

**By Fax**

Brian Lawson  
Scottish Executive  
Land Reform Branch  
Room 106  
Pentland House  
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21 September 1999

Dear Mr Lawson

**Land Reform – Proposals for Legislation (July 1999)**

Scottish Environment LINK is the liaison body for 39 of Scotland's voluntary environment organisations. This response represents a consensus from members working together on land reform issues.

**1. Community right to buy**

*General Comment:*

We welcome these proposals in broad terms but have three main concerns. First, the opportunities for community right to buy are so restricted that it is unlikely many communities will actually be 'empowered' to buy land. Second, we fear community right to buy is presented as the panacea to land tenure and land ownership issues when it clearly is not. Community right to buy should be supplemented by a stewardship obligation on all landowners and land users. Third, there appears to be a conflict between the aim of securing the public interest in land use and land ownership and the current proposals for Abolition of Feudal Tenure, which will strengthen the rights of landowners, potentially at the expense of the public interest.

These concerns are expanded upon below:-

**a. Community right to buy proposals**

LINK can speak from experience of the difficulties in securing environmental organisation ownership of land such as with the various attempts to purchase the Glenfeshie Estate. We do not see how the proposed legislation will help in such situations. With regard to the community purchase of land, unless the detailed conditions within the proposals are considerably extended to allow adjacent communities the right to buy, then the proposals will have little impact.

The following issues are of greatest concern:

*Definition of a Community Body:*

We believe the requirement for the community body to comprise a minimum percentage of those 'who live and / or work on the land in question' is too restrictive. Rather, a community body needs to be defined in relation to a geographical area, such as a parish. This geographical area would then form the area over which a community body would be eligible to register an interest over.

*Effected land:*

The White Paper states that the community right to buy will only relate to land that members of the community live and / or work on. This provision is far too tightly drawn and would limit the community purchase of land to exceptionally few cases. In order to achieve the objective of this legislation as set down in the Land Reform Policy Group consultation paper, *Identifying the Solutions* - (i.e. "to greatly empower communities" and to "effect rapid change in the pattern of land ownership"), it is essential that communities are given the right to purchase land nearby or adjacent land. As with the definition of community body above, this could easily be defined as land within a particular geographical area – e.g. a parish.

*Registering an interest:*

Looking at existing examples of community land purchase, it is common for only a limited number of highly motivated community members to be actively involved during the initial stages of purchase. However, once a community is successful in the purchase of land, the numbers and level of community involvement naturally increases (e.g., at Abriachan, the initial purchase of the forest was achieved by a small core of community members. Six months after purchase, membership of the Abriachan Forest Trust stood at over 60 out of a total local population of 150). As long as a community body is democratically accountable and open to all residents of a community there should be little need for a condition endorsement by a minimum percentage of the community.

*Purchase of land of strategic importance to communities:*

The White Paper is not clear as to whether a community right to buy can apply to part of a holding which is put up for sale. It is essential that communities are not limited to the option of buying large estates when their main interest may be in a community woodland near the village or space for a community hall. In some cases landowners may be willing to sell small parcels of land to a community body. However, where this is not the case, some provision should be made for the purchase of such land so as to allow the sustainable development of these communities at the time they are needed rather than being obliged to wait indefinitely for land to come on the open market.

*Valuation:*

It is proposed that valuation is to be based on the open market price as, "inadequately compensating the landowner is not tenable" (section 4.6). Open market value clearly means the top price which would be paid, which often includes a speculative element and, in the case of Highland estates, can be considerably inflated above the economic value by those seeking a private paradise (e.g. the economic value of Eigg was put at £750,000 by Highland Council but it was sold for £1.5 million). Evidence suggests that local communities find it hard to match these prices. If the valuations set by the District Valuer are too low, landowners may choose not to sell land on the register of

community interest unless absolutely necessary, thereby reducing the supply of land coming on to the market in the very areas where a need has been identified. The White Paper contains no mechanism to provide incentives for landowners to release such land. A mechanism, such as land value taxation, is needed to lower prices to a more economically viable level and to discourage the retention of surplus land.

*Public Agencies:*

The Government should also consider whether to initiate a programme of encouraging public bodies which currently own land which is not of high conservation value to dispose of selected areas to appropriate local community organisations. Forestry Commission land is an obvious example. The highest priority, however, is to see the Highlands and Islands Enterprise land in the northern Cairngorms removed from its ownership and transferred to some form of community / voluntary partnership or a more appropriate public agency.

*Wider Public Interest:*

The proposals should include a similar 'right-to-buy' to enable this community of interest (as recognised in the January 1999 Green Paper) to purchase land when it is in the wider public interest, for example to secure land of high biodiversity value or other wider heritage, recreation or amenity interest land.

**b. Stewardship Obligation**

Community landownership is not the answer for every community in terms of achieving the Government's aim of greater local involvement and local accountability, and securing the public interest in land use and land ownership (January 1999 Green Paper). A stewardship obligation on all landowners and tenants, including community landowners, would be an important complement to the community right to buy which would mean immediate positive change throughout Scotland. This should be included in the longer programme of action and legislation over the next 4-5 years which is noted in the White Paper.

**c. Conflict with Abolition of Feudal Tenure Proposals**

We fear many of the good intentions expressed in the White Paper to empower communities are threatened by the Draft Abolition of Feudal Tenure Bill, which will create outright ownership and strengthen the rights, rather than responsibilities, of landowners. The role of the Crown must be carefully reviewed before we abolish a unique and precious piece of the existing land tenure system – the incorporation of the public interest as a condition of land ownership.

**2. Information about Land**

**Database on Land Ownership**

Information on the ownership of land ought to be made as comprehensive and easily accessible as possible. The extent of the public demand for this was apparent from the analysis of responses in *Identifying the Solutions*, with individuals, community councils, local authorities, public bodies, NGOs and political parties all emphasising the need for better access to information. Mapped information on ownership should be readily available on a register which is accessible both nationally and at a local community level.

The land, after all, is the common resource of the nation, and the nation has a right to demand detailed information as to its ownership. It is perfectly reasonable therefore to place a legal obligation on all landowners, large or small, to make a return giving detailed information on their holdings.

Meanwhile, in the short term, more information could be made available by emulating the project undertaken for Highland Council (6.4). It is understood that this project took approximately one year, and while not absolutely authoritative, has been able to assist a wide variety of users including film companies, community councils and those seeking land for businesses.

We consider that, repeated across rural Scotland at an estimated cost of £500,000, this would represent excellent value for money. Public bodies and local authorities require information on land ownership as a matter of course, often in connection with matters of public safety (e.g. tree cutting on private land adjacent to public roads). It is in the interest of local economies that incoming businesses and developers should have easy access to the information they require. Land management initiatives ranging across estate boundaries (e.g. deer control) need to identify the various landowners, as do the organisers of outdoor recreation courses and charity events.

The proposals contained in the White Paper will bring further demands for information. If the community right-to-buy legislation is successful in changing the pattern of landownership, community groups will wish to establish the identity of adjacent landowners. The proposals on access require local authorities to plan path networks and protect the established routes; it will be essential to know who owns the land over which the paths are to go.

Furthermore, although it does not appear in the White Paper, the details of public support relating to land, including conditions relating to tax exemptions, ought to be publicly accessible. There should be no compromise to the principle of public accountability for public funding.

### **Beneficial Ownership:**

In respect of 6.6 and 6.7, the continued anonymity of beneficial interests is unacceptable, given the public demand for more transparency in matters of land ownership. A legal obligation must be established to disclose all beneficial interests.

We believe all offshore companies and private trusts should be rendered incompetent to take title to land in Scotland. This change in law is essential to secure the local accountability to the community, a key aim of the White Paper.

## **3. Access**

We are pleased that the Scottish Government is giving a high legislative priority to land reform and particularly welcome the commitment to access legislation. LINK members are represented on the Access Forum and have contributed to the development of the proposals being put to Scottish Natural Heritage. Members are also playing a key role in the Scottish Land Reform Convention.

The current arrangements for access to the countryside are unsatisfactory and the voluntary principle has not worked effectively for the last 30 years. We therefore

believe that there is an urgent need to bring forward arrangements which meet the needs of today's society. This is an opportunity to put in place a system that will ensure that Scotland is one of the leading countries in Europe in securing public access to land and water for outdoor recreation. Nevertheless, we recognise that fair and open safeguards are required to protect the environment, particularly sensitive species and habitats, from disturbance or damage.

The following issues are of greatest concern:

*Departmental responsibility for access legislation:*

We favour access legislation remaining as a key part of land reform and for the Justice Department taking the legislation through Parliament.

*Public Perception:*

We see access as potentially a very popular part of the land reform package, a measure that affects every citizen. Outdoor activities have very wide participation - for example surveys have shown that 60% of the population takes a walk at least once a year. Government should consider how this can be developed and sustained. We believe that the code should cover the legitimate concerns of land managers and that the burden of path maintenance and management should, at least in part, be publicly financed.

*Terminology:*

We consider that the phrase "right to roam" should be adopted by the Government given that it is the term used by the media to describe the forthcoming access legislation, is used by virtually all outdoor interests and commands wide public understanding.

*Enshrining the existing tradition:*

We wish to emphasise the need for the legislation to be based on the principle that it is doing no more, as regards general access to land and water, than enshrining the existing traditions, which already have a strong legal underpinning. It is not, and must not appear to be, the imposition of some huge new burden on land managing interests.

*All land:*

It is crucially important that the right of access applies to all the land recommended by SNH and the Access Forum, including all enclosed land, thereby following the wider European models, rather than the lesser approach now being proposed for England and Wales.

*Paths and tracks*

New arrangements for securing improved arrangements for access along paths and tracks, along with the creation of new access routes, is a vital component of the new legislation. A radical solution is needed to solve current difficulties.

*No delay:*

We are concerned about arguments relating to liability which are being used to suggest the legislation should be delayed. We believe these to be ill founded and should be clarified as soon as possible.

*Committee:*

We believe that the committee that scrutinises the Bill should ensure that it has available appropriate expertise from outdoor recreation and environmental interests.

*Europe:*

We recommend that Government take account of developments at a European level particularly in relation to the European Convention on Human Rights.

*Funding:*

The proposals on access will depend on substantial reallocation of resources if they are to be effective in practice and will require a funding commitment from government. This will, however, deliver far better value for money than the current arrangements and will bring real benefits to the quality of life of a large sector of the Scottish population.

#### **4. Conclusion**

LINK members welcome the White Paper as a first step in the Land Reform process and look forward to further legislation in order to achieve the goal of land reform as set down in the consultation paper, *Recommendations for Action* - namely "to remove the land-based barriers to the sustainable development of rural communities".

Yours sincerely

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