

LAND REFORM (SCOTLAND) ACT 2016

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 5 – Right to Buy Land to Further Sustainable Development

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.

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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.

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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

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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.