

Negotiating Transfer of Land to Communities

This protocol is one of a series we have issued to help you put the Scottish Government's Land Rights and Responsibilities Statement into practice.

The Land Rights and Responsibilities Statement (LRRS) sets out the vision for a strong and dynamic relationship between Scotland's land and its people. It is the first of its kind anywhere in the world. Land rights and responsibilities apply to both urban and rural Scotland and are about owning, managing and using land in a fair way that benefits everyone in Scotland. It states that the people and organisations that make decisions relating to land should recognise and act in line with their responsibilities, as well as their rights.

The way land is owned and used affects the quality of life for everyone in Scotland. The LRRS is based on the belief that Scotland's land is a resource for everyone in Scotland and should contribute to economic, environmental and social goals within a human rights approach. Realising and applying land rights and responsibilities can reduce inequality and bring mutual benefit to landowners, land managers and communities.

The LRRS recommends that better information about land should be available, to help with more informed decision-making, as this will benefit the local economy, environment and society. People should have confidence that there is a fair and balanced system of decision-making in relation to land and have the opportunity to be engaged in decisions relating to land that will affect them and their local environment.



There are seven principles in the LRRS. This protocol specifically supports Principle 3 of the Statement, but also Principles 1 and 6:

- Principle 1: “The overall framework of land rights, responsibilities and public policies should promote, fulfill and respect relevant human rights in relation to land, contribute to public interest and wellbeing, and balance public and private interests. The framework should support sustainable economic development, protect and enhance the environment, support a just transition to net zero, help achieve social justice and build a fairer society for the common good.”
- Principle 3: “More local communities should have the opportunity to own, lease or use buildings and land which can contribute to their community’s wellbeing and future development.”
- Principle 6: “There should be transparency about the ownership, use and management of land, and this information should be publicly available, clear and contain relevant detail.”

Purpose of this protocol

The main purpose of this protocol is to invite landowners and communities to consider how they can work together in an open and positive way to explore negotiated transfer, lease and management of land and buildings to meet community needs. This protocol applies to all landowners and communities in Scotland, and sets out reasonable expectations which encourage facilitating ownership, lease and use of land through a proactive and amicable process.

Community-based organisations can help to deliver benefits in rural and urban areas through owning, leasing or using assets. Community ownership and use of land and buildings can support wellbeing and resilience by giving local people the opportunity to identify and respond to their own needs. It can offer communities the chance to provide local housing, business opportunities, community facilities, recreation facilities, greenspace and other facilities and services that benefit local people.

There are different routes for communities to follow to take on ownership or management of land, including legislative routes such as Community Right to Buy Land, Community Right to Buy Abandoned, Neglected or Detrimental Land, Community Right to Buy Land for Sustainable

Development, and Asset Transfer. However, the focus of this protocol is negotiated transfer which takes place outwith any legislative framework.

Community ownership may not always be appropriate for a community, but owning, using or leasing land can empower communities by giving them a stronger voice in the decisions made about the resources and services that matter to them.

This protocol is designed to support positive behaviours by everyone involved. It aims to ensure that legitimate interests are taken into account in a reasonable and fair way, and to make sure that everyone works together in a spirit of mutual respect and understanding.

- Where we use the word **should**, we expect everyone involved to follow the approach described, unless it conflicts with their legal duties.
- Where we **recommend** a course of action it means this is good practice, but we recognise that other approaches may be equally effective.

This protocol is effective from the date of issue until we withdraw or revise it by following the review process set out below and publishing a notice on our website.

Who this protocol applies to

This protocol applies to:

- **Owners** of land, including companies, trusts, public bodies, non-governmental organisations, sole traders, charities and community landowners, but excluding individual homeowners
- **Charity trustees, land managers or charity employees** who have significant control over land
- **Land managers** including tenants or agents
- **Community councils** representing the area within which the land and/or a related community sits
- **Relevant constituted community organisations** who have an open membership, demonstrate community control, and who represent a defined geographic area
- **Members of a community** who are considering taking on ownership, use or lease of land.

Definitions

When we talk about **community**, we mean the individuals who live in a particular place. This can be an urban or rural area. It can be defined as whole towns, single streets, whole islands or peninsulas, other large geographic areas or small villages or neighbourhoods.

In some cases, such as for Asset Transfer requests, a community of interest can make a request for ownership, use or lease of land to relevant public bodies. These are communities of people who are connected through a shared interest rather than by place. However, the focus of this protocol is on those who live locally and may wish to own, lease or use land in the local area, rather than on communities of interest.

Land includes buildings and other structures, land covered with water, and any right or interest in or over land, and can be in either an urban or a rural context.

When we mention **collaborative working** we mean any arrangement between two or more parties that facilitates the sharing and/or use of resources. Collaborative working can include tenancies, short-term leases, partnership arrangements, management agreements and informal arrangements. There are lots of reasons why a collaborative approach may be taken and this approach can bring mutual benefits.

Specific Expectations

We expect everyone covered by this protocol to follow the specific expectations as set out in our protocols on Community Engagement in Decisions Relating to Land and Transparency of Ownership and Land Use Decision-Making and meet the following conditions:

- a. We recommend that community organisations are formally constituted or are working towards being formally constituted on a democratic basis prior to formal land negotiations beginning.
- b. If a community organisation would like to buy land or enter into a collaborative working arrangement, they should share information with the landowner or their agent about their aspirations for the land. It is recommended that they share information about the reasons for, and benefits of, their plans.

- c. Landowners should consider proactive requests for sale or lease of property when they are reasonably made by a community organisation. They should be open and transparent in their decision-making processes and provide clear reasons for their decisions, where this is possible.
- d. We recommend that landowners take account of wider benefits that can be delivered when making decisions on transferring land or buildings. These benefits could be to the economy, society, or environment, and may be long-term benefits, that could outweigh the value of short-term gains.
- e. When a landowner is considering transfer of land or buildings in a sale that will take place off the open market, they should make the local community aware that this is the case where this is possible. When landowners are considering private sale or are considering an approach, they should, where this is possible, publicly acknowledge such approaches.
- f. Subject to the agreement of both parties, landowners and community organisations should consider the different options for valuation, including using a joint valuation process. When using a joint valuation process consideration should be given to splitting the cost between both parties.
- g. When a private landowner is selling or transferring land to a community organisation, or when a community organisation initiates a sale or transfer of land from a landowner, they should follow the procedures set out in [Community Land Scotland and Scottish Land and Estates' Protocol for Negotiated Sales](#). For public landowners who are named as relevant authorities under the Community Empowerment Act (Scotland) 2015 Asset Transfer procedures may be followed, although negotiated transfers are also possible.
- h. Title conditions and clawbacks are sometimes used when land is transferred, particularly if the land is sold at a discount. Landowners should ensure that title conditions and clawback arrangements are appropriate and proportionate and should avoid those that will have an adverse impact on the viability or sustainability of businesses, community projects or other activities on the land.

Putting this protocol into practice

We may sometimes produce practice guidance and case-study examples to help you put this protocol into practice. We may publish these on our own website, or we may work with other organisations which represent the interests of a particular sector.

If you would like further information on how to implement this protocol, please [get in touch](#) with us.

Telling us about your experience

If you experience a situation which differs significantly from the principles and specific expectations set out in this protocol, please contact us with details and supporting evidence.

Where appropriate we will provide advice, and work with you to deal with any difficulties and help improve practice. Our main role will be to support you in putting in place good practice and developing confidence and capacity among stakeholders, and to influence future development of policy, protocols and guidance.

We are keen to hear of and share positive examples of good working relationships, and welcome information about successful collaboration between landowners and local communities. These case studies can help tell other landowners, managers and community organisations about good practice.

To share your experience please contact the Good Practice Team:

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Review

We have developed this protocol with the Good Practice Advisory Group members – Community Land Scotland, Development Trusts Association Scotland, National Farmers' Union Scotland, Scottish Land and Estates, and Scottish Property Federation.

We will continue to work with the Good Practice Advisory Group to keep this protocol under review. Our future work programme and the recommendations we make to Scottish Ministers in relation to the LRRS will be guided by how this protocol is put into practice.

Further Information

 **For more information, please visit the following websites:**

www.landcommission.gov.scot

www.gov.scot/policies/land-reform

CLS and SLE protocol

Guidance on assessing best value in relation to Asset Transfers

HIE, COSS and Scottish Government routes to ownership maps

“More local communities should have the opportunity to own, lease or use buildings and land which can contribute to their community’s wellbeing and future development.”

