

LAND REFORM (SCOTLAND) ACT 2016

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 5 – Right to Buy Land to Further Sustainable Development

Key terms

Section 45 – Meaning of “land”

188. Subsection (1) provides that land for the purposes of Part 5 includes bridges and other structures built on or over land, inland waters, canals, and the foreshore (which is the land between the high and low water marks of ordinary spring tides).
189. It also provides land for the purposes of Part 5 includes salmon fishings in inland waters or mineral rights that are owned separately from the land in respect of which they are exigible but that land also does not include any other separate tenements owned separately from the land in respect of which they are exigible.
190. Subsection (2) sets out that “mineral rights” does not include rights to oil, coal, gas, gold or silver.
191. Subsection (3) sets out the meaning of “inland waters” in Part 5.

Section 46 – Eligible land

192. This section defines the land which is to be classed as eligible for the purposes of the right to buy in Part 5.
193. Subsection (1) provides that all land is eligible for the purposes of Part 5 except for land which is defined as “excluded land”.
194. Subsection (2) sets out the meaning of “excluded land”. Excluded land includes: land on which there is an individual’s home, except where the home is occupied by an individual under a tenancy; land pertaining to an individual’s home as may be set out in regulations; croft land (as defined in section 68 of the Land Reform (Scotland) Act 2003); land which is owned by the Crown by virtue of it having vested as *bona vacantia* (because no owner exists or can be identified) or it having fallen to the Crown as *ultimus haeres* (because no heir to the previous owner exists or can be identified); and land of such other descriptions that Ministers may set out in regulations.
195. Subsection (3) provides that Ministers may make regulations setting out the buildings or structures that are or are to be treated as an individual’s home and the types of occupation and possession that are or are to be treated as a tenancy.

Section 47 – Eligible land: salmon fishings and mineral rights

196. Subsection (1) sets out circumstances in which a Part 5 community body may apply to buy eligible land consisting of salmon fishings or mineral rights only. This can only be done where the Part 5 community body is also applying, or has applied, to buy the land

to which the fishings or minerals relate, or the application is made during the relevant period.

197. Subsection (2) sets out that an application can only be made during the relevant period if the Part 5 community body has applied to buy the land that in respect of which the salmon fishings and mineral rights are exigible and the Part 5 community body, or third party purchaser nominated by the Part 5 community body, has confirmed its intention to proceed with buying that land or has already bought and retained the land in accordance with Part 5.
198. Subsection (3) sets out the meaning of “relevant period”. This is defined as beginning with the date on which the Scottish Ministers consented to the application for the Part 5 right to buy. It ends either with (a) where the Part 5 community body, or third party purchaser as the case may be, does not proceed to exercise its right to buy that related land, on the date on which it withdraws its intention to proceed, or the date of its failure to complete its purchase; or (b) where the Part 5 community body, or third party purchaser as the case may be, has bought the land in respect of which the salmon fishings or mineral rights are exigible, within one year (in relation to salmon fishings), or within five years (in relation to minerals right) after the date on which the land was so bought.

Section 48 – Eligible land: tenant’s interests

199. This section sets out the circumstances in which the right to buy may be exercised in relation to the interest of a tenant over tenanted land.
200. Subsection (1) states that the provisions about a tenant’s interest apply where a tenancy has been created over land at least part of which is eligible land provided that it is not a croft tenancy, tenancy of a dwelling-house or such other type of tenancy that the Scottish Ministers may set out in regulations.
201. Subsection (2) specifies definitions of “principal subjects” and “tenanted land”.
202. Subsection (3) specifies the situations in which a Part 5 community body may apply to buy a tenant’s interest in land. An application may be made if the Part 5 community body has made a simultaneous application to buy the land, or part of the land, to which the tenancy relates, it has made a prior application to buy the land on which Ministers have not yet made a decision or the application is made during the relevant period (and certain conditions are met).
203. Subsection (4) provides that the interest that the Part 5 community body may apply to buy under section 54 is the interest of the tenant over so much of the tenanted land as is comprised within the principal subjects.
204. Subsection (5) specifies the conditions under which the Part 5 community body can apply to purchase a tenant’s interest during the relevant period. The conditions are that the Part 5 community body, or third party purchaser who was nominated by a Part 5 community body has confirmed to Scottish Ministers its intention to proceed to buy the land, or part of it, to which the tenancy relates or has already bought and retained that land in accordance with Part 5.
205. Subsection (6) defines the “relevant period”. This is defined as beginning with the date on which Scottish Ministers approved the application for the Part 5 right to buy in relation to the land, or part of it, to which the tenancy relates. It ends either with (a) where the Part 5 community body, or third party purchaser as the case may be, does not proceed to exercise its right to buy, the date on which it withdraws its confirmation of intention to proceed, or the date of its failure to complete the purchase; or (b) where the Part 5 community body or third party purchaser has bought and retained the land, five years from the date where the Part 5 community body, or third party purchaser as the case may be, bought the land.
206. Subsection (7) specifies that reference to a tenant includes sub-tenant.

Section 49 – Part 5 community bodies

207. Subsection (1) sets out the meaning of a Part 5 community body. Where a body applies under section 54 to exercise the right to buy itself then a Part 5 community body is a body that falls within subsection (2), (3) or (4). Where a body applies under section 54 but nominates a third party purchaser to exercise the right to buy then a Part 5 community body is a body falling within subsection (5). Ministers may also make regulations setting out additional descriptions of bodies that are to be Part 5 community body.
208. Subsection (2) sets out that a company limited by guarantee whose articles of association meet certain requirements may be a Part 5 community body for the purpose of subsection (1)(a).
209. Subsection (3) sets out that a Scottish charitable incorporated organisation whose constitution meets certain requirements may be a Part 5 community body for the purpose of subsection (1)(a).
210. Subsection (4) sets out that a community benefit society whose registered rules meets certain requirements may be a Part 5 community body for the purpose of subsection (1)(a).
211. Subsection (5) specifies that a body corporate whose written constitution meets certain requirements may be a Part 5 community body for the purpose of subsection (1)(b).
212. Subsection (6) provides that, in terms of subsection (2), (3) and (4), Ministers may dispense the requirement that there must be not fewer than 10 members.
213. Subsection (7) provides that a body is not a Part 5 community body until Scottish Ministers have confirmed in writing that the main purpose of the body is consistent with furthering the achievement of sustainable development.
214. Subsection (8) provides that the Scottish Ministers may by regulations modify subsections (2), (3), (4), (5) and (6).
215. Subsection (9)(a) sets out that the community of a body is defined by reference to a postcode unit (or units) or a type of area which Ministers set out in regulation. A community may also be defined with reference to both of these things.
216. Subsection (9)(b) provides that the community includes people who are resident in that postcode unit or in one of the postcode units or other areas set out by Ministers in regulations. In addition to being resident, members of the community must also be entitled to vote at local government elections in a polling district that encompasses that postcode unit or postcode units or the alternative areas set out by Ministers in regulations. The Scottish Ministers may make regulations specifying unit or type of area included.
217. Subsection (10) provides that a Part 5 community body which is a company limited by guarantee may specify in its articles of association that, if the company is winding up, its property may only pass to another person if that person is a charity.
218. Subsection (11) provides definitions for the purposes of this section.

Section 50 – Provisions supplementary to section 49

219. Section 50 sets out the constraints which apply to a Part 5 community body after it has acquired land under Part 5.
220. Subsection (1) provides that a Part 5 community body, which has bought land under Part 5 and still owns that land, must notify Scottish Ministers as soon as possible after any modification it has made to its memorandum, articles of association, constitution or registered rules. Subsection (2) allows Ministers to acquire the land compulsorily

if a Part 5 community body, which has bought land under Part 5, would no longer be entitled to buy the land.

- 221. Subsection (3) provides that Ministers cannot exercise their powers under subsection (2) to acquire the land compulsorily on the basis that the land is no longer eligible land.
- 222. Subsections (4) and (5) provide that Ministers may set out in regulations provisions relating to the compulsory acquisition of land under this section.

Section 51 – Interpretation of Part

- 223. **Section 51** sets out some matters of interpretation for Part 5 of the Act and subsection (1) and (2) clarify terms “Lands Tribunal” and “a creditor in a standard security with a right to sell land”.
- 224. Subsections (3) and (4) provide that public or local holidays should not be taken into account when calculating time periods in Part 5, except for the six-month period of completion for the right to buy referred to in section 64(2), the 28-day period for lodging an appeal to the sheriff (section 69(7)) and the 21-day period for lodging an appeal to the Lands Tribunal on the valuation of land or a section 66 determination (section 70(3)).

Register of Applications by Community Bodies to Buy Land

Section 52 – Register of Applications by Community Bodies to Buy Land

- 225. **Section 52(1)** provides for the creation of a Register of Applications by Community Bodies to Buy Land (the “New Register”) to be set up and kept by the Keeper of the Registers of Scotland (the “Keeper”).
- 226. Subsection (2) specifies the information and documents which must be kept in the Part 5 Register and provides that these must be kept in a form convenient for public inspection.
- 227. Subsection (3) requires that any person providing information or making a decision that requires to be registered in the New Register must give it or a copy of it to the Keeper to be as soon as reasonably practicable.
- 228. Subsections (4) and (5) allow a Part 5 community body when registering an application to require that information or documentation which relates to the raising or expenditure of money to allow land to which the application relates to be used should be withheld from public inspection and is to be kept separately by the Scottish Ministers. Such information or documentation will not be entered in the New Register. Subsection (6) states that nothing in subsections (4) and (5) empowers Ministers to require a Part 5 community body or third party purchaser to provide such information or documentation.
- 229. Subsection (7) confers powers on Ministers to make regulations to amend the information that is to be made publicly available in the New Register, to amend the provision about the Part 5 community body requesting that certain information can be withheld from the Register and amending the type of information that may be withheld.
- 230. Subsection (8) and (9) requires the Part 5 community body to notify the Keeper of changes to its name, registered office address or principal office address (as the case may be depending on its constitution).
- 231. Subsection (10) sets out the duties which are imposed on the Keeper. The Keeper must make the New Register available at all reasonable times for inspection free of charge, ensure that members of the public are able to request copies of the entries on payment of a charge as may be set out by Ministers in regulations, and that if anyone requests a true copy of the original document this will be supplied on payment of such a charge. Subsection (11) confirms that a certified extract is allowable as evidence.

232. Subsection (12) provides that the Keeper means the Keeper of the Registers of Scotland or such person as Ministers appoint to carry out the Keeper's functions and subsection (13) allows for the appointment of different person for different persons.

Section 53 – Inclusion in New Register of applications for right to buy abandoned, neglected or detrimental land

233. **Section 53** amends section 97F of the Land Reform (Scotland) Act 2003 to remove the requirement for there to be a Register of Community Interests in Abandoned, Neglected or Detrimental Land. It requires the Keeper to include applications for the community right to buy abandoned, neglected or detrimental land as part of the Register of Applications by Community Bodies to Buy Land: in effect, the two Registers are thus merged. The amendment also makes consequential amendments to section 97F of the Land Reform (Scotland) Act 2003 to reflect this change.

Applications for consent

Section 54 – Right to buy: application for consent

234. **Section 54** sets out the process a Part 5 community body must undertake in submitting an application to exercise the right to buy.
235. Subsection (1) specifies that the right can be exercised by a Part 5 community body or by a third party purchaser which is nominated by the Part 5 community body in its application.
236. Subsection (2) specifies that the right to buy can only be exercised with Ministers' consent on the written application of the Part 5 community body.
237. Subsection (3) provides that a right to buy land can be exercised in relation to more than one holding of land or more than one tenancy, but separate applications must have been made for each holding of land or tenancy. Subsection (4) defines "holding" of land and "tenancy". Ministers may make different decisions in relation to each separate application.
238. Subsection (5) specifies that an application must set out who the owner of the land is and, where the application is for a tenant's interest in land, who the tenant is, and identify any creditor in a standard security with a right to sell the land or any part of it. Ministers may set out the required form of the application in regulations. The application must also include or be accompanied by information of the kind specified by Ministers in regulations.
239. Subsection (6) lists the matters which the information to be included in or to accompany the application made by the Part 5 community body is to be about. These include the reasons why the Part 5 community body considers that its proposals for the land satisfy the sustainable development conditions set out in section 56(2), (or, where the application is to buy a tenant's interest, those conditions as modified by section 56(5) (a)) the location and boundaries of the land, all rights and interests in the land known to the Part 5 community body and the proposed use, development and management of the land.
240. Subsection (7)(a) specifies that at the same time as the Part 5 community body applies to Ministers, it must send a copy of its application form (including the associated material) to the owner of the land.
241. Subsection (7)(b) specifies that where the application is for a tenant's interest, the Part 5 community body must send a copy of its application form (including the accompanying material) to the tenant.
242. Subsection (7)(c) specifies that, where the Part 5 community body nominates a third party purchaser, at the same time as the Part 5 community body applies to Ministers,

it must send a copy of its application form (including the accompanying information) to the third party purchaser.

243. Subsections (7)(d) and (8) require the Part 5 community body to send a copy of the application to any known creditor in a standard security over the land and invite the creditor to notify, within 60 days, the Part 5 community body and Ministers of circumstances in which a calling-up notice has been served by the creditor, a notice of default has been served, a notice of default has been upheld or varied or where the court has granted the creditor a warrant under section 24 of the Conveyancing and Feudal Reform (Scotland) Act 1970.

Section 55 – Right to buy: application procedure

244. Subsection (1) provides that upon receiving the application under section 54, Scottish Ministers must invite: the owner of the land; where the application is to buy a tenant's interest, the tenant; any creditor in a standard security; where the application includes a third party purchaser, the third party; and any other person that may have an interest in the application, to send written comments on the application to Scottish Ministers within 60 days of the Ministers' invitation. Ministers must also take reasonable steps to invite comments from owners of land adjacent to the land to which the application relates. The community body must be sent copies of the invitations.
245. Subsection (2) specifies matters which the invitation to a landowner and, where the application is to buy a tenant's interest, the tenant, must invite the landowner or tenant to provide comment on.
246. Subsection (3) provides that Ministers must give public notice of receipt of the application as soon as practicably possible and invite views within 60 days of the publication of the notice, and subsection (4) provides that the public notice is to be given by advertisement in such manner as specified in regulations.
247. Subsection (5) provides that Ministers must pass all views received on an application to the Part 5 community body and invite them to respond to these views within 60 days of Ministers sending the invitation.
248. Subsection (6) provides that when considering whether or not to give consent to the application, Ministers must have regard to all views received in answer and responses to those views to the invitation sent under this section.
249. Subsection (7) provides that Ministers must decline to consider an application that does not comply with the requirements of section 54, is otherwise incomplete or otherwise indicates that it is one which the Scottish Ministers would be bound to reject.
250. Subsection (8) sets constraints on the timing of the Ministers' decision on an application. It provides that Ministers must not make any decision on the application before the end of the 60-day period within which a Part 5 community body may respond to an invitation by Ministers under subsection (5) to provide responses to the comments on an application. Alternatively, if by the date of 60 days after the date on which the Part 5 community body may provide Ministers with a response to an invitation sent under subsection (5), the Lands Tribunal has not notified Ministers of any finding under section 71, Ministers must not make a decision until the date on which the Lands Tribunal provides Ministers with that finding.
251. Subsection (9) provides that, where requested by the Part 5 community body or third party purchaser where relevant, the Scottish Ministers must treat as confidential any information or document relating to the financial aspects of the application.

Section 56 – Right to buy: Ministers’ decision on application

252. Subsection (1) sets out that Ministers must not consent to an application to buy land under section 54 unless they are satisfied that application meets the sustainable development conditions and the procedural requirements have been complied with.
253. Subsection (2) sets out the sustainable development conditions. All conditions must be met for Ministers to consent to an application. These conditions are that the transfer of land is likely to further the achievement of sustainable development in relation to the land, that the transfer is in the public interest, that the transfer of land is likely to result in significant benefit to the community and is the only practicable, or most practicable, way of achieving that benefit, and that not granting consent to the transfer is likely to result in harm to the community in question.
254. Subsection (3) sets out the procedural requirements. These include that the community body has, at least six months prior to the application being made, submitted a written request to the owner of the land to transfer the land to the community body or person named in the application and the owner has not responded or agreed to the request. They also include a requirement that land is eligible land, the owner and any creditor in standard security is correctly identified, where a third party purchaser is nominated that the party is correctly identified and shown to consent to the application and that the owner is not prevented from selling the land or subject to any enforceable personal obligation (otherwise than an obligation which has been suspended by regulations made under section 61(3)) to sell the land to anyone other than the Part 5 community body or the third party purchaser. If a significant number of the members of the community have a connection with the land, that the land is sufficiently near to land with which those members of the community have a connection or that the land is in or sufficiently near to the area comprising that community. The community must have approved the exercise of the right to buy and Part 5 community body must comply with the provisions of section 49.
255. Subsection (4) provides that in determining whether an application to buy land meets the sustainable development conditions mentioned in subsection (2), the Scottish Ministers may take into account the extent to which, in relation to the relevant community (as defined in subsection (11), that is, by reference to a postcode unit or units or a type of area that Ministers may specify by regulations, regard has been had to guidance issued under section 44 (the Part 4 Guidance on Engaging Communities in Decisions Relating to Land).
256. Subsection (5) provides that, where an application relates to land which consists of salmon fishings or mineral rights only, Ministers must in addition be satisfied that the application complies with the requirements of section 47. That section contains provision requiring the Part 5 community body or third party purchaser to have already purchased the land, under Part 5, which the salmon fishings or mineral rights relate to, or to be in the process of applying to buy that land under Part 5.
257. Subsection (6) sets out that, where an application includes a request to buy a tenant’s interest, the Scottish Ministers must be satisfied that the sustainable development conditions under subsection (2) are met in respect of the tenant’s interest, and that the procedural requirements set out in subsection (7) have also been complied with.
258. Subsection (7) sets out the procedural requirements that must be complied with in respect of an application to buy a tenant’s interest. These require that, at least six months prior to making the application, the Part 5 community body has submitted a written request to the tenant to transfer the tenant’s interest to the community body or person named in the application. They also require that the tenant, owner and any creditor in standard security is correctly identified, where a third party purchaser is nominated, that the party is correctly identified and is shown to consent to the application and that the application complies with the requirements of section 48. The requirements also include that a significant number of the members of the community have a connection

with the land, that the land is sufficiently near to land with which those members of the community have a connection or that the land is in or sufficiently near to the area comprising that community. Also, the community must have approved the exercise of the right to buy and the Part 5 community body must comply with the provisions of section 49.

- 259. Subsection (8) provides that in considering whether the application to buy a tenant's interest meets the sustainable development criteria, the Scottish Ministers must take into account any related application under section 54 to buy land to which the tenancy relates, and may take into account the extent to which, with regard to the relevant community (as defined in subsection (11) that is, by reference to a postcode unit or units or a type of area that Ministers may specify by regulations), regard has been had to guidance issued under section 44 (the Part 4 Guidance on Engaging Communities in Decisions Relating to Land).
- 260. Subsection (9) states that the Scottish Ministers may by regulations make provision about the form and content of requests referred to in subsections (3)(a) and (7)(a) of section 56, the form and content of responses to requests referred to in subsection (3)(a) and the circumstances in which landowners are to be taken not to have responded or not to have agreed to requests referred to in subsection (3)(a).
- 261. Subsection (10) requires that in determining for the purposes of subsection (2)(b) whether a transfer of land or tenant's interest is in the public interest, the Scottish Ministers must take into account any information given under section 55(2)(a), that is, the owner's or tenant's views on the likely impact on the owner or tenant of the proposals, and they must also consider the likely effect of granting or not granting the consent to the transfer on land use in Scotland generally.
- 262. Subsection (11) defines "relevant community" for the purposes of sections (2)(c)(i), (3)(g)(i), (4), (7)(g)(i) and (8)(b).
- 263. Subsection (12) provides that, in determining what constitutes significant benefit to the community for the purposes of subsection (2)(c) or harm to a community for the purpose of subsection (2)(d), the Scottish Ministers must consider the likely effect of granting or refusing consent to the transfer of land or tenant's interest on the lives of the persons comprising that community, including the likely effect on economic development, regeneration, public health, social wellbeing and environmental wellbeing.
- 264. Subsection (13) provides that in considering a decision under section 56 on an application under section 54, the Scottish Ministers must have regard to relevant non-Convention human rights and the desirability of encouraging equal opportunities within the meaning of Section L2 of Part 2 of schedule 5 of the Scotland Act 1998. Convention rights are excluded from this definition as the Scottish Ministers are already required to act compatibly with the Convention by virtue of section 57(2) of the Scotland Act 1998.
- 265. Subsection (14) defines relevant non-Convention human rights as meaning such human rights, other than Convention rights, as the Scottish Ministers consider to be relevant, and which are contained in any international convention, treaty or other international instrument ratified by the United Kingdom, including the International Covenant on Economic, Social and Cultural Rights adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966 subject to any amendment in force in relation to the United Kingdom for the time being, and any reservations, objections or interpretative declarations by the United Kingdom for the time being in force.

Section 57 – Ballot to indicate approval for purposes of section 56

- 266. Section 57 sets out the requirements for a ballot to establish that a right to buy application by a Part 5 community body, or the third party purchaser where relevant, has the support of its community.

267. Subsection (1) provides that a proposal by a Part 5 community body to exercise a right to buy, with a third party purchaser where relevant, will be deemed to have been approved by the relevant community, if, firstly, the ballot takes place within the six-month period immediately preceding the date of the right to buy application; secondly, that at least half of the community voted in the ballot or where fewer than half of the members of the community voted, the proportion that voted is sufficient to justify the community body proceeding to purchase the land; and finally, that the majority of the votes cast were in favour of the proposal to buy the land or tenant's interest.
268. Subsection (2) provides that the ballot must be conducted as may be set out in regulations made by the Scottish Ministers. Subsection (3) sets out matters which must be included in those regulations.
269. Subsection (4) provides that if the ballot is not conducted as specified by regulations the right to buy under the application is extinguished.
270. Subsection (5) specifies that the Part 5 community body must notify Ministers of the result within 21 days of the ballot or, where the application is made before the expiry of that 21-day period, at the same time as the application is submitted. This subsection also sets out what information about the ballot the Part 5 community body must provide to Ministers.
271. Subsection (6) provides that Ministers may require a Part 5 community body to provide further information about the ballot or any consultation that the community body may have held undertaken.
272. Subsection (7) provides that the Part 5 community body is responsible for the expense of conducting the ballot.
273. Subsection (8) provides that Scottish Ministers may set out in regulations circumstances in which the Part 5 community body may seek reimbursement for the expense of conducting a ballot from the Scottish Ministers.
274. Subsection (9) provides that Ministers may set out in regulations details about the circumstances, method, criteria and procedure for reimbursement of expenses for conducting a ballot. In particular subsection (9)(d) to (f) provides that regulations may make provision regarding the procedure to be followed when appealing a decision made by the Scottish Ministers in respect of the expenses of conducting the ballot, the persons who may consider an appeal and the powers of such persons.

Section 58 – Right to buy same land exercisable by only one Part 5 community body

275. **Section 58** deals with the situation where there is more than one Part 5 community body applying to buying the same land or tenant's interest.
276. Subsection (1) provides that only one Part 5 community body may apply under Part 5 in relation to the same land or tenant's interest.
277. Subsection (2) provides that, where more than one Part 5 community body submits an application seeking to buy the same land or tenant's interest, Ministers have to decide which application is to proceed.
278. Subsection (3) provides that Ministers must not take any decision on any of the applications relating to the same land or tenant's interest before they have considered all views and responses related to each application which they have received in answer to invitations under section 55.
279. Subsection (4) provides that, once Ministers have decided which Part 5 community body's application is to be allowed to proceed, the other Part 5 community body's right to buy shall be extinguished. It also specifies that Ministers must notify the decision to the owner of land, the tenant where the application is to buy a tenant's interest, the Part

5 community body and a third party purchaser, where relevant, and any person invited under section 55(1)(a) to send views on the application.

Section 59 – Consent conditions

280. **Section 59** provides that Ministers may impose conditions on their consent to an application under section 54 to exercise the right to buy.

Section 60 – Notification of Ministers’ decision on application

281. **Section 60** sets out how Ministers must notify the relevant parties of their decision to consent to or refuse an application.
282. Subsection (1) provides that Ministers must give notice in writing of their decision, and their reasons for it, to consent to or refuse an application under section 54, and sets out that notice must be given to the owner of land, the tenant where the application is to buy a tenant’s interest, the Part 5 community body and a third party purchaser where relevant, the Keeper and every other person who was invited to send views on the application under section 55(1)(a). The form of the notice is to be set out in regulations.
283. Subsection (2) provides that the notice must set out the land, or where relevant, the tenant’s interest to which the decision relates, must set out to whom the land is to be transferred or the tenant’s interest assigned and, where consent is given, must set out any conditions imposed by Ministers. It further specifies that the notice must contain information about the consequences of the decision and the date on which the consent is given or refused.

Procedure following consent

Section 61 – Effect of Ministers’ decision on right to buy

284. Subsection (1) gives Ministers power to make regulations prohibiting certain persons from transferring or otherwise dealing with the land, or tenant’s interest where appropriate, in respect of which an application under section 54 has been made.
285. Subsection (2) sets out matters that the regulations under subsection (1) may include.
286. Subsection (3) provides that Ministers may make regulations to suspend rights over land in respect of which a Part 5 application has been made.
287. Subsection (4) sets out that these regulations may provide for rights which will not be suspended, as well as rights which will not be suspended in certain circumstances.
288. Subsection (5) provides that nothing in Part 5 prejudices the position of creditors seeking to prevent the disposal of heritable property by a debtor by means of inhibition, action of adjudication or any other diligence.

Section 62 – Confirmation of intention to proceed with purchase and withdrawal

289. **Section 62** sets out the procedure which follows the consent by Ministers to the exercise of a right to buy.
290. Subsection (1) provides that, where an application made under section 54 does not nominate a third party purchaser, the right to buy can only be exercised by the Part 5 community body if that body notifies the Scottish Ministers, the owner of the land and, where the application is to buy the tenant’s interest, the tenant, of its intention to proceed within 21 days of receiving the notice of the valuation under section 56(13).
291. Subsection (2) provides that, where an application made under section 54 nominates a third party purchaser, the third party’s right to buy can only be exercised if both the Part 5 community body and the third party purchaser notify the Scottish Ministers, the owner of the land and, where the application is to buy the tenant’s interest, the tenant,

of intention to proceed within 21 days of receiving the notice of the valuation under section 56(13).

- 292. Subsection (3)(a) provides that where a Part 5 community body does not nominate a third party purchaser, the Part 5 community body may withdraw its right to buy application at any time up to receipt of the valuation, by notice in writing to Ministers. Subsection (3)(b) allows the Part 5 community body to withdraw a confirmation of intention to proceed it has previously given, by giving notice in writing to Ministers.
- 293. Subsection (4) provides that, where an application nominates a third party purchaser, up until receipt of the valuation only the Part 5 body may withdraw the application. After receipt of the valuation, either the Part 5 body or the third party purchaser may withdraw a confirmation of intention to proceed it has previously given, by giving notice in writing to Ministers.
- 294. Subsection (5) provides that the Scottish Ministers must acknowledge receipt of a notice withdrawing an application, a notice of intention to proceed or a notice withdrawing the intention to proceed and send a copy of the acknowledgement to the Keeper, the owner of the land and, where the application is to buy a tenant's interest, the tenant.

Section 63 – Completion of purchase

- 295. **Section 63** deals with the purchase of land following Ministers giving consent to a Part 5 right to buy application.
- 296. Subsection (1) provides that the Part 5 community body, or third party purchaser where relevant, is responsible for preparing the documents necessary to effect the transfer of the land or assignation of the tenant's interest, for ensuring that the land or interest transferred or assigned is the same as that specified in the application and for ensuring that the transfer or assignation is undertaken in accordance with any conditions specified in the consent given by Ministers.
- 297. Subsection (2) provides that, where the Part 5 community body, or third party purchaser where relevant, cannot comply with its duty regarding the land or tenant's interest to be conveyed, due to the fact that all or part of the land or tenancy covered by the consent to the application is not owned or tenanted by the person named as owner or tenant in the application, then it must refer this matter to Ministers.
- 298. Subsection (3) provides that where a reference is made to Ministers under subsection (2) then Ministers must direct that the right to buy is extinguished.
- 299. Subsection (4) requires the owner of the land subject to the Part 5 right to buy to make title deeds and other documents available to, and transfer title to, the Part 5 community body, or third party purchaser where relevant.
- 300. Subsection (5) provides that if, within six weeks of Ministers consenting to the application to buy the land, the owner refuses or fails to make these deeds available, or if they cannot be found, the Part 5 community body, or third party purchaser where relevant, can apply to the Lands Tribunal for an order requiring the production of those documents.
- 301. Subsection (6) provides that the Part 5 community body may apply to the Lands Tribunal to authorise its clerk to effect the transfer of title where the owner refuses, or for other reasons fails, to do so. Where the clerk to the Tribunal does so the effect will be the same as if it were done by the owner.
- 302. Subsection (7) applies where the application is to buy a tenant's interest and requires the tenant of the land subject to the Part 5 right to buy to make deeds and other documents available to and assign the interest to the Part 5 community body, or third party purchaser where relevant.

303. Subsection (8) provides that if, within six weeks of Ministers consenting to the application to buy the tenant's interest, the tenant refuses or fails to make these deeds available, or if they cannot be found, the Part 5 community body, or third party purchaser where relevant, can apply to the Lands Tribunal for an order requiring the production of those documents.
304. Subsection (9) provides that the Part 5 community body may apply, or third party purchaser where relevant, to the Lands Tribunal to authorise its clerk to effect the assignation where the tenant refuses, or for other reasons fails, to do so. Where the clerk to the Tribunal does so the effect will be the same as if it were done by the tenant.

Section 64 – completion of transfer

305. **Section 64** sets out the process for completing the transfer or assignation of a tenant's interest.
306. Subsection (1) provides that the consideration payable for the land or tenant's interest in respect of which the Part 5 right to buy is exercised is the value of that land or interest as assessed under section 65 by the valuer appointed by Ministers.
307. Subsection (2) provides that, subject to subsections (3) to (5), the consideration must be paid not later than six months after the date on which Ministers consented to the right to buy application under section 54.
308. Subsection (3) specifies circumstances where either this payment deadline will not apply or where an alternative deadline will apply. In particular, it allows the landowner, or tenant where the application is to buy a tenant's interest, and the Part 5 community body, or third party purchaser where relevant, to agree an alternative payment date. It provides that, where the assessment of the valuation of the land or tenant's interest or determination under section 66 (as the case may be) has not been completed within four months of the date that the Scottish Ministers consent to the application, then payment must be made not later than two months after the date of completion of the valuation or two months after the date when the section 66 determination is made, whichever comes later. Finally, it provides that where the valuation or section 66 determination is subject to an appeal which has not been decided within four months of the date of Ministers' consent, payment must be paid not later than two months after the date of the decision on the appeal against the valuation or, as the case may be, not later than two months after the date of the decision on the appeal the appeal against the section 66 determination, whichever occurs later.
309. Subsection (4) specifies circumstances where Scottish Ministers may extend the final settlement date on application of any of the parties. This can be done where there is an appeal of a decision or determination in relation to a related application under section 54.
310. Subsection (5) specifies that, where the owner is unable to grant a good and marketable title to the Part 5 community body, or third party purchaser where relevant, by the date of payment, or, where relevant, the tenant is not able to assign the tenant's interest to the Part 5 community body, or third party purchaser, as appropriate, then payment is to be made to and held by the Lands Tribunal pending either title is granted or the assignation effected or notification to the Lands Tribunal by the Part 5 community body, or third party purchaser where relevant, that it has decided not to complete the transaction.
311. Subsection (6) provides that the Scottish Ministers must within seven days acknowledge receipt of notice not to proceed under subsection (5), copying acknowledgement to the Keeper, the owner of the land, where the application is to buy a tenant's interest, the tenant, and the Part 5 community body or, as the case may be, the third party purchaser.
312. Subsection (7) specifies that, if the consideration is not paid by the Part 5 community body, or third party purchaser where relevant, by the due date, then confirmation of

intention to proceed is treated as withdrawn and so the right to buy will no longer be able to be exercised (this subsection does not apply where subsection (5) applies).

- 313. Subsection (8) provides that, when the Part 5 community body, or third party purchaser is granted title to the land or is assigned the tenant's interest, any heritable security which burdened the title or assignation immediately before granting of title or assignation will cease to do so once the interest of the Part 5 community body or third party purchaser is registered in the Land Register of Scotland.
- 314. Subsection (9) provides that a heritable security that related to land or a tenant's interest other than that acquired through the Part 5 right to buy will continue to apply to that other land or interest.
- 315. Subsection (10) provides that where land is disburdened of a heritable security on purchase of the land or assignation of a tenant's interest, then unless the creditors otherwise agree, the Part 5 community body, or third party purchaser where relevant, must pay the creditors under that heritable security whatever sums are due to them.
- 316. Subsection (11) provides that the Part 5 community body, or third party purchaser where relevant, must deduct any sums paid to a heritable creditor under the provisions of subsection (10) from the amount that the body is due to pay the owner or the tenant. In effect, the landowner or tenant will receive a sum for the land or tenant's interest which will take account of the sum required to clear any securities.

Section 65 – Assessment of value of land etc.

- 317. **Section 65** sets out the procedure for valuation of the land or tenant's interest in respect of which a Part 5 community body, or third party purchaser where relevant, is exercising its right to buy.
- 318. Subsection (1) requires that the Scottish Ministers, where they have consented to right to buy application made under Section 54, must appoint a valuer to assess the value of that land or tenant's interest within 7 days of that consent.
- 319. Subsection (2) provides that the validity of anything done under this section will not be affected by any failure by the Scottish Ministers' to comply with the time limit specified in subsection (1).
- 320. Subsection (3) sets out the role of the valuer.
- 321. Subsection (4) specifies that the value of the land or tenant's interest to be ascertained is the market value at the date Ministers consented to the application made under Section 54 to exercise the right to buy.
- 322. Subsection (5) defines market value as the sum of the open market value if the sale were between a willing seller and willing buyer, plus any depreciation in the value of other land and interests belonging to the seller or tenant as a result of the transfer of land or assignation of tenant's interest, plus any disturbance to the seller or tenant resulting from the transfer or assignation.
- 323. Subsection (6) specifies that in arriving at the open market value for the purposes of subsection (5)(a), account may be taken of the known existence of a potential purchaser with a special interest in the property (other than the Part 5 community body or third party purchaser where relevant). It also specifies that no account shall be taken of the fact that no time was allowed for marketing the property or of the depreciation of other land or interests or disturbance.
- 324. Subsection (7) states that the Scottish Ministers will pay for the valuation under this section.
- 325. Subsection (8) requires the valuer to ask both the owner, or tenant, and the Part 5 community body, or third party purchaser where relevant, for their views in writing on

the value of the land or tenant's interest and to take these representations into account in arriving at the valuation.

- 326. Subsection (9) requires that where the valuer receives views from the owner, or tenant, then the Part 5 community body, or third party purchaser where relevant, must be invited to send their views to the valuer. Similarly, that where the valuer receives views from the Part 5 community body, or third party purchaser where relevant, then the owner, or tenant, must be invited to send their views to the valuer.
- 327. Subsection (10) requires the valuer to consider any views sent under subsection (9)
- 328. Subsection (11) specifies that where the Part 5 community body, or third party purchaser where relevant, and the owner have agreed the valuation, they must notify the valuer in writing of that valuation.
- 329. Subsection (12) specifies that where the Part 5 community body, or third party purchaser where relevant, and the tenant have agreed the valuation, they must notify the valuer in writing of that valuation.
- 330. Subsections (13) and (14) provide the parties the appointed valuer must notify of the valuation. This must be done within eight weeks of the valuer being appointed or within a longer period set by Ministers, as requested by the valuer.
- 331. Subsection (15) sets out that the validity of anything done under Part 5 is not affected by a failure by the valuer to comply with the time limit.

Section 66 – Acquisition of interest of tenant over land: allocation of rents etc.

- 332. Section 66 sets out the implications of the exercise of the right to buy where the application to purchase a tenant's interest does not apply to the entirety of the land that the tenancy relates to.
- 333. Subsection (1) specifies that the valuer will consider and determine any questions as to the allocation of rents or rights and obligations generally payable or receivable under the tenancy.
- 334. Subsection (2) provides that the determination will be as the valuer considers to be equitable in all the circumstances.
- 335. Subsection (3) provides that the valuer must notify the Part 5 community body, the third party purchaser where relevant, and the tenant of the valuer's determination.

Compensation

Section 67 – Compensation

- 336. Section 67 provides for payment of compensation in connection with an application to exercise the Part 5 right to buy. It provides that the compensation will be payable by the Part 5 community body or third party purchaser, except where Ministers have refused the application, in which case the compensation due to the owner of land, or tenant, will be paid by Ministers.
- 337. Subsection (1) specifies the circumstances in which eligibility for compensation will arise in circumstances where there is no third party purchaser and provides that this compensation will be payable by the Part 5 community body.
- 338. Subsection (2) specifies the circumstances in which eligibility for compensation will arise in circumstances where there is a third party purchaser and provides that this compensation will be payable by the third party purchaser or, in one circumstance, the Part 5 community body.

- 339. Subsection (3) provides that the Part 5 community body, third party purchaser where relevant, will not be liable to pay compensation when a Part 5 right to buy application is made but is not approved by Ministers.
- 340. Subsection (4) provides that where an application has been refused, an owner of land, or where relevant, a tenant, is entitled to recover certain losses or expenses from the Scottish Ministers.
- 341. Subsection (5) provides that the Scottish Ministers may set out in regulations further detail on the amounts payable in respect of loss or expense, who is liable to pay those amounts, and how any compensation is to be claimed.
- 342. Subsection (6) provides that, where the amount of compensation has not been settled by the parties within the timescale set out in regulations, either party can refer the question to the Lands Tribunal.
- 343. Subsection (7) provides that where parties refer compensation to the Lands Tribunal the party making the referral must notify the Scottish Ministers of the reference and its date (this doesn't apply where it is the Scottish Ministers who make the referral).
- 344. Subsection (8) requires the Lands Tribunal to send a copy of its findings on a question referred to it under subsection (6) to the Scottish Ministers.
- 345. Subsection (9) provides that failure to comply with subsections (7) or (8) has no effect on the right to buy or the validity of the reference under subsection (6).

Section 68 – Grants towards liabilities to pay compensation

- 346. Subsection (1) provides that the Scottish Ministers may, in certain circumstances, pay a grant to a Part 5 community body or, where relevant, a third party purchaser to assist it in meeting the compensation it has to pay in connection with its exercise of a right to buy.
- 347. Subsection (2) specifies the circumstances in which payment of such a grant may be permitted and subsection (3) makes it clear that Ministers are not bound to pay a grant even if all the circumstances specified arise.
- 348. Subsection (4) provides that payment of a grant may be subject to conditions including conditions relating to repayment in the event of a breach.
- 349. Subsection (5) provides that a grant may be paid only if the Part 5 community body, or third party purchaser where relevant, applies for it, and subsection (6) provides that Ministers may set out in regulations the form of the application and the application procedure.
- 350. Subsection (7) provides that Ministers must issue their decision on an application for a grant in writing and, where that decision is to refuse to pay a grant, include the reasons for that refusal. Subsection (8) provides that Ministers' decision on whether to pay a grant or not is final.

Appeals and references

Section 69 – Appeals to sheriff

- 351. **Section 69** sets out rights of appeal in connection with decisions of the Scottish Ministers on an application under section 54.
- 352. Subsections (1), (2), (5) and (6) provide that the owner of land, the tenant where the application relates to a tenant's interest, a person who is a member of the community to which a Part 5 community body relates and a creditor in a standard security with a right to sell land to which an application relates may appeal against the Scottish Ministers' decision to consent to an application made under section 54.

- 353. Subsection (3) allows the Part 5 community body to appeal against a decision by the Scottish Ministers to refuse an application. Where there is more than one Part 5 community body wishing to purchase the land, subsection (4) provides that Ministers' decision on which community body's application will proceed is final and cannot be appealed to the sheriff.
- 354. Subsection (7) specifies the timeframe within which an appeal may be made.
- 355. Subsection (8) specifies that the sheriff court with the jurisdiction to hear an appeal is the sheriffdom in which the land which is the subject of the application (or as the case may be, over which the tenancy has been created) is located.
- 356. Subsection (9) specifies who each appellant must inform when an appeal is made.
- 357. Subsection (10) provides that the sheriff's decision may require rectification of the New Register, may impose conditions on the appellant, and is final.

Section 70 – Appeals to Lands Tribunal: valuation

- 358. Subsection (1) sets out the persons that may appeal the valuation under section 65 to the Lands Tribunal.
- 359. Subsection (2) identifies which persons may appeal a determination of allocation of tenant's interest under section 66 to the Lands Tribunal.
- 360. Subsection (3) requires an appeal under section 70 to state the grounds of the appeal and that it be lodged within 21 days of valuation being notified under section 65(13).
- 361. Subsection (4) provides that the Lands Tribunal may reassess the valuation of the land or, as the case may be, tenant's interest and may substitute its own determination for any determination under section 66.
- 362. Subsection (5) provides that the valuer may be a witness in the appeal proceedings.
- 363. Subsections (6) and (7) provide that the Lands Tribunal must give reasons for its decision on an appeal and issue a written statement of these reasons. They also specify the timescales within which the Lands Tribunal must issue the written statement of its reasons.
- 364. Subsection (8) provides that the validity of anything done under Part 5 is not affected by any failure of the Lands Tribunal to issue a written statement by the date required in subsection (6) or (7).
- 365. Subsection (9) requires the person making the appeal to notify Scottish Ministers within 7 days of the making of the appeal and also notify the date of the making of the appeal.
- 366. Subsection (10) requires the Lands Tribunal to send a copy of the written statement of reasons issued under subsection (6) to Scottish Ministers.
- 367. Subsection (11) provides that failure to comply with subsection (9) or (10) does not affect the right to buy or the validity of the appeal.
- 368. Subsection (12) provides that Ministers are not competent parties to any appeal by reason only that they appointed the valuer.
- 369. Subsection (13) provides that Ministers' powers under the Lands Tribunal Act 1949 to make rules are extended so that Ministers can make any rules necessary or expedient in connection with Part 5.

Section 71 – Reference to Lands Tribunal of questions on applications

- 370. **Section 71** sets out rights to refer questions relating to the Part 5 application to the Lands Tribunal.

- 371. Subsection (1) identifies the persons that can refer a question on application to the Lands Tribunal.
- 372. Subsection (2) identifies the persons whose representations the Lands Tribunal may consider in determining a reference.
- 373. Subsection (3) provides that the Lands Tribunal must inform Ministers of its findings on any of the questions referred to it and may, by order, provide for Ministers to consent to an application only if they impose certain conditions under section 59, as directed by the Lands Tribunal.
- 374. Subsection (4) provides that, if the Lands Tribunal finds that the question on the application is not relevant to the Ministers' decision, the Lands Tribunal may decide not to consider the question further and find accordingly.
- 375. Subsection (5) provides that the person referring a question to the Lands Tribunal must notify the Scottish Ministers of the reference and the date of reference within seven days of referring it.
- 376. Subsection (6) provides that failure to comply with subsections (3)(a) or (5) has no effect on the validity of the application, the right to buy or the validity of the reference under this section.

Section 72 – Agreement as to matters appealed

- 377. **Section 72** provides that parties to the Part 5 application are not prevented from settling or agreeing a matter which is subject to an appeal under sections 69 or 70 between or among them.

Mediation

Section 73 – Mediation

- 378. Subsection (1) provides that the Scottish Ministers may arrange or facilitate mediation in relation to a proposed exercise of the Part 5 right to buy.
- 379. Subsection (2) sets out the persons who may request mediation under subsection (1).
- 380. Subsection (3) identifies steps the Scottish Ministers may take in arranging or facilitating mediation.