

Part 5 of the Land Reform (Scotland) Act 2016

# RIGHT TO BUY LAND TO FURTHER SUSTAINABLE DEVELOPMENT



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GUIDANCE FOR APPLICATIONS

JULY 2020



Scottish Government  
Riaghaltas na h-Alba  
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# INTRODUCTION





## Use of this guidance

- 1.** This guidance is intended to provide support to any party who is, or who might become, involved in the right to buy land to further sustainable development process. The guidance covers most aspects from the initial identification of land to the completion of a purchase. It provides a step-by-step guide, setting out the considerations that need to be taken into account and the legal requirements that must be met. Although the majority of the information is relevant to community bodies, there is also useful information for landowners and other parties who may have a reason to be involved in the process.
- 2.** This guidance applies to all applications for consent received by Scottish Ministers on or after 26 April 2020.

## Purpose of this guidance

- 3.** The requirements of the Part 5 right to buy can be both complex and demanding. This guidance will provide valuable assistance in understanding the process and what is required at each stage. It covers the entire process for applying under the Part 5 right to buy, including most of the statutory requirements under Part 5 of the 2016 Act and the associated subordinate legislation.
- 4.** The guidance is intended primarily to assist communities seeking to acquire land and, in some circumstances a tenant's interest under the Part 5 right to buy, but it will also be useful to landowners, tenant's and creditors in a standard security with the right to sell the land who have an interest in an application made under Part 5 of the 2016 Act, as well as to third parties who might be affected by a Part 5 right to buy application for consent.
- 5.** References to the 2016 Act and subordinate legislation are included to direct the reader to the relevant provisions, should they wish to read it alongside this guidance.
- 6.** There are also additional annexes which provide further information and useful tools.
- 7.** This guidance cannot take the place of independent professional advice on individual applications. Any group wishing to create a Part 5 community body for the purpose of applying to exercise a Part 5 right to buy should obtain appropriate advice. Any landowner or other person with an interest in land who considers that an application made under the Part 5 right to buy may affect their land or interest may also wish to seek advice. This may include legal advice, as well as advice on valuation, environmental and land management issues.



8. The guidance has been produced by the Scottish Government’s Community Land Team. The team is happy to assist with any questions you may have about the Part 5 right to buy process. In particular, you may wish to speak to them before beginning the Part 5 right to buy process.
9. The Community Land Team cannot provide legal advice nor, due to the impartiality required in advising Ministers on a case-by-case basis, advice which would be seen as supporting a particular group (e.g. a Part 5 community body, a landowner or any third party) involved in a specific case.
10. This guidance is subject to review from time to time. If you are unsure whether you have the latest version available, or if you have any comments on the guidance itself, please contact the Community Land Team. Contact details are noted in **Annex B**.

## An Overview of the Right to buy land to further sustainable development

11. The right to buy land to further sustainable development (the “Part 5 right to buy”) under Part 5 of the Land Reform (Scotland) Act 2016 (“the 2016 Act”), allows community bodies to apply to Scottish Ministers (“Ministers”) for consent to exercise a right to buy land. They can also apply for the right to buy the tenant’s interest along with the land itself. They may also request that a third party purchaser nominated by the Part 5 community body (“third party purchaser”), purchase the land on their behalf. Where Ministers grant consent, the Part 5 community body (or third party purchaser) has the right to buy the land, even if the owner is not seeking to sell it. **That is, the land can be acquired compulsorily.**
12. This right can be only exercised by a properly constituted community body compliant with Part 5 (a “Part 5 community body”), or a third party purchaser, when consent to do so is granted by Ministers. There are a number of requirements that must be fulfilled before an application can be considered. In order for a Part 5 community body to be considered properly constituted, it must have received written notification informing them of this fact, from Scottish Ministers (section 1.4 has more detail on this).
13. If a Part 5 community body identifies an area of land which they believe is eligible under the 2016 Act, the Part 5 community body can apply to Ministers for consent to exercise a right to buy the land. However, at least six months before they submit an application they must first have submitted a written request to the owner to transfer the land to the Part 5 community body or third party purchaser. Often, acquisition by way of an agreement will

result in a deal which better suits the needs of both the community and landowner. It can also help to clarify important information. For example, this process may help to confirm who owns the land or help to inform the landowner of what the Part 5 community body would like to achieve. There is a diagram in **Annex A** which helps to show the various steps and timescales involved in the right to buy process.

**14.** A Part 5 community body may also apply to Ministers for the right to buy the tenant's interest, as long as they are also applying to buy the land to which that interest relates. If this is the case, then the Part 5 community body must also write to the tenant requesting that they assign the tenant's interest to the Part 5 community body. This must be done at least six months before they submit the application to buy the tenant's interest.

**15.** The application to buy the tenant's interest does not have to be submitted at the same time as that application to buy the land, but it must be received before Ministers make a decision on the application to buy the land.

**16.** If the landowner doesn't respond or doesn't agree to the Part 5 community body's request to transfer the land to them, the Part 5 community body may apply for consent to exercise a right to buy the land under the Part 5 right to buy. If consent to exercise a right to buy is granted by Ministers, the owner must sell that land to the Part 5 community body, or third party purchaser for market value (or a value agreed between the owner and the Part 5 community body).

**17.** The Part 5 community body, the owner or the tenant have a right to appeal the decision of Ministers.

**18.** In addition, to the request to transfer, the Part 5 community body must also conduct a ballot of the defined community. This must be carried out in the six months prior to submitting an application. More information on the ballot is given later on in this guidance.

**19.** The Part 5 right to buy does not prevent the owner from developing the land whilst the process is ongoing. Part 5 community bodies should not submit an application under the Part 5 right to buy to try to stop an owner from developing the land in any way. For example, if an owner wishes to develop the land for housing or for other purposes that comes under the planning process, this is for the planning authority to determine and not for the Part 5 right to buy process. These two processes are entirely separate matters and are in no way related. The existence of an application for consent under Part 5 of the 2016 Act will not affect Ministers consideration of any planning matter which may subsequently come before them for determination in terms of the relevant planning legislation.



**20.** If an owner has entered into an enforceable personal obligation to sell the land (for example, an option agreement to sell to someone else should planning consent be granted), before a Part 5 community body's application for consent to acquire land has been submitted to Scottish Ministers, the application from the Part 5 community body will not be considered. The Community Land Team will be able to provide details if required. If, however, Ministers find that an option agreement was put in place after a valid application has been submitted to them, that option agreement will be deemed to have no effect.

**21.** The Part 5 right to buy requires to be exercised in accordance with Part 5 of the 2016 Act. The relevant legislation can be accessed via the following electronic links:

Land Reform Act (Scotland) 2016

<http://www.legislation.gov.uk/asp/2016/18/part/5>

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

<http://www.legislation.gov.uk/ssi/2020/114/contents/made>

The Right to Buy Land to Further Sustainable Development (Applications, Written Requests, Ballots and Compensation) (Scotland) Regulations 2020

<http://www.legislation.gov.uk/ssi/2020/21/contents/made>



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# SECTION 1: GUIDANCE



## 1.1 Initial steps

### Starting out

**1.1.1.** It is worth noting that there are several different rights to buy land and communities may wish to contact the Scottish Government Community Land Team to discuss the most appropriate.

**1.1.2.** Should a community decide that they wish to seek to acquire land using a Part 5 right to buy in order to realise their plans to further sustainable development in relation to the relevant land, they will need to undertake considerable preparation prior to making an application. The same is true should the Part 5 community body wish also to acquire any associated tenant's interest. There are several tasks that a community will need to undertake before they can submit an application under the Part 5 right to buy. Some of these are compulsory and are required by the 2016 Act, others are practical and must be completed before they can prepare a compliant application. The 2016 Act requires that, before an application is submitted the community:

- forms a compliant Part 5 community body and has received written confirmation from Ministers that they are satisfied that the main purpose of the body is consistent with furthering the achievement of sustainable development;
- the Part 5 community body must have written to the current landowner, at least six months prior to the application, requesting a transfer of the land or tenant's interest using the form in schedule 2 of the Right to Buy Land to Further Sustainable Development (Applications, Written Requests, Ballots and Compensation) (Scotland) Regulations 2020. The Part 5 community body will be asked to provide details of any offer that may have been made; and
- the Part 5 community body must establish community approval of the proposal to exercise the right to buy, which is then demonstrated by way of a ballot of the defined community undertaken during the period of six months immediately preceding the application approving the proposal to exercise the right to buy (further information below).

In order to prepare and submit an application, the Part 5 community body will also need to:

- identify the land or tenant's interest in land that it is seeking to acquire (the application for each must be separate, but you can apply for the latter, without also applying for the former);
- identify the purposes for which they propose to use the land, as well as how they plan to achieve this; and
- identify the resources needed to acquire that land or tenant's interest.



**1.1.3.** Communities are strongly advised to discuss their plans for forming a Part 5 community body with the Scottish Government’s Community Land Team before they formally constitute the Part 5 community body (contact details at **Annex B**). The team can provide information on what is required in order to make a Part 5 community body’s governing documents compliant with the 2016 Act, and discuss the right to buy process before completing the application form. Further sources of help are also available from the main contacts detailed in this guidance (**Annex B**).

### Identifying the financial resources needed

**1.1.4.** The Part 5 community body will not need to pay for the land they acquire until the date agreed with the seller but **it is important that they seek an early assessment of the likely cost of its acquisition**. They should also consider the potential development costs, as well as those costs associated with the application process itself, such as ownership searches, postage, ballot costs etc.

**1.1.5.** Such an assessment will:

- provide information that can be disseminated to the community when they are balloted on whether to proceed with the application;
- provide information which can be presented to prospective funding sources in order to assess funding and financial support requirements; and
- provide supporting information about the proposed use, development and management for use in the application.

**1.1.6.** **It is highly recommended that professional advice is obtained to assess likely costs.** Instructing a surveyor qualified to carry out valuations, who is suitably experienced in the type of property to be acquired, will enable an assessment of the value of the land or tenant’s interest. A valuation gives a clear indication of the potential cost of the land or tenant’s interest in advance of making an application to Ministers. It should be noted that, in order to provide an accurate assessment of the value of the land or tenant’s interest, a valuer who is employed by the Part 5 community body will need to have the co-operation of the owner of the land or tenant who holds the tenant’s interest that they are seeking to acquire. If this is not possible, they may still be able to provide an indicative value. This could be used to assist the Part 5 community body in making an offer to the owner prior to submitting the application and may also be useful indicator for approaching potential funders for acquisition funding.

**1.1.7.** In addition, the Part 5 community body will have to pay for the cost of running a ballot, although they are entitled to apply to the Scottish Ministers for reimbursement of some of costs (see Section 1.5.19).



**1.1.8.** The Scottish Government provides financial support to community groups seeking to acquire land and land assets, through the Scottish Land Fund (“SLF”). The SLF may be able to provide assistance to groups for carrying out feasibility studies and site investigations prior to submitting an application under Part 5 of the 2016 Act. For further information see:

<https://www.tnlcommunityfund.org.uk/funding/programmes/scottish-land-fund>

## 1.2 Definitions of eligible and ineligible land

### Overview

**1.2.1.** The 2016 Act defines what “land” and “eligible land” mean for the purposes of the Part 5 right to buy (sections 45 - 47 of the 2016 Act). Eligible land is land that a Part 5 community body can apply to Ministers for consent to exercise a right to buy. It also provides that a Part 5 community body may apply to purchase a tenant’s interest in land where they are simultaneously seeking to acquire the associated land or have submitted an application seeking to acquire the associated land but the Scottish Ministers have not yet made a decision on the application (section 48 of the 2016 Act).

**1.2.2.** “Land” includes bridges and other structures built on or over land, inland waters, canals, the foreshore and salmon fishings or mineral rights which are owned separately from the land from which they can be acquired (section 45 of the 2016 Act).

**1.2.3.** Eligible land is any land other than excluded land (see below).

**1.2.4.** Eligible land does not include certain land specified in section 46 of the 2016 Act and regulations 4 and 5 of 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. This includes:

- land on which there is a building or other structure which is an individual’s home, unless the building or structure is occupied by an individual under a tenancy;
- such land pertaining to land on which there is a building or structure which is an individual’s home as specified in regulation 4 of 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;
- croft land within the meaning of section 68(2) of the Land Reform (Scotland) Act 2003;
- land which is owned or occupied by the Crown by virtue of its having vested as bona vacantia (ownerless) in the Crown, or its having fallen to the Crown as ultimus haeres (without a will or any traceable heirs);



- land that is held or used by a Minister of the Crown or government department within the meaning of paragraph 3 of Part 1 of schedule 5 of the Scotland Act 1998.

Any land which falls within the types of land mentioned above must not be included in an application, as Scottish Ministers will not consider an application if it does.

### Criteria for Consent

**1.2.5.** The Part 5 community body's application must meet both sustainable development conditions, and procedural requirements in order for Ministers to consent to the application.

### Sustainable Development Conditions

**1.2.6.** Section 56(2) of the 2016 Act states that the sustainable development conditions are met if:

- the transfer of land is likely to further the achievement of sustainable development in relation to the land;
- the transfer of the land is in the public interest;
- the transfer of the land is likely to result in significant benefit to the relevant community and is the only, or most practicable way of achieving that significant benefit; and
- not granting consent to the transfer of land is likely to result in harm to the community.

**1.2.7.** In terms of determining what constitutes significant benefit or harm to the community, Scottish Ministers must consider the likely effect of granting or not granting consent to the transfer of the land or tenant's interest on the lives of persons comprising that community with reference to the following considerations:

- a) economic development
- b) regeneration
- c) public health
- d) social wellbeing
- e) environmental wellbeing

### Procedural Requirements

**1.2.8.** Section 56(3) of the 2016 Act states that the procedural requirements have been met if:

- no later than six months prior to the application being submitted, the Part 5 community body has submitted a written request (on the relevant form) to the owner of the land or to the tenant with the tenant's interest to transfer the land or assign the tenant's interest to either the Part 5 community body, or to the third party purchaser named in the application;

- the land to which the application relates is eligible land;
- the owner of the land is accurately identified in the application (this can usually be found on the title sheets);
- any creditor in a standard security over the land or any part of it is accurately identified in the application (this can usually be found in the title sheets);
- where the application nominates a third party purchaser, the third party purchaser is accurately identified in the application, and is shown to consent to the application;
- the owner is not prevented from selling the land or subject to any enforceable personal obligation (other than an obligation arising by virtue of any right suspended by regulation 11 of 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 to sell the land otherwise than to the Part 5 community body or, as the case may be, the third party purchaser;
- **either** a significant number of the members of the relevant community to which the application relates have a connection with the land, **or** the land is sufficiently near to land with which those members of that community have a connection, **or** the land is in or sufficiently near to the area comprising that community;
- the relevant community have approved the proposal to exercise the right to buy; and
- the Part 5 community body complies with the provisions of section 49 of the 2016 Act, which define what type of body a Part 5 community body may be and specify requirements for being such a body.

#### **1.2.9.** A Part 5 community body may:

- at the same time as it is applying for a right to buy land; or
- after they have applied for a right to buy land but before the Scottish Ministers have made a decision on that application; or
- where they meet the conditions specified in section 48(5) of the 2016 Act during the relevant period

submit a separate application to buy a tenant's interest in the land. If they choose to do so, they must ensure that the tenant's interest is eligible in terms of section 48 of the 2016 Act and that the application meets both the sustainable development conditions and procedural requirements provided for under section 56(2) and 56(7) of the 2016 Act. The sustainable development conditions are the same as those noted at paragraph 1.2.6 above but in relation to the transfer of the tenant's interest instead of in relation to the transfer of the land.



Section 56(7) of the 2016 Act states that the procedural requirements have been met if:

- no later than six months prior to the application being submitted, the Part 5 community body has submitted a written request, on the relevant form, to the tenant to assign the tenant's interest to either the Part 5 community body, or to the third party purchaser named in the application;
- the application complies with the requirements of section 48 of the 2016 Act which sets out which tenant's interests are eligible under Part 5 and when;
- the tenant whose interest the application relates to is accurately identified in the application;
- the owner of the land is accurately identified in the application;
- any creditor in a standard security over the land or any part of it is accurately identified in the application;
- where the application nominates a third party purchaser, the third party purchaser is accurately identified in the application, and is shown to consent to the application;
- **either** 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, **or** the land is sufficiently near to land with which those members of that community have a connection, **or** the land is in or sufficiently near to the area comprising that community;
- the relevant community have approved the proposal to exercise the right to buy; and
- the Part 5 community body complies with the provisions of section 49 of the 2016 Act, which define what type of body a Part 5 community body may be and specify requirements for being such a body.

**1.2.10.** The following land that is associated with an individual's home where that home is not occupied under a tenancy is ineligible for the purposes of the Part 5 right to buy. This is set out in regulation 4 of 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. Part 5 community bodies should ensure that such land does not fall within the boundaries of the land that they intend to apply for the right to buy. This is:

- land which forms the curtilage of the home;
- land which is used for the storage of possessions kept by the occupants of the home that are used for the maintenance, upkeep or subsistence of that home;
- land that is used to store vehicles that are used by the occupants of the individual's home;

- land used for drainage, water supply or provision of services such as media or electricity for that home;
- land used to grow food which is principally for the subsistence of the occupants of that home;
- land used for activities including recreation and leisure activities which are incidental to the use of that home;
- land used to keep pets belonging to the occupants of that home; and
- land used for access to the individual's home, if the land is owned by the same person that owns that home.

**1.2.11.** If there is a building or a structure which is an individual's home, land which is one or more of the kinds listed above must be excluded from the Part 5 application.

### Other ineligible land

**1.2.12.** There are some other types of land that are ineligible under Part 5 of the 2016 Act and therefore should be excluded from a Part 5 community body's application if appropriate:

- land that is held or used by a Minister of the Crown or government department (see regulation 5 of 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 is also ineligible and therefore should be excluded from a Part 5 community body's application; or
- the definition of land under section 45 of the 2016 Act does not include rights to oil, coal, gas, gold or silver.

### Tenancies

**1.2.13.** Part 5 specifies that, whilst an individual's home is not eligible land, if that home is occupied by an individual under a tenancy, then it is eligible. Regulation 3 of the Right to Buy Land to Further Sustainable Development (Eligible Land, Specified Areas, Restrictions on Transfers, Assignations and Dealing) (Scotland) Regulations 2020 specifies types of occupation or possession which are to be treated as a tenancy for the purposes of the 2016 Act. These are:

- occupancy or possession of tied accommodation. This is accommodation which is provided to an individual by their employer in return or part return for the performance by the individual of services under the employment agreement;
- occupancy or possession under a licence agreement that is in the nature of a tenancy;
- occupancy or possession of residential accommodation in connection with an individual's employment or education, and is in a building or structure that is owned or occupied by the employer or education provider;



- temporary occupancy or possession offered, on a night-by-night basis, to individuals who are homeless persons; and
- occupancy or possession by a life renter. This is where an individual has been granted the right to receive for life, the benefits of the property and to live in the building or structure, or on the land, for life.

## 1.3 Defining the Community

**1.3.1.** Members of the “community” must be resident in the defined area and be entitled to vote in a local government election at an address within the area. The Part 5 community body must choose how to define the “community”, but it must be in accordance with the options under section 49(9)(a) of the 2016 Act and regulation 6 of 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.

### How should the Part 5 community body define the “community”?

**1.3.2.** The application form requires that the Part 5 community body provide the definition of their “community” as set out in the Part 5 community body’s governing document. The “community” can be defined in a number of ways, which are all based on a geographical area and not a community of interest. These are by reference to a postcode unit or units or a prescribed type of area (or a combination of both such unit and type of prescribed area).

**1.3.3.** The “prescribed areas” are:

- **Postcode area** – an area of land covered by the first one or two letters of the postcode (e.g. EH) in which your Part 5 community body is situated.
- **Postcode district** – an area of land covered by a the first half of a full postcode, (e.g. EH11), in which your Part 5 community body is situated.
- **Postcode sector** – an area of land covered by the first full half of a postcode, the single space and the first character of the second half of the postcode, (e.g. EH11 3), in which your Part 5 community body is situated.
- **Postcode unit(s)** – an area of land covered by the full postcode, (e.g. EH11 3XD).
- **Settlement area** – an area of high density of residential and non-residential addresses, with a population of over 500 people. The boundaries of settlements are delineated on the maps included in the Population Estimates for Settlements and Localities in Scotland, Mid-2016, published on 12 March 2016. This is available through the following link: <https://www.nrscotland.gov.uk/statistics-and-data/statistics/statistics-by-theme/population/population-estimates/settlements-and-localities>

- **Locality** – settlements are divided into localities, which are smaller, but distinct parts. The boundaries of these are delineated on the maps included in the Population Estimates for Settlements and Localities in Scotland, Mid-2016, published on 12 March 2016. This is available through the following link: <https://www.nrscotland.gov.uk/statistics-and-data/statistics/statistics-by-theme/population/population-estimates/settlements-and-localities>
- **Electoral ward** – electoral wards are used by local authorities in elections and is a ward within the meaning of section 1 of the Local Governance (Scotland) Act 2004. Part 5 community bodies should be aware that an electoral ward can cut through postcode units.
- **Community council area** – this means an area of a community council established in accordance with Part IV of the Local Government (Scotland) Act 1973. Part 5 community bodies should be aware that an electoral ward can cut through postcode units.
- **Island** – an area of land surrounded by water, usually seawater, e.g. Barra, Isle of Eigg, Isle of Bute.

**1.3.4.** When deciding on the area of the “community”, the Part 5 community body should work through the list of units and types of area to consider how each of them would work in practice before coming to a decision on what unit and/or type of area best suits their needs. The Part 5 community body may decide that one or a combination of various postcode units and types of area are best suited to their needs.

**1.3.5.** When deciding what unit and type of area is to be used, the Part 5 community body should be aware that their boundaries may change over time. They should also be aware that the boundaries of some may not exactly follow those of others (e.g. an electoral ward may not follow the boundaries of postcodes). You may also wish to consider that as part of your application, you will be required to ballot your defined community. In relation to your defined community you may wish to consider how you will be able to determine the total number of eligible voters for the definition you choose. The Part 5 community body should ensure that the information supplied with the application is up-to-date.

**1.3.6.** It is for the Part 5 community body to include how they have defined the “community” in the application form.

**1.3.7.** It is important that the defined community is not made up of a number of individual pockets of residents, interspersed over a wider area. In determining any application for consent to acquire land, Ministers will tend to look for an inclusive approach to the definition of “community”, unless there is a good reason for the split. The Part 5 community body would need to explain that reason in their application.



## The Community Mapping Tool

**1.3.8.** The Part 5 community body can identify units and types of areas using the Communities Mapping Tool.

**1.3.9.** This electronic tool has been designed to help communities using any of the various rights to buy, to define their community. The tool can be used to identify, for example, postcode units, postcode sectors, postcode districts, electoral wards, community council areas, settlement areas, localities and islands (See **Annex B**).

## 1.4 Forming and Registering a Part 5 Community Body

**1.4.1.** The 2016 Act specifies that only a Part 5 community body or a third party purchaser nominated by a Part 5 community body can buy land under Part 5 of the 2016 Act. A community must first therefore form a Part 5 community body before it can submit an application, or indeed carry out some of the steps that are required prior to submitting an application. If the Part 5 community body plans to purchase the land themselves, then they may be one of a number of different legal entities. There are templates available for the first two on the Scottish Government website (links are provided in **Annex B**):

- a company limited by guarantee (CLBG);
- a Scottish charitable incorporated organisation (SCIO); or
- a community benefit society (BenCom).

If they intend to nominate a third party purchaser, with no intention to purchase land under this, or any other right to buy, themselves, the Part 5 community body can also be:

- body corporate having a written constitution (this could include any of the three previous types, but may also include others).

The body must have:

- compliant articles of association (AofA) if the Part 5 community body is a CLBG;
- a compliant constitution if the Part 5 community body is a SCIO;
- compliant registered rules if the Part 5 community body is a BenCom; or
- a written constitution if the Part 5 community body is a body corporate.



**1.4.2.** The matters that must be included in your Part 5 community body's governing documents, if they are a CLBG, SCIO or BenCom are set out in sections 49(2), (3) and (4) of the 2016 Act. The matters are:

- a definition of the community to which the Part 5 community body relates;
- provision enabling the Part 5 community body to exercise the right to buy land under Part 5 of the 2016 Act;
- provision that the Part 5 community body must have not fewer than 10 members (Ministers have a discretionary power under section 49(6) of the 2016 Act to accept a Part 5 community body with fewer than 10 members, e.g. in a remote rural community). If relevant, the Part 5 community body should discuss this point with the Community Land Team before submitting their Part 5 community body's governing documents. If section 49(6) of the 2016 Act is to be applied, the Part 5 community body should demonstrate why it is not possible for it to have 10 members and ensure that the application cannot be construed as being by a private group or family;
- provision that at least three quarters of the members of the Part 5 community body are members of the community;
- provision whereby the members of the Part 5 community body that are also members of the community, have control of the Part 5 community body (Ministers recognise that non-community members can contribute substantially to, and play a vital part in, the success of a community purchase by bringing the necessary skills and expertise. While Ministers acknowledge the importance of non-community members, care should be taken to ensure that, where such other members are to have a role in relation to the Part 5 community body, that role should not prejudice the position whereby community members have control of the Part 5 community body);
- provision ensuring proper arrangements for the financial management of the Part 5 community body;
- provision that, if the Part 5 community body is a SCIO or BenCom, and a person requests a copy of the minutes of the Part 5 community body's meetings, these are provided to that person within 28 days of the request, if that request is reasonable;
- provision that if the Part 5 community body is a SCIO or BenCom, and where a request for a copy of the minutes of the Part 5 community body's meeting, the Part 5 community body may withhold information in those minutes provided that they have reasons for doing so;



- provision ensuring that any surplus funds or assets of the Part 5 community body are to be applied for the benefit of the community; and
- provision that on the winding up of the CLBG (should that be the structure decided upon by the community body) and assessment of their liabilities, the property (including any land acquired by it under Part 5 of the 2016 Act) passes to such other community body or crofting community body as may be approved by Ministers. If no such body exists, then they may be passed to Ministers or to a charity as Ministers may direct. The provision on winding up of a SCIO or BenCom will differ, and are not provided for under Part 5, but should be included in the articles. Community bodies should contact either the Office of the Scottish Charity Regulator (OSCR) or the Financial Conduct Authority (FCA) as appropriate.

**1.4.3.** The matters that must be included in your Part 5 community body’s governing documents, if they are a body corporate are set out in section 49(5) of the 2016 Act. The matters are:

- a definition of the community to which the Part 5 community body relates;
- provision that the majority of the members of the Part 5 community body are members of the community;
- provision whereby the members of the Part 5 community body that are also members of the community, have control of the Part 5 community body (Ministers recognise that non-community members can contribute substantially to and play a vital part in the success of a community purchase by bringing the necessary skills and expertise. While Ministers acknowledge the importance of non-community members, care should be taken to ensure that, where such other members are to have a role in relation to the Part 5 community body, that role should not prejudice the position whereby community members have control of the Part 5 community body);
- provision that membership is open to any member of the community;
- a statement of the body’s aims and purposes, including the promotion of a benefit for that community; and
- provision that any surplus funds are to be applied for the benefit of that community.

**1.4.4.** A model Articles of Association for a CLBG and model constitution for a SCIO, which are compliant with the 2016 Act, can be accessed on the Scottish Government’s community right to buy webpages (see **Annex B**). These templates are not “off the shelf” products, and they may need to be amended to meet the particular needs of any Part 5 community body who chooses to use them. Other governing document templates may be available elsewhere, such as Development Trusts Association Scotland (DTAS) or Highlands and Islands Enterprise (HIE) websites although these may need to be amended to be compliant with the 2016 Act.

**1.4.5.** In addition, a body is not a Part 5 community body unless Scottish Ministers have given it written confirmation that they are satisfied that the main purpose of the body is consistent with furthering the achievement of sustainable development. The group will need to demonstrate this in some way. Inclusion in their governing documents is the preferred method. Examples of these can be found in the two right to buy registers on the Register of Scotland website (links can be found in **Annex B**).

### Seeking approval of governing documents

**1.4.6.** Draft governing documents should be sent to the Scottish Government’s Community Land Team before the Part 5 community body is incorporated. This will ensure that the Part 5 community body’s governing documents meet the requirements of section 49 of the 2016 Act. This will save time and inconvenience in the long run. If the Part 5 community body is already an incorporated organisation before they apply they should contact the Community Land Team to ensure that their governing document is compliant with section 49 of the 2016 Act.

**1.4.7.** In establishing a Part 5 community body, the intended members of the Part 5 community body will need to register with Companies House if they are a CLBG, the Office of Scottish Charity Regulator (OSCR) if they are a SCIO, or the Financial Conduct Authority (FCA) if they are a BenCom (addresses for these regulators can be found in **Annex B**). Regardless of the chosen structure, Ministers will need confirmation that the Part 5 community body has been set up with the relevant organisation before they can issue the compliance letter stating that they are satisfied that the main purpose of the Part 5 community body is consistent with furthering the achievement of sustainable development. If the Part 5 community body is already an existing CLBG, SCIO, or BenCom, they should inform Companies House, OSCR, FCA, as appropriate, of any changes to the Part 5 community body’s governing document.

**1.4.8.** If a Part 5 community body which has bought land under Part 5 which remains in its ownership amends their governing document they should notify Ministers of these changes (section 50(1) of the 2016 Act). If the Scottish Ministers are of the view that the Part 5 community body, had they not bought the land, would no longer be entitled to do so they can acquire the land compulsorily (section 50(2) of the 2016 Act).

## 1.5 Demonstrating community support – the ballot

**1.5.1.** The ballot establishes that the community have approved the proposal by the Part 5 community body to exercise the right to buy the land.

**1.5.2.** The ballot must be conducted no earlier than six months immediately prior to the Part 5 community body’s application. The results of that ballot must be notified to Ministers, on the



appropriate form, within 21 days of the ballot itself, or together with the application (if earlier). The 2016 Act also requires the ballot to demonstrate the following level of support (section 57(1)(b) and (c) of the 2016 Act):

- that at least half of the members of the defined community have voted, or where fewer than half of the members of the community have voted, the proportion which voted is sufficient to justify the Part 5 community body's proceeding to buy the land or tenant's interest; and
- the majority of those voting have voted in favour of the proposition that the Part 5 community body buy the land or the tenant's interest.

It is possible to contract out the running of the ballot, should the Part 5 community body feel that this is a better option. There are organisations who can do this, or the Part 5 community body could approach their local authority who may be able to assist.

### **Eligibility to vote**

The Part 5 community body must be clear about who is eligible to vote in the ballot. A mistake in identifying the members of the defined community who are eligible to vote on the proposed application could invalidate the ballot and, as such, stall the progress of submitting the application. Irregularities in the undertaking of the ballot could lead to any right to buy under Part 5 so far as proceeding on that application being extinguished.

### **Identifying the members of the defined community**

**1.5.3.** The Part 5 community body will have already defined the community before they conduct the ballot required by section 57 of the 2016 Act and in order to submit their application. All eligible members of the community must be given the opportunity to vote in a ballot on the proposition that the Part 5 community body buy the land or the tenant's interest.

### **The Electoral Register (voters roll)**

**1.5.4.** The most effective method to identify all the persons eligible to vote in the ballot is to check who is recorded on the current full Electoral Register in the electoral district in which the defined community lies.

**1.5.5.** As a full Electoral Register cannot be purchased or a copy made, a Part 5 community body will need to compile a list of names that are on the full Electoral Register. They can do this by initially looking at the edited Electoral Register for the electoral district(s) in which the defined community is located. A copy of the full Register, including monthly update sheets, can then be viewed at major public libraries, local authority service points and electoral registration offices to fill out any gaps. You can contact the Electoral Registration Office (ERO) to purchase a copy (a charge may be made for a copy) of the edited (open) Electoral Register. This will give a

list of the names that are publically available. The Part 5 community body should make sure that they use the most up-to-date version available.

**1.5.6.** The names on the edited Electoral Register should be compared against the full Electoral Register held at electoral registration offices, or a local library which contains the names of all eligible voters. The names and addresses identified by the Part 5 community body should be checked and any differences noted. This will give the Part 5 community body a copy of all the names on the full Electoral Register, which should then be used to check that they have identified all of the relevant members of the community for the ballot.

**1.5.7.** When the Part 5 community body has identified the persons who they know reside in the defined community, but who have not been found on the full Electoral Register, they should ask those individuals to confirm whether they are entitled to participate in local government elections or whether they have recently sought to be so included. These persons could include individuals who have recently moved into the area, or have recently had a 16<sup>th</sup> birthday. If they are entitled to participate, their name could be added to the Electoral Register at some point during the process when the Part 5 community body is acquiring the land. The Part 5 community body should keep a note of all instances where individuals are excluded from the full Electoral Register and those where their inclusion is not straightforward.

## The ballot process

**1.5.8.** The procedure for holding the ballot is set out in section 57 of the 2016 Act and the regulation 8 of the Right to Buy Land to Further Sustainable Development (Applications, Written Requests, Ballots and Compensation) (Scotland) Regulations 2020.

**1.5.9.** The Part 5 community body must follow the specified procedures. Failure to conduct the ballot in accordance with the 2016 Act and regulations will result in the application for consent being extinguished (section 57(4) of the 2016 Act).

**1.5.10.** The ballot must be conducted as a secret postal ballot. The Part 5 community body must appoint an independent observer to oversee, in person, the opening and counting of the votes and the recording of the result. The local authority Returning Officer for election purposes may be able to provide help and assistance. Contact details can be obtained from the relevant local authority.

**1.5.11.** As part of the postal ballot the Part 5 community body is required to issue certain information to all eligible voters. This is:

- a ballot paper with the question on which the vote is to be taken;
- the date and time by which the paper must be returned (not less than 10 days after the date of posting);



- a description of the land; or a description of the land to which the tenant's interest subject to an application relates;
- details of any rights or interests in respect of an owner, creditor or third party and, where the ballot is in respect of the proposed purchase of a tenant's interest, the tenant;
- a description of the Part 5 community body's proposals for the land or where the application is in respect of a tenant's interest, the land to which the tenant's interest relates;
- details of how further information on the proposals and other matters relating to the ballot may be obtained;
- the name of any proposed third party purchaser, if applicable;
- the name of the Part 5 community body; and
- contact details for the Part 5 community body.

In addition, the Part 5 community body **must** provide to each person eligible to vote a stamped addressed envelope for returning the completed ballot paper (see section 1.5.18 on reimbursement of the costs of the ballot).

**1.5.12.** Voters must receive these papers with sufficient time to consider, complete and return the voting paper to the return address by the due date. The ballot papers must be sent to voters with a minimum of 10 days from the date of posting before the deadline by which they must be returned.

**1.5.13.** A person eligible to vote in the ballot may make a request to the Part 5 community body for a proxy vote. A request must be in writing and must:

- state the name and address of the person eligible to vote;
- state the name and address of another person eligible to vote who the person wishes to appoint as a proxy;
- be signed by the person wishing to appoint the proxy;
- contain a statement confirming that the person who is eligible to vote has consulted the proxy and that the proxy is capable and willing to act as proxy; and
- be received by the Part 5 community body not later than 17:00 hours on the day before the date on which the ballot paper must be returned.

**1.5.14.** The Part 5 community body must permit a proxy vote to a person who makes a valid request in accordance with the above conditions.

## Notification of ballot results

**1.5.15.** The Part 5 community body is required to publish, within 14 days of the ballot, details of the result in a newspaper (paper or digital edition) circulating in the vicinity of the defined community. They must also publish the results on a webpage or website that is operated by, or on behalf of the Part 5 community body, if one exists. Although the regulations do not require it, they could also publish those results via social media platforms such as Facebook or Twitter. The results must be published in the form specified in schedule 3 of the Right to Buy Land to Further Sustainable Development (Applications, Written Requests, Ballots and Compensation) (Scotland) Regulations 2020.

**1.5.16.** The Part 5 community body are also required to notify to Ministers, within 21 days of the ballot (or if the application for consent is made within 21 days of the ballot, with the application), of its result and details in the form specified in schedule 4 of the Right to Buy Land to Further Sustainable Development (Applications, Written Requests, Ballots and Compensation) (Scotland) Regulations 2020. The return must show:

- the name of the Part 5 community body;
- the date by which the ballot papers had to be returned;
- the question which was put to the ballot;
- the number of persons eligible to vote in the ballot;
- the number of persons who voted;
- the number of proxy votes cast;
- the number of spoilt votes;
- the number of votes cast in favour of the proposal to buy the land or the tenant's interest;
- details of the information that was supplied by the Part 5 community body to persons eligible to vote in the ballot;
- the name, contact details and signature of the independent observer that was appointed to oversee the counting of the votes and recording of the result along with a signed declaration by the observer; and
- the name, address and telephone number, email and signature of the Part 5 community body representative making the ballot return along with a signed declaration by that person.

**1.5.17.** Ministers may request that the Part 5 community body provide them with additional information relating to the ballot (section 57(6) of the 2016 Act). This may include information



relating to any consultation with the eligible voters that the Part 5 community body undertook during the period when the ballot was being carried out. This information must be provided if it is requested by Ministers.

### **Cost of running the ballot**

**1.5.18.** The Part 5 community body is responsible for meeting the cost of running the ballot. However, the Part 5 community body can apply to Ministers, once a right to buy application has been submitted and entered on the Register of Applications by Community Bodies to Buy Land (RoACBL), to request reimbursement of the cost of conducting the ballot (regulations 14 to 18 of the Right to Buy Land to Further Sustainable Development (Applications, Written Requests, Ballots and Compensation) (Scotland) Regulations 2020).

### **Procedure for applying for the reimbursement of the expense of the ballot**

**1.5.19.** It is possible for community bodies to apply to Scottish Ministers for reimbursement of any reasonable expenses associated with conducting the ballot.

**1.5.20.** If applying for reimbursement for the expense of conducting the ballot, the Part 5 community body must adhere to the timescales laid out in regulation 14 of the Right to Buy Land to Further Sustainable Development (Applications, Written Requests, Ballots and Compensation) (Scotland) Regulations 2020.

**1.5.21.** An application for reimbursement of the expense of conducting a ballot must include all of the relevant information listed in regulation 15 of the Right to Buy Land to Further Sustainable Development (Applications, Written Requests, Ballots and Compensation) (Scotland) Regulations 2020.

**1.5.22.** Ministers will calculate the claimed expense of conducting the ballot and subtract from that amount any expense that they consider not to have been reasonably incurred in the conduct of the ballot and notify the Part 5 community body of the amount calculated and the reasons for any decisions made in the course of that calculation. It is important that any claims for expenses in relation to the ballot are evidenced. This evidence can, for example, be invoices, debit and credit notes, statements and receipts, though this list is not exhaustive.

**1.5.23.** Ministers will consider the costs for which reimbursement is sought on a case by case basis. All costs must have been reasonably incurred in the conduct of the ballot. Examples of the types of costs that may be reimbursed by Ministers following consideration are:

- administration to conduct a ballot if the process is outsourced;
- costs to access the voters' roll (full or edited);



- stationery (paper and envelopes);
- postage costs (to send out voting papers and for the return of the voting papers);
- printing costs (for ballot paper and information sheet); and
- independent observer (if a charge is made for such services).

**1.5.24.** Examples of the types of items and services that Ministers will not approve for reimbursement are:

- any costs of advertising the ballot result, over and above the requirements in the legislation;
- any costs relating to activities to encourage voters to vote and to vote for a particular outcome; and
- any costs that have been agreed with another party to be undertaken free of charge but are later charged for (i.e. retrospective costs).

**1.5.25.** When Ministers calculate the expense of conducting the ballot, they will consider:

- whether any amount was reasonably incurred in the conduct of the ballot;
- whether any amount is evidenced; and
- whether there are any costs that are not eligible for reimbursement.

**1.5.26.** Ministers have 60 days from the receipt of the application for reimbursement to make a decision. They will set out reasons for any decisions taken in the course of making their calculation.

### **Appealing against a decision by Ministers for the reimbursement of ballot expenses**

**1.5.27.** The Part 5 community body which applied to Ministers for the reimbursement of the expenses may choose to appeal the Ministers' decision to the Lands Tribunal for Scotland. If they wish to appeal, they must lodge their appeal within the period of 28 days beginning three days after the day on which the notice of the decision on the ballot expenses is sent to the Part 5 community body.

**1.5.28.** The decision of the Lands Tribunal is final.



## 1.6 Multiple Holdings

**1.6.1.** An application cannot relate to multiple holdings of land. If the Part 5 community body wishes to buy a number of holdings of land and, as the case may be, tenant's interests in land, they must complete separate applications in respect of each holding and each tenancy (section 54(3) of the 2016 Act). A holding of land is where the land is in the ownership of one person or in common or joint ownership. In relation to a tenancy, a single tenancy is where one person is entitled to the tenant's interest or there is a common or joint entitlement to that interest.

## 1.7 Multiple applications on the same or similar land, by different community bodies

**1.7.1.** Only one Part 5 community body may apply under Part 5 in relation to a holding of land or a tenant's interest. However, where two or more Part 5 community bodies do apply under Part 5 for the same holding of land or tenant's interest, Scottish Ministers will decide, if any, which application is to proceed (section 58(1) and (2) of the 2016 Act). They can only make that decision after they have considered all views relating to each application and the responses to their invitations received in connection with the application (section 58(3) of the 2016 Act).

**1.7.2.** Once Ministers have decided which Part 5 community body's application should proceed, the unsuccessful Part 5 community body's application is deleted from the Register of Applications by Community Bodies to Buy Land and any right to buy the land or tenant's interest is, so far as proceeding on that application, extinguished.

**1.7.3.** Please note that Ministers could decide that neither application proceeds if for example there is evidence that the approval of one application over another could result in a split community.

## 1.8 The Register of Applications by Community Bodies to Buy Land

**1.8.1.** The 2016 Act provides for the setting up and maintenance of the Register of Applications by Community Bodies to Buy Land (RoACBL) which contains information and documents relating to each Part 5 community body's application for consent (section 52 of the 2016 Act).

**1.8.2.** The Keeper of the Registers of Scotland (RoS) (“the Keeper”) is the Keeper of the RoACBL. The Keeper is to maintain the RoACBL and ensure that it is made available for public inspection at all reasonable times, free of charge, although there is a charge for copies of any register entries. The Register, which also contains details of any applications under the Community Right to Buy Abandoned, Neglected or Detrimental Land (the Part 3A community right to buy), can be viewed through the RoS website at: <https://roacbl.ros.gov.uk>

**1.8.3.** It may be helpful for a Part 5 community body to consult the RoACBL to see examples of applications and supporting documents which other Part 5 community bodies have already submitted to Ministers.

**1.8.4.** Ministers will instruct the Keeper to enter information in the RoACBL at various stages of the application process. Additional information may be entered into the Register, if Ministers so instruct. Section 52(2) of the 2016 Act specifies the information that must be held in the RoACBL. The Part 5 community body which is applying can require that such information which relates to the raising of funding or expenditure of money, be withheld from public inspection and will not be entered into the RoACBL; Ministers will keep that information or document separately from the Register (section 52(4) and (5) of the 2016 Act).

**1.8.5.** Once an application is received and the details appear on the RoACBL, then a prohibition is placed on any person who would be authorised to carry out a transfer of the land or assignation of a tenant’s interest subject to the application. This also prohibits those persons from taking any action with a view to transfer the land or to assign the tenant’s interest.

**1.8.6.** If the Part 5 community body changes its name or office once an application is registered they must notify the Keeper as soon as is reasonably practicable after that change has been made (section 52(8) and (9) of the 2016 Act). They should also notify the Community Land Team of that change.

## 1.9 Applying for consent to buy land

### Preliminaries

**1.9.1.** Before a Part 5 community body applies to Ministers for consent to exercise the Part 5 right to buy, they must have received a letter from Ministers confirming that they are satisfied that the main purpose of the Part 5 community body is consistent with furthering the achievement of sustainable development (section 49(7) of the 2016 Act). A timeline of the steps in the Part 5 right to buy process is noted in **Annex A**.



**1.9.2.** The Part 5 community body must use the official form to apply for consent to buy land under the 2016 Act. This form can be found in schedule 1 of the Right to Buy Land to Further Sustainable Development (Applications, Written Requests, Ballots and Compensation) (Scotland) Regulations 2020.

**1.9.3.** The form must not be altered or any of the wording in it deleted. The form is also available from the Scottish Government's website. (<https://www.gov.scot/policies/land-reform/community-right-to-buy/>)

**1.9.4.** An application must be received by Scottish Ministers within the 6 month period following the date of the ballot as required by section 57(1) of the 2016 Act. **The date of the ballot determines the last date on which the related application can be made to Ministers. The Part 5 community body must ensure that the application is submitted within this period of time. Failure to do so will mean that Ministers will not consider the application.**

**1.9.5.** The application form, all supporting documents such as maps, drawings, and plans (annexed where appropriate), and evidence demonstrating community support, as well as the Part 5 community body's governing document, will be considered by Ministers when they consider whether the application to buy land or a tenant's interest should be approved. **It is essential that the application is completed in full and all supporting documentation is attached. It is important that all the details are accurate and legible and that all accompanying documents are clearly labelled or referenced. Incomplete applications will be returned and the application will not be considered (section 55(7)(b) of the 2016 Act).**

### Completing the application form

**1.9.6.** The application form can be downloaded and completed electronically or printed and completed manually using black or blue ink and in capital letters. Additional pages may be attached. If additional pages are included, they must be clearly marked, showing the question number they refer to (e.g. Section 3.3 – see **Annex A**). The Annex should also be referred to in the answer given in the application form.

The application form is divided into 9 sections, each focussing on a particular topic. These are:

- (1) who is applying;
- (2) details of who is applying;
- (3) the land in respect of which the right to buy is sought to be exercised;
  - (3a) the land in respect of which the right to buy is sought to be exercised; or
  - (3b) the tenants interest in respect of which the right to buy is sought to be exercised;

- (4) owner/tenant and interests;
- (5) community support;
- (6) steps taken to buy land;
- (7) proposals for the land; and
- (8) declaration and third party purchaser declaration.

**1.9.7.** The declaration is particularly important. This sets out conditions which must be adhered to by the Part 5 community body when submitting their application. The Part 5 community body (and third party purchaser, if applicable) and the two signatories (for both the community body and third party purchaser, if applicable) should ensure that they understand the declaration before it is signed.

**1.9.8.** The completed application form must be signed by two individuals (board members, charity trustees or committee members as appropriate), on behalf of the Part 5 community body, (and third party purchaser if applicable) who have been authorised to do so by the Part 5 community body. They must also provide their full names and addresses.

**1.9.9.** If the Part 5 community body makes any inaccurate statement, provides inaccurate information, either deliberate or accidental, or knowingly withholds any information, these actions could result in Scottish Ministers deciding not to consent to the exercise of the right to buy.

**1.9.10.** The application will appear in the RoACBL, although it will be redacted as appropriate to ensure compliance with GDPR.

### Maps, plans or other drawings

**1.9.11.** Maps, plans or other drawings accompanying the application form must comply with the Right to Buy Land to Further Sustainable Development (Applications, Written Requests, Ballots and Compensation) (Scotland) Regulations 2020. In particular maps must:

- be drawn to a metric scale corresponding to one used by the Ordnance Survey for that land (e.g. 1:10,000);
- be taxative and not demonstrative only (in other words legally definitive not just an indication);
- show the compass orientation of north;
- contain map grid reference numbers and sufficient surrounding details (e.g. fences, houses etc.) to enable the position of the land to be fixed accurately;



- show the boundaries of the land; and
- where measurements are given, give those measurements to one decimal place.

It is worth noting that using the mapping tool available on the Scottish Government website will help to ensure that these requirements are met.

**1.9.12.** Maps, plans or other drawings that do not comply with these requirements will be returned. This may result in a decision on the application being either delayed, or the application being rejected.

## 1.10 Application process

### First steps

**1.10.1.** Once a Part 5 community body is ready to submit a formal application, they should send it to the Scottish Government Community Land Team (contact details are in **Annex B**).

**1.10.2.** At the same time, they must also send the application and the accompanying information to:

- the owner of the land to which the application relates;
- if the application is to buy a tenant's interest, to the tenant;
- if the Part 5 community body nominates a third party purchaser, to that third party purchaser; or
- where there is a standard security in relation to the land, or any part of it, to the creditor

**1.10.3.** Where there is a relevant creditor, the community must invite them to notify the Part 5 community body and Scottish Ministers within 60 days from the sending of the invitation about any calling-up notice or notice of default, whether any notice of default has been upheld or varied by the court or that a warrant has been granted by the court to the creditor in relation to the land, or any part of it (section 54(7) (d) and (8) of the 2016 Act).

### Initial checks

**1.10.4.** On receipt of an application, initial checks will determine whether the application form, maps and other supporting documents have been completed correctly, or whether the application is one which Ministers must decline to consider. Reasons for declining to consider could be, for example:

- the application does not comply with the requirements of section 54 of the 2016 Act;
- the official application form has not been used;

- the maps or plans do not comply with the mapping regulations e.g. are not drawn to a metric scale corresponding to a scale used by the Ordnance Survey;
- part of the form has not been completed, e.g. the name of the existing landowner or creditor in a standard security etc. may not have been noted;
- the application covers land which is clearly not “eligible land”;
- a ballot has not been conducted correctly; or
- the application is one which otherwise the Ministers are bound to reject.

**1.10.5.** These initial checks are not part of the detailed consideration of the application. If it fails to meet the basic requirements, the application will not proceed any further, and, **the documents will be returned.**

**1.10.6.** Should Ministers refuse to consider the application all of the papers will be returned to the Part 5 community body and they will be notified of the reason(s) for this action. The Part 5 community body may choose to make amendments to their application in order to remedy these defects and re-submit it. However, it must be resubmitted within 6 months of the date of the ballot, or they will be required to hold another ballot. Ministers cannot accept an application made outwith the 6 month period.

### Seeking views on an application

**1.10.7.** On receipt of an application and supporting documentation, Ministers will invite the following parties to send their views on the application:

- the owner of the land;
- where the application is to buy a tenant’s interest, the tenant;
- any creditor in a standard security over the land or any part of it;
- where the application nominates a third party purchaser, the third party purchaser; and
- any other person whom Ministers consider to have an interest in the application.

The parties invited to give their views will have 60 days after the date of the sending of the invitation in which to respond with their views (section 55(1)(a) of the 2016 Act).

**1.10.8.** An invitation to the owner or tenant must also invite the owner or tenant to give the Scottish Ministers information about the following:

- the owner’s or tenant’s views on the likely impact on the owner or tenant of the Part 5 community body’s proposals for the land or tenant’s interest, including on the current or intended use of the land or tenant’s interest;



- whether the owner or tenant considers that the Part 5 community body's proposals for the land or tenant's interest satisfy the sustainable development conditions and, if not, the owner or tenant's reasons;
- any rights or interests in the land of which the owner or tenant is aware that are not mentioned in the application; and
- any other matter that the owner or tenant considers relevant to the application (section 55(2) of the 2016 Act).

**1.10.9.** In addition, Ministers must also take reasonable steps to invite the owners of all land contiguous to the land to which the application relates to send their views (section 55(1)(b) of the 2016 Act).

**1.10.10.** Ministers must also send a copy of their invitation letters to the Part 5 community body (section 55(1)(c) of the 2016 Act).

**1.10.11.** As soon as practicable after receiving the application, Ministers are also required to give public notice of it (section 55(3) of the 2016 Act). The public notice must be advertised in a newspaper (digital or paper edition) circulating in the area where the relevant community is located and/or on a publicly accessible webpage or website maintained by Ministers (regulation 4 of the Right to Buy Land to Further Sustainable Development (Applications, Written Requests, Ballots and Compensation) (Scotland) Regulations 2020). This provides an opportunity for anyone with an interest in the application to provide their views. Any views must be sent to Ministers, in writing, no later than 60 days after the publication of the public notice.

**1.10.12.** Copies of any views received by Ministers will be sent to the Part 5 community body. They will be invited to comment on them and respond to Ministers within 60 days of the sending of that invitation (section 55(5) of the 2016 Act). **Ministers must consider all views received and the responses from the Part 5 community body before they reach a decision on the application.** This decision cannot be earlier than 60 days after the last date on which the Part 5 community body may respond to the views received or if a question has been referred to the Lands Tribunal in relation to the application, the date on which the Lands Tribunal provides Scottish Ministers with a finding on that question.

### Criteria for consent by Ministers

**1.10.13.** Once Ministers have sought views and the Part 5 community body have had a chance to comment on those views, Ministers are required to be satisfied that the application meets both the procedural requirements and sustainable development conditions specified in section 56 of the 2016 Act.



The sustainable development conditions are that:

- the transfer of land or the transfer of the tenant's interest, as the case may be, is likely to further the achievement of sustainable development in relation to the land;
- the transfer of land or the transfer of the tenant's interest, as the case may be, is in the public interest;
- the transfer of land or the transfer of the tenant's interest, as the case may be, is likely to result in significant benefit to the relevant community to which the application relates, and is the only practicable, or the most practicable, way of achieving that significant benefit; and
- not granting consent to the transfer of land or to the transfer of the tenant's interest, as the case may be, is likely to result in harm to that community.

Where the application is in respect of the land, the procedural requirements are that:

- before the period of six months ending with the day on which the application was made, the Part 5 community body has submitted a written request, using the appropriate form, to the owner of the land to transfer the land to the Part 5 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;
- the land to which the application relates is eligible land;
- the owner of the land is accurately identified in the application;
- any creditor in a standard security over the land or any part of it is accurately identified in the application;
- where the application nominates a third party purchaser, the third party purchaser is accurately identified in the application, and is shown to consent to the application;
- the owner is not prevented from selling the land, or subject to any enforceable personal obligation (other than an obligation arising by virtue of any right suspended by regulation 11 of 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) to sell the land otherwise than to the Part 5 community body or, as the case may be, the third party purchaser;
- either a significant number of the members of the relevant community to which the application relates have a connection with the land, the land is sufficiently near to land with which those members of that community have a connection, or the land is in or sufficiently near to the area comprising that community;



- the relevant community have approved the proposal to exercise the right to buy; and
- the Part 5 community body complies with the provisions of section 49 of the 2016 Act (section 49 sets out the requirements for being a compliant Part 5 community body).

Where the application is in respect of a tenant's interest, the procedural requirements are:

- no later than six months prior to the application being submitted, the Part 5 community body has submitted a written request, in the appropriate form, to the tenant to assign the tenant's interest to either the Part 5 community body, or to the third party purchaser named in the application;
- the application complies with the requirements of section 48 of the 2016 Act which sets out which tenant's interests are eligible under Part 5 and when;
- the tenant whose interest the application relates to is accurately identified in the application;
- the owner of the land is accurately identified in the application;
- any creditor in a standard security over the land or any part of it is accurately identified in the application;
- where the application nominates a third party purchaser, the third party purchaser is accurately identified in the application, and is shown to consent to the application;
- **either** 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, **or** the land is sufficiently near to land with which those members of that community have a connection, **or** the land is in or sufficiently near to the area comprising that community;
- the relevant community have approved the proposal to exercise the right to buy; and
- the Part 5 community body complies with the provisions of section 49 of the 2016 Act, which define what type of body a Part 5 community body may be and specify requirements for being such a body.

**1.10.14.** Some of the views received on the application (sections 55(1) and (3) of the 2016 Act) may raise questions which Ministers will seek to clarify with either the owner, third party purchaser if nominated, or the Part 5 community body.

**1.10.15.** Questions may be referred to the Lands Tribunal to be determined (section 71 of the 2016 Act). Questions can be referred by Ministers, any person who is a member of the community defined by the Part 5 community body, the owner of the land included in the application, if the application is in respect of a tenant's interest, the tenant, any person with an

interest in the land giving rise to a right which is legally enforceable by that person, or anyone whom Ministers invited to send views on the application. Where a question is referred in this way, the Lands Tribunal may consider any representations made to it by the Part 5 community body, the landowner, where the application is in respect of a tenant's interest, the tenant, or any other person who appears, in the opinion of the Lands Tribunal, to have an interest.

### Action on a flawed application

**1.10.16.** The views that have been submitted to Ministers on the application may include information which results in Ministers declining to consider the application. Where this happens, it might be appropriate for the Part 5 community body to resubmit a new application. This may avoid the need for another ballot (but see timescales for undertaking a ballot and the submission of an application at section 57(1) of the 2016 Act). If the Part 5 community body withdraw their application before it is declined, they should consider that this may give rise to liability for compensation (section 67 of the 2016 Act), in which case the Part 5 community body might prefer to await a Ministerial decision on the matter.

### Notifying the Ministers' decision

**1.10.17.** Ministers will give notice, in writing, of their decision to consent or to refuse consent to the Part 5 community body's application (section 60 of the 2016 Act). This will also give reasons for their decision. The notice will be sent to the Part 5 community body, the owner of the land and, where the application relates to a tenant's interest, the tenant, where the application nominates a third party purchaser, the third party purchaser and every other person who was invited to send their views on the application under section 55(1)(a) of the 2016 Act. The Ministers' decision will also be sent to the Keeper of the RoACBL (section 60(1)(f) of the 2016 Act).

### Appeals against the Ministers' decision

**1.10.18.** The following parties may appeal against the Ministers' decision to give consent to a Part 5 community body's application:

- the owner of the land;
- any tenant where the application is to buy a tenant's interest;
- a person who is a member of the Part 5 community body's defined community; and
- a creditor in a standard security with a right to sell land.

**1.10.19.** The Part 5 community body may also appeal the Ministers' decision not to give consent to the application (section 69(3) of the 2016 Act). There is no right of appeal where Ministers have declined to consider an application or where Ministers have made a decision



under section 58 of the 2016 Act (which is where more than one community group have submitted an application over the same land).

**1.10.20.** An appeal is to be made to the Sheriff Court in the area where the land or any part of it (or the tenancy, as the case may be) specified in the application is located. Appeals must be lodged within 28 days of the date on which Ministers decided to consent or refuse to consent to the application. The sheriff may require rectification of the Register of Applications by Community Bodies to Buy Land or impose conditions upon the appellant (section 69(10)(a) and (b) of the 2016 Act). The decision of the sheriff is final (section 69(10)(c) of the 2016 Act).

## 1.11 Mediation

Interested parties may make a request to Ministers to take such steps as they consider appropriate for the purpose of arranging, or facilitating the arrangement of, mediation in relation to the proposed exercise of the Part 5 right to buy (i.e. once an application has been submitted)(section 73(1) of the 2016 Act).

**1.11.1.** The interested parties that may make the request to Ministers are:

- the owner of the land;
- where the application is to buy a tenant's interest, the tenant;
- any creditor in a standard security with the right to sell the land or any part of the land;
- the Part 5 community body, and
- where the application nominates a third party purchaser, the third party purchaser (section 73(2) of the 2016 Act).

This may include appointing a mediator, making payments to mediators in respect of services provided, and reimbursing reasonable expenses of mediators.

**1.11.2.** You should contact the Community Land Team in the Scottish Government if you have any questions relating to mediation.

## What happens after Ministerial consent is given?

### Valuation

**1.11.3.** Where Ministers' grant consent to an application, they have 7 days in which to appoint an independent valuer (section 65(1) of the 2016 Act). Any delay to appoint the valuer within the specified time will not affect the validity of the valuation (section 65(2) of the 2016 Act).

**1.11.4.** Section 65(1) of the 2016 Act specifies that the valuer must be a person who appears to Ministers to be suitably qualified, independent and to have knowledge and experience of valuing land or interests of a kind which is similar to the land or tenant’s interest that the Part 5 community body is seeking to purchase. The cost of this valuation is met by Ministers (section 65(7) of the 2016 Act).

**1.11.5.** The aim of the independent valuation is to ensure that the landowner or tenant receives a fair price, the “market value” for the land or tenant’s interest. The definition of “market value” is set out at section 65(5) of the 2016 Act. The valuation is the combination of:

- the value on the open market if the sale were between a willing seller and a willing buyer;
- any depreciation in the value of other land or interests belonging to the seller which may result from the transfer of the land or tenant’s interest, including depreciation caused by the division of the land or interests by the transfer of the land to the Part 5 community body or third party purchaser; and
- the amount attributable to any disturbance to the seller which may arise in connection with the transfer of the land or tenant’s interest.

**1.11.6.** In arriving at the open market value, the valuation may take into account any factor attributable to the known existence of a person who would be willing to pay a higher price for the land or tenant’s interest because of a characteristic of the land or tenant’s interest that relates peculiarly to that person’s interest in buying it (section 65(6) of the 2016 Act). This person cannot be the Part 5 community body or third party purchaser which is exercising the right to buy. The valuer may take account of the depreciation in the value of other land or interests mentioned above, any disturbance to the seller as mentioned above or 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.

**1.11.7.** The appointed valuer does not act for the parties involved in the purchase. They will act as an expert and not as an arbiter. The valuer will invite the Part 5 community body, the landowner, where the application is to buy a tenant’s interest, the tenant, and where the application nominates a third party purchaser, the third party purchaser to make written representations about the value of the land (section 65(8)(a) of the 2016 Act). If the valuer receives representations from the owner or, as the case may be, the tenant, they will invite the Part 5 community body and, as the case may be, the third party purchaser to send views on those representations in writing. If the valuer receives representations from the Part 5 community body or, as the case may be, the third party purchaser, they will invite the owner and, as the case may be, the tenant to send views on those representations in writing. The valuer will consider all written views when considering the value of the land.



**1.11.8.** If the Part 5 community body, or third party purchaser and the landowner or, as the case may be the tenant, have come to an agreement on the valuation of the land or, as the case may be, the tenant's interest (at any point in the process), they must notify the valuer in writing of that agreed valuation.

**1.11.9.** The valuer has 8 weeks from the date of their appointment (or longer if decided by Ministers on application of the valuer, section 65(14) of the 2016 Act), to notify Ministers, the landowner, where the application is in respect of a tenant's interest, the tenant, where an application nominates a third party purchaser, the third party purchaser and the Part 5 community body of the assessed value of the land. The validity of anything done under Part 5 of the 2016 Act is not affected by the failure of the valuer to comply with this time limit (section 65(15) of the 2016 Act). The price to be paid for the land is either at a price agreed between the parties, the valuation price provided by the valuer or, if the valuation figure is appealed, the price determined by the Lands Tribunal (section 70 of the 2016 Act).

**1.11.10.** Where an application to buy a tenant's interest does not relate to the entire tenanted land, any question as to the allocation between the tenant and the Part 5 community body or the third party purchaser of rents payable or receivable, or as between those parties the right and obligations generally will be determined by the valuer when they are assessing the value of the interest of the tenant (section 66 of the 2016 Act).

### **Appeals against the valuation**

**1.11.11.** Should the landowner, where the application is to buy a tenant's interest, the tenant, where the application nominates a third party purchaser, the third party purchaser or the Part 5 community body disagree with the valuation, they may appeal to the Lands Tribunal for Scotland (section 70 of the 2016 Act).

**1.11.12.** Where an application is in relation to a tenant's interest, should the tenant, Part 5 community body and, where the application nominates a third party purchaser, the third party purchaser disagree with the valuers determination in relation to the allocation or rents or as to the rights and obligations between the parties under section 66 of the 2016 Act any of those parties may appeal against that determination to the Lands Tribunal (section 70(2) of the 2016 Act).

**1.11.13.** An appeal under sections 70(1) or (2) of the 2016 Act may be made within 21 days of the date of receiving notice of the assessed valuation (section 70(3) of the 2016 Act). The party that lodges the appeal must, within 7 days of making of the appeal, inform Ministers in writing of the making of the appeal and the date of the making of the appeal (section 70(9) of the 2016 Act).

**1.11.14.** The Lands Tribunal may reassess the value of the land or, as the case may be, the tenant's interest and may substitute its own determination for any determination in relation to the allocation of rents or as to the rights and obligations between the relevant parties (section 70(4) of the 2016 Act). The valuer may be a witness in the appeal proceedings (section 70(5) of the 2016 Act). The Lands Tribunal must give reasons for its decision on the appeal and must issue a written statement of these reasons within 8 weeks of the hearing of the appeal (section 70(6) of the 2016 Act), or, if the Lands Tribunal considers that 8 weeks is not reasonable, at a later date which the parties of the appeal are informed of in advance (section 70(7) of the 2016 Act). The validity of anything done under the Part 5 right to buy is not affected by failure of the Lands Tribunal to comply with the 8 week time limit or later time limit as notified to the parties (section 70(8) of the 2016 Act).

**1.11.15.** The valuation determined by the Lands Tribunal is the price that the Part 5 community body, or third party purchaser if relevant, will have to pay to purchase the land. It should be noted that Scottish Ministers are not a competent party to any appeal on the valuation as they appoint the valuer (section 70(12) of the 2016 Act).

## 1.12 Transfer of the land

### Confirmation of Intention to Proceed or Withdraw

**1.12.1.** After the valuer has advised all parties of the valuation figure, if the application does not nominate a third party purchaser, the Part 5 community body has 21 days within which to send notice confirming that they intend to proceed with the Part 5 right to buy, to Ministers, the tenant where the application is to buy a tenant's interest, and the landowner identified in the application (section 62(1) of the 2016 Act). Following receipt of that notification, Ministers have 7 days in which to acknowledge receipt of and send a copy of that acknowledgement to the landowner, the tenant where relevant and to the Keeper.

**1.12.2.** If the application does nominate a third party purchaser, both the Part 5 community body *and* the third party purchaser has 21 days in which to send notice confirming that they intend to proceed with the Part 5 right to buy, to Ministers, the tenant where the application is to buy a tenant's interest and the landowner identified in the application (section 62(2) of the 2016 Act). Following receipt of that notification, Ministers have 7 days in which to acknowledge receipt of and send a copy of that acknowledgement to the landowner, the tenant where relevant and to the Keeper.

### Withdrawal

**1.12.3.** The Part 5 community body may withdraw an application by giving Ministers notice of that in writing any time until receiving notice of the valuation under section 65(13) of the 2016



Act. Where an application does not nominate a third party purchaser, at any time after receiving that notice, the Part 5 community body may withdraw a confirmation of intention to proceed by giving notice to Scottish Ministers in writing. Where an application does nominate a third party purchaser, at any time after receiving notice of the valuation under section 65(13) of the 2016 Act either the Part 5 community body or the nominated third party purchaser may withdraw a confirmation of intention to proceed by giving Ministers notice in writing to that effect. After receiving a notice withdrawing either an application or a notice of intention to proceed, within 7 days of receiving such notice Ministers will acknowledge receipt and send a copy of that acknowledgement to the landowner, where the application is in respect of a tenant's interest, the tenant, and the Keeper.

**1.12.4.** Failure of the Part 5 community body to and, where nominated, the third party purchaser to confirm the intention to proceed will result in the prohibition on dealings with the land or, as the case may be, the tenant's interest being lifted. A withdrawal of the application or of the notice of intention to proceed will also result in the prohibition on the dealings with the land or tenant's interest being lifted.

**1.12.5.** Where an application does not nominate a third party purchaser, any person who has incurred loss or expense under the following circumstances, is entitled to recover the amount of that loss from the Part 5 community body (Section 67(1) of the 2016 Act) (see Section 1.13 for details). The circumstances are:

- in complying with the requirements of Part 5 following the application by the Part 5 community body;
- as a result of the withdrawal of the Part 5 community body's application;
- as a result of the withdrawal of the Part 5 community body of their confirmation of intention to proceed; or
- as a result of the failure of the Part 5 community body to complete the purchase.

**1.12.6.** Where an application nominates a third party purchaser, any person who has incurred loss or expense under the following circumstances, is entitled to recover the amount of that loss from the third party purchaser (Section 67(2) of the 2016 Act). The circumstances are:

- in complying with the requirements of Part 5 following the application by the Part 5 community body;
- as a result of the withdrawal of confirmation of intention to proceed by the Part 5 community body or third party purchaser where applicable; or
- as a result of the failure of the Part 5 community body or third party purchaser where applicable, to complete the purchase.



## Completion of the purchase

**1.12.7.** The Part 5 community body, or third party purchaser where applicable, is fully responsible for securing the expeditious exercise of the Part 5 right to buy (section 63(1) of the 2016 Act). They are required to prepare the documents necessary to:

- effect the transfer of the land or, as the case may be, the assignation of the tenant's interest; and
- They must impose any conditions Ministers require to be imposed upon the title to the land (section 59 of the 2016 Act).

In preparing the documents, the Part 5 community body or, as the case may be, the third party purchaser must ensure that the land in the application which Ministers have consented to is that to be transferred or assigned and that the transfer or assignation is to be effected in accordance with any other conditions imposed by Ministers.

**1.12.8.** The services of a solicitor will be required to complete the conveyance of the land or assignation of the tenancy.

**1.12.9.** Where a Part 5 community body, or third party purchaser where applicable, cannot fulfil their obligations to ensure that the subjects which are to be transferred are the same as those in the application and that the transfer is effected in accordance with any conditions imposed by Ministers, either because they are not owned by the person who is named as the owner in the application or because they are not tenanted by the person named as the tenant in the application, the matter must be referred to Ministers (section 63(2) of the 2016 Act).

**1.12.10.** The owner of the land being bought 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 the Part 5 community body or third party to proceed to complete its title to the land and to transfer the title accordingly (section 63(4) of the 2016 Act).

**1.12.11.** Should they refuse or fail to make them available, or if they cannot be found within 6 weeks of the date on which Ministers consented to the application, the Part 5 community body or third party purchaser, can apply to the Lands Tribunal who may order the production of these documents from the owner or any other person appearing to the Lands Tribunal to have those deeds or documents (section 63(5) of the 2016 Act).



**1.12.12.** Where the owner refuses or fails to transfer the title of the land, the Part 5 community body or third party purchaser can apply to the Lands Tribunal to authorise the clerk to adjust, execute and deliver such deeds or other documents as will complete the transfer and will have the effect and force as if it were done by the owner (section 63(6) of the 2016 Act).

**1.12.13.** Where the 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 the Part 5 community body or third party to proceed to complete its acquisition of the tenant's interest and the tenant is obliged to effect the assignation of the tenant's interest accordingly (section 63(7) of the 2016 Act).

**1.12.14.** Should the tenant refuse or fail to make them available, or if they cannot be found within 6 weeks of the date on which Ministers consented to the application, the Part 5 community body or third party purchaser, can apply to the Lands Tribunal who may order the production of these documents by the tenant or any other person appearing to the Lands Tribunal to have those deeds or documents (section 63(8) of the 2016 Act).

**1.12.15.** Where the owner refuses or fails to effect the transfer of the tenant's interest, the Part 5 community body or third party purchaser can apply to the Lands Tribunal to authorise the clerk to adjust, execute and deliver such deeds or other documents as will complete the assignation to have the effect and force as if it were done by the tenant (section 63(9) of the 2016 Act).

### **Completion of the transfer**

**1.12.16.** The details of how the transfer of the land, or the assignation of the tenant's interest, is to be completed are set out in section 64 of the 2016 Act. The Part 5 community body, or third party purchaser if applicable, must pay within 6 months from the date on which Ministers consented to the application (section 64(2) of the 2016 Act). However, this date may be extended where:

- the owner or tenant, and the Part 5 community body or third party purchaser, where applicable, agree to an extension of that period (section 64(3)(a) of the 2016 Act);
- the assessment of the valuation (under section 65) or determination (under section 66) of the 2016 Act has not been completed by a date which is 4 months after the date when Ministers consented to the application, in such a case payment must be made within 2 months of the completion of that assessment of determination, whichever occurs later (section 64(3)(b) of the 2016 Act);

- the valuation or determination is the subject of an appeal which has not been decided within 4 months of the date when Ministers consented to the application, in such a case, payment must be made within 2 months of the date of the decision on the appeal against the valuation or determination, whichever occurs later (section 64(3)(c) of the 2016 Act).

**1.12.17.** Where the owner cannot grant a good and marketable title, or the tenant is not able to assign the tenant's interest to the Part 5 community body, or third party purchaser, by the date that the payment is due, then the consideration shall be held by the Lands Tribunal pending either the completion of the conveyance or assignation is effected, or notification to the court and Ministers that the Part 5 community body or third party purchaser have decided not to proceed to complete the transaction. If the Part 5 community body or third party purchaser does not make payment by the due date, the confirmation of intention to proceed will be considered to have been withdrawn.

**1.12.18.** Any failure by the Part 5 community body or third party purchaser, to complete the purchase may create a liability to pay compensation under section 67 of the 2016 Act for any loss or expense incurred.

**1.12.19.** Any heritable security that burdened the land immediately before title is granted or the tenant's interest is assigned to the Part 5 community body will cease to do so on the registration of the interest (section 64(8) of the 2016 Act). Where such a security also burdens other land or tenant's interest which is not being acquired by the Part 5 community body or third party purchaser, the security does not cease to burden that land (section 64(9) of the 2016 Act).

**1.12.20.** The Part 5 community body or third party purchaser will be required to pay the creditor of a security any sums which are due to them (section 64(10) of the 2016 Act). The Part 5 community body or third party purchaser may deduct any sums paid to the creditor in the standard security from the amount that they are to pay the landowner or tenant (section 64(11) of the 2016 Act).



## 1.13 Compensation/grants

### Rights to compensation

**1.13.1.** Any person, including the landowner or tenant, who has incurred loss or expense is entitled to claim compensation for that loss or expense from the Part 5 community body or third party purchaser where applicable (section 67 of the 2016 Act). This covers loss or expenses incurred:

- in complying with the requirements of Part 5 following an application by a Part 5 community body;
- as a result of the Part 5 community body's withdrawal of their application;
- as a result of the Part 5 community body or, as the case may be, third party purchaser's confirmation of intention to proceed, or its failure to otherwise complete the purchase after having confirmed their intention to do so; or
- as a result of the failure by the Part 5 community body or third party purchaser where applicable, to complete the purchase in terms of Section 67(1) and (2) of the 2016 Act.

**1.13.2.** However, the Part 5 community body or third party purchaser will not be liable to pay compensation where an application for consent has been refused by Scottish Ministers (section 67(2)(b) of the 2016 Act). Should this be the case, the landowner or tenant if applicable, is entitled to recover the amount of any loss or expense incurred in complying with the requirements of Part 5 of the 2016 Act following the making of an application by a Part 5 community body from Ministers (section 67(4) of the 2016 Act).

**1.13.3.** The process for making a claim for compensation is set out in regulation 19 of the Right to Buy Land to Further Sustainable Development (Applications, Written Requests, Ballots and Compensation) (Scotland) Regulations 2020. A claim for compensation under section 67(1) or 67(2)(b) of the 2016 Act must be submitted to the Part 5 community body.

**1.13.4.** A claim for compensation under section 67(2)(a) of the Act must be submitted to the third party purchaser which is liable to pay the compensation at the address specified in the application form under schedule 1 of the Right to Buy Land to Further Sustainable Development (Applications, Written Requests, Ballots and Compensation) (Scotland) Regulations 2020.

**1.13.5.** A claim for compensation under section 67(4) of the Act must be submitted to Scottish Ministers.

**1.13.6.** A claim for compensation under section 67(1) or 67(2) of the Act must be submitted within 90 days beginning:

- on the final settlement date as defined in section 64(2) (completion of transfer), or such later date as consideration is paid in terms of section 64(3) or (4) of the Act;
- on the date that the notice in writing to Scottish Ministers that the Part 5 community body has withdrawn its application or withdrawn the confirmation of its intention to proceed with the purchase under section 62(3) of the Act is received;
- on the date that the notice in writing to Scottish Ministers that:
  - the Part 5 community body has withdrawn its application; or
  - the Part 5 community body or the nominated third party purchaser has withdrawn the confirmation of intention to proceed under section 62(4) of the Act; or
  - the date on which the Part 5 community body's or the third party purchaser's confirmation of intention to proceed made under section 62 of the Act is treated as withdrawn under section 64(7) of the Act.

**1.13.7.** A claim for compensation under section 67(4) of the Act must be submitted within the period of 90 days beginning with the date of notification under section 60(1) (b), (c), (d) or (e) of the Act (notification of Ministers' decision on application) of the refusal by Scottish Ministers to grant the Part 5 community body's application made under section 54 of the Act.

**1.13.8.** Where the parties cannot agree whether compensation is payable, or the amount of such compensation to be paid, then either party may refer the question to the Lands Tribunal for a decision (section 67(6) of the 2016 Act). This may only be done once the period of 60 days, beginning on the date that the claim for compensation was received, has expired.

### Grants towards the payment of compensation

**1.13.9.** In given circumstances, Ministers are able to pay a grant towards a Part 5 community body or third party purchaser's liability for compensation (section 68 of the 2016 Act). To apply for such a grant, the Part 5 community body or third party purchaser needs to demonstrate that:

- after payment of outstanding liabilities incurred by the purchase of the land or tenant's interest, the Part 5 community body or third party purchaser does not have sufficient funds to pay in full the compensation it is liable to pay;
- the Part 5 community body or third party purchaser has taken all reasonable steps to try to obtain the compensation amount required but have been unable to do so; and
- it is in the public interest that Ministers pay the grant.



**1.13.10.** The process of applying for a grant towards compensation costs is set out in regulation 20 of the Right to Buy Land to Further Sustainable Development (Applications, Written Requests, Ballots and Compensation) (Scotland) Regulations 2020. The Part 5 community body or third party purchaser should make an application to Ministers, on the form in schedule 5 of the Regulations, within 90 days of the date on which the Part 5 community body or third party purchaser and the claimant agreed the amount of compensation payable or the date on which the Lands Tribunal determined the amount of compensation payable (under section 67(6) of the 2016 Act). The Ministers' decision on an application for a grant towards compensation costs is final (section 68(8) of the 2016 Act).

## 1.14 Funding

**1.14.1.** The 2016 Act makes no specific reference to funding for community purchases of land. It is for the Part 5 community body or third party purchaser to decide where to obtain funding to support the purchase of the land. Part 5 community bodies or third party purchasers should contact the funding agents directly and as early as possible to obtain advice on funding options for their purchase (for both the original attempt to transfer the land, and the purchase, should their application be approved. Details of some funding sources, including the Scottish Land Fund, can be found on the Scottish Government website (<https://www.gov.scot/policies/land-reform/scottish-land-fund/>)

## 1.15 After Purchase

### General

**1.15.1.** The main purpose behind this right to buy is to further the sustainable development of land. Through acquiring land and furthering the sustainable development of that land, it also enables communities to secure their future. The 2016 Act seeks to ensure that the land which the Part 5 community body or third party purchaser has purchased, will remain a resource which benefits the community as a whole.

### The Part 5 Community Body - Future Actions?

**1.15.2.** The Part 5 community body must continue to be a CLBG, SCIO, BenCom or, if a third party purchaser was nominated, a body corporate whose surplus funds are applied for the benefit of the community. If it is a CLBG and is to be wound up, a successor body requires to be approved by Ministers (section 49(2)(h) of the 2016 Act).

## Changes to a Part 5 community body's governing documents

**1.15.3.** A Part 5 community body must notify Ministers (see section 1.4.8) in writing of any changes made to its governing documents as soon as possible after such changes have been made (section 50(1) of the 2016 Act). If Ministers believe that a Part 5 community body, having already successfully purchased land under the 2016 Act, would no longer be entitled to do so, they may compulsorily acquire that land.

**1.15.4.** The implications of these provisions are clear: the Part 5 community body must continue to observe the requirements of the 2016 Act in relation to any land bought under its provisions. For example, any surplus funds which the Part 5 community body (or its successor) may have, may only be applied to benefit the community. There is therefore, for example, no scope for paying any surplus funds as a dividend to be shared out amongst individuals.

## If winding-up becomes necessary

**1.15.5.** Where the Part 5 community body is a CLBG, the 2016 Act makes provision for the winding up of a Part 5 community body (section 49(2)(h) of the 2016 Act). If the Part 5 community body is a CLBG, following the settlement of any liabilities, its property, including the land, must be transferred to another community body as may be approved by Ministers, or, if no such body exists, either to Ministers or to a charity as Ministers may direct.

## 1.16 If you need any further help

Annex B provides useful contacts to help communities, landowners, agents etc. through the Part 5 right to buy process.

The Scottish Government's Community Land Team is happy to assist with questions you may have about the Part 5 right to buy. The team cannot provide legal advice and must remain objective at all times: its main role is to provide advice, on a case-by-case basis, to Ministers at various stages of the Part 5 right to buy process. However, the team can help you with any questions you have on the process. We recommend that you contact us as early as possible to benefit from our expertise.

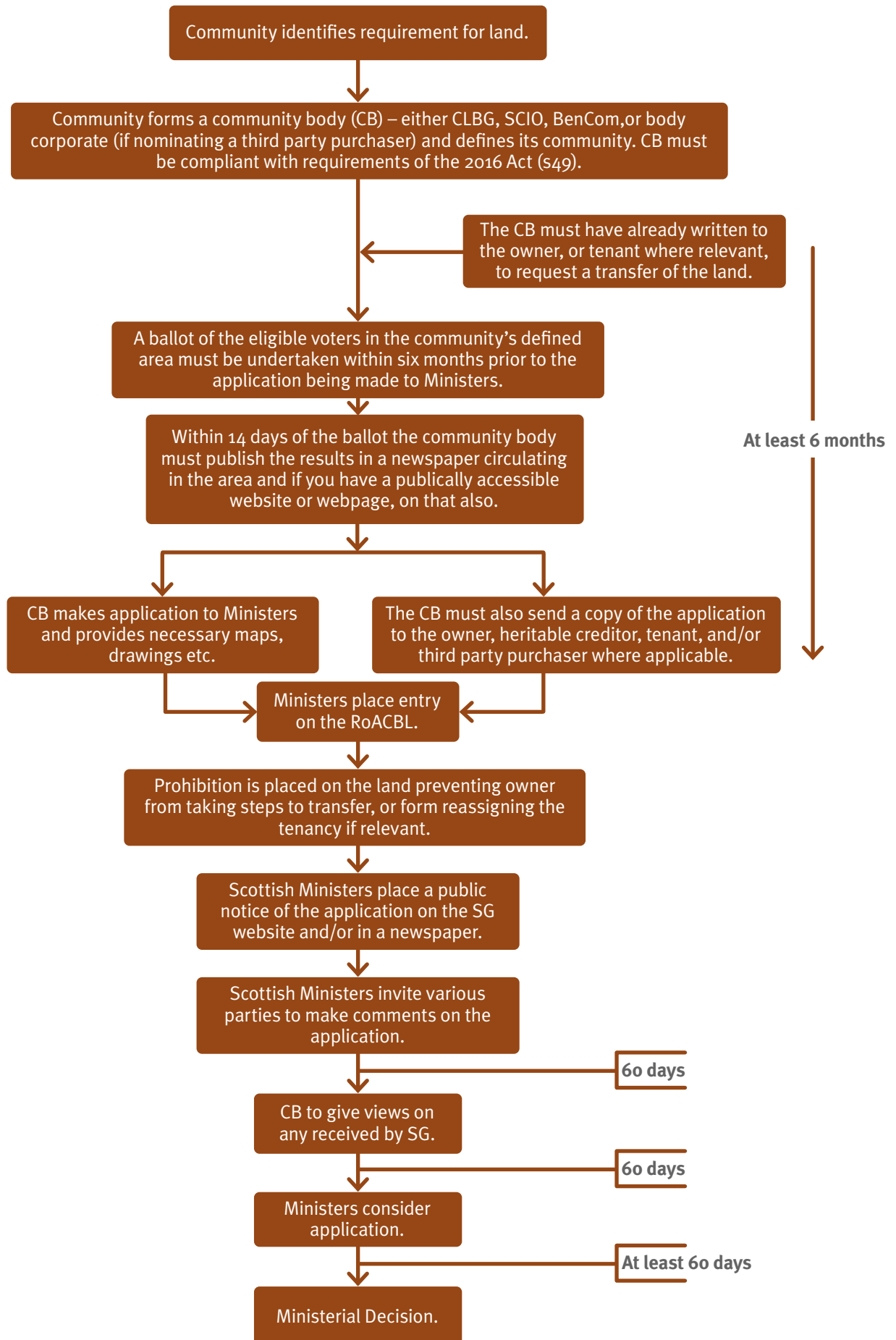
RIGHT TO BUY LAND TO FURTHER  
SUSTAINABLE DEVELOPMENT

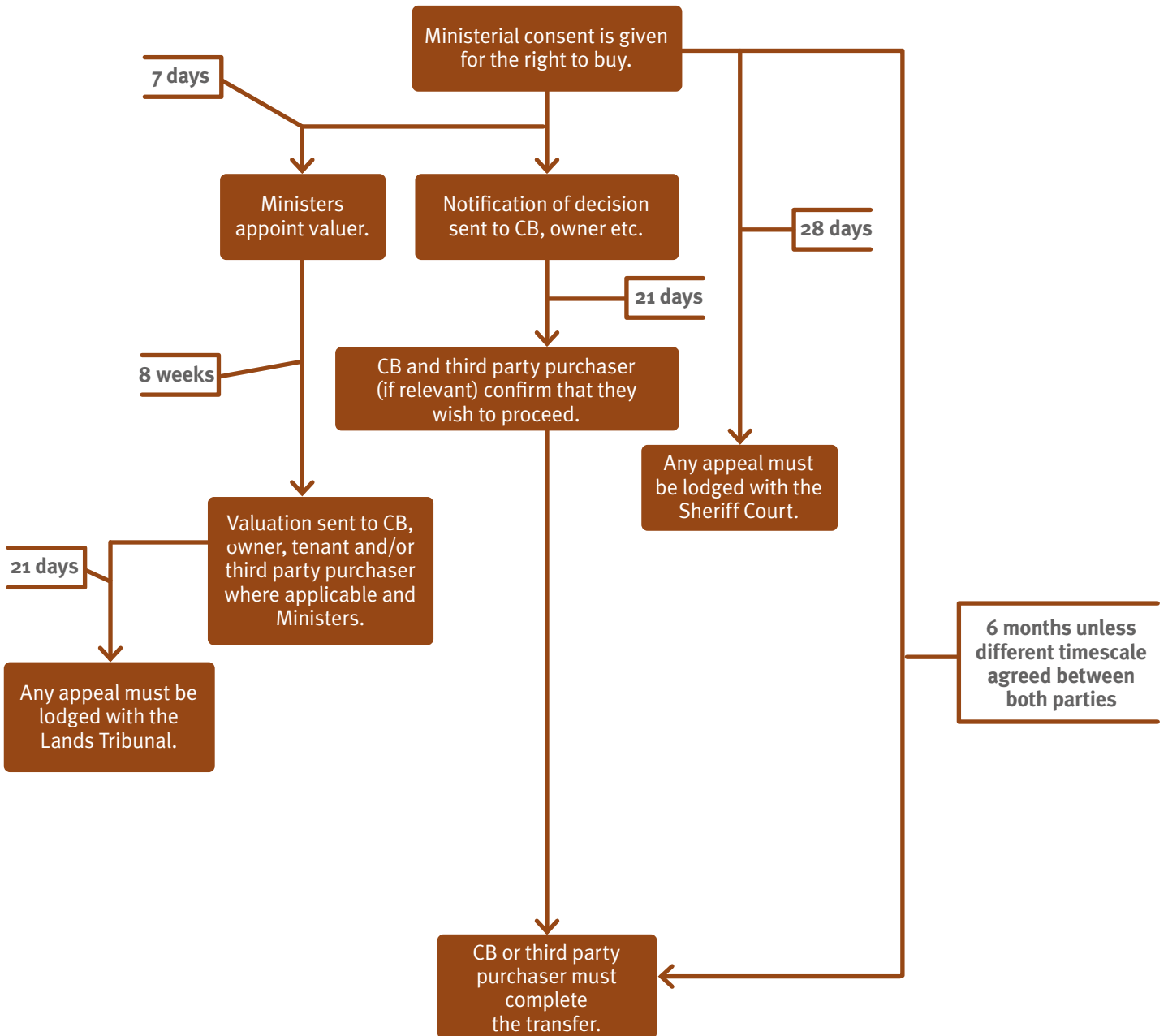
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# ANNEX A











RIGHT TO BUY LAND TO FURTHER  
SUSTAINABLE DEVELOPMENT

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# ANNEX B



Community Land Team, Q Spur, Saughton House, Broomhouse Drive, Edinburgh EH11 3XD  
 Tel: 0131 244 9822  
 Email: [crtb@gov.scot](mailto:crtb@gov.scot)

Community Assets Team, Highland and Islands Enterprise  
 An Lòchran, 10 Inverness Campus, Inverness IV2 5NA  
 Tel: 01463 245 245  
 Web: <https://www.hie.co.uk/support/support-for-community-organisations/>

Companies House, 4th Floor, Edinburgh Quay 2, 139 Fountainbridge, Edinburgh EH3 9FF  
 Web: <https://www.companieshouse.gov.uk>

Registers of Scotland (RoS), Meadowbank House, 153 London Road, Edinburgh EH8 7AW  
 Tel: 0845 6070161  
 Web: <https://www.ros.gov.uk/>

Lands Tribunal for Scotland, George House, 126 George Street, Edinburgh, EH2 4HH  
 Tel: 0131 271 4350  
 Email: [LTS\\_Mailbox@scotcourtribunals.gov.uk](mailto:LTS_Mailbox@scotcourtribunals.gov.uk)  
 Web: <http://www.lands-tribunal-scotland.org.uk/>

Development Trusts Association Scotland (DTAS), 1B Washington Lane, Edinburgh EH11 2HA  
 Tel: 0131 220 2456  
 Email: [info@dtascot.org.uk](mailto:info@dtascot.org.uk)  
 Web: <https://www.dtascot.org.uk/>

Community Ownership Support Service (COSS), 1B Washington Lane, Edinburgh EH11 2HA  
 Tel: 0131 225 2080  
 Email: [coss@dtascot.org.uk](mailto:coss@dtascot.org.uk)  
 Web: <https://www.dtascommunityownership.org.uk/>

Scottish Council for Voluntary Organisations (SCVO), Mansfield Traquair Centre, 15 Mansfield Place, Edinburgh, EH3 6BB  
 Tel: 0131 474 8000  
 Email: [enquiries@scvo.org.uk](mailto:enquiries@scvo.org.uk)  
 Web: <https://www.scvo.org.uk/>



Office of the Scottish Charities Regulator (OSCR), 2nd Floor Quadrant House, 9 Riverside Drive, Dundee DD1 4NY

Tel: 01382 220446

Email: [info@oscr.org.uk](mailto:info@oscr.org.uk)

Web: <https://www.oscr.org.uk>

Financial Conduct Authority (FCA), 25 The North Colonnade, London E14 5HS

Tel: 020 7066 1000

Web: <https://www.fca.org.uk>

Community Land Scotland, Fearann Coimhearsnachd na h-Alba

Room 1, Aves Business Centre, 11 Jamaica Street, Greenock PA15 1XX

Tel: 07884 314297

Email: [info@communitylandscotland.org.uk](mailto:info@communitylandscotland.org.uk)

Web: <https://www.communitylandscotland.org.uk/>

Scottish Land & Estates, Stuart House, Eskmills Business Park, Musselburgh, EH21 7PB

Tel: 0131 653 5400

Email: [info@scottishlandandestates.co.uk](mailto:info@scottishlandandestates.co.uk)

Web: <https://scottishlandandestates.co.uk/>

The Scottish Land Commission, Longman House, 28 Longman Road, Inverness, IV1 1SF

Tel: 0300 244 4452

Email: [info@landcommission.gov.scot](mailto:info@landcommission.gov.scot)

Web: <https://landcommission.gov.scot/>

## Resources

Community Right to Buy

<https://www.gov.scot/policies/land-reform/community-right-to-buy/>

Community Right to Buy Abandoned, Neglected or Detrimental Land

<https://www.gov.scot/policies/land-reform/community-right-to-buy/#community-right-to-buy-abandoned-neglected-or-detrimental-land>

Guidance for Engaging Communities in Decisions Relating to Land

<https://www.gov.scot/publications/guidance-engaging-communities-decisions-relating-land/>

Communities Mapping Tool

<https://www.gov.scot/publications/land-reform-mapping-tool-guidance/>

Register of Applications by Communities to Buy Land

<https://roacbl.ros.gov.uk/>

Register of Community Interest in Land

<https://www.eservices.ros.gov.uk/rcil/ros/rcilcb/presentation//ui/pageflows/viewCountySummary.do>

Buildings at Risk Register

<https://www.buildingsatrisk.org.uk/>

## Legislation

Land Reform (Scotland) Act 2003

<https://www.legislation.gov.uk/asp/2003/2/contents>

Land Reform (Scotland) Act 2003, Explanatory Notes

<https://www.legislation.gov.uk/asp/2003/2/notes/contents>

Community Empowerment (Scotland) Act 2015

<https://www.legislation.gov.uk/asp/2015/6/contents>

Community Empowerment (Scotland) Act 2015, Explanatory Notes

<https://www.legislation.gov.uk/asp/2015/6/notes/contents>

The Community Right to Buy Abandoned, Neglected or Detrimental Land (Abandoned, Neglected or Detrimental Land) (Eligible Land, Regulators and Restrictions on Transfers and Dealing) (Scotland) Regulations 2018

<https://www.legislation.gov.uk/ssi/2018/201/contents/made>

The Community Right to Buy Abandoned, Neglected or Detrimental Land (Abandoned, Neglected or Detrimental Land) (Applications, Ballots and Miscellaneous Provisions) (Scotland) Regulations 2018

<https://www.legislation.gov.uk/ssi/2018/140/contents/made>

The Community Right to Buy Abandoned, Neglected or Detrimental Land (Abandoned, Neglected or Detrimental Land) (Compensation) (Scotland) Order 2018

<https://www.legislation.gov.uk/ssi/2018/137/contents/made>

Land Reform Act (Scotland) 2016

<https://www.legislation.gov.uk/asp/2016/18/part/5>



Land Reform Act (Scotland) 2016, Explanatory Notes

**<https://www.legislation.gov.uk/asp/2016/18/notes/contents>**

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

**<https://www.legislation.gov.uk/ssi/2020/114/contents/made>**

The Right to Buy Land to Further Sustainable Development (Applications, Written Requests, Ballots and Compensation) (Scotland) Regulations 2020

**<https://www.legislation.gov.uk/ssi/2020/21/contents/made>**











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**[www.gov.scot](http://www.gov.scot)**

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**Email: [crtb@gov.scot](mailto:crtb@gov.scot)**

**Post: Q Spur, Saughton House, Broomhouse Drive, Edinburgh, EH11 3XD**

**W W W . g o v . s c o t**