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## Review of the Community Empowerment (Scotland) Act 2015

Robin Fallas  
November 2017

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Some general themes

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- Scottish Government focus on:
  - ‘Communities’
  - Sustainable Development
- Facilitating:
  - Buying of land by communities
  - ‘Asset transfer’ from public estate to communities

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Community Empowerment (Scotland) Act 2015

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- National Outcomes
- Community Planning
- Participation Requests
- **Community Right to Buy**
- **Asset Transfer Requests**
- Delegation of Forestry Commission Functions
- **Football Clubs**
- **Common Good Property**
- **Allotments**
- Participation in public decision making
- Non-domestic Rates

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And the legal context for today MACROBERTS  
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- Land Reform (Scotland) Act 2003
- Community Empowerment (Scotland) Act 2015
- Land Reform (Scotland) Act 2016
- Asset Transfer Regulations 2016
  - Procedure, appeals, review procedure, appeal where no contract concluded
- Community Empowerment Regulations 2016
  - Registers of Land

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Guidance – from each perspective MACROBERTS  
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- March 2016 Guidance on Right to Buy processes
- Jan 2017 Guidance on Asset Transfer

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Community Right to Buy

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Right to buy as we have know it – pre-emption MACROBERTS  
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- Eligibility
- Application process
- Ministers’ Consideration
- Entry on Register (and 5 yearly re-register)
- Right to buy triggered only on sale
- Time limits and process, including:
  - Notification of sale, confirmation of exercise, valuation, Ministers’ further consent / ballot, effecting of sale

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Community Right to Buy MACROBERTS  
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- **NOT NEW** – pre-emption right - BUT extended in scope
- **NEW** - Some general changes relevant to operation of pre-emption right processes
- **NEW** (not yet in force) right to buy abandoned, neglected or detrimental land
- **NEW** (not yet in force)– right to buy land to further sustainable development

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Key changes of note MACROBERTS  
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- *Eligibility*: SCIOs and Registered Society (Comm Ben) in addition to companies
- *Eligibility*: must further sustainable development and:
  - (i) significant number of community have a connection to the land and the land is sufficiently near that land:
  - (ii) sufficient level of community support
  - (iii) in the public interest
- Purchase timescales increased from 6 to 8 months

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- Laws not in force yet
- Not pre-emptive – no willing seller is needed
- Eligible land is either:
  - wholly or mainly abandoned or neglected; or
  - Use or management of the land is such that it results in or causes harm, directly or indirectly, to the environmental wellbeing of a relevant community

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- Laws not in force yet
- Not pre-emptive – no willing seller is needed
- Eligible land is all land save excluded land
- Must:
  - Achieve sustainable development
  - Be in the public interest and of significant benefit to the community (and only way of achieving that)
  - Be that not allowing transfer likely to cause harm to the community

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Asset Transfer

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What's new with asset transfer MACROBERTS  
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- Right to apply (in relation to any land owned/leased by a relevant authority) for:
  - Ownership
  - Lease
  - Other use
- Eligibility: 'Community Transfer Bodies'
  - 'Community controlled body' or 'designated body'
  - 'Community' need not be geographic
  - Requirements on how constituted

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Some general processes MACROBERTS  
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- Requirement on relevant authorities to maintain a register of land it owns and leases
  - Need not include certain types of land (2016 Regulations) including houses, roads, canals, bus stations, police radio masts, mineral rights etc
- Register does not determine what can be requested
- No set format for register but must be online

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Process overview MACROBERTS  
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- **Application (triggering 6 months):** (detailed requirements including price prepared to pay for ownership/lease)
- Application prevents transfer (unless advertisement/negotiation commenced)
- **Authority considerations include:**
  - eligibility
  - promotion of economic development, regeneration, public health, social & environmental wellbeing

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Process overview - continued

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- Robustness of proposal, best value, state aid etc
- Obligations/restrictions
- Community support
- Protective mechanisms

**Authority Decision Notice:** also published online

**Finally:** 6 months to conclude contract (or 20 working days to appeal)

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