

Business and Regulatory Impact Assessment

Secondary Legislation

Part 5 of the Land Reform (Scotland) Act 2016, the Right to Buy Land to Further Sustainable Development

Final
Business and Regulatory Impact Assessment

Title of Proposal: Secondary legislation which implements and brings into force Part 5 of the Land Reform (Scotland) Act 2016, the Right to Buy to Further Sustainable Development, as follows:

AFFIRMATIVE INSTRUMENT: “The Right to Buy Land to Further Sustainable Development (Eligible Land, Specified Types of Area and Restrictions on Transfers, Assignations and Dealing) (Scotland) Regulations 2020”

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

COMMENCEMENT ORDER: The Land Reform (Scotland) Act 2016 (Commencement No. 10) Regulations 2020

STATUTORY INSTRUMENT: Rules regarding Lands Tribunal Fees

ASSOCIATED SCHEDULES:

Schedule 1: Application for Consent to Exercise Right to Buy

Schedule 2: Form of Written Request to Owner of the Land or Tenant with Tenant's Interest and Response from Owner

Schedule 3: Publication of Ballot Result

Schedule 4: Notice To Ministers of Ballot Result and Declaration by Observer

Schedule 5: Application for Grant Towards Liability to Pay Compensation

Purpose and intended effect

Background

The Scottish Government is implementing a wide-ranging programme of land reform to help ensure people benefit more fairly from Scotland's land. This includes legislative reform and promoting cultural change.

The Land Reform (Scotland) Act 2016 was a key legislative milestone in this programme. The first 5 parts of the Act are universal in application in that they apply to land in general, rather than to any particular aspect of land. They are:

PART 1: The publication of a Land Rights and Responsibilities Statement,

PART 2: Establishing the Scottish Land Commission,

PART 3: Improving transparency about who controls land,

PART 4: Requiring publication of guidance on engaging communities in decisions relating to land, and

PART 5: Creating a new right to buy to further sustainable development.

(There are other parts of the Act, but they relate to specific policy interests, such as deer management and farming).

Parts 1, 2 and 4 have already been brought into force. Parts 3 and 5 have yet to be

brought into force. This BRIA deals with bringing Part 5 into force through a combination of affirmative and negative SSIs.

From 26 June 2019 to 19 September 2019 the Scottish Government ran a public consultation on regulations to bring Part 5 into force. Once in force, this will create a new right to buy to further sustainable development, which can be used by communities, and associated third parties in some instances. In doing so it will allow Scotland's place based communities to make use of a new right to buy power that will allow them to seek to buy land and related assets such as buildings, even where the owner is unwilling to sell. It will also allow communities to seek to buy non-residential tenancies that are on the land they are seeking to buy, also on a compulsory purchase basis.

This right to buy is not without constraints, and the regulations specify a range of sustainable development conditions and procedural requirements which must be met before Ministers can grant consent to a Part 5 Right to Buy application. In addition the regulations specify certain sorts of land that cannot be transferred under Part 5.

In addition, there are due processes for appeals, representations, compensation, and grants towards liabilities for compensation.

The regulations which are the subject of this BRIA will bring into force Part 5 and the regulatory processes that will allow it to work. The public consultation on the regulations was of a technical nature, and 20 responses were received. Most of the responses contained some detailed comments on parts of the regulations, and for most questions more consultees agreed with the Scottish Government proposals than disagreed.

The regulations will:

- Set out the type of land and tenancies which are excluded from Part 5 applications.
- Define how community areas will be identified for the purposes of making a Part 5 application and carrying out community ballots.
- Set out how Part 5 requests from community bodies to land owners and tenants will work, including providing appropriate forms and paperwork for this.
- Set out how the community ballot (to seek approval to proceed with a right to buy application) will be carried out, as well as the process for reclaiming ballot expenses.
- Provide an application form that community bodies must use to apply to Scottish Ministers to request the compulsory transfer of the land they are seeking, or to request the compulsory transfer of a tenant's interest in land (not applicable to a tenancy of croft land or a dwelling house).
- Set out the prohibitions on the transfer of land and other matters relating to land that a community body is seeking to buy.

- Set out the procedures for the public notice of the right to buy application.
- Set out the procedures for compensation and grants towards liabilities to pay compensation.

Objective

The secondary legislation seeks to specify the various steps and considerations mentioned above, and followed a period of consultation. During the consultation, which ran from 26 June 2019 to 19 September 2019, land reform officials met with various key stakeholders to explain how Part 5 would work once in force.

The secondary legislation does not concern the sustainable development conditions, which are given in the 2016 Act and could only be changed through primary legislation.

Rationale for Government intervention

The Scottish Government continues to recognise the importance of community ownership of land in empowering the people of Scotland. Ministers consider that community ownership has a transformational impact on communities, increasing community confidence and developing vibrant and flourishing communities. It can also allow more people and communities in Scotland to make use of land as a resource which can provide economic, social and environmental benefits, and in general support sustainable development.

Ministers consider that communities should be able to seek to acquire land for sustainable development purposes. Conditions in the primary legislation ensure that Ministers can only grant approval to a Part 5 application where certain sustainable development conditions are met, which ensure that the transfer is to benefit the community, support sustainable development and be in the public interest.

Consultation

Within Government

A wide range of Scottish Government officials were involved in, or consulted about, the development of the Land Reform (Scotland) Act 2016.

Public Consultation

Since the Land Reform (Scotland) Act 2003 came into force, Scottish Ministers and their officials have had many years of working with communities and land owners involved in right to buy processes. That experience was drawn on and used in the development of a new right to buy power created by Community Empowerment (Scotland) Act 2015. This inserted a new power (Part 3A) into the 2003 Act, allowing communities to seek to buy on a compulsory purchase basis, and subject to Ministerial approval and conditions being met, land that is abandoned, neglected or detrimental.

The right to buy abandoned, neglected or detrimental land was brought into force by regulations in June 2018, and the regulations to bring Part 5 into force take account of, and build on, those earlier regulations.

Part 5 has its own, specific approach, and the conditions for approving a Part 5 application are different from those for a Part 3A application. For example, the focus of Part 3A is on the state of the land, whereas the focus for Part 5 is on sustainable development and benefit to the local community.

However in general, those responding to the public consultation on bringing Part 5 into force, which ran from 26 June to 19 September 2019, were in favour of a measure of consistency for processes shared by Part 3A and Part 5, unless there was a good reason to do otherwise. Examples of these are the forms for publishing the results of the ballot, or applying for a grant to help with compensation claims. The Scottish Government agrees with this approach.

The consultation and responses can be found at the following web address:
<https://consult.gov.scot/environment-forestry/right-to-buy-land-further-sustainable-development/>

Business

Scottish Government officials were in contact with key stakeholders throughout the development of Part 5 of the Land Reform (Scotland) Act 2016 and also met with them during the consultation on the regulations to bring them into force. These were broadly representative of potential business interests, and included Scottish Land and Estates, Scottish Property Federation, Environment LINK, Rural Housing Scotland, Development Trusts Association Scotland and Community Land Scotland.

Options

OPTION 1 – INTRODUCE SECONDARY LEGISLATION

The legislative provisions of Part 5 of the 2016 Act are divided between primary legislation and secondary legislation. Secondary legislation must be developed to ensure that the full legislative provisions are available for the new Part 5 of the 2016 Act to operate. The secondary legislation defines key elements of the legislative provisions as set out above in the Background section.

Sectors and groups affected

Communities: The proposals have the potential to benefit all communities throughout Scotland, rural and urban, by creating formal legislative options for them to acquire land and associated tenants' interests for the purposes of sustainable development. In doing so, the community body or third party where relevant can seek to use the legislation to create a range and mix of environmental, social and economic benefits for the community and help the community avoid environmental, social and economic harm.

A requirement in the legislation is that a Part 5 transfer can only be approved by Scottish Ministers where it is in the public interest, and this ensures that wider considerations than those of the particular community in question are taken into account.

Landowners/creditors in a standard security: The proposals will have potential to impact many landowners and any creditors in a standard security with the right to sell land.

Exceptions include land on which there is a home, unless the home is a tenancy.

"Landowners" includes private individuals, trusts, businesses, local authorities and Government, though this list is not exhaustive.

A wide range of tenant's interests could, in theory, be sought by a community body under Part 5, where those interests are associated with the land that is also being sought by the community body under a separate application.

Scottish Ministers and the Scottish Government will administer these new policies which will be introduced through secondary legislation:

A number of applications may be received as a result of the new legislative provisions, and consideration needs to be given to ensure appropriate staff and other administrative resources. Our projection is that the extra workload within SG can be absorbed through existing business structures.

With regard to Registers of Scotland (RoS), the development of RoACBL was funded by Scottish Government at the time of the development of the register for the purposes of Part 3A of the Land Reform (Scotland) Act 2003, although further development may be required over time.

We cannot predict with any accuracy how many Part 5 community applications are likely to be submitted every year, as this will be the result of a number of factors, including community interest in using Part 5 and how a land owner or tenant responds to any community request to transfer land.

The Community Right to Buy Abandoned, Neglected or Detrimental Land (Part 3A of the Land Reform (Scotland) Act 2003) was brought into force in June 2018. It took several months before the first applications were received, although this was at least in part due to various requirements of the process. Similar timescales may apply to Part 5, although the requirement to be a compliant body before seeking the transfer of land or tenant's interest may help communities to consider the issues and processes at an early stage.

An additional factor with Part 5, as opposed to other forms of right to buy, is that there are opportunities in the Part 5 process for a land owner or tenant to work with the local community to address and resolve any issues relating to sustainable development, prior to any formal Part 5 community body application to Scottish Ministers.

A request from the community body to the land owner (or tenant, as the case may be), for transfer of the land or non-residential tenant's interests, must precede any formal right to buy application by at least 6 months. While it is not part of the formal process, this clearly provides an opportunity for the land owner or tenant to work together to address any local sustainable development issues. It may be that in some cases we will see sustainable development concerns being resolved rather than progressing to the formal right to buy application stage.

As with all right to buy powers, there are valuation costs which are paid for by the Scottish Government. Based on experience with other Right to Buys, we estimate valuation costs to be an average of £2,500 per valuation.

Legal/Courts

There are a number of appeals provisions within Part 5 of the 2016 Act. For example the Lands Tribunal and the Sheriff Court may receive appeals in relation to a Part 5 application for Ministerial consent. Within the regulations though, the only appeals provision is the appeal relating to the expenses of the ballot. Overall, we estimate the number of appeals will be small.

Benefits

The existing community rights to buy have demonstrated that where communities are able to buy land within their community, the responsibility and opportunity that comes with this empowers them. They have the opportunity to make decisions about the future of land to deliver broad benefits.

Part 5 will allow community bodies to identify land and tenancies which will help them achieve sustainable development and benefit the community. Land that is community owned can benefit from investment and improvements that may otherwise not occur. This will meet the overall policy objective that the right to buy is

compatible with furthering the achievement of sustainable development in relation to the land.

The development of the policy proposals which will be brought forward in the secondary legislation, and which will be used in conjunction with the primary legislation, may help raise awareness of the need for sustainable development in relation to land, and encourage communities and land owners to work more closely together to achieve this.

Costs

Costs of administering the new Part 5 legislation are based on those for existing right to buy processes for communities.

Administration of the compulsory purchase powers for communities – specific costs to Scottish Ministers

We expect the work to be absorbed within existing Scottish Government business structures. We do not foresee any extra staff being needed to administer Part 5, nor do we believe there are additional significant costs for Registers of Scotland (RoS) as the register to be used — the Register of Applications by Community Bodies to Buy Land (RoACBL) — has already been set up and is in operation for Part 3A of the Land Reform (Scotland) Act 2003, the Right to Buy Abandoned, Neglected or detrimental land.

It is difficult to predict exactly how many Part 5 community applications are likely to be submitted every year. Based on existing figures for other rights to buy, it would be reasonable to assume fewer than 10 per year.

Valuation costs are paid for by the Scottish Government, and based on experience with other right to buy, we estimate valuation costs to be an average of £2,500 per valuation.

Costs to Community Bodies

Communities seeking to use the provisions will incur some administrative costs, such as set-up costs, engaging independent professional advice or mapping.

The costs will vary from community to community depending on the level of activity, and it should be remembered that in addition to advice that is provided by the Scottish Government's Community Land Team, organisations such as the Community Ownership Support Service are able to provide advice to communities considering acquiring land. Third sector bodies such as Community Land Scotland may also provide advice.

Land owners:

It will be for land owners to decide how to respond to a Part 5 application for consent and how and when to seek professional advice, which may incur associated fees, during the process. Landowners will incur costs in relation to seeking professional advice during any sale period, i.e. solicitors' and estate agents' fees, as well as court fees. Compensation may be given by Scottish Ministers in certain circumstances.

OPTION 2 – DO NOTHING

The legislative provisions of Part 5 of the 2016 Act are divided between primary legislation and secondary legislation. Secondary legislation must be developed to ensure that the full legislative provisions are available to enable the new Part 5 of the 2016 Act to operate. In bringing forward the secondary legislation, it is necessary to develop policy proposals.

The implementation of Part 5 is a key objective of Scottish Ministers and the option of doing nothing is not appropriate here.

Scottish Firms Impact Test

Since implementation of the Land Reform (Scotland) Act 2003, Scottish Ministers have engaged with landowners, including private individuals, public bodies, businesses and community groups during formal consultations and meetings.

During the Part 5 consultation, as part of a larger stakeholder engagement exercise, Scottish Government officials met with key land holding stakeholder groups, including the National Farmers Union of Scotland, the Scottish Property Federation and Scottish Environment Link.

No evidence was presented in these meetings, or in the responses to the public consultation, that the new Part 5 Right to Buy will create costs significantly above those incurred for existing right to buy processes (Parts 2 and 3A of the 2003 Land Reform Act).

Competition Assessment

This policy should not impact on competition within any particular sector.

Test run of business forms

There are no business forms associated with these proposals.

Legal Aid Impact Test

We do not consider that this proposal will have any impact on legal aid. It will be up to communities and landowners to decide whether they should obtain professional assistance regarding an application for consent under Part 5 of the 2016 Act and the policy proposals set out in the consultation. We are aware that communities, as community bodies (including Part 5 community bodies) are unable to apply for legal aid.

Enforcement, sanctions and monitoring

The policy proposals, which will be brought forward in secondary legislation, will underpin aspects of the administrative process (such as how the ballot is carried out and the application is advertised), as set out in Part 5 of the 2016 Act. The administration of these legislative provisions will be undertaken by the Scottish Government, with any appeals being dealt with by the appropriate courts set out in the provisions.

Implementation and delivery plan

A full 12-week consultation on policy proposals took place between 26 June and 19 September. It is planned for the Scottish Statutory Instruments to be placed before the Scottish Parliament in early 2020, with commencement following the standard parliamentary process by the end of spring.

Post-implementation review

Post-implementation review of the compulsory purchase powers for communities will take place as and when required by Ministers, and may be assisted by the work of the Scottish Land Commission.

Summary and recommendation

Which option is being recommended and why? Refer to analysis of the costs and benefits in reaching the decision. Summarise, using the table below, the information gathered for each option.

• Summary costs and benefits table

Option	Total benefit per annum: - economic, environmental, social	Total cost per annum: - economic, environmental, social - policy and administrative
1	The proposals will support local communities throughout Scotland to take ownership of land to promote sustainable development, benefit local communities and support the public interest.	<p>Based on an estimated number of applications of fewer than 10 per year, we estimate additional valuation costs of no more than £25,000. We would expect this to be on the lower end of the scale in the first year.</p> <p>Most administrative costs will be absorbed by structures that are already in place to process other sorts of right to buy applications which are community focussed.</p> <p>Given the aim of this right to buy legislation is to promote sustainable development, we do not expect there to be overall economic, social or environmental losses, although in some cases the focus may be on one of these three factors. For example in some cases the local sustainable development need may be more focussed on growing the local economy and in others it could be on improving the natural or built environment.</p>
2	None – will mean that Part 5 of the 2016 Act will not be able to operate. This is because the	Will mean that Part 5 will not be available for communities to use. This will hinder Scottish Ministers'

	legislation is divided between primary and secondary legislation and the primary legislation cannot operate without key elements of the secondary regulations being made.	ambitions for community ownership and community empowerment across the whole of Scotland.
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Declaration and publication

The Cabinet Secretary or Minister responsible for the policy (or the Chief Executive of non departmental public bodies and other agencies if appropriate) is required to sign off all BRIs prior to publication. Use appropriate text from choices below:

- Sign-off for Final BRIs:

I have read the Business and Regulatory Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs. I am satisfied that business impact has been assessed with the support of businesses in Scotland.

Signed:



Date:

Roseanna Cunningham

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