

# **Community Land Scotland**

Land Reform Review

Submission of evidence in response to the first call for evidence from  
Land Reform Review Group

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## Executive Summary

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## **Introduction**

Community Land Scotland welcomes the opportunity to submit evidence to the Land Reform Review Group.

Community Land Scotland is the representative organisation for Scotland's community land owners, many of whom have come into existence within the last 20 years, and exists to promote the interests of community land owners in the development of public policy, to promote the benefits of community landowning, and to facilitate support and networking to existing and potential new members in order to share experience and expertise.

The current membership comprises some 27 community owners and aspirant owners who, taken together, already own and manage some 500,000 acres of land which is home to over 20,000 people.

We consider the land reform review to be a significant opportunity to review recent experience on the operation of the Land Reform (Scotland) Act 2003, and upon which further and necessary reform measures can be built, with a view to securing more sustainable and resilient communities, and to advance greater social justice in Scotland.

In this submission of evidence we comment principally on the community ownership of land as a significant aspect of land reform. We believe the community ownership of land has considerably more to offer the cause of sustainable rural development, but its potential is impeded, in part, due to inherent limitations in the current law.

Community Land Scotland members have significant experience in the operation of the Land Reform (Scotland) Act 2003, and of the financing and support arrangements available to community groups wishing to purchase land as the basis for their community's development. We believe that community land ownership ought to be seen as a highly effective model of sustainable rural community development.

This submission makes a number of suggestions as to how further policy, support arrangements and additional statutory provisions might be developed and framed.

We will be happy to explore any of the ideas in this paper with the Land Reform Review Group.

## **The Community Empowerment and Renewal Bill (CERB)**

We believe it is important to highlight the intrinsic link between the work of the Land Reform Review Group and Scottish Government plans for a Community Empowerment and Renewal Bill (CERB) which are currently under discussion.

This submission of evidence focuses on the current Land Reform (Scotland) Act 2003, and is therefore principally around the issue of furthering rural sustainable development. However, in our submission to the CERB we supported to an urban right to buy, such as is available to rural communities under the Land Reform (Scotland) Act 2003.

In our evidence to the CERB and in discussion around that consultation since, we have stressed the importance of learning lessons from the operation of the Land Reform Act and applying them to any urban right to buy, in terms of the scope of the provisions of that Act and its administration. We

have further stressed to the Scottish Government the importance of managing these separate processes (LRRG and CERB) in a way which recognises their intrinsic connection.

While argued in the context of the Land Reform Act provisions which are for rural communities, anything in this submission should be taken as applying equally in relevance to any extended right to buy to urban communities emanating from the CERB considerations.

## **The case for further land reform**

The broad ranging nature of the remit of the Land Reform Review Group is welcome, and makes clear the belief of the Scottish Government that community ownership of land has 'contributed positively to a more successful Scotland by assisting in the reduction of barriers to sustainable development, by strengthening communities and by giving them a greater stake in their future'.

The remit further makes clear that the review group has been established to identify how further land reform will enable more people to have a stake in the ownership and management and use of land, leading to a greater diversity of ownership, and ownership types in Scotland in future; and assist with the further acquisition of land.

These strong and positive statements indicate the value the Scottish Government attach to seeing more progress on land reform, and community land ownership as a key dimension of that. Community Land Scotland therefore recognise that the starting point for the work of the Land Reform Review Group is not to make a case for land reform and community ownership, but to explore how further progress on these matters can be secured. This is a welcome and strong starting point for the review group.

That said, we none-the-less want to support the broad view expressed in the remit that the early evidence of the benefits of community land ownership are extremely promising.

There is little doubt communities securing ownership of land is bringing real change and improvement to what were previously communities in the most precarious condition. Community ownership releases energy, enterprise and innovation, and it requires taking responsibility. The process reveals people with enormous capacity, capable of making the most remarkable contribution to the development of the life of their community. The same people, who are now playing strong roles in showing this enterprise, being innovative and taking responsibility, are long term residents of the community. Their desire for a better future for their community and their capacity to make a substantial difference has always been there, it simply did not have the circumstances or opportunity now available through community ownership, to fully deliver on their community ambition and for their full repertoire of talents to surface. It is the ownership of their land, enabled with important support they have received, that has released their enterprise more fully. It is the change of ownership that is giving the possibility for a change of focus, priorities and new land uses, in line with community aspirations and priorities.

The effect of the change in ownership is tangible. In many communities population is growing for the first time in generations, school rolls are strengthening, new enterprises are being created. The modern community land owner is running a multi-faceted business making a contribution across a wide range of fronts. These can range through the traditional land uses one associates with large estates; the generation of energy through wind, PV cell and hydro; the planting of trees and the management of commercial forests and amenity woodland; the release of land for housing; the development or renovation of housing units; the creation of new crofts; investment in tourist attractions, access and interpretation arrangements; the supply or development of buildings for community or commercial activity, such as workspace, retail outlets and hotel accommodation. Community ownership is stimulating new private investment for business activity within their communities and building confidence that the future can hold much more promise than was evident just a few years ago.

The 500,000 acres of land in community ownership remains a tiny fraction of Scotland's land mass and, despite this community ownership, and more ownership by a range of national conservation

charities, for example, little has changed in the underlying land ownership patterns in Scotland over many generations.

Scotland's land ownership patterns, where vast tracts of land are still owned by a very small number of people, and a number of them absentee owners, is not typical of land ownership patterns across most of Europe, or much of the rest of the world. The research work on who owns Scotland of the late John McEwen and more recently by Andy Wightman and Charles Warren, reveal a continuing stranglehold on land by a, generally, wealthy elite. Warren reveals that, "Half of the entire country is held by just 608 owners and a mere eighteen owners hold 10% of Scotland"

Much land that comes on to the market in Scotland attracts a high price and is specifically marketed to that wealthy elite, partly on the basis of the personal tax and other finance advantages owning large tracts of land and forestry can bring.

Despite the work of John McEwen and others in highlighting the inequity in the land ownership patterns of Scotland, and despite all the reforming measures of the past and the promising progress made in recent years in community ownership, that progress could not be said to be anything other than marginal in achieving real change in land ownership patterns in Scotland.

It appears simply wrong that in a nation that would pride itself in its commitment to social justice, that so few of its people have a stake in the land. It would seem inconceivable in looking to the future of Scotland that in 20, or 40, or 60 years that the basic patterns of land ownership should not see significant change. Significant change would provide a basis a basis for greater social justice in Scotland, as well as providing potential to further contribute to sustainable development.

There is little evidence that, without an imaginative, bold and advanced framework of law, building on the provisions of the current Land Reform (Scotland) Act 2003, and addressing issues arising from the experience of its workings, together with appropriate support to communities, there will be any real hope for an acceleration of change in current patterns of land ownership.

## **Does the question of ownership really matter?**

Community Land Scotland is aware of arguments that the ownership of land is not what is important, but it is what happens on the land and what its use is that is the important issue. We are also aware of arguments that it is not necessary to burden communities with title and the responsibility of ownership, and that current ownership patterns already give rise to sustainable development in rural Scotland.

We are clear that what happens to land, the uses to which it is put, is of huge significance and importance to achieving sustainable development ambitions, but we are equally clear that it is who owns the land that is the key question in land reform. Far from burdening communities with title to land and the responsibilities that brings, it is the very ownership of land that is decisive in bringing new opportunity.

The argument that ownership is not what is really important may principally emanate from those interests which currently own the bulk of the land. On the face of it, if this is actually the belief of such interests, there ought to be the basis of ready and rapid progress in securing more diversity of ownership – those with current ownership which believe it is not the vital thing, readily transferring ownership of land to communities which believe it is the vital thing. However, we believe there is little evidence that this is likely to happen.

There is a growing emphasis among private owners that they should seek to work closely with communities, developing better engagement with communities, finding ways to involve communities more in discussions about future land uses. This emphasis is important, particularly where a community might not be at a stage in its development and aspiration, or yet have the desire or confidence, to seek ownership of their land. There are a number of progressive and imaginative private owners who seek to work closely with communities and who have created development and employment opportunities for local communities, and are well respected by the local community. That is neither to be discouraged, nor disparaged; it is to be warmly welcomed. Progressive private owners are undertaking developments and securing investment which in many ways is analogous to the actions of community owners. The vital difference is that under community ownership it is the community that is in the driving seat in determining development priorities, and the proceeds of any development are always for the common good and benefit of the entire community.

More recently arguments around 'partnerships' with communities have been emerging, though the nature of these and whether this represents real or fundamental change is not clear. Fundamentally, however, partnering with communities, unless that was in potentially in the actual ownership and in sharing the benefits of that ownership of the land, will be bound to be second best to the potential of outright community ownership. Partnerships with existing owners, in other than actual ownership arrangements, would not of themselves stop the transfer of land to new owners with different attitudes, would inevitably compromise local democratic community priorities and ambition, would lessen the value shared community benefits to be had from revenue generating activities wholly owned by the community. In short, partnership arrangements should not be seen as a substitute for or alternative to advancing community ownership. Only where a community had no desire to own land, might local partnership arrangements offer them some greater access to and possible influence over, local land uses.

The experience of our members is that, notwithstanding satisfaction with the actions of any current owner, a change of ownership can arise from a wide range of circumstances and can quickly change and adversely affect the life of that community. One clear rationale for communities wanting to own the land, is to insure against the negative consequences of changes in land ownership.

Progressive private owners might proffer the view that the community may have no desire to change ownership arrangements, and that might indeed be the case. If indeed that was the case, such owners would have nothing to fear from further land reform measures. However, the good actions of progressive owners is not an argument against further land reform and ownership of land by communities, where equally beneficial or even greater outcomes can be achieved through community ownership.

In debate about land reform those who oppose the need for it may emphasise possible threats to land values and investment, particularly if powers exist to force a change of ownership. Arguments about land values being negatively affected were advanced around the time of the Land Reform (Scotland) Act 2003 being debated and enacted. In the event, this has not happened and land value has remained buoyant, and there is little reason to believe land values will be adversely affected by further land reform, particularly if they continue to embrace the principle that landowners should receive a fair value for their land, independently assessed.

There is a sense in which communities in many parts of Scotland, and particularly in the Highlands and Islands, have been fed a diet that the only way communities have been able to survive has been through wealthy private owners being prepared to subsidise their loss making private estates and make investments in them. It is undoubtedly the case that wealthy owners down the years have put money into maintaining the particular uses to which they chose to put their land. However, the underlying implication has been that communities ought to be grateful for such largesse and any other future would be ill advised. This can appear to communities as a patronising view, particularly when viewed against the evidence of recent community purchase. Far from investment stopping and loss making increasing, the early evidence of community ownership is that it results in the opposite. We attach at Annex A three 'thumb nail' sketches of investment and benefits resulting from community ownership.

The early investment in any particular community purchase may be from public funds and this is widely accepted as necessary. It should be noted that significant sums of public finance is also received by many private estates, as well as a range of potential tax benefits, which no doubt contribute to helping to underwrite the uses to which the private owner wishes to see their land put. These various tax and public spending benefits can range through particular capital tax gains arrangements, inheritance and income tax arrangements, as well as through, for example, forestry planting grants, and various farm payments and SRDP grants.

## **The four pillars for success in delivering community ownership of land**

In Community Land Scotland's experience there are four essential pillars to achieving successful community land ownership:

- the community must have a strong desire to own and be clearly aware of the considerable responsibilities ownership brings
- there needs to be a strong and empowering legislative framework in place to support community action
- there needs to be tailored support services available to communities wishing to purchase, and
- there needs to be appropriate financial support available
- 

Each of these four pillars is examined in turn in what follows, with the discussion around the legislative framework comprising the largest part of this submission.

### **A strong community desire to own**

Community ownership is a significant and serious endeavour and communities have to be highly motivated and committed to this path. In short, the first and possibly the most important step is that a community must have a strong desire to own, and it may not be for every community in the short to medium term. The desire to own ultimately has to come from within the community, and at a time that is right for them in their circumstances and for their stage of development. It is not something that can or should be forced from outwith.

Sharing experience of community ownership is an important part of the process a community might go through to consider its options and make decisions about how to proceed. It is a way some communities can come to realise the full range of possibilities and potentials from community ownership, and can help give confidence to proceed down this route.

### **A strong and empowering legislative framework (and the case for change to current legislation)**

The Land Reform (Scotland) Act 2003 was a bold and progressive piece of legislation of its time and it signalled a clear desire by Scotland's (then new) Parliament to encourage and facilitate change in land ownership patterns, building from the work of the Land Reform Policy Group established in 1997 by the UK government.

The fact that such legislation exists and communities are given rights and routes to potential community ownership of land is of itself a very important signal to communities to know that their actions in seeking to purchase land have, as a matter of clear principle, the endorsement of the Scottish Parliament.

This fact, together with the specific rights granted in the legislation, has fundamentally changed the nature of the relationship between private owners and communities. It has empowered communities and significantly strengthened their position and given crucial time to communities to seek to secure a land purchase. More broadly it has had an effect of changing the overall climate of relationships between traditional owners and communities and has given rise to a number of voluntarily negotiated transfers of land.

The 2003 Act provides a clear legal backdrop of powers and rights to fall back on when necessary, and has created a broadly sound framework for gaining democratic community assent to a purchase,

and for constituting an appropriate community body. Recent experience reveals that the majority of purchases have taken place out-with the terms of the Act itself, none-the-less, the Act remains vitally important in providing the framework within which a community can take ownership of their land.

Community Land Scotland believes the current broad framework of the 2003 Act remains highly relevant in providing rights to communities.

Work undertaken for the then Rural Affairs and Environment Committee of the last Scottish Parliament by Dr Calum McLeod, et al, set out a detailed and comprehensive analysis of views on the strengths and weaknesses of the 2003 Act. The Scottish Government publication “Overview of evidence on land reform in Scotland” captures and summarises a range of land reform research, and it highlights analysis of a range of key issues. Work by Highland Council on problems with the land reform legislation produced after their conference on the matter in March 2010, entitled “Right to Buy – where from here” provides further useful information and analysis. An excellent case study by Abbie Marland of the Seton Fields Community Company sets out very clear frustrations with aspects of the operation of the Land Reform (Scotland) Act 2003, written from a community perspective. Community Land Scotland commends all this work to the Land Reform Review Group and believes that all the issues identified as requiring examination are relevant and form a sound agenda for consideration.

Further, we would draw attention to the National Forest Land Scheme as an imaginative and flexible administrative development, building on the Land Reform (Scotland) Act 2003 as a potential model for achieving greater transfer of public land into community ownership, capable of wider application across the public sector.

Notwithstanding the benefits of the existing legislation it is widely recognised that the Act is cumbersome and complex to use and is in need of significant simplification and streamlining. Further, we believe it is clear the Act has significant problems in its operation, and is deficient in its range of powers, and needs to be reformed if there is to be further advance in the cause of land reform.

The complexity of the current Act present problems for communities and current owners in its use, adds to the difficulty of civil servants in administration, and can create significant challenges for Ministers in decisions they may be invited to consider.

In what follows we consider specific matters, structured to cover the three parts of the 2003 Act and complements the issues identified in references to existing research set out above.

### **Part 1 – Access**

Community Land Scotland has no issues it wishes to raise in relation to the access provisions.

### **Part 2 – Community Right to Buy**

The comments that immediately follow address the current provisions of the Act and associated matters from regulations. These are matters that members of Community Land Scotland have raised as being of concern or suitable for simplification or relaxation in criteria. Matters referred to later, on more fundamental changes of principle to Part 2 and Part 3, may have the effect of overtaking some of the detail set out immediately below, if and when agreed.

**The 10,000 population threshold** - The Community right to buy only applies to communities which have 10,000 head of population, or less. The measure is meant for rural communities.

We have no observation to make on this threshold, which remains appropriate for rural Scotland. However, we make this observation within a context where we have supported in our response to the consultation on a potential Community Empowerment and Renewal Bill, an 'urban right to buy', which we believe should cover every community above the 10,000 threshold for rural communities, thus achieving universal coverage for all communities of a right to buy.

Short of this being achieved, within a context where the community right to buy remains an instrument of rural policy, we believe it would be helpful to put beyond any doubt that Ministers should have a discretion to permit a community which may not meet the 10,000 population threshold, to make an application to buy in circumstances where that would not otherwise be the case, and where Ministers were satisfied the intention of the application could in all other respects be held to be in line with promoting sustainable rural development under the 2003 Act. In such instances the community would have to make a simple stated case for Ministers to use the discretion available.

**Defining a community body** – A 'community body' can register an interest in land so that if and when it comes onto the market they have, in effect, a first option to buy, and restrictions are placed on any sale within a specified period. A community is defined by reference to a postcode unit or postcode units, unless Ministers otherwise direct.

We suggest that using a postcode unit or postcode units is too inflexible as the means of defining a community, and it can sometimes be complex for community organisations to map.

It is noted that Ministers have powers to 'otherwise direct' that postcode criteria may not be used, but the clear expectation on the face of the Act is that they shall be used.

Within a policy environment which seeks to create greater community empowerment it would seem right that a community should self-define and set out their case for that definition. It may be that in doing so a community may use postcodes or units of postcodes, to give help define a specific mapped geography, but that should not be essential.

Community Land Scotland would like to see greater flexibility in how a community is defined, leaving that largely to the community itself to state and show by reference to simple maps. It may be that in any guidance accompanying any revised provisions, the use, or otherwise, to which post codes may be helpfully used is set out, among other things, rather than remaining the principal requirement in law. This may become an even more important consideration within the context of more urbanised communities with smaller geographies.

**Requirement to be a Company Ltd by Guarantee** – the Act requires a Community Body to be a Company Limited by Guarantee.

Given recent developments in forms of company and organisation recognised in Scotland for charitable purposes, the particular requirement to be a Company Limited by Guarantee needs revisited.

**Requirements for maps and drawings** – In registering an interest in land, this must be done in a prescribed form, including by reference to maps and drawings.

In principle, it should remain an indispensable aspect of registering an interest in land, that it is mapped. It is in the extent of the detail that is required, and any referencing of maps within the application that becomes crucially important to community groups with limited resources.

It is vital in this context for the Scottish Government to be as clear in guidance and advice as is possible as to what is specifically required, and to offer advice on the likelihood of acceptability of maps (in draft) prior to formal submission. In all cases the emphasis should be on the simplicity of the requirements for communities consistent with clarity of the extent of the interest in land.

**Demonstrate 10% approval to register an interest** – In order to register an interest the community body must show it has the approval of 10% of the community population, though Ministers may accept a lower number in certain circumstances.

Given the existing discretion where Ministers may accept an indication of support falling short of the 10% level, the 10% threshold remains reasonable.

It should be noted that the very act of having to secure a 10% threshold can have the effect of alerting the landowner of an interest in the land, potentially in some circumstances, precipitating the land being put on to the market, at which point the threshold for approval to submit an interest rises under the provision for late registration (see immediately below). In such circumstances a helpful change to current provisions would make it clear that the timeline for rules for a timeous registration should apply when the process for securing the 10% approval started when the land had not been advertised as being on the open market, even if it is on the market when the registration application is submitted.

**Timeous and late registration** - The criteria for late registration of an interest to buy are more onerous than for a timeous application. In practise, most recent purchases that have proceeded have been from late registrations.

It is not clear why a late registration should have more onerous conditions than a timeous one. This could have been conceived as a mechanism simply to encourage timeous applications, which are easier to achieve. However, given that the underlying intention of a timeous and late registration remain the same, to register an interest in land, and given the genuine reluctance of some communities to register an interest (for reasons set out elsewhere in this submission) it does not seem reasonable that the registration requirements should be so different, particularly given the ultimate ballot requirements for a right to buy purchase to be able to proceed.

Community Land Scotland believes it is important to continue to have late registration procedures, but that it should have the same 10% threshold requirements as the timeous registration requirements.

**The Renewal of registration** - A registration lasts for 5 years whereupon it has to be renewed if the rights to buy are to be maintained.

The re-registration provisions are seen as particularly onerous. The principle that there should be a re-registration is not disputed, but the particular requirements are seen as unnecessarily demanding.

There are at least two ways of dealing with this. One simple way would be to lengthen the period over which registration applies and remains in force.

The 5 year period is considered too short, and consideration should be given to extending this to 10 years. This would retain the ability to occasionally test the will of the community on their continuing interest in purchase, while reducing the burden on communities. It must always be remembered that a full ballot of the community would be needed to finally trigger the right to buy provisions, and this is the ultimate safeguard.

A further concern is that re-registration requires replicating the original registration demands, which can be considerable, depending on the size of the community concerned. In addition to extending the timescale, a further way to simplify matters would be to change this requirement to one that is less demanding on the community body, but none-the-less open and transparent and which provides opportunity for a community view.

There would be merit in changing the statutory provisions to establish that once an interest is registered it remains valid until such time as the community may change its mind, and that an occasional and simple opportunity is established to confirm community views. That could be provided for by the community body being required to take a simple advert in a local newspaper (or equivalent mechanism) circulating in the area in which it would be indicated that the community body was under an obligation to review whether it wished to continue to maintain a registration of interest, what its view was, and offering an opportunity for any qualifying residents (on electoral roll) who object to lodge an objection with the Scottish Government. If Ministers judged the objections were independently generated, sufficient in number and in the reasoning given, they would be empowered to ask the community body to re-register demonstrating there was still 10% support.

We recognise there is scope for mischief in this approach from, for example, current landowning interests encouraging objections to be lodged, or from a vociferous minority in the community, and Ministers would have to use their judgement to assess when this might be the case and give weight accordingly to any objections.

**The 30 day confirmation period** - Once a piece of land comes on to the market and the registered interest is triggered, the community has 30 days to confirm their intention to exercise their right to buy.

There has been some experience that such a period may fall during important holiday periods, and this can prove challenging. It is considered that making this requirement 30 working days would suitable relax the period.

**Turnout and majority in ballot** - In order to proceed to purchase the community body must be able to demonstrate that at least half the members of the community have voted in a ballot on the question and the majority of those voting have voted in favour. There are some circumstances where less than 50% have voted in the ballot, but the majority of those voting having voted in favour of purchase can be regarded by Ministers as sufficient.

Given the element of discretion available to Ministers there appears no need to change current requirements.

Some questions have been raised about the ability of an approved community body being entitled to access to registers of electors. Given the requirements of the Act it should be a matter put beyond doubt that Electoral Registrations Officers are required to give such properly constituted bodies access to current registers for the purposes of conducting ballots under the terms of the Act.

**Time within which to hold ballot** – The community are required to notify Ministers of the result of their ballot within 28 days of the receipt of the assessed value of the land.

This period is perceived to be on the tight side and could be suitably relaxed to 30 working days, without detriment to the overall process or parties involved. Further, however, we are aware of an instance where the early completion and receipt of the valuation triggered the need to run the ballot sooner than had been anticipated, and this caused sizeable problems. It may be wise to consider tying the date of the ballot to two triggers; the commissioning of the valuation, and from the receipt of the valuation, whichever provides for the longest period.

**The 6 month period from start to finish** – The entire process, from receipt of the notice triggering the right to buy upon the land becoming available for sale to the date of entry to the land and the payment of the price, is to be completed no later than 6 months after receipt of the first notice.

It is considered that this is a very tight timescale, particularly given all the legal and organisational requirements, and the time for some funding bodies to turn round applications for funding. Clearly a balance has to be struck between the desire of public policy to see more community purchases secured, and the ability of a community to conclude all the demanding requirements, without such time being so great as to disadvantage the current owner in selling.

On balance it is considered that extending the overall period is warranted, and that period should be 9 months.

**Sustainable development and the public interest** - Ministers cannot grant ultimate approval to the purchase unless they are satisfied that the purchase would further the achievement of sustainable development, and that the purchase is in the public interest.

Community Land Scotland has considered whether there ought to be greater specification as to what constitutes the advancement of sustainable development, or what might be regarded to be in the public interest. Having done so, we have concluded the current tests in this regard and the degree of discretion they offer to Ministers is appropriate.

**The official form** – An official form must be used to register an interest to buy.

Members have reported that the form is difficult to understand, repetitive, and badly compiled. We would like to see the current form reviewed with a group of users to seek to simplify that as far as is possible.

### **Other observations**

The following further observations were received from members of Community Land Scotland.

Information provided to owners should be a concise list of the rights and responsibilities of all parties – in plain English – ensuring that no misconceptions about the Community Right to Buy process can persist. This should be issued to all parties as a matter of course at the point of establishing a Community Right to Buy, and also at renewal.

Serving the notice on the landowner if the registration reaches the stage where the intention to register is to be served on the landowner can be a nightmare. The property that the registration refers to is not adequate service if that property is not the landowners principal residence, even if it is occupied by his paid employees when he is not in residence. It is incumbent on the applicant to

trace the landowner(s) main residence so that Scottish Government can serve the document there.  
If anything can be done to simplify this requirement, it will be worthy of consideration.

## **Part 2 - Issues of more fundamental principle**

In addition to the more 'technical' and 'streamlining' issues above, there are matters of more fundamental legislative principle that Community Land Scotland believes need to be addressed. What follows is discussion on these issues.

### **The need for a willing seller and new rights for communities**

This is a fundamental question and sits at the heart of the major weakness in the current Act, limiting further progress. It is an aspect of policy change likely to be controversial for existing private owners, and brings with it consideration of European Convention of Human Rights (ECHR) issues. The ECHR issues are, in part, designed to protect individual rights to the enjoyment of the property they own. The original policy memorandum for the Land Reform Bill set out considerations for a universal and absolute right to buy in 2001. The policy memorandum did not seek to say that meeting the ECHR demands was impossible, provided suitable compensation was available and where a public interest test was met. The reason the absolute right to buy available to crofting communities in Part 3 was not extended to all communities in the original Act was, in significant part, argued on the basis of cost in relation to that compensation. The policy memorandum stated – “The cost of the necessary compensation would be very significant, either for funding agencies such as the Land Fund or for the Executive itself.” The finance issues are dealt with later in this submission.

It is currently the case that Part 2 of the Act only gives rights to communities when land becomes available for sale. This means that, despite the fact that it may be in the interests of furthering sustainable development, and in the public interest, opportunity for a change of ownership to happen is limited, thus holding back progress. In addition, it is known from research that very large tracts of land have never, nor are they likely to, come on to the market, further limiting potential. We consider that this central issue needs to be addressed.

The question of strong legal powers of intervention over land is not new, even if always controversial. Powers still exist, and were used in the early part of the last century, to take land into public ownership for the purpose of creating new land holdings. This is the origin of the crofting estates owned by government to this day. An answer to a Parliamentary Question on the issues in 2012 revealed,

*“Most of the estates or holdings were acquired between 1900 and 1939 for lease to smallholders and crofters for land settlement purposes. The acquisition of land took place under the Congested Districts (Scotland) Act 1897, the Small Landholders (Scotland) Acts 1886 and 1931, the Land Settlement (Scotland) Acts 1919 to 1934 and the Agriculture (Scotland) Act 1948.*

*The above legislation conferred power on the Board of Agriculture (a forerunner to the Agriculture, Food and Rural Communities Directorate) to acquire land by agreement, purchase, lease, gift and compulsory purchase for occupation and settlement by crofters, cottars, fishermen and returning ex-servicemen. The main aim was to provide, equip and adapt land under favourable conditions and in less-congested districts of Scotland at that time.*

*These powers still exist, but Scottish Ministers' policy has been to sell and not purchase for some time.*

*The majority of estates were purchased by the Board of Agriculture and a purchase price was paid. Records of the purchase price are held by the Scottish Government's Estates Management team.”*

Further, although seldom (or perhaps never) used, the Act establishing the Highlands and Islands Development Board in the 1960s contained compulsory purchase powers which were justified in Parliament by the then Secretary of State for Scotland on a broad economic and social development premise. He argued you could not separate the land question from the development question and vigorously defended the need for powers of compulsory purchase to Parliament, and secured such powers. This broader concept of having powers to secure assets for social and economic development purposes has, therefore, clearly received past consideration and approval.

Beyond these examples, local authorities and others have compulsory purchase powers. Hitherto it might be argued that compulsory purchase has principally been used by public authorities to acquire land and building with a quite specific and single purpose in mind, for a road widening, for a new housing site, to restore derelict or contaminated land, or the like. In assembling land for a wider town centre redevelopment, for example, the purpose might be slightly broader but still well defined and guided by an agreed master plan the achievement of which requires specific land assembly. In the context of the role of communities in social and economic development, such as that seen in community land owning and in the work of development trusts, for example, their objectives are long term and are potentially for a wide range of diverse activities to be developed over time, and which will support long term sustainable development and greater community resilience. This may require a broader concept of land requirements, where not all ultimate uses may be specific at the outset, given the land is to provide the basis and opportunity for long term sustainable development.

There are further compulsory controls on land uses, for example through SSSI or SPA designations, through planning policies, through requirements around timber planting and felling, in relation to environmental controls of rivers and farming practises, and so on.

On the basis of the evidence, any notion that a strong legal power on land ownership and use is anathema to Scottish society, would be wrong. Extending such powers, provided that served furthering the achievement of sustainable development, and was in the public interest, can be seen and argued as readily fitting within the broader context of already existing and well established powers.

Community Land Scotland propose that there should be new legal provisions to secure the ability for land to be taken into community ownership when that can be shown to be in the public interest, and is calculated to secure furthering the achievement of sustainable development, and this should not be limited to circumstances where there is a willing seller.

There is already provision for this in Part 3 of the Act, for crofting communities. The limiting of this provision to the crofting counties, according to the original policy memorandum, “inherently constrained” the potential for compensation costs, partly because the value of croft land was considered to be low. Further, however, the need for such a right was seen as measure more justified because crofting communities were “located in the most fragile areas where the potential for a bad landlord to do real harm to the community was at its greatest”. The principle of land being required to be transferred to community ownership even when there is not a willing seller, and when that can be argued to be furthering the achievement of sustainable development and can be shown to be in the public interest, has therefore been established, albeit only in so far as that relates to crofting communities.

Absolute rights for community purchase of land should be available across Scotland.

Within the context of the Highlands and Islands, where crofting exists, it appears increasingly anomalous that different rights apply to crofting communities than to other communities which face exactly similar economic, demographic and sustainability challenges. Notwithstanding the wider case for such powers across Scotland, there is a clear case to balance up the rights of all communities with those of crofting communities within the crofting counties.

Making such new rights available to all communities would be likely to significantly change the ability of those communities to secure community ownership (provided suitable funding and technical support was also available) and to further contribute to achieving more diversified ownership in Scotland.

Without an ultimate and absolute right to buy, it is unlikely there will be significant further movement on community purchases and they will remain only available when land comes on to the market. This would leave Scotland's land ownership patterns largely unchanged for generations to come - an unacceptable state of affairs given the remit of the Land Reform Review Group and the commitment of the Scottish Government to support land reform measures designed to bring about a greater diversity in land ownership.

Arising from the foregoing there may be a technical issue to consider about whether, in the context of policy moving to support an extension of absolute rights to buy to all communities, there would remain a need to have a differentiated Part 2 and Part 3 to the Land Reform Act. There may be particular circumstances relating to particular legal and regulatory provisions for crofting that would necessitate crofting communities continuing to have separate provision, but that is a matter that would require close legal examination.

## The prospects for more negotiated land transfers

Experience of Part 3, even if some of the more onerous requirements around it could be relaxed (see later), show that a community may face considerable obstacles in operating that part of the Act. Recent experience in community purchases has shown a willingness of owners to negotiate arrangements with communities, encouraged by a backdrop of a right to buy being available. It may not always be the case that a community may want to own a whole estate and there are examples of the community and private interests coming to arrangements to work together to achieve the mutual interests in ownership and management of land, such as in the case of the North Harris Trust.

It is an interesting and rather telling fact that the official guidance issued by the Scottish Government about right to buy suggests communities might be better not to use the provisions of the Act, if there was any potential for a negotiated settlement.

Further, it is known that HIE, in performing their wider support role for communities seeking to purchase land have on occasion, quite informally and without specific powers to do so, facilitated negotiated approaches to land ownership transferring. HIE regularly advise communities to seek to purchase by negotiation, if that is at all possible, rather than using the formal processes of the Act. So, a key consideration in the further development of policy should explore what arrangements it might be possible to construct to best facilitate communities and owners to be able to get into serious dialogue and negotiation about the future, in order to arrive at arrangements that might suit all parties.

However, we firmly believe that any such approach would only be likely to be successful if there is an absolute right to buy as a back-stop, otherwise there is no real incentive for private owners to come to the table with communities.

We believe it is possible to construct arrangements in law to both require and guide the seeking of negotiated settlements to land transfers.

Such arrangements, in outline, might look like this:

- An absolute right to buy when calculated to further the achievement of sustainable development, and when in public interest, as determined by Ministers.
- A continuing registration of interest in land process (but potentially also involving a new 'land agency' – see below for more detail).
- A new registration of a 'request to purchase' (to the 'land agency').
- 'Land agency' under a duty to notify owner of interest in land or request to purchase and seek views and provide an opportunity for owner to enter entirely voluntary negotiation.
- Private owner ability to register an interest to sell – with 'land agency' under a duty to seek to establish an interest from the community to buy.
- Owner or community can request, and therefore trigger, a 'mediated negotiation' process, for which there would be clear time parameters.
- Duty on 'land agency' to facilitate that process, one which seeks to secure transfer ownership of assets to the community as its primary purpose.
- Duty on owners and community body to supply appropriate information to support the process and co-operate with 'land agency'.
- There could be a range of possible outcomes in terms of scale of land transfer
- Where a negotiated settlement could not be achieved, community can apply to the 'land agency' to exercise their absolute right to buy an area they define.

- 'Land agency' under duty to advise Ministers if transfer of all or part of any land holding could be regarded as furthering the achievement of sustainable development, and be in the public interest.
- Ministers make decision (broadly as per Part 3 currently).
- There would need to be suitable appeal mechanisms constructed at the end of the process (broadly, as per existing provisions in Act).

It would be possible to provide that a community body could not trigger their absolute right to buy without having used their best endeavours to secure purchase through the negotiated route first, and Community Land Scotland would not be averse to that.

It would also be possible to attach the same broad registration process to the current Part 3 of the Act.

## What might be the duties and powers of any 'land agency'?

They could look something like this:

### Overarching Duty

A body with a duty to seek to secure greater community ownership (or diversity of ownership) of land and to promote and take action to support, facilitate and broker arrangements to secure that outcome.

Specific duties:

- To promote community ownership of land.
- To assist and advise communities on processes to acquire land and to register an interest to buy and/or a request to buy.
- To inform owners of community interests to purchase and to seek to facilitate and broker voluntary transfers of ownership.
- To inform owners of requests to purchase and manage or arrange for the management of the 'mediated negotiation' with owners.
- To advise Ministers on land ownership questions and on sustainable development and public interest tests relating to any particular request to buy.

Duties on owners and community bodies

- Duty on landowners to co-operate with the 'land agency' and supply information requested by it as it endeavours to achieve its objectives.
- Duty on registered community bodies to co-operate with 'land agency' and supply it with information requested as it endeavours to achieve its objectives.

Powers:

- To require information of landowners concerning the land in which an approved community body has expressed an interest, or request to purchase.
- To enter land for the purpose of mapping, etc associated with purchase.
- To assist communities with plans for land use, prior to purchase.
- To join in arrangements with others to achieve their objectives.
- To compulsorily purchase land and hold land for onward transfer to communities and/or to create new agricultural holdings for lease or purchase
- Compulsion to sell powers (over private landowners) (see later for description of this)
- To secure valuations of the land in question
- To give grants

Such a 'mediated negotiation' process could contribute significantly to real movement forward in securing more transfer of land into community ownership.

While this negotiated approach is already advised and encouraged no specific powers or duties exist to assist any such process and such powers would be needed if this was to become a deliberate part of policy and future practise. Such an approach may appear more consensual, and less hostile than a straight power of an absolute right to buy for communities sitting alone, provided always such an absolute power existed as a backstop. Such a process, arguably, might be a contribution to helping sustain any ultimate right to purchase, in terms of ECHR considerations – as voluntary arrangements

or negotiation had been offered and/or required before moving to an exercise of the absolute right to buy.

Communities could become more confident in registering an interest to buy, or a request to buy, knowing that they could trigger a mediated process, with support from the 'land agency'.

This 'land agency' approach is not without precedent in Scotland and more widely. The Congested Districts Board and then Board of Agriculture that administered the provisions of earlier land reform legislation in the late 19<sup>th</sup> century and into the mid 20<sup>th</sup> century are examples. Further, the Irish Land Commission was central to the major Irish land reforms of the last century.

### **Creating a 'new' land agency?**

The Scottish Government is generally not in favour of creating new 'QUANGOs', and this might be seen to act against a new 'land agency' being created and, therefore, it is important to consider whether a 'new' land agency needs to be established, or could be a part of the existing civil service arrangements or other existing agency?

One way of looking at this would be to view the 'land agency' as a development of the community assets branch of the rural affairs department, possibly merging in some way with the HIE community assets unit.

Community Land Scotland believe the creation of a new stand-alone 'land agency' would be the optimal arrangement, particularly if it utilised existing expertise inside government and HIE to administer it and keep costs under control.

If an alternative approach to creating a new 'land agency' as a separate body was desirable it would be vitally important to put beyond doubt that Ministers had appropriate powers to provide for effective 'mediated negotiations'. One formulation would be to give Ministers new powers in any revision of the Land Reform (Scotland) Act 2003, such powers would allow Ministers to make such arrangements as from time to time seemed to them expedient and appropriate to facilitate 'mediated negotiations' for transfer of land into community ownership. Ministers could then invite HIE, or other arms of the Scottish Government to undertake the work, as appropriate. Ministers could also be empowered to take into account how landowners offered a 'mediated negotiation' responded to that, in the event a community sought to exercise its absolute right to buy. Further, Ministers could be given order making powers to set conditions on the supply of information, etc to support a 'mediated negotiation' process, and to make arrangements to support securing a process. In effect, such latter order making powers would provide Ministers with the opportunity, over time, to strengthen arrangements, either within the frame of current government administrative arrangements, or by the creation of new arrangements through affirmative or super-affirmative order making procedures, without the need for further primary legislation.

## **Should a community have to register an interest before it could exercise a right to buy under Part 2 of the Act?**

In reviewing the operation of the Land Reform Act the question of whether any registration process is necessary at all has been raised.

After considering the issues, Community Land Scotland has concluded that there remains a case for the registration of an interest along similar lines as at present and subject to streamlining measures suggested earlier in this submission.

Particularly in circumstances where there may be widened powers to an absolute right to buy for all communities, and where there may be an emphasis on negotiated settlements, there is a case for an advance registration process, as well as provisions for late registrations.

The detailed reasoning behind this position is set out at Annex B

### **Finance for compensation**

As seen above, it was fear of the compensation costs that significantly affected the decision not to give an absolute right to buy to communities covering all types of land, when the existing Land Reform Act was being debated. This concern will, in principle, remain, and it is based on the concern that too many communities would opt to use the provisions of the Act, thus placing public funds under great pressure.

We now know from experience that the process of negotiating and securing land can be a lengthy one, and communities appreciate that there are not unlimited funds available. The whole process can be more planned than might at one time have been imagined.

Further, while we would like to see a larger Land Fund moving forward, it would be unrealistic to think or suggest that would ever be without cash limits.

It would be to be hoped that with demand becoming clearer through the negotiation provisions suggested, and provided the outcomes of more community land ownership continue to deliver the achievement of sustainable development, then Scottish Governments will devote appropriate public expenditure to make real progress.

To help allay any concern by government on the issue of financial pressures, new provisions in any revision to the Act might require Scottish Ministers, as part of each budget Bill, to set such limits as they thought appropriate for compensation under the terms of the Act.

### **When land may be considered as becoming available for community purchase rights to be triggered?**

There is scope for widening the circumstances when it is considered that land becomes available for sale. Such circumstances might be when land was transferred between different parts of an overarching company, at succession, or in relation to the gift of land within a family or to outwith a family, or trust, or the like.

Community Land Scotland propose that an extension of the circumstances in which the option to exercise the right to buy could be triggered is worthy of detailed consideration, to remove

unnecessary limitations to community aspirations, and where actions by current owners can change ownership beyond the current ability of the Act to influence.

This may not be necessary in the context of an absolute right to buy being extended.

### **Part 3 – The crofting community right to buy**

The complexity of the requirements of Part 3 of the Act have become notorious and add such complexity to the requirements on communities that they are capable of being largely self-defeating to the principled intentions of Parliament. Some of the requirements have been described as Byzantine. Some of the detail exists in regulation, rather than primary legislation, though the primary legislation sets the tone for the detail in the regulations through provisions that are on the face of the Act.

The overwhelming need is to simplify procedures so that genuine and strong applications cannot be thwarted by legal action on technical grounds.

The procedures which have to be exercised by crofting community bodies under Part 3 in order to exercise their rights to purchase crofting land and related leases on behalf of their communities (i) are extremely complex and time-consuming; (ii) often appear to have no logical or functional rationale; and (iii) risk legal challenge on minor technical grounds.

The issues can best be understood by considering the application form for consent to buy eligible croft land (or the interest of the tenant in related tenanted land), which is prescribed by secondary legislation. It is accepted that a crofting community body should be required to demonstrate: (i) that they are properly constituted and represent the relevant crofting community; (ii) the boundaries of the land or lease they seek to buy; (iii) that the majority in the community (both crofters and the whole community) support the application; and (iv) that it is in the public interest that they should be given permission to buy the land or interest of the tenant.

However, there appears no logical or functional rationale for being required to provide the following:

- a map and written description showing not only the boundary of the land or lease to be acquired, but also all sewers, pipes, lines, watercourses or other conduits, and fences, dykes, ditches, or other boundaries (Question 4(d)). This goes far beyond what is required in other land or lease transactions, and there seems no functional reason to require this information. It is particularly absurd when the area to be purchased extends to several thousand hectares.
- a list of all postcodes and OS 1 Km grid squares included in the land or lease area to be purchased (Question 4(c)). Again there seems no reason for this if the boundary is properly defined on a map. If the area concerned extends to several thousand hectares, the list simply opens up scope for a technical challenge if particular postcodes or grid squares are inadvertently omitted.
- a full list of all those eligible to vote in the ballot, including distances away from the relevant township in the case of absentee crofters (Question 11)). The test should be evidence that a majority support the application, rather than providing detailed lists which open up the possibility of legal challenge if any error or inconsistency is made.

Community Land Scotland would wish to see such existing requirements being abolished.

In the event that any rationale might be found for retaining any such provisions, then a criterion of proportionality should be explicitly applied to all such provisions so that an application which meets the essential purposes of the Act are not at risk of refusal or legal challenge on minor technical details. For example, an error in one voter issued with a ballot paper should not invalidate the result

if there is a large majority in favour, and an error in the listing of one postcode or grid square should not invalidate an application if the boundary of the land or lease to be acquired is clear.

Time limits should be imposed on all stages of the process of application, comment, decision, and appeal, so that a landlord cannot unreasonably delay a decision on an application, or indefinitely hold up implementation of an approved application. The overall timescale should not be dissimilar, overall, to that applying to Part 2, from inception to completion of the process.

## Funding

As well as a community having a strong and genuine desire to purchase, and there being the appropriate enabling and empowering legislation, the availability of finance to aid purchase and initial development plans is fundamental to the prospects for success in driving forward more community ownership of land.

The availability of finance to support land purchases is vital and cannot be overestimated, even with a strengthened legal framework of rights for communities such as is argued for above.

Community Land Scotland has welcomed the re-establishment of a dedicated land fund to assist community purchases. That fund stands at £1m in the current financial year, rising to £2 million in 2013/14 and £3 million in 2014/15. If that base-line figure of £3 million a year thereafter was maintained, it would be capable of meeting the historic averaged demand for funds to secure community purchase experienced over the first decade of the original land funds. However, there are limitations to this which are worthy of mention and consideration by the Land Reform Review Group in establishing recommendations for a strengthened policy framework for further land reform.

In a context where community rights to purchase may be made easier by adjustments to current legislation and/or by further extension of community rights to buy as advocated in this submission, and where the body of evidence of success in community land owning is encouraging wider interest among communities, then it is to be expected that there will be a growth in the number of communities seeking to purchase land. In this context the sum of £3 million will in all probability be inadequate to meet future demand.

Further, the nature of the spending on land is that it is 'lumpy'. In some years demand could be below the £3 million level (although this is increasingly unlikely given interest in the current land fund), in other years significantly above that level. This calls for either a raising of the level of the fund to accommodate the peaks that may arise in spending, or a clear acceptance by the Scottish Government that the nature of this type of spending is that it is 'lumpy' and that they will be prepared to add to the annually available sum fund (perhaps within an annual cash limited upper ceiling) as and when that is necessary to meet opportunity.

Community Land Scotland has an ambition to see the Scottish Land Fund grow to a £10 million a year ceiling, with or without any legislative changes envisaged in this submission, as a basis for advancing the achievement of more community purchases of land.

This sum represents a tiny fraction of a Scottish budget running at in excess of £30 billion annually and, even by comparison with agricultural payments to land-owners, it is clearly a small sum. Leaving aside that investment in community ownership may be proving more effective than other and earlier forms of public interventions to secure sustainable rural development, the cash investment made in supporting the capital to purchase land effectively remains available. Unlike normal revenue spending on salaries and consumables, which leaves no tangible asset, community land purchases secure an asset in perpetuity and from which communities can derive a yield which helps sustain them long term. In addition, the capital value of the land can rise, in some cases significantly, and the land cannot be disposed of, unless for other public benefit purposes, and sometimes only then with the consent of Scottish Ministers. The underlying and rising value of the land opens up the prospect of commercial borrowing to finance investment for more public goods over time, and at no cost to the public purse.

Seen in this context, the original public expenditure sits on the `balance sheet' of public assets, with a potentially growing valuation. At any point when a sale ever became necessary on dissolution of the community body, any proceeds available would be re-applied to achieving other public goods, at no cost to the public purse at that time.

## **Support services for communities**

Discussion in earlier parts of this submission highlighted the need for a community to have a strong and genuine desire to purchase, there being the appropriate enabling and empowering legislation, and the importance of the availability of finance to aid purchase and initial development plans if community purchases are to be successful. The final element that is vital to the prospects for success in driving forward more community ownership of land is access to appropriate support services through crucial stages of the process.

There is already significant and good practise to draw on through the support work undertaken by the Community Assets Branch of the Scottish Government, and through the support work of Highlands and Islands Enterprise Community Assets division, as well as experience at the Big Lottery in Scotland.

It is the experience of Community Land Scotland members that significant support is necessary from principally the Community Assets Branch of the Scottish Government and from HIE, if a purchase is likely to be successful. Such support spans advice about procedures and the Land Reform (Scotland) Act 2003 and associated regulations and guidance; advice about defining your community appropriately; advice about organising the ballot, mapping requirements, making applications for finance, and so on. The expertise and insights held by Scottish Government Officials and HIE as a result of growing experience in this area of work cannot be overstated in its importance. Beyond this, the ability of HIE, for example, to fund the securing of expertise in feasibility studies, in business planning, and in legal work associated with purchase is another vital part of the support package.

There is a successful working model of how to provide appropriate support. Nothing particularly new is required in this regard. However, what needs to be recognised that as part of securing a greater number of community purchases the support effort of the agencies involved needs to be capable of gearing up to meet increasing demand.

Beyond this, and as part of the financing of community land purchases it is now clear from experience that community bodies also need some revenue support to be able to fund the co-ordination and development of their effort post purchase, normally through the employment of a development officer. Depending upon the profitability and scale of the land purchase, this might need to exist for a period of between 3 and 5 years, in order to offer the best prospects for success. This element of the overall support that community bodies need also needs to be recognised as an important part of developing successful forward strategy.

## **Other important issues**

### **Charitable Status for what is effectively the maintenance of private land**

Community Land Scotland has become concerned at the use of charitable status, probably granted many years ago, can apply to specific land holdings which effectively remain in private hands, and the terms of which may inhibit sustainable community development objectives.

It does seem anomalous that such status may help perpetuate what appears to be effectively private ownership of land, when the transfer of that land may be in the public interest in order to further the delivery of sustainable development. Many community landowning organisations have been established with charitable status, and have open and democratic membership schemes which allow all those wishing to participate to become involved. Other, essentially 'private' landowning trusts, possess charitable status to gain from the taxation, rates relief and other benefits which accrue, yet they have closed membership. Any member of the public who wishes to participate in such charities are effectively debarred from doing so.

Community Land Scotland hope the Land Reform Review Group may be able to critically examine this aspect of current ownership and engage with OSCR with a view to ensuring that the 'closed' membership of charities owning land is reviewed. Any legislative change resulting from this review could be incorporated within revisions to the Charities and Trustee Investment (Scotland) Act 2005.

Such a review may be less necessary in a context where an absolute right to buy existed for such land in such arrangements.

### **Charitable Status and Sustainable Development**

The rights in the Land Reform Act are built around the concept of land use for furthering sustainable development. Sustainable development is not directly compatible with the charitable purposes recognised by OSCR and has caused some challenges for previous groups in meeting the requirements of both sets of legislation.

The Land reform review Group may wish to explore (possibly with OSCR) what might be possible to adjust legislation to make the two more easily compatible and reduce the burden of compliance on community groups.

### **Land Taxation**

From time to time the question of a land value tax, or at least placing some taxation on aspects of land use, or lack of land use, arises. Local business tax ( Non Domestic Rates which were set locally then) was levied on sporting estates up until the 1980s, when it was abolished.

The Scottish Government is currently changing the law to reduce tax reliefs on vacant properties, to incentivise new uses for vacant property. This is an example of using taxation to seek to effect behavioural change and produce more economic activity.

Land Value Tax, or variants on it, interplay with other forms of taxation, like council tax and non-domestic rates and is generally debated in the context of local taxes (which are devolved matters). In our evidence to the Community Empowerment and Renewal Bill we argued for a community to be given a right to request that certain land be placed under an extra taxation burden when it was

regarded as being underused relative to its potential to further the achievement of sustainable development. Ministers (or local authorities) would be given powers to accept such a request and set a tax levy on that piece of land.

Business Property Relief and Agricultural Property Relief are forms of taxation incentives which can have a significant effect on land ownership within the private sector. For example, the eligibility of forestry investments for Business Property Relief, and their exemption from Inheritance Tax if certain criteria are fulfilled, means that forestry investment can be very attractive to private investors. In addition, the gain in value of standing timber, whether from the physical growth of the trees or rises in timber prices, is entirely free from Capital Gains Tax. Any community's aspiration towards ownership of forestry land may be negatively affected by the existence of such taxation incentives which benefit private owners.

Taxation of land or revisions to current arrangements could well have a place within a range of possible measures to support further land reform. Many such taxation matters are, of course, a matter for the UK Government and Parliament who may wish to take an interest in these issues in support of more land reform in Scotland.

Such provisions may be less necessary in a context where an absolute right to buy was widely available.

### **Compulsion to sell**

The concept that it may be in the public interest on occasion to force some land or buildings to be sold has emerged in the consultation on the Community Empowerment and Renewal Bill. In that context we have given this general support as an interesting and potentially powerful and useful new power, to be given.

Linked to the right to buy, this could provide another important and useful lever to create community purchase opportunities.

This may not be a necessary provision in the context of the absolute right to buy being extended.

### **The Crown Estate**

It would be difficult to consider the issue of advancing sustainable development through more community ownership of land and associated assets without also referring to the importance of the marine resource in Scotland, and of its vital strategic significance to many coastal communities. The Crown Estate manage much of Scotland's foreshore and seabed on behalf of the UK. They have been subject to considerable criticism in reports of the local authorities in the Highlands and Islands, the Scotland Bill Committees of the Scottish Parliament, and the Treasury and Scottish Affairs Committees of the House of Commons.

The Crown Estate is currently offering discussions with coastal communities which may wish to enter 'local management agreements' of assets held by the Crown Estate, although there appear to be significant limits to what might be possible under these potential arrangements, limits which might fall short of meeting the aspirations of community owners who have land adjoining the foreshore and seabed.

Community Land Scotland has entered discussions with the Crown Estate about what might be possible under such arrangements, but has also maintained its principled commitment to see more

fundamental change in who controls the assets currently under the management and control of the Crown Estate.

At its most simple Community Land Scotland wants to see significantly more openness and transparency in the dealings of the Crown Estate at the local level and so that communities can be aware of possible leasing and other options and arrangements which may have a material bearing on the interests of the community. Further we want to see all fore-shore and a zone of seabed adjacent to community owned land being transferred to community owners, in order to contribute to the ability of those communities to secure a sustainable future.

What powers the Scottish Parliament has in relation to the Crown Estate is a complex matter. However, Community Land Scotland would like to see the Land Reform Review Group consider what it can say in its final report to advance a transfer of responsibility of marine assets into community control. This may involve considering what opportunity the Scottish Government could have to use legislative vehicles, such as possible reforms to the Land Reform (Scotland) Act 2003, to secure greater community rights of ownership, access or control of the marine assets that adjoin their land holdings. Other organisations, such as local trust ports will also have an interest in these matters. This matter is likely to involve exploration of Crown property rights in Scotland and the potential for the Scottish Parliament to legislate on them.

### **Tenant Farmers**

Community Land Scotland does not represent tenant farmers, and we will be interested in any evidence they submit to the review group about their primary interests at this time.

However, we recognise that issues associated with tenant farming, in terms of the security of tenure they have, and potential rights to buy, are significant in terms of long term land reform and in potentially securing a greater number of Scotland's people having a direct interest and stake in the land. We are also aware of frustration at the government level that there are not a greater number of tenancies being made available for farming, and to supply potential new entrants. The response of private owners to any notion of a tenant farmers right to buy has been to draw back from offering tenancies and, indeed, we understand there has been a developing practise of taking farms back 'in hand' when opportunities present themselves. This acts against more people having a stake in the land, something which underpins our belief in the need for further land reform. We also understand that there is frustration among tenant farmers that short term tenancies on offer do not encourage investment, and there are what they believe to be unnecessary limitations to succession rights in certain respects.

We recognise that it is in the national interest to have a healthy farm sector, in terms of food production, the increasing importance of food security, for environmental stewardship, and as part of the foundation of sustaining strong rural communities, and that this demands a supply of tenancies with the levels of security that will encourage investment, new entrants and a thriving farm sector.

Earlier in this evidence we drew attention to the laws which are still on the statute book which were used in the earlier part of the last century to create new agricultural holdings at a time when there was a national need for this. Although the practise of successive governments since the middle of the last century has not been to use these provisions, if the private sector in land ownership is unable to adequately meet the national interest in delivering the number and nature of tenancies required, there would be no reason why these laws could not once more be brought into use to break up large estates and create more land holdings with the sort of security of tenure already enjoyed by crofters.

Community Land Scotland members are responsible for a large number of croft tenancies and are well accustomed and attuned to circumstances where there are clear rights of succession of a sort tenant farmers might today welcome, and where there are existing rights to buy. In a context where as a result of the land reform review there may be an advance in the cause of community land owning, this will be likely to expand such ownership into land which may have more farm tenancies. Community land owners appreciate the benefits that can come from further land reform, and bring fresh thinking to land use questions. This, together with current community owners being familiar with stronger security of tenure rights, and a right to buy, potentially provides fruitful ground for approaches to future land use that will be much more in tune with tenant farmers than current arrangements may be.

Community Land Scotland plan to continue discussions started with tenant farming interests to seek to develop policy thinking for new community owners which will advance the interests of securing the strong farming sector described above. More community ownership of land has the potential to provide the very environment where the long held ambitions of tenant farmers for greater security of tenure and a possible right to buy may be best achieved, with arrangements for land use serving the common good and not designed to protect private interests. Tenant farmers could have a strong part to play at the local level in helping secure more community ownership sympathetic to the needs of their sector.

### **Land Prices**

One part of the reason why more community ownership has happened in the Highlands and Islands may be to do with lower land prices, and this itself is in part linked with crofting and its effect on such values.

However, if the benefits of community land ownership are to be enjoyed by other populations, including in the central belt and those close to good agricultural land, then land prices will inevitably be higher. The relative benefits may also be higher, given also the relative scarcity of land suitable for community purchase.

It was the effect of the land price which effectively ended the imaginative and hard fought struggle of the Seton Fields community to take ownership of important local land for the community. If progress in such areas is to be met, then support from public funds will need to recognise that the price per acre is bound to be higher than experience in other areas, such as the Highlands and Islands.

### **Non-advertised private land sales**

Where an interest in land has not yet been registered it may be possible for a land sale to proceed through a private, non-advertised means. The land can therefore change hands without the community knowing anything about this, preventing even a late registration of interest.

It is understood that provisions exist in the arts world to allow a `domestic` bid for Art works to prevent them leaving the country, where a sale would otherwise take place which would result in the art work moving overseas. This allows a `domestic` bid to overtake that of an overseas bid where the price to be paid is at least matched.

Similar provisions, allowing a community the opportunity to express an interest in land which was the subject of private sale, would be worthy of consideration. Thus any private sale, before taking

effect would be regarded as provisional, pending the opportunity for a community to express an interest and match the sum offered in the private sale.

### **Obligation on public agencies to offer surplus land and building assets to communities**

Annex B rehearses arguments around the need to register an interest in private land.

Community bodies can, under the Land Reform Act, register an interest in land held by public bodies. However, and given a growing interest in the transfer of publicly owned assets to communities, it would seem appropriate if public bodies were under a duty to offer surplus assets to communities first, as a matter of established principle.

This could be required in revised legislation or, in the interim, could be encouraged to become established practise, perhaps supported by appropriate guidance.

This is a matter likely to be considered under the discussions on the proposed Community Empowerment and Renewal Bill.

|  
Community Land Scotland  
January 2013

## Annex A

### Thumb nail sketches of community ownership and investment

#### **Isle of Gigha**

The island of Gigha was purchased by the community (Isle of Gigha Heritage Trust) in March 2002 for £4.15M. The purchase of the island was assisted by a £2.5M grant from the Scottish Land Fund, a £1M loan from the Scottish Land Fund, and a grant of £500,000 from HIE. The loan required to be repaid within 2 years of the community buyout, and this was successfully achieved through extensive island fundraising efforts, and the sale proceeds from Achamore House.

Key achievements since 2002 include:

- Population increase from 98 to 156
- School roll risen from 6 to 15
- Number of new island businesses 11
- Number of new houses constructed 28
- Restoration of 50 acre world famous Achamore Gardens
- Community owned and operated hotel now open all year round
- Construction of 3 business starter units
- Three new 4 star self-catering accommodation units constructed
- UK's first community owned and grid connected windfarm generating a net surplus of c.£100,000 to £150,000 per annum towards community projects.

One of the main priorities for the Trust on taking over the island was to address the chronic condition of the estate housing stock. A survey of housing conditions found that of the 42 trust owned houses, 75% were classed as being 'below tolerable living standard', with a further 23% classed as 'in serious disrepair'. To date, 27 of the properties have been completely renovated by the Trust.

The investment strategy pursued by the Trust has assured the viability of an on-going community on the island, something that had previously looked increasingly tenuous. The development of the island, and what has been achieved so far, has raised morale and community confidence, and has resulted in an island with enhanced resources, employment opportunities and prospects than prior to the community buyout.

### **The islands of Eriskay, South Uist & Benbecula (part)**

The 93,000 acre estate covering the islands of Eriskay, South Uist and part of Benbecula was purchased by the community in 2006 for £4.5M. The purchase of the islands was assisted by a £2M grant from HIE, a £2M grant from the Big Lottery, while other funding came from Comhairle nan Eilean Siar and SNH, together with community fundraising efforts.

‘Stòras Uibhist’, which means ‘the store or wealth of Uist’, is the collective name given to the various related organisations which represent the community ownership of the estate. Stòras Uibhist is the largest community landowner in Scotland, and the estate has a resident population of 3,000 people. The company operates as an open membership organisation with 850 current members who elect a board of directors who oversee the work of the 18 full time equivalent employees.

The company has 996 crofts, and leases property to other agriculture tenants, fish farmers, quarry operators and commercial organisations. A sporting lodge is run directly by the company, and the turnover of the entire business operation has increased from £300,000 to £600,000 since the land purchase took place.

Key achievements since 2006 include:

- The core estate business has been turned in to a profit generating operation
- Construction of an £11M, 6.9MW wind farm at Loch Carnan has been completed. Annual surplus forecast to be in the region of £800,000 per annum towards community projects.
- Restoration of ‘Old Tom Morris’ 18 hole golf course at Askernish
- £9.5M Lochboisdale Port of Entry re-development project currently out to tender. This project will comprise a new fisheries pier, a marina, land for business development and housing.
- Establishment of a business centre at Daliburgh
- Partner in the task force which lobbied successfully to retain the Hebrides Range

The combined effects of these developments, and those currently being planned, will undoubtedly result in an increase in community confidence and economic activity within the islands. The revenue stream created by the community owned wind farm will provide much needed financial investment in local infrastructure and community projects, and will contribute to the objectives of sustaining and increasing population over time.

## **Knoydart**

The Knoydart Estate was purchased by the Knoydart Foundation in 1999 after a fundraising effort to raise the 750k. The money was raised from a number of sources including Highland and Islands Enterprise, John Muir Trust, The Chris Brasher Trust, SNH, private donors and donations from individuals and groups around the country.

The purchase included 16,500 acres of land, a hydroelectric scheme, bunkhouse, 5 residential properties and various other buildings. All the assets purchased were in incredibly poor condition following years of neglect by previous owners and the first few years were spent working on them all to get them into working order.

The Foundation set up 2 trading companies – 1 to run the hydro (Knoydart Renewables) and 1 to run the bunkhouse (Knoydart Trading). Whilst initially the Foundation received grant aid to assist with running costs, for the past 4 years or so it has been self-supporting through its own activities and those of the Trading Company. Together the 3 companies have a basic turnover of 250k and employ over 12 people on a full and part time basis and are managed by volunteer boards of local residents.

Key achievements since 1999:

- Hydro scheme refurbished to provide a reliable supply of electricity to residents and businesses around Inverie Bay (Knoydart is NOT grid connected so the work of Knoydart Renewables is about providing a basic service rather than income generation)
- Services such as water and sewage upgraded
- Population increase from 68 to 110
- School role increased from 5 to 10
- 13 new local businesses established
- Existing housing stock refurbished and 4 new properties built.
- Bunkhouse upgraded and open all year round and seeing a year on year take up of bed spaces
- Shared equity scheme established for sale of land for homes
- New community facilities provided e.g. community garden
- Ranger service established
- 'Knoydart wild venison' brand established
- Community broadband service provided
- Maintenance company established (2013)

The Foundation has still much it wants to achieve over the next 10 years – further housing refurbishment, new bunkhouse and education facilities, and establishment of new office space to house 3 future projects. These will be undertaken as and when the Foundation is able to do so. Maintaining financial sustainability is key to any future undertaking and ensuring long term management is a key part of the approach.

## **Should a community have to register an interest before it could exercise a right to buy under Part 2 of the Act?**

The difficulty with the current arrangements for many communities is that the very act of registering an interest to buy is seen as difficult and challenging, not so much in a technical sense, but as a matter of principle. This principally arises from a fear, or at least significant apprehension, that registering an interest will or may be regarded as a hostile act by the current landowner, something that signals discontent with their ownership. That may indeed be the case, or it may not. It may be the case that the community was registering an interest in land to protect itself from the vagaries of changing land ownership upon potential sale of the land in question. None the less, the community is reluctant to register as they fear relationships with the current owner may deteriorate, that there may be less co-operation with the community across a range of fronts, or that individual relationships of members of the community could be soured and negatively affected and have material effects. This may be a dreadful state of affairs in the modern day, but very real none-the-less. The effect is that an interest is not registered, even where there may be real interest to buy. So, for many, the provision in the Act does not give rise to the intended effect as it is felt the provisions to register an interest cannot be used.

This forces the community into a late registration once they become aware the land is available for sale. The provisions for late registration are more onerous than timeous registration, and the rationale for this is picked up in the earlier evidence about details of the Act.

The question has arisen that if late registration is possible, and in fact has been used in the majority of recent purchases, what, in principle, is the need for early registration at all, and what function does registering an interest, early or late, provide? Further, it is self-evidently the case that it is only because registering an interest is required that the need for re-registering an interest is also required, and this is seen as an onerous burden on communities (although there are ways of making re-registration less onerous and this is picked up in the earlier evidence about details of the Act). At one level the registration process can be seen as being about bureaucratic neatness, getting everything sorted out well in advance. To an extent that is true and might have much to commend it if it means there is - clarity about the extent of community interest in land across the country, the community body is properly constituted, the area of land is identified clearly, and further thinking about the potential process of purchase and possible land uses and development opportunities is triggered. These are not intrinsically bad features of the system.

Further, if communities could get beyond their reluctance to register an interest, as well as being capable of being interpreted as a hostile act, registering an interest it is also capable of being interpreted as just what it is, an expression of interest in land and to potentially purchase if and when the land becomes available for sale. This could also trigger with the landowner the possibility of some negotiated sale which the landowner had not previously considered as a possibility, being unaware of a community interest to buy.

However, it seems clear there is probably a much more fundamental policy intention lying behind the provision. That becomes clearer when thinking about the alternatives.

Earlier thinking in Community Land Scotland explored whether the current provisions in the Act could not be turned on their head, rather than the community registering an interest, the owner at the point of considering a sale, would be required to offer the land for sale to the community first. There is little doubt provisions to require this could be created, and this, at first sight, appears a

reasonable proposition. This would also put a pretty immediate stop to speculative and somewhat offensive forms of marketing large estates as playthings for the rich, with little reference to the interests of the community affected by the potential sale.

The difficulty, however, is that this would mean that every bit of land or property in Scotland, no matter how big or small, would have to be offered to a community to buy, even where in the majority of cases there would be likely to be no community interest in buying. It would have a 'universal impact on property rights', as the original policy memorandum to the Land Reform Bill in 2001 put it. That would clearly be a considerable burden on all owners (and potentially many communities asked the question of whether they wanted to buy). Considerable administrative effort would need to attach to administering and policing such a provision. To manage this, criteria to limit the effect could be created, by reference to size, or to the value of the land or property in question, by the status of the land or property, or some such. However, as soon as you get into that territory there are some very difficult decisions to be made, very difficult and complex definitional issues, and thresholds to be set.

It is recognised that Governments generally do not like to place burdens on the entirety of the population, in order to achieve more opportunity for some. However, more fundamentally, it is to avoid the burden of placing such a requirement on every land sale, and to avoid the huge definitional complexity of limiting it, that the registration process most probably came from. The original policy memorandum to accompany the original Bill in 2001 alludes to this when it states – "The aim is to empower communities that are interested in community ownership without imposing significant new burdens when there is no community interest."

The beauty of registration process, in these terms, is that any burden on the owner only arises when the community has expressed an interest. It is a self-limiting burden, not a universal burden, and it avoids any decisions on how otherwise to limit the burden.

Further, it can be argued that the late registration process is a genuine attempt to provide for a community to still get a first right to purchase, notwithstanding there has been no registered interest, but they self-select, and the burden does not fall more widely on all owners, all of the time. Finally, the question has also been raised of whether an extant body, for example a Community Council or other local body could not register an interest in land in their area. The need to firm up the specific body that would move forward to purchase any land that then came on to the market being left to a later stage. Community Land Scotland believes there may be potential for this within any simplified procedures attaching to current the provisions of the Act.

**Given there is a late registration process, is there really any need to have a timeous registration process, and therefore a re-registration process?**

Community Land Scotland recognise it could be argued that if it were possible to give communities much more re-assurance that registering an interest is a neutral act that should not be capable of interpretation as being hostile by existing owners, and if some of the bureaucracy surrounding re-registration and the more onerous requirements of late registration could be dealt with, then the advantages of an early registration process does potentially outweigh the disadvantages. But we also recognise this is a matter of judgement.

After considering the issues, Community Land Scotland has concluded that there remains a case for the registration of an interest along similar lines as at present and subject to streamlining measures suggested earlier in this submission.

Particularly in circumstances where there may be widened powers to an absolute right to buy for all communities, and where there may be an emphasis on negotiated settlements, Community Land Scotland believes there is a case and a need for an advance registration process, as well as continuing provision for late registrations.

## International land reform

It is worth drawing attention to the international dimension to land reform. Land reform remains a worldwide phenomenon, and takes many forms. One thing that is clear is that it is always highly controversial, as it always impacts on someone's established rights in order to effect wider change that is deemed to be in the public interest.

The reforms of the Land Reform (Scotland) Act 2003 were innovative of their time and represented a different way forward to much land reform elsewhere. This was recently captured very effectively in a summary of some work by Matthew Hoffman of Cornell University:

*"In 1999 the Scottish Parliament convened for the first time in almost 300 years and in response to long-standing popular discontent about highly concentrated land ownership passed the Land Reform (Scotland) Act 2003. Quite in contrast to the emphasis that much of the international development literature and policy have placed on the importance of individual private ownership, Scotland's land reform promotes community ownership. Rather than breaking up large private estates, land reformers aim to keep these estates whole while transferring ownership of them to local communities. This study uses historical analysis and in-depth interviews to understand why this is being pursued as a rural development strategy in Scotland today. It finds that community ownership is intended not only to encourage the development of resources that private investors might otherwise ignore; but also to enable local communities to guide the development process. Whereas unfettered, market-driven entrepreneurship might generate increased wealth, but not necessarily benefit the local community, community ownership aims to make sure that wealth generated from the land remains within the community; that the benefits of development are evenly spread; that needed services are provided; that the population is maintained; and that resources are managed for the long-term benefit of the community. In this way the Scottish land reform represents a shift (or rather a broadening) of emphasis, from a focus on wealth creation to a recognition of the importance of effective local democratic governance." © 2012 Elsevier Ltd. All rights reserved.*

Community Land Scotland do not have the resources to have been able to research international examples of land reform which may offer Scotland new ways forward, but hope that the Land Reform Review Group may be able to undertake some such work, and also to see further land reform as being a perfectly natural part of global human and political evolution in the cause of tackling and re-distributing power and sharing opportunity and wealth more widely. Any detailed recommendations the Land Reform Review Group make to advance land reform will be bound to attract criticism from vested interests and others, but Community Land Scotland hope the Land Reform Review Group will recommend whatever radical actions will serve the achievement of greater social justice and the achievement of further sustainable development and resilient communities in Scotland.