

SHARED ASSETS

Guidance on Assets & Ownership for Woodland Social Enterprises

A literature review



**MAKING
LOCAL WOODS
WORK**



**NATIONAL
LOTTERY FUNDED**

Shared Assets

Guidance on Assets & Ownership for Woodland Social Enterprises

Literature review

May 2019



Shared Assets is a think and do tank that supports people managing land for the common good. At Shared Assets we believe that land is a common resource that should deliver shared benefits for everyone.

We provide practical advice, support and training to landowners and communities who want to manage land as a sustainable and productive asset. We also undertake research, policy and advocacy work to help create an environment where common good models of land management can flourish.

Shared Assets

www.sharedassets.org.uk

hello@sharedassets.org.uk

@shared_assets

This work has been funded by Making Local Woods Work, a Big Lottery Funded programme.

Written by: Kate Swade

© May 2019 Shared Assets

This work is licensed under the Creative Commons Attribution-ShareAlike 2.5 Generic License.

To view a copy of this licence, visit <http://creativecommons.org/licenses/by-sa/2.5/>

Cover image by [John-Mark Strange](#) on [Unsplash](#)

Table of contents

[1. Introduction](#)

[About Woodland Social Enterprises](#)

[Report Structure](#)

[2. Mechanisms for acquisition](#)

[2.1 Purchase of land on the open market](#)

[Outline](#)

[Guidance available](#)

[2.2 Community Rights](#)

[Outline](#)

[Guidance available](#)

[2.3 Community asset transfer](#)

[Outline](#)

[Guidance available](#)

[3. Types of agreement](#)

[General Outline](#)

[3.1 Leases](#)

[Outline](#)

[Guidance available](#)

[3.2 Licences to occupy](#)

[Outline](#)

[Guidance available](#)

[3.3 Management agreements and Service Level Agreements](#)

[Outline](#)

[Guidance available](#)

[4. Transitions](#)

[4.1 Moving from one form of tenure to another](#)

[4.2 Ending and renewing leases](#)

[5. Conclusions and key themes](#)

1. Introduction

This is a brief report for the Making Local Woods Work (MLWW) programme exploring the guidance that is available to Woodland Social Enterprises (WSEs) to support them in acquiring or accessing land.

It aims to answer the question “*How useful is existing literature and guidance in supporting WSEs to understand the options available for accessing, acquiring and retaining land?*”

It does this through briefly reviewing existing literature and guidance across all four UK countries, and assessing its relevance to WSEs. We have summarised the reading we have done in [this open spreadsheet](#) - and are aware that there may be areas or publications we have missed, and would encourage readers to add any further resources that might be useful.

About Woodland Social Enterprises

The [Making Local Woods Work](#) programme exists to support social enterprises that are active in woodlands and forests across the UK. WSEs have a diversity of activities, legal structures and business models, but one thing they all have in common is their need to access woodlands. The type of access they need will vary depending on their purpose and their activities. For those with a focus on recreation or education, a reliable access agreement may be what’s necessary. Those with a business model based on coppicing or other woodland management techniques may need management agreements or licences. For those with a mission to regenerate or re-populate a rural community, freehold or long leasehold ownership may be what’s needed.

Through the MLWW programme, WSEs have reported challenges around accessing and acquiring land. At the same time there is a lot of guidance, from a number of different sectors and aimed at social and community enterprises, about acquiring land and assets. This report aims to ascertain how useful that guidance is for WSEs in particular, and assess whether a specific resource for WSEs would be helpful.

Report Structure

This report looks broadly at the different tenures or models WSEs might use to access or acquire land and runs through each of them, commenting on the guidance that is available, UK wide, for each area. Guidance and resources quoted are summarised in the [open online spreadsheet](#). The three main areas the report covers are:

Mechanisms for acquisition

- Purchase of land on the open market

- Community Rights

Community asset transfer

Types of agreement

Leases

Licences to occupy

Management agreements and Service Level Agreements

Transitions

Moving from one form of tenure to another

Ending and renewing leases

While this report, and particularly the open spreadsheet, will provide some summaries of the different guidance available, it does not set out to provide guidance itself. Given the volume of guidance that exists on certain issues, it also does not purport to be exhaustive, rather to give a survey of the most easily available guidance.

2. Mechanisms for acquisition

2.1 Purchase of land on the open market

Outline

Most land purchases in the UK will happen between private individuals or companies, and in a standard transactional way. WSEs may choose to pursue land on the open market, or be particularly interested in a piece of land which is privately owned and may come up for sale.

Guidance available

The [Community Land Advisory Service](#) (CLAS) covers the whole UK. It is only funded to provide advisors in Scotland and Wales currently, and it has more substantial guidance notes available for England and Scotland, but much of the information on its website is relevant and will be helpful for WSEs in all four UK countries looking at land purchase. In particular, its note on [Buying Land](#) is helpful, and relevant. In England, the [Community Woodland Network](#) has produced guidance on acquiring woodlands with support from CLAS.

The [Woodlands for Sale](#) website has UK-wide listings of small (generally under 10ha) woodlands for sale and some step by step guides to the purchasing process.

2.2 Community Rights

Outline

The different UK countries have different systems of community rights. By far the most extensive and powerful is in Scotland, where the Land Reform (Scotland) Act 2003 gives communities a pre-emptive right to buy land that they have previously registered an interest in if it is offered for sale. The 2015 Community Empowerment Act extended this right to urban community groups, and gives communities the right to buy land currently owned by a public body even if it is not currently for sale, as long as they can demonstrate increased benefit.

In England, the Localism Act 2011 gives communities a suite of “rights”, including the Community Right to Bid - which allows qualifying community organisations the ability to register an asset or piece of land as being an “Asset of Community Value”, and then, if it is offered for sale, to place a moratorium of up to six months on the sale to raise the money to make an offer on the land. It is not a right to buy.

Some WSEs in England and Scotland are likely to qualify as community organisations or community bodies under these regimes. Both require that the organisation is set up to benefit a certain geographical community, and is not for private profit. In Scotland, the community body must be governed by those from the community it is established to serve.

Neither of these regimes extend to Wales or Northern Ireland.

Guidance available

There is substantial guidance available on both the Scottish Right to Buy and the English Right to Bid. The main sources are summarised in the spreadsheet. Good places to start are the thorough [Community Right to Buy](#) guidance from the Scottish Government, and the [Understanding the Community Right to Bid](#) guidance from MyCommunity in England.

2.3 Community asset transfer

Outline

Community Asset Transfer describes a process where a community organisation acquires leasehold or freehold ownership of local authority or other public sector land, often at less than market value. This applies to all parts of the UK, but is particularly well developed in Scotland where the [2015 Community Empowerment Act](#) gives communities a right to make requests to all local authorities, Scottish Ministers and a wide-ranging list of public bodies, for any land or buildings they feel they could make better use of.

In England, Asset Transfer is still mostly used to transfer the ownership of local authority assets, and the [General Disposal Consent Order \(2003\)](#) enables local authorities to dispose of assets for up to £2m less than the market price without needing consent from the

government. Similar legislation in Wales (the [General Disposal Consent Order \(Wales\) 2003](#)) also applies to community councils, fire services and police services.

There is no General Disposal Consent order or similar in Northern Ireland, and the policy environment supporting asset transfer lags behind that on the mainland, although the Department for Social Development released a policy framework to support Community Asset Transfer in 2014.

Guidance available

Again, there is substantial guidance from various sources on Community Asset Transfer. The spreadsheet aims to summarise the most pertinent or relevant guidance. In summary:

Scotland - DTAS (Development Trust Association Scotland)'s Community Ownership Support Service (COSS) has a comprehensive toolkit available [here](#). This is supplemented by comprehensive guidance notes from 2017 that supplement the Community Empowerment Act 2015 and are available [here](#). Forestry Commission Scotland has also produced [guidance](#) on its Community Asset Transfer Scheme in response to the Community Empowerment Act.

England - [Locality](#), and its sister site [MyCommunity.org.uk](#) are the two key sources of guidance on community asset transfer in England. This includes basic introductions to Community Asset Transfer such as [this one](#), to more comprehensive “[companion guides](#)” for local authority officers, and [legal toolkits](#). Some of these date back to 2012, however, and may not be kept updated.

The Community Woodland Network has produced some [brief guidance on asset transfer](#), which signposts back to the MyCommunity site.

Wales - [DTA Wales](#) has created an [Assets Portal](#) which is similar to the comprehensive COSS portal in Scotland. Much of the content on the MyCommunity and Locality websites is also relevant to Wales.

Northern Ireland - The policy environment is less supportive in Northern Ireland, but there is an aspiration to increase community asset transfer as a way of supporting sustainable development. Development Trusts NI (DTNI) have produced a useful [infographic “routemap”](#) showing the current process for transfers.

3. Types of agreement

General Outline

If land is not purchased outright (freehold), then the form of tenure (the WSE's legal relationship to the land) that is being considered becomes important. The type of tenure that will be appropriate will vary depending on the needs, business model and legal structure of the organisation.

CLAS have produced this [very helpful flowchart](#) on choosing a woodland land agreement, with links to guidance on all of the different forms of tenure highlighted. The [Land Partnerships Handbook](#) also offers a particularly useful overview of options for sharing land, with an agricultural focus, and including tools like Farm Business Tenancies. Much of the guidance above on asset transfer touches on the different forms of leases and licences available. The [Ethical Property Foundation's Advice Service](#) also has a number of detailed resources, primarily focused on buildings and property, but with relevance to land acquisition as well.

Shared Assets has developed an [infographic online tool](#)¹ to help community groups understand land tenure options and what questions might need to be asked to make an informed choice about which type of tenure is suitable for their project

3.1 Leases

Outline

A lease confers exclusive possession of a piece of land or a building on the recipient of that lease, for a defined period of time - anything from one to over 100 years. A woodland management plan should be separate from the lease. The two main types of lease WSEs are likely to encounter are [standard business leases](#) (governed by the 1954 Landlord and Tenant Act), and, more rarely, [Farm Business Tenancies](#) (governed by the 1995 Agricultural Tenancies Act). [“Meanwhile” leases](#), that are designed to be temporary, have been used by the community food growing sector, for instance to take on a piece of land that is earmarked for development in the future, but are likely to be less appropriate for woodlands given the longer timescales that woodlands operate to. If a temporary use is appropriate, a licence to occupy or a management agreement is likely to be more appropriate (see below).

Guidance available

A very good place to start is CLAS's [Leases Overview](#) section, where there is a downloadable factsheet outlining the basics. The MyCommunity site also has [a brief guide to lease negotiations](#) for asset transfers (but which will have relevance regardless of the original landowner). Given that leases will be tailored to the given context, and getting legal advice is always recommended, there is a limit as to how specific general advice can be.

3.2 Licences to occupy

Outline

The key difference between a lease and a licence is that a licence does not entail exclusive occupation of the land. Licences are simpler documents than leases (they are not governed by particular legislation) and can be useful when access is needed to a site to carry out a particular activity. It's important to note that if the occupier of the land (or building) has

¹ See www.sharedassets.org.uk/tenure-choices

exclusive occupation *in practice*, then regardless of what the agreement is called, it may legally be considered a lease.

Guidance available

Again, CLAS have a [useful overview of this topic](#) which is a good place to start (although they link to documents from the sadly-now-defunct Landshare).

Of particular note in Scotland is the potential for Woodlots - where the [Scottish Woodlot Association](#) lease land from a landowner, agree a management plan, and then create a licence with an individual or family (or WSE?) to manage that land.

3.3 Management agreements and Service Level Agreements

Outline

Many WSEs may not need either a lease or a licence on a particular site, especially if they are looking to provide management services across a number of woodlands. This is where a management or “service level” agreement may be useful - an agreement that sets out what the WSE is planning to do, or the services it is offering to a landowner, probably backed up by a woodland management plan.

Guidance available

CLAS have a [specific guide to woodland and orchard management agreements](#), and a template agreement, which would be a very good place to start. For WSEs in Scotland, Forest Enterprise Scotland have a [guide to the different types of “community agreement”](#) that might be available for accessing their land.

4. Transitions

4.1 Moving from one form of tenure to another

It is of course possible that a WSE may want to move from one form of tenure to another - for instance wanting to move from a management agreement to a more secure lease. This may be because the business needs have changed, or in order to access funding (many funders will want recipients to have a certain security of tenure). WSEs may also find that starting with a licence or a management agreement allows them to build a track record and reputation which may open up the way to more long term lease agreements later on.

There is little specific advice or guidance available for transitioning from one form of tenure to another. It is essentially a whole new project or negotiation, and the guidance above and in the [open spreadsheet](#) should be the place to start.

4.2 Ending and renewing leases

A lease will set out the terms on which it will end, and if there are any opportunities to “break” the lease before its term is up. WSEs with leases that are coming to an end may want to renew or extend them - and should start thinking early about approaching the landowner with a plan or a proposal. Business leases under the 1954 Landlord and Tenant Act automatically give tenants [security of tenure](#) and the right to renew, unless they have been actively “excluded” from the Act (or “contracted out”). Many leases are excluded in this way but it is worth checking.

5. Conclusions

This report and the associated literature review set out to answer the question *“How useful is existing literature and guidance in supporting WSEs to understand the options available for accessing, acquiring and retaining land?”*

The short answer to this question is - “fairly useful”. There is comprehensive guidance that exists on all aspects of the land acquisition process. In Scotland there is more guidance aimed specifically at woodland enterprises, which is a reflection partly of the more powerful legislative framework in place, and partly of the higher profile of community- and social- woodland enterprise.

A key downside of producing guidance is that while the content may remain relevant, websites change quite frequently, so links quickly become broken. Confidence using search engines well may actually be the key to finding the right information for any particular project, rather than expecting a piece of guidance to answer all questions.

Given this, it is maybe more useful for MLWW to consider producing a resource that supports projects to ask the right questions of themselves about land access and acquisition. As many of the quoted pieces of guidance recognise, the key is about being clear about the purpose and intentions of the WSE, as well as the context it is operating within. Supporting WSEs to go through a process to understand and be clear about why they need access to land could make the process of deciding how to access that land much easier. The *how* will also vary considerably depending on the type of land being pursued, the business model of the WSE, and the country within which it operates.

There are two resources that accompany this report that start to address these issues. [This online tool shows](#) an overview of all of the options available alongside the different types of WSE business models. There is an accompanying report that reflects on the existing land access and tenure arrangements that the different WSEs in the MLWW cohort have - and begins to draw some tentative conclusions about what types of arrangements suit different types of business models.

Access to land is a crucial part of woodland social enterprise, but it is only one element. Other core elements are a business plan to support the ongoing operation of the business and

perhaps the raising of finance to purchase the land, a governance structure that is fit for purpose (and maybe meets the criteria of one of the community rights schemes), and an understanding of the market within which the WSE operates or hopes to operate. If WSE is to fulfil its potential as a transformative force within forestry, and to meet policy objectives to bring more woodlands back into management, individual WSEs will need to excel across all of these areas. We hope that this suite of resources for MLWW is helpful both for WSEs and those who support them.

