

## **LAND REFORM REVIEW GROUP: CALL FOR EVIDENCE**

### **Highlands and Islands Enterprise response**

#### **INTRODUCTION**

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1 Highlands and Islands Enterprise (HIE) welcomes the appointment of the Land Reform Review Group (LRRG) and the Scottish Government's request that it brings forward innovative and radical proposals so that more people, organisations and communities can benefit from Scotland's land and land assets.

#### **About Highlands & Islands Enterprise (HIE)**

2 HIE is the Scottish Government's economic and community development agency for an area which covers more than half of Scotland. We work with high growth businesses, social enterprises and public and third sector organisations to build sustainable economic growth across a diverse region which stretches from Shetland to Argyll and from the Outer Hebrides to Moray. We are committed to continuing the development of the Highlands and Islands as a competitive region which is home to strong communities, successful, high growth businesses and offers an excellent quality of life.

#### **HIE Specialist Expertise**

3 In line with the Government Economic Strategy (GES), HIE's purpose is to generate sustainable economic growth in every part of the Highlands and Islands. Our work to support community ownership is an integral part of our approach to Strengthening Communities and Fragile Areas; one of our four organisational priorities.

4 Responsibility for leading this agenda sits with our Community Assets Team. This specialist team comprises 7.5 FTE and operates across the HIE area, liaising closely with colleagues in our eight area teams. For further information on the work of our Community Assets Team see:

[www.hie.co.uk/community-support/community-assets/default.htm](http://www.hie.co.uk/community-support/community-assets/default.htm)

5 HIE has been a long standing advocate of the benefits of community land and asset ownership. Since establishing the Community Land Unit in 1997, we have actively supported and contributed towards over 150 community buyouts, including a significant number of whole estate purchases. A map of the HIE assisted buyouts from 1997 – June 2012 is included at the end of this section.

6 Over the last 12 years, in recognition of our knowledge and skills in this area, we have been contracted to deliver services to support the ownership of assets by communities, across Scotland. Our experience in the community ownership sector therefore extends beyond the Highlands and Islands.

2001 – 2005 HIE delivered the original Scottish Land Fund on behalf of the Lottery (New Opportunities Fund): operated across rural Scotland

2006 – 2010 HIE was the lead partner in a consortium to deliver Growing Community Assets (phase 1): operated across the whole of Scotland (urban and rural)

2012 – 2015 HIE is currently working in partnership with the BIG Lottery Fund to deliver the current Scottish Land Fund on behalf of Scottish Government: operating across rural Scotland

2012 – 2015 HIE is currently working on behalf of Scottish Government to deliver Community Broadband Scotland across Scotland in the 10-15% 'harder to reach' areas that are least likely to benefit from a next generation solution under the Government's mainstream rollout programmes.

## **STRUCTURE OF RESPONSE**

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7 We have framed our submission in the format requested in the 'Call for Evidence' document. As acknowledged in this document, the LRRG's remit is wide and its objectives are far-reaching. In this submission, we present an overview of key areas and would welcome an invitation to provide follow-up information/evidence on specific points should this be of assistance to the LRRG.

8 There is scope for the issues and evidence relevant to the LRRG's three key objectives to overlap and also for some elements of our evidence to repeat our recent submission to the Community Empowerment and Renewal Bill (CERB). Where this occurs, reference is made in the text.

### **Definitions and abbreviations**

- LRA: Land Reform (Scotland) Act 2003
- CRtB: Community Right to Buy
- CCRtB: Crofting Community Right to Buy
- CERB: Community Empowerment and Renewal Bill
- NFLS: National Forest Land Scheme (Forestry Commission Scotland)
- The word 'land' and 'asset' is used interchangeably to represent land and land assets: i.e. land, forestry, buildings and other heritable assets pertaining to land such as sporting rights.

# HIE ASSISTED COMMUNITY BUYOUTS MAP: 1997 – 2011

## HIE Assisted Community Buyouts Coimhearsnachdan a' Ceannachd Fearann le taic bho HIE

### Shetland

- 1 Bigton Play Area Ltd
- 2 COPE Ltd, land at Gremista
- 3 COPE Ltd, industrial unit Lerwick
- 4 Eid Community Co-operative
- 5 Lunnasting Public Hall Trust
- 6 Northmave Comm Dev Co
- 7 Sandwick Social & Development Group
- 8 Shetland Amenity Trust, building Unst
- 9 Shetland Amenity Trust, Sumburgh lighthouse
- 10 Shetland Amenity Trust, Old Scatness
- 11 Shetland Astronomical Society
- 12 Shetland Bus Friendship Society
- 13 Voe Pier Trust

### Orkney

- 14 Cromarty Hall Association, St Margarets Hope
- 15 Eday Heritage Centre Association
- 16 Energy Action Westray
- 17 Holm Community Association
- 18 North Ronaldsay Trust
- 19 Orkney Housing Association
- 20 Papay Development Trust
- 21 St Magnus Festival
- 22 Westray Buildings Preservation Trust
- 23 Westray Dev Trust, golf course
- 24 Westray Dev Trust, land at Sand O'Gill
- 25 Westray Heritage Trust

### Caithness and Sutherland

- 26 Assynt Community Association
- 27 Assynt Crofters
- 28 Assynt Foundation
- 29 Caithness FM
- 30 Culag Community Woodland Trust, Mid Inver Estate
- 31 Culag Community Woodland Trust, building Lochinver
- 32 Durness Development Group
- 33 Farr Edge 2000
- 34 Highland Small Communities Housing Trust
- 35 Highland Small Communities Housing Trust
- 36 HomeAid Caithness, industrial unit Thurso
- 37 HomeAid Caithness, shop Thurso
- 38 Kells Croft Committee
- 39 Kylesku Crofters Trust
- 40 Lairg Community Council
- 41 Latheron Lybster and Clyth Comm Dev Co
- 42 North Sutherland Community Forest Trust
- 43 Pultneytown Family Centre
- 44 Second World War Air Raid Victims, Wick

### Innse Gall

- 45 Benbecula Sport and Leisure Co
- 46 Bernera Community Association
- 47 Bhaltois Community Trust
- 48 Cothrom Ltd
- 49 East Camp Trust
- 50 Erisort Trust
- 51 Keese & Glebe Community Association
- 52 Leverburgh Village Hall Committee
- 53 North Harris Trust, North Harris Estate
- 54 North Harris Trust, Loch Seaforth Estate
- 55 Sealladh na Beinne Moire
- 56 Sgoil an lochdair agus a'Choinhearsnachd
- 57 The Stornoway Trust
- 58 Tolsta Comm Dev
- 59 Uig Development Trust
- 60 Urras Oighreachd Ghabsainn (Galson Estate Trust)
- 61 West Harris Crofting Trust

### Lochaber, Skye and Wester Ross

- 62 Acharacle Community Council
- 63 Arisaig Land, Sea & Islands Centre
- 64 Dornie Community Projects Group
- 65 Fernaig Community Trust, building Achmore
- 66 Fernaig Community Trust, land Achmore
- 67 Glengarry & District Community Association
- 68 Highland Small Communities Housing Trust
- 69 Kingsburgh Forest Trust
- 70 Loch Ewe & Gairloch Enterprise
- 71 Lochaber Rural Complex Ltd
- 72 Lochalsh & Skye Housing Association
- 73 Morvern Community Dev Co, petrol station Lochaline
- 74 Morvern Community Dev Co, war memorial Lochaline
- 75 Nevis Radio
- 76 Plockton and District Community Council
- 77 Plockton Bowling Club
- 78 Sleat Community Trust, Tormore Forest
- 79 Sleat Community Trust, petrol station, Armadale
- 80 Stronfian Community Steering Group
- 81 The Isle of Eigg Heritage Trust
- 82 The Knoydart Foundation
- 83 Uig Pier Development Limited
- 84 Voluntary Action Lochaber
- 85 West Ardnamurchan Jetty Association
- 86 Wester Loch Ewe Community Council

### Inner Moray Firth

- 87 Abriachan Forest Trust
- 88 Alness Community Association Ltd
- 89 Anagach Woods Trust
- 90 Auldearn Community Trust
- 91 Barbarville Improvement Group
- 92 Black Isle Farmers Society
- 93 Invergordon Naval Museum & Heritage Centre
- 94 Laggan Forest Trust
- 95 Newtonmore Community Woodland Trust
- 96 Seaboard Initiative
- 97 Strathnairn Community Woodland Project
- 98 Strathy Bains Day Care Nursery

### Moray

- 99 Burghhead Amenity Group
- 100 Dufftown Community Resource Centre
- 101 Findhorn Village Centre
- 102 Forres Community Woodland Trust, Sanquhar wood
- 103 Forres Community Woodland Trust, Muiry wood
- 104 Kintessack Residents Association
- 105 Rothes Council
- 106 Rothes Community Ltd
- 107 The Loft Youth Project, restaurant Keith
- 108 The Loft Youth Project, building Keith

### Argyll and the Islands

- 109 Argyll FM
- 110 Arrochar & Tarbert Community Dev Trust
- 111 Bute Community Land Company
- 112 Colonsay Community Dev Co, various crofts
- 113 Colonsay Community Dev Co, petrol pump site
- 114 Dalavich Social Club
- 115 Dalmally Community Co, land
- 116 Deer Park Community Trust
- 117 Development Coll
- 118 Easdale Island Folk Museum
- 119 Eilean Eisdale Trust
- 120 Ford Community Project
- 121 Iomairt Chille Choman, housing dev land
- 122 Iomairt Chille Choman, land at Port Charlotte
- 123 Ionad Chalium Chille Ile
- 124 Islay & Jura CVS
- 125 Isle of Gigha Heritage Trust
- 126 Isle of Jura Dev Trust, Antlers tearoom
- 127 Isle of Jura Dev Trust, land next to Antlers
- 128 Isle of Luing Community Trust
- 129 Jura Community Business Ltd
- 130 Killfinan Community Forest Co
- 131 Millport Bowling Club
- 132 Millport Golf Club
- 133 Minard Community Trust, Minard shop and PO
- 134 Minard Community Trust, site for village hall
- 135 Mull & Iona Community Trust, building and land, Craignure
- 136 Mull & Iona Community Trust, butchers shop, Tobermory
- 137 North West Mull Community Woodland Co
- 138 Oban War & Peace Exhibition Assoc
- 139 Pennyghael Development Association Ltd
- 140 Ross of Mull Historical Society
- 141 Sandbank Community Development Trust
- 142 Stokavullin Community Group
- 143 Strachur & District Community Dev Co, Succoth field
- 144 Strachur & District Community Dev Co, old golf course
- 145 Tarbert & Skipness Community Trust, land at Tarbert
- 146 Tarbert & Skipness Community Trust, Tarbert Castle and keep
- 147 Tayvallich Community Group, shop & PO
- 148 Tobermory Harbour Association, site at Ledaig
- 149 West Highland Housing Association



Highlands and Islands Enterprise  
Iomairt na Gàidhealtachd's nan Eilean

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## EXECUTIVE SUMMARY

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**Objective 1**    **Enabling more people in rural and urban Scotland to have a stake in the ownership, governance, management and use of land, which will lead to a greater diversity of land ownership, and ownership types, in Scotland.**

9 We provide an overview of land ownership in Scotland and comment from HIE’s perspective on the **impact of the community right to buy provisions of the Land Reform Act (LRA).**

10 HIE is committed to enabling increased community and public benefit from Scotland’s land resources and increased community resilience through more ownership of local land and other assets. We believe **the LRA could be simplified and extend to all communities.** To help overcome the perception that a community right to buy (CRtB) is a hostile action, this provision could be renamed a ‘community option to buy’.

11 We suggest **measures are taken to incentivise and facilitate the voluntary sale of assets to communities.** This could include creating incentives for landowners to sell outwith the legislation and providing an independent negotiation/brokering service to facilitate constructive dialogue between parties. Creating an environment that is more conducive to voluntary sales through the owner becoming a willing seller is a central consideration.

**12 Additional opportunities could be created, where negotiated acquisition (for instance) has failed, if communities ultimately had a mechanism to acquire within an appropriate legislative framework** (the mechanism having been tested for efficacy) – where it can be demonstrated that an asset is underused, neglected, or where the community would take forward a development that will provide significant community benefit. Such a process would be measure of last resort where all other (preferable) mechanisms had been exhausted.

13 We suggest consideration is given to **extending the LRA to the sea bed**, up to the 12 nautical mile limit.

**Objective 2**    **Assist with the acquisition and management of land (and also land assets) by communities, to make stronger, more resilient and independent communities which have an even greater stake in their development.**

14 In this section we focus on measures to support and increase community asset ownership that sit outside the LRA. This includes public asset transfer, funding for acquisition and provision of support (advice, guidance and capacity building) for communities.

15 To facilitate public asset transfer at below market value we suggest a **review of the current accounting practices that appear to be restricting such transfers**. We endorse the CERB proposal regarding the **establishment of a public asset register**. This register could detail surplus assets and could also list privately-owned assets where the owner would welcome an approach from the community. We further suggest the establishment of a register of Common Good land to include details of the title and conditions attached to the sale or transfer of such assets.

16 The **development of an Asset Transfer Scheme**, similar to that of the National Forest Land Scheme, for all public bodies and local authorities would help overcome some of the challenges that are currently being experienced with public asset transfer. Ideally this would enable the asset valuation to take account of the intended use of the asset in a similar way to the NFLS which allows land for affordable housing to be transferred at a lower value.

17 We also advocate continued **and additional support to assist communities to realise their aspirations** to own assets which bring social and economic benefits to their communities. **Access to advice and capacity building support as well as funding is critical** to enable more communities to acquire and develop assets.

18 It would be helpful if guidance/**a mechanism was available to enable public funders to adopt a local market approach to State aid assessment** so a 'no-aid' argument can be applied consistently across the public sector. Alternatively, the development of a State aid approved scheme to meet the needs of the enterprising community bodies, to include community asset acquisition, could be made available.

**Objective 3    Generate, support, promote and deliver new relationships between land, people, economy and environment in Scotland.**

19 HIE welcomes initiatives **to support collaborations, partnerships and other activities that will deliver community and economic benefits** that are relevant to our strategic priorities. We view such relationships as complementary to community land ownership. This is because we recognise asset ownership, and the control/opportunities this provides, to be a strong and enabling catalyst for community empowerment and community social and economic resilience.

20 We provide a less detailed response to this objective.

## OBJECTIVE 1

**Enabling more people in rural and urban Scotland to have a stake in the ownership, governance, management and use of land, which will lead to a greater diversity of land ownership, and ownership types, in Scotland.**

### LAND OWNERSHIP IN SCOTLAND

21 It has been well documented by land reform campaigners, particularly John McEwen and Andy Wightman, that Scotland has one of the most concentrated patterns of private landownership in the developed world. In his book, 'The Poor Had No Lawyers' (Birlinn, Edinburgh 2010), Wightman estimates that 83% of land in Scotland remains privately owned, with 12% in public ownership, 2.5% owned by other bodies (such as NGOs) and just 2% in community ownership.

22 However, over the past decade or so considerable progress has been made in changing the pattern of land ownership in the Outer Hebrides. Today almost 40% of the land mass of these islands is community owned and approximately 70% of the population live on community owned land.

#### **Community land ownership – a growing sector**

23 Although only 2% of Scotland is in community ownership, this extends to approximately 500,000 acres of land. This is more than all the land collectively owned by the National Trust for Scotland, RSPB and John Muir Trust so the community landowning sector is not insignificant. Indeed, the sector is growing and maturing and now has its own representative body in Community Land Scotland.

24 Community ownership is delivering positive social, economic and environmental outcomes. It can require significant investment, and huge amounts of voluntary input, but the rewards are shown to be long-lasting and transformational. Community landowners are creating housing opportunities and jobs, erecting turbines and sustaining essential local services (shops and fuel provision). Much of this is happening in rural areas and is supported by a public sector keen to embrace creative solutions to address the long-standing issues of market failure that exist in these parts of the country.

25 Today, community asset ownership is no longer viewed as an experimental project, but as a proven model of rural regeneration. Increasingly, asset based community ownership is being recognised by Scottish Government as being one of the most effective means to strengthening communities and make them more resilient, prosperous and sustainable.

## EFFECTIVENESS OF THE LAND REFORM (SCOTLAND) ACT 2003

26 The LRA was one of a number of measures introduced to provide a programme of land reform in Scotland. The CRtB and the CCRtB provisions of the LRA were developed following significant consultation and policy development from 1997-2003, led by the Land Reform Policy Group. The Policy Group recommended that to remove land-based barriers to the sustainable development of rural communities, land reform measures needed to:

- **Diversify land ownership** - more diversity in how land is owned and used with more local ownership, and
- **Empower communities** - increased community involvement in how land is owned and used, so local people are not excluded from decisions which affect their communities

27 The Land Reform Policy Group's recommendation for more diversity in how land is owned and used is therefore closely aligned with Objective 1 of this review. The key difference being the Land Reform Policy Group's recommendation was restricted to rural communities only.

### **Does the LRA diversify land ownership types?**

28 The LRA only currently applies to rural areas, defined by settlements of up to 10,000 people, and can only be utilised by community bodies and crofting community bodies (geographically-based, open membership community companies). At present, therefore, the LRA does not support individuals, public bodies or NGOs to acquire land, nor does it support community bodies outwith rural areas in Scotland to acquire land. Thus the LRA is somewhat restricted in its ability to diversify ownership types, as it can only support a transfer of ownership to rural communities.

### **Does the LRA diversify land ownership?**

29 As communities own only a small percentage of land in Scotland, use of the LRA will support greater diversity of land ownership. The extent of this impact will be dependant on both the size of the land assets purchased and also the number of community buyouts under the LRA.

30 The Overview of Evidence on Land Reform in Scotland (2012) provides a clear summary of the use of the LRA. It notes that as at May 2012, 142 applications to register an interest had been received and that this figure was greater than anticipated in the Bill. In evaluating the impact of the LRA in terms of its policy objectives, the key statistics are perhaps the number of successful purchases under the legislation. At May 2012, this stood at 11 for the CRtB and no purchases under the CCRtB. It should of course be noted that there were 95 approved registrations and of this 33 were granted the right to buy. In the same time period, within the Highlands and Islands, HIE supported 81 community buyouts. This

clearly demonstrates that legislation is only one ‘tool in the box’. The non-legislative aspects of our response to support increased community asset ownership are detailed under Objective 2.

## Behind the LRA statistics

- **Willing sellers opting to sell via CRtB:**

31 A number of willing sellers, particularly public bodies, have opted to sell via the terms of the LRA. The Ministry of Defence (MOD) and Scottish Water are two examples. There are a number of examples where the community has been informed they would have to register an interest before the asset would be offered for sale. This may be because the LRA sets the selling price and/or because it is perceived to be a ‘no strings attached’ transaction; i.e. take it or leave it.

*NB It should be noted that there is scope within the LRA for conditions of sale and purchase price to be negotiated on terms agreeable to both the seller and the purchaser. There may be limited awareness of this.*

32 The ‘straight sale’ aspect may be particularly attractive when the asset to be sold has liabilities attached. The purchase of the former RAF Machrihanish airbase by Machrihanish Airbase Community Company is a good example. This extensive and complex asset was sold by MOD, via the CRtB, for £1 in May 2012. Significant intervention on behalf of Scottish Ministers and their officials, HIE and Argyll & Bute Council resulted in a package of support that together with the £1 purchase price made the purchase by the community a viable proposition. Without a comprehensive support package, to pay primarily for essential remedial work and significant investment in technical appraisals and ongoing support, this community buyout would not have been viable.

33 We believe the CRtB provisions should continue to apply to assets owned by public bodies, but this could be in addition to alternative, non-legislative, methods to transfer public assets to community ownership. See ASSET TRANSFER SCHEME (P. 25).

- **Indirect benefits of LRA:**

34 HIE is fully supportive of the policy intent behind the LRA. While it may have had limited impact in direct delivery of its policy objectives, indirectly it has been powerful in demonstrating a commitment by the Scottish Parliament to community ownership and the presence of the LRA has given leverage to communities in their negotiations with landowners and also funding bodies. Whilst more difficult to quantify, we believe this to be a significant and valuable benefit to the community landowning sector, creating an environment of increased confidence for those communities seeking ownership of land and assets.

35 A notable example of this was the crofting community buyout of Galson Estate (Lewis) by Urras Oighreachd Ghabhsainn in 2007. Initially the owners were not willing sellers so the community progressed a buyout under the CCRtB. The community's application was submitted in 2005 and then, at the request of the landowner and the crofting community body, the Minister's decision was put on hold to allow time for the parties to seek a negotiated (willing seller) purchase. This proved successful and two years later Urras Oighreachd Ghabhsainn acquired the 55,000 acre estate. The resultant transfer was on terms that better suited both the seller and the purchaser. Whilst these terms could not have been replicated under the LRA (most notably the purchase being of the company that owned the asset, rather than the land itself) this community buyout is unlikely to have occurred at this time without the LRA. The compulsory purchase nature of CCRtB was the catalyst. Had the land not been in crofting tenure and the community thereby restricted to the use of the CRtB, it is considered most unlikely that this transfer would have taken place in 2007.

## **Conclusion**

36 When considering impact quantitatively, the total amount of land passed into community ownership, through utilising the LRA is nominal. We conclude therefore that the LRA is having a limited impact on both the diversity of land ownership and even less impact on diversity of land ownership types.

37 However, the LRA demonstrates the Scottish Parliament's commitment to community asset ownership and in doing so this helps influence and shape public policy and behaviours to support this sector. This is a significant indirect benefit of the legislation. Without advice, guidance and funding communities will be less able to capitalise on opportunities to acquire land and land assets, whether using the legislation or not.

38 The presence of the LRA also gives leverage to communities in negotiating purchases outwith applying the full mechanisms of the legislation. As further explained in INCREASING COMMUNITY OWNERSHIP OF ASSETS (P.14) we believe negotiated purchases to be the way forward, but there may be some instances, as in the Galson Estate buyout, where recourse to formal mechanisms might be necessary to provide the optimum catalyst.

39 HIE wishes to see the LRA amendments focus on making it simpler to use so that it can be more effective and empowering for many more communities.

### **Please Note:**

#### **Possible amendments to the LRA**

From our experience supporting communities to utilise the LRA, we have documented a synopsis of possible amendments to the CRtB and CCRtB which we believe could increase their effectiveness. Most of our suggestions centre on simplifying the process for communities. We have not included these in this formal submission but would be happy to discuss these concepts with the LRRG.

## VISION

40 HIE is supportive in principle of proposals to strengthen public policy and legislation that enables and acts as a catalyst for greater community and public benefit from Scotland's land resources and increased community resilience through the ownership of local land assets.

### EXTEND LRA TO URBAN COMMUNITIES

41 As detailed in our response to the CERB, HIE believes that all communities should be able to access the benefits from the opportunities provided by the LRA. We have not fully explored the implications of applying the CRtB provisions to all communities and believe this would benefit from due consideration to ensure the provisions are transferable to an urban context.

42 Clearly, rural communities naturally identify themselves with 'place' and will tend to align their boundaries with those of a settlement area. Perhaps because of their smaller populations, rural communities have a strong sense of communal identity and usually find it easier to mobilise and demonstrate local (shared) support.

43 If an urban community was to align its boundaries with those of the whole settlement it will be considerably more challenging for a community body to demonstrate the 10% community support requirement to apply to 'register an interest in land' (CRtB). Should the registered asset be offered for sale, the community body would then have to ballot the whole community, and achieve a majority in favour, ideally with a turnout of more than 50%.

44 We would anticipate that in urban areas the definition of community is more likely to present itself as a subset of a larger settlement or, at a whole settlement level by a community of interest.

#### **'Subset' community**

45 At present, because the CRtB uses postcodes to define the community, it is possible for a community body's 'area of benefit' to apply only to part of the settlement. Indeed, there is an example of a very small, or 'subset', community in Livingston. Willow Wood Community Company, with an area of benefit of only a single postcode, was accepted as a community body under the CRtB.

#### **Community of interest**

46 At a whole community level for larger communities, interest in the CRtB may come from a community body that represents a community of interest within this wider geographic community. Within larger settlements there may be sufficient critical mass to sustain certain 'local' communities of interest.

47 Due to the greater number of assets available and the more diverse ownership pattern in urban areas, the wider community is less likely to be affected by a community of interest purchase in an urban area than would be the case in a rural area. Therefore, in a revised LRA, there may be merits to accommodate CRtB applications from a community of interest, but still within a wider geographic community boundary. Such an organisation, we would suggest, would still be required to have open membership with its 'area of benefit'. Furthermore, the purpose and governance of the community body and proposed use of the asset to be purchased would have to be fully compliant with LRA provisions including the public benefit and sustainable development requirements.

### **Conclusion**

48 We believe consideration could be given to modifying the CRtB provisions with respect to community support and public interest, to make it more achievable for community bodies representing a larger community to use these provisions.

## **ASSET OWNERSHIP AND PUBLIC BENEFIT**

49 Generation of community benefit – social, economic and environmental impact – is the primary objective of community asset owners.

50 Communities who acquire assets through the LRA, and/or are dependant on public funding to meet the purchase price (the vast majority) are required to provide a development plan that demonstrates these long-term benefits. However, delivering positive community outcomes is in fact the outright driver behind community buyouts as evidenced by a number of buyouts that have not had to use the LRA and did not require public funding, or only very limited financial assistance, for the land purchase. The Stornoway Trust and the Isle of Eigg Heritage Trust are two such examples.

### **Underused or neglected/misused assets**

51 At the other end of the spectrum from assets being owned and managed to deliver public benefit are assets that are underused, neglected or, for instance, serving as a 'ransom strip'. In some cases the current use of land assets or poor management practices is thwarting community development in others they could be said to be demonstrably harming the community.

#### **➤ Access to a surplus asset**

52 The Lochcarron community has been in dialogue with FCS for over 10 years regarding the purchase of Kirkton Wood which is surplus (underused) to their requirements. The FCS is a willing seller. The key barrier to community ownership has been the lack of vehicular access to the woodland which is located immediately adjacent to the village. The community wishes to develop

the woodland for a variety of socio-economic and environmental reasons including sites for much needed houses and the creation of woodland crofts. A strip of land, owned by an individual living overseas, limits access to this 92 hectare asset. The community considered registering an interest over this land but did not expect it to come up for sale and were concerned that this action could be viewed as a hostile by the owner. They felt their best option was to negotiate. Some years later it now appears that progress is being made though this is still at a tentative stage. In this case the LRA has been of no assistance to the community and as discussed in Appendix 1 the community was anxious about antagonising the owner through registering an interest via the CRtB.

➤ **Neglected asset**

53 An example of a neglected asset is the community of Scalpay's desire to acquire the Eilean Glas lighthouse buildings. The Grade-A listed buildings, which are viewed as internationally important by Historic Scotland, are falling into disrepair and are listed as 'high risk' on the Buildings at Risk Register for Scotland (Royal Commission of the Ancient and Historical Monuments of Scotland). The community registered an interest under the CRtB in 2005 in order to bring this iconic landmark into community ownership and to develop it for the social and economic benefit of the island community. The community could not force the sale. Following a court case it transpired that the 'owners' used fraudulent means to acquire the asset in the first place. The community's register of interest lapsed on its 5 year anniversary. The community decided against renewing this due to the effort entailed by the re-registration process and uncertainty regarding the rightful owner.

➤ **Poor management practices**

54 The current LRA will not benefit a community suffering at the hands of a landlord such as the experiences on Eigg prior to community ownership. It does not give the community any opportunities unless/until the owner is willing to sell. Whilst Eigg does have some land under crofting tenure, it is limited, so the CCRtB would also be less effective in this case.

## **INCREASING COMMUNITY OWNERSHIP OF ASSETS**

### **Community option to buy**

55 The CRtB is not an absolute right to buy, but an opportunity to register an interest in land. Although communities and landowners often perceive registration to be a hostile action, it is simply a declaration that the community is interested in purchasing the asset. The asset owner is completely in control of the situation and the right to buy only takes effect once the following three criteria are met:

- i) the land is offered for sale at the discretion of the landowner,
- ii) a successful community ballot is achieved, and

- iii) Ministerial approval following a satisfactory assessment of sustainable development and public interest.

56 Following this, the community has to raise the purchase price as determined by an independent valuation. For these reasons we suggest the CRtB could be renamed a 'community option to buy'.

### **Compulsory purchase**

57 The CCRtB on the other hand is an absolute right to buy on the basis of a successful community ballot and a satisfactory case being made to Ministers. The key difference between the CRtB and the CCRtB is that the CCRtB does not require a willing seller. Its provisions are therefore more akin to a compulsory purchase but at the discretion of Ministers.

58 Whilst the CCRtB could be seen to be more empowering for communities only two applications have been made to date; at Galson and Pairc (both in Lewis). As has already been noted, the Galson community successfully negotiated a purchase outwith the legislation and prior to the Minister determining their application. Their CCRtB application was withdrawn once the missives were signed. The CCRtB application by The Pairc Trust by contrast continues to be an extremely complex affair for all concerned; a brief summary is provided below.

#### ***The Pairc Trust experience: brief summary***

*The Trust submitted an application in 2005 to acquire the common grazings as the CCRtB mapping requirements for the whole estate were considered unworkable. Due to legal uncertainty regarding the validity of an interposed lease over the land to be acquired, certain questions were referred to the Scottish Land Court. The Court ruled that the interposed lease was valid. This LRA was then amended by the Crofting Reform (Scotland) Act 2010 to enable crofting community bodies to acquire the tenant's interest in an interposed lease in addition to the land. The Trust then submitted two a subsequent CCRtB applications in 2010; one to acquire the land and the other to acquire the tenant's interest in the lease over this land. Ministers approved both applications in 2011 and this decision was then appealed by the landowner. One of the grounds for the appeal was the incompatibility of CCRtB with European Convention on Human Rights. The Court of Session has very recently concluded that the Trust's application to acquire the assets of the landowner at full market value is not a contravention of ECHR legislation. This case is not over yet as the landowner can appeal this ruling and certain other aspects of the landowner's appeal have still to be considered by the Sheriff Court in Stornoway. NB The Pairc community initiated steps towards a buyout of Pairc Estate ten years ago in early 2003.*

59 There are potential benefits which can be brought about through communities having access to formal mechanisms, where other means fail to bring assets that are not being put to purposeful use into community ownership. This is particularly important for assets that are thwarting or having an adverse impact on community development. The LRA's compulsory purchase provisions are presently included

for croft land, but provide such a mechanism. Formal powers for non crofting land, supported by a rationale that pursuit of a community asset acquisition is driven by community development needs rather than merely the tenure of the land in question, could bring about beneficial community asset ownership opportunities. Clearly, such mechanisms, as addition to perceived positive effects in terms of community land ownership could have other impacts; we would welcome the LRRG's full consideration of all aspects of such an approach to quantify the impact of any such mechanism in full.

60 HIE is of the view that in certain circumstances, reversion to formal mechanisms, where all other means have been exhausted could enable 'more purposeful use' of assets by communities. In the context of current patterns of community land ownership, it is considered that this could be particularly relevant to remote/fragile and disadvantaged communities.

61 It is important to note that HIE would suggest communities could only apply to access any formal mechanisms put in place once the willing seller (negotiated) route to ownership has been exhausted.

### **Encouraging voluntary sales through willing seller incentives and facilitation**

62 Whilst a formal mechanism could enhance a community's opportunities for ownership, the process is more likely to be challenged in the courts. As has been the experience with the CCRtB, where compulsory purchase is the mechanism deployed to 'enable' crofting communities, this can also be counter-productive to increasing community asset ownership. A negotiated settlement on the other hand is the simplest route to ownership, but is dependant on a willing seller. To increase the opportunities for communities to acquire assets, consideration could be given to a suite of options which at one end incentivises negotiated settlements; and ultimately may also include recourse to a formal mechanism as the absolute position. However, as stated previously, the adverse implications of the inclusion of any such formal mechanisms (such as discouraging otherwise potentially willing sellers or creating perceptions of insecurity over land tenure) need to be fully investigated in order that on balance, their inclusion/application is beneficial to the pursuit of community land ownership in Scotland.

### **Benefits of voluntary sales**

63 It should be noted that existing LRA provides Ministers with significant powers of discretion and this contributes to exposing the CRtB and CCRtB legislation to legal challenge. Furthermore, this has had the effect of diminishing community confidence in the LRA and clearly has significant resource implications (staff time and legal costs) for Ministers. A negotiated settlement, by its voluntary nature, would not be determined by the Courts. It also would not trigger compensation claims against Ministers; a core component of the CCRtB to ensure compliance with ECHR requirements.

64 A cost analysis would clearly have to be undertaken to assess the potential costs from an incentivised approach; these costs would be quantifiable and would be known in advance of any commitment being made. This has to be contrasted against the highly unpredictable nature of legal

appeal costs and compensation claims. As there is already tax relief for the owner of an asset being compulsorily purchased, the incentive provided via the negotiated route may need to be on more beneficial terms for the landowner.

65 In addition to avoiding the risk of litigation via a forced sale, incentivising negotiated sales could proactively encourage asset sales to communities. However, to fully optimise the negotiated sales route and to provide real and demonstrable opportunities for communities to acquire assets, there is an underlying need to provide communities with appropriate policy and legislative tools.

### **Facilitating voluntary sales**

66 The LRA is complex legislation and can be extremely prescriptive. There is significant scope for an application to be rejected by Ministers, or challenged in the Courts, on a minor technicality. In our experience of supporting community bodies through this process, a disproportionate effort is invested in meeting the requirements of the legal process when compared to preparing their case for ownership.

67 The Community Assets Branch (CAB) has developed much knowledge and experience in the administration of the LRA and goes to some effort to explain the process to communities and addition to producing detailed guidance. This level of support is both welcome and critical. Yet, because CAB staff have an official role in administering the LRA and advising Ministers, they need to remain impartial and keep a professional distance. Importantly, they cannot do anything that could be construed as giving direction or legal advice.

68 HIE's Community Assets Team work closely with community bodies and has a detailed working knowledge of the legislation. We liaise closely with CAB colleagues as they lead on the technical aspects of the legislation, while we support communities to consult with their community, develop their project plans and to submit robust LRA applications. An important element of our support is providing the necessary financial assistance to enable community bodies to procure their own independent specialist advice.

69 In advocating an approach that will hopefully lead to more negotiated settlements, outwith the legislation, we believe there is a role for an independent party to help broker such settlements. It can be difficult for communities to undertake this role themselves, for a variety of reasons, although there are examples where this has been achieved. HIE has on occasion provided a similar role but only because an independent third party could not be identified.

70 We see merit in creating a small team of professional advisers who are fully conversant in property transactions thus enabling them to perform the duties of an 'independent intermediary'. Importantly, this body would be independent of both the community and the landowner and would support the development of a Heads of Terms detailing the conditions of a negotiated settlement. It is our view that

this function may only be appropriate for negotiating transfers outwith the LRA. Because of the legal nature of the LRA, such a body would find itself in a similar position to CAB and HIE when supporting applications using the LRA and this would curtail its effectiveness.

71 In order to relieve communities from the significant legislative burden of the LRA during its application, and enable them to focus on developing robust development plans for community ownership, we are of the view that the LRA should be simplified wherever possible.

## REFORM OF THE CROWN ESTATE

72 The CRtB provisions apply to the foreshore and we believe there are merits in extending this to the seabed, at least up to the 12 nautical mile limit which is retained as a public asset and is managed by the Crown Estate.

73 We appreciate the reform of the Crown Estate may be considered beyond the scope of the LRRG, but we consider this is relevant to the community empowerment and resilience agenda. Putting the seabed, or parts of it, under LRA legislation could increase the future ability of communities to develop income generating assets, particularly in relation to the growth in tidal, wave and wind electricity generating.

## BARRIERS

74 Barriers to the vision of greater community/public benefit being generated from Scotland’s land assets and increased resilience through community ownership of assets fall into three distinct categories: opportunity, financial and capacity.

<p><b>Opportunity:</b> availability of assets</p>	<p>As had been alluded to the LRA, despite having positive intent, has been limited in providing opportunities for communities to acquire assets. There are a number of reasons for this, including:</p> <p>CRtB</p> <ul style="list-style-type: none"> <li>• Onerous registration and re-registration process</li> <li>• Only applicable to rural communities</li> <li>• Asset may not be offered for sale</li> </ul> <p>CCRtB</p> <ul style="list-style-type: none"> <li>• Onerous mapping requirements</li> <li>• Only applicable to land under crofting tenure (primarily)</li> </ul>
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<p><b>Financial:</b> a means to acquire and develop the assets to deliver community benefit outcomes</p>	<p>Assuming a community body has an opportunity to acquire an asset, unless it is being gifted, the purchase price will have to be paid. Public funds towards the purchase of an asset will be based on a percentage of an open market valuation; which may or may not be the same as the selling price. Purchases via the LRA will be on this open market basis unless the seller and community negotiate a different purchase price.</p> <p>HIE has supported communities to purchase assets valued at a few hundred pounds up to millions of pounds. For initiatives included on the HIE Assisted Buyouts map, the average HIE grant was £47,805 with a median of £14,173. The highest interventions were low in number and our assistance has ranged from £300 to £2 million.</p> <p>As can be seen the purchase price of land and land assets varies considerably. Land values tend to be higher in lowland Scotland and could be considerably higher in urban areas. As is discussed in RAISING THE PURCHASE PRICE (P. 23) community bodies are heavily dependant on public funding towards the purchase of the asset and have limited opportunity to secure loan funding.</p> <p>At present, the primary sources of funding to community asset purchase are:</p> <ul style="list-style-type: none"> <li>• Highlands &amp; Islands Enterprise – HIE area only</li> <li>• Scottish Land Fund – rural Scotland only</li> <li>• Growing Community Assets – all of Scotland <i>(but less likely to fund acquisition-only projects and does not usually support public asset purchase at full market value)</i></li> </ul>
<p><b>Capacity:</b> support for communities</p>	<p>As has been identified by numerous evaluations and studies, the provision of specialist advice, guidance and capacity building support is a critical factor. Such support comes from a variety of organisations, and includes organisations such as SCVO and the Social Enterprise Academy which support the ‘enterprising Third Sector’. Organisations with a specific remit/interest in the community asset sector include:</p> <ul style="list-style-type: none"> <li>• Highlands &amp; Islands Enterprise</li> <li>• Scottish Government</li> <li>• BIG Lottery Fund</li> <li>• Development Trust Association Scotland</li> <li>• Community Woodlands Association</li> <li>• Community Land Scotland</li> </ul> <p>The need for access to quality information, specialist advice and capacity building support is expanded upon in SUPPORT FOR COMMUNITIES (P. 24).</p>

Proposals:

❖ **Simplify the LRA**

75 Comprehensively revise the provisions of the LRA so it is more enabling and empowering for communities by amendments focusing on making it simpler to use for communities  
*(We would be happy to discuss these concepts with the LRRG).*

❖ **LRA to apply to all communities**

76 Extend provisions of the LRA to all communities, and consider amendments to enable successful CRtB applications from community bodies representing larger communities.

❖ **Rename CRtB**

77 To help overcome the perception that a CRtB is a hostile action, this provision could be renamed a 'community option to buy'.

❖ **A suite of options to support more negotiated purchases**

78 New provisions could be put in place to facilitate negotiated purchases. These would include incentives to encourage more asset owners to become willing seller and thereby an increased number of community purchases and less use of the LRA whilst still achieving the policy objective and intent of the LRA. To further facilitate negotiated purchases, a specialist, independent body could be set up to provide a brokering service to help support the drafting of a Heads of Terms between the landowner and the community. Additional opportunities could be created if communities, where all other means have been exhausted, had a formal/legal mechanism to revert to where an asset that is underused, neglected, or where the community would take forward a development that will provide significant community benefit. Such a process would be measure of last resort.

❖ **Marine opportunity**

79 Consideration to be given to extending the LRA to the sea bed, up to the 12 nautical mile limit.

## OBJECTIVE 2

**Assist with the acquisition and management of land (and also land assets) by communities, to make stronger, more resilient and independent communities which have an even greater stake in their development.**

80 In this section we focus our response on the supportive public policy environment to strengthen the opportunities for communities to acquire and manage assets for public benefit. We address public asset transfer, funding for acquisition and provision of support (advice and guidance) for communities.

### PUBLIC ASSET TRANSFER

81 Asset availability is clearly a key consideration. Creating more opportunity by incentivising landowners to be willing sellers and simplifying the LRA has already been addressed.

82 In our response to the Community Empowerment and Renewal Bill (CERB), copied below, we supported the principle of surplus public assets being transferred to community ownership. We favoured a simple process and one that did not place burdens or clawback conditions on the community body.

#### **CERB: HIE's submission on Asset Transfer**

We are living in exceptionally challenging times, and need to achieve the best possible outcomes from the assets we have. While public finance cash is constrained, we are rich in assets, which are sometimes underutilised. HIE believes there is a case for a more radical challenge to the accounting treatments that are helpfully summarised [in Annex A], in order to break down barriers for communities contributing to asset optimisation.

It is our experience that public bodies find it very difficult to transfer assets at below market value. The Scottish Public Finance Manual does enable such transfers, but the procedures involved are complex and it rarely happens in practice. A further factor that requires consideration is that some funders have taken the policy view that they will not support the purchase of public assets at full market value. The combined effect is that it is particularly challenging for communities to acquire public assets, many of which are completely surplus to the requirements (and exceeding the budget provision) of the public body concerned.

As an example, a number of years ago it proved more difficult to support a community in Harris to acquire a crofting estate held in public ownership than a larger and more valuable crofting estate from an absentee landowner in Lewis. Furthermore, the amount of officers time (Government and agency) spent on the Harris project was considerable and, it could be argued, disproportionate to the value of the asset to be acquired.

The COSS\* service is welcomed and is an important support mechanism to facilitate asset transfer. However, converting asset transfer aspirations into action on the ground is severely hampered by the need for communities to raise the market purchase price.

It may be an aspiration for communities to be able to pay full value for the assets, but communities need to have the resources to do so. An enterprising asset base is one way for communities to raise such revenue, however the important point is that the asset base need to come first. Without an equitable means for communities to become asset owners, there is a risk that only communities with an income stream, from a community benefit fund for example, will be able to acquire public assets. This is clearly contrary to an inclusive strengthening communities agenda.

\*Community Ownership Support Service

### **Transfer of Crofting Estates (Scotland) Act 1997**

83 Related to the issue of public asset transfer is the Scottish Government's current interpretation of this Act. When originally drafted this legislation was intended to enable the crofting land asset to transfer to crofting communities at no cost. The Act remained untested till the West Harris Trust used it to acquire three crofting estates from Ministers in 2010. On this occasion, the community was only able to conclude the sale once the market value of the assets concerned had been raised. It is our understanding that concerns were raised that a below market value transfer of these crofting estates could be taken as setting a precedent for other public asset transfers, particularly those of higher value. As a result it took three years for this buyout to be concluded.

84 By way of a contrast, a couple of years later the privately-owned neighbouring island of Taransay was sold to a private buyer within a fortnight of being offered for sale on the open market. The purchases were not dissimilar; both involved a willing seller and a transfer at market value. However the time taken to conclude the community purchase of a public asset illustrates the bureaucracy surrounding public asset transfer.

### **National register of surplus/available assets**

85 Under the Scottish Public Finance Manual, public assets in the ownership of Scottish Ministers that are surplus are advertised internally to all Government departments and Non-departmental Public Bodies. This is done by way of an email notification, referred to as 'the trawl'. If no interest is declared the department/body concerned can advertise the asset for sale externally. Prior to the asset being advertised on the open market or being sold at auction, it would be advantageous for community organisations to have an opportunity to declare an interest in an asset. The availability of the asset could be posted on a national online register.

86 The register could also be used for local authorities and owners of non-public assets to post details of their property should they be open to receiving an approach to purchase from the community.

87 If such a measure was put in place and the LRA retained provisions for late registrations, it would be important for such a posting not to render an application to register an interest under the CRtB as a late registration if it would otherwise have been deemed timeous.

## **REFORM OF COMMON GOOD LAND**

88 There is an opportunity to improve the transparency of, and potentially greater community involvement in, management and transfer of Common Good land. HIE's work has only rarely involved Common Good land though we are working with a community on such a case at the moment. The passage of time has led to uncertainty regarding the existence and status of these 'historic/legacy' assets. The establishment of a public register of Common Good land in each Local Authority would provide clarity and transparency. Clarification of the right to sell/transfer Common Good land, and under what charter conditions (if deemed necessary or appropriate to retain them) would be helpful. Including Common Good land, clearly identified as such, in any forthcoming asset transfer scheme would be worth considering (SEE ASSET TRANSFER SCHEME, P. 25).

## **RAISING THE PURCHASE PRICE**

89 It is a reality that advancing the ability for communities to own and manage land will often require significant sums of capital investment. This could be more so in urban areas where asset values and/or remediation costs have potential to be higher. As is typical of asset purchase, the assets purchased by communities require a high capital asset investment yet only a low rate of return can usually be realised by the asset. In other words, simply purchasing the asset rarely provides much in the way of an income stream. As such commercial borrowing is rarely available to communities, or not to an extent that will enable the purchase to proceed on the basis of loan finance only. Coupled to this is that most communities, at the time of purchase, have little if any trading history and very limited cash reserves. It is our experience that grant assistance, at a high intervention level, is critically important to support community asset acquisition.

90 Providing significant grant funding was the rationale adopted for the original Scottish Land Fund in 2001-06. This principle has been replicated in the current Scottish Land Fund (2012-15) which can potentially provide up to 95% of the acquisition costs based on an independent valuation of the asset. £6 million has been provided by Scottish Government, over 3 years, to support community acquisitions in rural areas. Resources required to enable significantly increased asset acquisition across Scotland will of course be much greater.

91 We view the support for the initial purchase as an investment in the long term future of the community. We further recognise that additional support and often quite substantial capital investment, is usually required to help develop the asset and thus enable the community to deliver the many social and economic benefits from asset ownership. We endorse the conclusion of Skerratt's recent research on community land ownership and resilience that it takes approximately 5 years for revenue streams to be realised (SRUC, 2011).

92 Throughout the Highlands and Islands there are numerous examples of transformational change at a local level through community asset ownership. Other forms of transformational change, which are not community-led, also require significant capital investment so this is not at all unprecedented. With community asset ownership this change can be evidenced to be long lasting and has the added benefit of empowering communities to lead their own development, which is fully aligned with Scottish Government policy.

## **SUPPORT FOR COMMUNITIES**

93 The need to support communities throughout the process of asset ownership has already been described. The provision of specialist advice, guidance and capacity building support is a critical factor to unlock the latent talent, skills, aspiration and commitment within communities. Through its social remit, HIE and its predecessor organisation (HIDB) has been active in this area for many years and our approach to bottom-up rural development has been widely acclaimed. Our Community Assets Team engages with communities from the initial project idea and supports them through to asset purchase and during the early stages of asset ownership.

94 In our experience, community organisations really benefit from access to an adviser knowledgeable in community development (organisational governance, community consultation and engagement, business planning, etc), particularly in the early start-up days. Once organisations become established and more mature, and are well into the 'delivery phase' their development needs become more specific.

95 Community asset projects can take years to progress from initial idea to asset ownership, depending on the complexity of the asset. To embark on this journey, which can be complex, lengthy and very demanding in terms of voluntary effort, communities need to be confident that a) they can succeed, and b) that ongoing support will be available. A strong network of public bodies, including supportive local authorities, and intermediary membership organisations all play important roles in supporting the sector.

## **VISION**

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96 A wide range of support services and access to high levels of funding to be made available to help realise successful community ownership projects; as supportive legislation on its own will not deliver this outcome.

### **ASSET TRANSFER SCHEME**

97 A Scottish Government and local authority scheme to support the transfer of assets from public ownership to community ownership could make a significant contribution to growing the community asset sector.

98 Forestry Commission Scotland's National Forest Land Scheme (NFLS) provides for some an effective means for communities to seek ownership of national forest land. This land does not need to be declared surplus to requirements for a community body to initiate an application to purchase. Furthermore, for land sales to provide affordable housing, the valuation is undertaken on the basis of the intended use of the land rather than an open market valuation. This usually serves to reduce the purchase price.

99 A similar scheme, together with a national register of public assets, could be applied across all public bodies and local authorities.

### **ADDITIONAL PUBLIC FUNDING FOR ASSET ACQUISITION**

100 Access to public funding, as previously described above, is fundamental. Ongoing Scottish Government and Lottery/other commitments to making public funding available at high intervention levels is a pre-requisite unless other means to reduce asset values can be implemented. If community ownership is to increase and if new opportunities to acquire assets are to extend to all communities, additional public funding will be required.

## **BARRIERS**

101 The barriers to the above vision fall into two areas: availability of funding and public policy.

### **FUNDING THE ASSET PURCHASE**

#### **State Aid**

102 Whilst significant public funding would be required to see a step change in community asset ownership, it is recognised that State aid rules direct the amount of public funding that can be invested in an undertaking (an organisation that trades) in any three year period. Our submission to the CERB contained the following extract regarding State aid:

#### **CERB: HIE's submission on EU State Aid**

This is very complex and dynamic area which impacts directly on communities as they pursue their ambitions for asset ownership. It also shapes the scale of opportunities which can be pursued; and whilst the purpose of this consultation is not to reformulate the State aid legislation, it is noted that expert interpretation of this complex legal framework by communities poses a significant challenge. Public bodies such as HIE would greatly benefit from encouragement and support at a national level to be proactive, take a risk-aware approach and allow assistance to be recorded as "non-State aid" when this is appropriate. This would apply, for example when the project's focus is on local supply by a community/non-profit distributing organisation - such as a social enterprise whose core remit is to benefit a local community. This could be extended to locally-focused communities of interest providing much needed services to those hard to reach and disadvantaged groups.

Our proposal therefore is that the Government support a fully defined "no-aid" argument which could be applied consistently across the public sector, and/or the Government lead on the development of a State aid approved scheme for Community Enterprise.

The issue of State Aid must be factored into this discussion. Indeed, State aid, which clearly cuts across the asset transfer agenda, is perhaps one of the critical starting points from which to enable an increase in transfer of assets to community bodies.

#### **Funding the purchase of PUBLIC assets**

103 Another issue is the apparent reluctance of some funding bodies to support the community acquisition of public assets at full market value. This is on the principle that public funds are simply being recycled into public bodies. The preference is that these public bodies could further support and enable community ownership by offering their assets at below market value, recognising the future use

intent and measurable outcomes for the community. This issue has significantly impacted on the effectiveness of the National Forest Land Scheme. There was hope that the new Scottish Land Fund, which does implement such a policy, would be the solution. However, there are now concerns that support for forestry acquisition could constitute a State aid so some of these projects are again being thwarted to the understandable exasperation of the community bodies concerned.

## **PUBLIC POLICY**

### **Public asset transfer at below market value**

104 The rules relating to the transfer of public assets, owned by Scottish Ministers, at less than market value are clearly set out in the Scottish Public Finance Manual. Such transfers are possible but it is a lengthy and complex process. An added complication is that transferring at below market value is in effect providing a public grant to the value of the discount. As such, the value of the discount may constitute a State aid and would be subject to State aid limits. Notwithstanding this, it is our experience that the issues which arise in below market transfers of public assets are threefold:

- Precedent being set and the 'floodgates' opening
- The value of any discount is charged to the Scottish Government's resource budget, and hence an effective budget cut for the department concerned results
- Such transfers require the explicit approval of the Accountable Officer, or Ministers if the value is high, and must be reported in the disposing body's accounts

105 As has been alluded to previously, the above issues appear to have influenced the current interpretation of the Transfer of Crofting Estates Act 1997.

106 Local authorities, to which the Scottish Public Finance Manual does not apply, are however presented with similar issues. Their rules allow asset transfer at 'best value' where community benefit can be demonstrated. The Accountable Officer has to approve such sales which can require an assessment of the value of the community benefit arising from the transfer. This is inherently difficult to calculate and without specific guidance, Officers can be likely to guard against exposing their organisation to possible criticism and reputational damage. A further concern, particularly in the current financial climate, is that a discounted transfer reduces revenues to the local authority which provides essential services to the wider community. There are also associated issues with 'hope value' which may, at a later date, lead to financial gains for the community body. Whilst some would view this as a positive outcome, there can be an underlying concern that the local authority could again be challenged on the probity of such an outcome. A sale at full market value, which includes potential future value, removes these issues.

107 In addition to the above issues, there can be a perception within some estates/property departments of public bodies and local authorities that a sale to communities, even at full market value, is 'selling off the family silver'. There can also be reluctance due to the perception that the community may not have the skills or capacity to properly manage the asset.

108 Development Trust Association Scotland (DTAS) is active in this area, delivering the Community Ownership Support Service on behalf of Scottish Government. Amongst other things they support local authorities to develop asset transfer policies. These are developed at a local level and while there are good examples, such policies are not being advanced by all local authorities. A more uniform and consistent approach to the sale of all public assets (Scottish Government and local authority) would be advantageous.

### **SUPPORT FOR COMMUNITIES: level playing field**

109 With the exception of HIE and local authorities, all the other organisations referred to that support the community assets sector operate on a pan-Scotland basis. HIE is fully engaged in this sector within the HIE area and invests significant support both in terms of staff resource/expertise and funding. This provides communities in the HIE area with additional support and access to funding not necessarily available outwith our region. If this agenda is to be actively promoted in all communities it would be advantageous to provide opportunities for consistent support to communities across the whole of Scotland.

## **WAY FORWARD**

### Proposals

#### ❖ **Public Asset Transfer**

- 110 Below market: Consideration be given to reviewing the current accounting practices surrounding public asset transfer at a below market value to facilitate such transfers.
- 111 Surplus Asset Register: Establishment of a national online surplus/public asset register. This would promote the availability of surplus public assets and could also list privately-owned assets where the owner would welcome an approach from the community.

#### ❖ **Common Good land**

- 112 Consideration be given to a establishing a register of Common Good land to include clarity of the title and conditions of sale or transfer pertaining to Common Good assets.

❖ **Asset Transfer Scheme**

113 Establishment of an Asset Transfer Scheme, similar to that of the National Forest Land Scheme, where communities could submit an application/proposal to acquire all or part of a public asset. This could apply to assets owned by Scottish Ministers and local authorities and could include a review of the terms of the valuation to take account of their intended use.

❖ **Support for communities**

114 Consistency throughout Scotland of provision of support, including access to specialist advisers and the availability of additional capital and revenue funding to enable more communities to acquire and develop assets.

❖ **State Aid**

115 Guidance from Scottish Government to enable public funders to adopt a local market approach to state aid assessment so a 'no-aid' argument can be applied consistently across the public sector. Alternatively, the development of a State aid approved scheme to meet the needs of the enterprising community bodies, to include community asset acquisition.

### OBJECTIVE 3

**Generate, support, promote and deliver new relationships between land, people, economy and environment in Scotland.**

#### COLLABORATIVE RELATIONSHIPS

116 This objective has parallels with 'Getting the best from our land – A land use strategy for Scotland', published in March 2011. HIE submitted a detailed response during the consultation phase of this strategy which centres on partnership working to provide greater integration of our land use activities. The first annual progress statement of this strategy was published in June 2012.

117 Within the context of land reform is the desire to diversify land ownership and empower communities. HIE is of the view that these objectives can be met in part through enabling community land ownership for those communities who desire this. It is our experience that to fully empower a community through an asset-based approach to community development, the community must control the asset, being both responsible and accountable for it.

118 Other relationships and partnerships between a community and publicly or privately owned land can bring strong advantages to both communities and landowners. Any relationship which provides public and environmental benefit is welcomed. We view this as complementary to community land ownership.

119 Indeed, it is not every community that will aspire to asset ownership and certain community development aspirations can be met from working in close collaboration with an asset owner. The potential of collaborative initiatives between privately owned estates, communities and other partners in upland Scotland has been studied as part of the 'Sustainable Estates for the 21<sup>st</sup> Century' project (2007-12) at the Centre for Mountain Studies (Perth College, University of the Highlands and Islands). *Working Together for Sustainable Estate Communities* details the research findings.

120 We do not support community ownership for the sake of ownership. We are interested in the outcomes of ownership; what ownership can unlock with respect to positive social and economic development. To this end HIE will engage with public/private/community land based initiatives that have potential to deliver community benefit. Below is an example of such an initiative involving a water utility company:

#### **Scottish Water: Public/community partnership**

121 HIE is currently in dialogue with Scottish Water (SW), the nation's water utility company which owns significant water based land assets and infrastructure, to see how fresh water resources could be best managed to secure wider community benefit.

122 SW is considering how it can make better use of those assets beyond its core role of providing high quality water and safely treating our waste water. As the largest single user of electricity in Scotland, SW recognises that it could reduce that cost significantly if it took advantage of renewable electricity generation opportunities associated with its existing assets. At the same time, SW has started to explore the potential of realising those 'asset optimisation' possibilities in collaborations with the communities that live adjacent to those assets.

123 These explorations are at an early stage. A conference in 2012 brought community groups, SW and other stakeholders, including the International Resources and Recycling Institute (IRRI), academics, consultants and business together to discuss possibilities. The IRRI has now pulled together a Water Asset Renewable Energy Solutions (WARES) [a Northern Periphery Programme project] which seeks to take forward pilot projects, two to three of which will be delivered within the HIE area.

124 This approach is unlikely to see the transfer of any assets to communities, or formal leasing to communities. However, it is likely to create opportunities for communities to benefit from collaborating with SW to optimise water infrastructure assets and win benefits for their community.

#### **National Forest Land Scheme: leasing**

125 In addition to facilitating the acquisition of national forest land by communities, the National Forest Land Scheme includes provisions enabling communities to lease national forest land. The leases can be of a long duration; anything up to 99 years.

126 It was hoped that the leasing would help overcome the need for communities to raise what is often significant capital to acquire the asset. However it appears that the capitalised nature of the lease, particularly for longer-term leases, is not dissimilar to the value of the purchase price.

127 The terms used to calculate the lease payment are currently being reviewed. In time, a detailed evaluation of such lease arrangements would be useful.

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End