

Part 5 of the Land Reform (Scotland) Act 2016

RIGHT TO BUY LAND TO FURTHER SUSTAINABLE DEVELOPMENT



INFORMATION AND GUIDANCE LEAFLET FOR
COMMUNITY BODIES, LANDOWNERS AND
OTHER INTERESTED PARTIES



Scottish Government
Riaghaltas na h-Alba
gov.scot

INTRODUCTION

This booklet gives an overview of the Right to Buy Land to Further Sustainable Development (“Part 5”) process and provides some tips for communities thinking about using the right to buy process, and for community bodies, tenants or landowners who may be involved in a right to buy.

Part 5 of the Land Reform (Scotland) Act 2016 (“the 2016 Act”), the Right to Buy Land to Further Sustainable Development, provides the opportunity for communities across Scotland to apply for a compulsory right to buy at market value.

The flowcharts on pages 6 and 7 show the right to buy process from beginning to end.

The stages in the flowchart show which sections of the 2016 Act apply.

Before a community can submit a Part 5 application for consideration by Scottish Ministers, it needs to form a community body. The types of entity that a community body can be and other helpful points are included in the “13 points on the Right to Buy” on page 4 and 5.

A ballot of the eligible voters in the community body’s defined area must be undertaken within six months before the date the application is made to Scottish Ministers. You may seek to undertake the ballot yourselves or may wish to consider seeking professional advice or services. Within 14 days of the ballot, the community body must publish the results in a digital or paper edition of a newspaper circulating in the area and if you have a publicly accessible website or webpage, on that also.

The community body must notify Scottish Ministers of the ballot result within 21 days of the ballot taking place. If you are submitting the application for consent to Scottish Ministers within 21 days of carrying out the ballot you must include the ballot result with the application. A form for submitting the ballot result to Scottish Ministers can be found on the Scottish Government website.

For any application you will also have had to provide evidence that the compliant Part 5 community body has requested a transfer of the land from the owner or, as the case may be, to the tenant requesting the assignation of the tenant’s interest, using the form on the Scottish Government website at least 6 months prior to making the application.

Community bodies can submit an application for a wide range of land such as woodlands, forests, fields, reservoirs, public houses, churches, schools and community centres.

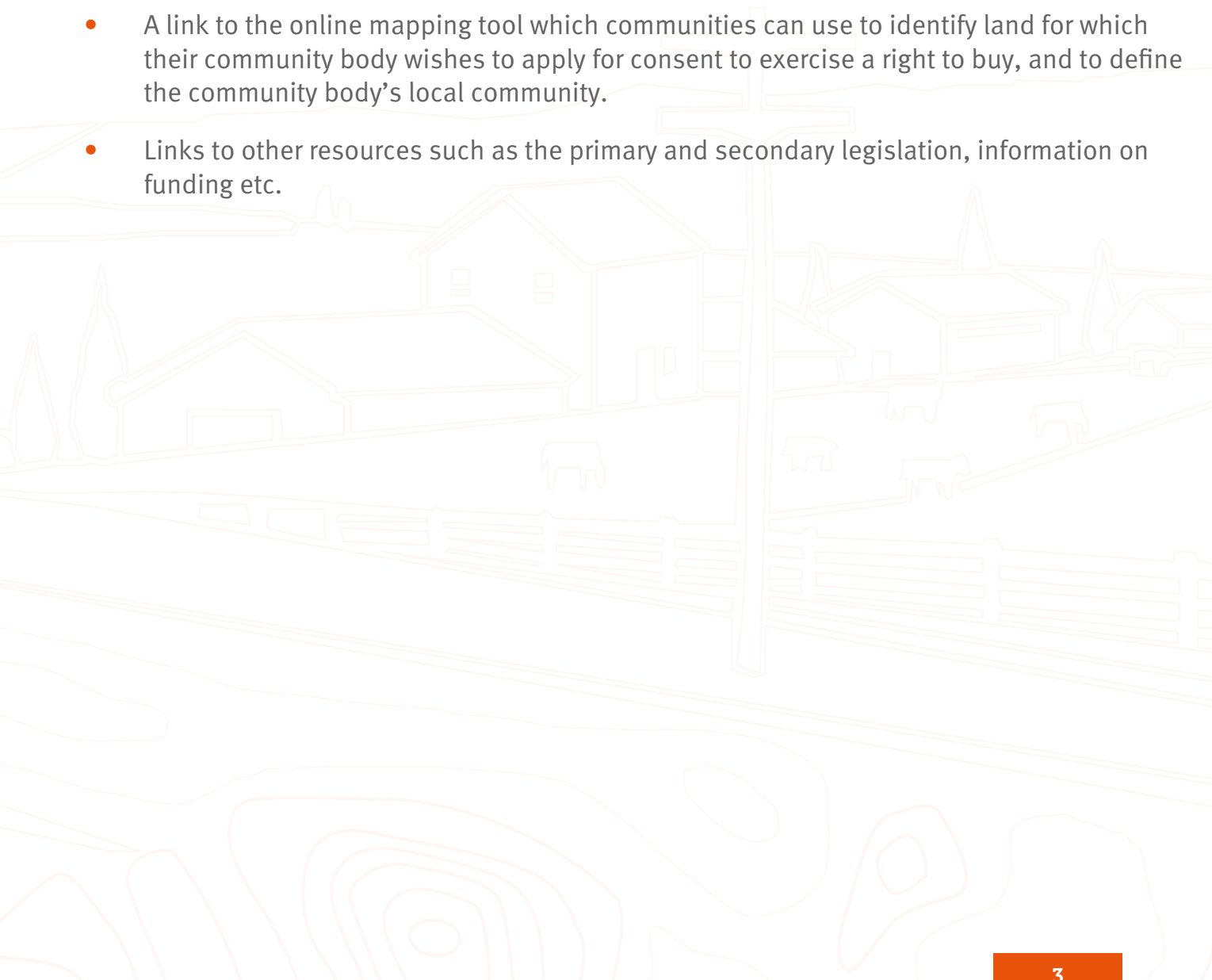
Please note that if there are multiple titles, even if each is owned by the same person (or commonly or jointly owned by the same people), the community body must submit an application for each individual title.

If Scottish Ministers grant consent to proceed with the acquisition, the community body must secure funds for the purchase of the land or tenant’s interest, and complete the transfer of the land within six months of consent being given, or by a later date if agreed by both the owner or tenant and the community body.

RESOURCES AVAILABLE TO ALL PARTIES

The Scottish Government's Right to Buy website has a number of useful tools:

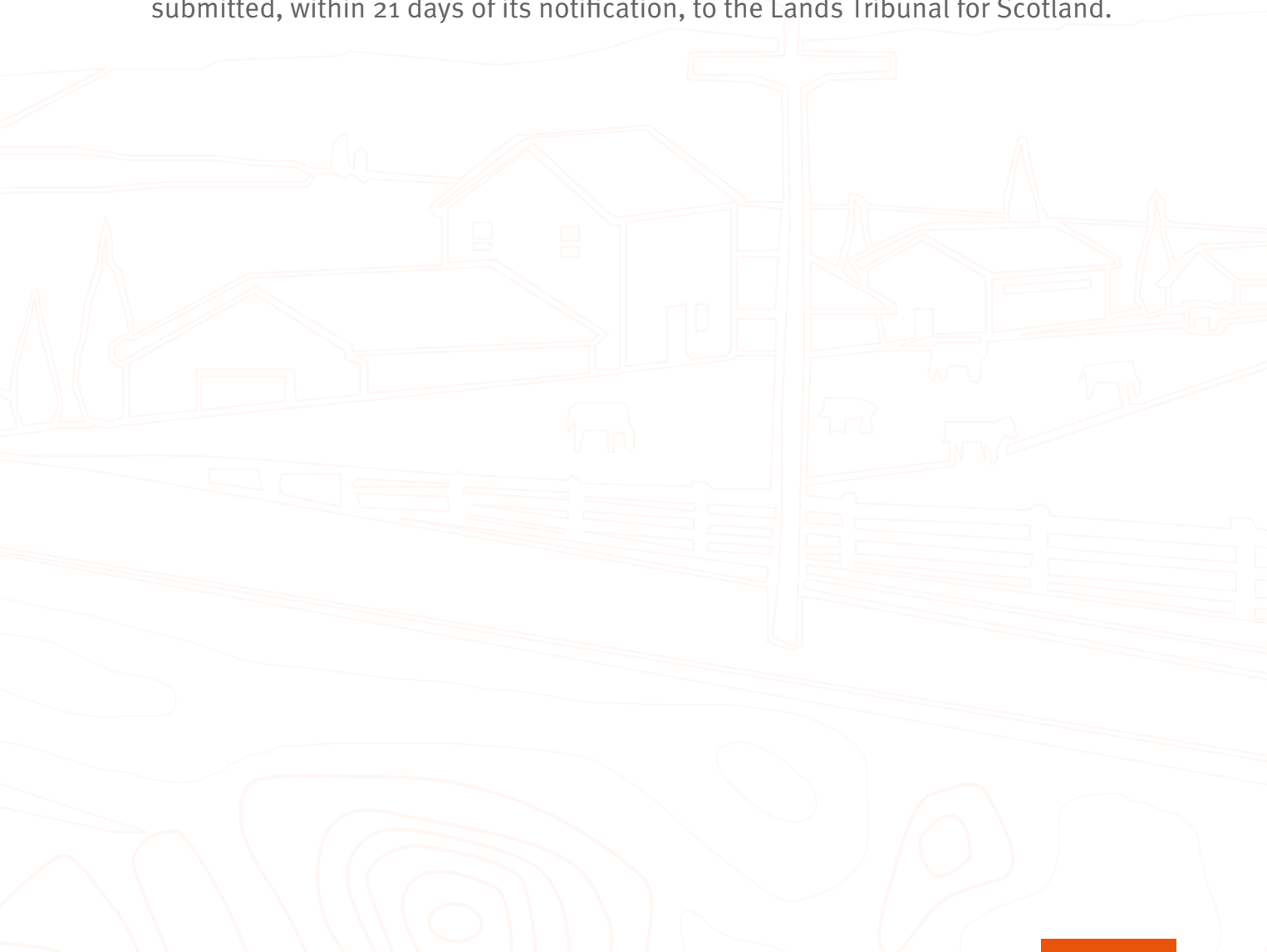
- A model Articles of Association to set up a community body as a Company Limited by Guarantee (CLBG).
- A model Constitution to set up a community body as a Scottish Charitable Incorporated Organisation (SCIO).
- A downloadable application form to submit an application.
- A comprehensive guidance document with sections for community bodies, landowners and tenants, and third parties.
- A link to the Register of Application by Community Bodies to Buy Land (RoACBL) which contains all the Right to Buy Land to Further Sustainable Development applications and associated documents.
- A link to the online mapping tool which communities can use to identify land for which their community body wishes to apply for consent to exercise a right to buy, and to define the community body's local community.
- Links to other resources such as the primary and secondary legislation, information on funding etc.



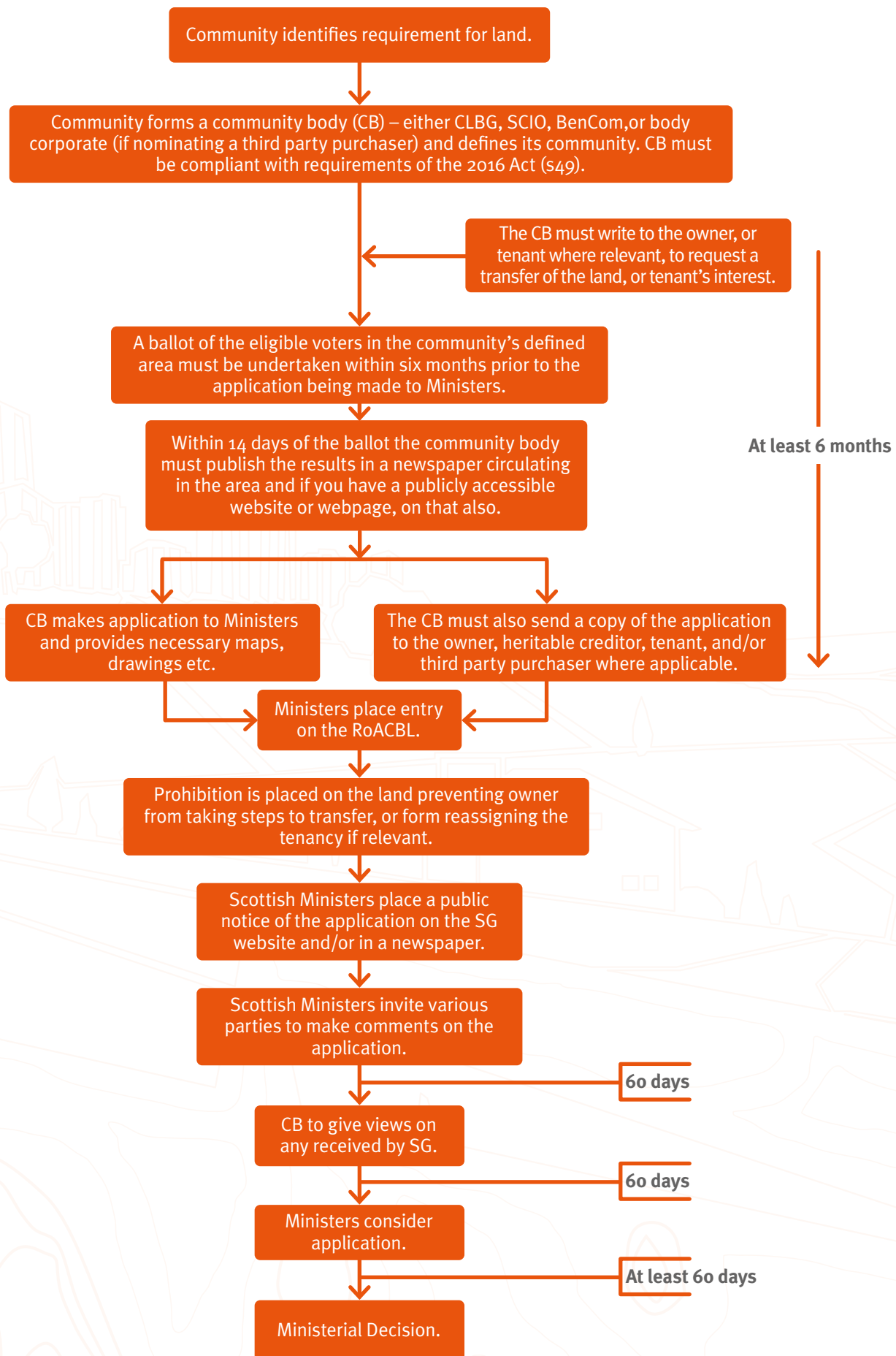
13 POINTS ON THE RIGHT TO BUY

1. The Right to Buy under Part 5 of the 2016 Act relates to all land in Scotland, unless it is ineligible land, such as an individual's home.
2. The right to buy may only be exercised by a properly constituted community body, that is a CLBG, a SCIO, a BenCom or, where using a third party purchaser, a body corporate having a written constitution. Apart from where a third party purchaser is being used, the community body must have a minimum of 10 members, three-quarters being from the community body's defined "community". In all cases, Ministers must be satisfied that a community body's main purpose is consistent with furthering the achievement of sustainable development. This is achieved by including this within the community body's purposes in their constitutional document.
3. Community bodies should send their constitutional document (articles of association, constitution, or registered rules) to Scottish Ministers to check that they comply with the requirements of the Act, before submitting an application for a right to buy.
4. Before submitting an application, the community body must have made a request to the owner to transfer the land or, where the application is in respect of a tenant's interest, a request to assign the tenant's interest at least six months prior to applying.
5. Before submitting an application, the community body must have carried out a ballot of the eligible voters in the community's defined area, no earlier than six months before the date the application is made to Scottish Ministers.
6. Within 14 days of the ballot, the community body must publish the results in a digital or paper edition of a newspaper circulating in the area and if you have a publicly accessible website or webpage, on that also.
7. The ballot result must be notified to Scottish Ministers within 21 days of the ballot taking place. If you are submitting the application for consent to Scottish Ministers within 21 days of carrying out the ballot you must include the ballot result with the application.
8. It is a decision of Scottish Ministers whether to consent to an application or not.
9. A community body's application is made publicly available on the Register of Applications by Community Bodies to Buy Land (RoACBL). This register is free to view via the Registers of Scotland website (<https://roacbl.ros.gov.uk>)
10. The right to buy is a compulsory right. This means that if consent is granted, the community body has the right to buy the land or tenant's interest even if the owner or tenant does not wish to sell.

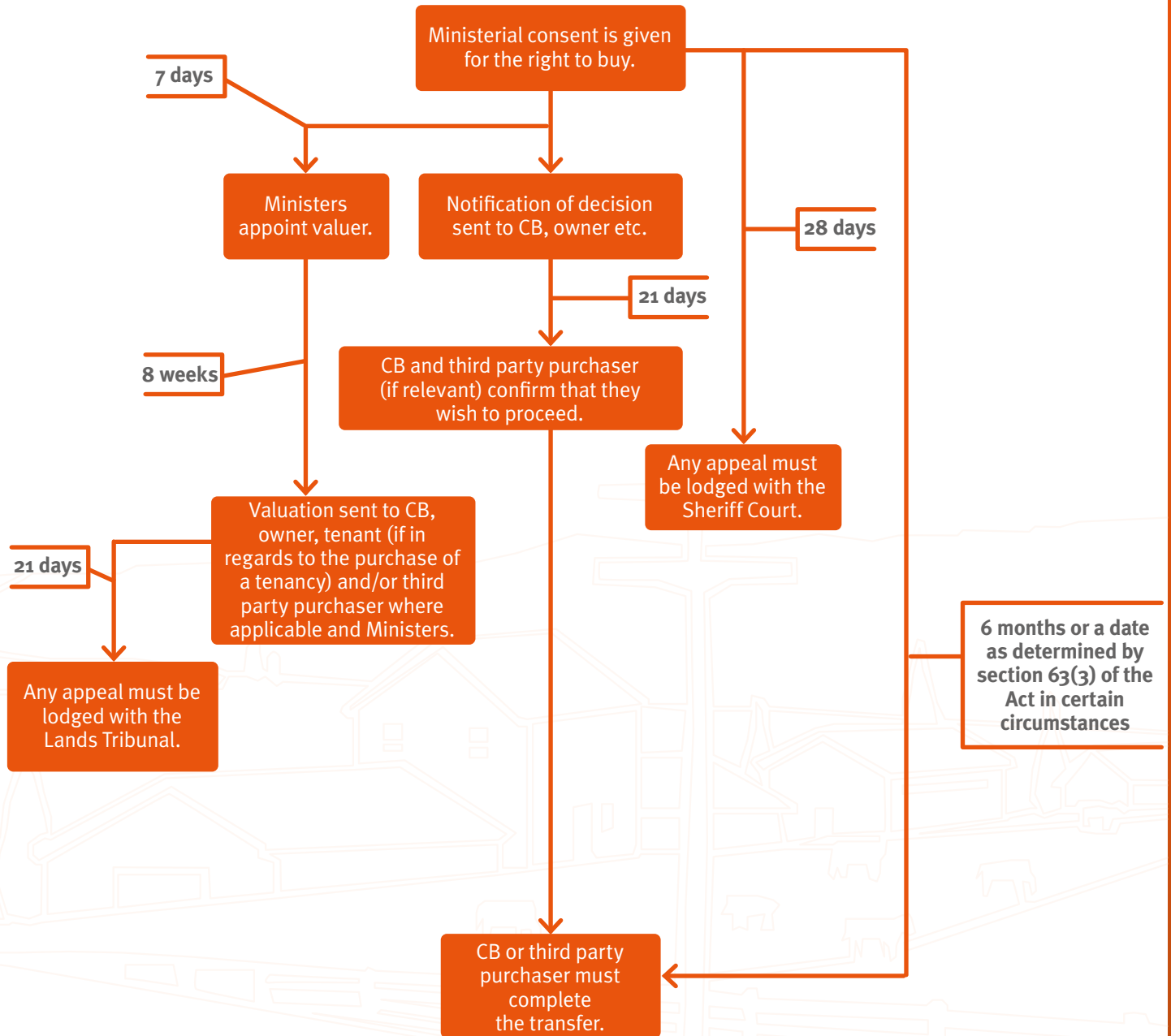
- 11.** The value of the land will be assessed by an independent valuer, paid for by Scottish Ministers. The price to be paid shall be either the price stated by the independent valuer, or the price stated by the Lands Tribunal for Scotland if the valuation provided by the valuer has been appealed.
- 12.** The community body has 6 months to complete the purchase from the date that the application is consented to unless the assessment of the valuation has not been completed by 4 months after the consent date, or an appeal of the valuation has not been decided 4 months after the consent date, in which case the date for completion is 2 months after the date that the assessment is completed or the decision on the appeal. Any other extension to the 6 months must be agreed between the owner or tenant and the community body.
- 13.** There are provisions which allow for the community body, owner and interested parties to appeal Ministers' decision on an application. Those wishing to appeal these decisions must lodge their appeal with the sheriff court within 28 days of Ministers' decision. There are also provisions which allow for an appeal of a valuation, such an appeal should be submitted, within 21 days of its notification, to the Lands Tribunal for Scotland.



THE RIGHT TO BUY PROCESS FLOWCHART 1



THE RIGHT TO BUY PROCESS FLOWCHART 2



TOP TEN TIPS FOR COMMUNITY BODIES ON USING THE RIGHT TO BUY LAND TO FURTHER SUSTAINABLE DEVELOPMENT

1. Contact the Scottish Government's Community Land Team at the outset. Contact details for the team are provided on the back cover of this booklet.
2. Access the Right to Buy guidance online and read it. (www.gov.scot and search for "Community Right to Buy")
3. Get your community on board.
4. Be clear what land or, if relevant, any tenant's interest and the land related to that interest you wish to acquire.
5. Be clear why you wish to acquire that land or, if relevant, tenant's interest.
6. Be clear on the substantial benefits to your community.
7. Keep an open mind on your options – are there other ways to get what your community needs?
8. Form a community body which is compliant with the Act – either a company limited by guarantee, Scottish charitable incorporated organisation, community benefit society or, if you're nominating a third party purchaser, a body corporate. Model articles of association and a model constitution, depending upon the type of legal body you opt to form, are available on the Scottish Government's Community Right to Buy website.
9. View the Register of Applications by Community Bodies to Buy Land (RoACBL), as this may help you fill in your application. The RoACBL contains applications completed by other community bodies which you may find helpful.
10. If in doubt, ask the Community Land Team!

USEFUL TIPS FOR LANDOWNERS AND TENANTS

- 1.** The Right to Buy under Part 5 of the Land Reform (Scotland) Act 2016 relates to all land in Scotland. Some land, such as land on which there is an individual's home, is ineligible. More details of ineligible land can be found in the full guidance.
- 2.** An application under Part 5 does not stop a landowner from developing their land in any way, although if the right to buy is consented to, the owner will still have to sell to the community body.
- 3.** If you are a member of the community body's "community" as defined in their constitutional documents, you will have an opportunity to vote in a ballot that must be held no earlier than 6 months before the submission of the application.
- 4.** Once an application is showing on the Register of Applications by Community Bodies to Buy Land, a prohibition is put in place which prevents a landowner or tenant from taking steps to dispose of the land or tenancy in the application. This prohibition lasts for a period of time that is detailed in 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. However, there are a number of excepted types of transfers or assignations which can be made.
- 5.** A community does not need to tell a landowner or tenant that it is setting up a community body, or that it is planning on submitting an application under the Part 5 right to buy. However, the legislation requires that a community body must have requested a transfer of the land or tenancy at least six months before submitting an application using the form provided for in 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, so they will be in touch at some point and this will be a clear indication that an application under the Part 5 right to buy may follow should their request be turned down. Of course, there is nothing to stop a landowner or tenant from making contact with a community body to inquire on its activities.
- 6.** Landowners and, where the application is in respect of a tenant's interest, tenants, are invited to comment on an application as part of the process set out in the Act. It is up to a landowner and, where applicable, tenant to decide if they wish to provide comments to Scottish Ministers.
- 7.** There are appeal provisions which allow for the owner, tenant, community body, creditors in a standard security with a right to sell the land and members of the community to appeal the Scottish Ministers' decision to consent or not consent to the community body's application to exercise the right to buy.

8. If the application for the right to buy is consented to, then Scottish Ministers appoint an independent valuer to value the land or tenant's interest. The valuation is at "market value" as set out in the Act. The owner and, where the application is in respect of the tenant's interest, the tenant, the community body and where there is a third party purchaser, the third party purchaser have an opportunity to submit representations to the valuer as part of this process. Where the landowner or tenant and community body or third party purchaser have agreed a valuation they must notify the valuer of the value in writing. The valuation process will still proceed, but the valuation as agreed between the parties will be taken into account by the valuer. If the independent valuation is appealed, the price to be paid will be that determined by appeal to the Lands Tribunal for Scotland.
9. The community body has 6 months to complete the purchase from the date that the application is consented to, unless the assessment of the valuation has not been completed by 4 months after the consent date, or an appeal of the valuation has not been decided 4 months after the consent date, in which case the date for completion is 2 months after the date that the assessment is completed or the decision on the appeal. Any other extension to the 6 months must be agreed between the owner or tenant and the community body.
10. If a community body withdraws from a purchase or does not purchase within the agreed timeline, then the prohibition from transferring the land or tenant's interest is lifted.
11. A community body's application under the right to buy, and associated documents such as Ministers' decision notices, are made publicly available on the Register of Applications by Community Bodies to Buy Land at: <https://roacbl.ros.gov.uk>
12. Guidance on the right to buy is available at: <https://www.gov.scot/policies/land-reform/community-right-to-buy/>

The Scottish Government's Community Land Team will be happy to discuss the right to buy process with landowners and tenants, and answer any questions that they may have. Contact details for the team are provided on the back cover of this booklet.

DATA PROTECTION

In order to consider an application on the register, there is a requirement to process the personal data provided within any documentation received by Scottish Ministers in relation to that right to buy. The basis for processing this personal data is in accordance with Article 6(1)(c) and/or Article 6(1)(e) of the General Data Protection Regulations (GDPR).

When a community body submits a compliant application under the right to buy land legislation, the application is entered onto the register. During this process, the community body is required to provide certain information about itself and those who own the land. This information will be taken into consideration when considering whether the application for consent to exercise the right to buy is approved by Scottish Ministers.

All personal data will be redacted before appearing on the register. The data will be used to assist the Scottish Ministers to determine whether the purchase should receive consent to proceed.

The data captured will be kept on the register as a record of the application and any decisions. This information is used by other community bodies as a source of information and guidance for their own applications, as well as a historic record of rights to buy.

WHAT ARE YOUR RIGHTS?

If at any point you believe the information we process on you is incorrect you can request to see this information through a subject access request.

You may have a right to have this information corrected, deleted and to object to or restrict the processing of the information held.

If you wish to raise a complaint on how your personal data is handled, you can contact the Scottish Government Data Protection Officer (dpa@gov.scot) who will investigate the matter.

If you are not satisfied with the response or believe we are not processing your personal data in accordance with the law you can complain to the Information Commissioner's Office (ICO).

The Information Commissioner's Office –
Scotland 45 Melville Street
Edinburgh EH3 7HL
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Email: Scotland@ico.org.uk



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