National Forest Land Scheme
National Forest Land Scheme

Introduction

National Forest Land consists of the forests, woods, open land and other property owned by Scottish Ministers on behalf of the nation, and managed by Forestry Commission Scotland through its agency Forest Enterprise Scotland.

The National Forest Land Scheme was introduced following the recommendations of the Review of Land Managed by Forestry Commission Scotland.

The National Forest Land Scheme has four parts:

1. Community Acquisition
2. Land for Affordable Housing
3. Land for Woodland Crofts
4. Sponsored Sale of Surplus Land

Community Acquisition

Community Acquisition gives communities the opportunity to buy or lease National Forest Land. It goes one step further than Community Right to Buy because it gives this opportunity even though the land has not come up for sale. Community Acquisition is in addition to the community's right to buy under the Land Reform Act.

As an alternative to purchase of land for communal woodland, a community organisation could consider the opportunities for working in partnership with Forestry Commission Scotland local Forest Districts on the management of national forest land for community benefit (information on the range of options is available at www.forestry.gov.uk/communityscotland).

The Scottish Government’s Right to Buy

Part 2 of the Land Reform (Scotland) Act 2003 - gives communities the opportunity to buy rural land when it comes up for sale, whether it is privately or publicly owned. This is known as Community Right to Buy and is administered by the Scottish Government. See www.scotland.gov.uk for further information on land reform and Community Right to Buy.

Communities are encouraged to register an interest in the land they wish to buy with the Scottish Government before it comes up for sale. Otherwise the community will have to apply to Scottish Ministers to make a late registration of interest.

When Forestry Commission Scotland decides to sell national forest land a community can use its rights under Community Right to Buy to apply to buy it.
Community Acquisition is based on the principles and criteria set out overleaf.

Community Acquisition is based on the following principles:

- Forestry Commission Scotland will work with communities to achieve their desired level of involvement in the management of National Forest Land by providing a full range of options for community involvement, from consultation, through participation and partnerships to leasing or purchase.
- The Land Reform (Scotland) Act 2003 provides the benchmark for community purchase of land in Scotland. As far as possible, Community Acquisition is based on the principles of Community Right to Buy, but aims to provide a more flexible route for the purchase or lease of land managed by Forestry Commission Scotland.
- The evidence required by Forestry Commission Scotland in applications will be in proportion to the significance of the land, and
- The value of the land will be established by professional independent external valuers.

For communities to be successful in their bid to buy or lease National Forest Land they must satisfy seven criteria.

These criteria are explained more fully further on in the guidance (page 7).

The decision whether to approve the purchase or lease will be made by the Director of Forestry Commission Scotland, who will receive advice from an independent Evaluation Panel. There will be a right of appeal to Scottish Ministers.

Land for woodland crofts

Community acquisition of land for the creation of woodland crofts has a number of features that set it apart from community acquisition. This part of the National Forest Land Scheme will be available only to a community located in the crofting counties or in an area designated by order of Scottish Ministers as an area in which new crofts can be created. The land to be acquired must also be so located. In addition, communities considering leasing areas of land for woodland crofts will need to enter into discussion with the Crofters Commission about the implications of the proposed lease on their plans.

The principles applicable to the community acquisition of land will apply in exactly the same way to the acquisition of land for woodland crofts. The application process and decision and appeal processes will be as for any other community acquisition. The seven criteria to be satisfied also apply. However, in some instances, which are fully explained in this guidance, there are modifications reflecting the specific circumstances relating to woodland crofts.

Some woodland croft proposals may envisage combining the creation of crofts with the provision of affordable housing for croft tenants. In such circumstances it will be possible to purchase the land for such housing through the use of the part of the National Forest Land Scheme that applies to the purchase of land for affordable housing.

Background information on woodland crofts is available at www.forestry.gov.uk/woodlandcrofts

Land for affordable housing

Forestry Commission Scotland is working with Scottish Government’s Housing and Regeneration Directorate to make National Forest Land available for affordable housing, where there are recognised shortages. Land for Affordable Housing allows Registered Social Landlords and other appropriate housing bodies (including those endorsed by the Scottish Housing Regulator) to purchase land for affordable housing (page 20).

Sponsored sale of surplus land

Forestry Commission Scotland from time to time sells surplus land. Surplus land is land that makes little net contribution to Forestry Commission Scotland public policy objectives. Previously Forestry Commission Scotland operated the Sponsorship Scheme that gave communities or recognised Environmental Non-Government Organisations the first chance to buy National Forest Land that was surplus to requirements, before it was put on the open market. This Scheme has now closed.

Under the Sponsored Sale of Surplus Land, when National Forest Land is to be sold Forestry Commission Scotland will advertise their intention to sell, giving the community the opportunity to apply to buy it providing that it can satisfy the relevant criteria of Community Acquisition. This does not affect the community’s rights under Community Right to Buy.
Introduction
In this section we cover preliminary discussions, valuation of the land, the application process, the supporting evidence required, the seven evaluation criteria, and avenues for appeal.

Before you apply
The process of buying or leasing national forest land will often begin with the community having informal discussions with the local Forest District Manager. A community that wishes to buy or lease land may already be managing land in partnership with Forest Enterprise Scotland.

From the outset, some sort of community organisation will be needed to apply to buy national forest land. It is recognised that at this early stage a community organisation which will fully meet National Forest Land Scheme requirements may not have been formed for the purpose of buying land on the community’s behalf.

At a minimum, the community interest must be expressed by a community organisation with a constitution (i.e., an unincorporated association), or the Community Council. In addition, there must be some evidence of community support for pursuing this proposal, for example the minutes and attendance record of a public meeting, a petition, or endorsement from the Community Council.

Valuation
Before an application is made it will be important for the community to know the market value of the land to be acquired and often to have obtained a feasibility study. To assist the community in making an informed decision on whether to proceed with an acquisition, Forestry Commission Scotland will offer to jointly instruct the District Valuer (an independent professional valuer) with the community organisation for a...
Community acquisition

valuation on a shared cost basis. This will take place before an application is submitted to the National Forest Land Scheme. If the community organisation wishes to use another valuer then Forestry Commission Scotland may choose not to contribute to a joint valuation and to instruct the District Valuer at its own expense (see page 11 for information on appeal process for valuation).

Forest Enterprise Scotland will provide information to the community organisation to allow the valuation to be instructed. This will include:

- maps of the site including stock maps, and identifying boundaries;
- details of any burdens, servitudes, or third party legal rights over the land identified;
- details of any environmental and cultural heritage designations; and
- inventory data.

As with Community Right to Buy, valuation will be at full market value (including development potential and any rights or burdens that run with the land) as determined by the District Valuer. A re-valuation may be instructed by agreement between the parties where there has been a change in circumstances which will affect the value of the land (including any change in value due to a significant elapse of time since the original valuation). However, in normal circumstances Forestry Commission Scotland will allow a valuation, current at the date of approval, to subsist for 18 months from the date of approval of the application.

The application

An application will only be accepted for consideration where it is submitted by a community organisation meeting the scheme requirements.

A community organisation will submit a pro forma application to Forestry Commission Scotland. The application should include:

- details of the land to be bought or leased, including a map and details of any environmental designations and considerations;
- delineation of the community from where support is sought and its boundaries;
- how the application satisfies each of the seven criteria and evidence to support this; and
- Memorandum and Articles of Association of the community organisation.

The application process

The application process and timelines are set out in Fig 2. Forestry Commission Scotland will have 21 days (all time limits relate to a seven day week) from the receipt of the application to assess whether or not it is eligible, for example whether the application is from a properly constituted community organisation or whether there is insufficient information in the application to allow evaluation against the seven criteria. Where the application does not appear to be eligible Forestry Commission Scotland will advise the community organisation on what steps can be taken to achieve eligibility.

Where there are competing bids from community organisations to acquire the same piece of land then the applications will go through the standard application process when the applications are received, with opportunities for comments to be made during the public consultation period. Where there are rival applications at different stages in the application process the Evaluation Panel has the discretion to decide whether to consider the rival applications at the same time. As per the standard process, the Director will consider the Panel's recommendations and decide whether to approve or reject the applications.

Publication and consultation

Eligible applications together with any supporting documentation will be published on the Forestry Commission Scotland website.

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Fig 2 - Application Process

Forestry Commission Scotland have 21 days to assess whether an application is eligible, and place application on website

28 day public consultation period. All comments sent to community organisation for response

Community organisation have 28 days to respond to comments

Evaluation Panel to consider application and make recommendation to Director Forestry Commission Scotland

28 days for Director Forestry Commission Scotland to make decision

Refused/approved in part

Approved

Community Organisation have 28 days to submit appeal

Sale/lease completed within 18 months of approval

Scottish Ministers consider appeal and give decision within 56 days

Appeal granted
(commercially sensitive and personal information may not be published) within the 21 day period. Within that period the application will be sent to those with legal rights over the land including:

- agricultural tenants;
- croft tenants and grazing shareholders;
- sporting tenants or other tenants;
- anyone operating a mineral concession on the land;
- anyone entitled to servitude rights or holding a wayleave over the land; or
- timber contract holders.

Publication of the application on the website will initiate a 28 day period of public consultation when anyone can comment on the application. The application will also be copied to Forest Enterprise Scotland, which will be asked to advise on the following points within the 28 day consultation period:

- would the proposal be significantly detrimental to the national forest estate (see Criteria 7); and
- whether, in its opinion, the community organisation has the capacity to manage the land (where the Forest District has experience of working with the community organisation).

Forest Enterprise Scotland’s views, together with any consultation responses will be copied to the community organisation which will have a further 28 days to respond (if it wishes).

In its application the community organisation will be expected to demonstrate the support of key stakeholders and user groups for its proposals, including site users from outwith the immediate community. This could be by way of letters of endorsement. For example, it will be for the community organisation to show that their proposals for development are consistent with the Local Development Plan. Where there are environmental designations the community organisation may find it valuable to seek the endorsement of Scottish Natural Heritage, and similarly Historic Scotland, where there are ancient monument designations.

What evidence is needed?

The level of evidence required to satisfy the seven criteria will be in proportion to the significance of the land. Significance is determined by the size, value or importance of the land. Land may be important where it has environmental or cultural heritage designations or is highly valued by user groups. The community organisation will be expected to provide evidence that they have the skills and resources to manage such sites appropriately.

The criteria set out specific thresholds based on the market value of the land. Ballots are required to demonstrate community support for all applications where the asset has a value greater than £50,000 and at this threshold business plans are also required to demonstrate capacity to manage the land (further information on ballots are provided on page 14). You can discuss what is appropriate with the Forestry Commission Scotland National Forest Land Scheme team.

Making the decision

The decision whether to approve the purchase or lease will be made by the Director of Forestry Commission Scotland in the light of recommendations from an independent Evaluation Panel. This panel will be made up of seven voting members including a Chair, chosen for their expertise. Two members of the Panel will come from each of the economic, environmental and social sectors. Forestry Commission Scotland will provide a non-voting Secretary.

The National Committee for Scotland, which is the executive board for Forestry Commission Scotland, will choose the Evaluation Panel. See www.forestry.gov.uk/scotland for further information on the Committee’s membership and role.

A recommendation to the Director will be made by the Panel at the next assessment meeting following the public consultation period for the application. Their recommendation will consider the community organisation’s response to any consultation responses on their application. However, the Evaluation Panel may seek further information from the community organisation or could decide to visit the community and the land concerned, which may require extra time. The Panel can recommend to the Director that he approve the application, approve the application in part, or reject the application. The Panel’s recommendation will be published when the Director gives his decision.

The Director will have a further 28 days to make the decision. The Director can approve the application, approve the application in part, or reject the application. If an application is refused or approved only in part, the reasons given for refusal will be published.

It is expected that the sale or lease will be concluded (including full payment) within eighteen months of the approval of the application, unless agreed otherwise. The agreed valuation current at the time of approval will be held for this time period, except in exceptional circumstances.

Appeals

Two appeals processes will be available under Community Acquisition.

Where either the community organisation or Forestry Commission Scotland does not agree with the valuation, either or both parties can obtain one further valuation each from an independent professional valuer. The valuation must follow The Royal Institution of Chartered Surveyors’ valuation guidelines. Any additional valuation will be paid for by the party that instructed it. If the valuations are within 15% of each other, the average of all the valuations will be used as the open market valuation. Greater variance in valuations will be remitted back to the valuers for resolution.

Where the parties remain unable to agree the valuation, they can, by consent, make a joint application to the Lands Tribunal for Scotland under section 15(5) of the Lands Tribunal Act 1949. Under such a voluntary reference the Tribunal adopts the role ofarbiter in a dispute. The Tribunal has initial discretion whether or not to accept a voluntary reference and, while procedure is able to be flexible, parties are expected to accept the Tribunal’s normal rules for the management and disposal of a case. The Tribunal has power to make awards of expenses and regard will be had to the extent to which one party or another has been successful and to any other relevant factor bearing on the application.
The community organisation will also have a right of appeal to Scottish Ministers over a decision to refuse the application. The community organisation must formally notify Forestry Commission Scotland of their appeal setting out the grounds, within 28 days of the Director's decision.

Ministers will receive all the papers relating to the application and may convene a Reference Committee (a statutory advisory committee under the Forestry Act 1967) or any other advisory group to advise them. Ministers will give their decision within 56 days of the appeal being lodged.

Re-application
If the initial approval period of 18 months has lapsed a re-application option is available under the National Forest Land Scheme (NFLS). However, the following conditions will apply:

a) re-application is not possible on assets that have been declared surplus - formal confirmation on the status of the assets is required from Forest Enterprise Scotland;

b) the application should not just be a simple re-submission of a previous application as all information must be current and reflect any material changes;

c) a ballot is not mandatory for re-application. However, the principle remains that it is for the applicant to demonstrate that it has current community support for the acquisition. A ballot will always provide the clearest demonstration of the community’s views; and

d) a new valuation will be required.

All other NFLS procedures and criteria will remain unchanged.

Explaining the criteria

1. Who can apply?
Only a community organisation that meets the scheme requirements can apply to buy or lease National Forest Land. These requirements are set out in Fig 1 on page 7 and are based on those that apply to a community body or crofting community body eligible to apply to buy land under the community right to buy or crofting community right to buy. The National Forest Land Scheme is not a statutory scheme and so Forestry Commission Scotland does have scope to exercise some discretion in applying these eligibility requirements. It is suggested that, before making an application, a community organisation should establish through discussion with Forestry Commission Scotland that it meets the scheme requirements. It is for Forestry Commission Scotland and not the community organisation to determine when exceptional circumstances arise.

A community is defined for the National Forest Land Scheme in accordance with the Community Right to Buy provisions of the Land Reform (Scotland) Act 2003. It is geographically defined, and will normally include the whole of a settlement. Members of the community must be resident and registered to vote. It is for the community organisation to show how it has defined the community. The Community Right to Buy requires that the area of the community should be defined by means of maps on the basis of postcode units, but Forestry Commission Scotland may also accept definition in terms of the whole of a Community Council area or a Local Authority ward.

Whatever way the community is described, it is important that where a ballot of the community is required that the community organisation can identify everyone who is entitled to vote within that community.

2. What land can be acquired?
A community organisation can apply for any land managed by Forestry Commission Scotland on behalf of Scottish Ministers. Before the valuation is instructed Forest Enterprise Scotland will provide the community with details of the burdens, responsibilities and rights attached to the land, including private water supplies, wayleaves, servitude rights, rights of access, minerals, salmon fishings and sporting rights.

Where a community organisation has applied to buy or lease land, Forestry Commission Scotland reserves the right to require the inclusion of other land that is not in the community’s application to avoid the creation of parcels of unmanageable land.

Subject to operational considerations, Forestry Commission Scotland is willing to consider retaining timber in any sale to a community organisation to reduce the burden of harvesting on the community organisation where this fits with the community organisation’s plans.
**Community acquisition**

Where land is sold Forestry Commission Scotland may retain a right of pre-emption giving Scottish Ministers the option to buy back the land or any part of it at a valuation established by the District Valuer, should a community organisation decide to sell. This reduces the risk of the land being sold on for purposes incompatible with the basis of the National Forest Land Scheme application.

2. **Connection with the land**

The community organisation must show that it has “a substantial connection with the land” in that the community should be situated by, near to, or on, the land.

3. **Community support**

Applicants must demonstrate widespread community support. All applications where the land has a market value of greater than £50 000 will require community support to be demonstrated by way of a ballot conducted as prescribed in Community Right to Buy at www.scotland.gov.uk. This ensures that the whole community can have its say. The ballot must be held during the 6-month period immediately before the application is made (Page 10).

The requirement for community support will be satisfied if:
- at least half the members of the community (those resident and registered to vote) voted in the ballot; and
- the majority of those voting voted in favour of the community buying or leasing the land.

Only in exceptional circumstances will the community organisation’s application be considered if less than half the members of the community vote in the ballot, even though a majority of those voting vote in favour of the acquisition. The community organisation would have to provide good reasons why the application should be considered and in particular why it is in the public interest.

For all other applications a ballot is not mandatory. It is for the community organisation to demonstrate that it has community support for the acquisition. This can be demonstrated in a number of ways including a petition, or the minutes of a public meeting. However, a ballot will always provide the clearest demonstration of the community’s views.

4. **Capacity to manage the land**

The community organisation must have clear proposals for the land and demonstrate the community’s capacity to provide long term sustainable management. The amount of evidence required will depend on the significance of the land.

This capacity can be demonstrated through business plans, budgets, management plans, development plans, evidence from the management of existing landholdings, and evidence of the activity of any existing community organisation or other community structures.

For all applications to buy land with a market value of more than £50 000 a business plan will be required. We consider it desirable that applicants should not be placed in the position of having a business plan for Forestry Commission Scotland purposes which they cannot use for other purposes e.g. funding applications.

For that reason we recommend using a format which would be suitable for dual applications. For significant applications, plans should cover the process of acquisition and financial management for at least the three years following purchase. Budgets and funding sources should be defined. Where important outcomes will not be achieved within the first three years, the anticipated funding sources for those activities in subsequent years should be shown.

5. **Consistent with the principles of sustainable development**

One of the policy aims of encouraging communities to buy National Forest Land is to foster the sustainable development of communities. Sustainable development requires an integrated long-term approach to economic, social and environmental issues. The proposed management of the land should be consistent with the Scottish Government’s policy on sustainable development. See www.scotland.gov.uk for further information.

Applications should show how sustainable environmental, social and/or economic benefits will be secured for the whole community. Environmental assets and heritage features should be identified and applications should show how these are to be employed, maintained or enhanced for the benefit of the community.

For forested land, an intention to secure UK Woodland Assurance Scheme (UKWAS) certification will be a relevant factor indicating the sustainability of the management proposed, but will not be mandatory. After acquisition the community organisation will have the opportunity to access support for sustainable forest management through the Scottish Rural Development Programme.

6. **Is community acquisition in the public interest?**

A community organisation must show that its application is in the public interest. This will be decided on a case by case basis. However, applications should:
- show that the community organisation’s proposals will provide net additional public benefit;
- demonstrate benefits to the whole local community rather than only some individuals in the community;
- show that benefits for the immediate community are not outweighed by disbenefits to the wider community, environment or economy;
- avoid a disproportionate degree of harm to private interests; and
- avoid detriment to the wider public interest.

Forestry Commission Scotland may consider the local authority’s plans for the area when considering the public interest as the planning system guides the development and use of land in the long-term public interest. Applications that aim to subvert the local authority planning process and prevent legitimate development that is in the wider public interest are unlikely to be approved.

The public interest includes the interest of any sector of the public which, in the opinion of Forestry Commission Scotland, would be affected by the application. This measure is intended to protect the interests of distinct communities and groups other than the community represented by the community organisation.
7. Management of the national forest estate

The community organisation’s proposals should not be significantly detrimental to the management of the national forest estate, and Forest Enterprise Scotland will be asked to comment on this. Some potential issues are set out below:

- the land concerned is critical for access, transport or implementation of plans for the wider forest;
- net losses in local employment including local Forestry Commission Scotland staff reductions or loss of local contracting jobs;
- significantly increased management costs on remaining land reducing its operational viability; and
- the need to fulfil long-term contractual commitments, e.g. for timber supply.

The community organisation and Forest Enterprise Scotland should explore together any such issues raised by Forest Enterprise Scotland, and the community organisation should demonstrate in its application that, as far as possible, these issues have been addressed.

Introduction

This section sets out the special features associated with community acquisition of land for woodland crofts.

Crofting

Technically a croft is a unit of land subject to the Crofting Acts. Crofting is a system of land tenure that applies in the crofting counties. The crofting system is regulated and supported by the Crofters Commission [www.crofterscommission.org.uk](http://www.crofterscommission.org.uk). A map of the area covered by crofting legislation can be found on that website.

The Crofting Reform Act 2007 amended the Crofters (Scotland) Act 1993 to allow new crofts to be created within the crofting counties and in other parts of Scotland in areas designated by an order made by Ministers.

Principles

For communities to be successful in their bid to buy or lease land for woodland crofts they must satisfy the principles and the 7 criteria for Community Acquisition under the National Forest Land Scheme (see pages 12 - 16) with the few amendments to criteria 1 and 6 outlined below. Where part of the land to be acquired is intended to be used for affordable housing the land on which these houses are to be sited may be acquired under the procedures applicable to purchase for that purpose (see pages 20 – 22).

The role of the Crofters Commission

Communities proposing to create woodland crofts should involve the Crofters Commission at an early stage. Crofting legislation gives the Crofters Commission the power, on the application of any landowner in the crofting counties, to constitute land as croft land. It also provides advice on the creation of new crofts.

The procedure for constituting land as croft land is set out in Section 3A of the Crofters (Scotland) Act 1993 (as amended by the Crofting Reform Act 2007). In brief, the Crofters Commission will publicise any application received and ask for comments on it. The Crofters Commission will publicise their decision. In making their decision on the application the Commission will take into account:
Land for woodland crofts

- any comments received;
- the public interest and the interest of the crofting community in the locality of the land, and
- whether social and economic benefits might be expected as a consequence of approving the application.

Where the land is outwith the crofting counties, an owner can apply only if the land is in an area designated by order as an area in which the Crofters Commission has been given power to constitute land as croft land. An order designating such an area must be made by affirmative resolution of the Scottish Parliament.

The Crofters Commission can make a formal decision on whether it will constitute land as croft land only after receipt of an application from the owner of that land. So a community organisation cannot make a formal application to the Crofters Commission for consent to create woodland crofts until its purchase of land is complete. Nevertheless a community organisation will be expected to provide evidence in an application to purchase which demonstrates that the Crofters Commission has no fundamental objection to the proposal.

**Before you apply**

The guidance on page 7 applies to the purchase of land for woodland crofts. For woodland crofts initial discussions, both with the Forest District and other relevant parties, are likely to be quite extensive because creating woodland crofts will be quite a complicated and time consuming task.

**Valuation**

The valuation guidance on page 7 will apply to the purchase of land for Woodland Crofts and valuation will be at full market value. However, as noted on page 17, land for affordable housing can be acquired to form part of a Woodland Crofts project and the relevant land valued for affordable housing. As in Community Acquisition a valuation current at the date of approval of the application will subsist for 18 months from that date.

**Procedures**

The procedural arrangements for application, publication and consultation, making a decision and appeals, the evidence requirements and the time for completion of purchase will be exactly as for Community Acquisition (see pages 12 - 16).

**Criteria**

The criteria for the acquisition of national forest land for woodland crofts, unless otherwise indicated, will follow the seven criteria specified in page 4 and explained on pages 12 - 16. Where land for affordable housing is sought, the criteria relevant to purchase of land for that purpose will apply (see page 20).

Additional points applicable to the criteria relevant to the community acquisition of land for woodland crofts are as follows:

1. **Who can apply?**

   It will be important that the community organisation is seen to represent the whole geographical community and not simply existing crofting interests.

   It is appreciated that a woodland crofts project to create a new community may be proposed for an area in which there is no significant existing community. In such circumstances Forestry Commission Scotland may consider an application from a community organisation, which is primarily a community of interest, provided Forestry Commission Scotland can be satisfied that any existing inhabitants of the wider geographical area are not opposed to the proposal, and are permitted to be voting members of the community organisation. Should Forestry Commission Scotland decide to consider such an application Criteria 2 will not apply.

6. **Is Community Acquisition in the public interest?**

   An application should demonstrate that the Crofters Commission has no fundamental objection to the proposal to create new crofts.

   An application should demonstrate how the creation of new crofts will deliver public benefit and that there is genuine demand for woodland crofts (as distinct from demand for affordable housing).

   An application should demonstrate how the community organisation will secure the planned public benefits once the croft land is controlled by the croft tenants.

   The principles and procedures for selecting candidates for the tenancy of the new crofts should be explained. These should be transparent, fair and objective and should maximise public benefits.

**Housing and woodland crofts**

Where housing is associated with the creation of crofts there is no special provision for acquisition of land for housing except where the housing is intended to be affordable. Where the conditions relating to acquisition of land for affordable housing cannot be met land for housing may nevertheless be acquired. However, the principles and criteria for community acquisition of land for woodland crofts will apply.

**Affordable housing**

A community organisation may wish to provide affordable housing for woodland croft tenants. If so, provided all the conditions and criteria for purchase of land for affordable housing are met (see pages 20 - 22) it may be possible to acquire the land for the housing at a price that reflects the proposed use. This means that the organisation acquiring the land for housing must be a Registered Social Landlord or another type of appropriate housing body. It will also be necessary for the applicant to demonstrate how retention of the housing in the affordable sector will be secured.

It may be that a community organisation will also be a Registered Social Landlord or another type of appropriate housing body. However, it is more likely that a community organisation will need to have a partnership with such a body. In that case the application for purchase of land for affordable housing should be made by the partner organisation.

**Linking the house with the land**

Where proposals for developing a woodland crofts project consist of crofts with houses it will be necessary for applicants to demonstrate how the link between the house and croft is to be maintained in the long term.
Land for Affordable Housing

Introduction
This initiative allows Registered Social Landlords and other appropriate housing bodies to purchase land for the provision of affordable housing for those in housing need. (The term “affordable housing” and the types of provision that can contribute to this provision are described in the Scottish Government’s Planning Advice Note: Affordable Housing and Housing Land Audits.) There are a number of ways that these organisations will then provide the housing.
They can:
- provide houses for rent;
- provide houses for shared ownership/equity; or
- sell plots to local people in need of housing.

Valuation
The District Valuer’s valuation of the land will reflect the purpose of the housing e.g. affordable housing for rent. There will be a use restriction clause in the sale missives requiring that the housing body only builds affordable housing on the land.

Use of timber in construction
Forestry Commission Scotland is working with a number of housing bodies, architects, sawmillers and suppliers to encourage the use of timber and timber products in the construction and cladding of houses, and in particular affordable housing built on Forestry Commission Scotland managed land.
Forestry Commission Scotland aims to ensure the maximum appropriate use of timber and timber products in any affordable housing built, including certified products, locally sourced timber, and woodfuel for heating. There will be a contractual clause requiring housing bodies to build houses in timber frame (except for Rural Home Ownership Grant plots). It will not be a requirement that houses are timber-clad, but Forestry Commission Scotland will facilitate and promote its use.

Forestry Commission Scotland will continue to work with the Scottish Government to deliver the Government’s policy on the sustainable procurement of timber and timber products in the construction of housing funded from Scottish Government resources, and to promote the maximum use of sustainable timber.

The application
The application process is set out in Fig 3. A series of potential sites in areas of highest need will be agreed between Forestry Commission Scotland and local housing partners after consideration of the Local Housing Strategy and discussions with the planning authorities.
Where a site has been identified as being suitable, the housing body will undertake a local needs survey or other similar assessment. If affordable housing is appropriate for that site, a valuation will be obtained. Parties will then discuss how best to ensure that the sites remain in the affordable housing sector before the proposed sale of land is put before the Evaluation Panel for consideration.
The Evaluation Panel will consider the application in the same manner as under Community Acquisition. The Director, Forestry Commission Scotland will assess the application against the criteria. There will be no appeal from the Director’s decision.

Explaining the criteria
There are three criteria to be met.

1. Eligible applications
The applicant must be a Registered Social Landlord or other appropriate housing body. Other appropriate housing bodies can include applicants, designated as Rural Housing Bodies under the Title Conditions (Scotland) Act 2003, which provide building plots or houses for sale.
Applicants will need to demonstrate how they will ensure retention of housing in the affordable sector in accordance with Scottish Government policy.

Being designated as a Rural Housing Body gives a housing body the ability to attach a Rural Housing Burden to any house or plot sold, allowing the housing body to buy back the property on terms detailed in the Burden, to ensure that the housing stock is transferred to another person meeting the criteria for need.
2. Affordable housing in areas of greatest need

Forestry Commission Scotland is working with the Scottish Government and other local housing partners to match the areas of greatest housing need with suitable Forestry Commission Scotland landholdings. This will provide a strategic framework for the supply of national forest land for affordable housing. Areas of greatest housing need will generally be identified in the Local Authority’s Local Housing Strategy, as informed by its Housing Needs and Demand Assessment. It is standard practice to consult local communities as part of the development of these strategies. Local Authorities are required to keep their Strategies under review.

3. Community consultation and assessment of local housing need

The applicants must consult the community over any proposals to build affordable housing on land managed by Forestry Commission Scotland.

A local needs survey or other similar analysis of local housing needs showing that there is a need for affordable housing should have been carried out within the 24 months prior to the sale of land to the housing body.

It will be for the housing body to provide appropriate evidence of community consultation and assessment of local housing needs.

Introduction

The process for the Sponsored Sale of Surplus Land is set out in Fig 4.

As soon as Forestry Commission Scotland reach a decision that an area of land is surplus to requirements the local community council will be advised that a sale is likely to take place. This may happen some considerable time before Forestry Commission Scotland has completed preparations for the sale of that land. Subsequently when Forestry Commission Scotland is ready to sell land that is surplus to requirements it will:

- place details of the land for sale on our website;
- advertise the land in the local newspaper;
- inform the local Community Council in writing;
- notify the Community Woodlands Association by e-mail;
- notify the Community Land Unit of Highlands and Islands Enterprise by e-mail;
- notify Scottish Environment Link by e-mail; and
- notify the National Trust for Scotland, RSPB, and the Woodland Trust (Scotland) by e-mail.

Acquisition by community bodies

Under this part of the scheme the community will be notified as above, of Forestry Commission Scotland intention to sell land. This will give a community organisation the opportunity to notify Forestry Commission Scotland of their interest in buying or leasing the land.

Where a community organisation has already registered an interest in the land under Community Right to Buy or has been successful in making a late registration (see the Community Right to Buy guidance) it can choose to use the statutory process in preference to the National Forest Land Scheme.

Due to the time constraints involved under this part of the Scheme, a community organisation can submit the application provided that it is constituted as a community body or crofting community body prior to the transfer of the land.

Where there is no registration of interest under Community Right to Buy, the community organisation will have 28 days from the date of advertisement to formally notify Forestry Commission Scotland of its interest.
Sponsored sale of surplus land

Interest in acquiring the land, 56 days to jointly instruct a valuation, and a further 56 days to submit a formal application. Forestry Commission Scotland may have obtained a valuation from the District Valuer prior to advertising the land for sale. The timescales required for obtaining the valuation could therefore be reduced if the community organisation was able to agree that valuation.

Once the community organisation decides to use the National Forest Land Scheme, the procedure and the criteria are the same as Community Acquisition with the exception of Criteria 7 which is not relevant. However, the level of evidence required to support an application will reflect the designation of the land as "surplus".

Purchase by other organisations

Where there is no community application to buy or lease the land, then recognised Non-Governmental Organisations which deliver environmental, cultural heritage, recreational, community or social benefits will have the opportunity to apply to buy the land. There will be no opportunity to lease the land.

The opportunity to apply to buy national forest land outwith the open market is a valuable right. Any sale should deliver public benefits and deliver the outcomes of the Scottish Forestry Strategy. Generally, land suitable for development will not meet this requirement.

Non-Governmental Organisations that wish to apply to buy surplus forest land must first be “recognised”. The criteria for recognition are set out below.

Criteria for a “recognised” Non-Governmental Organisation

A Public benefit objectives

The objectives of the Non-Governmental Organisation must be to deliver public benefit. These objectives should deliver the outcomes of the Scottish Forestry Strategy.

B Sustainable development

The objectives of the Non-Governmental Organisation must not be inconsistent with the principles of sustainable development as set out by the Scottish Government. Sustainable development requires an integrated long-term approach to economic, social and environmental issues. See www.scotland.gov.uk for further information.

C Delivery of public benefits

The Non-Governmental Organisation must demonstrate that it has the capacity to deliver the public benefits set out in the organisation’s objectives. Having a track record is an important but not necessarily mandatory factor in satisfying this criterion.

D A fair and equitable constitution

The Non-Governmental Organisation must have a fair and equitable constitution and structures to ensure good governance. Factors that are relevant for consideration of this criterion include:

- whether the Non-Governmental Organisation is a membership organisation;
- the number of members and the number of voting members;
- accountability to members and whether the members have overall control of the organisation;
- whether the Non-Governmental Organisation is a company limited by guarantee; and
- generally, private or family applications will not be eligible.

E No opportunity for private gain

The constitution of the Non-Governmental Organisation must provide that:

- there is no opportunity for private gain;
- any surplus assets or funds must be applied solely for the public benefit objectives set out in the constitution; and
- if wound up, the Non-Governmental Organisation’s constitution must make provision for its assets to pass to another organisation with similar public benefit aims and whose constitution restricts the distribution of income and assets among members.

Registration as a charity may be relevant to a number of the recognition criteria but will not necessarily satisfy them. In satisfying these criteria analysis of risk will be an important consideration, for example the risk of the Non-Governmental Organisation failing to deliver the public benefits proposed.

Recognition process

The applicant will complete the application form together with supporting documents providing information to address each of the criteria. The application will be considered by the Evaluation Panel, which will make a recommendation to the Director. There is no appeal from the Director’s decision. Non-Governmental Organisations that are approved will be placed on a list of recognised Non-Governmental Organisations.

Criteria for applications to buy surplus land

Once an Non-Governmental Organisation is recognised it can apply to buy surplus land. Applications by Non-Governmental Organisations must meet the following criteria:

I The applicant must be a recognised Non-Governmental Organisation

As set out above.

II The Non-Governmental Organisation has a legitimate connection with the land being purchased
The Non-Governmental Organisation must be able to demonstrate that the national forest land being purchased is central to the delivery of its main objectives.

Additionally, it may be appropriate for the Non-Governmental Organisation to demonstrate a local connection.

III Community consultation
The local community should have been consulted on the proposed purchase and any issues raised by the community have, as far as possible, been addressed.

IV Capacity to manage the land
The Non-Governmental Organisation must be able to demonstrate the capacity for long-term management of the land. This is the same criteria as Criteria 3 of Community Acquisition although the level of evidence required to support an application will reflect the designation of the land as “surplus”.

V Consistent with the principles of sustainable development
This is the same criteria as Criteria 5 of Community Acquisition although the level of evidence required to support an application will reflect the designation of the land as “surplus”.

VI Is acquisition by the Non-Governmental Organisation in the public interest?
The proposal must provide net additional public benefit and be in the public interest. This is the same criteria as Criteria 6 of Community Acquisition although the level of evidence required to support an application will reflect the designation of the land as “surplus”.

The applicant’s main objectives for the land being purchased must deliver the outcomes of the Scottish Forestry Strategy.

Application process
Forestry Commission Scotland will notify the proposed sale of surplus land as set out at page 2 of the National Forest Land Scheme Guidance. The Non-Governmental Organisation should notify Forestry Commission Scotland of its interest within 28 days of the date of advertisement. This notification of interest will only become live if there is no community notification of interest. If the notification does become live the Non-Governmental Organisation will have 56 days to submit an application.

Applications received will be notified on the Forestry Commission Scotland web site. The procedure will then follow that of Community Acquisition. As set out above, the level of evidence required to support an application will reflect the designation of the land as surplus.

Valuation
The valuation of the land is at full market value as set out under Community Acquisition.

Appeals
A recognised Non-Governmental Organisation will have a right of appeal to Scottish Ministers over a decision to refuse the application as set out under Community Acquisition.

Introduction
This section sets out the specific process and procedures associated with community leasing. A community must satisfy the principles and criteria for Community Acquisition to be successful in their application for community leasing (see pages 12-16).

The Public Services Reform (Scotland) Act 2010 allows Forestry Commission Scotland to delegate functions to community bodies. This means that Forestry Commission Scotland can offer eligible community organisations the opportunity to lease national forest land for forestry purposes. This broadens the existing leasing option, which was only available for non-forestry purposes such as managing recreation facilities.

Under a lease the community will have full responsibility for managing the forest. The lease is seen as a long term agreement (minimum duration of 25 years) allowing sufficient time for an organisation to develop and implement their plans. The forest must continue to be managed in accordance with the UK Forestry Standard and associated guidelines (www.forestry.gov.uk/ukfs).

Leasing is not applicable to land for affordable housing.

Before you apply
The guidance on page 7 applies to the leasing of national forest land for forestry purposes. For community leasing applications initial discussions are recommended with both the Forest District to gain a full understanding of the specific forest and local Forestry Commission Scotland Conservancy office to explore the available forestry grant funding.

Rent valuation
The valuation principles outlined on page 7 will apply as any rent must reflect market value.

Rent valuation will reflect the terms of the lease and be determined by the District Valuer (or other independent valuer) in accordance with the Scottish Public Finance Manual and current NFLS practise. Minerals and development rights will normally be excluded from the lease, on the understanding that they could be subject to separate negotiations if the community wishes to secure these rights during the term of the lease.

Making the decision
Under community leasing the Forestry Commission Scotland Director’s approval would be “in principle”. The community organisation would then have up to 18 months, from date of approval, to consider whether or not to sign the lease. This would enable an applicant to gain further detailed understanding of the forest, to develop an approved Forest Plan and assess the financial implications of a lease. Some communities may decide that a partnership arrangement would meet their needs, without the need to take on the financial commitments of a lease.
Community leasing for forestry purposes

Procedures
The procedural arrangements for application, publication and consultation, making the decision (except the addition of “approval in principle”) and appeals, the evidence requirements and the time for signing a lease will be exactly as for Community Acquisition (see pages 12-16).

Criteria
The criteria for community organisations leasing national forest land for forestry purposes will follow the seven criteria specified on page 4 and explained on pages 12-16.

Standard lease clauses
A draft model lease is available at: www.forestry.gov.uk/nfls. This outlines the scope of specific terms and conditions including: development rights, management standards, lease expiry procedures etc. Early discussion on these is encouraged to ensure the scope of any agreement is fully understood. They must be finalised and agreed during the 18 months in principle approval period.

Forestry grants
Community organisations that lease land are likely to be eligible for grant-aid not available to Forest Enterprise Scotland. Under the rules of the current EU Rural Development Regulations, community tenants will be eligible for some but not all Scotland Rural Development Programme measures (for further information on forestry grants contact your local Forestry Commission Scotland Conservancy office).

Purchasing the land in future
It would be open to the community to apply through the National Forest Land Scheme to purchase the freehold. The valuation would be at full market value (see page 7) at time of the application and refer to vacant possession.

Changes to the terms of an approved application
An existing approval for purchasing land under the NFLS cannot be automatically transformed into an approval for leasing without the written agreement of the Director, Forestry Commission Scotland. The Director retains the right to request a new application for leasing be submitted, if the proposal differs significantly from the original. Furthermore, a request to change the terms of the approval will need to be considered alongside Forestry Commission Scotland's other public policy commitments.

Community renewables
Community organisations can already apply to purchase or lease land to develop renewable energy projects under the National Forest Land Scheme.

In order to provide a greater degree of flexibility for applicants, during the feasibility phase of a renewables project, an applicant can seek an “in principle approval”. This will allow a community to undertake feasibility work and enter into detailed discussions with the Forestry Commission Scotland Forest Renewables Business Unit about the terms of a lease option or option to purchase, prior to seeking planning permission.

The “in principle approval” would subsist for 18 months.
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Published by - Forestry Commission Scotland - November 2010
ISBN - 978 0 85538 813 3
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Designed by Flintriver Ltd (www.flintriver.co.uk) for Design and Interpretative Services, Forestry Commission Scotland, Edinburgh
FCFC102/FC-SIDS/1-SK-AL/NOV10