



SCOTTISH LAND COMMISSION  
COIMISEAN FEARAINN NA H-ALBA

## Land and Human Rights Advisory Forum

### Meeting 7

#### DRAFT Note of Meeting - Tuesday 28<sup>th</sup> March 2022

#### Discussion

##### *Community Land Scotland Proposal on Part 2 CRtB Reform*

A Community Land Scotland (CLS) working paper was presented to the forum, which proposes revisions to the 2-stage process for Community Right to Buy under Part 2 of the Land Reform (Scotland) Act 2003.

The paper described perceived issues with the existing Community Right to Buy (CRtB) process in Scotland. Issues identified included that there has been a low rate of acceptance of late applications under Part 2 since 2003. There have been no late applications accepted since 2017, despite reform to the CRtB process under the Community Empowerment (Scotland) Act 2015.

The paper suggests that the process under the 2003 Act was designed for a different land market from the present day, as well as political and legal environment, and as such is seen to be too complex and lacking proportionality.

Drawing on data from the [Scottish Index of Multiple Deprivation](#), CLS highlighted a correlation showing that poorer communities are less likely to engage with the CRtB process.

The forum discussed various possible reasons for the low rates of CRtB application and acceptance. Factors discussed included communities finding it difficult to meet registration standards, risk aversion within Scottish Government decision making, and the current land market – in particular its fast pace, high land values, and lack of transparency. Members also suggested that the COVID-19 pandemic and the ongoing cost of living crisis have placed additional time and financial pressures on community organisations and suggested that this could be another contributing factor to low application rates.

The paper set out proposals to improve the CRtB process and encourage more applications. This included the proposal to introduce a simple preliminary registration stage before the current 2-stage process, allowing any 'community entity' to register an interest in a piece of land. Such a community entity would be preliminarily registered for up to five years, during which time they could move to complete the existing Stage 1 process. This change would be achieved through amending Part 2 of the 2003 Act. The paper also suggests simplifying Stage 1 of the existing process and highlighted the need for a full review of CRtB.

Forum members were asked for their input on the proposals' possible impact on property rights. This prompted discussion on both the practicalities and human rights implications of the proposal.

One risk identified was that introducing a preliminary registration stage could further complicate the CRtB process and create another barrier to applications. However, other

participants in the discussion argued that the intention of pre-registration is to be a 'foot in the door' for communities and should therefore be designed in as straightforward a way as possible.

It was also suggested during discussion that if the pre-registration is only an optional stage, then this should be made explicit, to mitigate the risk that pre-registration could be perceived as an additional burden. Some forum members also highlighted the practicality of the proposal and suggested it could help facilitate early dialogue between communities and landowners.

Members also raised questions about the phrase 'community entity' in the preliminary registration proposal, and whether it would be feasible for a community council or a non-constituted community organisation to undertake the preregistration phase despite being ineligible to move to Stage 1 or Stage 2. Some members felt that community bodies should be compliant from the outset of the process, as if one body takes on one stage, and another body takes on the next stage, it would be an inconsistent process. Forum members noted the role of community councils under planning legislation, and their potential to act as an initial 'lightning rod' for local interest in land issues, but generally agreed that they were unlikely to be the best type of organisation to attempt to acquire land through a reformed Part 2 process.

Members also discussed the proposed change to Stage 1, which would give registered community groups 60 days to submit a formal application following notification from an owner on their intention to sell (known as a late application process). Some forum members suggested that this timeframe was unrealistically short for communities to submit an application, however others said that this short timeframe could be mitigated by communities preparing ahead of a notification to sell, for instance by setting up a constituted body during preliminary registration. Discussion also noted that the intended benefit of including this timescale is that it would provide the selling landowner with some clarity about the community's intentions. However, the forum did not conclude as to whether they felt the proposal would effectively achieve this aim.

The forum also discussed the links between CRtB and the public interest test (PIT) proposed in the recent Land Reform Bill consultation. It was suggested that strong alignment between CRtB and PIT requirements would be welcome, and that if implemented well, could encourage the creation of more community bodies throughout Scotland.

Others perspectives highlighted the feeling that one limitation of current legislation is that it assumes communities are always proactive in looking for buying opportunities, but in practice communities are often engaged by CRtB in response to previously unforeseen opportunities or threats.

In summary, the forum did not draw conclusions on the feasibility or potential benefit of the discussed proposals, and discussion emphasised that the proposed change to CRtB would have to be rigorously tested to address potential issues or unintended consequences.

However, members considered that in principle the proposals made would be unlikely to pose new or additional challenges to property and human rights.

### *Reflections on the work of the Forum and Discussion on its Future*

Forum members were pleased to note that the positive impact of its work has been recently evidenced both through direct feedback from the Scottish Land Commission and the input it had to the Land Reform Bill at the consultation stage.

The forum also discussed its future work as it moves away from work related to the Land Reform Bill. The forthcoming Human Rights Bill will have implications for future Scottish

Parliament bills and any recommendations made by the Scottish Land Commission. Members identified this as a future area of work. Continuing SLC workstreams on natural capital and tax were also flagged as potential topics for future discussion.

Members also generally agreed that the membership of the forum could be expanded to include more practitioners as well as public law perspectives, increasing challenge and debate.

The human right to housing was raised for future discussion, and members suggested that, as much of the housing sector is appears focused on issues such as availability of land and shifts in market trends, the forum could fill a gap in the conversation by discussing how housing rights can best be realised.

Members also expressed interest in discussing the right to water in the context of recent wider public interest in watercourses and water management.

### *Forthcoming Bills and Consultations for consideration*

Members discussed upcoming bills and consultations at the Scottish and UK level, where human rights issues might be raised and where the Land Commission's input might be valuable.

The Wildlife Management and Muirburn (Scotland) Bill is currently at stage 1 in the Scottish Parliament, and aims to introduce measures such as muirburn licensing and a ban on glue traps. Members agreed that the bill will engage property rights and could therefore raise issues if executed poorly or disproportionately.

HM Treasury's consultation on taxation of environmental land management and ecosystem service markets was also raised as a topic for future discussion, as although it pertains to reserved taxation powers this would have implications for land in Scotland.

The Scottish Government's ongoing consultation on Highly Protected Marine Areas was also identified as having wider land-related implications on shore areas, coastal communities and economies.

The forum identified the Natural Environment Bill as upcoming in the near future but did not discuss it in detail. The forum also noted that Scottish Forestry has launched a consultation on future grant support for forestry.

### *Legal News Update and reflections on previous meeting*

The ongoing legal challenge to the Cost of Living (Tenant Protection) (Scotland) Act 2022 was discussed. Members noted that the issue of proportionality has been raised in the challenge as it concerns the differential treatment between private landlords and social/student landlords. Some forum members suggested that the possibility of the Scottish Government bringing human rights to housing into Scots law through the forthcoming Human Rights Bill would affect similar legal challenges in future, as consideration of potential new rights – for example, to housing, shelter, and/or standard of living – would be necessary.

The forum noted that the Repairing Standard and other housing standards are being updated for the private rented sector. The Scottish Government has announced that the updates will come into effect from 1<sup>st</sup> March 2024.

Members identified that the Scottish Government's commitment to increase the proportion of Scotland's land and sea protected for nature to 30% by 2030, as well as the creation of a

new national park, will both have land and human rights consequences and may merit future discussion.

The forum noted the appointment of Sheriff Euan Duthie KC's as chair of the Scottish Land Court in January, following the retirement of Lord Minginish.

## **Links**

Members provided links for further reading related to the discussion:

- HM Treasury and HMRC: Taxation of environmental land management and ecosystem service markets: <https://www.gov.uk/government/consultations/taxation-of-environmental-land-management-and-ecosystem-service-markets>
- Human Rights Consortium Scotland Blog: The Right to Cultural Life: <https://hrcscotland.org/2023/03/13/blog-the-right-to-cultural-life-and-why-its-all-about-dignity-really/>
- Scottish Forestry: Future Grant Support for Forestry consultation: <https://scottishforestry.citizenspace.com/operational-delivery/future-grant-support-for-forestry/>
- Scottish Government: Scottish Highly Protected Marine Areas consultation <https://consult.gov.scot/marine-scotland/scottish-highly-protected-marine-areas/>