

Part 3A of the Land Reform (Scotland) Act 2003

COMMUNITY RIGHT TO BUY ABANDONED, NEGLECTED OR DETRIMENTAL LAND



GUIDANCE FOR APPLICATIONS

OCTOBER 2018



Scottish Government
Riaghaltas na h-Alba
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CONTENTS

INTRODUCTION

Use of this guidance	1
Community right to buy abandoned, neglected or detrimental land	1
Purpose of this guidance	3

RO-RADH

Mar a chleachdar an stiùireadh seo	7
Còir-cheannaich coimhearsnachd airson fearann a tha tràighe, air dhearmad neo millteach	7
Adhbhar an stiùiridh seo	9

1: GUIDANCE

1.1. Initial steps	13
Starting out	13
Identifying the financial resources needed	14
1.2. Definitions of eligible and ineligible land	15
Overview	15
Land which is wholly or mainly abandoned or neglected	16
Land where the use or management is such that it results in or causes harm, directly or indirectly, to the environmental wellbeing of a relevant community	18
Land on which there is a building or other structure which is an individual's home other than a building or other structure which is occupied by an individual under a tenancy	20
Other ineligible land	21
Tenancies	21
Identifying interests	22
Eligible Land: What does each option under Part 3A require?	22
Relevant regulators	22
1.3. Defining the Community	23
How should the Part 3A CB define the “community”?	23
The Communities Mapping Tool	25
1.4. Forming and Registering a Part 3A Community Body	26
Seeking charitable status	28
Seeking approval of governing documents	28



1.5.	Demonstrating community support – the ballot	29
	Eligibility to vote	29
	Identifying the members of the defined community	29
	The Electoral Register (voters roll)	30
	The ballot process	31
	Notification of ballot results	32
	Cost of running the ballot	33
	Procedure for applying for the reimbursement of the expense of the ballot	33
	Appealing against a decision by Ministers for the reimbursement of ballot expenses	35
1.6.	Multiple owners	35
1.7.	Multiple applications on the same or similar land, by different community bodies	35
1.8.	The Register of Applications by Community Bodies to Buy Land	36
1.9.	Applying for consent to buy land	37
	Preliminaries	37
	Completing the application form	38
	Maps, plans or other drawings	39
1.10.	Application process	39
	First steps	39
	Initial checks	40
	Seeking views on your application	40
	Criteria for consent by Ministers	41
	Action on a flawed application	43
	Notifying the Ministers decision	43
	Appeals against the Ministers’ decision	44
1.11.	Mediation	44
	What happens after Ministerial consent is given?	45
	Valuation	45
	Appeals against the valuation	46
1.12.	Transfer of the land to the community body	47
	Confirmation by the Part 3A CB	47
	Withdrawal	47
	Completion of the purchase	47
	Completion of the transfer	48
1.13.	Compensation/grants	49
	Rights to compensation	49
	Grants for Part 3A CB’s towards the payment of compensation	50

1.14. Funding	50
1.15. After Purchase	51
General	51
The Part 3A Community Body – Future Actions?	51
Changes to a Part 3A CB’s governing documents	51
If winding-up becomes necessary	51
1.16. If you need any further help	52
Annex A	55
Annex B	59

COMMUNITY RIGHT TO BUY ABANDONED,
NEGLECTED OR DETRIMENTAL LAND

INTRODUCTION



Use of this guidance

- 1.** This guidance is intended to support communities through the right to buy abandoned, neglected or detrimental land process. The guidance covers most aspects from the initial identification of land to the completion of a purchase. It provides a step-by-step guide, setting out the considerations that need to be taken into account, the legal requirements that must be met and the various decision-making stages. Although the majority of the information is relevant to community groups, there is also useful information for landowners and other parties who may have a reason to be involved in the process.
- 2.** This guidance applies to all applications for consent received by Ministers on or after **27 June 2018**.

Community right to buy abandoned, neglected or detrimental land

- 3.** The community right to buy abandoned, neglected or detrimental land (the “Part 3A right to buy”) is created by Part 3A of the Land Reform (Scotland) Act 2003 (“the Act”). The Part 3A right to buy allows community bodies to apply to Ministers (“Ministers”) for consent to exercise a right to buy land. Where Ministers grant consent, the community body has the right to buy the land, even if the owner is not seeking to sell it. That is, the community body can acquire the land compulsorily.
- 4.** This right can be only exercised by a properly constituted Part 3A community body (a “Part 3A CB”) when consent to do so is granted by Ministers. There are a number of requirements that must be fulfilled before an application can be considered.
- 5.** If a Part 3A CB identifies an area of land which they believe is abandoned or neglected, or where the use or management of the land results in or is causing harm to their environmental wellbeing, the Part 3A CB can apply to Ministers for consent to exercise a right to buy the land under the Part 3A right to buy. However, before they are able to submit an application they must first try to address the situation by trying to buy the land from its current owner. Acquisition by way of an agreement is likely to result in a deal which better suits the needs of both the community and landowner. The process of making an offer, even where it is rejected, can help a Part 3A CB to gather information which will subsequently prove useful in preparing an application under the Part 3A right to buy. It can also help to avoid misunderstandings by, for example, confirming who owns the land, which could otherwise result in a flawed application.



- 6.** If a Part 3A CB is of the view that the use or management of the land is such that it is resulting in or is causing harm to the environmental wellbeing of the community, they must also try to remedy that harm by contacting any relevant regulator(s) and requesting that the regulator(s) take action in relation to the land before they are able to submit an application under the Part 3A right to buy.
- 7.** If the Part 3A CB is unsuccessful in trying to purchase the land from the owner and, if relevant, the result of the request to any regulator(s) does not remedy the matter, the Part 3A CB may apply for consent to exercise a right to buy the land under the Part 3A right to buy. If an application for consent to exercise a right to buy is granted by Ministers, the owner must sell that land to the Part 3A CB.
- 8.** The Part 3A right to buy does not prevent the owner from developing the land, subject to any necessary planning approval. Part 3A CB's should not use the Part 3A right to buy as a way to stop an owner from developing the land in any way. For example, if an owner wishes to develop the land for housing or for other purposes that come under the planning process, this is for the planning authority to determine and not for the Part 3A right to buy process. These two processes are entirely separate matters and are in no way related. The existence of an application for consent under Part 3A of the Act will not affect Ministers consideration of any planning matter which may subsequently come before them for determination in terms of the relevant planning legislation.
- 9.** If an owner has entered into an enforceable personal obligation to sell the land, for example, an option agreement, before a Part 3A CB's application for consent to acquire land has been submitted to Ministers, the application from the Part 3A CB will not be considered. If, however, Ministers find that an option agreement put in place after a valid application has been submitted to them, that option agreement will be deemed to have no effect.

10. The Part 3A right to buy requires to be exercised in accordance with Part 3A of the Act. The relevant legislation can be accessed via the following electronic links:

Land Reform Act (Scotland) 2003

<http://www.legislation.gov.uk/asp/2003/2/contents>

The Community Right to Buy (Abandoned, Neglected or Detrimental Land) (Eligible Land, Regulators and Restrictions on Transfers and Dealing) (Scotland) Regulations

<http://www.legislation.gov.uk/ssi/2018/201/contents/made>

The Community Right to Buy (Abandoned, Neglected or Detrimental Land) (Applications, Ballots and Miscellaneous Provisions) (Scotland) Regulations 2018

<http://www.legislation.gov.uk/ssi/2018/140/contents/made>

The Community Right to Buy (Abandoned, Neglected or Detrimental Land) (Compensation) (Scotland) Order 2018

<http://www.legislation.gov.uk/ssi/2018/137/contents/made>

Purpose of this guidance

11. The requirements of the Part 3A right to buy can be both complex and demanding. This guidance will provide valuable assistance in understanding the process and what is required at each stage. It covers the entire process for applying under the Part 3A right to buy, including most of the statutory requirements under Part 3A of the Act and the associated subordinate legislation.

12. The guidance is intended primarily to assist communities interested in seeking to acquire land under the Part 3A right to buy, but it will also be useful to landowners and creditors in a standard security with the right to sell the land who have an interest in an application made under Part 3A of the Act, as well as to third parties who might be affected by a Part 3A right to buy application for consent.

13. References to the Act and subordinate legislation are included to direct the reader to the relevant provisions should they wish to read it alongside this guidance. However, it should be possible to understand what is required by reading only the guidance.

14. There are also additional annexes which provide further information and useful tools.



15. This guidance cannot take the place of independent professional advice on individual applications. Any group wishing to create a Part 3A CB for the purpose of applying to exercise a Part 3A right to buy should obtain appropriate advice. Any landowner or other person with an interest in land who considers that an application made under the Part 3A right to buy may affect their land or interest is also recommended to seek advice. This may include legal advice, as well as advice on valuation, environmental and land management issues.

16. The guidance has been produced by the Scottish Government's Community Land Team. The team is happy to assist with any questions you may have about the Part 3A right to buy process. In particular, you may wish to speak to them before beginning the Part 3A right to buy process.

17. The Community Land Team cannot provide legal advice nor, due to the impartiality required in advising Ministers on a case-by-case basis, advice which would be seen as supporting a particular group (e.g. a Part 3A CB, a landowner or any third party) involved in a specific case.

18. This guidance is subject to review from time to time. If you are unsure whether you have the latest version available, or if you have any comments on the guidance itself, please contact the Community Land Team. Contact details are noted in **Annex B**.



COMMUNITY RIGHT TO BUY ABANDONED,
NEGLECTED OR DETRIMENTAL LAND

RO-RÀDH



Mar a chleachdar an stiùireadh seo

1. Thathar an dùil gun cuir an stiùireadh seo taic ri coimhearsnachdan tron phròiseas còir-cheannaich airson fearann a tha tràigete, air dhearmad neo millteach. Tha an stiùireadh a' toirt a-steach a' chuid as motha den phròiseas, bhon chiad dearbh-aithneachadh den fhearann gu ceannachadh a chrìochnachadh. Tha iùl ceum-air-cheum na chois, ag innse na cùisean air am bu chòir beachdachadh, na riatanasan laghail a dh'fheumas a leantail, agus na h-ìrean far am feum dearbhaidhean a dhèanamh. Ged a tha a' chuid as motha den fhiosrachadh buntainneach do bhuidhnean coimhearsnachd, tha cuideachd fiosrachadh feumail ann do luchd-seilbh fearainn agus do dhaoine agus buidhnean eile aig a bheil adhbhar a bhith an-sàs sa phròiseas.
2. Tha an stiùireadh seo a' buineadh don h-uile tagradh airson aonta a ruigeas Ministearan na h-Alba air neo às dèidh **27 Ògmhios 2018**.

Còir-cheannaich coimhearsnachd airson fearann a tha tràigete, air dhearmad neo millteach

3. Chaidh còir-cheannaich coimhearsnachd airson fearann a tha tràigete, air dhearmad neo millteach (“còir-cheannaich Pàirt 3A”) a chruthachadh le Pàirt 3A de dh'Achd Ath-leasachaidh an Fhearainn (Alba) 2003 (“an Achd”). Tha còir-cheannaich Pàirt 3A a' leigeil le buidhnean coimhearsnachd tagradh a chuir do Mhinistearan na h-Alba (“Ministearan”) airson aonta an còir-cheannaich fearainn a chleachdadh. Nuair a tha Ministearan ag aontachadh, tha còir-cheannaich aig a' bhuidheann coimhearsnachd, fiù 's ged nach eil an uachdaran ag iarraidh a reic. 'S e sin a ràdh, faodaidh am buidheann coimhearsnachd am fearann a cheannach gu h-èigneachail.
4. Chan fhaodar an còir seo a chleachdadh ach le buidheann coimhearsnachd a tha air a stèidheachadh san dòigh cheart fo Phàirt 3A (“BC Pàirt 3A”), nuair a tha Ministearan air aontachadh. Tha corra riatanas a dh'fheumar a choileanadh mus tèid beachdachadh air tagradh.



5. Ma tha BC Pàirt 3A air pìos fearainn dearbh-aithneachadh leis a' bheachd gu bheil e trèigte neo air dhearmad, neo ma tha milleadh air tighinn air an soirbheas àrainneachdail na coimhearsnachd mar thoradh air cleachdadh neo rianachd an fhearainn, faodaidh am BC Pàirt 3A tagradh a chuir gu Ministearan an còir-cheannaich a chleachdadh air an fhearainn fon chòir-cheannaich Pàirt 3A. Ach, mus cuir iad tagradh a-steach feumaidh iad an toiseach feuchainn fuasgladh fhaighinn le bhith feuchainn ris a' phìos fearainn a cheannach bhon t-uachdaran aig a bheil e an-dràsta. Ma gheibh iad seilbheachd mar thoradh air còrdadh, tha e nas coltaiche gun tig cùmhnant a bhuineas nas fheàrr do dh'fheumalachdan na coimhearsnachd agus an uachdaran. Cuidichidh am pròiseas tairgsinn, fiù 's ma thèid a dhiùltadh, buidheann coimhearsnachd fiosrachadh fhaighinn a bhios feumail às dèidh làimh nuair a tha iad a' cur tagradh a-steach fon chòir-cheannaich Pàirt 3A. Dh'fhaodadh e cuideachd cuideachadh le bhith a' seachnadh mi-thuigse mu chùisean mar seilbheachd an fhearainn, mi-thuigse a dh'fhaodadh easbhaidh a chuir ann an tagradh.

6. Ma tha BC Pàirt 3A den bheachd gu bheil milleadh air tighinn air an soirbheas àrainneachdail na coimhearsnachd mar thoradh air cleachdadh neo rianachd an fhearainn, feumaidh iad feuchainn ri fuasgladh fhaighinn le fios a chuir dha riaghladair(ean) buntainneach sam bith agus iarraidh orra ceumannan a ghabhail a thaobh an fhearainn mus cuir iad tagradh a-steach fon chòir-cheannaich Pàirt 3A.

7. Mura bheil am BC Pàirt 3A soirbheachail am pìos fearainn a cheannach bhon t-uachdaran agus, ma tha e buntainneach, nach tàinig fuasgladh bhon iartras do riaghladair(ean), faodaidh am BC Pàirt 3A tagradh a chuir a-steach airson aonta an còir-cheannaich fo Phàirt 3A a chleachdadh. Ma dh'aontaicheas Ministearan leis an tagradh an còir-cheannaich a chleachdadh, feumaidh an t-uachdaran am pìos fearainn sin a reic don BhC Pàirt 3A.

8. Chan eil còir-cheannaich Pàirt 3A a' cur casg air an t-uachdaran leasachadh a dhèanamh air an fhearann, a-rèir cead planaidh riatanach sam bith. Cha bu chòir BC Pàirt 3A an còir-cheannaich Pàirt 3A a chleachdadh mar dhòigh airson stad a chuir air uachdaran leasachadh a dhèanamh air pìos fearainn ann an dòigh sam bith. Mar eisimpleir, ma tha uachdaran airson leasachadh a dhèanamh air an fhearann airson taigheadas neo airson adhbharan sam bith eile a tha a' tighinn fon phròiseas planaidh, tha seo airson an t-ùghdarras dealbhaidh a dhearbhadh agus chan ann airson pròiseas còir-cheannaich Pàirt 3A. 'S e dà phròiseas eadar-dhealaichte a th' anna seo agus chan eil ceangal sam bith eatarra. Cha dèan tagrach airson aonta fo Phàirt 3A den Achd díofar air beachdan Mhinistearan air cùis planaidh sam bith a dh'fhaodadh tighinn romhpa airson dearbhadh a thaobh reachdas planaidh buntainneach sam bith.

9. Ma tha uachdaran air dleastanas pearsanta a stèidheachadh airson pìos fearainn a reic, mar eisimpleir, còrdadh le roghainn fearann a cheannach, mus tèid tagradh airson aonta fearann a cheannach a chuir do Mhinistearan na h-Alba, cha tèid beachdachadh air an tagradh bhon BhC Pàirt 3A. Ach, ge-tà, ma dhearbhas Ministearan gun deach an còrdadh a stèidhachadh às dèidh dha tagradh dligheach a chuir thuca, thèid dearbhadh nach bi an còrdadh èifeachdach.

10. Feumaidh còir-cheannaich Pàirt 3A a bhith air a chuir an gnìomh a-rèir Pàirt 3A den Achd. Faodar an reachdas buntainneach fhaotainn tro na ceanglaichean a leanas:

Achd Ath-leasachadh an Fhearainn (Alba) 2003

<http://www.legislation.gov.uk/asp/2003/2/contents>

Riaghailtean Còir-cheannaich Coimhearsnachd (Fearann Trèigte, air Dhearmad neo Millteach) (Fearann Roghnach, Rìghladairean agus Cuibhreachadhean air Tar-aiseagan agus Dèiligeadh) (Alba) 2018

<http://www.legislation.gov.uk/ssi/2018/201/contents/made>

Riaghailtean Còir-cheannaich Coimhearsnachd (Fearann Trèigte, air Dhearmad neo Millteach) (Tagraidhean, Dòighean-bhòtaidh agus Solaran Measgaichte) (Alba) 2018

<http://www.legislation.gov.uk/ssi/2018/140/contents/made>

Òrdugh Còir-cheannaich Coimhearsnachd (Fearann Trèigte, air Dhearmad neo Millteach) (Ath-dhioladh) (Alba) 2018

<http://www.legislation.gov.uk/ssi/2018/137/contents/made>

Adhbhar an stiùiridh seo

11. Tha riathanasan fon chòir-cheannaich Pàirt 3A a dh'fhaodadh a bhith toinnte agus ùine mhòr a thoirt. Bheir an stiùireadh taic feumail ann a bhith a' tuigsinn a' phròiseas agus na dh'fheumar dèanamh aig gach ìre. Tha e a' toirt iomradh air a' phròiseas air fad airson tagradh a dhèanamh fo chòir-cheannaich Pàirt 3A, a' gabhail a-steach a' chuid as motha de na riathanasan reachdail fo Phàirt 3A den Achd agus am fo-reachdas a tha na chois.

12. Thathar an dùil gun cuidich an stiùireadh seo sa chiad dol-a-mach coimhearsnachdan a tha an dùil fearann a cheannach fo chòir-cheannaich Pàirt 3A, ach bidh e feumail cuideachd do dh'uachdarain agus luchd-creideis le tèarainteachd àbhaisteach aig a bheil ùidh ann an tagradh fo Phàirt 3A den Achd, a bharrachd air pàrtaidhean a dh'fhaodadh a bhith fo bhuidh tagradh airson aonta fo chòir-cheannaich Pàirt 3A.



- 13.** Tha iomraidhean san stiùireadh air an Achd agus bun-reachdas airson an neach-leughaidh a stiùireadh dha na solaran buntainneach ma tha iad airson an leughadh còmhla ris an stiùireadh seo. Ach, bu chòir gum bi tuigse ann air na dh'fheumar dèanamh le bhith a' leughadh an stiùireadh leis fhèin.
- 14.** Gheibhear cuideachd leas-phàipearan le barrachd fiosrachaidh agus innealan a bhios feumail.
- 15.** Cha bu chòir an stiùireadh seo a chleachdadh an àite comhairle proifeiseanta neo-eisimileach air tagraidhean fa-leth. Bu chòir buidheann sam bith a tha airson BC Pàirt 3A a stèidheachadh airson tagradh a chuir a-steach airson còir-cheannaich Pàirt 3A a chleachdadh comhairle freagarrach fhaotainn. Thathar a' moladh gum bu chòir uachdaran neo neach sam bith eile le ùidh ann am fearann a tha den bheachd gum bi buaidh aig tagradh fo chòir-cheannaich Pàirt 3A air am fearann neo ùidh aca comhairle freagarrach fhaotainn cuideachd. Dh'fhaodadh seo toirt a-steach comhairle laghail, a bharrachd air comhairle a thaobh luach, cùisean àrainneachdail agus stiùireadh fearainn.
- 16.** Chaidh an stiùireadh seo a dheasachadh le Sgioba Fearann Coimhearsnachd aig Riaghaltas na h-Alba. Tha an sgioba toilichte cuideachadh le ceistean sam bith a dh'fhaodadh a bhith agaibh mun phròiseas còir-cheannaich Pàirt 3A. Gu sònraichte, dh'fhaodadh gum biodh sibh airson bruidhinn riutha mus tòisich sibh air a' phròiseas còir-cheannaich Pàirt 3A.
- 17.** Chan urrainn dhan Sgioba Fearann Coimhearsnachd comhairle laghail a thoirt seachad neo, air sàilleibh gu bheil aca ri bhith neo-phàirteach ann a bhith a' toirt comhairle do Mhinistearan cùis às dèidh cùis, comhairle sam bith a tha a' cur taic ri buidheann air leth sam bith (m.e. BC Pàirt 3A, uachdaran neo pàrtaidh sam bith) a tha an-sàs ann an cùis sònraichte.
- 18.** Thèid an stiùireadh seo ath-sgrùdadh bho àm gu àm. Mura bheil sibh cinnteach a bheil an tionndadh as ùire agaibh, neo ma tha beachdan sam bith agaibh mun stiùireadh fhèin, cuiribh fios don Sgioba Fearann Coimhearsnachd. Gheibhear fiosrachadh conaltraidh ann an **Leas-phàipear B.**

COMMUNITY RIGHT TO BUY ABANDONED,
NEGLECTED OR DETRIMENTAL LAND

SECTION 1: GUIDANCE



1.1. Initial steps

Starting out

1.1.1. Should a community decide that a Part 3A right to buy is the best way to resolve their concerns about the relevant land, they will need to undertake considerable preparation prior to making an application. There are several tasks that a community will need to undertake before they can submit an application under the Part 3A right to buy, some of which are compulsory and are required by the Act, and others which, from a practical perspective, must be completed before they can prepare a compliant application. The Act requires that before an application is submitted, the community:

- forms a compliant Part 3A community body;
- if the Part 3A CB is of the view that the use or management of the land is such that it is resulting in or causing harm to the environmental wellbeing of the community then they **must** contact any relevant regulator(s) and request that they take action in relation to the land that might remedy or mitigate the harm before they are able to submit an application;
- **the Part 3A CB must have tried to buy the land from the current landowner before submitting an application; and**
- the Part 3A CB must establish community support in relation to the Part 3A application which is then demonstrated by way of a ballot of the defined community (further information below).

In order to prepare and submit an application, the Part 3A CB will also need to:

- identify the land and interests in land that it is seeking to acquire;
- identify the purposes for which they propose to use the land; and
- identify the resources needed to acquire that land and interests.

1.1.2. Communities are strongly advised to discuss their plans for forming a Part 3A CB with the Scottish Government's Community Land Team before they formally constitute the community body (contact details at **Annex B**). The team can provide information on what is required in order to make a Part 3A CB's governing documents compliant with the Act, and discuss the right to buy process before completing the application form. Further sources of help are also available from the main contacts detailed in this guidance (**Annex B**).



Identifying the financial resources needed

1.1.3. The Part 3A CB will not need to pay for the land they acquire until the land is transferred but **it is important that they seek an early assessment of the likely cost of its acquisition. This is particularly important since they must have already tried to buy the land before submitting an application. They may be required to pay compensation to the landowner for loss and expenses of the land that they are seeking to acquire.** They should also consider the potential development costs, as well as those costs associated with the application process itself, such as ownership searches, postage etc.

1.1.4. Such an assessment will:

- provide information that can be disseminated to the community when they are balloted on whether to proceed with the application;
- provide information which can be presented to prospective funding sources in order to assess funding and financial support requirements; and
- provide supporting information about the proposed use, development and management for use in the application.

1.1.5. It is highly recommended that professional advice is obtained to assess likely costs.

Instructing a chartered valuation surveyor who is suitably experienced in the type of property to be acquired will enable an assessment of the value of the land. A chartered valuation surveyor will also be able to give a clear indication of the potential cost in advance of making an application to Ministers. It should be noted that, in order to provide an accurate assessment of the value of the land, a valuer who is employed by the Part 3A CB will need to have the co-operation of the owner of the land they are seeking to acquire. If this is not possible, they may still be able to provide an indicative value.

1.1.6. In addition, the Part 3A CB will have to pay for the cost of running a ballot, although they may be entitled to claim for reimbursement of at least some of these costs (see Section 1.5.23).

1.1.7. The Scottish Government provides financial support to community groups seeking to acquire land and land assets, through the Scottish Land Fund (“SLF”). The SLF can provide assistance to groups for carrying out feasibility studies and site investigations prior to making a decision to purchase. For further information see <https://www.biglotteryfund.org.uk/funding/programmes/scottish-land-fund>

1.2. Definitions of eligible and ineligible land

Overview

1.2.1. The Act defines what “land” and “eligible land” mean for the purposes of the Part 3A right to buy (section 97B and 97C of the Act). Eligible land is land that a Part 3A CB can apply to Ministers for consent to exercise a right to buy. The Community Right to Buy Regulations 2018 (no. 201) set out matters that Ministers must have regard to when considering whether the land that is the subject of an application is abandoned or neglected, or that the use or management is such that it is resulting in or causing harm to the environmental wellbeing of the community.

1.2.2. “Land” includes bridges and other structures built on or over land, inland waters, canals and the foreshore (section 97B of the Act).

1.2.3. Eligible land can either be land that is wholly or mainly abandoned or neglected (section 97C(2)(a) of the Act) or land where the use or management of that land is such that it results in or causes harm, directly or indirectly, to the environmental wellbeing of a relevant community (section 97C(2)(b) of the Act) (details below).

1.2.4. Eligible land does not include certain land specified in section 97C(5) of the Act and regulations 8 and 9 of the Community Right to Buy Regulations 2018 (no. 201). This includes:

- land held or used by a Minister of the Crown or a UK government department;
- land consisting of a right to petroleum, coal, gold or silver;
- land on which there is a building or other structure which is an individual’s home other than a building or other structure which is occupied by an individual under a tenancy;
- land pertaining to an individual’s home (as defined below);
- eligible croft land;
- any croft occupied or worked by its owner or a member of its owner’s family; and
- land owned or occupied by the Crown that is designated as *bona vacantia* in the Crown, or its having fallen to the Crown as *ultimus haeres*.

Any land which falls within the types of land mentioned above must not be included in an application.



1.2.5. Part 3A CB's should consider the requirements for eligibility including the factors that Ministers will have regard to in determining whether they are satisfied that the land is either abandoned or neglected, or that the use or management is such that it results in or causes harm to the environmental wellbeing of the community. It is for the Part 3A CB to make a case in its application that the land is abandoned or neglected, or that the use or management results in or is causing harm to the environmental wellbeing of the community.

Land which is wholly or mainly abandoned or neglected

1.2.6. The Part 3A CB's application must include why they consider that the land subject to the application is wholly or mainly abandoned or neglected (section 97G(6)(b)(i) of the Act).

1.2.7. The Part 3A CB should give details as to why they are of the view that the land is abandoned or neglected. The Act does not require that the land is both abandoned and neglected (section 97C(2)(b)).

1.2.8. The Part 3A CB should be satisfied that, and include reasons why, the land is thought to be *wholly or mainly* abandoned or neglected. That is, they should consider the extent to which the land is abandoned or neglected. It is for the Part 3A CB to provide information as to why they consider this to be so.

1.2.9. It is for the Part 3A CB to provide information as to why they consider that the land they are seeking to acquire meets the criteria. The Community Right to Buy (Abandoned, Neglected or Detrimental Land)(Eligible Land, Regulators and Restrictions on Transfers and Dealing)(Scotland) Regulations 2018 sets out the matters that Ministers must consider when deciding whether land is wholly or mainly abandoned or neglected. Not all of the matters will be relevant to the land in a given application. It is for Minister's to be satisfied that the land is wholly or mainly abandoned or neglected.

The matters are set out under the following three broad headings. These are matters relating to:

- (1) the physical condition of the land;
- (2) designation or classification of the land; and
- (3) the use or management of the land (or the lack of).

1.2.10. The Part 3A CB may find it helpful to consider these headings and the matters listed under them when preparing their application. This should help to identify relevant evidence to support the application.

(1) Matters relating to the physical condition of the land

Under the first heading, the Part 3A CB should consider the following questions about the land:

- What is the physical condition of the land or any building or other structure on the land, and what is the length of time that it has been in that condition?
- What is the extent, if any, to which the physical condition of the land or any building or other structure on the land is:
 - (1) a risk to public safety;
 - (2) has, or is likely to have, a detrimental effect on adjacent land;
 - (3) causes, or is likely to cause, environmental harm?

For the purposes of the Part 3A right to buy, “environmental harm” is defined in section 17(2) of the Regulatory Reform (Scotland) Act 2014 as:

- (a) *harm to the health of human beings or other living organisms;*
- (b) *harm to the quality of the environment including;*
 - (i) *harm to the quality of the environment taken as a whole;*
 - (ii) *harm to the quality of air, water or land; and*
 - (iii) *other impairment of, or interference with, ecosystems;*
- (c) *offence to the senses of human beings;*
- (d) *damage to property; or*
- (e) *impairment of, or interference with, amenities or other legitimate uses of the environment.*

(2) Matters relating to the use or management of the land

Under the second heading, the Part 3A CB should consider the following questions about the land:

- What is the land or any buildings or other structure on the land currently being used for?
- How is the land or any buildings or other structure on the land currently being managed?
- Is the land, buildings or other structure used or managed for lawful public recreation, leisure activities or for the purpose of an activity that requires a permit or a licence?
- Is the land being held for the purpose of preserving or conserving the natural, historic or built environment?
- If the land or any building or other structure on the land is being used or managed, how long has this been the case?
- If the land or any buildings or structures are not being used or managed for any discernible purpose, how long has this been the case?



(3) Matters relating to designations or classifications of the land

Under heading (3), the Part 3A CB should consider the following questions about the land:

- Is the land, or any part of the land, a nature reserve or conservation area?
- Is the land, or any part of the land, a special site?
- Is any building or structure on the land a listed building or scheduled monument?
- Are there any policies or proposals in a local or strategic development plan, or associated guidance relevant to the land (or any part of the land)?
- Are there any policies or proposals in the National Planning Framework 3 relevant to the land (or any part of the land)?

Specific definitions for “conservation area”, “environmental harm”, “special site”, “listed building”, special monument, local development plan, strategic development plan and “nature reserve” are set out in the Community Right to Buy Regulations 2018 (no. 201).

It may also be useful to look at other sources of information, such as the Buildings at Risk Register, for information about any buildings that might be considered to be neglected. The Register is maintained by Historic Environment Scotland, and provides information on properties of architectural or historic merit throughout the country that are considered to be at risk. There is a link to the register in **Annex B**.

Land where the use or management is such that it results in or causes harm, directly or indirectly, to the environmental wellbeing of a relevant community

1.2.11. It is for the Part 3A CB to demonstrate why they consider that the land is being used or managed in such a way as to result in or cause harm to the environmental wellbeing of the relevant community (section 97C(2)(b) of the Act). The application must set out the Part 3A CB’s reasons for this.

1.2.12. The Part 3A CB should consider the way in which the land is being either used or managed and whether the impact that the use or management of that land is resulting in or causing harm to the environmental wellbeing of the community. That harm may be directly or indirectly attributable to the use or management of the land.

Section 97C(3)(a) of the Act provides that “harm” includes harm, the environmental effects of which, have an adverse effect on the lives of persons comprising the relevant community. “Harm” will not include harm which, in the opinion of Ministers is negligible.

1.2.13. Regulation 6 of the Community Right to Buy Regulations 2018 (no. 201) sets out the matters that Ministers must consider when deciding whether land is eligible under Part 3A due to harm being caused to the environmental wellbeing of the community. These matters are:

- whether the use or management of the land or any building or other structure on the land, has resulted in or caused, directly or indirectly, a statutory nuisance;
- whether the land or any building or other structure on the land is subject to a current closure notice or closure order under the Antisocial Behaviour etc. (Scotland) Act 2004 (sections 26 or 29 respectively);
- whether the use or management of the land or any building or other structure on the land, has resulted in a warning notice being issued under the Antisocial Behaviour etc. (Scotland) Act 2004 (section 44).

Statutory nuisance is defined in Section 79(1) of the Environmental Protection Act 1990 as:

- (a) *any premises in such a state as to be prejudicial to health or a nuisance;*
- (b) *smoke emitted from premises so as to be prejudicial to health or a nuisance;*
- (c) *fumes or gases emitted from premises so as to be prejudicial to health or a nuisance;*
- (d) *any dust, steam, smell or other effluvia arising on industrial, trade or business premises and being prejudicial to health or a nuisance;*
- (e) *any accumulation or deposit which is prejudicial to health or a nuisance;*
- (f) *any animal kept in such a place or manner as to be prejudicial to health or a nuisance;*
- (fa) *any insects emanating from relevant industrial, trade or business premises and being prejudicial to health or a nuisance;*
- (fb) *artificial light emitted from premises so as to be prejudicial to health or a nuisance;*
- (g) *noise emitted from premises so as to be prejudicial to health or a nuisance;*
- (ga) *noise that is prejudicial to health or a nuisance and is emitted from or caused by a vehicle, machinery or equipment in a street or in Scotland, road;*
- (h) *any other matter declared by any enactment to be a statutory nuisance.*



Land on which there is a building or other structure which is an individual's home other than a building or other structure which is occupied by an individual under a tenancy

1.2.14. Land on which there is a building or other structure which is an individual's home is not eligible land for the purposes of the Act and therefore the Part 3A CB cannot apply for consent to exercise a Part 3A right to buy in relation to it. This, however, does not extend to tenancies. If the building or other structure is occupied by an individual under a tenancy, it may still be eligible land for the purposes of the Part 3A right to buy. If the Part 3A CB are seeking to purchase land on which there are buildings or other structures which are an individual's home (not a home occupied under a tenancy), they will need to exclude such land from the application. A Part 3A CB should think carefully about the footprint of the land that comprises a person's home and how that land is being used by the home. This will normally be the land that is within or pertains to the curtilage of the home. This *might*, for example, be a garage, or a tool shed that is used by the owners.

1.2.15. The following land pertaining to an individual's home that is not occupied under a tenancy is also ineligible for the purposes of the Part 3A right to buy. This is set out in regulation 8 of the Community Right to Buy Regulations 2018 (no. 201). Part 3A CB's should ensure that such land does not fall within the boundaries of the land that they intend to apply for the right to acquire. This is:

- land which forms the curtilage of the home;
- land which is used for the storage of possessions owned by the occupants of the home that are used for the maintenance, upkeep or subsistence of that home;
- land that is used to store vehicles that are used by the occupants of the individual's home;
- land used for drainage, water supply or provision of services such as media or electricity for that home;
- land used to grow food which is principally for the subsistence of the occupants of that home;
- land used for activities including recreation and leisure activities which are incidental to the use of that home;
- land used to keep pets belonging to the occupants of that home;
- land used for businesses run by occupants of the individual's home;
- land used for access to the individual's home, if the land is owned by the same person that owns that home.

1.2.16. If there is a building or a structure which is an individual's home, land pertaining to land occupied by that home of one or more of the kinds listed above it must be excluded from the Part 3A application.

Other ineligible land

1.2.17. There are some other types of land that are ineligible under Part 3A of the Act and therefore should be excluded from a Part 3A CB's application, if appropriate. These types of land are:

- land that is held or used by a Minister of the Crown or government department; and
- land consisting of a right to petroleum, coal, gold or silver (whether or not that right is owned separately from the land in respect of where they are located).

Tenancies

1.2.18. Part 3A specifies that, whilst an individual's home cannot be eligible land, if that home is occupied by an individual under a tenancy, then it is eligible. The Community Right to Buy Regulations 2018 (no. 201) specify descriptions and classes of occupation or possession which are, or are to be treated as, a tenancy for the purposes of the Act. These are:

- occupancy or possession of tied accommodation. This is accommodation which is provided to an individual by their employer;
- occupancy or possession under a licence agreement that is in the nature of a tenancy;
- occupancy or possession of residential accommodation in connection with an individual's employment or education, or which is in a building or structure that is owned or occupied by the employer or education provider;
- temporary occupancy or possession offered, on a night-by-night basis, to individuals who are homeless persons; and
- occupancy or possession by a liferenter. This is where an individual has been granted the right to receive for life, the benefits of the property and to live in the building or structure, or on the land.



Identifying interests

1.2.19. The Part 3A CB will need to identify the interests associated with the land. **The Part 3A CB should consider appointing someone who has professional experience, such as a suitably experienced chartered valuation surveyor or a solicitor, to assist with, advise on and, in some cases, undertake these tasks.**

Eligible Land: What does each option under Part 3A require?

1.2.20. At an early stage it should be considered whether to submit an application that relates to (1) land that is wholly or mainly abandoned or neglected land, or (2) land where the use or management is such that it results in or causes harm, directly or indirectly, to the environmental wellbeing of a Part 3A community. If applying on the basis of the second, there is an additional requirement that the Part 3A CB must approach any “relevant” regulator(s) (see below and section 1.2.23 of this guidance). There are also some differences in the matters that Ministers must have regard to in determining whether the land is eligible depending on whether an application is submitted under the first or second categories (see section 1.10.12 of this guidance).

Relevant regulators

1.2.21. If a Part 3A CB is applying for consent to acquire land on the basis that the use or management of that land is resulting in or causing harm, directly or indirectly, to the environmental wellbeing of the relevant community, they must have contacted any “relevant” regulator, or regulators, to request it/them to take action in relation to the land in exercising its/their regulatory functions that could, or might reasonably be expected to, remedy or mitigate the harm on that defined community prior to submitting an application.

1.2.22. When Ministers consider an application, they will look at which regulators have been contacted and the steps the regulator or regulators have taken in relation to the land. Ministers will consider whether all relevant regulators have been contacted and, if so, whether any regulator has been able to mitigate or remove the harm to the environmental wellbeing of the community in question.

1.2.23. This guidance cannot say which regulator(s) should be approached as this will vary depending on the circumstances. The Part 3A CB will need to consider whether there are any regulators who may be able to address the harm in the first instance. As an example, where the issue is about water pollution, SEPA or Scottish Water may be a relevant regulator, while a local authority may be a relevant regulator for a noise issue. A Part 3A CB should consider carefully what the issues are that are associated with the land that are affecting the community. They should then look to see what functions the regulators have and whether these can be used to mitigate harm. The regulator may not at first be obvious. A regulator may say that it might be best to approach another one, in which case their advice should be followed up.

1.3. Defining the Community

1.3.1. The members of the “community” must be resident in the defined area and be registered to vote in a local government election at an address within the area. The Part 3A CB must choose how to define the “community”, but it must be in accordance with the options under section 97D(9)(a) of the Act and regulation 17 of the Community Right to Buy Regulations 2018 (no. 201).

How should the Part 3A CB define the “community”?

1.3.2. The application form requires that the Part 3A CB provide the definition of their “community” as set out in the Part 3A CB’s governing documents. The “community” can be defined in a number of ways. These are by reference to a postcode unit or units, or a prescribed type of area (or a combination of both such unit and a single type of prescribed area).



1.3.3. The “prescribed areas” are:

- **Postcode area** – an area of land covered by the first one or two letters of the postcode (e.g. EH) in which your Part 3A CB is situated;
- **Postcode district** – an area of land covered by the first half of a full postcode, (e.g. EH11), in which your Part 3A CB is situated;
- **Postcode sector** – an area of land covered by the first full half of a postcode, the single space and the first character of the second half of the postcode, (e.g. EH11 3), in which your Part 3A CB is situated;
- **Postcode unit(s)** – an area of land covered by the full postcode, (e.g. EH11 3XD);
- **Settlement area** – an area of high density of residential and non-residential addresses, with a population of over 500 people. The boundaries of settlements are delineated on the maps included in the Population Estimates for Settlements and Localities in Scotland, Mid-2016, published on 12 March 2016. This is available through the following link: <https://www.nrscotland.gov.uk/statistics-and-data/statistics/statistics-by-theme/population/population-estimates/settlements-and-localities>
- **Locality** – settlements are divided into localities, which are smaller, but distinct parts. The boundaries of these are delineated on the maps included in the Population Estimates for Settlements and Localities in Scotland, Mid-2016, published on 12 March 2016. This is available through the following link: <https://www.nrscotland.gov.uk/statistics-and-data/statistics/statistics-by-theme/population/population-estimates/settlements-and-localities>
- **Electoral ward** – electoral wards are used by local authorities in elections and is a ward within the meaning of section 1 of the Local Governance (Scotland) Act 2004. Part 3A CBs should be aware that an electoral ward can cut through postcode units;
- **Community council area** – this means an area of a community council established in accordance with Part IV of the Local Government (Scotland) Act 1973. Part 3A CBs should be aware that an electoral ward can cut through postcode units;
- **Island** – an area of land surrounded by water, usually seawater, e.g. Barra, Isle of Eigg, Isle of Bute.

1.3.4. When deciding on the area of the “community” the Part 3A CB should work through the list of units and types of area to consider how each of them would work in practice before coming to a decision on what unit and/or type of area best suits their needs. The Part 3A CB may decide that one or a combination of the various units and a single type of area is best suited to their needs.

1.3.5. When deciding what unit and type of area is to be used, the Part 3A CB should be aware that their boundaries may change over time. They should also be aware that the boundaries of some may not exactly follow those of others (e.g. an electoral ward may not follow the boundaries of postcodes). The Part 3A CB should ensure that the information with the application is up-to-date.

1.3.6. It is for the Part 3A CB to include how they have defined the “community” in the application form.

1.3.7. It is important that the defined community is not made up of a number of individual pockets of residents, interspersed over a wider area. In determining any application for consent to acquire land, Ministers will tend to look for an inclusive approach to the definition of “community”, unless there is a good reason for the split.

The Communities Mapping Tool

1.3.8. The Part 3A CB can identify units and types of areas using the Communities Mapping Tool.

1.3.9. This electronic tool has been designed to help Part 3A CBs, as well as CBs under Part 2 of the Act (community right to buy), and crofting community bodies under Part 3 of the Act (crofting community right to buy), to define their community. The tool can be used to identify, for example, postcode units, postcode sectors, postcode districts, electoral wards, community council areas, settlement areas, localities and islands.



1.4. Forming and Registering a Part 3A Community Body

1.4.1. The Act requires that only a Part 3A CB can buy land under Part 3A of the Act. A community must first therefore form a Part 3A CB before it can submit an application. A Part 3A CB may be one of a number of different legal entities:

- a company limited by guarantee (CLBG);
- a Scottish charitable incorporated organisation (SCIO); or
- a community benefit society (BenCom).

The body must have:

- compliant articles of association (AofA) if the CB is a CLBG;
- a compliant constitution if the CB is a SCIO; or
- compliant registered rules if the Part 3A CB is a BenCom.

1.4.2. The matters that must be included in your Part 3A CB's governing documents are set out in section 97D(2), (3) and (4) of the Act. The matters are:

- a definition of the community to which the Part 3A CB relates;
- provision enabling the Part 3A CB to exercise the right to buy land under Part 3A of the Act;
- provision that the Part 3A CB must have not fewer than 10 members (Ministers have a discretionary power under section 97D(5) of the Act to accept a Part 3A CB with fewer than 10 members, e.g. in a remote rural community). If relevant, the Part 3A CB should discuss this point with the Community Land Team before submitting their Part 3A CB's governing documents. If section 97D(5) of the Act is to be applied, the Part 3A CB should demonstrate why it is not possible for it to have 10 members and ensure that the application cannot be construed as a private or family application (sections 97D(2)(c), 97D(3)(c), or 97D(4)(c) of the Act);
- provision that at least three quarters of the members of the Part 3A CB consist of members of the community;

- provision whereby the members of the Part 3A CB that are also members of the community, have control of the Part 3A CB. Ministers recognise that non-community members can contribute substantially to, and play a vital part, in the success of a community purchase by bringing the necessary skills and expertise. While Ministers acknowledge the importance of non-community members, care should be taken to ensure that, where such other members are to have a role in relation to the Part 3A CB, that role should not prejudice the position whereby community members have control of the Part 3A CB;
- provision ensuring proper arrangements for the financial management of the Part 3A CB;
- provision that, if the CB is a SCIO or BenCom, and a person requests a copy of the minutes of the Part 3A CB's meeting, these are provided to that person within 28 days of the request, if that request is reasonable;
- provision that if the CB is a SCIO or BenCom, and where a request for a copy of the minutes of the Part 3A CB's meeting, the Part 3A CB may withhold information in those minutes provided that they have reasons for doing so;
- provision ensuring that any surplus funds or assets of the company are to be applied for the benefit of the community;
- provision that on the winding up of the CLBG (should that be the structure you decide upon) and assessment of their liabilities, the property (including any land acquired by it under Part 3A of the Act) passes to such other community body or crofting community body as may be approved by Ministers. If no such body exists, then they may be passed to Ministers or to a charity as Ministers may direct.

1.4.3. A model AofA (for a CLBG) and model constitution (for a SCIO), which are compliant with the Act, can be accessed on the Scottish Government's community right to buy webpages – see **Annex B**. These templates are not “off the shelf” products, and they may need to be amended to meet the particular needs of each Part 3A CB. Other governing document templates may be available elsewhere; these may need to be amended to be compliant with the 2003 Act.

1.4.4. In addition, a body is not a Part 3A community body unless Ministers have given it written confirmation that they are satisfied that the main purpose of the body is consistent with furthering the achievement of sustainable development. The group will need to demonstrate this in some way. Inclusion in their governing documents is the preferred method.



Seeking charitable status

1.4.5. It is up to the Part 3A CB to decide whether they want to obtain charitable status, and if so, when. Most Part 3A CLBG CBs may wish to wait until they are purchasing their land before they seek charitable status. This is because the Office of the Scottish Charity Regulator (OSCR) take account of how active a group is when decided on whether or not to award charitable status.

1.4.6. If the Part 3A CB is a CLBG, the process to secure charitable status may require further changes to their governing documents. For this reason, it is advisable to seek charitable status before seeking compliance under Part 3A. They should contact OSCR for details on the requirements to become a charitable body. Full contact details can be found at **Annex B**.

Seeking approval of governing documents

1.4.7. Draft governing documents should be sent to the Scottish Government's Community Land Team before the Part 3A CB is incorporated. This will ensure that the Part 3A CB's governing documents meet the requirements of section 97D of the Act. This will save time and inconvenience in the long run. If the Part 3A CB is already an incorporated organisation before they apply they should contact the Community Land Team to ensure that their governing documents are compliant with section 97D of the Act.

1.4.8. If Ministers are satisfied that the main purpose of the Part 3A CB is consistent with furthering the achievement of sustainable development then they will issue the Part 3A CB with a letter confirming this. After receiving this letter, the Part 3A CB should register with Companies House if they are a CLBG, the Office of the Scottish Charity Regulator (OSCR) if they are a SCIO, or the Financial Conduct Authority (FCA) if they are a BenCom (addresses for these regulators can be found in **Annex B**). If a SCIO or BenCom is the chosen structure, Ministers will need confirmation that the Part 3A CB has been set up with the relevant organisation before they can issue the compliance letter. If the Part 3A CB is already an existing CLBG, SCIO, or BenCom, they should inform Companies House, OSCR or the FCA, as appropriate, of any changes to the Part 3A CB's governing documents.

1.4.9. If a Part 3A CB amends their governing documents once they have received written confirmation that Ministers are satisfied that the main purpose of the body is consistent with furthering the achievement of sustainable development, they should notify Ministers of these changes (section 97E(1) of the Act). If, after purchasing the land, the Part 3A CB no longer meets the requirements of the Act, Ministers can acquire the land compulsorily (section 97E(2) of the Act).

1.5. Demonstrating community support – the ballot

1.5.1. The ballot establishes that the Part 3A CB's application for consent has the support of the defined community.

1.5.2. The ballot must be conducted no earlier than the six months immediately prior to the Part 3A CB's application. The results of that ballot must be notified to Ministers within 21 days of the ballot itself or together with the application, if earlier. The Act also requires the ballot demonstrate the following level of support (section 97(J)(1)(b) and (c) of the Act):

- that at least half of the members of the defined community have voted, or where fewer than half of the members of the community have voted, the proportion which voted is sufficient to justify the Part 3A CB's proceeding to buy the land; and
- the majority of those voting have voted in favour of the proposition that the Part 3A CB buy the land.

Eligibility to vote

The Part 3A CB must be clear about who is eligible to vote in the ballot. A mistake in identifying the members of the defined community who are eligible to vote on the proposed application could invalidate the ballot and, as such, stall the progress of submitting the application. It should be remembered that irregularities in the undertaking of the ballot could lead to any right to buy under Part 3A, so far as proceeding on that application, being extinguished

Identifying the members of the defined community

1.5.3. The Part 3A CB will have already defined and established the membership of the defined community before they conduct the ballot required by section 97J of the Act and submit their application. All eligible members of the community must be given the opportunity to vote in a ballot on the proposition that the Part 3A CB exercise a Part 3A right to buy.



The Electoral Register (voters roll)

1.5.4. The most effective method to identify all the persons eligible to vote in the ballot is to check who is recorded on the current full Electoral Register in the electoral district in which the defined community lies.

1.5.5. As a full Electoral Register cannot be purchased or a copy made, a Part 3A CB will need to compile a list of names that are on the full Electoral Register. They can do this by scrutinising the edited Electoral Register for the electoral district(s) in which the defined community is located. A copy of the published (or edited) Register can be viewed at major public libraries, local authority service points and electoral registration offices. Alternatively, contact the Electoral Registration Officer (ERO) to purchase a copy (a charge may be made for a copy) of the Edited (open) Electoral Register. This will give a list of the names that are publically available. The Part 3A CB should make sure that they use the most up-to-date version available.

1.5.6. The names on the edited Electoral Register should be compared against the full Electoral Register held at electoral registration offices, or a local library which contains the names of all eligible voters. The names and addresses identified by the Part 3A CB should be checked and any differences noted. This will give the Part 3A CB a copy of all the names on the full Electoral Register, which should then be used to check that they have identified all of the relevant members of the community for the ballot.

1.5.7. Having identified the persons who reside in the defined community who are not on the full Electoral Register, the Part 3A CB should ask those individuals to confirm whether they are entitled to participate in local government elections or whether they have recently sought to be so included. These persons could include individuals who have recently moved into the area. If they are entitled to participate, their name could be added to the Electoral Register at some point during the process when the Part 3A CB is acquiring the land. The Part 3A CB should keep a note of all instances where individuals are excluded from the full Electoral Register and those where their inclusion is not straightforward.

It is also possible to contract out the running of the ballot, should the CB feel that this is a better option. There are organisations who can do this, or the CB could approach their local authority who may be able to assist.

The ballot process

1.5.8. The procedure for holding the ballot is set out in section 97J of the Act and Part 3 of the Community Right to Buy (Abandoned, Neglected or Detrimental Land) (Scotland) Regulations 2018. The Part 3A CB must follow the specified procedures. Failure to conduct the ballot in accordance with the Act and Regulations will result in the application for consent being extinguished (section 97J(9) of the Act).

1.5.9. The ballot must be conducted as a secret postal ballot. The Part 3A CB must appoint an independent observer to oversee, in person, the counting of the votes and the recording of the result. The local authority Returning Officer for election purposes may be able to provide help and assistance. Contact details can be obtained from the relevant local authority.

1.5.10. As part of the postal ballot, the Part 3A CB is required to issue certain information to all eligible voters. This is:

- a ballot paper with the question on which the vote is to be taken;
- the date and time by which the paper must be returned (not less than 10 days after the date of posting);
- a description of the land and details of any rights or interests in that land;
- the basis on which the Part 3A CB asserts that the land is eligible under Part 3A of the Act;
- a description of the Part 3A CB's proposals for the land;
- details of how further information on the proposals and other matters relating to the ballot may be obtained;
- the name of the Part 3A CB;
- the Part 3A CB company number, charity number or registration number as appropriate; and
- contact details for the Part 3A CB.

In addition, the Part 3A CB **must** provide to each person eligible to vote a stamped addressed envelope for returning the completed ballot paper.



1.5.11. Voters must receive these papers with sufficient time to consider, complete and return the voting paper to the return address by the due date. The ballot papers should be sent to voters with a minimum of 10 days from the date of posting before the deadline by which they must be returned.

1.5.12. A person eligible to vote in the ballot may make a request to the Part 3A CB for a proxy vote. A request must be in writing and must:

- state the name and address of the person eligible to vote;
- state the name and address of the person whom the person eligible to vote wishes to appoint as a proxy;
- be signed by the person eligible to vote;
- contain a statement confirming that the person who is eligible to vote has consulted the proxy and that the proxy is capable and willing to act as proxy; and
- be received by the Part 3A CB not later than 17:00 hours on the day before the date on which the ballot paper must be returned.

1.5.13. The Part 3A CB must permit a proxy vote to a person who makes a valid request in accordance with the above conditions.

Notification of ballot results

1.5.14. The Part 3A CB is required to publish, within 14 days of holding the ballot, details of the result in a newspaper (paper or digital edition) circulating in the vicinity of the defined community. They must also publish the results on a webpage or website that is operated by, or on behalf of the Part 3A CB, if one exists. The results must be published in accordance with the form in schedule 3 of the Community Right to Buy Regulations 2018 (no. 140).

1.5.15. The Part 3A CB are also required to notify to Ministers, within 21 days of the ballot (or if the application for consent is made within 21 days of the ballot, with the application), its result and details in accordance with schedule 4 of the Community Right to Buy Regulations 2018 (no. 140). The return must show:

- the name of the Part 3A CB;
- the date by which the ballot papers had to be returned;
- the question which was put to the ballot;
- the number of persons eligible to vote in the ballot;
- the number of persons who voted;

- the number of proxy votes cast;
- the number of spoilt votes;
- the number of votes cast in favour of the proposal to buy the land;
- details of the information that was supplied by the Part 3A CB to persons eligible to vote in the ballot;
- the name, contact details and signature of the independent observer that was appointed to oversee the counting of the votes and recording of the result;
- the name, address and telephone number, email and signature of the Part 3A CB representative making the ballot return; and
- the date of the ballot return.

1.5.16. Ministers may request that the Part 3A CB provide them with additional information relating to the ballot (section 97J(5) of the Act). This may include information relating to any consultation with the eligible voters that the Part 3A CB undertook during the period when the ballot was being carried out. This information must be provided if it is requested by Ministers.

Cost of running the ballot

1.5.17. The Part 3A CB is responsible for meeting the cost of running the ballot. However, the Part 3A CB can apply to Ministers to request reimbursement of the cost of the ballot (regulations 12 to 16 of the Community Right to Buy Regulations 2018 (no. 140)).

Procedure for applying for the reimbursement of the expense of the ballot

1.5.18. If applying for reimbursement for the expense of the ballot, the Part 3A CB must adhere to the timescales laid out in the Community Right to Buy Regulations 2018 (no. 140).

1.5.19. An application for reimbursement of the expense of conducting a ballot must include all of the relevant information listed in those regulations.

1.5.20. Ministers will consider the Part 3A CB's application and take a decision as to whether to reimburse the expenses. It is important that any claims for expenses in relation to the ballot are fully vouched. This evidence can, for example, be invoices, debit and credit notes, statements and receipts, though this list is not exhaustive.



1.5.21. Ministers will consider the costs for which reimbursement is sought on a case by case basis. All costs must have been reasonably incurred in the conduct of the ballot. Examples of the types of costs that may be reimbursed by Ministers following consideration are:-

- administration to conduct a ballot (time and expertise);
- costs to access the voters' roll;
- stationery (paper and envelopes);
- postage costs (to send out voting papers and for the return of the voting papers);
- printing costs (for ballot paper and information sheet);
- independent observer (if a charge is made for such services).

1.5.22. Examples of the types of items and services that Ministers will not approve for reimbursement are:

- any costs of advertising the ballot;
- any costs of advertising the ballot result, over and above the requirements in the legislation;
- any costs relating to activities to encourage voters to vote and to vote for a particular outcome;
- any costs that have been agreed with another party to be undertaken free of charge but are later charged for (i.e. retrospective costs).

1.5.23. When Ministers calculate the expense of conducting the ballot, they will consider:

- whether any amount was reasonably incurred in the conduct of the ballot;
- whether any amount is fully vouched;
- whether there are any costs that are not eligible for reimbursement.

1.5.24. Ministers have 60 days from the receipt of the application for reimbursement to make a decision. They will set out reasons for their decision.

Appealing against a decision by Ministers for the reimbursement of ballot expenses

1.5.25. The Part 3A CB which applied to Ministers for the reimbursement of the expenses may choose to appeal the Ministers' decision to the Lands Tribunal for Scotland. If they wish to appeal, they must lodge their appeal within 28 days of receiving Ministers' decision.

1.5.26. The decision of the Lands Tribunal is final.

1.6. Multiple owners

1.6.1. An application must relate to land owned by one party, whether by an individual, or in common or joint ownership with more than one owner. It cannot relate to multiple holdings of land. If the Part 3A CB wishes to buy a number of holdings of land and/or land assets they must complete separate applications in respect of each holding (section 97G(4) of the Act).

1.7. Multiple applications on the same or similar land, by different community bodies

1.7.1. The Act does not prevent more than one Part 3A CB from applying to buy the same land. However, only one Part 3A CB may exercise its Part 3A right to buy that land (section 97K(1) of the Act). Where two or more Part 3A CB's have applied to buy the same land, Ministers must decide which Part 3A CB will proceed (section 97K(2) of the Act). They can only make that decision after they have considered all views relating to each application and the responses to their invitations received in connection with the application (section 97K(3) of the Act). There is, however, no guarantee that any application will proceed where it appears to Ministers that it is not in the public interest to let one Part 3A CB proceed over another.

1.7.2. Once Ministers have decided which Part 3A CB should proceed to buy the land, the unsuccessful Part 3A CB's right to buy is extinguished and its application is deleted from the Register of Applications by Community Bodies to Buy Land.



1.8. The Register of Applications by Community Bodies to Buy Land

1.8.1. The Act provides for the setting up and maintenance of the Register of Applications by Community Bodies to Buy Land (RoACBL) which contains information and documents relating to each Part 3A CB's application for consent (section 97F of the Act).

1.8.2. The Keeper of the Registers of Scotland (RoS) ("the Keeper") is the Keeper of the RoACBL. The Keeper is to maintain the RoACBL and ensure that it is made available for public inspection at all reasonable times, free of charge, although there is a charge for copies of any register entries. The Register can be viewed through the RoS website at: <https://roacbl.ros.gov.uk>.

1.8.3. Ministers will instruct the Keeper to enter information in the RoACBL at various stages of the application process. Additional information may be entered into the Register, if Ministers so instruct. Section 97F(2) of the Act specifies the information that must be held in the RoACBL. The Part 3A CB which is applying can request that such information which relates to the raising of funding, be withheld from public inspection and will not be entered into the RoACBL; Ministers will keep that information or document separately from the Register (section 97F(4) and (5) of the Act).

1.8.4. Once an application is received and the details appear on the RoACBL, then a prohibition is placed on the owner of the land in the application. This prohibits the owner from transferring the land or taking action with a view to transfer the land.

1.8.5. If the Part 3A CB changes its name, registered or principal office once an application is registered they must notify the Keeper as soon as is reasonably practicable after that change has been made (section 97F(7) and (8) of the Act). They should also notify the Community Land Team of that change.

1.8.6. It may be helpful for a Part 3A CB to consult the RoACBL to see examples of applications and supporting documents which other Part 3A CBs have already submitted to Ministers.

1.9. Applying for consent to buy land

Preliminaries

1.9.1. Before a Part 3A CB applies to Ministers for consent to exercise the Part 3A right to buy, they must have received a letter from Ministers confirming that they are satisfied that the main purpose of the Part 3A CB is consistent with furthering the achievement of sustainable development (section 97(D)(6) of the Act). They must have also registered the Part 3A CB with Companies House (if the Part 3A CB is a CLBG), OSCR (if the Part 3A CB is a SCIO), or incorporated with the FCA (if the Part 3A CB is a BenCom). A timeline of the steps in the Part 3A right to buy process is noted in **Annex A**.

1.9.2. The Part 3A CB must use the official form to apply for consent to buy land under the Act. Statutory provision for these forms is made in schedule 1 of the Community Right to Buy Regulations 2018 (no. 140). The form must not be altered or any of the wording in it deleted. The form is available from the Scottish Government's website at: <https://beta.gov.scot/publications/community-right-to-buy-abandoned-neglected-or-detrimental-land-application-form/>.

1.9.3. An application must be received by Ministers within the 6 month period following the date of the ballot as required by section 97(1) of the Act. **The date of the ballot determines the last date on which the related application(s) can be made to Ministers. The Part 3A CB must ensure that the application is submitted within this period of time. Failure to do so will mean that Ministers will not consider the application.**

1.9.4. The application form and all supporting documents such as maps, drawings, and plans (annexed where appropriate) and evidence demonstrating community support, and the governing documents, will be considered by Ministers when they consider whether the application for consent should be approved. **It is essential that the application is completed in full and all supporting documentation is attached. It is important that all the details are accurate and legible and that all accompanying documents are clearly labelled or referenced. Incomplete applications will be returned and the application will not be considered (section 97G(15)(b) of the Act).**



Completing the application form

1.9.5. The application form can be downloaded and completed electronically or downloaded and completed manually using black or blue ink and in capital letters. Additional pages may be attached. If additional pages are included, they must be clearly marked, showing the question number they refer to (e.g. section 3.3 – see Annex A”). The Annex should also be referred to in the answer given in the application form.

The application form is divided into 10 sections, each focussing on a particular topic. These are:

- (1) who is applying;
- (2) details of who is applying;
- (3) the land in respect of which the right to buy is sought to be exercised;
- (4) ownership and interests;
- (5) eligibility of land;
- (6) steps taken to buy land;
- (7) community support;
- (8) proposals for the land;
- (9) public interest; and
- (10) declaration.

1.9.6. The declaration is particularly important. This sets out conditions which must be adhered to by the Part 3A CB when submitting their application. The Part 3A CB and the two signatories should ensure that they understand the declaration before it is signed.

1.9.7. The completed application form must be signed by two individuals (board members, charity trustees or committee members as appropriate), on behalf of the Part 3A CB, who have been authorised to do so by the Part 3A CB. They must also provide their full names and addresses for the purposes of prevention and detection of fraud.

1.9.8. If the Part 3A CB makes any inaccurate statement, provides inaccurate information, either deliberate or accidental, or knowingly withholds any information, these actions could result in Ministers deciding not to approve the application for consent.

1.9.9. The application will appear in the RoACBL, although it will be redacted as appropriate to ensure compliance with General Data Protection Regulation (GDPR).

Maps, plans or other drawings

1.9.10. Maps, plans or other drawings accompanying the application form must comply with the Community Right to Buy Regulations 2018 (no. 140). In particular maps must:

- be drawn to a metric scale corresponding to one used by the Ordnance Survey for that land (e.g. 1:10,000);
- be taxative and not demonstrative only;
- show the compass orientation of north;
- contain map grid reference numbers and sufficient surrounding details (e.g. fences, houses etc.) to enable the position of the land to be fixed accurately;
- show the boundaries of the land; and
- where measurements are given, give those measurements to one decimal place.

1.9.11. Maps, plans or other drawings that do not comply with these requirements will be returned. This may result in a decision on the application being either delayed, or the application being declined to be considered.

1.10. Application process

First steps

1.10.1. Once a Part 3A CB is ready to submit a formal application, they should send it to the Scottish Government Community Land Team (contact details are in **Annex B**).

1.10.2. At the same time, they must also send it to the owner of the land to which the application relates and to any relevant creditor.

1.10.3. A relevant creditor is someone who holds a standard security over the land, or any part of it. That creditor has 60 days from receipt of the invitation to inform the Part 3A CB and Ministers of any calling-up notice or notice of default, whether any notice of default has been upheld or varied by the court or that a warrant has been granted by the court to the creditor in relation to the land, or any part of it.



Initial checks

1.10.4. On receipt of an application, initial checks will determine whether the application form, maps and other supporting documents have been completed correctly, or whether the application is one which Ministers must decline to consider. Reasons could be, for example:

- the application does not comply with the requirements of section 97G of the Act;
- the prescribed application form has not been used;
- the maps or plans are not drawn to a metric scale corresponding to a scale used by the Ordnance Survey;
- part of the form has not been completed, e.g. the name of the existing landowner or creditor in a standard security etc. may not have been noted;
- the application covers land which is clearly not “eligible land”;
- a ballot has not been conducted correctly; or
- the application is one which otherwise the Ministers are bound to reject.

1.10.5. These initial checks are not part of the detailed consideration of the application. If it fails to meet the basic requirements, the application will not proceed any further, and, **the documents will be returned.**

1.10.6. Should Ministers refuse to consider the application on one or more of these grounds, all of the papers will be returned to the Part 3A CB and they will be notified of the reason(s) for this action. The Part 3A CB may choose to make amendments to their application in order to remedy these defects and re-submit it. However, it must resubmitted within 6 months of the date of the ballot, or they will be required to hold another ballot. Ministers cannot accept an application made outwith the 6 month period.

Seeking views on your application

1.10.7. On receipt of the application and supporting documentation, Ministers will invite the following parties to send their views on your application, as appropriate. They have 60 days in which to respond with their views:

- the owner of the land;
- any tenant of the land;
- any creditor in a standard security over the land or any part of it; and
- any other person whom Ministers consider to have an interest in the application.

1.10.8. In addition, Ministers must also take reasonable steps to invite the owners of all land contiguous to the land to which the application relates to send their views.

1.10.9. Ministers must also send a copy of their invitation letters to the Part 3A CB (section 97G(9)(c) of the Act).

1.10.10. As soon as practicable after receiving the application, Ministers are also required to give public notice of it (section 97G(11) of the Act). The public notice must be advertised in a newspaper (digital or paper edition) circulating in the area where the relevant community is located and also on a publicly accessible webpage or website maintained by Ministers (regulation 4 of the Community Right to Buy Regulations 2018 (no. 140)). This provides an opportunity for anyone with an interest in the application to provide their views. Any views must be sent to Ministers in writing within 60 days of the publication of the public notice.

1.10.11. Copies of any views received by Ministers will be sent to the Part 3A CB. They will be invited to comment on them and respond to Ministers within 60 days of receipt of that invitation (section 97G(13) of the Act). **Ministers must consider all views received and the responses from the Part 3A CB before they reach a decision on the application.** This decision cannot be earlier than 60 days after the last date on which the Part 3A CB may respond to the views received or later if a question has been referred to the Lands Tribunal who have yet to provide a finding on that question.

Criteria for consent by Ministers

1.10.12. Once Ministers have sought views and the Part 3A CB have had a chance to comment on those views, Ministers are required to be satisfied that the application meets the criteria for consent in section 97H of the Act. The criteria are that:

- the land to which the application relates is eligible land;
- the exercise by the Part 3A CB of the Part 3A right to buy under the Act is in the public interest and compatible with furthering the achievement of sustainable development in relation to the land;
- the achievement of sustainable development in relation to the land would be unlikely to be furthered by the owner of the land continuing to be its owner (Ministers are not required to be satisfied of this where an application solely relates to land, the use or management of which is such that it results in or causes harm to the environmental wellbeing of a relevant community);
- the owner of the land is accurately identified in the application;
- any creditor in a standard security over the land or any part of it with a right to sell the land or any part of it is accurately identified in the application;



- the owner is not (i) prevented from selling the land, or (ii) subject to any enforceable personal obligation (other than an obligation arising by virtue of any right suspended by the Community Right to Buy Regulations 2018 (no. 201) under section 97N(3) of the Act to sell the land otherwise than to the Part 3A CB;
- the Part 3A CB complies with the provisions of section 97D of the Act;
- one of the following criteria is met:
 - (i) a significant number of the members of the community to which the application relates have a connection with the land;
 - (ii) the land is sufficiently near to land with which those members of the community have a connection;
 - (iii) where the Part 3A CB is a body mentioned in section 97D(1)(a) of the Act, the land is in or sufficiently near to the area of the community by reference to which the community is defined as mentioned in section 97D(9)(a); or
 - (iv) where the Part 3A CB is a body mentioned in section 97D(1)(b) of the Act, the land is in or sufficiently near to the area of the community to which the body relates;
- the community have approved the proposal to exercise the Part 3A right to buy; and
- that, otherwise than by the Part 3A process, the Part 3A CB has tried and failed to buy the land.

1.10.13. If the Part 3A CB is applying for consent to purchase land, the use or management of which is such that it results in, or causes harm to, the environmental wellbeing of a relevant community (as defined in section 97C(2)(b) of the Act) it must also meet the following criteria that:

- the exercise by the Part 3A CB of the Part 3A right to buy is compatible with removing, or substantially removing, the harm to the environmental wellbeing of the relevant community;
- the Part 3A CB has, before the application is submitted, made a request to (i) a relevant regulator (if any), or (ii) where there is more than one relevant regulator, to all such regulators to take action in relation to the land in exercise of its (or their) relevant regulatory functions that could, or might reasonably be expected to, remedy or mitigate the harm; and
- (Regardless of whether or not a relevant regulator is taking, or has taken, action in exercise of its relevant functions in relation to the land) that the harm is unlikely to be removed, or substantially removed, by the owner of the land continuing to be its owner.

1.10.14. Some of the views received on the application (sections 97G(9)(a) and (b) and 97(G)(11) of the Act) may raise questions which Ministers will seek to clarify with either the owner or the Part 3A CB. However, other issues may be referred to the Lands Tribunal to be determined (section 97X of the Act). These can be referred by Ministers, any person who is a member of the community defined by the Part 3A CB, the owner of the land included in the application, any person with an interest in the land giving rise to a right which is legally enforceable by that person, or anyone whom Ministers invited to send views on the application. Where an issue is referred in this way, the Lands Tribunal can invite the Part 3A CB, the landowner or any other person who appears to have an interest, to make representations. **If, following the finding of the Lands Tribunal, it can be concluded that the information provided in the application is incorrect or flawed, and that the application does not therefore meet the criteria for consent, Ministers may reject it.**

Action on a flawed application

1.10.15. The views that have been submitted to Ministers on the application may reveal facts which may result in Ministers declining to consider the application. Where this happens, it might be appropriate for the Part 3A CB to resubmit a new application. This may avoid the need for another ballot (but see timescales for undertaking a ballot and the submission of an application at section 97J(1) of the Act). If the Part 3A CB withdraw their application before it is declined, they should consider that this may give rise to liability for compensation (section 97T of the Act), in which case the Part 3A CB might prefer to await a Ministerial decision on the matter.

Notifying the Ministers' decision

1.10.16. Ministers will give a notice, in writing, of their decision to consent or to refuse consent to the Part 3A CB's application (section 97M of the Act). This will also give reasons for their decision. This will be sent to the Part 3A CB, the owner of the land and every other person who was invited to send their views on the application (section 97M(1)(a) to (c) of the Act). The Ministers' decision will also be sent to the Keeper of the RoACBL (section 97M(1)(d) of the Act).



Appeals against the Ministers' decision

1.10.17. The Act makes provision that certain parties may appeal against the Ministers' decision to give consent to the Part 3A CB's application. An appeal may be made by:

- the owner of the land;
- a person who is a member of the Part 3A CB's defined community;
- a creditor in a standard security with a right to sell land.

1.10.18. The Part 3A CB may also appeal Ministers' decision not to give consent to the application (section 97V(2) of the Act). It cannot be appealed if Ministers have declined to consider the application.

1.10.19. An appeal should be made to the Sheriff Court in the area where the land or any part of it specified in the application is located. Appeals must be lodged within 28 days of the date on which Ministers decided to consent or refuse to consent to the application. The sheriff may uphold, reverse or add conditions to the party appealing the decision. The decision of the sheriff is final (section 97V(9)(c) of the Act).

1.11. Mediation

Interested parties may request Ministers to take such steps as they consider appropriate for the purpose of arranging, or facilitating, the arrangement of mediation in relation to the proposed exercise of the Part 3A right to buy (i.e. once an application has been submitted).

1.11.1. The interested parties that may make the request to Ministers are: the owner of the land; any creditor in a standard security with the right to sell the land in the land or any part of the land and the Part 3A CB (section 97Z1(3) of the Act refers). These parties may request Ministers to appoint a mediator; make payments to mediators in respect of services provided; and reimburse reasonable expenses of mediators.

1.11.2. You should contact the Community Land Team in the Scottish Government if you have any questions relating to mediation.

What happens after Ministerial consent is given?

Valuation

1.11.3. Where Ministers' grant consent to an application, they have 7 days in which to appoint an independent valuer (section 97S of the Act). Any delay to appoint the valuer within the specified time will not affect the validity of the valuation (section 97S(2) of the Act).

1.11.4. The Act specifies that the valuer must be a person who appears to Ministers to be suitably qualified, independent and to have knowledge and experience of valuing land of a kind which is similar to the land that the Part 3A CB is seeking to purchase (section 97S(1) of the Act). The cost of this valuation is met by Ministers (section 97S(7) of the Act).

1.11.5. The aim of the independent valuation is to ensure that the landowner receives a fair price, the "market value" for the land. The definition of "market value" is set out at section 97S(5) of the Act. The valuation will consist of a sum of the value of:

- the open market value if the sale were between a willing seller and a willing buyer;
- any depreciation in the value of other land, tenants' interests and other interests belonging to the seller as a result of the transfer of the land; and
- the amount attributable to any disturbance to the seller resulting from the transfer of the land.

1.11.6. In arriving at the open market value, the valuation may take into account the known existence of a potential purchaser who would be willing to pay a higher price for the property because of a characteristic of the land that relates peculiarly to that purchaser's interest in the property (other than the Part 3A CB) (section 97S(6) of the Act). No account shall be taken in that assessment of the fact that no time was allowed for marketing the property or of depreciation of other land or disturbance to the seller.

1.11.7. The appointed valuer does not act for the parties involved in the purchase. They will act as an expert and not as an arbiter. The valuer will invite both the Part 3A CB and the landowner to make written representations about the value of the land (section 97S(8)(a) of the Act). If the valuer receives any such representation, counter-representations will then be invited from the other party. The valuer will consider all written views when considering the value of the land (section 97S(10) of the Act).



1.11.8. If the Part 3A CB and the landowner have come to an agreement on the valuation of the land, they must notify the valuer in writing of that agreed valuation.

1.11.9. The valuer has 8 weeks from the date of their appointment (or longer if agreed by Ministers, section 97S(13) of the Act), to notify Ministers, the landowner and the Part 3A CB of their assessment of the value of the land. The validity of the transfer of the land is not affected by the failure of the valuer to comply with this time limit (section 97S(14) of the Act). The price to be paid for the land is the valuation price provided by the valuer or if the valuation figure is appealed, the price determined by the Lands Tribunal (section 97W of the Act).

Appeals against the valuation

1.11.10. Should the landowner or the Part 3A CB disagree with the valuation, an appeals process is available (section 97W of the Act). Appeals against the valuation are made to the Lands Tribunal for Scotland. An appeal may be made within 21 days of the intimation of the valuation (section 97W(2) of the Act). The party that lodges the appeal must, within 7 days of making the appeal, inform Ministers in writing of the date of the making of the appeal and the date of the making of the appeal (section 97W(8) of the Act).

1.11.11. The Lands Tribunal may reassess the value of the land (section 97W(3) of the Act). The valuer may be called as a witness in the appeal proceedings (section 97W(4) of the Act). The Lands Tribunal must give reasons for its decision on the appeal and must issue a written statement of these reasons within 8 weeks of the hearing of the appeal (section 97W(5) of the Act), or, if the Lands Tribunal considers that 8 weeks is not reasonable, at a later date which the parties of the appeal are informed of in advance (section 97W(6) of the Act). The validity of the Lands Tribunal's decision is not affected by its failure to comply with the time limits set out in the Act (section 97W(7) of the Act).

1.11.12. The valuation determined by the Lands Tribunal is the price that the Part 3A CB will have to pay to purchase the land. It should be noted that Ministers are not a competent party to any appeal on the valuation as they only appoint the valuer (section 97W(11) of the Act).

1.12. Transfer of the land to the community body

Confirmation by the Part 3A CB

1.12.1. After the valuer has advised all parties of the valuation figure, the Part 3A CB has 21 days in which to send notice confirming that they intend to proceed with the Part 3A right to buy to Ministers and the landowner identified in the application (section 97P(1) of the Act). Following receipt of that notification, Ministers have 7 days in which to acknowledge receipt of and send a copy of that acknowledgement to the landowner.

Withdrawal

1.12.2. If, at any time after the Part 3A CB has confirmed that they wish to proceed to buy the land they decide that they want to withdraw that confirmation, they should notify this fact, in writing, to Ministers. Ministers will then, within 7 days of receiving such notice, acknowledge receipt and send a copy of that acknowledgement to the landowner. Should the Part 3A CB withdraw their application, the owner of the land may apply for compensation from the Part 3A CB (section 97T(1)(b) of the Act) (see section 1.13 on compensation). Such withdrawal will also result in the Part 3A right to buy being deleted from the RoACBL and any prohibitions on the land being lifted.

Completion of the purchase

1.12.3. The Part 3A CB is fully responsible for securing the expeditious exercise of the Part 3A right to buy (section 97Q(1) of the Act). They are required to:

- prepare the documents necessary to effect the conveyance of the land and ensure that the subjects to be conveyed are the same as those specified in the consent to Ministers; and
- in preparing these documents they must take into account all conditions imposed by Ministers (section 97L of the Act), if any.

1.12.4. A Part 3A CB will require the services of a solicitor to complete the conveyance of the land.

1.12.5. Where a Part 3A CB cannot fulfil their obligations to ensure that the subjects which are to be transferred are the same and meet all the conditions imposed by Ministers in their consent, because they are not owned by the person who is named as the owner in the application, the matter must be referred to Ministers (section 97Q(2) of the Act).



1.12.6. The owner of the land being bought is obliged to make available to the Part 3A CB such deeds and other documents as are sufficient to enable the Part 3A CB to proceed to complete its title to the land and to transfer the title accordingly (section 97Q(4) of the Act). Should they refuse or fail to make them available, or if they cannot be found within 6 weeks of the date on which Ministers consented to the application, the Part 3A CB can apply to the Lands Tribunal who may order the production of these documents (section 97Q(5) of the Act). Where the owner refuses or fails to transfer the title of the land the Part 3A CB can also apply to the Lands Tribunal to undertake that action. Where the clerk is so authorised, an action by them to adjust, execute and deliver such deeds or other documents as will complete the transfer will have the effect and force as if it were done by the owner (section 97Q(6) of the Act).

Completion of the transfer

1.12.7. The details of how the transfer of the land is to be completed are set out in section 97R of the Act. The Part 3A CB must pay for the land within 6 months from the date on which Ministers consented to the application (section 97R(2) of the Act). However, this date may be extended where:

- the owner and the Part 3A CB agree to an extension of that period (section 97R(3)(a) of the Act);
- the valuation (under section 97S of the Act) has not been completed by a date which is 4 months after the date when Ministers consented to the application: in such a case payment must be made within 2 months of the completion of that valuation (section 97R(3)(b) of the Act);
- the valuation is the subject of an appeal which has not been determined within 4 months of the date when Ministers consented to the application: in such a case, payment must be made within 2 months of the date of the outcome of the appeal (section 97R(3)(c) of the Act).

1.12.8. Where the owner cannot grant a good and marketable title to the Part 3A CB by the date that the payment is due, then the consideration shall be held by the Lands Tribunal pending either the completion of the conveyance or notification to the court that the Part 3A CB has decided not to proceed to complete the transaction. If the Part 3A CB does not make payment by the due date, the application will be considered to have been withdrawn.

1.12.9. Any failure by the Part 3A CB, to complete the purchase may create a liability to pay compensation under section 97T of the Act for any loss or expense incurred.

1.12.10. The land that the Part 3A CB is acquiring will be disburdened of any heritable security (section 97R(6) of the Act). Where such a security also burdens other land which is not being acquired by the Part 3A CB, the security does not cease to burden that land (section 97R(7) of the Act).

1.12.11. The Part 3A CB will be required to pay the creditor of a security any sums which are due to them (section 97R(8) of the Act). The Part 3A CB may deduct any sums paid to the creditor in the standard security from the amount that they are to pay the landowner (section 97R(9) of the Act).

1.13. Compensation/grants

Rights to compensation

1.13.1. Any person, including the landowner, who has incurred loss or expense is entitled claim compensation for that loss or expense from the Part 3A CB (section 97T of the Act). This covers loss or expenses incurred:

- in complying with the requirements of Part 3A of the Act following an application (section 97T(1)(a) of the Act);
- as a result of the Part 3A CB's withdrawal from the Part 3A right to buy process or otherwise failing to complete the purchase after having confirmed its intention to do so (section 97T(1)(b) of the Act);
- as a result of the failure by the Part 3A CB to complete the purchase (section 97T(1)(c) of the Act).

1.13.2. However, the Part 3A CB will not be liable to pay compensation where an application for consent has been refused by Ministers (section 97T(2) of the Act). Should this be the case, the landowner is entitled to recover the amount of any losses or expenses incurred in complying with the requirements of Part 3A of the Act following the making of an application by a Part 3A CB from Ministers (section 97T(3) of the Act).

1.13.3. The process for making a claim for compensation is set out in the Community Right to Buy Order 2018 (137). A claim for compensation under section 97T(1)(a),(b) or (c) must be submitted within the period of 90 days beginning:

- on the final settlement date;
- on the date that the Part 3A CB informed Ministers that it has withdrawn its application or withdrawn its confirmation of its intention to proceed; or



- the date that the Part 3A CB application is to be treated as withdrawn under section 97R(5) of the Act.

A claim for compensation under 97T(3) of the Act must be submitted within the period of 90 days beginning with the date of notification of the refusal by Ministers to grant the Part 3A CBs application.

1.13.4. Where the parties cannot agree whether compensation is payable, or the amount of such compensation to be paid, within 60 days from the date of the submission of the claim for compensation, then either party may refer the question to the Lands Tribunal for a decision (section 97T(5) of the Act).

Grants for Part 3A CB's towards the payment of compensation

1.13.5. In given circumstances, Ministers are able to pay a grant towards a Part 3A CB's liability for compensation (section 97U of the Act). To apply for such a grant, the Part 3A CB needs to demonstrate that:

- after payment of outstanding liabilities incurred by the purchase of the land, the Part 3A does not have sufficient funds to pay in full the compensation required;
- the Part 3A CB has already taken all reasonable steps to try to obtain the compensation amount required but have been unable to do so; and
- it is in the public interest that Ministers pay the grant.

1.13.6. The process of applying for a grant towards compensation costs is set out in the Community Right to Buy Regulations 2018 (no. 140). The Part 3A CB should make an application to Ministers, on the form in schedule 5 of the Regulations, within 90 days of the date on which the Part 3A CB and the claimant agreed the amount of compensation payable or the date on which the Lands Tribunal determined the amount of compensation payable (under section 97T(5) of the Act). The Ministers' decision on an application for a grant towards compensation costs is final (section 97U(8) of the Act).

1.14. Funding

1.14.1. The Act makes no specific reference to funding for community purchases of land. It is for the Part 3A CB to decide where to obtain funding to support the purchase of the land. Part 3A CBs should contact the funding agents directly and as early as possible to obtain advice on funding options for their community purchase for both the original attempt to buy the land, and the purchase, should their application be approved.

1.15. After Purchase

General

1.15.1. The main purpose behind community right to buy is to enable communities to secure their future through the purchase, and subsequent sustainable development, of land. In the case of Part 3A, it aims to bring land which is abandoned, neglected or detrimental, back into productive use. The Act seeks to ensure that the land which the Part 3A CB has purchased, will remain a resource which benefits your community as a whole.

The Part 3A Community Body – Future Actions?

1.15.2. The Part 3A CB must continue to be a CLBG, SCIO, or BenCom whose surplus funds are applied for the benefit of the community. If it is a CLBG and is to be wound up, a successor body requires to be approved by Ministers (section 97D(2)(h) of the Act).

Changes to a Part 3A CB's governing documents

1.15.3. A Part 3A CB must notify Ministers in writing of any changes made to its governing documents as soon as possible after such changes have been made (section 97E(1) of the Act). If Ministers believe that a Part 3A CB, having already successfully purchased land under the Act, would no longer be entitled to do so, they may compulsorily acquire that land. This does not apply where the reason that the Part 3A would no longer be entitled to purchase the land is because the land would no longer be considered eligible by virtue of being abandoned, neglected or detrimental (section 97E(2) and (3) of the Act).

1.15.4. The implications of these provisions are clear: the Part 3A CB must continue to observe the requirements of the Act in relation to any land bought under its provisions. For example, any surplus funds which the Part 3A CB (or its successor) may have, may only be applied to benefit the community. There is therefore no scope for paying any surplus funds as a dividend to be shared out amongst individuals.

If winding-up becomes necessary

1.15.5. Where the Part 3A CB is a CLBG, the Act makes provision for the winding up of a Part 3A CB (section 97D(2)(h) of the Act). If the Part 3A CB is a CLBG, following the settlement of any liabilities, its property, including the land, must be transferred to another approved community body or crofting community body as may be approved by Ministers, or, if no such body exists, either to Ministers or to a charity as Ministers may direct.



1.16. If you need any further help

Annex B provides useful contacts to help you through the Part 3A right to buy process.

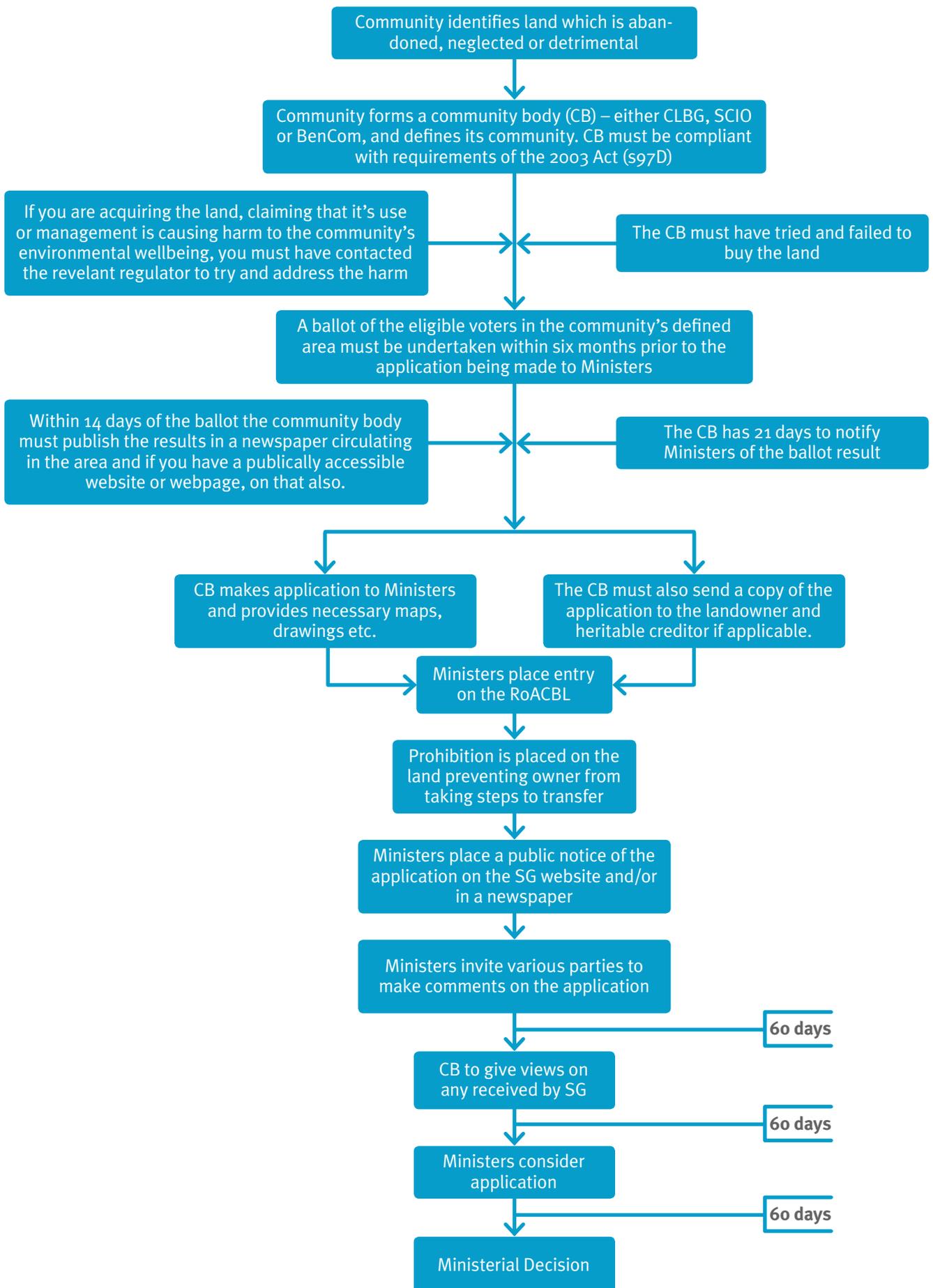
The Scottish Government's Community Land Team is happy to assist with questions you may have about the Part 3A right to buy. The team cannot provide legal advice and must remain objective at all times: its main role is to provide advice, on a case-by-case basis, to Ministers at various stages of the Part 3A right to buy process. However, the team can help you with any questions you have on the process. We recommend that you contact us as early as possible to benefit from our expertise.

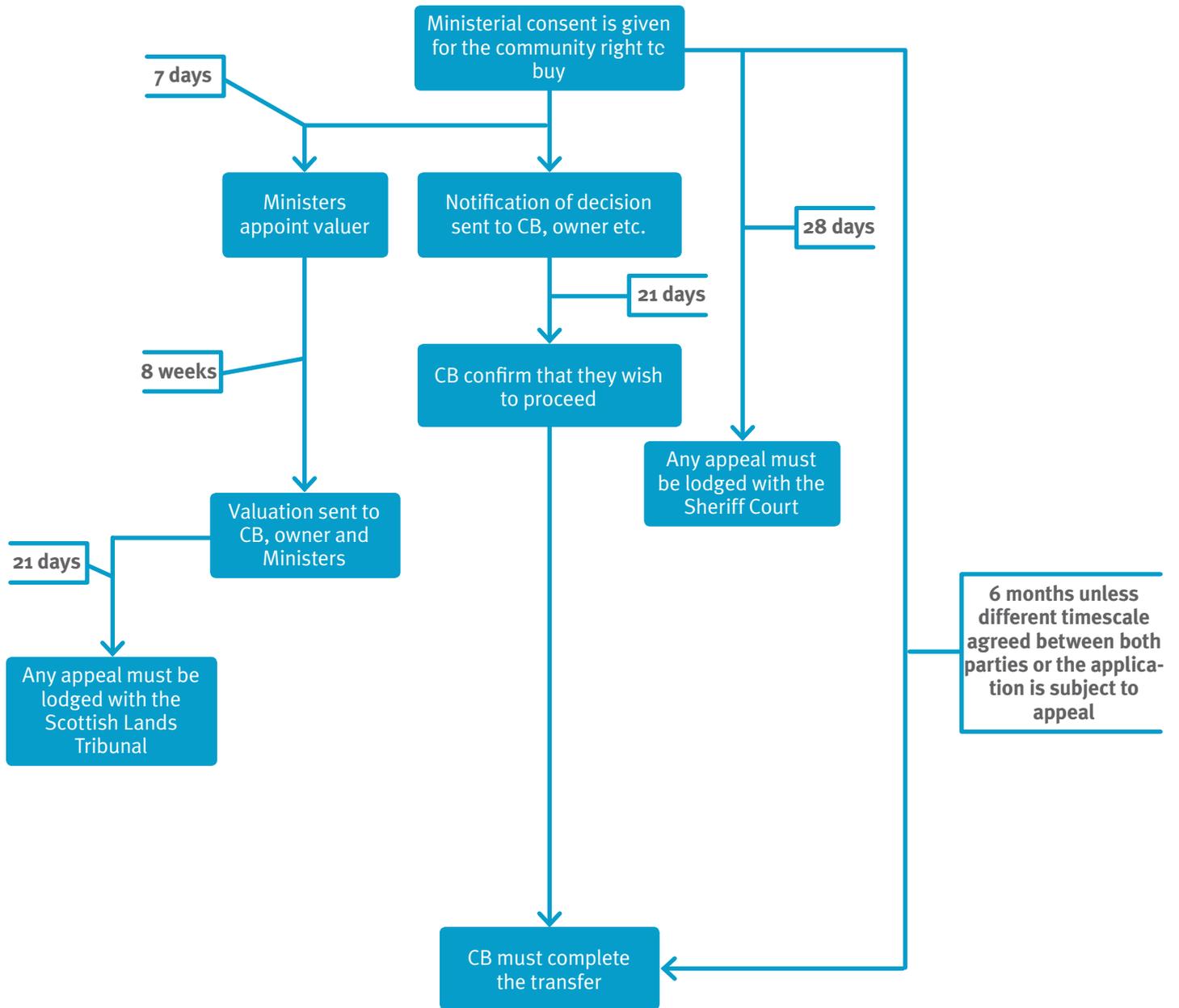


COMMUNITY RIGHT TO BUY ABANDONED,
NEGLECTED OR DETRIMENTAL LAND

ANNEX A









COMMUNITY RIGHT TO BUY ABANDONED,
NEGLECTED OR DETRIMENTAL LAND

ANNEX B



Community Land Team, Q Spur, Saughton House, Broomhouse Drive, Edinburgh EH11 3XD
 tel: 0131 244 9822
 email: crtb@gov.scot

Community Assets Team, Highland and Islands Enterprise
 An Lòchran, 10 Inverness Campus, Inverness IV2 5NA
 tel: 01463 245 245
 email: info@hient.co.uk
 website: <http://www.hie.co.uk/community-support/community-assets/default.html>

Companies House, 4th Floor, Edinburgh Quay 2, 139 Fountainbridge, Edinburgh EH3 7FF
 website: <http://www.companieshouse.gov.uk>

Registers of Scotland (RoS), Meadowbank House, 153 London Road, Edinburgh EH8 7AW
 tel: 0845 6070161
 email: <https://www.ros.gov.uk/contact-us/customer-services>
 website: <http://www.ros.gov.uk/>

Lands Tribunal for Scotland, George House, 126 George Street, Edinburgh, EH2 4HH
 tel: 0131 271 4350
 email: LTS_Mailbox@scotcourtribunals.gov.uk
 website: <http://www.lands-tribunal-scotland.org.uk/>

Development Trusts Association Scotland (DTAS), 1B Washington Lane, Edinburgh EH11 2HA
 tel: 0131 220 2456
 email: info@dtascot.org.uk
 website: <http://www.dtascot.org.uk/>

Community Ownership Support Service (COSS), 1B Washington Lane, Edinburgh EH11 2HA
 Tel: 0131 225 2080
 Email: coass@dtascot.org.uk
 Website: <http://www.dtascommunityownership.org.uk/>

Scottish Council for Voluntary Organisations (SCVO), Mansfield Traquair Centre, 15 Mansfield Place, Edinburgh, EH3 6BB
 tel: 0131 474 8000
 email: enquiries@scvo.org.uk
 website: <http://www.scvo.org.uk/>



Office of the Scottish Charities Regulator (OSCR), 2nd Floor Quadrant House, 9 Riverside Drive, Dundee DD1 4NY

tel: 01382 220446

email: info@oscr.org.uk

website: www.oscr.org.uk

Financial Conduct Authority (FCA), 25 The North Colonnade, London E14 5HS

tel: 020 7066 1000

website: www.fca.org.uk

Community Land Scotland, Fearann Coimhearsnachd na h-Alba

Room 1, Aves Business Centre, 11 Jamaica Street, Greenock PA15 1XX

Tel: 07884 314297

Email: info@communitylandscotland.org.uk

Website: <http://www.communitylandscotland.org.uk/>

Scottish Land & Estates, Stuart House, Eskmills Business Park, Musselburgh, EH21 7PB

Tel: 0131 653 5400

Email: info@scottishlandandestates.co.uk

Website: <http://scottishlandandestates.co.uk/>

The Scottish Land Commission, Longman House, 28 Longman Road, Inverness, IV1 1SF

Tel: 0300 244 4452

Email: info@landcommission.gov.scot

Website: <https://landcommission.gov.scot/>

Resources

Community Right to Buy

<https://beta.gov.scot/policies/land-reform/community-right-to-buy/>

Community Right to Buy Abandoned, Neglected or Detrimental Land

<https://beta.gov.scot/policies/land-reform/community-right-to-buy/#community-right-to-buy-abandoned-neglected-or-detrimental-land>

Communities Mapping Tool

<https://beta.gov.scot/publications/land-reform-mapping-tool-guidance/>

Register of Applications by Communities to Buy Land

<https://roacbl.ros.gov.uk/>

Register of Community Interest in Land

<https://www.eservices.ros.gov.uk/rcil/ros/rcilcb/presentation//ui/pageflows/viewCountySummary.do>

Title Searches

<https://www.growingtogether.community/resources/who-owns-land-scotland>

Buildings at Risk Register

<https://www.buildingsatrisk.org.uk/>

Legislation

Land Reform (Scotland) Act 2003

<http://www.legislation.gov.uk/asp/2003/2/contents>

Land Reform (Scotland) Act 2003, Explanatory Notes

<http://www.legislation.gov.uk/asp/2003/2/notes/contents>

Community Empowerment (Scotland) Act 2015

<http://www.legislation.gov.uk/asp/2015/6/contents>

Community Empowerment (Scotland) Act 2015, Explanatory Notes

<http://www.legislation.gov.uk/asp/2015/6/notes/contents>

The Community Right to Buy Abandoned, Neglected or Detrimental Land (Abandoned, Neglected or Detrimental Land)(Eligible Land, Regulators and Restrictions on Transfers and Dealing) (Scotland) Regulations 2018

<http://www.legislation.gov.uk/ssi/2018/201/contents/made>

The Community Right to Buy Abandoned, Neglected or Detrimental Land (Abandoned, Neglected or Detrimental Land)(Applications, Ballots and Miscellaneous Provisions) (Scotland) Regulations 2018

<http://www.legislation.gov.uk/ssi/2018/140/contents/made>

The Community Right to Buy Abandoned, Neglected or Detrimental Land (Abandoned, Neglected or Detrimental Land)(Compensation) (Scotland) Order 2018

<http://www.legislation.gov.uk/ssi/2018/137/contents/made>



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Produced for The Scottish Government by APS Group Scotland, 21 Tennant Street, Edinburgh EH6 5NA
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The Community Land Team can be contacted on:

Tel: 0300 244 9822

Email: crtb@gov.scot

Post: Q Spur, Saughton House, Broomhouse Drive, Edinburgh, EH11 3XD

www.gov.scot