



Community
Woodlands
Association

**Submission in response to the
Land Reform Review Group call for evidence**

Community Woodlands Association

January 2013

The Community Woodlands Association (CWA) is very pleased to have the opportunity to submit a contribution to the call for evidence from the Land Reform Review Group.

The CWA was established in 2003 by Scotland's community woodland groups as their direct representative body. In the past decade we have supported a great many of our members in their attempts to acquire land, whether through the Community Right to Buy, the National Forest Land Scheme or by private negotiation with landowners.

From the pioneering seed sown in 1987 by Wooplaw Community Woodland in the Borders, the first community buyout in Scotland, there are now well over 200 community woodland groups across Scotland, responsible for the management of tens of thousands of hectares of woodland and open space. More than half of our members own their woods, the remainder lease or work in partnership with public and private sector landowners.

We are pleased to report that new groups continue to be established, seeking to develop and use local woodlands to deliver a range of economic, social and environmental benefits for their community. Some are successful in their attempts to acquire land; almost all discover that the process of acquiring land to deliver local benefits (and a range of Scottish Government policies) is onerous, bureaucratic and long-winded.

Our submission is in two sections: the first outlines some key principles:

- ***Land Reform is an essential component of community empowerment and sustainable land use***
- ***Land Reform is for all of Scotland, and for all of Scotland's communities***
- ***Land Reform takes time, patience and trust***

and concludes with a note on the issues around the valuation of public sector assets.

The second focusses in more detail on Part 2 of the Land Reform Act (the Community Right to Buy) and proposes a number of revisions, extensions and amendments to the provisions therein, under three main headings:

- ***The processes of the Act should be simplified and streamlined***
- ***The scope of the Act should be extended***
- ***A new body should be established to ensure effective delivery of Land Reform***

We are aware that a number of these points have also been made in our submission to the consultation on the Community Empowerment and Renewal Bill (CERB), and we trust that the work and outcomes of the LRRG are closely coordinated with the CERB: together they present an important opportunity to significantly advance the cause of sustainable, economically active and resilient Scottish communities.

At the same time, we are aware that legislation, however radical, and however well-drafted, only defines what is possible. The desired outcomes of land reform: community empowerment and sustainable development, require a much broader alignment of legislation, resources and organisational commitment at all levels of government.

Land Reform is an essential component of community empowerment and sustainable land use

Scotland's land ownership pattern, and in particular the extraordinary concentration of so much in the hands of so few, is unique in Europe. In the forestry sector 91% of Scotland's private-sector forests are in the hands of landed estates or investment owners, 55% by absentees. Such inequality contributes to the disempowerment of Scottish communities, and acts against the interests of social justice.

Moreover, there is a widespread consensus, reflected in the Scottish Government's Land Use strategy, that the current ownership arrangements are not delivering sustainable development and the broad range of desired social, economic and environmental benefits.

The status quo has deep, historical roots, but it is neither divinely ordained nor the logical outcome of a rational market. Rather, it is the product of decades of intervention, reinforced by fiscal advantage and sustained by vast public subsidy. These institutions and flows of money actively inhibit community acquisition and sustainable development by distorting markets and inflating land prices.

If Land Reform is to make a significant rather than symbolic contribution, legislation must be backed up by a thorough and wide-ranging review into rural funding and support, covering not just direct subsidies but all fiscal measures and the institutions which administer them, to ensure that all are aligned to the delivery of sustainable development.

Land Reform is for all of Scotland, and for all of Scotland's communities

Land Reform is sometimes represented as an issue for the remote north west of Scotland, and characterised as a story of "whole estate buyouts", often achieved after many years of struggle against "bad" landlords.

There have been a dozen or so such buyouts in the last twenty years, and they have done much to capture the public imagination. In terms of hectares they dominate, in terms of achievements they are inspirational: at Knoydart, Eigg and elsewhere, community ownership has brought deep and lasting change.

But in many respects the classic "whole estate" buyout is atypical, and a relatively small part of a much bigger picture: across Scotland there are hundreds of community land and asset owners, including nearly 100 community woodland owners as well as an estimated 2400 community owned village halls and other community buildings, and more than 73,000 housing units owned by community-controlled housing associations, housing co-operatives and rural development trusts.¹

The achievements of Abriachan Forest Trust, Neilston Development Trust and literally hundreds of other groups are equally inspirational, and provide compelling evidence of the national need for, and success of the sort of community asset ownership and management that we want Land Reform to deliver.

¹ "Community Ownership in Scotland: A baseline study" 2012 Community Ownership Support Service

Land Reform takes time, patience and trust

We have mentioned a number of inspirational community bodies: Knoydart, Eigg, Abriachan, Neilston, and it is worth noting the inception date of these: 1999, 1997, 1996 and 2006 respectively. Collectively these four organisations have 50 years of experience between them, and they have achieved great things in those 50 years, but in many respects they are just getting started.

The transfer of an asset can happen at the stroke of pen (usually after several years' hard work), but community empowerment: building confidence and capacity after decades of disenfranchisement, takes much longer. Equally, sustainable land management is not achieved overnight. So whilst there is evidence already of the wide-ranging benefits of community asset ownership, it must be recognised that Land Reform isn't a quick fix delivering instant results but a long-term investment in Scotland's communities.

It is also a demonstration of trust. At one level this is about communities trusting themselves and each other, being prepared to take responsibility for their future and work together for common aims. It should also be a manifestation of the Scottish Government's (in the sense of the broad public sector) trust in the talents, skills and enterprise of the Scottish people.

Valuation of public sector assets

The valuation of assets to be transferred to the community bodies, and the need to raise capital to support such acquisitions, has always acted as a brake on the spread of community ownership.

Whilst community acquisitions via the CRtB from the private sector will need to be at independently-assessed market value, there is scope to reconsider valuation of public sector assets and facilitate transfer at below market value. Alternatively, it may be time to rethink the meaning of "community ownership" – where this is by non-profit-distributing bodies operate to deliver public benefit, could this be considered as remaining within the broader public sector?

The price that communities are expected to pay for assets is very often unrelated to their productive value. Often the assets being acquired are more accurately described as liabilities, which the communities are taking on to "rescue" them from neglect or prevent service closures. Where land is being acquired, the asking price (defined as full market value in a private sector sale) is usually inflated by inclusion of a number of components of value which are irrelevant to either public sector or community owners: the value of land as a signifier of status and social power, its use as a repository of capital and as collateral for borrowing, and the tax and subsidy benefits of ownership. In these cases the continued insistence on "full market value" is an impediment to sustainable development.

In our particular sector, the growth and development of community woodlands in Scotland has been severely constricted in recent years by difficulties over financing. In particular the impact of the National Forest Land Scheme has been limited by the inability of groups to raise capital for purchase. Communities have been trapped between Forestry Commission Scotland's insistence that the Scottish Public Finance Manual demands sale at "full market value" and Funders' reluctance to support such acquisitions. Whilst the new Scottish Land

Fund appears to offer a partial solution, we have been concerned to hear that state aid regulations (or their interpretation by over-cautious public officials) may impinge on the effectiveness of the fund.

The position of state aid with respect to community asset acquisition and enterprise must be clarified and if possible cleared. The simplest way forward would be for the Scottish Government to develop block exemptions for non-profit-distributing community-led organisations.

There are a number of other potential solutions to these issues of price and value: one such would be for legislation (either the Land Reform Act or the Community Empowerment and Renewal Bill) to include provision to amend the Scottish Public Finance Manual to permit Scottish Government bodies to dispose of assets at less than market value when the disposal is likely to contribute to economic development or regeneration; health; social well-being; or environmental well-being - in other words, to mirror the powers given to Scottish Local Authorities under the Disposal of Land by Local Authorities (Scotland) Regulations 2010.

There is also a broader need to redefine the meaning of “public ownership”, to encompass community ownership, recognising that community asset acquisition, development and management by non-profit distributing, community-led bodies is in the public interest and is a key component of building community resilience and achieving sustainable development.

Part 2 of the Land Reform (Scotland) Act 2003 (the Community Right to Buy)

The Land Reform (Scotland) Act 2003 was hugely important symbolically, both as a first attempt to address the Land Reform issue by legislation, and as a manifestation of the worth of the new Scottish Parliament.

In reality, however, part 2 of the Act has had only limited, local impact: a handful of communities have actually acquired land using the Community Right to Buy provisions, whilst a rather larger cadre of communities have invested a great deal of time and effort in the registration process for little or no apparent benefit.

As of 7 January 2013, the Register of Community Interests in Land lists 153 registrations, however no less than 101 of these have been deleted. 1 is listed as “pending” and there are 38 current registrations, held by 31 Community Bodies. Just 13 rights to buy have been activated since the enactment of the legislation, and in 8 of these cases the seller was a public body.

It is sometimes argued that the existence of the Act has encouraged other community acquisitions. This may be the case, but is difficult to prove. A counter point might be that the influence of the Act has not always been positive: it contains a very narrow and restrictive definition of a community body, which has been adopted by other government organisations, and this has been a constraint on the community sector.

We suggest a number of amendments to the legislation, which are gathered under three headings: simplification, extension of powers, and a new body responsible for delivery. Above all, it should be clear that the purpose of the Act should be to facilitate community

empowerment and sustainable development through community ownership of assets, not to place barriers in its way.

We believe the present two-stage process should be continued, but with considerable simplification of the registration (and re-registration) process. We wish to see Community registrations of interest in land and assets become the norm, not the rare exception.

A key weakness of part 2 the 2003 Act is the reliance on a willing seller before a community can attempt to acquire the land or asset, however urgent the community need or overwhelming the public interest in such a transfer.

Additional rights should be created to allow communities to buy land (private and public) when that is in the public interest (furthering sustainable development). This could be achieved by amending the Act to give all communities the rights currently enjoyed bycrofting communities, although given the lack of success to date of part 3 of the Act, we are not convinced that this route would deliver the desired outcomes. It might therefore that these rights could be delivered by more widespread use of compulsory purchase orders, with a new Land Agency (see later section for more details) using these powers on behalf of properly constituted Community Bodies.

Whilst these additional rights are necessary to underpin the delivery of the Act, we believe that there should be a much greater emphasis on negotiated transfers, with such discussions taking place between communities and landowners, prior to the exercise of any new absolute right to buy.

Simplify and Streamline

Our experience working with communities bears out the widespread view in the community sector that the Community Right to Buy processes are overly complex bureaucratic, and occasionally absurd. The review provides the opportunity to simplify and streamline processes in a number of areas.

Definition of community and community body

As a general principle, the CWA believes that self-definition is a prerequisite of empowerment, and that the definition of 'community' should be a matter for the community in question to decide.

Since the legislation was enacted in 2003 there have been significant changes in the range of company forms available to the Scottish voluntary sector. These new organisational types are excluded from using the Community Right to Buy provisions, as indeed are many long-standing community landowners whose constitutions predate the Act. Rather than prescribe a specific form, the legislation should define the characteristics required of a community body. We suggest that these community bodies should:

- Be incorporated
- Be geographically discrete
- Be open, democratic, locally controlled
- Be non-profit distributing

- Have objectives consistent with sustainable development
- Have an appropriate dissolution clause

Community Bodies, currently obliged to incorporate as Companies Limited by Guarantee, should be free to adopt other company forms such as Scottish Charitable Incorporated Organisation, Community Benefit Society, subject to demonstrating that their constitution meets the required characteristics.

The revised legislation should also allow alternative methods of geographical definition (e.g. community council area)² and also allow all adult residents to be members of the community body³.

Details of Community Proposals and Prohibition on “blanket registrations”

The Community Right to Buy is in effect a community right to register an interest in a property: the right to buy (at market value) is only activated if the property comes on to the market. As such the requirements of simply registering an interest should be proportionate to the speculative nature of the registration process.

Currently, at registration, community bodies are expected to provide detailed information on their proposed uses of the land, in order that Ministers can be satisfied that “*acquisition by the community body is compatible with furthering the achievement of sustainable development*”.

This can require substantial development work for a community body (which will already have been required to demonstrate that its objectives are consistent with sustainable development) to demonstrate technical feasibility, financial sustainability and community demand for a project which at the point is purely speculative, as there is no immediate prospect of a sale and indeed may never be under the current rules. Detailed proposals should be required only at the point of activation, when there is a genuine prospect of the transfer taking place and the community’s proposals being delivered.

Furthermore, a Community Body is required to explain why the land they are seeking to register is more suitable than any other piece of land in the locality. In some cases this may be a simple matter where there is only one possible location for the proposed development or activity, but if the community is seeking office space or a retail property, or a small area of land for affordable housing, a village hall, or a children’s playpark then any one of a dozen properties or sites might be suitable.

It would be sensible to allow communities to register interest in all possible sites, and then acquire the first that becomes available, however at present the legislation is framed to prohibit multiple registrations to cover such eventualities.⁴

² The use of post code units is cumbersome and unintuitive – few know the extent of their post code – and the boundaries rarely coincide with settlement or community boundaries.

³ Currently only those on the electoral roll are eligible for membership, which excludes non-EU/commonwealth citizens regardless of their length of residence.

⁴ The CRtB guidance says: *You should not use multiple registrations as a “blanket” registration. Should your CB consider submitting multiple registrations, you should demonstrate serious intent to purchase any land subject to its registration. Your CB should make applications only in respect of land which, given the opportunity, you would want to buy. Any attempt to register a larger piece of land when a smaller piece is required will, in terms of section 67(2) of the Act, result in your CB having to buy either all or none of the registered land if the whole lot is put up for sale.*

Re-registration

The procedures for re-registration should be simplified, indeed this process should be considered as a reconfirmation of registration, rather than a re-registration, with the Community Body being required to confirm its continued eligibility and interest in the registered land or asset.

The opportunity for landowners to challenge a registration should be preserved, but only on the ground of significantly changed circumstances since the original registration was approved.

Ballot rules

The present ballot require a 50% turnout, and a majority of those voting to be in favour:

51 (2) The community are to be taken as having given their approval ... if Ministers are satisfied
(a) that
(i) at least half of the members of the community, as defined for the purposes of section 34(1)(a) above, have voted in a ballot conducted by the community body on the question whether the community body should buy the land; or
(ii) where less than half of the members of the community have so voted, the proportion which did vote is, in the circumstances, sufficient to justify the community body's proceeding to buy the land; and
(b) that the majority of those voting have voted in favour of the proposition that the community body buy the land.

It is possible to proceed with an application with less than 50% turnout but the official CRtB guidance makes it clear that this power should be relied on “only in exceptional circumstances”.

Under such rules, a “no” vote is meaningless and might in some circumstances actually contribute towards the approval of an acquisition which would otherwise be rejected⁵.

The requirement for a 50% turnout is a significant challenge for communities, especially those with large populations, and represents a substantially higher threshold than is expected for local authority elections, indeed we note that the overall turnout for the 2011 Scottish Parliamentary elections was just 50.4%, and that some regions have never achieved a 50% turnout.⁶

A majority in favour, backed up by a minimum turnout of 25%, would be a more achievable and reasonable threshold, whilst still providing evidence of significant public support.

⁵ If >50% of the electorate vote “yes” the application will be approved, regardless of the proportion of “no” votes. If <25% of the electorate vote “yes” then the application will be rejected, even if there is no opposition at all. If however the “yes” vote is between 25 & 50%, approval is contingent on there being sufficient “no” votes to take the turnout over the 50% threshold.

⁶ http://www.scottish.parliament.uk/Electionresults/2011%2520election/5_Turnout_Region.pdf

Timescales

The Community Right to Buy processes contain a number of timescales which constrain and in some cases present significant challenges to community bodies.

In particular the 6 month window to raise funds for acquisition is often unrealistic, given the increasingly extended turnaround times of external grant funding, and the time needed to organise and borrowing processes, community fund raising, etc. We note that the NFLS, which initially used the CRtB timescales, has acknowledged that this is an unreasonable constraint and has extended the window to 18 months.

The scope of the Act should be extended to cover all of Scotland

The CWA has consistently argued that the Community Right to Buy should be available to all of Scotland's communities, regardless of rurality or population size. We see Land Reform as a powerful tool for community empowerment, and an essential component of sustainable development and social justice: these are not "rural" or urban" issues but national imperatives.

Applying the CRtB in large urban conurbations will undoubtedly bring some additional challenges in defining and demarcating communities, but these are not sufficient reason to deny such communities the much needed opportunities the Right to Buy could bring. As noted previously, we believe that the definition of 'community' should be a matter for the community in question to decide.

There may be some other contextual differences between urban and rural areas: different types of assets, different categories of owners. Again however, these should not be seen as obstacles but opportunities for the legislation to deliver a wider range of public benefit outcomes. We would note too that several of the assets acquired to date through the CRtB are to all intents and purposes "urban" in character, albeit that the communities involved contain fewer than 10,000 inhabitants.

The use of an arbitrary population figure (at whatever level it is set) to distinguish between urban and rural bears little relation to the reality of an urban-rural continuum, and creates a particular anomaly in the administration of the Act.

A properly constituted community body representing a small town such as Forres (population >9,000) can register an interest under the legislation. If however, housing development⁷ and subsequent population growth pushes the population over 10,000, the legislation requires that the registration be extinguished.

45(1) If Ministers are satisfied that there has, since the date on which they decided that a community interest should be registered, been a change in any matters to the extent that, if the application to register that community interest were made afresh, they would decide that the interest is not to be entered in the Register, they shall direct the Keeper to delete that interest.

⁷ <http://www.forres-gazette.co.uk/News/Work-set-to-begin-this-month-on-380-new-homes-01012013.htm>

Moreover, if such a Community Body had successfully activated their Right to Buy and had acquired the asset in question, then they would face the prospect of compulsory purchase by Ministers: in reality this seems unlikely, but that doesn't reduce the absurdity of the situation.

35(3) If Ministers are satisfied that a body which has, under this Part of this Act, bought land would, had it not so bought that land, no longer be entitled to do so, they may acquire the land compulsorily.

We note that an urban “right to buy” was included for consideration in the consultation for the Community Empowerment and Renewal Bill: if it is created by that legislation then it is essential that common rules and processes apply across all of Scotland.

A new body should be established to ensure effective delivery of Land Reform

As noted previously, the on-the-ground effect of the Act has been disappointing. We believe this is due, in part, to the lack of a body charged with effective delivery of Land Reform. As the official CRtB guidance makes clear “*Community Assets Branch ... must remain objective at all times: its main role is to provide advice to Ministers, on a case-by-case basis, at various stages of the right to buy process.*”

The legislation as currently framed places a great many different powers and responsibilities with Ministers (i.e. with Scottish Government Community Assets Branch) which disempowers communities and can lead to confusion, if not outright conflict of interest⁸.

We believe a new Land Agency body is required to champion and promote the Land Reform Act and the wider Land Reform agenda. This Land Agency would assist and advise communities on the registration and acquisition processes, work with community bodies and land owners to manage negotiations and facilitate transfers, and advise ministers on issues of public interest and sustainable development. Such a body would require a range of powers, including those to compel co-operation from landowners and community bodies, and to carry out compulsory purchases and subsequent transfers to communities.

The new Land Agency could be developed from existing public bodies, or created new. Either way, it should seek to utilise the considerable existing expertise within both the public and community sectors⁹.

⁸ In one recent case we are aware of, a community attempted to register an interest in land being sold by FCS (i.e. Scottish Ministers). As they had missed the window of opportunity for the NFLS, they were advised by their local MSP (a Scottish Minister) to use the CRtB provisions, and submit an application to register an interest in the land, to be assessed by Scottish Ministers...

⁹ It might also be productive for the Land Agency to convene an independent Evaluation Panel to assess issues of public interest and sustainable development, similar to that which assesses applications to the National Forest Land Scheme. Evidence from the NFLS suggests that the independent panel has facilitated the delivery of the scheme in a number of ways, not least by distancing FCS staff charged with administering the scheme from the decision making process.