



The Effectiveness of Rural Housing Burdens

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ACKNOWLEDGEMENTS

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Introduction



Finding effective mechanisms to secure affordable homes and then retain their 'affordability' is a key rural policy challenge. It is an essential component of the Carnegie U.K. Trust's work on Community Land Trusts, and an important element of the Trust's People and Place policy theme.

The Rural Housing Burden (RHB) mechanism introduced in Scotland in 2004 allows a legal obligation to be placed in the Title Deeds of a rural house/house plot which ensures that whenever it is sold, the discount included in the original purchase price (typically derived from a plot acquisition price well below market value) can be retained in perpetuity in all subsequent sales of the property. This legal right applies only to a 'rural housing body', such as a Registered Social Landlord or a community housing or land trust, which has been so designated by the Scottish Government. The aim of the Rural Housing Burden mechanism is to lock in this 'affordability' discount for long-term community benefit and enable the property to meet local needs by remaining in the more affordable part of the rural housing market.

The research brief was to:

- a) examine how effective the RHB mechanism has been at addressing and overcoming affordable land supply and resale issues;

- b) examine the effectiveness of the RHB in providing rural housing policy matters and providers with new but practical ways of increasing the supply of affordable housing in differing rural housing market areas and conditions;
- c) compare the effectiveness of the RHB with other similar mechanisms used in the rest of the U.K. and Ireland; and
- d) make policy and practice recommendations arising from the research findings.

The research methodology comprised:

- a literature review;
- individual, face-to-face or telephone interviews with over 50 people who have first-hand experience and varying perspectives of Rural Housing Burdens, including key personnel from 26 of the 28 still extant rural housing bodies (a mix of local authorities, housing associations and community land or housing trusts), also including experienced solicitors and landowners such as the Forestry Commission who have sold several sites at significantly reduced prices on the basis of rural housing burden guarantees;
- field trips in England and Scotland, particularly to gather Community Land Trust

experience first-hand; and

- a questionnaire survey of 13 rural housing burden purchasers.

How effective, or otherwise, the RHB mechanism has been thus far and how effective it is likely to be in the wake of the recession and the financially pressured years ahead requires consideration of a number of inter-related policy issues. These include:

- how to increase the supply of affordable land for affordable housing;
- how to increase the flexibility of the housing system as a whole (i.e. the mix and interplay of its various markets, needs and tenures) and, in particular, its responsiveness to demand for affordable/low-cost homeownership opportunities;
- how, at the same time, to achieve an equitable balance between the differing interests of: RHB homeowners seeking to maximise their return when they decide to sell up and move on; landowners who have donated a discount on the original land sale price; communities who also wish to see the affordability discount retained to benefit subsequent purchasers of the locally 'affordable' house; and the Scottish Government seeking to achieve ever better value for public investment;

- the extent to which the RHB approach fits with the wider aspirations of those rural communities who seek greater and more direct local control over decisions affecting their economic and social well-being;
- how – in the present recession-affected spending and lending context – national and local government might seek to enhance the practical effectiveness of the RHB or other similarly focused policy mechanisms to improve the delivery of government policy objectives.

1. How did Rural Housing Burdens evolve and what key policy issues did they set out to address?



1.1 How did RHBs evolve and who can use them?

Rural Housing Burdens were created by the Title Conditions (Scotland) Act 2003 as one of a large number of reforms to the feudal system of land tenure that had previously operated in Scotland. The legal requisites of RHBs are summarised in Appendix 1 of this report. In summary these are as follows:

- burdens may only be established on land in 'rural' areas of Scotland, that is, in settlements of 10,000 people or less;
- anyone can seek to create an RHB, but it will only be legally effective when it is in favour of a rural housing body which has expressly consented to such a burden being created;
- a RHB gives the rural housing body a pre-emption right when selling a property – which means it has the right to re-purchase the property whenever it is made available for sale and on the buy-back price terms and other conditions which may also be attached to the burden;
- the terms of the RHB are negotiated with the purchaser and may indicate the price and the terms at which the property can be bought back;
- the rural housing body has 42 days when the property becomes available for sale to

decide whether it wishes to re-purchase the property or not;

- crucially, the rural housing body does not lose its pre-emption right, or any buy-back price conditions attached if it chooses not to exercise them on that occasion. They remain available to be exercised on all future sale occasions although the rural housing body also retains the sole discretion to waive them should it so decide.

Table 1 includes a full list of the 34 'Prescribed Rural Housing Bodies' who have currently received authority from the Scottish Parliament to use RHBs. This table was compiled from the latest information on them provided by the Scottish Government. Only six of these bodies have established RHBs to date – although another three bodies have plans in the pipeline – but between these organisations, 129 RHBs have been put in place.

Any properly constituted body which has an upfront and clearly stated objective to meet affordable housing needs in rural Scotland (defined as settlements with populations of 10,000 or less) may be eligible for designation by the Scottish Government, as a 'Prescribed Rural Housing Body'. In practice, rural housing bodies presently comprise a variety of experienced and more aspirant affordable housing providers/community developers

including two local authorities, ten (still active) housing associations two housing association (HA) subsidiaries, ten community-specific land trusts (or very similar) and two regional Small Community Housing Trusts.

It was the Highlands Small Communities Housing Trust (HSCHT), a charity and partnership vehicle set up in 1998 with the express purpose of 'landbanking' sites for affordable housing, which decided to lobby the Scottish Parliament to retain a modernised version of the feudal pre-emption right and conditions which private landlords had hitherto been able to attach to land sales. HSCHT argued that this method should not be swept away entirely in the planned land reform legislation, but be adapted and retained to help rural housing organisations acquire good sites on terms which would meet affordability, landowner and community needs.

1.2. Affordable land supply and landowner concerns

There is plenty of land in rural Scotland, but only a tiny proportion of it is suitable – that is, appropriately located and economically developable – for affordable housing provision. But merely identifying a good potential site offers no guarantee that the landowner will be either willing to sell it, inclined to sell it to an affordable housing provider, or be prepared

to sell it at significantly below market value to help meet affordable housing needs by thus contributing the discounted sale price to a reduction of the overall housing procurement costs.

Even where suitable land might potentially be made available at a discounted rate, affordable housing providers, such as rural housing associations and HSCHT, would often be asked how they could guarantee that the 'affordable' houses they promised would be provided on the site would not, in reality, end up in the open housing market. The concern expressed is that the generously provided discount will end up in the pocket of the first purchaser and, therefore, no longer be available to provide longer-term community benefit.

Whilst reassurance could confidently be given that any rented housing provided by a Registered Social Landlord would almost certainly (given the Right to Buy exemptions applying to most social housing in rural Scotland) remain available for re-let at affordable housing association rents to successive generations of local people in housing need, no such firm assurances could be given about the likely re-sale implications of any affordable homes for ownership which might be provided on the site.

Landowners required some convincing that they would not face the prospect of being

'ripped off', made to feel and look foolish and quite possibly face a critical reaction from the community. Moreover, the concerns were not confined to private landowners – Scotland's largest landowner, the Forestry Commission in Scotland (FCS) also came to require legal assurances that any houses provided on sites sold under their Affordable Rural Land Scheme, whether for rent or affordable homeownership, must remain in the affordable housing sector for at least 15 years after they had sold the site to the affordable housing provider.

1.3. Affordable homeownership aspirations

Though median house sale prices are much higher in rural Scotland (£200k in 'accessible' rural, £184K in 'remote' rural) compared to the rest of Scotland (£154k) and low pay and below average incomes more common in rural areas, surveys consistently find that the great majority of households in need of affordable housing aspire to own their own homes even though very few could afford to compete in the open housing market.

Closer, income-based assessments in rural communities by bodies such as the Highlands Small Communities Housing Trust (HSCHT), typically show that, on average, around only one household in every three or four of those in need of affordable housing could realistically sustain a mortgage of between £75 and £100K

– sufficient perhaps for a subsidised form of homeownership such as shared equity or shared ownership housing.

Up until 2008, High Street lenders were still willing to offer 90% to 95% mortgages for RHB plot/house and similar mechanism purchases. In addition, a means-tested Scottish Government scheme, called a Rural Home Ownership Grant (RHOG) was also potentially available to help aspiring first-time homeowners build or buy their own homes in rural areas by filling the gap between the Government approved cost of building a modest home and what the household could realistically afford to sustain by way of a mortgage.

It was to this client group that HSCHT directed part of its site acquisition programme (the rest being landbanked for rented housing association provision) in order to provide affordable and serviced house plots for some of the many households who wanted, and could realistically afford, to solve their housing problems via the affordable homeownership as opposed to the rented housing association option.

In the wake of the recession, however, the public funding and the residual affordability context for the aspiring homeowner has been fundamentally altered – on the one hand the Scottish Government has, at least temporarily, withdrawn RHOGs and on the other, HSCHT

report that lenders have reduced the loan-to-value ratio of their mortgages to 75% to 80%, while almost all have shown a pronounced reluctance to lend where there is an RHB restriction in the Title.

1.4. Community sustainability concerns

In the experience of The Highlands Small Communities Housing Trust (HSCHT) and other affordable housing providers, local Community Councils are usually forceful in making the point that their communities require a mix of both affordable rented and affordable homeownership opportunities to meet their local housing needs and, above all, their long-term community development requirements properly.

Rural community interests in this policy area are often focused on the needs of local young people, particularly those starting out family life together, preferring, and looking, to make the community their permanent home. Participants interviewed as part of this research study expressed the view that such newly forming local households are seen as the best guarantee of continuous community vitality and viability, on the grounds that there will continue to be children to keep the village school going, economically and socially active adults to sustain local enterprises and activities and fit residents to provide formal

and informal care support for their older relatives and neighbours.

They argue that, for these newly formed households, sourcing a good, secure home for themselves is typically the key to their committing long-term to living out their lives in the community. Their aspirations, tempered by a keen appreciation of the financial realities, are generally for homeownership and they are likely to see building a house as a much more economically feasible option than trying to compete for those existing properties which may infrequently come onto the local housing market, but which attract outside competition from households with greater purchasing power.

Moreover, the belief was expressed that communities know that new builds of one-off houses are more likely to be contracted out to local builders with much greater economic spin-off being derived by local people as a result.

In addition, there is a commonly-held view that you will be much more reluctant to contemplate moving from your home if you have invested personal wealth in the ownership of it, than if you have only been paying out rent on it. The more widely expressed belief – in smaller and more remote communities especially – is that, if affordable housing opportunities, including those for affordable/low cost homeownership, are not available locally or present little

prospect of becoming available locally within a reasonable timeframe, then the young couples will sooner or later get fed up with, for example, living with parents, or in a caravan, or in not infrequently sub-standard and expensive private lets, and make the decision to move away to the towns and cities where the supply and turnover of better housing opportunities is much greater.

For these social, economic and long-term community sustainability reasons is new and affordable housing provision is seen as a critically important issue by rural communities and supportive housing providers. Both interest groups know, however, that acquiring affordable land is an essential pre-requisite to building affordable houses and both are also aware that without landowner co-operation – on terms which the landowner has to be agreeable to – good and affordable sites will not be made available. Such was the motivation for being able to offer landowners the reassurances which RHBs seek to provide.

TABLE 1 – RURAL HOUSING BURDEN ANALYSIS MATRIX (JULY 2011)

Name and type of Rural Housing Body	Year Registered	Operative Area	No of RHBs issued	Type of RHB issued			
				P-E Only	S-E and DRC	S-E	Future plans
LOCAL AUTHORITIES							
Eilean Siar	2004	Western Isles	0	-	-	-	-
Orkney Islands	2004	Orkneys	0	-	-	-	-
HOUSING ASSOCIATIONS							
(Barra & Vatersay)	2004	Barra etc	0	-	-	-	-
(Berneray)	2004	North Uist etc	0	-	-	-	-
(Muirneag)	2004	Lewis	0	-	-	-	-
(Na Meadhonan)	2004	South Uist etc	0	-	-	-	-
(Na Hearadh)	2004	Harris	0	-	-	-	-
Albyn	2004	Highland	12	-	-	12	-
Argyll Community	2007	Argyll	0	-	-	-	-
Cairn	2004	Scotland	0	-	-	-	-
Dunbritton	2004	Dunbartonshire	0	-	-	-	-
Fyne Homes	2004	Argyll	60	-	-	60	-
Lochaber	2004	Lochaber	0	-	-	-	-
Lochalsh & Skye	2006	L&S	0	-	-	-	-
Pentland	2004	Caithness	0	-	-	-	-
Rural Stirling	2006	Stirlingshire	0	-	-	-	-
West Highland	2006	Argyll	0	-	-	-	-
HA SUBSIDIARIES							
Fyne Initiatives	2006	Argyll	0	-	-	-	-
W.H. Rural Solutions	2007	Argyll	0	-	-	-	-
LA/HA CONSORTIA							
HHA	2008	Highland	0	-	-	-	-

CONTINUED ON NEXT PAGE

Name and type of Rural Housing Body	Year Registered	Operative Area	No of RHBs issued	Type of RHB issued			
				P-E Only	S-E and DRC	S-E	Future plans
TIG	2004	Western Isles	0	-	-	-	-
COMMUNITY OWNED LAND TRUSTS							
Craignish CDC	2008	Craignish	0	-	-	-	2+
(Down to Earth SSHA)	2007	Glenlivet	0	-	-	-	-
Ekopia RE Ltd	2006	Findhorn	0	-	-	-	2+
HIFAR	2007	Arran	0	-	-	-	-
Isle of Eigg HT	2004	Eigg	0	-	-	-	-
Isle of Gigha HT	2004	Gigha	8	8	-	-	-
Isle of Jura DT	2004	Jura	0	-	-	-	-
Colonsay CDC	2007	Colonsay	0	-	-	-	-
North Harris Trust	2004	North Harris	2	2	-	-	2+
NW Mull CWC	2007	NW Mull	0	-	-	-	3+
REGIONAL HOUSING TRUSTS							
HSCHT	2004	Highland	43	1	15	27	10+
DGSCHT	2007	D. & Galloway	4		-	4	5+
(C.S-B.Scotland)	2007	Scotland	-	-	-	-	-
TOTALS			129	11	15	103	24+

2. What forms do RHBs take and how do they work?



2.1. The differing models of the Rural Housing Burden

As Table 1 shows, three main forms of Rural Housing Burden have been developed and used so far - the shared equity (SE) and depreciated replacement cost (DRC) versions which set differing formulae for establishing the discounted buy-back price whenever the house concerned is ever put up for sale. In addition, there is the basic pre-emption only (P-E only) form, in which no such formulae are prescribed and the house may only be re-purchased at full market value. Each of these options is considered in more detail below.

2.1.1. Shared Equity Rural Housing Burdens

The shared equity form of the Rural Housing Burden is the most commonly used, accounting for more than 100 of the 129 RHBs established to date. At its simplest, it ensures that the share of the equity retained by the RHB equates to the level of discount on the market value which the original landowner donated to the purchasing rural housing body.

However, as will be seen in Appendix 2 (HSCHT's November 2010 Information Note on its 'Shared Equity RHB Conditions'), a Rural Housing Body using the shared equity clawback method retains the right to set its equity share at such a level, i.e. at a somewhat lower or higher

Model A: Basic Version Shared Equity RHBs – Illustrative Example

Purchase arrangement	Net value attained by each party	Equity share resulting	Re-sale arrangement	Outcome
Rural housing body buys plot worth £60k for £20k, sells on for £20k and retains £40k stake in property	£40k	25%	Value at point of sale is 25% uplift in market value – rural housing body's share is now worth £50k	Rural housing body can re-purchase the property at £150k and sell on to the next purchaser at this affordable level
Plot purchaser buys plot for house at £20k then builds house at the approved build price of £100k	£120k	75%	Plot purchaser's 75% share is now worth £150k	Original purchaser has made £30k profit on original investment
Total Value	£160k	100%	£200k	Profits shared 75:25

percentage, as it believes this takes fair and proper account of all the cost factors applying to the transaction.

For example, HSCHT takes the view that 'typical' build costs should be used to value the plot purchaser's costs of building their house, rather than the actual, receipted costs. On the one hand, this is because the purchaser might choose a more expensive builder and/or building materials than necessary to procure a perfectly

good equivalent house. On the other, it gives the plot purchaser an opportunity to make some savings on the transaction if they can procure their house for somewhat less than the 'typical' benchmark figure which has been laid down.

The purpose here is to try to ensure that as much as possible of the future affordability of the property is retained to help it remain affordable to subsequent purchasers, but without being unreasonable to the selling owner.

It should also be noted that the degree of future affordability of the property at the point of subsequent sale cannot be governed with certainty by the basic shared equity buy-back formula, as illustrated above. For example, if the house were to appreciate in market value by 5% more than annual inflation for a period of 20 years, it would end up twice as expensive (or half as affordable) in real money terms for the next purchaser to buy the house at that point in time. Even with such equity sharing, it can be seen that the smaller the equity share retained by the rural housing body, the less the leverage it can bring to bear on future affordability. Conversely, the higher the equity share that can reasonably be justified by the rural housing body, the greater its ability to lock in a meaningful affordability discount for subsequent purchasers.

2.1.2. Depreciated replacement cost (DRC) Rural Housing Burdens

The ‘depreciated replacement cost’ (DRC) form of the Rural Housing Burden was the first version applied by HSCHT before it decided to substitute the shared equity form, on the grounds that it was much easier for all interested parties to understand and relate to. Fifteen RHBs were established using the DRC approach.

Though complex, the DRC form came about because HSCHT was trying to resolve the issue

of whether it should, in fairness to the purchaser who actually built a house on the plot, treat the value of the building(s) erected on the plot differently from the value of the bareland plot itself – and from which the discount retained by the RHB had been derived.

As a result, a not widely known, but nevertheless tried and tested valuation method, commonly used by the District Valuer (D.V.) to assess the value of ‘improvements’ carried out by a crofter on his bareland croft (e.g. any buildings erected) was broadly replicated.

In this model, the values of the plot and the house (and any other permanent buildings such as garages etc) built on it are assessed separately at the point that the property comes up for sale:

- The buy-back price of the plot is only increased by the annual level of inflation
- The buy-back price of the house is assessed by the district valuer at the point of sale, not on its open market value but in the district valuer’s opinion of the actual cost of getting local contractors to build a ‘like for like’ property (on the notional bareland plot).

From this figure is subtracted a total assessed for the material depreciation of the house over the intervening period (i.e. for ‘wear and

tear’ in the District Valuer’s view). To this figure may be added the assessed cost, plus an annual inflation indexed uplift from the point when it was built, of any permanent outbuildings, such as a garage.

The DRC method’s main appeal was that it seemed to ensure that no purchaser with or without the house built on it – could profit from any uplift in the plot’s market value beyond annual inflationary increases as defined by the Retail Price Index or similar Government measure. It also used updated but still ‘like for like’ equivalent build costs less any depreciation costs resulting from ‘wear and tear’ on the fabric of the building – as opposed to using housing market value increases – as a way of mitigating their impact on its later affordability to subsequent purchasers. It was not clear, however, how well the DRC would work in practice and it relies on the professional judgement of the District Valuer at the point in time at which the value is required. It was difficult, therefore, to quantify and therefore explain to potential purchasers and their financial and legal advisers, so HSCHT replaced it in 2007 with its more straightforward, shared equity version of the RHB.

2.1.3. Pre-emption only Rural Housing Burdens

The basis of a Rural Housing Burden is its pre-emption right, reinforced by its capacity to

Model B: Depreciated Replacement Cost RHBs – Illustrative Example

Purchase arrangement	Net value attained by each party	Increased values after 20 years	Re-sale arrangement	Outcome
Plot bought by rural housing body for £20k is sold on for £20k, but purchaser cannot profit on re-sale on this part of the transaction (except for annual inflation increases)	£20k	£30k (£20k plus annual inflation uplift of 2.5%)	Plot valued by District Valuer at point of sale at £30k	Rural housing body can now re-purchase at £170k and sell on to the next purchaser at this affordable level
Plot purchaser buys plot at £20k and builds house for the agreed build price of £100k – upon which they can make a profit on re-sale (although only to the extent of a like-for-like rebuild as determined by the District Valuer)	£100k	£170k (based on 3.5% increase every year for 20 years in like-for-like average build costs)	Like-for-like rebuild costs assessed by District Valuer at £170k	Original purchaser has made £50k profit on original investment
Total Value	£120k	£200k	£200k	Profits shared 85:15

remain active in the Title in perpetuity and be exercised when the opportunity arises. Though it lies dormant between times, the RHB is automatically re-awoken whenever the property

comes up for sale and the Title to it must, as a matter of inevitable course, be inspected by both the seller's and the prospective purchaser's solicitors for any Title restrictions which may pertain.

Even without any additional buy-back conditions attached to the RHB (e.g. to pass on any discount on the plot price), the pre-emption right above gives the Rural Housing Body the ability to influence or control who the house is sold to. If the rural housing body concerned does not wish, or does not have the necessary finance readily available, to buy back the property within 42 days, it is at least notified early enough to be able to influence who the seller might wish to consider as a purchaser, albeit that the degree above or below the market price which the seller would choose or be able to sell at is open to question. If, on the other hand, the rural housing body can raise the purchase price quickly enough then it not only has direct control over who it may choose to sell the house to once it has re-purchased it, but also the price at which it is prepared to sell it (see Section 3.2.2 on Dumfries and Galloway Small Communities Housing Trust dedicated 'buy-back fund').

Although the great majority of the RHBs deployed so far in Scotland have additional conditions attached to restrict the buy-back price, a small number – 11 to date – RHBs have not had any extra conditions attached and, in each of these cases, there are valid reasons why the rural housing body in question has simply kept to the basic pre-emption right only version.

In one instance, for example, a household with a severely disabled occupant was given

planning consent for a site – which in most other circumstances would have been refused – on condition that an RHB was included in the Title. This means that, whenever the specially adapted and purpose-built house comes onto the market, the rural housing body concerned is both bound to be notified and have the opportunity to buy it back, albeit at the market rate, in order to help enable a similar household to take advantage of such a specifically designed property.

In other instances, the rural housing bodies concerned have taken the view that given the relatively remote and restricted nature of the local housing markets concerned – where market values can be less than the building costs and buyers can be hard to find – they should not impose any additionally restrictive, buy-back conditions. They believe the pre-emption right alone will give them sufficient influence in making sure that the property is subsequently occupied to the benefit of the community and will not put off potentially willing buyers in the way that additional equity retention conditions might.

2.2 Variations on Rural Housing Burdens

In addition to the three key Rural Housing Burden models outlined in section 2.1, this section describes a number of variations that rural housing bodies have so far implemented. These are the combination of ‘Golden Share’ LIFTs with Rural

Housing Burdens, the use of proxy rural housing bodies and the use of Section 75 Agreements with Rural Housing Burdens. Section 2.3 goes on to consider further potential variations which have not yet been put into practice.

2.2.1 ‘Golden share’ LIFT combined with Rural Housing Burdens

The Scottish Government’s Low-Cost Initiative for First Time Buyer (LIFT) Scheme, introduced in 2007, allows Scottish Ministers to retain a 10% or 20% equity stake in properties purchased through these schemes as a ‘golden share’. The ‘golden share’ is a pre-emption right built into the Minute of Agreement that is entered into between a LIFT shared equity owner and Scottish Ministers.

Ministers have the right, therefore, to buy the property back when the owner wishes to put it up for sale and to do so at a discounted price i.e. market value less the 10% or 20% ‘golden share’ discount. Provided the ‘golden share’ pre-emption right is exercised, Scottish Ministers also have the option of including ‘golden share’ provisions in the next Minute of Agreement with the new purchaser. If they do not exercise their pre-emption right, however, it is extinguished on sale and the property concerned will thereafter be bought and sold at full market price.

‘Golden share’ LIFT is deployed in areas where there is a constrained supply of affordable housing and limited scope for this supply to be increased and, as such, it has frequently been used in LIFT transactions in rural areas (predominantly in rural towns) including the Highlands and Argyll and Bute. In these two local authority areas, the pro-forma legal documentation used for LIFT was amended by the Housing Associations (Albyn Housing Society and Fyne Homes H.A., respectively, which act as LIFT agents for the Scottish Government) to also include a rural housing burden. The thinking behind this ‘belt and braces’ approach appears to have been that whereas the inclusion of the RHB in the Title Deeds ensures that it will apply to all future sales, the golden share provision alone does not – because if the golden share pre-emption right is not exercised by Scottish Ministers at the point of sale, it falls from the Title and cannot be exercised again on that property.

Scottish Government has since made clear to both Fyne Homes HA and Albyn HS that LIFT Golden Share transactions should not include the additional provision of the RHB and that LIFT agents should instead refer the decision to Scottish Government officials as to whether the house should be bought back or not, having consulted first with the relevant housing association agent and local authority. Where it can be demonstrated that there is demand from buyers in the area and support

from the HA agent and the local authority, the Scottish Government have indicated that it is likely that they will approve the buy-back and re-sale. However, the Scottish Government has also made clear that they reserve the right not to exercise the right of pre-emption where, for example, there is no expressed demand from 'affordable-only' applicants. This also applies where the buy-back valuation has meantime risen so far beyond the original purchase price that it has effectively taken the property out of the 'affordable' housing market. Although it is clear that RHB-reinforced golden share LIFT transactions are no longer supported by the Scottish Government – who have also expressed reservations about High Street lenders' potential objections to having two pre-emption rights within the Title Deeds – some relevant policy issues arising from this approach have been highlighted in the *'Evaluation of Low Cost Initiative for First Time Buyers (LIFT)'*, which the Scottish Government commissioned of ODS consultants and published in January, 2011. Amongst other things, ODS recommend that the *'Scottish Government re-examines the golden share model to identify whether there would be value in replacing it with a right of pre-emption that does not restrict the amount of equity a purchaser can acquire'*.

The thinking behind this recommendation is that customer feedback suggests that the golden share may be acting as a disincentive

to purchasers acquiring additional equity. Any such re-examination of the LIFT golden share mechanism might also wish to consider whether there might be some merit in using RHBs as the single means of applying the pre-emption right in rural areas since it offers longer-term strategic control over local housing markets. Since the RHB is guaranteed to stay in the Title in perpetuity, it remains available, therefore, to be acted upon if affordable local housing market pressures should change in the future from unpressured to pressured and/or changed circumstances justify a strategic buy-back, even at full market value.

2.2.2. Proxy RHBs

Appendix 1 describes how RHBs can be used by proxy: 'A Rural Housing Burden may be created by anyone, i.e. persons or organisation which are not Scottish Government-approved rural housing bodies, but may only be in favour of a rural housing body, and the consent of that rural housing body is required.' To date, there is one example of this RHB option being used in practice: HSCHT acting as the proxy RHB vehicle for the Knoydart Foundation.

There were two main reasons why the Knoydart Foundation chose the 'proxy RHB' route and asked HSCHT to act for them. Firstly, their application to Scottish Government to become a Rural Housing Body in their own right was

referred back to them because, it appears, the Foundation's stated objectives and functions did not give sufficiently clear priority to 'the provision of housing on rural land, or the provision of rural land for housing' (see Appendix 1 – 'Rural Housing Burdens'). However, it is clear that several other similar community land trusts with very similar community-controlled, community development objectives, such as the Isle of Eigg Heritage Trust and the Isle of Gigha Heritage Trust which also came into being as a result of community-led buyouts from previous Estate owners, were assessed as having clearly stated enough affordable housing objectives.

Secondly, however, and probably more tellingly, the Knoydart Foundation management made the not inconsiderable effort to examine the pros and cons of RHBs in detail and concluded, as a result, that not only would HSCHT, which had particular expertise in the subject matter, be happy to consent to become the Foundation's designated rural housing body, but that HSCHT's involvement would probably help give the community greater confidence that the issues arising would be dealt with both independently and professionally.

In the words of one Foundation member interviewed: 'From my point of view, the main reason was to have an outside body to make sure we were on the right track, to give us a bit of distance from the process and give the whole

thing enough legitimacy from the point of view of the community and others. We might have started to know what we were talking about at the end of the day, but it's sometimes hard to convince folk.'

Transferring the responsibility for the RHB-triggered process of possible buy-back – and/or re-allocation of the house bought back under the process – would relieve the Foundation staff of some of the local pressures involved in making, and being seen by their local community to make, properly informed and well-balanced decisions. However, the understanding reached with HSCHT includes provision for the RHB to be returned to the direct control of the Knoydart Foundation should they ever choose to apply, successfully, to Scottish Government for prescription as an officially approved rural housing body in their own name.

The perceived advantages of entering into a proxy RHB relationship are clearly dependant on the level of understanding and confidence that the two parties have in each other, as well as the existence of a locally operating rural housing body that is able and willing to provide this proxy RHB service. In the case of the Knoydart Foundation and HSCHT, who already knew each other well, this understanding is backed up by an exchange of letters on the matter.

2.2.3. Section 75 Agreements combined with Rural Housing Burdens

Like Section 120 Agreements used in England and Wales, Section 75 Agreements are commonly used in Scotland by Local Authorities to support and enforce their affordable housing policies, for example by requiring a developer to provide a pre-defined quota (normally 25%) of affordable houses on a given site as a Planning Permission requirement. Section 75 Agreements may also specify the tenure of affordable housing that the developer must promise to deliver on the specific site, as well as a named and approved provider.

Dumfries and Galloway Council has issued tri-partite Section 75 Agreements binding the Council, the Dumfries and Galloway Small Communities Housing Trust (DGSCHT) and the private developer to ensuring that a proportion of the local number of houses which the developer undertakes to build on the site must be offered for sale to a DGSCHT nominee 'under burden of a Rural Housing Burden' at an agreed shared equity percentage (typically 80%) of the independently assessed market value. All three parties sign up to a Minute of Agreement to make it binding.

The pros and cons of the RHB mechanism and the Section 75 mechanism, when used independently of each other, are compared

and contrasted in Chapter 4 of this report. However, it seems clear that this RHB/Section 75 combined approach brings distinct benefits to all the parties involved. It gives them clarity and certainty on the specifics of the type of affordable housing that will be provided on the site. The RHB gives the Council the assurances that the use of Section 75 Agreements alone seem unlikely to be able to guarantee. It also gives the rural housing body another means of procuring and delivering some affordable housing without incurring any site developments costs.

2.3. Other potential models and uses of RHBs

Various other models, or refinements of existing options, are potentially available to define the terms and price at which an RHB property can be bought back. Key factors likely to influence any such conditions to be attached include:

- how clear and easy the conditions are for everyone involved (e.g. plot/house purchasers, solicitors, lenders) to understand;
- how equitable they seem to be to the interests of all the main parties to it;
- how likely they are to have the proposed effect as and when they may be required to be activated at some future point(s) in time.

So, for example, HSCHT considered various other possible permutations before electing to introduce the DRC form and then to replace it with the Shared Equity model.

In deciding how to try to ‘square the circle’ of the competing interests – between retaining the affordability dividend delivered by the discount on the plot price (for the benefit of subsequent purchasers) and allowing them to make sufficient profit on the sale of their property to be able to move on to another house – HSCHT considered the following options in what might be described as the ‘hard to soft’ spectrum of actual (as described in section 2.1) and potential models (described below):

- An ‘inflation only’ model i.e. restricting the profit that could be made on the sale of an RHB property to its actual development costs (plot purchase price + receipted build costs + fees) plus an increment equal to no more than an index-linked annual inflationary increase on that original figure at the point of subsequent sale
- The Depreciated Replacement Cost (DRC) model (See section 2.1.2)
- The Shared Equity model (See section 2.1.1)
- A ‘re-purchasable’ equity loan model, whereby the equity share retained by the rural housing

Model C: ‘Forgivable’ Shared Equity RHBs – Illustrative Example

Purchase arrangement	‘Forgivable’ equity share resulting	Equity share resulting	Re-sale arrangement	Outcome
Rural housing body buys plot worth £60k for £20k, sells on for £20k and retains £40k stake in property	£40k at outset but reducing by 5% a year over 20 years	25% at outset, reducing by 1.25% per annum	If sold, for example, after 15 years then equity share has been reduced to 6.25%	Rural housing body still has right to re-purchase, but affordability to next purchaser is now very limited
Plot purchaser buys plot for house for the approved build price of £100k	£120k at outset but increasing by 5% a year over 20 years	75% increasing by 1.25% per annum	If sold, for example, after 15 years then equity share has increased to 93.75%	Original purchaser has now accrued nearly all the equity in the value of the property
Total Value	£160k	100%	£200k	Unrestricted ownership rights and profits accrue entirely to the plot purchaser after 20 years

body may, after an agreed period, be bought by the purchaser of the plot provided s/he has then gone on to build and live permanently in the house for that agreed period

- A ‘fully forgivable’ equity loan model (see Model C below) whereby the equity share retained by the rural housing body may, after an agreed period, be fully “forgiven and forgotten” provided the plot purchaser has gone on to build and live permanently in the house for that agreed period

Getting the balance right between the interests and intentions of all key players requires a clear view to be taken by the rural housing body about their relative priorities. The interests to be balanced include those of a) the original landowner whose good will has provided the affordability discount, b) the community (and others, including government) who may also wish to see the affordability discount retained long-term to enable its benefits to be passed on to subsequent purchasers, c) the High Street lender whose mortgage and consequent loan security requirements underpin the whole deal and d) last, but not least, the individual plot/house purchaser who – were it not for the difficulty in otherwise finding and affording a house plot to build a home on – will generally want to have unencumbered title to, and make as much profit from, the sale of the house as is feasible in order to make it as easy for them to move on and buy another property with as little impediment as possible.

The case for enhancing the size of the equity share held by a rural housing body by the addition of a government grant has been advanced by The Highlands Small Communities Housing Trust (see section 3.2.1) which has the widest experience to date of using RHBs to facilitate the purchase and re-sale of both affordable house plots and

Model D: Grant-Enhanced Equity Share RHBs – Illustrative Example

Purchase arrangement	Net value attained by each party	Equity share resulting	Re-sale arrangement	Outcome
Rural housing body buys plot worth £60k for £20k, sells on for £20k, retains £40k stake in property as a result – but also retains an additional £20k stake, which is the value of a government grant given to the purchaser	£60k	37.5%	Value at point of sale is 25% uplift in market value – rural housing body’s share is now worth £75k	Rural housing body retains greater share of equity, making property more affordable – and retains and recycles the government grant
Plot purchaser buys plot for house at £20k, provided by government grant, then builds house at the approved* build price of £100k	£100k	62.5%	Plot purchaser’s 75% share is now worth £125k	Government grant has helped first-time purchaser to reduce their outlay and mortgage though they make less profit on re-sale
Total Value	£160k	100%	£200k	Profits shared 62:37

houses. Their rationale is that the input of a top-up grant would not just increase the size and proportion of the overall discount and therefore bring the plot/house purchase price within the affordability range of a greater number of aspiring local households. HSCHT

also believe that locking in this enhanced level of discount will not only secure a greater degree of affordability for subsequent purchasers of the property but would also, therefore, secure much better long-term value for public money for the grant given.

3. The Experience of and Reactions to RHBs so far



3.1. The usage and spread of RHBs to date

Table 1 in Chapter 1 provides details of the 34 organisations which are currently designated by the Scottish Government as prescribed rural housing bodies able to use Rural Housing Burdens, as well as the extent to which these bodies have used RHBs thus far.

It should be noted, however, that although 34 bodies have been prescribed as rural housing bodies since 2004, the number of bodies now actually able to use RHBs is only 27 – as five ‘satellite’ housing associations in the Western Isles have been subsumed into a new stock transfer body; one organisation (Community Self-Build Scotland) has been wound up; and one small local housing action group in Moray has elected to change their legal structure to become a Community Interest Company and decided to forego their rural housing body status in the process.

The first key point to note in analysing the spread and use of RHBs to date is that it can be seen that most of the rural housing bodies were prescribed by the Scottish Government in 2004, the year in which the new legislation providing for them came into force. Since then, there has been a continuing tail-off in the numbers of organisations seeking and achieving prescribed rural housing body status, with no new rural housing bodies being created since

2008. It has been difficult to secure evidence from the Scottish Government as to the number of organisations that have applied to become prescribed rural housing bodies but have been rejected or referred back to them for further detail/explanation. However, it is understood from interviews carried out for this project that at least four are known to have had this experience, three of which have decided not to continue with the process and with just one, it is understood, awaiting formal approval.

Secondly, the breakdown of the types of organisations that have been successful in their applications shows that although most have come from well-established rural and island housing associations and/or their subsidiaries and development consortia, a significant proportion (around a third) have come from more recently created Community Land Trusts – mostly small and often remote communities which have managed, or expect, to acquire ownership and control of local estates or other significant local landholdings. In a similar category could be included the two regionally operative Housing Trusts, HSCHT and DGSCHT, covering the Highlands Council and Dumfries and Galloway Council areas respectively, which effectively deploy Rural Housing Burdens on behalf of those many remote communities in their operational areas which do not yet own land.

Thirdly, the table shows that the great majority (28 out of 34) of the rural housing bodies

prescribed to date are located in the Highlands and Islands of Scotland and that only four of the 129 RHBs that are known to have been issued to date apply to properties in any other areas of rural Scotland (all four are in Dumfries and Galloway).

Fourthly, it can be seen that though local authorities are clearly eligible for prescribed rural housing body status only two, Comhairle nan Eilean Siar and Orkney Islands Council, have so far applied to do so.

Finally, though the figures show that most (72 out of 129) of the RHBs issued to date were deployed by two housing associations (Albyn in the Highlands and Fyne Homes in Argyll) Section 2.2.1 of this report makes clear that, following Scottish Government’s advice, they will no longer be doing so because they are deemed to be superfluous to the requirements of the ‘golden share’ mechanisms to which they were attached.

So, the remaining 57 Rural Housing Burdens may be viewed as the most functional ones which have been implemented to date. Of these, the Highlands Small Communities Housing Trust (HSCHT) is the most extensive (43) and longest running user. Moreover, only three other organisations, apart from the two housing associations referred to above, have used RHBs to date, although a further three are known to be actively considering their deployment.

This raises various policy questions:

- If, despite their limited usage to date, RHBs are considered to be a useful and effective policy mechanism, how could they be better promoted and supported?
- What could Scottish Government do to ensure that the geographical outreach and potential usage of RHBs is extended to all parts of rural Scotland? For example, more active policy encouragement to community landowning groups to consider applying for ‘rural housing body’ status; issuing new advice notes to rural local authorities and RSLs etc?
- What could other organisations (e.g. the Carnegie UK Trust, Rural Housing Service etc) do? Is there merit in a seminar focused on RHBs in particular, or in the wider policy context of a closer look at comparable routes into the affordable home ownership and the mechanisms required to support key policy objectives such as affordability via equity retention?

3.2. Rural Housing Bodies

3.2.1. The Highlands Small Communities Housing Trust (HSCHT)

A key question as to how well RHBs work in practice is what happens when an RHB-

restricted property comes up for sale? How well do the buy-back terms and conditions set out in the RHB function, whether or not the rural housing body chooses to exercise its pre-emption right and buy the property back?

Only two RHB-restricted properties are known to have come up for sale so far and both of these were originally sold to their purchasers by the Highland Small Communities Housing Trust (HSCHT).

The first of these was a plot which HSCHT re-purchased at the original sale price because the purchaser was unable to develop the plot and asked HSCHT to take it back which, to be helpful, they did.

The second transaction, however, raises important issues which have caused HSCHT to revise their ‘Shared Equity Rural Housing Burden Conditions’ (see Appendix 2) about how properties should be valued. In essence, the property constructed on the plot sold to the original purchaser was built to a significantly higher specification than originally envisaged and its market value was enhanced accordingly. In addition, the well above annual inflation increases in house values that took place in the final years preceding the ‘credit crunch’ of 2008 had further raised the value of the property in real money terms and effectively took it out of the locally affordable housing market, notwithstanding the equity share retained by HSCHT.

The cause of such a rapid and unanticipated leakage in its subsequent affordability was twofold. First, it allowed the original plot purchaser to build a more expensive or valuable house than the guideline given as the Scottish Government’s affordable benchmark costs for a more modest house designed to meet the same household needs. Second, there was a lack of reference in HSCHT’s shared equity, buy-back guidelines to the actual build costs of the house as well as its open market valuation, both of which should be taken into account when determining the buy-back price.

As a result, HSCHT’s amended guidelines (see Appendix 2) now make it clear that ‘typical build costs will be based on the average (as determined by HSCHT) for that particular community, but will also take account of fees, site servicing costs and eligible floor space’. In other words, if the plot purchaser chooses to build a bigger and higher-spec house than the average affordable norm for their household size, they do so at their own cost and financial risk because the additional costs incurred will not be considered by HSCHT in their buy-back calculation, as illustrated by the example in Model A.

The effect of HSCHT’s revised calculation method is to increase the rural housing body’s share of the equity because if actual, but higher than the norm, build costs of, say, £125k were

permitted, the total cost to the purchaser would be £155k leaving a difference between the Open Market Value and the build costs of only £30k. This would equate to 30/185ths or 16%.

Though the buy-back calculation has been tightened, the affordability of any RHB-restricted property at its point of sale is still vulnerable to the external influence of the market. If housing market increases keep broadly in line with annual inflationary increases, as they did for many years before the last housing boom started in the 1990s, then a roughly equivalent (in real terms) affordability discount can be passed onto the next purchaser by means of a shared equity RHB. If, though, the market moves or races ahead of inflation – as it did for much of the last decade – then the house will become increasingly less affordable in real terms (i.e. more expensive) to the next purchaser, notwithstanding the equity share reduction imposed by the RHB.

HSCHT point out that unless some other more restrictive form of RHB is used (see Section 2.3 of this report) then the only way of mitigating the affordability-leakage problems created by excessive market forces is to increase the retained equity share e.g. a 40% returned share will, logically, make the property more affordable to the next purchaser than a 30% or 25% share because that much less of the market uplift on the overall selling price will go to the seller.

However, HSCHT also point out that though property prices are now stable or even decreasing slightly, the affordability problems for potential RHB plot purchasers have been greatly exacerbated by two recession-induced policy changes – to mortgage lending policy and Scottish Government grant assistance (RHOG) policy.

HSCHT have found that, not only have High Street lenders increased their loan to value ratios so that they now typically require deposits of 20% to 25% of the self-build mortgage sought compared to 5% to 10% pre-recession, a £100k mortgage requires a £20k or £25k deposit, therefore, compared to a £5k to £10k one. Associated on-costs have also been greatly increased. Moreover, to make the project financing requirements even more onerous for the purchaser, HSCHT report that lenders will only make the mortgage available for such self-build projects when the building has been certified as having reached the ‘wind and watertight’ stage – which, even, with a deferral of payment on the plot purchase, means that a typical self-builder will have to find around £50k from their own resources before the mortgage becomes available to take the strain.

In addition, Scottish Government have said that they are presently unable to provide RHOG (Rural Home Ownership Grant) support to any aspiring, self-builder, including the client group

of rural households on moderate incomes at whom HSCHT and other rural housing bodies are most wanting to target RHB-restricted plot sales.

HSCHT are doing their best to help fill the resulting affordability gap created by the increased mortgage costs and difficulties and the cessation of RHOG support, by offering potential purchasers deferred payments on the plot price and they are also hoping to create, with Scottish Government funding support, a recyclable loan fund of their own to which potential plot purchasers and home builders could apply for bridging loan finance.

Despite all the added difficulties, HSCHT are still able to sell some plots, with shared equity RHBs incorporated in their Titles, to a more restricted client group – on higher annual incomes (e.g. £35k to £40k) who are, notwithstanding their much higher than average rural incomes, still quite unable to compete in their local housing markets without such assistance as HSCHT is able to offer. To help the households on incomes of £25k to £35k or less, HSCHT argue that some additional subsidy is required, but that the use of the RHB would allow any subsidy provided to be protected and, effectively, recycled for use by subsequent purchasers. Furthermore, it would allow the rural housing body to retain an even bigger share of the equity and thus improve the long-term affordability characteristics of the property concerned. Taking the previous

example, this improvement is illustrated in Model D, in the previous chapter.

HSCHT Chief Executive, Ronnie MacRae, says:

'RHBs are now more necessary and applicable than ever – and not just because landowners need the RHB assurances before they will make the right sites available at the right price. With less public funding available, the future of affordable housing provision has never needed the subsidy which landowners are able to provide more.'

'But RHBs enable rural housing bodies like us to lock in and pass on any subsidies which Government or anyone else is able to contribute to help bring down the overall costs to the purchaser and actually deliver the affordable/LCHO opportunities which ordinary rural people and their communities are looking for.'

'RHBs are a mechanism, therefore, for ensuring such subsidies are retained and recycled to the long-term benefit of rural communities. The key is the size of the equity share. The more we can retain – 40% would be a good target – the more effective the RHB becomes and the better able we are to lock in the value for money of the affordability discounts or other subsidies provided.'

The key policy questions arising from these experiences include:

- Whether and how to stop or restrict affordability 'leakage': should the relevant equity share be retained and recycled or gradually 'forgiven' and forgotten after the recipient has lived in the affordable house for a certain number of years?
- Whether the Scottish Government and/or local authorities are able to make grant (e.g. RHOG) or loan (e.g. 'golden share') funding available to rural housing bodies to help them increase the equity share – and, therefore, the affordability discount – they are able to offer to prospective purchasers of affordable home ownership houses?
- What size of equity share, given the tightening of the mortgage market and the additional pressure from falling disposable incomes, is now needed to help enough prospective purchasers have a realistic chance of being able to afford access to low cost home ownership options? Is 10% or 20% too little? Is 40% too much?
- What more can be done with regards to mortgage requirements to get the affordable/low cost home ownership part of the housing system moving again and thus help all its other parts (social rented, market rented and open market) function better as well? Can the new stumbling block of the much increased level of initial mortgage

deposit required be eased cost-effectively by monetary intervention e.g. for example by state-backed mortgage deposit guarantee schemes?

3.2.2. Dumfries and Galloway Small Communities Housing Trust (DGSCHT)

The more recently established Dumfries and Galloway Small Communities Housing Trust has developed its own innovative approach to delivering affordable homeownership opportunities in the south west of Scotland – an approach which features two main differences: firstly, getting private developers to take the financial consequences of buying sites and building shared equity RHB houses on them and, secondly, having access to a £250k dedicated buy-back fund for RHB houses which may be offered for sale.

The Planning Department of the Local Authority, Dumfries and Galloway Council, use DGSCHT as their preferred vehicle for ensuring that private developers deliver affordable housing quotas (normally 20% to 25%) on sites which have been granted Planning Permission on that basis. A Section 75 Agreement is accordingly signed up to by the three parties – the developer, DGSCHT and the Council – which results in the developer building his affordable quota at the same time as the open market houses. The affordable houses must also be built to the same standard as the rest and as a wholly integrated part of the overall development.

But the Council's commitment to the RHB-secured approach goes a significant stage further: they have earmarked a £250k reserve fund which DGSCHT can borrow from to buy back an RHB house, as and when it comes up for sale, because they recognise that the most sure and certain method of being able to guarantee that the affordable housing on the site continues to be targeted at the client group for which it is intended is to give the rural housing body, DGSCHT, the financial back-up it may need to exercise its pre-emption right within the statutory 42-day period.

However, whilst DGSCHT emphasise the strategic importance of the availability of the buy-back fund, their approach to an impending sale would always begin with attempts to facilitate and broker an onward sale to an appropriate purchaser and, thereby, avoid the additional legal costs and work involved in having to buy back and then sell on the property concerned.

Jamie Dent, DGSCHT's, Lead Officer is enthusiastic about the effectiveness of the approach they have developed and the crucial role that the local authority is playing in its successful implementation. He believes it is a model which could work well elsewhere, although he recognises that it is very dependent on private developers' views on which communities and what scale of development they believe would justify

the commercial risk they would be taking. The smaller the community and scale of development, the less likely a developer is to be prepared to take the financial risk, but, he believes, it will continue to deliver affordable home ownership as part of larger-scale developments in larger villages and rural towns.

Like HSCHT, Jamie Dent, believes that, 'RHBs are a very effective mechanism', but that their potential effectiveness is presently unduly constrained by the much tighter restrictions on mortgage lending that have come into play since the recession. He also believes that the level of equity retained by the rural housing body needs to be significantly higher than the 20% to 25% if DGSCHT are to be in a position to maintain the continuing affordability of RHB houses when they come up for sale.

'I would like to see Government getting right behind Rural Housing Burdens which have proved to be an effective policy instrument. They could do two really helpful things: make it clear to lenders that Government fully supports shared equity RHBs and that they see them as an adjunct to the Government's mainstream schemes for LIFT Shared Equity (see Section 2.2.1. of this report); and they could also use rural housing bodies and RHBs to secure the public subsidy – whether "Golden Share", RHOG or whatever grant version. This would help secure better long term value for the public money

invested and it would increase the overall equity share retained. We need all the help we can get to make rural homes affordable and to keep them affordable.'

The policy questions arising from these experiences include:

- Do all rural housing bodies need access to a revolving buy-back fund, one which is big enough to support at least one buy-back at any one time? If so, how might such a fund be financed in these times of tight public finances?
- Does the local authority/rural housing body approach to Section 75 Agreements to secure affordable home ownership (as exemplified by Dumfries & Galloway Council and DGSCHT) offer a policy model for other rural areas?

3.2.3. Community Land Trusts (CLTs)

Of the ten community-owned land trusts that have become prescribed rural housing bodies so far, two (The Isle of Gigha Housing Trust (eight RHBs) and the North Harris Trust (two RHBs)) have used Rural Housing Burdens, one is actively planning to use them (North West Mull Community Company) and most of the remainder have actively considered their potential use.

In addition, a further two community-owned land trusts, who have not become rural housing bodies, the Knoydart Foundation and the West Harris Trust have committed to using them – the Knoydart Foundation use HSCHT as their RHB provider (see Section 2.2.2 of this report ‘proxy providers’) and the West Harris Trust currently have an application to become a rural housing body awaiting formal approval by Scottish Government.

The ten RHBs applied to date by the two CLTs, are pre-emption only RHBs on the grounds that although as community landowners they wish to retain long-term community control over all land and buildings in their community, they do not necessarily see any added benefits in imposing further buy-back price restrictions.

The attitude to such further restrictions varies from CLT to CLT, however, and whilst some see that some potential purchasers might be put off by restricting outright ownership ambitions when their overriding objective is the regeneration of small and de-populated communities all see the potential problem that could arise – of local perception if not actual adverse effect – if the houses built on ‘community’ land became holiday houses which brought much more economic benefit to their owners than the communities. The issue of retaining some equity value is always a live one with CLTs, and most appear to be actively considering the shared equity RHB

method of tackling it – although it is also clear that gaining a confident understanding of the pros and cons of precisely what kind of buy-back conditions should be attached to the pre-emption right is more challenging than understanding the effect and purpose of the pre-emption right alone.

The main policy question arising here is:

- If RHBs (and their equivalent Re-sale Price Covenants in England and Wales) are the best available policy mechanisms for giving communities themselves direct power to help tackle their affordable-land-for-affordable-housing problems, what is the best way of giving CLTs and other such bodies the knowledge and confidence to use them to best local effect?

3.2.4. Housing Associations (HAs) and Local Authorities (LAs)

As noted in Section 2.2.1 of this report on ‘Golden Share’ LIFT RHBs, only two housing associations – Fyne Homes Housing Association and Albyn Housing Society – have used RHBs and, though they have done so over 70 times between them, they seem very unlikely to do so again in this connection unless Scottish Government alters its policy on this approach (see previous sub-sections).

From the interviews conducted for this research, it is clear that all of the housing associations and their allied development vehicles (subsidiaries and consortia) that applied to become prescribed rural housing bodies did so as a form of insurance policy to increase their flexibility and options – i.e. if ever they decided to pursue a course of having development which would suit the RHB route best. Apart from the two housing associations mentioned above, no others have yet felt it necessary to do so, although all are fully aware of what outcomes RHBs are designed to achieve, particularly those HAs in the Highland Council area who are also Board Members of HSCHT, and have acquired a good understanding of the circumstances in which they may be used effectively.

Similarly, the only two local authorities that have become prescribed rural housing bodies did so, they advise, more as insurance against missing a potential opportunity for exercising some additional strategic control over affordable housing development. Comhairle nan Eilean Siar could also turn to another rural housing body, T.I.G. (Tighean Innse Gall) to act in the same way for it is as DGSCHT does for its own Council (see sub-section 3.2.2. of this report). The Orkney Islands Council has no other potential rural housing body partner although it does have a policy of selling house plots to first time buyers and is concerned about some of the control issues arising from this – for example

purchasers being able to build houses for market rent rather than for living in themselves.

The key policy questions arising here are:

- Would it help public bodies to secure better long-term value for public investment to use RHBs (and housing associations as their agents) to maintain long-term strategic control over their ‘golden share’ equity grant/loan schemes like ‘LIFT’ (see section 2.2.1)?
- How can RHBs be better promoted amongst rural local authorities and housing associations?

3.3. Plot/house purchasers (including case study)

Questionnaires were sent out to each of HSCHT’s 43 purchasers of plots or houses with RHB conditions attached. 13 (30%) questionnaires were returned and the responses to each question may be summarised as follows:

- Most respondents felt that they had a good understanding of the RHB, and the conditions attached to it, when they bought their house/plot (9 out of 13)
- Most respondents felt that more than any other factor, the principal reason they signed up to the RHB was that it was the only affordable way available for them to

realise their homeownership ambitions (9 out of 11)

- Most respondents reported that their views on the RHB, and conditions attached to it, had not changed since they bought their house/plot (11 out of 13). Two said they now thought that the RHB would make their house very hard to sell and/or make sufficient profit from it.
- There were mixed views as to whether the RHB had got the balance right between their potential future needs (e.g. wanting to sell up and move on) and the long-term affordable housing needs of their community which it is trying to help safeguard. Three agreed the balance was right, four expressed some doubts and three said the balance was wrong, making clear that they felt that the reduction in the selling price they would get after HSCHT’s equity share had been discounted was unfair and would make the house harder to sell.
- There were mixed views as to whether there are any aspects of the RHB mechanism of approach they would like to see amended or improved. Two said they could suggest no amendments or improvements, two said the process was too difficult and four expressed reservations about how easy or fair it would be when they came to sell up and

move on, with three of these respondents suggesting that they should be allowed to buy out the rural housing bodies equity share after a certain number of years had elapsed between buying the plot/house and putting it on the market.

In other comments, two respondents reiterated their concerns about the RHB not really addressing the housing needs it professes to be there for. They believe the RHB restrictions make it very hard for people to move on and buy another house because they won’t be able to raise sufficient capital without HSCHT relaxing its restrictions on its retained equity share; and because potential purchasers of RHB houses find it even harder to get big enough mortgages to be able to buy an RHB-restricted house. One respondent asked how the RHB might affect their ability to leave their house to a family member. Seven respondents took the opportunity to comment positively, as follows:

‘Very worthwhile, helps re-address the issues of de-population and an ageing demographic in rural areas gives people hope of living and working in a place where they were born and where their family lives. The work in constructing the houses goes to local building firms.’

‘I am happy with my house and how RHB has helped us to do this.’

'We love our home and are very grateful to build and live in such an amazing area. Safe for children and good community spirit.'

'It is fair that some method is in place to protect the stock for the community.'

'A fantastic opportunity for many folk who would otherwise get stuck in the rental rut. The process could be simplified, but it was well worth the effort and the wait as we would not have been able to afford property otherwise and our house and its situation are truly beautiful.'

'Without the RHB, we would not have got our planning permission.'

Glenachulish Case Study

Glenachulish is a small and secluded settlement of around 25 households three miles west of Ballachulish village in the Highlands

HSCHT bought a former Forestry Commission site in the heart of the community at an affordable price - which allowed HSCHT to service and offer five house plots for sale at £30k each – at least half of their then market value.

The plots were offered for sale to people from the area who aspire to affordable/LCHO homeownership, work locally but could not normally hope to be able to compete in the expensive local housing market. All the plots have RHBs with buy-back price restrictions attached to try to ensure that if they are ever offered for sale by their owners, the houses will go to other local people of similar income levels

All the house plots went to young couples with typical local jobs (postal worker, nurse, builder, chef, etc) and most also qualified for Scottish Government grants (RHOGs) to further help them afford to build.

Each house was procured individually, but all the building work was done by various local builders who employ local people. In the three years since the houses were built, 10 children have been born and the age profile and vitality of the settlement has been transformed.

'We are from Ballachulish,' says plot purchaser, Jane Moran, 'and were unable to afford to buy any property locally. All rented property we looked at was too expensive as mostly for holiday lets. The RHB was our only option. All we wanted was to have a home close to our parents and grandparents and to give our children the opportunities we had as kids. We love our home and the place and the community spirit. We'll never move from here.'

'These five new houses have made Glenachulish a proper community,' says neighbour, Brenda Middleton.

Questionnaire-based research carried out by HSCHT in 2008/9 also suggests that most of their RHNB plot/house purchasers are more than happy to have been able to take up the affordable homeownership opportunity that the offer of the discounted house plot, with RHB conditions attached, provided. Nevertheless, it is also clear that a small but significant minority are unhappy with the – as they perceive them – overly restrictive nature of those conditions.

The main policy problems purchasers see are:

- a) Not being able to afford to buy another home for themselves as and when they need to, because they will never have enough equity to compete in the open housing market.
- b) Not having the opportunity/right to purchase the missing share of the equity from the rural housing body – even if they had to wait a specified number of years before they were given it.
- c) The potentially off-putting effect on potential purchasers of the RHB restrictions on their property, particularly because of the problems potential purchasers may encounter when trying to secure a mortgage from lenders who do not like any additional restrictions on being able to redeem their loan.

It should be noted that the Rural Housing Burden is a contractual burden i.e. a freely negotiated and agreed contract and that all purchasers of RHB plots/houses from HSCHT are required to give a signed undertaking that they understand and accept the RHB restrictions – as are their solicitors that they have explained the implications of RHBs to their clients. Feedback then suggests that those who are least likely to want to leave their home and their community are most likely to remain unworried by RHB restrictions.

The policy issues arising from the experiences of plot and house purchasers appear to be as follows:

- Whether it is fair that plot purchasers who, even although they have freely agreed and signed up to the RHB conditions in order to access a ‘cheap’ house plot but have then invested significant effort and money in building a house, will never have an opportunity to purchase the remaining share of the equity in their property?
- Whether plot purchasers might be given ‘a right to review’ in certain prescribed circumstances, such as a certain period of continuous occupancy (on the same principle as those signing up to Section 106 Agreements in England who are entitled to ‘a right to review’ every 5 years)? Or would this

undermine the basis of the assurances which were given to both the local community and the landowner that the affordability discount locked into the property value by the RHB would be used to help subsequent local purchasers? What if the landowner and/or the community change their view at some point in the future, because, for example, of a marked improvement in the supply of affordable housing locally or, perhaps, because it is considered that the personal circumstances of the household affected by the RHB restrictions would justify a relaxation?

3.4. Solicitors

When the legislation regarding RHBs came into force in November, 2004, very few solicitors were aware of them, and the initial reactions from those acting for clients wishing to buy RHB plots from HSCHT reflected their unfamiliarity with the new legislation. HSCHT report that, in the Highlands at least, RHBs are now much more widely understood and accepted by local solicitors, many of whom now have first-hand experience of dealing with them. This impression is confirmed by research interviews conducted with three Highland and Island solicitors as part of this study.

With regard to the conveyancing practicalities involved, solicitors have reported that the

relative complexities of the legal documentation that they have to deal with can cause complications and delays because a Standard Security has to be included to cover prohibitions on leasing an RHB property, for example. It has been suggested that the Standard Security could be removed if the legislation on RHBs could be amended to include all such necessary Standard Security obligations in the Title. This would simplify the conveyancing process and reduce costs for purchasers.

With regard to the underlying legal principles involved, the question has been raised as to whether the imposition of an RHB in the legal Title represents an unwarranted interference in the natural rights of ownership, whether – to use the legal term – the RHB is “repugnant” to ownership because it is unduly circumscribed by the RHB restrictions.

Furthermore, it has been suggested that the longer the RHB restrictions stay in the Title and appear likely to be exercised at some time in the future, no matter how theoretically distant or more ‘repugnant’ the RHB becomes or, put another way, the less reasonable it steadily becomes for them to be exercised, the greater the moral – if not the legal – argument for waiving the RHB restrictions altogether, once a certain number of years have elapsed.

It has been argued that the basis and logic of the RHB legislation is that it is a Title restriction applying

to the land before it applies to the person and its restrictions must, therefore, apply to subsequent purchasers and not just the first purchaser.

However, it has also been pointed out that rural housing bodies always have the discretion to decide whether – or not – to exercise their RHB rights. This discretion allows them to take account of the particular circumstances affecting a household with a reasonable case to make for an easing, waiving or rescinding of the RHB conditions imposed.

- A policy issue arising is whether, in the light of experience to date, any improvements might usefully be made to the RHB legislation and related legal process to simplify and strengthen the conveyancing of RHB properties

3.5. Lenders

Where solicitors, at least in the Highlands, now tend to treat RHB transactions as a non-controversial and fairly routine part of conveyancing, lenders have become much more reluctant since the 2008 banking crisis to provide capital for purchases where a RHB is involved. HSCHT have reported that most lenders, such as the Royal Bank of Scotland who were the first to make mortgages available for RHB-restricted purchases now effectively refuse to deal with RHB transactions. Since 2008, they

have become much more risk-averse and see RHBs as adding to the risk that, in the event of a loan default, the RHB restrictions will make it harder for them to get their money back.

A few lenders are still prepared to give mortgage support to RHB property purchases, but their new loan-to-value requirements mean that they now require much larger deposits, of 20% to 25% of the property value. In the words of Stephen Noakes, Commercial Director (Mortgages) of the Lloyds Banking Group (July 2010): ‘Although Bank of Scotland has recently taken the decision to withdraw from the self-build market, self-build are still available through Halifax. In line with our approach to new-build properties, the maximum loan-to-value available on new build is currently 80% of the value being purchased by the customer.’

Most young couples, even with parental or other support, are unlikely to have access to the £25k or more of personal savings that this deposit equates to even on a modest property and where other discounts and/or grants may also be available. The borrowing problems are further compounded by the reportedly universal refusal of High Street lenders to make any mortgage lending available until the property has been certified as reaching the ‘wind and watertight’ construction stage. HSCHT advise that this typically involves their self-build clients in having to try to raise bridging finance of around £50k

to fill the funding gap – a task which is generally beyond realistic expectations.

Moreover, Lloyds Banking Group makes it clear that it will only lend on the owner's share of the equity rather than the full market value of the property. So, where a purchaser is buying, say, 70% of the equity and the rural housing body is retaining 30%, the maximum mortgage likely to be offered is 80% of 70% which equates to 56% of the total value of the property. They have added that they would be willing to consider lending up to 80% of the value of the property but that 'this would require the customer to purchase the property outright, replacing the interest of the rural housing body'.

Part of the solution to this particular mortgage funding gap problem for RHB plot/house purchasers may lie with recently proposed schemes for local authorities to provide mortgage deposit guarantees to lenders which would enable them to increase their lending from 80% to 95% and so leave clients with much smaller deposits (5%) to find from their own resources. However, it seems likely that local authorities will have fairly limited capacity to support these types of scheme in a significant way over the next few years, given the major financial pressures facing most public bodies.

The key policy issue arising from these points is as follows:

- Feedback suggests that High Street lenders need a greater degree of reassurance about the perceived risks of lending on shared equity than outright and, therefore unencumbered homeownership – but that the more mainstream and well-tested the shared equity model (for example, co-ownership housing in Northern Ireland) the less anxious they become. How might the Scottish Government deliver the additional level of reassurance to lenders to make borrowing easier for potential shared equity purchasers? Is a more simplified version of shared equity now required?

3.6. Planning Authorities

Evidence gathered during this research study suggests that planning authorities felt positive about RHBs because they make it easier for them to guarantee the delivery of their affordable housing policies insofar as affordable home ownership is concerned.

Dumfries and Galloway Council (see Sections 2.2.3 of this report 'Section 75 RHBs' and 3.2.2. 'DGSCHT') make it clear to developers that they must incorporate RHBs in the Titles of affordable houses they sell as part of a Section 75 Agreement to deliver the Council's affordable housing quota provisions on sites zoned for mixed open market/affordable housing.

The Cairngorm National Park Authority (CNPA) is happy to accept the affordability guarantees offered by RHBs, believing them to be sufficient to ensure compliance with their affordable housing planning policies. They prefer not to use Section 75s in these circumstances, as it saves them the cost and trouble of implementing these and because they believe that RHBs are just as an effective self-policy mechanism as Section 75s.

The Highland Council was instrumental in both the establishment of HSCHT as a partnership vehicle and the development of HSCHT's pre-emption right and buy-back conditions approach to securing more land for affordable rented and low cost homeownership provision.

The key policy issue arising from this perspective appears to be:

- Whether there is a need for supplementary planning guidance from Government on the context in which planning authorities might wish to consider using RHBs in planning conditions?

3.7. Landowners

As made clear earlier in the report, one of the main drivers for the case that was made to Scottish Government to create Rural Housing Burdens was based upon the need to give

private landowners the assurances they sought that they would not be ‘ripped off’ if they decided to sell sites at a discounted price.

The experience of the two regional Small Community Housing Trusts has shown that being able to refer confidently to the protection of landowner and community interests which RHBs provide has been a key factor in a) getting landowners to engage and give serious, rather than fleeting, consideration to discussions about potential sites and b) persuading them – and their Factors and business partners – to then release sites significantly below market value prices.

The RHB guarantees have been equally influential in persuading a key public body, Forestry Commission Scotland, to release sites well below market value and in full compliance with their Affordable Rural Land Scheme.

In an interview for this project, the Forestry Commission Scotland commented:

‘Fundamentally, FCS believes RHB has been a very positive move – it has provided us with the security as a public body to continue to support the provision of affordable housing in Scotland – giving us confidence that any house built has a fair chance of remaining in the affordable sector, even though there is no 100% guarantee.’

This view was expressed in the full knowledge of the buy-back problems which HSCHT (see Section 3.2.1.) experienced on a site which was sold to them on the basis of RHB-underpinned legal guarantees that the houses would remain in the affordable housing sector for a minimum period of 15 years. FCS has nevertheless made clear that *‘as long as, in principle and with the RHB in place, the development is most likely to remain in the affordable sector then we are likely to continue to support it’*.

The main policy issue that appears to arising from the landowners’ perspective is:

- If the key to affordable rural housing is affordable land and the key to landowners’ willingness to sell sites affordably is a mix of the moral and financial incentives offered to them, what forms of additional encouragement could be given to both public and private landowners to get them to release sites for affordable housing? For example, could landowners be given Capital Gains and/or Inheritance Tax exemptions (which their representative bodies in Scotland and England have argued for) provided reciprocal commitments were given as, for example, to the affordability of the houses and how they would be allocated to ensure local needs and community views were properly acknowledged, secured by RHBs or Re-sale Price Covenants (RPCs) for an

agreed number of years (after which expiry date Capital Gains Tax liability would be reinstated)?

3.8. Developers

DGSCHT say that the feedback they have received from developers (see Section 2.2.3 on ‘Section 75 RHBs’) about having to market some of the houses at lower prices, and with RHB restrictions in the Title, has not put them off. Although developers may express their feelings about the added challenges to profit that any affordable housing quota requirements bring to a development, they want absolute clarity and certainty about the cost implications of a site – so that they know where they stand with the quota-specific obligation they sign up to. They do, however, express some concerns about whether the RHB-restricted houses will sell quickly enough and prefer the ‘affordable’ houses to be for the homeownership market rather than for ‘social’ rent, because they generally appear to believe that the open market houses will attract more interest where it is not mixed with social housing for rent.

3.9. Communities

When the RHB mechanism and purpose is explained and discussed, as it regularly is, with Community Councils they have little difficulty in understanding what it is trying to achieve and

secure – an affordability dividend on the site, not just for the favoured first purchaser of the house plot sold at a significant discount, but for the longer-term benefit of subsequent local purchasers and the community interest as a whole.

As such, many Community Councils in two large, but different areas of Scotland – the Highlands and Dumfries and Galloway – and in differing types of local housing markets – for example, popular villages within easy commuting distance of Inverness and small and remote west coast communities, have consistently proved keen to endorse the RHB approach in the provision of affordable homeownership houses by HSCHT and DGSCHT.

However, this does not mean that questions are not asked about the balance of the RHB buy-back terms and conditions – the degree to which they may be less fair to the householder who wants to sell but cannot make enough from the equity-restricted sale to buy in the open market, or may be less fair to the community because the house built is likely to become gradually less affordable in real terms to subsequent local purchasers as the years pass and house prices grow more quickly than average local incomes.

The response given usually reflects the dilemma of how to achieve the best balance between these two apparently irreconcilable

opposites – the understandable desire of the plot purchaser and home builder to make as much money as they can from the sale of their house, as and when they may wish to move on, and the need to first secure and then protect the gift of the discount provided by the supportive landowner. There is also a need to allay local concerns, reflected in understandings agreed with the Community Council concerned, that the affordability dividend secured will be passed on to future local purchasers who will need as much help as the first purchaser to gain access to affordable homeownership.

What has not yet been tested is the position which a rural housing body might choose to adopt to any later change of view by, for example, either the landowner or the Community Council concerned if either or both came to think that the local housing needs and supply context and/or the personal circumstances of the household concerned justified a relaxation or even complete removal of the RHB restrictions. It would be open to them to make a case to the rural housing body – or vice versa – for a relaxation of the RHB conditions which might be applied in the circumstances and which nevertheless remain within the sole discretion of the prescribed rural housing body to alter, waive or leave as they are.

A key policy question is therefore:

- Are Rural Housing Burdens and Re-sale Price Covenants tailor-made tools for the development and implementation of a rural policy which gives communities much greater ownership and control over their assets and destinies, through CLTs for example? Or do they need to be improved to be made fit for purpose?

3.10. Policy Makers

Although Rural Housing Burdens were established by one of the early Acts of the Scottish Parliament as part of the ambitious programme of land reform legislation, they have not been widely promoted or pushed by the Scottish Government since that time.

For example, the Scottish Government's comprehensive 'Strategy and Action Plan for Housing in the Next Decade, 2011-2020: Homes Fit for the 21st Century', published in 2010, makes no specific reference to the RHB mechanism although, amongst other things, they emphasise their strategic commitment to a range of critical issues highly relevant to the RHB mechanism, for example:

- finding and supporting new ways of financing house building and targeting the reduced public investment available in ways which

lever in more resources from elsewhere, in order to maximise the supply of affordable homes;

- increasing affordable housing supply across all tenures and making shared equity a permanent feature of housing policy;
- ensuring that planning authorities maintain a generous supply of effective housing land in the right places which, in the current economic climate, may need a more flexible and responsive approach.

The Scottish Government's 2010 Planning and Advice note on 'Affordable Housing and Housing Land Audits' does, however, make clear reference to the role RHBs can play in securing discounted, serviced plots for self-build and ensuring that subsequent buyers of the resulting houses remain affordable to people on modest incomes.

Also relevant too is the value for money quid pro quo scale suggested by the Scottish Government's 2011 guidance on its competitive £50m 'Housing Innovation and Investment Fund' for 2011/2012, where they make clear that they 'would expect to make less subsidy available for homes that will be available for 10 years than for homes available for 30 or more years'.

It may also be noted that 'The Evaluation of Low Cost Initiative for First Time Buyers (LIFT)' report commissioned by The Scottish Government and published in 2011 includes the recommendation that it should re-examine and review the 'golden share' model and identify whether there would be value in replacing it with a right of pre-emption.

At local government level (see Section 3.6. 'Planning Authorities'), it is clear that a small number of local authorities have been happy to make use of RHBs in their own affordable housing policies. In the case of Highlands Council, the local authority was not only instrumental in the creation of HSCHT, as a pan-Highlands rural housing body, but has been fully behind HSCHT's efforts to use RHBs to secure affordable and deliver affordable homeownership in nearly 20 different rural communities so far.

In addition, Highlands Council officials are keen to consider other ways in which RHBs may be used to support their wider housing policy objectives e.g. as a possible means of 'locking in' equity loans which the Council might give to older owner-occupiers of homes below the Tolerable Standard who cannot afford to pay for the necessary improvement work required given the cut-backs to the Improvement and Repair Grants that were formerly available for that kind of assistance.

However, as the data in this report shows, awareness and use of RHBs is currently confined to a small number of local authority areas – and there is work to be done to raise the profile of the mechanism amongst other rural local authorities.

The overall experience to date of those who have had first-hand experience of RHBs indicates that they have been effective at both a practical and a policy level as a means of assisting public policies on land release, affordable housing provision and wider sustainable rural community development objectives. However, the greatly increased pressures on public funding that have come in the wake of the recession mean that policy mechanisms will now be judged by how relevant or not they are to this by the resulting grant-giving and mortgage-lending changes to the policy context.

The feedback reported in this chapter suggests that RHBs could play a more important role as a more fully integrated, rather than as a somewhat peripheral, part of the policy response that is now, more than ever, driven by the need to get a 'bigger bang from the public buck'.

In assessing the RHB future potential effectiveness, the following policy attributes should be taken into consideration:

- It helps to persuade landowners to release sites for affordable housing at a discounted price
- The subsidy/gift/discount which comes from the landowner relieves the pressure on the level of public subsidy required to deliver affordable housing on those sites
- The RHB pre-emption right and buy-back terms offer the Scottish Government a means of getting good, long-term value for, and protection over, any additional public subsidy they may be prepared to invest – e.g. as a Rural Home Ownership Grant or a ‘golden share’ locked into the Title for a quid pro quo period (10, 20, 30 years or more) of the Government’s choosing
- The local construction work generated by the resulting one-off self builds is particularly beneficial to the economies of smaller rural and remote communities because the jobs go to local firms, who employ local people who spend their wages locally.

Looking at how such affordable housing policies and mechanisms might dovetail with the overriding macro-economic policy considerations, the OECD’s March 2011 Economy Survey for the United Kingdom reaches the following conclusion:

‘Reforms to housing policy should aim to increase affordability and mitigate excessive house price viability by enhancing the supply of available land and reducing the volatility of housing demand. Rigid housing supply and fast-rising demand have fuelled house prices, reducing affordability and contributing to macro-economic and financial instability. Policies to increase supply should focus on lowering barriers to access to land for housing and providing sufficient incentives for local communities to allow development.’

Policy issues arising:

- For all the above reasons, is it time to look again at the role affordable homeownership mechanisms can play in the light of overarching value for public money considerations, holistic housing system wellbeing considerations, tenure-specific considerations and the best long-term interests of rural communities?

4. Similar Mechanisms Used Elsewhere in the UK and Ireland



4.1. Introduction

This section of the report offers a brief outline of comparable ways in which other parts of the U.K. and Ireland try to deal with the same underlying policy issues (and, in particular, the long-term retention of equity shares which lock in affordability discounts) which the Rural Housing Burden is trying to help address. The subject of equity grant or loan routes into affordable homeownership – particularly in the context of the ongoing recession and the much greater resulting pressures on public and personal finance – merits much greater in-depth and comparative analysis. The points outlined below should be seen only as a gateway to the comprehensive study that is needed.

Some broad distinctions can be drawn, however, from this initial examination: Scotland, England and Wales all have active equity retention mechanisms in place to restrict – in perpetuity, if wished – future sales of publicly and/or privately subsidised affordable homes. In Ireland, both south and north, they take less restrictive (though differing) approaches and allow households given access to their respective Government-sponsored shared equity or co-ownership schemes to increase their equity shares to 100% in due course.

Table 6 breaks down the various equity share retention methods and approaches identified into five broad categories:

- Section 75, 106 and similar Planning Agreements
- Enhanced 'Exceptions Sites' Planning Agreements
- 'Golden share' government grant/loan schemes
- RHBs and RPCs (Resale Price Covenants)
- Co-ownership models

Distinctions may also be drawn about who takes the lead in implementing each of these categories of equity share retention. Three groups are involved: local authorities, central government (at UK or devolved level) and independent bodies such as CLTs and others.

Each of these categories is looked at in turn, but Table 6 offers a summarised version of which parts of the UK and Ireland they are used in, their essential policy characteristics and how these may compare and contrast both by category and by country.

4.2 Local Authority Section 75 and 106 Agreements etc.

Section 75 Agreements are the Scottish equivalent of Section 106 Agreements used in England and Wales and their equivalents, Article

40 and Part V Agreements used respectively in Northern Ireland and Ireland.

Section 75 of The Town and Country Planning (Scotland) Act 1997, Section 106 of The Town and Country Planning Act 1990, Article 40 of the Planning (Northern Ireland) Order 1991 and Part V of The Planning and Development Acts 2000-2006 allow local authorities to make binding agreements with applicants for planning permissions. The Agreements impose strict obligations on applicants to deliver community benefits or 'planning gain' as the quid pro quo for receiving planning permission.

By the early 1990s, it had become established that local planning gain could deliver affordable housing benefits through such Section 75/106 Agreements. The quota of affordable housing that is delivered by them, on sites which have already been zoned by their Planning Authorities as suitable for housing, is typically around 25% of the overall number of houses built on the particular site. The quota may, however, be higher or lower depending on the level of need that has been previously justified in a local housing need and demand assessment. The quota may also include a mix of affordable housing tenures, for example some for affordable rent, and some for affordable home ownership, or just one of these two tenures. The quota of affordable houses provided on such previously zoned sites is typically delivered by a

registered Housing Association. The rest of the houses are usually built by a private developer for open market sale.

Whilst Section 75/106 Agreements in 'Exceptions sites' (see next sub-section) are likely to concentrate on ensuring that the affordable 'quota' houses are likely to remain so long-term, the more basic version on current zoned housing land is more likely to be satisfied simply with ensuring that the right mix of affordable/open market houses has been built on the site and that the initial sales/allocations are made accordingly. Subsequent re-sales and 'leakage' of affordable homeownership houses over time appears less likely, therefore, to be taken as a breach of these more basic Agreements.

4.3. Local Authority "Exceptions sites" Planning Agreements

In a subsequent evolution of planning policy, sites not previously zoned for housing may be given planning permission where the exceptional local circumstances would justify it – typically where it can be evidenced that sites are not, in practice, developed or brought forward for properly evidenced, badly needed, affordable housing provision.

'Exception sites', as they are called, are also bound by Section 75/106 Agreements which are typically much more carefully considered

and tightly drawn and which have delivered 100% quotas of affordable homes, provided predominantly by Housing Associations and/or, to a lesser but gradually increasing extent, Community Land Trusts. (It is worth noting here that the proposal in the July 2011 National Planning Policy Framework Consultation to allow a small proportion of market development on 'exceptions sites', in order to both encourage the release of inexpensive sites and increase cross-subsidisation possibilities, is under active consideration in England at the present time). The consultation document points to Cornwall Council's 'innovative affordable housing policy which . . . will consider proposals to include an element of market housing on exceptions sites if it was satisfied that the development had community support and reflected local need in terms of scale, dwelling type and tenure mix and could demonstrate that a cross-subsidising mixed tenure scheme was essential to the delivery of the development which included a majority of affordable homes'.

The kind of Section 75/106 Agreements entered into for 'exceptions' sites may well include a comprehensive schedule of definitions as to what constitutes, for example, 'local housing need', 'a qualifying person' and 'the formula price' at which an affordable/LCHO house may be offered for sale and re-sale to a qualifying person in local housing need.

The Shropshire Council's Section 106 Agreement for Rural Single Plot Exceptions Sites (February 2011) also includes a staged cascade approach to sales and re-sales which sets out how the house may be offered to an ever-widening group of potential buyers – from locals in qualifying need first, through to others in housing need and, ultimately, to open market purchasers – if a purchaser cannot be found from one or other of the cascade client groups within the complementary timetable allowed.

However, even in the event of finding no buyers from the affordable only purchaser client groups within the 6 months permitted, any open market purchaser must split the difference on the project between the 'formula price' (60% of market value) and the market price, return half of the profit made to the Council who commit to using it solely for the provision of affordable dwellings elsewhere in Shropshire.

Alternatively, the Dumfries and Galloway Council's tri-partite Section 75 Agreement with Dumfries and Galloway Small Communities Housing Trust (see Sections 2.7 and 3.2.2. of this report) allows the Council to use a third party (DGSCHT) to implement and 'police' its sale and re-sale policy.

As can be seen therefore, local authorities have the option of using Section 75/106 Agreements, either directly or through a chosen agent, to

impose legally-binding requirements restricting the price at which an affordable homeownership house may be sold and re-sold. To this extent, the equity share retention method compares favourably with the RHB method.

However, in the Scottish context at least, the question has been raised as to how well monitored such rigorous Section 75 Agreements are likely to be over time, given the reliance for monitoring on hard-worked planning officials with no shortage of other competing priorities. Moreover, how likely or willing are planning authorities to be, it is asked, in taking time-consuming and expensive enforcement action where any breaches of these Agreements are detected? For example, interview feedback suggests that there is very little monitoring and enforcement of Section 75 Agreements which have been applied to single house development in the countryside tied to ‘agricultural occupancy’ conditions. As a result, these houses are being sold on at open market prices.

Rather than risking falling short, and being seen by others to fall short, on adequate internal monitoring and enforcement of Section 75/106 Agreements, local authorities may prefer to effectively pass the ‘policing’ responsibility to bodies which also have the legal power and responsibility (through the use of RHBs or Re-sale Price Covenants) to approved organisations, such as prescribed rural housing bodies or

Community Land Trusts, which have a greater vested local interest in making sure that affordable housing obligations are consistently upheld and a greater ability to keep a watchful eye on what is happening locally.

4.4. Government ‘golden share’ scheme

In Scotland, England and Wales, the respective Governments have all taken direct responsibility for providing grant and loan assistance to affordable homeownership purchasers. In Scotland, the Scottish Government’s Low Cost Initiative for First-time buyers (LIFT) scheme, allows eligible purchasers to buy a house on the open market for an upper limit of 80% to sometimes 90% of its market value. The Scottish Government pays for the remaining 20% (or 10%) share of the equity which they also have the absolute right to retain as a ‘golden share’ where they consider it necessary to ensure that the house in question remains in the affordable housing market for subsequent purchasers. However, the Scottish Government have also made clear that that they will waive the ‘golden share’ restriction where they find that there are no expressions of interest in re-purchase from other ‘affordable’ house purchasers. (See also Section 2.2.1 on ‘Golden Share’ LIFT RHBs).

In England, the same ‘golden share’ restriction can be applied by Government to the same limit

of 80%, but only on their rural shared ownership scheme. This is essential on Section 106 Agreement ‘exceptions sites’ where homes must be retained for long-term, locally- affordable housing occupancy.

The main drawback of both of these Government-managed equity retention schemes is that the retained equity share does not lock in a big enough slice of affordability to withstand the pressures of ever-increasing rises in house prices and at a rate which outstrips annual inflationary and average wage increases.

4.5. RHBs and RPCs (Re-sale Price Covenants)

Re-sale Price Covenants (RPCs) are the closest equivalent mechanism to Scotland’s Rural Housing Burdens in England and Wales.

RPCs provide the same pre-emption rights as RHBs, albeit that some RPCs do not offer the same automatic guarantees that the pre-emption right stays in the title in perpetuity. There is a separate perpetuity law in England and Wales, which limits ‘perpetuity’ to 21 years in some instances, although the ‘perpetuity’ can be reinstated if the property is bought back prior to the ‘perpetuity’ expiry date by the party granting the covenants.

However, where RPCs are part of a Section 106 Agreement (see Section 4.2.) they are not affected by any such perpetuity law restrictions and have as much long-term legal power as RHBs to lock in permanent affordability.

Like RHBs, Re-sale Price Covenants typically include a series of legal obligations, for example: a pre-emption right and/or nomination rights over future purchasers; and restrictions on occupancy of the property to people in housing need and with a local connection.

Significantly, RPCs and RHBs alike are a tool which community-owned and controlled organisations such as Community Land Trusts and prescribed rural housing bodies can access, adapt and use directly and independently. Though there are good, strategic reasons for co-ordinating approaches to the delivery of affordable housing with both the local planning authority and central government, RPCs in particular are now being used as the mechanism of choice by an ever-increasing number of English CLTs as well as some English housing associations, like Hastoe Housing Association which operates across a large part of the south of England.

4.6. Co-ownership models

All the other approaches previously outlined in this section of the report give outright ownership

of the house to the purchaser, even though the purchaser only has legal control over a pre-set share of the overall equity value of the property. Co-ownership is different. In co-ownership models the property is jointly owned, the respective equity shares are set out in the title deed and both parties always have their prescribed shares in the value of the property as joint owners.

In Scotland, the co-ownership route offers a possible, though rarely used, alternative to the RHB route. The Isle of Eigg Heritage Trust, which now owns the island on behalf of the community, has chosen to sell one or two house plots on the co-ownership rather than the RHB basis – even though they are a ‘prescribed rural housing body’ (see Table 1) and would also be able to ask HSCHT to act as a ‘proxy RHB’ provider (see Section 2.2.2) as HSCHT have to the nearby Knoydart Foundation.

The co-ownership route followed on Eigg is based on a high level of mutual understanding and trust between the two parties that each is honour-bound to act in the best interests of the community at all times. For though the Heritage Trust may sell the plot at a nominal price, it owns its share of the value of the house built on the plot entirely at the plot purchaser’s expense. What happens with regard to insurable interests in the property in the event of damage or

destruction (by fire, for example), its tax liabilities and so on, may be regulated by a separate contractual agreement.

Whatever the value of the property, even where it may have been added to over the years by, for example, the building of a garage or an extension, the co-owners can always be certain that they retain their respective ‘pro indiviso’ share.

A potential weakness in this co-ownership arrangement is that either of the co-owners has the right to force a sale of the property through a court process known as ‘division and sale’ which would result in one party buying the other out. The remaining sole owner would then be entirely free to do whatever they wanted with the property.

The much better known co-ownership model is ‘shared ownership’, which has provided a publicly subsidised route into affordable home ownership for many years in Scotland, England, Wales and Northern Ireland, though in Scotland the Scottish Government will now only fund shared equity provision.

Normally, government-backed shared ownership models allow purchasers of ownership shares (typically in 25% tranches) to purchase all the shares in the property and become outright owners. Such is the case in Northern Ireland

where many shared ownership housing opportunities have, for many years, been provided exclusively and successfully by the one, Government-backed, 'Co-ownership Housing Association' – but without any restriction on tranching up to outright ownership.

In England, however, some government-backed shared ownership houses may have outright ownership by the purchaser restricted to 80% where affordable/LCHO opportunities are constrained, particularly in some rural areas.

In addition, the former English charity called the Rural Housing Trust (now subsumed into Hastoe Housing Association) built shared ownership houses in many English rural communities without any input of government subsidy. It relied instead on private subsidy derived from landowners selling 'exceptions sites' (see Section 4.3.) well below market value, which enabled the Rural Housing Trust, through its subsidiary called English Villages H.A., to sell them at 70% of their market value and lock in their 30% share so that they could always be sold on to approved purchasers at the discounted purchase price to other local people in affordable housing need.

4.7. Clawback schemes

In the Irish Republic, the closest comparable model to RHB and RPC equity share retention

methods is the 'Clawback' scheme promoted by Ireland's Housing and Sustainable Communities Agency

The 'Clawback' scheme is, however, based on allowing a fully 'forgivable' equity loan i.e. the equity share provided by Government – typically 25% to 30% - is forgiven over a 20 year period. During the first 10 years of their occupancy, however, the purchaser of a 'Clawback' scheme house will not be entitled to any part of the Government's share of the equity in their property. Between years 11 and 20 that share is 'forgiven' at the rate of 10% per annum so that at the beginning of Year 21, the purchaser will own the property outright and be able to realise its full market value on a subsequent sale.

Because of the recent collapse of the housing market in Ireland, the scheme is effectively discontinued but, in any event, the value for money and fairness basis of the scheme was already being questioned by the Irish Government. Though the equity discounts provided to purchasers were derived from 'exceptions sites' land acquisitions or sites made available by central or local government at nil value, the October 2007 research report, 'Increasing Affordable Housing Supply', commissioned by the Irish Government, concluded that it would be better to retain the equity than to write it off or 'forgive' it over time. The researchers recommended a

recyclable instead of a 'forgivable' equity loan, i.e. a loan which would be cashed in by the Irish Government as a capital receipt and then recycled in further affordable housing provision. However the researchers also concluded that 'if there were a mechanism for a share of the equity to be held in public ownership, this would permit the property to be resold on an affordable basis to a second household'.

TABLE 2 – EQUITY SHARE RETENTION METHODS FOR RURAL AREAS – Analysis Matrix

	Section 75 and 106 Agreements	'Exceptions' Sites Agreements	'Golden Share' S/O AND S/E	RHBs and Re-sale Price Covenants	Co-ownership Models
Scotland	Section 75	Yes	S/E	RHBs	Rare
England	Section 106	Yes	S/O	RPCs	Some
Wales	Section 106	Yes	S/O	RPCs?	?
Northern Ireland	Equivalent	Yes	No	No	'Co-ownership HA'
Eire	Equivalent	Yes	No	No	No
Size of retained equity share	25% is typical	May rise to 40%	10% to 20% typical	25% to 30% RHB RPCs can be 40%	30% typical. Can reduce to 0% in N.I. and Eire
Includes buy-back rights	Via HA normally	Via HA or CLT, can also be LA	Via HA or Government	Via community bodies eg CLTs	No
Level of control over re-sales	Some	Good	Some	Very Good	Some
Subject to 'Right to Review'	Yes	Yes	No	No	No
H.A. developer involved	Yes, usually	Yes	Yes, usually	Sometimes	Yes

CONTINUED ON NEXT PAGE

	Section 75 and 106 Agreements	'Exceptions' Sites Agreements	'Golden Share' S/O AND S/E	RHBs and Re-sale Price Covenants	Co-ownership Models
CLT developer involved	Yes	Yes, usually	No	Yes	Yes
Private developer involved	Yes	Sometimes	No	No	Possibly
High Street lender support		Possibly	Ok-ish	Poor	Good
Reliance on public subsidy	Yes	Yes, but less so	Yes	Yes, but less so	Yes, in s/o models (eg NI) otherwise not
Levers in land value subsidy	Yes, some	Yes, but much more	No	Yes, good leverage	Yes, usually good leverage
How much aff/lcho housing delivered	About 25% of overall development	More likely to be 100%	Varies	100%	100%
Reliance on additional public subsidy (in rising market) to make re-sales as affordable to next low-income home buyer as previous one	Yes	Yes, but less required where equity share is higher and/or buy-back terms tougher	Yes	Yes, but less required where equity share is higher and/or buy-back terms tougher	No, but houses become increasingly unaffordable to next buyers in a rising market

Rural Housing Bodies & Rural Housing Burdens: A Short Guide For Community Landowners

Background

The Scottish Executive began a programme of property law reform with the Abolition of Feudal Tenure etc. (Scotland) Act in 2000. This Act abolished the feudal system of land tenure, and was followed by the Title Conditions (Scotland) Act 2003. Together, these pieces of legislation have provided a modern and simplified framework for property ownership in Scotland.

Feudal burdens have been abolished; however real burdens do still exist and the Title Conditions Act restated and clarified the law of real burdens and stipulated rules for the creation, enforcement and extinction of real burdens. (*A real burden is an obligation affecting land or buildings; it is a condition of ownership.*)

Of special interest to community landowners will be rural housing burdens, introduced by the 2003 Act, which are created in favour of a rural housing body. A rural housing burden is a special type of *pre-emption right* allowing a rural housing body the opportunity to buy back property it has sold for the provision of affordable rural housing. (*A right of pre-emption is an entitlement to have the first option to buy back the property in the event of it coming up for sale.*)

Rural housing burdens, rural housing bodies and their consequences for the community land sector are discussed further below.

Rural Housing Burdens

Rural housing burdens are intended for use by certain bodies – rural housing bodies - which sell land in the interests of providing housing in rural areas. These burdens may only be created over rural land: generally in settlements of under 10,000 people. A full list of excluded areas where this is not applicable can be found in the Community Right to Buy (Definition of Excluded Land) (Scotland) Order 2009 (SSI 2009/207).¹

A rural housing burden may be created by anyone but may only be in favour of a rural housing body, and the consent of that rural housing body is required². By creating a rural housing burden over a property, a rural housing body will have a personal pre-emption right when selling that property. This will give them the right to repurchase the property in the event of it coming up for sale, and as a consequence, the ability to control future sales. When the house is to be sold, the owner has to offer it to the rural housing body, which has 42 days to accept the offer.³

Importantly, the rural housing body will not lose the right of pre-emption if it is not exercised; if the right is not exercised when the property is being resold, it will lie dormant until the next sale ie the rural housing burden conditions stay in the Title forever⁴.

The terms of the rural housing burden may be freely negotiated with the purchaser and could for example detail the terms and price at which the property could be bought back. That provision could be used to allow the rural housing body to buy back the property at a pre-determined price when resold.

¹ Section 43(9), Title Conditions (Scotland) Act 2003 (asp 9)

² Section 43(2)

³ Section 84(3)

⁴ Section 84(1)

Rural Housing Bodies

Rural housing bodies are prescribed by Scottish Ministers, who maintain a list of such bodies⁵. Names can be added or removed from that list – see below for details of how to apply for designation as a rural housing body.

The object or function of the rural housing body – or one of its main objects or functions – must be the provision of housing on rural land, or the provision of rural land for housing.⁶

Options for Community Landowners

Affordable housing is a key issue for many communities, and community landowners will often be keen to use their land to help address the problem. However provision of rental properties by community bodies is not necessarily a straightforward option, and sometimes the involvement of mainstream housing providers in delivering housing for rent is resisted on account of perceived lack of local control over lettings, or the nature of the housing which is often developed.

Release of land for affordable self-build plots can be an appropriate alternative, but community landowners will be anxious to see such housing retained in the affordable sector, and avoid the speculation which in many areas has resulted in the present lack of affordable housing.

Rural housing burdens provide a mechanism whereby land (or indeed housing) can be released by community landowners, but retained in the affordable sector. There are two possibilities:

1. The community landowner releases the property with a burden in favour of a suitable rural housing body attached (with their agreement – this could be one of the larger housing bodies).
(Then subsequent control of sales rests with the rural housing body through the right of pre-emption); or
2. The community landowner itself becomes designated as a rural housing body, and releases property with a burden attached in favour of themselves.
(Subsequent control of sales rests with the community landowner)

The application to become a rural housing body is not unduly onerous (see below), however if the community landowner feels they will have difficulty in exercising their right of pre-emption (eg for financial reasons), they may prefer to pursue option (1). That said, the presence of the burden itself, in perpetuity, will serve to depress the open market value of the property to some extent anyway, which will help to keep it affordable.

Designation as a rural housing body may also bring community bodies eligibility for certain funding streams, or access to other useful programmes. For example, the National Forest Land Scheme (NFLS) operated by Forestry Commission Scotland, through which communities can apply to acquire national forest land for general purposes, also includes a measure which releases land for affordable housing at a value which reflects that use.

To be eligible for that measure, the applicant must be “a Registered Social Landlord or other appropriate housing body. Other appropriate housing bodies can include applicants, designated as Rural Housing Bodies under the Title Conditions (Scotland) Act 2003, which provide building plots or houses for sale” (p21, NFLS Guidance). It should be noted however that other criteria also apply, and eligibility does not guarantee approval - any application requires to be evaluated by an independent panel and approved by the Director Forestry Commission Scotland.

⁵ Section 43(5)

⁶ Section 43(6)

Application for Designation as a Rural Housing Body

If an organisation wishes to become designated as a rural housing body, they should apply in writing to the Scottish Government (Civil Law Division), outlining in their letter how they intend to use rural housing body status. They should also enclose a copy of their constitution (to demonstrate that this does include the appropriate objects or functions as described above).

If the organisation's constitution does not already include the necessary objects or functions (ie the provision of housing on rural land or the provision of rural land for housing), then it must be amended prior to application to the Scottish Government.

Following application as described, the Government will write to the organisation saying they are considering the application and taking advice on it from a solicitor. When this has been concluded positively, applications will be 'batched' (unless very urgent) so that they can be laid before parliament in groups (the formal process of designation is by Statutory Instrument in parliament). When the Scottish Statutory Instrument (SSI) is laid thereafter, the Government will write to the applicant organisation advising them that their application has been approved by ministers, that the SSI has been laid, and advising them of when it comes into force.

Hence the process of application is straightforward, although it may take some time before the relevant SSI can be laid before parliament. The Scottish Government is keen to see community organisations apply for rural housing body status, and make use of the powers available to them.

Contacts:

Scottish Government:
Family and Property Law
Civil Law Division
Scottish Government
2W St Andrew's House
Edinburgh
EH1 3DG

This guidance note has been produced to provide guidance for community landowners on rural housing bodies and rural housing burdens. While it is intended to provide an accurate reflection of the main issues, it does not cover all the detail included within the legislation. We strongly recommend that professional and legal advice be sought for more detailed information and guidance on specific cases.

References

Title Conditions (Scotland) Act 2003 (asp 9):

http://www.opsi.gov.uk/legislation/scotland/acts2003/asp_20030009_en_1

Scottish Statutory Instruments:

<http://www.opsi.gov.uk/legislation/scotland/s-stat>

Title Conditions (Scotland) Act 2003 – Scottish Government webpage:

<http://www.scotland.gov.uk/Topics/Justice/law/17975/11022>

HSCHT'S SHARED EQUITY RURAL HOUSING BURDEN CONDITIONS
Information Note (updated December 2007)

As of 2nd March, 2007, The Highlands Small Communities Housing Trust (HSCHT) decided to introduce new, shared equity, pre-emption right conditions (known as a "Rural Housing Burden") on the Titles of the house plots it sells.

The Trust's Board took the decision because they felt that the new shared equity method is fairer, more straightforward and easily understood by all interested parties than the previous "depreciated replacement cost" method. Though both methods are designed to ensure that houses built on HSCHT plots remain much more affordable to subsequent purchasers than they would be if sold at full, open market value, the Trust believes that the shared equity method offers more reliable guarantees that the full affordability discount offered by the Trust will, in practise, be retained.

The basis of the way the shared equity method works is like this example:

- The Trust buys and services a plot for, say, £20k
- The plot's full open market value (as assessed by the District Valuer) is, say, £60k
- Therefore, the Trust's discount is £40k (£60k less £20k)
- The plot purchaser buys the plot from the Trust at £20k
- The house she/he then builds on the plot costs, say, £100k
- The total development cost value is £160k (£20k for the plot purchase, £100k for the build costs and £40k for the discount on the plot price)
- The Trust's share of the equity involved in this example* is, therefore, 25% (40/160ths), the plot/house owners share is 75%
- The Rural Housing Burden conditions in the Title to the plot – and the house built on it – will ensure that, whenever the property is sold, the seller will be able to get back not more than 75% of the open market value of the property (as assessed by the D.V.) because the Trust will retain its 25% share of the equity.

- So, if the house (which had an original development cost value of £160K) were to be sold, say, 10 years later – at the D.V.'s then open market valuation of, say, £300k, the seller would be able to get a return of 75% of that value (i.e. £225k) and the Trust would be entitled to retain the remaining 25% (£75k) of the value.
- The Trust will have the legal right, therefore, to buy back the house at £225k and sell it again to another local household who, like the previous household, will have been otherwise unable to afford to buy or build a home for themselves locally.
- The Trust also has the right not to exercise its pre-emption right but, please note, that the Rural Housing Burden conditions stay in the Title forever – which means that, even if the Trust chooses not to exercise its pre-emption right, any purchaser would have to accept that the house on offer will never be worth more than its discounted value because the Trust will always retain the right to buy it back, at any subsequent sale, at the stated equity share price (in the example above, 75% of the open market value, as assessed by the D.V.).
- **Please note that the above example is for illustrative purposes only and that the Trust reserves the right to set the percentage share of the equity it retains at such a level as, it believes, takes proper account of the relevant market values (of both the plot and the completed house) as well as the basic plot purchase and approvable development costs that will be incurred by the plot purchaser.*

In other words, the Trust's share of the equity may vary, although it is expected that it will normally be set in advance at 25%, 30% or 35%, depending on the Trust's assessment of the particular values and costs pertaining.

For further information and advice please contact the Trust's Development Manager, Di Alexander (tel: 01463 233548) or Solicitor, Andrew Murchison (tel: 01463 709992).

DA/HSCHT/4th July/2007

APPENDIX 3 - List of interviewees

1. Morven Taylor, HSCHT plot/house sales
2. Ronnie MacRae, HSCHT CEO
3. Hughie Donaldson, HSCHT Board Member
4. Andrew Murchison (Solicitor to HSCHT), Murchison Law
5. John Richards, Orkney Islands Council
6. Jamie Dent, DGSCHT CEO
7. Kim Siu, Down to Earth Solutions Self-Build HA
8. Maggie Fyffe, Isle of Eigg Heritage Trust
9. Tony Teasdale, CEO, Rural Stirling HA
10. Jan Brown, Craignish Community Company
11. Alistair MacLeod, North Harris Trust
12. Ian Hepburn, North West Mull Community Woodland Ltd
13. Donald McLellan, Forestry Commission Scotland (FCS)
14. Simon Fraser, Solicitor (including to many Highlands & Islands CLTs)
15. Alex Walker, Ekopia Ltd (Findhorn)
16. Malcolm Wield, FCS
17. Bob Frost, FCS
18. John McHardy, Housing Development Co-ordinator, The Highland Council
19. Derek Logie, Director, Rural Housing Service
20. Neil Campbell, West Harris Trust
21. Willie MacDonald, Jura
22. Lukas Lehman, Isle of Gigha Heritage Trust CEO
23. Alan Hobbett, ex Isle of Gigha Heritage Trust CEO
24. Alpin Stewart, Solicitor, George Street Law
25. Don McKee, Head of Planning, Cairngorm National Park Authority
26. Peter MacDonald, Head of Housing Development, Fyne Homes HA
27. Steven Paterson, Scottish Government, Housing Investment Department
28. Ian Leighton, Valuer, Graham & Sibbald
29. Lachie MacDonald, CEO Lochalsh & Skye HA
30. Donald Lockhart, Director of Development, Albyn Housing Society
31. David Brookfield, CEO, Pentland HA
32. Blair Allan, CEO, Lochaber HA
33. Morven Short, CEO, Dunbritton HA
34. Matt Bruce, Comhairle nan Eilean Siar
35. Alastair MacGregor, CEO, Argyll Community HA
36. Brian Gegan, CEO, Cairn HA
37. Stewart Wilson, Tighean Innse Gall
38. Sue Chalkley, CEO, Hastoe HA
39. Jo Lavis, Rural Housing Solutions (formerly of DEFRA)
40. Matthew Dodd, HCA
41. Fenella Collins, CLA
42. Arlene Kersley, Berkshire RHE
43. Steve Watson, Dorset, Devon & Somerset CLT project
44. Alan Fox, Cornwall Rural HA
45. Jake Berriman, Shropshire Council
46. Stephen Johnston, Northern Ireland Housing Executive
47. Michael Conway, NIHE Rural Housing Co-ordinator
48. Charlie O'Neill, Legal Department, Co-ownership HA (Northern Ireland)
49. John O'Connor, Housing and Sustainable Communities Agency (Republic of Ireland)
50. David James, Rural Housing Enabler, Abergavenny
51. Sandra Jack, Scottish Government
52. Caroline Dicks, Scottish Government
53. Angela Williams, Knoydart Foundation
54. Jane Cowan, Glenachulish RHB plot purchaser
55. Brenda Middleton, neighbour
56. Stephen Noakes, Mortgages Director, Lloyds Banking Group

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This report was written by Di Alexander

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