



# Land Reform (Scotland) Act 2016

## 2016 asp 18

### PART 5

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

##### *Procedure following consent*

#### **61 Effect of Ministers' decision on right to buy**

- (1) The Scottish Ministers may by regulations make provision for or in connection with prohibiting, during such period as may be specified in the regulations, persons so specified from transferring or otherwise dealing with land or, as the case may be, a tenant's interest in respect of which a Part 5 community body has made an application under section 54.
- (2) Regulations under subsection (1) may in particular include provision—
  - (a) specifying transfers or dealings which are not prohibited by the regulations,
  - (b) requiring or enabling specified persons in specified circumstances to register specified notices in the New Register,
  - (c) requiring, in such circumstances as may be specified in the regulations, such information as may be so specified to be incorporated into deeds relating to the land as may be so specified.
- (3) The Scottish Ministers may by regulations make provision for or in connection with suspending, during such period as may be specified in the regulations, such rights in or over land in respect of which a Part 5 community body has made an application under section 54 as may be so specified.
- (4) Regulations under subsection (3) may in particular include provision specifying—
  - (a) rights to which the regulations do not apply,
  - (b) rights to which the regulations do not apply in such circumstances as may be specified in the regulations.
- (5) Nothing in this Part—
  - (a) affects the operation of an inhibition on the sale of the land,
  - (b) prevents an action of adjudication from proceeding, or

- (c) affects the commencement, execution or operation of any other diligence.

## **62 Confirmation of intention to proceed with purchase and withdrawal**

- (1) Where an application made under section 54 does not nominate a third party purchaser, the right to buy of a Part 5 community body is exercisable only if, within 21 days of the date of receiving notice of assessed value under section 65(13), the Part 5 community body sends notice confirming intention to proceed to buy the land or, as the case may be, tenant's interest to—
  - (a) the Scottish Ministers,
  - (b) the owner of the land, and
  - (c) where the application is to buy a tenant's interest, the tenant.
- (2) Where an application made under section 54 nominates a third party purchaser, the right to buy is exercisable only if, within 21 days of the date of receiving notice under section 65(13), both the third party purchaser and the Part 5 community body which nominated the third party purchaser send notice confirming intention to proceed to buy the land or, as the case may be, tenant's interest to—
  - (a) the Scottish Ministers,
  - (b) the owner of the land, and
  - (c) where the application is to buy a tenant's interest, the tenant.
- (3) Where an application made under section 54 does not nominate a third party purchaser—
  - (a) at any time until receiving notice under section 65(13) a Part 5 community body may withdraw an application under section 54 by giving the Scottish Ministers notice in writing to that effect,
  - (b) at any time after receiving notice under section 65(13), the Part 5 community body may withdraw a confirmation of intention to proceed made under this section by giving the Scottish Ministers notice in writing to that effect.
- (4) Where an application nominates a third party purchaser—
  - (a) at any time until receiving notice under section 65(13), only the Part 5 community body which nominated the third party purchaser may withdraw an application under section 54 by giving the Scottish Ministers notice in writing to that effect,
  - (b) at any time after receiving notice under section 65(13), either the third party purchaser or the Part 5 community body which nominated the third party purchaser may withdraw a confirmation of intention to proceed made under this section by giving the Scottish Ministers notice in writing to that effect.
- (5) The Scottish Ministers must, within 7 days of receipt of notice under subsection (1), (2), (3)(a) or (b) or (4)(a) or (b), acknowledge receipt and send a copy of that acknowledgement to—
  - (a) the Keeper,
  - (b) the owner of the land, and
  - (c) where the application is to buy a tenant's interest, the tenant.

### **63 Completion of purchase**

- (1) It is for the Part 5 community body or, as the case may be, the third party purchaser to secure the expeditious exercise of its right to buy and, in particular—
  - (a) to prepare the documents necessary to—
    - (i) effect the transfer to it of the land or, as the case may be, the assignation to it of the tenant’s interest, and
    - (ii) impose any conditions (including any real burdens or servitudes) which the Scottish Ministers, under section 59, require to be imposed upon the title to land, and
  - (b) in so doing, to ensure—
    - (i) that the land in the application to which the Scottish Ministers have consented is that to be transferred or assigned, and
    - (ii) that the transfer or assignation is to be effected in accordance with any other conditions imposed by the Scottish Ministers under section 59.
- (2) Where the Part 5 community body or, as the case may be, the third party purchaser is unable to fulfil the duty imposed by subsection (1)(b) because the land or part of the land in respect of which the Scottish Ministers’ consent was given is—
  - (a) not owned by the person named as its owner in the application made under section 54, or
  - (b) not tenanted by the person named as its tenant in the application made by virtue of section 48(3),it must refer that matter to the Scottish Ministers.
- (3) On a reference under subsection (2), the Scottish Ministers must direct that the right to buy of the Part 5 community body or, as the case may be, of the third party purchaser is, so far as proceeding on that application, extinguished.
- (4) The owner of the land being bought is obliged—
  - (a) to make available to the Part 5 community body or, as the case may be, the third party purchaser such deeds and other documents as are sufficient to enable completion of its title to the land, and
  - (b) to transfer title accordingly.
- (5) If the owner of the land refuses or fails to make those deeds and other documents available (or they cannot be found) within 6 weeks of the date on which the Scottish Ministers consent to an application to buy land, the Lands Tribunal may, on the application of the Part 5 community body or, as the case may be, the third party purchaser, order the owner or any other person appearing to the Lands Tribunal to have those deeds and documents to produce them.
- (6) If the owner of the land refuses or fails to effect such sufficient transfer as is mentioned in subsection (4), the Lands Tribunal may, on the application of the Part 5 community body or, as the case may be, the third party purchaser, authorise its clerk to adjust, execute and deliver such deeds or other documents as will complete such transfer to the same force and effect as if done by the owner or person entitled.
- (7) Where an application is to buy a tenant’s interest, the tenant is obliged to make available to the Part 5 community body or, as the case may be, the third party purchaser such deeds and other documents as are sufficient to enable completion of its acquisition of the tenant’s interest and the tenant is obliged to effect the assignation of the tenant’s interest accordingly.

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*Status: This is the original version (as it was originally enacted).*

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- (8) If the tenant refuses or fails to make those deeds and other documents available (or they cannot be found) within 6 weeks of the date on which the Scottish Ministers consent to an application to buy a tenant's interest, the Lands Tribunal may, on the application of the Part 5 community body or, as the case may be, the third party purchaser, order the tenant or any other person appearing to the Lands Tribunal to have those deeds and documents to produce them.
- (9) If the tenant refuses or fails to effect the assignation of the tenant's interest in accordance with subsection (7), the Lands Tribunal may, on the application of the Part 5 community body or, as the case may be, the third party purchaser, authorise its clerk to adjust, execute and deliver such deeds or other documents as will complete the assignation to the same force and effect as if done by the tenant.

## **64 Completion of transfer**

- (1) The consideration for the transfer of the land or for the assignation of the tenant's interest is its value as assessed under section 65.
- (2) Subject to subsections (3) to (5), that consideration must be paid not later than the date (the "final settlement date") falling 6 months after the date (the "consent date") when the Scottish Ministers consented to the application made under section 54.
- (3) Where—
- (a) the Part 5 community body or, as the case may be, the third party purchaser and the owner or, as the case may be, the tenant so agree, the consideration may be paid on a date later than the final settlement date,
  - (b) the assessment of the valuation of the land or the tenant's interest under section 65 or, as the case may be, a determination under section 66 has not been completed by a date 4 months after the consent date, the consideration must be paid not later than 2 months after the date when that assessment is completed or the date when that determination is made, whichever occurs later,
  - (c) that valuation or, as the case may be, determination under section 66 is the subject of an appeal which has not been decided within 4 months of the consent date, the consideration must be paid not later than 2 months after the date of the decision on the appeal against the valuation or, as the case may be, the determination, whichever occurs later.
- (4) The Scottish Ministers may, on the application of any of the parties, extend the final settlement date—
- (a) in relation to an application to buy land, where an appeal is made—
    - (i) under section 69 in respect of the Scottish Ministers' decision on a related application to buy a tenant's interest,
    - (ii) under section 70(1) in respect of a valuation of that tenant's interest, or
    - (iii) under section 70(2) in respect of a determination carried out under section 66 concerning that related application,
  - (b) in relation to an application to buy a tenant's interest, where an appeal is made—
    - (i) under section 69 in respect of the Scottish Ministers' decision on a related application to buy land, or
    - (ii) under section 70(1) in respect of a valuation of that land.

- (5) If, on the date the consideration is to be paid, the owner is not able to effect the grant of a good and marketable title or, as the case may be, the tenant is not able to assign the tenant's interest—
- (a) the consideration, or
  - (b) if, for any reason, the consideration has not been ascertained, such sum as may be fixed by the valuer appointed under section 65 as a fair estimate of what the consideration might be,
- must be consigned into the Lands Tribunal until that title is granted or assignation is effected or the Part 5 community body or, as the case may be, the third party purchaser gives notice to the Tribunal and to the Scottish Ministers of its decision not to proceed to complete the transaction.
- (6) The Scottish Ministers must, within 7 days of receipt of notice of a decision not to proceed under subsection (5), acknowledge receipt and send a copy of that acknowledgement to—
- (a) the Keeper,
  - (b) the owner of the land,
  - (c) where the application is to buy a tenant's interest, the tenant, and
  - (d) the Part 5 community body or, as the case may be, the third party purchaser.
- (7) Except where subsection (5) applies, if the consideration remains unpaid after the date not later than which it is to be paid, the Part 5 community body's or, as the case may be, the third party purchaser's confirmation of intention to proceed made under section 62 in relation to the land or the tenant's interest is to be treated as withdrawn.
- (8) Any heritable security which burdened the land or tenant's interest immediately before—
- (a) title is granted to the Part 5 community body or, as the case may be, to the third party purchaser, or
  - (b) the tenant's interest is assigned to the Part 5 community body or, as the case may be, to the third party purchaser,
- ceases to do so on the registration in the Land Register of Scotland of the Part 5 community body's or third party purchaser's interest in the land.
- (9) Where such a security also burdens—
- (a) land other than the land in respect of which title is granted to the Part 5 community body or, as the case may be, to the third party purchaser, or
  - (b) a tenant's interest other than the tenant's interest assigned to the Part 5 community body or, as the case may be, to the third party purchaser,
- the security does not, by virtue of subsection (8), cease to burden that other land.
- (10) Unless the creditors in right of any such security otherwise agree, the Part 5 community body or, as the case may be, the third party purchaser must pay to them according to their respective rights and preferences any sum which would, but for this subsection, be paid to the owner by the Part 5 community body or the third party purchaser as consideration for the land or the tenant's interest.
- (11) Any sum paid by a Part 5 community body or a third party purchaser under subsection (10) must be deducted from the sum which the Part 5 community body or third party purchaser is to pay to the owner as consideration for the land or, as the case may be, to the tenant as consideration for the tenant's interest.

## **65 Assessment of value of land etc.**

- (1) Where the Scottish Ministers consent to an application made under section 54 they must within 7 days of doing so appoint a valuer, being a person who appears to the Scottish Ministers—
  - (a) to be suitably qualified to consider the matters arising under this section and, as the case may be, under section 66,
  - (b) to be independent, and
  - (c) to have knowledge and experience of valuing land or interests of a kind similar to the land or tenant’s interest being bought,
 to assess the value of the land or tenant’s interest to which the application relates.
- (2) The validity of anything done under this section is not affected by any failure by the Scottish Ministers to comply with the time limit specified in subsection (1).
- (3) In assessing the value of land or a tenant’s interest in pursuance of an appointment under subsection (1), a valuer—
  - (a) does not act on behalf of the owner of the land, the tenant, the Part 5 community body or, as the case may be, the third party purchaser, and
  - (b) is to act as an expert and not as an arbiter.
- (4) The value to be assessed is the market value of the land or the tenant’s interest as at the date when the Scottish Ministers consented to the application made under section 54 relating to the land or the tenant’s interest.
- (5) The “market value” of land or a tenant’s interest is the aggregate of—
  - (a) the value the land or the tenant’s interest would have on the open market as between a seller and a buyer both of whom are, as respects the transaction, willing,
  - (b) any depreciation in the value of other land or interests belonging to the seller which may result from the transfer of the land or the tenant’s interest, including depreciation caused by division of the land or interests by the transfer of land to the Part 5 community body or third party purchaser, and
  - (c) the amount attributable to any disturbance to the seller which may arise in connection with the transfer of the land or the tenant’s interest to the Part 5 community body or third party purchaser.
- (6) In determining the value which land or a tenant’s interest would have on the open market in the circumstances mentioned in subsection (5)(a)—
  - (a) the valuer may take account, in so far as a seller and buyer such as are mentioned in subsection (5) would do so, of any factor attributable to the known existence of a person who (not being the Part 5 community body or third party purchaser which is exercising its right to buy) would be willing to buy the land or the tenant’s interest at a price higher than others would, because of a characteristic of the land or the tenant’s interest which relates peculiarly to that person’s interest in buying it,
  - (b) the valuer may not take account of—
    - (i) any depreciation of the type mentioned in subsection (5)(b),
    - (ii) any disturbance of the type mentioned in subsection (5)(c),
    - (iii) the absence of the period of time during which the land or the tenant’s interest would, on the open market, be likely to be advertised and exposed for sale.

- (7) The expense of a valuation under this section is to be met by the Scottish Ministers.
- (8) In carrying out a valuation under this section, the valuer must—
- (a) invite—
    - (i) the owner of the land,
    - (ii) where the application is to buy a tenant’s interest, the tenant,
    - (iii) the Part 5 community body,
    - (iv) where the application nominates a third party purchaser, the third party purchaser,to make representations in writing about the value of the land or tenant’s interest, and
  - (b) consider any representations made accordingly.
- (9) Where written representations under subsection (8) are received—
- (a) from the owner of the land or, as the case may be, the tenant, the valuer must invite the Part 5 community body and, as the case may be, the third party purchaser to send views on the representations in writing,
  - (b) from the Part 5 community body or, as the case may be, the third party purchaser, the valuer must invite the owner of the land and, as the case may be, the tenant to send views on the representations in writing.
- (10) In carrying out a valuation under this section, the valuer must consider any views sent under subsection (9).
- (11) Where the Part 5 community body or, as the case may be, the third party purchaser and the owner of the land have agreed the valuation of the land they must notify the valuer in writing of that valuation.
- (12) Where the Part 5 community body or, as the case may be, the third party purchaser and the tenant have agreed the valuation of the tenant’s interest, they must notify the valuer in writing of the valuation.
- (13) The valuer must, within the period set out in subsection (14), give notice of the assessed value of the land or tenant’s interest to—
- (a) the Scottish Ministers,
  - (b) the Part 5 community body,
  - (c) where the application nominates a third party purchaser, the third party purchaser,
  - (d) the owner of the land, and
  - (e) where the application is to buy a tenant’s interest, the tenant.
- (14) The period referred to in subsection (13) is the period of 8 weeks beginning with the date of appointment of the valuer or such longer period as the Scottish Ministers may, on an application by the valuer, determine.
- (15) The validity of anything done under this Part is not affected by any failure by a valuer to comply with the time limit specified in subsection (14).

## **66 Acquisition of interest of tenant over land: allocation of rents etc.**

- (1) Where an application to buy a tenant’s interest does not relate to the entire tenanted land, any resultant question as to the allocation—

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- (a) as between the tenant and the Part 5 community body or the third party purchaser of rents payable or receivable, or
  - (b) as between them of rights and obligations generally,is to be determined by the valuer when, in pursuance of an appointment under section 65(1), the valuer assesses the value of the interest of the tenant.
- (2) Any determination under subsection (1) is to be such as the valuer considers equitable in all the circumstances.
- (3) Where a determination is made under subsection (1) the valuer must, within the period specified in section 65(14), notify—
  - (a) the Part 5 community body,
  - (b) where the application nominates a third party purchaser, the third party purchaser, and
  - (c) the tenant.