

**SCOTTISH PLANNING, LOCAL GOVERNMENT AND ENVIRONMENT BAR
GROUP: 2 JULY 2001**

Public Controls on the Private Use of Land

**Public/Private partnerships for land: A Natural Heritage perspective -
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Introduction

- Welcome opportunity, looking forward to interesting debates on extremely important issues
- Will consider four issues in my presentation
 1. The justification for public/private partnerships
 2. Mechanisms available: their credibility and effectiveness
 3. The Land Reform agenda as a platform for change
 4. The balance package approach as exemplified for wildlife

Justification

- Private land seen by many as both a private asset and a public good. Society regards it as part of its natural identity. Society also has a high dependence on private land for a whole variety of reasons: amenity, quiet responsible enjoyment, wildlife protection and enhancement, provision of foods of high quality, provision of timber for various purposes etc.

- Have to recognise that most land in Scotland outside the settlements is in private ownership and is likely to remain so. Recognise growth of ownership by charitable trusts - do not regard this as land nationalisation by another route. Recognise the potential for community ownership in addition to existing pattern under the Executive's proposals. However, wholesale nationalisation, briefly flirted by some Labour politicians before 97, not on the agenda. Have to bear in mind variety and diversity of ownership types.
- Our experience is many owners and occupiers accept some responsibility of stewardship on behalf of future generations and therefore by implication on behalf of society.
- Many accept some form of constraint in return for contractual obligations from public agencies such as SNH.
- Very clear that owners respond to signals through the taxation system, through the financial support mechanisms. Very powerful mechanisms which affect short-term profitability and longer-term viability. Also affect quality of management which can be afforded by owners.

Mechanisms for achieving public/private partnerships

- You will be more familiar than I about the various mechanisms. Seems to be a spectrum from informal arrangements through to custodial sentences with virtually every variety in between.
- Really two groups of mechanisms

(1) The voluntary based on exaltation: many codes of practice for good husbandry, for soil management, Forestry Commission guidelines all without statutory basis. And others, such as Sites of Special Scientific Interest which based on voluntary principle are a reciprocal notification contractual but not regulatory and do not stop things happening on the land.

(2) The other group are regulatory and seek to deter: regulations under Control of Pollution Act, regulations under European Habitats Directive, regulations under Part 1 of 1981 Act etc: can force things to be stopped either in the short or longer terms (special nature conservation orders), result in significant finds. So far only proposals for custodial sentences for wildlife crime in Scotland, but these activated through CROW Act 2000 in England and Wales.

REGULATION THROUGH TOWN AND COUNTRY PLANNING IE PREVENTATIVE REQUIRING PRIOR APPROVAL, EXPROPRIATION AS UNDER COMPULSORY PURCHASE ARRANGEMENTS SUCH AS SECTION 29 OF 1981 ACT

- Some of you that the tougher the measures the greater degree of protection of environmental assets from informal codes through negotiated deals, regulation, penalties to expropriation and custodial sentences.
(show sketch)

- Arguably the present system not effective as continuing losses of species, continuing persecution of those not biologically viable eg hen harriers, annual loss of areas within SSSIs that cannot be retrieved.
- System lacks coherence as developed on ad hoc basis: birds first, other species, then habitats but not wider environment ie the things that make wildlife tick and survive
- Too narrow in its focus on protection areas covering only 12% of the Scottish land area
- Many respects lacks bite because based on voluntary principle which means the taxpayer pays for threat of damage, although change anticipated in Nature of Scotland: real challenges for delivering society's obligations and benefits to society, as well as owners, on private land.

Land Reform as the new platform

- The debates on Land Reform, particularly through the Land Reform Policy Group of the former Scottish Office raised awareness of issues and posed shorter and longer-term solutions.
- Current government proposals on access, community right to buy hopefully just the beginnings of a wider package of land reform.
- If accept argument of private land being also a public good, then have expectations of owners, managers and tenants, for basic levels of stewardship. Many codes being considered by various constituencies.
- SNH would like a stewardship code from an environmental perspective embracing: owners role in providing the basic services from the

environment such as water and soil, the maintenance of the natural capital of the land ie specifically soil, provision of responsible access, the maintenance of species and their host habitats and ecosystems, and the provision of amenity.

- Way forward is a new form of contract heralded in the government's strategy for agriculture: land management contracts. Need to be broad based recognising owners and others stewardship responsibilities for environmental goods and services, and social responsibility within the rural and wider community. Contract means obligations and responsibilities to two parties: therefore society through government has obligation to assist in delivery of these wider benefits and allowing owners to make a living.
- Important component is new way of valuing land. For sporting estates valuation is still based on value of sporting asset such as salmon, braces of grouse and stags. But amenity, access and biodiversity important. On lower enclosed ground valuation is on cropping potential in the light of market prices and the financial support available through the CAP. However, economists can give us values of other factors such as access, scenery, water services. Excellent work by Nick Hanley on this. Clear challenge for government, agencies, owners and management companies to get together to hammer out a new valuation basis.

A balance package

- Experience shows that the tougher the measure does not give either a greater protection of the environment or benefits to owners and to society

as a whole. Public sector are not models owners always and many examples where informal codes and modest application of financial support work wonders.

- By all means have deterrence measures to stop those few people who are intent on damaging environmental assets but regard them for most people as deterrents: expropriation/compulsory purchase and custodial sentences. Relatively few examples in wildlife of need for compulsory purchase eg Creag Meagaidh. But greater number of examples of need for custodial sentences for wildlife crime especially egg theft for commercial benefit.
- The permit to proceed approach of conventional regulation under Town and Country Planning is too narrow a base to formulate a new approach. Against extension of Town and Country Planning system for this purpose and, too often, the strategic plans are ignored when it comes to the hard black or white development control decisions. Deal can be struck eg Section 50 agreements but few and far between eg Cairngorm Funicular.
- Codes of practice on their own not likely to be followed by other than a small majority covering a small proportion of land area.
- Balance package, for wildlife, seems to be twofold.

(1) Statutory codes of environmental stewardship (already mentioned) attached to a cross compliance mechanism, ie no receipt of support from government without achieving minimal stewardship standards.

(2) Natural care contracts for wildlife sites: get rid of compensation except in special circumstances where change in management is sought to protect wildlife, base contracts on positive arrangements now well tried and tested in flow country Lewis and shortly in Forest of Clunie.

- Recognise the need for dispute resolution procedures. Do not wish to get into European Commission on human rights issues. However, mediation well tried and tested in other countries and should receive stronger support here.

Conclusion

- In country where public through government has high dependency on private and charitable owners of land, then whilst regulation and other forms of deterrence are necessary, a balance package of codes and complimentary compliance and positive management contracts seems to me to be the most effective way forward and to provide new public/private partnerships for our natural heritage.