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- ☐ Yes
- ☐ No

Questionnaire

Question 1

Do you think that the three existing compulsory rights should be merged?

- ☐ Yes
- ☒ No
- ☐ Unsure

If so, given that each of the existing ones provide a different level of rights to communities, in what way should they be merged?

Attempts to simplify and streamline the current CRtB are very welcome. We have undertaken three consultation events with our members, DTAS and SCF members to reach the points set out in our response.

We think that merging Parts 3A and 5 could be very beneficial. However Crofting Community Right to Buy (CRtB) Part 3 should not be merged with the other rights. Crofting CRtB will be discussed briefly below and in further detail in Q19.

Whilst the policy intent behind Part 3A was welcome it has not been effective and the focus on the condition of the land became a blocker to changing ownership. We are of the view that the condition of the land is never likely to be an appropriate criterion to base Community Right to Buy on. The intent of the legislation seemed to morph from giving communities rights over land that had been suffering from long term neglect to it being about giving communities another tool to get the land use improved.

The purpose of CRtB is to increase community ownership as a form of land reform to increase community empowerment and development, changing the condition of land does not do that, the rights must also change the ownership to deliver the fully policy outcome. Reforming the condition of the land should be dealt with by compulsory purchase and sales orders led by public bodies – although communities should have the means of reporting issues.

As such a merged right focused on land use, more akin to Part 5, would be more effective. We have seen more communities pursuing this right as it provides a clearer outcome and means that competing land uses can be assessed by Scottish Ministers. If any merged Right is going to be based on a notion of sustainable development, it would be helpful to provide guidance on how the Scottish Government interprets this.

It would be simpler for communities, landowners and officials to be managing one compulsory right based on the use of the land, building much more on the example of Part 5 rather than 3A. The new single compulsory right should factor the following:

- Governance requirements should be the same across the compulsory rights – e.g. between crofting and other compulsory rights.
- The compulsory right should not be deemed to be restricted to very specific cases (such as abandoned/neglected sites and small landholdings – in theory the right should be applicable to any landholding in which the local community has a stronger case for ownership in the public interest. This

Crofting CRtB

Merging Crofting CRtB with the other compulsory rights has several risks:

1. It could water down crofting rights through the loss of crofter agency over voting decisions alongside the crofting township
2. Potentially reduces the ability to purchase entire estates compulsorily as crofting CRtB is targeted at the whole landholding under crofting tenure, the other rights are focused on parcels for specific purpose. We would welcome a more expansive compulsory right for outwith the crofting counties to enable communities to purchase larger landholdings compulsorily when in the public interest
3. Crofting covers only a portion of the country – Part 3 currently has specific provisions related to crofting tenure which may make it overly complex/add confusion within a single unified right

There are two quick changes to Part 3 which would improve the flexibility and usability of the legislation:

- Definition of a community body under Part 3 should be allowed as a valid definition of a community body under the other CRtB and Asset Transfer legislation. This would prevent crofting community bodies from having to set up another body to use existing rights when trying to pursue ownership of local land which is not under crofting tenure
- The guidance and application for Part 3 need to be updated to reflect the important changes brought into Part 3 through the Community Empowerment Act 2015

There are several other points relating to Part 3 which should be considered within the review which are expanded upon under Question 19:

Question 2

Should the newly merged compulsory rights be based on the condition of the land or on the owner's use of the land? For example, the existing Part 3A rights are based on the condition of the land, whereas Part 5 rights are based on how it is being used

- ☐ Condition
- ☒ Use
- ☐ Other (please tell us more below)

Please provide any additional comments

Any assessment of a compulsory right application made by Scottish Ministers will be based on the public interest, in other words, would changing the ownership of the land deliver the public interest more effectively than the status quo.

Taking this into account it makes strong sense to base the compulsory right on the use of the land, it provides a more robust and coherent means of achieving the aims of CRtB (further community ownership) and making a clear decision on which public interest considerations are being met.

On a similar point, changing the condition of the land without also changing the ownership does not deliver the stated policy outcomes of community ownership and land reform which the legislation is seeking to provide.

Focusing on the use of the land, would allow for competing ideas of land use to be decided on by the Scottish Ministers – does the community or private landowner have land use plans which meet the public interest more effectively?

Part 5, focused on land use, also benefited from not having to speak to a regulator to get an assessment of the land condition before progressing. Part 5, focused on land use, also benefited from not having to speak to a regulator to get an assessment of the land condition before progressing. Many regulators are overstretched and many communities won't hear back from them when they try and make a complaint. If contacting the regulator remains part of the process, it should be similar to contacting the landowner in Part 5. If the community has contacted the regulator and they have not heard back within a certain number of days, they should be able to proceed. Similarly, if the regulator says they should take action but then doesn't proceed, then there should be a time limit on this.

Additionally, condition of the land can be changed, often minimally and with further deterioration possible over time. This does not robustly or distinctly deliver the land reform outcomes of further community ownership.

Question 3

Do you support the Scottish Government recommendation that the residence and voting eligibility requirement is reduced to being anything over 50% of the community?

☒ Yes

☐ No

☐ Unsure

What ratio of ordinary members should be required of a community body to ensure that control of community-owned assets remains with local members of the community?

We support the proposal to reduce the residence and voting eligibility requirement to anything over 50%. This is likely to encourage more participation in the life of the community body, without any serious disadvantage or impacting upon the strength of local democratic accountability.

We would suggest that 51% of the membership have to be ordinary members who meet residence and voting eligibility requirements. This would align with the standard structure for Community Benefit Societies running community share offers and the Scottish Land Fund. We support alignment between CRtB and funding mechanisms wherever possible.

51% would allow local democratic control and maintain the key democratic function whilst increasing the diversity and support of wider associate and junior members.

For crofting CRtB:

In consultation with our crofting members there was agreement that the same changes should apply for crofting communities, with 51% of the membership having to be ordinary members.

However the changes through the 2016 Community Empowerment Act enabled absentee crofters to have voting rights. This should be changed so that only croft tenants complying with the crofting residency requirements can have voting rights.

Question 4

Should the ratio of members required to attend be amended from the current 10%?

- ☒ Yes
- ☐ No
- ☐ Unsure

We would support this being reduced to 5% for AGMs. Low attendance at an AGM is often an indication of things going well – not a sign of a lack of democracy or issues. Most community landowners offer a broad range of ways for the community to engage, of which the AGM is only one.

Many communities have increased their online presence and have regular communication with their membership. The formality of meetings is often not appealing to many members. Similarly we support use of online meetings to increase accessibility and attendance. It is important for those who might struggle for any reason to come to meetings physically to be able to attend and is particularly important in rural areas where the community body might cover a large geographic area, requiring members to travel significant distances to attend in person AGMs.

If so, what proportion do you think would still ensure that the local community is fairly represented at general meetings of the company?

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Question 5a

Could some of levels of community support and turnout required be reduced while still providing sufficient evidence that the proposals have community support?

- ☒ Yes
- ☐ No
- ☐ Unsure

If so, which ones

Community support for proposals is vital to ensure local engagement and empowerment. However, indications of community support need to be workable across the different contexts of Scotland, including both urban and rural work areas. In many contexts it can be challenging to secure turnouts in areas where populations are very dispersed, where there are areas with high levels of transience and low levels of registration to vote in local elections or where there may be many 1000s of households, as such there needs to be greater flexibility.

We would support a reduced turnout threshold of 5% for a timeous applications petitions. And 5% for late applications petitions too – we are not convinced that the higher turnout for a late application offers more integrity to the process but instead just acts as a barrier given the tight turnaround times that are often required.

In an ideal world there would not be a specific turnout threshold for ballots as it does not allow for flexibility or nuance within each unique situation. If instead ballots could be decided by a simple majority, with a decision made by the Community Land Team as to whether the vote demonstrates sufficient community support. This would need to be informed by clear guidance so that communities and officials had clarity over how decisions would be made.

However we recognise that this may be too open to interpretation, and our suggested alternative is to have no minimum turnout but only 25% of the community required to vote yes as long as the yes votes are in a majority.

Question 5b

Should the demonstration of support in a ballot be solely based on the percentage of the community in support (i.e. with no separate minimum turnout requirement)—so for example a 25% threshold could be met by a 50% turnout and 50% support—or a 25% turnout and 100% support?

- ☒ Yes
☐ No
☐ Unsure

Please provide any additional comments

As noted to our response to Question 5a, there is a strong argument for a qualitative assessment of ballots to decide if a significant enough proportion of the community have supported the application, being mindful of the fact that this will look different in different contexts. This would move away from a one-size fits all threshold which will miss the differences between contexts, in which community support is still significant but cannot be quantified using such a blunt instrument.

We also recognise that the Scottish Government may be nervous of the resource implication, or the flexibility of this approach. As such a back up could be to formalise the existing precedent for not using minimum turnout (e.g. accepting a 40% turnout if 90% have voted Yes) and apply this to existing rights.

In consultation with our membership we recommend that there is no minimum turnout requirement. It is possible to work out from a total number of votes how proportionate the vote is – without minimum turnout. There should be a reasonable threshold to demonstrate reasonable community support. We propose that the vote needs to demonstrate that 25% of the local community support the purchase (irrespective of turnout).

This would show that a majority of those who were engaged enough to vote support the project.

A quick additional note on the requirement for a ballot so near the beginning for the compulsory purchases. We think this is an unnecessarily burdensome requirement. Relatively new community bodies have to pay out money and then claim it back, which would be extremely challenging in deprived areas which seems to work against the equitable aims at the heart of the legislation. There may also be technical issues if the ballot is done at the beginning, so the community will go to all the effort of doing the ballot and then discover that the application can't proceed. In Part 2, the Scottish Ministers appoint the balloter, which makes it much easier.

Crofting CRtB:

There was broad agreement in our consultation exercises that the same changes should apply to crofting CRtB – both the crofting community within the township and the crofting tenants and shareholders should meet a 25% of both groups voting Yes

Question 5c

If a ballot were based solely on the percentage of community support, with no minimum turnout, should the percentage of those against the proposals be considered, instead of just those in favour?

- ☒ Yes
☐ No
☐ Unsure

Please provide any additional comments

If there is no minimum turnout, but for example 25% of the local community must vote Yes, there is no need to count the no votes as the decision could be made on a significant portion of the community supporting the application .

However, there are clearly cases when No votes should be counted. If for example the No votes outnumber the Yes votes, in which case it would be common sense for the application to not proceed.

Question 6

What level of community support should be required for a late application to be accepted? The legislation requires it to be “significantly greater” than the 10% required for a timeous application. In practice, this has been taken to be 15%.

Please share your views

The current Late Application process is based on steps to sell occurring, but this does not mean that a land sale is happening imminently.

As such it feels unnecessary for the level of community support to be higher.

The levels should be the same, at 5% as suggested above. We are not clear why there needs to be a higher level, this does not indicate a stronger public interest case for interfering with property rights? Both a timeous and late application infringe property rights and the specific right to dispose of property. We appreciate that the late application has the potential to be more disruptive, but focusing on the % of support seems the wrong way to do this when the onus of success or acceptance could fall on the reason for the application.

If the % of community support needs to be different for a late application , it would be good to see some of the legal advice to explain this.

Question 7

Should late applications only be accepted from community groups that can demonstrate that they are compliant with the Right to Buy provisions, prior to the owner taking steps to transfer (and should we define what is considered to be a step to transfer)?

- ☐ Yes
- ☒ No
- ☐ Unsure

Please provide any additional comments

Question 8

Should late applications still require a community group to demonstrate that they had taken steps towards acquiring the land before the owner has taken steps to dispose of it? Further details will be developed on what those steps should be as part of the review.

- ☐ Yes
- ☒ No

There needs to be greater flexibility for communities to use late applications – allowing non-compliant bodies to become compliant and use late applications would be welcome. Community groups can demonstrate that they are on road to achieving that status but not actually be compliant. We have routinely seen cases where the community could not have expected land or buildings to come up for sale. For example, where ownership has remained static for over 100 years. It is unrealistic for every community that might find itself in this situation to be expected to already have a compliance letter when there is no immediate likelihood of assets coming up for sale or transfer. It is good practice for companies and charities to be updating their governing documents on a regular basis but if they have already got a compliance letter, they need to inform Ministers every time they make changes. If every community in Scotland were to do this, it would potentially clog up the system.

Community Land Scotland have previously proposed a simplified process for Part 2, with a light touch pre-registration phase which would help address this point of non-compliance. Please contact us for more information.

Land sales can be quick processes, the CRtB need to be agile to accommodate for this and having greater flexibility for which communities can use the legislation when a landowner suddenly takes 'steps to transfer'

But if there are reasons already being compliant has to be included there needs to be transparency about what this means through clear guidance.

Additionally, the owner taking 'steps to transfer' is not clear for communities – ideally it would be removed entirely and only apply to land/buildings being placed on the market. If this is not possible very clear guidance should be provided on what 'steps to transfer' are interpreted as.

☐ Unsure

Please provide any additional comments

This requirement should be removed as communities often do not know or expect that landholdings will be coming on the market and this is an unrealistic barrier.

Also, communities want to be constructive with landowners, they often do not pursue CRtB as they do not want to be seen as obstructive.

However, if 'taken steps toward acquiring' must be included then the following points should be considered:

- If this is narrowly defined as a timeous application then late application does not work.
- Other 'steps to acquire' could be:
 1. communities have got Stage 1 SLF funding communities have got or are working towards Stage 1 SLF funding
 2. negotiated with the landowners
 3. identified the site as place of interest or importance in a Local Place Plan
 4. pursued interest in another site in the local area which would have achieved the same outcomes but has not occurred
 5. Identified a need for land and buildings for a particular purpose in a Community Action Plan or business plan

Question 9

Should it be a requirement of a late application that a detailed business plan for the asset be included, and should we define how much detail is required?

☐ Yes

☒ No

☐ Unsure

Please provide any additional comments

It is unrealistic to get a community to provide a detailed business plan which requires funding and time when pursuing a late application.

Other means such as the asset being in a Local Place Plan or a viable plan/proposal for how the asset will be used should be appropriate without a full business plan.

Question 10

If a late application is approved, should the owner be prohibited from removing the asset from sale (given that they were already in the process of selling it)?

- ☒ Yes
- ☐ No
- ☐ Unsure

Please provide any additional comments

Landowners should not be allowed to remove assets from sale to frustrate late applications which are a legally robust and thorough process.

A late application is designed, with the policy intent, of allowing communities an opportunity to acquire assets which are already on the market. Loopholes to frustrate this should be closed.

Question 11

Should third party purchasers remain an option under the compulsory rights to buy?

- ☐ Yes
- ☒ No
- ☐ Unsure

Please provide any additional comments

This is an unnecessarily complicated addition without clear benefits, which has already complicated previous CRtB applications.

Question 12

If third party purchasers remain an option, should requirements be placed on the structure of the third party purchaser for it to be eligible, for example in line with the compliance requirements placed on community group applicants?

- ☒ Yes
- ☐ No
- ☐ Unsure

Please provide any additional comments

This would make good sense but see answer to Q11 that this should not be allowed.

Question 13

Should the third-party purchaser be required to have an agreement in place with the community body that shows the future relationship between the two and any business plan in place for the asset, as part of the application?

- ☒ Yes
- ☐ No
- ☐ Unsure

Please provide any additional comments

This would be a common sense approach if third party purchasers remained an option. However see answer to Q11 and Q12.

Question 14

Should the existence of option agreements (although not their details) be something that an asset owner must make known to community groups that have applied for a right to buy the asset?

- ☒ Yes
- ☐ No
- ☐ Unsure

Please provide any additional comments

We received strong community feedback on this. It is important the communities are aware of options agreements before starting a lengthy process of pursuing CRtB. Some details should be provided such as length of the options agreement so communities can make well informed decisions about how to proceed.

This will prevent a waste of time and energy on behalf of the community and support further transparency.

As much transparency as possible in these kinds of transactions, in line with the transparency protocol set out by the Scottish Land Commission.

A register of options agreements should also be provided so that communities can check whether land/buildings they might be interested in are on the register.

Question 15

Rather than automatically requiring that an application is declined, should an application for a right to buy proceed through assessment, and then, if approved, take second place to the option agreement, meaning that if the option is not taken up, then the community body right to buy will apply?

☒ Yes

☐ No

☐ Unsure

Please provide any additional comments

Especially if no details are provided for the options agreement – by the time the application is submitted lots of work has already taken place. The work would be wasted, but this would allow for a backstop.

This would also close the loophole of an options agreement being used by landowners to prevent CRtB.

Question 16

Should there be a limitation on the types of option agreement that cause an application to be declined? For example, should they only be relevant if not between members of the same family, or companies within the same group?

☒ Yes

☐ No

☐ Unsure

Please provide any additional comments

Any loopholes associated with options agreements should be closed and only legitimate options agreement should be able to prevent CRtB being actioned.

Options agreements between people or companies connected through the Register of persons holding a controlled interest in land, or Companies House, or related for example should be excluded.

Question 17

Should the period allowed to submit an appeal be extended to allow both parties to make a more informed decision on whether to appeal?

- ☒ Yes
- ☐ No
- ☐ Unsure

If so, how long should it be, given that the asset is free to be sold if the application is rejected?

Challenging timeframe to raise funds for legal challenge etc – communities do not have legal or expert advice on hand.

56 days would be more appropriate to allow for full consideration and to allow a meaningful response from communities.

Question 18

Should the registration period be extended from the current five-year period?
Please provide any additional comments

- ☒ Yes
- ☐ No
- ☐ Unsure

Please provide any additional comments

Strong community response in favour of this.

10 years would be more appropriate – 5 years is a short period of time because of the amount of work that has to go into an application.

However, if there is a legal reason why it cannot be moved then a more light-touch approach to confirming continued community interest should be developed rather than doing a full CRtB application again. However, if there is a legal reason why it cannot be moved then a more light-touch approach to confirming continued community interest should be developed rather than effectively doing a full CRtB application again. However, if there is a legal reason why it cannot be moved then a more light-touch approach to confirming continued community interest should be developed rather than effectively doing a full CRtB application again.

Question 19

Do you wish to make any other comments in relation to the matters raised by this consultation and which you feel have not been covered by any of the earlier questions?

Please provide any additional comments

Communities are very supportive of the legislation in principle. It is empowering that these community rights exist. There is a huge amount of passion behind these applications, with hard-working and dedicated volunteers. However, there needs to be recognition that these applications are being carried out by volunteers, who are representing and working with local communities. There needs to be an understanding that these applications are being produced under these conditions, and that small, editorial or procedural errors should not trip up applications.

- Application forms should be simplified. As it stands, they are not very inclusive.
- Total length of time for communities to do these applications – Part 5 – 6 month response period is far too long. Secret postal community ballot another 6 months. Another 6 months to respond to the ballot. The cost of the balloting is also prohibitive for communities with few funding options available to cover this.
- 28 days to submit an appeal – after 17 months waiting for a response.
- The length of the process can have an impact on the fabric of historic buildings – the process needs to be streamlined and made more simple to allow the process to be as quick as possible.
- Easier way to submit documentation/submission system – too difficult doing scanning – local councils and crofting commission take online forms etc.
- Online system is clunky – no ability to save progress which seems outdated

- Minor editorial issues, such as wrong punctuation or brackets, meaning that documents are sent back to communities to fix even though it does not change the weight of the application.
- Legislation should not be putting undue burdens in the way of communities – needs to be legally robust but also delivering policy objectives.
- Clarification on the use of Community Benefit Communities as a community body for using the legislation and making sure that future legislation is BenCom-proofed so that communities wanting to issue Community Shares can use Community Right to Buy
- There should be leeway for minor mapping errors across all of the rights.
- The need to advertise in a newspaper if the community group cannot find the owner is unnecessarily expensive and seems outdated. Groups who have used this before had to find £1000s with little chance of an absentee owner seeing it in a local paper.
- The exclusion of land that is under a tenement (such as a harbour tenement) should be removed and has caused issues for groups in the past.

Crofting community right to buy

Crofting CRtB seems to have been largely left out of this consultation – but we would strongly support the following changes to a revised crofting CRTB:

- Guidance and application forms need updating online as it does not reflect changes in Community Empowerment Act or 2021 secondary legislation
- Use of contiguous/additional land in the legislation – this should not make the bar higher for an application. It might make more sense to let the CRtB application apply to the entire estate if 75% or more of the estate is under crofting tenure. This may help with issues around mapping which are explained below.
- the changes through the 2016 Community Empowerment Act enabled absentee crofters to have voting rights. This should be changed so that only croft tenants complying with the crofting residency requirements can have voting rights.
- Equally people who have shares in common grazings and pastures should have voting right as long as they meet the residency requirements
- Mapping – this is still a complex requirement to produce detailed maps of each croft. The process was made less onerous with removal of the mapping of sewers, dykes etc through the 2015 Community Empowerment Act. However, the requirements need to be made more straightforward by not allowing small discrepancies in mapping to frustrate the process. The number of times that a landowner can dispute the mapping should be limited or the length of time in which they can comment on the mapping should be a fixed period