

The Rights of a Community to Buy Land



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From 15 April 2016 communities will have the right to apply to register a notice to buy any land connected to their community in Scotland. Prior to that date, the right applied only to predominantly rural land and many rural communities have successfully registered an interest in a variety of types of property including fields, forests, reservoirs, public houses, churches, woodlands, community centres and schools.

The right to buy is a pre-emptive right. In other words it can only be exercised if the landowner takes steps to sell the property. Eligibility to register, and the procedural steps to be followed, including valuation of the land in question are similar to the existing arrangements that have been available for rural land since 2004 under the Land Reform (Scotland) Act 2003. The proposed acquisition must be for furthering the achievement of sustainable development, and in the public interest, and Scottish Ministers' consent to the application to register an interest is necessary.

The Community Right to Buy

From 15 April, a community body may register an interest in acquiring any land in Scotland. The Right to Buy procedure to be followed is broadly the same as the original arrangements for rural land under the 2003 Act and consists of two stages:

1. Registration of a community interest in land.
2. Having an opportunity to purchase the land when it is put on the market.

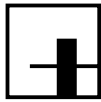
Community Body

Before a community can register its interest in the land, it has to form a community body. The community body can either be a company limited by guarantee, a Scottish charitable incorporated organisation, or a community benefit society.

The community has to identify land or a building which, if the community was to buy it, would benefit the

community. In practice, identification of a suitable area of land or property will usually be the trigger for members of a community to start thinking about the process. There is of course no reason why they may not approach the landowner to negotiate a purchase of the property in question. However an owner is not under any obligation to agree to such an approach, whereas, if the land is put up for sale when a community interest has been registered, then the community will have a pre-emptive right to purchase the land at the time of it going on the market.

A community body must have a minimum of 10 members, of which at least three-quarters must be from the defined community body's community. A community body must demonstrate that its main purpose, within its articles of association, constitution, or registered rules as appropriate, is consistent with furthering the achievement of sustainable development.



The community body must also provide evidence of community support for registering an interest in land. Scottish Ministers will consider 10% community support for the proposal as being sufficient evidence, although they may consider a smaller percentage as sufficient in some circumstances.

Registering an interest

A lot of paperwork is involved in registering an interest in land. It is recommended that the community body submits their articles of association, constitution, or registered rules to Scottish Ministers (the Community Land Team at Scottish Government deal with applications) so that compliance with the legislative requirements can be confirmed before the application to register an interest is made. Scottish Ministers have to be satisfied that the main purpose of the community body, as evidenced by its constitution, is consistent with furthering the achievement of sustainable development.

An application to register an interest must be made to Scottish Ministers who, in deciding whether to register the interest, and whether it would be in the public interest, will take into account any environmental, economic and social benefits.

Applications to register a community interest should be made before the land is put on the market, although it is possible for a community body to make a late application, after the land has been put on the market, but before missives have been concluded. In those cases however, the community body will need to meet additional criteria, and demonstrate a significantly greater level of community support.

The application is sent by Scottish Ministers to the landowner (which includes a heritable creditor in possession) who is invited to express views on the proposed application. At the same time, a notice of prohibition is sent to the landowner, at which point they must not take steps to transfer the land or take any action with a view to transfer of the land (or any land of which it forms part).

If a community body submits an application to register an interest in land, but missives have already been concluded for the sale of that land, or an option to acquire the land has been entered into, then Scottish Ministers must decline to consider the application.

Exercising the Right to Buy

Once an interest has been registered – in the Register of Community Interests in Land (RCIL), registration lasts for five years. The community body can make an application to re-register the interest in land, in the 6-month period before a registered interest is due to expire, and if successful, the interest will be re-registered for another five years.

When the owner of the land affected by the registered interest decides to sell it, they must let both the community body and Scottish Ministers know. The steps that follow, which must be completed within a period of eight months are:

- A valuation of the registered land (arranged by Scottish Ministers).
- A ballot taken of the local community (arranged by Scottish Ministers and conducted by a balloter).
- Funds must be secured by the community body for the purchase of the land or property.
- The landowner must convey the land to the community body in exchange for payment.

Scottish Government has published comprehensive [Guidance for Community Bodies, Landowners, Heritable Creditors in possession, and Third Parties](#), which is essential reading for communities considering registering an interest, and for landowners who might be affected.

Abandoned, neglected or detrimental land

Further community rights to buy are in the pipeline. The Community Empowerment (Scotland) Act 2015 introduces a new 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. This right, when it comes into force, will not have to rely on the landowner wishing to sell the land – it can be exercised even when the seller is unwilling. Homes, and land within the curtilage of a home, will be excluded from the right.

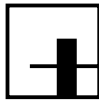
A [consultation on the detail](#) of this is running until 20 June 2016. In particular, it looks at the criteria that should be considered by Scottish Ministers, when determining whether land is to be regarded as abandoned or neglected, or detrimental to the community. This will include:

- The physical condition of the land or any building or other structure on it.
- The length of time it has been in such a condition.
- Whether that condition is detrimental to the amenity of adjacent land, or a risk to public safety, or causing or likely to cause environmental harm.

It is proposed that certain rights which might otherwise preclude a community right to buy should be suspended while an application for such a right to buy is being considered by Scottish Ministers. These include:

- Pre-emption rights (other than those under an option agreement).
- Redemption rights.
- Reversion rights.
- Rights arising from any option to purchase.

Before making any application, the community must



have tried, and failed to reach agreement with the owner to buy the land. Owners of such land will be given an opportunity to make representations in relation to an application to buy, but Scottish Ministers should not approve a community's application to buy, unless it is in the public interest, and compatible with furthering the achievement of sustainable development in relation to the land, which would be unlikely to be furthered if the owner of the land continued to own it.

Where the application is to acquire land that is causing environmental harm, the community must first approach appropriate regulators, such as the local or Parks authority, SEPA, the Health and Safety Executive, the Police, and Scottish Natural Heritage to request them to invoke legislation or regulations or take action that could resolve or alleviate the harm that the current use or management of the land is causing. The application should demonstrate that even if such regulators do take action it appears that the harm is unlikely to be removed, or substantially removed, if the owner of the land continues to own it.

The owner is entitled to payment for the land based on market value, and may also be entitled to be compensated for other losses incurred.

Right to buy land to further sustainable development

The Land Reform (Scotland) Act 2016 provides for another non-pre-emptive right to buy for communities. This right, when it comes into force (on a date yet to be determined) will also apply to all of Scotland, but excludes homes and land pertaining to the home, although not homes occupied under a tenancy. Land that has fallen to the Crown is also excluded, and other types of land may be excluded by regulations.

As with the right to buy abandoned, neglected or detrimental land, there does not need to be a willing seller, but the community must have tried and failed to reach agreement with the owner to buy the land.

For the right to be approved, it must be shown that the transfer of land is likely to further the achievement of sustainable development, that it is in the public interest, likely to result in significant benefit to the community and is the only, or most practicable, way of achieving that benefit. It must also be shown that not consenting to the transfer is likely to result in significant harm to the community.

As with the other rights to buy, it is anticipated that there will be consultation in advance of regulations being made, when more detail will be known. Guidance from Scottish Government is also likely to be made available.

A trio of rights

Once fully enacted, these rights will give communities significant power to acquire lands for that community's benefit. Acquiring land in any one of these ways, however, will not be an easy task for a community, and rigorous procedural steps must be followed, with Scottish Ministers having the final say. Land must be acquired for value, and so the community must be in a position to raise sufficient funds to pay a proper price.

That said, owners of land that is in a neglected or environmentally dangerous state, should be live to the possibility that communities will have rights to take matters into their own hands, and that improving the amenity of land within communities can be a powerful incentive.

This Briefing Note is intended only as a general guide to the Community Right to Buy as it applies in Scotland. The information and expressions of opinions in this Note are not intended to be a comprehensive study, nor to provide legal advice and should not be treated as a substitute for specific advice concerning individual situations.