

# Land Ownership by Private Trusts

This protocol is one of a series we have issued to help you put the Scottish Government's Land Rights and Responsibilities Statement into practice.

The Land Rights and Responsibilities Statement (LRRS) sets out the vision for a strong and dynamic relationship between Scotland's land and its people. It is the first of its kind anywhere in the world. Land rights and responsibilities apply to both urban and rural Scotland and are about owning, managing and using land in a fair way that benefits everyone in Scotland. It states that the people and organisations that make decisions relating to land should recognise and act in line with their responsibilities, as well as their rights.

The way land is owned and used affects the quality of life for everyone in Scotland. The LRRS is based on the belief that Scotland's land is a resource for everyone in Scotland and should contribute to economic, environmental and social goals within a human rights approach. Realising and applying land rights and responsibilities can reduce inequality and bring mutual benefit to landowners, land managers and communities.

The LRRS recommends that better information about land should be available to help with more informed decision-making, as this will benefit the local economy, environment and society. People should have confidence that there is a fair and balanced system of decision-making in relation to land and have the opportunity to be engaged in decisions relating to land that will affect them and their local environment.



There are six principles in the LRRS, and this protocol on Land Ownership by Private Trusts specifically supports principles 1, 3 and 5, which are as follows:

- Principle 1: “The overall framework of land rights, responsibilities and public policies should promote, fulfil and respect relevant human rights in relation to land, contribute to public interest and wellbeing, and balance public and private interests. The framework should support sustainable economic development, protect and enhance the environment, help achieve social justice and build a fairer society.”
- Principle 3: “More local communities should have the opportunity to own, lease or use buildings and land which can contribute to their community’s wellbeing and future development.”
- Principle 5: “There should be improved transparency of information about the ownership, use and management of land, and this should be publicly available, clear and contain relevant detail.”

## Purpose of this protocol

Trusts are used, for a variety of reasons, as a way of owning land. They must meet the aims set out in their trust deeds. The main purpose of this protocol is to invite landowning trusts to consider how they can adequately reflect land rights and responsibilities in their governance structures and accountability. This protocol sets out reasonable expectations for the trustees and land managers of trusts who own land in Scotland.

Trusts must act in line with the terms set out in their trust deeds and in line with their trustees’ legal duties. However, they should also aim to manage land in a way that considers the needs and priorities of the local community, who could be affected by decisions about how land is used and managed. This protocol does not detract from a Trust’s legal duties but seeks to complement them in a positive way to deliver land rights and responsibilities.

This protocol supports positive behaviours by everyone involved in decisions relating to land, to make sure that any contact between them takes place in a spirit of mutual respect and understanding and makes sure that legitimate interests are taken into account, reasonably and fairly. Where trust duties allow, trustees

and other people with significant influence and control over land are expected to engage with local communities in line with our protocol on Community Engagement in Decisions Relating to Land and provide information about owning, using and managing land in line with our protocol on Transparency of Ownership and Land Use Decision-Making.

- Where we use the word **should**, we expect everyone involved to follow the approach described, unless it conflicts with their legal duties.
- Where we **recommend** a course of action it means this is good practice, but we recognise that other approaches may be equally effective.

This protocol is effective from the date of issue until we withdraw or revise it by following the review process set out below and publishing a notice on our website.

## Who this protocol applies to

This protocol applies to:

- **Private trusts** which own and manage land in Scotland
- **Trustees, land managers or trust employees** with significant influence and control over land
- **Community councils** representing the area within which the land and/or a related community sits
- **Relevant constituted community organisations** who have an open membership, demonstrate community control, and who represent a defined geographic area.

## Definitions

A **trust** is an organisation, set up by a legal arrangement, that takes ownership of assets and manages them for the benefit of a chosen person, group of people or the general public, known as the beneficiaries. Trusts are used for a variety of purposes including planning for who will inherit land or property, holding property for businesses and holding property for the benefit of other people, such as those who are young, vulnerable or incapable of managing the property themselves.

Trusts can own land and buildings in a geographic area, but it is not uncommon for assets to be managed for the benefit of individuals or groups of people who do not live in the same area.

Good governance contributes to the effectiveness, productivity and reputation of an organisation. By **governance** we mean the structure of decision-making processes in an organisation. Governance in this protocol includes all those who manage and put into practice decisions and policies relating to land that belongs to the trust. Decision-making can involve trustees and other people, such as land managers or other employees, agents, investors or beneficiaries, who influence the trust's decisions about land. Governance includes how these people make decisions and how they involve other people in this. However, the trustees are jointly responsible for the governance of the trust, regardless of any others who may help with decision-making.

**Trustees** are the people chosen, by the person who sets up the trust or by the rules of the trust deed, to hold and manage the assets. They are responsible for managing the assets in the best interests of the beneficiaries, as set out in the **trust deed** (the terms that govern the trust). Trustees have certain legal duties, which include a duty of care, a duty to keep accounts, a duty to take advice, a duty not to delegate (unless the trust deed allows it) and a duty to invest (under the terms of the trust deed).

When we mention **significant influence and control**, this refers to people who can control decision-making processes or act in a way that affects the way land is used and managed.

**Land** includes buildings and other structures, land covered with water and any right or interest in or over land. It can be in urban or rural areas.

## Specific Expectations

We expect everyone covered by this protocol to meet the following conditions, as long as this is in line with their trust deed and trustees' duties.

- a. Trusts should make sure up-to-date information about who the trustees are and a main point of contact for the land is always publicly available. We recommend that this information is made available online if possible. For more details, see the LRRS Protocol on Transparency of Ownership and Land Use Decision-Making.

- b. If a trust is planning to make significant changes to the way land is used or managed and this will affect a local community, or if a relevant constituted community organisation makes a reasonable request for information, trustees should follow the LRRS Protocol on Community Engagement in Decisions Relating to Land, as long as this does not contradict the terms of their trust deed or trustees' duties.
- c. We recommend that trustees regularly review their governance and consider the skills and knowledge they need to carry out their roles. We recommend that they consider whether they have sufficient knowledge of the local community in areas where the trust owns land and whether their decision-making processes can be influenced by local communities' priorities.
- d. If possible, under the terms of the trust deed, we recommend that trusts consider appointing trustees from the local area of where the land is or trustees who have a significant connection to, and knowledge of, the local area and community. Where trusts are national organisations and own land in many different locations, local representatives should be included in locally based decision-making procedures such as working groups.
- e. If changes are being made to the structure or governance of a trust, the trustees should consider whether this is likely to affect the local community. If it is, they should follow the LRRS Protocol on Community Engagement in Decisions Relating to Land.
- f. When trustees review their operational strategy in relation to their trust deed, they should consider the ways in which they can work with the local community to meet community priorities while achieving the trust's purposes.
- g. If there is an approach from a relevant constituted community organisation to lease or take ownership of land from a trust, the trustees should consider this in line with the terms of their trust deed and taking into account their duties as trustees. They should be open and transparent in their decision-making processes and give clear reasons for their decisions.
- h. When considering selling or leasing land or property, trustees should consider opportunities for different types of organisations, small businesses or local residents to buy or take over the property.

## Putting this protocol into practice

We may sometimes produce practice guidance and case-study examples to help trusts put this protocol into practice. We may publish these on our own website, or we may work with other organisations which represent the interests of a particular sector.

If you would like further information on how to implement this protocol, please get in touch with us.

## Telling us about your experience

If you experience a situation which differs significantly from the principles and specific expectations set out in this protocol, please contact us with details and supporting evidence.

Where appropriate we will provide advice, and work with you to deal with any difficulties and help improve practice. Our main role will be to support you in putting in place good practice and developing confidence and capacity among stakeholders, and to influence future development of policy, protocols and guidance.

We are keen to hear of and share positive examples of good working relationships, and welcome information about successful collaboration between trusts and local communities. These case studies can help tell other trustees, managers and community organisations about good practice.

**To share your experience please contact the Good Practice Team:**

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## Review

We have developed this protocol with the Good Practice Advisory Group members – Community Land Scotland, Development Trusts Association Scotland, National Farmers' Union Scotland, Scottish Land and Estates, and Scottish Property Federation.

We will continue to work with the Good Practice Advisory Group to keep this protocol under review. Our future work programme and the recommendations we make to Scottish Ministers in relation to the LRRS will be guided by how this protocol is put into practice.

## Further Information

 **For more information, please visit the following websites:**

[www.landcommission.gov.scot](http://www.landcommission.gov.scot)

[www.gov.scot/policies/land-reform](http://www.gov.scot/policies/land-reform)



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