



Scottish Land Commission response to the Community Right to Buy Review

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?

It is important that community rights to buy remain an effective and viable statutory route for communities to buy land, where negotiated options are not possible.

There has been only one successful registration through the Part 3, Part 3A or Part 5 right to buy provisions to date:

- Two communities have completed applications for Part 3 Crofting Community Right to Buy but gone on to acquire land through negotiation.
- Only three applications have been received under Community Right to Buy Abandoned, Neglected or Detrimental Land, with one declined and two rejected.
- One right to buy under Part 5 has been activated, another community has had applications declined then, and a decision is pending on a more recent application.

As such we support simplification of the compulsory rights to buy. We believe that the Part 3A and Part 5 rights could be effectively combined. However, we think that the Part 3 Crofting Community Right to Buy should not be merged, although it should be simplified.

We think that the Part 3 and Part 2 provisions for qualifying community bodies should be aligned to allow crofting community bodies to undertake Part 2 applications if required. It should also be the case that eligibility for compulsory purchase rights is aligned with Part 2 eligibility.

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

We believe that the rights should primarily be based on the use of the land or potential use of the land for sustainable development in support of community needs and ambitions, with the condition of the land being a secondary consideration during the assessment process. Simultaneously, it must continue to be clear that rights to buy cannot be used as tool to block, restrict, or frustrate the landowner's ability to engage in legitimate development activities.

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 principle of reducing the residence and voting eligibility requirements. Our Review of Community Ownership Mechanisms made a recommendation to amend the 2003 Act to remove the requirement for 75% of the membership of a community body to be from within the defined community area.

We consider that it would be appropriate when making any changes to criteria that consideration is given to to ensure alignment between the requirements relating to community control for CRtB applications and the eligibility criteria of the Scottish Land Fund.

Question 4

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

- ☐ Yes
- ☐ No
- ☒ Unsure

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

While we are supportive of representation in local decision-making, if the minimum requirement is raised then it may create difficulties for communities to meet the requirement, and may particularly disadvantage those in rural and island areas covering larger geographic areas.

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

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

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

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

We believe that 15% is more than adequate to meet the requirement for support demonstrated to be significantly greater than the 10% required for timeous applications.

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

Use of the Part 2 Community Right to Buy has slowed significantly in recent years and there has been no successful use of the 'late registration' provision for several years. We support steps being taken to simplify the process and make it more accessible to communities.

It would be helpful to define what is considered a step to transfer, making the process clearer for communities and landowners. It is important that the threshold for this is not set too low as it could prevent successful registrations.

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**

☐ **Unsure**

Please provide any additional comments

As above, use of the Part 2 Community Right to Buy has slowed significantly in recent years and there has been no successful use of the 'late registration' provisions. We support steps being taken to simplify the process and make it more accessible to communities. There are many reasons why a community would not be in a position to seek to acquire land prior to sale and removing this requirement will make rights to buy more useable for communities.

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

While we would expect the community to be able to justify their application, and guidance on minimum requirements to do so would be necessary, a full and detailed business plan creates an unnecessarily high bar to success.

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 can and do withdraw land from sale for entirely legitimate reasons. Instead we suggest that where such an application has been approved and land subsequently withdrawn from the market, the approved application is converted to a standard Part 2 registration.

Question 11

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

☒ **Yes**

☐ **No**

☐ **Unsure**

Please provide any additional comments

Yes. Demand for Scotland's land remains strong and we see continuing high land values and a fast-moving market which makes it challenging for communities to buy land – both to raise the necessary finance and to act quickly enough in the market. Ensuring a community body is able to nominate a third-party purchaser to buy land on its behalf would support a wider range of routes to acquisition, including interim ownership by a nominated partner.

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

No, we do not believe such requirements would be helpful and would risk making the use of third party purchasers impractical.

We believe that public land owners have a particular role to play as potential interim owners, enabling a longer timeframe to transfer land into community ownership. We have worked with Crown Estate Scotland (CES) to explore the possibility of CES becoming an intermediary owner of land to give communities time to develop their plans and raise funds before acquiring a site. While this has not been continued to a pilot phase, it is clear that similar approaches with other public bodies would open up a wider range of opportunities. Applying this in the context of community rights to buy, public landowners, and other suitable third party purchasers identified by communities, could become interim owners of land and provide the necessary time for communities to develop plans and secure funding for purchase. This could be particularly useful in situations involved more complex purchases, where the timeframe for acquisition following a right to buy being triggered could be challenging for communities.

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

We recognise that a formal agreement between parties could be helpful in demonstrating ongoing commitment and collaboration, however, we have no strong views on the form this would take or the level of detail necessary.

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

Yes. We support greater transparency in relation to land use and management and believe that the existence of option agreements and similar obligations should be publicly available as a matter of course, and actively disclosed to community groups when relevant.

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

Yes, we believe that this could create opportunities for communities. Consideration should be given to whether the right to buy will continue to apply if the holder of an option agreement takes ownership of the land or whether re-registration would be required.

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

While we agree with the principle that rights to buy should be made simpler and easier for communities to use and reducing the reasons for applications being declined is in line with this, it is not sufficiently clear what kinds of options agreements are being referred to here and therefore what the likely impact would be. It is already the case that transfers between spouses and companies in the same group are exempt (whether there is an option agreement or not) per S40(4) and there is an exemption for transfers not for value which would likely cover other family members.

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?

While we believe that the timeframe for appeal should be sufficient to enable both parties to make informed decisions, we believe that extending the appeal period could increase uncertainty for both communities and landowners, which could have detrimental impact on community funding applications or on landowner's future plans.

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

An extension to the registration period would reduce the burden on communities who have registered an interest and would ensure rights to buy remain effective and viable for community use. It would also reduce the administrative burden on Scottish Government and on Registers of Scotland. We consider that 10 years would be an appropriate timeframe.

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

Simplified initial registration:

While not considered in the consultation due to practicality and feasibility, we believe that the Scottish Government should consider options to simplify the initial registration stage for Part 2 CRTB. Registration currently requires significant and detailed information about ownership plans at a stage when the option to acquire the land may be very uncertain. This can be a barrier to communities registering an interest to buy. In turn, if the land unexpectedly does become available in due course, communities must then seek to use the late registration process, the requirements for which are difficult to meet.

There is a public interest in ensuring that initial registration remains a viable and practical option for all communities. This supports a planned and proactive approach to community land acquisition, enables targeting of support to help communities prepare for possible acquisition, reduces reliance on 'late registration' procedures, and reduces the need for other interventions.

Capacity and support:

While outwith the legislation, we believe that building capacity and providing support for communities who wish to use the rights to buy is important. There remains disparity in the level of support available to communities across Scotland. While communities in the Highlands and Islands and the South of Scotland can seek support from HIE and SoSE, community bodies in other areas have fewer options for support, particularly in relation to the financial costs associated with pursuing a right to buy application.

We have previously recommended that support for enabling community ownership should be further developed to:

- provide consistent support equivalent to that provided by Highlands & Islands Enterprise (HIE) and South of Scotland Enterprise (SoSE) across the whole of Scotland;
- provide advisory support to landowners as well as communities in order to encourage and enable negotiated transfers; and
- include a proactive communications strategy and programme of awareness raising for communities across Scotland.

Rights to buy in an urban context

We recognise that there are particular challenges for urban communities who wish to use rights to buy including property values, the pace of transactions and lack of transparency around ownership. These means that many urban applications are deemed late. We support clarification and simplification of the rights in general but also note the need to ensure that changes and criteria are suitable to enable urban communities to use the rights to buy if needed.

Recommendations from review of the effectiveness of community ownership mechanisms

In 2018, we published a report, written by SRUC, commissioned to review the effectiveness of community ownership mechanisms and assess options for supporting the expansion of community ownership in Scotland.

In relation to the rights to buy, the report recommended the following amendments: i) Amend Parts 2 and 3A of the 2003 Act and Part 5 of the 2016 Act to allow the Scottish Government to designate community bodies and classes of community bodies as eligible; ii) Amend the 2003 Act to remove the requirement for 75% of the membership of a community body to be from within the defined community area; iii) Amend the 2003 Act to give communities the right to respond to landowners' comments on late registrations and to extend the period for which expressions of community support are valid.