
<b>COMPULSORY PURCHASE</b>	<p>The Review Group considers there is a clear need to update Scotland's system of compulsory purchase. The Group recommends that the Scottish Government should take forward the modernisation and reform of Scotland's compulsory purchase legislation, with a clear timetable for introducing a Bill to achieve this into the Scottish Parliament.</p> <p>The Review Group recommends that the Scottish Government and local authorities should have a right to register a statutory right of pre-emption over land, where that is in the public interest.</p>
<b>EXTENT OF PUBLIC LAND</b>	The Review Group considers that information on the properties in Scotland owned by the Scottish Government, local authorities and other public bodies, should be more readily available. The Group recommends that the Scottish Government, local authorities and other public bodies in Scotland should publish online property registers that are publicly accessible.
<b>CROWN PROPERTY RIGHTS</b>	<p>The Review Group considers that ending the Crown Estate Commissioners' involvement in Scotland would deliver wide ranging and important benefits to Scotland. The Group recommends that the Crown Estate Commissioners' statutory responsibilities in Scotland, under the Crown Estate Act 1961, should be devolved to the Scottish Parliament.</p> <p>The Review Group considers that, following the abolition of feudal tenure, there should be further significant reductions in types of Crown property rights in Scotland. The Group recommends that the Scottish Government reviews the current Crown property rights in Scots law and brings forward proposals for the abolition of these rights or their replacement statutory provisions, as appropriate in the public interest.</p>
<b>HISTORIC NATIONAL PROPERTIES</b>	The Review Group recommends that the Scottish Government should ensure that the two reservations inserted by the Crown Estate Commissioners into the titles to Edinburgh Castle and other former Crown properties now owned by Scottish Ministers are removed.
<b>NATIONAL FOREST ESTATE</b>	The Review Group considers that the size and composition of the National Forest Estate should continue to evolve to meet changing circumstances. The Group recommends that the Scottish Government and Forestry Commission Scotland

	<p>should develop a more integrated and ambitious programme of land acquisitions in rural Scotland, as part of delivering multiple public interest policy objectives.</p>
<b>COMMON GOOD LANDS</b>	<p>The Review Group considers that the position over Common Good lands should be improved to ensure they are adequately safeguarded and appropriately managed. The Group recommends that a new statutory framework should be developed to modernise the arrangements governing Common Good property.</p>
<b>LOCAL COMMUNITIES</b>	<p>The Group considers that while there should be an agreed set of criteria which defines an ‘appropriate community body’, the Government should be flexible in terms of which legal structures are eligible. The Review Group recommends that there should be a clear focus in public policy on supporting appropriate local community bodies that are owned and managed by local communities acting on their own behalves.</p>
<b>LAND AND COMMUNITY DEVELOPMENT</b>	<p>The Review Group recognises that there is now a wide range of types of property owned by communities and also types of community owners. Given the target of one million acres in community ownership by 2020, set by the First Minister, the Group recommends that the Scottish Government sets up a short life working group whose task would be to improve information on the numbers and types of community land owners and the land that they own, and to develop a strategy for achieving this target.</p> <p>The Review Group considers that Trust Ports and other forms of local community control over harbours, piers, slipways and similar coastal assets should be encouraged as a form of community land ownership. The Group recommends that the Scottish Government should develop specific initiatives to assist this process.</p> <p>The Review Group recognises that significant progress has been made in the growth of community owned land. The Group recommends that the Scottish Government, using the evidence and recommendations for change presented in this report, should develop a policy statement, with clear direction to all parts of Government and its agencies, on the objective of diversified land ownership in Scotland, and a strategic framework to promote the continued growth of local community land ownership.</p>
<b>LOCAL COMMUNITY LAND RIGHTS</b>	<p>The Review Group considers that the Scottish Government’s planned Community Empowerment (Scotland) Bill provides a crucial opportunity to improve Part 2 of the Land Reform (Scotland) Act 2003. The Group recommends that improvements to Part 2 of the Act should include widening its scope to cover urban areas; enabling appropriate community bodies to be constituted as SCIOs; allowing communities to define their area by a boundary on a map; increasing the period of registration to ten years and decreasing the requirements of re-registration; and more generally to make the legislation more straightforward and less onerous for local communities to use.</p> <p>The Review Group concludes that local communities, acting through appropriate community bodies, should have the opportunity to use a range of statutory land rights which are defined to suit different needs and circumstances. The Group recommends that the statutory land rights of local communities should include a right to register an interest in land, the existing right of pre-emption over land and a right to buy land, as well as rights to request the purchase of public land and to request Scottish Ministers to implement a Compulsory Purchase Order.</p> <p>The Review Group recommends that Local Authorities should have the right to exercise a Compulsory Sale Order over an area of vacant or derelict land, and also that Community Councils, or appropriate community bodies, should have the right to request that a local authority exercises a Compulsory Sale Order.</p>
<b>COMMUNITY ACQUISITION COSTS</b>	<p>The Review Group concludes that while funding packages for community land acquisitions and development are becoming more diversified, public funding remains critical. The Group recommends that the Scottish Government should ensure that there is an integrated legislative and financial support structure to help local communities in urban and rural Scotland buy and develop land and</p>

	<p>buildings. The Group further recommends that an adequate level of funding should be made available to meet an expected increase in demand for local community land ownership.</p> <p>The Review Group considers that current interpretation of State Aid regulations in Scotland is inhibiting the further growth and development of community land ownership. The Group recommends that the Scottish Government should publish new Guidance on State Aid to ensure public bodies take a more solution-focused and less risk-averse approach to their interpretation of the Rules. The Group further recommends that the Government should enter into dialogue with the European Commission to improve the scope for public assistance to non-profit distributing appropriate local community bodies.</p> <p>The Review Group concludes that the Scottish Public Finance Manual need not prohibit the transfer of public land at less than market value. The Group recommends that the Scottish Government should have a clear policy framework for the disposal of public property to appropriate local community bodies by the Government and associated public bodies, including a more integrated and focused approach to disposals for less than open market value where that is in the public interest.</p> <p>The Review Group considers that there is significant potential community benefit in the transfer of selected local authorities' assets to communities. The Group recommends that all local authorities should have a 'Community Assets Transfer Scheme' to encourage greater local community land ownership, and that the arrangements in these Schemes should all follow the same consistently high standard of best practice.</p>
<b>COMMUNITY SUPPORT SERVICES</b>	<p>The Review Group concludes that communities embarking on land and property ownership and management requires considerable support. The Group recommends that the types of support services provided in the Highlands and Islands should be made available to local communities in the rest of Scotland and that the Scottish Government should take a more integrated and focused approach to encouraging and supporting the growth of local community land ownership.</p> <p>The Review Group concludes that communities require a wide range of support and advice in seeking to acquire and manage land. The Group recommends that the Scottish Government should establish a Community Land Agency, within Government, with a range of powers, particularly in facilitating negotiation between land owners and communities, to promote, support and deliver a significant increase in local community land ownership in Scotland.</p>
<b>URBAN RENEWAL</b>	<p>The Review Group considers that further mechanisms are required to address the persistent challenge of vacant and derelict land in urban areas. The Group recommends giving local authorities a new power of Compulsory Sale Order.</p> <p>The Review Group considers that additional policy tools are required to more effectively enable land assembly for urban renewal purposes. The Group recommends that the Scottish Government explores the feasibility of introducing a Majority Land Assembly measure.</p> <p>The Review Group considers that the well-established international practice of property land readjustment or land-pooling provides another effective means of addressing fragmented or multiple ownership of land. The Group recommends that the Scottish Government investigates the potential of introducing an Urban Partnership Zone mechanism in Scotland.</p> <p>The Review Group notes the greater public interest outcomes from public interest led development processes and considers this to be a necessary requirement for most effectively addressing urban renewal challenges in Scotland. The Group recommends that the Scottish Government should encourage and support a greater emphasis on public interest led development.</p>
<b>NEW HOUSING</b>	<p>The Review Group considers that a strong self-build sector is a key factor in the efficient use of land and in encouraging different forms of home ownership. The</p>

	<p>Group recommends that encouraging and supporting the development of a vibrant self-build sector should be an explicit aim of a housing strategy in Scotland.</p> <p>The Review Group considers that existing mechanisms are unlikely to deliver national housebuilding targets, in a manner compatible with Scottish Government place-making aspirations. The Group recommends the establishment of a Housing Land Corporation, a new national body charged with the acquisition and development of sufficient land to fully achieve these objectives.</p> <p>The Review Group considers that specific attention requires to be focused on the housing needs of rural communities. The Group recommends that, in these areas, the Housing Land Corporation should have explicit performance targets that recognise the specific needs of small rural communities and an extended operational role to enable these to be addressed.</p>
<b>EXISTING HOUSING</b>	<p>The Review Group recognises that it is now 10 years since the Abolition of Feudal Tenure etc (Scotland) Act, 2000, the Title Conditions (Scotland) Act 2003 and the Tenements (Scotland) Act 2004 were introduced. The Group recommends that the Scottish Government introduces a more comprehensive legal framework for common property, which clarifies and modernises the rights and responsibilities of both the individual ownership and the collective governance of such property.</p> <p>The Review Group considers that, to address housing need and the changing nature of the private rented sector, a change is required in the nature of tenancy arrangements within the sector. The Group recommends that the Scottish Government introduces longer and more secure tenancies in the private rented sector.</p>
<b>RURAL LAND USE</b>	<p>The Review Group recognises that the Scottish Government's Land Use Strategy is an important development to encourage the use of Scotland's rural land in ways which contribute more to the public interest. The Group recommends that the Government should make rapid progress in implementing the Strategy across the rest of Scotland beyond the two pilot areas.</p> <p>The Review Group considers that information on the pattern of land ownership should be an integral component of developing and implementing the Scottish Government's Land Use Strategy. The Group recommends that the Scottish Government should produce indicative maps of the patterns of land ownership in the Land Use Strategy's current two pilot areas, and in other areas as the implementation of the Strategy develops.</p> <p>The Review Group anticipates that the implementation of the Scottish Government's Land Use Strategy process will lead to reductions in the current flexibility in rural land owners' choices over how they use their land. The Group recommends that the Government ensures that the necessary mechanisms are in place for the successful implementation of the Land Use Strategy in the public interest.</p> <p>The Review Group considers that the patterns of land ownership in rural Scotland are an important factor in delivering the Land Use Strategy's community objective, because of the control that ownership gives over land use decisions and benefits. The Group recommends that the Scottish Government should map and monitor the patterns of land ownership in rural Scotland as part of implementing its Land Use Strategy.</p>
<b>PATTERN OF RURAL LAND OWNERSHIP</b>	<p>The Review Group considers that the assembling of relevant statistical information and research is crucial to our understanding of patterns of land ownership in rural Scotland, and how they can evolve. The Group recommends that the Government should compile improved information on land ownership and undertake or commission more research into patterns of land ownership.</p> <p>The Review Group considers that there should be an upper limit on the total amount of land in Scotland that can be held by a private land owner or single beneficial interest. The Group recommends that the Scottish Government should</p>

	<p>develop proposals to establish such a limit in law.</p> <p>The Review Group supports the Scottish Government's aim of "a fairer, or wider and more equitable, distribution of land in Scotland...with greater diversity of land ownership". The Group believes that this requires an integrated approach to developing measures which help deliver this ambition. The Group recommends that the Government should develop a National Land Policy for Scotland, taking full account of international experience and best practice.</p>
<p><b>LAND TAXATION, PAYMENTS AND MARKETS</b></p>	<p>The Review Group considers that there is no clear public interest case in maintaining the current universal exemption of agriculture, forestry and other land based businesses from non-domestic rates. The Group recommends that the Scottish Government should review this historic exemption, with a view to the phased introduction of non-domestic rates for these land based businesses.</p> <p>The Review Group considers that 'sporting rates' could be tailored to each of the species involved and have the potential to be one of the tools available to help deliver the Scottish Government's Land Use Strategy and other rural objectives. The Group recommends that the Government should review the current exemptions from sporting rates and introduce a reformed rates system as appropriate in the public interest.</p> <p>The Review Group considers that local government taxation in Scotland needs to be modernised and that Land Value Taxation should be given serious consideration as an option. The Group recommends that there should be a detailed study of the scope and practicalities of introducing Land Value Taxation.</p> <p>The Review Group considers that there is a lack of clarity over the public costs and public benefits that result from the current exemptions and reliefs for agriculture and forestry land in national and local taxation. The Group recommends that each of the exemptions and reliefs should be reviewed and reformed as necessary, to ensure that there is a clear and transparent public interest justification for the public expenditure through revenue foregone.</p> <p>The Review Group considers that the current fiscal regime for land ownership and use plays an important part in maintaining the concentrated pattern of large scale, private land ownership in rural Scotland. The Group recommends that changes to the current fiscal regime should include structuring them to encourage an increase in the number of land owners in rural Scotland, in the public interest.</p>
<p><b>CROFTS</b></p>	<p>The Review Group recommends that developing a modern and robust statutory framework for crofting should be a priority for the Scottish Government. The Group considers that the crofting community should be at the heart of any such process, and have a clearly defined role within it. The Group further recommends that reducing the complexity of crofting legislation should be an underpinning principle of any such process.</p> <p>The Review Group considers that the provisions in the Land Reform (Scotland) Act Part 3 impose unnecessary burdens on the crofting community in exercising the right to buy and that the ambiguities in the requirements that they have to fulfil can be exploited in the form of unwarranted challenges to the exercising of the right. The Group recommends that the provisions of the Act should be amended to reduce these unnecessary burdens, to reduce the risk of unwarranted challenges and to make other improvements to the provisions.</p> <p>The Review Group recommends that crofting trusts or crofting community owners should be able to purchase Scottish Government crofting estates at less than open market value. The Group recommends that Ministers direct the Scottish Government to make provision for this to happen and to clarify the circumstances under which this can occur. The Group also recommends that the Government should take a more pro-active approach to facilitating and supporting such transfers.</p>
<p><b>SMALL LANDHOLDINGS</b></p>	<p>The Review Group's view is that there should be major improvements in the position of tenants under the Small Landholders (Scotland) Act 1911. The Group recommends that these tenants should, like crofters, have a statutory right to buy</p>

	their holdings.
<b>TENANT FARMS</b>	<p>The Review Group's view is that the requirement for registration is an unwarranted constraint on the right of pre-emption of secure 1991 tenants under the Agricultural Holdings (Scotland) Act 2003. The Group recommends that the legislation should be amended to remove this requirement and to provide that all these tenants have first option on buying any part of their tenanted holding which their landlord decides to sell.</p> <p>The Review Group considers that the position of secure 1991 tenant farmers and their families as part of Scotland's rural communities, should be an important consideration in the Scottish Government's current review of Scotland's agricultural holdings legislation. The Group recommends that the Government should take full account of social and local community factors in determining whether the introduction of a conditional right to buy for tenants with secure tenancies under the Agricultural Holdings (Scotland) Act 1991, would be warranted in the public interest.</p>
<b>PUBLIC ACCESS</b>	<p>The Review Group's view is that Part 1 of the Land Reform (Scotland) Act 2003 has delivered a progressive statutory framework for improved public access over land in Scotland, and that the main challenges involve continuing improvements in implementation.</p> <p>The Group recommends that Scottish Ministers should as part of that, update the Guidance provided to access authorities under Section 27 of the 2003 Act.</p> <p>The Review Group recommends that Scotland's current common law public rights over the foreshore, inland water and seabed should be replaced by statutory public rights that are integrated with the public's statutory access rights over land under Part 1 of the Land Reform (Scotland) Act 2003.</p>
<b>WATER RESOURCES</b>	<p>The Review Group recommends that, following the reform by the Scottish Parliament of the arrangements governing the management and use of Scotland's fresh water resources, the riparian rights still attributed to adjacent and surrounding land owners in Scots property law should be reviewed and reformed to reflect the public interest in these resources as now defined.</p>
<b>FRESHWATER FISH</b>	<p>The Review Group considers that the current system of District Salmon Fishing Boards based on property rights is no longer appropriate or adequate as part of the statutory arrangements governing freshwater fishing and fisheries. The Group recommends that District Salmon Fishing Boards should be abolished as part of putting in place a new improved statutory framework to ensure the sustainable management of Scotland's wild freshwater fish populations in the public interest.</p> <p>The Review Group recommends that the presumptive Crown property right in Scotland to salmon fishings should be abolished or at least not exercised by the Crown Estate Commissioners until it can be. The Group also recommends that the coastal and freshwater salmon fishings held as ancient possessions by the Crown should be conveyed by the Crown Estate Commissioners to Scottish Ministers.</p> <p>The Review Group recommends that the capacity in Scots law to create new ownerships of salmon fishing rights separate from the land over which the rights exist, should be ended.</p> <p>The Review Group recommends that the Scottish Government develops a clear policy framework and associated arrangements to deliver improved opportunities for members of the public to fish for wild freshwater fish in Scotland.</p>
<b>WILD DEER</b>	<p>The Review Group considers that Scotland's populations of native red and roe deer are important national assets that should be sustainably managed in the public interest. The Group recommends that improvements should be made to the current statutory framework governing the hunting of deer in Scotland to ensure appropriate culls are carried out to adequately safeguard public interests.</p>
<b>LAND REFORM, COMMON GOOD</b>	<p>The Review Group considers that significant changes are required to make Scotland's system of land ownership a more efficient and effective system for</p>

<b>AND THE PUBLIC INTEREST</b>	<p>delivering the public interest. The Group recommends that the Scottish Government should have an integrated programme of land reform measures to take forward the changes required to modernise and reform Scotland's system of land ownership.</p> <p>The Review Group considers that there is a need for a single body with responsibility for understanding and monitoring the system governing the ownership and management of Scotland's land, and recommending changes in the public interest. The Group recommends that the Scottish Government should establish a Scottish Land and Property Commission.</p>
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