



EXPLANATORY GUIDANCE NOTE ON THE APPLICATION FOR CONSENT TO EXERCISE THE RIGHT TO BUY LAND TO FURTHER SUSTAINABLE DEVELOPMENT



The application form has been designed to ask for all the relevant information required to assist Scottish Ministers to make a decision on whether to grant or decline consent to a community body (“CB”) to exercise a right to buy land to further sustainable development. Although full guidance is available in the main guidance booklet, this quick guide to the application has also been produced in order to assist CB’s.

A CB must submit additional supporting annexes with the application (i.e. governing documents, certificate of incorporation (or equivalent), maps etc.), but can submit any other additional supporting annexes if they wish.

The application form can be:

- Printed off, completed manually and posted back to Scottish Ministers; or
- it can be downloaded and completed (by tabbing or clicking into the answer boxes) and submitted via email to Scottish Ministers.

The application form contains 8 sections. The following pages provide quick guidance on the information required under each section. The application form (and the requirements of the Land Reform (Scotland) Act 2016 (“the Act”)) requires your CB to state in detail your proposals for the use of the land. Details of proposed uses may help to demonstrate how any proposed land use is compatible with furthering the achievement of sustainable development and how the CB’s application is in the public interest. If consent is granted, the sale is compulsory and therefore a fully thought out business case is required.

SECTION 1 – WHO IS APPLYING

Please provide the full name of the CB who is applying (i.e. your organisation’s name).

SECTION 2 – DETAILS OF WHO IS APPLYING

The form asks you to provide certain information about the CB applying.

In this section your CB is required to provide:

- 2.1 Your registered or principal office.
- 2.2 A contact and address you wish all correspondence sent to.

- 2.3 Confirm what type of CB you are and confirm that you have submitted your governing documents (i.e. articles of association, constitution or registered rules) and official number (company number, charity number or registration number) as applicable. You must demonstrate that you comply with section 49 of the Act, by including a copy of the compliance letter that the CB was issued with by Scottish Ministers. If you intend to nominate a third party purchaser, you must also include their governing documents, contact details, status and relationship with the CB.
- 2.4 A clear written description of your community (as defined in your governing document). You should also include a rough description of where the community is located in Scotland (i.e. the county, towns/main settlements and a description of the North, South, East and West boundary that the community represents).
- 2.5 Confirmation of how many maps, plans or other documents are being supplied which show your CB boundary.
- 2.6 Details of your CB membership (including total number of members and a breakdown of the membership types, including all members contact names and addresses). This will allow Scottish Ministers to confirm that you are complying with the requirements of section 49 of the Act.

SECTION 3 – THE LAND IN RESPECT OF WHICH THE RIGHT TO BUY IS SOUGHT TO BE EXERCISED

The form asks you to provide certain information about the land, or the tenant's interest in respect of which the CB is seeking to exercise the right to buy. If your application is seeking the right to buy land, then you should complete section 3A. If the application is applying for the right to buy the tenant's interest, then you should complete section 3B. Please note that, if this application is for the right to buy the tenant's interest, you must have already bought, already applied, or have simultaneously applied for, the right to buy the associated land.

Scottish Ministers need to be able to identify the precise location of the land that your CB wants to acquire. They also need to understand your CB's proposals for the land, and your community's connection with that land.

In this section you are required to provide:

- 3A.1 If your application is to seek the right to buy salmon fishings or mineral rights, you need to confirm that you either have, or are simultaneously applying for the land, in a separate application. That application must also be within the time period in section 47(3) of the Act.
- 3A.2 The description of the type of land your CB is applying to acquire (you can select more than one option if the land has different uses).
- 3A.3 If known, the estimated area of land being acquired.
- 3A.4 The county the land is located in (i.e. the name of the county should be set out according to its pre-1974 designation (e.g. Berwickshire, Argyllshire etc.)).
- 3A.5 A clear written description of the land to be acquired including the North, South, East and West boundary of the land. This can also include details of the postcodes covering the land, how the land is currently being used and its current condition.
- 3A.6 Confirmation of how many maps, plans or other drawings are being supplied.

3A.7 Your CB needs to inform Scottish Ministers of your connection to the land. This is done by confirming which option best describes your communities connection. You are then required to provide a clear written explanation of your connection to the land.

- If choosing to check box one you should provide information in relation to the connection that a significant number of members of the community have with the land to be acquired. This option should be used if the community currently have access to or use the land.
- If choosing to check box two you should indicate the connection to other land used within the community by the community members and the connection they have with this other area of land. This option would normally be chosen if the land to be acquired cannot be accessed by the community.
- If choosing to check box three you should indicate the connection with the land that is in or near the community. This option would normally be chosen for land you wish to acquire that is not within the community boundary i.e. nearby land.

3A.8 Please provide details of any official designations that the land may have.

If applying for the right to buy the tenant's interest:

3B.1 If your application is to seek the right to buy the tenant's interest, you need to confirm that a separate application in respect of the land to which the tenant's interest relates has or is simultaneously being made, or that the conditions under section 48(5) of the Act have been met.

3B.2 The description of the type of land covered by the tenancy that your CB is applying to acquire (you can select more than one option if the land has different uses).

3B.3 If known, the estimated area of land covered by the tenancy that is being acquired.

3B.4 The county that the land covered by the tenancy is located in (i.e. the name of the county should be set out according to its pre-1974 designation (e.g. Berwickshire, Argyllshire etc.)).

3B.5 A clear written description of the land covered by the tenancy that is to be acquired including the North, South, East and West boundary of the land. This can also include details of the postcodes covering the land, how the land is currently being used and its current condition.

3B.6 Confirmation of how many maps, plans or other drawings are being supplied.

3B.7 Your CB needs to inform Scottish Ministers of your connection to the land covered by the tenancy. This is done by confirming which option best describes your communities connection. You are then required to provide a clear written explanation of your connection to the land covered by the tenancy.

- If choosing to check box one you should provide information in relation to the connection that a significant number of members of the community have with the land to be acquired. This option should be used if the community currently have access to or use the land.
- If choosing to check box two you should indicate the connection to other land used within the community by the community members and the connection they have with this other area of land. This option would normally be chosen if the land to be acquired cannot be accessed by the community.
- If choosing to check box three you should indicate the connection with the land that is in or near the community. This option would normally be chosen for land you wish to acquire that is not within the community boundary i.e. nearby land.

3B.8 Please provide details of any official designations that the land covered by the tenancy may have.

SECTION 4 – OWNERSHIP AND INTERESTS

Scottish Ministers require details of who the landowner is (or landowners – if in joint or common ownership), any creditor with a standard security over the land and any tenant occupying or in possession of the land. Your CB should include details of the checks carried out to identify these people, as Scottish Ministers will use this information to issue the prohibition, which ensures that the land cannot be sold while the application is being considered.

In this section you are required to provide:

- 4.1 The details of who the owner of the land (or the land covered by the tenancy) is (this information can be found through searching the title deed (Registers of Scotland can provide this service)). If it's an organisation, then a search of Companies House, Office of the Scottish Charity Regulator or the Financial Conduct Authority should identify details of their current registered office.
- 4.2 Please enter the owner's agent or representative, if known.
- 4.3 It's not uncommon for the land (or the land covered by the tenancy) to be owned by joint or common ownership. If, during your checks you identify this, you should provide the other owners contact details here (as all owners will receive the prohibition). If more than one owner is identified, under 4.1 you should select just one name and contact, and enter the others in this section.

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

- 4.4 If the application is in respect of a tenant's interest, provide the contact details of the tenant.
- 4.5 If there is more than one tenant, you must provide contact details for the additional tenant(s).
- 4.6 Scottish Ministers need to be satisfied that you have completed checks to confirm the ownership or tenancy. You need to detail all steps that were undertaken to identify the ownership or tenancy. **(If you supply incorrect ownership or tenancy details or do not note owners, tenants or creditors, it will result in Scottish Ministers declining to consider the application).**
- 4.7 There may be individuals or organisations with rights that are enforceable against the title to the land, or against the tenant, for example, a mortgage provider. You need to provide this information (details of which should appear on the title deed). If you are aware of anything that prevents the owner from selling the land, or from assigning the tenancy, please give details.
- 4.8 Please confirm whether there are any tenancies over the land or part of it. Please give details of each tenancy.
- 4.9 Please give details for each standard security over the land. These can be found on the title sheet for the land. Also, if the owner is a company, these can also be found by searching the Companies House website.
- 4.10 Each box should be checked to show that you have determined whether they apply or not. You may wish to view the local authority planning website for any information regarding the land.
- 4.11 If you answered 'Yes' to any of the boxes in 4.10 you should provide details of this within this section.

- 4.12 The relevant box should be checked depending on whether you are aware of any other existing rights or interests in the land, or part of it.
- 4.13 Only complete this box if you indicated 'Yes' to 4.12, giving details of each right or interest.
- 4.14 Please state the number of maps, plans or other drawings attached which show the location of all the rights or interests noted in this section (if possible).

SECTION 5 – COMMUNITY SUPPORT

Scottish Ministers need to be satisfied that there is, within your community, a sufficient level of support to justify acquisition of the land or tenant's interest. The support is obtained from those who are over the age of 16, eligible to vote at a local government election and resident within your defined community.

Under the Act, you **must** have carried out a ballot of the eligible voters within your defined community during the six months prior to the submission of your application to Scottish Ministers.

- 5.1 You are asked to confirm whether you have attached the ballot result to the application, or whether the ballot results have already been notified to Scottish Ministers and, if so, when. The result of the ballot has to be notified to Scottish Ministers within three weeks of the results of the ballot being counted, so your answer depends on when the ballot was undertaken in relation to the application being submitted. The result of the ballot, whether it is included with the application or beforehand, must be submitted in the relevant form.

SECTION 6 – STEPS TAKEN TO BUY THE LAND

- 6.1 Please state the steps taken by the CB to acquire the land or tenancy. Prior to the submission of an application, the Part 5 CB **must** have sent a written request to the owner or, if the application is for a tenancy, then written to the tenant, requesting a transfer in order to meet the requirements of the Act. This request must have been made as a compliant Part 5 CB and it must have been made using the official form provided in Part A of schedule 2 of the Right to Buy Land to Further Sustainable Development (Applications, Written Requests, Ballots and Compensation)(Scotland) Regulations 2020.

Please include date(s) of when the Part 5 CB tried to buy the land, details of the offer and to whom it was made. This may be best evidenced by drawing up a timeline, and including copies of any correspondence to and from the owner, tenant or heritable creditor. You may wish to include any valuation carried out in order to determine the offer made, if applicable.

SECTION 7 – PROPOSALS FOR THE LAND

Scottish Ministers require supporting information about your CB's proposals and benefits for the land, (and an indication on whether the proposals will contribute to sustainable development). All of this will be taken into account by Scottish Ministers in making their decision on whether to consent to your CB's application to acquire the land.

Scottish Ministers require:

- 7.1 An explanation of what the CB's proposals for the land are. If evidence for the need for your proposals exists (e.g. a business plan), you can submit this as supporting documentation.
- 7.2 How the transfer of the land or the tenant's interest will help contribute to furthering the achievement of sustainable development in relation to the land.

- 7.3 How the transfer of the land or the tenant's interest would be in the public interest.
- 7.4 How the transfer of the land, or the tenant's interest would result in significant benefit for the members of the defined community.
- 7.5 Confirm that the transfer of the land, or the tenant's interest is the *only, or most practicable way* to achieve that **significant** benefit.
- 7.6 Explain why the confirmation in question 7.5 is the case. You should provide as much detail and evidence as possible.
- 7.7 Explain, in as much detail, what harm is likely to be caused to your defined community if this application is not granted. You should provide as much detail and evidence as possible.
- 7.8 Please provide any additional information that you think is relevant.

DECLARATION

As with any application form, declaration signatures are required before an application can be accepted. It needs to be signed and dated by two different members of the CB. If it is intended that a third party purchaser would purchase the land on the CB's behalf, then it also needs to be signed by two representatives of the third party nominated in the application.

ADDITIONAL SUPPORTING INFORMATION

More detailed guidance on the application form and the Right to Buy Land to Further Sustainable Development can be found in our guidance booklet.

The Community Land Team is happy to provide any guidance and support in completing the form.

Data Protection

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

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

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

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

What are your rights?

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

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

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

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

The Information Commissioner's Office - Scotland

45 Melville Street

Edinburgh

EH3 7HL

Phone: 0303 123 1115

Email: Scotland@ico.org.uk