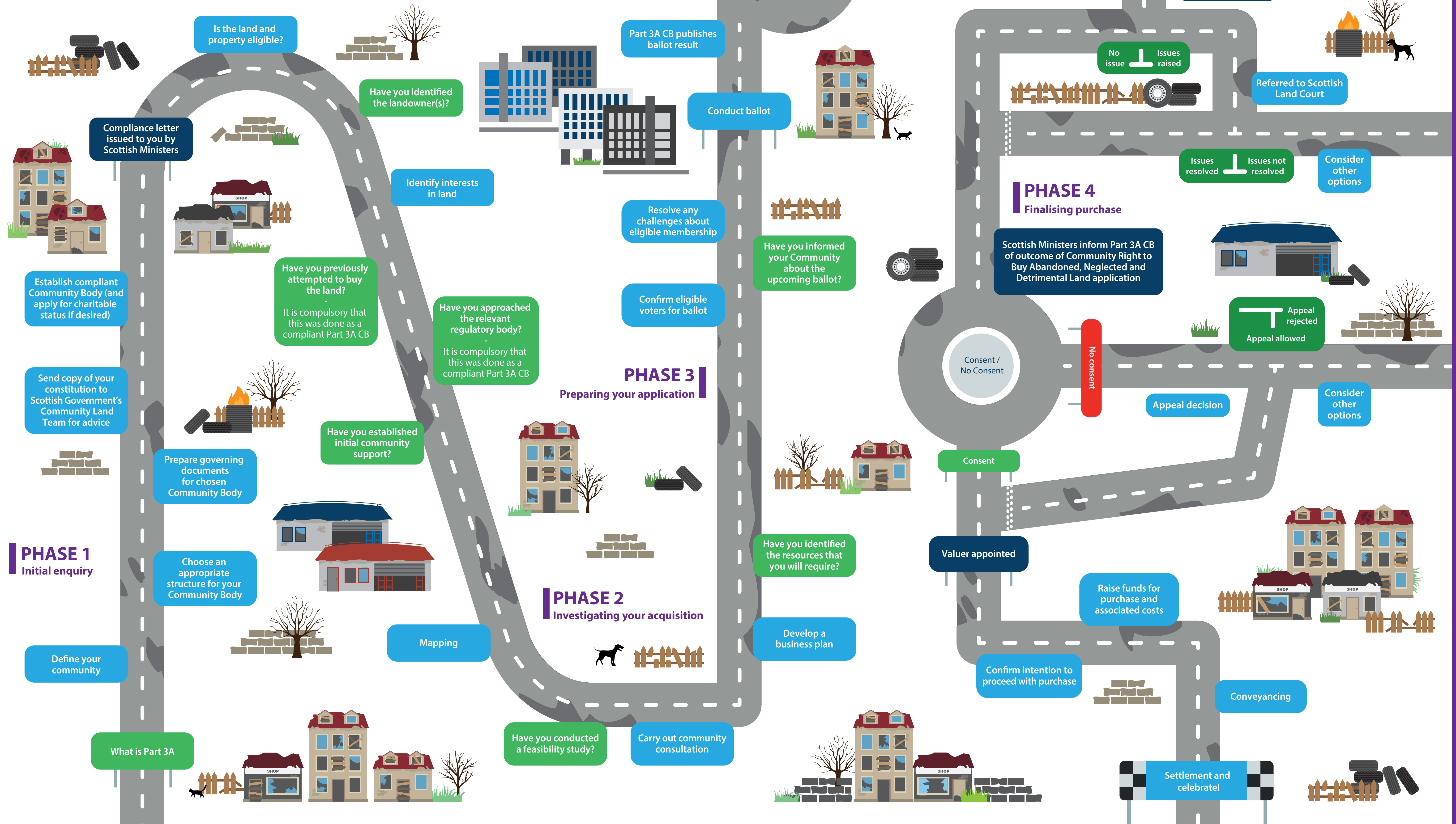


Abandoned, Neglected and Detrimental Land Right to Buy Route Map

Part 3A 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 community
- Only open to compliant community bodies
- Subject to approval by Scottish Ministers
- Keep community engaged along the way
- Exit at any stage



PHASE 1 - Initial enquiry

What is Part 3A?

The Right to Buy Abandoned, Neglected and Detrimental Land in Part 3A of the Land Reform (Scotland) Act 2003 ("the Act") creates a setting in which a Part 3A compliant Community Body (Part 3A CB), representing a geographically defined community, may acquire eligible land and property that is considered to be abandoned, neglected, or detrimental (harmful to the environmental wellbeing of the community).

This right can only be exercised by a properly constituted Part 3A CB, with the consent of the community. If Scottish Ministers approve the application then the Part 3A CB is given consent to proceed with the right to buy.

The compulsory nature of the purchase is the major distinguishing feature of the Right to Buy Abandoned, Neglected and Detrimental Land.

Contact the Scottish Government's Community Land Team at an early stage if you are considering pursuing the Right to Buy Abandoned, Neglected and Detrimental Land. They will advise you on the details of the legislation.

Define your community

At least 75% of the members of the community body must be resident in the defined area and be registered to vote in a local government election at an address within the area.

The Part 3A CB must choose how to define its community, but it must be in accordance with the options under section 97D(9)(a) of the Act and regulation 17 of the Community Right to Buy Regulations 2018 (no. 140).

Your community can be defined by reference to a postcode unit or units, or a prescribed type of area (or a combination of both).

Your Part 3A CB can identify units and types of areas using the Community Mapping Tool, an electronic tool designed to help community bodies to define their communities.
<https://www.gov.scot/publications/land-reform-mapping-tool-guidance/>

Choose an appropriate structure for your Community Body

Your community must form a compliant Community Body to apply for consent to exercise the right to buy.

This must either be a:

- company limited by guarantee (CLBG);
- Scottish charitable incorporated Organisation (SCIO); or
- community benefit society (BenCom).

The body must have:

- compliant articles of association (AoA) if the Part 3A CB is a CLBG;
- a compliant constitution if the Part 3A CB is a SCIO; or
- compliant registered rules if the Part 3A CB is a BenCom.

Prepare governing documents for chosen Community Body

The Scottish Government's Community Land Team can provide advice on your governing documents.

The matters that must be included in your Part 3A CB's governing documents are set out in section 97D(2), (3) and (4) of the Act. The matters are:

- a definition of the community to which your Part 3A CB relates;
- provision enabling the Part 3A CB to exercise the right to buy land under Part 3A of the Act

Send copy of your constitution to Scottish Government Community Land Team for advice

Establish compliant Community Body (and apply for charitable status if desired)

Compliance letter issued to you by Scottish Ministers

Is the land and property eligible?

- provision that the Part 3A CB must have not fewer than 10 members;
- provision that at least three quarters of the members of the Part 3A CB consist of members of the community;
- provision whereby the members of the Part 3A CB that are also members of the defined community, have control of the Part 3A CB.
- provision ensuring proper arrangements for the financial management;
- provision that, if the Part 3A CB is a SCIO or BenCom, and a person requests a copy of the minutes of the Part 3A CB's meeting, these are provided to that person within 28 days of the request, if that request is reasonable;
- provision that if the Part 3A CB is a SCIO or BenCom, and where a request for a copy of the minutes of the Part 3A CB's meeting, the Part 3A CB may withhold information in those minutes provided that they have reasons for doing so;
- provision ensuring that any surplus funds or assets of the company are to be applied for the benefit of the community;
- provision that on the winding up of the CLBG (should that be the structure you decide upon) and once all debts and liabilities are dealt with, the property (including any land acquired by it under Part 3A) passes to such other community body orcrofting community body (Part 2, 3 or 3A) as may be approved by Scottish Ministers. If no such body exists, then they may be passed to Scottish Ministers or to a charity as Scottish Ministers may direct.

The Scottish Government's 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 for the constitution to be considered compliant.

Your Part 3A CB should be incorporated through the appropriate authority (Companies House / OSCR / FCA). You may wish to approach the relevant body prior to applying for advice.

Once it has been established that your group is compliant, a letter will be issued to you confirming compliance. From the date of the letter, you will be able to submit an application. Please note that you are not considered to be a compliant body until this letter has been issued.

An application by your Part 3A CB must relate to eligible land. Eligible land:

- is land that is wholly or mainly abandoned or neglected, with respect to the physical condition, designation or classification, and use or management of the land (or lack thereof), or
- is land where the use or management is such that it results in or causes harm, directly or indirectly, to the environmental wellbeing of the community.
- There are some exclusions noted in the legislation. These include:
 - Land held or used by a minister of the Crown or a Government Department;
 - Land consisting of a right to petroleum, coal, gold or silver;
 - Land on which there is a building or other structure which is an individual's home, other than a building or other structure which is occupied by an individual under a tenancy;
 - Land pertaining to an individual's home;
 - Eligiblecroft land;
 - Anycroft occupied or worked by its owner or a

Have you identified the landowner(s)?

member of the owner's family;
- Land owned or occupied by the Crown that is designated as bona vacantia or ultimas haeres.

It is important that your Part 3A CB provides Scottish Ministers with the correct landowner details.

An application must relate to land owned by one party, whether by an individual, or in common or joint ownership with more than one owner. It cannot relate to multiple holdings of land. If your Part 3A CB wishes to buy a number of holdings of land and/or land assets you must complete separate applications in respect of each holding (section 97G(4) of the Act). Ownership of land is dealt with by Registers of Scotland who can assist in identifying ownership - www.ros.gov.uk

Your Part 3A CB must also identify any creditors in a standard security (e.g. mortgage lenders). If the owner is a company, Companies House will provide up-to-date details of a company's registered address.

Identify interests in land

You will need to identify interests associated with the 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, to assist with, provide advice on, and, in some cases, undertake these tasks. A Title Sheet search by Registers of Scotland, will highlight any charges or burdens associated with the land.

Have you previously attempted to buy the land?

Prior to applying for consent to acquire the land, your Part 3A CB must have already tried and failed to buy the land from the current landowner.

Have you approached the relevant regulatory body?

If you are relying on the detrimental element of the legislation, then you should be able to demonstrate that you have contacted all relevant regulators to request that they take action that might remedy or mitigate the harm before you submit an application.

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. You will need to demonstrate this support as part of your application, by means of a ballot of the eligible voters in your Part 3A CB's defined community. 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.

Although your Part 3A CB will not need to pay for the land you acquire until the land is transferred, it is important that you have an idea of the likely cost of its acquisition (you may already have had a valuation carried out prior to attempting to buy the land), compensation to the landowner for loss and expenses (associated in complying with the Act, as well as management of the land you are seeking to acquire. Some elements (e.g. ballot) may be reimbursed by the Scottish Government at a later stage but funding will be required to cover the costs in the interim.

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.

Assist in forming a reasonable offer when contact is made with the owner when trying to purchase.

PHASE 3 - Preparing your application

Confirm eligible voters for ballot

Your Part 3A CB must be clear about who is eligible to vote in the ballot. A mistake in identifying the members of the defined community who are eligible to vote on the proposed application could invalidate the ballot.

All eligible members of the community must be given the opportunity to vote in a ballot on the proposition that the Part 3A CB exercise a Part 3A right to buy.

The most effective method to identify all the persons eligible to vote in the ballot is to check who is recorded on the current full Electoral Register in the electoral district in which the defined community lies. This is usually held at Electoral Registration Offices (ERO) or a local library. Note that voters, voting in the ballot, must be eligible to vote in a local government election. You should contact the ERO to ensure that there have not been any updates to the information held by the libraries, before conducting a ballot. There may be some who are on the register who aren't able to vote in a local government election. Care must be taken to identify those who are not on the Register (such as those who have recently moved to the area).

Have you informed your Community about the upcoming ballot?

It is essential that, having identified the members of your community, your Part 3A CB should inform the members who are entitled to vote of that fact.

Your Part 3A CB is required to issue certain information to all eligible voters. This is:

- a ballot paper with the question on which the vote is to be taken;
- the date and time by which the paper must be returned (not less than 10 days after the date of posting);
- a description of the land and details of any rights or interests in that land;
- the basis on which the Part 3A CB asserts that the land is eligible under Part 3A of the Act;
- a description of the Part 3A CB's proposals for the land;
- details of how further information on the proposals and other matters relating to the ballot may be obtained;
- the name of the Part 3A CB as it appears on the Part 3A CB's Articles, constitution or registered rules;
- the Part 3A CB company number, charity number or registration number as appropriate; and
- contact details for the Part 3A CB including name, postal address email address and telephone number.

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.

It should be remembered that irregularities in the undertaking of the ballot could lead to any right to buy under Part 3A, so far as proceeding on the application, being extinguished.

Conduct ballot

The procedure for holding the ballot is set out in section 97J of the Act and Part 3 of the Community Right to Buy (Abandoned, Neglected or Detrimental Land) (Scotland) Regulations 2018 No 140. The Part 3A CB must follow the specified procedures.

The ballot must be conducted as a secret postal ballot and your Part 3A CB must appoint an independent observer to oversee, in person, the counting of the votes and the recording of the result. This must be a person independent of the Part 3A CB.

The ballot must be conducted no earlier than the six months immediately prior to the application. The results of that ballot must be notified to Scottish Ministers within 21 days of the ballot itself or together with the application, if earlier.

The Act requires the ballot demonstrate the following level of support (section 97J(1)(b) and (c) of the Act):

- that at least half of the members of the defined community have voted, or where fewer than half of the members of the community have voted, the proportion which voted is sufficient to justify the Part 3A CB's proceeding to buy the land; and
- the majority of those voting have voted in favour of the proposition that the Part 3A CB buy the land.

Part 3A CB can apply to Scottish Ministers for reimbursement of expenses incurred in carrying out the ballot. An application for reimbursement can only be applied for if an application has been submitted to Scottish Ministers.

Part 3A CB publishes ballot result

The Part 3A CB must publish, no later than 14 days of the ballot deadline, details of the result in a newspaper (paper or digital edition) circulating in the vicinity of the defined community in accordance with schedule 3 of the Community Right to Buy Regulations 2018 (no.140).

They must also publish the results on a webpage or website that is operated by, or on behalf of the Part 3A CB, if one exists.

The Part 3A CB are also required to notify to Scottish Ministers, within 21 days of the ballot (or if the application for consent is made within 21 days of the ballot, with the application), its result and details in accordance with schedule 4 of the Community Right to Buy Regulations 2018 (no.140).

Initial checks

On receipt of an application, initial checks will be carried out by the Scottish Government's Community Land Team to determine whether the application form, maps and other supporting documents have been completed correctly, or whether the application is one which Scottish Ministers must decline to consider.

These initial checks are not part of the detailed consideration and if an application fails to meet the basic requirements, the application will not proceed any further and the documents will be returned.

PHASE 4 - Finalising purchase

Scottish Ministers inform Part 3A CB of outcome of Community Right to Buy Abandoned, Neglected and Detrimental Land application

Scottish Ministers will consent or not consent to your application. Scottish Ministers cannot make a decision within 60 days of receiving views on the application. Appeals can be made against the Scottish Ministers' decision by any member of your community, the owner of the land, the tenants, any person with a legally enforceable right in the land, and / or any person invited by Scottish 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, specified in your application, is located and which has the jurisdiction to hear an appeal. Appeals must be made within 28 days of the date on which Scottish Ministers decided to consent to, or refuse, your application. Appeals may only be made on a decision (section 97V of the Act). The Sheriff may make an order to uphold, reverse or add conditions to the Scottish Ministers' decision. The order of the Sheriff is final.

Consent

The details of how the transfer of the land is to be completed are set out in section 97R of the Act. Your Part 3A CB must complete the transaction within 6 months from the date on which Scottish Ministers consented to your application. However, this time can be extended where:

- the owner of the land and Part 3A CB agree to an extension of that period;
- the valuation has not been completed by a date which is 4 months after the date when Scottish 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 Scottish 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 you not receive consent, all your papers will be returned to your Part 3A CB. You will be notified of the reason(s) for this action. The prohibition will also be lifted. If your application is flawed, Scottish Ministers must decline to consider it. If this is the case, you may

Part 3A CB applies to purchase land

When you have completed your application form and have checked that you have attached all enclosures, your Part 3A CB should send it to the Scottish Government's Community Land Team for consideration by Scottish Ministers. This should be done within the 6-month period following the date of the ballot.

At the same time as you are applying to Scottish Ministers you must send a copy of your application form and supporting documents to the owner of the land and to any relevant creditor. The creditor should be invited to give notice, within 60 days, to your Part 3A CB and Scottish Ministers of any calling-up notice or notice of default, whether any notice of default has been upheld or varied by the court, or that a warrant has been granted by the court to the creditor in relation to the land or any part of it.

Scottish Ministers invite landowner, creditor and other stakeholders to comment on application

On receipt of the application, Scottish Ministers will invite the landowner, any tenant, any creditor in a standard security, and others, as appropriate, to submit comments on the application to be received within 60 days of the invitation. They will also take reasonable steps to seek the views of the owners of all land contiguous with the land. A public notice will be published in a local newspaper (paper or digital) inviting comments within 60 days of publication.

Part 3A CB invited to respond to comments

After Scottish Ministers have received views, in writing, they are required to send copies of them to the Part 3A CB. The Part 3A CB will be invited to comment on them and respond to Scottish Ministers within 60 days of receiving their invitation.

Referred to Scottish Land Court

Some of the views received on the application (sections 97G(9)(a) and (b) and 97G(11) of the Act) may raise questions which Scottish Ministers will seek to clarify with either the owner or the Part 3A CB.

However, other issues may be referred to the Lands Tribunal to be determined (section 97X of the Act). These can be referred by Scottish Ministers, any person who is a member of the community defined by the Part 3A CB, the owner of the land included in the application, any person with an interest in the land giving rise to a right which is legally enforceable by that person, or anyone whom Scottish Ministers invited to send views on the application.

Where an issue is referred in this way, the Lands Tribunal can invite the Part 3A CB, the landowner or any other person who appears to have an interest, to make representations.

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.

Raise funds for purchase and associated costs

You should have already identified potential funders. Remember to consider purchase, running and development costs and potential compensation claims. Where any person, including the landowner, has incurred loss or expense, they are entitled to claim compensation for that loss or expense from your Part 3A CB.

This right includes:

- the costs or losses resulting from compliance with the Act following an application to purchase by your Part 3A CB;
- the costs or losses resulting from your Part 3A CB's withdrawal from the right to buy process; and
- the costs or losses resulting from failure by your Part 3A CB to complete the purchase.

However, your Part 3A CB will not be liable to pay compensation where an application for consent has been refused by Scottish Ministers.

Claims should be made within 90 days of settlement or withdrawal and should specify why compensation is being claimed. Scottish Ministers may be able to give your Part 3A CB a grant towards meeting a claim for compensation. It is important to let the Community Land Team know if you receive such a claim.

Conveyancing

Your Part 3A CB is fully responsible for ensuring that the purchase of the asset concludes within the 6 months given deadline. You are required to:

- prepare the documents necessary to effect the conveyance of the land and ensure that the subjects to be conveyed are the same as those specified in the consent by Scottish Ministers; and
- ensure that in preparing these documents they take into account all conditions imposed by Scottish Ministers.

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.