



## Defining “an appropriate community organisation”

In order for communities to receive community benefit from developer-led renewable energy projects on the national forests and land they must identify or establish an appropriate community organisation. The definition of an appropriate community organisation is based on the community right to buy process under Land Reform legislation. Forestry and Land Scotland (FLS) does have scope to exercise some discretion regarding the strict application of this definition. It is for FLS to determine when exceptional circumstances arise and therefore community organisations are advised to discuss any issues with FLS as soon as possible.

An “appropriate community organisation” should:

### a) Be Incorporated

The preferred governance structure for community organisations is a Company Limited by Guarantee. However, it is recognised that in certain circumstances this may not be the most appropriate structure for the community's purpose. Therefore, other structures such as a Scottish Charitable Incorporated Organisation (SCIO), Community Interest Companies (CIC) and Community Benefit Society (Bencoms) may be considered if their company rules reflect the principles described in this definition. The rules governing Bencoms differ from other structures and FLS aims to mirror those - these have been highlighted in the note below. (Other examples such as a Company Limited by Shares may be acceptable structures for the Community Vehicle (structure through which benefit payments or investment is channelled) if the community parent organisation is constituted as defined in this note.

### b) Have a main purpose which is consistent with furthering the achievement of sustainable development

Community organisations will be expected to demonstrate an integrated long term approach to environmental, social and economic issues through a Community Development Plan which may need approval by the developer.

### c) Have open membership

Membership of the community organisation is expected to be open to all members of the community (see below for discussion of “community”). It is likely that the constitution will provide for the election of a Board of Directors to manage the organisation.

## d) Be based on a geographical definition of the community

Sometimes this will be a single settlement (in which case it should normally be the whole of the settlement), but the organisation may have, or choose to have a wider basis covering a number of discrete communities. This may be defined for example, in terms of postcode units or Community Council areas.

Based on Land Reform legislation, FLS uses "appropriate community organisation" in terms of their connection to the land *[project]* in which they have an interest:

- "The community organisation must show that it has "a substantial connection with the land *[project]*" in that the community should be situated by, near to, or on, the land *[project]*".

In addition to this proximity criterion FLS recognises that other discretionary criteria are currently used by renewable developers to define the communities that are 'affected' by a development, and therefore may be eligible to receive community benefit. These additional criteria are likely to be determined through developer's existing approaches, project specific circumstances and renewable industry practice. They may include communities whose area is within or adjacent to the development site and/or where the communities they represent are impacted by the development e.g. in terms of landscape impact or in terms of disruption caused by construction activity and traffic. Communities should discuss this directly with a developer.

## e) Be controlled by members of the community

In many cases membership of the community body will be restricted to members of the community as defined below. However, this need not necessarily be the case, and it is possible for the community organisation to have a wider membership, as long as community members retain control. It must be clear how Directors are elected (and removed, if necessary) by the membership. It can be valuable for Boards to have the option to co-opt Directors from outwith the membership where the co-optees can bring specific skills not otherwise available, but they, and any Directors appointed by partner bodies, should remain in the minority.

"Members of the community" should include all individuals who are entitled to vote but excluding individuals who are non-UK-resident.

*For Bencoms, FLS would expect to see Rules specifying that there should be two classes of members (resident and non-resident) and enabling resident members to elect a majority of the board*

## f) Be non-profit distributing

This is usually demonstrated by clauses to the effect that any surpluses must be reinvested in the company, and by a clear separation of roles between employees of the company, who are paid but not allowed to become members, and Directors, who are not remunerated, although reasonable expenses incurred in the execution of their duties may be reimbursed. Therefore, the benefits derived from the community benefit arrangements should be focused on benefitting the whole community rather than only some individuals in the community.

*FLS will not consider appropriate interest payments to individual members of Bencoms as private gain so long as the community group concerned can demonstrate that the interest paid to members is lower than a normal commercial return from similar investment on the grounds that some of the returns will accrue to the community, i.e. they are making what amounts to a 'social investment'<sup>1</sup>.*

## g) Have a “dissolution clause” ensuring the benefit arrangements can be transferred to a similarly constituted organisation

In the event of the community body being wound-up, the community benefit arrangements may be passed to a body with similar purposes and constitutional safeguards with the agreement of the Developer and FLS and may not be distributed amongst the members of the company. If the community organisation is a charity, its constitution cannot allow it to distribute or otherwise apply any of its 'property' for a non-charitable purpose, whether on being wound up or at any other time.

*If the organisation is a Bencom then FLS would expect there to be an asset lock instated.*

## Forestry and Land Scotland April 2019

<sup>1</sup> Social investment: investment activity which has an expectation of both a specified social outcome and an explicit financial return (usually below "market-rate")