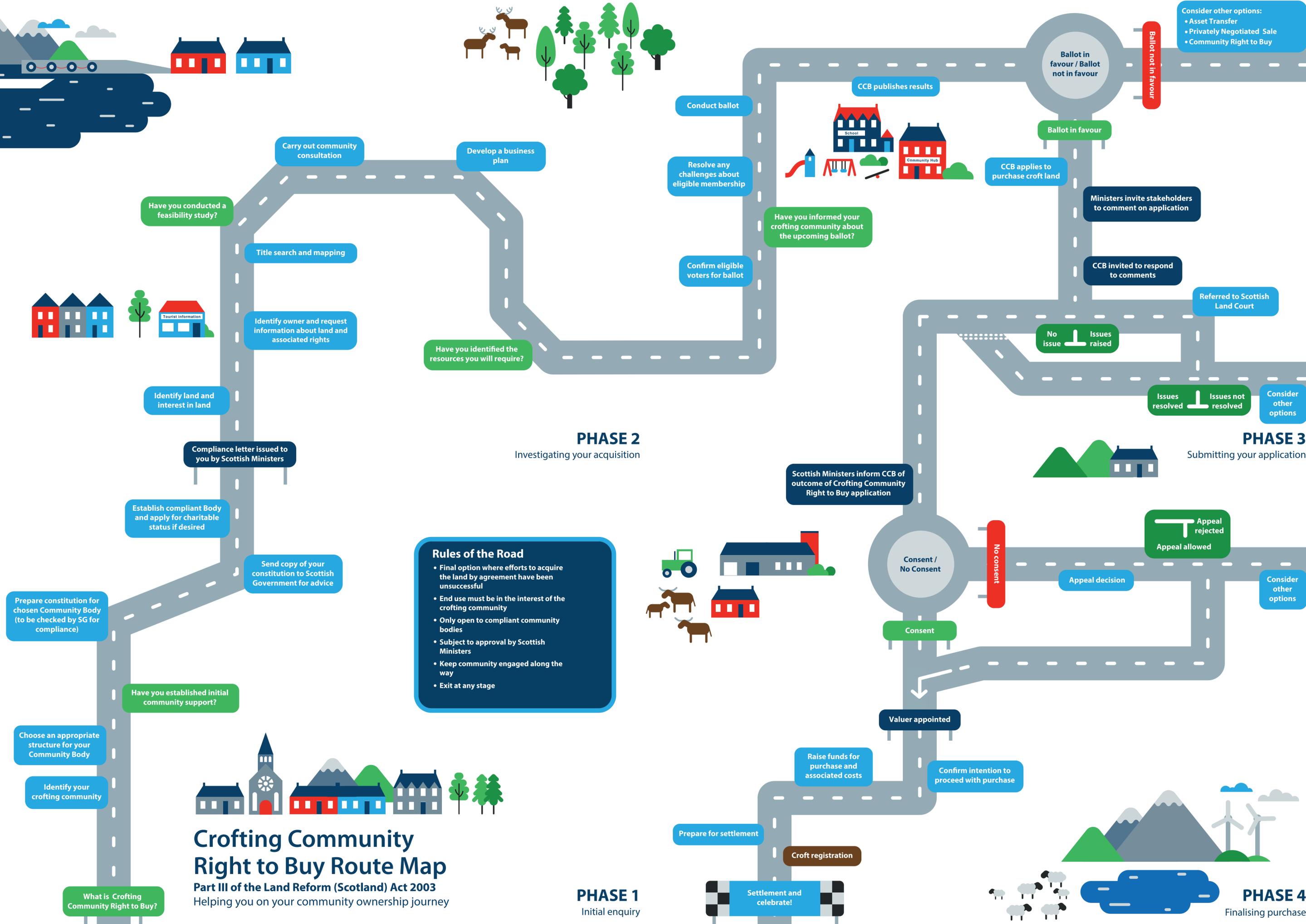


Crofting Community Right to Buy Route Map

Part III of the Land Reform (Scotland) Act 2003
Helping you on your community ownership journey

Rules of the Road

- Final option where efforts to acquire the land by agreement have been unsuccessful
- End use must be in the interest of the crofting community
- Only open to compliant community bodies
- Subject to approval by Scottish Ministers
- Keep community engaged along the way
- Exit at any stage



What is Crofting Community Right to Buy?

PHASE 1
Initial enquiry

PHASE 4
Finalising purchase

PHASE 2
Investigating your acquisition

PHASE 3
Submitting your application

Consider other options:
• Asset Transfer
• Privately Negotiated Sale
• Community Right to Buy

Consider other options

Consider other options

CCB publishes results

Ballot in favour

Ballot not in favour

CCB applies to purchase croft land

Ministers invite stakeholders to comment on application

CCB invited to respond to comments

Referred to Scottish Land Court

No issue / Issues raised

Issues resolved / Issues not resolved

Scottish Ministers inform CCB of outcome of Crofting Community Right to Buy application

Consent / No Consent

No consent

Appeal decision

Appeal allowed / Appeal rejected

Valuer appointed

Raise funds for purchase and associated costs

Confirm intention to proceed with purchase

Prepare for settlement

Croft registration

Settlement and celebrate!

PHASE 2 - Investigating your acquisition

Identify owner and request information about land and associated rights

It is important that your CCB provides Scottish Ministers with the correct landowner details. Your CCB must also identify any creditors in a standard security (e.g. mortgage lenders). Companies House will provide up-to-date details of a company's registered address. An application for consent for your Crofting Community Right to Buy must relate to land owned by one party, whether an individual owner or a consortium of owners. If your CCB wishes to buy land which is owned by a number of owners, you must complete separate applications in respect of land owned by each person.

Carry out community consultation

It is important to ensure that your plans reflect the needs and priorities of your community. These can be gathered by consulting with the community in a variety of ways. See **Ten Steps to Community Ownership** for some hints, tips and ideas.

Develop a business plan

Once you have identified your preferred approach, indicative costs and how they will be funded, you need to compile a business plan to demonstrate the viability of your project. The plan should also include (among other things): financial projections, a market appraisal and an assessment of the risks. Your business plan will help you set out the case for funding and finance for the project.

Have you identified the resources that you will require?

It is important that you seek an early assessment of the likely cost of its acquisition, compensation to the landowner for loss and expenses, as well as management of the land you are seeking to acquire. Such an assessment will:

- give you information to disseminate to your community when you hold your ballot on whether to proceed with your application;
- provide you with supporting information on the proposed use, development and management, which must form part of any competent application; and
- provide you with information which you will need to present to prospective funding sources in order to assess funding and financial support requirements.

Title search and mapping

Ownership of land is dealt with by Registers of Scotland who can assist in identifying ownership - <http://www.ros.gov.uk/>.

The Communities Mapping Tool has been developed to assist CCBs and Community Bodies in identifying their communities: <http://www.scotland.gov.uk/Topics/Rural/rural-land/right-to-buy/MappingTool>.

Maps will be required for the Croft Registration process which must be carried out prior to completion of a sale of crofting land. You may wish to check the specific requirements for these maps before proceeding with any mapping work. You may wish to consult with a solicitor or surveyor and appoint them to carry out the work for you.

Have you conducted a feasibility study?

This work may be carried out by a consultant that you have contracted with, or by yourselves if you have the appropriate skills, time and resources available. It is important to consider all the options available to you both in terms of addressing the needs you have identified, and the proposed use of the property you are looking to purchase. Don't forget that the option to "do nothing" should always be considered. Please see **Ten Steps to Community Ownership** for more information about working with consultants.

Identify land and interest in land

You will need to identify how these interests are owned and decide whether or not you wish to acquire the land, interests, sporting rights and the interest of the tenant in tenanted land. You need to do this before you attempt to identify the resources you will need to exercise your right to buy. You should consider appointing someone who has professional experience, such as a suitably experienced chartered valuation surveyor or a solicitor, to assist with, provide advice on, and, in some cases, undertake these tasks.

PHASE 3 - Submitting your application

Confirm eligible voters for ballot

Your CCB must be clear on who is eligible to vote in your ballot in order to avoid potential legal challenge to the result. A mistake in identifying those who are eligible to vote on your proposed application for consent to your Crofting Community Right to Buy could invalidate the whole process of your application.

You need to identify two main groups in your community: (1) the croft tenants and (2) the other township or community residents.

A person can only vote as a croft tenant if they are entitled to vote as a member of your community. A croft tenant includes anyone who has a right of pasture and grazing or holds a common grazing share within the land covered by the application. This would potentially include croft owner-occupiers and people who have no croft. It does not however, apply to a sub-tenant who uses a croft or grazing share. In that case the voting right rests with the croft tenant from whom the croft or grazing share is sublet.

To identify the crofters you should obtain a list of tenanted crofts from the Crofting Commission. You may wish to use the Communities Mapping Tool which has been developed to assist CCBs and Community Bodies (CBs) in identifying their communities. Speak to your HIE or DTAS adviser to find out how to access and use this tool.

Have you informed your Crofting Community about the upcoming ballot?

It is essential that, having identified the members of your crofting community, your CCB should inform the members who are entitled to vote of that fact. It is also essential that other people in the area that may believe that they are entitled to vote, but have not been identified as members of your crofting community, are able to make representations. There may be challenges to the identification of individuals as members of your crofting community.

You are required to give all eligible voters not less than 10 days notification of the date on which your ballot is to be held.

Resolve any challenges about eligible membership

You will need to ensure that you have resolved any challenges before you proceed with your ballot.

You should remember that a decision by Ministers on your ballot could be challenged and overturned either through judicial review or as a result of an appeal against a decision by Ministers on your subsequent Right to Buy application (section 91 of the Act).

Conduct ballot

The procedures for holding your ballot are set out in section 75(2) of the Act and in the Crofting Community Right to Buy (Ballot) (Scotland) Regulations 2004 (Annex B).

Your ballot may be postal, or by voting in person (at a polling station set up for the purpose). In certain circumstances voters may cast their vote by proxy. Whatever approach you use, you should ensure that the ballot paper should be able to identify the votes to be counted for the community as a whole and to allow an additional count of croft tenant votes.

You must follow the specified procedures. Failure to conduct your ballot fairly and reasonably and in accordance with the Regulations will result in your CCB's application for your consent to your right to buy the land or eligible sporting interests being extinguished.

CCB publishes results

CCB must inform Scottish Ministers of the result within 21 days. The result must also be publicised in newspaper that circulates in the area where the crofting lands are located and on your CCB's website, if you have one, within 14 days.

CCB applies to purchase crofting lands

When you have completed your application form and have checked that you have attached all enclosures, your CCB should send it to the Community Land Team for consideration by Scottish Ministers.

At the same time as you are applying to Ministers you must send a copy of your application form and supporting documents to

Ministers invite stakeholders to comment on application

the owner of the land or eligible sporting interests which are the subjects of your application. If there is a standard security over any of the subjects to which your application relates, you should also send a copy of your application and supporting documents to the creditor who holds that standard security and invite that person to give notice, within 60 days, to your CCB and Ministers on whether they have taken any steps to enforce its security in terms of the Conveyancing and Feudal Reform (Scotland) Act 1970 (section 73(6)(b) of the Act).

On receipt of the application, Ministers will invite the landowner, tenant, the owners of all land contiguous with the land, the Crofting Commission and others, as appropriate, to comment. A public notice will be published in a local newspaper inviting comments.

CCB invited to respond to comments

After Ministers have received views, in writing, they are required to send copies of them to the CCB. The CCB will be invited to comment on them and respond to Ministers within 60 days of receiving their invitation.

Referred to Scottish Land Court

Issues raised may have to be referred to the Scottish Land Court to be determined. These can be referred by Ministers, any member of the crofting community, any person with an interest in the land or the eligible sporting interests, the interest of the tenant, and anyone whom Ministers invited to send views on your application.

Where an issue is referred to the Scottish Land Court, the Land Court can invite your CCB, the landowner or any other person who appears to have an interest to make representations to it.

Issues resolved / issues not resolved

If it is successfully demonstrated that the information you provided in your application is incorrect or flawed, and that your application would not therefore meet the criteria for consent, Scottish Ministers would be bound to reject it.

PHASE 1 - Initial enquiry

What is Crofting Community Right to Buy

The Crofting Community Right to Buy (CCRTB) in Part 3 of the Land Reform (Scotland) Act 2003 ("the Act") creates a setting in which a Crofting Community Body (CCB), representing an identified crofting community, may acquire eligible croft land (including fishing rights and / or mineral rights (except mineral rights to oil, coal, gas, gold or silver), associated with that crofting community, and sporting rights. A CCB may also acquire, at the same time, or within a specified period after it has purchased the eligible croft land, the interest of the tenant in tenanted land (interposed leases).

This right can only be exercised by a properly constituted CCB when its application to do so has the consent of a majority both of the crofting community and of the crofters within that crofting community, and is approved by the Scottish Ministers.

The major distinguishing feature of the Crofting Community Right to Buy is that it is a right which can be exercised at any time. It does not depend on the land being for sale, as under the Community Right to Buy. In effect it is a forced sale and in that respect has something in common with a compulsory purchase.

If you are considering pursuing Crofting Community Right to Buy please contact the Community Land Team at Scottish Government at an early stage. They will advise you on the details of the regulations.

Identify your crofting community

An application by your CCB must relate to eligible croft land. Eligible croft land is:

- all land which is subject to crofting tenure and regulation, including arable machair and scattalds (section 68(2)(a) of the Act);
- any land in which a tenant of a croft (either alone or in common with others) has a right of pasture or grazing (section 68(2)(b) of the Act);
- any land which comprises any part of a common grazing held by a tenant of a croft, or held runrig by a tenant of a croft, which has not been apportioned for the exclusive use of a tenant of a croft (as provided by section 52 of the Crofters (Scotland) Act 1993);

Have you established initial community support?

It is essential that you establish that there is a measure of community support for your proposals to acquire the land before you start to incur expense in developing your application.

Write down a list of the people and organisations that are already involved in the project. Also make a note of those groups that are likely to become involved as your project develops, and who might be interested in supporting you in the future. These are all stakeholders in your project and some could be potential partners if you find a mutual interest or can provide mutual benefit. Stakeholder/partner involvement is essential for building consensus on proposals and addressing objections or concerns in advance. From this point of view any local politicians, local community groups and organisations that are likely to support the idea of community owned land and buildings are key partners to the process, particularly as asset projects often take a long time to implement.

If you plan to apply for grants, speak to the funding bodies and/or agencies involved and outline your project - this will give you an early indication of what they will and won't fund.

Choose an appropriate structure for your Community Body

Your community must form a compliant Community Body to apply to register an interest in land.

This must either be a:

- company limited by guarantee;
- Scottish charitable incorporated organisation; or
- community benefit society.

Your Crofting Community Body must comply with the relevant requirements of Section 71 of the Act.

Prepare constitution for chosen Community Body (to be checked by SG for compliance)

The community body should:

- be controlled by members of the community;
- be defined geographically;
- meet the requirements for defining your community as set out in section 71(5) of the Act; and
- ensure its main purpose is consistent with furthering the achievement of sustainable development.

Send copy of your constitution to Scottish Government for advice

The Scottish Government's Community Land Team can provide advice on your constitution. Your constitution should clearly define your Crofting Community, which can be defined as:

- persons who are resident in the crofting township which is situated in or is associated with the croft land which your CCB has a right to buy; or
- the tenants of crofts in that crofting township who are resident in another place, and who are entitled to vote in local government elections in the polling district or districts in which that township or other place is situated; or
- Ministers can also set out alternative criteria where they consider that it is appropriate.

Establish compliant Community Body and apply for charitable status if desired

The Community Land Team can examine your group's governing document at an early stage and provide advice on what changes, if any, would need to be made in order to be considered compliant.

Your CCB should be incorporated through the appropriate authority (Companies House / OSCAR / FCA). You may wish to approach the relevant body prior to applying for advice.

Compliance letter issued to you by Scottish Ministers

Once it has been established that your group is compliant, a letter will be issued to you to indicate that you may proceed with an application to register an interest in the land and associated rights.

PHASE 4 - Finalising purchase

Scottish Ministers inform CCB of outcome of Crofting Community Right to Buy application

Ministers will consent or not consent to your application. Appeals can be made against the Ministers' decision by any member of your crofting community, the owner of the land or person entitled to the sporting interests, the tenants, any person with a legally enforceable right in the land or sporting rights, and / or any person invited by Ministers to give their views.

An appeal should be made to the Sheriff Court in the area where the land or any part of it or the eligible sporting interests or any part of them, specified in your application, is located and which has the jurisdiction to hear an appeal. Applications must be made within 28 days of the date on which Ministers decided to consent to, or refuse, your application. Appeals may only be made on a question of law (section 91(5) of the Act). The Sheriff may make an order to uphold, reverse or add conditions to the Ministers' decision. The conditions must be consistent with any decisions or findings by the Scottish Land Court on matters under sections 77 or 81 of the Act. The order of the Sheriff is final.

Consent

The details of how the transfer of the land and eligible sporting interests is to be completed are set out in section 87 of the Act. Your CCB must pay for the land, eligible sporting interests or interposed leases (interest of the tenant) within 8 months from the date on which Ministers consented to your application. However, this date may be extended where:

- the owner of the land, the tenant, or person entitled to the eligible sporting interests agrees to an extension of that period;
- the valuation has not been completed by a date which is 4 months after the date when Ministers consented to your application; in such a case payment must be made within 2 months of the completion of that valuation;
- the valuation is the subject of an appeal which has not been determined within 4 months of the date when Ministers consented to your application; in such a case, payment must be made within 2 months of the date of the outcome of the appeal.

No consent

Should your application be rejected, all your papers will be returned to your CCB. You may be notified of the reason(s) for this action. You may choose to make amendments to your application in order to remedy these defects and re-submit it. However, you must re-submit it within 6 months of the date of your ballot, or you will be required to hold another ballot. Ministers have no powers to accept an application made outwith the 6 month period.

Valuer appointed

Following the Ministers' consent to your application, Ministers have 7 days in which to appoint an independent valuer, unless they have referred a question to the Scottish Land Court, in which case they will appoint the valuer within 7 days of the day on which the Scottish Land Court makes its determination on this question. Should Ministers fail to appoint the valuer within these specified times, any delay will not affect the validity of the valuation.

Should the landowner, the tenant, the person entitled to the eligible sporting interests, or your CCB be unhappy with the valuation, an appeals procedure is available. Appeals against the valuation are made to the Scottish Land Court. An appeal may be made within 21 days of the intimation of the valuation.

Confirm intention to proceed with purchase

After the valuer has advised your CCB of the valuation figure, you have 21 days in which to send to Ministers and the landowner, the tenant, and any other person entitled to the interests included in your application, notice that you intend to proceed with your right to buy. Following receipt of your notification, Ministers have 7 days in which to acknowledge your confirmation; a copy will also be sent to the landowner, tenant, or person entitled to the interests.

Raise funds for purchase and associated costs

You can speak to your HIE adviser who will help you to identify potential funders. Remember to consider purchase costs, revenue costs, croft registration costs and potential compensation claims.

Conveyancing

Where any persons, such as the landowner, tenant or a person entitled to the eligible sporting interests, have incurred loss or expense through the exercise of your community right to buy, they are entitled to reclaim that loss or expense from your CCB. This right includes:

- the costs or losses resulting from compliance with the Act following an application to purchase by your CCB;
- the costs or losses resulting from your CCB's withdrawal from the right to buy process; and
- the costs or losses resulting from failure by your CCB to complete the purchase.

Claims should be made within 90 days or settlement or withdrawal and should specify why compensation is being claimed. Ministers may be able to give your CCB a grant towards compensation.

Croft registration

Registration in the Crofting Register is required for certain trigger events. In the event of a sale of crofting lands registration is required. There is scope for negotiation between the outgoing owner and your CCB about who will carry out the process but there is generally an assumption that the incoming landlord will take responsibility.

Settlement and celebrate!

You may wish to hold a public event to celebrate the official community ownership of the land. You may also wish to issue a press release or speak to a journalist in advance about the story. Give everyone the opportunity to get involved and make sure you take lots of photographs.

It may seem like it has been a long haul but remember it's only the very start of your journey.