

Diversification of Ownership and Tenure

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. This protocol on diversification of ownership specifically supports principle 2, but also principles 1 and 3:

- 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 2: “There should be a more diverse pattern of land ownership and tenure, with more opportunities for citizens to own, lease and have access to land.”
- 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.”

Purpose of this protocol

The purpose of this protocol is to set out how landowners can help achieve a more diverse pattern of land ownership and tenure. This protocol applies to all landowners in Scotland. It sets out reasonable expectations for landowners in relation to assessing use and ownership of their current landholdings as part of their normal business planning and in taking measures to provide opportunities for acquisition and use of land by a broad range of interested parties.

A wide and diverse availability of land and buildings allows businesses, organisations, individuals and communities, to pursue projects of all scales and purposes. Access to land can provide a range of benefits including supporting sustainable local economic development, providing spaces for social and amenity activities, and improving access to green spaces. For landowners, diversifying land holdings can contribute to a more varied asset base, generate funds to reinvest elsewhere, improve public profile and relationships with the community and provide opportunities for innovation and collaboration.

This protocol aims to encourage landowners to support the diversification of land ownership and tenure to further sustainable development through promotion of one or more of the following: community empowerment, economic development, social wellbeing and/or environmental enhancement. This protocol invites landowners to undertake regular reviews of their holdings to assess business needs and consider what opportunities there might be to work with others to make more productive use of land or buildings to meet the local area’s needs and aspirations. Landowners are invited to consider giving local parties such as residents, businesses or community groups priority in purchases, leases and other collaborative working arrangements. Taking a balanced view that considers the environmental, social and cultural benefits, as well as economic, is likely to be advantageous in helping to develop inclusive and resilient local economies with strong social cohesion including retention of young and working age residents and thriving local environments.

This protocol supports positive behaviours by everyone involved in decisions relating to land. It aims to ensure that mutual interests are taken into account in a reasonable and fair way, and to make sure that interactions take place in a spirit of respect and understanding.

- 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:

- **Owners** of land, including companies, trusts, public bodies, non-governmental organisations, sole traders, charities, and community landowners, but excluding individual homeowners
- **Land managers** including tenants or agents or other people employed or contracted by the owner to look after land or property on their behalf
- **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
- **Members of a community** who are considering taking on ownership, use or lease of land
- **Residents and businesses** who live in or are based in the local area.

Definitions

When we talk about **community**, we mean the individuals who live in a particular place. This can be an urban or rural area. It can be defined as whole towns, single streets, whole islands or peninsulas, other large geographic areas or small villages or neighbourhoods.

In some cases, such as for Asset Transfer requests, a community of interest can make a request for ownership, use or lease of land to relevant public bodies. These are communities of people who are connected through a shared interest rather than by place. However, the focus of this protocol is on those who live locally and may wish to own, lease or use land in the local area, rather than on communities of interest.

Land includes buildings and other structures, land covered with water, and any right or interest in or over land, and can be in either an urban or a rural context.

When we refer to **diversification**, we mean an increase in the number and variety of local residents, businesses, and community groups exercising control over land and buildings. This may be through ownership, lease or other forms of collaborative working.

When we mention **collaborative working** we mean any arrangement between two or more parties that facilitates the sharing and/ or use of resources. Collaborative working can include tenancies, short-term leases, partnership arrangements, management agreements and informal arrangements. There are lots of reasons why a collaborative approach may be taken and this approach can bring mutual benefits.



Specific Expectations

We expect everyone covered by this protocol to follow the specific expectations as set out in our protocols on Community Engagement in Decisions Relating to Land and Transparency of Ownership and Land Use Decision-Making and meet the following conditions:

- a. Landowners and managers should consider whether land and buildings are being maintained and used productively in a way that supports sustainable development. They should consider whether land and buildings are managed in a way that contributes to their governance and management objectives and whether there are opportunities to work with others to make more productive use of land or buildings. We recommend that self-assessment of landholdings is part of regular business planning and review, if it is not already.
- b. We recommend that landowners take account of the wider benefits that can be delivered when making decisions on transferring land or buildings. These benefits can be to the economy, society, or environment, and may be long-term benefits that could outweigh the value of short-term gains.
- c. Landowners should consider proactive requests for sale or lease of property when they are reasonably made by a community organisation. They should be open and transparent in their decision-making processes and provide clear reasons for their decisions, where this is possible.
- d. When a change in ownership of land or buildings is not feasible or appropriate, landowners and managers should consider what the opportunities are for leasing, partnership working, or other collaborative working arrangements.
- e. When a landowner is considering the transfer or lease of property, they should consider the different ways in which they could do this. In the first instance, those with existing pre-emption rights should be approached. Secondly, landowners should consider offering sitting tenants a right of refusal. Finally, we recommend that landowners consider opportunities to work with the community to assist in the delivery of its social, economic and environmental aspirations, and identify the steps that need to be taken to realise these opportunities.
- f. When a landowner is considering transfer of land or buildings in a sale that will take place off the open market, they should make the local community aware that this is the case where possible. When landowners are considering private sale or are considering an approach by developers, they should, where possible, publicly acknowledge such approaches.
- g. Title conditions and clawbacks are sometimes used when land is transferred, particularly if the land is sold at a discount. Landowners should ensure that title conditions and clawback arrangements are appropriate and proportionate and should avoid those that will have an adverse impact on the viability or sustainability of businesses, community projects or other activities on the land.



Putting this protocol into practice

We may sometimes produce practice guidance and case study examples to help you 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 landowners and local communities. These case studies can help tell other landowners, managers and community organisations about good practice.

To share your experience please contact the Good Practice Team:

Scottish Land Commission
Longman House
28 Longman Road
Inverness, IV1 1SF

@ info@landcommission.gov.scot

01463 423 300

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

www.gov.scot/policies/land-reform

Guidance on assessing best value in relation to Asset Transfers



“There should be a more diverse pattern of land ownership and tenure, with more opportunities for citizens to own, lease and have access to land.”

