

Community Land Scotland

Response to the Scottish Government consultation on a potential Community Empowerment and Renewal Bill

September 2012

Introduction

Community Land Scotland is pleased to be able to submit its views on the potential of the proposed Community Empowerment and Renewal Bill (CERB).

Community Land Scotland represents the interests of Scotland's community land owners. Collectively they own and manage some 500,000 acres of land and are delivering a range of diversified economic and social developments to build stronger, more sustainable and resilient communities. The majority of the members of Community Land Scotland have come into existence only within the last 15 to 20 years and therefore represent a relatively new type of dynamic community organisation making significant contributions to the development of their respective communities.

The community owners are people and organisations with considerable capacity and have shown great determination, initiative and enterprise in achieving what they have so far achieved. They have secured potential for their communities into the long term by taking ownership of vital land and associated assets upon the use of which so much can be achieved. The opportunity of community ownership has released and galvanised capacity that already existed within these communities, but may have lain untapped previously. Their capacity has developed through the experience of securing and managing their land, and they have been greatly assisted in this through important strategic support being made available, principally through Highlands and Islands Enterprise, but also through the Big Lottery in Scotland, in the form of providing advice and guidance and in securing professional expertise to undertake key tasks, as well as funding. In addition, vital support at key stages of the purchase process has been received from civil servants responsible for administration of provisions of the Land Reform Act.

The ability to secure and take land into community ownership has been considerably strengthened by the provisions of the Land Reform (Scotland) Act, which has given communities which register an interest in land a pre-emptive right to purchase the land when it becomes available for sale. This provision in law has changed the nature of debate between communities and landowners, guaranteeing communities certain opportunities. The Act's provisions, aided by the grant conditions of funding bodies like Highlands and Islands Enterprise, has ensured that these community bodies can only exist and act to purchase their land and associated assets with the democratically expressed consent of local people. Local people have on-going democratic rights which ensure that community is ultimately in control of its own destiny in matters which relate to the use of its land and associated assets.

Community Land Scotland believes its membership exemplifies what could be achieved more widely in Scotland if more communities were able to release the latent capacity that will exist within many communities. Those communities would be best supported by obtaining rights in law, together with

strategic advice and support from key development agencies to strengthen their capacity. Our experience is that when people are empowered to act, when they are given the opportunity to take control of vital assets, they are motivated and can find insightful and enterprising ways to secure progress for their communities, very often in ways which have eluded other forms of development intervention.

It is against this background that Community Land Scotland welcomes and supports the possibilities represented by the ideas and consultation on the CERB as a means to find new ways to release and support more community action to advance the interests of local communities. Community Land Scotland believes that it will be important to empower communities by giving them significant new rights in law as the foundation for securing more local action. In addition, it is necessary to recognise the need for strategic support for communities at key stages in their development, but such interventions will be so much more likely to be effective when it is in support of communities which have secured key rights to decisively intervene in the life of their community. For this reason we support a legislative based approach to helping secure a real advance in community empowerment, such as we have seen from aspects of the Land Reform Act.

Community Land Scotland does not feel well qualified to comment on all aspects of the consultation, some issues being beyond our experience. We have chosen to respond to the consultation by means of this paper, rather than through responding to each of the consultation questions, to seek to better capture our experience and thinking. Our evidence is structured to reflect the different distinct parts of the consultation paper.

Prior to setting out our thinking on those sections, there are some wider points of procedure relating to how the CERB may be taken forward, and some overarching points of principle we would like to make.

The first general point relates to a largely procedural matter. The Scottish Government have very recently established a Land Reform Review Group to report to Ministers by the end of 2013 on a range of matters that will be designed to further develop land reform measures as a basis of securing more sustainable, economically active and resilient rural communities. This is an important review, to which Community Land Scotland will be giving separate evidence when called upon to do so. There are very clear parallels and a great deal of common ground in the principles being considered between this work on land reform and the work on the CERB. Indeed, there is specific policy cross-over in so far, for example, as the CERB consultation specifically asks whether the community right to buy as framed for certain rural areas in the Land Reform Act should now have an urban equivalent, facilitated through the potential CERB (we comment on this specifically later in this paper). Further, there are aspects of the question of compulsory purchase which the CERB consultation asks about, and this is territory which the Land Reform Review Group may also wish to explore as it reviews Part 2 of the Land Reform Act. Community Land Scotland believes it will be of vital importance for the Scottish Government to ensure the cross-over policy development implications of both pieces of work are fully understood and managed appropriately. For example, while it may be right in principle to have an urban right to buy like that in the Land Reform Act, it will be important not to conclude within the CERB that it would be right to adopt for urban areas the current Land Reform Act Part 2 community right to buy, when the Land Reform Review Group is likely to receive evidence that these provisions have certain weaknesses both in their administration

and policy effectiveness, which may lead the Land Reform Review Group to recommend changes and strengthening of the current provision. It is likely that Community Land Scotland will give evidence to the Land Reform Review Group along these lines, but we have yet to conclude our detailed thinking on what the administrative and policy options may be, and cannot therefore feed detailed thinking into the CERB consultation on that at this stage. Further, we would not want policy determined for the purposes of the CERB to pre-empt any of the policy considerations of the Land Reform Review Group. The dangers of, on the one hand, discontinuity in policy emerging is apparent or, on the other hand, of one set of considerations in analogous policy pre-empting the other set of considerations. In short, it is going to be important for the Scottish Government to be very alert to the issues here and to manage them appropriately.

The second general point relates to an overarching set of thoughts about how much trust we invest in local communities generally in our society and whether there is any further underpinning needed on to how thinking may develop for the future. As alluded to above, the new generation of community land owners are demonstrating that, given the right conditions, local community organisations are capable of achieving the most remarkable things, and doing so competently and professionally, and demonstrating a great deal of responsibility, enterprise and initiative. The increasing number of development trusts and community woodland owners could be said to be demonstrating exactly similar characteristics. Housing Associations could be said to have been demonstrating very similar features for a longer period of time. However, our experience is that it is very hard for many people, until they see it first hand, to understand it is possible for community organisations to tackle and deliver the kind of significant developments they are delivering. People who learn of what is happening are for the most part genuinely surprised and highly impressed by what they discover, having never thought community organisations would have the capacity or be capable of doing what they are now doing. It would appear that at a societal and governmental level, we do not have a widely held belief that communities can deliver large and complex projects and display high levels of competence, it is as if we rather associate 'community' as always small scale, marginal and tending to the amateur. Yet recent experience contradicts this. It is time that recent experience informed a new policy approach which positively seeks out greater community control, and this is very much in the spirit of the CERB thinking and proposals. In recent evidence Community Land Scotland gave to the House of Commons Scottish Affairs Committee in relation to potential reform of the Crown Estate, we advanced the principle of subsidiarity as a guiding principle. In the context of the further work on CERB and more widely in government we believe adopting the principle of subsidiarity has a role to play in explicitly underpinning further thinking and policy development. This in turn would help facilitate in the local context other important guiding principles, of self-determination, of local people leading the finding of solutions to their challenges, of communities having rights, and that the ownership of assets provides a basis for the generation of income streams to help secure a sustainable future.

The third general point is that the cause of greater social justice can be directly served through community ownership of assets widening ownership and the opportunities arising therefrom. Further, that ownership can become a powerful vehicle for tackling wider social inequalities by bringing new opportunity to often disadvantaged communities. Part of the explicit policy purpose of promoting wider asset ownership should be about addressing inequalities and seeking greater social justice in Scotland.

Part 1: Structures for participation

Community Planning

Community Land Scotland members have limited experience of Community Planning and do not feel qualified to venture strong opinion on current arrangements across Scotland.

The experience our members do have indicates little knowledge or involvement in Community Planning and that may demonstrate that it is simply not working as it could. It can appear a very much top-down approach with token SCVO or similar representation on the partnership. Genuine engagement with communities could lead to very different solutions in delivery of services from those developed by professionals around the table, with different perceptions from those of communities, and less able to identify needs and opportunities in the same way.

To the extent that we are able to venture a view it would be that the principle of Community Planning as a means to secure more joined-up service delivery to the local level must still be valid.

If community empowerment is to advance and deliver what we believe it is capable of, then Community Planning needs to adopt beliefs in the principles of subsidiarity and look for positive opportunities to engage communities at the local level in service planning and delivery.

While Community Planning Partnerships may have become the principal means for the high level inter-agency service co-ordination and delivery, it was never intended that it should be limited to that. The potential still exists to have better joined up approaches at levels well below the strategic level, giving opportunity for participation in identifying need and contributing to joint solutions at the community level too.

We believe assessment of the effectiveness of Community Planning should be a firm part of the work of Audit Scotland and the Accounts Commission as a means to help share best practice and drive improvement when that is needed.

It may be that a duty on Ministers to report regularly to Parliament on Community Planning and its effectiveness may also be a spur to on-going scrutiny and improvement.

Overarching duty to engage

Consistent with our belief in the capacity of communities to significantly contribute to improved local economic and social development, it is vital that public sector organisations take seriously the need to engage appropriately. Public sector organisations with a commitment to principles of subsidiarity will help create the right climate for this to happen.

Engagement duties that are already placed on the public sector exist to meet particular circumstances approved by Parliament at the time of their creation. The danger of an overarching duty which replaced existing duties is that it may have to be at such a high level of generality that specific requirements designed to meet specific objectives may be diminished, and the benefit of such arrangements lost or weakened. A general overarching duty which did not seek to replace all other engagement duties, but was the basis for developing community engagement plans (Q11),

may well bring benefits, particularly if such engagement plans secured common agreement between the public agencies, through the Community Planning process.

Community Councils

All our members have links to Community Councils in their area and in some instances Community Councils formed part of the early support for community purchase of land.

We are aware that there can be very mixed views about the effectiveness of Community Councils and whether they are truly representative. We are also aware that Community Councils can go through periods of relative strength or weakness with changes in personnel. Not all community Councils have survived and some have from time to time found it a challenge to secure members or have contested elections.

However, Community Councils have the strong merit of being a formal part of the local government structure, with a clear statutory position and clear democratic rules of governance. It needs to be remembered that they were first designed some 50 years ago, in the 1960s, as part of the Wheatley reforms to local government which abolished Town and the old District and County Councils. They were designed to fill a gap in what was previously much less strategic and more local, local government. They were not designed to carry functions, but to ascertain, co-ordinate and express local community views to the new tiers of, then, Regional and District Councils.

It is clear they do not have any decisive powers to intervene in the life of their community, or exercise discretion over local spending. Some may not want such powers, others may relish them. It is at least arguable that had they been given some more powers, then they would be seen as more relevant and would have and could still enjoy higher participation rates and impacting more effectively on their communities.

It would be possible to use the CERB to seek to re-invigorate community councils, and devolve at least some local discretionary decision making and/or give some decisive powers to trigger consideration of interventions in the life of their community.

For example, Community Land Scotland can see merit in using the CERB to give Community Councils the right to formally request to exercise control over a value of spending discretion to improve their local 'civic realm'. This could be achieved by Community Councils being given the right to request authority to spend a defined amount of local authority resources on a range of areas where the local authority has powers or duties. The local authority could be required to give full consideration to any such request, and not to unreasonably withhold approval, with, potentially, an appeal to Ministers if it was felt such a request was unreasonably refused. Ministers could be required to issue guidance on the circumstances in which such a request could be made, and define the types of issue such expenditure would be designed for. Depending on the success of such measures in any one instance, the level of discretionary spending granted could be extended as trust and capacity was 'earned' by the demonstrated performance of the community concerned.

It may be that with the development of new forms of organisation, such as community land owners, or developments trusts or other forms of 'anchor' organisation, and in circumstances where no community council may exist, it would be appropriate to use the CERB to give the local authority or Ministers the power to 'approve' the holding of any revised powers for Community Councils by such

properly constituted and locally democratic organisations, where such organisations applied for such powers. Additionally where there is a community council and it does not wish to exercise those powers directly it could nominate a local anchor organisation to do so on its behalf.

In addition to limited spending powers, the local democratic structure of the Community Council (or such other approved organisation) makes it well placed to hold other powers of local importance and significance, where at present the Community Council is limited to writing letters of request to local authorities (and others) under their existing powers. There can be few matters more frustrating to local communities than matters affecting the local civic realm which are of keen local interest and importance, but which may be seen as being of not great significance or importance at the local authority level, given their other responsibilities and priorities. So, for example, the local dangerous, unsightly or derelict building, the local wasteland affecting local amenity, can blight a local community.

The CERB provides an opportunity to decisively empower local community action on such matters. It would be possible to use the CERB to devolve some of the powers of the local authority over such matters to the Community Council or, short of that, to specifically empower Community Councils to require the local authority to formally consider specific actions under various powers they hold and to not unreasonably refuse to act. Any unreasonable failure to act could be appealed to Ministers. By either route, the ability of the community to impact more decisively on circumstances which, in its judgement, are seriously adversely affecting their community would be significantly enhanced.

Beyond these new powers it may also be helpful to use the CERB to ensure that Community Councils had a general power to 'act and establish' vehicles for taking local development action. This would put beyond doubt they were empowered to act, potentially with others, for example, by securing the formation of a development trust or similar body to advance the community interest, and by making this explicit this may also have the effect of encouraging such actions.

The CERB could also be used to clarify existing powers, for example, as to whether a Community Council could hold or own assets, or create appropriate vehicles for such. It could also usefully clarify whether a Community Council could nominate another approved body to carry any enhanced functions for it.

In the rural context, and given the Scottish Government's commitment to create a 'Rural Parliament', Community Councils could have a specific function in feeding in to that 'Rural Parliament' process on behalf of rural communities.

Third Sector

The Third Sector is enormously diverse and it is difficult to see how it can, in all its various forms and with its near infinite variety of interests, be adequately represented in the Community Planning process.

The Third Sector Interface is probably the best hope for securing the appropriate involvement. Funding arrangements for the Interface should reflect the need for the Interface organisation to use its best endeavours to consult with and secure engagement from the sector in community planning.

However, beyond this, where it appears to a community, in the form of a Community Council (or other approved body) that Community Planning is not serving their local interests in delivering better joined up public services, or more generally, communities be given the `right to be heard`. The local authority and other public bodies involved in Community Planning being placed under a duty to consider issues raised, even if that is through the overarching Community Planning Partnership itself, or through more local levels of action within the framework of community planning. (Relates too to Q1,2,and3)

Quality and Accountability for participation

National Standards for Community Engagement

Given that the National Standards for Community Engagement have already been widely adopted, making it a duty to adopt them may be of marginal benefit. However, it may be more effective to ensure that in auditing Community Planning the relevant audit bodies check genuine adoption of the spirit and principles of the standards, as well as compliance with the standards, as a means of encouraging best practice.

Community Engagement Plans

See earlier comments under `Overarching duty to engage`.

Auditing

Auditing community participation should be a more significant part of the best value audit of Community Planning.

Named Officer

Community Land Scotland believe there could be significant dangers in there being a named officer to act as the primary contact for the community.

The danger is that this could be entirely token and, more significantly, all the remaining parts of the organisation no longer feel it is their responsibility to engage as there is a `named officer` for this purpose.

Community Land Owners require to liaise with a number of different parts of public authorities and develop relationships with them accordingly and would not want to see any excuse being given not to deal with them directly.

It may well be that within the public authorities, and for the improvement of their practices internally, that there is a named officer or `champion` of community participation, but this should be internally and not externally facing. In this context such a person could also have an internal advocacy role on behalf of community groups who felt that they were not being treated reasonably by particular departments.

Community-led design and delivery

Community Service Delivery

As community land owners further develop their capacity it is conceivable that they may wish to run certain services on behalf of the local authority as part of their diversified business. Community owners would be approaching this from a largely commercial viewpoint (even if socially motivated) and it is not clear what special provisions they would specifically need that would be different from any other commercial providers, provided the procurement, data and procedural requirements of the public agency were specifically designed to allow smaller scale organisations to compete. Tender specifications and briefs can be prepared suitable for communities to bid and at a community scale, but this requires to be specifically addressed to ensure it happens.

See earlier comments on a community 'right to be heard' as an alternative to a 'community right to challenge' role.

Community Directed Spending

See earlier comments in section on Community Councils as regards local discretionary budgets.

Further, however, the LEADER programme provides some useful insights into the ability of community based organisations to have a clear and important role in helping determine spending at the more local level, demonstrating this can be achieved successfully.

Part 2. Unlocking Enterprising Community Development

Community right to buy

The experience of the community land owning sector is that the rights to buy established under the Land Reform Scotland Act have been decisive in changing the nature of community thinking about entering the world of land-owning, and in changing the nature of debate with private landowners. Through the Land Reform Act Parliament demonstrated a clear national will to see advance in changing the land ownership patterns in Scotland and in giving communities a greater stake in and control over vital local assets. The knowledge that your community has the principled backing of your devolved Parliament in your ambitions has helped make community land owning a mainstream endeavour. However, in practical terms, and more importantly, it has also provided communities with the specific means to be able to purchase their land.

Community Land Scotland would strongly support an urban right to buy as a matter of principle. There can be no reason of principle why a right enjoyed by some rural communities should not be more widely enjoyed, particularly when the benefits that can derive from this are now there for all to see.

That said, and as set out at the beginning of this paper, and in light of experience, the particular provisions of the Land Reform Act need to be revisited to streamline the administrative procedures and adjust certain criteria and requirements to make the Act work more effectively and be able to be handled by communities with greater ease. Further, the Part 2 provisions of the Land Reform Act ultimately depend upon land coming on to the market for sale, even where the wider public interest

may be served by a transfer of that land into community ownership in order to meet broad economic and social development objectives, and where greater public benefits can be achieved than through the current use. These are matters on which Community Land Scotland will be developing detailed policy representations to put to the Land Reform Review Group, within the timescales they are working to. It is in this context that we again draw attention to the comments made in the opening paragraphs of this paper about the linkages between the land reform review and the CERB policy in this area.

It may be that as part of their work the Land Reform Review Group will also want to look at the community size criteria for right to buy provisions of the Land Reform Act. This is another area of conjoined policy interest between the Land Reform Review Group and the CERB. Whatever the detailed outcome it will be important that communities of all sizes in Scotland can ultimately exercise an appropriate right to buy.

There will be many possibilities for defining a community in the urban context and Community Land Scotland does not have particular insights or expertise in this. However, defining what is the community within the Land Reform Act is one matter that we are likely to develop comment on for the Land Reform Review Group, based on our members' experience. The policy thinking in the CERB is essentially about communities of place and what the community itself defines as its boundaries and can make a convincing case for, should drive whatever is the final process, with the simplest possible procedures. Perhaps, the question of definition of the urban community for right to buy purposes is a matter best dealt with by more detailed work through a small working group of key interests.

Provision of a right to buy, while changing the terms of discussion and providing principled backing for such, is unlikely of itself to be sufficient to bring purchase about. The experience of the Community Land Scotland members is that organisational and financial support provided by Highlands and Islands Enterprise, and the financial support of lottery funds, has been critical in achieving success. HIE has great expertise in supporting communities through what can be the complex and lengthy purchase period and, if an urban right to buy is to exist, then support of a similar kind will be an essential component of ultimate success.

Community Asset Transfer

Community Land Scotland supports the transfer of appropriate public assets to community control and we would agree that communities should have a right to request such transfers and be given first refusal on any property surplus to requirements. Where a community has held a lease of a property for a period of time and has secured and invested resources in that asset, then they should have a right to buy, provided they are properly constituted and the community at large can participate in decisions about the assets.

The Forestry Commission has set a good example by the creation of the National Forest Land Scheme to specifically guide work around transfer of the forest estate to community bodies. It would be appropriate for other parts of government and for local government to have analogous schemes. It would be possible to ensure this by using the CERB to place a duty on Ministers to provide for such schemes spanning government and its agencies, and for a similar duty to be placed on local government, with Ministers having a power to issue guidance on when such transfers may be

appropriate and setting out good practice to be followed. Such schemes and associated guidance would have the added advantage of putting beyond doubt the ability of government and local government to transfer assets, and at below market rates when appropriate.

This latter issue of achieving transfers of publicly owned assets has been one causing concern and Community Land Scotland has undertaken work to better understand what has been preventing more transfers, when, as the consultation paper makes clear in its Annex, a discretion does exist to transfer land off the open market and at below open market value. We attach at Annex 1 to this submission, and forming part of this submission, a summary of the detailed work we have done on this issue and which contains a number of suggestions on ways forward to resolve the issue.

There is a further point of general principle in this that requires to be addressed if the move to greater community empowerment is genuinely to progress. It is clear from our members' experience that it is through the ownership and control of land and other assets, and trading on those assets, that the basis of a more sustainable future is secured. In looking to the future is likely that more assets currently in the hands of public authorities could be beneficially transferred to community control. The consultation paper makes the point that the public sector owns assets 'on behalf of the people of Scotland' and this hints at views we are aware of, that transferring publicly owned assets to communities is akin to 'giving away the family silver', somehow putting it beyond public control. This has the potential to limit actions that could empower more communities to bring the sort of public benefits which we are seeing arising in practice from community land and associated asset ownership. It will be important to develop thinking and the understanding that, provided the community organisations concerned are constituted appropriately to ensure on-going ownership of the assets for the wider community and that they cannot be disposed of inappropriately, then community ownership is a new way of holding 'the family silver' and still for the benefit of the family, so to speak. To continue the analogy, in a lot of cases the family silver is effectively locked in the cupboard and tarnished because it is not being well used. Community ownership can display it at its best and the value of the asset is increased significantly due to strong management of a previously neglected resource. Far from its removal as a public asset, it remains a public asset, simply owned at a more local level.

In short, we need to modernise thinking that there is more than one form of public ownership, through government or public authorities. The discussions around the CERB together with the support of the Scottish Government to such changed thinking will be an important basis for progress. Of course, it is also the case that taking more land out of private ownership and into community ownership is effectively creating more publicly owned assets, more 'family silver', albeit publicly owned at a more local level than traditional public authorities.

Community Land Scotland is aware of views that ownership of land or other assets is unnecessary and that the key question is what use the land is put to, irrespective of ownership. Further, it can be implied that to encourage communities to take title to land is to place a burden on them. These arguments are often associated with other arguments that the creation of powers to change ownership will result in a discouragement to investment, and will adversely affect land values. Such arguments seem to normally come from those who currently own the assets. Community Land Scotland emphatically rejects such arguments. It is the ownership of land and other assets that is decisive and of fundamental importance and, holding title, far from being a burden is what can

liberate communities and put them in the driving seat in determining the future of their place. The evidence of community ownership of land demonstrates that, while it represents taking considerable responsibility, it also liberates enterprise and initiative and can result in attracting new private and public investment locally. There is no evidence that, as was suggested at the time it would, the passing of the Land Reform Act with the rights it gives to communities would constrain or reduce land values.

Q22 d asks what conditions should be placed on a community when an asset is transferred to it and Community Land Scotland make the case for a minimum level of restrictions in order to give communities the maximum freedom and motivation to develop assets for public benefit. The constraints of their memorandum and articles should be sufficient controls on the uses of income or capital appreciation. It does not seem right that the transfer of an underused public asset into community control should contain, for example, any development claw-back arrangements, given the previous public ownership was not capable of realising value from the ownership.

Common Good

Community Land Scotland has no specific experience of how Common Good assets are controlled and managed currently.

It is the case that if and when more communities become involved in more land asset purchase, they may be developing community owned public space for economic, social and environmental use akin to what is common good land. It may well be that current common good land could be managed by appropriately constituted community bodies, where appropriate.

It may be worth re-visiting the statutory provisions governing Common Good land within consideration of the CERB to look for opportunities to empower properly constituted community bodies with a democratic mandate to request to take over their own funds and other assets at the level at which they were once controlled. This could include taking back title to land.

Asset Management

Community Land Scotland would support provisions to make asset registers publicly available. In terms of community ownership interests, such registers might usefully contain the location and size of the asset, a description of the land or buildings, the condition of such, any planning zoning or conditioning, the approximate value, Rateable Value, and any restrictions on use.

Within earlier comments we have argued that public authorities ought to have schemes for how they will handle the disposal of assets, analogous to the National Forest Land Scheme. In this context a nominated officer to liaise with communities on the transfer of such assets would appear to have merit.

Allotments

Community Land Scotland recently gave evidence to the Scottish Parliament on a petition about allotments and this evidence is attached at Appendix 2.

The creation of allotments is only one manifestation of a range of community uses of land that could be further empowered by the CERB.

Part 3: Renewing our communities

Leases and temporary uses: Encouraging temporary use agreement

Community Land Scotland would support appropriately constituted community bodies being given the ability to apply to use or manage underused public land or buildings, with a corresponding duty on authorities to give full and proper consideration to such requests and not to unreasonably withhold consent.

It would seem appropriate that temporary uses of private or public property should be made a class of permitted development and any such temporary use should not be taken into account or allowed to prejudice decisions on future planning proposals.

Dangerous and defective buildings

See earlier comments in section on Community Councils and new powers suggested there in relation to requiring local authorities to consider using their powers in relation to dangerous buildings when requested to do so by a Community Council or other approved community organisation.

We would be guided by the evidence of the local authorities on what changes in procedure or law may be needed to enable them to take action more easily.

Compulsory purchase

Community Land Scotland believes that the question of when it is in the public interest to see a transfer of land and other associated assets for broad economic and social objectives requires close examination, and made easier. It is probable that Community Land Scotland will develop policy arguments around these issues as part of its evidence to the Land Reform Review Group, and these are not yet fully developed. Hitherto it might be argued that compulsory purchase has principally been used by public authorities to acquire land and building with a quite specific and single purpose in mind, for a road widening, for a new housing site, to restore derelict or contaminated land, or the like. In assembling land for a wider town centre redevelopment, for example, the purpose might be slightly broader but still well defined and guided by an agreed master plan the achievement of which requires specific land assembly. In the context of the role of communities in social and economic development, such as that seen in community land owning and in the work of development trusts, for example, their objectives are long term and are potentially for a wide range of diverse activities to be developed over time, and which will support long term sustainability and greater community resilience. This will, or may, require a broader concept of land requirements, where not all ultimate uses may be specific at the outset, but where some may be. It is through achieving community ownership that capacity and opportunity to pursue economic and social development goals, in the public interest, and over time, is best calculated to be achieved. How public interest considerations are assessed in compulsory purchase for social and economic development purposes needs to be capable of broad interpretation and requires to ensure any current interpretations or limitations do not unnecessarily constrain future actions seeking to empower communities. This will be an important area for further consideration.

Community Land Scotland, mindful of the right to initiate action in Part 3 of the Land Reform Act is given to communities, believes a case can be made for properly constituted community bodies to

hold a right to secure transfer of land or other assets into community ownership to secure sustainable economic, social development and environmental development purposes. Perhaps, subject to Ministerial or other appropriate approval to ensure the public interest is met.

In relation to the specifics of the CERB consultation we would support communities having a right to request a local authority or other development agency holding such powers to be able to exercise its powers of compulsory purchase on their behalf. This could be used in a variety of circumstances, principally and perhaps most likely in relation to resolving the need for action to address dereliction or to secure land for specific development purposes. It should also be capable of being used to allow a community to pursue broader and long term sustainable economic, social and environmental purposes and where a change of ownership is seen as the means best calculated to secure the long term interests of the community. Once purchased the local authority should be empowered to transfer that asset to the community on similar conditions as to any other asset transfer.

Powers to enforce the sale or lease of empty properties

Community Land Scotland believes all the ideas set out in this section of the consultation are innovative and have considerable merit, and would see them as very useful additions to the armoury of possible actions to secure local sustainable economic and social development.

The powers could potentially and usefully expand to underused or derelict land as well.

What is suggested, in the spirit of earlier parts of the consultation, could also be triggered by a community right to request the local authority to use any such new powers.

Further, the option of properly constituted community bodies having such rights is also a matter worthy of consideration. This may be particularly beneficial to community owners who see the impact of the circumstances described in the consultation paper on other properties or business premises they own and manage in the immediate vicinity. Perhaps, subject to Ministerial or other appropriate approval, to ensure the public interest is met.

As well as the question of enforced sale or lease of empty properties, there may be merit in considering further incentives to owners to sell or lease. The taxation of such underused assets may be a powerful way to incentivise new and beneficial uses, possible through specific powers to local authorities and/or Ministers to levy additional taxes on specific identified properties or land, possibly triggered by a request for such from a Community Council or other such approved community body.

Valuations

It has become apparent that in seeking to secure land and associated assets, the issue of how the land in question is valued for potential sale, lease or transfer is vital. Valuing land and property is complex and technical and Community Land Scotland recognises that independent valuations follow well established principles.

With the growth in community asset owning, and the potential for more, the issue of valuations is critical to the potential of achieving a successful purchase. It can appear that commercial valuation approaches may not lend themselves to the new approaches to achieving economic and social

development. To communities, public assets have more than just a financial value, and it appears this may be difficult to account for in traditional ways. Community ownership of some public assets may have the potential to deliver more public social and economic benefits than traditional public ownership or sale into private ownership, and this perhaps needs to be more readily reflected in valuations.

Community Land Scotland shares with others in the community asset owning sector a view that it will be important, as part of the mix of things that will lead to more community ownership of assets, that valuation principles are explored and the potential for them to adapt to changing ownership classes with new use purposes examined. In the first instance it may be appropriate for the Scottish Government to facilitate discussions which will help all parties gain a better understanding of precisely what governs and determines current valuations, and to explore what scope there is for the evolution of practice to reflect changing circumstances. Part of an exploration of such issues might also usefully, for example, open up ground to examine what valuation specialists or public authorities might legitimately do to discount initial traditional valuations when for example, the current use is loss making and unsustainable, when there is a public cost to the administration of the assets which will be saved upon transfer. Further, when the transfer is in support of community organisations pursuing sustainable economic and social objectives. Principles established might then inform future guidance to public authorities under the development of schemes for the disposal of assets mentioned earlier in this paper.

Other Issues

The Crown Estate

While not highlighted in the CERB consultation paper, it would be difficult to consider the issue of greater community empowerment and renewal, without referring to the importance of the marine resource in Scotland, and of its vital strategic significance to many coastal communities.

The Crown Estate manage much of Scotland's foreshore and seabed on behalf of the UK. They have been subject to considerable criticism in reports of the local authorities in the Highlands and Islands, the Scotland Bill Committees of the Scottish Parliament, and the Treasury and Scottish Affairs Committees of the House of Commons.

The Crown Estate is currently offering discussions with coastal communities which may wish to enter 'local management agreements' of assets held by the Crown Estate, although there appear to be significant limits to what might be possible under these potential arrangements, limits falling short of the aspirations of community owners who have land adjoining the foreshore and seabed.

Community Land Scotland has entered discussions with the Crown Estate about what might be possible under such arrangements, but has also maintained its principled commitment to see more fundamental change in who controls the assets currently under the management and control of the Crown Estate.

At its most simple Community Land Scotland wants to see all fore-shore and seabed adjacent to community owned land being transferred to community owners, in order to contribute to the ability of those communities to secure a sustainable future.

What powers the Scottish Parliament has in relation to the Crown Estate is a complex matter. However, Community Land Scotland would like to see the Scottish Government use the opportunity of the CERB to explore what might be possible in legislation to secure greater community rights of ownership, access or control of the marine assets that adjoin their land holdings. Other organisations, such as local trust ports will also have an interest in these matters. This matter is likely to involve exploration of Crown property rights in Scotland and the potential for the Scottish Parliament to legislate on them.

Crofting

The advent of community ownership in the crofting counties, involving community owners now managing large estates with many croft tenancies, raises interesting issues of principle about when the recent trend of enhancing individual rights in crofting law may run counter to the collective community rights of the wider community as owners. Given the democratic control sitting at the heart of community ownership, the role of the owners in relation to the new Crofting Commission in the administration of crofting in such areas is one likely to require consideration in the light of experience.

Community Land Scotland is hoping to undertake some work to identify issues arising from this change in circumstances and to discuss these with the Crofting Commission. While it is too early to say, it is conceivable that arising from this work issues of a legislative nature may emerge.

Land Use Planning

It is in the nature of community land owning, or in the work of development trusts established to promote social and economic development over area of geographic scale, that they will take a spacial view of their community's future and the land uses within it. They may well develop their own form of spacial land use plan for their area, identifying potential future land uses.

The relationship between these relatively new forms of owners and the land use planning system is undeveloped but is going to be of increasing significance as more community and forest owners and/or development trusts emerge.

This will become particularly important in relation to properly constituted community bodies seeking to bring forward development proposals that may be out-with the current land uses identified in local authority plans, and in seeking to shape future plans. Arguably such properly constituted community bodies, with their local democratic roots, ought to have particular consideration of their views within the land use planning system.

In the spirit of community empowerment embodied in the thinking about the CERB this area of interest needs to be further explored.

The Transfer of Government Assets to Communities

The problem and potential ways forward to a solution.

Background

- 1.1 There has been a strong movement over recent years toward greater control by communities of land and associated assets. Policies to encourage this have spanned the political spectrum and legislation has been passed to both permit the transfer of particular government held assets, through the Transfer of Crofting Estates (Scotland) Act 1997, and to generally encourage and enable purchases in the subsequent Land Reform (Scotland) Act 2003. In addition, since 1997, there has been support and public funds available, and subsequently national Lottery funds, to help communities secure their land.
- 1.2 The development of community land owning is showing remarkable promise in providing new community opportunities for economic and social development and doing so in what were often regarded as areas with intractable economic and rural development problems.
- 1.3 In taking ownership of their land, the communities involved have demonstrated a release of enterprise, initiative, ambition and aspiration, and a taking of responsibility, never really seen through decades of other forms of economic and rural development effort.
- 1.4 The result is one where investment in development projects is taking place in, for example, renewables, where new businesses are being created, where social housing is being developed, where the tourism offer is being improved, among many other things.
- 1.5 In consequence there are encouraging signs for population retention and growth, better local employment prospects, and greater prospects for creating sustainable and more resilient communities.
- 1.6 Many communities which would now like to join in this movement for local improvement and development are within, or bounded by, public land. That land may be in the ownership of "the Department", shorthand for the agriculture department of Scottish Government. These will typically be crofting or other estates brought into public hands at various times. There is a great deal of forestry land, not all of which is regarded as prime for national forest production. NDPBs like HIE or SNH may have land assets. There are also residual land holdings of a smaller nature from acquisitions from former trunk road works, for example. The desire by local people to control the land will be for many uses, from the creation of allotments at the most basic, to the management of whole and large estates of diverse interests.
- 1.7 The Forestry Commission has a developed scheme, The National Forest Land Scheme, to facilitate the transfer of forest assets to local communities.

- 1.8 The Crown Estate and the MOD also have large land and foreshore/seabed resources, with ownership being at the UK level.
- 1.9 The SNP manifesto for the 2011 election committed the Scottish Government to further action to “make it easier for communities to take over underused or unused public assets”. They committed to doing so through a Community Empowerment and Renewal Bill.
- 1.10 On the face of it, with the public policy climate in support of more community land ownership being positive, the scope for more transfers of government owned land and associated assets to local communities ought to be good. However, this is not the case. Indeed, it is proving near impossible to secure transfers, despite the overall public policy climate.
- 1.11 The issues involved in preparing this paper cover some quite technical matters within current government administrative processes. Following an initial analysis of the situation which is described in this paper, together with initial ideas of how to bring about necessary change, and given the technical nature of the issues and their link to caused behaviours within government administration, it was felt it would be advantageous to seek some expert help and verification that emerging proposals would be likely to be workable. To this end it was arranged for the services of a former Head of Finance at the Scottish Executive, John Aldridge, to look at the issues and advise. Significant parts of the Aldridge report are utilised in this report and, where directly quoted, are shown in *italics*.

2. The Problem

- 2.1 Notwithstanding the public policy context, transfers come down to practical mechanisms to achieve them.
- 2.2 Departments of government would generally be willing to dispose of assets, but the way the current administrative practices operate they are only likely to do so ‘at full open market value’, independently assessed, generally by the District Valuer.
- 2.3 This approach triggers an immediate problem for communities as the values are beyond the reach of those, often small, communities.
- 2.4 This leads to communities seeking to have the assets transferred at nil cost, or at a heavily discounted price.
- 2.5 The general response from government departments or NDPBs is that they are not permitted to do this and that they must secure ‘full open market value’. The stance taken is often backed up by a statement to the effect that this approach is due to ‘Treasury Rules’, with the clear implication that such ‘Treasury Rules’ are absolute and insurmountable.
- 2.6 Government departments might also point to the existence of funds to assist community purchase, currently held and fully administered by the Big Lottery fund in Scotland, through their Growing Community Assets programme. However, the policy in operation by the lottery will not support the use of such funds for purchase of publicly owned land or associated assets at full open market value.
- 2.7 This policy approach is proving to be deeply frustrating but appears the firm position of the Big Lottery. The rationale for the stance the lottery take would appear rooted in the belief that using

funds for such a purpose would simply be to substitute lottery funds for public expenditure, and that is not what lottery funding is for. Further, a belief that if government want to encourage more transfers to communities, they have the means to do so and should not need lottery resources. It should be said that there is an implication from the lottery that an appropriately discounted transfer might open the door to support, but there is a reluctance to say at what level such a discount might trigger this, and this, combined with the government current belief and practise that such discounts are not within their gift, means that no real practical progress has been possible. No doubt it will also be of concern to the lottery that if their stance were breached there would be a concern about a precedent being created in lottery funding substituting for what should be 'normal' public expenditure.

2.8 The result is that there is a current impasse, with the practical consequence that transfer to communities of government held assets has all but ceased.

2.9 In relation to forestry in particular, when purchase ceases to be an option, communities have been exploring long term leasing as an alternative. In itself this is less desirable than purchase, and lease conditions have the potential to be more restrictive, however it may be the only option left open to communities. Recent experience has suggested that even leasing arrangements may prove impossible if, as it is apparent is the case in some circumstances, the lease costs are very heavily weighted to the early years of the leasing arrangement, leaving communities unable to find the upfront costs. [A further complication is that, in some circumstances, principally outwith forestry, establishing a long lease may mean there is a 'capital charge' triggered for the department up front, therefore bringing no financial benefit for the department.] Current work is being undertaken by local communities, with support from the Community Woodlands Association, to see if they can find a satisfactory way through this. The remainder of this paper suggests a way forward which, if successful, would obviate the need for leasing arrangements and leasing is not further dealt with in this paper.

3. Analysis

3.1 On the face of it the way to tackle the issues and achieve the land and associated asset transfer everyone seems keen to support might seem to be to seek a change to the 'Treasury Rules' to permit transfers at or below full open market value. An alternative approach would be to seek a change in the position of the lottery in funding such transfers, either at full value, or at an agreed discount value. This latter option is not pursued in this paper as the policy position of the lottery is considered, recent, and not regarded to be open to change. Ministers, will be reluctant to use any powers of direction they may have in this regard, except in extremis.

3.2 It is undoubtedly the case that there is a firm and genuinely held belief by government officials, and indeed by Ministers, that there are 'Treasury Rules' that do not permit the transfer of land and associated assets at less than full open market value. However, this is not the case.

3.3 *Rules and guidance relating to the disposal of public sector assets by the Scottish Government and public sector bodies within its control are set out in the Scottish Public Finance Manual (SPFM). The SPFM is largely based on guidance promulgated by the Treasury, most of which is set out in the publication "Managing Public Money". The core Scottish Government is required to operate in accordance with the SPFM; other Scottish public bodies are expected to do so, but have some flexibility to vary the way they operate to take account of their own needs. Whitehall Departments and UK or Great Britain wide public bodies operating in Scotland are expected to follow Treasury guidance as adjusted to meet their own particular circumstances. Thus, while the arrangements for the transfer of Scottish Ministers' assets are devolved, the policy pursued in*

Scotland is likely to be strongly influenced by Treasury guidance. The Treasury has no explicit power to enforce particular arrangements for asset disposal by the Scottish Government or its agencies and other public bodies. However, in theory, since the Treasury controls the public resources allocated to the Scottish Government (currently largely determined by the Barnett formula), if the Scottish Government diverged substantially from Treasury recommended practice, it could impose financial sanctions. This is in practice very unlikely, and certainly even less likely on a matter that is at the margins of overall public spending.

3.4 *The SPFM states that, in order to achieve value for money, any public sector assets that are surplus to requirements should be disposed of as soon as possible, and should normally be offered for sale on the open market. However, this presumption can be overturned. First, all potential disposals are required to be trawled round the rest of the public sector in Scotland to see if they can be used elsewhere. If so, the asset may be transferred to the other public sector body at the price determined by the District Valuer or other professional valuer without exposing the potential sale to the market. Second, it is allowable for an asset to be transferred elsewhere at less than market value. But in such circumstances the disposal should be treated as a gift, requiring the explicit approval of the Accountable Officer (and of Ministers if the value is significant), and must be reported explicitly in the disposing body's accounts, thus bringing it to the attention of Audit Scotland and the Parliament's Audit Committee.*

3.5 So, in strict terms of the rules, discretion does exist to dispose of land and associated assets outwith the open market and at less than open market value. However, simply extending knowledge and a clear understanding of this within the system, while helpful, is unlikely of itself to change the current impasse, as the real problem is much more rooted in practical features of the way the governance rules operate, than in principle. A number of matters come into play and, even where Officials are fully aware of their potential discretion, they act against that discretion being exercised.

3.6 First, the ownership of the policy drive to encourage more transfer of land and associated assets may sit in a different part of government than the actual ownership of the assets, and there may be less awareness of this dimension of policy, or less commitment to it, particularly given practical consequences for the department concerned.

3.7 Second, operating the SPFM involves quite complex and time consuming procedures, procedures which may well be previously unknown or unfamiliar to those who may have to operate them. They will be novel and time consuming at least, and will involve other departments of government, notably finance and legal, which will tend to be very cautious in their approach. In Particular, Accountable Officers may be concerned that exercising their discretion to take a piece of land off the open market and/or declare it as a gift, and to arrange to report their actions in the accounts, thus drawing it to the attention of the Auditor General and potentially Parliament, could leave them open to criticism as having not properly fulfilled their role as the guardians of the regular and proper use of public resources. This is to say nothing of the complexity of also satisfying any State Aid requirements (see para 3.9), and arranging appropriate 'clawback' provisions (see para 3.8).

3.8 Third, and perhaps most important, there is a potential financial consequence to the department concerned, with no apparent way of meeting that consequence, other than at their own cost, thus potentially affecting their ability to meet any income targets they may have, or to use income to meet planned spending targets or, leaving room for departmental priorities and opportunities. *This arises because, the difference between the full value of the asset transferred and the price obtained has to be charged to the Scottish Government's resource budget. Thus any*

below market value transfer of an asset reduces the resources available to the Scottish Government for providing (other) public services. Furthermore, if an asset to be transferred at below market value is likely to be developed, thus increasing its worth, consideration has to be given to including a clawback provision in the missives, so that the disposing body recoups a share of the increase in value due to development. These matters currently have to be dealt with at the departmental, rather than the central level of government. Therefore, not only is there no real incentive to dispose of such assets, there is much administrative complexity, and there real potential financial penalties to the department concerned.

3.9 The situation is further compounded by State Aids *where any disposal at below market value may also constitute a state aid as defined by the European Union. Whether a particular disposal amounts to a state aid depends on the value of the disposal, and the purpose for which the asset disposed of will be used. Each case has to be considered on its merits. In short, any subsidy or grant (and disposal of an asset at less than market value would be included) will be considered a state aid if it could distort competition within the European Union. It may still be a state aid even if the organisation or enterprise receiving the benefit does not actually trade across borders within the EU. There are certain exemptions which permit the awarding of a benefit even though it is a state aid. In particular, where the activity is taking place in a regional development area, an exemption may arise. But the circumstances of each case need to be considered, adding considerably to complexity in administering any transfer.*

4. Proposed Way Forward

4.1 In order to move matters forward and break the impasse that exists, and given that, contrary to popular opinion this does not require change to 'Treasury Rules' will, none the less, require key partners to persuade the Scottish Government to tackle the practical impediments that have been identified.

4.2 In moving forward Community Land Scotland, Scottish Council of Voluntary Organisations; the Development Trusts Association Scotland; the Community Woodlands Association; Scottish Community Development Alliance, and others have agreed to work together.

4.3 The aim is to bring about a number of clarifications and changes to the way current systems operate and to remove as far as practicable the disincentives to achieve transfers. This should seek to embrace:

- Making explicit to departments that it is Scottish Government policy to encourage and facilitate wherever possible the appropriate transfer of government held land and associated assets where that will meet objectives to empower communities, support local economic and community development, improve the resilience of communities, support population retention and growth.[This may involve securing changes to guidance to Accountable Officers, and securing a clear policy statement provides Accountable Officers with a measure of protection and helps meet any interests of Audit Scotland which cannot question Ministerial policy, only the administration of that policy.]
- Reminding and making clear to Departments, Non Departmental Public Bodies (and Ministers) that the Scottish Public Finance Manual does permit transfer of assets outwith the open market, and at below full market value.
- Having relevant community organisations included in the list of organisations to be trawled when a public asset is being considered for disposal.

- Ensuring that framework agreements, management statements and business plans for Non Departmental Public Bodies do not inadvertently or explicitly impede the transfer of assets to community organisations.
- Utilising the forthcoming Community Empowerment and Renewal Bill to gain statutory backing for the measures above, by means of explicitly empowering Ministers to have a grant scheme for the purpose of facilitating asset transfers in pursuit of particular policy objectives. [This would also assist Accountable Officers and Audit Scotland by making a support scheme explicit.]
- Seeking the Scottish Government to pro-actively address any complication arising from the potential application of State Aid rules, perhaps through seeking approval of the EU to any grant scheme established.
- Ensuring Audit Scotland was clear about the desire of Ministers' to see asset transfers and seeking their agreement to the use of the proposed grant scheme (or Land Fund).
- The creation of a grant scheme to facilitate transfers of assets to communities, stressing the benefits not only in terms of community development, *but also in making prudent use of public money and thus protecting the position of Accountable Officers*. A grant scheme would put beyond any doubt it was proper to use the discretion available and would remove many of the more obvious administrative and accounting problems, and would be the single most important development to secure. [It should be noted that if, as expected, the currently proposed new Land Fund includes the potential use of the fund for the community purchase of government owned assets, this of itself would be highly significant in meeting this objective. However, the Land Fund is an instrument of rural policy and it is understood currently it is designed for application to communities of 10,000 population or less (per the Land Reform Act), so may not support asset transfer to communities in other circumstances. The principle of seeking a wider grant scheme for such circumstances should be pursued.]

4.4 In addition, and although this paper does not deal with issues surrounding the transfer of local government assets, where there is generally greater flexibility, none the less, local government officials can feel constrained in facilitating transfers as they may be unsure how these might be regarded in, for example, Best Value terms, or in terms of how their auditors and the Accounts Commission might react to such transfers. Indeed in the absence of detailed guidance officials may be concerned at potential legal challenge to their actions. In addition to the objectives set out above, an objective of the further work on asset transfers should be to seek the issue of appropriate guidance from Ministers, perhaps under Best Value provisions, or in future under powers created through the Community Empowerment and Renewal Bill, to make clear the desirability of achieving appropriate transfers of assets to communities, and in what circumstances and with what safeguards this would be regarded as proper. Further, the future work should embrace ensuring the Accounts Commission were clearly aware of the public policy objectives of asset transfers and that they can become content with arrangements and safeguards put in place around such transfers. Further, it may be that the professional accountancy bodies, ICAS, CIPFA and ACCA may be encouraged to provide appropriate guidance. Often such guidance is adopted by local and central governments. Such progress, if achieved, could only greatly assist such transfers in the local government arena.

4.5 This paper has not dealt with the UK situation, where there are clearly interests in working with the MOD, and where similar practical impediments are understood to exist as those that exist in

Scotland. In taking forward the detailed work, and once detailed proposals have been tested with the Scottish Government, it is proposed that similar actions be pursued with the UK government. This might also include further work on the Crown Estate.

This paper is derived from work undertaken by Community Land Scotland
March 2012

Appendix 2

Petition PE1433 re: land for allotments

Views on what the petition seeks.

Response by Community Land Scotland

Community Land Scotland believes the petition urging the Scottish Government to encourage public agencies and landowners, public and private, rural and urban, to make land available for people to plant and grow and harvest their own food is **entirely reasonable and deserves support**.

We would take the view that the request in the petition is in fact quite modest in seeking only Scottish Government encouragement of the proposition. We believe that while encouragement and leadership by government is very important to set expectations, further actions will be necessary to achieve the outcomes sought, by addressing current administrative procedures which mitigate against those outcomes, and by giving greater rights to communities to take a greater stake in their land. Greater community access to land for allotments is in itself very important, but represents only one use for land bounding communities or close to them. There is a range of other potential community economic, social and environmental uses.

It is perhaps important to separate out further consideration into land in public ownership by government, its agencies or by local authorities, and land in private ownership.

Land in public ownership

The petition is right to identify this type of land as having potential. There is discretion for government and its agencies to dispose of land to communities for such a purpose off the open market and at below open market value, though the exercise of this discretion is complex and time consuming and results in this discretion being seldom used. Such land, when it is available for disposal, is mostly put on the market for sale at open market value. This effectively rules out the purchase by many communities as they can find it difficult to raise the capital value.

Community Land Scotland has undertaken some research and analysis of what acts against the discretion being used, even in matters where government policy is clearly supportive, such as land use for allotments. We would be willing to share that research and analysis if that is relevant and of use in the Committee's further consideration of the issues.

Leasing, rather than purchase may also be an option for communities, but there are issues about the valuation for leasing purposes which may also put the land beyond the reach of communities.

Community Land Scotland would suggest that action around the use of discretion in these matters is necessary, as well as the general government encouragement the petition seeks, if real progress is to be made.

The Committee will be aware that the Big Lottery tends not to fund community purchases of publicly owned land. The new Land Fund has potential to assist in purchase, but this is an instrument of rural policy benefiting only communities of below 10,000 people.

Land in private ownership

Land currently in private ownership presents different issues to land in public ownership. The Land Reform Act allows certain rural communities to register an interest in land in order to gain a right to buy that land as and when it comes on to the market. While a very useful provision in law, any progress in this regard still depends upon the land becoming available for purchase, which of course may not happen. Further, any land for relatively small scale local use may come on to the market as part of a much larger unit. Fundamentally, this leaves the destiny of the local community interest in the hands of the private owner and their intention to sell.

Local Authorities who have a statutory duty to provide allotments where there is a demand should be encouraged to use any relevant compulsory purchase powers to help secure the outcome the petitioner seeks, where a private owner may be unwilling to sell.

Leasing, rather than purchase, may also be an option, but there are issues about the valuation for leasing purposes which may also put the land beyond the reach of communities.

However, beyond this, Community Land Scotland believes that public policy needs to develop further in respect of giving greater weight to the interests of communities over the interests of private owners, when that is in the public interest, such as for the creation of allotments and the wider land uses in which a local community may have an interest in order to secure their economic and social development.

The forthcoming Community Empowerment Bill and the review of the Land Reform Act provide opportunities to advance the development of the means of achieving this. However, without either, further change in the attitudes of owners in willingly accommodating wider community interests, and/or development in public policy on these issues, the opportunity for significant advances toward more communities having a greater stake in, and preferably ownership of, local land for purposes such as the creation of allotments, will be limited.

Community Land Scotland
July 2012