Options' Appraisal

Legal, Governance and Finance Models

Scottish Farm Land Trust

January 2018

Contents

1. Executive Summary

1.1 Background

The Scottish Farm Land Trust (SFLT) has been established to enable people to gain access to land for organic and low-impact food, fuel and fibre production. It will do so by creating a network of small-holdings and community farms throughout Scotland and providing a voice for those wishing to gain access to land.

Following the example of Terre de Liens (TdL), the primary function of SFLT will be to raise capital, purchase farm land and manage long-term affordable guaranteed tenancies.

The land will be held by SFLT ensuring that it remains in productive use and cannot be sold off to re-enter the commodity market. The rent paid by the landholder will return to the organisation to be re-invested by SFLT in further land acquisition and other supportive mechanisms.

The aims are to:

- Purchase quality land to be held in trust for the use of low-impact ecological farming
- Support the development of sustainable rural employment
- Support new entrants into farming

This will allow SFLT to:

- Permanently remove land from the commodity market
- Provide sustainable rural jobs, particularly for young people and new entrants
- Offer viable opportunities for new entrants to farming
- Boost the rural economy and support the repopulation of rural communities
- Create farm landscapes which are wildlife friendly
- Create a sustainable and affordable model
- Facilitate cooperation between producers
- Provide local, healthy food
- Provide education and volunteering opportunities

SFLT's focus is on non-crofting land although they have been in touch with the Crofting Association and there could be potential for future collaboration.

1.2 The task

SFLT wants to buy farm land to rent out affordably for small-scale, ecological agriculture, in order to increase access to land and positive methods of farming. It has already carried out feasibility work and requires further work to look at options for:

1. Legal structure(s) for the organisation
2. Governance structure for the organisation
3. Mechanisms for raising finance to buy farm land, including some high level financial projections.

There are a number of examples of similar organisations that are already operating well which have been considered to see what can be learned from them and whether elements of their structures and practices could be adapted for SFLT:

- Ecological Land Co-operative (ELC) – in the south of England
- Terre de Liens (TdL) – in France
- Agrarian Trust – in USA

This report sets out the options with recommendations for the most suitable models for SFLT.

1.3 Findings and Recommendations

These are highlighted throughout the report and summarised as:
Legal model

1. One of the questions raised was whether it would be better to have a centralised structure or a regional structure. It would be legally and administratively much more complex to set up a network of separate entities and financially much more expensive, so the regional element would need to be a sub-division within an overall legal entity.

2. Mutual models combine the best elements of the business and co-operative sectors. They provide many of the same features as companies, such as the separate legal entity and limited liability but also have some unique features, relating to membership and share capital that fit with SFLT's ethos.

3. The bona fide co-operative model is used by people who find it beneficial to work co-operatively as it is the structure that serves its members most effectively through sharing space, skills and resources and offering mutual support. This is the model that would work for a group of people coming together to jointly buy or lease a farm i.e. the farmers themselves where they want to adopt the ethos of a mutual, rather than the business ethos of a partnership. Although it fits with SFLT's principles of mutual co-operation, equity and shared management and responsibility, it limits the opportunity to raise capital from share issues so is not recommended.

4. Community Benefit Societies (Bencoms) serve the broader interests of the community and are run primarily for the benefit of the community rather than the members of the society. Bencoms can issue community shares, up to a maximum of £100,000 per shareholder, a key requirement for SFLT. This model allows people who support and share SFLT's vision to become involved as shareholders and members. It also provides evidence of community support and buy-in to the project which will be required for funders and ethical finance sources. This is the model recommended for SFLT.

5. One option is to have a Charitable Bencom. A community benefit society is eligible for charitable status, provided it has purposes that are exclusively charitable and it can satisfy the charity test. It would be possible to operate SFLT as a charitable bencom with the benefits (and associated tax reliefs) of charitable status in a mutual model that allows share issue. The challenge would be persuading OSCR that its purposes are wholly charitable.

6. The recommendation is that SFLT should set up a bencom initially, with objects that are worded to fit with charitable purposes (as far as possible). This leaves the option of applying to OSCR for charitable status.

7. If the range of SFLT's activities do not meet OSCR's criteria for charitable status, a separate charity, in the form of a SCIO, can be set up at a later date, both to accept gifts of land and to carry out grant funded charitable activity, like education.

8. Note that many of the grant funders will fund bencoms without charitable status, provided they have purposes that fit their funding criteria and an asset lock.

9. Tax rules are complex and potential donors would require specialist tax advice before making donations of cash or land to SFLT. The various reliefs outlined in the report would only apply if SFLT was a charitable bencom or had a charity as part of its structure.

10. If a landowner wanted to give SFLT use of some of his/her land but wanted to retain title to the land, this could be done through a Limited Liability Partnership (LLP). The LLP model allows the landowner to retain some control and interest in the use of the land while giving SFLT more security of tenure than a lease, as the title to the land is held by the LLP. The partners would be SFLT and the landowner. An agreement would have to be drawn up setting out the responsibilities, rights and liabilities of each party. This would include the right for SFLT to lease/rent out the land to eco-farmers in line with its core purposes.

Management model

11. SFLT's culture is one of mutual respect and support, shared responsibility and living lightly and well on the land. The balance that has to be maintained is that between the collective processes, established by the shared group culture versus the need for the farmers to have the individual choice in how they use their piece of land to make a living from that land through sustainable eco-agricultural use.

12. The model used by the Ecological Land Co-operative has much to recommend it and is a good base for SFLT. This operating and management model has a lot of features that could be adopted by SFLT for managing the tenancies. The range of franchise options opens up the possibility of accessing farmland to a wider range of potential start-up farmers.

13. In terms of its own internal governance and management, the way that it is structured has to balance the need and desire for its wider membership to have its democratic say with the need to protect the farmers' right to make a sustainable living from the land they farm.

14. SFLT do this through separate categories of membership with a share of votes allocated to each group, in the same way as ELC.

15. The other option is to set up the structure of the Management Group, responsible for the SFLT's day-to-day management so that say 50% are drawn from SFLT's farmers or those on the waiting list to become farmers and the other 50% from the wider membership. This retains the balance required for a bencom.

16. People with specialist knowledge can be co-opted on as a means of bringing specific expertise to the Management Group at different stages of SFLT's development.

17. Regional sub-groups can be set up where members can meet and share their experiences and ideas for SFLT. These would be discussion and advisory groups, not decision-making bodies. There would need to be a mechanism for the regional sub-groups to feed into the Management Group.

Financial model

18. SFLT's aim has to be to start small and grow organically through the piecemeal acquisition of land. This would seem to be the obvious model as it allows time to learn and prove that it works. It can then be scaled up and replicated elsewhere. This will mean constant work to raise finance but might appeal to different types of investors at various stages of the growth.

19. It is assumed that SFLT will issue shares to raise capital to buy a particular piece of farmland. This is likely to appeal to more local shareholders but there will be people from other areas of Scotland (and possibly beyond) who want to buy into SFLT's ideas and principles.

20. The shareholder bias may be initially skewed towards a particular area but this will change if subsequent farmland purchases are in other areas. A share offer would have to specify what rights the shares bestow in terms of involvement in decision making.

21. In financial terms this is not an attractive investment – no dividends, no capital growth, a limited 'market' and limits on the amount of share capital that can be redeemed in the year. The investors however will be socially conscious ethical investors who share SFLT's beliefs and ideals and take their reward in the form of social return i.e. in the health of soils, in the preservation of pollinator populations, in the provision of nutritious food, and in sustaining rural livelihoods.

22. As a bencom, SFLT can accept donations of both cash and land but it cannot use Gift Aid to increase the value of cash donations unless it is a charitable bencom.

23. One potential source of land would be a gift of land from a landowner who wants to support new entrants into eco-agriculture. In tax terms, it would benefit the donor to gift the land to a charity. This would be a trigger point for SFLT to either register the bencom as a charity or set up a linked charity. This is also the case where the landowner wants to sell the land to SFLT at a price below market value. In either of these cases, SFLT becomes the owner of the land and the donor relinquishes control over it.

24. Where the donor wants to gift SFLT the use of the land, rather than the title to it, this could be done through a Limited Liability Partnership structure. In this case, the landowner would retain an interest in the land and the arrangements for its use would be governed by the LLP agreement, as would the respective financial commitments.

25. Donation-based crowdfunding is an option for SFLT, targeted at socially motivated people who give because they believe in the cause. To be successful, SFLT would need a high profile campaign on social media that generates enough attention and interest to reach as large a section of the potential donor community as possible.

26. Grant funding. The report includes some potential sources of grant funding worth exploring. The question was asked about Scottish Land Fund (SLF) eligibility. SFLT might have difficulty meeting SLF criteria as it is a community of interest (people interested in getting a start in organic farming) rather than the strictly defined geographic community required for SLF funding. Even if the initial rules define the geographic area of the first land purchase by postcode, it may be hard to prove benefit to the geographic community, other than the obvious economic one. SFLT would need to identify a piece of land before they can even speak to SLF.

27. SFLT could issue bonds or loan stock to members who want to contribute capital but want it repaid over time. The terms and conditions of the investment can be tailored to suit, with low interest and long repayment terms but would need to fit with any other commercial external lender, who will want to make sure that their own interests are fully protected.

28. Community bonds are a new option to consider, issued through Scottish Communities Finance (SCF). It was suggested that a Community Bond might be used to provide SFLT with a fund that it could use to make small loans to its new-start farmers/tenants to help them with start-up costs for equipment, seeds, etc. as they would not qualify for bank loans.

29. SFLT could get a commercial loan from a bank, in the same way as any other agri-business, with the land as security. This could be a fixed charge over a specified piece of land owned by SFLT, or a charge over all of the land owned by SFLT, or a floating charge over all of SFLT's assets. This and the interest rate would need to be negotiated with the lender.

Financial projections

30. Although SFLT does not envisage a large staff team, it will face the challenge of spreading and absorbing staff and overhead costs. These will need to be spread over more than one site to be viable.

31. The figures shown at Appendix 1 are high level financial projections which are indicative only and based on some broad assumptions. The projections show how difficult it will be to achieve viability with a small number of farms. However, if the number of farms increases, so will the costs, particularly staffing costs.

32. The model currently depends on very limited staffing which will mean ongoing Board and volunteer commitment and time input.

33. The payback period for these land purchases and site development based on these assumptions is 36 years.

34. The model relies heavily on capital from share issues and donations - £395,000 as a minimum for the acquisition of the first three sites. It has been assumed that no interest is paid on shares and that loans are kept to a minimum at an interest rate of 3%. A shift in the balance between shares and bonds/loans would increase costs and add the challenge of making loan repayments.

35. The income for SFLT is based on acreage so is not affected by the number and size of the plots that it is subdivided into.

36. Obviously the size of the plot affects the plot holder as rent will be higher for a larger plot but so will income generation potential. The optimal size of each plot will depend on the quality of the land, the potential yield and the plans of the plot holder.

2. Legal and Governance Structure

The Scottish Farm Land Trust is currently constituted as an unincorporated group with a bank account. It now needs to move to a formal structure that will allow it to raise capital and purchase land. The aim is to have a proper legal structure in place by March 2018.

2.1 Structure considerations

SFLT could take many forms, however it is important that it is led by the people it is set up to serve i.e. those who would be taking up landholdings. This is based on the Mexican Zapatista principle of 'mandar obedeciendo', 'lead by obeying' which stresses that leaders seek direction from those they serve. It also wants to involve and work with the local community and develop in a way that is sensitive to surrounding businesses and the environment.

The legal structure has to be one that will allow land purchase on the open market or through asset transfer under Community Asset legislation. SFLT's initial thoughts are that this is likely to be two separate entities:

- one to raise capital and hold land
- one with charitable status – for donations of land or land acquired under asset transfer; grant funding; educational and training aspects; as a means of engaging with the wider community.

Both entities need to have an asset lock to make sure that the land will be held in perpetuity to help people who want to enter farming.

Consideration has been given to:

- members and shareholders and their respective rights, responsibilities and who has control (strategic and operational).
- whether it should be a centralised structure operating Scotland-wide or a regionalised structure.
- The possibility of a funding application (perhaps to Scottish Land Fund) for a development worker to get it up and running and whether this can be done through the land owning structure or a separate charity.

2.2 Community Supported Agriculture in Europe

Community Supported Agriculture (CSA) "is a direct partnership between a group of consumers and producer(s) whereby the risks, responsibilities and rewards of farming activities are shared through long-term agreements."[1]

CSAs operate successfully in much of Europe, generally on a small, local scale. CSA members either finance the farmer who acquires the land through direct means, or provide funding to a third party (a land trust, an association) that buys the land and rents it to the farmer/CSA. Finance can be in the form of donations, investments, interest-free loans, advance payments of crop shares, etc.

CSA experiences highlight that there are challenges in finding and implementing the right model:

- Choosing between a community farmland trust (attached to one specific farm), or a wider land trust

[1] Access to Land; Stories from Europe written by the European Access to Land network in cooperation with Urgenci, the network for Community Supported Agriculture (CSA)

- Having a single legal entity that owns both the farm business and the land, or two separate ones
- Whether to be a trust or a cooperative
- How to balance community involvement and farmers' autonomy
- How decisions are made about using land, e.g. regarding maintenance or access
- How to reconcile community involvement in both the farm CSA and the farm land trust.

These issues are all equally relevant for SFLT. The next sections look at how established organisations address these challenges through their legal and governance structures.

2.3 Terre de Liens

Background

Terre de Liens (TdL) is a civil society organisation created in 2003 to address the difficulties faced by organic and peasant farmers in securing agricultural land in France, in the face of high land prices and a competitive market that keeps out new entrants. Its stated mission is to protect agricultural land as a common good and to improve it in exemplary fashion.

Since 2007 TdL has directly acquired farmland which it holds in perpetuity and lets to farmers who undertake to farm organically or biodynamically. To date it has acquired 100 farms (2,300 hectares) with a further 20 farms under consideration for acquisition. Terre de Liens has now supported over 200 farmers to establish businesses on land (partially or fully) owned by the trust across France. This has been made possible through the support of 12,000 citizens who have contributed €41 million in investment and €2 million in donations.

Legal model

TdL operates through three component parts:

- *La Foncière* is the limited company which issues shares available for purchase by the general public. It buys agricultural land and buildings with the capital raised, renting this to farmers on a long-term rural lease, which is a specific type of agricultural lease that includes legally binding environmental protection clauses.

  Shares cost €100 and shareholders do not receive interest on their investment. Initially investment was helped by tax breaks (25% tax rebate) but these tax breaks are no longer available. Despite this, share issues continue to appeal to ethical investors.
- *Le Fond* is an endowment fund which collects donations of land and cash to rent to farmers.
- *Le Fondation* is a land trust which collects donations of farm land from individuals, companies and public/local authorities to be held in perpetuity.

This structure has been created to suit the legal environment in France. SFLT should aim for a less complex structure if legally and financially possible.

2.4 Ecological Land Co-operative[2]

The Ecological Land Co-operative (ELC) was set up to address the lack of affordable smallholding sites for ecological land-based livelihoods in England. Their solution and core business is the creation of small clusters of three or more affordable residential smallholdings. By buying larger sites at a lower price per acre, and distributing the cost of infrastructure, planning applications and subsequent site monitoring across a number of smallholdings, they keep costs low for the smallholder families who benefit from:

- No conveyancing costs;
- Permission to build a low-impact dwelling;
- A shared timber frame barn;
- Highway Authority compliant road access and internal stone track;
- Electricity via on-site renewable generation, with no ongoing charges;
- Water via rainwater harvesting, with no ongoing charges;
- One year's business mentoring from a sector expert;
- No-cost labour via regular volunteer work days organised by the Cooperative;
- Ongoing support and advice regarding business planning, grant applications and planning conditions/permission;
- Opportunities for mutual support and collaboration through a cluster model.

They have developed two sites in the south of England and identified a number of potential sites for a third purchase, as the next step towards their goal of having 22 ecological smallholdings by 2020. They have a waiting list of over 250 people who have expressed a serious interest in these smallholdings.

The initial holdings were sold for £72,000, with two purchased outright and one under a rent-to-buy agreement (£14,400 as a down payment, with the balance, plus interest, over 25 years). This brings funds back into ELC to enable it to make further land purchases.

Grant applications by ELC have raised money to provide a bore hole to supplement the water supply, a wind turbine and a food preparation kitchen.

Legal model

Ecological Land Cooperative is the trading name of Ecological Land Limited, registered with the FCA under the Co-operative and Community Benefit Societies Act 2014, Reg. No 30770R.

It is a multi-stakeholder Co-operative with three types of membership, each of which share a proportion of voting rights:

- *Investor Members* have invested money in the Co-operative and share 25% of voting rights and receive returns on their investment.
- *Worker Members* are those people that work for the Co-operative - employees and volunteers that work at least 15 days each year. They share 25% of voting rights.

[2] http://ecologicalland.coop - website has a lot of useful resources and examples of how they have done it

- *Steward Members* are ecological land managers and share the remaining 50% of voting rights. This category of membership was designed principally for the Co-operative's smallholders but also includes qualified ecological land users who do not farm one of the smallholdings.

This is an interesting membership structure and clearly designed to give all members a say, weighting it in favour of the smallholders who have most to lose, but ensuring that no group of members has overall control.

2.5 Agrarian Trust[3]

Founded in 2013 in California. Agrarian Trust's mission is to support land access for next generation farmers. It is a 501(c)(3) non-profit corporation (similar to a charity in UK).

It protects farmland for sustainable agriculture and preserves its affordability for new and disadvantaged farmers, by buying, holding and permanently protecting farmland through its unique 'commons-based' approach which offers a way for landowners and retiring farmers to partner with new-start and under-resourced farmers.

While Agrarian Trust raises capital to purchase land, the most common method of obtaining and conserving land is through donations or charitably discounted sales which offer significant tax benefits for donor landowners.

Agrarian Trust intends to transfer donations of land to its 501(c)(2) title holding corporation, which gives it greater flexibility in whom the Trust can lease land to. The 501(c)(3) can also retain perpetual easements on land transferred to the 501(c)(2), providing an additional layer of protection to Agrarian Trust land.

Although US based, it is significant to note that it uses a two-tier structure like TdL. Unlike TdL and ELC, it sees its land coming from donations and discounted sales from existing landowners rather than open market purchases.

2.6 The Kindling Trust[4]

FarmStart is a farm incubator initiative offering a supported route into farming for a new generation of organic growers in the North West of England. The scheme, operated by the Kindling Trust, provides access to affordable land, shared equipment, training and a ready market.

The Kindling Trust is a not for profit social enterprise with charitable aims, registered as a company ltd by guarantee (Company number: 6136029). Although it has charitable aims, which help with funding, it is not a registered charity.

Points relevant for SFLT

They have a Friends scheme - £5/month minimum or one-off donation. Friends get a 20% discount on their Commercial Growers Course, 10% discount on event and conference tickets and invitations to social events.

They have a number of tools and policies which they share on their website, including:

- Consensus – a method of group decision-making which encourages participation as well as facilitation techniques for productive and inclusive meetings and tools for resolving conflict.

[3] https://agrariantrust.org/

[4] https://kindling.org.uk/farmstart

- Project Management - samples of SWOT analysis, Gannt Chart, SMART objectives, etc.

- Quality Assurance - methods and systems devised to ensure good practice.

Some of these could be adapted and adopted for use by SFLT.

The Kindling Trust has been successful in attracting funding for different aspects of development or for specific projects. These (and other) grant sources have been explored as potential funders for SFLT in section 4.4.

2.7 SFLT structure considerations

Regional v centralised
One of the questions raised was whether it would be better to have a centralised structure or whether a regional structure would be better.

TdL is a civic movement of one national and 19 regional associations. France is a much bigger country than Scotland, divided into 96 departments for administrative purposes, as opposed to Scotland's 32 Local Authority areas, many of whom are used to co-operating on a regional basis so the scale is different here.

There are arguments in favour of both structures:

Regional structure	Centralised structure
Pros	**Pros**
Local links help to embed the project within a community	Easier to control direction and strategy
Volunteers are more inclined to become members if they see it as local to them so that they become active for SFLT as well as for the individual farm	Creates a network of volunteers who can share ideas and differing regional perspectives
It creates a local identity which attracts consumers who want to buy local	A national identity makes it easier to create a brand
It may be easier to raise capital through a share issue where it is clear that it is to buy a specific local farm	National identity allows a higher profile with potentially more political influence
Scottish Land Fund requires a geographic definition of 'community' to be eligible for funding	More access to, and equity in partnerships with other national bodies promoting land access for eco-agriculture
Separate entities could apply separately for grant funding, especially local funding pots	Centralised administration is less costly
Cons	**Cons**
Costs of maintaining and servicing regional branches would take money away from the core purpose of providing farmland for new entrants	Danger of disillusion among members if Board not seen to represent regions fairly
Danger of different regions developing different agendas	

Recommendation: It would be legally and administratively much more complex to set up a network of separate entities and financially much more expensive, so the regional element would need to be a sub-division within an overall legal entity.

Shares

These would need to be withdrawable shares but with limits on the timescale and amount that can be withdrawn, as any withdrawals will have to be funded from a reserve set aside. TdL limit the amount of shares that can be withdrawn annually to 25% of total shares; they retain a level of reserves that covers this. ELC limits it to 10%.

SFLT envisages no return on share capital (either in cash or in kind), other than the knowledge that they are supporting new entrants into eco-agriculture and the green benefits of this way of farming. This has proved to be incentive enough for those who continue to invest in TdL. There is no reason to suppose that it will not work equally well for SFLT as the shares will appeal to ethical, rather than commercial investors.

Mutual models

Mutual models combine the best elements of the business and co-operative sectors. They provide many of the same features as companies, such as the separate legal entity and limited liability but also have some unique features, relating to membership and share capital that fit with SFLT's ethos. The examples earlier in this section all use mutual models. This section concentrates on these mutual models. Appendix 2 sets out the key features of the full range of options, including non-mutuals.

A key feature of the mutual is the ability to issue non-transferable, withdrawable shares in a society with a voluntary or statutory asset lock. Members are allowed to withdraw this type of capital, subject to the rules of the society.

Mutuals are registered with and regulated by the Financial Conduct Authority (FCA) and include:

- *Co-operatives* are for member benefit, working on principles of mutual co-operation, equity and shared management and responsibility. Bona fide co-operative societies are often used by groups who find it beneficial to work co-operatively.
- *Community benefit societies* (Bencoms) serve the broader interests of the community and are run primarily for the benefit of the community rather than the members of the society i.e. there must be a wider community purpose.
- *Charitable community benefit societies* are for public benefit and must have purposes that are exclusively charitable.

There are important yet subtle distinctions between member, community and public benefit. The concept of public benefit is central to charity law and focuses on meeting objects that are wholly charitable, whereas community benefit is neither necessarily, nor exclusively, charitable.

Member benefit in a co-operative society is shaped by cooperative values and principles, which distinguish it from the private benefit of company shareholders.

Withdrawable shares

Mutuals have the big advantage of being able to issue withdrawable shares, as well as the transferable shares issued by companies. Members are allowed to withdraw this type of capital, subject to the rules of the society. The rules can specify the terms for withdrawal, such as:

- The period of notice required to withdraw share capital (typically ranging from one week to one year). A longer period allows time to gather liquid resources to make the repayment.
- The proportion of total share capital that can be withdrawn at any one time. This can include linking it to retained profit or to the issue of new share capital.
- The right of the management committee to suspend withdrawal.
- The right to offer applicants only a fraction of the value of their share capital. This right is usually linked to an assessment that the net asset value of the enterprise can no longer support the full value of the share capital, justifying a temporary or permanent reduction in share value.

Withdrawable shares are not normally transferable, unless a member dies, in which case their shares are transferred as part of the member's estate.

This is the normal type of shares issued by mutuals, although there are major differences in the terms and conditions adopted by societies for this type of capital, which in turn affect the liquidity of the shares and the capital flows of the society.

Transferable shares

Transferable shares are shares that can be traded between buyers and sellers at a mutually agreed price, in the same way as company shares. Transferable shares cannot be withdrawn from a society i.e. they form the permanent capital of the society, freeing it from any responsibility to make provision for liquidity. It is the responsibility of the shareholder to find a buyer if they want to realise the value of their shares.

There is no upper limit on the amount of transferable share capital an individual can hold in a society.

The FCA's registration guidance requires any society that intends to issue transferable shares to have rules that provide for this type of share, including how it will be transferred and registered.

Unlike company shares, FCA guidance includes the requirement that the board must give its consent to any proposed transfer of share capital. The FCA considers any market arrangement that allows transferable shareholders to make capital gains to be inconsistent with registration as a mutual.

The main problem with transferable shares is the lack of any secondary market or social motive for buying the shares after they have been issued by a society. Buying shares when they are first issued, in a society that needs the capital to get started, provides the investor with a clear social motive. In SFLT's case where the land will be held in perpetuity and locked into affordable eco-agricultural farms, it could be argued that the social motive remains, but the shareholder wishing to sell would still have the issue of finding someone who wants to buy the shares.

Another problem with transferable shares is that they are not exempt from financial promotions regulations if issued by a co-operative society, which means that communications about the share issue have to be vetted by an FCA authorised adviser. The issuer may also need to comply with the prospectus regulations if the amount of share capital on offer is above the minimum level although bencoms are exempt from the prospectus regulations when issuing transferable share capital, as long as the money raised is used for its business purposes. Complying with the regulations increases the cost of a share issue.

For all of these reasons, very few societies choose to issue transferable shares.

Borrowing

A society's rules have to include the terms and conditions on which capital can be borrowed from members and commercial sources, including details of the security to be offered and the maximum amount that can be borrowed. There are no legal restrictions on the terms and conditions of the loan arrangements a society can enter into. This is treated as a commercial decision to be made by the society.

There is no limit on the amount a member, or other person, may lend to a society, other than the maximum amount stated in the society's rules. This means that members who want to invest more than the legal maximum for withdrawable share capital could lend additional capital, on terms agreed with the society.

These loans can be subject to a standard security over a specific piece of land, a floating charge against all assets, or not secured at all. Both parties are free to agree whatever interest rates and repayment terms they choose. Loans are likely to be part of SFLT's financing strategy.

2.8 Bona fide co-operative societies

Co-operatives are run for the mutual benefit of members who use the services of the society.

Bona fide co-operative society	
Pros	*Cons*
They work on principles that sit well with SFLT's ethos and aspirations	*Decisions require member agreement which requires discussion, negotiation and sometimes persuasion. This is time consuming and makes it difficult to get quick decisions.*
Voluntary and open membership: Membership is open to anyone who meets the membership criteria. Co-operative societies are free to determine who can be a member, based on the principle that it should be open to all who can use the services of the enterprise.	*There is nothing in society legislation to prevent a co-operative society from converting into a company, which in turn would enable it to distribute residual assets to members. This could be included in the founding document.*
Democratic member control: Members have equal voting rights (one member, one vote) and actively participate in setting policies and making decisions. Members serve as elected representatives, accountable to the membership for the running of the organisation.	*Co-operatives normally have at least a partial asset lock but there is no statutory asset lock available for co-operative societies which closes off most grant funding.*
Member economic participation: Co-operatives have common property and indivisible reserves. Members contribute equitably to, and democratically control the capital of their co-operative. Members usually receive limited interest on their share capital and/or a share in the profits.	*There are likely to be liquidity issues when a member wants to withdraw shares. It is important to consider this when drawing up the rules for a new society and to ensure that notice of withdrawal is long enough to gather the funds necessary to repay shares.*
Asset lock: Most co-operative societies have a voluntary asset lock that prevents the distribution of residual assets to members.	

Members decide how surpluses are to be used, generally for developing the co-operative, possibly by setting up reserves; benefiting members in proportion to their transactions with the cooperative; and supporting other activities approved by the membership.	
Autonomy and Independence: Co-operatives are autonomous, self-help organisations controlled by their members.	

The co-operative format is common amongst housing, consumer and worker co-operatives. This is a model often used by groups of artists/craftspeople who find it beneficial to work co-operatively, as it is the structure that serves its members most effectively through sharing space, skills and resources and offering mutual support. This is the model that would work for a group of people coming together to jointly buy or lease a farm i.e. the farmers themselves where they want to adopt the ethos of a mutual, rather than the business ethos of a partnership.

Although it fits with SFLT's principles of mutual co-operation, equity and shared management and responsibility, it limits the opportunity to raise capital from share issues so is not recommended.

2.9 Community benefit societies (Bencoms)

Bencoms serve the broader interests of the community and are run primarily for the benefit of the community rather than the members of the society i.e. there must be a wider community purpose.

Bencoms	
Pros	Cons
They work on principles that sit well with SFLT's ethos and aspirations	*Bencoms are run primarily for the benefit of the community rather than the members of the society i.e. there must be a wider community purpose and no preferential benefit for members.*
One member-one vote, regardless of how much capital a member has invested. This is much more democratic than the company shareholder structure of one share-one vote, which allows large shareholders to control companies and dictate policy and terms. Each shareholder has an equal say in major decisions, regardless of the size of their shareholding and the bencom is therefore controlled and governed by the community it serves.	*Most bencoms adopt rules that set a minimum shareholding for membership. A high minimum shareholding may be a barrier to membership, which could contravene the co-operative principle* *In practice most community share offers set a low minimum shareholding, as would SFLT.*
Most societies have a single category of open membership, although there has been some experimentation with multi-stakeholder structures, with sectional voting rights and different rates of return. ELC has sectional voting rights.	*The upper limit on individual member investment is currently £100,000 in withdrawable shares per individual. This builds on the principle of community ownership rather than dependency on a few individual shareholders.*

The board is formed from and elected by the members, on a democratic basis, again ensuring that there is no control of the board by any large investor.	*Though relatively straightforward for those with experience, managing a share issue and the purchase and withdrawal of shares over time can be onerous. This would need professional help. Community Shares Scotland help with advice.*
Flexible capped interest, not dividends, can be paid on share capital. Societies can pay interest up to a rate "sufficient to attract and retain investment". This respects the not-for profit motive of members while rewarding them for investing and risking their money.	*The maximum rate of interest paid on shares has to be declared in advance of the period for which it is intended to be paid, either in the society's rules or elsewhere (FCA requirement). The declared maximum rate of interest is the lowest rate sufficient to obtain the necessary funds from members who are committed to furthering the society's objects.*
Withdrawable share capital allows investors to get their money back, subject to the terms and conditions of withdrawal, without having to find a buyer for the shares.	*Any profit made by a bencom must be used for the benefit of the community. Unlike a co-operative society, profits cannot be distributed to members of a community benefit society.*
Any profit made by a bencom must be used for the benefit of the community. This can include the profits being ploughed back into the business, or being distributed to beneficiaries with objects the same as, or similar to, those of the society.	*Bencoms must only use their assets for the benefit of the community. If a bencom is sold, converted, or amalgamated with another legal entity, its assets must continue to be used for the benefit of the community and must not be distributed to members. This lock on the assets of a community benefit society can be reinforced by adopting the prescribed wording for a statutory asset lock.*
The optional statutory asset lock is available to community benefit societies. This is similar to the asset lock in CICs and the restrictions imposed in the dissolution clause for charities. This is required by funders.	
A bencom is excluded from statutory tenancy provisions. It is, therefore, free to create the tenure model that grants farm tenants an equity stake through the terms of a contractual lease.	
If a member moves or dies, they or their estate can withdraw the value of the community shares that they invested.	

Recommendation: The bencom model is the model used by ELC. Bencoms can issue community shares, up to a maximum of £100,000 per shareholder, a key requirement for SFLT. This model allows people who support and share SFLT's vision to become involved as shareholders and members. It also provides evidence of community support and buy-in to the project which will be required for funders and ethical finance sources. This is the model recommended for SFLT.

For further information on mutuals, see Community Shares Scotland's handbook
http://communitysharesscotland.org.uk/resources/handbook

2.10 Need for charitable status

SFLT would like to apply for funding for a development worker to get it up and running. One of the questions asked was whether there was a need for a linked charity within the structure.

One option is to have a Charitable Bencom. A community benefit society is eligible for charitable status, provided it has purposes that are exclusively charitable and it can satisfy the charity test (see Appendix 3). Portpatrick Harbour Community Benefit Society, with share capital from a community shares issue set a precedent when it was registered as a charitable bencom in November 2016.

Charitable Bencom	
Pros	Cons
A community benefit society is eligible for charitable status, provided it has purposes that are exclusively charitable and it can satisfy the charity test.	*A charitable bencom must only undertake activities that further its exclusively charitable objects.*
As well as the advantages of a bencom (above), charitable bencoms can issue community shares and pay members interest on share capital, subject to a number of conditions	*If it intends to engage in trading activities that are not in pursuit of its primary purpose, it may have to establish a trading subsidiary to carry on this trade.*
	A charitable bencom must have an asset lock. This must take the form of a rule stating that if the society is dissolved, any residual assets must be transferred to another charity with the same or similar charitable purposes.
	Community shares cannot increase in value or be sold on to anyone else but they can be withdrawn within the set rules of the society which means that the bencom must have cash reserves to make repayments requested.

Terre de Liens set up le Foncière and la Fondation in order to facilitate investments and charitable donations separately.

It would be possible to operate SFLT as a charitable bencom with the benefits (and associated tax reliefs) of charitable status in a mutual model that allows share issue. The challenge would be persuading OSCR that its purposes are wholly charitable.

OSCR has granted charitable status to organisations formed to take ownership of land where estates have been bought under Community Right to Buy so SFLT's case for charitable status should be arguable.

The list of charitable purposes is shown at Appendix 3. An organisation must have at least one charitable purpose and be able to show how it fulfils this and meets the public benefit test. SFLT's activities would clearly fit within the charitable purpose of "the advancement of environmental protection and improvement". It could be argued that it also contributes to "rural regeneration", "the advancement of education" and/or "the advancement of culture" (traditional farming methods), although OSCR may not be convinced by the case for these. The real challenge would be proving public benefit, as opposed to the private benefit to the individuals who are getting a start in farming.

Recommendation: SFLT should set up a bencom initially with objects that are worded to fit with charitable purposes (as far as possible). This leaves the option of applying to OSCR for charitable status. It might be worth an initial discussion although they are likely to ask for a formal application before they can make any decision.

If the range of SFLT's activities do not meet OSCR's criteria for charitable status, a separate charity, in the form of a SCIO (see appendix 2), can be set up at a later date, both to accept gifts of land and to carry out grant funded charitable activity, like education.

Note that many of the grant funders will fund bencoms without charitable status, provided they have purposes that fit their funding criteria and an asset lock.

2.11 Tax considerations

Tax relief on gifts applies to both cash donations and to land, property or shares donated to a charity. This includes selling land for less than market value to a charity.

The donor gets tax relief on:

- Income Tax through deduction from taxable income in the year of the gift
- Corporation tax for a company through deduction against profits
- Capital Gains Tax on land, property or shares given to a charity. For sales of land to a charity at less than market value, CGT may be payable on the difference between the amount paid by the charity and the original cost.

Some agricultural property can be passed on free of Inheritance Tax, either during the donor's lifetime or as part of their will. Agricultural property that qualifies for Agricultural Relief is land or pasture that is used to grow crops or to rear animals intensively.

The property must have been owned and occupied for agricultural purposes immediately before its transfer for:

- 2 years if occupied by the owner, a company controlled by them, or their spouse or civil partner
- 7 years if occupied by someone else.

Agricultural relief can apply to land that includes a cottage or farmhouse but it must be occupied by someone employed in farming or a retired farm employee. They must occupy the property as a protected tenant with statutory rights or as a tenant under a lease granted as part of their former employment contract.

If the land does not qualify for Agricultural Relief, the estate can pay Inheritance Tax at a reduced rate of 36% if 10% or more of the 'net value' of the estate (cash or land) is bequeathed to charity in a will.

Tax rules are complex and potential donors would require specialist tax advice before making donations of cash or land to SFLT. These reliefs would only apply if SFLT was a charitable bencom or had a charity as part of its structure.

2.12 Land partnership option

If a landowner wanted to give SFLT use of some of his/her land but wanted to retain the title to the land, this could be done through a Limited Liability Partnership (LLP).

LLPs are most commonly used as vehicles for businesses with a number of manager/owners. Their main attraction is that they combine the limited liability protection of companies with the flexibility and tax advantages of partnerships.

An LLP is not in fact a partnership but a type of body corporate, governed by the *Limited Liability Partnerships Act 2000*. Like a company, it is a separate legal entity from its stakeholders. Unlike a company, an LLP does not have shares or shareholders, nor does it have directors – it has members.

Limited Liability Partnership (LLP)	
Pros	Cons
An LLP is a separate legal entity, distinct from its members. The LLP owns property and enters into contracts in its own name.	*The title to the property remains with the LLP and cannot revert to individual members.*
Individual members' own personal assets are protected by this limited liability, unless members can be shown to have failed to manage the LLP properly.	*Although a member of an LLP is not liable for losses caused to third parties by other members/employees or for the financial consequences of general business failure, an individual member may be liable to third parties for losses caused by his/her own defaults.*
This limited liability is similar to that afforded to directors and shareholders of companies.	*LLPs are subject to special clawback provisions in the event of insolvency, under which any amounts withdrawn by a (former) member in the 2 years before winding up can be clawed back if the prospect of insolvency should have been foreseen.* *This 'clawback' is unique to LLPs with no equivalent for directors or shareholders of a company.*
It can have any number of 'ordinary members'. A member can be a person or a company (known as a 'corporate member').	*All members must carry out their duties and meet their legal responsibilities, as set out in the LLP agreement.*
It must have at least 2 'designated members' at all times - they have more responsibilities (e.g. filing information with Companies House, keeping company accounts, dealing with HMRC). *If no members are identified to the Registrar of Companies as the designated members, or if the members choose, all of the members are held to be designated members.*	*Designated members are responsible for company secretary duties and can be prosecuted if they don't meet their legal obligations.*
There is no set form for the partnership/members' agreement so it can be tailored to suit SFLT's specific needs.	*If they do not have a formal agreement, "default provisions" set out in the Limited Liability Partnerships Regulations will apply to the LLP.*

The agreement sets out the rights and obligations of the members and how the LLP will be run, including: - *who needs to agree decisions* - *members' responsibilities* - *how members can join or leave the LLP* - *how profits are shared among members*	*These default provisions include:* - *all of the members having equal profit shares* - *no power to expel a member from the LLP without his/her consent* - *the introduction of new members requiring unanimous consent* - *each of the members having equal rights to manage the business of the LLP.* *Most LLPs put in place a members' agreement, which overrides those parts of the default regime that the members do not want to apply to their LLP. The agreement also provides for any other relevant matters.*
A members' agreement is a private document. It is not required to be filed with the Registrar of Companies or made publicly available.	*All the partners' names and business name (if there is one) must be shown on official paperwork e.g. invoices and letters.*
It can have any business name, provided it is not the same as an existing name. The name must end in 'Limited Liability Partnership' or 'LLP'	*Companies House must be told about changes to the LLP's registered address, members' details (name or address) or registered name. This is done electronically.*
It is relatively straightforward to register with Companies House. It can be done without professional help or fees, other than the registration fee.	*A Confirmation Statement (previously known as the Annual Return) has to be completed annually. This is done online.*
Like a company, an LLP is required to prepare and file accounts with Companies House. SFLT would be below the audit threshold and would be able to file abbreviated accounts, showing balance sheet information only.	*The accounts must be in the required format and filed with Companies House within 9 months of the year end. These are then publicly available.*
For tax purposes an LLP is like an ordinary partnership. The individual members of the LLP are treated as self-employed for tax purposes and are taxed individually on the profits of the LLP in accordance with their profit share entitlements (whether or not those profits are actually distributed to the members). *There is no Employer's National Insurance due.*	*Every member must register for Self-Assessment with HM Revenue and Customs (HMRC) and is responsible for tax on his share of LLP profits, whether these have been distributed or not i.e. tax is due by the individual on any share of profits even if it is retained within the LLP.* *The LLP is also registered for Self-Assessment with HMRC. The designated member is responsible for this.*
Although self-employed for tax purposes, members are classified as 'workers' for employment law purposes. This gives them some (but not all) of the employment law rights of employees – national minimum wage and working time regulations; anti-discrimination and whistleblowing legislation.	*Unfair dismissal and redundancy entitlements do not apply to 'workers'*

The LLP model allows the landowner to retain some control and interest in the use of the land while giving SFLT more security of tenure than a lease, as the title to the land is held by the LLP. The partners would be SFLT and the landowner.

An agreement would have to be drawn up setting out the responsibilities, rights and liabilities of each party. This would include the right for SFLT to lease/ rent out the land to eco-farmers in line with its core purposes.

2.13 Management model

SFLT's culture is one of mutual respect and support, shared responsibility and living lightly and well on the land. The balance that has to be maintained is that between the collective processes, established by the shared group culture versus the need for the farmers to have the individual choice in how they use their piece of land to make a living from that land through sustainable eco-agricultural use.

This is linked to the legal and financial models and is based on a co-operative model of joint decision-making and responsibility, working together for mutual benefit of the community while respecting individual rights.

Operating and management model

Again the model used by the Ecological Land Co-operative has much to recommend it and is a good base for SFLT.

ELC purchases agricultural land which is subdivided into a number of ecologically managed residential smallholdings for new entrants. Once planning permission is granted, ELC sells (150 year lease) or rents the smallholdings at an affordable rate.

Although each smallholding operates as a separate business, ELC has overall responsibility for ensuring compliance with the terms of both the management plan and the planning conditions, and works with the smallholders to see that this is achieved.

Franchise options

The governing document is a 150 year agricultural lease with restrictions on transfer to maintain the principles of affordability.

There are three tenure options to suit different circumstances:

1. *Initial premium*: An initial lump sum is followed by small service charges. This model suits smallholders with some savings or existing property equity.

   ELC benefits from this tenure model as it brings in immediate capital which can be re-invested.

2. *Twenty five year investment scheme*: This model involves a much reduced premium (typically 20%), followed by a low monthly charge during the first five years, then a higher charge for a further twenty years; after which only service charges are payable. This suits smallholders who want the security of a long-term leasehold, and have a profitable farm business model, but who lack the capital to buy the lease outright.

   If the smallholder wants to transfer the lease to someone else during the twenty year period (after the initial five years), they can withdraw a portion of the payments made to date, reflecting the value of the work they have done establishing the holding.

   ELC benefits from this tenure model as it opens up a wider pool of applicants.

3. *Ongoing monthly charge with risk sharing*: This is the most accessible option, of interest to those looking for a first experience of managing a small-scale sustainable farming enterprise without being locked in to higher payments, and/or without the savings or access to capital needed to pay an initial premium.

   An element of the monthly charge is variable to allow for farm businesses to pay more or less depending on their profitability.

   ELC benefits from this tenure model as it provides a long-term source of regular income. Typical payments have been set within their financial forecasts at £400 per month, rising with inflation.

Cost to Smallholders

The costs to smallholders break down into:

- The upfront cost of lease: the 'premium'. This is set in their business plan at £22,000 for rent-to-buy and £110,000 for an outright leasehold sale. However, the final amount depends on the actual costs of producing the holdings, including the costs to ELC of borrowing the money to cover expenditure. There is no upfront cost for rental properties.

- The ongoing costs of lease: This is the rent paid on rent-to-buy holdings. During the first five years, rent-to-buy rent represents interest – at 6% – on the portion of the holding not purchased. After the first five years this rises to allow for capital payments. On a holding valued at £110,000, payments would total £430 and then £625 per month.

- Rent paid on rental properties has been calculated at £400 per month, rising annually with the Consumer Price Index.

- Other ongoing costs which have to be shared by the smallholders are:

    - Costs of insuring and maintaining any shared infrastructure and land - £150 per site per year for insurance, plus maintenance as incurred

    - Costs of monitoring the site (biodiversity survey fees, water and soil testing, traffic monitoring, etc.) - capped at £400 per year (base year 2014), rising with inflation, for each smallholding

    - Staff time providing business and planning support to the smallholders - set initially at £650 per holding per year but decreasing to £0 over 10 years.

ELC ensures that the smallholdings remain in eco-agricultural use through a number of "protections":

- Affordability is protected in perpetuity through the use of a re-sale formula in the leasehold agreement. At the point of sale, the value of the holding is calculated by multiplying the initial premium by the Consumer Price Index, plus the value of improvements made to the holding. This approach ensures that smallholders are compensated for their efforts, while maintaining the affordability of the holdings for future land workers.

- Agricultural use is protected through the lease, which requires that each smallholding household has at least one full time equivalent working on their holding. Holdings cannot be sublet.

- The smallholders are bound by both the lease and planning conditions to a comprehensive and rigorous whole-site ecological management plan. Performance against this plan is monitored annually. If a smallholder is found in breach of the terms of their lease then fellow members of ELC will work with them to get back on track.

If the smallholder is not willing or able to address the breach, ELC has the ultimate recourse of requiring the smallholder to sell the smallholding back to the Co-operative, to be used by someone else.

This operating and management model has a lot of features that could be adopted by SFLT for managing the tenancies.

The range of franchise options opens up the possibility of making farmland accessible to a wider range of potential start-up farmers.

If ELC is willing to share their lease agreements, this would give SFLT a good starting point and reduce the time and legal fees involved in starting from scratch. Building in similar "protections" would also work well as they would articulate SFLT's aims and ethos and ensure their practical implementation.

Governance model

In terms of its own internal governance and management, the way that it is structured needs to balance the need and desire for its wider membership to have its democratic say with the need to protect the farmers' right to make a sustainable living from the land they farm.

ELC does this through separate categories of membership with a share of votes allocated to each group (see section 2.4). This is an option for SFLT.

The other option is to set up the structure of the Management Group, responsible for the SFLT's day-to-day management so that say 50% are drawn from SFLT's farmers, or those on the waiting list to become farmers, and the other 50% from the wider membership. This retains the balance required for a bencom.

People with specialist knowledge can be co-opted on as a means of bringing specific expertise to the Management Group at different stages of SFLT's development.

If desired, regional sub-groups can be set up where members can meet and share their experiences and ideas for SFLT. These would be discussion and advisory groups, not decision-making bodies. There would need to be a mechanism for the regional sub-groups to feed into the Management Group.

3. Land, Housing and Tax Considerations

3.1 Type of land required

The type of land required has to be decent agricultural land suitable for growing vegetables, fruit, legumes, fuel crops, etc. There is potential for small pockets of land stranded between developments which are too small to appeal to existing farmers or developers. Ideally land will be near towns to give easy access to a potential local customer base. Remote parcels of land would add to the costs of getting produce to market which would eat into already slim profits, making it less appealing to new entrants. It is also easier to attract volunteers to help out if farms are not far from urban areas.

There is unlikely to be housing on the land, at least initially, so those working the land will have to live elsewhere.

To be eligible for asset transfer under Community Asset legislation, the land has to be either surplus to Local Authority requirements or 'derelict' and not being properly used by a private landowner.

Supplies of land owned by Local Authorities and suitable for growing are likely to be limited. Where they own farmland, it tends to be Common Good land, which dates back to the times of the Royal Burghs e.g. Selkirk Common Good includes 3 farms within the town boundaries (Linglie, Smedheuth and South Common farms), all of which have been let to tenant families for several generations. As Common Good land, there are clauses in the Trust deeds that prevent its sale. It could be argued that SFLT's purposes align with those of Common Good so it is worth investigating whether there are suitable areas of Common Good land that could be made available.

Further information about Common Good land in this Scottish Government report http://www.gov.scot/Publications/2014/05/2852/298145

Andy Wightman's 2005 report[5] http://www.andywightman.com/docs/commongood_v3.pdf is also a useful insight into Common Good land. It would be worth contacting Andy Wightman, now an MSP, but passionate about land use in Scotland http://www.andywightman.com/

All of the factors above affect the availability and the price of land.

3.2 Price of land

Farmland remains one of the best long-term investments, with values up 83% over the past 10 years, comfortably outpacing the mainstream housing market (+15%) and even prime central London homes (+28%). This is despite a fall of 12% over the past 24 months, slicing £1,000 off the price of an acre of land south of the border where the average value of bare agricultural land was just over £7,310/acre in the third quarter of 2017, according to the Knight Frank Farmland Index[6].

In Scotland[7], the average value of farmland rose slightly during the first half of 2017, with average prices up 0.6% to £4,253/acre. However, price varies with land type:

- Good arable land was one of the strongest performers with values rising by 2% to £9,200/acre.

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[5] Common Good Land in Scotland: a Review and Critique, by Andy Wightman and James Perman, Commonweal Working Paper No. 5, November 2005, Published by the Caledonia Centre for Social Development © Caledonia Centre for Social Development
[6] Knight Frank Research: Farmland Index Q3 2017
[7] Knight Frank Rural Research: Scottish Farmland Index H1 2017

- Average arable land prices held steady at £5,154/acre, down from the 2014 Q4 high of £5,612 but this is largely due to the lack of farms coming to the market amid Brexit and future subsidy uncertainty.
- Arable/grass land prices slipped very slightly to £3,622/acre.
- Prices for hill land are rising as the Scottish Government's ambitious tree-planting targets make it an attractive investment.

Knight Frank did note that there were more 'smaller' farms (100-500 acres) coming onto the market but this is still far too large for SFLT.

In addition to the costs of the land, there are the costs of obtaining planning permission and developing infrastructure – man hours over a number of years (ELC's experience suggests often upwards of 5 years); professional planning consultants' fees (£60–100 per hour); planning fees; legal fees; infrastructure capital costs.

3.3 Agricultural rent

Scottish Government figures[8] show that the average agricultural rent in 2016/17 was estimated as £40/hectare; £27/hectare for LFA holdings and £137/hectare (£55.46/acre) for non- LFA farms. The trend shows steady prices until 2008, since when there have been above-inflation increases in rent. Note that the figures are taken from larger holdings only but they do give indicative rental rates. The report states that rents vary depending on factors like land quality, remoteness, inclusion of buildings and land availability. Rents are highest in Fife and Lothian, with 75% of those sampled paying over £74/hectare (£30/acre).

The report also notes that in recent years there has been a reduction in the area of land rented under cheaper, long-term rental arrangements, and an increase in shorter-term limited duration tenancies. These arrangements are often more expensive, and this has driven up the overall average cost of renting.

3.4 Land and Buildings Transaction Tax (LBTT)

LBTT is the tax on transactions on land situated in Scotland that replaced Stamp Duty Land Tax (SDLT) from 1 April 2015.

For non-residential property transactions, including the purchase of agricultural land, the rate of tax is:

- 0% LBTT on the first £150,000
- 3% on the next £200,000 (£350,000 purchase price)
- 4.5% above £350,000

These rates and bands are also used to determine the tax due on any premium paid for the assignation of a lease (other than those treated as the grant of a new lease).

For new leases LBTT is calculated based on the Net Present Value of the rent payable under the lease at 0% on the first £150,000 and 1% above £150,000.

More details on Revenue Scotland website https://www.revenue.scot/land-buildings-transaction-tax/guidance/lbtt-legislation-guidance

[8] Tenanted agricultural land in Scotland 2016-2017, a Scottish Government Statistics publication, published 26 April 2017, ISBN: 9781786529411 https://beta.gov.scot/publications/tenanted-agricultural-land-scotland-2016-17

There are specific LBTT reliefs available for charities under Schedule 13 of *the Land and Buildings Transaction Tax (Scotland) Act 2013*[9] and a crofting community right to buy relief under Schedule 9.

Rates exemption

Agricultural land and buildings are exempt properties and therefore not liable to pay non-domestic rates. Farmhouses and cottages are subject to Council Tax in the same way as other residential buildings. This would be a cost for the tenant, not for SFLT.

3.5 The housing issue

Access to housing has been identified as an issue in Scotland[10]. Although traditionally farm land in Scotland included at least one house, recent new tenancies and land for purchase have tended not to include housing, particularly in less remote areas. This is because the housing (farm houses, cottages and steadings) is done up and rented or sold separately to other rural residents, urban commuters, or as holiday accommodation. This maximises income for a (retiring) farmer/landowner. Smaller cottages/houses with a few acres are scarce and in high demand and likely to be beyond SFLT's price range.

It is assumed that purchases will be small pockets of land, without a house as a house or planning permission increases the land price massively. Landowners often try to obtain planning permission for small areas of farmland near towns so that they can be sold off as development sites, rather than agricultural land, as in these examples:

- The Angles Field, Selkirk, part of Philiphaugh Farm, is being marketed as a development opportunity. Located on the edge of Selkirk, the site is approximately 2.00 hectares (4.95 acres) and is allocated for 30 units within the Scottish Borders Council Local Development Plan (Site Reference ASELK033). This was formerly grazing land with a tendency to flood but the rest of the field is part of the £0.68m Selkirk Flood Protection Scheme, completed in February 2017. Price on application to the selling agent, Bell Rural Solutions.

Bell Rural Solutions also has a similar site at The Langshots, Wildcat Cleuch, Jedburgh, again near a main road and a town. The slightly larger site (2.722 hectares/6.726 acres) is allocated for 6 units within the Scottish Borders Council Local Development Plan (Site Reference RJ27D).

Offers over £200,000, equivalent to £29,735/acre, more than eight times its value as arable/grassland.

If there is no house, there is the issue of where people working the land will live. Housing thus represents an additional cost to the household, making the farming operation as a whole less profitable. Most farmers cannot generate enough income from farming to service a mortgage, particularly with the disproportionate increase in rural housing prices over recent years.

3.6 Temporary accommodation solutions

Planning legislation enables planning permission to be granted to a farmer to build themselves a dwelling on their land where the planning authority consider their farm business to be both financially viable and to have a need for someone to be on hand around the clock.

[9] http://www.legislation.gov.uk/asp/2013/11/contents
[10] Research for AGRI Committee – Young Farmers – Policy Implementation after the 2013 CAP Reform; report for the European Parliament; Directorate-General for Internal Policies, published 2017

Where new entrants can obtain this permission they essentially overcome the most significant barrier; self-built housing removes the need to service either rent or a sizeable mortgage on a house. Permission to build a farm worker's dwelling is granted subject to a condition limiting who can occupy the dwelling. These are known as 'agriculturally tied properties'.

However a number of perceived abuses of 'tied' property permissions has made it harder for those with a genuine need to get this permission. Even if planning permission is granted, this takes time and money, even before construction work starts so a temporary solution is required.

This is most likely to be finding local, affordable rented accommodation, which can be difficult, especially in rural areas where many properties have been converted into holiday homes.

The other alternative is a temporary structure. Sites that have a building on already (such as a barn) often have more chance of getting planning permission but it can be a difficult and lengthy process to get permission even for a temporary dwelling, as this is seen as leading to a request for permission for a permanent structure.

Siting a mobile home/cabin requires planning permission, even for 'portable buildings' (defined as stand-alone, self-contained buildings that are manufactured and fitted out in a factory, delivered in one piece by road and craned into position, usually supported on jack-up legs. They are typically used for short-term accommodation requirements). Portable buildings can also include tent-like metal framed structures covered in plastic fabric which utilise simple foundations or are bolted to a concrete slab. If planning permission is granted for this as a temporary structure, it is likely to be for a three year maximum as this is considered a reasonable timescale for finding a permanent accommodation solution.

Huts may offer an alternative solution. Under new legislation[11], as of 1st July 2017, there is a new building type (Type 23a) under which huts will be regulated. This is not an exemption from building regulations (a hut still needs to comply with sections of the building regulations), but huts will have a much lighter regulatory burden in terms of how they are constructed, and in many cases may not require any building warrant at all.

The new Type 23A in Schedule 3 of the Building Regulations covers detached single-storey buildings used for shelter or sleeping in connection with recreation (not a principal residence). The type has a number of limitations which include a maximum floor area of 30 square metres, minimum distance to a boundary or other buildings, and maximum floor area of any gallery or galleries. A building warrant would be required if the limitations are not met. Although the new Type 23A does not require a building warrant, construction must meet building regulation standards. For more information and resources including *New hutting developments: Good practice guidance on the planning, development and management of huts and hut sites*, see Reforesting Scotland's A Thousand Huts website http://www.thousandhuts.org

Accommodation is an issue and will present a problem for anyone, particularly if they have a young family, wanting to take on SFLT's farmland. None of these solutions is easy. If SFLT looks for land that is near to towns, it will be closer to rented accommodation for its farmers and closer to the markets, but this is the land that is being given over to development, with a commensurate hike in price.

[11] The Building (Miscellaneous Amendments) (Scotland) Regulations 2017

4. Raising the Capital

This section of the report considers the suitability of a range of mechanisms for raising finance for SFLT to buy farm land.

4.1 Ecological Land Co-op finance model

Most of their finance comes from equity.

Shares - The first community share offer in 2015 successfully raised £340,000 in equity and loan finance. 119 Investor Members hold £338,312 in shares. The 2017 target was a maximum of £340,000 to finance the purchase and development of two sites. They are using the Ethex online platform[12] to reach new ethical investors as well as current investors and supporters.

The minimum investment is £500 and the maximum £40,000. Investor Members receive an annual return set at a maximum of 3%, although some members have chosen to waive this or take a lower rate of interest to further support ELC's social mission.

The shares are withdrawable, meaning that they cannot be sold on to anyone else but they can be withdrawn by request to the Co-operative giving three months' notice. A maximum of 10% of the combined share capital is allowed to be withdrawn in any year.

Loanstock - ELC accepts applications for loanstock if targets for new equity investment are not met. Most of their current loanstock is issued at 0% interest, making them cheaper than equity investment but repayable.

Loans - So far they have had one 'commercial' loan and one charitable loan. The commercial loan is small and came through a social enterprise award, and the charitable loan interest is set at 2%. They hope to secure further social enterprise loans at no or low cost.

Grants – They have a target of between £25,000 and £55,000 for each new site to be purchased and developed.

4.2 Raising capital for SFLT

The aim has to be to start small and grow organically through the piecemeal acquisition of land. This would seem to be the obvious model as it allows time to learn and prove that it works. It can then be scaled up and replicated elsewhere. This will mean constant work to raise finance but might appeal to different types of investors at various stages of the growth.

Potential sources of funding considered in this section include:

- Share issue – open to individuals and institutions
- Donations – of land from farmers; or of cash
- Crowdfunding
- Grant funding /rural funding for agriculture
- Loan finance
- Debentures /loan stock

[12] https://www.ethex.org.uk/

- Community bonds

4.3 Share issue

Share issues are a way of obtaining long-term risk capital. The great advantage of shares over other forms of finance is that if the shares carry limited rights to withdrawal, there is no obligation to repay them.

For investors in commercial companies, the motivation for purchasing shares is to maximise the return on investment through dividends and through the anticipated increase in the market value of the shares. For community share investors, the primary motivation is not personal wealth maximisation but to support the social purpose and objects of the enterprise. Financial motivation is at best secondary, and any return on capital is seen as compensation rather than a reward for risk taking.

Community shares are generally issued through bencoms whose members each have one vote regardless of the value of the shareholding. This retains the democratic structure and community control.

SFLT's shares would be non-transferable, withdrawable shares i.e. they cannot be sold or transferred to third parties, except as allowed under SFLT's rules. Withdrawable shares are not normally transferable, unless a member dies, in which case their shares are transferred as part of the member's estate.

This is the normal type of shares issued by mutuals, although there are major differences in the terms and conditions adopted by societies for this type of capital.

The rules can specify the terms for withdrawal, such as:

- The period of notice required to withdraw share capital (suggested notice of 3 months but it can be up to one year). This allows time to gather liquid resources to make the repayment.
- The proportion of total share capital that can be withdrawn at any one time. The suggestion is to follow ELC's example and limit this to 10% of total share capital in any year.
- SFLT's right to suspend withdrawal.
- The right to offer applicants only a fraction of the value of their share capital if land values fall and SFLT's net asset value is unable support the full value of the share capital.

These conditions can be useful for helping to manage liquidity but SFLT would need to create reserves to allow for (limited) withdrawal of share capital, after a set initial period. The alternative is to raise further finance (in the form of a new share issue or loans) to repay shareholders.

Reasons for issuing shares rather than bonds

Most community based and/or mutual organisations prefer to issue shares rather than bonds. The reasons for this are fairly straightforward.

- Bonds are debt which has to be repaid at a set future date.
- Withdrawable share capital is equity i.e. members' investment in the organisation with no repayment date.
- Interest is due on bonds annually at a set rate, whereas interest is not normally paid on community shares, although interest can be paid, either in cash or in kind. SFLT's intention is to pay no interest on shares.

There can be more than one class of share, with different rights attached to each class, as in ELC but allocating a proportion of the voting rights to a particular class of shareholder would seem at odds with the mutual democratic principal of one person, one vote.

It is assumed that SFLT will issue shares to raise capital to buy a particular piece of farmland. TdL ensure that there is local commitment to new farms by raising at least half (aiming for 75%) of the investment for a farm locally.

The local element is likely to appeal to local shareholders but there will be people from other areas of Scotland (and possibly beyond) who want to buy into SFLT's ideas and principles. The shareholder bias may be initially skewed towards a particular area but this will change if subsequent farmland purchases are in other areas. A share offer would have to specify what rights the shares bestow in terms of involvement in decision making.

The minimum shareholding would be set at a low level e.g. £50 or £100 to make membership accessible to all interested supporters.

In financial terms this is not an attractive investment – no dividends, no capital growth, a limited 'market' and limits on the amount of share capital that can be redeemed in the year. The investors however will be socially conscious ethical investors (individuals and organisations) who share SFLT's beliefs and ideals and take their reward in the form of social return i.e. in the health of soils, in the preservation of pollinator populations, in the provision of nutritious food, and in sustaining rural livelihoods. It is likely that there will be many small shareholders.

The Community Shares Handbook[13] (updated on 15th Aug 2017) contains further information, including technicalities of making share issues, which may be helpful.

Angel investors

The question was asked about whether SFLT's proposition is likely to appeal to angel investors. These are wealthy individuals who invest in start-up businesses with the aim of making a good return on their investment. They take a stake in the business, generally at least 25% and are generally more interested in financial than social returns. This means they would have a significant say in how SFLT is run. This would be out of line with SFLT's democratic and social principles and would be an unlikely source of capital.

4.3 Donations and crowdfunding

Donations

As a bencom, SFLT can accept donations of cash but cannot use Gift Aid to increase the value of the donation unless it is a charitable bencom.

One potential source of land would be a gift of land from a landowner who wants to support new entrants into eco-agriculture. In tax terms, it would benefit the donor to gift the land to a charity. This would be a trigger point for SFLT to either register the bencom as a charity or set up a linked charity, as discussed in section 2.10. This is also the case where the landowner wants to sell the land to SFLT at a price below market value. In either of these cases, SFLT becomes the owner of the land and the donor relinquishes control over it.

Where the donor wants to gift SFLT the use of the land, rather than the title to it, this could be done through the Limited Liability Partnership structure suggested in section 2.12. In this case, the landowner would retain an interest in the land and the arrangements for its use would be governed by the LLP agreement, as would the respective financial commitments.

[13] http://communityshares.org.uk/resources/handbook

Crowdfunding[14]

Crowdfunding is where loans or donations are raised for a project or a business by asking for contributions from a large number of people via an online platform. It is an increasingly popular fundraising tool, often used for kick-start funding for ideas and projects at the early stage of development. There are various types of crowdfunding:

- *Donation-based crowdfunding* can generate funding, free from any obligation to provide a financial return to the donor. It is not repayable.

- *Reward-based crowdfunding* is more onerous as the funding is given based on a contract to provide a reward in the form of a product or service, although again it is a donation so not repayable.

Both these forms of crowdfunding are socially rather than financial motivated, and people give because they believe in the cause. Both are unregulated activities and do not need FCA authorisation.

Donation-based crowdfunding would be the option for SFLT. To be successful, SFLT would need a high profile campaign on social media that generates enough attention and interest to reach as large a section of the potential donor community as possible.

- *Peer2peer crowdfunding* or lending is asking the public to lend money via an online platform. Peers (crowd) can contribute financially to projects with the aim of getting their capital returned to them. Money can be returned either as capital only or capital plus interest.

- *Loan-based crowdfunding* (known as peer-to-peer lending) and investment-based crowdfunding are FCA regulated activities and are more sophisticated products, aimed at more financially motivated investors.

Charities and social enterprises can use a range of funding platforms who offer a number of different types of crowdfunding campaign:

All or Nothing crowdfunding - None of the funding raised is handed over until the deadline. Where the financial target is not met by the set deadline, all money raised is returned to the donors or investors.

This is the opposite of *Keep It All Crowdfunding* where campaigners keep whatever money is raised by the deadline, even although the target has not been met. Most crowdfunding platforms charge an additional fee for a 'Keep It All' campaign.

A crowdfunding campaign can be Fixed Term i.e. with a set target to be reached within a set time frame, or an Open Ended crowdfunding where there is a set financial target but no set time limit. Campaigns are normally Fixed Term and fairly short.

An early example of a successful crowdfund was Fordhall Community Farm[15]. In 2004 Ben and Charlotte Hollins inherited the tenancy of a 140-acre farm from their grandfather, a pioneer of the organic movement. The farm was in a poor state and the landlord intended to sell it off for development. The couple were committed to perpetuating organic and community ideas, and set out with a range of partners to raise £800,000 to buy the land and place it in trust with a charitable IPS (bencom). The idea was that the IPS would lease the land to Fordhall Farm under a comprehensive land use agreement, with the farmhouse and outbuildings being sold to the farm. A full range of community engagement activities was planned. Gifts to the charitable IPS were eligible for tax relief under gift aid. By September 2006 they had raised over £1 million in shares,

[14] Scottish Community Re:Investment Trust (SCRT) Knowledge Resources - https://www.scrt.scot/knowledge-centre/crowdfunding
[15] www.fordhallorganicfarm.co.uk

gifts and loans (of £200,000) and had 7,000 shareholders. The surplus £200,000 was put into educational facilities and the farm shop. The shares are redeemable, but no dividend is paid on them.

There are some interesting lessons for SFLT from Fordhall. It demonstrates the power of an idea and the benefits of being able to tell an inspiring story; the importance of a strong partnership (the Soil Association and the Wildlife Trust were involved); and the benefits of developing a national profile with good media coverage and high profile support.

4.4 Grant funding

One of the key potential funders is *The Scottish Land Fund (SLF)* which supports rural and urban communities to become more resilient and sustainable through the ownership and management of land and land assets.

Successful applicants must clearly demonstrate that their project will help their local community to:

- Achieve more sustainable economic, environmental and/or social development through ownership of land and buildings
- Have a stronger role in and control over their own development
- Own well managed, financially sustainable land and buildings.

It prioritises applications that can demonstrate significant positive impact for the community as a whole. Grants range from £10,000 and £1 million to fund the purchase of land or land assets, and some revenue funding to help with the cost of developing the proposal or initial project running costs after acquisition. This could include costs of technical and legal fees and potentially a development worker, as well as the cost of the land itself.

The fund is now open to a number of legal models including bencoms; applicants do not need to be charities. The key is that they are community-led, community-controlled, and defined by a geographic area.

SFLT might have difficulty meeting SLF criteria as it is a community of interest (people interested in getting a start in organic farming) rather than a strictly defined geographic community.

Even if SFLT's initial rules define the geographic area of the first land purchase by postcode, it may be hard to prove benefit to the geographic community, other than the obvious economic one. Rural areas with arable land tend not to be statistically deprived, other than in terms of access.

SFLT would need to identify a piece of land before they can even speak to SLF.

Enquiry line; 0300 123 7110 https://www.biglotteryfund.org.uk/scottishlandfund

Further information and support from DTAS's Community Ownership Support Service (COSS) http://www.dtascommunityownership.org.uk

Other grant funders are more likely to support specific activities or projects, rather than land purchase. These include:

The Prince's Countryside Fund

The Prince's Countryside Fund provides more than £1m in grants each year to grassroots organisations and projects across the UK, with grants of up to £50,000 available for innovative projects that result in a long-term positive impact on rural communities by helping the people that live and work in the countryside.

The grant programme currently aims to tackle the following key rural issues:

1. To improve the prospects of viability for family farm businesses
2. To sustain rural communities and drive economic vibrancy
3. To support aid delivery in emergency and building resilience

Each theme is described in more detail in their [Grant Eligibility and Guidance Document.](Grant Eligibility and Guidance Document) The fund will be open again for grant applications in early 2018.

Esmee Fairbairn Foundation has a food strand where one of the priorities is *Innovation in alternative approaches:*

- Inventive projects that can test and demonstrate viable alternative approaches to mainstream corporate food production, retail, and consumption, or
- The development of food production methods that do less harm to the natural environment, and improve the lives of people, local communities and livestock, or
- Work that influences local food buying and selling and promotes the wider uptake of sustainably produced food.

This strand fits well with SFLT's aims but funding is vastly oversubscribed and very competitive. They make very few grants to start ups so this is one for further down the line for specific projects.

Esmee Fairbairn Foundation (EFF) also provides social investment in the form of different types of repayable finance to charities and other not-for-profit organisations (including bencoms), with the aim of creating social impact.

Investments must meet the aims of their funding strategy and achieve high social impact as well as a financial return. They can invest in start-up projects or enterprises, innovative models or services aiming to address social issues, and organisations looking to scale up or move towards longer term financial sustainability.

Investments include loans, bonds, equity, and underwriting. Loans are for a minimum of £60,000 and must match one of the funding priorities e.g. the food strand above. It might be worth speaking to the Foundation to see if this is a financing option for SFLT.

www.esmeefairbairn.org.uk/what-we-fund

Heritage Lottery Fund – Although HLF has previously funded food and heritage projects, SFLT's activities do not fit with current HLF programmes www.hlf.org.uk.

Joseph Rowntree Charitable Trust – Sustainable Future programme. The overall focus is on developing and promoting sustainable, low-carbon alternatives to the current consumerist and growth-based paradigm.

It has two strands - Better economics and Beyond Consumerism – that appear to fit with SFLT's aims. Grants tend to be significant and often over more than one year, and can include core costs. This is an option worth exploring.

https://www.jrct.org.uk/sustainable-future

The A Team Foundation - It supports food and land projects that are ecologically, economically and socially conscious. It contributes to the wider movement that envisions a future where real food is produced by enlightened agriculture and access to it is equal.

Its programme areas would fit well with SFLT's aims but it is not currently taking unsolicited applications for grants. https://www.ateamfoundation.org

LEADER is a bottom-up method of delivering support to communities for rural development. Grants are awarded by Local Action Groups to projects that support delivery of a Local Development Strategy. The aim of the EU-funded LEADER programme is to increase support to local rural community and business networks to build knowledge and skills, and encourage innovation and cooperation to tackle local development objectives.

Local Development Strategies include actions that allow individuals, communities and businesses to:

- drive community action on climate change
- enhance rural services and facilities, including transport initiatives
- enhance natural/cultural heritage, tourism and leisure
- support food and drink initiatives (for example short supply chains, community food)

SFLT's activities fit well with these aims but SFLT would have to apply to the LEADER programme in the area where it purchases land. The current programme runs to 2020.

Note that it is retrospective funding and bureaucratic but nevertheless worth speaking to the local contact.

https://www.ruralnetwork.scot/funding/leader

4.5 Loan stock and bonds

Bond issues or loan stock issues (also known as debentures or promissory notes) are offers to potential investors to lend money to an organisation on specified terms. The loan is evidenced by a bond or agreement that the borrower promises to pay interest and to repay the capital to the bondholder on a set date. It is long-term debt capital.

There is a commitment to repay the amount invested after a number of years. While this makes it easier to raise the money in the first place, the business plan has to show the ability to repay the loan within the stated time.

Interest is payable at an agreed rate, generally below commercial rates although, given the continuing poor return on investment, interest rates are less of a determining factor in investment decisions. Bonds can be fixed interest, stepped interest or variable interest (bank base rates plus a set percentage).

Bonds can be secured against specific assets, or subject to a floating charge against all assets, or not secured at all. Borrower and bondholder are free to agree whatever interest rates and repayment terms they choose.

Loan stocks/bonds can be convertible – i.e. carrying the right to be converted into shares at some future time. This is more commonly used by commercial companies at the early stages of development; the investor has investment security in the interim, with the hope of sharing in future increases in share price. The disadvantage for the investor is that convertible loan stocks are higher risk as they rank behind other loan stocks in bankruptcy because of their right to convert to shares.

Use and regulation of bonds

Bonds are widely used by public authorities, credit institutions and companies but are rarely used by smaller community enterprises, although bond issues under social finance initiatives are emerging as another way of attracting investment into social enterprises from institutions and high net worth investors (see below).

Loan stocks and bonds are sometimes used by bencoms to raise money from supporters who are not qualified to become members or where members want to invest more than the legal maximum shareholding of £100,000. There are no legal restrictions on the terms and conditions of the loan arrangements entered into. This is treated as a commercial decision by the organisation. There is no limit on the amount of money a member, or other person, may lend to a bencom, other than the maximum amount stated in rules. This means that members who want to invest more than the legal maximum for withdrawable share capital could lend additional capital, on terms agreed with the society.

If offered to the general public, the loan stock issue would be subject to regulation under the Financial Services and Markets Act (FSMA) by the Financial Conduct Authority (FCA) and would incur the costs involved in making and underwriting a public offer. This would be too costly for SFLT.

SFLT could issue bonds or loan stock to members who want to contribute capital but want it repaid over time. The terms and conditions of the investment can be tailored to suit, with low interest and long repayment terms but would need to fit with any other commercial external lender, who will want to make sure that their own interests are fully protected.

Community bonds

Scottish Communities Finance (SCF)[16] is a new bencom which raises money from people in communities and lends it back out to community organisations and social enterprises. It does this by issuing Community Bonds that can be purchased by local individuals and organisations. These investors are people who buy the bonds because they believe in the cause it will support and want to lend their money. With a bond, the investor gets interest (in the 2-3% range) and a set repayment date (often 3-5 years). If a longer term loan is required, as will be the case for SFLT, the bondholder would expect a higher rate of return on the “patient” finance.

SCF has established a bespoke Community Loan Fund which will provide a range of loans from micro and unsecured to bridging loans and patient capital at an affordable cost to social and community enterprises that provide goods and services to communities or for any valid and viable business purpose. Loans are £2,000 - £15,000 with repayment terms from 6 months to 5 years. Loan interest rates are based on the assessed level of risk and other measures, but they try to keep them as low as possible.

SCF itself is still in its early days. They have just launched their first Community Bond offer which is hoping to raise up to £100,000 by 7th May 2018 for Social Enterprise Networks Scotland. Using SCF makes the process easier as SCF is the issuing bencom. Its rules have been set up to enable this. SCF also has a wider reach through its networks so the bond issue reaches more potential investors, many of whom will be small investors.

SCF can work with any place-based community or thematic community in Scotland. SFLT would need to be fully constituted as a bencom with a viable business plan and financial projections to be eligible to apply to SCF but it is an option worth further discussion.

[16] https://www.scotcomfinance.scot/

SCF's Pauline Hinchion confirmed that she could see no reason why SCF would not be open to working with SFLT on a Community Bond issue.

Her thoughts were that there would be other sources of finance for the land purchase but that a Community Bond might be used to provide SFLT with a fund that it could use to make small loans to its new-start farmers/tenants to help them with start-up costs for equipment, seeds, etc. as they would not qualify for bank loans.

The money would come back into the pot as the farmers repaid the loans. This would fund the bond repayment on the due date. The interest charged to the farmers could match the rate paid to the bondholders with a nil cost for SFLT.

Social Impact Bonds

Social Impact Bonds (SIBs) raise investment to address social issues. A SIB is a type of 'payment by results' contract. Like other types of payment by results contracts, a public sector commissioner agrees to pay for outcomes delivered by service providers. If the outcomes are not achieved, the commissioner doesn't pay.

The main difference between a SIB and a normal contract for services is that with a SIB, the providers do not use their own money to fund their services. Instead, money is raised from social investors, who get both a financial and social return if the outcomes are achieved. If the outcomes are not achieved the social investors could lose their investment.

There are now over 30 SIBs across the UK, with organisations delivering services in areas like youth unemployment, mental health and homelessness.

Since SIBs are linked to services delivered by the public sector, they would not be applicable to SFLT's activities so are not an option.

4.6 Commercial loans

Secured longer-term capital loans, for terms of five years or more, are typically used to finance the purchase of fixed assets, with the asset used as security for the loan. Secured loans take priority over unsecured loans and bonds, other creditors such as suppliers and over shareholders.

Interest rates on commercial loans are not cheap, even from specialist charity lenders, particularly for unsecured loans e.g. Big Issue Invest Scotland offers loans of £5,000- £1.5m at 7-9% fixed interest. (Other lenders show rates as "competitive" or "negotiable"). This makes them a much more expensive form of finance than community shares or bonds.

Loan repayments must be made monthly and on time which can impact on cashflow.

Institutional lenders will often include the condition requiring directors to seek their permission before entering into any other new debt finance agreements.

This option may well be open to SFLT after it has established a reliable and sustainable cash flow from a number of viable farm businesses contributing rent.

Potential sources of this investment are:

- Social Investment Finance Institutions (SIFIs) such as Social Investment Scotland (SIS).
- Social Banks such as Triodos Bank or Green Bank
- The new Scottish National Investment Bank, currently under consultation but whose mission is "to provide and catalyse investment in order to create opportunities for

Scotland, by powering innovation and accelerating the transformation to a low carbon, high-tech, connected, globally competitive and inclusive economy"

Malcom Harris spoke to SIS as a potential loan funder. They said they would be unlikely to look at funding the purchase of farm land, presumably as this could be funded by a normal commercial mortgage or secured bank loan.

The question is why bother with SIS and higher interest rate when SFLT could get a commercial loan from a bank in the same way as any other agri-business, which would take title to the land as security. This could be a fixed charge over a specified piece of land owned by SFLT, or a charge over all of the land owned by SFLT, or a floating charge over all of SFLT's assets. This and the interest rate would need to be negotiated with the lender.

Using the land as security should not compromise its eco-agricultural use as the security would only be enforced if SFLT was unable to repay the loan. Once the loan was repaid, the security would be discharged.

Of interest to SFLT might be *Social Investment Scotland's Growth & Replication Challenge* which is aimed at established charities or social enterprises to help them to grow their business. The Challenge is a competitive opportunity that combines bespoke business support with tailored financial backing for successful applicants.

This includes access to flexible finance on 13 year fixed rate terms to provide confidence on future costs, with no upfront fees and the option of nothing to pay for the first 3 years. The finance can be secured or unsecured.

This programme is currently closed but may re-open in the future, by which time SFLT may be established and in a position to submit an application.

4.7 Social Investment Tax Relief

Social Investment Tax Relief (SITR) [17] is the government's tax relief for social investment which encourages individuals to support social enterprises and helps them access new sources of finance.

Individuals making an eligible investment can deduct 30% of the cost of their investment from their income tax liability, either for the tax year in which the investment is made or the previous tax year. The investment must be held for a minimum period of 3 years for the relief to be retained.

If individuals have chargeable gains in that tax year, they can defer their capital gains tax (CGT) liability if they invest their gain in a qualifying social investment. Tax will instead be payable when the social investment is sold or redeemed. They also pay no CGT on any gain on the investment itself, but they must pay income tax in the normal way on any dividends or interest on the investment.

Eligibility

To qualify for this scheme, the investment and the social enterprise receiving it must meet certain criteria. The organisation must have a defined and regulated social purpose. Charities, community interest companies or bencoms (with an asset lock) carrying out a qualifying trade, with fewer than 250 employees and gross assets of no more than £15 million may be eligible.

[17] HMRC guidance: Social Investment Tax Relief, updated 23 November 2016

Other conditions and criteria apply to the social enterprise, investor and the investment made.

- The investment must be in new shares or debt investment, previously up to a maximum of £250,000 over 3 years. From 6 April 2017, SITR was enlarged to allow up to £1.5m of qualifying investments under this scheme within 7 years of its first commercial sale.
- The investment must not carry a guarantee that investors will get their capital back before other lenders i.e. not preferential shares/debt.
- Debt finance must be unsecured and there must be no prearranged exit for the investor for at least three years.
- The rate of interest must not be more than commercial interest rates.

The money raised by the investment must be used for either carrying on the qualifying trade or preparing to carry on the trade within 2 years of the date of the investment.

All money raised from the investment must be used within 28 months of the date of the investment.

Most trades qualify but the social enterprise must be trading commercially and trying to make a profit. There are a number of activities that may not qualify including dealing in land which may exclude SFLT's land purchases for agricultural use.

The social enterprise has to apply to HMRC to confirm that both they and the investment meet the conditions of the scheme. Investors are only able to claim tax relief once this confirmation has been given.

SFLT should apply to HMRC for a preliminary opinion on whether it is likely to qualify for SITR, under an advance assurance application.

5. Financial Modelling

This section considers costs and income streams, using information from Ecological Land Co-op's experience as a basis for high level financial modelling for SFLT.

5.1 ELC model costs

ELC commissioned a report, Small is Successful, published in 2011. The study of eight enterprises found smallholder annual wages to be in the range of £12,000 – £16,000 on established holdings. This looks unsustainable but smallholders' cost of living tends to be lower than average as a result of reduced utility costs, the input of volunteer labour, and a significant proportion of their subsistence needs directly from their land.

This informed their pricing model:

Costs per smallholding	Costs for Greenham Reach	Projected new site costs
Upfront cost of lease	£72,000 (outright leasehold sale price) or £14,400 (rent-to-buy deposit)	£110,000 (outright leasehold sale price) or £22,000 (rent-to-buy deposit)
Ongoing cost of lease	£288/month (rent-to-buy rental payment*)	£430/month (rent-to-buy rental payment*) or £400 (monthly payment for rental plots
Site monitoring costs	£400 p.a. (2014 base year)	£400 p.a. plus inflation
Smallholder support costs	N/A	£650 p.a. decreasing to £0 over 10 years

*Initial rental payment in first 5 years of lease, i.e. before the start of capital payments.

ELC's financial projections use a land price of £8,000 acre. This is slightly above the £7,310/acre average price in England (section 3.2). It bases its costs on a 27 year lifetime per site – 2 years of development with no income and 25 years of smallholder payments. It sets rents for its rental sites at 5% of the total costs.

ELC staff team has grown and now consists of a team which is equivalent to 3 full-time employees:

- Operations Manager, responsible for the day to day running of the Cooperative
- Land/Site manager, responsible for working on development of the new site
- Funding support co-ordinator
- Communications
- Currently advertising for a Fundraiser (3 days/week) and a Membership and Engagement Manager (2 days/week)

ELC has a flat payment structure, with all workers paid at the same rate of £13.29/hour - £26,374 per annum.

The Co-operative requires one full-time equivalent (FTE) to cover general operations (accountancy, membership and Board administration, grant fundraising, etc.). Wages and other overheads have to be spread across a number of developments to make ELC viable and keep the sites affordable.

Although SFLT does not envisage such a large staff team, it will face the same challenge of spreading and absorbing staff and overhead costs and will need the spread beyond one site.

5.2 SFLT costs

The figures in the cashflows are based on the following assumptions:

1. Land price – estimated at £7,200 (half way between the price for good and average arable land - £9,200 and £5,154)

    - Purchase 1 in year 1– 15 acres @ £7,200 = £108,000, split into 2 smallholder units.

    - Purchase 2 in year 4 – 12 acres @ £7,200 = £86,400, split into 2 smaller units

    - Purchase 3 in year 7 – a further 15 acres @ £7,200 = £108,000.

No LBTT is due on these purchases as the price is within the £150,000 0% rate band.

2. Costs of obtaining planning permission and developing infrastructure per site are estimated at £3,000 for conveyancing; £5,000 for professional fees for site development; £25,000 (over the first 2 years) for site/infrastructure development.

3. Staffing costs for a full-time development worker– £29,151 (gross salary £26,374 p.a. plus Employers' NI £2,513 plus employers' pension at 1%-3% £264- £792). This post will be reliant on grant funding so has been shown as full-time for the first 3 years to get SFLT properly established, then reduced to 0.6 post. The post can only be sustained if it can continue to be part funded – assumed fully funded at £30,000 p.a. for the first 3 years, then part funded at £10,000 grant p.a. from year 4.

4. On-going site development and maintenance costs - SFLT will carry out the initial site development but most routine maintenance will then be recharged to the farmers, based on their portion of the site. £1,000 p.a. has been allowed in the projections for non-rechargeable costs.

5. Rates and insurance – Agricultural land is exempt from business rates; Water rates will be recharged to the tenants, as will property insurance.

6. Office costs – SFLT's costs will include public liability insurance, telephone and office costs like printing and stationery – estimated at £1,500 p.a.

7. Costs of website – estimated at £3,000, then annual costs of £500.

8. Costs of promotion and awareness raising – Social media will be used as the principal means of raising awareness and communicating with supporters but there will be costs associated with members' meetings, particularly if held at regional level, and with printed promotional materials. £2,000 - £4,000 p.a. allowed in projections with higher amounts in years where shares will be issued.

9. Professional fees and compliance - legal set up and work on leases in year one - £6,000 and then ongoing compliance costs (returns, accounts, etc.) estimated at £2,000 p.a.

10. Loan interest at 3%.

5.3 Income

Rental income is based on the assumption that each piece of farmland purchased will be sub-divided and rented out to several small farmers.

- It is assumed that there will be no rent in the year of acquisition or the following year as this will be the time required to develop the site
- Annual rent is 5% of the purchase price of the land - £360 /acre.
- Rent is discounted in the first three years to allow time for the farmer to start to generate sufficient income – by 70% in the first year, by 40% in year 2, and by 10% in year 3.

The payback period for these land purchases and site development based on these assumptions is 36 years – see Appendix 1. This model (developed by Malcolm Harris and adapted here) can be varied depending on the assumptions made.

The income for SFLT is based on acreage so is not affected by the number and size of the plots that it is subdivided into.

Obviously the size of the plot affects the plot holder as rent will be higher for a larger plot but so will income generation potential. The optimal size of each plot will depend on the quality of the land, the potential yield and the plans of the plot holder.

The question was raised of how SFLT would cope with a tenant affected by crop failure. This would be challenging as any reduction in income would impact on SFLT's own cashflow. This would be more problematic if SFLT's financial structure includes a larger element of loan repayments that have to be made on time. While the cashflow might bear crop failure as a rare occurrence, it should be just that; SFLT could not reduce rents on a regular basis because crops had failed to generate the anticipated level of income for the farmer.

5.4 Financial modelling

The figures shown at Appendix 1 are high level financial projections which are indicative only and based on some broad assumptions. Inflation has not been factored in, nor have increases in land prices.

The projections show how difficult it will be to achieve viability with a small number of farms. However, if the number of farms increases, so will the costs, particularly staffing costs. The model currently depends on very limited staffing which will mean ongoing Board and volunteer commitment and time input.

The model relies heavily on capital from share issues and donations - £395,000 as a minimum for the acquisition of the first three sites. It has been assumed that no interest is paid on shares and that loans are kept to a minimum at an interest rate of 3%. A shift in the balance between shares and bonds/loans would increase costs and add the challenge of making loan repayments.

6. Risk

Risk assessment and management will be critical to the success of the project. The table below highlights some of the key potential risks. This can be amended and added to as SFLT develops.

Risk	Consequences/impact	Steps to mitigate
Refusal of planning consent	Cost and time spent on initial application wasted. Need to appeal – more costs and time. Loss of site value and attractiveness to occupiers if planning permission refused.	Work to reduce the likelihood of adverse planning decisions at all stages of the process through open dialogue. Robust planning application documentation. Consider interim use for site if planning permission is delayed or denied.
Failing to attract the right potential farmers/ tenants	Farmers fail to make a living – bad for them personally, but also potentially damaging to the credibility of SFLT's scheme. Difficult issues where a farmer fails to deliver on agreed environmental outcomes. Disillusionment and disenchantment makes it hard to keep and attract members.	Develop and adhere to a rigorous farmer selection process, including defined selection criteria. Develop a programme of volunteer work days to build relationships with potential farmers. Build up a strong network of supporters and similar organisations.
Failing to attract and retain the right people on the staff and Board team	Loss of drive and determination to make it happen. Things not done properly in terms of management & admin. Lack of leadership which would lead to loss of supporters.	Clear strategic plan that sets out how objectives will be achieved. Careful recruitment. Good and regular communication between Board members, staff and members.
Rising land prices	Suitable farmland becomes unaffordable for SFLT.	Proactively seek land donations. Take up any opportunities for grant funding that would contribute to the cost of establishing new sites.
Failure to attract sufficient financing	Failure to attract shareholders, donations, etc. - i.e. low cost/no cost finance - puts the whole project in jeopardy. This would leave SFLT dependent on loan finance which would make viability much more challenging.	Using networks of supporters and partners to reach as many potential investors/members as possible. Generate as much publicity as possible through Press and social media to raise SFLT's profile before launching a share issue. Build long-term relationships with key potential finance partners.

Failure to meet grant targets	No "free" money which will be crucial, particularly at the start. No money for a development worker, which puts pressure and an unsustainable workload on the Board and volunteers.	Build relationships with key potential funders and work out what each one could potentially fund. Read funding criteria before starting on applications and show how SFLT meets these criteria. Find "critical friends" from among the membership to review applications before submission. Develop a funding strategy as part of the overall financial plan.

Appendix 1: Financial modelling

SFLT Cashflow Projections							
	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7
Income	£	£	£	£	£	£	£
Rental income	0	0	1,620	3,240	4,860	6,696	7,992
Donations/Friends Scheme	1,000	1,000	1,200	1,200	1,500	1,500	1,500
Grant for land /infrastructure		25,000			25,000		
Grant for development worker	30,000	30,000	30,000	10,000	10,000	10,000	10,000
	31,000	**56,000**	**32,820**	**14,440**	**41,360**	**18,196**	**19,492**
Site costs							
Land purchase	108,000			86,400			108,000
Conveyancing	3,000			3,000			3,000
Planning and professional fees	5,000			5,000			5,000
Site infrastructure costs	5,000	20,000		5,000	20,000		5,000
	121,000	**20,000**	**0**	**99,400**	**20,000**	**0**	**121,000**
Operating costs							
Staff costs	29,151	29,415	29,679	17,807	17,807	17,807	17,807
Recruitment and staff travel	1,000	420	420	420	420	420	420
Ongoing site development & maintenance			1,000	1,000	1,000	1,000	1,000
Office costs	1,500	1,500	1,500	1,500	1,500	1,500	1,500
Website costs	3,000	500	500	500	500	500	500
Costs of promotion & awareness raising	4,000	2,000	2,000	3,000	2,000	2,000	2,500
Professional fees & compliance	6,000	2,000	2,000	2,000	2,000	2,000	2,000
	44,651	**35,835**	**37,099**	**26,227**	**25,227**	**25,227**	**25,727**
Finance costs							
Loan interest				600	600	600	600
Costs of share issue	4,000						
	4,000	**0**	**0**	**600**	**600**	**600**	**600**
Surplus/deficit	**-138,651**	**165**	**-4,279**	**-111,787**	**-4,467**	**-7,631**	**-127,835**
Capital							
Shares issued	150,000			100,000			100,000
Loans /bonds				20,000			25,000
Loan repayments							
Net cash inflow/outflow	**11,349**	**165**	**-4,279**	**8,213**	**-4,467**	**-7,631**	**-2,835**
Opening balance b/fwd	100	11,449	11,614	7,335	15,548	11,080	3,449
Closing balance c/fwd	**11,449**	**11,614**	**7,335**	**15,548**	**11,080**	**3,449**	**613**

Payback model

Rent per acre after 5 yrs £360 Est Acquisition Price per Acre £7,200

Farm	Acres	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10	Year 11	Year 12	Year 13	Year 14	Year 15	Year 16	Year 17	Year 18
Farm 1	15	-108,000		1,620	3,240	4,860	5,400	5,400	5,400	5,400	5,400	5,400	5,400	5,400	5,400	5,400	5,400	5,400	5,400
Farm 2	12				-86,400		1,296	2,592	3,888	4,320	4,320	4,320	4,320	4,320	4,320	4,320	4,320	4,320	4,320
Farm 3	15							-108,000		1,620	3,240	4,860	5,400	5,400	5,400	5,400	5,400	5,400	5,400
Farm 4																			
Farm 5																			
Farm 6																			
Farm 7																			
				0															
Site development/maint costs		-13,000	-20,000	-1,000	-14,000	-21,000	-1,000	-14,000	-21,000	-2,000	-2,000	-2,000	-2,000	-2,000	-2,000	-2,000	-2,000	-2,000	-2,000
SFLT Reserves	15%	-18,150	-3,000	93	-14,574	-2,421	854	-17,101	-1,757	1,401	1,644	1,887	1,968	1,968	1,968	1,968	1,968	1,968	1,968
SFLT Share Capital		139,150	162,150	161,437	273,171	291,732	285,182	416,291	429,760	419,019	406,415	391,948	376,860	361,772	346,684	331,596	316,508	301,420	286,332
SFLT Retained Earnings		0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Capital Raised/(Repaid)		139,150	23,000	-713	111,734	18,561	-6,550	131,109	13,469	-10,741	-12,604	-14,467	-15,088	-15,088	-15,088	-15,088	-15,088	-15,088	-15,088
Payback in	**36 Years**																		

Farm	Year 19	Year 20	Year 21	Year 22	Year 23	Year 24	Year 25	Year 26	Year 27	Year 28	Year 29	Year 30	Year 31	Year 32	Year 33	Year 34	Year 35	Year 36	Year 37
Farm 1	5,400	5,400	5,400	5,400	5,400	5,400	5,400	5,400	5,400	5,400	5,400	5,400	5,400	5,400	5,400	5,400	5,400	5,400	5,400
Farm 2	4,320	4,320	4,320	4,320	4,320	4,320	4,320	4,320	4,320	4,320	4,320	4,320	4,320	4,320	4,320	4,320	4,320	4,320	4,320
Farm 3	5,400	5,400	5,400	5,400	5,400	5,400	5,400	5,400	5,400	5,400	5,400	5,400	5,400	5,400	5,400	5,400	5,400	5,400	5,400
Farm 4																			
Farm 5																			
Farm 6																			
Farm 7																			
Site development/maint costs	-2,000	-2,000	-2,000	-2,000	-2,000	-2,000	-2,000	-2,000	-2,000	-2,000	-2,000	-2,000	-2,000	-2,000	-2,000	-2,000	-2,000	-2,000	-2,000
SFLT Reserves	1,968	1,968	1,968	1,968	1,968	1,968	1,968	1,968	1,968	1,968	1,968	1,968	1,968	1,968	1,968	1,968	1,968	1,968	1,968
SFLT Share Capital	271,244	256,156	241,068	225,980	210,892	195,804	180,716	165,628	150,540	135,452	120,364	105,276	90,188	75,100	60,012	44,924	29,836	14,748	0
SFLT Retained Earnings	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	340
Capital Raised/(Repaid)	-15,088	-15,088	-15,088	-15,088	-15,088	-15,088	-15,088	-15,088	-15,088	-15,088	-15,088	-15,088	-15,088	-15,088	-15,088	-15,088	-15,088	-15,088	-14,748

Appendix 2: Legal Options' Key Features

The report has focussed on mutual models as the most appropriate for SFLT. The table below sets out the key features of the full range of legal models:

Legal structure	Benefit focus	Ability to issue shares	Members' liability	Voting rights	Asset lock	Profit share	Regulator	Can it be a charity?
Limited liability partnership (LLP)	Group members/ owners	Member's share brought in	Limited to share in partnership, subject to LLP clawback	Based on members' agreement	No	Based on members' agreement	Companies House	No
Company limited by shares	Shareholders	Transferable shares	Limited to amount unpaid on shares	One share, one vote	No	Dividend based on shares held	Companies House	No
Company limited by guarantee	Commitment to shared objectives	No	Limited to amount guaranteed (usually £1)	One member, one vote	Optional	No	Companies House OSCR if charity	Yes if it meets the criteria for being a charity.
Community interest company (CIC)	Community benefit	Yes, if limited by shares	Limited to amount unpaid on shares or by guarantee	One member, one vote if ltd by guarantee One share, one vote if ltd by shares	Yes - statutory	Can pay capped dividends on shares	Companies House CIC Regulator	No
Scottish Charitable Incorporated Organisation (SCIO)	Community benefit	No	No liability	One member, one vote at AGM/EGM	Yes - statutory	No, all profits must be used for charitable purposes	OSCR	Yes, its objects must remain wholly charitable
Legal structure	Benefit focus	Ability to issue shares	Members' liability	Voting rights	Asset lock	Profit share	Regulator	Can it be a charity?

Bona Fide Co-operative	Mutual benefit of members	Withdrawable shares (max £100,000)	Limited to amount of shares	One member, one vote	Voluntary	Can distribute to members	Financial Conduct Authority (FCA)	No
Community Benefit Society (Bencom) limited by guarantee	Community benefit	No	Limited to amount guaranteed (usually £1)	One member, one vote	Optional statutory	No	Financial Conduct Authority (FCA) OSCR if charity	Yes if it meets the criteria for being a charity.
Community Benefit Society (Bencom) limited by shares	Community benefit	Withdrawable shares (max £100,000) Transferable shares	Limited to amount of shares	One member, one vote	Optional statutory	Flexible capped interest	Financial Conduct Authority (FCA) OSCR if charity	Yes if it meets the criteria for being a charity.

Appendix 3: Charitable Status

Pros

- Exemption from most forms of direct taxation, within certain limits. Note that this does not include VAT. Charities have to pay VAT like any other business when they cross the registration threshold.
- Eligibility for rates relief – mandatory 80% for charities; the other 20% is discretionary.
- Gift Aid can be used to increase the value of donations from eligible individual tax payers.
- Eligibility for help, especially financial, from charitable trusts, some of which will only give grants to registered charities.

Cons

- The organisation's objects must all be, and remain wholly charitable. OSCR would need to be convinced that SFLT's objects are charitable.
- There are restrictions on the level of non-charitable trading that can be carried out by a charity. Exceeding these limits makes the charity liable for tax and can also jeopardise its charitable status.
- There are restrictions on the alteration of objects.
- The asset lock applies to charities and on dissolution, all remaining assets must pass to another asset locked body with charitable purposes.
- Charity trustees/directors cannot normally be paid or receive any financial benefits.
- Charities are subject to regulation by the Office of the Scottish Charity Regulator (OSCR) and must complete an Annual Return, as well as notifying OSCR of various other changes.
- Accounts have to be drafted in accordance with specific requirements as laid out in charity accounting regulations. They must be independently examined or audited as required by the regulations, and must be sent to OSCR with the Annual Return. This has additional cost implications.

The Charity Test

Every charity must meet the charity test, both before registration and on an ongoing basis.

1. Its purposes consist of one or more charitable purposes

and

2. It provides public benefit in Scotland or elsewhere.

The **charitable purposes** are:-

- the prevention or relief of **poverty**
- the advancement of **education**
- the advancement of **religion**
- the advancement of **health** (including the prevention or relief of sickness, disease or human suffering)

- the **saving of lives**
- the advancement of **citizenship or community development** (including rural or urban regeneration, and the promotion of civic responsibility, volunteering and the voluntary sector)
- the advancement of the **arts, heritage, culture or science**
- the advancement of **public participation in sport**
- the provision of **recreational facilities**, or the organisation of recreational activities, with the object of improving the conditions of life for the persons for whom the facilities or activities are primarily intended
- the advancement of **human rights**, conflict resolution or reconciliation
- the promotion of **religious or racial harmony**
- the promotion of **equality and diversity**
- the advancement of **environmental protection** and improvement
- the **relief of those in need** by reason of age, ill-health, disability, financial hardship or other disadvantage (including the provision of accommodation or care)
- the advancement of **animal welfare**
- any other purpose that may reasonably be regarded as analogous to any of the preceding purposes.

The Public Benefit test

Public Benefit is not defined in the Act but is based on established practice and case law. In assessing public benefit, OSCR considers not only the benefit to members of the public but also:-

- whether any other specific groups or individuals gain any private benefit and how this compares to the public benefit provided
- whether there is likely to be any “disbenefit” or harm to the public
- whether any fees or charges made for its services unduly restrict public access to the benefit.

Although an organisation may meet the charity test by having one or more charitable purposes and providing public benefit, it cannot be a charity if the constitution allows the distribution or use of its property for a purpose which is not charitable - this is why the dissolution clause in the constitution is so important.

OSCR has published full guidance on this in its publication **“Meeting the Charity Test”** which can be downloaded from its website.