

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

COMMUNITY RIGHT TO BUY ABANDONED, NEGLECTED OR DETRIMENTAL LAND



AN INFORMATION LEAFLET FOR COMMUNITY
BODIES, LANDOWNERS AND OTHER INTERESTED
PARTIES REGARDING APPLICATIONS

OCTOBER 2018



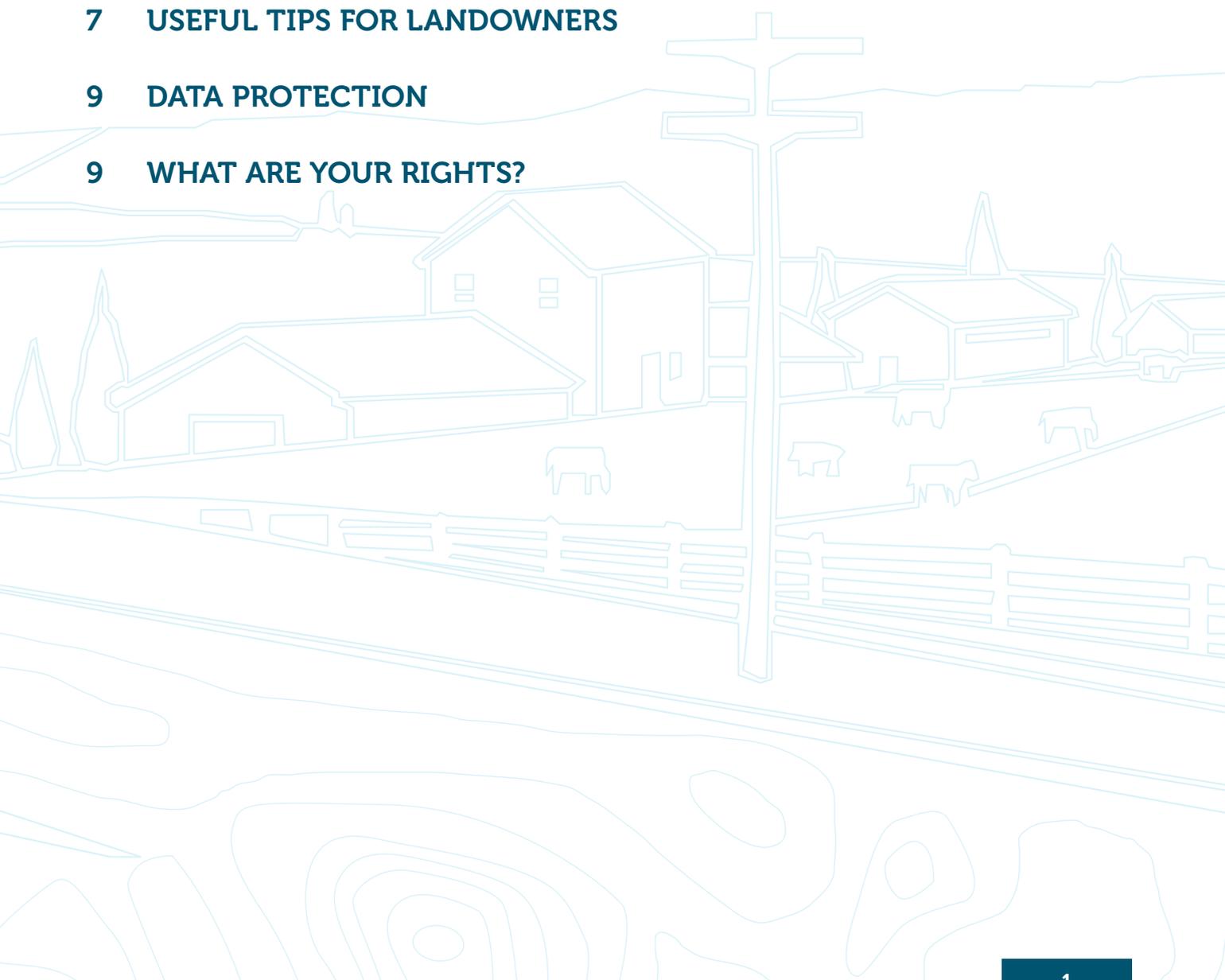
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INTRODUCTION

This booklet gives an overview of the Community Right to Buy Abandoned, Neglected or Detrimental Land (ANDL) process and provides some useful hints and tips for communities thinking about using the community right to buy ANDL process, and for community bodies or landowners who may be involved in a community right to buy ANDL.

Part 3A of the Land Reform (Scotland) Act 2003 (“the 2003 Act”), the Community Right to Buy ANDL, provides the opportunity for communities across Scotland to apply for a compulsory right to buy ANDL, at market value.

The flowcharts on pages 5 and 6 show the Right to Buy ANDL process from beginning to end.

The stages in the flowchart show which sections of the 2003 Act apply.

Before a community can submit a Part 3A application for consideration by Scottish Ministers, it needs to form a community body (CB). The types of entity that a CB can be and other helpful points are included in the “Top 12 tips for community bodies” on page 3.

A ballot of the eligible voters in the CB’s defined area must be undertaken within six months before the date the application is made to Scottish Ministers. You may seek to undertake the ballot yourselves or may wish to consider seeking professional advice or services. Within 14 days of the ballot, the CB must publish the results in a digital or paper edition of a newspaper circulating in the area and if you have a publicly accessible website or webpage, on that also.

The CB must notify Scottish Ministers of the ballot result within 21 days of the ballot taking place. If you are submitting the application for consent to Scottish Ministers within 21 days of carrying out the ballot you may include the ballot result and supporting documents as part of the application. A form for submitting the ballot result to Scottish Ministers can be found at <https://beta.gov.scot/policies/land-reform/community-right-to-buy/>.

If you are seeking to acquire land due the use or management of the land resulting in or causing harm to the environmental wellbeing of the community, then you will have to provide evidence in the application that you have contacted any relevant regulator(s). You **must** state what actions they have taken to remedy the harm (or action that is causing the harm) to the community.

For any application you will have to provide evidence of the steps taken by the CB to acquire the land from the current owner, prior to the application.

CBs can submit an application for a wide range of land such as woodlands, forests, fields, reservoirs, public houses, churches, schools and community centres.

Please note that if there are multiple titles, even if each is owned by the same person (or commonly or jointly owned by the same people), the CB must submit an application for each individual title.

If Scottish Ministers grant consent to proceed with the acquisition, the CB must secure funds for the purchase of the land or asset; and complete the transfer of the land within six month of consent being given, or by a later date if agreed by both the owner and the CB.

RESOURCES AVAILABLE TO ALL PARTIES

The Scottish Government's Right to Buy website has a number of useful tools:

- A model Articles of Association to set up a CB as a Company Limited by Guarantee (CLBG).
- A model Constitution to set up a CB as a Scottish Charitable Incorporated Organisation (SCIO).
- A downloadable application form in Word and Adobe PDF format to submit an application.
- A comprehensive Guidance document with sections for CBs, landowners and third parties.
- A link to the Register of Application by Community Bodies to Buy Land (RoACBL) which contains all the Community Right to Buy ANDL applications and associated documents.
- A link to the online mapping tool which communities can use to identify land for which their CB wishes to apply for consent to exercise a right to buy, and to define the CB's local community.
- Links to other resources such as the primary and secondary legislation, information on funding etc.



12 POINTS ON THE COMMUNITY RIGHT TO BUY

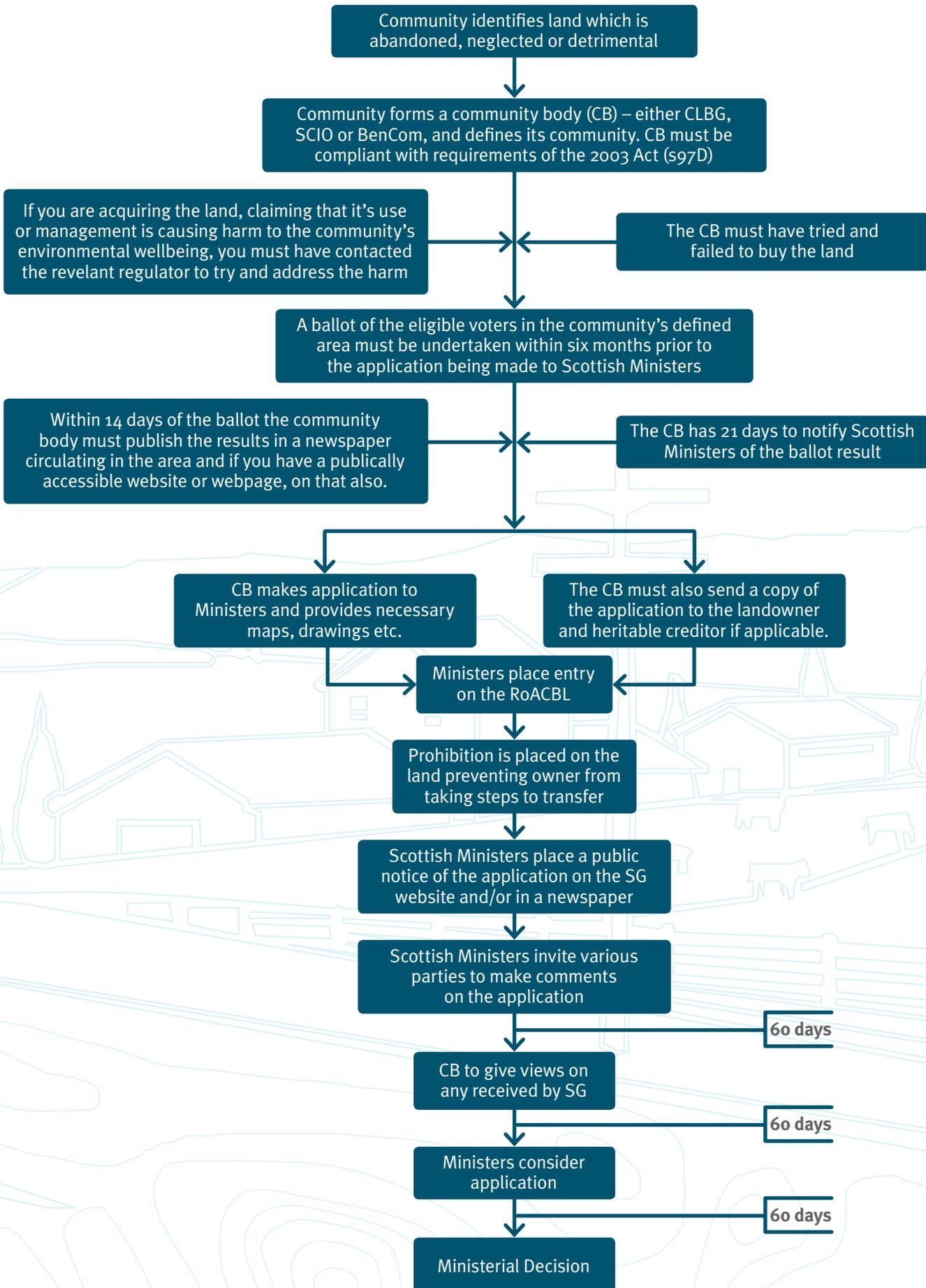
1. The Community Right to Buy in Part 3A of the 2003 Act relates to all land in Scotland, unless it is ineligible land, such as an individual's home or land held by a Minister of the Crown or government department.
2. The community right to buy ANDL may only be exercised by a properly constituted CB, that is a CLBG, a SCIO or a BenCom. The CB must have a minimum of 10 members, three-quarters being from the CB's defined "community". Ministers must be satisfied that a CB's main purpose is consistent with furthering the achievement of sustainable development. This is achieved by including this within the CB's purposes in their constitutional document.
3. CBs should send their articles of association, constitution, or registered rules (depending on the type of body formed) to Scottish Ministers to check that they comply with the requirements of the Act, before an application to register a community interest in land is submitted. Scottish Ministers must confirm in writing that they are satisfied that the main purpose of the CB is consistent with furthering the achievement of sustainable development before an application for consent can be submitted.
4. Before submitting an application, the CB, **must** have tried and failed to buy the land.
5. Before submitting an application, the CB, **must** have carried out a ballot of the eligible voters in the community's defined area, no earlier than six months before the date the application is made to Scottish Ministers.

Within 14 days of the ballot, the CB **must** publish the results in a digital or paper edition of a newspaper circulating in the area and if you have a publicly accessible website or webpage, on that also.

The ballot result must be notified to Scottish Ministers within 21 days of the ballot taking place. If you are submitting the application for consent to Scottish Ministers within 21 days of carrying out the ballot you may include the ballot result and supporting documents as part of the application.
6. If you are seeking to acquire land where the use or management results in or causes harm to the environmental wellbeing of the community then you **must** provide evidence in the application to show that you have contacted all relevant regulator(s). You will also have to state what actions any regulator has taken, if any, to remedy the harm (or action that is causing the harm) to the community.
7. It is a decision of Scottish Ministers whether to consent to an application or not.
8. A CB's application is made publicly available on the Register of Applications by Community Bodies to Buy Land (RoACBL). This register is free to view via the Registers of Scotland website (<https://roacbl.ros.gov.uk>)
9. The community right to buy ANDL is a compulsory sale. The right to buy is activated if Scottish Ministers give consent to the application.
10. The value of the land will be assessed by an independent valuer, paid for by Scottish Ministers. The price to be paid shall be: (i) the price stated by the independent valuer, or (ii) the price stated by the Lands Tribunal for Scotland if the Ministers' valuation has been appealed.
11. The CB has 6 months to complete the purchase from the date that the application is consented to. Any extension to this date must be agreed between the owner and the CB.
12. There are appeal provisions which allow for the CB, owner and interested parties to raise objections to Ministers' decisions. Those wishing to appeal these decisions **must** lodge their appeal with the sheriff court within 28 days of the Ministers' decision. If the appeal relates to a valuation, an appeal should be submitted, within 21 days of its notification, to the Lands Tribunal for Scotland.

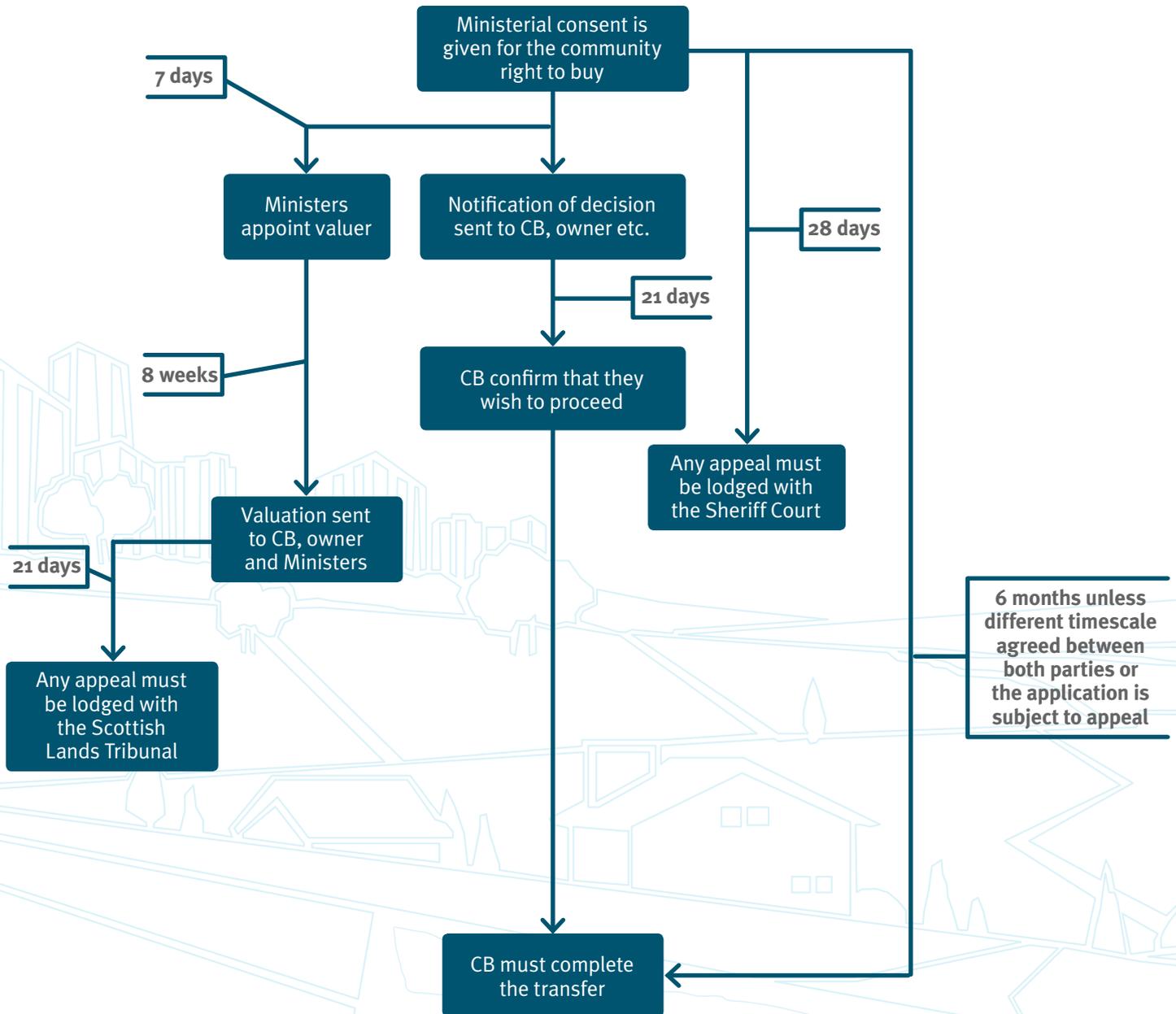
THE COMMUNITY RIGHT TO BUY PROCESS FLOWCHART 1

REGISTRATION OF COMMUNITY INTEREST IN THE LAND



THE COMMUNITY RIGHT TO BUY PROCESS FLOWCHART 2

ACTIVATION OF THE RIGHT TO BUY



TOP TEN TIPS FOR COMMUNITY BODIES ON USING THE COMMUNITY RIGHT TO BUY ABANDONED, NEGLECTED OR DETRIMENTAL LAND

1. Contact the Scottish Government's Community Land Team at the outset. Contact details for the team are provided on the back cover of this booklet.
2. Access the Community Right to Buy ANDL guidance online and read it. (www.gov.scot and search for "Community Right to Buy")
3. Get your community on board.
4. Be clear what land you wish to acquire, and why you consider that it is abandoned, neglected or detrimental.
5. Be clear why you wish to acquire that land.
6. Be clear on the benefits to your community.
7. Keep an open mind on your options – are there other ways to get what your community needs?
8. Form a community body which is compliant with the Act – either a company limited by guarantee, Scottish charitable incorporated organisation or community benefit society. Model articles of association and a model constitution, depending upon the type of legal body you opt to form, are available on the Scottish Government's Community Right to Buy website.
9. View the Register of Applications by Community Bodies to Buy Land in Land (RoACBL), as this will help you fill in your application. The RoACBL contains applications completed by other community bodies which you may find helpful.
10. If in doubt, ask the Community Land Team!

USEFUL TIPS FOR LANDOWNERS

1. The Community Right to Buy in Part 3A of the Land Reform (Scotland) Act 2003 relates to all land in Scotland. Some land, such as land on which there is an individual's home, is ineligible. More details of ineligible land can be found in the full guidance.
2. An application under Part 3A does not stop a landowner from developing their land in any way, although if the right to buy is consented to, the owner will still have to sell to the community body.
3. If you are a member of the community body's "community" as defined in their constitutional documents, you will have an opportunity to vote in a ballot that must be held no earlier than 6 months before the submission of the application.
4. Once received, this application results in a prohibition being put in place which prevents a landowner from taking steps to dispose of the land in the application to another party other than the community body which has submitted the application. This prohibition lasts for a period of time that is detailed in the Community Right to Buy Regulations (2018/201). However, there are a number of exempt transfers which can be made. It is worth noting that a registered community interest may provide a landowner with a willing buyer.

5. A community does not need to tell a landowner that it is setting up a community body, or that it is planning on submitting an application to register a community interest in land. However, the legislation requires that a community body must have tried and failed to buy the land before submitting an application, so they will be in touch at some point. Do not ignore this. Of course, there is nothing to stop a landowner from making contact with a community body to inquire on its activities.
6. Landowners are invited to comment on an application as part of the process set out in the Act. It is up to a landowner to decide if they wish to provide comments to Scottish Ministers.
7. There are appeal provisions which allow for the owner, community body, creditors in a standard security with a right to sell the land and members of the community to appeal the Scottish Ministers' decision to consent or not consent to the community body's application to exercise the right to buy.
8. If the application for the right to buy is consented to, then Scottish Ministers appoint an independent valuer to value the land. The valuation is at "market value" as set out in the Act, and both the owner and the CB have an opportunity to submit representations to the valuer as part of this process. The landowner and community body may also negotiate an alternative figure to be paid by the community body. They must inform the valuer of that fact, and, although the valuation process must proceed, it will be taken into account by the valuer. If the independent valuation is appealed, the price to be paid will be that determined by appeal to the Lands Tribunal for Scotland.
9. A community body has 6 months to purchase the registered land from date of Scottish Ministers consent to proceed with the purchase. Any extension to the "completion of purchase date" must be agreed between the landowner and the community body.
10. If a community body withdraws from a purchase or does not purchase within the agreed timeline, then the prohibition from selling the land is lifted and the landowner is free to dispose of the land as they see fit.
11. A community body's application under the community right to buy ANDL, including Ministers' decision notices, is made publicly available on the Register of Applications by Community Bodies to Buy Land at: <https://roacbl.ros.gov.uk>
12. Guidance on the community right to buy ANDL is available at: <https://beta.gov.scot/policies/land-reform/community-right-to-buy/>

The Scottish Government's Community Land Team will be happy to discuss the ANDL process with landowners and answer any questions that they may have. Contact details for the team are provided on the back cover of this booklet.

DATA PROTECTION

In order to consider an application on the register, there is a requirement to process the personal data provided within any documentation received by Scottish Ministers in relation to that right to buy. The basis for processing this personal data is in accordance with Article 6(1)(c) and/or Article 6(1)(e) of the General Data Protection Regulations (GDPR).

When a community body submits a compliant application under the community right to buy land legislation, the application is entered onto the register. During this process, the community body is required to provide certain information about itself and those who own the land. This information will be used to assess whether the application for consent to exercise the right to buy is approved by Scottish Ministers.

All personal data will be redacted before appearing on the register. The data will be used to assist the Scottish Ministers to determine whether the land purchase should receive consent to proceed.

The data captured will be kept on the register as a record of the application and any decisions. This information is used by other community bodies as a source of information and guidance for their own applications, as well as a historic record of community rights to buy.

WHAT ARE YOUR RIGHTS?

If at any point you believe the information we process on you is incorrect you can request to see this information through a subject access request.

You may have a right to have this information corrected, deleted and to object to or restrict the processing of the information held.

If you wish to raise a complaint on how your personal data is handled, you can contact the Scottish Government Data Protection Officer (dpa@gov.scot) who will investigate the matter.

If you are not satisfied with the response or believe we are not processing your personal data in accordance with the law you can complain to the Information Commissioner's Office (ICO).

The Information Commissioner's Office – Scotland
45 Melville Street
Edinburgh
EH3 7HL

Phone: 0303 123 1115

Email: Scotland@ico.org.uk



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The Community Land Team can be contacted on:

Tel: 0300 244 9822

Email: crtb@gov.scot

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

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