

**Crofting Community Right to Buy
under Part 3 of the Land Reform
(Scotland) Act 2003**

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INTRODUCTION

1. The crofting community right to buy in Part 3 of the Land Reform (Scotland) Act 2003 (“the Act”) creates a regime in which a crofting community body (CCB), representing an identified crofting community, may acquire eligible croft land (including salmon fishings, mineral rights (except mineral rights to oil, coal, gas, gold or silver)), associated with that crofting community, and sporting rights. A CCB may also acquire, at the same time, or within a specified period after it has purchased the eligible croft land, the interest of the tenant in tenanted land (interposed leases). This right – the crofting community right to buy - can only be exercised by a properly constituted CCB and when its application to do so has the consent of a majority both of the crofting community and of the crofters within that crofting community, and is approved by the Scottish Ministers (Ministers).

2. The requirements of the crofting community right to buy in Part 3 of the Act are both complex and demanding. Crofting communities interested in acquiring their croft land etc should view the use of these provisions as a fall-back position in circumstances where efforts to acquire the land by agreement fail. Acquisition by agreement is likely to result in a deal which better suits the needs of both community and landowner. Even a failed attempt at acquisition by agreement can reveal a great deal of information which will subsequently prove useful in preparing an application. It can also help to avoid misunderstandings which could otherwise result in a flawed or incompetent application.

3. The crofting community right to buy process requires to be exercised in accordance with Part 3 of the Act. The Act and its explanatory notes can be accessed via the electronic links: http://www.opsi.gov.uk/legislation/scotland/acts2003/asp_20030002_en_1 and You should also refer to the Crofting Reform etc Act 2007 at http://www.opsi.gov.uk/legislation/scotland/acts2007/asp_20070007_en_1. The consolidated 2003 Act can be found in the Statute Law Database at <http://www.statutelaw.gov.uk/>. A timeline of actions in the crofting community right to buy process is noted in Annex A.

4. A useful introductory guide to the crofting community right to buy process is provided in the leaflet “The crofting community right to buy – your questions answered”, published by the Community Land Unit (CLU) of Highlands and Islands Enterprise. This can be obtained from CLU or viewed on the HIE website (<http://www.hie.co.uk/CLU-General/-/holding-area/crofting-right-to-buy-0604.pdf>).

Purpose of this guidance

5. This guidance is intended to assist crofting communities interested in acquiring land under the crofting community right to buy provisions in Part 3 of the Act; landowners who might be affected by an application for consent to exercise the crofting right to buy; and individuals and businesses who feel that their interest in a particular area of land may be affected by an application. The guidance is written in three parts:

- the first part provides guidance specifically for CCBs;
- the second part provides specific guidance for landowners;
- the third part is specific for third parties.

There are also additional Annexes which provide further information for each of the three parts.

6. This guidance covers the statutory requirements of Part 3 of the Act and associated subordinate legislation. References to the Act are included to direct the reader to relevant sections should they wish to read the legislation alongside this guidance.

7. This guidance cannot take the place of independent professional advice on individual applications to purchase croft land etc. The first consideration for any group within a crofting community wishing to create a CCB for the purpose of exercising the crofting community right to buy should be to obtain legal advice. It would also be appropriate for any landowner or other person with an interest in the land who considers that a crofting community right to buy application may affect their land or interest to seek similar professional advice, including legal advice and advice on valuation, environmental and land management issues.

8. The Scottish Government's Community Assets Branch can assist with any queries on the crofting community right to buy process. It cannot, however, 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 CCB, a landowner or any third party) involved in a specific case.

9. 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 Community Assets Branch. Our contact details are noted in Annex B.

SECTION 1 GUIDANCE FOR CROFTING COMMUNITY BODIES (CCBs)

1.1 INITIAL STEPS

Preliminary consideration

10. Should your group or community decide that the crofting community right to buy is the best way for you to achieve your aims, you will need to undertake considerable preparation even before you make your application for consent for your community right to buy. There are four major tasks you must complete before you can prepare a compliant and sound application. These are:

- establishing community support;
- forming a crofting community body (CCB);
- identifying the land and interests in land to be acquired;
- identifying the resources needed to acquire land and interests.

11. If you are considering preparing a crofting community right to buy application you may wish to discuss your plans with the Community Land Unit (CLU) of Highlands and Islands Enterprise (HIE) at a very early stage (contact details at Annex B). The Community Land Unit may be able to provide financial support for work which will lead to the creation of your CCB and assist with the preparation of your application. It will also be able to help identify people who would be willing and able to provide you with appropriate professional advice on how to form your CCB and prepare your application.

12. If you are seeking to promote a crofting community right to buy application you are also strongly advised to discuss your plans for creating your CCB with the Scottish Government's Community Assets Branch before you constitute your company (contact details at Annex B). The Branch will provide you with advice on how to make your Memorandum & Articles of Association (M&A) compliant with the Act and discuss the right to buy process before you complete your application form. Further sources of help are also available from the main contacts detailed in this guidance (Annex B).

Identifying the resources you need

13. Although your CCB will not need to pay for the land you acquire under the crofting community right to buy until after the land is transferred, **it is important that you seek an early assessment of the likely cost of its acquisition, compensation to the landowner for loss and expenses as well as management of the land you are seeking to acquire.** Such an assessment will:

- give you information to disseminate to your community when you ballot it on whether to proceed with your application;
- provide you with supporting information on the proposed use, development and management, which must form part of any competent application; and

- provide you with information which you will need to present to prospective funding sources in order to assess funding and financial support requirements.

14. **It is essential that you obtain professional advice to assess likely costs.** The employment of a chartered valuation surveyor (Member of the Royal Institute of Chartered Surveyors (MRICS)) who is suitably experienced in the type of property to be acquired will enable an assessment of the value of the land you are seeking to acquire to be given, and they will also give you a reasonably clear indication of its potential cost in advance of your CCB making an application to Ministers. You should, however, be aware that a valuer who is employed by your CCB may not have the co-operation of the landowner from whom you are seeking to acquire. This is likely to make it difficult to provide an accurate assessment of the value of the land. In particular, it may be difficult to assess the value of any minerals, salmon fishings, sporting rights and leases as their value may depend on information which cannot be obtained from either local knowledge or by simply viewing these assets.

1.2 DEFINITIONS: ELIGIBLE CROFT LAND, ELIGIBLE ADDITIONAL LAND ETC

15. Part 3 of the Act allows your CCB to buy croft land and its interests - salmon fishings and mineral rights (except mineral rights to oil, coal, gas, gold or silver) - eligible additional land, eligible sporting interests and the interest of the tenant in tenanted land. This section explains the different types of land and rights, as defined by Part 3 of the Act.

Eligible croft land

16. An application by your CCB **must** relate to eligible croft land. Eligible croft land is:

- all land which is subject to crofting tenure and regulation, including arable machair and scattalds (section 68(2)(a) of the Act);
- any land in which a tenant of a croft (either alone or in common with others) has a right of pasture or grazing (section 68(2)(b) of the Act);
- any land which comprises any part of a common grazing held by a tenant of a croft, or held runrig by a tenant of a croft, which has not been apportioned for the exclusive use of a tenant of a croft (as provided by section 52 of the Crofters (Scotland) Act 1993);
- salmon fishings in inland waters within or contiguous to the eligible croft land. The salmon fishings can include fishings or rights which are owned separately from that land (sections 68(2)(d) of the Act as read with section 69);
- mineral rights within or contiguous to eligible croft land (section 68(2)(d) of the Act as read with section 69).

17. The following does **not** constitute eligible croft land:

- owner occupied or worked crofts (see section 68(3) as read with section 68(4) of the Act);
- crofts and croft house sites which have been decrofted;
- areas of land that have been resumed from crofting tenure.

18. It will not be easy for your CCB to identify eligible croft land and ensure that you have not included non-eligible land. If you propose to submit your application in respect of a large area of land comprising several crofts and common grazings, there is a strong chance that some of the land within that area will not be eligible croft land. You may be unaware that a croft has been purchased or that pockets of land within a larger area may never have been part of a croft or common grazing. The Register of Crofts, held by the Crofters Commission, may help to assist you in identifying such areas (contact details at Annex B). The Register gives details of all crofts and most common grazings. However, it is not map-based and boundaries may not be adequately described.

19. So that you can be certain of the status of the land you will probably need to conduct a full title search in the Land Register and Register of Sasines before you finalise your application. **While these records are publically available and may be accessed by anyone, it is advisable that you entrust your searches for property transactions to professionals. You should make a budgetary allocation for carrying out any such searches.**

20. **Failure to establish the eligible croft land could result in your application being rejected.** In some cases Ministers will need to refer your application to the Scottish Land Court in order to establish whether particular areas of land are part of a croft or part of a common grazing (section 81 of the Act). You should not work on the assumption that the land included in your application which turns out not to be eligible croft land can be treated as eligible additional land.

Salmon fishings and mineral rights

21. Salmon fishings and mineral rights (excluding oil, coal, gas, gold or silver) (as referred to in section 68(2)(d) of the Act) form part of or are contiguous to the eligible croft land to which they relate.

22. Your CCB can apply for consent to purchase these rights at a number of points in time:

- at the same time as you are applying to purchase the eligible croft land associated with them (section 69(1)(a)(i) of the Act);
- where you have made an application to Ministers, but they have still to make a decision on your application (section 69(1)(a)(ii) of the Act);
- during “the relevant period” (defined in section 69(3) of the Act). The “relevant period” is the period from the date on which Ministers consented to your application under section 73 of the Act until one year after your CCB has

bought and retained the related croft land for salmon fishings or until five years thereafter for mineral rights (section 69(3) of the Act).

23. In order to proceed, you must have provided Ministers, in accordance with section 85(1) of the Act, with confirmation that: (1) you intend to proceed to buy the eligible croft land to which the salmon fishings or mineral rights relate; or (2) you have bought and retained the related croft land in accordance with Part 3 of the Act and your application is being made within the relevant period (section 69(1)(b) and (2) of the Act).

24. You cannot acquire mineral rights or salmon fishings through the crofting community right to buy **unless** you are acquiring or have acquired the relevant eligible croft land in accordance with the provisions of Part 3 of the Act. **You cannot therefore use the crofting community right to buy to acquire mineral rights and salmon fishings in isolation or in respect of land already owned by your CCB and which was acquired by means other than the exercise of the crofting community right to buy.**

Eligible additional land

25. Your application may also include “eligible additional land”. This is land which is contiguous to the eligible croft land which is included in your application, and which is also owned by the same person (section 70(4) of the Act). The eligible additional land does not include salmon fishings and mineral rights associated with it (section 70(4) of the Act).

26. If you propose to include eligible additional land in your application, the owner of the land is required to agree to its inclusion. You may choose to approach the landowner before you submit your application. Ministers will write to the landowner following the receipt of your application seeking agreement as to its sale (section 73(9) of the Act). The landowner may however, not agree to its inclusion. Where you propose that eligible additional land be included in your application, and the landowner has not requested, or consented, to the sale of that land, Ministers will refer the issue to the Scottish Land Court (section 77 of the Act).

27. It is important that you consider very carefully whether you want to include eligible additional land in your application. If you want to include such land you should ensure that you will be able to satisfy Ministers on the criteria set out at section 77(3)(a)-(e) of the Act in respect of that land.

Eligible sporting interests

28. Sporting rights are normally attached to land. This means that when your CCB seeks to buy eligible croft land you will normally also acquire the sporting rights. It is therefore not possible to exclude sporting rights from the land you are acquiring. The Act therefore includes “eligible sporting interests”. These are the rights of a person other than the owner of the eligible croft land under any lease or other contract to shoot or fish on the land.

29. The Act provides a mechanism whereby your CCB and the landowner can agree that where your application is successful, the eligible sporting interests on the land can be leased back to the former owner at a nominal rental for a period of at least 20 years (section 83(4) of the Act).

30. The existence of a leaseback agreement will be taken into account in assessing the value of the land and any interests (section 88(11) of the Act). This will reduce the price your CCB will pay for the land by the value attributable to that leaseback. You must agree this arrangement with the landowner before your CCB exercises your right to buy. **If you fail to make an agreement, the price payable for the land will include an element representing the value of the sporting rights.**

31. If sporting rights have been leased back to the former landowner (in terms of section 83 of the Act), your CCB cannot apply under the Act to purchase these rights (section 70(3) of the Act).

32. There may be instances where an arrangement already exists which gives a third party a heritable interest in the sporting use of the land you wish to acquire. If this is the case and your CCB acquires the land through the crofting community right to buy, that interest could persist and give that third party effective control of the sporting use of the land. In such a situation, you can apply to Ministers to acquire that sporting interest provided that you make your application within the relevant time limit (section 70(3) of the Act). This time limit starts on the date on which Ministers gave consent to your application for your community right to buy the land and ends 5 years after the date on which your CCB completed the purchase of the eligible croft land.

The interest of the tenant in tenanted land

33. Some eligible croft land may have a lease or leases over it (so called "interposed leases"). Your CCB can apply to purchase the interest of the tenant in a lease over the land which you have bought or are acquiring. However, this interest does not include the interest of the tenant in a croft tenancy or in the tenancy of a dwelling house (section 69A(1) of the Act). The lease which can be purchased must be contained within the eligible croft land which your CCB proposes to acquire. If it extends beyond the eligible croft land, you will not be able to purchase that portion of the lease. Section 88A of the Act provides for the situation where your CCB does not wish to acquire the interest of the tenant in a lease in its entirety. The interest of the tenant in a lease may include their interest in the lease of a company which is exploiting wind power, or water for hydro power generation.

34. Your CCB can apply for consent to purchase the interest of the tenant at a number of points of time:

- at the same time as you are applying to purchase the eligible croft land (section 69A(2)(i) of the Act);
- where you have made an application to Ministers, but they have still to make a decision on your application (section 69A(2)(ii) of the Act);

- during the “relevant period” (specified in section 69A(5) of the Act). This “relevant period” is the period from the date on which Ministers consent to your application under section 73 of the Act until 5 years after the date on which your CCB has bought and retained the croft land etc (the principal subjects). In order to proceed, you must have provided confirmation to Ministers (in accordance with section 69A(4) of the Act) that you: (1) intend to proceed to buy the croft land to which the interest of the tenant relates or (2) you have bought and retained the related croft land in accordance with Part 3 of the Act.

Identifying your interests

35. You will need to identify how these interests are owned and decide whether or not you wish to acquire the land, interests, sporting rights and the interest of the tenant in tenanted land. You need to do this before you attempt to identify the resources you will need to exercise your right to buy. **You 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.**

1.3 THE CROFTING COMMUNITY

Defining your crofting community

36. A “crofting community” is defined in terms of section 71(5) of the Act. This definition depends on another one, that of “crofting township” at section 71(6) of the Act. A crofting community is therefore defined as:

- persons who are resident in the crofting township which is situated in or is associated with the croft land which your CCB has a right to buy under Part 3 of the Act (section 71(5)(i)); or
- the tenants of crofts in that crofting township who are resident in another place within 16km of that township (section 71(5)(ii)), and who are entitled to vote in local government elections in the polling district or districts in which that township or other place is situated;
- Ministers can also set out alternative criteria where they consider that it is appropriate (section 71(5)(b) of the Act).

37. A “crofting township” comprises any two or more crofts which share the right to use a common grazing together with that common grazing and any houses pertaining to or contiguous to those crofts or that common grazing, or any combination of two or more crofting townships within that meaning (section 71(6) of the Act).

38. Therefore:

- a person **cannot** be considered a member of your crofting community **unless** they are registered to vote in local elections in the polling district in which your

township is located, or, in certain cases, in the polling district in which they live if it is within 16 kilometres of the township. This, for example, excludes persons under 18 years of age from membership of your crofting community;

- depending on where they live, the landowner and their family may be members of your crofting community (provided they are also registered to vote in local government elections);
- croft tenants of the land to be included in your application who live within 16 kilometres of that land and are registered to vote in local government elections where they live are members of your crofting community;
- anyone who has a grazing share or a right of pasture or grazing in the land covered by your application is a croft tenant of that land. If they live within 16 kilometres of the township and are registered to vote in local government elections where they live, that person will be a member of your crofting community;
- any resident of any property which is situated within your crofting township or is contiguous to that township or the land being acquired is likely to be a member of your crofting community.

39. Ministers have discretion to define the crofting community in other ways (section 71(5)(b) of the Act). This could include, for example, identifying a crofting community by means of postcodes. Should you wish to use this option, you should discuss this first with Community Assets Branch. Such an approach must, however, be approved by Ministers.

Identifying the members of your crofting community

40. As the Act does not define “resident” you should proceed on an inclusive basis (section 71(5)(a) of the Act). Thus:

- any person living in a house in your community for a period rather than continuously, should still be regarded as being resident;
- any person who is not a UK national can register to vote in local government elections, and if registered, should not be debarred from being considered a member of your community for the purposes of membership of your CCB and your ballot (section 75 of the Act).

41. Your CCB must define and establish the membership of your crofting community before you conduct your ballot (as required under section 75 of the Act) or submit your application for consent for your community right to buy (section 73 of the Act). All eligible members of your crofting community must be given the opportunity to vote in a ballot on your application. **You must conduct your ballot within the six-month period immediately preceding the date upon which you submit your application to Ministers (section 75(1)(a) of the Act).**

42. **It is essential that you properly and correctly define your crofting community.** Failure to do so could result in your application failing if it is found that your ballot was invalid. A challenge to your ballot and the membership of your

community is most likely to arise if someone is excluded from your community membership and ballot or if there is any opposition to your proposals.

43. You need to identify two main groups in your community: (1) the croft tenants and (2) the other township or community residents. This is so that you can meet the statutory requirements for conducting your CCB's ballot in the Crofting Community Right to Buy (Ballot) (Scotland) Regulations 2004 (Annex B).

44. A person can only vote as a croft tenant if they are entitled to vote as a member of your community. A croft tenant includes anyone who has a right of pasture and grazing or holds a common grazing share within the land covered by the application (section 75(5) of the Act). This would potentially include croft owner-occupiers and people who have no croft. It does not however, apply to a sub-tenant who uses a croft or grazing share. In that case the voting right rests with the croft tenant from whom the croft or grazing share is sublet.

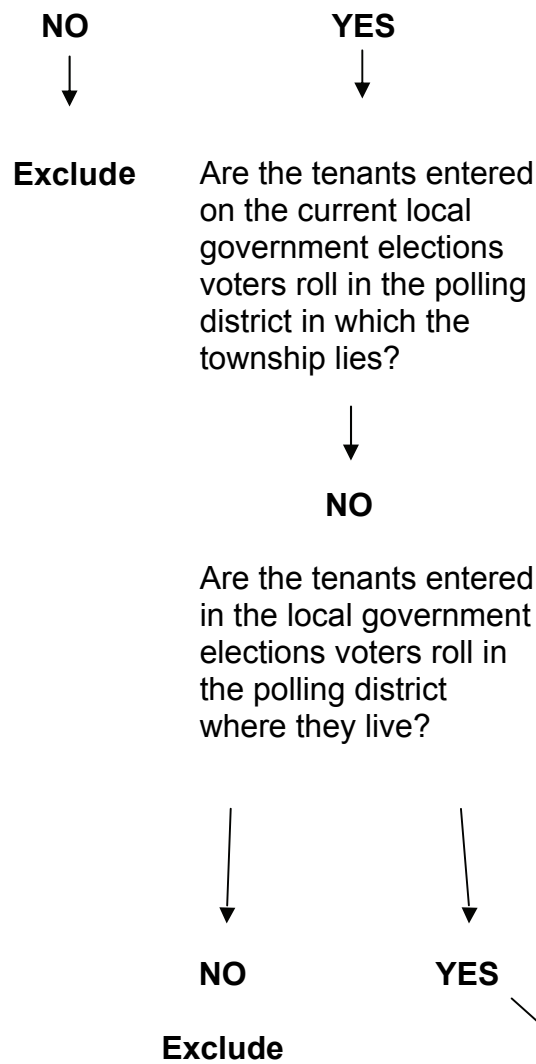
45. There are a number of steps you can take to identify the two groups of members of your crofting community. These are shown in Figure 1.

46. To identify the crofters you should obtain a list of tenanted crofts and any separate shares within a distance of 16km from your township from the Crofters Commission. You can locate this 16km line in the Rural Communities Mapping Tool which has been developed to assist CCBs and Community Bodies (CBs) in identifying their communities (<http://www.scotland.gov.uk/Topics/Rural/rural-land/right-to-buy/MappingTool>). Details on how to use the Mapping Tool are at Annex B. As the definition of "community" is different in Part 2 and Part 3 of the Act, there are features of the Tool which are not relevant for CCBs. These features are not discussed in the instructions in Annex B.

Figure 1. Identifying your crofting community

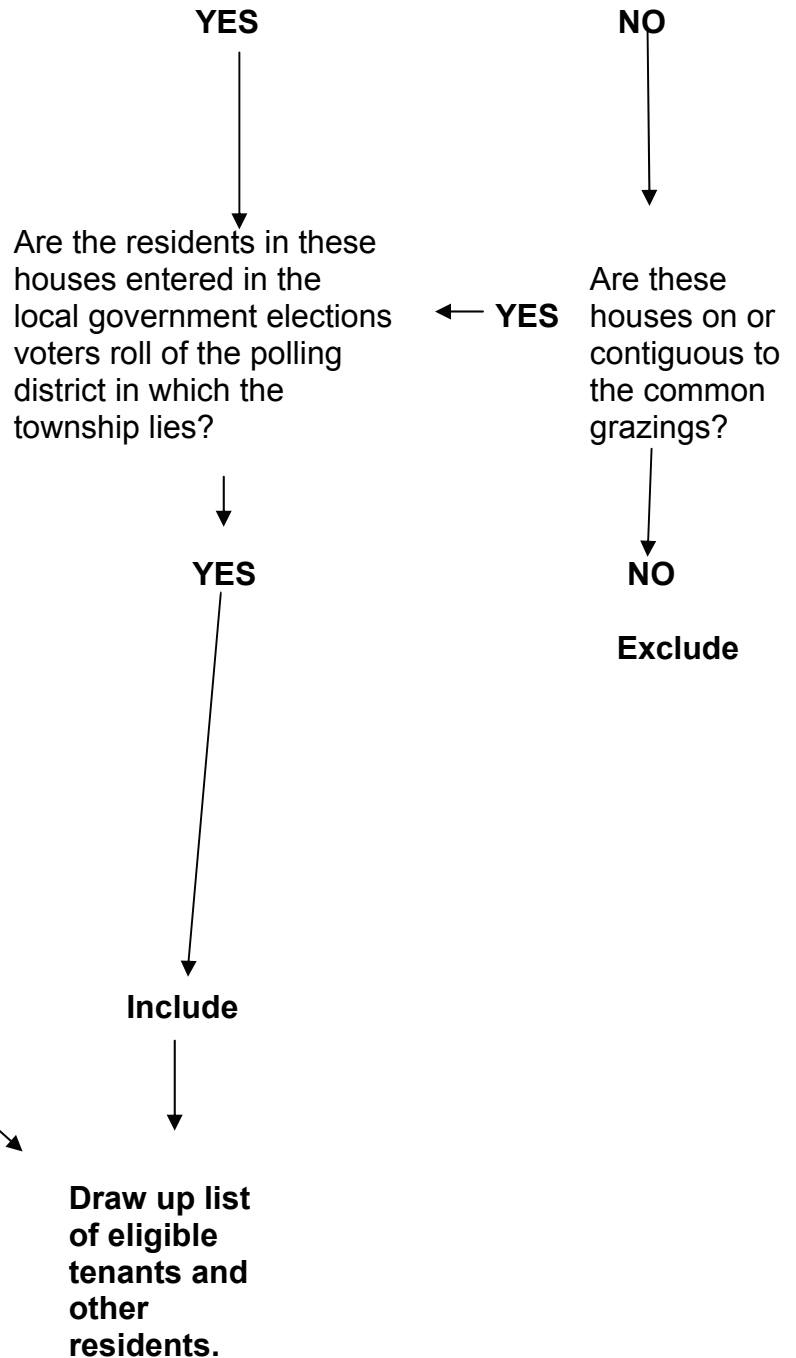
CROFTERS

Obtain list of tenanted crofts are from the Crofters Commission. Measured in a direct line, do tenants of the township crofts or shares live within 16km of the township?



OTHER TOWNSHIP RESIDENTS

Are they resident in houses or on crofts contiguous to crofts sharing in the common grazing?



The Electoral Register (voters roll)

47. The next step in identifying community members who are crofters is to check whether the crofter tenants are on the current Full Electoral Register in the electoral district in which the township lies.

48. First, you should scrutinise the Edited Electoral Register for the electoral district(s) in which the land you want to acquire and associated township(s) are located. The published (or edited) version may be obtained from major public libraries, local authority service points and electoral registration offices. A charge may be made for a copy of the Edited Register. You should be aware that not all the names of residents may be on this list as individuals can ask for their names to be excluded from the Full Register. Second, you should then compare this against the full Electoral Register held at electoral registration offices. This contains the names of all the voters. You will not, however, be able to make a copy of this Register. You should check against the names and addresses identified by your CCB in the township and note any differences. Where these tenants are found in the Full Electoral Register you should include them in your list of eligible tenants.

49. The next step is to repeat the above process where you have identified any persons who are croft tenants (as defined by section 71(5) of the Act) and who do not live within the township (but within the 16km area of township).

50. Your CCB will need to undertake a number of steps to identify the other township residents. The first step you should take is to identify whether these persons are resident in houses on or contiguous to crofts sharing the common grazings. If they are, you should then identify whether these residents are entered in the Full Electoral Register of the polling district in which the township lies. If the houses are on or contiguous to the common grazings you should also identify whether the residents of these houses are entered in the Full Electoral Register of the polling district in which the township lies.

51. After you have identified the persons who reside in your township but who are not noted on the Full Electoral Register, you should ask them 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 your CCB is acquiring the land. You should keep a note of all instances where individuals are excluded from the Full Electoral Register and those where their inclusion is not straightforward.

52. You might find it helpful to prepare a plan which shows all properties in your township, holdings on the land and all contiguous properties together with a listing of their occupants. This will enable you to assess who needs to be considered as a possible community member and help you to justify the inclusion and exclusion of persons should there be challenges to your determination of community membership and the persons who are invited to participate in your ballot.

53. To minimise the risk of challenge or rejection of your ballot results, you should consider employing an independent professional to establish the membership of your community (as defined under section 71(5) of the Act).

1.4 FORMING AND REGISTERING YOUR CROFTING COMMUNITY BODY (CCB) AS A COMPANY LIMITED BY GUARANTEE

54. The Act requires that only a Crofting Community Body (CCB) – a company limited by guarantee – which has a Memorandum and Articles of Association (M&A) which complies with the requirements of Part 3 of the Act, may apply to Ministers for consent to exercise a crofting community right to buy. (The Companies Act 2006 will bring into effect changes to M&As during the course of 2009. M&As will no longer be referred to as such).

55. You will need to constitute your CCB at an early stage and at any rate before you proceed with the steps required to apply to Ministers for consent for your right to buy application. In most cases you will need to set up your CCB before you can apply for and obtain any financial support from public sector funding sources. The Community Land Unit (CLU) in HIE may be able to assist your community group in securing the professional help required to set up your CCB and to ensure that that is compliant with the Act. The Unit may also be able to provide some financial assistance for that purpose.

56. Section 71(1) of the Act specifies the matters which you must provide for in your CCB's M&A. These are:

- a definition of the crofting community to which your company relates;
- provision enabling your company to exercise your right to buy land and eligible sporting interests under Part 3 of the Act;
- provision that your company must have not fewer than 20 members. There is no upper limit on the number of members your company can have. However, in practice the number of members is limited by the requirement at section 71(1)(d) of the Act (that the majority of the members of your company must be members of your crofting community). Ministers have a discretionary power (section 71(2) of the Act) to accept a CCB with fewer than 20 members. If you think this is relevant to you, you should discuss this with Community Assets Branch before submitting your draft M&A. If section 71(2) of the Act is to be applied, you should explain why it is not possible for your CCB to have 20 members and why your application should not be construed as a private or family application;
- provision that the majority of the members of your company consist of members of your crofting community (section 71(1)(d) of the Act). Persons who comprise a crofting community are those people specified in section 71(5) of the Act;
- provision whereby the members of your company who consist of members of the crofting community have control of your company;

- provision ensuring proper arrangements for the financial management of your company and the auditing of your accounts: the Act requires that your CCB's accounts be subject to an audit, not a financial examination;
- provision that any surplus funds or assets of your company are to be applied for the benefit of your crofting community;
- provision that on the winding up of your company and after satisfaction of your liabilities, your property (including any land and eligible sporting interests which you have acquired under Part 3 of the Act) pass – (i) to another CCB or community body approved by Ministers; or (ii) if no other body is so approved, to Ministers or to a charity which Ministers may direct.

57. Membership of your CCB is distinct from the membership of the Board of your CCB. Members of a company limited by guarantee are responsible for selecting the Board of their company in accordance with its constitution. As noted above, section 71(1)(e) of the Act requires that members of your CCB who are members of your crofting community **must** have control of your CCB. However, these provisions do not specify how you are to achieve this. There may be a range of constitutional options to ensure that crofting members of your community who are members of your CCB control the activities of your CCB's Board. Ensuring that more than half of your Board members are members of your crofting community may not be the only or best way to achieve that outcome. There is no requirement that all members of your crofting community should be members of your CCB.

58. You should send your draft M&A to Community Assets Branch before you incorporate your company (contact details in Annex B). The Branch will consider your M&A against the requirements of the Act. This may save you time and inconvenience in the long run. At this time, the Branch will endeavour to point out any issues that might give rise to problems in securing compliance with the requirements of the Act. However, the Branch cannot give you an assurance that the status of your CCB will not be challenged by a third party. Neither can they give you an assurance that you will have met all the criteria set out in section 74(1)(i) of the Act in advance of your CCB making and submitting your application for consent for your right to buy. Such an assurance can only be given after you have submitted your application. Further, a decision by Ministers to approve your CCB could be challenged and overturned on appeal (section 91(1) of the Act).

59. When Ministers are satisfied that your CCB's M&A contains provisions which satisfy the criteria in section 71 of the Act, they will issue a "section 71(4) letter". This states that they are satisfied that the main purpose of your body is consistent with furthering the achievement of sustainable development, i.e. an integrated long-term approach to economic, social and environmental issues. Further information on sustainable development can be found in paragraphs 99 to 104 of this guidance. You should now incorporate your company with Companies House (contact address at Annex B).

Securing charitable status of your CCB

60. You may want to obtain charitable status for your CCB. This may require you to make changes to your M&A. You should contact the Office of the Scottish Charity

Regulator (OSCR) for details on the requirements to become a charitable body. The Scottish Council for Voluntary Organisations (SCVO) also provides information to members of the public on setting up a charitable company (contact details at Annex B).

Changes to your Memorandum and Articles of Association (M&A)

61. Once your company is incorporated, any changes you propose to make to your M&A must first be approved in writing by Ministers (section 72(1) of the Act). You should provide written details of the proposed modifications you are seeking to make. Ministers will consider whether they are in line with the requirements of the Act. If they are not, then Ministers will not approve them. Where your CCB no longer meets the requirements of the Act, and you have successfully purchased land through the Act, Ministers may acquire any community land compulsorily (section 72(2) of the Act).

1.5 ESTABLISHING AND DEMONSTRATING COMMUNITY SUPPORT

62. Preparation of your application for your crofting community right to buy requires considerable work and expenditure. All this effort may well prove abortive if your crofting community does not eventually support your application. **No application to acquire land and interests can succeed without the support of both your crofting community and the crofters in that community.**

63. It is essential that you use the crofting community right to buy to establish that there is a measure of community support for your proposals to acquire the land before you start to incur expense in developing your application.

1.6 YOUR BALLOT

64. The ballot establishes that your CCB's crofting community right to buy application has the support of your crofting community. The Act requires your ballot to demonstrate a specific level of support: that a majority of the members of your crofting community who voted in your ballot **and** a majority of the croft tenant members of your community who voted did so in favour of your CCB's application for your proposed right to buy (section 75(1)(b) of the Act).

Eligibility to vote

65. Your CCB must be clear on who is eligible to vote in your ballot in order to avoid potential legal challenge to the result. A mistake in identifying the members of your crofting community who are eligible to vote on your proposed application for consent to your community right to buy could invalidate the whole process of your application. Your CCB should confirm with Community Assets Branch that you have correctly identified the voting members of your crofting community before you conduct your ballot. This should enable any obvious difficulties to be resolved and thus reduce the

likelihood that Ministers might consider your ballot result to be invalid. **This is not a process of prior approval. The validity of every ballot has to be considered on its own merits on the basis of the information provided with the ballot results.** You should remember that a decision by Ministers on your ballot could be challenged and overturned either through judicial review or as a result of an appeal against a decision by Ministers on your subsequent right to buy application (section 91 of the Act).

Giving notice of who may vote in your ballot

66. It is essential that, having identified the members of your crofting community, your CCB should inform the members who are entitled to vote of that fact. It is also essential that other people in the area who may believe that they are entitled to vote, but have not been identified as members of your crofting community, are also able to make representations. There may also be challenges to the identification of individuals as members of your crofting community.

67. You should devise a means to ensure that all persons with an interest, or who may believe they have an interest, are provided with information as to who is a member of your crofting community. You could, for example, issue a letter to all households, each tenant and the landowner (if applicable). You will also need to build into your plans sufficient time to allow any further claims or challenges to the membership of your community and be able to respond appropriately. You will need to ensure that you have resolved any challenges before you notify your ballot. You are required to give all eligible voters not less than 10 days notification of the date on which your ballot is to be held, as required by the Crofting Community Right to Buy (Ballot) (Scotland) Regulations 2004 (see Annex B).

Ballot procedures

68. The procedures for holding your ballot are set out in section 75(2) of the Act and in the Crofting Community Right to Buy (Ballot) (Scotland) Regulations 2004 (see Annex B). **You must follow the specified procedures. Failure to conduct your ballot fairly and reasonably and in accordance with the Regulations will result in your CCB's application for your consent to your right to buy the land or eligible sporting interests being extinguished (section 75(3) of the Act).**

69. Your ballot should be conducted in a fair and reasonable manner, with all those being balloted having the opportunity to participate in a secret ballot. It is for your CCB to satisfy Ministers that your ballot was conducted in such a manner. You may wish to consider appointing an independent assessor to oversee the proceedings if you consider that this will help to demonstrate your compliance with the statutory requirements, though this is not a legislative requirement. Your local authority Returning Officer for election purposes may be able to provide help and assistance. You could also ask the Electoral Reform Society to administer your ballot. The Society's experience and scrutiny will likely help to maintain confidence that your ballot is fair. Your CCB may also choose another means to administer your ballot. **Whatever approach you choose to use, you are strongly advised to ensure that**

your ballot is supervised or conducted by an independent, professional person appointed for that purpose (e.g. a returning officer).

70. Your ballot may be postal, or by voting in person (at a polling station set up for the purpose). In certain circumstances you may hold it by proxy. Whatever approach you use, you should ensure that the ballot paper should be able to identify the votes to be counted for the community as a whole and to allow an additional count of croft tenant votes. You could manage this double count in a number of ways. One simple approach would be to colour code or otherwise distinctively mark voting slips for croft tenants so that each of their ballot papers can be clearly distinguishable from the papers of the other members of the community.

71. A postal ballot would require you to issue your ballot papers (which should include the question on which the vote is to be taken and the date and time of the ballot) and stamped, return-address envelopes to each voter, together with a note on the purpose of the ballot and the date by which ballot papers should be completed and returned. You should ensure that your voters receive these papers with sufficient time to consider, complete and return the voting slip to the return address by the due date. The ballot papers should be sent to voters so as to allow not less than 10 days from the date of their receipt to the date of your ballot.

72. Where you choose to ballot in person, you should take into account the fact that some people may not be able to vote on the appointed day for reasons such as holidays, business appointments or infirmity. You should offer them the possibility of a postal vote.

73. **You must ensure that the counting of votes is undertaken with the utmost care.** You could, for example, arrange to undertake the count at an appointed time and place, supervised by two independent persons of standing and perhaps observed by the solicitor appointed by your CCB, where you have one. The solicitor and supervisors could then certify the result. Reference has already been made in paragraph 69 of this guidance to the use of your local authority Returning Officer and the Electoral Reform Society.

Detail of your ballot proposition

74. The voting members of your crofting community will require clear and sufficient information on all aspects of your proposal in order to come to a decision on whether to support it. There is no statutory requirement which provides for the standard of information you should provide to inform your ballot. Nevertheless, you should try to make the information as comprehensive as possible. At the very least, your ballot paper has to contain details of the information relating to “land, the interest of the tenant or sporting interest”, as appropriate in order to satisfy section 75(1)(a) of the Act. You could identify each feature which has a bearing on the value and use of the land you are seeking to acquire: details of the extent of the land being sought, boundaries, the inclusion of bodies of water, woods and other features which would affect its value, and also any improvements, such as roads, fencing and dykes. You should also identify rights of access by third parties, drains, sewerage, and way-leaves for utilities. You should advise of leases by third parties, where known. You

should also state whether or not you propose to purchase salmon fishings, eligible sporting interests or mineral rights, or the interest of the tenant, where appropriate.

Notification of your ballot results

75. Your CCB is required to publish, within 14 days of holding your ballot, its result and details in a newspaper circulating in the vicinity of your crofting community. You are also required to notify to Ministers, within 21 days of your ballot (or if your application for consent to exercise your right to buy is made sooner, with the application) its result and details in accordance with the Schedule to the Crofting Community Right to Buy (Ballot) (Scotland) Regulations 2004. Your return must show:

- the name of your crofting community body;
- the date of your ballot;
- the question which was put to the ballot;
- the result of the vote;
- the number of persons eligible to vote;
- the number of those persons who are croft tenants of the land which your crofting community proposes to buy;
- the number of persons who voted (including details of the number of any proxy votes cast) and the number of those persons who are croft tenants;
- the number of persons who voted in favour of your proposal to buy and the number of those persons who are croft tenants;
- the name, address and telephone number of your CCB representative making the ballot return.

76. Within 7 days after you have returned your ballot results, Ministers may request your CCB to provide them with additional information. You should provide this information within 7 days of their request.

1.7 SINGLE AND MULTIPLE APPLICATIONS FOR CONSENT FOR THE CROFTING COMMUNITY RIGHT TO BUY

77. An application for consent for your crofting community right to buy must relate to land owned by one party, whether an individual owner or a consortium of owners. If your CCB wishes to buy land (including holdings consisting solely of salmon fishings or mineral rights), eligible sporting interests or the interest of the tenant in tenanted land, which is owned by a number of owners you must complete separate applications in respect of land owned by each person (section 73(3) of the Act).

78. You should consider the ownership of the land, any interests, sporting rights, and the interest of the tenant before you seek to make your application. Mineral rights, salmon fishings and sporting rights may be held by the current landowner. Mineral rights and salmon fishings may also be owned by or leased to a third party. Sporting rights may also occasionally be held by a third party under a lease or other

arrangement, the terms of which would be binding on anyone purchasing those tenancies.

79. The Act does not prevent more than one CCB (or CCB and a CB) from applying to buy the same land, eligible sporting interests or the interest of the tenant. However, only one CCB may exercise its right to buy that land (section 76(1) of the Act). Ministers must decide which one will proceed (section 76(2)). They can only make that decision after they have considered all views relating to each application and the responses to their invitations received under section 73 (section 76(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 CCB proceed over another if this would result in, for example, a division in the crofting community which would affect its stability. **It is therefore very important that your application is as detailed and robust as possible. Ministers will make their decision on the information you provide.**

80. Once Ministers have decided which CCB should proceed to buy the land, the interest of the tenant or eligible sporting interests, the unsuccessful CCB's right to buy is extinguished and its application is deleted from the Register of Crofting Community Rights to Buy. This also applies where both a CCB and a Community Body (CB) under Part 2 of the Act seek to buy the same land. Separate guidance is available for the community right to buy in Part 2 of the Act. Copies are available at <http://www.scotland.gov.uk/Topics/Rural/rural-land/right-to-buy/Community/Guidance/Q/editmode/on/forceupdate/on> from Community Assets Branch (contact details are at Annex B).

1.8 THE REGISTER OF CROFTING COMMUNITY RIGHT TO BUY

81. The Act provides for the setting up and maintenance of the Register of Crofting Community Rights to Buy which contains information and documents relating to each CCB's application to exercise their crofting community right to buy (section 94 of the Act).

82. The Keeper of this Register is the Crofters Commission. The main function of the Keeper is to maintain the Register and to ensure that it is made available for public inspection at all reasonable times and is free of charge (a charge may be made for any extracts requested from the Register).

83. Ministers will instruct the Keeper to enter information on the Register at various stages of your CCB's right to buy. Additional information may be entered into the Register if Ministers so instruct (section 94(2)(e) of the Act). The Act specifies the information which must be held in the Register (section 94(2)). All the information on your application form, including the names and addresses of your CCB members, will be placed in the Register for public inspection.

1.9 APPLYING FOR CONSENT TO EXERCISE YOUR CROFTING COMMUNITY RIGHT TO BUY

84. **Before you apply to Ministers for consent to exercise your crofting community right to buy you must have received the “section 71(4) letter” from Ministers approving your CCB as a company limited by guarantee and you must have incorporated your company with Companies House.** A timeline of actions in the crofting community right to buy process is noted in Annex A.

85. **You must use the prescribed application form to apply for your consent to buy eligible croft land etc/the interest of the tenant in tenanted land. No other application will be accepted.** You should indicate whether you wish to apply for consent to buy eligible croft land or to buy the interest of the tenant in tenanted land. The prescribed form of application is contained in the Crofting Community Body (Prescribed Form of Application and Notice) (Scotland) Regulations 2009. The application form is available in the crofting community right to buy guidance pack or as a downloadable document on the Scottish Government’s Land Reform website at <http://www.scotland.gov.uk/Topics/Rural/rural-land/right-to-buy/crofting/applicationform>.

86. You must make your application within the 6 month period following the date of your ballot as required by section 75(1) of the Act. **The date of your ballot determines the last date on which your related application can be made. You must ensure that you submit your application within this period of time. Failure to do so will mean that Ministers will not consider your application.**

87. Your application form and all supporting documents such as maps, plans (annexed where appropriate) and evidence of community support, will be considered by Ministers in their determination of your application. **It is essential that your application is completed in full and all supporting documentation is attached. You should ensure that all the details are accurate and legible and that all accompanying documents are clearly labelled or referenced. Incomplete application forms will be returned to you and will not be considered (section 73(14)(b) of the Act).**

Completing your application form

88. The prescribed application form makes provision for your CCB to apply for: (1) consent to buy eligible croft land, etc, or (2) the interest of the tenant in tenanted land. You should indicate on the form which assets you are applying for. Should you apply for (1) you should complete all questions in the application form with the exception of 4(l) which deals specifically with the interest of the tenant in tenanted land. If you are only applying for (2) you should complete all questions on the application form with the exception of 4(e), 4(f), 4(g), 4(h), 4(i), 4(j), and 4(k). You do not need to include your M&A, or your Certificate of Incorporation, as part of your application, as these will have already been submitted in the context of your application for consent to purchase eligible croft land, etc.

89. CAPITAL LETTERS should be used wherever indicated. All information should be clear and legible. Black ink should be used at all times. Additional pages may be attached. These should be clearly marked, showing the question number they refer to (e.g. “Question 3 – see Annex A”). You should ensure that you also refer to the Annex in the answer given in the application form.

Maps and drawings

90. Maps, plans and drawings accompanying your form must be derived from Ordnance Survey maps, as provided for in Schedule 1 to the Crofting Community Body (Prescribed Form of Application and Notice) (Scotland) Regulations 2009. They should be to a suitable scale to clearly show all relevant features, exceptions and boundaries. **Failure to provide clear and accurate maps, plans or drawings may result in an application being rejected or lead to the possibility of challenge.**

The application form

91. The following refers specifically to an application for consent to buy eligible croft land etc. The process to apply for consent to buy the interest of the tenant in tenanted land is noted in paragraph 112 of this guidance.

1. Name of your Crofting Community Body

- You are required to state the name and contact details of your CCB which is applying for consent to buy eligible croft land etc (see section 94(2)(a) of the Act).
- You should ensure that the name of your CCB is the same as that registered with Companies House.

2. Company details

- Ministers need to be satisfied that your CCB complies with section 71 of the Act (section 74(1)(i) of the Act).
- You are required to state the name and address of the registered office of your company (CCB) so that this information can be recorded in the Register of Crofting Rights to Buy (as required by section 94(2)(a) of Act).
- You should include a copy of your incorporated M&A and Certificate of Incorporation from Companies House with your completed application form.

3(a). Location of eligible croft land, etc and the identification of your “crofting community”

- You will have defined “crofting community” in your M&A and will have balloted your members before submitting your application.
- Ministers require your CCB to provide information on the location and boundaries of the eligible croft land or eligible sporting interests in respect of which you are seeking consent to exercise your right to buy (section 73(5)(a) of the Act).
- You are required to show the location of your crofting community in relation to the land, etc you are seeking consent to acquire.
- You should provide a suitable map which identifies the individual households of members of your crofting community resident in the township of your crofting community. Your map or plan should be to an appropriate scale (1:10,000 scale or larger) and derived from an Ordnance Survey map (see paragraph 90 above).
- You should state the number of maps or plans you have enclosed.

3(b). Relationship between the crofting community and the land in your application

- Ministers need to be satisfied that your definition of “crofting community” is, in relation to the subjects of your application, an appropriate crofting community (section 74(1)(l) of the Act).
- You should consider the relationship between your “crofting community” and the land which you wish to acquire.
- You are required to explain the connection between your defined “crofting community” and the land which is the subject of your application.

4. Details of the eligible croft land, eligible additional land or eligible sporting interests

- By the time you complete your application, you will have identified the various categories of land in respect of which you wish to apply for consent to exercise your crofting community right to buy.
- Ministers need to be satisfied that the land, and any eligible sporting interests which you wish to apply for consent to acquire is eligible (section 74(1)(a) to (f) of the Act).

4(a). Map of the land or eligible sporting interests

- You are required to provide a map or maps which show the location and boundaries of the eligible croft land or eligible sporting interests in respect of which you are applying for consent to exercise your crofting community right to buy (section 73(5)(a) of the Act).

- You should show boundaries in correct detail and state the size of the area concerned. **You may wish to use the services of an experienced surveyor to ascertain the size of this area.**
- You should indicate the area of any significant bodies of water. The size of these bodies of water should be noted separately.
- Eligible croft land and any eligible additional land should be separately highlighted and their specific extents noted.
- You should state the extent of all rights and interests in the land to be purchased.
- You should mark within the boundary area of the land you are seeking to acquire any areas of land which are to be excluded from your application. The land which is to be excluded will comprise: (1) land which your CCB does not wish to acquire, (2) land which your CCB could acquire but cannot be included in your current application and (3) land which cannot be acquired. The first of these categories is self explanatory. The second category is eligible croft land owned by a person other than the owner of the land to which your application relates. The third category will be owner occupied crofts, land owned by a third party which is not eligible croft land and land which is not eligible croft land and is not included in the application as eligible additional land. You should state the area of land which you are excluding.
- You should provide detail on maps of 1:10,000 scale or larger (see paragraph 90 above).

4(b). Maps and drawings

- You should note the number of drawings you have enclosed and provide a description of each.

4(c). Location of the land

- You are required to provide details of the location of the land in which you wish to apply for consent to exercise your crofting community right to buy.
- You are required to state the name of the county in which the land and its interests are located, according to its pre-1974 designation (e.g. Berwickshire, Argyllshire). (This information should be held in your local library).
- You should give postcode details that cover **all** the land you are seeking to acquire.
- You should provide OS grid references which cover all the land you are seeking to acquire. This should be given as a four figure reference (e.g. NT1234).

4(d). Written description of the land

- Ministers need to satisfy themselves that the croft land which is included in your application is eligible and can be purchased under Part 3 of the Act (section 74(1)(a) to (f)).

- You should provide a written description of the various categories of land (and subjects) which you are seeking to acquire (eligible croft land (including salmon fishings and mineral rights), eligible additional land or eligible sporting interests).
- You should provide a detailed written description of the boundaries of the land and subjects (see section 73(5)(a)).

92. You also need to address, at an early stage, the extent of any burdens, responsibilities and rights which may attach to the land and identify any sewers pipes, lines, watercourses or other conduits and fences, dykes, ditches and other boundaries on the land. For example, there may be drainage or private water supplies, power lines or rights of access. The Act requires that, so far as is reasonably possible, all these things should be ascertained and identified in your right to buy application (section 73(5) of the Act).

93. You should include the lines of all the sewers, pipes, lines, watercourses or other conduits and fences, dykes, ditches or other boundaries in or on the land (see section 73(5)(b)(ii) of the Act). You should also identify woodland, roads, tracks, servitudes, wayleaves, rights of way and the extent of any collective rights such as peat cutting rights on this map.

4(e). Mineral rights

- Your CCB may purchase mineral rights (except mineral rights to oil, coal, gas, gold or silver) associated with the eligible croft land during a number of specified periods (see paragraph 22 of this guidance).
- Ministers need to be satisfied that any mineral rights noted in your application exist in respect of eligible croft land (section 74(1)(e) of the Act).
- You should identify whether the person who owns the eligible croft land/eligible additional land also owns the mineral rights associated with that land and state whether that person owns these rights.

4(f). Mineral rights

- You will need to consider whether your CCB wants to purchase the mineral rights in the land (as required by section 73(5)(c)(ii) of the Act).
- You may choose to purchase them at a later date (section 69(1) of the Act) (see section 22 of this guidance).
- You should confirm whether you wish to acquire these rights as part of your application (section 73(5)(c)(ii) of the Act).

4(g). Salmon fishings

- Your CCB may choose to purchase salmon fishings rights which are part of or are contiguous to the eligible croft land to which they relate during a number of specified periods (see paragraph 22 of the guidance).

- Ministers need to be satisfied that any salmon fishings noted in your application exist in respect of eligible croft land (section 74(1)(d) of the Act).
- You should identify whether the owner of the eligible croft land/eligible additional land to which these fishings are on or are contiguous to also owns the salmon fishing rights, and state whether that person also owns these rights.

4(h). Salmon fishings

- You should consider whether your CCB wants to purchase the salmon fishings associated with the land.
- You may wish to purchase these at a later date (section 69(1) of the Act) (see paragraph 22 of this guidance).
- You should confirm whether you wish to acquire these rights as part of your application (as required by section 73(5)(c)(i) of the Act).

4(i), 4(j) and 4(k). Salmon fishings, mineral rights, and eligible sporting interests relating to other applications or any previous rights to buy under Part 3 of the Act

94. 4(i), 4(j) and 4(k) relate to salmon fishings, mineral rights, and eligible sporting interests which are included in another application to Ministers or which have been previously acquired through the exercise of Part 3 of the Act. Ministers need to be satisfied that the subjects of your application have not been previously bought under Part 3 of the Act, or have been disposed of by your CCB (section 74(1)(g) of the Act).

4(i). Salmon fishings, mineral rights, and eligible sporting interests

- You are required to state whether you are seeking to, or have acquired, salmon fishings, mineral rights, and/or eligible sporting interests which are on or contiguous to eligible croft land in another application to Ministers or you have acquired them previously through Part 3 of the Act.
- You should answer separately for each of these subjects.

4(j). Salmon fishings, mineral rights, and eligible sporting interests

- If you have stated that your crofting community body has acquired any of the subjects noted in question 4(i), you should provide information to help Ministers identify your other application(s) or previous acquisition(s).
- You should also confirm that these rights are on or contiguous to the eligible croft land. You should provide a map or plan to confirm their position. The map should be to a suitable scale to clearly show all the relevant features, exceptions and boundaries. It should be derived from an Ordnance Survey Map (see paragraph 90 above).

4(k). Salmon fishings, mineral rights, and eligible sporting interests

- Ministers need to be satisfied that your CCB has not previously bought the subjects of your application under Part 3 of the Act and disposed of them (section 74(1)(g) of the Act).
- If you previously acquired eligible croft land through Part 3 of the Act you should indicate the date on which you completed that purchase.

4(l). Interest of the tenant in tenanted land

- **This question should only be answered where you are applying for consent to buy the interest of the tenant in tenanted land.**
- Ministers need to be satisfied that the interest of the tenant in tenanted land included in your application has not been previously bought under Part 3 of the Act and disposed of by the CCB (section 74(1)(g) of the Act).
- If you have previously acquired the interest of the tenant through Part 3 of the Act, you should indicate the date on which that purchase was completed.

4(m). Eligible sporting interests

- The Act provides that your CCB may choose to purchase eligible sporting interests and buy out a sporting lease or tenancy (section 70(4) of the Act). These interests can only be purchased where they relate to the eligible croft land your CCB is seeking to acquire.
- Ministers require you to state whether your CCB wishes to propose a leaseback of the eligible sporting interests (sections 73(5)(d) and 83 of the Act).

5(a). Eligible additional land

- You should consider whether the land you have described in question 4 includes eligible additional land (as defined in section 70(4) of the Act).
- Ministers need to be satisfied that any additional land to which your application relates is eligible additional land (as required by section 74(1)(b) of the Act).
- You should identify the eligible additional land you are including in your application, on a map or maps. This should show all the relevant features, exceptions and boundaries.
- You should also demonstrate the extent to which the eligible additional land is contiguous to the eligible croft land.
- You should clearly label and reference the maps.

5(b). Eligible additional land

- Ministers need to be satisfied that any additional land is to be bought only at the request of or with the consent of its owner (section 74(1)(c) of the Act).
- You should indicate whether you have the consent of the landowner.
- Ministers will write to the landowner when they have received your application to seek their consent for the sale of that land under Part 3 of the Act (section 73(9) of the Act).

6. Confirmation of land status

- Ministers need to be satisfied that any eligible sporting interests included in your application are eligible sporting interests (as required by section 74(1)(f) of the Act).

6(i). Confirmation of land status

- You should explain why you consider that all of the land or eligible sporting interests constitute eligible croft land, eligible additional land or eligible sporting interests.
- Ministers also need to be satisfied of the ownership of these eligible sporting interests. This is so that they can be transferred under the Act.

6(ii). Confirmation of land status

- You should state why you believe all of the eligible croft land or the eligible sporting interests is owned by the landowner. You should provide relevant evidence to support your explanation.

7. Proposed use etc

- Ministers require your CCB to state the proposed use, development and management of the subjects of your application (section 73(5)(e) of the Act).
- You should provide a comprehensive land, resources management and development plan which covers the process of acquisition of the land and for at least the first 3 years after your CCB has purchased it. Your CCB's objectives can lead on to further development beyond that 3-year period. You should clearly explain the eventual outcomes of your plans. Sustainability should be a crucial aspect of these plans. **It will be essential for your CCB to demonstrate how the management of the land and interests are to be sustained in the longer term.**
- You must set budgets for the period of your plan. You should clearly identify funding sources and the allocation of spend between activities. Where you will not attain objectives and outcomes within the period of your plan, you must show the sources of funding for those activities in following years.

Capital costs and funding must be distinguished from annual costs and revenues. Depreciation of assets and allocations for replacements should also be shown.

8. Boundaries and services on contiguous land

95. Questions 8(a), (b) and (c) relate to the boundaries and services on contiguous land to that included in your application.

96. Ministers require you to state whether your application would affect facilities which connect with neighbouring land or which serve other land (section 73(5)(f) of the Act) and the extent to which these facilities would consist of or support the sustainable use or development of the subjects in your application (section 73(5)(g) of the Act).

97. Your proposals for the use and development of land or waters may have an effect on other land beyond the boundaries of that land you are seeking to acquire. For example, your purchase may create questions of access, shared roads and fences, drainage and water supplies, all of which need to be maintained.

98. It is particularly important that you identify features which impact on land neighbouring the land you are seeking to acquire as it may be necessary to make special arrangements to ensure its future management and maintenance. This is particularly the case for features such as boundary fences, water supplies, field drainage and roads. **You are strongly recommended to obtain the advice of a suitably qualified professional experienced in preparing sale particulars for substantial rural properties to identify these features.**

8(a). Interference with any sewers, pipes etc

- Having identified any sewers, pipes, lines, watercourses or other conduits and fences, dykes, ditches or other boundaries in or on the land, you should consider whether the proposed use, development or management of the land in your application will interfere with these features.
- You should consider the broader effects of your proposed activities. You should outline acceptable solutions. You should set out your proposed solutions to these problems and for the long-term maintenance of shared facilities in your plan.

8(b). Access to other property and services

- You should consider whether the present owner of the land (eligible croft land/eligible additional land) or any third party will require access over the land you are seeking to acquire to reach other property or to access services.
- You should consider the broader effects of your proposed activities in relation to access and service provisions. You should outline acceptable solutions.

You should fully set out your proposed solutions to these problems. Long-term maintenance of shared facilities must also be fully set in your plan.

8(c). Other land and businesses owned by the landowner

- You should consider whether the owner of the eligible croft land/eligible additional land has any other land or business on the land you are seeking to acquire which may be affected if consent for your right to buy is granted. If the owner owns additional land or a business on that land you should indicate the existence of such land or business.
- You should give details of how the landowner will be affected.

9. Proposed sustainable use or developments

Sustainable development

Background

99. Ministers must be satisfied that your crofting community right to buy is consistent or compatible with “furthering the achievement of sustainable development” (as required by sections 71(4), 73(5)(g) and 74(1)(j) of the Act). Sustainable development is an integrated long-term approach to economic, social and environmental issues. The information provide for your plans on the future development and management of the land and subjects you are seeking to acquire will be crucial in determining whether you meet this criterion.

100. Applications have the best chance of success if they explicitly address the likely overall impacts of your acquisition in terms of environmental, economic and social benefits. Development, in the wider sense, to deliver these benefits would not be ruled out because the gain from the development did not meet all three benefits: environmental, economic and social. The Act does not require that every element of any planned development be compatible with the achievement of sustainable development, but that the application **as a whole** should be compatible with furthering sustainable development. Proposals for developments which might result in lasting significant environmental damage are likely to fail to meet this legislative requirement. **This may also be the case in relation to proposals to prevent any development or which aim to simply maintain the status quo. These are likely to be construed as not being compatible with furthering sustainable development.**

101. We suggest that the best way for you to consider sustainable development so that you can satisfy the requirements of the Act is to look at the positive economic, social and environmental consequences of your aspirations. One of the policy aims of Part 3 of the Act is to give crofting communities greater opportunities to achieve sustainable development. Your application should show how this would be an outcome of your proposed acquisition of the land and subjects. This policy is intended to deliver sustainable communities. It requires recognition of housing and employment needs, as well as access to services. Your CCB should obtain advice

and expertise to identify the environmental assets and heritage features of the land concerned and clearly indicate how these are to be employed, maintained or enhanced for the benefit of your community.

102. The Scottish Government's approach to sustainable development is set out in the document "Meeting the Needs - Priorities, Actions and Targets for Sustainable Development in Scotland" (available at <http://www.scotland.gov.uk/Publications/2002/04/14640/4040>). You may also wish to contact your local authority's sustainable development staff through the Sustainable Scotland Network at www.sustainable-scotland.net.

103. As the Act is part of a programme of land reform measures intended to support, maintain and develop rural communities, it is expected that the exercising of your crofting community right to buy should deliver lasting benefits to your community.

- Your application must demonstrate the extent to which the main purpose of your CCB is consistent with furthering the achievement of sustainable development.
- You must demonstrate the extent to which the proposed use, development and management of the land and subjects included in your application would consist of or support the sustainable use or development of the land, including any eligible sporting interests, salmon fishings or mineral rights you are seeking to purchase under the Act.

104. A decision by Ministers in favour of your application means that Ministers have accepted that your CCB's plans are compatible with furthering sustainable development. However, its consent does not imply that any subsequent application for planning permission will be granted. **The planning process and the crofting community right to buy process are entirely separate matters and are in no way related.** The existence of a crofting community right to buy application 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(a). Proposed sustainable use or developments

- You should consider how your plans for the proposed use, development and management of the land to which your application relates, would consist of or support the sustainable development and the use of the land, any salmon fishings, mineral rights or eligible sporting interests, and any land or eligible sporting interests which your CCB has previously acquired.
- You should answer this question separately for each of the land, rights and interests and any eligible sporting interests previously acquired by your CCB.

9(b). Supporting sustainable development

- The Act provides that Ministers shall not consent to your CCB's application unless they are satisfied that, where the subjects of the application are salmon fishings, mineral rights or eligible sporting interests, your CCB has or

is acquiring sufficient croft land to enable these subjects to be exploited so as to support the development of your crofting community. (section 74(1)(k)).

- You should separately consider whether the amount of land you are seeking to acquire is sufficient to support any salmon fishings, mineral rights or eligible sporting interests so as to support the development of your crofting community.
- You should consider how that amount of land will support your crofting community and state how you will achieve that support.
- Should the amount of land be insufficient, you are required to indicate why Ministers should approve your application.

105. There is a clear link between the amount of croft land you are seeking to acquire and the ability to develop a financially viable and worthwhile operation to exploit fishing rights, sport or minerals. This is because these things can only be exploited on, or in the case of salmon fishings, from the croft land. However, the amount of croft land that is sufficient in any particular case will depend on what is delivered by way of revenue or other benefits.

106. Ministers will wish to see that your CCB has plans for exploiting the fishing rights, sporting interests or minerals (but you will need to ensure that your plans are compatible with furthering sustainable development). You will need to demonstrate that your plans are realistic, are expected to be profitable, or failing that, will provide a real and lasting benefit to your community, and that the profit or benefit will make a significant contribution to the development of your crofting community. Should your acquisition be founded on your belief that it will deliver a benefit to your community, it may be necessary for you to show that you are providing a new benefit or will secure an existing benefit for your community. Should Ministers be satisfied that the purchase of the fishing rights, sporting interest or mineral rights will make a significant contribution to your community then they are likely to conclude that the amount of croft land acquired or being acquired is sufficient to meet the requirements of section 74(1)(k) of the Act.

107. If your community seeks to acquire salmon fishing rights, sporting interest or mineral rights as a separate acquisition from their purchase of the associated land and you do not indicate that you intend, in due course, to utilise these rights, your plans for their utilisation are unrealistic or they convey no significant benefits to your crofting community, Ministers may consider rejecting your application. For example, if your CCB applied for a right to buy mineral rights in order to prevent any planned exploitation of these minerals, Ministers may reject your application.

10(a). Details about the landowner

- You should identify the landowner of the land you are proposing to purchase.
- You should state their name and address, as well as the details of the landowner's agent/representative. Your CCB may be unsure about their current address and you should give the best and most recent information that is available to your CCB.

- If the landowner is unknown, you are required to state that fact. You should try to provide the best and most recent information you have of the landowner's current address.

108. It is important that you identify the owner of the land included in your application. This is because it may be that the actual legal owner is not the individual identified locally as the landlord. This situation may be quite common where the croft land is part of a large estate. Such estates may be owned by a trust or company and the person who is thought to be the landlord may not, in fact, be the legal owner of the croft land.

10(b). Checks to identify the landowner

- You are required to demonstrate the checks made, and by whom, to establish the ownership details of the land and subjects of your application.
- If you are unsure of the landowner's details, you should state why you have doubts about the information.
- You may find the leaflet "Sources of Land Ownership", which can be obtained from Registers of Scotland (RoS) or Community Assets Branch, helpful in identifying the owner. You can also verify the landowner by contacting RoS (contact details at Annex B).

11. Ballot

- Ministers need to be satisfied that your crofting community has approved your proposal to exercise your right to buy (section 74(1)(m) of the Act). They also need to be satisfied that you have conducted your ballot in accordance with section 75 of the Act and the Crofting Community Right to Buy (Ballot) (Scotland) Regulations 2004.

11(a). Ballot

- You are required to provide a list of all community members who were eligible to vote in your ballot (see also section 75(4)(b) of the Act). You should indicate which of these members are crofters and identify their croft (see also section 75(4)(c) of the Act).

11(b). Ballot

- You should identify the names and current addresses of the crofter members of your crofting community who reside **outwith** the eligible croft land to which your application relates. You should indicate the distance from the township to their place of residence (see also section 75(4)(c) of the Act).
- Such crofter members should reside not further than 16km of the township (section 71(5)(a)(ii) of the Act).

11(c). Ballot

- You are required to confirm that the membership of your crofting community was eligible to take part in the ballot which you notified to Ministers. You should confirm that this is the case.

12. Ballot result

- You are required to notify Ministers of the result of your ballot.
- You can provide this notification either with your application or at another time.
- If your CB has sent the ballot result separately from your application, you should indicate the date on which you sent the result to Ministers. You should provide your ballot result within 21 days of your ballot being held (section 75(4) of the Act).
- If you are submitting your application before that 21 day period expires, you should include it with your application.
- The results of your ballot should be given in the prescribed form (section 75(4) of the Act). This is contained in Schedule 1 of the Crofting Community Right to Buy (Ballot) (Scotland) Regulations 2004.

13. Public interest

- Ministers need to be satisfied that your crofting community right to buy is in the public interest (section 74(1)(n) of the Act). Ministers will determine, on a case-by-case basis, whether your particular proposal is in the public interest.
- You should consider how your application is in the public interest.
- You should show that your proposed acquisition would bring real benefits to the **whole** of your community and not only to individual members of your CCB.
- You should consider and show that the benefits of your application are not outweighed by any alleged disadvantages to the wider community, the environment or the economy or are not disproportionate to the degree of any harm to private interests.

109. Section 74(2) of the Act expands the meaning of “public interest”. In particular, it provides that the interests of any crofting community represented by a community body established for the purposes of Part 2 of the Act and any crofting community represented by a CCB must be taken into account. The public interest includes the interest of any sector (however small) of the public which, in the opinion of Ministers, would be affected by the exercise of your right to buy. Ministers do not see this as a measure to place the interests of your CCB seeking to exercise your right to buy above the wider public interest. Rather, it is intended to protect the interests of distinct existing communities and groups, other than the crofting community your CCB represents. For example, a CCB may be set up to represent a grouping of crofting townships which may collectively vote in a ballot in favour of exercising a right to buy. However, it could be that in one of these townships - or indeed a

neighbouring township – most, if not all, of the residents might be opposed to the CCB’s right to buy. If this was to be made known to Ministers they would be bound to consider how the interests of that township would be affected before they reached their decision. Another possibility might be that all the active crofters who form a grazings committee or even the landowner’s family and friends might indicate that the exercise of right to buy would affect their interests. If Ministers consider the interests of a particular sector of the public (in accordance with the provisions of section 74(2) of the Act) and conclude that their interests are unfavourably affected, this does not, in itself, mean that the public interest test cannot otherwise be satisfied.

14. Declaration

- You should certify that the information you have supplied in your application form is correct to the best of your knowledge and belief. This certification should be signed by the Chairman and the Secretary (or another representative) of your CCB.
- You should **NOT** date your form **before** the date on your section 71(4) letter, otherwise your form will be returned to you.

On completing your application form

110. When you have completed your application form and have checked that you have attached all enclosures, your CCB should send it to Community Assets Branch for consideration by Ministers (address is at Annex B).

111. At the same time as you are applying to Ministers you must send a copy of your application form and supporting documents to the owner of the land or eligible sporting interests which are the subjects of your application (section 73(6)(a) of the Act). If there is a standard security over any of the subjects to which your application relates, you should also send a copy of your application and supporting documents to the creditor who holds that standard security and invite that person to give notice, within 60 days, to your CCB and Ministers on whether they have taken any steps to enforce its security in terms of the Conveyancing and Feudal Reform (Scotland) Act 1970 (section 73(6)(b) of the Act). These steps are stated in section 73(7) of the Act. **If you fail to send the application to these parties, the outcome of your application could be prejudiced. You may find it helpful to keep a copy of your application.**

Applying for consent to buy the interest of the tenant in tenanted land

112. If you are seeking to make an application for consent to buy the interest of the tenant in tenanted land you must submit your application within the relevant period (see section 69A(5) of the Act), and when your CCB has met the conditions specified in section 69A(4) of the Act.

1.10 WHAT HAPPENS AFTER YOU HAVE SUBMITTED YOUR APPLICATION TO SEEK CONSENT TO EXERCISE YOUR CROFTING COMMUNITY RIGHT TO BUY?

Initial checks

113. On receipt of your application, initial checks will be made to ensure that it complies with the basic requirements of the Act. **This check is not part of the detailed consideration of your application. If you fail to meet the basic requirements, your application will not proceed any further.**

114. Initial checks will determine whether your application form, maps and other supporting documents have been completed correctly, or whether it is obvious that your application would otherwise be rejected by Ministers without detailed consideration. Reasons could be, for example:

- your application does not comply with the requirements of section 73 of the Act;
- you have not used the prescribed application form;
- your maps or plans are not derived from an Ordnance Survey map;
- you have not completed part of the form, e.g., you may not have noted the name of the existing landowner or heritable creditor etc;
- your application covers property which is neither eligible croft land nor eligible additional land nor an eligible sporting interest; or
- your application is one which otherwise the Ministers would be bound to reject.

115. Should your application be rejected, all your papers will be returned to your CCB. You will be notified of the reason(s) for this action. You may choose to make amendments to your application in order to remedy these defects and re-submit it. However, you must resubmit it within 6 months of the date of your ballot, or you will be required to hold another ballot. Ministers have no powers to accept an application made outwith the 6 month period.

Seeking views on your application

116. On receipt of your application and supporting documentation, Ministers have 60 days in which to invite the following individuals and bodies to send their views on your application:

- the owner of the land or the person entitled to the subjects in your application (and the owner of land other than eligible croft land);
- the tenant (where the application relates to the interest of the tenant in tenanted land)
- the owners of all contiguous land noted in your application;
- the Crofters Commission;

- and any other person whom they consider to have an interest in your application (section 73(8) of the Act).

117. Ministers must also send a copy of their invitation letter to your CCB (section 73(8) of the Act). If your application includes land other than eligible croft land, Ministers will also write to the owner of that land seeking consent for its sale (section 73(9) of the Act).

118. As soon as Ministers have received your application, they are also required to give public notice of it (section 73(10) of the Act). The public notice is advertised in a newspaper (which Ministers think is appropriate) circulating in the area where the land and subjects of your application is located and also in the Edinburgh Gazette (section 73(11) of the Act). This provides an opportunity for anyone with an interest in the application to provide their views on it. Any views, in writing, must be sent to Ministers within 60 days of the publication of the public notice.

119. Copies of any views received by Ministers will be sent to your CCB. You will be invited to comment on them and respond to Ministers within 60 days (section 73(12) of the Act). **Ministers must consider the views received and the responses from your CCB before they reach a decision on your application.**

Criteria for consent by Ministers

120. When Ministers have sought views and resolved any issues arising, they are required to be satisfied that your application meets the criteria for consent in section 74(1) of the Act. Criteria are:

- that the croft land which is the subject of your application is eligible croft land;
- that any additional land included in your application is eligible additional land;
- that any eligible additional land is to be bought only at the request of or with the consent of its owner;
- that any salmon fishings to which your application relates are eligible croft land;
- that any mineral rights to which your application relates are eligible croft land;
- that any eligible sporting interests which relate to your application are eligible sporting interests;
- that the subjects of your application have not been previously bought under Part 3 of the Act and re-sold by your CCB;
- that the owner of the land is not prevented from selling the land which is the subject of your application or the land is not the subject of an obligation to sell to someone other than your CCB;
- that your CCB complies with the provisions of section 71 of the Act (it is a company limited by guarantee, and Ministers are satisfied that the main purpose of your CCB is consistent with furthering the achievement of sustainable development);
- that the exercise of your right to buy is compatible with furthering the achievement of sustainable development;

- that, where your CCB is applying to purchase salmon fishings, mineral rights or eligible sporting interests, you are acquiring sufficient croft land to enable these subjects to be exploited so as to support the development of your crofting community;
- that the crofting community which your CCB has defined is an appropriate crofting community;
- that your defined crofting community has approved your CCB's proposal to exercise your right to buy (i.e. your CCB has undertaken a ballot and your crofting community has signified their approval of the application for your crofting community right to buy (see also section 75 of the Act));
- that your right to buy is in the public interest: "public interest" is provided for in section 74(2) of the Act);
- and where you have applied to buy the interest of the tenant in tenanted land, that your CCB has provided Ministers with confirmation under section 85(1) of the Act that you intend to proceed to buy the principal subjects relating to your application or have bought and retained those subjects in accordance with the provisions of Part 3 of the Act; and have made your application within the relevant period (as provided in section 69A(2)).

121. Most of the criteria which Ministers need to take account of in determining your application are factual. However, a number are subjective (see section 74(1)(j), (k) and (n) of the Act).

122. Some of the views received by Ministers on your application (sections 73(6), (8) and (9) and (11) of the Act) may raise factual points which can be resolved by the Ministers based on views expressed and responses offered. However, other issues may have to be referred to the Scottish Land Court to be determined (section 81 of the Act). These can be referred by Ministers, any member of the crofting community, any person with an interest in the land or the eligible sporting interests, the interest of the tenant, and anyone whom Ministers invited to send views on your application. Where an issue is referred to the Scottish Land Court, the Land Court can invite your CCB, the landowner or any other person who appears to have an interest to make representations to it. **If it is successfully demonstrated that the information you provided in your application is incorrect or flawed, and that your application would not therefore meet the criteria for consent, Scottish Ministers would be bound to reject it.**

Ministerial consideration of the purchase of eligible additional land without the owners' consent

123. You may have included eligible additional land in your application but the owner has not requested, or consented to, its sale. The Act makes provision that the Ministers' decision on your right to buy application will be deferred until this issue has been referred to the Scottish Land Court and it has made a decision on the matter (section 77 of the Act). The Scottish Land Court must be satisfied (according to section 77(3) of the Act) that:

- the acquisition of the eligible additional land must be essential to the development of your crofting community and that development must be compatible with furthering sustainable development;
- the purpose for which the purchase of that eligible additional land is proposed cannot be achieved by other means available to the Scottish Land Court;
- the purchase of that eligible additional land will not be seriously prejudicial to the use and management of other land held by the landowner; and
- the total amount of eligible additional land which your CCB can purchase is not greater than either: (1) **an area of up to 5% of the total area of all the land** to be acquired under the application or land already acquired by your CCB through the crofting community right to buy regime, or (2) **an area of up to 10 hectares**.

124. The Scottish Land Court will consider your CCB's application to include eligible additional land against the criteria set out in section 77(3) of the Act. It can make an order which specifies either: (1) that some or all of the additional land should be included in your right to buy; or (2) that there should be title conditions applied to some or all of the land (section 77(4) of the Act). The effect of such an order would allow Ministers to grant your application. In this case, Ministers would grant your application in relation to the eligible additional land in accordance with the arrangements specified in that order.

125. If the Scottish Land Court concludes that it should not make an order, having found that there was no justification for either including any part of the eligible additional land in your right to buy or for imposing title conditions on any part of that eligible additional land in your right to buy, then Ministers could modify your application to exclude the additional land if the remainder of your application could still satisfy all the statutory tests.

126. The landowner can also propose that eligible additional land should be included in your right to buy application. The Act makes provision that this land can be included at the request of the landowner (section 79 of the Act). If the landowner makes this request within the time limit for submitting views on your CCB's application (under section 73 of the Act), Ministers may, if they consider that it is in the public interest, require that your application be modified to include such eligible additional land.

127. Ministers may refer any matter which relates to the question of whether eligible additional land should be included in your application to the Scottish Land Court. Ministers are not bound to refer a matter to the Scottish Land Court in every circumstance. However, they must do so if the landowner or your CCB requires them to do so (section 79(2) of the Act). If any questions on the eligible additional land are referred to the Scottish Land Court, Ministers will be bound to take account its findings when they consider your application (section 79(5) of the Act).

Action on a flawed application

128. The views that have been submitted to Ministers on your application may reveal facts which may result in Ministers being bound to reject your application. For

example, it may become apparent that some land is not part of the same landholding as the rest, or that some land which you believed was croft land is not actually croft land or that the owner is prevented from selling all or part of the land. **Where this happens, it might be appropriate for your CCB to withdraw your application and resubmit a new one.** This would perhaps avoid the need for another ballot (but see timescales for undertaking a ballot and the submission of an application at section 75(1)(a) of the Act). Such a decision should be considered against any potential liability for compensation (section 89 of the Act), in which case you might prefer your CCB await a Ministerial decision on the matter.

Notifying the Ministers' decision

129. There is no specific time set out in the Act by which Ministers must notify their decision on your application. Should your application be referred to the Scottish Land Court, this consideration will delay the notification of their decision on your application.

130. Ministers will give a Notice, in writing, of their decision to consent or to refuse your CCB's application to exercise your crofting community right to buy (section 82 of the Act). This will also give reasons for their decision. This will be sent to your CCB, the owner of the land, the tenant, or person entitled to the eligible sporting interests to which your application relates, and every person who was invited to send their views to Ministers on your application (section 82(1) of the Act). If the Ministers' decision is to consent to your application, they will also send it to the Keeper of the Registers of Scotland (section 82(1)(d) of the Act).

131. The Ministers' Notice will contain a full description of the land or eligible sporting interests or interest of the tenant to which their consent relates and any conditions imposed under section 80 of the Act (consent conditions) and by virtue of section 77(4) or (5) of the Act (reference to the Land Court of the purchase of eligible additional land without the owner's consent). It will also contain information about the consequences of their decision (section 82(3)(a) of the Act) and the right of appeal in Part 3 of the Act. It will state the date on which the Ministers' decision is effective (section 82(3)(b) of the Act).

Appeals against the Ministers' decision

132. The Act makes provision that parties may appeal against the Ministers' decision to give consent to or to refuse to consent to your application to exercise your right to buy (section 91(1) and (2) of the Act). An appeal may be made by:

- any member of your crofting community;
- the owner of the land or person entitled to the eligible sporting interests in your application;
- the tenant (where the application relates to the tenant in tenanted land);
- any other person with a legally enforceable interest in the land or sporting rights; and/or
- any person invited by Ministers to give them their views on the application.

133. Your CCB may also appeal the Ministers' decision to refuse to consent to your application (section 91(3) of the Act).

134. An appeal should be made to the Sheriff Court in the area where the land or any part of it or the eligible sporting interests or any part of them, specified in your application, is located and which has the jurisdiction to hear an appeal. Applications must be made within 28 days of the date on which Ministers decided to consent to, or refuse, your application. Appeals may only be made on a question of law (section 91(5) of the Act). The Sheriff may make an order to uphold, reverse or add conditions to the Ministers' decision. The conditions must be consistent with any decisions or finding by the Scottish Land Court on matters under sections 77 or 81 of the Act. The order of the Sheriff is final.

1.11 AFTER MINISTERS DECIDE

Effects on other rights

135. Where Ministers approve your application, their approval has an immediate effect on existing rights in the land. Any rights of pre-emption, redemption, reversion or others derived from options to purchase are suspended (temporarily) from the date of their approval (section 84(1) of the Act). In addition, a crofter's right to approach the Scottish Land Court for approval to purchase his own croft is also suspended (section 84(2)(c) of the Act). These rights are revived when the transfer of the land to your CCB is completed, or where the transfer is not completed, either because your CCB decides not to proceed to buy the land or you have withdrawn your confirmation of your intention to proceed with your right to buy (section 84(1)(b) of the Act). Nothing in Part 3 of the Act prejudices the position of creditors seeking to prevent the disposal of heritable property by a debtor by means of inhibition, action of adjudication or any other diligence.

136. From the date on which Ministers give their consent to your application, the landowner or person entitled to the eligible sporting interests, or tenant, in your application is prohibited from disposing of them to any person other than your CCB (section 95 of the Act). Should your CCB decide not to exercise your right to buy or withdraw from your right to buy application, this prohibition will be lifted (section 95(2) of the Act).

Valuation

137. Following the Ministers' consent to your application, Ministers have 7 days in which to appoint an independent valuer (section 88(1) of the Act), unless they have referred a question to the Scottish Land Court, e.g., on the terms of a leaseback, in which case they will appoint the valuer within 7 days of the day on which the Scottish Land Court makes its determination on this question (section 88(2) of the Act). Should Ministers fail to appoint the valuer within these specified times, any delay will not affect the validity of the valuation (section 88(3) of the Act).

138. The Act specifies that this valuer must be suitably qualified, independent and have knowledge and experience of valuing land, tenants' interests or eligible sporting interests of a kind which is similar to the land, tenants' interests or eligible sporting interests which your CCB is seeking to purchase (section 88(1) of the Act). The cost of this valuation will be met by Ministers (section 88(8) of the Act).

139. The aim of the independent valuation is to ensure that the landowner receives a fair price, the "market value" for the land. **It is not the purpose of the Act to allow your CCB to purchase land cheaply and at a financial loss to the owner.** The definition of "market value" is set out at section 88(6) of the Act. The valuation will consist of the sum of the value of:

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

140. In arriving at the open market value, the valuation should take into account the possibility of a potential purchaser with a special interest in the property (other than your CCB) (section 88(7) 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. This is because compensation for these latter two items will be added to the open market value (in accordance with section 88(6)(b) of the Act).

141. The appointed valuer acts on behalf of the Ministers, not for the parties involved in the purchase. They will act as an expert and not as an arbiter. The valuer will ask your CCB as also the landowner and tenant for written views on the value of the land and or interests (section 88(9) of the Act). They will take these views into account when considering the value of the land. If your CCB and the landowner or tenant have come to an agreement on the valuation of the land, you must notify the valuer in writing of that agreed valuation. If you are interested in leasing back eligible sporting interests to the owner, the valuer will assess their value and take into account the terms and conditions of the lease which has been agreed between the owner and your CCB, or, if it is the case, by the Scottish Land Court under section 83 of the Act.

142. The valuer has 6 weeks from the date of their appointment (or longer if agreed by Ministers in terms of section 88(13) of the Act), to provide Ministers, the landowner or tenant and your CCB with 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 88(14) of the Act). **The price to be paid for the land is the valuation price provided by the valuer or a price agreed by mutual agreement between your CCB and the landowner or tenant or the price determined by the Scottish Land Court (section 92 of the Act) if the valuation figure is appealed.**

Appeals against the valuation

143. Should the landowner, the tenant, the person entitled to the eligible sporting interests, or your CCB be unhappy with the valuation, an appeals procedure is available (section 92 of the Act). Appeals against the valuation are made to the Scottish Land Court (section 88 of the Act). An appeal may be made within 21 days of the intimation of the valuation (section 92(2) of the Act).

144. The Scottish Land Court may reassess the valuation and substitute its own for that of the appointed valuer. The valuer may be called as a witness in the appeal proceedings (section 92(4) of the Act). The Scottish Land Court must give its decision on the appeal in writing, within 4 weeks of the hearing of the appeal. It will give reasons for its decision (section 92(5) of the Act). The validity of the Land Court's decision is not affected by its failure to comply with this time limit.

145. The valuation determined by the Scottish Land Court is the price you will have to pay to purchase the land unless a different price is agreed by both parties. You and the landowner or tenant can reach an out of court settlement on any issues relating to your community right to buy which are the subject of an appeal (section 93 of the Act). You should be aware that the Ministers are not a competent party to any appeal as they only appoint the valuer (section 92(7) of the Act). If your CCB calls the valuer to appear as a witness, any costs incurred **will not** be met by the Scottish Government.

1.12 TRANSFER OF THE CROFT LAND ETC TO YOUR CCB

Confirmation by your CCB

146. After the valuer has advised your CCB of the valuation figure, you have 21 days in which to send to Ministers and the landowner, the tenant, and any other person entitled to the interests included in your application, notice that you intend to proceed with your right to buy (section 85(1) of the Act). Following receipt of your notification, Ministers have 7 days in which to acknowledge your confirmation; a copy will also be sent to the landowner, tenant, or person entitled to the interests (section 85(3) of the Act).

147. If, at any time after your CCB has confirmed that you wish to proceed with your right to buy, you decide that you want to withdraw it, you should confirm this fact, in writing, to Ministers. Ministers will then, within 7 days of receiving your notice, acknowledge receipt and send a copy of their acknowledgement to the landowner, tenant, or person entitled to the interests. Should you decide to withdraw your application, the owner of the land, tenant, or person entitled to the eligible sporting interests may apply for compensation from you (section 89(1)(b) of the Act) (see section on compensation).

Completion of the purchase

148. Your CCB is fully responsible for securing the expeditious exercise of your right to buy (section 86 of the Act). You 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 by Ministers; and
- ensure that in preparing these documents they take into account all conditions imposed by Ministers (section 86(1) and (2) of the Act).

149. You are advised to secure the services of a solicitor to act for your CCB and complete the conveyancing practicalities relevant to the transfer of the land (as required by section 86 of the Act).

150. Where you cannot fulfil your obligation 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 your application, you should refer this matter to Ministers (section 86(2) of the Act). Ministers can direct that you may exercise your right to buy as if that part of the land or interest had never been included in your application. They may also decide that your right to buy should be extinguished (section 86(3)(b) of the Act).

151. The landowner or the person entitled to the interests you are acquiring is obliged to make the title deeds available to and to transfer them to your CCB (section 86(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 your application, your CCB can apply to the Scottish Land Court for an order requiring the production of these documents (section 86(5) of the Act). Where the owner refuses or fails to transfer the title of the land, you can also apply to the Scottish Land Court to undertake that action. An action by the principal clerk to the Court has the same effect as if it were done by the owner (section 86(6) of the Act).

Completion of the transfer

152. The details of how the transfer of the land, eligible sporting interests is to be completed are set out in section 87 of the Act. Your CCB must pay for the land, eligible sporting interests or interposed leases (interest of the tenant) within 6 months from the date on which Ministers consented to your application (section 87(2) of the Act). However, this date may be extended where:

- the owner of the land, the tenant, or person entitled to the eligible sporting interests agrees to an extension of that period (section 87(3)(a) of the Act);
- the valuation (under section 88 of the Act) has not been completed by a date which is 4 months after the date when Ministers consented to your application: in such a case payment must be made within 2 months of the completion of that valuation (section 87(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 your application: in such a

case, payment must be made within 2 months of the date of the outcome of the appeal (section 87(3)(c) of the Act).

153. If there is any unreasonable delay in transferring the title of the land, corrective action can be undertaken (sections 87(4) and (5) of the Act). In particular, where the owner does not grant a good and marketable title to your CCB by the date of payment, then the payment shall be made to and held by the Scottish Land Court pending either the completion of the conveyance or notification to the court that your CCB has decided not to complete the transaction (section 87(4) of the Act). If your CCB does not make payment by the due date, your application will be considered to have been withdrawn. **You should be aware that your failure to pay for the land and any interests creates a liability to pay compensation under section 89 of the Act (section 87(5) of the Act).**

154. The land, the interest of the tenant, and/or eligible sporting interests you are acquiring will be disburdened of any heritable security (section 87(6) of the Act) and any securities which burden the land other than in respect of which title is granted shall cease to burden the land (section 87(7)). However, your CCB will be required to pay the creditors of a heritable security any sums which are due to them (section 87(8) of the Act). Your CCB may deduct any sums paid to the heritable creditor from the amount you are to pay the landowner (section 87(9) of the Act).

1.13 COMPENSATION

Rights to compensation

155. Where any persons, such as the landowner, tenant or a person entitled to the eligible sporting interests, have incurred loss or expense through the exercise of your community right to buy, they are entitled to reclaim that loss or expense from your CCB (section 89 of the Act). This right includes:

- the costs or losses resulting from compliance with the Act following an application to purchase by your CCB (section 89(1)(a) of the Act);
- the costs or losses resulting from your CCB's withdrawal from the right to buy process (section 89(1)(b) of the Act); and
- the costs or losses resulting from failure by your CCB to complete the purchase (section 89(1)(c) of the Act).

156. However, your CCB will not be liable to pay compensation where you have made an application for consent to Ministers, but Ministers have not approved it (section 89(2) of the Act). Should you make an application and it is refused, the landowner, tenant, or the person entitled to the interests is entitled to recover the amount of any losses from Ministers (section 89(3) of the Act).

157. The process for making a claim against your CCB is set out in the Crofting Community Right to Buy Compensation (Scotland) Order 2004 (see Annex B). A claim must be submitted to your CCB within 90 days of:

- the final settlement date (section 87(2) of the Act), or a later date (section 87 (3) or (4) of the Act);
- the date when your CCB withdrew confirmation of your intention to proceed with the purchase of the land (section 85 of the Act); or
- the date on which your CCB's application was treated as being withdrawn (section 87(5) of the Act),
whichever date is earlier.

The claimant should specify the reasons why they are applying for compensation. Where your CCB and the applicant cannot agree whether compensation is payable, or the amount of such compensation, within the timescale specified in the 2004 Order, then either party may refer the question to the Scottish Land Court for a decision (section 89(5) of the Act).

Grants for CCBs towards the payment of compensation

158. In given circumstances, Ministers are empowered to make a grant towards your CCB's liability for compensation (section 90 of the Act). To apply successfully for such a grant, your CCB needs to demonstrate that:

- after you have made payment of outstanding costs incurred by the purchase of the croft land, you have insufficient funds to pay the compensation required;
- you have already taken all reasonable steps to try and raise the compensation amount required; and
- it is in the public interest that Ministers pay the grant.

159. The process for applying for a grant towards compensation costs is set out in the Crofting Community Right to Buy (Grant Towards Compensation Liability) (Scotland) Regulations 2004 (see Annex B). Your CCB should make an application within the prescribed timescale (within 90 days of the date on which your CCB and the claimant agreed the amount of compensation payable or the date on which the Scottish Land Court determined the amount of compensation payable (under section 89(5) of the Act), whichever date is earlier). The Ministers' decision on an application for a grant towards compensation costs is final (section 90(8) of the Act).

1.14 FUNDING

160. The Act makes no specific reference to funding for community purchases of land. **It is for your CCB to decide where you obtain funding to support your purchase of the land.** Annex B contains details of various funders that provide funding support for rural areas. You should contact the funding agents directly and as early as possible to obtain advice on funding options for your community purchase.

1.15 AFTER PURCHASE

What happens next?

Leaseback of eligible sporting interests

161. If your CCB has decided to leaseback the eligible sporting interests to the former owner, you are required immediately to grant a lease to that person on completing the transfer of the land in accordance with the terms and conditions specified by the Scottish Land Court (section 83(5) of the Act). This leaseback should include mandatory terms and conditions (section 83(4) of the Act). Should your CCB fail to proceed as required, the Scottish Land Court may authorise its principal clerk to grant the lease (section 83(6) of the Act).

Purchase of other land or rights under the Act

162. As noted in section 1.2 of this guidance, your CCB may also choose to acquire salmon fishings and mineral rights and the interest of the tenant in tenanted land after you have bought your eligible croft land etc. If you are considering applying for these interests, you should apply within the “relevant period”, after having provided the specified information to Ministers (sections 69(3) and 69(A) of the Act).

General

163. The purpose of the crofting community right to buy is to enable crofting communities to secure their future through the purchase and subsequent sustainable development of land. When your CCB has succeeded in purchasing the land and interests, you are required to take steps under the Act to advance the interests of your community. The Act seeks to ensure that the land and any interest which your CCB have purchased will remain a resource which benefits your community as a whole. Failure to ensure such action may result in Ministers being satisfied that your CCB is no longer compliant with the provisions of the Act. It could lead them to direct the Crofters Commission to delete your interest from the Register of Crofting Community Rights to Buy.

Your CCB

164. Your CCB must continue to be a company limited by guarantee whose surplus funds are applied for the benefit of your community. If it was to be wound up, a successor body would require to be approved by Ministers (section 71 of the Act).

165. You must not amend your CCB’s M&A without the approval of Ministers (section 72(1) of the Act). Where Ministers believe that your CCB, having already successfully purchased land under the Act, would no longer qualify as a CCB, they may compulsorily acquire that land (section 72(2) of the Act).

166. The implications of these provisions are clear: your CCB must continue to observe the requirements of the Act in relation to any land bought under its provisions. For example, any surplus funds which your CCB (or its successor) may enjoy, may only be applied to subjects which benefit the whole of your 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

167. The Act makes provision for the winding up of a CCB (section 71(1)(h) and (7) of the Act). Your CCB is similar to any other company being wound up in that its surplus assets, including the land and any associated sporting or mineral rights, shall contribute towards satisfying any liabilities which your CCB may leave behind. In addition, any surplus assets which have not been absorbed by liabilities must be transferred to another approved CCB (or CB), or, if no such body or bodies exist, either to Ministers or to a charity as Ministers may direct (section 71(l)(h) of the Act). You can make provision in your CCB's M&A that any surplus assets may only be directed to a charity (section 71(7) of the Act). The Act defines "charity" as a body entered in the Scottish Charity Register (section 71(8) of the Act).

1.16 CONCLUSION

168. This guidance shows that crofting community purchase of land, as provided for under Part 3 of the Land Reform (Scotland) Act 2003, requires both commitment and patience. We recommend the assistance of a solicitor or other suitable qualified expert at an early stage in proceedings.

169. Annex B provides useful contacts to help you through the right to buy process and after you have purchased the land.

170. The Scottish Government's Community Assets Branch is happy to assist with questions you may have about the crofting community right to buy process. The Branch 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 crofting community right to buy process. However, the Branch can help you with any questions you have on the process. We recommend that your CCB contacts us as early as possible to benefit from our expertise.

PART 2 GUIDANCE FOR LANDOWNERS, OWNERS OF INTERESTS, AND HERITABLE CREDITORS

2.1 USE OF THE CROFTING COMMUNITY RIGHT TO BUY

1. The crofting community right to buy in Part 3 of the Land Reform (Scotland) Act 2003 (“the Act”) gives crofting communities the right to buy eligible croft land (including salmon fishings, mineral rights (except mineral rights to oil, coal, gas, gold or silver), associated with that crofting community, sporting rights, the interest of the tenant in tenanted land (so called “interposed leases”), and eligible additional land. This means that a crofting community body (“CCB”) may acquire your interest in that land and interests, interposed leases, and sporting rights. **The crofting community right to buy can be used by crofting communities, through the vehicle of a CCB, at any time. The land or interests in question do not need to be offered for sale.** This means that a crofting community may wish to acquire land that you, as a landowner or owner of interests, or heritable creditor, do not want to or have no intention of selling. The main stages in the crofting community right to buy process are outlined in Annex A.

2. The crofting community right to buy is designed to be a last resort option for CCBs. It is expected that CCBs will proceed with an application under Part 3 of the Act only after discussions with you concerning the purchase of the land, etc, outwith the Act, have failed. At any time after a CCB has submitted its application to the Scottish Ministers (Ministers), it can suspend its progress, if in the intervening period it has managed to progress meaningful discussions with the affected landowner, and it is expected that they will lead to the successful acquisition of the land it is seeking to acquire. In such a case, the CCB would acquire the land and any interests by a negotiated settlement, outwith the Act.

3. If a CCB discusses its plans with you and you agree to sell your land, its interests, any interposed leases or sporting interests, the CCB will not need to have recourse to the community right to buy provisions in Part 3 of the Act. This may be an easier option for both parties. In certain cases, ownership of the land or interests in question may not be the best solution to meet the aspirations of a CCB. Some communities may find, through negotiation, that it may be more appropriate to lease land rather than purchase it. **Communication is the key to a satisfactory outcome for both yourself as landowner, or owner of interests in land, and the CCB.**

2.2 CROFTING COMMUNITY BODIES (CCBs)

4. A crofting community body (CCB) is a company limited by guarantee which must, at all times, have no fewer than 20 members, with the majority of those members being from the crofting community (please see definition in section 1.3 of this guidance). Its Memorandum and Articles of Association (M&A) must contain provision to meet the requirements of section 71(1) of the Act. Ministers must be satisfied that the main purpose of the CCB is consistent with furthering the

achievement of sustainable development (section 71(4) of the Act). CCBs may also wish to attain charitable status.

5. Should Ministers be satisfied that a CCB which has bought land under the Act no longer meets the requirements of section 71(1) of the Act, they may acquire the land from the CCB by means of compulsory purchase (section 72(2) of the Act).

2.3 THE CROFTING COMMUNITY

6. As it is the “crofting community” which will be acquiring the “landlord’s interest”, it is important that a definition of that community is provided. A crofting community is defined in terms of section 71(5) of the Act, as read with the definition of “crofting township” in section 71(6) of the Act. A crofting township therefore comprises:-

- persons who are resident in the crofting township which is situated in or is associated with the eligible croft land which the CCB has a right to buy under Part 3 of the Act (section 71(5)(i) of the Act); or
- the tenants of crofts in that crofting township who are resident in another place within 16km of that township and who are entitled to vote in local government elections in the polling district or districts in which that township or other place is situated (section 71(5)(ii) of the Act).

7. A “crofting township” comprises any two or more crofts which share the right to use a common grazing together with that common grazing and any houses pertaining to or contiguous to those crofts or that common grazing, or any combination of two or more crofting townships within that meaning (section 71(6) of the Act).

8. Therefore, if you are resident in the township, and are registered to vote in local elections in the polling district in which the township is located, you and members of your family (provided they are also registered to vote in local elections) are members of the crofting community. In such a case, the CCB must give you the opportunity to vote in its ballot (see section 1.4).

2.4 WHAT CAN CCBs PURCHASE?

9. Part 3 of the Act sets out the land and interests which a CCB can purchase. These are eligible croft land and its interests - salmon fishings and mineral rights (except mineral rights to oil, coal, gas, gold or silver) - eligible additional land, eligible sporting interests and the interest of the tenant in tenanted land. These are described in turn.

Eligible croft land

10. Eligible croft land is:

- all land which is subject to crofting tenure and regulation, including arable machair and scattalds (section 68(2)(a) of the Act);
- any land in which a tenant of a croft (either alone or in common with others) has a right of pasture or grazing (section 68(2)(b) of the Act);
- any land which comprises any part of a common grazing held by a tenant of a croft, or held runrig by a tenant of a croft, which has not been apportioned for the exclusive use of a tenant of a croft (as provided by section 52 of the Crofters (Scotland) Act 1993);
- salmon fishings in inland waters within or contiguous to the eligible croft land: the salmon fishings can include fishings or rights which are owned separately from that land) (sections 68(2)(d) of the Act as read with section 69);
- mineral rights within or contiguous to the eligible croft land (sections 68(2)(d) of the Act as read with section 69).

Salmon fishings and mineral rights

11. Salmon fishings and mineral rights (excluding oil, coal, gas, gold or silver, as defined in section 68(2)(d) of the Act) form part of or are contiguous to the eligible croft land to which they relate.

12. A CCB cannot acquire mineral rights or salmon fishings through the crofting community right to buy unless it is acquiring or has acquired eligible croft land in accordance with the provisions of Part 3 of the Act. **A CCB cannot therefore use the crofting community right to buy to acquire mineral rights and salmon fishings in isolation or in respect of land already owned by the CCB and which was acquired by other means than by exercising the crofting community right to buy.**

Eligible additional land

13. “Eligible additional land” is land which is contiguous to the eligible croft land (which the CCB has included in its application) and is also owned by the same person (section 70(4) of the Act). The eligible additional land does not include salmon fishings and mineral rights associated with it (section 70(4) of the Act). If you are the owner of the land, you will be required to agree to its inclusion in the CCB’s application for consent to exercise its right to buy. A CCB may choose to approach you before it submits its application. Ministers will write to you following the receipt of the CCB’s application seeking agreement to the sale of the eligible additional land (section 73(9) of the Act). You may however, not agree to its inclusion. The CCB may also propose that eligible additional land should be included in its application without your agreement. Where you have not requested, or consented to the sale of that land, Ministers will refer the issue to the Scottish Land Court (section 77 of the Act). See also section 1.10 of this guidance.

Eligible sporting interests

14. Sporting rights are normally attached to land. This means that when a CCB seeks to buy eligible croft land it will normally also acquire the sporting rights. It is therefore not possible to exclude sporting rights from the land which the CCB is seeking to acquire. The Act therefore includes “eligible sporting interests”, the rights of a person other than the owner of the eligible croft land, which are under any lease or other contract to shoot or fish on the land.

15. The Act provides a mechanism whereby the CCB and the owner can agree that, where the CCB’s application succeeds, the eligible sporting interests in the land can be leased back to the former owner at a nominal rental, for a period of at least 20 years (section 83 of the Act).

16. The existence of a leaseback agreement will be taken into account in assessing the value of your land and any interests (section 88(11) of the Act). This will reduce the price the CCB will pay for your land by the value attributable to that leaseback arrangement. The CCB must agree this arrangement with you before the CCB exercises its right to buy. **If the CCB fails to make an agreement, the price payable for the land will include an element in respect of the value of the sporting rights.**

17. **If sporting rights have been leased back to the former landowner (in terms of section 83 of the Act), the CCB cannot apply under the Act to purchase these rights (section 70(3) of the Act).**

18. There may be instances where an arrangement already exists which gives a third party a heritable interest in the sporting use of the land which the CCB wishes to acquire. If this is the case, and the CCB acquires the land through the crofting community right to buy, that interest could persist and give that third party effective control of the sporting use of the land. In such a situation, the CCB can apply to Ministers to acquire that sporting interest provided that it makes its application within the relevant time limit (section 70(3) of the Act). This time limit starts on the date on which Ministers approve the CCB’s application for its community right to buy and ends 5 years after the date on which the CCB completed its purchase of the eligible croft land.

Interest of the tenant in tenanted land

19. Some eligible croft land may have a lease or leases over it (so called “interposed leases”). A CCB can apply to purchase the interest of the tenant in such a lease over the land. This interest does not, however, include a croft tenancy or the tenancy of a dwelling house (section 69A(1) of the Act). The area of land covered by the interposed lease must be contained within the extent of the eligible croft land the CCB proposes to acquire. If it extends beyond the eligible croft land, the CCB will not be able to purchase that portion of the lease which relates to land which is not eligible croft land.

Timescales for purchasing eligible croft land, interests, and sporting rights

20. A CCB may choose to buy eligible croft land without any salmon fishings, mineral rights or the interest of the tenant in tenanted land. It can also apply to purchase the salmon fishings and mineral rights, together with the interest of the tenant in tenanted land, at a date later than it acquires the eligible croft land. These interests may be purchased:

- at the same time as the CCB is applying to purchase the eligible croft land associated with them (section 69(1)(a)(i), as read with section 69A(2)(i) of the Act);
- where the CCB has made an application to Ministers, but Ministers have still to make a decision on its application (section 69(1)(a)(ii), as read with section 69A(2)(ii) of the Act);
- during “the relevant period” (defined in section 69(3) of the Act) (section 69A(5) of the Act). The “relevant period” is the period from the date on which Ministers approve or consent to the CCB’s application (under section 73 of the Act) one year after the CCB has bought and retained the related croft land for salmon fishings or until five years thereafter for mineral rights after that date.

In order to proceed, the CCB must have provided information to Ministers (in accordance with section 85(1) of the Act or section 69A(4) if the application is in respect of the interest of the tenant in tenanted land), that: (1) it intends to proceed to buy the croft land to which the salmon fishings or mineral rights relate or (2) it has bought and retained the related croft land in accordance with Part 3 of the Act and the CCB’s application is being made within the specified time limits (“the relevant period”) (section 69(1) and (2) of the Act).

Extent of land sought by the CCB

21. The CCB may seek to purchase only part of the eligible croft land. It does not need to acquire all the land owned by you. If you consider that the CCB is selecting the best parts of your land for acquisition, then you can seek permission from Ministers to include land which the CCB is not seeking to acquire (section 79 of the Act).

2.5 ESTABLISHING AND DEMONSTRATING COMMUNITY SUPPORT

22. No application by a CCB to acquire land and its interests can succeed without the support of its crofting community and the crofters in that community.

23. The CCB will act on behalf of the crofting community and carry out a ballot (section 75(1) of the Act) to demonstrate that a majority of the members of the CCB’s defined “crofting community” who voted in the ballot and a majority of the croft tenant members of that community who voted, support the CCB’s application (section 75(1)(b) of the Act).

The Ballot

24. All eligible members of the CCB's "crofting community" must be given the opportunity to vote in its ballot. If you as landowner or the owner of interests, are resident in the community and eligible to vote in local authority elections, you will be entitled to vote in the CCB's ballot. The CCB should inform you of that fact. All eligible voters must be given not less than 10 days notification of the date on which the ballot is to be held, as required by the Crofting Community Right to Buy (Ballot) (Scotland) Regulations 2004 (see Annex B). If you are in doubt as to whether you are entitled to vote, you should discuss this matter with the CCB or, if this is not possible, with Community Assets Branch.

25. The ballot must be held in accordance with section 75(2) of the Act and the 2004 Regulations (see Annex B). If you have any objections to the ballot process, you should discuss these with the CCB as early as possible. This should preferably take place before the CCB submits its ballot results to Ministers for their consideration. You may also wish to discuss any unresolved objections with Community Assets Branch.

26. The ballot may be postal, or by voting in person (at a polling station set up for the purpose). In certain circumstances it may be held by proxy. The ballot papers should identify the votes to be counted for the crofting community as a whole and to allow an additional count of croft tenant votes. The ballot question should provide clear and sufficient information on all aspects of the CCB's proposal in order that members of the CCB's "crofting community" can readily come to a decision on whether to support it.

27. The ballot should be conducted fairly and reasonably, with all those being balloted having the opportunity for a secret ballot. It is for the CCB to demonstrate to the Scottish Ministers that it conducted the ballot in such a manner. Ministers will pay particular attention to determining whether the CCB's ballot has been conducted fairly and reasonably and whether the arrangements have been inclusive. Failure to conduct the ballot fairly and reasonably and in accordance with the Act and Regulations will result in the CCB's application being refused.

28. The CCB is required to publish, within 14 days of holding its ballot, the ballot result, and details of the ballot in a newspaper circulating in the vicinity of the crofting community. It is also required to notify Ministers of its result within 21 days of the date of the ballot.

2.6 SINGLE AND MULTIPLE APPLICATIONS FOR CONSENT FOR THE CROFTING COMMUNITY RIGHT TO BUY

29. An application for consent to a CCB's crofting community right to buy must relate to land owned by one party, whether an individual owner or a consortium of owners. If a CCB wishes to acquire eligible croft land (including holdings consisting solely of salmon fishings or mineral rights), eligible sporting interests or the interest of the tenant in tenanted land, owned by a number of owners, it must complete

separate applications in respect of the land, etc, owned by each person (section 73(3) of the Act).

30. The Act does not prevent more than one CCB (or CCB and a Community Body (CB)) from applying to buy the same eligible croft land, the interest of the tenant, or eligible sporting interests. However, only one CCB may exercise its right to buy that land (section 76(1) of the Act). Ministers must decide which one will proceed (section 76(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 under section 73 of the Act (section 76(3) of the Act). There is, however, no guarantee that any application will proceed, if it appears to Ministers that it is not in the public interest to let one CCB proceed over another if this would result in, for example, a division in the crofting community which would affect its stability.

31. Once Ministers have decided which CCB should proceed to buy the land and interests, the interests of a tenant or eligible sporting interests, the unsuccessful CCB's right to buy is extinguished and its application is deleted from the Register of Crofting Community Rights to Buy. This also applies where both a CCB and a Community Body (CB) under Part 2 of the Act seek to buy the same land. Separate guidance is available for the community right to buy in Part 2 of the Act. Copies are available from <http://www.scotland.gov.uk/Topics/Rural/rural-land/right-to-buy/Community/Guidance/Q/editmode/on/forceupdate/on> or Community Assets Branch (contact details at Annex B).

2.7 THE REGISTER OF CROFTING COMMUNITY RIGHT TO BUY

32. The Act provides for the setting up and maintenance of the Register of Crofting Community Rights to buy, which contains information and documents relating to each CCB's application to exercise their crofting community right to buy (section 94 of the Act).

33. The Keeper of this Register is the Crofters Commission. The main function of the Keeper is to maintain the Register and to ensure that it is made available for public inspection at all reasonable times and is free of charge to view (a charge may, however, be made for any extracts requested from the Register).

34. Ministers will instruct the Keeper to enter information on the Register at various stages of the CCB's right to buy. Additional information may be entered onto the Register if Ministers so instruct (section 94(2)(e) of the Act). The Act specifies the information which must be held on the Register (section 94(2) of the Act). All the information on the application form will be placed on the Register for public inspection.

2.8 THE CCB'S APPLICATION FOR CONSENT TO EXERCISE ITS CROFTING COMMUNITY RIGHT TO BUY

35. The CCB must make its application to exercise its right to buy within the 6 month period following the date of its ballot (as required by section 75(1) of the Act). At the same time that the CCB applies to Ministers, it must send a copy of its application form and supporting documents to you as owner of the land or eligible sporting interests which are the subject of its application (section 73(6)(a) of the Act), and where the application relates to the interest of the tenant, to the tenant. If there is a standard security over an interest in any of the subjects to which the application relates, the CCB should also send a copy of its application and supporting documents to the creditor who holds that standard security and invite that person to give notice, within 60 days, to the CCB and Ministers on whether they have taken any steps to enforce its security in terms of the Conveyancing and Feudal Reform (Scotland) (Act 1970) (section 73(6)(b) of the Act). These steps are stated in section 73(7) of the Act. **If the CCB fails to send the application to these parties, the success of the CCB's application could be prejudiced.**

36. On receipt of the CCB's application and supporting documentation, Ministers have 60 days to invite the following individuals and bodies to send their views on your application:

- the owner of the land or the person entitled to the subjects in the CCB's application, (and the owner of land other than eligible croft land) and the tenant of the tenanted land;
- the owners of all contiguous land noted in the CCB's application;
- the Crofters Commission;
- and any other persons whom Ministers consider to have an interest in the CCB's application (section 73(8) of the Act).

37. Ministers must also send a copy of their invitation letter to the CCB (section 73(8) of the Act). If the application includes land other than eligible croft land, Ministers will also write to its owner seeking consent for its sale (section 73(9) of the Act).

38. As soon as Ministers have received the CCB's application, they are also required to give public notice of it (section 73(10) of the Act). This public notice shall be advertised in a newspaper (which Ministers think is appropriate) that circulates in the area where the land and subjects of the CCB's application are located and also in the Edinburgh Gazette (section 73(11) of the Act). This notice provides an opportunity for anyone with an interest in the application to provide views on it. Any views, in writing, must be sent to Ministers within 60 days of the publication of the public notice.

39. After Ministers have received views, in writing, they are required to send copies of them to the CCB. The CCB will be invited to comment on them and respond to Ministers within 60 days of receiving their invitation (section 73(12) of the Act). Ministers must consider the views received and the responses from the CCB before they reach a decision on its application.

Criteria for consent by Ministers

40. When Ministers have sought views and resolved any issues arising, they are required to satisfy themselves that the CCB's application has met the criteria for consent (section 74(1) of the Act). When considering the application, Ministers may have to refer issues to the Scottish Land Court to be resolved (section 81 of the Act). These can be referred by Ministers, any member of the crofting community, any person such as you with an interest in the land, or the eligible sporting interests and anyone whom Ministers invited to send views on the application. Where an issue is referred to the Scottish Land Court, the Land Court can invite you as landowner, the CCB or any other person who appears to have an interest to make representations to it. **If it is successfully demonstrated that the information which the CCB provided in its application is incorrect or flawed, and that the application would not therefore meet the criteria for consent, Scottish Ministers would be bound to reject it.**

Ministerial consideration of the purchase of eligible additional land without the owners' consent

41. The CCB may have included eligible additional land in its application but you, as owner of that land, have not requested, or consented, to the sale of that land. The Act makes provision that the Ministers' decision on the CCB's application will be deferred until this issue has been referred to the Scottish Land Court and it has made a decision on the matter (section 77 of the Act).

42. The Scottish Land Court will consider (in terms of section 77(4) of the Act) the CCB's application to include eligible additional land against the criteria set out in section 77(3) of the Act. It can make an order which specifies either: (1) that some or all of the eligible additional land should be included in the CCB's right to buy or (2) that there should be title conditions applied to some or all of the land. The effect of such an order would allow Ministers to grant the CCB's application. Ministers would therefore grant the CCB's application in relation to the eligible additional land in accordance with the arrangements specified in that order.

43. If the Scottish Land Court concludes that it should not make an order, as it has found that there was no justification for either including any part of the eligible additional land in the CCB's right to buy or for imposing title conditions on any part of that eligible additional land in the right to buy, then the CCB's application as a whole would fail.

44. The landowner can also propose that eligible additional land should be included in the CCB's right to buy application (section 79 of the Act). If you, as landowner, make this request within the time limit for submitting views on the CCB's application (under section 73 of the Act), Ministers may, if they consider that it is in the public interest, require that the CCB's application be modified to include such eligible additional land.

45. Ministers may refer any matter which relates to the question of whether eligible additional land should be included in the CCB's application to the Scottish Land Court. Ministers are not bound to refer a matter to the Scottish Land Court in every circumstance. However, they must do so if you, as owner of land, or the CCB require them to do so (section 79(2) of the Act). If any questions on the eligible additional land are referred to the Scottish Land Court, Ministers will be bound to take account of its findings when they consider the CCB's application (section 79(5) of the Act).

Notification of the Ministers' decision

46. There is no specific time set out in the Act in which Ministers must notify their decision on the CCB's application. Ministers will give a Notice, in writing, of their decision to consent or to refuse the CCB's application to exercise its crofting community right to buy (section 82 of the Act). This notice will also give the reasons for their decision. This will be sent to the CCB, the owner of the land, the tenant, or person entitled to the eligible sporting interests to which the application relates, and every person who was invited to send their views to Ministers on the application (section 82(1) of the Act). If the Ministers' decision is to consent to the application, they will also send it to the Keeper of the Registers of Scotland (section 82(1)(d) of the Act).

47. The Ministers' Notice will contain a full description of the eligible croft land, eligible additional land, interest of the tenant in tenanted land or eligible sporting interests to which their consent relates and any conditions imposed under section 80 (consent conditions) by virtue of section 77(4) or (5) of the Act (reference to the Land Court of the purchase of eligible additional land without the owner's consent). It will also contain information about the consequences of their decision (section 82(3)(a) of the Act), and the right of appeal in Part 3 of the Act. It will state the date on which the Ministers' decision is effective (section 82(3)(b) of the Act).

Appeals against the Ministers' decision

48. The Act makes provision that parties may appeal against the Ministers' decision to consent to or to refuse the CCB's application for consent to exercise its right to buy (section 91(1) and (2) of the Act). These parties include you, as owner of the land, or a person entitled to the eligible sporting interests in the application, or any other person with a legally enforceable interest in the land or sporting rights.

49. You should make your appeal to the Sheriff Court in the area where the land or any part of it or the eligible sporting interests or any part of them is located, and which has the jurisdiction to hear an appeal. Applications must be made within 28 days of the date on which Ministers decided to consent to, or refuse, the application. Appeals may only be made on a question of law (section 91(5) of the Act). The Sheriff may make an order to uphold, reverse or add conditions to the decision by Ministers. The conditions must be consistent with any decisions or finding by the Scottish Land Court on matters under sections 77 or 81 of the Act. The order of the Sheriff is final.

2.9 AFTER MINISTERS DECIDE

50. From the date on which Ministers give their consent to the CCB's application, you as landowner, the tenant, or person entitled to the eligible sporting interests in the CCB's application, are prohibited from disposing of them to any person other than the CCB (section 95 of the Act). Should the CCB decide not to exercise its right to buy or withdraw from its right to buy application, this prohibition will be lifted (section 95(2) of the Act).

Valuation

51. Following the Ministers' consent to the CCB's application, Ministers have 7 days in which to appoint an independent valuer (section 88(1) of the Act), unless they have referred a question to the Scottish Land Court, e.g. on the terms of a leaseback, in which case they will appoint the valuer within 7 days of the day on which the Scottish Land Court makes its determination on this question (section 88(2) of the Act). Should, however, Ministers fail to appoint within these specified times, any delay will not affect the validity of the valuation (section 88(3) of the Act).

52. The Act specifies that the valuer must be suitably qualified, independent and have knowledge and experience of valuing land, tenants' interests, or eligible sporting interests of a kind which is similar to the land, tenants' interests or eligible sporting interests which the CCB is seeking to purchase (section 88(1) of the Act). The cost of this valuation will be met by Ministers (section 88(8) of the Act).

53. The aim of the independent valuation is to ensure that the landowner receives a fair price, the "market value" for the land. **It is not the purpose of the Act to allow the CCB to purchase land cheaply and at a financial loss to you the owner.** The definition of "market value" is set out at section 88(6) of the Act. The valuation will consist of the sum of the value of:

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

54. In arriving at the open market value, the valuation will take into account the possibility of a potential purchaser with a special interest in the property (other than the CCB) (section 88(7) of the Act). No account shall be taken in that assessment of the fact that you, as landowner, were not allowed any time to market the property or of depreciation of other land or disturbance. This is because compensation for these latter two items will be added to the open market value (in accordance with section 88(6)(b) of the Act).

55. The appointed valuer acts on behalf of the Ministers, not for the parties involved in the purchase. They will act as an expert and not as an arbiter. The valuer will ask you as landowner, tenant (if applicable) and also the CCB, for your

written views on the value of the land and or interests (section 88(9) of the Act). They will take these views into account when considering the value of the land. If you and the CCB have come to an agreement on the valuation of the land, you must notify the valuer in writing of that agreed valuation. If the CCB is interested in leasing back the eligible sporting interests to you, as owner, the valuer will assess their value and take into account the terms and conditions of the lease which has been agreed between you as owner and the CCB, or, as the case may be, by the Scottish Land Court under section 83 of the Act.

56. The valuer has 6 weeks from the date of their appointment (or longer if agreed by Ministers in terms of section 88(13) of the Act), to provide Ministers, you, as landowner, and the CCB with 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 88(14) of the Act). **The price to be paid for the land, interests and the interest of the tenant, is the valuation price provided by the valuer or a price agreed by mutual agreement between the CCB and yourself as landowner, tenant or person owning interests or the price determined by the Scottish Land Court (section 92 of the Act) if the valuation figure is appealed.**

Appeals against the valuation

57. Should you as landowner, the tenant, the person entitled to the eligible sporting interests, or the CCB be unhappy with the valuation, an appeals procedure is available (section 92 of the Act). Appeals against the valuation are made to the Scottish Land Court (section 88 of the Act). An appeal may be made within 21 days of the intimation of the valuation (section 92(2) of the Act).

58. The Scottish Land Court may reassess the valuation and substitute its own for that of the appointed valuer (section 92(2) of the Act). The valuer may be called as a witness in the appeal proceedings (section 92(4)). The Scottish Land Court must give its decision on the appeal in writing, within 4 weeks of the hearing of the appeal. It will give reasons for its decision (section 92(5) of the Act). The validity of the Land Court's decision is not affected by its failure to comply with this time limit.

59. **The valuation determined by the Scottish Land Court is the price the CCB will have to pay to purchase the land or the interest of the tenant unless a different price is agreed by both parties. The CCB and yourself, as landowner, can reach an out of court settlement on any issues relating to your community right to buy which are the subject of an appeal (section 93 of the Act).** You should be aware that the Ministers are not a competent party to any appeal as they only appoint the valuer (section 92(7) of the Act).

2.10 TRANSFER OF THE CROFT LAND ETC TO THE CCB

60. After the valuer has informed the CCB of the valuation figure, it has 21 days in which to send to you, as landowner, tenant, Ministers, and other parties entitled to the interests included in its application, notice that it intends to proceed with its right

to buy (section 85(1) of the Act). Ministers will acknowledge the CCB's confirmation and will send a copy to you or any person entitled to the interests (section 85(3) of the Act). Should, at any time, the CCB decide that it wishes to withdraw from its right to buy, you will be notified in an acknowledgement letter from Ministers (section 88(9) of the Act).

Completion of the purchase

61. The CCB is fully responsible for securing the expeditious exercise of its right to buy (section 86 of the Act). You as landowner, tenant, or the person entitled to the interests to be acquired, are obliged to make the title deeds available to, and to transfer them to, the CCB (section 86(4) of the Act). Should you refuse or fail to make these documents available, or if they cannot be found within 6 weeks of the date on which Ministers consent to the CCB's application, the CCB can apply to the Scottish Land Court for an order requiring the production of these documents (section 86(5) of the Act). Where you refuse or fail to transfer the title of the land, the CCB can also apply to the Scottish Land Court to undertake that action. An action by the principal clerk to the Court has the same effect as if it were done by the owner (section 86(6) of the Act).

Completion of the transfer

62. The details of how the transfer of the land or eligible sporting interests is to be completed are set out in section 87 of the Act. The CCB must pay for the land, interposed leases or eligible sporting interests within 6 months from the date on which Ministers consented to its application (section 87(2) of the Act). However, this date may be extended where:

- you, as the owner of the land, the tenant or person entitled to the eligible sporting interests agrees to an extension of that period (section 87(3)(a) of the Act);
- the valuation (under section 88) has not been completed by a date which is 4 months after the date when Ministers consented to the CCB's application: in such a case payment must be made within 2 months of the completion of that valuation (section 87(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 CCB's application: in such a case, payment must be made within 2 months of the date of the outcome of the appeal (section 87(3)(c) of the Act).

63. If there is any unreasonable delay in transferring the title of the land, corrective action can be undertaken (sections 87(4) and (5) of the Act). In particular, if you, as owner, do not grant a good and marketable title to the CCB by the date of payment, then the payment shall be made to and held by the Scottish Land Court pending either the completion of the conveyance or notification to the court that the CCB has decided not to complete the transaction (section 87(4) of the Act). If the CCB does not make payment by the due date, the CCB's application will be considered to have been withdrawn. **The CCB's failure to pay for the land and**

any interests creates a liability to pay compensation under section 89 of the Act (section 87(5)).

64. The land, the interest of the tenant and/or eligible sporting interests which the CCB is acquiring will be disburdened of any heritable security (section 87(6) of the Act) and any securities which burden the land other than in respect of which title is granted shall cease to burden the land (section 87(7) of the Act). However, the CCB will be required to pay the creditors of a heritable security any sums which are due to them (section 87(8) of the Act). The CCB may deduct any sums paid to the heritable creditor from the amount it is to pay you as the landowner (section 87(9) of the Act).

2.11 COMPENSATION

65. Section 89 of the Act sets out the circumstances in which any person, including the landowner, tenant, or a person entitled to the eligible sporting interests, who has incurred loss or expense through the exercise of the CCB's crofting community right to buy is entitled to reclaim that loss or expense from the CCB (section 89 of the Act). If a CCB makes an application and it is refused by Ministers, you as landowner, tenant, or the person entitled to the interests, are entitled to recover the amount of any losses from Ministers. A CCB will not be liable to pay compensation where it has made an application to Ministers, but Ministers have not approved it (section 89(2) of the Act).

66. The process for making a claim against the CCB is set out in the Crofting Community Right to Buy Compensation (Scotland) Order 2004 (see Annex B). A claim must be submitted to the CCB within 90 days of:

- the final settlement date (section 87(2) of the Act), or a later date (section 87 (3) or (4) of the Act);
- the date when your CCB withdrew confirmation of your intention to proceed with the purchase of the land (section 85 of the Act); or
- the date on which your CCB's application was treated as being withdrawn (section 87(5) of the Act),
whichever date is earlier.

The claimant should specify the reasons why they are applying for compensation. Where the applicant and the CCB cannot agree whether compensation is payable, or the amount of such compensation, within the timescale specified in the 2004 Order, then either party may refer the question to the Scottish Land Court for a decision (section 89(5) of the Act).

2.12 CONCLUSION

67. This guidance demonstrates that a community purchase under part 3 of the Act is not an easy route for communities to embrace and it may not suit you as a owner of land, interests, or sporting interests or as a tenant of so called interposed leases. You may wish to consider selling your land and interests to the community by agreement and without recourse to the provisions in Part 3 of the Land Reform

(Scotland) Act 2003. The key to such a transfer is good communication between yourself and the CCB. Reliance on the Act has the advantage of a structure with which to operate. However, you should be aware that adherence to Part 3 is both complex and legalistic. Parties may choose to use the services of a solicitor from an early stage.

68. The Scottish Government's Community Assets Branch is happy to assist with any questions about the crofting community right to buy process (contact details in Annex B). The branch cannot, however, provide legal advice, nor, due to impartiality required in advising Ministers on a case-by-case basis, advice which would be seen as supporting a particular group such as owners, heritable creditors, the tenant of a so called interposed lease, or the CCB in any specific case.

GUIDANCE FOR THIRD PARTIES

3.1 WHO IS A THIRD PARTY?

1. Under Part 3 of the Land Reform (Scotland) Act 2003, a third party may be:
 - a member of the crofting community defined by a CCB for the purposes of section 71(1)(a) of the Act;
 - any person who has a known interest in the land, tenant of tenanted land and interests or sporting rights; or
 - a person who has a right of pre-emption, redemption or reversion over the registered land.

3.2 IDENTIFYING YOUR RIGHTS

2. Individuals with legal rights in or over land should be aware of their rights. You should consider the effects of a CCB's application for consent to exercise its crofting community right to buy. If details of your rights are contained on the Sasine or Land Registers held by the Keeper of the Registers of Scotland (RoS), they should appear on a CCB's application form. If the registration is approved, these details will then appear in the Register of Crofting Community Rights to Buy. **If these details are incorrect, you should inform the CCB and Community Assets Branch.** Although there is no legislative requirement for you to do so, this may further help to ensure you have your say in the right to buy process.

3.3 EFFECT OF THE CROFTING COMMUNITY RIGHT TO BUY ON YOUR RIGHTS

3. The effects the crofting community right to buy will have on pre-emption, redemption and reversion rights is set out in section 84 of the Act. Generally, any legal right you have in the land or interests will be suspended from the time Ministers approve the CCB's application until the transfer of the land is completed. If the right to buy does not proceed, any legal right you have in the land which is the subject of its application will be reinstated as before.

Member of the crofting community

4. If you are a member of the crofting community, defined by a CCB (for the purposes of section 71(1)(a) of the Act), you will be entitled to vote in the CCB's ballot prior to it submitting its application to Ministers (section 75 of the Act). If you meet the criteria set out in section 71(1)(a) of the Act, you should ensure that you have a right to vote in the CCB's ballot. If you discover that the CCB's ballot in which you had a right to vote has taken place without your knowledge, you should inform the CCB and Community Assets Branch.

Third party purchaser

5. The 2003 Act provides third parties with certain other rights. For example, if Ministers have consented to a CCB's application to proceed with its right to buy, and a valuer has been appointed, section 88(7)(a) of the Act requires the valuer to take account of the known existence of a person who may be willing to buy the land at a higher price than others might be expected to pay. You should therefore make yourself known to the valuer, whose details can be obtained from Community Assets Branch, to ensure that your views are taken into account.

3.4 APPEALS

6. As a third party, you have a right to appeal against Ministers' decision to consent to the CCB's application (under section 91(2) of the Act). Section 91(5) of the Act provides that appeals must be lodged within 28 days of the date on which Ministers decided to consent to the CCB's application. The sheriff may order that the Ministers' decision shall be adhered to or reversed. The sheriff's decision is final.

3.5 PROVIDING INFORMATION TO MINISTERS

7. If you wish to provide information to Ministers which is pertinent to a CCB's application to exercise its crofting community right to buy, you should send it to Community Assets Branch (contact details at Annex B). You will have an opportunity to provide comments on the CCB's application soon after Ministers receive it (section 73(11) of the Act). If the information you wish to submit is of a sensitive nature, for example, it concerns any alleged breach of the provisions of the Act, it can be submitted in confidence and will be treated as such by the Branch (though it may still be made publicly available if requested under Freedom of Information legislation).

3.6 COMPENSATION

8. Any person (other than a CCB) who has suffered loss or incurred expense arising from the operation of Part 3 of the Act, such as costs or losses resulting from compliance with the Act following an application to purchase land or from the CCB withdrawing from the right to buy process, may claim compensation. This compensation is payable by the CCB, and in certain circumstances by Ministers.

9. The circumstances in which compensation is payable are set out in section 89 of the Act. The procedures for recovering costs are set out in the Crofting Community Right to Buy (Compensation) (Scotland) Order 2004 (see Annex B).

10. Claims for compensation should be made within 90 days of the final settlement date (section 89 of the Act), or such later date as may be agreed, or the date when the CCB withdrew its confirmation of its intention to proceed with the purchase of the land, or the date on which the CCB's application was treated as being withdrawn, whichever date is earlier.

11. Annex B provides useful contacts to help you through the right to buy process. Community Assets Branch 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 right to buy process. Community Assets Branch can help you with any process-related questions you have.

ANNEX A. TIMELINE OF ACTIONS FOR THE CROFTING COMMUNITY RIGHT TO BUY PROCESS

Deadlines	Action	Cumulative deadline
	Crofting Community Body (CCB) holds a ballot of its defined “crofting community”. (s75(1) and the Crofting Community Right to Buy (Ballot) (Scotland) Regulations 2004)	6 months
21 days from date of ballot	Ministers are advised of the ballot results. (s75(4))	
	CCB applies to purchase croft land.(s73) CCB send a copy of the application to the landowner, tenant and any heritable creditor. s73(6) and (8))	
60 days from date of receipt of application	On receipt of the application, Ministers invite the landowner, tenant, the owners of all land contiguous with the land, the Crofters Commission and others, as appropriate, to comment. (s73(8)) Deadline for receipt of comments on the CCB’s application is 60 days after the sending of the Ministers’ invitation. (s73(8))	Minimum of 60 days
As soon as possible after receiving application	As soon as possible after the receipt of the application, a public notice is published in a local newspaper and the Edinburgh Gazette, inviting comments on the application. (deadline for response - 60 days) (s73(3)-(11)) Deadline for receipt of comments on the CCB’s application (60 days). (s73(10))	
	Ministers send a copy of the comments to the CCB and invite its comments. (s73(12)(a))	
60 days from date of invitation to comment	Deadline for receipt of views from CCB is 60 days after the sending of the Ministers’ invitation. (s73(12)(b))	
As required to determine issues by Scottish Land Court	Any reference of issues to Scottish Land Court (s81 , and 97)	

MINISTERS' DECISION		
	<p>Scottish Ministers write to the CCB advising of consent/rejection of the Crofting Community Right to Buy. (s82)</p> <p>The landowner can only dispose of the land and interests to the CCB. (s84(1))</p>	6 months (unless extended by agreement or as a result of proceedings in Scottish Land Court)
7 days from decision	<p>Scottish Ministers appoint a valuer within 7 days of giving consent to an application (or 7 days following a determination in the Scottish Land Court). (s88(1) and (2))</p>	
21 days from decision	<p>CCB confirms its intention to proceed with the purchase of the croft land (s85(1)) within 21 days of the date of notification from Ministers.</p>	
7 days from receipt of intention to proceed with right to buy	<p>Scottish Ministers acknowledge receipt of the crofting community's confirmation to proceed with the purchase. (s85(3))</p>	
6 weeks from notification of Ministers' decision	<p>CCB is notified of the results of the valuation within 6 weeks of the appointment of the valuer. (s88(13))</p>	
	<p>Final settlement date. (s87(2))</p>	

ANNEX B. USEFUL CONTACTS AND WEB LINKS

Community Assets Branch, Rural Directorate, Scottish Government, Area 1-D, Pentland House, 47 Robb's Loan, Edinburgh, EH14 1TY
(tel: 0131 244 6003, fax: 0131 244 3101)
email: crtb@scotland.gsi.gov.uk

Scottish Government Library, Saughton House, Broomhouse Drive, Edinburgh, EH11 3XD
(tel: 0131 244 4550, fax: 0131 244 4545)

Highland and Islands Enterprise Community Land Unit
'Taigh Fearna', Lochalsh Business Park, Auchtertyre, Balmacara, IV40 8EG
(tel: 01520 722988; fax: 01599 566724)
email: hie.general@hient.co.uk
web: <http://www.hie.co.uk/CommunityLand.htm>

Crofters Commission, Castle Wynd, Inverness, IV2 3EQ
(tel: 01463 663450)
email: info@crofterscommission.org.uk
web: <http://www.crofterscommission.org.uk/>

Companies House, 37 Castle Terrace, Edinburgh, EH1 2EB
web: <http://www.companieshouse.gov.uk> (new premises from summer 2009)

General Register Office for Scotland (GROS), Ladywell House, Ladywell Road, Edinburgh, EH12 7TF
(Customer Services tel: 0131 314 4243, Fax: 0131 314 4344)
email: customer@gro-scotland.gov.uk
website: <http://www.gro-scotland.gov.uk>

Registers of Scotland (RoS), Erskine House, 68 Queen Street, Edinburgh, EH2 4NF
(tel: 0845 6070161, fax: 0131 200 3932)
email: customer.service@ros.gov.uk
website: <http://www.ros.gov.uk/>

Scottish Land Court, George House, 126 George Street, Edinburgh, EH2 4HH
(tel: 0131 271 4360; fax: 0131 271 4399)
website: <http://www.scottish-land-court.org.uk/index.html>

Scottish Natural Heritage, Great Glen House, Leachkin Road, Inverness, IV3 8NW
(tel: 01463 725000; fax: 01463 725067)
website: <http://www.snh.org.uk/>

Development Trusts Association Scotland (DTAS), 54 Manor Place, Edinburgh, EH3 7EH
(tel: 0131 220 2456)
email info@dtascot.org.uk
website: <http://www.dtascot.org.uk/>

Scottish Council for Voluntary Organisations (SCVO), Mansfield Traquair Centre, 15
Mansfield Place, Edinburgh, EH3 6BB
(tel: 0131 556 3882)
email: enquiries@scvo.org.uk
website: <http://www.scvo.org.uk/scvo/Home/Home.aspx>

Resources

Crofting Community Right to Buy website:
<http://www.scotland.gov.uk/Topics/Rural/rural-land/right-to-buy/crofting>

Crofting Community Right to Buy – downloadable application form
<http://www.scotland.gov.uk/Topics/Rural/rural-land/right-to-buy/crofting/applicationform>

Community Right to Buy website:
<http://www.scotland.gov.uk/Topics/Rural/rural-land/right-to-buy/Community>

Land Reform History website:
<http://www.scotland.gov.uk/Topics/Rural/rural-land/right-to-buy/Resources/Land-Reform>

Rural Communities Mapping Tool
<http://www.scotland.gov.uk/Topics/Rural/rural-land/right-to-buy/MappingTool>

Highlands and Islands Enterprise Community Land Unit (guidance)
<http://www.hie.co.uk/CLU-General/-/holding-area/crofting-right-to-buy-0604.pdf>

Legislation

Statute Law Database
<http://www.statutelaw.gov.uk/>.

Land Reform (Scotland) Act 2003
http://www.opsi.gov.uk/legislation/scotland/acts2003/asp_20030002_en_1

Land Reform (Scotland) Act 2003, Explanatory Notes
http://www.opsi.gov.uk/legislation/scotland/acts2003/en/aspen_20030002_en_1

Crofting Reform etc. Act 2007
http://www.opsi.gov.uk/legislation/scotland/acts2007/asp_20070007_en_1

The Crofting Community Body (Prescribed Form of Application and Notice)
(Scotland) Regulations 2009
<http://www.opsi.gov.uk/advanced-search/index>
<http://www.scotland.gov.uk/Topics/Rural/rural-land/right-to-buy/Resources/Orders>

The Crofting Community Right to Buy (Ballot) (Scotland) Regulations 2004
http://www.opsi.gov.uk/legislation/scotland/ssi2004/ssi_20040227_en.pdf
<http://www.scotland.gov.uk/Topics/Rural/rural-land/right-to-buy/Resources/Orders>

The Crofting Community Right to Buy (Compensation) (Scotland) Order 2004
<http://www.opsi.gov.uk/legislation/scotland/ssi2004/20040226.htm>
<http://www.scotland.gov.uk/Topics/Rural/rural-land/right-to-buy/Resources/Orders>

The Crofting Community Right to Buy (Grant Towards Compensation Liability) (Scotland) Regulations 2004
<http://www.opsi.gov.uk/legislation/scotland/ssi2004/20040225.htm>
<http://www.scotland.gov.uk/Topics/Rural/rural-land/right-to-buy/Resources/Orders>

Funding agents

Big Lottery Fund (Scotland), 1 Atlantic Quay, Glasgow, G2 8JB
(tel: 0141 242 1400; fax: 0141 242 1401)
email: enquiries.scotland@biglotteryfund.org.uk
website: <http://www.biglotteryfund.org.uk/scotland>

Highlands and Islands Enterprise Community Land Unit, Cowan House, Inverness Retail and Business Park, Inverness, IV2 7GF
(tel: 01463 244253; fax: 01463 244217)
Taigh Feàrna, Auchtertyre, Balmacara, Kyle, IV40 8EG
(tel: 01520 722988; fax: 01599 566724)
email: hie.general@hient.co.uk
website <http://www.hie.co.uk/communityland.htm>

Scottish Enterprise, 5 Atlantic Quay, 150 Broomielaw, Glasgow, G2 8LU
(tel: 0845 607 8787 (from within Scotland) or 0141 228 2000 (elsewhere in the UK))
website: <http://www.scottish-enterprise.com>

Scottish Rural Development Programme (SRDP), Pentland House, 47 Robb's Loan, Edinburgh, EH14 1TY
website: <http://www.scotland.gov.uk/topics/rural/srdp>
Scottish Government – LEADER Funding, Pentland House, 47 Robb's Loan, Edinburgh, EH14 1TY
Website: <http://www.scotland.gov.uk/Topics/Rural/SRDP/LEADER>

Local Authorities website
<http://www.cosla.gov.uk/councils.asp?leftId=10001954C-10766746&rightId=10001954C-10771016&hybrid=false>

John Muir Trust, 41 Commercial Street, Edinburgh, EH6 6JD
(tel: 0131 554 0114; fax: 0131 555 2112)
email: admin@jmt.org
Tower House, Station Road, Pitlochry, PH16 5AN
(telephone: 01796 470080; fax: 01796 473514)
email: Linda@jmt.org

website: <http://www.jmt.org/home.asp>

The Robertson Trust, 85 Berkeley Street, Glasgow, G3 7DX
(tel: 0141 221 3151; fax: 0141 221 0744)
email: admin@therobertsontrust.org.uk
website: <http://www.therobertsontrust.org.uk/>

The Tubney Charitable Trust, First Floor, Front Wing, 30-31 Friar Street, Reading, RG1 1DX
(tel: 0118 958 6100; fax: 0118 959 4400)
email: info@tubney.org.uk
website: <http://www.tubney.org.uk>

Triodos Bank Scotland, 32 Annandale Street Lane, Edinburgh, EH7 4L
(telephone: 0131 557 5528; fax: 0131 557 649)
email: mail@triodos.co.uk
website: <http://www.triodos.co.uk/>

Funding resources

Grant Finder website at: <http://www.grantnet.com>

Scottish Government Rural Funding – Opportunities Guide
Website: <http://www.scotland.gov.uk/Topics/Rural/rural-communities/access-funding>

ANNEX C. RURAL COMMUNITIES MAPPING TOOL

1. This Annex describes how to use the Rural Communities Mapping Tool (<http://www.scotland.gov.uk/Topics/Rural/rural-land/right-to-buy/MappingTool>). This electronic tool has been designed to help CCBs and CBs (community bodies) to identify their communities.

2. To utilise the full functionality of the Mapping Tool, you should disable any pop-up blocker on your browser.

1.1 Available layers in the tool

Area boundaries

3. Although what comprises excluded land for the purposes of Part 2 of the Act does not apply to the crofting community right to buy, this facility has two relevant parts of relevance to CCBs:

- **Parishes** – shows agricultural parish boundaries.
- **Wards** – shows Electoral Wards. Ward names can be found by using the “Identify All” button, noted below.

Postcodes

4. Postcode units are normally used to define a community for the purposes of Part 2 of the Act. Ministers have the discretion to define the crofting community in such other way as they approve, such as postcodes (section 71(5)(b) of the Act).

Base layers

- **Base layers** – show major cities. We would advise not to adjust the default setting for these layers.

1.2 Layer options

5. Please check the boxes of the relevant layers that you wish to see. Bear in mind that checking a number of boxes at the same time may lead to the “view” being unclear and overly congested.

6. **Options** can be opened up by clicking on the “folder” sign. Please ensure that to access the newest layer of an option (e.g. Settlements), the one with the latest date is checked.

1.3 Radio buttons

7. These circular buttons determine which layer is “Active”. For example, if the “Postcode Unit” button is checked, when you use the “Identify All” button along the

top edge of the viewable area and click on the map itself, postcode information on that part of the land will be brought up in a separate window. The same applies for each of the options to which radio buttons are attached.

1.4 Buttons above the map

8. The buttons above the map are:

- **Print Map** - opens a new window where Print options will be shown.
- **Clear Map** - clears the map of any draw lines or other marked selections.
- **Whole Map** - shows the whole map i.e. the view will revert to that at the start of the session.
- **Last Map** - shows the previous view of the map i.e. one step back, akin to an “undo”.
- **Show Legend** - shows/hides the legend of the map. It also helps to show what layers are active.
- **Zoom In** - click on this to activate. Place cross-hair on the map, left click and hold mouse then drag over the required area. That area will be zoomed into. Scale is shown on the bottom left of the screen.
- **Zoom Out** - click on this to activate. Place cross-hair on the map, left click and hold mouse button then drag over the required area. That area will be zoomed out. Scale is shown on the bottom left of the screen.
- **Move View** - click on this to activate. Place cursor onto map, left click and hold mouse button to move the viewable area.
- **Find** - click on this to activate. A new window will appear which will allow you to search the OS Gazetteer, as will the button at the bottom of the page.
- **Identify All** - click on this to activate. Please see above at “Radio buttons”.
- **Measure** - click on this to activate. Click onto the map at two or more points to show the distance between them or a cumulative total distance.
- **Circle Select** - click on this to activate. A new window appears. Adjust the pull down to show the requested radius, then click “draw the selection circle”. Click on the map at the required spot to show a highlighted radius from that point.
- **Square Select** - click on this to activate. Ensure the relevant active layer is activated. Place cursor onto map, left click, hold mouse button and draw required shape. Once the shape is complete the information will appear (dependant on what layers are “active”).
- **Line/polygon Select** - click on this to activate. A new window will appear. Click on map at point to draw the require shape (e.g. following postcode boundaries). Once the shape is complete, click on “Finish Shape”. You can then print off this map with the required shape shown. This will be a useful tool in creating a community boundary map.

1.5 Search buttons (bottom right)

9. The search buttons on the bottom right are:

- **Postcode search** – allows you to search for a specific postcode unit, sector, and districts. If searching for a postcode sector or area a new window will appear showing all postcodes contained therein. Please note that Large User postcodes will not appear on the view/listing.
- **Place search** – allows you to search by place name (settlement, town, city, etc) and to search by O.S. Grid References or by X and Y co-ordinates.