

* A Summary of Community Rights in Law to Seek to Purchase Land

1. The following is a summary of what the current position is in law relating to community rights to seek to purchase privately owned land. Full details of both communities and landowners rights as set out in the legislation are provided in the original legislative instruments referred to in the text below which can be accessed at legislation.gov.uk. A full list of guidance and support in relation to the provisions set out below is provided in the **Contacts and Resources Section** of the Protocol. This summary does not replace the need to consult the actual statute direct or to access legal advice; it serves purely as an overarching summary of the main provisions and their significance. It is also recommended that the Scottish Government's Community Right to Buy team is consulted at an early stage (refer **Contacts and Resources Section** for contact details).
2. It should be noted that communities have a range of additional rights in relation to land that is owned by the public sector but that is not dealt with here.

Established Provisions

Community Right to Buy (CRtB)

3. Community Right to Buy, provides the opportunity for communities across Scotland to register an interest in land and buy that registered land, at an independently assessed market value, **once** it is offered for sale. The process is based on the premise of there being a 'willing seller' with the 'right to buy' only triggered when the owner wishes to sell the land or any part of it. The legislation establishing these rights falls within Part 2 of the **Land Reform (Scotland) Act 2003** as amended by the **Community Empowerment (Scotland) Act 2015**. It should be noted that while the LRA 2003 applied only to geographical communities of 10,000 population or less (therefore mostly rural) in Scotland, the CRtB rights as amended by CEA 2015 now apply to any community.
4. Under the LRA 2003 the community should first 'register an interest' with the Scottish Government (SG) in the land that they are interested in purchasing. Registrable land could include built assets, salmon fishings or mineral rights (with some exceptions). This should be done in advance of the land being offered for sale by its current owner (timeous) although 'late' applications lodged once land is marketed can be considered, where the community can show there has been 'relevant work' or 'relevant steps' taken to consider a potential purchase, or otherwise where there would be 'good reasons' for allowing a late application. A late application would not be accepted where the community had been offered the land to purchase within the previous 12 months and they had declined to do so, unless there were 'good reasons' for having declined.
5. The term 'community body' is used to describe a legal community organisation which can take the form of a Company Limited by Guarantee (CLBG), a Scottish Charitable Incorporated Organisation (SCIO) or a community benefit society (BenCom). The community body must have at least 10 members at least 75% of which should be drawn from the organisation's defined 'community' the nature of which is set out in the

legislation. The community body must demonstrate that its main purpose is consistent with the delivery of sustainable development (development encompassing economic, social and environmental objectives).

6. In order to 'register an interest' in a specified area of land the community body has to make an application to Ministers in order to satisfy them that it is in the public interest for the community to be given the right to buy should the landowner of the land in question offer the land for sale or take any action with a view to the transfer of that land. They must clearly demonstrate the community's connection to the land in question and both the benefits to the community of owning the land and that there is sufficient support within the community for registering an interest in the land. At the registration stage this amounts to obtaining at least 10% community support (unless exceptional circumstances can be demonstrated). Once Ministers are satisfied that a case has been made the registration will be placed on the Register of Community Interests in Land (RCIL) for a period of 5 years, after which time an application would have to be made to re-register for a further 5-year period if the community wish to retain their interest. In the instance where more than one community body registers an interest in the same area of land then a decision will be taken by Ministers as to which community body, if any, has made the strongest case to secure the registration. Community bodies can register an interest in more than one area of land.
7. If, and when the owner of land that has been registered decides to sell all or part of the land in question then they must inform Ministers and the community body of this. This triggers the right of the community to exercise their right to purchase the land before it is placed on the open market. At this time an independent valuer is instructed by Ministers to value the land and the community is balloted. The community has a period of 8 months from the notification of the landowner taking steps to sell or transfer (or 6 months in the case of a registration prior to 15 April 2016) to raise the necessary funds and to complete the purchase, should the community ballot demonstrate adequate community support.
8. Landowners are given opportunities to comment on applications to register a community interest in land. A registration of land does not stop the landowner from developing their land or transferring the land in certain circumstances e.g. a transfer of croft land to the crofter tenancing it, transfer to a spouse as part of a divorce settlement or similar or transfer to creditors, etc.. Strict time limits are applied throughout the process.
9. Both community bodies and landowners have the rights to appeal any decisions taken by Ministers at various stages in the process. Ministers can facilitate the arrangement of mediation at any time, on the request of interested parties (community body, owner or creditor) to smooth the process of registration or purchase.
10. Further information on community right to buy is available at <http://www.gov.scot/Topics/farmingrural/Rural/rural-land/right-to-buy/Community>

Crofting Community Right to Buy

11. Part 3 of the ***Land Reform (Scotland) Act 2003*** establishes that a crofting community may acquire eligible croft land under the Crofting Community Right to Buy whether there is a willing seller or not. Croft land is that which is subject to crofting tenure and regulation and includes any land, including common grazings, which have not been subject to an 'Apportionment Order' from the Crofting Commission. It also includes salmon fishings and some mineral rights so long as owned by the same landowner (salmon fishings can be purchased up to 1 year following transfer and mineral rights up to 5 years following transfer of land). Sporting rights may also be purchased either at the time of purchase of the land or up to 5 years after the purchase of the land. The Act also enables a crofting community to acquire, in certain circumstances,

additional 'eligible' land which is contiguous to the croft land and owned by the same person (excluding salmon fishings and mineral rights). Finally the crofting community can also seek to purchase the interests of the tenant in any interposed leases.

12. A crofting community body (CCB) as defined by the Act and which represents a defined crofting community must apply to Ministers for consent to buy croft land (Please refer to the relevant legislation and Scottish Government guidance for this definition: refer **Contacts and Resources Section** and para. 17 below). The application must set out the extent of the land in question along with the use, development and management proposed, the extent to which these activities would support sustainable development and evidence of community support (both wider community and croft tenants) on the basis of a ballot which must be conducted within the immediately preceding 6 month period of the date of submission to Ministers and the result of which must be published within 14 days. A copy of the application is also sent to the landowner.
13. As indicated above there requires to be evidence of support from **both** the more narrowly defined crofting community in addition to the wider community. The crofting community is defined as those persons who (i) are resident in the crofting township which is situated in or otherwise associated with the croft land which the crofting community has the right to buy, (ii) are registered in the Crofting Register (or Register of Crofts maintained by the Crofting Commission) as tenants of crofts in the crofting township in question, or (iii) are owner-occupier crofters of a croft in the crofting township in question. The crofting community as such is a sub-set of the wider community.
14. After full assessment of the application and consultation with various parties including the landowner Ministers will decide whether to issue consent for the sale to proceed. Should consent be given Ministers shall then appoint an independent valuer who will assess the market value of the land and associated interests. The Crofting Community Body can then exercise its right to buy the croft land and associated interests.
15. Both CCBs and landowners have the rights to appeal any decisions taken by Ministers at various stages in the process. Ministers can facilitate the arrangement of mediation at any time to smooth the process of purchase.
16. The application of Part 3 of the LRA 2003 has proven challenging to both landowners and crofting communities. For this reason Scottish Ministers and their advisors recommend that land should be transferred by agreement with the legislation used as a fall-back should negotiations fail.
17. Further information on crofting community right to buy is available at <http://www.gov.scot/Topics/farmingrural/Rural/rural-land/right-to-buy/crofting>

Provisions Introduced in 2015/16

Community right to buy land even where there is not a willing seller if they can show the land is abandoned, neglected or detrimental.

18. The **Community Empowerment (Scotland) Act 2015** has introduced a new Part 3A to the **Land Reform (Scotland) Act 2003** setting out new rights in relation to a 'Community Right to Buy Abandoned, Neglected or Detrimental Land'. This would facilitate a community's right to purchase land deemed to be 'abandoned or neglected' by Ministers from an 'unwilling seller'. It is for Ministers to exercise judgement on whether the

land subject to any application is either “wholly or mainly abandoned or neglected” or “the use or management of the land is such that it results in or causes harm, directly or indirectly, to the environmental wellbeing of a relevant community.” The issue of what factors should be material considerations when considering whether land is neglected, abandoned or detrimental along with the interpretation of other aspects of the new Part 3A will be the subject of secondary legislation not established at the time of preparing this guidance (May 2016).

19. Similar to the arrangements for CRtB there must be an eligible community body and an application must be made to Ministers for consent to trigger a right of purchase of ‘neglected or abandoned land’. In addition to defining the land in question, demonstrating the community’s connection to the land, the proposed use, development and management of the land and the community support the community must set out the reasons why it considers that the land is either wholly or mainly neglected or abandoned or how its use/management is causing harm as it is described in the Act. A copy of the application must be sent to the landowner and other relevant parties as defined in the Act.
20. After full assessment of the application and consultation with various parties including the landowner Ministers will decide whether to issue consent for the sale to proceed. Ministers must be satisfied that the land in question meets the criteria for being considered abandoned or neglected or that its current use constitutes harm to the environmental well-being of the local community and that the exercise of the rights of the community under Part 3A is both in the public interest and compatible with achieving sustainable development in relation to the land. Should consent be given Ministers shall then appoint an independent valuer who will assess the market value of the land and associated interests and a community ballot will be held. As long as the ballot demonstrates adequate levels of community support for the purchase of the land the community body can then exercise its right to buy the land and associated interests.
21. Both community bodies and landowners have the rights to appeal any decisions taken by Ministers at various stages in the process. Ministers can facilitate the arrangement of mediation at any time to smooth the process of purchase.

Engaging Communities in Decisions Relating to Land

22. Part 4 of the *Land Reform (Scotland) Act 2016* establishes provisions for Scottish Ministers to issue guidance for land owners, tenants and occupiers of land on engaging with communities in decisions relating to land which may affect them. This is for the purpose of promoting responsible practices in relation to land, reducing inequalities that arise from socio-economic disadvantage and furthering the achievement of sustainable development in relation to land. This guidance will set out the types of land and types of decision to which community engagement should apply, when and how consultation and engagement should take place. At the time of writing (May 2016) this Guidance had yet to be consulted on or issued by Scottish Ministers. It should be noted that where the engagement of the owner with the community was deemed not to follow the guidance, that matter may be one the Minister can consider in any application to purchase the land under Part 5 of the *Land Reform (Scotland) Act 2016*, below.

Community Right to Buy Land to Further Sustainable Development

23. Part 5 of the *Land Reform (Scotland) Act 2016* has introduced a new form of community right to buy land for the purpose of furthering sustainable development. This would facilitate a community’s right to purchase land deemed to have satisfied conditions for sustainable development by Ministers from an

'unwilling seller'. The Act sets out 4 conditions which must be met, these are: a) the transfer of land is likely to further the achievement sustainable development of the land; b) the transfer of land is in the public interest; c) the transfer of land will either likely result in significant benefit to the community or is the only or most practicable way of achieving significant benefit, and; d) not granting consent to the transfer of land is likely to result in harm to the community.

24. In this instance the community can either make the application under Part 5 themselves or can nominate another person to exercise the right to buy (a third party purchaser). Eligible community bodies are defined in a similar way to that already established for the CRtB.
25. Similar to the arrangements for CRtB there must be an eligible community body and an application must be made to Ministers for consent to trigger a right of purchase land to further sustainable development. In addition to defining the land in question, demonstrating the community's connection to the land, the proposed use, development and management of the land and the community support, the community must set out how their proposals meet the 4 conditions above. A copy of the application must be sent to the landowner and other relevant parties as defined in the Act.
26. After full assessment of the application and consultation with various parties including the landowner Ministers will decide whether to issue consent for the sale to proceed. Ministers must be satisfied that the land in question meets the 4 conditions and that all processes have been adequately followed. In determining what constitutes significant benefit or harm to the community Scottish Ministers should consider the likely effect of granting (or not granting) consent to land transfer on economic development, regeneration, public health, social wellbeing and environmental wellbeing. In taking decisions under this Section Ministers must have regard to the desirability of encouraging equal opportunities and also certain human rights provisions, most notably the International Covenant on Economic, Social and Cultural Rights. Ministers must also invite the owner or, as the case may be, the tenant to give Scottish Ministers information about the owner's or tenant's views on the likely impact on the owner or tenant of the proposals for the land or tenant's interest, including current use or intended use or other matters the owner or tenant considers relevant. Should consent be given Ministers shall then appoint an independent valuer who will assess the market value of the land and associated interests and a community ballot will be held. As long as the ballot demonstrates adequate levels of community support for the purchase of the land the community body can then exercise its right to buy the land and associated interests.
27. Both community bodies and landowners have the rights to appeal any decisions taken by Ministers at various stages in the process. Ministers can facilitate the arrangement of mediation at any time to smooth the process of purchase.