



## Community Right to Buy

The subject of Community Ownership has long been on the agenda of the Scottish Government, setting a target of having a million acres of land being held in community ownership across Scotland by 2020. The Land Reform (Scotland) Act 2003 introduced the first Community Right to Buy in Scotland, which over time has been developed and extended.

As a result of further legislative changes, in May of this year a community group in Edinburgh became the first organisation in an urban area to benefit from Community Right to Buy powers, with the Scottish Ministers giving consent to 'Action Party' to proceed with the purchase of the former Portobello Old Parish Church and halls by the local community.

The organisation was the first in Scotland to go through the revised Community Right to Buy legislation, which now permits applications from urban communities. We have seen the powers used extensively across rural Scotland, however this was the first time consent has been given to a community group within a city. As a result of the positive reception to the application, it is widely expected that more urban groups will follow suit and apply in the future.

### What are the application requirements?

Since the initial Community Right to Buy was introduced by the 2003 Act the law in this area has evolved. Changes contained in the Community Empowerment (Scotland) Act in 2015 and the Land Reform (Scotland) Act 2016, have however brought some confusion about the criteria which has to be met in order to exercise these rights, and which groups are able to exercise them. Therefore, it is worth reviewing the recent developments and setting out the current position in respect of the Community Right to Buy.

### Land Reform Scotland Act 2003

Part 2 of the 2003 Act introduced the first Community Right to Buy in Scotland. This allowed Community Bodies to apply to Scottish Ministers to register an interest over 'registrable land', being predominantly rural land, and excluded settlements with a population in excess of 10,000 people.

Registering an interest over land ensured that in the event that the landowner put the desired land on the market, the Community Body had a pre-emptive right to buy it. However, the landowner was under no obligation to put his land up for sale, and crucially the Community Body had no powers under the 2003 Act to force a sale.

This differs from the Crofting Community Right to Buy, which was established under Part 3 of the 2003 Act and granted crofting communities the right to purchase the croft land where they live and work. Under this right, the

prospective buyer does not need a willing seller so the Crofting Community Right to Buy is an absolute right, not a pre-emptive one.

Since its introduction, many communities have used the powers under the 2003 Act to great effect. Nevertheless, an independent review recognised that the application procedure and overall process could be improved for the benefit of communities looking to exercise a Community Right to Buy.

Consequently, the 2003 Act was amended following the introduction of the Community Empowerment (Scotland) Act 2015.

### The Community Empowerment (Scotland) Act 2015

The 2015 Act substantially amended the Community Right to Buy, with some of the key amendments as follows:

- The definition of 'registrable land' was extended to include any land (for example, churches, pubs, estates, fields and woodlands) other than 'excluded land';
- Previously, Community Bodies looking to exercise their rights under the 2003 Act had to be operating as a company limited by guarantee. However, the 2015 Act extended the definition of prospective Community Body to include other entities such as:
  - Scottish Charitable Incorporated Organisations (SCIOs); and
  - Community Benefit Societies;

However, there are other conditions which must be fulfilled before an entity can be deemed a Community Body. For example, in respect of a SCIO, the body must have not fewer than 10 members with at least three quarters of the members of the SCIO being members of the community, and the SCIO must be 'controlled' by members coming from the community; and

- Community Bodies, if the right to buy is triggered, now have more time to complete the purchase of the land with the period being extended from six months to eight months.



### Abandoned, Neglected or Detrimental Land

As well as amending various provisions of the 2003 Act, the 2015 Act also introduced a new Community Right to Buy land that is abandoned or neglected, or is being used or managed in such a way that harm is being caused to the environmental wellbeing of the local community.

These provisions are not yet in force, but are expected to come into effect later this year. This right to buy will differ from the current Community Right to Buy in that there is no requirement for the owner of the land to be willing to sell. The owner can be compelled to sell the land but the Community Body must be able to demonstrate that they have already tried and failed to purchase the land.

- Land is eligible for the purposes of this right to buy if in the opinion of the Scottish Ministers -
  - It is wholly or mainly abandoned or neglected; or
  - The use or management of the land is such that it results in or causes harm, directly or indirectly to the environmental wellbeing of a relevant community.

Not all land is included. There are some exceptions such as an individual's home, certain croft land as well as certain land which is owned or occupied by the Crown.

Scottish Ministers will determine whether land is abandoned or neglected. In addition, the application to the Scottish Ministers has to demonstrate sufficient community support and that the purchase of the land is in the public interest and will further the aims of sustainable development.

### The Land Reform (Scotland) Act 2016

The Land Reform (Scotland) Act 2016 provides for another right to buy for communities. The provisions are not yet in force but when they come into effect, they will apply to all land subject to some exceptions, for example land on which there is a building or other structure which is an individual's home.

As with the Community Right to Buy abandoned or neglected land, there does not need to be a willing seller in order to secure the land. However, the community must have attempted (and failed) to secure agreement with the landowner.

And again in order for the Scottish Ministers to approve any prospective transaction it must be demonstrated that the purchase of the land is in the public interest and will further the achievement of sustainable development.

It is beyond doubt that recent legislative developments have empowered communities significantly; granting them new rights to buy land for the benefit of their communities as a whole. And while the 'original' Community Right to Buy has been substantially extended, Community Bodies can also expect further rights with the 2015 Act and the 2016 Act, to come into effect in the near future.

Nevertheless, while there have clearly been some 'success stories' like that of 'Action Porty', Community Bodies are still required to follow rigorous procedural steps, in order to gain approval of the Scottish Ministers. Community Bodies seeking to make use of the new provisions and landowners who are concerned about the exercise of these rights should seek expert legal advice on this complex area of law.

Should you have any concerns or queries please contact Hamish Lean or Kevin Timlin in our Rural team.



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