

Part 2 of the Land Reform (Scotland) Act 2003

COMMUNITY RIGHT TO BUY

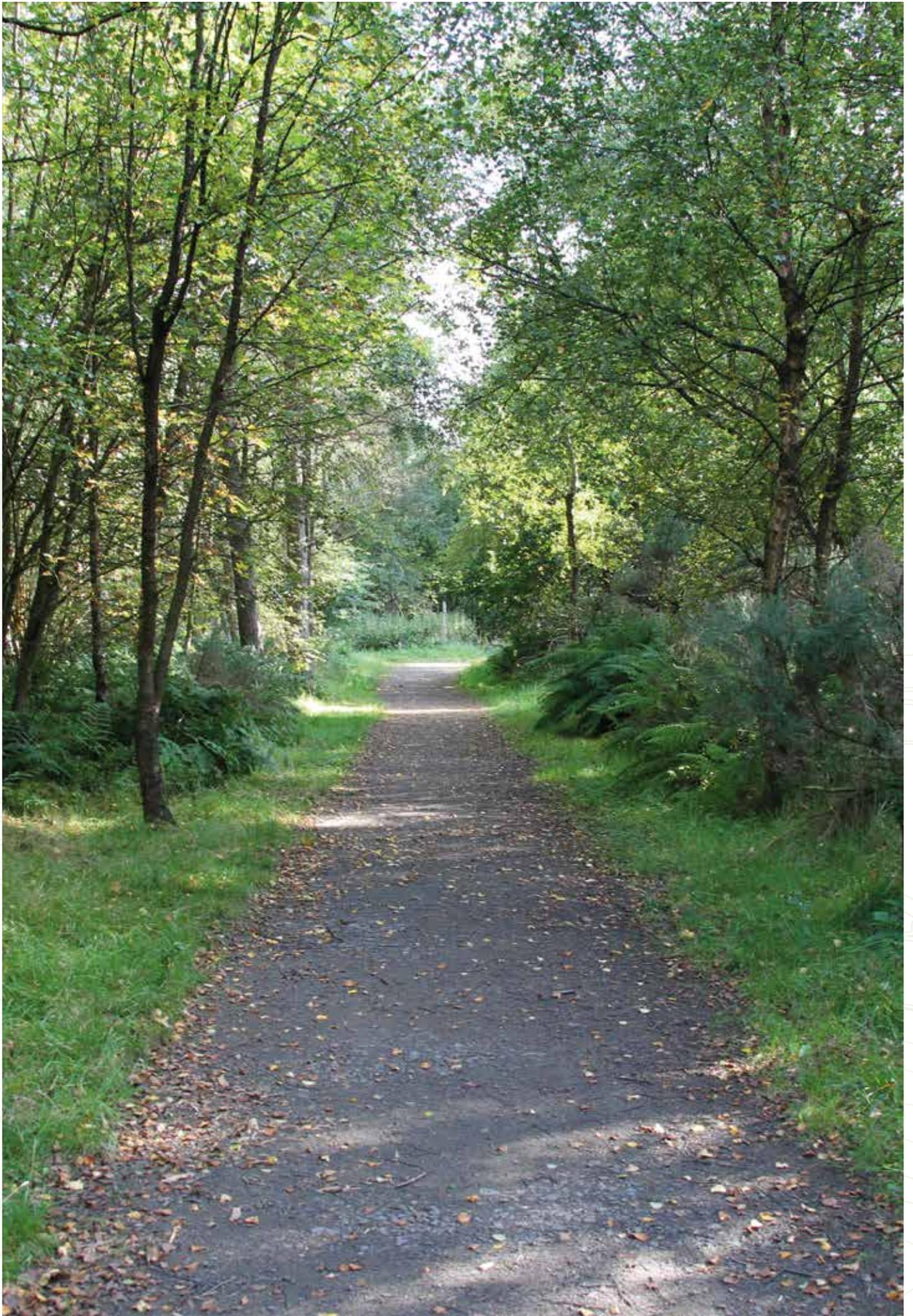


AN INFORMATION LEAFLET FOR
COMMUNITY BODIES, LANDOWNERS
AND OTHER INTERESTED PARTIES
FOR APPLICATIONS MADE ON OR
AFTER 15 APRIL 2016

FEBRUARY 2016



The Scottish
Government
Riaghaltas na h-Alba



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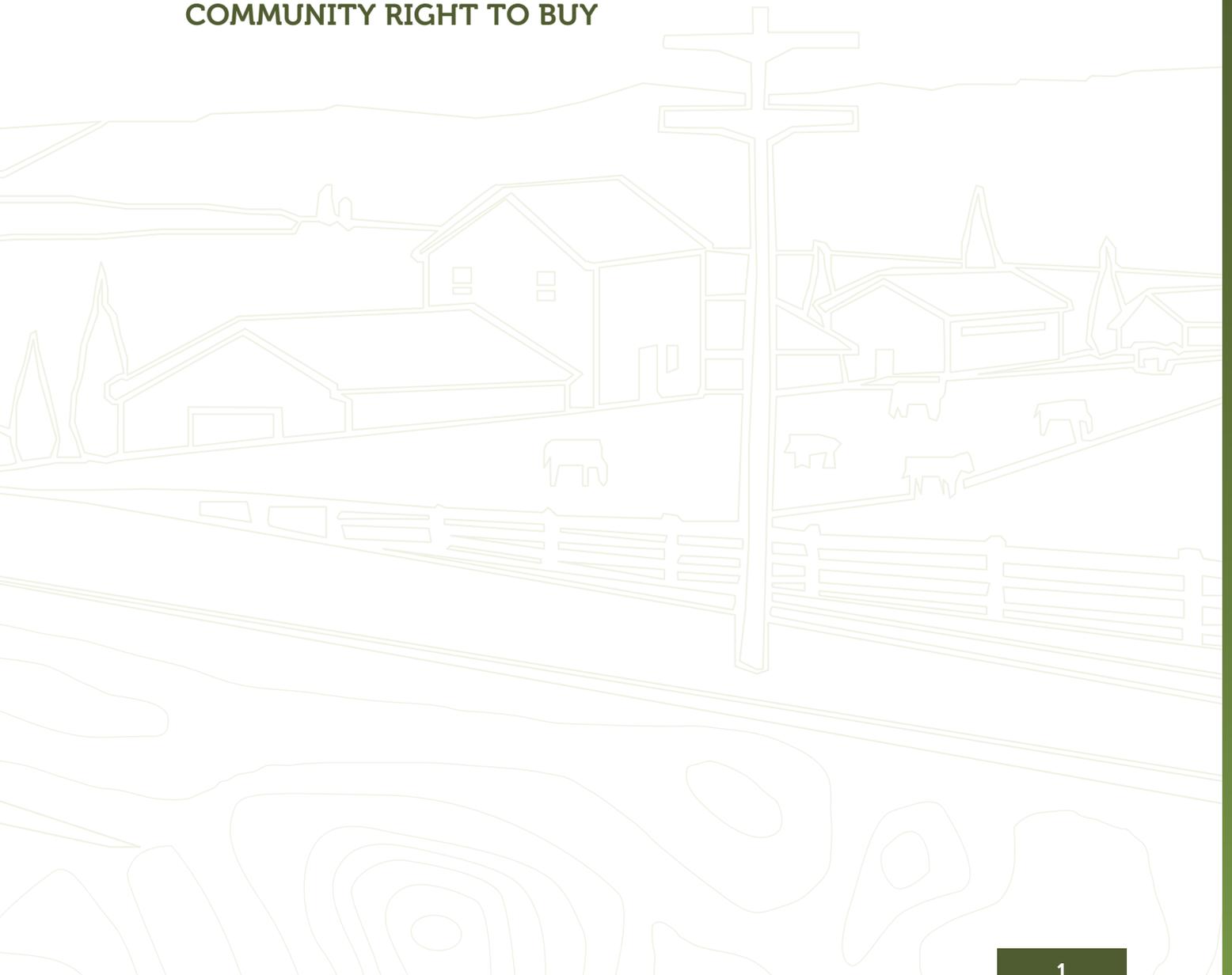
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INTRODUCTION

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

Part 2 of the Land Reform (Scotland) Act 2003 (the 2003 Act), the Community Right to Buy, provides the opportunity for communities across Scotland to register an interest in land and buy that registered land, at market value, once it is offered for sale.

The 2003 Act has been amended by the Community Empowerment (Scotland) Act 2015. The changes come into effect on 15th April 2016, and the information contained in this leaflet applies only to applications to register or re-register a community interest made on or after 15 April 2016.

The Community Right to Buy has two stages:

- Registering a community interest in land;
- The opportunity to purchase the registered land when it is offered for sale (the “Right to Buy”).

The flowcharts on pages 6 and 7 show the Right to Buy process from beginning to end. The stages in the flowchart show which section of the 2003 Act apply. You will also find it helpful to read the *Community Right to Buy: Guidance* book as amended by the Community Empowerment (Scotland) Act 2015.

Before a community can register its interest in land, it needs to form a community body (CB). The types of legal body that a community body can be and other helpful points are included in the “Top ten tips for community bodies” on page 8.

Communities will need to identify land or an asset which, if the community was to purchase, would be able to benefit it. Factors that Ministers will take into account when deciding whether to register a community interest, and whether it would be in the public interest, include any environmental, economic and social benefits. Applications to register a community interest in land should be made before the land is put on the market (a “timeous” application), although a community body can apply after the land has been placed on the market (a “late” application) but before missives are concluded. When a late application is made the community body will be required to meet additional criteria.

Community bodies will need to get evidence of support from their community for their proposals to register an interest in land. Ministers shall regard 10% community support for a CB’s proposal as being sufficient evidence, although Ministers may regard less than 10% as sufficient indication of community support. If the application is a “late” application, a “significantly greater” level of community support is required than if the application is a “timeous” application.



Communities have successfully registered an interest in a wide range of land such as woodlands, forests, fields, reservoirs, public houses, churches, schools and community centres.

A registration lasts for 5 years. In the 6-month period before a registered interest is due to expire, an application can be made to re-register the interest in land, and if Ministers decide that the re-registration is to be recorded in the Register of Community Interests in Land (“the RCIL”), it will be re-registered for another 5 years.

When the owner of the registered land decides to sell the land, they must inform Scottish Ministers and the community body of this. The key steps which must be completed within a period of 8 months are:

- valuation of the registered land (which is arranged by Scottish Ministers);
- ballot of the local community (which is arranged by Scottish Ministers and carried out by a balloter);
- the community body must secure funds for the purchase of the land or asset; and
- transfer of the land by the landowner or creditor to the community body following payment.

RESOURCES AVAILABLE TO ALL PARTIES THROUGH THE COMMUNITY RIGHT TO BUY

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

- A model Articles of Association to set up a community body (CB) as a Company Limited by Guarantee (CLBG).
- A model Constitution to set up a community body as a Scottish Charitable Incorporated Organisation (SCIO).
- A model Registered Rules to set up a community body as a Community Benefit Society (BenCom).
- A downloadable application form in Word format to register a community interest in land.
- A comprehensive Guidance document with sections for community bodies, landowners and third parties.
- A link to the Register of Community Interests in Land (RCIL) which contains all the Community Right to Buy applications and associated documents.
- A link to the online mapping tool for communities which communities can use to identify land in which their CB wishes to register an interest in, and to define the CB's local community.
- Links to other resources such as the primary and secondary legislation, information on funding etc.

TEN POINTS ON THE COMMUNITY RIGHT TO BUY

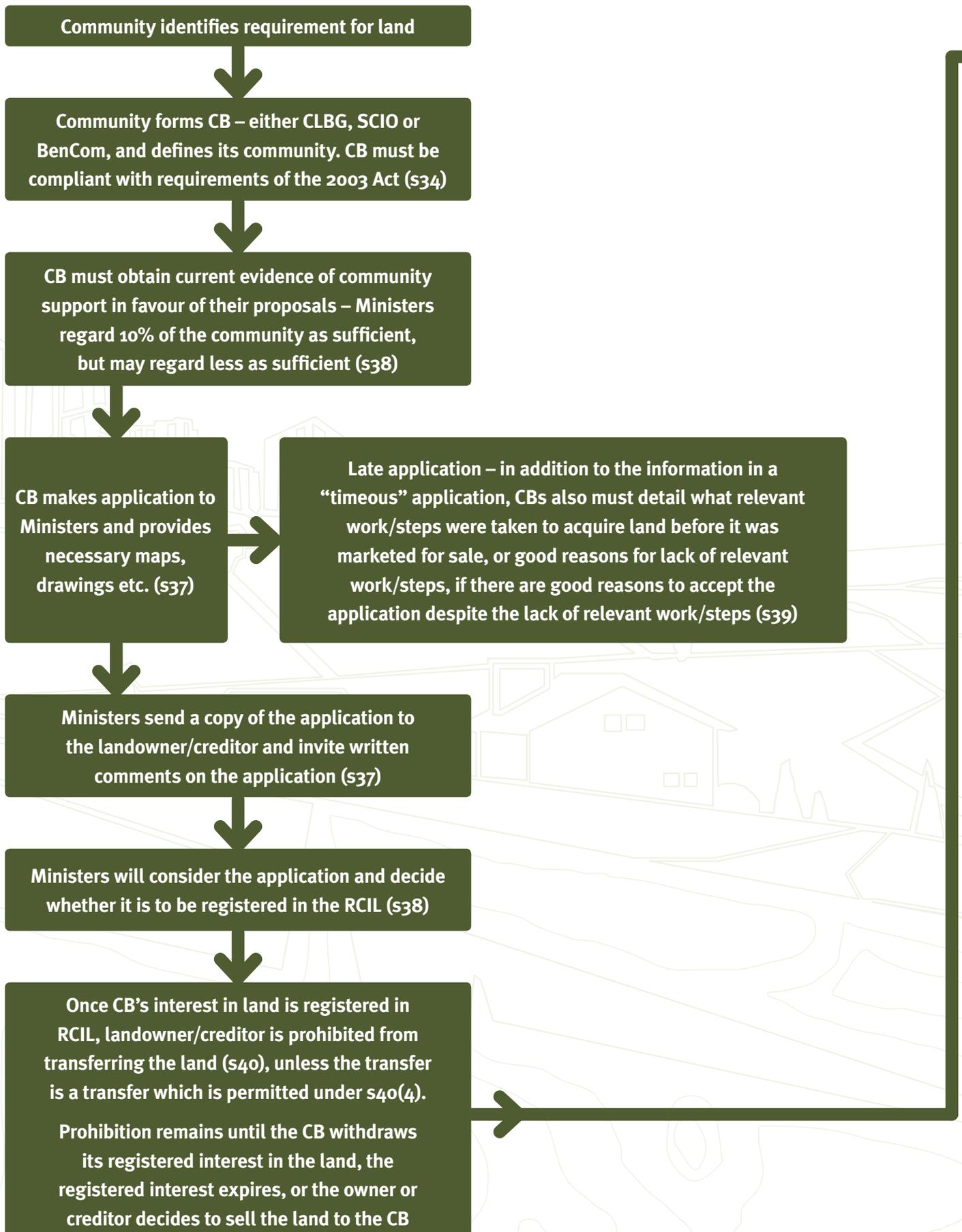
1. The Community Right to Buy in Part 2 of the Land Reform (Scotland) Act 2003 relates to all land in Scotland (including certain salmon fishing and mineral rights), unless it is excluded land, that is, certain separate "tenements" which are owned separately from the land, such as the right to gather mussels and oysters.
2. The Community Right to Buy may only be exercised by a properly constituted community body, that is a company limited by guarantee (CLBG), a Scottish charitable incorporated organisation (SCIO) or a community benefit society (BenCom). The community body must have a minimum of 10 members, three-quarters being from the defined community body's "community". A community body must demonstrate that its main purpose, within its articles of association, constitution, or registered rules as appropriate, is consistent with furthering the achievement of sustainable development.
3. CBs should send their articles of association, constitution, or registered rules (depending upon the type of body formed) to Ministers to check that they comply with the legislative requirements, before an application to register a community interest in land is submitted to Ministers. 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.



4. It is a decision of Ministers whether to register a community interest in land.
5. A community body's registration of a community interest in land is made publicly available on the Register of Community Interests in Land (RCIL).
6. An approved registration of a community interest in land lasts for 5 years from the date of ministerial approval. Ministers will notify the community body 12 months before the registered interest is due to expire. Community bodies have an opportunity to apply to re-register that interest for a further 5 years. This option can roll on indefinitely.
7. The Community Right to Buy is a pre-emptive right to buy and requires a willing seller. The right to buy is activated when the owner or creditor wishes to sell or transfer the registered land or any part of it.
8. The value of the land will be assessed by an independent valuer, paid for by Ministers. The price to be paid shall be:
 - (i) by agreement between the community body and landowner, (ii) the price stated by the independent valuer, or (iii) the price stated by the Lands Tribunal after the Ministers' valuation has been appealed.
9. The community body has 8 months to complete the purchase from the date it confirms it intends to exercise its right to buy. An extension to this date must be agreed between the owner and the community body.
10. There are appeal provisions which allow for the community body, owner and interested parties to raise objections to Ministers' decisions. Those wishing to appeal these decisions have to submit their appeal within 28 days of the Ministers' decision to a local Sheriff. If the appeal relates to a valuation, an appeal should be submitted within 21 days of its notification to the Lands Tribunal for Scotland.

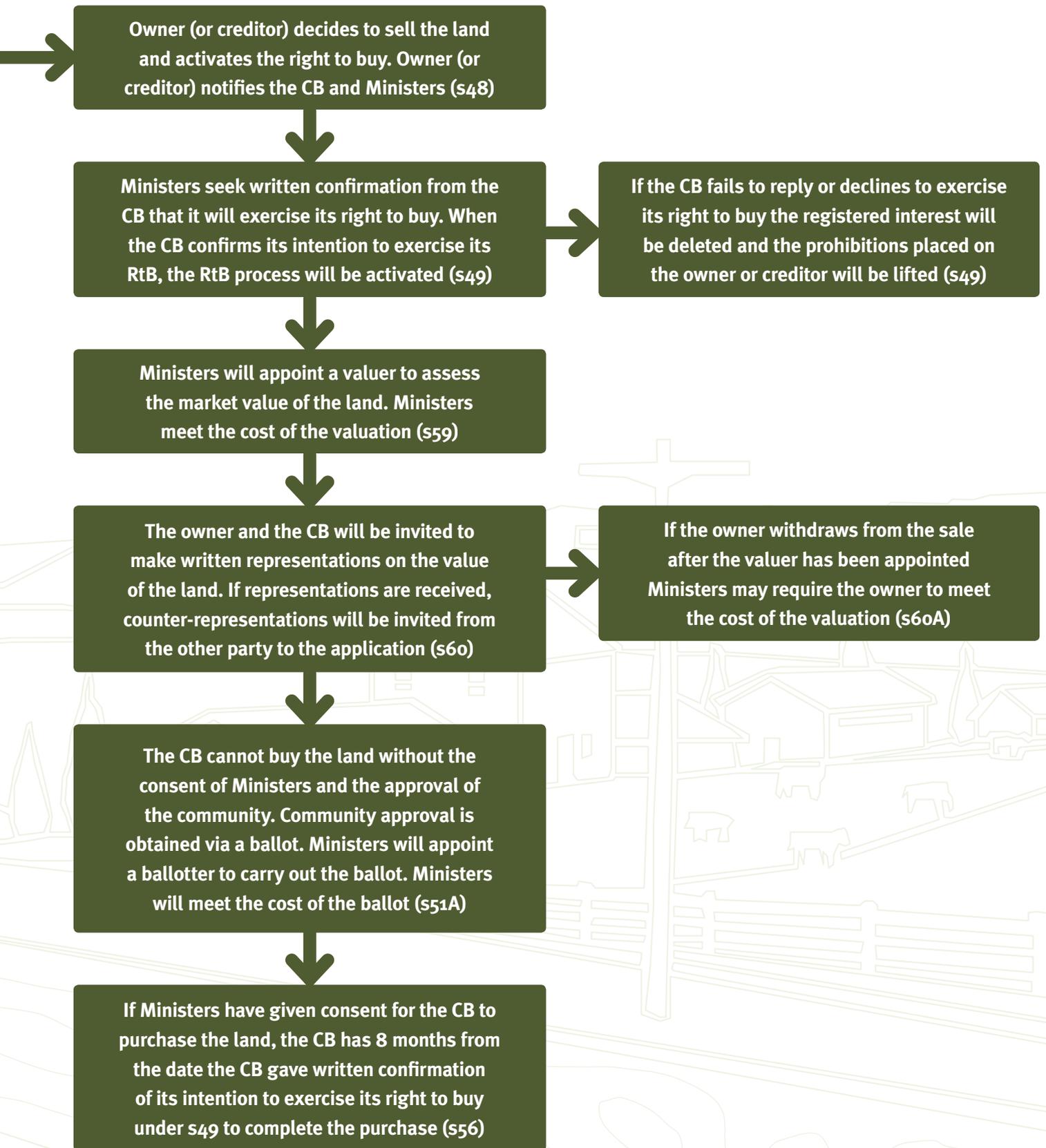
THE COMMUNITY RIGHT TO BUY PROCESS FLOWCHART 1

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 REGISTERING A COMMUNITY INTEREST IN 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 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 register a community interest in.
5. Be clear why you wish to register the community interest in 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 wants?
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, constitution and registered rules, 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 Community Interests in Land (RCIL), as this will help you fill in your application. The RCIL contains applications completed by other community bodies which you may find helpful.
10. If in doubt, ask the Community Land Team!

USEFUL POINTS FOR LANDOWNERS ON THE COMMUNITY RIGHT TO BUY

1. The Community Right to Buy in Part 2 of the Land Reform (Scotland) Act 2003 relates to all land in Scotland (including certain salmon fishing and mineral rights), unless it is excluded land, that is, certain separate "tenements" which are owned separately from the land, such as the right to gather mussels and oysters.
2. The Community Right to Buy is a pre-emptive right to buy. It does not force a landowner to sell their land. It requires a willing seller if the land is to be sold. The right to buy is activated when the owner or creditor with the right to sell the land wishes to sell or transfer the registered land or any part of it.
3. A registered interest in land does not stop a landowner from developing their land in any way.
4. A registered community interest in land prohibits a landowner from taking steps to dispose of registered land to another party other than a community body which has registered its interest. However, there are a number of exempt transfers which can be made (s40). 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 submitting an application to register a community interest in land. It is up to the community body to decide whether it approaches a landowner. There is nothing to stop a landowner from making contact with a community body to inquire on its activities.
6. An application to register a community interest in land may relate to one or more parcels of land, as long as they are owned by the same person.

7. Landowners are invited to comment on an application to register a community interest in land as part of the legislative process. It is up to a landowner to decide if they wish to provide comments to Ministers.
8. 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 raise objections to the Ministers' decision to enter or not enter an interest in the RCIL or to consent or not consent to the exercise of the community body of the right to buy.
9. When a landowner decides to sell the registered land, the Ministers appoint an independent valuer to value the land. The valuation is at "market value" as set out in the Act. The landowner and community body may also negotiate a figure to be paid by the community body. If there is no agreement on price, the price to be paid will be the independent valuation figure. If the independent valuation is appealed, the price to be paid will be that determined by appeal to the Lands Tribunal.
10. If you withdraw from the transfer of the land without good reason after Ministers have instructed the valuer to carry out the valuation of the land, you may be liable for the cost of the valuation.
11. If you are a member of the community body's "community" as defined by it, you will have an opportunity to vote in the community ballot at the right to buy stage. A ballot is arranged by Ministers and is undertaken within 28 days of the date the independent valuation is notified to the landowner, the community body and Ministers.
12. A community body has 8 months to purchase the registered land from the time it agrees to proceed with its right to buy. Any extension to the "completion of purchase date" must be agreed between the landowner and the community body.
13. If the landowner withdraws the land from sale, the registered interest in the land will remain in place up to its expiry date. 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.
14. An approved registration of a community interest in land lasts for 5 years from the date of Ministers' approval unless a community body informs Ministers that its registered interest should be deleted, it refuses the opportunity to exercise its right to buy or changes have taken place to it which would lead Ministers to delete its registration. Community bodies have an opportunity to re-register that interest for a further 5 years on an ongoing basis.
15. A community body's registration of a community interest in land, including Ministers' decision notices, is made publicly available on the Register of Community Interests in land at: www.ros.gov.uk/services/registration/register-of-community-interests-in-land
16. Guidance on the community right to buy is available at: www.gov.scot/Topics/farmingrural/Rural/rural-land/right-to-buy/Community
17. The Scottish Government's Community Land Team will be happy to discuss the RtB 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.



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