



# Land Reform (Scotland) Act 2016

## 2016 asp 18

### PART 5

#### RIGHT TO BUY LAND TO FURTHER SUSTAINABLE DEVELOPMENT

##### *Applications for consent*

#### **54 Right to buy: application for consent**

- (1) The right to buy under this Part may be exercised only by—
  - (a) a Part 5 community body, or
  - (b) where a Part 5 community body nominates in its application another person to exercise the right to buy, that person (a “third party purchaser”).
- (2) That right may be so exercised only with the consent of the Scottish Ministers given on the written application of the Part 5 community body.
- (3) That right may be exercised in relation to more than one holding of land or more than one tenancy but in order so to exercise the right an application must be made in respect of each such holding or tenancy and applications so made may be differently disposed of.
- (4) In subsection (3)—
  - (a) a “holding” of land is land in the ownership of one person or in common or joint ownership, and
  - (b) a “tenancy” is one where one person is entitled to the tenant’s interest or there is a common or joint entitlement to that interest.
- (5) Such an application—
  - (a) must be made in such form as the Scottish Ministers may by regulations require,
  - (b) must specify—
    - (i) the owner of the land,
    - (ii) where the application is to buy a tenant’s interest, the tenant, and
    - (iii) any creditor in a standard security over the land or any part of it, and

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- (c) must include or be accompanied by such information as the Scottish Ministers may by regulations specify including information (provided, where appropriate, by or by reference to maps or drawings) about the matters mentioned in subsection (6).
- (6) The matters are—
- (a) the reasons 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(6)(a)),
  - (b) the location and boundaries of the land in respect of which the right to buy is sought to be exercised (including, as the case may be, the land to which any tenant’s interest relates),
  - (c) all rights and interests in the land known to the Part 5 community body,
  - (d) the proposed use, development and management of the land (including, as the case may be, the land to which any tenant’s interest relates).
- (7) A Part 5 community body applying under this section must, at the same time as it applies—
- (a) send a copy of its application and the accompanying information to the owner of the land to which the application relates,
  - (b) where its application is to buy a tenant’s interest, send a copy of the application and the accompanying information to the tenant,
  - (c) where the Part 5 community body nominates a third party purchaser, send a copy of the application and the accompanying information to the third party purchaser,
  - (d) where there is a standard security in relation to the land or any part of it, send a copy of the application and the accompanying information to the creditor who holds the standard security and invite the creditor—
    - (i) to notify the Part 5 community body and the Scottish Ministers, within 60 days of the sending of the invitation, if any of the circumstances set out in subsection (8) has arisen (or arises within 60 days of the sending of the invitation), and
    - (ii) if such notice is given, to provide the Scottish Ministers, within that time, with the creditor’s views in writing on the application.
- (8) Those circumstances are that—
- (a) a calling-up notice has been served by the creditor under section 19 of the Conveyancing and Feudal Reform (Scotland) Act 1970 in relation to the land which the Part 5 community body is seeking to exercise its right to buy or any part of the land and that notice has not been complied with,
  - (b) a notice of default served by the creditor under section 21 of that Act in relation to the land or any part of the land has not been complied with and the person on whom the notice was served has not, within the period specified in section 22 of that Act, objected to the notice by way of application to the court,
  - (c) where that person has so objected, the court has upheld or varied the notice of default,
  - (d) the court has granted the creditor a warrant under section 24 of that Act in relation to the land or any part of the land.

## **55 Right to buy: application procedure**

- (1) On receipt of an application under section 54, the Scottish Ministers must—
  - (a) invite—
    - (i) the owner of the land,
    - (ii) where the application is to buy a tenant’s interest, the tenant,
    - (iii) any creditor in a standard security over the land or any part of it,
    - (iv) where the application nominates a third party purchaser, the third party purchaser, and
    - (v) any other person whom the Scottish Ministers consider to have an interest in the application,to send them, so as to be received not later than 60 days after the sending of the invitation, views in writing on the application,
  - (b) take reasonable steps to invite the owners of all land contiguous to the land to which the application relates to send them, so as to be received not later than 60 days after the sending of the invitation, views in writing on the application, and
  - (c) send copies of invitations given under paragraphs (a) and (b) to the Part 5 community body.
- (2) An invitation given under subsection (1)(a)(i) or (ii) must also invite the owner or, as the case may be, the tenant to give the Scottish Ministers information about—
  - (a) the owner’s or tenant’s views on the likely impact on the owner or tenant of the proposals for the land or tenant’s interest, including on the current use of the land or tenant’s interest (and any intended use),
  - (b) whether the owner or tenant considers that the proposals for the land or tenant’s interest satisfy the sustainable development conditions set out in section 56(2) and, if not, the owner or tenant’s reasons,
  - (c) any rights or interests in the land of which the owner or tenant is aware that are not mentioned in the application, and
  - (d) any other matter that the owner or tenant considers is relevant to the application.
- (3) The Scottish Ministers must, as soon as reasonably practicable after receiving an application, give public notice of it and of the date by which, under subsection (1)(a), views are to be received by them and, in that notice, invite persons to send to the Scottish Ministers, so as to be received by them not later than 60 days after the publication of the notice, views in writing on the application.
- (4) That public notice is to be given by advertisement in such manner as the Scottish Ministers may by regulations specify.
- (5) The Scottish Ministers must—
  - (a) send copies of any views they receive under this section to the Part 5 community body, and
  - (b) invite it to send them, so as to be received by them not later than 60 days after the sending of that invitation, its responses to these views.
- (6) The Scottish Ministers must, when considering whether to consent to an application under section 54, have regard to all views on it and responses to the views which they have received in answer to invitations under this section.
- (7) The Scottish Ministers must decline to consider an application which—

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- (a) does not comply with the requirements of or imposed under section 54,
- (b) is otherwise incomplete, or
- (c) otherwise indicates that it is one which the Scottish Ministers would be bound to reject,

and the Scottish Ministers are not required to comply with subsections (1) to (6) in relation to such an application.

- (8) The Scottish Ministers must not reach a decision on an application before—
  - (a) the date which is 60 days after the last date on which the Part 5 community body may provide the Scottish Ministers with a response to the invitation given under subsection (5), or
  - (b) if by that date the Lands Tribunal has not advised the Scottish Ministers of its finding on any question referred to it under section 71 in relation to the application, the date on which the Lands Tribunal provides the Scottish Ministers with that finding.
- (9) A Part 5 community body or, as the case may be, a third party purchaser may require the Scottish Ministers to treat as confidential any information or document relating to arrangements for the raising or expenditure of money to enable the land to be put to a particular use, being information or a document made available to the Scottish Ministers for the purposes of this section and section 54.

## **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,
  - (b) the land to which the application relates is eligible land,

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- (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,
  - (c) the tenant whose interest the application relates to is accurately identified in the application,

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- (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,
  - (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.

## **57 Ballot to indicate approval for purposes of section 56**

- (1) The community, as defined in section 49 in relation to a Part 5 community body, are to be taken for the purposes of section 56(3)(h) and (7)(h) as having approved a proposal to exercise the right to buy if—
  - (a) a ballot of the members of the community so defined has, during the period of 6 months which immediately preceded the date on which the application was made, been conducted by the Part 5 community body on the question whether the Part 5 community body or, as the case may be, the third party purchaser should buy the land or, as the case may be, the tenant’s interest,
  - (b) in the ballot—
    - (i) at least half of the members of the community so defined have voted, or
    - (ii) fewer than half of the members of the community so defined have voted but the proportion which voted is sufficient to justify the Part 5 community body’s proceeding to buy the land or tenant’s interest, and
  - (c) the majority of those voting have voted in favour of the proposition that the Part 5 community body buy the land or tenant’s interest.
- (2) The ballot is to be conducted as the Scottish Ministers may by regulations specify.
- (3) Regulations under subsection (2) must in particular include provision for—
  - (a) the ascertainment and publication of—
    - (i) the number of persons eligible to vote in the ballot,
    - (ii) the number who did vote,
    - (iii) the numbers of valid votes respectively cast for and against the proposition mentioned in subsection (1)(c), and
  - (b) the form and manner in which the result of the ballot is to be published.

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- (4) If the ballot is not conducted as specified by regulations under subsection (2), the right to buy is, so far as proceeding on that application, extinguished.
- (5) The Part 5 community body which conducts a ballot must, within 21 days of the ballot (or, if its application under section 54 is given before the expiry of that period, together with the application), and in the form of return specified by the regulations, notify the Scottish Ministers of—
  - (a) the result,
  - (b) the number of persons eligible to vote,
  - (c) the number of persons who voted, and
  - (d) the number of persons who voted in favour of the proposition mentioned in subsection (1)(c).
- (6) The Scottish Ministers may require the Part 5 community body—
  - (a) to provide such information relating to the ballot as they think fit, and
  - (b) to provide such information relating to any consultation with those eligible to vote in the ballot undertaken during the period in which the ballot was carried out as Ministers think fit.
- (7) Subject to subsection (8), the expense of conducting a ballot under this section is to be met by the Part 5 community body.
- (8) The Scottish Ministers may by regulations make provision enabling a Part 5 community body, in such circumstances as may be specified in the regulations, to apply to them to seek reimbursement of the expense of conducting a ballot under this section.
- (9) Regulations under subsection (8) may in particular make provision in relation to—
  - (a) the circumstances in which a Part 5 community body may make an application by virtue of that subsection,
  - (b) the method to be applied by the Scottish Ministers in calculating the expense of conducting the ballot,
  - (c) the criteria to be applied by the Scottish Ministers in deciding whether to make a reimbursement to the applicant,
  - (d) the procedure to be followed in connection with the making of—
    - (i) an application to Ministers,
    - (ii) an appeal against a decision made by Ministers in respect of an application,
  - (e) persons who may consider such an appeal,
  - (f) the powers of such persons.

## **58 Right to buy same land exercisable by only one Part 5 community body**

- (1) Only one Part 5 community body may apply under this Part in relation to the same land or tenant's interest.
- (2) Where two or more Part 5 community bodies apply under this Part in relation to the same land or tenant's interest, it is for the Scottish Ministers to decide which application is to proceed.



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- (3) The Scottish Ministers may not make such a decision unless they have had regard to all views on each of the applications, and responses to the views, which they have received in answer to invitations under section 55.
- (4) On the Scottish Ministers so deciding—
- (a) any right to buy the land or tenant’s interest which is the subject of the other body’s application is, so far as proceeding on that application, extinguished, and
  - (b) the Scottish Ministers must give notice in writing to—
    - (i) the owner of the land,
    - (ii) where the application is to buy a tenant’s interest, the tenant,
    - (iii) the Part 5 community bodies,
    - (iv) where any application nominates a third party purchaser, the third party purchaser, and
    - (v) every person who was invited, under section 55(1)(a), to send the Scottish Ministers views on the application.

## **59 Consent conditions**

The Scottish Ministers may make their consent to an application made under section 54 subject to conditions.

## **60 Notification of Ministers’ decision on application**

- (1) The Scottish Ministers must give notice in writing of their decision on an application, and their reasons for it, to—
- (a) the applicant Part 5 community body,
  - (b) the owner of the land to which the application relates,
  - (c) where the application is to buy a tenant’s interest, the tenant,
  - (d) where the application nominates a third party purchaser, the third party purchaser,
  - (e) every other person who was invited, under section 55(1)(a), to send them views on the application, and
  - (f) the Keeper.
- (2) The notice must set out—
- (a) the land or, as the case may be, the tenant’s interest to which the decision relates,
  - (b) to whom the land is to be transferred or, as the case may be, to whom the tenant’s interest is to be assigned,
  - (c) where the Scottish Ministers’ decision is to consent to the application, any conditions imposed under section 59,
  - (d) information about the consequences of the decision notified and of the rights of appeal against it given by this Part, and
  - (e) the date on which consent is given or refused.