



Land Reform (Scotland) Act 2016

2016 asp 18

PART 5

RIGHT TO BUY LAND TO FURTHER SUSTAINABLE DEVELOPMENT

Applications for consent

56 Right to buy: Ministers' decision on application

- (1) The Scottish Ministers must not consent to an application to buy land under section 54 unless they are satisfied that—
 - (a) the sustainable development conditions mentioned in subsection (2) are met, and
 - (b) the procedural requirements mentioned in subsection (3) have been complied with.
- (2) The sustainable development conditions are met if—
 - (a) the transfer of land is likely to further the achievement of sustainable development in relation to the land,
 - (b) the transfer of land is in the public interest,
 - (c) the transfer of land—
 - (i) is likely to result in significant benefit to the relevant community (see subsection (11)) to which the application relates, and
 - (ii) is the only practicable, or the most practicable, way of achieving that significant benefit, and
 - (d) not granting consent to the transfer of land is likely to result in harm to that community.
- (3) The procedural requirements for an application to buy land have been complied with if—
 - (a) before the period of 6 months ending with the day on which the application was made, the Part 5 community body has submitted a written request to the owner of the land to transfer the land to the community body or, as the case may be, to the third party purchaser named in the application and the owner has not responded or has not agreed to the request,

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- (b) the land to which the application relates is eligible land,
 - (c) the owner of the land is accurately identified in the application,
 - (d) any creditor in a standard security over the land or any part of it is accurately identified in the application,
 - (e) where the application nominates a third party purchaser, the third party purchaser—
 - (i) is accurately identified in the application, and
 - (ii) is shown to consent to the application,
 - (f) the owner is not—
 - (i) prevented from selling the land, or
 - (ii) subject to any enforceable personal obligation (other than an obligation arising by virtue of any right suspended by regulations under section 61(3)) to sell the land otherwise than to the Part 5 community body or, as the case may be, the third party purchaser,
 - (g) either—
 - (i) a significant number of the members of the relevant community to which the application relates have a connection with the land,
 - (ii) the land is sufficiently near to land with which those members of that community have a connection, or
 - (iii) the land is in or sufficiently near to the area comprising that community,
 - (h) the relevant community have approved the proposal to exercise the right to buy, and
 - (i) the Part 5 community body complies with the provisions of section 49.
- (4) 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, regard has been had to guidance issued under section 44.
- (5) Where an application relates to land which consists of salmon fishings or mineral rights only, the Scottish Ministers must not consent to the application unless they are also satisfied that the application complies with the requirements of section 47.
- (6) Where an application is to buy a tenant’s interest, the Scottish Ministers must not consent to the application unless they are satisfied that—
- (a) the sustainable development conditions mentioned in subsection (2) are met in relation to the transfer of the tenant’s interest (reading references in that subsection to “the transfer of land” as “the transfer of the tenant’s interest”), and
 - (b) the procedural requirements mentioned in subsection (7) have been complied with.
- (7) The procedural requirements for an application to buy a tenant’s interest have been complied with if—
- (a) before the period of 6 months ending with the day on which the application was made, the Part 5 community body has submitted a written request to the tenant to assign the tenant’s interest to the community body or, as the case may be, to the third party purchaser named in the application,
 - (b) the application complies with the requirements of section 48,

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- (c) the tenant whose interest the application relates to is accurately identified in the application,
 - (d) the owner of the land is accurately identified in the application,
 - (e) any creditor in a standard security over the land or any part of it is accurately identified in the application,
 - (f) where the application nominates a third party purchaser, the third party purchaser—
 - (i) is accurately identified in the application, and
 - (ii) is shown to consent to the application,
 - (g) either—
 - (i) a significant number of the members of the relevant community to which the application relates have a connection with the land to which the tenancy relates,
 - (ii) the land is sufficiently near to land with which those members of that community have a connection, or
 - (iii) the land is in or sufficiently near to the area comprising that community,
 - (h) the relevant community have approved the proposal to exercise the right to buy, and
 - (i) the Part 5 community body complies with the provisions of section 49.
- (8) In determining whether an application to buy a tenant’s interest meets the sustainable development conditions mentioned in subsection (2), the Scottish Ministers—
- (a) must take into account any related application under section 54 to buy the land to which the tenancy relates, and
 - (b) may take into account the extent to which, in relation to the relevant community, regard has been had to guidance issued under section 44.
- (9) The Scottish Ministers may by regulations make provision about—
- (a) the form and content of requests referred to in subsections (3)(a) and (7)(a),
 - (b) the form and content of responses to requests referred to in subsection (3)(a),
 - (c) the circumstances in which owners of land are to be taken not to have responded or not to have agreed to requests referred to in subsection (3)(a).
- (10) 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—
- (a) take into account, in particular, any information given under section 55(2)(a),
 - (b) consider the likely effect of granting (or not granting) consent to the transfer of land or tenant’s interest on land use in Scotland.
- (11) For the purposes of subsections (2)(c)(i), (3)(g)(i), (4), (7)(g)(i) and (8)(b) “relevant community” means the community as defined in subsection (9) of section 49 (reading that subsection as if paragraph (b)(ii) were omitted).
- (12) In determining what constitutes significant benefit to the community for the purposes of subsection (2)(c) or harm to the community for the purposes of subsection (2)(d), the Scottish Ministers must consider the likely effect of granting (or not granting) consent to the transfer of land or tenant’s interest on the lives of the persons comprising that community with reference to the following considerations—
- (a) economic development,
 - (b) regeneration,

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- (c) public health,
 - (d) social wellbeing, and
 - (e) environmental wellbeing.
- (13) In considering a decision under this section on an application under section 54, the Scottish Ministers must have regard to—
- (a) relevant non-Convention human rights, and
 - (b) the desirability of encouraging equal opportunities (within the meaning of Section L2 of Part 2 of schedule 5 of the Scotland Act 1998).
- (14) In subsection (13)(a), “relevant non-Convention human rights” means such human rights other than the Convention rights (within the meaning of section 1 of the Human Rights Act 1998)—
- (a) as the Scottish Ministers consider to be relevant, and
 - (b) 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—
 - (i) any amendment in force in relation to the United Kingdom for the time being, and
 - (ii) any reservations, objections or interpretative declarations by the United Kingdom for the time being in force.