Community Woodlands Association
Response to consultation on secondary legislation proposals relating to Part 5 of the Land Reform (Scotland) Act 2016 – the Right to Buy Land to Further Sustainable Development

Question 1
[Partially agree]
We agree in principle with excluding land which forms the curtilage of an individual’s home, however we would like to see more clarity as to how this is defined in order to avoid the issues that have arisen in respect of access rights under Part 1 of the 2003 Act (whereby what constitutes ‘sufficient adjacent land’ to a person’s home has fallen to be determined by the courts, and applied very broadly in some cases, e.g. the decision that 12 acres around Ann Gloag’s property in Perthshire was excluded from access rights on this basis).

We are concerned that the exclusion with respect to keeping “pets belonging to the occupants of the individual’s home” may be used to exclude extensive tracts of land, used for e.g. horses. Clarification on what constitutes a “pet” would be welcome, as would tighter drafting that made it clear that the exclusion was limited to e.g. outbuildings for housing such pets. Similarly, we would like to see more clarity on the land used for other exclusions, e.g. recreation and leisure activities and to grow food.

We note that it is proposed that land used for “water supply” is excluded. It is not uncommon in rural areas for domestic water supplies to come from surrounding land (i.e. land owned by someone other than the homeowner), however we do not think that such land should be excluded. We suggest that all the proposed exclusions should only apply if the land is owned by the same person that owns the house, as is the case with land used for access, on the basis that the transfer of land under separate ownership would not affect any existing lease or servitude rights that are in place to allow that land to be used in connection with the house.

Question 2
[Partially agree]
We agree that land on which there is a building or structure that is a person’s home should be excluded, however we believe that holiday homes and empty homes should not be included within the definition (i.e. so that an application could be made in respect of these types of properties). This is of particular importance in communities where the prevalence of such properties effectively means that those who would live and work there year-round cannot afford to do so, undermining the sustainability of the community as a whole. The home exemption should only apply if the building or structure in question is occupied as a person’s primary residence.

Question 5A
[Partially agree]
While we agree with the list of areas proposed, we would suggest that the regulations clarify that a combination of these areas may be used, as may e.g. a combination of one or more of these areas and one or more postcode units.

Question 12
[Partially agree]
We suggest that the Regulations make provision for expenses to be provided ahead of the ballot where required, to help support community bodies from lower income areas or without significant reserves.
**Question 15**  
[Partially agree]  
We support modelling the prohibitions relating to Part 5 land on those relating to a Part 3A application. However, in our view the prohibitions on transfer are largely hypothetical, as it appears unlikely that any community body would seek to use the Part 5 provisions without first having a Part 2 registration in place (with the immediate prohibition on transfer that this provides). This is because, if a Community Body were to try to go straight to Part 5, the legislation has been designed to give the landowner at least 6 months’ notice, (because of the requirement and timescales related to the written request to buy and the ballot) which gives more than enough time for the landowner to sidestep any Part 5 application before it can be lodged. It is therefore critical that there is clarity in the Regulations as to how applications made under these respective Community Rights to Buy will interact in practice.

**Question 25**  
[Partially agree]  
We agree with the proposed types of body that may register as a Part 5 community body. As per our response to Q15 above, we consider that community bodies will need to use Part 2 first to have any chance of a successful Part 5 application.

To use Part 5 the legislation requires community bodies to have provision in their constitution "enabling the company/SCIO/society to exercise the right to buy land under this Part". It is not clear if this means community bodies must explicitly mention Part 5 in their governing document, but if so few if any existing community bodies with live Part 2 registrations will be eligible to use Part 5: they and all other existing community bodies will have to amend their constitutions before beginning the process (making the written request to buy the land from the current owner).

To simplify this, and ensure congruency between the various Community Rights to Buy, the power given in 49(1)(c) "A Part 5 community body is, subject to subsection (7)—a body of such other description as the Scottish Ministers may by regulations specify" should be used to specify that Part 2 bodies are automatically eligible to use Part 5 (in much the same way as CR2B community bodies have been designated as eligible to use the Asset Transfer provisions).

**Question 29**  
The Community Woodlands Association welcomes the opportunity to respond to this consultation. We consider it vital that the Regulations are framed to make the new Community Right to Buy to further sustainable development fit for purpose in meeting its policy intent.

We welcome the fact that Scottish Ministers must refer to considerations including economic development, regeneration, public health, social wellbeing and environmental wellbeing when determining the likely effect of granting (or not granting) consent to transfer the land or tenant’s interest on the lives of the persons comprising the relevant communities. These considerations should be widely interpreted rather than narrowly defined in the Regulations, within the broad overarching framework of the public interest.

This approach would be in keeping with the existing Crofting Community Right to Buy contained in Part 3 of the Land Reform (Scotland) Act 2003 which stipulates that the transfer of such land should further sustainable development without explicitly stating more specific considerations such as those mentioned in relation to the Part 5 Community Right to Buy to further sustainable development.