

## Wider UK Policy on Public Land

To complement the [review of Welsh policy](#) around public land, we also examined related or equivalent legislation across England, Scotland and Northern Ireland, to see where there might be existing practice to draw on or learn from.

### What current and planned policies govern use of publicly owned land specifically and what do they say?

#### England

In England, management of public land is mainly influenced by a combination of the budgetary pressures of local, unitary and combined authorities, local and national planning, and agri-environmental, policy.

The Localism Act (2011) sought to decentralise certain aspects of planning policy, giving more control over social housing to local authorities, putting in place Neighbourhood Planning processes, and a Community Right to Buy and Right to Bid on ‘Assets of Community Value’<sup>1</sup> (Department for Communities and Local Government, 2011). These rights are meant to offer greater opportunities for communities to ensure local amenities and services are not lost and can continue to remain in public use if they are at risk of being sold off (MyCommunity, 2020). However, the process of actually engaging with these mechanisms as a community or individual seeking land is often long and complex, and can require specialist legal or financial expertise, which may be prohibitively expensive to obtain. Public land use and management therefore sits within a nested framework of neighbourhood and local plans, and the National Planning Policy Framework (Department for Communities and Local Government, 2011).

Another area of policy of particular relevance to green space and farmland, is the legislation surrounding council farmland<sup>2</sup> as well as current and proposed agri-environmental policy. These farms have their origins in the late Victorian agricultural depression, and successive legislative Acts of 1892, 1908 and 1926, which prompted councils to acquire land for smallholdings for cash-strapped young farmers. 438,000 acres were held by councils for this purpose in 1926, and this acreage stayed relatively stable until the 1970s (Graham et al., 2019). The 1970 Agriculture Act led to a further evolution of these holdings to provide opportunities for more people to farm in their own right, although a continued emphasis on their role as ‘starter units’ before tenants moved on elsewhere arose in the House of Lords debates around what would become the 1984 Agricultural Holdings Act (Curry, 2008: 3). The rules and objectives around management of council farms are set out in the 1970 Agriculture Act, which states that smallholdings authorities should offer opportunities to new entrants and support existing tenants alike (Curry, 2008: 4).

<sup>1</sup> “A building or other land is an asset of community value if its main use has recently been or is presently used to further the social wellbeing or social interests of the local community and could do so in the future” (MyCommunity, 2020: 1).

<sup>2</sup> Also referred to as more ‘County Farms’ or ‘County Smallholdings’, in various circumstances. For a full definition of the difference between these terms, please see Graham et al. (2019: 5).

Since the 1970s however, over half the area of council farmland has been sold off, due to the Conservative governments' emphasis on privatisation under Thatcher and Major, and more recently the impact of austerity squeezing council budgets. Since council farmland is a discretionary service, these farms are often the most vulnerable to sell-off when budgets are tight, along with libraries and leisure centres (Graham et al., 2019). This is also the case in Wales, where between 2014 and 2019 alone, approximately 5,000 acres of council farmland was sold off, leaving 38,719 acres remaining (Prior, 2016, Harris, 2020).

In practice, Smallholdings Authorities have to devise their own strategies and approaches for their farmland estates and these can be quite varied. Research in 2019 showed that, of the councils which responded, three quarters of councils who intended to retain their farmland had formal policies or strategies. Others had management plans or were led by income generation for instance, and one respondent noted the lack of a clear plan as an impediment to achieving estate objectives. Respondents to this research also noted the importance of wider policy legislation in determining future council plans for their farmland estates, whether this is their own climate emergency declarations or, for example, Net Zero objectives set at a national level (Graham et al., 2019). The extent to which these various policies are seen as connected changes from council to council, and therefore so do the opportunities for communities to advocate for council farmland being used in a different way, including as an important access route to land.

One final, recent proposed policy has been the 'Community Right to Grow' law campaign led by Incredible Edible (2022). They are seeking that the public be given the right to grow food on underused public spaces such as roadside verges or lawns around public buildings. According to The Guardian, such a new law "would oblige councils to maintain a list of public land suitable for "community cultivation" or "environmental enhancement", including land owned by the NHS, government agencies and possibly water utilities", and local groups could then apply for "a certificate of lawful use to cultivate the land for an agreed period, without any rental charges or ownership change" (Barkham, 2022). The campaign was launched in May at the House of Lords, and will be taken forward through a '10-minute rule bill', where it is hoped it can be moved forward with cross-party support (Incredible Edible Prestwich and District, 2022). Although Incredible Edible's growing spaces are often relatively small, the improvements in data transparency which might be facilitated by Right to Grow legislation could be helpful for establishing larger scale community farms as well.

### Northern Ireland

In Northern Ireland, the main opportunities for communities seeking land are to engage with councils directly on a one-to-one basis, the more formal Community Asset Transfer process and ultimately, the planning system. There is no equivalent system of council farmland in Northern Ireland, where the majority of farms are owner-occupied, or else let annually under the 'conacre' system (Food, Farming and Countryside Commission, 2019).

The Social Farms & Gardens NI website has a number of case studies of community gardens, made possible by community groups negotiating a lease or licence with their local council, for example, the Incredible Edible Cloughmills site. Work is ongoing amongst Social Farms & Gardens NI and receptive

council officers to develop policy guidelines for local authorities interested in opening up more of their land for community use.

At present, the main formal routes for community access to land are via the planning system. As a result of the Local Government Act (NI) 2014, since 2015, each local authority in Northern Ireland has to produce a 'Community Plan'. Each district has an established partnership to develop and implement these plans, made up of the council and other statutory bodies, the community and voluntary sector, and the wider community, and the shared plans produced are meant to *"identify long-term priorities for improving the social, economic and environmental well-being of districts and the people who live there"* (Department for Communities / An Roinn Pobal / Department for Communities, 2017: 1). Whilst few of the plans make explicit reference to community access to land (with those that do generally talking about parks/community garden projects), this could be seen as fitting within their broader objectives.

These Community Plans must be taken into account in larger 'Local Development Plans' put together by councils, which provide the 'spatial expression' of the Community Plan, by setting out what the area will look like and how land should be used and developed there (Department of the Environment / An Roinn Comhshaoil / Máinnystrie o tha Kintraside, 2015, Causeway Coast and Glens Borough Council, 2017).

Development Trusts NI, one of the third sector bodies which supports Community Assets Transfers in Northern Ireland, has put together a 'route map' of the rather complex way in which they can use this mechanism via the disposals process (explained further in the next section). In this way, by means of completing a series of questionnaires and a business case/plan, communities may be able to secure the transfer of an asset, including pieces of land (Development Trusts NI, 2021).

### Scotland

In Scotland, land reform and community access to/ownership of land has been a consistent policy objective over the last two decades, and is often considered the most progressive in the UK. The Land Reform Act 2003 laid the groundwork for a raft of land-related legislation, and was bolstered by the Community Empowerment Act of 2015 and Land Reform Act of 2016. These successive pieces of legislation have included provisions around Community Right to Buy (including of abandoned or derelict land) and Community Asset Transfer, and have been accompanied by a number of guidance documents and the establishment of supportive institutions such as the Scottish Land Commission and Scottish Land Fund (Scottish Government / Riaghaltas na h-Alba, 2021a). In accordance with the Land Reform (Scotland) Act 2016, the Scottish Government has also published a statement of land rights and responsibilities, which underpin its approach to land reform. These include taking a human rights-based approach to land, having a more diverse system of land ownership and tenure and more community involvement in decision-making about land, amongst other things (Scottish Government / Riaghaltas na h-Alba, 2017a).

The Community Empowerment (Scotland) Act 2015 strengthened community access to land in Scotland, and in two ways relevant to public land in particular. Firstly, through asset transfer processes, community bodies were given a right to request to buy, lease or manage land (or buildings) belonging to local authorities or other public bodies which they think they can make better use of – and local authorities are obliged to publish maps of the land they own to help

communities identify suitable locations. After communities have set out their plans for the site, and the local authority compares these with existing or other possible uses of the land and the benefits each would bring, the request must be agreed to unless there are reasonable grounds for refusal. Secondly, the Act meant local authorities have a duty to establish and/or maintain registers of ‘Common Good Land’ a specific type of property passed down by former burgh councils, which often has “*strong historical and emotional value to local communities, as well as its practical use and financial value*”. They must involve local communities in the registration process to ensure nothing is left out, and must consult them before disposing of it (Scottish Government / Riaghaltas na h-Alba, 2017b: 3-5).

There are also potentially a few routes by which communities could gain greater access to land through the planning system. Local Place Plans were introduced by the Planning (Scotland) Act 2019, and give the right to communities to produce their own proposals for the development and use of land (Scottish Community Development Centre and Nick Wright Planning, n.d.). The Scottish Government has also recently published its Third Land Use Strategy, covering the period from 2021-2026, which details some further potential mechanisms for communities to become involved in land use planning and management, such as via Regional Land Use Partnerships (Scottish Government / Riaghaltas na h-Alba, 2021b).

One of the priorities for action in Scotland’s Forestry Strategy 2019-2029 is “*Engaging more people, communities and businesses in the creation, management and use of forests and woodlands*”, and one of the ways of achieving this goal is mentioned is “*Providing more opportunities for urban and rural communities to influence the decisions affecting their local forests and woodlands, including through increased community ownership*” (Scottish Government / Riaghaltas na h-Alba, 2019: 35). Drawing on this policy imperative could potentially help garner local authority support for community farms which include agroforestry elements.

Finally, in a push to increase transparency around ownership and control over land, a free publicly available, ‘Register of Persons Holding a Controlled Interest in Land (RCI)’ was launched in April 2022. Regulations now place a responsibility on owners and tenants (for more than 20 years) to supply information to RCI of their controlling interest before April 2023, before penalties come into force (Registers of Scotland, n.d.). This will presumably affect public bodies as well as private landowners, and should help ease the process of communities enquiring about who manages a particular piece of land they might be interested in using to develop a community farm or for another use for wider community benefit.

### What current and planned policies govern the disposal of public land specifically and what do they say?

#### England

The pressure on local authorities to provide new homes (in line with central government priorities) and simultaneously balance their budgets in the context of austerity, has led to local authorities disposing of their land, often for house-building, to meet local planning objectives. There are some principles around these disposals, including being ‘rooted in local plans’ and ‘early and meaningful engagement with other public bodies and the market’, as well as a number of mechanisms (e.g. tenders and public auctions) for the process of disposal laid out in guidance documents. Overall,

local authorities have general disposal powers under the Local Government Act 1972, but crucially are obliged to get ‘best consideration’, usually interpreted financially for the assets they dispose of (Department for Communities and Local Government, 2016). In practice, this can make community bids and purchase processes very difficult, as they may not be able to match commercial bids for an asset. However, the General Disposal Consent (England) 2003 updated the 1972 Act to give local authorities the right to dispose of land at up to £2 million less than ‘best consideration’ without the specific consent of the Secretary of State, which was previously required. This update was meant to enable local authorities to accept a reduced price for an asset if it was likely to provide social, economic or environmental benefits to an area (Ministry of Housing, Communities & Local Government, 2003), but it is little used in practice likely given the financial pressures local authorities are under.

### Northern Ireland

A register of properties and land which Northern Ireland government bodies have declared surplus is maintained by the Land & Property Services Central Advisory Unit. Detailed guidance has been produced on how public sector bodies can dispose of land, with achieving best value usually the priority. This guidance also takes account of the Community Asset Transfer Policy introduced in 2014 (which is not the same as that in England), and its review in 2018, and states that “a third sector body can express an interest in purchasing a surplus property through the disposal process and the proposal can be considered by the asset owner, where applicable, along with any other internal market expressions of interest, if any” (Land and Property Services / Seirbhísí Talún & Maoine and Department of Finance / An Roinn Airgeadais / Máinnystrie o Siller, 2018: 20). Should a third sector organisation want to pursue this option, they have to follow the highly structured process laid out in the route map mentioned above put together by Development Trusts NI.

### Scotland

Although Scottish local authorities are also generally expected to get ‘best consideration’ for any land they dispose of (as set out in the Local Government in Scotland Act 2003), there was also some guidance provided in 2010 for making a disposal for less than best consideration, including taking into account if the disposal will contribute to economic development or regeneration, health, social or environmental wellbeing of an area or persons resident there (Scottish Government / Riaghaltas na h-Alba, 2010: 5, 7).

## What policies relate to public bodies that are not directly about land ownership or management but could still be relevant?

### England

Since Brexit, the Department for Environment, Agriculture and Rural Affairs has been undertaking a major rework of agriculture and environmental policy and subsidies, through the Agricultural Transition Plan (based on the powers in the Agriculture Act 2020), and closely related to the 25 Year Environment Plan and Net Zero 2050 commitments. The Agricultural Transition Plan outlines three future ‘Environmental Land Management’ (ELM) schemes: the Sustainable Farming Incentive, Local Nature Recovery and Landscape Recovery, all of which are intended to replace existing schemes such as the Basic Payment Scheme and Countryside Stewardship Scheme, and support farmers and



other land managers (including local authorities) to manage their land in an environmentally sustainable way (Department for Environment, Food and Rural Affairs, 2020). The ELM schemes are currently in the piloting stage, so precise details of how they will work are not yet available, making it difficult for farmers and land managers to plan ahead (Department for Environment, Agriculture and Rural Affairs, 2021). In parallel with the development of the ELM schemes, the England Trees Action Plan (2021-2024) and Woodland Creation Offer have already been launched to support landowners to establish and maintain new woodlands, and help meet the target of 12% of England being forested by the mid-century (UK Government, 2021). These schemes and additional funding opportunities, for example around selling carbon (Forestry Commission, 2021), may influence the priorities of public landowners and whether they see community farm projects as viable.

Two other inter-related policy discussions which may influence public land in future are to do with the National Food Strategy, and land use frameworks. The National Food Strategy has so far been an independent review process led by Henry Dimbleby and supported by DEFRA, considering how the UK's food sector operates currently, and setting out options for adjusting and building on Government policies (such as the Agriculture Act 2020 and Environment Act 2021) to ensure the UK's food system provides employment, and healthy and affordable food to everyone, is resilient, and enhances the natural environment (National Food Strategy, 2020). A report and a plan have been produced through the National Food Strategy process so far, the latter of which made a number of suggestions about making best use of our land, including creating a 'Rural Land Use Framework' setting out which areas of land would be best suited to the different functions of the "three compartment model" of 'high yield farmland', 'lower yielding farmland, and semi-natural land, which should in turn inform agricultural subsidies (National Food Strategy, 2021: 99, 156).

In June, the government finally published its Food Strategy White Paper as a response to the National Food Strategy review (Department for Environment, Food and Rural Affairs, 2022). Many environmental and social justice organisations were disappointed that only a few of the recommendations made in the National Food Strategy were included in this White Paper, and since this document is not legally binding, questions remain about how even these commitments will be taken forward and/or funded (George, 2022).

In the meantime, the issue of a land use framework has also been raised in the House of Lords during the report stage amendment to the Environment Bill, but as yet there have been no firm commitments made by government on this for England (Coleman, 2021).

### *Northern Ireland*

The NI Executive released a draft 'Green Growth Strategy' in 2021, which lays out a multi-decade approach to tackling climate and environmental change whilst also supporting the economy. As part of the phased approach of realising the commitments and vision outlined in the strategy, Climate Action Plans are set to be launched in the near future (NI Executive, 2021).

The recently passed Climate Change Bill, which commits Northern Ireland to achieving net zero by 2050, and cutting methane emissions by 46% (ITV News, 2022), is likely to result in significant changes to the agricultural sector, which is dominated by livestock farming. An industry-commissioned analysis suggested that more than 1 million sheep and cattle may need to be lost to meet these targets (Greene, 2022), and that a general move to arable farming might be necessary.

As the Bill has just been passed in March 2022, there is little detail yet on its policy impact, however proposals include a ‘Just Transition Fund for Agriculture’ to support farmers to meet its targets, and a new independent office of ‘Northern Ireland Climate Commissioner’, who may choose to make provisions about the acquisition or disposal of land to meet climate change objectives (Northern Ireland Assembly, 2022).

An independent strategic review of the agri-food sector in Northern Ireland was published at the start of 2022, and some of its recommendations being taken onboard by policy makers may influence the future direction of agricultural policy in Northern Ireland (Kendall, 2022). In addition, similar to in England, the Department for Agriculture, Environment, and Rural Affairs in Northern Ireland offers a number of grants to support the creation of new woodlands and the maintenance of existing ones, to fulfil the ‘Forests for Our Future’ scheme target of planting 18 million trees or 9,000 hectares of new woodland over the next 10 years (DAERA, n.d.).

### Scotland

The Good Food Nation (Scotland) Bill has recently been passed in the Scottish Parliament (The Scottish Parliament / Pàrlamaid na h-Alba, 2022) – its aim is to place a requirement upon certain public bodies to create ‘Good Food Nation Plans’ (The Scottish Parliament / Pàrlamaid na h-Alba, 2021). This is one part of the wider Good Food Nation policy activities set in motion since the ‘Becoming a Good Food Nation’ document was published in 2014, which set out a vision of Scotland as a Good Food Nation, “where people from every walk of life take pride and pleasure in, and benefit from, the food they produce, buy, cook, serve, and eat each day” (Scottish Government and Riaghaltas na h-Alba, 2022: 1). While there is no explicit mention of land in this document, the overall aims of the ‘Good Food Nation’ policy could support greater community access to land. For example, work under the topic of ‘Promoting sustainable production and procurement’ has included a ‘Growing Your Own’ Working Group which recommended long term leasing of land for community growing projects (Grow Your Own Working Group, 2011).

## Wider UK Policy on Private Land

Are there any current or planned policies that could incentivise private land owners to make land available to communities directly or via a land bank?

### England

The main policy which could support private land owners in England to make their land available to communities could be via the lump sum exit payment recently launched as part of the Environmental Land Management Scheme (Rural Payments Agency and Department for Environment, Food and Rural Affairs, 2022). This policy enables farmers wanting to exit agriculture to take a payment instead of receiving further subsidies, if they agree to leave within a given time period (by May 2024). If a large number of retiring farmers are incentivised to sell or gift their land because of the lump sum payment, this could potentially open up substantial opportunities for new entrants, including community forms of ownership.

### Northern Ireland

The Climate Change Bill mentioned above could potentially lay the groundwork for future incentives for landowners to make land available for communities, but little detail is available at this stage.

### Scotland

In Scotland, the various land reform and community empowerment legislative frameworks introduced to provisions for communities wanting to access privately owned land. Firstly, with the community right to buy now extended across Scotland, local communities and, separately, agricultural tenants, are able to register an interest in pieces of land and have first choice to buy it them if they come up for sale. Secondly, community bodies were given a right to purchase abandoned or neglected land which is causing harm to the environmental wellbeing of the community, even if the owner is not willing to sell, if the purchase would mean sustainable development of the land in the public interest (Scottish Government / Riaghaltas na h-Alba, 2017b). Whilst neither of these policies might incentivise private landowners directly, they could indirectly by a) knowing that pieces of their land could provide wider community benefits, or b) being able to get rid of potentially challenging pieces of land which they have no immediate plans for.

Recently, a Scottish MSP has proposed a cap on the amount of land a private landowner could hold, with any excess which could better serve the public benefit potentially offered for purchase by community groups, and is going to launch a public consultation on this subject (Carmichael, 2022). Such a cap has been proposed before in Scotland but not taken forward (Carrell, 2015), and this legislation remains a long way from being implemented, but such a potential future 'Land Justice Bill' could force some of the largest private landowners to hand over some of their land to community groups.

As well as these regionally specific policies, landowners across the UK could potentially be incentivised to offer land to communities through the Community Ownership Fund, a £150 million pot of funding running until 2024/25, meant to help communities buy or take over assets, including land, of importance to the local community, which are at risk of being lost (Community Ownership Fund, 2021, Ministry of Housing, Communities & Local Government, 2021).

***Resilient Green Spaces is a £1.27m partnership project being led by Social Farms & Gardens to pilot alternative re-localised food systems using communities and their green spaces as the driving force for change across Wales until June 2023.***

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