



Law Society
of Scotland



Consultation Response

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

September 2019



Introduction

The Law Society of Scotland is the professional body for around 12,000 Scottish solicitors. With our overarching objective of leading legal excellence, we strive to excel and to be a world-class professional body, understanding and serving the needs of our members and the public. We set and uphold standards to ensure the provision of excellent legal services and ensure the public can have confidence in Scotland's solicitor profession.

We have a statutory duty to work in the public interest, a duty which we are strongly committed to achieving through our work to promote a strong, varied and effective solicitor profession working in the interests of the public and protecting and promoting the rule of law. We seek to influence the creation of a fairer and more just society through our active engagement with the Scottish and United Kingdom Governments, Parliaments, wider stakeholders and our membership.

Our Property and Land Law Reform and Rural Affairs sub-committees welcome the opportunity to consider and respond to the Scottish Government's 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*¹. We have the following comments to put forward for consideration.

Response to questions

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?

We agree with the proposed exemptions. However, we note that “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.” Where there is a short-assured tenancy in place, there is a possibility that a community, having purchased land, may seek to bring that tenancy to an end in early course after the purchase.

Question 2. Do you agree with the further types of land that are to be excluded from Part 5 right to buy?

Partially agree.

¹ <https://consult.gov.scot/environment-forestry/right-to-buy-land-further-sustainable-development/>

We suggest that to ensure common grazings are covered by an exemption, the reference to crofting should be to “all land subject to crofting tenure”. In addition, we suggest that consideration be given as to how the right to buy provisions will be fit with land which is subject to an agricultural tenancy. Where there is a right of pre-emption, it is not clear whether the community right to buy would trigger the pre-emption.

Question 3. Do you agree with what we suggest constitutes a tenancy for the purposes of Part 5?

We note the proposals in this regard and consider that there is merit in there being consistency across the statute books in terms of the approach to tenancies.

In respect of liferents, we note that it is common for there to be a personal link between the liferenter and the trustees, which generally supports co-operation between the parties. An element of this may be lost where a community becomes the landowner.

In relation to tied accommodation, we note the potential for difficulties in the event that an employer no longer owns the accommodation which is tied to the tenant’s employment..

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?

We suggest this matter requires further consideration.

We question whether it is desirable for an agricultural tenant’s interest to be capable of purchase under this scheme. Such a tenant may not wish to exercise their pre-emptive right to buy but may wish to continue to farm on the land. A community body seeking to purchase both land and an associated agricultural tenant’s interest could be in a stronger position than the original landowner where the tenant has a right of pre-emption. This would appear to be an anomaly. In line with sections 64 and 65 of the 2016 Act, we note that the consideration is to be the value of the tenant’s interest. This sum may be lower than that which could be secured by a tenant via a private deal with their landlord.

We note the potential challenges arising in relation to community services and amenities, particularly in rural areas, for or example, a post office.

There may be potential for landowners who consider they are at risk of a community purchase to seek to achieve double compensation by granting leases to tame or associated parties with the intention that the landlord would be compensated for having to sell the land and the tenant would be compensated for having to give up their tenancy. We flag this as a potential issue but would also comment that there should not be an assumption that such arrangements are entered into with ulterior motives. In the case of diversified activities for example there are sound commercial reasons for such arrangements and it should

not be assumed that such arrangements will have been entered into with the intention solely of obtaining additional compensation.

We would also query whether a property that is subject to an existing commercial lease which facilitates the occupation of premises by an operational business, for example, should be capable of being acquired by a community body. In such circumstances this process could cause considerable concern and uncertainty for an operating business.

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

Agree.

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.

We have no comment on this question.

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

The description of the land must be suitably detailed to ensure the extent of the land which the community body wishes to be transferred is clear. In most circumstances this should include a plan, produced in a manner similar to that required for Part 3A of the 2003 Act. This would particularly be the case where a community body seeks transfer of only a part of the land owner's property.

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?

As referred to above, where there is a right of pre-emption, it is not clear whether or not this is triggered by the community seeking to buy the land. If so, the tenant would step in to the landlord's position but the community would likely still wish to acquire the tenant's interest.

As set out in our response to question 6, we consider that the description of the land should include a plan.

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

Agree.

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?

Agree (although we would highlight the typographical error in relation to Option 1 where this should refer to "principle" on two occasions rather than "principal" as currently drafted).

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?

Agree. We consider it is important that both parties are aware of the process which requires to be followed and that there is an advantage in ensuring there is consistency of approach.

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.

Agree.

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.

We consider there is merit in consistency across the procedures. Consideration should be given to where records are to be held in the event that a community body does not remain in existence for two years after the ballot deadline. It is important that the ballot records are retained securely and in a manner compliant with the Data Protection Act 2018.

Question 13. Do you agree with our proposals for a draft application form at Annex C?

Agree.

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?

We consider there is merit in consistency across the procedures.

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?

We note the risk of land being ‘frozen’ in terms of certain dealings and rights for some time during the process of a community right to buy application. This may impact upon a landowner’s ability to undertake particular actions in relation to land. It may also impact upon the ability to obtain subsidies for work or projects and/or funding from a lender and there is the potential for the market value of the land to change during the period. Consideration should be given to safeguards to protect against communities seeking to use the provisions for purposes other than those intended.

Question 16. Do you agree with the prohibitions outlined above?

We agree that there is merit in ensuring consistency in approach with list of prohibitions already stipulated for land subject to a Part 3A application under the 2003 Act.

Question 17. Do you agree with the exemptions to the prohibitions outlined above?

We refer to our response at Question 16.

Question 18. Do you agree with the Scottish Government’s proposals with regard to suspension of certain rights over land, as outlined above?

Agree.

Question 19. Do you agree with the Scottish Government’s proposals above for the advertisement of Part 5 right to buy applications?

Agree.

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?

We agree that there is merit in ensuring consistency in approach with the claims process relevant for claiming compensation under Part 3A of the 2003 Act.

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?

We have no comment on this question.

Question 22. Are you content that the draft grant application form is fit and suitable for purpose?

We have no comment on this question.

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?

We have no comment on this question.

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?

See response to Question 4.

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?

We have no comment on this question.

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?

We have no comment on this question.

Question 27. Do you agree there is no need, at present, to use the power under subsection 52(7)?

We have no comment on this question.

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.

We have no comment on this question.

Question 29. Please use this space to tell the Scottish Government about anything else you believe is relevant to this consultation.

We have no further comment.

For further information, please contact:

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