

Potential impact of community ownership on forest property

By **Mike Stephen**
and **Graeme**
Leith, Brodies LLP
Forestry Team

Forestry covers a diverse range of land types, from large-scale commercial plantations to small areas of broadleaf woodland, which will often be used as an amenity for a variety of sporting and recreational activities, not only by landowners, but by neighbouring communities and the public generally. The continued Scottish Government focus on community empowerment is a matter that should be of interest to forestry owners.

This article focuses on the Scottish situation. It would be fair to say that the Scottish Government has more of a focus on community ownership than its counterpart at Westminster, which regulates the situation in England and Wales. However, there is a general political will and public interest in increasing community ownership across the UK and this may bring about further legislative change north and south of the Border.

This article is also restricted to land in private ownership, as opportunities for community involvement in, and ownership of, public land (including the National Forest Estate) is subject to separate legislation and regulations, and is a distinct topic.

In Scotland, recent legislative changes have extended the existing opportunities for communities to purchase land to be used in the community interest.

While there has been a form of community right to buy in operation for some time, the Scottish Parliament has recently extended that further, prompted by the political objective of increasing the amount of land in community ownership. Given the size, uses and location of much forestry land, some of it could be the focus of community right to buy.

Since 2003, 'community bodies' in Scotland (in the form of limited companies, charitable organisations or community benefit societies) that meet specified criteria can apply to register an interest in

acquiring an area of land. If the application is successful, then the interest is registered in a public register, with the effect that the community body then benefits from a 'pre-emptive right' to buy the land should the landowner seek to sell it in future. In essence the community body is given the opportunity to match the price and others terms offered by a third party purchaser. In considering an application, the Scottish Government needs to be satisfied on many matters, including that the application is "compatible with furthering the achievement of sustainable development", there has been a demonstration of "sufficient support" in the community; and the application is in the "public interest".

Community right to buy

The recent expansion of the community right to buy - which is expected to come into force in June this year - extends a community's right to buy to land that the owner is not proposing to sell. Most of the general requirements over the nature of the body that can make such an application and the criteria that will be used in considering whether to grant the right remain the same. Importantly, the extended right to buy land that is not for sale only applies to land that is either "wholly or mainly abandoned or neglected" or where the current use or management of the land "causes harm... to the environmental well-being of the community". Could be pull-out quote, if space filler needed

How these changes will impact on forestry land is likely to depend on how the expression "wholly abandoned or neglected land" is interpreted. There is unlikely to be any debate in relation to well-managed forests or well-used and well-managed amenity woodlands, but it is not difficult to imagine that there may be some ambiguity in relation to some wooded areas, or perhaps land that may be consid- >>



Heavy Duty Professional Log Splitters

- ▶ Heavy duty splitters from 7-28 tonne capacity
- ▶ Horizontal, vertical & combi types available
- ▶ Hydraulic, PTO, engine & electric power options
- ▶ Heavy duty, robust build quality
- ▶ Incredibly fast, double pump action



FUELWOOD

>> ered suitable for planting.

Current Scottish Government guidance identifies three factors that would be taken into account:

1 The physical condition, such as the derelict nature of a building or land overgrown with weeds. This could potentially become relevant for forests where a community body could show that land is not being maintained, particularly where it has become overgrown to such an extent that it interferes with the use of the forest;

2 The use of land, or lack of use (perhaps relevant to land earmarked for future planting); and

3 Any designation or classification of the land, for example, a classification as contaminated.

It should also be noted that to make a successful application the community body must provide evidence that it has unsuccessfully attempted to buy the land from the landowner, directly prior to commencing the application.

Owners of land in Scotland should also be aware of an additional form of community right to buy, which was introduced by the Land Reform (Scotland) Act 2016. Its operation is similar in many ways to the right to buy abandoned or neglected land (and can result in a forced sale), but instead it relates to land that is considered suitable for 'sustainable development'. Feasibly, neglected woodlands on the edge of existing settlements would not be immune to such claims.

The new legislation is causing some concern within the rural land sector and, indeed, for the owners of some urban properties, as it applies equally to all property. It will be interesting to see how it will be applied in practice, and where the bar will be set for what constitutes 'abandoned or neglected land', and



The extended right to buy land that is not for sale only applies to land that is either "wholly or mainly abandoned or neglected" or where the current use or management of the land "causes harm... to the environmental wellbeing of the community"

what is meant by 'sustainable development'. While we do not consider that the legislation is designed with forestry in mind, it is not immune to the effects of the legislation, and it is certainly worthwhile for the forestry industry to monitor developments in this area.

www.Brodies.com



MEMBER SERVICES

Legal helpline

Members can get 30 minutes of free legal advice from our associated specialist solicitors Brodies LLP and Atkinson Ritson. This is meant as a first guidance and does not constitute a full client-solicitor relationship. The teams of lawyers who provide our helpline and assist the work of Confor are experienced in all legal issues that impact on forest owners or those involved in the forest industry, including employment law, health and safety law, planning law, tax and property law.

England and Wales: Atkinson Ritson Solicitors, www.atkinsonritson.co.uk

Tel: 01228 525221 E: info@atkinsonritson.co.uk

Scotland: Brodies Solicitors, www.brodies.com

Tel: 0131 656 3795 E: Confor@brodies.com

Please mention 'Confor helpline' when calling, describe your enquiry and a qualified legal advisor will call or email you back.



SHUTTERSTOCK