

# Common Good Land

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 six principles in the LRRS, and this protocol on Common Good specifically supports principles 4, 5 and 6 which state:

- Principle 4: “The holders of land rights should exercise [these] rights in ways that take account of their responsibilities to meet high standards of land ownership, management and use. Acting as stewards of Scotland’s land resource for future generations they contribute to sustainable growth and a modern, successful country.”
- Principle 5: “There should be improved transparency of information about the ownership, use and management of land, and this should be publicly available, clear and contain relevant detail.”
- Principle 6: “There should be greater collaboration and community engagement in decisions about land.”

It is also underpinned by and supports principle 1, which states:

- Principle 1: “The overall framework of land rights, responsibilities and public policies should promote, fulfil 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, help achieve social justice and build a fairer society.”

## Purpose of this protocol

Common Good property was granted to, and acquired by, former burghs over time for public benefit. Common Good land was intended to provide the burgh with space to construct civic buildings and hold markets, as well as areas for recreation, the grazing of livestock, collection of fuelwood, and other activities.

Common Good assets are often of significant local importance, part of the local heritage, and valued by residents – buildings like town halls, tolbooths, and former burgh chambers, as well as parks, gardens, links, and woodland. The income generated from Common Good assets is held in Common Good funds which are often distributed to local causes or used to fund local events.

Local authorities have a duty in managing Common Good assets to take into account the interests of the residents of the former burgh. However, at present, the way this is interpreted and

conducted varies widely between local authorities. This can cause confusion and frustration for local authorities and residents alike, so there is a need to set out clear expectations and behaviours for Common Good management.

The Community Empowerment Act (Scotland) 2015 imposed new duties on local authorities on registration, use and disposal of Common Good assets. The Scottish Government has issued guidance on these duties and this protocol is intended to be used alongside the guidance.

This protocol sets out how local authorities should manage Common Good land and buildings in line with their statutory duties. It also makes recommendations for local authorities to enhance transparency and improve community involvement in decision-making.

- Where we use the word **must**, this means the action is required by law and failing to comply would be a breach of legislation.
- 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:

- **Local authorities** in Scotland who all have at least one former burgh in their area
- **Land managers** such as a tenants or agents or other people employed or contracted by the owner to look after Common Good land or buildings on their behalf
- **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.

## Definitions

When we talk about **Common Good** property, we mean assets that were granted to or acquired by former Royal burghs in Scotland for the benefit of the community. The Common Good Act 1491 provided legal status to Common Good and created an obligation that assets be managed for the benefit of the citizens of the burgh. This obligation is still in force today. This protocol relates to Common Good land and buildings.

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.

**Land** includes buildings and other structures, land covered with water, and any right or interest over land. It can be urban or rural.

All Common Good property falls into one of two categories – alienable or inalienable. **Alienable** property can be sold, leased or otherwise disposed of in a permanent or semi-permanent way that reduces public use. A council can change the use of an alienable asset without needing to get consent from a court. Inalienable property cannot have its use changed or be sold, leased or otherwise disposed of without a court order. **Inalienable** property tends to include town halls, market squares, parks or greens, and churches, although the status of each asset needs to be individually determined and cannot be assumed.

## 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 conditions below. Where we use 'must' this relates to Part 8 of the Community Empowerment (Scotland) Act 2015. Further information can be found in the Scottish Government's Common Good Property [Statutory Guidance for Local Authorities](#).

- a. Local authorities must establish and maintain a register of property that is held as part of the Common Good and must make this easily accessible online. Local authorities should provide details on the current use and management of assets. Local authorities should provide information on whether Common Good land is being used, leased or is vacant, and whether the status is alienable or inalienable (where known). This information must be regularly reviewed at intervals of no more than five years.
- b. Local authorities should provide clear contact details for those who manage and make decisions about Common Good land and should have a dedicated point of contact for Common Good matters. This information should be shared online alongside the Common Good register.
- c. Local authorities should regularly review how community engagement is incorporated into the management of Common Good land. Local authorities should encourage community involvement in decision-making processes around the governance and management of Common Good assets.
- d. When a local authority is thinking about disposing of or changing the use of Common Good land, it should consider whether this option will continue to deliver public good and what impact it will have on the broader Common Good portfolio. When a disposal or change of use is assessed to be the best option, the local authority must consult with the community.
- e. Local authorities should be transparent in communicating processes for leasing or disposing of Common Good land, including likely timescales (where known) and how any associated costs are expected to be covered.
- f. Local authorities must make information about the income generated by Common Good land clear and easily accessible. This should include information about how Common Good Funds are used, including how much is reinvested into Common Good assets, how much is distributed and to whom, and how much is retained by Common Good Funds.

## Putting this protocol into practice

We may sometimes produce practice guidance and case study examples to help 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 trusts and local communities. These case studies can help tell other trustees, 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, Scottish Property Federation and Scottish Environment Link. We have also worked with local authorities across Scotland.

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 Land Rights and Responsibilities Statement will be guided by how this protocol is put into practice.

## Further Information

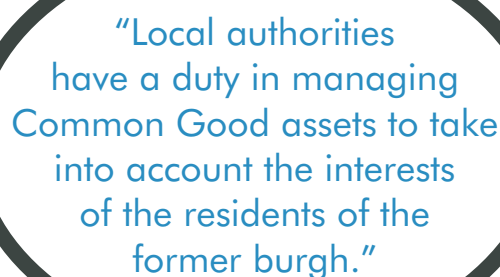
 **For more information, please visit the following websites:**

[www.landcommission.gov.scot](http://www.landcommission.gov.scot)

[www.gov.scot/policies/land-reform](http://www.gov.scot/policies/land-reform)

**Statutory Guidance on Common Good Property**

**LASAAC Guidance on Accounting for the Common Good**



“Local authorities have a duty in managing Common Good assets to take into account the interests of the residents of the former burgh.”

