



SCOTTISH LAND COMMISSION
COIMISEAN FEARAINN NA H-ALBA

Land: For the many, not the few?

Limitations on the Scale of Land Ownership

A discussion paper

Peter Peacock
March 2018

LAND LINES

A series of independent discussion papers on land reform issues

Background to the 'Land Lines' discussion papers

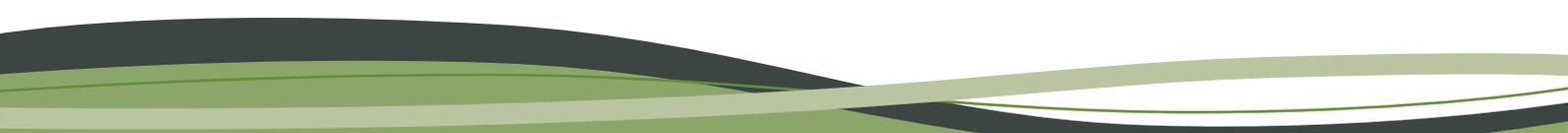
The Scottish Land Commission has commissioned a series of independent discussion papers on key land reform issues. These papers are intended to stimulate public debate and to inform the Commission's longer term research priorities.

The Commission is looking at the scale of ownership as part of our strategic priority of 'Land Ownership' as detailed in the [Programme of Work](#). This, the third paper in the Land Lines series, is looking at the scale of concentration of ownership of land in Scotland.

The opinions expressed, and any errors, in the papers are the authors alone and do not necessarily reflect those of the Commission.

About the Author

Peter Peacock has over 30 years' experience in land reform. He is a former Leader of Highland Council and was previously a Highlands and Islands MSP. Peter was also a Minister in the first Scottish Executive and held Ministerial office for over 7 years, gaining considerable experience as a legislator. He was the Policy Director of Community Land Scotland from 2011 to 2017 and in that role was an active participant in shaping recent land legislation. He has been active in discussions around the Land Rights and Responsibilities Statement recently adopted by the Scottish Government.



LAND LINES

A series of independent discussion papers on land reform issues

Summary

Keywords

Land; ownership; diversity; policy; reform

It is widely regarded that, internationally, Scotland has one of the most concentrated landownership patterns – very few owners own a large proportion of Scotland – concentrating power in very few hands. Issues around transparency and fully understanding who owns Scotland still persist. Statistics from the Registers of Scotland do not focus on the scale of ownerships and continuing research will be required to maintain a picture of land ownerships of scale.

Scottish policy toward land is increasingly rooted in explicit concerns about fairness, equality and the fulfilment of the human rights, in securing greater diversity in land ownership and tenure. Wider economic policy has a focus on more inclusive and sustainable economic growth, and empowering communities.

The Scottish Land Commission is launching an open call for evidence of people's experiences of issues associated with concentration of land ownership.

The purpose of the call for evidence is to help the Commission better understand the issues that people associate with concentrated land ownership from the perspective of those directly involved or affected.

Visit the Commission's website to find out more:
www.landcommission.gov.scot.

Contents

1. INTRODUCTION	1
2. SCOTLAND'S CURRENT LAND OWNERSHIP PATTERNS	1
3. THE DEVELOPMENT OF RECENT LAND POLICY IN SCOTLAND	2
4. THE CHALLENGES OF LARGE-SCALE AND CONCENTRATED LAND OWNERSHIP	4
5. A QUESTION OF FAIRNESS AND THE DISTRIBUTION OF WEALTH AND POWER	6
6. AN ALTERNATIVE VIEW OF SCALE	9
7. SUMMARY OF JUSTIFICATIONS FOR CHANGE	10
8. POTENTIAL POLICY OPTIONS	10
9. OTHER POLICY MEASURES THAT COULD INFLUENCE OWNERSHIPS OF SCALE	13
10. WHAT OTHER COUNTRIES DO	15
11. PROMOTING AN ONGOING DISCUSSION	16
12. CONCLUSION	16
13. REFERENCES	17

1. INTRODUCTION

With the creation of the Scottish Land Commission comes an unprecedented opportunity to undertake the detailed work necessary to fully explore the issues of land scale and the concentration of power associated with such landownerships.

This short paper is a contribution to highlighting some of the key issues and potential policy options for change, as a backdrop for wider discussion on the issues. The paper has been commissioned by the Scottish Land Commissionⁱ.

2. SCOTLAND'S CURRENT LAND OWNERSHIP PATTERNS

It is widely regarded that, internationally, Scotland has one of the most concentrated landownership patterns – very few owners own a large proportion of Scotland – concentrating power in very few hands. The commonly used statistic derives from work by Andy Wightmanⁱⁱ, building on work by the late John McEwenⁱⁱⁱ, that 432 owners own 50% of Scotland's private rural land.

The Land Reform Review Group in their final report in 2014 set out a range of figures to illustrate the scale of ownerships in Scotland, with specific illustrative figures for all land ownerships between 1872 and 1970, thus:

Percentage of Scotland's Land Area	Number of landowners 1872	Number of landowners 1970
10%	3	13
20%	21	40
30%	34	134
40%	63	269
50%	118	579
60%	196	1430

They further set out Wightman’s findings relating to private rural land:

Percentage of Private Rural Land	Number of landowners 1970	Number of landowners 1995	Number of landowners 2012
10%	18	17	16
20%	51	53	49
30%	110	116	110
40%	207	220	221
50%	370	412	432
60%	1180	854	963

The original Wightman research is still quite recent and will inevitably date, but has never received serious challenge to its accuracy. It matters little whether today’s equivalent figure to 432, is 400 or 500, such is the scale of the concentration that any of these figures represent, they would continue to show Scotland had highly concentrated land ownership. This issue is at the heart of what is often referred to as ‘the Scottish land question’.

Issues around transparency and fully understanding who owns Scotland still persist and as the Land Register continues to be populated with data, research on this should become easier. The information in the Land Register will be added to when the new Register of Controlling Interests in Land in Scotland is established. Statistics from the Registers of Scotland do not focus on the scale of ownerships and continuing research will be required to maintain a picture of land ownerships of scale.

3. THE DEVELOPMENT OF RECENT LAND POLICY IN SCOTLAND

The development of Scottish land policy over recent years gives an important contemporary context for the consideration of issues around land ownership scale and concentration. To have any prospect of success, any policy proposals around these issues would need to be seen as relevant to current policy objectives.

Scottish policy toward land is increasingly rooted in explicit concerns about fairness, equality and the fulfilment of the human rights, in securing greater diversity in land ownership and tenure. Wider economic policy has a focus on more inclusive and sustainable economic growth^{iv}, and empowering communities.

The Land Reform Review Group specifically recommended in their final report^v that a limit be set on the amount of land any single interest could hold. The Group's recommendations have been influential in setting the scene for what has developed. They saw land as a crucial and finite resource that required owning and using in the public interest and for the common good. This thinking has contributed to a changed focus of the recent land debate, away from looking at land ownership and land rights as principally market matters and private rights, to now giving more emphasis on where the public interest lies.

The development of thinking to see land policy in these terms is evidenced in recent legislation, the Land Reform (Scotland) Act of 2016 in particular. The Policy Memorandum to the Bill^{vi} on its introduction to Parliament said that, *“land reform has the potential to empower greater numbers of people...land reform can change patterns of ownership in Scotland to ensure a greater diversity of ownership, greater diversity of investment and greater sustainable development... land reform has the potential to empower greater numbers of people.”*

The Act^{vii} requires the production of a Land Rights and Responsibilities Statement, in which Ministers are required to have regard to: promoting respect for, and observance of, relevant human rights; encouraging equal opportunities; furthering the reduction of inequalities of outcome which result from socio-economic disadvantage; supporting and facilitating community empowerment; increasing the diversity of land ownership; and furthering the achievement of sustainable development in relation to land.

The recently published Land Rights and Responsibilities Statement^{viii} has considerable status and is a key document to which the Land Commission must have regard in undertaking its work, and which Ministers themselves are required to promote.

In introducing the Statement on its website^x, the Scottish Government makes clear the Statement, *“underlines the Government’s commitment to on-going and long-term land reform...; will help ensure that land can support our ambitions for a fairer ... country where more people and communities can benefit from ... (the) land; and supports a human rights approach to land and will contribute to securing rights, equality and wellbeing.....”* The Statement itself refers to it helping achieve *“social justice and build a fairer society”* and commits to there being, *“a more diverse pattern of land ownership and tenure....”*

Scottish Ministers' public statements set out government policy intentions, plainly stated by the Cabinet Secretary for Environment, Climate Change and Land Reform at the first Conference of the Land Commission in September 2017 that policy on land is rooted in fairness and greater diversity; *“about a fairer Scotland... about economic and social justice”*. The position of Ministers is no more clearly captured than by the First Minister in her programme for Government speech in 2014^x where she made clear, *“Scotland’s land must be an asset that benefits the many, not the few.”*

The focus on greater diversity in land ownership echoes a policy goal of the 1998 Scottish Office report from the Land Reform Policy Group^{xi}, immediately prior to devolution, which helped inform the first land reform act post devolution (Land Reform (Scotland) Act 2003).

The requirements flowing from the Climate Change (Scotland) Act 2009 for a national Land Use Strategy also reveal how land policy has a stronger focus on the public interest in land.

4. THE CHALLENGES OF LARGE-SCALE AND CONCENTRATED LAND OWNERSHIP

There are different dimensions to considering questions of large scale and concentrated land ownership. The first dimension involves the pattern of ownerships of scale at the Scottish level, as illustrated above, which in aggregate concentrate ownership in very few hands. The second dimension is the concentration of power over decision-making within the boundary of any particular ownership to rest only in a single person, or small group of individuals. The larger the ownership scale, the greater the potential for more communities, individuals and a wider environment to be affected by such concentrated power.

Scale and diversity

The question of scale has a specific relationship with the potential for greater diversity of ownership. When diversity is considered as meaning more ownerships of any significant number, it would not be possible to achieve this without some or many of the existing land holdings of scale being reduced in size.

Diversity itself can mean more ownerships and more tenures, but it might also mean different types of ownership and tenure, the latter not necessarily requiring change to the scale of ownerships. There seems little doubt from the policy documents and statements that Ministers' objectives seek more ownerships and tenures, and not just different types of ownership and tenure.

Is scale always a concern?

Many people see the scale of land ownerships that characterise Scotland's land question as problematic. Such a view is likely to be based on a strong sense of an unequal distribution of resources, unfairness, and an important component in the wealth inequalities that trouble many people.

A further dimension to the question of ownerships of scale is when a single owner's aggregate holdings of land represent very significant scale, even if each individual holding is of itself not necessarily vast. It seems clear that some find this emerging issue troubling as there is no apparent means to formally ask questions about the appropriateness of such land-acquisitions if there were a concern about it.

The position is more complex however, as it seems that simultaneously, some ownerships of scale carry widespread support. For example, it would seem that the national forest estate, the largest land holding in Scotland, managed on behalf of Scottish Ministers by Forest Enterprise Scotland, has significant support for the ownership and management of that forest estate. Indeed, suggestions in 2009^{xii} to change the arrangements for how the national forest estate might be owned and managed were widely seen as a threat to the public interest and an outcry resulted in the proposals being dropped.

Further, of course, Scotland now has a number of community ownerships of significant scale which have legislative and popular public, and local, support.

What probably distinguishes those ownerships from private ownerships of scale is that they have well understood accountability arrangements, and that the income derived from ownership is shared in the wider community or public interest. In the case of the Forestry Commission the accountability comes through national democratic arrangements. In the case of community ownerships the free, prior, and informed consent of local people is required to the ownership, normally in the form of a ballot of all electors, and the community has an ongoing 'regulatory' role through local elections to the governing body and in shaping major land use decisions.

It might be argued, therefore, that large scale ownerships, per se, are not necessarily seen as unacceptable, when combined with open accountability mechanisms.

A further, but somewhat different, example of where ownerships of scale may find widespread public support would be the ownerships that some large conservation agencies have. The route to purchases of this sort is very often dependent upon voluntary public subscription of the funds necessary. In this instance, it could not be said that such bodies have accountability arrangements of the sort described earlier, but the purpose of the ownership can be widely supported. It would however be fair to acknowledge that there may sometimes be a different view of the benefits of such ownerships at the local level.

Concentration Vs Scale

With greater scale comes the potential for a greater number of communities and individuals to be affected by the view and preferences of the owner. However, concentration is not just a function of large scale. In some island situations for example, which by definition may not be of vast scale, the power of the owner over the majority of the island can have pronounced practical effects. Further, within the more urban context or in land adjacent to some settlements, really quite small

land-holdings and their use, or lack of use, may have very significant impacts on an entire community. So, while scale of ownerships may increase the concentration of power over more people and communities, scale per se is not the only consideration in challenges around land ownership and the public interest.

5. A QUESTION OF FAIRNESS AND THE DISTRIBUTION OF WEALTH AND POWER

The great texts that have helped shape our modern world and offered values for it, or helped create ideological models for political debate and social progress, have had questions of the inequality of wealth, sometimes in which land was seen as part, at their heart: from the Bible^{xiii}, the Quran^{xiv}, in Judaism through the ‘Jubilee’^{xv}, or in the writings of Karl Marx^{xvi}, Keir Hardy^{xvii}, Adam Smith^{xviii}; or in today’s world, Joseph Stiglitz. Stiglitz^{xix} recent book captures how growing wealth disparity can breed social discontent, and support the rise of extremism with potentially catastrophic consequences for society. Land being an important component of wealth, the distribution of land ownership is a consideration in questions of wealth.

A significant component of how we view our society is whether we can regard it as fair, just, and equitable. When perceptions on these matters conclude there is injustice or a lack of fairness, society takes steps through the means at its disposal to make adjustments to the status quo. The land raids are an example of direct action taken by the people. They demonstrate a breaking point in the level of tolerance towards the perceived injustice in how land was distributed. The land question in Scotland also gave rise to political organisation and the election of Highland Land League MPs between 1885 and 1894, this contributed to the delivery of land protections for crofters.

Debate about the limitations on the scale of ownership in Scotland is therefore partly rooted in a perceived inequitable national inheritance, for many lacking justice or fairness, and with real consequences in how society functions. Addressing sources of inequality is a driver for politicians and policy makers tasked with supporting inclusive and sustainable economic growth.

For many the current concentrated ownership patterns represent a structural inequality in Scotland of significant proportions which arguably limits or acts against furthering the achievement of greater social justice.

But this is not the only reason concern exists about the effects of scale and concentration of land ownerships.

Scale – limits to economic participation?

Although debate about land ownerships can be sometimes characterised as the politics of envy, or simply the pursuit of Marxist doctrine, our land ownership pattern has practical consequences.

What specific changes in ownerships of scale would deliver by way of the availability of land for rural housing, for forestry, hutting, to supply new agricultural tenancies and smallholdings, new recreational activities, and the creation of employment, is a matter for debate. While some evidence from research into community ownership of land points to improved activity across all these matters after the community took ownership^{xx} that debate might benefit from closer application of economic theory on these matters to the specific Scottish context. What would seem undeniable, however, is that with more ownerships of different scale would come more perspectives on land use, wider opportunity for different choices for land uses, more opportunities for fuller economic participation, and a move toward achieving more inclusive growth and greater diversity.

There are those who would argue the current arrangements stifle social and economic progress and sustainable rural development in particular. This set of issues has been most comprehensively explored by Professor John Bryden^{xxi}, who examined in some detail our land ownership patterns, the consequences for rural sustainable development, and the constraints the current land arrangements place on progress.

In their McEwen Lectures, Professor Bryan McGregor^{xxii}, Dr. James Hunter^{xxiii} and Andy Wightman^{xxiv} respectively reveal broader and differing approaches to the challenges that the question of ownership scale and concentration present. Bryan McGregor explained that there is nothing to suggest that Scotland's current structure of tenure is the best for contemporary society or able to deliver desired policy objectives. James Hunter indicated a vision for changes in opportunity through a major expansion of community ownership, a steady contraction of Crown or State ownership, and substantially more (and therefore smaller scale) private ownership regulated to make it more socially and environmentally acceptable. Andy Wightman pointed towards a social democratic property owning society with strong mutual and co-operative institutions, creating a strong network of collective institutions

Opportunity for participation in Scotland's land market is limited

A further challenge arises because much rural land that does come on to the market, beyond the churn of average sized farms, is in units of significant scale. This inevitably means the price for the land can be considerable and in turn this means that only very few people are able to participate in that market. It is a market place where, with limited exceptions, only wealthy elites can really participate.

It could be said that this is a market failure, a barrier to participation in land and how it is owned, managed and used. Left to its own devices, the land market will carry on in its present form. It will continue to limit those who can participate in it, perpetuate land holdings of scale and concentrate power.

Local land monopolies

The unusually large scale of much Scottish private land ownership concentrates power over more people, communities and landscapes than a more diverse ownership pattern would. The concentration of power within any single ownership creates the conditions for a local land monopoly.

A monopoly is essentially the exclusive possession or control of the supply of or trade in a commodity or service and the classic effects are well established in the ways they can act against the public interest: diminishing choice; the loss of consumer (community) sovereignty; higher prices; excess profit; power imbalance; an unbreakable hold on a market, or commodity; limited accountability; the prioritisation of actions to protect the monopoly; complacency or disinterest over those affected by the monopoly; loss of enterprise; and the loss of efficiency. Such market power is another form of market failure.

There are various mechanisms at the UK and wider EU level to protect against the effects of monopolies. For example, the Competition and Markets Authority^{xxv} specifically acts to protect the public interest in competition matters. There is also separate regulation to protect plurality in the media^{xxvi}, our water services are regulated^{xxvii} because of their monopoly provider position, and so on.

In a context where measures to protect against the effects of monopolies are common-place and uncontroversial it seems odd that land, a finite resource and a key foundation for how we can function as a society, has largely escaped regulatory scrutiny. The large scale land holdings we have in Scotland, where they can be said to characterise a monopoly in any locality, represent an economically unregulated power imbalance between the monopoly, people and community.

The empowerment of communities

A further challenge arises from a growing area of policy interest and action, that of community empowerment.

The Land Reform (Scotland) Act 2003 and its rights for community ownership of land, the Community Empowerment (Scotland) Act 2015 and subsequent Land Reform (Scotland) Act 2016 all have empowerment of communities as a key theme. Such empowerment is now mainstream thinking of government and opposition parties. Therefore in thinking about the question of the scale of land ownerships, how this interacts with the potential greater empowerment of communities over their futures has to be seen as important.

With concentrated power, the decisions of one individual or company can have material effects on the livelihoods of the people, or the very viability of a place. Much of the motivation for communities to own land has been their inability to sufficiently influence decisions that materially affect them; to have sufficient control over their future, the sort of control that comes with ownership of land.

The most celebrated of community purchases of land, such as that in Eigg, have been driven by the fact that the people of the place and the owner had different visions for the place, and practical obstacles to community progress, such as from the opportunity to use land for key purposes to the security of different tenures on offer. The same could be said to be true of many other past purchases, or some being pursued today. In Eigg, or Gigha, South Uist or North Harris for example, where population levels were plummeting, people could see a threat to their very way of life, their economic survival and the culture they cherished. Through the taking of the control that comes only with ownership, people have become empowered to deliver a more sustainable future.

In considering the question of ownership of scale and concentration in today's policy context, the question of the opportunity for advancing community empowerment needs to be central to how land policy develops.

6. AN ALTERNATIVE VIEW OF SCALE

It is probably important to record that seen from the point of view of many existing owners of land, any suggestion of there being actions to limit the scale of landownerships is deeply threatening and will be seen as unwarranted. Those owners are likely to argue that their contribution to rural and wider economic development is considerable and undervalued; that they have a high degree of expertise in how to manage land; that economies of scale of large ownerships can bring many advantages; that practical arrangements to manage deer, for example, would become more complex with smaller scale ownerships; that smaller units of ownership may be economically unviable; that it is land use that is important, not ownership; that any proposed actions will create market uncertainty and discourage investment; that by improved participation and consultation with communities any perceived problems can be overcome. It would be contested territory that such arguments therefore warrant no change.

7. SUMMARY OF JUSTIFICATIONS FOR CHANGE

So, to bring about the greater diversity in ownerships that is at the heart of contemporary land policy, taking action to limit the scale of land ownership and the effects of concentration of power within any landholding might be justified on five essential grounds:

1. The way in which current ownership patterns inherently act against the greater fairness and social justice widely shared as a societal goal;
2. The positive effects of fuller economic participation by more people;
3. Addressing the market failure that limits participation to an increasingly rich few;
4. Tackling the concentration of power, with some land ownerships being effective local land monopolies; and
5. The ability of reformed arrangements to empower more people and communities.

These justifications broadly align with the Land Commission's strategic objectives around productivity, diversity and accountability. They are also matters which broadly fall within the sort of justifications for policy interventions permissible by government under the Treasury 'Green Book'^{xxviii} which addresses questions of economic efficiency, market power, equity, additionality considerations which alter the productive capacity of the economy, and regeneration.

8. POTENTIAL POLICY OPTIONS

Absolute limits on ownership?

This question is best examined by first considering future purchase of land, and secondly existing land holdings.

Future Purchases of Land

The Scottish Parliament has legislative competence in land policy questions and should in principle have power to legislate for placing absolute limits on any landholding that could be purchased. Anyone wishing to purchase land would be able to see in advance potential limitations to their desires. The policy goal can be seen as, broadly, to secure greater equity in land ownership (and wealth) distribution, greater land ownership diversity, the widening of more inclusive economic opportunity and participation, and providing opportunity for greater empowerment.

The setting of any limit would almost certainly be seen as arbitrary, but that does not mean it would necessarily be inappropriate. It is noteworthy that the possibility of placing limits to land tenure is recognised in internationally agreed guidelines on land tenure, guidelines of the UN and to which the UK is a signatory. The Voluntary Guidelines on the Responsible Governance of Tenure^{xxix}, which themselves are now recognised in recent Scottish legislation^{xxx}, include a provision in this regard that, “*States may consider land ceilings as a policy option.*”

The significant challenge in this, and this challenge should not be underestimated, would be in determining a limit that could gain broad consent as being fair, with an absolute limit carrying the additional difficulty of suggesting that at one acre below the limit everything is fine, but one acre above and the ownership scale is unacceptable.

Any such policy approach of course implies there would have to be a ‘policing’ function for the policy and a cost attached to administering any such public policy. Considerations around this matter should push any such policy away from interfering with anyone wanting to own a home and garden; it would seem unnecessary and undesirable for it to engage any land below the average productive farm size. This would take policy into the territory of a limit anywhere upward from a few hundred hectares. Such holdings would in today’s context not generally be regarded as landholdings of any great scale.

A study for Scottish Land and Estates in 2015^{xxxi} segmented landholding sizes as very small (< 100 ha.), small (100 to 1,000ha.), medium (1,000 to 10,000ha.), large (10,000 to 20,000ha.) and very large (>20,000ha.). This provides some reference points for consideration of the issue of an absolute limit on scale, but does not relieve the inherent challenge in setting an absolute limit.

An absolute limit would threaten the sort of ownerships of scale that are accountable or seen as acceptable, as discussed above.

It would ultimately be a matter for the judgement of Parliament if this approach is appropriate and where any absolute limit might lie.

Scale as a trigger for public interest considerations?

A different way of looking at the issue would be for there to be a limit purely for the purpose of providing a trigger for a public interest consideration of land sales. Within such a scenario the actual trigger limit is likely to be a much less contentious issue as it is not absolute. This would be particularly so if there was discretion not to trigger a public interest examination if there was no interest or case for so doing, or to permit purchases of large scale after public interest considerations.

A vital component of any detailed consideration of such matters would be to set any thresholds to ensure the administrative burdens of any such system were manageable.

Setting a trigger by reference to scale carries with it the danger that smaller purchases which may none the less be of potential significance to settlements would escape scrutiny, unless a more all-embracing approach to any sale were adopted, such as in France (see later).

Imposing absolute limits on existing land holdings

Taking action in the context of existing land holdings would be much more legally challenging, principally because a requirement would be being imposed retrospectively and in a way that could be argued could not have been reasonably predicted at the time of purchase by the owner; and would interfere with established property rights. This does not mean to imply action would not be possible after detailed legal considerations, with the provision of extended periods to bring holdings into line with any requirement. But inevitably it would be much less certain legal territory.

None the less, existing holdings, many of which never come on to the market in Scotland, do have impacts which may act against the public interest and objectives of government land policy, such as those discussed earlier in this paper. In this context it would be important that the public interest can still be considered.

The most obvious way for this to happen would be to design a different form of trigger mechanism to allow a public interest consideration.

The mechanism here could embrace considerations around scale, and also those associated with widening economic opportunity through greater diversity, of community empowerment, the concentration of power with any land-holding, and so on, whether large rural, island or urban.

Interference with land-owners' property rights

Property owners do of course have rights, human rights, principally established under the European Convention on Human Rights (ECHR). Article 1, Protocol 1^{xxxii} enshrines those human rights and provides for persons to peacefully enjoy their property. Any changes to current arrangements require to be implemented in ways that respect those human rights. What is sometimes overlooked in such considerations is that those rights are not absolute rights. The ECHR rights of owners are, however, not a 'red card' to further land reform measures. Interference with these rights can be permitted if certain conditions are met, including that the interference is in the general (public) interest, has a legitimate aim, proportionate in meeting the public interest consideration, and compensation is payable.

What seems no longer appropriate today is that Ministers in Scotland have no means of asking important public interest questions in relation to the scale and concentration of Scotland's land holdings, let alone have any powers to act on any concerns.

A Regulatory Body

The foregoing discussion assumes that a regulatory body exists for these land issues. Any such body would require appropriate powers and duties. Its duties being, for example, to monitor any future sales against any trigger created, to investigate referrals to it, and to consult appropriately. Such a body would also need strong powers if it was to effect any change as a consequence of referrals to it.

Having such regulatory bodies, holding wide-ranging powers, is not an unusual feature of our society and is seen as a necessary part of how to protect the public interest.

9. OTHER POLICY MEASURES THAT COULD INFLUENCE OWNERSHIPS OF SCALE

Taxation

Taxation policy is one of the most important and powerful tools that any government has for affecting the behaviour of people and corporations. The annual budget of any nation in part concerns providing differing incentives and disincentives to behaviours that in the judgement of the government require adjustment. Against this backdrop, taxation policy most probably has a part to play in addressing challenges perceived to emerge from land ownership scale.

Discouraging any continuing or further concentration in ownership of land is an obvious potential area for selective taxation policy. The Land and Buildings Transaction Tax is a banded tax that increases as value of a sale increases and within its provisions has established a principle of higher rates for the purchase of a second home, to discourage such sales.

This tax is based on value, not the scale of a purchase, but the powers exist in Scotland to adapt the tax to meet policy requirements. It is possible to envisage a policy where any purchase above a certain scale, or in aggregate, would have to pay Land and Buildings Transaction Tax on a higher escalating rate designed to discourage such purchases.

Conversely, there could be tax incentives for the disposal of land for public interest purposes, for example, such as community owners, charitable conservation bodies or other communities of interest, when there was a proven public interest reason for the disposal to such bodies. The Scottish Government does not have powers over inheritance tax or capital gains tax, which might be candidate taxes for any reliefs related to incentivising public interest sales. Any policy development in this direction might be informed by arrangements currently entered into with the tax authorities from time to time when important works of art or buildings are made available to the public in lieu of outstanding taxes otherwise due, or through the creation of specific tax credits or exemptions.

The Scottish Government does have powers over non-domestic rating policy and although many land based activities are currently exempt from this form of taxation the Scottish Government is in the process of re-introducing 'sporting rates' on land used for various forms of shooting. In the process of doing this they have made clear they had no intention of changing other forms of rating exemptions that are in force and impact on land based activity. None the less, discretion exists over this form of taxation.

Land value tax^{xxxiii} has been the subject of debate over many years and was agreed to be introduced in the early part of the 20th century. In the event and after extensive preparations, it did not proceed. Land value tax has many advocates as a principle for fair taxation and, in the land context, recognising that for many, holding land, an appreciating value asset, has little cost attached to it. Land value tax fundamentally seeks to alter that. It is seen principally by its advocates as a different and fairer form of taxation to some existing forms of tax, bringing with it changed incentives in relation to the use of land. How land value tax would play out in practise and whether any exemptions would be given and for what reasons (such as currently on other forms of taxation to agriculture), would be a matter for detailed policy development and extensive consideration.

Adjustments to public subsidy

Agricultural and other grant (and some tax relief arrangements attaching to land) probably have an effect on why at least some people may want to own land, providing regular income on top of escalating capital value. The Scottish Affairs Committee in March 2015 reported^{xxxiv} on an inquiry they had undertaken into land reform in Scotland which began to explore this issue, and they recommended more work be undertaken. Specific design changes to land based payments are always possible, though could be complex. A simpler instrument that would be likely to have a direct effect on the desirability of some to own large acreages of land would be to cap the amount any one beneficial interest could receive.

Succession (inheritance) law

Succession (inheritance) law in Scotland permits a distinction in the rights of spouses, civil partners and children in relation to land as opposed to other forms of property (moveable property). This, it is argued, allows large land-holdings to remain intact upon succession, whereas if all potential successors had an enforceable entitlement to a share, this would result in the break-up of such landholdings. This has had significance in arguments down the years for those with a concern for the scale of many of Scotland's land holdings and has been seen as a potential area for change. Interestingly, the Land Reform Review Group in their close examination of this issue concluded that changes to succession law to provide for equality in how an estates assets are treated would not give rise to significant changes in the scale of

ownerships as there were other mechanisms to protect existing units of ownership, such as through the creation of companies and trusts to hold the land. The 2016 SNP manifesto^{xxxv} made a commitment to modernise succession law. What the detail of this may finally encompass remains to be seen.

Residential requirements

Given that many large scale ownerships in Scotland are by people who do not live on the land permanently but use it as a place to visit, placing a residential requirement to live on the land may provide a disincentive to purchase. Such a legal requirement applies to crofters, to live on the croft or within 32 kilometres. While there would be inevitable policing and compliance challenges from such an arrangement, it is a not uncommon feature of other countries land laws.

Conclusion on potential policy options

As can be seen, a range of plausible policy and legislative options exist to give Ministers or their nominee's powers to intervene in land markets to further the public interest and to deliver greater diversity of ownerships, and which need not be restricted only to consideration of fixed limits to landholdings.

10. WHAT OTHER COUNTRIES DO

Other countries have measures at their disposal to intervene or influence land^{xxxvi} ownerships.

For example, Poland, Denmark and Malta have varying mechanisms to place limits of foreign ownerships, with a system of government 'permits' for foreigners to be able to own land. Decisions to permit ownership may depend on a judgement of the extent to which the ownership will contribute to the economy and the public interest in land. There has not been any real evidence in land debates in Scotland that foreign ownership is inappropriate, the focus has been on scale and concentration.

Many countries outside the EU also operate restrictions on foreign ownerships, for example, in Mexico, Australia, Philippines, Uganda, Thailand, and Ethiopia. Several states in the USA also restrict foreign ownership of agricultural land, as do some Canadian provinces.

There are some countries where all land sales, including those by domestic natural persons and legal entities, must first be approved.

In France, the SAFER (Sociétés d' Aménagement Foncier et d'Établissement Rural) must be notified of each sale of agricultural land and has two months to approve or reject the transaction.

In Germany, the Law on the Sale of Agricultural Land regulates the procedure for land sales and each sale of land larger than a certain minimum size, which varies from federal state to state and needs to be approved by the regulatory authority.

In Sweden, in sparsely populated regions, purchasers of agricultural land need a permit. This permit in some instances requires that the landowner lives on the property.

In Hungary there is an upper limit (300 ha) on the amount of land that a domestic natural person can own and in Lithuania an upper limit (500 ha).

In short, internationally, mechanisms for interventions in land markets to protect the public interest are commonplace.

11. PROMOTING AN ONGOING DISCUSSION

It can be of no surprise that the Scottish Land Commission has a close interest in the above issues, established to explore Scottish land policy; people would be askance if they did not open up these issues for wider discussion.

The Commission is in a strong position to support and then help develop a discussion of the issues around scale and concentration. It can perform an important role in informing ongoing discussions with research and information, and in encouraging and facilitating discussion around potential policy options to address perceived challenges arising from land ownership scale and concentration.

Key information required to maintain a shared and regularly updated understanding of the issues would involve: the patterns of ownership, their scale and whether change is occurring; what policy exists on these issues elsewhere and how it is developing; what the Scottish public, not just those with direct interests, think about issues of scale and concentration. Research may be needed, for example, on the potential economic benefits of greater diversity in Scotland's particular land ownership context; on the lived experience of communities and individuals in relation to local land monopolies; on land value taxation and where and how it is applied in other jurisdictions, and on other tax regimes.

12. CONCLUSION

With much more detailed policy work and ultimately with political will, Scotland can advance to address its historic land question. This paper points to some of the issues and areas of work needing more consideration and policy development.

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