

Consultation on secondary legislation proposals relating to Part 5 of the Land Reform (Scotland) Act 2016 – the Right to Buy Land to Further Sustainable Development

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Scottish Government
Riaghaltas na h-Alba
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Glossary

In this document:

The terms “Part 5” always means Part 5 of the Land Reform (Scotland) Act 2016, the Right to Buy Land to Further Sustainable Development.

The term “Part 3A” always means Part 3A of the Land Reform (Scotland) Act 2003, the Community Right to Buy Abandoned, Neglected or Detrimental Land.

The term “Part 2” always means Part 2 of the Land Reform (Scotland) Act 2003, the Community Right to Buy.

The term “Part 3” always means Part 3 of the Land Reform (Scotland) Act 2003, the Crofting Community Right to Buy.

“the 2016 Act” always means the Land Reform (Scotland) Act 2016.

“the 2015 Act” always means the Community Empowerment (Scotland) Act 2015.

“the 2003 Act” always means the Land Reform (Scotland) Act 2003.

Where a section or subsection of legislation is referred to without reference to an Act, it always refers to the Land Reform (Scotland) Act 2016. For example, subsection 61(1) means subsection 61(1) of the Land Reform (Scotland) Act 2016.

As a reminder to the reader, sometimes these terms are written out in full throughout the consultation paper.

INTRODUCTION

Part 5 of the 2016 Act creates a process by which local, place-based communities can seek to acquire a right to buy land to further the achievement of sustainable development in relation to that land. Where an application is successful, the right to purchase the land applies even where the owner of the land is not willing to sell it. It is therefore, like Part 3A of the Land Reform (Scotland) Act 2003 (the Community Right to Buy Abandoned, Neglected or Detrimental Land), a form of compulsory purchase. Part 5 of the 2016 Act is currently not in force.

Part 5 of the 2016 Act contains a number of regulation making powers. They allow Scottish Ministers to make regulations about a number of matters that relate to Part 5. The main purpose of this consultation is to explain the Scottish Government's proposals for how it will use these regulation making powers, to present a broad outline of how Part 5 will work once it is in force, and to give you the opportunity to put forward your views on these proposals.

Under Part 5, Scottish Ministers can only consent to a right to buy application where they are satisfied that certain conditions are met. These conditions, which are in section 56 of the 2016 Act, are of two sorts:

- (a) sustainable development conditions
- (b) procedural conditions

The sustainable development conditions are explained further on in this consultation. It should be noted that there are no regulation making powers in Part 5 that would allow modification of these conditions as they are fully set out in the 2016 Act.

There are however regulation making powers for some of the procedural requirements. These include the power under section 56(9), which allows regulations to be made about the form and content of the Part 5 community body's request to a land owner or tenant to seek the transfer of land or tenant's interest prior to any formal right to buy application. Section 56(9) also allows regulations to be made about the form and content of a response from a land owner to a community body's request and the circumstances in which owners are taken not to have responded.

In addition to the regulation making powers connected with some of the procedural conditions, there are several other regulation making powers contained in Part 5. These include powers to specify types of land and tenant's interests which are not eligible for purchase under Part 5, and regulations for governing community ballot processes.

Our proposals for how we will use these regulation making powers are set out in this consultation paper.

There are some regulation making powers that we do not believe need to be used at present, and these are also explained.

RESPONDING TO THIS CONSULTATION

We are inviting responses to this consultation by 18 September 2019.

Please respond to this consultation using the Scottish Government's consultation hub, Citizen Space (<http://consult.gov.scot>). Access and respond to this consultation online at <https://consult.gov.scot/environment-forestry/right-to-buy-land-further-sustainable-development>

You can save and return to your responses while the consultation is still open. Please ensure that consultation responses are submitted before the closing date of 18 September 2019.

If you are unable to respond using our consultation hub, please send the completed Respondent Information Form to:

Land Reform Policy and Legislation Team
Scottish Government
Area 3G South
Victoria Quay
Edinburgh
EH6 6QQ

Handling your response

If you respond using the consultation hub, you will be directed to the About You page before submitting your response. Please indicate how you wish your response to be handled and, in particular, whether you are content for your response to be published. If you ask for your response not to be published, we will regard it as confidential, and we will treat it accordingly.

All respondents should be aware that the Scottish Government is subject to the provisions of the Freedom of Information (Scotland) Act 2002 and would therefore have to consider any request made to it under the Act for information relating to responses made to this consultation exercise.

If you are unable to respond via Citizen Space, please complete and return the Respondent Information Form included in this document.

To find out how we handle your personal data, please see our privacy policy <https://beta.gov.scot/privacy/>

Next steps in the process

Where respondents have given permission for their response to be made public, and after we have checked that they contain no potentially defamatory material, responses will be made available to the public at <http://consult.gov.scot>. If you use the consultation hub to respond, you will receive a copy of your response via email.

Following the closing date, all responses will be analysed and considered along with any other available evidence to help us. An analysis report will also be made available.

Comments and complaints

If you have any comments about how this consultation exercise has been conducted, please send them to the contact address above or at LandReform@gov.scot.

Scottish Government Consultation process

Consultation is an essential part of the policy making process. It gives us the opportunity to consider your opinion and expertise on a proposed area of work.

You can find all our consultations online: <http://consult.gov.scot>. Each consultation details the issues under consideration, as well as a way for you to give us your views, either online, by email or by post.

Responses will be analysed and used as part of the decision making process, along with a range of other available information and evidence. We will publish a report of this analysis for every consultation. Depending on the nature of the consultation exercise the responses received may:

- indicate the need for policy development or review
- inform the development of a particular policy
- help decisions to be made between alternative policy proposals
- be used to finalise legislation before it is implemented

While details of particular circumstances described in a response to a consultation exercise may usefully inform the policy process, consultation exercises cannot address individual concerns and comments, which should be directed to the relevant public body.

RESPONDENT INFORMATION FORM

Consultation on secondary legislation proposals relating to Part 5 of Land Reform (Scotland) Act 2016 – the right to buy land to further sustainable development



Scottish Government
Riaghaltas na h-Alba
gov.scot

RESPONDENT INFORMATION FORM

Please Note this form **must** be completed and returned with your response.
To find out how we handle your personal data, please see our privacy policy:
<https://beta.gov.scot/privacy/>

Are you responding as an individual or an organisation?

- Individual
 Organisation

Full name or organisation's name

Phone number

Address

Postcode

Email

The Scottish Government would like your permission to publish your consultation response. Please indicate your publishing preference:

- Publish response with name
 Publish response only (without name)
 Do not publish response

Information for organisations:

The option 'Publish response only (without name)' is available for individual respondents only. If this option is selected, the organisation name will still be published.

If you choose the option 'Do not publish response', your organisation name may still be listed as having responded to the consultation in, for example, the analysis report.

We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

- Yes
 No

OVERVIEW OF HOW THE PART 5 PROCESS WILL WORK ONCE IN FORCE

This part of the consultation explains how we expect the Part 5 process will work in practice, once in force. It is provided to support your consideration of the questions in this consultation, and to provide a foretaste of how the Part 5 process is expected to work.

It is a general description of the process, and not a detailed explanation of each part. The processes within each stage should not always be thought of as being sequential, but are presented in an order that should help the reader consider the Part 5 process as a whole.

When Part 5 is brought into force, non-statutory guidance will be published to explain how the process works in more detail. Your views at this stage will help inform the Part 5 guidance.

For ease of presentation, this explanation of how the Part 5 process will work is broken down into the several key stages. The stages are presented as follows:

- Matters prior to the community writing to the land owner and tenant.
- Writing to the land owner and tenant.
- Land owner response.
- Right to buy application.
- Ministers' receipt of the application.
- Ministerial decision.
- Appeals.
- Other matters.

MATTERS PRIOR TO WRITING TO THE LAND OWNER AND TENANT

SUSTAINABLE DEVELOPMENT

A local community identifies land the transfer of which they are of the view would further sustainable development in relation to that land and which is in the public interest. The community's plans for the land should be likely to result in significant benefit to the community and be the only practicable or most practicable way of achieving that benefit.

It is a requirement under subsection 56(1) of the 2016 Act, that Scottish Ministers must not consent to any Part 5 application unless they are satisfied that certain sustainable development conditions and procedural requirements are met. As such, the local community are advised to consider the sustainable development conditions before going any further in the process, as Scottish Ministers will not be able to consent to an application unless they are satisfied that all of the sustainable development conditions are met.

The sustainable development conditions are listed under subsection 56(2) of the 2016 Act. If a community does not believe that these conditions could be met, they are advised to consider an alternative route to acquire the land in question, or other ways of acquiring land or for achieving the community's goals. This might include the use of Part 2 or Part 3A.

Subsection 56(2) states that the sustainable development conditions are met if:

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

BENEFIT AND HARM

In considering the conditions relating to benefit and harm, it is important to consider subsection 56(12) of the 2016 Act. Subsection 56(12) states that in determining what is significant benefit to the community, or harm to the community for the purposes of subsection 56(2), Scottish Ministers must consider the likely effect of granting (or not granting) consent to transfer the land or tenant's interest on the lives of the persons comprising the community with reference to the following considerations:

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

ELIGIBLE LAND

The community need to identify eligible land. Definitions of eligible and excluded land and tenant's interests can be found in sections 46, 47 and 48 of the 2016 Act. There is some regulatory scope to expand or restrict what land or tenant's interests are eligible under Part 5 of the 2016 Act. This is discussed in more detail further on in the consultation.

INCORPORATION OF COMMUNITY BODY

Once land has been identified, the community body must incorporate itself and ensure the its constitutional documents comply with the requirements under subsections 49(2), (3), (4) or (5) depending on which type of body they have chosen to form. A community body must specify the community area, how that area is defined is set out under subsection 49(9). Subsection 49(1)(c) gives Ministers the ability to make regulations specifying other types of community bodies, and

subsection 49(9)(a) gives Ministers powers to specify other sorts of areas by reference to which a community body may be constituted.

A body is not a Part 5 community body under the 2016 Act 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

NOMINATION OF A THIRD PARTY PURCHASER

A community body which complies with subsection 49(5) may nominate a third party purchaser to purchase the land.

IDENTIFICATION OF LAND OWNERS AND CREDITORS

The Part 5 community body need to identify the owner of the land they seek to purchase and any creditor in a standard security over the land or any part of it. They can do this by looking at the title sheet to the land held by Registers of Scotland. They must also identify any tenant and any other rights or interests in the land known to them.

WRITING TO THE LAND OWNER AND TENANT

WRITING TO THE LAND OWNER AND TENANT AS THE CASE MAY BE

The Part 5 community body, having now been officially constituted, write to the land owner and where applicable, the tenant, seeking transfer of the land and where applicable the tenant's interest.

Subsection 56(9)(a) allows Scottish Ministers' to make regulations about the form and content of the written request from the Part 5 community to the land owner and, where applicable, tenant. (**Please note** – the forms will be included as schedules to the regulations laid in Parliament. This will include the forms for the community body to write to the land owner and tenant as the case may be, and for the land owner to respond to the community body should they so wish).

As already noted, a community seeking to acquire land through Part 5 must constitute itself according to the requirements of section 49 of the 2016 Act, and have received written confirmation from Scottish Ministers that they are satisfied that the main purpose of the body is consistent with furthering the achievement of sustainable development.

Once this confirmation has been received, the community body can, in terms of the Part 5 process, write to the land owner or tenant under subsections 56(3) and (7). If a community body is formed in a manner that is not compliant with the requirements of the Act it will not be recognised as a Part 5 community body and in terms of Part 5 will be unable to submit a competent request to the land owner or tenant.

A community of any sort, local or otherwise, may of course write to a land owner or tenant at any point seeking the transfer of land or a tenant's interests as the case may be. However, this would be outside the terms of the Part 5 process, and any

agreements resulting from such a request would be purely a private matter between the community and the land owner or the tenant.

It is very important to remember this because there is a requirement under Part 5 that after writing to the land owner, the Part 5 community body must wait a minimum of 6 months before submitting a Part 5 application to Scottish Ministers (this is presuming that the community still wish to proceed with the application and that the land owner has not indicated they are willing to make a transfer on the terms proposed by the Part 5 community body).

If a community has submitted a request to the land owner unofficially (in terms of Part 5), and the community hasn't had a response or the request has been refused, this cannot be regarded as relevant for the Part 5 process. Should the community wish to seek to acquire the land in question through Part 5, they will have to constitute themselves as a valid Part 5 community body, then submit a valid request to the land owner and tenant as the case may be, then wait 6 months before being able to make a Part 5 application.

On the other hand, if a community and a land owner (and tenant where relevant) can come to an agreement outside the Part 5 process (and outside any official right to buy process) this may be a simpler and more efficient approach for all parties involved, providing that this is something all parties are willing to do. One example of how to go about this is the voluntary process outlined in the Protocol on Negotiated Sales process agreed between Scottish Land and Estates and Community Land Scotland, which can be found at the following web address:

<https://www.communitylandscotland.org.uk/wp-content/uploads/2016/06/CompleteCLSProtocol.pdf>

For communities and those who advise them, these are matters that should be considered at an early stage of planning.

LAND OWNER RESPONSE

OPTIONS FOR LAND OWNERS

The land owner may respond to the request from the community body, or they may choose not to. If the owner of the land agrees to transfer the land at a price and on terms agreeable to the community body, or comes up with another proposal acceptable to the community body, then the transfer of land becomes a private matter between the land owner and community body.

The community body may of course continue to take advice from groups such as the Community Ownership Support Service while in discussion with the land owner or tenant, and funding from the Scottish Government's Land Fund may be available to support the transfer.

Subsection 56(9)(b) allows Scottish Ministers to specify the form and content of responses from the land owner to requests from a Part 5 community body, and under section 56(9)(c), the circumstances under which a land owner is taken not to have responded to the request. Our proposals for section 56(9)(b) and (c) are

discussed in the body of this consultation. But as already noted, forms will be laid as part of the regulations laid in Parliament, and we plan to include a response form for the land owner to respond to the community body should the land owner so wish to do so.

Please note that no automatic correlation between a land owner response, or lack of response, to a valid Part 5 request, and the success or failure of any subsequent part 5 application, should be assumed. Scottish Ministers will consider each request on its own merits, according to the conditions and requirements set out in section 56 of the 2016 Act.

NOTE ON SECTION 44 GUIDANCE

As a matter of policy, the Scottish Government want land owners, tenants, land managers and communities to work together for better outcomes. Sometimes this may include discussion about transfer of land. The Scottish Government has issued guidance on community engagement relating to land in compliance with section 44 of the 2016 Act, and a link to the guidance can be found via the following web address:

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

To support this guidance, the Scottish Land Commission has issued a protocol on community engagement in decisions relating to land. This can be found at the following web address:

https://landcommission.gov.scot/wp-content/uploads/2019/01/SLC-PROTOCOL_web-30.1.19.pdf

Section 56(4) of the 2016 Act says that “In determining whether an application to buy land meets the sustainable development conditions mentioned in subsection (2), the Scottish Ministers may take into account the extent to which, in relation to the relevant community, regard has been had to guidance issued under section 44.”

Where a land owner or tenant, in good faith, is already engaging with their local community, this may provide opportunities to discuss the voluntary transfer of land, or other ways of making use of the land to achieve better local outcomes.

RIGHT TO BUY APPLICATION

MINIMUM SIX MONTH PRE-APPLICATION PERIOD

After submitting its written request to the land owner to transfer the land and where the application is for the tenant's interest, also having sent a request to the tenant to assign the tenant's interest a Part 5 community body must wait for at least 6 months before submitting any Part 5 right to buy application to Scottish Ministers.

An application can follow so long as the owner has either not responded or has responded but has not agreed to the request. Where an owner has agreed to the request there is no need to progress the Part 5 application. Alternatively, it may be that the owner indicates they are open to negotiation. In this scenario, if the parties

do not reach agreement, it is still open to the community body to make a formal Part 5 application.

The requirement to wait at least 6 months between submitting a written request to the land owner and submitting an application to the Scottish Ministers is established in primary legislation (section 56(3)(a) of the 2016 Act), and may not be altered by regulations.

There is no maximum time limit as to how long a community body may wait before submitting a formal Part 5 application to Scottish Ministers. However, common sense should be applied. Given that circumstances relating to land and people can change over time, in practice it is sensible to not have a long delay between submitting a written request to the land owner and making a Part 5 application although there may be circumstances where a delay is warranted.

THE COMMUNITY BALLOT

Prior to submitting a Part 5 application to Scottish Ministers, the Part 5 community body must seek the approval, via a ballot, of members of the community as defined under subsection 49(9) of the 2016 Act. Requirements for the ballot are set out in section 57 of the 2016 Act. Scottish Ministers may make regulations about the conduct of the ballot (see subsection 57(2) of the 2016 Act), and which enable a community body to apply for ballot expense reimbursement (see section 57(8) of the 2016 Act).

The ballot must take place within the 6 months immediately preceding the Part 5 application to Scottish Ministers (see subsection 57(1)(a)). If the application is made later than 6 months following the date on which the ballot takes place, the application will be rejected.

THE TWO SIX MONTH PERIODS EXPLAINED

It should be noted that whilst the legislation makes reference to two scenarios in which a 6 month timescale is applicable and there could be some overlap between the two, the two timescales do not run in parallel. The following two bullet points clarify the difference:

- At least 6 months prior to a community body submitting an application under Part 5 to the Scottish Ministers, the community body must have submitted a written request to the owner of the land to transfer the land to the community body (or third party purchaser) (and sent a letter to the tenant requesting the transfer of their interest, if applicable) (see subsection 56(3)(a) and (7)(a))
- During the 6 months immediately preceding any Part 5 application to Scottish Ministers, the community body must have sought and received the approval, for the Part 5 application, of its associated community (see subsection 57(1)(a))

IF THE BALLOT SUPPORTS THE PART 5 APPLICATION

If the ballot supports the application, the Part 5 application to Scottish Ministers may now be submitted. The application is to be made in such form as Scottish Ministers may by regulations specify. See subsections 54(5)(a) and 54(5)(c). As already noted, draft forms will be provided as part of the regulations laid in Parliament.

SCOTTISH MINISTERS' RECEIPT OF THE APPLICATION

ACCEPTANCE BY MINISTERS AND REGISTRATION ON THE NEW REGISTER

The application, if accepted for consideration by Scottish Ministers, is registered by Registers of Scotland on the Register of Applications by Community Bodies to Buy Land while it is pending. Scottish Ministers may modify the type of information to be held on the Register by regulations under subsection 52(7).

Once an application is accepted for consideration by Scottish Ministers and registered, three key things happen:

PROHIBITIONS

1. Scottish Ministers can, by regulations, make provision for prohibiting persons from transferring or otherwise dealing with land or the tenant's interest as the case may be that it is proposed would come into effect following an application, once it shows as pending on the Register (this is discussed in greater detail elsewhere in the consultation). Section 61 of the Land Reform (Scotland) Act 2016 enables Scottish Ministers to make regulations which provide for prohibiting such transfers or other dealings.

INVITING COMMENTS

2. On receipt of the application, Scottish Ministers must invite various people, including the land owner and, if applicable, any tenant, creditor in a standard security over the land or proposed third party purchaser, to send them their views on the application within 60 days of the invitation to do so. Scottish Ministers must also take reasonable steps to invite neighbouring owners of the land for which the application relates to send their views on the application, within 60 days. Scottish Ministers must send copies of these requests to the Part 5 community body that has made the application. These requirements are in subsection 55(1) of the 2016 Act, and there are no regulation making powers to amend them.

PUBLIC NOTICE OF APPLICATION

3. On receipt of a Part 5 application, Scottish Ministers are required under subsection 55(3) to give public notice of the application as soon as reasonably practicable. They must also give the date by which views from the interested parties are to be received by them and invite persons to send their views within 60 days from publication of the notice.

Subsection 55(4) requires that the public notice must be given by advertisement in such a form as Scottish Ministers may by regulations specify. Our proposals for regulations governing the advertisement are discussed further on in this consultation.

MINISTERIAL DECISION

Scottish Ministers will take a decision on the application, which must be based on the whether the sustainable development conditions and procedural requirements under section 56 have been met and taking account of all of the information available to them. These requirements have been discussed above.

APPROVAL OF TRANSFER

If Scottish Ministers approve the transfer, they may, under section 59, make their consent subject to conditions. In any case, within 7 days of approval of a Part 5 application, Scottish Ministers appoint a valuer, and within 8 weeks or longer period as so specified by Scottish Ministers on application by the valuer, the valuer gives a value of the land. The valuer also settles the allocation of rents and any other rights and obligations in respect of the tenant's interest where necessary.

Under section 70 the owner, community body and, where applicable, tenant and/or third party purchaser may appeal to the Lands Tribunal about the valuation of the land and allocation of rents. The community body and, where applicable the third party purchaser, have 21 days from receipt of the assessed value to confirm to Scottish Ministers, the owner of the land and, where applicable, the tenant days to confirm that they wish to proceed with the purchase.

COMPLETION OF PURCHASE

Section 63 details the requirements for the completion of the purchase and section 64 details the completion of the assignment of the tenant's interest, if applicable. Alternatively at this point the community may decide not to go ahead with the transfer.

APPEALS

Under section 69 specified interested parties, including the land owner and the Part 5 community, may appeal to the sheriff about the decision.

OTHER MATTERS

COMPENSATION

Compensation may be paid as provided for under section 67. Anyone who has incurred loss or expense as a result of one of the reasons listed under subsection 67(1) or (2) where there is a third party purchaser can seek compensation. This includes owners, previous owners, and tenants, but is not limited to them.

Where compensation is due, Scottish Ministers may pay the community body or third party purchaser a grant towards this as provided for under section 68. Regulations

relating to compensation are to be made under subsection 67(5) and relating to grants towards compensation under subsection 68(6). Our proposals for these regulations are discussed further on in this consultation.

MEDIATION

Section 73 provides that Scottish Ministers, on being requested to do so by certain persons (including land owner, tenant and Part 5 community body), may take steps to arrange mediation.

ADVICE

The local community are encouraged to begin seeking advice on their plans for land acquisition. This could be from the Scottish Government's Community Land Team, the Community Ownership and Support Service (COSS), or others.

FUNDING

Communities are encouraged to begin enquiring into funding at an early stage in the process.

LANDS TRIBUNAL

At any time before Scottish Ministers take a decision on a Part 5 application, certain persons, including a community member or land owner, or tenant where the application relates to a tenancy, may refer any questions relating to the application to the Lands Tribunal. This may result in certain conditions being imposed on any RtB consent by Ministers. Details of this are under section 71.

DETAILED POLICY PROPOSALS

1. EXCLUDED LAND, TENANCIES AND TENANT'S INTERESTS

Background and context

Sections 45-48 of the Land Reform (Scotland) Act 2016 define land for the purposes of Part 5, including what sort of land, tenancies and tenant's interests are eligible for the purposes of a community body making a Part 5 right to buy application.

There are regulation making powers under sections 46 and 48 that enable Scottish Ministers to make further definitions in relation to land and what is ineligible and what is eligible.

Section 46 of the 2016 Act excludes various sorts of land from being eligible and therefore subject to a Part 5 right to buy application. These include individuals' homes (unless occupied under a tenancy) and croft and Crown land (where owned by the Crown because it has no other identifiable owner). Section 46 also provides that Scottish Ministers can make regulations to exclude types of land pertaining to homes, and define other descriptions or classes of excluded land. Section 46 also enables Ministers to specify types of occupation or possession to be treated as a tenancy (which is then eligible).

The exclusion of homes is also a feature of Part 3A, but not of Part 2. The reason is that under Part 2, a house and any associated land can be bought only subject to the formal right to buy process where the owner of the house has put it on the market. The purchase of any property under Part 2 is not a form of compulsory purchase.

The Scottish Land Rights and Responsibilities Statement (the Statement) states that the Scottish Government's vision is for all people in Scotland to live in high-quality sustainable homes that they can afford and that meet their needs. As part of making this a reality, we need to increase the number of homes in Scotland and ensure the availability of a variety of tenure and ownership options which cater for the full range of people's needs.

Home owners and their families should feel secure in the possession and occupation of their homes and gardens, and this is the reason that homes and gardens are excluded under the Part 3A and Part 5 right to buy.

The rights of tenant are not changed if the land is sold to a new owner. Following the approval of a Part 5 application and the transfer of the land to a community, the obligations of a landlord under a tenancy will transfer to the community as the new landlord. When considering a Part 5 application, Scottish Ministers will take into account the views of any tenant of the land that have been submitted.

REGULATION MAKING POWERS

Section 46(2)(b)

Section 46(2)(e)

Section 46(3)(a)
Section 46(3)(b)
Section 48(1)(c)

Proposals

Subsection 46(2)(b)

Under subsection 46(2)(a), land on which there is a building or other structure which is an individual's home is excluded from Part 5, unless the building or structure is occupied by an individual under a tenancy.

Subsection 46(2)(b) provides that Scottish Ministers may by regulations specify land pertaining to land of the type mentioned in subsection 46(2)(a). This means that Scottish Ministers can specify certain kinds of land that are to be regarded as being part of an individual's home for the purposes of Part 5, and therefore not eligible for the purposes of a Part 5 right to buy application.

We propose that land which forms the curtilage of the individual's home is excluded from Part 5 Right, along with land that is used for one or more of the following purposes:

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

There similar to exclusions for Part 3A which can be found in section 8 of SSI 2018 No. 201, the Community Right to Buy (Abandoned, Neglected or Detrimental Land) (Eligible Land, Regulators and Restrictions on Transfers and Dealing) (Scotland) Regulations 2018 (see:

http://www.legislation.gov.uk/ssi/2018/201/pdfs/ssi_20180201_en.pdf).

The rationale for these exclusions is that they exclude not just land which is necessary for the function of providing a shelter from the elements, sleeping and eating, but land which supports all those activities normally associated with the full life of a home.

Question 1

Do you agree with our proposals for excluding from the Part 5 right to buy the sorts of land relating to a home outlined above? Yes No Partially agree

If you wish, please provide further details.

Section 46(2)(e)

“excluded land means land of such other descriptions or classes as the Scottish Ministers may by regulations specify.”

We propose that land that is used or held 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) is excluded. The reason for this is that such land is reserved. Such land is also excluded in relation to Part 3A.

This would mean that the following types of land would be excluded under Part 5:

- Land owned by a Minister of the Crown or a UK government department (but land belonging to the Scottish Government is not excluded).
- Land on which there is a building or structure which is a person’s home (except where it is occupied under a tenancy).
- Land pertaining to land on which there is a person’s home, such as Scottish Ministers may specify in the regulations and as noted above.
- Croft land
- Land owned by the Crown by virtue of its having its vested interest as *bona vacantia* in the Crown, or its having fallen to the Crown as *ultimus haeres*.

Question 2

Do you agree with the further types of land that are to be excluded from Part 5 right to buy? Yes No Partially agree

If you wish, please provide further details, including details of any further sorts of land that you believe should be excluded from being bought under Part 5.

Section 46(3)(a)

“The Scottish Ministers may by regulations make provision about the buildings and structures which are, or are to be treated as, a home for the purposes of subsection (2)(a)”

This gives Scottish Ministers an opportunity to make regulations further defining the sort of structures or buildings that are to be treated as a home for the purpose of excluding them from any potential Part 5 right to buy application. The Scottish Government does not propose to use this power. This leaves a wide ranging, open definition of what a home could be, but the Scottish Government believes that this is appropriate, in order to include the different and diverse ways that people make their homes, and to support and promote social diversity, equalities, and the rights of people to choose their own mode of living.

It includes houses, flats and caravans, but could also include less common structures. Provided the home is a building or other structure and not occupied under a tenancy, it will be treated as a home.

Section 46(3)(b)

“The Scottish Ministers may by regulations make provision about the types of occupation and possession of land that are to be treated as a tenancy for the purposes of subsection (2)(a)”

As set out above, there are a range of restrictions on the sort of land that Part 5 community bodies may seek to buy using the Part 5 process. These include croft land, land owned by the Crown as a result of having no identifiable owner or because there is no traceable heir to it, land that is held or used by a Minister of the Crown or UK government department and land on which there is a home, as well as particular land pertaining to that home.

One important exception is where the home is occupied under a tenancy – such homes are not excluded from the Part 5 process, although the rights of tenants would be unchanged by a sale in the event that the land subject to the tenancy was sold.

We propose the following types of occupation and possession be treated as a tenancies for the purposes of Part 5:

- occupation or possession of tied accommodation;
- occupation or possession under a licence agreement that is in the nature of a tenancy;
- occupancy or possession of residential accommodation—
 - (i) in connection with an individual’s employment or education; and
 - (ii) 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 liferenter.

“Liferenter” means an individual who, by virtue of a liferent, has the right—
 (a) to receive for life the benefits of the property; and
 (b) to live in the building or structure, or on the land, for life;

“Tied accommodation” means accommodation provided to an individual by the individual’s employer under a service occupancy agreement (that is, in return or part return for the performance by the individual of services under the employment agreement).

These are similar to the types of occupation and possession that are considered a tenancy for Part 3A. These can be found in regulation 7 of SSI 2018 No. 201, the Community Right to Buy (Abandoned, Neglected or Detrimental Land) (Eligible Land, Regulators and Restrictions on Transfers and Dealing) (Scotland) Regulations 2018.

Question 3

Do you agree with what we suggest constitutes a tenancy for the purposes of Part 5?
 Yes No Partially agree

If you wish, please provide further details.

Section 48(1)(c)

Section 48 deals with a tenant’s interests, which, subject to approval, may be acquired by a community body using Part 5. A community body can only apply to acquire a tenant’s interest where it is connected with land that is being sought under Part 5.

Section 48 stipulates that a tenant's interest cannot be that of a croft tenancy or the tenancy of a dwelling house.

Section 48(1)(c) allows Scottish Ministers to make regulations specifying other kinds of tenancies that should not be eligible under Part 5 Right to Buy.

The Scottish Government does not believe it necessary to specify any further kinds of tenant's interests that should be excluded from Part 5 Right to Buy. In some circumstances the acquisition of a tenant's interest may be an essential part of a community's plans for sustainable development of the land, and the Scottish Government does not wish to unnecessarily curtail the sorts of tenants' interests that may be bought by a community under Part 5.

As with land, Scottish Ministers will consider each Part 5 application on its merit, and the case for transfer of any particular tenant's interest will be considered at this point, and assessed against the sustainable development conditions and procedural requirements in section 56, which include that the transfer must be in the public interest.

Question 4

Do you agree with the Scottish Government's decision not to exclude any further types of tenant's interests from purchase under Part 5?

Yes No Partially agree

If you wish, please provide further details.

2. DEFINITION OF COMMUNITY AREA

REGULATORY POWERS

Subsection 49(9)(a)

Background and context

Subsection 49(9)(a) provides that a Part 5 community body is defined by reference to a postcode unit or a type of area that Scottish Ministers may by regulations specify.

It is necessary to define a community body for the purposes of Part 5.

We want a way to fairly include all people in the local community, not just some people or particular interest groups. Scottish Ministers will not approve an application unless they are satisfied, in addition to the application meeting the sustainable development and procedural conditions, that the Part 5 community body is seeking to act in the interests of the local community as demonstrated by the ballot.

The ballot to determine whether a right to buy application should go ahead will be a secret ballot of all people in the community, and it is therefore important to be explicit about who will be balloted. Those who will be balloted are those whom the Part 5 community body have defined as their relevant community.

Proposals

The Scottish Government's view is that the best ways of defining a local community for the purposes of a Part 5 application is allow for the same ways of defining a community that have been set down for Part 2 and Part 3A communities, which have been developed for similar purposes and are tried and tested.

We propose that for the purposes of Part 5, the types of area by reference to which a community is defined can be:

- an electoral ward within the meaning of section 1 of the Local Governance (Scotland) Act 2004;
- the area of a community council established in accordance with Part IV of the Local Government (Scotland) Act 1973;
- a postcode area, being an area given a unique alphabetic coding to facilitate the delivering of mail, being identified by one or two alphabetical characters at the start of the full postcode, the letters being derived from a town, city or district falling within that postcode area;
- a postcode district, being a sub-area of a postcode area, identified by the characters within the first half of a full postcode, which may be numeric, alphabetic or alpha-numeric;

- a postcode sector, being a sub-area of a postcode district, identified by the number third from the end of a postcode unit;
- an island;
- a settlement delineated on the maps included in the Population Estimates for Settlements and Localities in Scotland, Mid-2016 published on 12th March 2018; or
- a locality delineated on the maps included in the Population Estimates for Settlements and Localities in Scotland, Mid-2016 published on 12th March 2018.

These are based on SSI 2018 No. 140, the Community Right to Buy (Abandoned, Neglected or Detrimental Land) (Applications, Ballots and Miscellaneous Provisions) (Scotland) Regulations 2018, regulation 17, which define the types of community areas that may be referred to for Part 3A, see:
<http://www.legislation.gov.uk/ssi/2018/140/regulation/17/made>

Question 5A

Do you agree with the Scottish Government's proposals for defining Part 5 community areas?

Yes No Partially agree

If you wish, please provide further details.

Question 5B

Please feel free to suggest any further types of area that could be used as a basis for defining a Part 5 community area, and the reasons why you believe they would be useful.

3. REQUESTS FROM A PART 5 COMMUNITY FOR VOLUNTARY TRANSFER OF LAND AND TENANT'S INTEREST

REGULATION MAKING POWERS

Section 56(9)(a)(b) & (c)

Background and context

Section 56 of the Land Reform (Scotland) Act 2016 ('the 2016 Act') sets out how Scottish Ministers must decide whether to consent to a Part 5 right to buy application. It includes both procedural requirements and sustainable development conditions against which a Part 5 application must be assessed.

Section 56(1)(b) provides that Scottish Ministers must not consent to a Part 5 Right to Buy application unless they are satisfied that the procedural requirements under section 56(3) have been met. In relation to land, the procedural requirements include that before the period of 6 months ending on the day when a Part 5 application was made, the Part 5 community body have submitted a written request to the land owner to transfer the land to the community body or to the third party purchaser as the case may be.

The procedural requirements under section 56(7)(a), relate to applying to purchase a tenant's interest and section 56(6) requires that Scottish Ministers must not consent to a Part 5 Right to Buy application to buy a tenant's interest unless they are satisfied that these requirements have been met. One such requirement is that Scottish Ministers must be satisfied that before the period of 6 months ending on the day when a Part 5 application was made, the Part 5 community body have submitted a written request to the tenant asking them to assign the tenant's interest to the community body or the third party purchaser as the case may be.

Section 56(3)(a) and section 56(7)(a) require that a community body must have submitted its written requests to the land owner, and where relevant a tenant, at least 6 months prior to submitting a Part 5 application to Scottish Ministers.

Section 56(9) allows Scottish Ministers to make provision in regulations about:

- the form and content of requests by the Part 5 community body in subsections 56(3)(a) (to the land owner) and 56(7)(a) (to a tenant regarding their interest);
- the form and content of responses from the land owner to requests referred to in subsection 56(3)(a); and
- the circumstances in which owners of land are to be taken not to have responded or not to have agreed to requests from the Part 5 community body under subsection 56(3)(a).

Proposals

Form and content of Part 5 community body requests to land owners and tenants for transfer of the land or tenant's interest as the case may be.

Under section 56(9)(a), Scottish Ministers are to prescribe the form and content of requests that a Part 5 community body must make to the land owner to transfer the land to them, and to any tenant to transfer their interest to them.

There is a draft form at **Annex A** for the community body to send to the land owner, and one at **Annex B** for the community body to send to the tenant.

The aim of these is to ensure that the Part 5 community body gives the land owner or tenant information which allows the recipient to understand the Part 5 process, to understand the nature and validity of the request and the community body, and the nature of what the community body wants to do with the land or tenant's interest. For the land owner recipient, it also includes options for responding and the consequences of responding or not responding, and of agreeing or not agreeing to the Part 5 community body's request.

Question 6

Do you agree with the proposals for a draft form at **Annex A**, for the Part 5 community body to send to the land owner seeking transfer of land?

Yes No Partially

If you wish, please provide further details, including any suggestions for improvements to the form.

Question 7

Do you agree with the proposals for the draft form, at **Annex B**, for the Part 5 community body to send to the tenant whose interests they are seeking to buy under Part 5? Yes No Partially

If you wish, please provide further details, including any suggestions for improvements to the form.

The form and content of responses from the land owner to requests referred to in subsection 56(3)(a), and the circumstances in which owners of land are to be taken not to have responded or not to have agreed to requests from the Part 5 community body under subsection 56(3)(a).

Section 56(9)(b) allows Scottish Ministers to prescribe the form and content of responses from the land owner to requests from a Part 5 community body to transfer land under section 56(3)(a). Please note that there is no similar requirement in relation to a response from tenants regarding a tenant's interest.

The Scottish Government has included a response form for the land owner to use to respond to the community, as part of **Annex A**. The land owner will therefore receive this form at the time the community body writes to the land owner.

The draft form at **Annex A** provides the opportunity for the land owner to choose one of the following options:

- To agree to the community body's proposals.
- To not agree to the community body's proposals.
- To indicate they do not agree to the community's proposals, but that they would like to discuss other options with the community. In terms of the Part 5 process, this would be considered a refusal of the community body's proposals, although outwith the official Part 5 process it could offer an opportunity for the land owner and community to work together.

The land owner does not have to use the form to respond, but we propose that if the land owner does not use the official form to respond, this will be regarded as not responding to the community body's request.

The aim of this is to ensure that for the purposes of the Part 5 process, insofar as they affect the Part 5 process, official exchanges between the land owner and the Part 5 community body are transparent and provide the means of clearly indicating the intent of the corresponding parties. Having a tick box allows the land owner to indicate clearly whether they agree or not with the community body's proposals.

We also propose that where a land owner does not agree to the Part 5 community body's request in its entirety, this will be regarded as not agreeing to the community body's proposals for the purposes of Part 5. This is to ensure that the Part 5 process is clearly focussed on the specific community proposals outlined in the community body's request in the form at **Annex A**

Question 8

Do you agree with the proposal to provide an official form, as part of the form at **Annex A**, which the community body send to the land owner, for the land owner to use to respond to the community body request for a land transfer?

Yes No Partially

If you wish, please provide further details.

Question 9

Do you agree with the options in the form for the land owner to respond to the community body request for a land transfer?

Yes No Partially

If you wish, please provide further details.

Question 10

Do you agree that for the purposes of indicating that the land owner agrees to the community body's proposals, responding by using the form at **Annex A** is the only valid form of response, and that where a land owner indicates acceptance of the community body's proposals by any other means, this shall be regarded as not responding to the community body for the purposes of the Part 5 process? Yes

No Partially

If you wish, please provide further details.

Question 11

Do you agree with the proposal that where a land owner has not agreed to the Part 5 community body's transfer proposals in full, this is to be considered as not agreeing to the proposals for the purposes of the Part 5 process.

Yes No Partially

If you wish, please provide further details.

4. CONDUCT OF THE BALLOT AND REIMBURSEMENT OF EXPENSES

REGULATION MAKING POWERS

Section 57(2)

Section 57(8)

Background and context

Conduct of the Ballot

It is a requirement under Part 5 that the community represented by the Part 5 community body have given their approval to a proposal to exercise the right to buy. Section 57(1) of the 2016 Act states that a community will have demonstrated their approval of the proposal by holding a ballot of the members of the community during the period of 6 months which immediately preceded the date on which the Part 5 application was made to Ministers.

Section 57(2) specifies that the ballot is to be conducted as the Scottish Ministers may by regulations specify.

As specified by section 57(3), these regulations must include provisions for the ascertainment and publication of:

- the number of persons eligible to vote in the ballot,
- the number who did vote, and
- the numbers of valid votes respectively cast for and against the proposed right to buy.
- The regulations must also include the form and manner in which the result of the ballot is to be published.

Reimbursement of Expenses

Section 57(7) of the 2016 Act specifies that the expenses of conducting a ballot are to be met by the Part 5 community body. However, section 57(8) specifies that Scottish Ministers may make regulations enabling a Part 5 community body to apply to them to seek reimbursement of the expenses of conducting a ballot under this section in certain circumstances as they may provide.

Proposals

The Scottish Government proposes that the conduct of the ballot should closely match the conduct of a ballot for the purposes of Part 3A of the Land Reform (Scotland) Act 2003 (the Community Right to Buy Abandoned, Neglected or Detrimental Land).

The Part 3A ballot process was developed based on years of experience of the Part 2 ballot process. It is a well-established process that works well, and provides for fairness and a secret postal ballot.

The use of similar ballot procedures will also provide consistency for communities and those who advise communities on rights to buy. We see no reason why the ballot process should differ in any substantial way for the respective rights to buy.

For the same reasons, it is also the view of the Scottish Government that the process for communities to seek reimbursement for Part 5 ballot expenses should also match closely the process for seeking expenses for a Part 3A application under the 2003 Act.

Details of the ballot for the purpose of demonstrating approval of a Part 3A right to buy application under the 2003 Act, and the process governing the reimbursement of expenses under that Act, are provided for in sections 6 to 16 of SSI 2018 No. 140, the Community Right to Buy (Abandoned, Neglected or Detrimental Land) (Applications, Ballots and Miscellaneous Provisions) (Scotland) Regulations 2018. These regulations can be found at the following web address;
http://www.legislation.gov.uk/ssi/2018/140/pdfs/ssi_20180140_en.pdf

The key elements of the ballot process contained in the regulations for Part 3A are:

- Conduct of the ballot, including ensuring that the ballot is conducted in a fair and reasonable manner, is a secret ballot by post, and that all those eligible to vote get the opportunity to vote.
- Provision is made for proxy votes.
- Provision for the appointment of an observer, who is independent of the community body, is appointed to oversee, in person, the counting of the votes and the recording of the result.
- The results of the ballot must be published within 14 days beginning with the ballot deadline. They must be published in a digital or paper edition of a local newspaper circulating in the area where the community is located, as well as on the community body's website, if it has one.
- The community body must retain records of the ballot, including returned votes, for two years after the ballot deadline.
- Provision is made for the community body to apply to Scottish Ministers for reimbursement of the expense of conducting a ballot. This includes provision for Ministers to seek further information about the ballot expenses, to calculate the payment to the community body, and a requirement for Ministers to take a decision and pay the community within 60 days of receiving the application for reimbursement of ballot expenses.
- There is provision for the community body to appeal to the Lands Tribunal about Scottish Minister's decision on the reimbursement of ballot expenses.

Question 12

We invite respondents to consider whether they agree that ballot procedures, including applications for reimbursement, for Part 5 applications, should match those for applications under Part 3A of the 2003 Act, as outlined above.

Yes No Partially

If you wish, please provide further details.

5. SEEKING TO BUY UNDER PART 5 - APPLICATION FORM AND CONTENT

REGULATION MAKING POWERS

Section 54(5)(a)

Section 54(5)(c)

Background and context

These regulation making powers are about the information that must be supplied as part of a Part 5 Right to Buy application being submitted to Scottish Ministers.

Subsection 54(5) requires that a Part 5 Right to Buy application to Scottish Ministers:

(a) must be made in such form as the Scottish Ministers may by regulations require, and

(c) must include or be accompanied by such information as the Scottish Ministers may by regulations specify including information (provided, where appropriate, by or by reference to maps or drawings) about matters mention in subsection 54(6).

Subsection 54(6) includes:

- the reasons the Part 5 community body considers its proposals meet the sustainable development conditions;
- the locations and boundaries of the land in respect of which the community is seeking to exercise the Part 5 right to buy (including where relevant any tenant's interest);
- all rights and interests in the land known to the Part 5 community body;
- and the proposed use, development and management of the land (including where relevant any tenant's interest).

Proposals

The Scottish Government believes the best approach is to model the information required for a Part 5 right to buy application on Part 3A of the Land Reform (Scotland) Act 2003 (the Community Right to Buy Abandoned, Neglected or Detrimental Land), and adapt it for the purposes of meeting the sustainable development requirements in Part 5.

A draft application form has been drawn up similar to that used to apply to buy land under Part 3A of the 2003 Act, but adapted to allow communities to make the case for the requirements under Part 5 of the 2016 Act. This is at **Annex C** to this consultation.

In terms of the specifications for maps, plans or other drawings relating to land, we propose that any map, plan or other drawing related to the application to buy land under Part 5 must:

- (a) be drawn to a metric scale corresponding to a scale used by the Ordnance Survey for that land;
- (b) be taxative and not demonstrative only;
- (c) show the compass orientation of north;
- (d) contain map grid reference numbers and sufficient surrounding details (fences, houses etc.) to enable the position of the land to be fixed accurately;
- (e) show the boundaries of the land; and
- (f) where measurements are given, give those measurements to one decimal place

Question 13

Do you agree with our proposals for a draft application form at **Annex C**?

Yes No Partially

If you wish, please provide further details, including of how the application form could be improved.

Question 14

Do you agree that the specifications for maps, plans and drawings should be similar to those for Part 3A of the 2003 Act?

Yes No Partially

If you wish, please provide further details.

6. PROHIBITIONS ON THE TRANSFER OF LAND AND OTHER MATTERS RELATING TO LAND THAT A COMMUNITY ARE SEEKING TO BUY UNDER PART 5

REGULATION MAKING POWERS

Section 61(1)

Section 61(3)

Background and context

Section 61 of the Land Reform (Scotland) Act 2016 provide powers enabling Scottish Ministers to make restrictions about who can transfer or otherwise deal with land once a Part 5 community body has made a Part 5 right to buy application during the period when the application is pending. It also enables Ministers to suspend certain rights in or over land during the same period.

Transfers and other dealings with land for which a Part 5 application has been made

61(1) Provides that Scottish Ministers may by regulations make provision for or in connection with prohibiting, during such period as may be specified in the regulations, persons so specified from transferring or otherwise dealing with land or, as the case may be, a tenant's interest in respect of which a Part 5 community body has made an application under section 54.

Section 61(1) is qualified by section 61(2), as follows:

61(2) Regulations under subsection (1) may in, particular include provision—(a) specifying transfers or dealings which are not prohibited by the regulations, (b) requiring or enabling specified persons in specified circumstances to register specified notices in the New Register, (c) requiring, in such circumstances as may be specified in the regulations, such information as may be so specified to be incorporated into deeds relating to the land as may be so specified.

Exercising rights over land for which a Part 5 application has been made

Section 61(3) provides that Scottish Ministers may by regulations make provision for or in connection with suspending, during such period as may be specified in the regulations, such rights in or over land in respect of which a Part 5 community body has made an application under section 54 as may be so specified.

Proposals

Prohibitions over transfers and other actions that can be taken with respect to land during a right to buy application are already a feature of other community right to buy legislation. There are regulations governing these for Part 2 and Part 3A of the Land Reform (Scotland) Act 2003. Part 3A is particularly relevant because it is, like Part 5, a form of compulsory purchase. We suggest using the Part 3A provisions as a close

model for the prohibitions and restrictions over land where a Part 5 application has been made.

We plan to model the prohibition relating Part 5 land on sections 11–15 of SSI 2018 No. 201: http://www.legislation.gov.uk/ssi/2018/201/pdfs/ssi_20180201_en.pdf which stipulates the prohibitions for land subject to a Part 3A application.

In summary we propose:

Relevant dates and timescales

- The restriction period, prohibiting certain dealings relating to land and suspension of certain rights over land, will start on the day the application appears on the Register of Applications by Community Bodies to Buy Land held by Registers of Scotland.
- If the Part 5 community body is refused consent to exercise the right to buy, the end date (of the prohibitions and suspensions) is either the day after the time period for lodging an appeal against the decision expires, or the day on which a sheriff issues a decision refusing consent to exercise the right to buy, whichever is the earlier.
- If the Part 5 community body is given consent to exercise the right to buy, the restriction period is the earlier of:
 - (i) The expiry period within which the community body should notify Ministers of their intention to proceed with purchase, or to withdraw from the purchase, except where the community have indicated its intention to proceed with the purchase,
 - (ii) the day the land owner receives a copy of Ministerial acknowledgement that the community has withdrawn its application or intends to go ahead and buy the land,
 - (iii) the day on which the application is to be treated as withdrawn because the community body has failed to complete the transfer of the monies necessary to complete the transfer of the land under Part 5,
 - (iv) the day on which the monies are paid by the community (or on their behalf) for the transfer of the land, but only where the land owner can affect the grant of a good and marketable title to the Part 5 community body, or
 - (v) following the consignment of the consideration or estimate of the consideration to the Lands Tribunal, the owner grants a good and marketable land title to the Part 5 community body, or the Part 5 community body gives notice to the Tribunal of its decision not to proceed with the transaction.

Question 15

Do you agree with the relevant dates and timescale outlined above, which will apply to prohibiting certain dealings relating to land and suspending certain rights over land in the case of a Part 5 application?

Yes No Partially

If you wish, please provide further details.

Prohibited dealings

- We propose that the following dealings are prohibited during the prohibition period:
 - (i) Transfer of whole or part of the land the Part 5 community body have applied to buy under Part 5.
 - (ii) Any actions taken with a view to the transfer of such land. These actions include advertising or otherwise exposing the land for sale; entering into negotiations with another party with a view to the transfer of the land; proceeding with any proposed transfer of the land initiated prior to the date on which the pending Part registration appeared on the Register of Applications by Community Bodies to Buy Land.
- However, there are to be exceptions to the transfer prohibitions, which will include:
 - (i) A transfer other than for value.
 - (ii) A transfer implementing or pursuing a court order (other than under section 24 of the Conveyancing and Feudal Reform (Scotland) Act 1970 (a) or a decree in an action for the division or sale of land).
 - (iii) A transfer between spouses or civil partners in pursuance of an arrangement between them entered into at any time after they have ceased living together and before Ministers have received the Part 5 application.
 - (iv) A transfer between companies in the same group.
 - (v) A transfer to a statutory undertaker for the purpose of carrying on their undertaking.
 - (vi) A transfer implementing the compulsory acquisition of the land under an enactment, or by agreement, land which could have been acquired

compulsorily under an enactment. For example, compulsory purchase of land by a local authority for housing or other development purposes.

(vii) A transfer for the purposes of the Part 5 right to buy or for the purpose of right to buy under Parts 2, 3 or 3A of the 2003 Act.

(viii) Implementing missives, provided that the date on which the missives were concluded was prior to registration of the Part 5 application on the Register of Applications by Community Bodies to Buy Land.

(ix) Implementing an option to acquire land, but only if on the date when the option was created, no Part 5 application had been received.

(x) Vesting the land in a person for the purposes of any enactment relating to sequestration, bankruptcy, winding up or incapacity or to the purposes for which judicial factors may be appointed.

(xi) A transfer of land in consequence of the assumption, resignation or death of one or more partners in a firm, or the assumption, resignation or death of one or more of the trustees of a trust.

Question 16

Do you agree with the prohibitions outlined above?

Yes No Partially

If you wish, please provide further details.

Exemptions to the prohibitions

- However, we propose that as with Part 3A, these exemptions will not apply in certain cases. Where the exemption is because of a transfer other than for value, where the exemption is for transfer between companies in the same group, or where the exemption is because of the assumption, resignation or death of a partner or trustee, the exemption does not apply if the transfer:

(i) is or forms part of a scheme or arrangement; or

(ii) is one of a series of transactions; and the main purpose or effect, or one of the main purposes or effects, of the scheme, arrangement or series of transactions is to avoid the requirements or consequences of a Part 5 transfer.

Question 17

Do you agree with the exemptions to the prohibitions outlined above?

Yes No Partially

If you wish, please provide further details.

Suspension of certain rights over land - Effect of right to buy on other rights

We propose that any right of pre-emption, redemption or reversion otherwise exercisable over Part 5 land and any right or interest in Part 5 land conferred under Part 2 of the 2003 Act (the non-compulsory right to buy) is suspended for the duration of the restriction period.

Question 18

Do you agree with the Scottish Government's proposals with regard to suspension of certain rights over land, as outlined above?

Yes No Partially

If you wish, please provide further details.

7. PUBLIC NOTICE OF APPLICATION

REGULATION MAKING POWER

Section 55(4)

Background and context

On receipt of a Part 5 application, Scottish Ministers are required under Section 55(3) to give public notice of the application as soon as reasonably practicable. They must also give the date by which views are to be received by them. Section 55(4) provides that the public notice is to be given by advertisement in such a form as Scottish Ministers may by regulations specify.

Proposals

It is important that all persons who have a view on, or may be interested, materially or otherwise, in a right to buy application of any sort, have the chance to comment on it.

Section 55(3) of the 2016 Act requires Scottish Ministers to give public notice of an application, our proposals are that they do so by way of an advertisement in one or both of the following:

- (a) a digital or paper edition of a newspaper circulating in the area where the community is located;
- (b) a publicly accessible webpage or website maintained by Ministers for purposes which include making available for inspection any public notice of an application for consent under this regulation.

This also matches the advertisement process used for Part 2 and Part 3A, which have been developed over the years since the 2003 Act, and would provide consistency between the different rights to buy. The relevant provisions under Part 3A under can be found in section 4 of SSI 2018 No. 140, The Community Right to Buy (Abandoned, Neglected or Detrimental Land) (Applications, Ballots and Miscellaneous Provisions) (Scotland) Regulations 2018:

http://www.legislation.gov.uk/ssi/2018/140/pdfs/ssi_20180140_en.pdf

Question 19

Do you agree with the Scottish Government's proposals above for the advertisement of Part 5 right to buy applications?

Yes No Partially

If you wish, please provide further details.

8. COMPENSATION AND GRANTS TOWARDS LIABILITIES TO PAY COMPENSATION

REGULATION MAKING POWERS

Section 67(5)

Section 68(6)

Background and context

As with other right to buy legislation in Scotland, anyone who has incurred loss or expense as a result of one of the reasons listed under subsection 67(1) of the 2016 Act can seek compensation. This includes owners, previous owners, and tenants, but is not limited to them.

Compensation must be paid by the community body or third party purchaser depending on the circumstances, but Scottish Ministers may make grants towards paying the compensation in specified circumstances.

Section 67 of the Land Reform (Scotland) Act 2016 defines the circumstances where a person is entitled to compensation under Part 5 and section 68 defines the circumstances in which community bodies or a third party purchaser may apply for a grant to pay this compensation. Section 67 contains a power to specify the amounts payable, who is liable to pay those amounts and the procedure under which claims for compensation are to be made.

Section 68 contains a power to specify the form and procedure for applying for a grant toward compensation.

Our proposed regulations for grants and compensations are based processes that have been established under Part 2 and Part 3A.

Proposals for section 67(5)

This regulation-making power is similar to section 97T(4) of the Land Reform (Scotland) Act 2003, the power under which the Community Right to Buy (Abandoned, Neglected or Detrimental Land) (Compensation) Order 2018 is made. See following link for the 2018 compensation order:
<http://www.legislation.gov.uk/ssi/2018/137/contents/made>

This order provides the procedure for claiming compensation under Part 3A. We propose that regulations for compensation under Part 5:

- ensure that the compensation request is submitted to the community body at their registered office;
- provide that, where the compensation request is refused by the community body, there is facility for the claimant to apply to Scottish Ministers for compensation;

- require that compensation claims for losses caused by complying with Part 5 where an application has been made, or as a result of withdrawal by the community body from the application process once begun, or its failure to complete the purchase, must be submitted within the period of 90 days of completion of transfer of the land or such later date where the consideration is paid; or within 90 days of Ministers receiving notice from the community body that it has withdrawn its application or has withdrawn its intention to proceed with the purchase of the land; or where the community body's application is to be treated as withdrawn because it has failed to pay the consideration; and
- require that a compensation claim made following the Scottish Ministers turning down a Part 5 application must be submitted within the period of 90 working days of Minister's decisions to refuse the Part 5 application.

Question 20

Do you agree with the Scottish Government's proposals, as outlined above, for regulations to govern compensation payments for activities relating to Part 5?

Yes No Partially

If you wish, please provide further details, including any suggestions you may have.

Proposals for section 68(6)

Similar provision is made by section 97U of the 2003 Act in relation to the Part 3A community right to buy land that is abandoned, neglected or detrimental. The procedure and form for applying for a grant towards payment of compensation is contained in regulation 19 and schedule 5 of the Community Right to Buy (Abandoned, Neglected and Detrimental Land) (Applications, Ballots and Miscellaneous Provisions) (Scotland) Regulations 2018. See following link for the 2018 regulations: <http://www.legislation.gov.uk/ssi/2018/140/contents/made>

We propose similar provisions and a similar form when applying for a grant towards payment of compensation under Part 5.

- The application must be in a form specified by Scottish Ministers and include information specified in that form. A draft form is provided at **Annex D**.
- We propose to require that such an application must be submitted to Ministers within 90 days beginning with the date on which the Part 5 community body and the claimant agree the amount of compensation payable; or the date on which the Lands Tribunal decides on a question which has been referred to them by one of the parties involved (the claimant or the Part 5 community body), as to whether compensation is payable or the amount payable.

Question 21

Do you agree with the Scottish Government’s proposals, as outlined above, for regulations to govern grants towards compensation payments for activities relating to Part 5?

Yes No Partially

If you wish, please provide further details, including any suggestions you may have.

Question 22

Are you content that the draft grant application form is fit and suitable for purpose?

Yes No Partially

If you wish, please provide further details, including any suggestions for improvements to the form that you may have.

9. REGULATIONS WE PROPOSE NOT TO MAKE AT PRESENT

The Scottish Government does not think it is necessary to use all the regulation making powers within the 2016 Act.

Section 46(3)(a)

This is a power to make regulations further defining the sort of structures or buildings that are to be treated as a home for the purpose of excluding them from any potential Part 5 right to buy application. As discussed above in the section on excluded land, the Scottish Government does not intend to use this power at present, and believes it appropriate, in the interests of social diversity and the rights of people to choose their own mode of living, not to restrict the definition of what a home could be.

Question 23

Do you agree that there is no need, at present, to use the power under section 46(3)(a) to further define structures that are or may be treated as a home?

Yes No Partially

If you wish, please provide further details of your view.

Subsection 48(1)(c)

Subsection 48 deals with a Part 5 community body seeking to buy a tenant's interest related to the proposed purchase of land under a Part 5 Right to Buy application. A tenant's interest cannot be that of a croft tenancy or the tenancy of a dwelling house.

Subsection 48(1)(c) allows Scottish Ministers to make regulations specifying any other kinds of tenancies the tenant's interest in which would be ineligible to acquire under Part 5 Right to Buy. The Scottish Government does not believe it necessary at present to specify any further kinds of tenant's interests that should be excluded from Part 5 Right to Buy

Question 24

Do you agree that there is no need, at present, to use the power under section 48(1)(c) to specify any further types of tenancy the tenant's interest in which would be excluded from being eligible to be acquired under Part 5 ?

Yes No Partially

If you wish, please provide further details of your view.

Subsection 49(1)(c)

Section 49 defines the types of bodies that may be considered a Part 5 community body. These are:

- A body that is a company limited by guarantee, the articles of which must include the articles as specified in section 49(2) of the 2016 Act.
- A Scottish Charitable Incorporated Organisation (A SCIO) with a constitution that includes the provisions in section 49(3) of the 2016 Act.
- A community benefit society the registered rules of which include the provisions in section 49(4) of the 2016 Act.
- Where a community body nominates a third party purchaser, a body corporate having a written constitution that includes the provisions in section 49(5) of the 2016 Act.

Subsection 49(1)(c) allows Scottish Ministers to use regulations to specify further types of bodies that may be classed as a Part 5 community body for the purposes of Part 5 of the 2016 Act. The Scottish Government does not believe there are currently any other types of community body that should be defined for the purposes of being able to make a Part 5 right to buy application.

However, we would like to hear your views on whether you think other bodies should be considered a Part 5 community body, and why.

Question 25

Do you agree that the types of community body that may register as a Part 5 community body should be limited the four types outlined above?

Yes No Partially

Please feel free to comment on this, including, if you have any, suggestions for other types of community bodies that should be able to register as a Part 5 community body and the reason why they should be included.

Subsection 49(8)

Subsection 49(8) provides that Scottish Ministers may by regulation modify subsections 49(2),(3),(4) and (6) of the 2016 Act.

Subsections 49(2),(3) and (4) provide the requirements for three of the types of community body that can make a right to buy application under Part 5. Subsection 49(8) allows Scottish Ministers to make regulations modifying those requirements. The Scottish Government believes there is no need, at present, to modify any of the requirements provided.

Subsection 49(6) allows Scottish Ministers to disapply, if they believe it is in the public interest, the requirement specified in subsections (2)(c), (3)(c) and (4)(c) of section 49. These provisions provide that the community body, whether a company limited by guarantee, a SCIO or a community benefit society, as the case may be, must not have less than 10 members. Subsection 49(6) therefore allows Scottish Ministers to disapply this membership number requirement if they believe that doing so is in the public interest on a case by case basis. Subsection 49(8) allows Scottish Ministers to make regulations to modify subsection 49(6). The Scottish Government sees no requirement to modify subsection 49(6) at present.

Question 26

Do you agree there is no present need to use the regulation making powers in section 49(8), which would allow modification of certain matters relating to the three types of community body that may make a Part 5 right to buy application?

Yes No Partially

If you wish, please provide further details of your view.

Subsection 50(4)

Where land has been acquired by a community body in accordance with Part 5 of the 2016 Act, subsection 50(2) of the Act, when in force, will make it possible for Scottish Ministers to acquire the land compulsorily from the community if they, the Scottish Ministers, are satisfied that if the Part 5 community body had not bought the land, that community would no longer be entitled to do so.

For example this may come about because the community body that has bought land under Part 5 has modified its articles of association, constitution or its registered rules in a way that would no longer allow it to use Part 5 as a means of acquiring the land.

Subsection 50(4) provides that where Scottish Ministers exercise the power to acquire the land compulsorily from the community body they may by regulations make provision relating to, or to matters connected with, the acquisition of the land. It

would only ever be necessary to use subsection 50(4) if the need arose for Ministers to acquire the land because of the reasons described above. It is a reactive power that if and when used, will be used on a case by case basis. This power is not needed for the purpose of implementing Part 5 of the 2016 Act.

Subsection 52(7)

This provision allows Scottish Ministers to make regulations modifying certain provisions in section 52 of the 2016 Act, relating to the Register of Applications by Community Bodies to Buy Land. The Scottish Government sees no reason to modify any matters relating to the Register at present, and therefore no current need to use this power.

Question 27

Do you agree there is no need, at present, to use the power under subsection 52(7)?

Yes No Partially

If you wish, please provide further details of your view.

Subsection 52(10)(b)

Subsection 52(10) is already in force. See the Land Reform (Scotland) Act 2016 (Commencement No. 8 and Saving Provision) Regulations 2018: <http://www.legislation.gov.uk/ssi/2018/138/made> Paragraph (a) of subsection 52(10) specifies that the Register must be available for public inspection at all times free of charge.

Subsection 52(10)(b) of the 2016 Act specifies that members of the public must be given facilities for getting copies of entries in the Register on payment of such charges as Scottish Ministers may by regulations specify. The charges for copies are specified under regulation 18 of the Community Right to Buy (Abandoned, Neglected or Detrimental Land)(Applications, Ballots and Miscellaneous Provisions) (Scotland) Regulations 2018. See: <http://www.legislation.gov.uk/ssi/2018/140/made>

The charges are: (a) £30 for an extract of registration or colour plan; and (b) £16 for a plain copy of registration or black and white plan plus VAT.

Question 28

Regulations made under subsection 52(10)(b) are already in force but please feel free to give any views you have on access to the Register of Applications by Community Bodies to Buy Land.

10. OTHER INFORMATION YOU BELIEVE IS RELEVANT TO THIS CONSULTATION

In this consultation, the Scottish Government has tried to cover all the main points relating regulation making powers under Part 5 that will be used to implement the new right to buy. However, there may be other points you wish to raise in connection with the Part 5 regulations, and this section provides an opportunity for you to do so.

Question 29

Please use this space to tell the Scottish Government about anything else you believe is relevant to this consultation.



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