
DRAFT SCOTTISH STATUTORY INSTRUMENTS

2020 No.

The Right to Buy Land to Further Sustainable Development (Eligible Land, Specified Types of Area and Restrictions on Transfers, Assignations and Dealing) (Scotland) Regulations 2020

Restrictions on dealings while application pending

Restriction period

- 7.—(1) Regulations 8 and 9 apply during the restriction period being the period that—
- (a) begins on the date which an application made under section 54 (right to buy: application for consent) of the Act first appears on the Register of Applications by Community Bodies to Buy Land, and
 - (b) ends on the end date as determined in accordance with paragraph (2) or (3) as the case may be.
- (2) If the Part 5 community body is refused consent to exercise the right to buy, the end date is the earliest of—
- (a) the day after the expiry of the time period specified in section 69(7) (appeals to sheriff) of the Act, but only if no appeal is lodged within that period, or
 - (b) the day on which the sheriff issues a decision in an appeal under section 69 of the Act, but only if the outcome of the appeal is that the Part 5 community body is refused consent for the application under section 54.
- (3) If the Part 5 community body is given consent to exercise the right to buy, the end date is the earliest of—
- (a) where no third party purchaser is nominated, the expiry of the period specified in section 62(1) (confirmation of intention to proceed with purchase and withdrawal) of the Act, but only if the Part 5 community body does not, within that period, notify the Scottish Ministers, the owner of the land and, where the application is to buy a tenant's interest, the tenant, of its intention to proceed to buy the land or, as the case may be, the tenant's interest,
 - (b) where a third party purchaser is nominated, the expiry of the period specified in section 62(2) of the Act, but only if the third party purchaser or the Part 5 community body (or both the third party purchaser and the Part 5 community body) do not, within that period, notify the Scottish Ministers, the owner of the land and, where the application is to buy a tenant's interest, the tenant, of the intention to proceed to buy the land or, as the case may be, the tenant's interest,
 - (c) the day on which the owner of the land or, where the application is to buy the tenant's interest, the tenant, receives a copy of the Scottish Ministers' acknowledgement under section 62(5)(b) or (c) of the Act, but only if the matter acknowledged is—
 - (i) the Part 5 community body's withdrawal of its application under section 62(3)(a) or (4)(a) of the Act,

- (ii) the Part 5 community body's withdrawal of the confirmation under section 62(3)(b) or (4)(b) of the Act that it intends to proceed, or
- (iii) the nominated third party purchaser's withdrawal of the confirmation under section 62(4)(b) of the Act that it intends to proceed,
- (d) the day on which the Part 5 community body or nominated third party purchaser's confirmation of intention to proceed made under section 62(1) or (2) in relation to the land or the tenant's interest is to be treated as withdrawn under section 64(7) (completion of transfer) of the Act,
- (e) the day on which the consideration is paid in accordance with section 64(2) or (3) provided that, on that day, the owner is able to effect the grant of good and marketable title or, as the case may be, the tenant is able to assign the tenant's interest to the Part 5 community body or nominated third party purchaser,
- (f) the day on which, following the consignment of the consideration or estimate of what the consideration might be into the Lands Tribunal under section 64(5) of the Act, one of the following events occur—
 - (i) the owner grants a good and marketable title to the Part 5 community body or, as the case may be, the nominated third party purchaser,
 - (ii) the tenant assigns the tenant's interest to the Part 5 community body or, as the case may be, the nominated third party purchaser,
 - (iii) the Part 5 community body or, as the case may be, the third party purchaser gives notice to the Lands Tribunal of its decision not to proceed to complete the transaction.

Certain dealings prohibited during restriction period

8.—(1) For the purposes of section 61(1) (effect of Ministers' decision on right to buy) of the Act, during the restriction period the persons specified in paragraph (2) are prohibited from carrying out the dealings referred to in paragraph (3) or (4).

(2) The specified persons are any person who, but for the prohibition in paragraph (1), would be authorised to carry out a transaction, action or dealing referred to in paragraph (3) or (4).

(3) The following dealings are prohibited during the restriction period where an application under section 54 of the Act is seeking consent to exercise a right to buy land—

- (a) any transfer of the ownership of the land that is subject to an application under section 54 of the Act or land that includes land that is subject to an application under section 54 of the Act,
- (b) any action taken with a view to a transfer of land prohibited by sub-paragraph (a).

(4) The following dealings are prohibited during the restriction period where an application under section 54 of the Act is seeking consent to exercise a right to buy a tenant's interest—

- (a) any assignation of the tenant's interest which is subject to an application under section 54 of the Act,
- (b) any action taken with a view to an assignation of the tenant's interest which is prohibited by sub-paragraph (a).

(5) For the purposes of paragraph (3)(b), action is taken with a view to transfer land when—

- (a) the land is advertised or otherwise exposed for sale by or with the authority of the owner of the land or a creditor in a standard security with the right to sell the land,
- (b) the owner or such a creditor, or a person acting on behalf of the owner or such a creditor, enters into negotiations with another party with a view to the transfer of the land,

- (c) the owner or such a creditor, or a person acting on behalf of the owner or such a creditor, proceeds further with any proposed transfer of the land which was initiated prior to the date on which the pending application appeared on the Register of Applications by Community Bodies to Buy Land.
- (6) For the purposes of paragraph (4)(b), action is taken with a view to assign the tenant's interest when—
 - (a) the tenant's interest is advertised or otherwise exposed for sale by or with the authority of the of the tenant or a creditor in a standard security with a right to sell the interest,
 - (b) the tenant or such a creditor, or a person acting on behalf of the tenant or such a creditor, enters into negotiations with another with a view to assigning the tenant's interest,
 - (c) the tenant or such a creditor, or a person acting on behalf of the tenant or such a creditor, proceeds further with any proposed assignation of the tenant's interest which was initiated prior to the date on which the pending application appeared on the Register of Applications by Community Bodies to Buy Land.

Exceptions to regulation 8

- 9.—(1) Subject to paragraph (4), regulation 8 does not prohibit—
 - (a) dealings with land subject to an application under section 54 of the Act of a type specified in paragraph (2), or
 - (b) dealings with the tenant's interest in land subject to an application under section 54 of the Act of a type specified in paragraph (3).
- (2) The dealings with land referred to in paragraph (1) are—
 - (a) a transfer otherwise than for value,
 - (b) a transfer in implement or pursuance of an order of a court (other than an order under section 24 of the Conveyancing and Feudal Reform (Scotland) Act 1970(1) or a decree in an action for the division and sale of the land),
 - (c) a transfer between spouses or civil partners in pursuance of an arrangement between them entered into at any time—
 - (i) after they have ceased living together as spouses or civil partners, and
 - (ii) before the Scottish Ministers have received the application under section 54 of the Act,
 - (d) a transfer between cohabitants in pursuance of an arrangement entered into at any time—
 - (i) after they have ceased living together as if they were spouses or civil partners, and
 - (ii) before the Scottish Ministers have received the application under section 54 of the Act,
 - (e) a transfer between companies in the same group,
 - (f) a transfer to a statutory undertaker for the purpose of carrying on their undertaking,
 - (g) a transfer—
 - (i) implementing the compulsory acquisition of the land under an enactment,
 - (ii) by agreement, of land which could have been acquired compulsorily under an enactment,

(1) 1970 c.35, amended by section 4(3) of the Mortgage Rights (Scotland) Act 2001 asp 11, paragraph 1(4) of the schedule of the Homelessness etc. (Scotland) Act 2003 asp 10, section 2 of the Home Owner and Debtor Protection (Scotland) Act 2010 asp 6 and section 152(2) of the Housing (Scotland) Act 2010 asp 17.

- (iii) implementing a right conferred by or under Part 2, 3 or 3A of the Land Reform (Scotland) Act 2003⁽²⁾,
 - (iv) implementing a right conferred by or under Part 5 of the Act,
 - (v) implementing missives for the sale and purchase of land, but only if, on the date that the missives were concluded, no application under section 54 of the Act was included in the Register of Applications by Community Bodies to Buy Land,
 - (vi) implementing an option to acquire land, but only if, on the date that the option was created, no application under section 54 of the Act was included in the Register of Applications by Community Bodies to Buy Land,
 - (vii) vesting the land in a person for the purposes of any enactment relating to sequestration, bankruptcy, winding up or incapacity or to the purposes for which judicial factors may be appointed, or
 - (h) a transfer of land in consequence of—
 - (i) the assumption, resignation or death of one or more of the partners in a firm, or
 - (ii) the assumption, resignation or death of one or more of the trustees of a trust.
- (3) The dealings with a tenant's interest referred to in paragraph (1) are—
- (a) an assignation otherwise than for value,
 - (b) an assignation in implement or pursuance of an order of a court (other than an order of court under section 24 of the Conveyancing and Feudal Reform (Scotland) Act 1970 or a decree in an action for the division and sale of the tenant's interest),
 - (c) an assignation from one spouse or civil partner to another in pursuance of an arrangement entered into at any time—
 - (i) after they have ceased living together as spouses or civil partners, and
 - (ii) before the Scottish Ministers have received the application under section 54 of the Act,
 - (d) an assignation from one cohabitant to another in pursuance of an arrangement entered into at any time—
 - (i) after they have ceased living together as if they were spouses or civil partners, and
 - (ii) before the Scottish Ministers have received the application under section 54 of the Act,
 - (e) an assignation between companies in the same group,
 - (f) an assignation to a statutory undertaker for the purpose of carrying out their undertaking,
 - (g) an assignation—
 - (i) implementing the compulsory acquisition of the tenant's interest under an enactment,
 - (ii) by agreement, of the tenant's interest which could have been acquired compulsorily under an enactment,
 - (iii) implementing a right conferred by or under Part 5 of the Act,
 - (iv) vesting the tenant's interest in a person for the purposes of any enactment relating to sequestration, bankruptcy, winding up or incapacity or to the purposes for which judicial factors may be appointed, or
 - (h) an assignation of the tenant's interest in consequence of—

(2) 2003 asp 2. Part 3A of the Land Reform (Scotland) Act 2003 was inserted by the Community Empowerment (Scotland) Act 2015 asp 6.

- (i) the assumption, resignation or death of one or more of the partners in a firm, or
 - (ii) the assumption, resignation or death of one or more of the trustees of a trust.
- (4) The exceptions mentioned in paragraph (2)(a),(e) or (h) and (3)(a), (e) or (h) do not apply if
- (a) the transfer or, as the case may be, assignation—
 - (i) is, or forms part of, a scheme or arrangement, or
 - (ii) is one of a series of transactions, and
 - (b) the main purpose or effect, or one of the main purposes or effects, of the scheme, arrangement or series of transactions is to avoid the requirements or consequences of regulation 8.
- (5) In paragraphs (2)(f) and (3)(f), “statutory undertaker” is to be construed in accordance with section 214 (meaning of statutory undertaker) of the Town and Country Planning (Scotland) Act 1997(3).

Declaration required for transfers of land or assignations of tenancies during restriction period

10.—(1) This regulation applies to any transfer of land or assignation of a tenancy that is subject to an application under section 54 during the restriction period, unless the transfer or assignation is implementing a right conferred by or under Part 5 of the Act.

(2) The transferor or, as the case may be, assignor, must incorporate in the deed giving effect to the transfer or assignation a declaration—

- (a) specifying which exception under regulation 9(1) is being relied on as regards the prohibition in regulation 8, and
- (b) where the specified exception is an exception mentioned in regulation 9(2)(a), (d) or (g), or 9(3)(a), (d) or (g), stating that the exception is not disapplied by regulation 9(4).