

Small Landholdings Landownership & Registration

Project Report



Reproduced with permission of K. C. Martin

Author:

Dr Annie Tindley, Newcastle University

Project team:

Dr Annie Tindley, Newcastle University (historian)

Mr Micky Gibbard, PhD candidate, University of Dundee (History)

Mr Malcolm Combe, University of Aberdeen (land law expert)

Contents

1. Introduction	03
2. Methods and Approach	04
3. Findings	06
4. Legal Forms and Processes: A Summary	13
5. Conclusions	15
6. Appendices	18
• 6.1. Case Study Summaries (7)	18-21
• 6.2. Archival Bibliography	22
• 6.3. Bibliography	23
• 6.4. Project Team Details	23

Abbreviations

BoAS: Board of Agriculture for Scotland

SLC: Scottish Land Court

SLH: Small Landholding

1. Introduction

1.1. The purpose of this research project was to provide an insight and narrative into how small landholdings [SLHs] were established and how their ownership has changed over time. Specifically, the study aimed to:

- Show how landownership relating to small landholdings has changed over the last century (1911 to the present).
- Identify the potential to (re)establish a register for small landholdings.

1.2. As such, the research objectives for this project were as follows:

- To identify how landownership relating to small landholdings has changed over the last century, recording changes to status or tenure type, particularly where no record has been made.
- To identify what (and how much) compensation in its various forms was originally paid to landlords and large estates.
- To identify the potential to (re)establish a new administrative register for small landholdings.

1.3. The research team constituted of an academic historian with expertise in landownership in the nineteenth and twentieth centuries, a land law academic, who worked on a consultative basis and a research assistant who undertook most of the archival work which underpins this report. More detail can be found on page 23.

1.4. SLHs were usually established as **schemes**, consisting of multiple individual units established and arranged concurrently, depending on the land and sites available. For instance, if the Board of Agriculture for Scotland (BoAS) purchased or was offered a large farm, they would break up that farm into multiple lots and assign small landholders to each unit. These could be quite small, perhaps two or sometimes even a single small landholder, but were more commonly larger, from ten to fifteen units per scheme. The advantage of larger schemes was that the set-up costs in terms of roads, water supplies, draining etc were more economic.

2. Methods and Approach

2.1 In order to construct a narrative of how small landholdings were established (usually collectively as multiple units on planned schemes) and the ways in which their ownership changed over time, the team undertook a detailed archival search into schemes from 1911. The archives were predominantly those of the Board of Agriculture for Scotland [BoAS], the Scottish Land Court [SLC] and other government agencies, along with some relevant private estates archives.

The full archival list is in the Archival Bibliography (6.2 on page 22).

2.2. A great deal of archival material survives, documenting in some detail the establishment of schemes both pre-WWI and post-WWI. However given the time constraints on the project, seven case studies were selected, offering a chronological and geographical spread. This was made easier by the fact that the archival records are organised by scheme. These consist of files, of varying length and detail, which contain all correspondence, reports, memorandums, legal documentation and mapping associated with each scheme. Most of the emphasis lies on the negotiation leading up to the creation of each scheme, and the selection of the small landholders. Once this has been completed, the use of records then reduces dramatically.

The case study schemes, along with the date which an archival record begins, are:

Pre-1914 schemes:

- Kinninghall, Hawick (October 1912)
- Crossbankhead, Dumfriesshire (September 1912)
- Bennicarrigan, Arran (October 1912)
- Shedog, Kilmory, Arran (December 1913)

Post-1918 schemes:

- Grassmillees, Ayrshire (March 1920)
- Springbank, Arran (December 1920)
- Drimaghinier, Arran (February 1927)

2.3 Initial demand for the 1911 Act came principally from the Highlands and Islands, which struggled economically and demographically with endemic land hunger and poverty. Despite the pressures of the radical Liberal government of the day, as well as rioting and agitation in many parts of the crofting counties, the creation of schemes between 1911 and 1914 was slow. This is reflected in the archival record.

2.4. Unsurprisingly, the pace of establishing new schemes picked up dramatically from c. 1917, as the political pressures around the settling of ex-servicemen grew. There are detailed archival records for applicants for the schemes, and in the immediate post-war period, ex-servicemen of all types were prioritised, with sometimes negative effects on the actual management and use of the new landholdings. The records begin to thin out from the late 1920s, and by the late 1930s, when assessing candidates for new schemes or to replace SLHs who had relinquished their tenancies, the importance of being an ex-serviceman was quietly dropped as being irrelevant.

2.5. Overall, the scale of the archival record reduces dramatically from the late 1920s, with only patchy records for each scheme after that date, normally recording only any disputes or resignations of tenancies, although these are not systematically recorded either. The latest archival material is focussed around the late 1930s, with a very small amount in the 1960s, but this is not linear or complete.

2.6. The project leader identified and scoped the existing archival material underpinning this project and the postgraduate research assistant worked in the archives, photographing and summarising the identified files and schemes.

2.7. Any legal points were then identified and referred to the legal consultant on the project for clarification and expansion.

2.8. The project lead then undertook a full analysis of the archival findings and mapped them across the aims and objectives outlined in the Introduction, and wrote them up under Findings (3), Legal processes (4), and Conclusions (5). This was supported by a small but important selection of literature, some legal and some historical (see Bibliography 6.3. on page 23 for the full list).

3. Findings

3.1. Small landholdings are a unique and minority form of agricultural holding of which there are approximately 68 remaining, down from a peak figure of around 476. This form of holding was created under the Small Landholders (Scotland) Act 1911, and developed in a number of interesting directions, driven by short term contemporary issues. For example, pressure on government to allocate land to ex-service landless labourers and small tenants during and after World War One or to support the initial years of the Forestry Commission. Contemporary small landholdings are by definition all outwith the crofting counties.¹

3.2. The Small Landholders (Scotland) Act 1911 came into operation in April 1912 via the creation of the Board of Agriculture for Scotland [BoAS] and the Scottish Land Court [SLC]. The BoAS was constituted and given powers to create new holdings on privately-owned land. It was composed of three executive officials: the chairman; an official in charge of agricultural education and improvement and – most relevant to this project – an official in charge of the Land division, with responsibility for creating small landholdings.

3.3. Schemes were established along the following principles. Firstly, a demand for small landholdings had to be established, usually in the form of applications from potential tenants or a suggestion by the BoAS itself, but occasionally volunteered by landowners or farm tenants. Secondly, some potentially available land had to be identified. Sub-commissioners of the BoAS were required to keep themselves informed of which farms were about to fall out of lease, to inspect these and report on their suitability for schemes. Then, if the report was positive, negotiations would be opened with the relevant estate management.² If the estate agreed in principle, there were two options: (1) the settlement could proceed through agreement, in which case the estate had no right to subsequent compensation if the scheme failed, or (2) if the estate had no objections but wished to protect their right to compensation, an unopposed compulsory order would be sought from the SLC. Route (2) was by far the most common.³ Up to £200,000 per annum was available to the BoAS via the Agriculture (Scotland) Fund to support these activities.

3.4. Much of these funds were eaten up by various compensation claims from both existing tenants, whose tenancies were being disrupted, and also the landowners. Compensation claims under £300 were settled by the SLC; claims of over £300 were taken to an arbiter appointed by the Court of Session. The landowner was only required to state whether they would be claiming in excess of £300 without giving an accurate or final amount and this often delayed the settlement of schemes.

There was widespread contemporary dissatisfaction about the inconsistency of compensation awards made by the arbiters appointed by the Court of Session, but inconsistency was hardly surprising given that the arbiters had no guidance to follow. Compensation was paid from the Agriculture (Scotland) Fund meaning that the more compensation paid, the fewer schemes could be established. Financial pressures had other consequences (see 3.10).

1 'Crofting counties' means the former counties of Argyll, Caithness, Inverness, Orkney, Ross and Cromarty, Sutherland and Zetland. The geographically distinct treatment of smaller rural holdings in the Highlands and Islands is a result of the Crofters (Scotland) Act 1955 (re)introducing a regulatory system which specifically applied to the crofting counties and leaving suitably-sized holdings in the rest of Scotland subject to the Small Landholders (Scotland) Acts 1886 to 1931. There was also a period of distinct geographic treatment prior to the enactment of the Small Landholders (Scotland) Act 1911 across the whole of Scotland, when the Crofters Holdings (Scotland) Act 1886 only applied to the crofting counties.

2 Board of Agriculture for Scotland, Annual Report, 1912, p. viii.

3 The National Archives, Cabinet Papers, CAB27/105/298, Duties and procedure; BoAS Annual Report, 1914, p. ix.

3.5. As its provisions were not taken up by large numbers of agricultural tenants, and as there was no overarching and dedicated overseeing body, information or recordings of how these holdings have changed over time in terms of area, use and status, has not been systematically kept. Historically, part of the issue is that this scheme was something of a 'Cinderella's sister' to the much better known (and even more complex) histories of crofting tenure and farm tenancies, as well as the lack of a dedicated organisation overseeing small landholdings (such as the Crofters Commission for instance), or a land register.

3.6. The researchers also looked to see if there were enough records to (re)establish a small landholdings register detailing the current situation. While there is a lot of accessible archival material, gaps in the records on either ownership or tenure terms, from 1940 to today - when many changes will have occurred - will result in any 2019 register having significant gaps on the majority of schemes. This is partly due to landed estates and government agencies having no incentive to maintain archives in any great detail after schemes were established.

3.7. As the archival record is the most detailed for the periods around establishment of schemes, it is a straightforward process to identify compensation paid to landowners and sitting farm tenants. One of the chief initial obstacles for the BoAS was the lack of defined processes for calculating compensation in the 1911 legislation, leading to long delays over schemes. While the issue of compensation was taken on a case by case basis, a common formula was eventually developed. It was for the landowner to be paid 25 years' worth of rental value, of the difference between the old and the new 'fair' rents set by the SLC. Securing 25 years' purchase might be considered generous to landowners, particularly in the period 1918-1930, when a wave of private land flooded the market, depressing prices to significantly below that on the private market. For example, land being sold privately by the Sutherland estates achieved (at best) 11 or 12 years' purchase.⁴

3.8. Overall, most landed estates were amenable in principle to the creation of small landholding schemes on their property, especially after WWI, although there might be protracted negotiations over levels of compensation. Compensation claims focused on the value of the existing buildings, infrastructure and other facilities, as well as the loss of rent. The estates were also focussed on ensuring that proposed schemes had a robust business model; that is, that they had a chance economically. It is also worth noting that in terms of the process of establishing new schemes, the BoAS normally opened negotiations with the landowner, without informing any existing tenant(s) on the land identified for the scheme. Negotiations would continue 'behind closed doors' and the archives show that plans might be up to five years in development before the existing tenant(s) were informed. Lastly, with all of the case study schemes, both existing tenants and landowners dealt very cautiously with the BoAS, as they were concerned that the BoAS would (as it did) abandon plans for schemes regularly. This made it difficult for existing tenants in terms of the security of their leases and renewal negotiations. To evidence this from the case studies selected here, at Bennicarrigan on Arran, negotiations for a scheme began in 1912 and the scheme did not progress until after 1928. The norm was 2-5 years from negotiation to scheme establishment (as in the cases of Crossbankhead and Grassmillees).

4 A. Tindley, *The Sutherland Estate, 1850-1920: aristocratic decline, estate management and land reform* (Edinburgh, 2010), pp. 260-275.

3.9. Most private landowners were represented by a select number of legal firms which built up reputation and expertise in this area of land law. Some were Edinburgh-based with national reach; others local to specific schemes. They were:

Tods, Murray and Jamieson (Edinburgh).

Brownlie, Watson and Beckett (Glasgow).

McDonald and Roddick (Annan): dealing with Crossbankhead.

Gillespie and Paterson (Edinburgh).

Haddon and Turnbull (Hawick): dealing with Kinninghall.

Balfour and Manson (Edinburgh); R. Peden Smith (Irvine): both dealing with the Drumaghiner scheme.

3.10 Depending on the location of the schemes, the lack of existing facilities, communications and infrastructure could pose obstacles and add significant costs for the BoAS. For example, at Kinninghall, near Hawick, provision for water supplies was required. The BoAS tried as often as possible to ensure the incoming small landholders were made responsible for these facilities rather than themselves. They advanced loans and to a lesser extent grants for this purpose to the small landholders (not the landowner). These loans generate a good deal of archival detail and raise the issue of to what degree small landholdings were financially within reach of the average working person. Certainly, they are the source of long and complex cases in many case studies. A further recurring issue was future financial responsibility for facilities put in place, e.g. further repairs, upkeep and costs. The BoAS rejected arguments that it was them and wrangles over these issues could spin out over many years.

3.11. As per standard practice, when a scheme was successfully established, the landowner retained the rights to game, minerals, feuing, quarrying etc.

3.12. Once holdings were established and occupied, the BoAS turned the maintenance of the scheme over to the small landholders and the landowner. For example, it was the landowner's responsibility to ensure the landholdings remained occupied after a small landholder vacated/died. This means that it is possible (but by no means guaranteed) to track the history of a small landholding in the archives of the landowner, once the government records end.

3.13. Issues could arise when small landholders wished to give up their tenancies (often due to the fact they could not make them work economically), but still owed loans to the BoAS. There was some confusion around which party was responsible for making good any loans to the BoAS. The Kinninghall case study suggests that this might have been the landowner. The BoAS refused to transfer outstanding loan amounts to new small landholders coming into a tenancy. There was often confusion about whether the landlord or BoAS had responsibility for taking decisions on critical issues of land transfer and change of use/ownership.

3.14. The scale of activity under the small landholders scheme was significantly greater after WWI than before. In the pre-1914 schemes, the BoAS was testing its processes and demand, and took time to 'tweak' settlement plans (for example, reducing or increasing the number of holdings in a scheme after it had been agreed). In the war years themselves, the pace of work of the BoAS and SLC slowed considerably due to essential staff, as well as potential new small landholders, being away on war service. After 1918 the scale rapidly increased, and the BoAS was establishing many schemes simultaneously, up to around 1925, when significant budget cuts (the so-called 'Geddes Axe') as well as declining demand, curbed the establishment of new schemes.

3.15. Another area of controversy for the BoAS and the SLC after 1919, was the revaluation of loans on schemes developed in the period of very high prices in the immediate post-war years. The subsequent dramatic fall in those prices left the small landholders saddled with unserviceable debts. In 1925, £338,299 (or approx. £13.8 million in 2018 values), worth of small landholder's loans (across the whole of Scotland), were written off by the BoAS to keep the schemes 'workable'.

3.16. It is likely that the number of small landholdings peaked in the early 1930s, and has been steadily decreasing since then, but particularly from the 1960s. There are a number of reasons for this; some national and some local. First, there was declining demand for SLHs as a tenancy type as the mechanisation of agriculture and an increasing requirement for capital to farm from the 1930s became apparent. Few SLHs were large enough to warrant this type of investment. Demographic decline, critical in Scotland in the 1920s and 1930s overall, but particularly rural Scotland, impacted succession to and demand for SLHs. Fundamentally, SLHs were created for a short-term political purpose, and once the initial demand was met, the need for new SLHs declined and the tenure arrangements on existing SLHs began to change.

3.17. As noted in section 2 (pages 4 & 5), the project focussed on 7 case study schemes, with the findings from each detailed here. This has been visualised as a table for each case study, enumerating the costs of its set up, including compensation granted to landowner and sitting tenant, grants and loans made to the new SLHs and other costs, where applicable. First, here is a table bringing all the case studies together for ease of comparison. Please also see section 6.1.1-7 (pages 18-21) for fuller narrative summaries of each case study.

Name of Scheme	Total cost of establishment^{5*}	Compensation to landowner	Compensation to sitting tenant	Buildings Loans and Grants⁶	Additional Loans and Grants⁷
Kinninghall, Hawick	£10,471	£5,650	£208	£3,650	£963
Crossbankhead, Annan	£79	£51	Nil	Nil	£28
Bennicarrigan, Arran	£4,592	£1,075	£117	£2,600	£800
Shedog, Arran	£11,120	£500 (for buildings)	£90	£5,900	£1,380
Grassmillees, Kilmarnock	£16,936	£2,200 (approximately)	£2,161 to Paton, £540 to Brown	£10,875	£1,160
Springbank, Arran	£2,370	Nil	£50	£2,000	£320
Drimaghinier, Arran	£53	Nil	Nil	Nil	£53

***All costs rounded to nearest pound**

Not all schemes required each type of expenditure.

The archival record is unclear in many cases as to the final total cost of loans and grants, and some of these figures are estimates. All compensation amounts are actual.

Most carried legal costs, but these have not been enumerated here, as in most cases the BoAS covered these costs and where they did not in full, it was often the case that each party (i.e. the landowner and the Board) were required to pay the stamp duty on the paper. The landowner had to pay their half of this which was not repaid by the Board.

5 Within this, we have aimed to include what the Board sets aside as 'contingency', as in almost all cases (excepting the smaller schemes like Crossbankhead and Drumaghinier) the final costings, outwith the compensation claims, are estimates.

6 Often buildings were just given loans, as opposed to grants, but we have included grants to cover all eventualities.

7 This covers all loans and grant for water supplies, fencing, etc.

3.17.1. Kinninghall, Roxburghshire. Archival material is available from October 1912 to August 1962, with the majority of material from the 1920s. The scheme consisted of nine units.

Name of Scheme	Total cost of establishment*	Compensation to landowner	Compensation to sitting tenant	Buildings Loans and Grants	Additional Loans and Grants
Kinninghall, Hawick	£10,471 (estimate with actual compensation)	£5,650	£208	£3,650	£963

3.17.2. Crossbankhead, Dumfriesshire. Archival material is available from September 1912 to July 1927. This was a very small scheme of just one unit.

Name of Scheme	Total cost of establishment*	Compensation to landowner	Compensation to sitting tenant	Buildings Loans and Grants	Additional Loans and Grants
Crossbankhead, Annan	£79 (Actual)	£51	Nil	Nil	£28

3.17.3 Bennicarrigan, Arran. Archival material is available from October 1912 to December 1938. The scheme was suggested in 1912, abandoned around 1919, resurrected in 1928 and finalised by 1929. The scheme consisted of four new units and five enlargements of existing holdings.

Name of Scheme	Total cost of establishment*	Compensation to landowner	Compensation to sitting tenant	Buildings Loans and Grants	Additional Loans and Grants
Bennicarrigan, Arran	£4,592 (Actual compensation and estimated scheme)	£1,075	£117	£2,600	£800

3.17.4. Shedog, Kilmory, Arran. Archival material is available from December 1913 to January 1923. The scheme consisted of six new units.

Name of Scheme	Total cost of establishment*	Compensation to landowner	Compensation to sitting tenant	Buildings Loans and Grants	Additional Loans and Grants
Shedog, Arran	£11,120	£500 (for buildings)	£90	£5,900	£1,380

3.17.5. Grassmillees, Ayrshire. Archival material is available from March 1920 to May 1922. The scheme was initiated by the BoAS, and both the landowner and sitting tenant agreed in principle. The scheme consisted of 15 new units.

Name of Scheme	Total cost of establishment*	Compensation to landowner	Compensation to sitting tenant	Buildings Loans and Grants	Additional Loans and Grants
Grassmillees, Kilmarnock	£16,936	£2,200 (approximately)	£2,161 to Paton, £540 to Brown	£10,875	£1,160

3.17.6. Springbank, Arran. Archival material is available from December 1920 to 1930. The scheme consists of two new units.

Name of Scheme	Total cost of establishment*	Compensation to landowner	Compensation to sitting tenant	Buildings Loans and Grants	Additional Loans and Grants
Springbank, Arran	£2,370	Nil	£50	£2,000	£320

3.17.7. Drimaghinier, Arran. Archival material is available from February 1927 to March 1938. This case study is an example of where an existing tenant converts to the status of SLH. In this case, the landowner initiated discussions with the BoAS having already agreed in principle with the tenant to make the conversion. The scheme consisted of only one unit.

Name of Scheme	Total cost of establishment*	Compensation to landowner	Compensation to sitting tenant	Buildings Loans and Grants	Additional Loans and Grants
Drimaghinier, Arran	£53	Nil	Nil	Nil	£53

3.18. As the case studies demonstrate, there was a good deal of variation in the experience of establishing a SLH scheme. Overall though, they tended to be concluded with greater speed after 1918, when more political pressure was brought to bear on both the BoAS and landowners, and after the Land Settlement (Scotland) Act 1919 clarified some of the most obstructive elements of the original 1911 legislation. The case studies from before 1914 were also slowed down by (1) a relative lack of demand (outwith the crofting counties), and (2) the fact that the BoAS and SLC were newly constituted bodies with no precedent or established procedures to follow.

3.19. Most SLH schemes outwith the crofting counties were relatively small in scale, as demonstrated by the case studies. Some were as small as 1 or 2 new SLHs, whilst others contained up to 15. This meant that their overall cost could be relatively high (when calculated per unit), as economies of scale for infrastructure, buildings and fencing could not be achieved.

3.20. Demand for SLHs outwith the crofting counties declined from the late 1920s, as did political appetite and budgets. No central register was kept updated for SLHs by the BoAS, and most of the archival material relates to the establishment of schemes, rather than how they evolved.

4. Legal Forms and Processes: A Summary

Understanding the changing nature and status of small landholdings requires some understanding of the workings of the two government agencies most closely associated with them: the Board of Agriculture for Scotland (BoAS) and the Scottish Land Court (SLC).

4.1. Board of Agriculture for Scotland

4.1.1. The BoAS was an arm of government and its powers were rooted in relevant statute and civil service governance.

4.1.2. There were no legal rubrics/processes in place to direct the identification and establishment of schemes in 1911, although there is evidence that the BoAS slowly developed its own (somewhat inconsistent) procedures via precedent. This generated a good deal of contemporary criticism. Some by the poorly drafted and amended 1911 legislation and some by the actions of the BoAS and SLC in the initial years of their operation.

4.1.3. The historian Ewen A. Cameron notes that the 1911 Act 'had bequeathed a badly conceived vehicle for creating new small holdings', going on to explain that landowners got no compensation at all if they agreed to a scheme ('a powerful disincentive to cooperation'). It did work in some cases however; usually where the BoAS had identified vacant land/farms, rather than those occupied by sitting tenants.

4.1.4. If agreement did not occur, the landlord had a chance to object to negotiations, and if the matter could not be settled, the BoAS could employ compulsory processes. This system arguably gave the chance for 'obstructionist tactics' on the part of estates and sitting tenants. Partly due to this and partly due to the disruption of WWI, between 1912 and 1919 there were '8,507 serious applications for land and only 482 new holdings created' across the whole of Scotland (including the crofting counties).⁸

4.1.5. Compensation was negotiated on a case by case basis. Elements of schemes that landowners or sitting tenants could claim for included: loss of rent, buildings, fencing and other materials. The BoAS effectively passed the cost on via grants or loans to the new small landholders.

4.1.6. The case of *Scott Plummer v Board of Agriculture for Scotland* 1916 S.C. (H.L.) 94 was an important dispute over compensation in Selkirkshire. It provided a precedent for landowners to claim compensation for loss of selling value due to creation of small holdings.⁹

8 E. A. Cameron, 'An Agrarian Star Chamber: the Scottish Land Court to 1955,' in *No Ordinary Court: 100 years of the Scottish Land Court* (Edinburgh, 2012), pp. 21-33, 26. Relevant details for schemes in this period are detailed at 26-8. See also the judicial remarks of Lord Johnston in the Court of Session case of at 5, where he notes 'one thing which the Act wholly omits to do... is to make any direct provision for what is to happen during the transition from... a single holding fully equipped to a state of parcel holdings, for which new holders are to be found, and which have got to be equipped when these have been found.' This case was also interesting because Lord Johnston, even though he dismissed the landowner's petition as premature in the circumstances, still found the BoAS liable in expenses, no doubt sympathetic to the scheme the landowner had to contend with. He also noted this award of expenses 'might have been otherwise if the respondents [the BoAS] had not sought to take advantage of the petition in their own interest.'

9 *Ibid*, p. 28. This 'Lindean case' from the Scottish Borders proceeded through both the Outer House and Inner House of the Court of Session before it reached the House of Lords (the highest civil appeal court at the time). There was also further litigation relating to this scheme in Selkirkshire, which led to Lord Johnston's judicial comments about the statutory scheme as a whole referred to above, and also some less than complimentary words about the young Scottish Land Court in the Court of Session: 1914 SC 1.

4.1.7. When a SLH was approved to take up a new holding, s/he had to be registered by the BoAS with the approval of the landowner.

4.1.8. The Land Settlement (Scotland) Act 1919 gave the BoAS new powers and a larger budget to accelerate land settlement. It also clarified some of the poorly drafted clauses of the 1911 Act, closing some loopholes and creating a more efficient environment. For example, the BoAS now had the power to issue an order for the establishment of new holdings without reference to the SLC.

4.2. Scottish Land Court

4.2.1. The powers of the Scottish Land Court in this period related to rural tenancies. Its powers were wholly derived from statute. It did not make rulings about who owned what (such matters being for the Court of Session or local sheriff courts) or make rulings about 'title conditions', for example, rights of access. The SLC fixed fair rents on new SLHs schemes. This was often a source of grievance to landowners and slowed negotiations down. It was important because levels of compensation were often calibrated against rent.

4.2.2. Once the BoAS had a scheme set up, they had to submit it to the SLC for approval, including all estimated costs. Additionally, all schemes and their associated costings had to be submitted to the UK Treasury for final approval, who often quibbled over these costs (especially buildings costs), slowing down a scheme's establishment.

4.2.3. The SLC fixed new fair rents, adjudicated on disputes and when it came to a decision, it issued a final certified order so that a scheme was officially established.

4.2.4 The case studies show a reluctance on the part of some landowners to take cases to the SLC and a preference to settle with the BoAS. There are three potential reasons for this: (1) because they think the SLC was biased against landowners, (2) they wished to avoid a fair rent ruling, and (3) they wanted a swifter resolution and wished to avoid a lengthy SLC hearing. Point (1) was especially influential in the early years of 1911-1918, in part because of the chairmanship of Lord Kennedy, the first chair of the SLC. His politics were radical and much debated in the press.

4.2.5. A problem for the SLC was the way in which its decisions and processes were very publicly criticised by the Court of Session, mainly around their lack of detailed reasoning in support of fair rent decisions, failure to perform essential duties in connection with the establishment of new schemes and that they more frequently took the view of the tenant over that of the landowner.

4.2.6. The regulation of small landholdings has changed very little in any legal sense since 1911. There have been changes to land law more generally, including conveyancing reforms in 1924 and 1970 (relating to the process of transfer of land and granting security in land) and feudalism was abolished in 2004 (as a result of the Abolition of Feudal Tenure etc. (Scotland) Act 2000). However, none of these changes affected the underlying landlord-tenant relationship. The Small Landholders and Agricultural Holdings (Scotland) Act 1931 did enlarge the jurisdiction of the SLC in that (1) it could remove SLHs for non-payment of rent or other breach of statutory conditions, and (2) remove SLHs not cultivating or occupying their small landholding.

5. Conclusions

5.1. Can a register be (re)established?

Yes, it can. But with the following caveats:

- The archival record necessary to underpin a register is not evenly spread chronologically. Most of the available material relates to the establishment of holdings and schemes, principally between 1911 and 1928.
- Information relating to the later histories and changes in tenancy and ownership arrangements for the schemes will need to be tracked through the available papers of the estates the schemes are situated on. The survival of, or access to these materials is not guaranteed.
- Further information might also be gathered via existing small landholders, their records or oral knowledge of their landholdings; but again this cannot be guaranteed.
- The project team are mindful of the other registers that relate to land and leases in Scotland (such as the Land Register and the Crofting Register) which might be thought of as non-administrative (that is to say, they have property law and third-party consequences) and are sensitive about what lessons can be drawn from them in relation to a potential SLH register.

5.2. What information is available for inclusion? How does this relate to (re)establishing a register?

A wide variety of information is available for inclusion into a register, including:

- Reports, memoranda and correspondence between stakeholders involved in the establishment, financing and management of small landholding schemes.
- Mapping and surveying records of schemes, including those that were not proceeded with, as many of these mapping records have been extracted from the main Agriculture and Fisheries (AF) series into the Register House Plans [RHP] series, it can be time consuming to link back in.
- Correspondence from and other documentation relating to the original small landholders, their finances, eligibility, and on-going management of their small landholdings.
- Duplicate records of court proceedings (Scottish Land Court; Court of Session) and correspondence from legal firms relating to negotiations over the establishment of schemes.
- The annual reports and papers of the main government agencies, the BoAS and SLC.
- Contemporary commentary and reporting on individual cases and the overall workings of the legislation and changes to it in the newspaper press.
- Records from private landed estates relating to the establishment and management of small landholding schemes, mainly consisting of correspondence, mapping, reporting and financial records.

In relation to the (re)establishment of a register, there is a good deal of detailed material on the early stages and establishment of schemes, but much less from c. 1930, making it difficult to track the changes that occurred to individual small landholdings over time (see 5.1. and 5.4.).

5.3. How much time/resource would be required to set up a register?

This project has undertaken the archival scoping work and has compiled detailed histories of seven case study schemes. Therefore, some of the work has already been undertaken and a working methodology tested for the rest.

Most of the work is laborious as none of the records have been digitised and accessing and navigating private estate records are all time-consuming. Attempting to fill in gaps in information through oral history interviewing and working with the current small landholding community would be valuable on a number of levels – but will also take significant time.

This project team concludes that a small team of one lead academic, supported by a 12-month postdoctoral assistant and a PhD student (three years) would be the most efficient way to (re)establish a register. The resource cost would be approximately £75,000 over three years (or approximately £25,000 per year for three years) for the PhD and approximately £45,000 for 12 months (pro rata) of a postdoctoral researcher, plus travel/research expenses costs. In total, a resource of approximately £130,000 would be realistic.

This project took the approach of going back to the origins of the small landholding legislation, and then worked forwards from 1911. If a project were to be set up to (re)establish a register, a more time-resource-saving approach would be to take the existing 68 small landholdings and work backwards on each of them individually. This has the disadvantage of potentially missing key context but might reduce the resource/time commitment by focusing on what is directly relevant today. The potential disadvantage is that the existing archival record gets thinner the closer to the present the researcher gets, which might lead to dead-ends and failure to add some small landholdings onto the register. It should also be noted that while the project team has not checked the veracity of the Scottish Government's figure of 68 existing small landholdings, the process of (re)establishing a register might help clarify that number.

Although not asked for in the project brief, one option might be a follow-on project to pilot the (re)establishment of a register by undertaking this for one of the case study schemes presented here, as an end-to-end history, plus a register, to act as a template.

5.4. How has landownership relating to small landholdings changed over the last century, recording changes to status or tenure type, particularly where no record has been made?

For the reasons noted already, tracing changes that occurred to the ownership and tenure arrangements for individual SLHs after the late 1920s is not possible based on the archives of government agencies such as the BoAS or SLC. As the BoAS always stressed, it did not own the land, and all continuing responsibilities were left with the existing private landowners on whose land the schemes were established. As such, to answer this question in full, for each scheme, the landowner must first be identified, any changes or sales investigated, and any archives created by those estates referred to.

Overall, we know that the number of SLHs has declined dramatically since the late 1930s. Looking at the evidence gathered here, it is likely that in many cases, SLH tenants renounced leases or have died and the landowner was unable (or perhaps unwilling) to replace them with another SLH tenant. Accordingly, this land moved into different tenancy arrangements.

5.5. What and how much compensation in its various forms was originally paid to landlords and large estates?

As the extant archival records are richest at the point of establishment of each scheme, enumerating the amount of compensation paid to landowners or sitting tenants is straightforward. As a template, we have laid out these costs in section 3.17 for each case study. The same information can be established for most other schemes. Compensation could be granted for: (1) loss of rent; (2) loss of selling value [up to 1919]; and (3) Buildings and equipment/facilities.

6. Appendices

6.1 CASE STUDY SUMMARIES

PRE-1914 CASE STUDIES

6.1.1. Kinninghall, Roxburghshire

National Records of Scotland, AF83/885-891. Material is available from October 1912 to August 1962, with the majority of material from the 1920s. The scheme consisted of nine units.

The first evidence for this scheme appears in 17 October 1912 meaning it is a pre-war scheme, not conceived for the settlement of ex-servicemen and under less political pressure than post-1918 schemes. Cavers estate was amenable in principle to the scheme at first but there were then many delays, mainly from the BoAS side around facilities (water supplies; fencing; roads) and buildings. The scheme consisted of a plan for nine holdings of between 8 and 50 acres each; a total of 341 acres (204 arable and 137 pasture) with an annual rent of £459. As this scheme was processed via an unopposed compulsory order, it came before the SLC for approval (granted).¹⁰

This scheme is exceptionally well documented as it has all of the individual maps with the holdings highlighted, plus the 'minute of agreement' between the Board and each of the tenants outlining the obligations of the tenant including entry, rent, and other responsibilities.

The compensation awarded to the existing farm tenant (a Mr Davidson), was £535. Compensation to the landowner was £5,250, calculated in three parts: (1) Buildings (£2,950); (2) Loss in letting value (£1,453); and (3) Loss of selling value (£847).¹¹

The rest of the archival record is very detailed in relation to this scheme, taken up with sporadic negotiations and complaints. These include assignation of the small landholdings to heirs, who retained responsibility for the payment of BoAS loans, repair costs to facilities and further applicants for the small landholdings. There is a short correspondence from 1962 where the Department for Agriculture for Scotland makes it clear that it, and its predecessor, the BoAS, were never the proprietors of the small landholdings.¹²

6.1.2. Crossbankhead, Dumfriesshire

National Records of Scotland, AF83/869-872. Material is available from September 1912 to July 1927. This was a very small scheme of just one unit.

The sitting tenant was George Bell and the initial landowner was William Carlyle, a merchant. The case opened with a letter to Carlyle from the BoAS in September 1912 enquiring about the conditions under which the farms of Gilmartin and Crossbankhead 'are at present held'. The BoAS was required by statute to identify likely places for schemes as well as receive requests from potential small landholders; this is an example of the former process.¹³ There was a single SLH applicant at this stage, Mrs Helen Stohart; the proposed holding was 30 acres.¹⁴

¹⁰ NRS, AF83.886.

¹¹ NRS, AF83.890.

¹² NRS, AF83.889.

¹³ NRS, AF83.869/13.

¹⁴ NRS, AF83.869/12.

The sitting tenant, Mr Bell, was vehemently opposed to the creation of a SLH on his farm.¹⁵ Despite this, the BoAS went to the SLC to have the new 'fair' rent fixed for the SLH, although this had by then been reduced to 8 acres of arable land at 15 shillings per acre, i.e. £6.¹⁶ A certified final order from the SLC is included, dated 8 February 1915. The landlord was to be paid 25 years purchase of the difference between the old and new fair rent (5 shillings per acre).¹⁷ On 4 June 1915, there is a record of the Scottish Secretary of State's approval for the scheme and consequent expenditure of £90 and on 11 June 1915, a record of the SLH having entered the holding.¹⁸

The rest of the archive consists of material relating to a new SLH entering the holding, an ex-serviceman, Mr Davidson. Mrs Stothart had relinquished her tenancy in May 1925. The landowner, Carlyle, then had to register Mr Davidson as the new SLH with the SLC. The process was completed in July 1927, when the record ends.¹⁹

6.1.3. Bennicarrigan, Arran

National Records of Scotland, AF83.881-1265. Material is available from October 1912 to December 1938. The scheme was suggested in 1912 and abandoned around 1919, then resurrected in 1928 and finalised by 1929. The scheme consisted of four new units and five enlargements of existing holdings. The landowner was the Trustees of the late Duke of Hamilton, headed by the Marquis of Graham, later the 6th Duke of Montrose.

The scheme was initiated by the BoAS based on applications from potential SLHs on Arran and the initial response from the estate was amenable. Negotiations developed well until 1914 and then got stuck on the issue of setting new fair rents.²⁰ On 23 December 1915, the BoAS decided to abandon negotiations due to 'the heavy cost of this scheme as foreshadowed by the claims made by the Landlord and outgoing tenants'.²¹ In contrast, the landowner's agent claimed that the scheme was 'dropped owing to the war.'²²

In September 1928, the scheme was revived, principally due to the sitting tenant of Bennicarrigan having died and the landowner being prepared to negotiate. There were 27 applicants for the 4 new SLHs and 5 enlargements, 4 of whom were listed as ex-servicemen.²³ Compensation to the landowner was negotiated without the requirement for an arbiter and agreed at £1,075. The scheme was approved by certified order of the SLC in August 1929.²⁴

There is just one more record relating to this scheme, from December 1938. A complaint that one of the SLHs was neglecting their unit, followed by a letter from the BoAS to that SLH reminding them of their responsibilities.

15 NRS, AF83.869/15.

16 NRS, AF869/23.

17 NRS, AF83.869/31-33.

18 NRS, AF83.870/2.

19 NRS, AF83.872/9, 10, 17, 23.

20 NRS, AF83.883/8-10.

21 NRS, AF83.884/12.

22 NRS, AF83.884/42.

23 NRS, AF83.1265/33.

24 NRS, AF83.1265/60, 61, 62, 74-83.

6.1.4. Shedog, Kilmory, Arran

National Records of Scotland, AF83.940-945. Material is available from December 1913 to January 1923. The landowner was the Trustees of the late Duke of Hamilton, headed by the Marquis of Graham (as with Bennicarrigan), and there was a sitting tenant called Mr William Brown.

Interestingly, the offer to the BoAS for land to set up SLHs came initially from Mr Brown, the tenant, supported by the landowner. The scheme consisted of six new SLHs.

The farm consisted of 272 acres of mixed land at an annual rent of £350. The estimated compensation to the tenant was stated as £650. The total grant from the BoAS for fencing, water, roads etc to the 6 applicants is listed as £1,154.²⁵ Negotiations were fairly smooth but delayed due to WWI. They continued after 1918, with the landowner happy to see the new fair rents fixed at the SLC, though delays occurred due to high costs of buildings, drainage and other facilities proposed. This was eventually settled and approved at £11,120, despite the UK Treasury noting its 'disappointment' at this relatively high cost.²⁶ Of this, £500 was awarded to the landowner as compensation and £70 to the sitting tenant, Mr Brown. This figure equates to a cost to the BoAS of £1,853 per holding.

POST-1918 CASE STUDIES

6.1.5. Grassmillees, Ayrshire

National Records of Scotland, AF83.1174-1179. Material is available from March 1920 to May 1922. The landowner is the Trustees of Sir Claud Alexander of Ballochmyle and the sitting tenants were Mr John Brown and Mr Paton.

This scheme was initiated by the BoAS, and both the landowner and sitting tenant agreed in principle. The scheme covered 187 acres, split into 15 SLHs. Some of these were small and earmarked for market gardening, while others were larger and suggested for dairy, pigs and poultry. An interesting aspect of this scheme was the claim made by the landowner for £500 to compensate him for the extra time and resource it would take to manage the scheme i.e. managing 15 SLHs instead of 1 tenant.²⁷

Overall, the scheme cost £13,010, £2,200 of which was compensation for the landowner, £2,200 compensation to the sitting tenant and the rest consisting of loans to the new SLHs for buildings and equipment.²⁸

Although expensive, at just over two years this was one of the speediest schemes to be set up, being driven forward by significant political pressures, the benefits brought by the 1919 Act, and the greater budget the BoAS was granted under the 1919 Act.

25 NRS, AF83.940/20, 21.

26 NRS, AF83.941/18, 24-25.

27 NRS, AF83.1175/54-58.

28 NRS, AF83.1174/20-21.

6.1.6 Springbank, Arran

National Records of Scotland, AF83.1189-1192. Material is available from December 1920 to 1930. The landowner is the Trustees of the late Duke of Hamilton, led by the Marquis of Graham; there is no sitting tenant as the land was vacant in 1920, and the building were 'ruinous.' The scheme consisted of 2 new SLHs on 77 acres.

The scheme was initiated by the BoAS and supported by the landowner, who received no compensation as the land was vacant and they raised no objection to the scheme. However, costs for buildings and a new water supply were high. The total cost of the scheme was £2,370, with £2,000 of that required for the buildings alone (houses and outbuildings).²⁹

While a delay was caused by the UK Treasury questioning what it regarded as high costs for building materials, this was settled by the BoAS and the final certified order issued in 1922.³⁰

Two SLHs were selected, both ex-servicemen, Mr Stewart and Mr Sillars. There are problems with Sillars, as the landowner objected to him and refused to register him as a SLH, so the BoAS did so without the landowner's concurrence in 1925. Sillars quickly fell into arrears of rent, and the final archival material for the scheme notes the landowner's attempt to reclaim these, but notes that he was not removed from the SLH (which would have been legally possible after 1931).³¹

6.1.7. Drimaghinier, Arran

National Records of Scotland, AF83.1476. Material is available from February 1927 to March 1938. The landowner is the Trustees of the late Duke of Hamilton, led by the Marquis of Graham. There is a sitting tenant, Mr George Bannatyne, who is already a Statutory Small Tenant and married ex-serviceman. This case study is an example of where an existing tenant underwent conversion to the status of SLH. In this case the landowner initiated discussions with the BoAS having already agreed in principle with the tenant to make the conversion.

The tenant paid £12 in rent per year; a new fair rent was fixed at £10 10 shillings. The holding consisted of nine acres and as all parties were in agreement, the final certified order quickly came through on 9 April 1928.³²

Once Bannatyne had been registered as a SLH, he requested a loan of £53 from the BoAS for fencing materials.³³ In May 1928, a new SLH, Mr James McMillan, requested that the BoAS register him as the new SLH, taking over from Bannatyne, who had run away with the fencing materials. There is a good deal of archival material on this episode, with statements from local police constables etc, but it was resolved and McMillan became the new SLH.

The rest of the record notes McMillan renounced his tenancy in May 1938. The BoAS received 16 'suitable' applications for the holding, and the records note that being an ex-serviceman no longer put an applicant in a favourable position.³⁴

29 NRS, AF83.1189/22, 28, 35 and 36.

30 NRS, AF83.1189/61-68.

31 NRS, AF83.1190/15, 19-22, 36.

32 NRS, AF83.1476/1-9.

33 NRS, AF83.1476/49.

34 NRS, AF83.1476/74-80.

6.2. ARCHIVAL BIBLIOGRAPHY

National Records of Scotland, Edinburgh
Allotments and Small Holdings files, Agriculture & Fisheries files 66
Board of Agriculture for Scotland Miscellaneous Files, AF43
Crofting Files, AF67
Estate Management Files, AF83
Lord Advocates' Papers, AD59
Scottish Office Correspondence, HH28
Scottish Landowners' Federation Papers, GD325

Registers of Scotland, Edinburgh
Land Register of Scotland
General Register of Sasines

The National Archives, London
Cabinet Committees, General Series, CAB27
Cabinet Memoranda, CAB24
Cabinet Minutes, CAB23

Public Reports
Board of Agriculture for Scotland Annual Reports, extant from 1913; later Department of Agriculture for Scotland Annual Reports, extant from 1934.
Scottish Land Court Annual Reports, extant from 1913
Forestry Commission Annual Reports
Agricultural Census and Agricultural Surveys

Parliamentary Papers
1916, XII: Report of the Departmental Committee on Land Settlement for Soldiers and Sailors;
1922, IX: Second Interim Report of the Committee on National Expenditure;
1928, XI: Report of the Committee on Land Settlement in Scotland;
1944-5, V: Land Settlement in Scotland: Report by the Scottish Land Settlement Committee.

Hansard, Parliamentary Debates, House of Commons.

Private Archives (personal and landed estate)
Papers of the Dukes of Montrose and Marquis of Graham, National Records of Scotland, GD1.
Papers of the Marquises of Bute, Mount Stuart, Isle of Bute, NRAS631.

6.3. BIBLIOGRAPHY

E. A. Cameron, *Land for the People? The British Government and the Scottish Highlands*, c. 1880-c. 1925 (East Linton, 1996).

E. A. Cameron, 'An 'Agrarian Star Chamber': the Scottish Land Court to 1955,' in *No Ordinary Court: 100 years of the Scottish Land Court* (Edinburgh, 2012).

B. Chambers, 'For want of land: a study of land settlement in the Outer Hebrides, Skye and Raasay between the two world wars,' PhD thesis (University of Aberdeen, 2013).

J. Hunter, *The Making of the Crofting Community* (Edinburgh, 1976).

L. Leneman, *Fit for Heroes? Land settlement in Scotland after World War One* (Aberdeen, 1989).

J. Scott, *The Law of Smallholdings* (Edinburgh, 1938).

6.4 PROJECT TEAM'S DETAILS

6.4.1. Project Lead: Dr Annie Tindley, senior lecturer in modern British History, Newcastle University.

Dr Tindley was the project lead and was responsible for the authorship and delivery of the final report, research summary and oral presentation. She is an experienced project manager and researcher, specifically on historical land issues and their contemporary translations. She has researched and published extensively on nineteenth and twentieth century landownership and land reform.

<https://www.ncl.ac.uk/hca/staff/profile/annietindley.html#background>

6.4.2. Postgraduate Research Assistant: Mr Micky Gibbard, PhD candidate, University of Dundee.

Mr Gibbard was the research assistant on the project and undertook most of the archival work, including photographing and summarising the main collections and case studies. He is due to complete his PhD in October 2018. It examines the history of planned rural settlements in Scotland, c. 1700-1890 and was undertaken in partnership with Argyll Estates, Inveraray.

6.4.3 Legal consultant: Mr Malcolm Combe, University of Aberdeen.

Mr Combe was the legal consultant on this project. Mr Combe is a leading expert on land and tenancy law and regulation in Scotland and is thoroughly familiar with the policy and legal context of small landholdings in Scotland from 1911 into the present day. Mr Combe spent four days on this project, providing evidence reviews and context/legal explanation on issues relating to the history and records of the small landholdings scheme.

<https://www.abdn.ac.uk/law/people/profiles/m.m.combe>



© Crown copyright 2018

OGL

This publication is licensed under the terms of the Open Government Licence v3.0 except where otherwise stated. To view this licence, visit nationalarchives.gov.uk/doc/open-government-licence/version/3 or write to the Information Policy Team, The National Archives, Kew, London TW9 4DU, or email: psi@nationalarchives.gsi.gov.uk.

Where we have identified any third party copyright information you will need to obtain permission from the copyright holders concerned.

This publication is available at www.gov.scot

Any enquiries regarding this publication should be sent to us at
The Scottish Government
St Andrew's House
Edinburgh
EH1 3DG

ISBN: 978-1-78781-348-9

Published by The Scottish Government, September 2018

Produced for The Scottish Government by APS Group Scotland, 21 Tennant Street, Edinburgh EH6 5NA
PPDAS486426 (11/18)

W W W . g o v . s c o t