

# Land Ownership by Charities

This protocol is one of a series we have issued to help you put the Scottish Government's Land Rights and Responsibilities Statement into practice.

The Land Rights and Responsibilities Statement (LRRS) sets out the vision for a strong and dynamic relationship between Scotland's land and its people. It is the first of its kind anywhere in the world. Land rights and responsibilities apply to both urban and rural Scotland and are about owning, managing and using land in a fair way that benefits everyone in Scotland. It states that the people and organisations that make decisions relating to land should recognise and act in line with their responsibilities, as well as their rights.

The way land is owned and used affects the quality of life for everyone in Scotland. The LRRS is based on the belief that Scotland's land is a resource for everyone in Scotland and should contribute to economic, environmental and social goals within a human rights approach. Realising and applying land rights and responsibilities can reduce inequality and bring mutual benefit to landowners, land managers and communities.

The LRRS recommends that better information about land should be available to help with more informed decision-making, as this will benefit the local economy, environment and society. People should have confidence that there is a fair and balanced system of decision-making in relation to land and have the opportunity to be engaged in decisions relating to land that will affect them and their local environment.



There are six principles in the LRRS, and this protocol on Land Ownership by Charities specifically supports principles 1, 3 and 5, which are as follows.

- Principle 1: “The overall framework of land rights, responsibilities and public policies should promote, fulfil and respect relevant human rights in relation to land, contribute to public interest and wellbeing, and balance public and private interests. The framework should support sustainable economic development, protect and enhance the environment, help achieve social justice and build a fairer society.”
- Principle 3: “More local communities should have the opportunity to own, lease or use buildings and land which can contribute to their community’s wellbeing and future development.”
- Principle 5: “There should be improved transparency of information about the ownership, use and management of land, and this should be publicly available, clear and contain relevant detail.”

## Purpose of this protocol

The main purpose of this protocol is to invite landowning charities to think about how they reflect land rights and responsibilities in how they operate and make decisions. This protocol sets out reasonable expectations for charity trustees and applies to all charities that own and manage land or buildings in Scotland.

Charity trustees are the people who manage and control a charity. They have a legal duty to act in line with the Charities and Trustee Investment (Scotland) Act 2005. They must act in line with the terms set out in their governing document and in line with Trustee’s legal duties. This protocol does not detract from these legal duties but seeks to complement them in a positive way to deliver land rights and responsibilities.

This protocol supports positive behaviours by everyone involved in decision-making, to make sure that any contact between them takes place

in a spirit of mutual respect and understanding and makes sure that legitimate interests are taken into account, reasonably and fairly. Where trustee duties allow, charity trustees and other people with significant influence and control over land are expected to engage with local communities in line with our protocol on Community Engagement in Decisions Relating to Land and provide information about the ownership, use and management of land in line with our protocol on Transparency of Ownership and Land Use Decision-Making.

- Where we use the word **should**, we expect everyone involved to follow the approach described, unless it conflicts with their legal duties.
- Where we **recommend** a course of action it means this is good practice, but we recognise that other approaches may be equally effective.

This protocol is effective from the date of issue until we withdraw or revise it by following the review process set out below and publishing a notice on our website.

## Who this protocol applies to

This protocol applies to:

- **Charities** that own and manage land in Scotland
- **Charity trustees, land managers or charity employees** who have significant control over land
- **Community councils** representing the area within which the land and/or a related community sits
- **Relevant constituted community organisations** who have an open membership, demonstrate community control, and who represent a defined geographic area.

## Definitions

A **charity** in Scotland is an organisation which is entered on the Scottish Charity Register. An organisation can only become a charity if it meets the 'charity test', which is applied by OSCR, the Scottish Charity Regulator. This means that the charity must have only charitable purposes and provide public benefit.

The fundamental purpose of charities is to provide public benefit, as set out in the Charities and Trustee Investment (Scotland) Act 2005. Charities own land and buildings for a variety of reasons to serve the aims specified in their charitable purposes. The land or buildings may be in a particular geographic area but are sometimes managed for beneficiaries who are not resident in the same area. **Beneficiaries** are the people the charity is set up to help.

Good governance contributes to the effectiveness, productivity and reputation of an organisation. By **governance** we mean the structure of decision-making processes in an organisation. Governance in this protocol includes all those who manage and put into practice decisions and policies relating to

land or buildings that belong to the charity. This includes how they make decisions and how they involve other people in decision-making. Decision-making can involve charity trustees and other people such as land managers or other employees, agents, investors or beneficiaries who influence the charity's decisions about land. However, the charity trustees are responsible for the governance of the charity, regardless of who else who may help with their decision making.

**Trustees** of charities have a legal duty to act in a manner consistent with their charitable purposes and to comply with the Charities and Trustee Investment (Scotland) Act 2005. Charity trustees have the general control and management of a charity and are sometimes known as committee members, directors or board members. Charity trustees are responsible for their own actions and the actions and decisions taken by the charity trustees when acting together.

**Land** includes buildings and other structures, land covered with water, and any right or interest in or over land, and it can be urban or rural.





## Specific Expectations

We expect everyone covered by this protocol to meet the following conditions, as long as this is inline with their charitable purposes and governing document and the Charities and Trustee Investment (Scotland) Act 2005:

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| <ul style="list-style-type: none"> <li>a. Charities should make sure up-to-date information about who the trustees are and a main point of contact for the land is always publicly available. We recommend that this information is made available online if possible. For more details, see the LRRS Protocol on Transparency of Ownership and Land Use Decision-Making.</li> <li>b. Charity trustees should be proactive and transparent in sharing information about land held, activities carried out on the land, and the public benefits that are delivered from them. It is recommended that this information is included in the Trustees' Annual Report and included on the charity's website with information about their charitable purposes.</li> <li>c. When making decisions about land or buildings charity trustees should follow our Protocol on Community Engagement in Decisions Relating to Land where these do not contradict duties explicit in their charitable purposes or governing document.</li> <li>d. When charity trustees review their operational strategy in relation to their governing document and their charitable purposes, they should consider the ways in which they can work with the local community to meet community priorities.</li> <li>e. Community engagement plans should be prepared by all charities who own land and property. The plans should be proportionate to the charity's local or national context and consider the potential impact of decisions on the local community. For further information, please see our Practice Guide on developing an engagement plan for decisions relating to land.</li> <li>f. If changes are being made to the land or property management operations of a charity, the charity trustees should consider whether this is likely to affect the local community. If it is they should follow the Protocol on Community Engagement in Decisions Relating to Land.</li> <li>g. Charity trustees should reflect on whether the governance of their land and property can be more closely linked to the Land Rights and Responsibilities Statement. We recommend</li> </ul> | <p>that charity trustees consider whether and how they can reflect the principles set out in the LRRS in their charitable purposes and governing document. For example, the advancement of community development, or the advancement of environmental protection or improvement. Any changes to charitable purposes will require the relevant governing body's consent.</p> <ul style="list-style-type: none"> <li>h. Charity trustees should regularly review their governance and consider the skills and knowledge they need to carry out their roles. They should consider whether they have sufficient knowledge of the local community in areas where they own land and whether their decision-making processes can be influenced by local communities' priorities.</li> <li>i. We recommend that consideration is given to appointing charity trustees from the local area where the land is held. If charities own land or property in several locations, local representation should be included in local decision-making procedures such as working groups or community forums.</li> <li>j. If there is an approach from a relevant constituted community organisation to lease or take ownership of land or property from a charity, the charity trustees should consider this in line with the terms of their governing document and taking into account their duties as trustees. They should be open and transparent in their decision-making processes and give clear reasons for their decisions.</li> <li>k. When considering the sale or lease of land or other property, charity trustees should consider opportunities for different types of organisations to own or manage the land or property, and opportunities for sustainable development by local residents.</li> <li>l. In the spirit of the provisions of Part 3 of the Community Empowerment (Scotland) Act (2015), if there is a request from a relevant constituted community body or community council to participate in decisions and processes, it is recommended that charity trustees consider the request and that they should follow the LRRS Protocol on Community Engagement in Decisions Relating to Land.</li> </ul> |
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## Putting this protocol into practice

We may sometimes produce practice guidance and case-study examples to help trusts put this protocol into practice. We may publish these on our own website, or we may work with other organisations which represent the interests of a particular sector.

If you would like further information on how to implement this protocol, please get in touch with us.

## Telling us about your experience

If you experience a situation which differs significantly from the principles and specific expectations set out in this protocol, please contact us with details and supporting evidence.

Where appropriate we will provide advice, and work with you to deal with any difficulties and help improve practice. Our main role will be to support you in putting in place good practice and developing confidence and capacity among stakeholders, and to influence future development of policy, protocols and guidance.

We are keen to hear of and share positive examples of good working relationships, and welcome information about successful collaboration between trusts and local communities. These case studies can help tell other trustees, managers and community organisations about good practice.

**To share your experience please contact the Good Practice Team:**

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## Review

We have developed this protocol with OSCR and the Good Practice Advisory Group members – Community Land Scotland, Development Trusts Association Scotland, National Farmers' Union Scotland, Scottish Land and Estates, and Scottish Property Federation.

We will continue to work with the Good Practice Advisory Group to keep this protocol under review. Our future work programme and the recommendations we make to Scottish Ministers in relation to the LRRS will be guided by how this protocol is put into practice.

## Further Information


 **For more information, please visit the following websites:**

[www.landcommission.gov.scot](http://www.landcommission.gov.scot)

[www.gov.scot/policies/land-reform](http://www.gov.scot/policies/land-reform)

[www.oscr.org.uk](http://www.oscr.org.uk)

[www.gov.uk/government/organisations/charity-commission](http://www.gov.uk/government/organisations/charity-commission)



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