



Highlands & Islands
ENTERPRISE

Part 2 of the Land Reform (Scotland) Act 2003 The Community Right to Buy – your questions answered





Your questions answered

The Community Right to Buy provisions of The Land Reform (Scotland) Act will facilitate the process for rural communities in Scotland to acquire and manage land. Highlands and Islands Enterprise's Community Land Unit has received many enquiries from communities wanting to understand how they will be affected and how they can make use of this opportunity. Our staff, working in partnership with The Highland Council, have set out to address those questions in this publication. In due course, full guidance on the Act and how to make use of it will be published by SEERAD, in the meantime, we hope that this booklet will provide a useful introduction.

Sandy Cumming
Chief executive

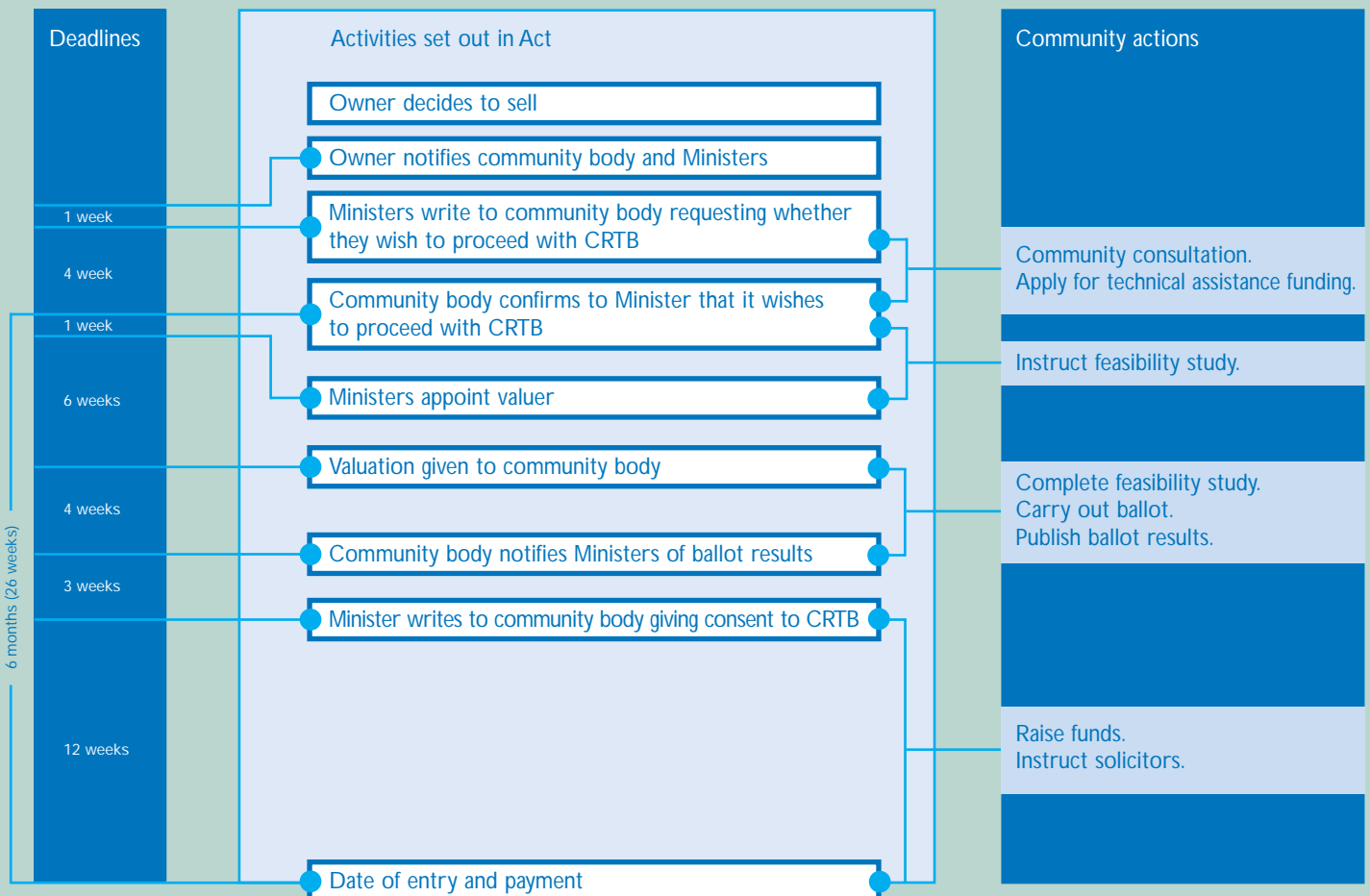
This booklet has been produced to provide an introduction to Part 2 of the Land Reform (Scotland) Act 2003.

While it is intended to provide an accurate reflection of the main provisions of Part 2 of the Act, this booklet does not cover all the detail specified within the Act and there is no guarantee of the legal accuracy of its content. We strongly recommend that legal advice be sought for more detailed information and guidance on specific cases.

HIE gratefully acknowledges the assistance of The Highland Council in producing this guide.

Community Right to Buy process

Figure 1 Process for activating the Community Right to Buy (CRTB)



1. What is in this Act for your community?

Essentially this legislation allows your community to register, and have recorded, an interest in acquiring land and have the **first option** to purchase if and when that land comes up for sale. Very importantly it provides that the price paid by the community is fair and no more than the open market value. A six-month period will be allowed for the community to raise funds and complete the land purchase.

2. Why would you want to purchase land?

It may be that your community has been looking for a site for a village hall, a play area, a community enterprise or to meet local housing needs. Alternatively your community may have identified the possibility of getting involved in the management of a local woodland to provide employment and recreational activities for residents and visitors.

Action on such ideas might not be possible at present because land is not available for purchase. By registering an interest in specific pieces of land with the Scottish Executive, your community will have the opportunity to secure those sites for community developments when they are offered for sale.

You may wish to bring a larger area of land in to community control to fully exploit development opportunities. There are a number of examples where communities have bought the island or estate where they live and work and are successfully managing it to good effect.

3. Does this mean the end of negotiated sales?

No, the community will retain the right to approach a landowner to negotiate the purchase of land. However, if this is unsuccessful a registration of interest will demonstrate the community's commitment and might therefore encourage the landowner to enter into negotiations to sell. Once Ministers in the Scottish Executive have received an application to register an interest in land they must notify the owner. The land concerned is then protected by the provisions of this legislation and cannot be sold before being offered to the community.

4. In what areas can a registration of interest be made?

The legislation covers all land in rural areas of Scotland. The Scottish Executive will provide maps showing eligible land and detailing any excluded areas (see back page for details).

The community right to buy covers not only land but can include buildings, salmon fishing and mineral rights – providing these are an accessory to land already owned or being purchased. Very importantly, the community need only register an interest in the property that they require. Should this eventually be part of a larger land sale, then the community will still be entitled to purchase only the area in which they have an interest. The community can register an interest in any number of properties but a separate application will be needed for land held by a different owner.

5. When can a registration of interest be made?

An application can be made at any time once the legislation is in force. Clearly, the intention of the legislation is that applications are made before land is put on the market. There is provision for late registration, however, this is only intended for use in exceptional circumstances – such as during the first few months of the legislation. In all cases of late registration, the community will have to demonstrate that there is a good reason why an earlier registration was not made, that the community support is very high and that community purchase of the land will provide 'public interest' benefits.

6. Who can register an interest in land?

It is not open for individuals to apply to register an interest, even if they are acting on behalf of the community. The applicant must be a **community body** set up for this purpose. Such a body has to be a company limited by guarantee with no fewer than 20 members and the majority of members must be from the local community. Agencies supporting the community can be members as long as the local community retains overall control. In the case of small communities where it may be difficult to secure 20 members, the legislation allows Ministers to accept a smaller membership if it is in the public interest.

The community body must define the community that it serves. This should be done using **postcode units** e.g. 'IV3 5NX'. These are generally quite small in extent and can be combined to create an appropriate community boundary. The way you define your community may depend on the subsequent use of the land. For example, a community body wanting to secure land for a play area is likely to be defined by the settlement in which the play area is located. On the other hand, a community body wishing to purchase a sizeable woodland or estate may cover a wider geographical area encompassing several settlements.

7. How does a community work towards registering an interest?

The community body must have an appropriate case for registering an interest in land. The site identified must be suitable to meet community requirements. You will need to demonstrate that the registration is in the public interest and that purchasing the land will further the achievement of sustainable development.

In effect, this means the purchase has to secure economic or social benefits for the community and be environmentally friendly. In the event that your development project requires planning approval or other formal consents, it would be sensible to assess whether permission is likely to be forthcoming before proceeding any further.

You will need to demonstrate that there is a measure of local support within the community for your proposal. Ten per cent of the population of the community indicating their support will normally be sufficient, but a lower threshold may be accepted at ministerial discretion. Membership of the community body or signatures in favour of the proposal will both be taken as valid indicators of support.

A crucial task is to establish who owns the site. This is likely to be straightforward but if the owner is unknown then you will have to take steps to find out. Guidance on how to go about this will be available from the Scottish Executive. If normal channels of investigation fail you will have to place an advertisement in the local newspaper for two consecutive weeks and put a conspicuous notice on the site advising of your intention to apply to register an interest in acquiring the site.

8. How does the application process work?

The community body must complete an application form provided by the Scottish Executive (see the address on the back page). The application must be accompanied by a map showing the location and boundaries of the land to be registered and, if necessary, written details clarifying any boundary uncertainties. Further guidance will be available from the Executive.

A project description outlining the intended use of the land is not a formal requirement at this stage but it might help Ministers to determine whether the proposals would contribute to sustainable development and be in the public interest. Neither is it necessary to indicate how funding would be secured if the land was offered to the community body, however, this is clearly a matter that you would wish to investigate.

On receipt of the application, a copy of all the information will be sent to the landowner and other interested parties to enable them to comment. From this time on, until the application is accepted or refused, the landowner is unable to sell or transfer the land. There is likely to be a further exchange of correspondence with the Ministers, but the process should be completed and a decision received in just over two months.

9. What are the effects of successful registration?

A registered community interest in land will grant the community what amounts to a 'right of first refusal' when the owner (or creditor) offers that land for sale. There are, however, certain transfers of land that are exempt from this legislation. These include land transfers where no money is involved, either as a gift or between companies in the same group.

The Scottish Executive estimates, however, that 70 per cent of all land transfers in 2001 would have triggered the right to buy had a community body registered an interest. Transfers made under the permitted exemptions must include in the title a declaration from the owner that they have a genuine case for exemption. Any registered community interest will still apply to the land when it is under new ownership.

Once the application to register an interest has been approved, details will be entered into the Register of Community Interests in Land. This register will be available for public viewing via the internet (see the back page for further details).

The registration of a community interest will last for five years. An application to renew the registered interest for another five-year period can be made within the six-month period before the date of expiry. After that time, a new application will have to be made.

10. What happens when registered land is offered for sale?

When the owner of land in which an interest is registered decides to sell, they will have to notify both the community body and Ministers of their intention. The Minister will then contact the community body asking for confirmation that it still wishes to pursue a purchase of the land. The community body will have 30 days to respond and failure to do so will lead to the community right to buy being deleted. The date of the community body's response confirming that it wishes to proceed will mark the start of a six-month period by the end of which the sale must be completed.

This period may be extended by mutual agreement between the community body and the owner, or if any appeal procedure is initiated. There will be four key tasks to complete within the six-month period:

- Obtaining an independent valuation;
- Conducting a community ballot;
- Preparing the case for a community purchase;
- Securing funds for the purchase.

Figure 1 shows the sequence of these tasks.

The valuation will be undertaken by a suitably qualified person appointed by the Executive. A ballot will be conducted in order to demonstrate that there is community support for the purchase of the land. Guidance explaining how this should be conducted will be available from the Scottish Executive. It will normally be expected that at least half of the members of the community must take part in the ballot and the majority of the votes should be in favour of the purchase. The results of the ballot should be published in a local newspaper and reported back to Ministers.

The community body will need to develop a business case for the community purchase that demonstrates the contribution that will be made to sustainable development and that public interests are satisfied. All necessary funding will need to be secured in preparation for settlement. If Ministers are satisfied that all requirements have been met, they will notify the community body of their decision. If consent to purchase the land is refused, the community body will have a right to appeal.

11. Are there any restrictions over a future sale of the land?

No, but a community wishing to wind up the community company and sell the land must get approval from Ministers. The land will be expected to pass to another community or crofting community body or a charity. Any funding bodies that have contributed funds to the purchase are likely to have provisions to cover this situation.



Where can I get more help?

The Scottish Executive Environment and Rural Affairs Department (SEERAD) are responsible for administering the CRTB and would be happy to deal with any queries from communities who may be interested in using this legislation. Contact:

Colin Gray
SEERAD Land Reform Branch
Mailpoint 1-D
Pentland House
47 Robb's Loan
Edinburgh EH14 1TY
Tel: 0131 244 4447
E-mail: colin.gray2@scotland.gsi.gov.uk

Advice on all aspects of community purchase, including the setting up of a community body and sources of funding can be sought from:

The Community Land Unit
Highlands and Islands Enterprise
Cowan House
Inverness Retail and Business Park
Inverness IV2 7GF

Tel: 01463 244 253
Fax: 01463 244 217
E-mail: hie.general@hient.co.uk
www.hie.co.uk

and

The Scottish Land Fund
Taigh Fèarna
Lochalsh Business Park
Auchtertyre, Balmacara
Kyle IV40 8EG

Tel: 01520 722988
Fax: 01599 566724
E-mail: hie.general@hient.co.uk
www.hie.co.uk/scottishlandfund

Postcode unit information can be obtained from the General Register Office for Scotland website:

www.groscotland.gov.uk/grosweb/grosweb.nsf/pages/geoprods

Your local authority may also be able to provide this information.

The definition of excluded land will be found on the Scottish Executive and the General Register Office for Scotland websites:

www.scotland.gov.uk/about/ERAD/LURP4/00017063/ExcludedLand.aspx

www.groscotland.gov.uk/grosweb/grosweb.nsf/pages/scosett

Paper copies of maps detailing excluded land, to be known as 'The Land Reform (Definition of Excluded Land) Order 2003: Definitive Maps', will be available from SEERAD Office in Edinburgh, and some of the Agricultural Area Offices – see the websites listed above for more details.

The Register of Community Interest in Land can be viewed at the Registers of Scotland website:

www.rcil.ros.gov.uk/RCIL



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