

Consultation Title	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
Date	18/09/19
From	Gavin Mowat Scottish Land & Estates Stuart House Eskmills Business Park, EH21 7PB
Telephone	0131 653 5400
Email	Gavin.Mowat@scottishlandandestates.co.uk

Scottish Land & Estates (SLE) is the voice of rural businesses throughout Scotland. We are a membership organisation representing a wide range of rural businesses, including farmers, foresters, tourism operators, housing providers, leisure companies, and renewable energy providers.

Our members provide a wide range of economic, environmental and social benefits which are vital to the success of communities throughout rural Scotland. They play a critical role in ensuring sustainable, healthy and empowered rural communities, providing housing, employment and a wide range of economic, environmental and social benefits.

SLE members are key delivery partners helping create resilient rural communities and enabling them to thrive. As an organisation we recognise the importance of building a sustainable future, particularly for our remote rural communities. In this respect it is vital that the implementation of Part 5 recognises the importance of ensuring that those existing rural businesses which are best placed to meet the challenges of the future remain sustainable.

- 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**

While we agree with what is contained, SLE would also like to see the inclusion of the following:

- land which is a designated designed landscape pertaining to a home, either under National or Local Authority designation; and
- listing, e.g., land contained within the same conservation listing as the home;

These are designations often associated with a home and as a result of such designations, land like this could be viewed as unproductive or unsustainable, when the reality is that activity is restricted.

- 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**

We agree with what is there already but consider that there are some areas where this could be strengthened. For instance, “land consisting of a right to petroleum, coal, gold or silver (whether or not owned separately from the land in respect of which it is eligible).” is included in Part 3A and we do not see any reason why it should not be included under Part 5.

We also consider it appropriate to include sites that, have planning permission, are allocated under a local development plan or are included as part of any forestry strategy should not be eligible under Part 5. The development planning process under the new Planning (Scotland) Act 2019 is required to be in the “long term public interest”, therefore allocated land will only be allocated in the public interest. It therefore stands to reason that allocated land should not be able to fail the public interest test required to be eligible under Part 5. Similarly, it will now be a statutory requirement for planning authorities to prepare forestry and woodland strategy under the Planning (Scotland) Act 2019.

In addition, ministers should consider whether land has been deemed to meet good agricultural and environmental condition, or it is deemed to be eligible for the purposes of Basic Payment Scheme.

Furthermore, the following should also be considered for exemption:

- Sites of Special Scientific Interest;
- Special Protection Areas;
- Special Areas of Conservation; and
- land that is part of an Agri-Environment Climate Scheme (or successor schemes).

We are also aware that there is a growing tendency for estates to produce plans to inform decision making in the locality, for example, in relation to the Land Rights and Responsibilities Statement. SLE is of the view that where this is the case, such a plan should be a “material consideration” for any community body looking at Part 5 options.

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

- Yes**
 No
 Partially agree

We have concerns about the types of “tenancies” outlined. Tied accommodation will by and large be a service occupancy or a service tenancy. There is no specific legislation as such re tied accommodation, but a service occupancy is where accommodation is provided by the employer and the employee lives there rent free in return or part return for working for the employer and it is stated that the accommodation will end when employment ends in the employment contract or letting agreement. Alternatively, where it is stated that you have to live in the accommodation to do your job properly or, not that you have to live there, but it would be impractical or impossible to do your job if you did not. A service tenancy is where one chooses to live in accommodation provided by their employer or the employer wishes you to live in accommodation they provide for you and you have a lease and pay your employer rent in order to live in the accommodation, but don’t have to live there in order to carry out your job better.

A service occupancy is not generally regarded as a “tenancy” and indeed the occupier does not have tenants’ rights. We feel it would be an anomaly for tied accommodation per se to be included in the treatment of a “tenancy”, when many are in fact not. Tied accommodation is an integral part of rural businesses. It is also worth considering that with the new residential tenancy regime it can be more difficult for rural businesses to find property to create new tied accommodation to maintain business sustainability. Excluding tied property would remove that risk to sustainability.

We would therefore suggest that bullet point one and three are not treated as “tenancies” for the purposes of the regulations, given the specific employment angle.

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

Apart from tied accommodation that we have outlined at question 3, we do not see a need for any other types of tenancy to be excluded.

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

- Yes
- No
- Partially agree

No issue with this

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.

Not applicable.

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

Yes, it is generally acceptable. We consider it could include a section on why the Community Body consider the current use unsustainable, this might lead to conversations, dialogue and decisions which help resolve the issue.

New economic challenges on the horizon may result in many rural businesses becoming unsustainable. It should therefore be clear in this section that any Part 5 proposal is not for the purposes of making the community body's existing business/holding sustainable, rather purely to ensure the sustainable use of other land assets. In other words, Part 5 should not become a tool to create critical mass for one land owning business (community body) at the expense of another.

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

Yes. There could be a section advising a tenant how to respond should they so wish.

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

Yes.

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

It should be made clear that whilst responding is a choice, it is in their interests to do so – and the consequences for not responding. Under “further information” it should be made clear that the land owner is not restricted to making comments on the community body’s proposals in the box provided.

We are also of the view that it should be appropriate for a question to specifically prompt the land owner to consider whether the sustainability of his or her wider business will be impacted as a consequence of the proposed purchase by the Part 5 community body. The consequences of ‘cherry picking’ parts could be far-reaching and detrimental to the wider local community should a business become unviable. In doing so, this will allow the land owner to properly consider any impacts in the context of sustainability (which they may not have considered before) and it will enable Scottish Government to better ascertain the cumulative impact on sustainability of any proposal. An example of wording could be: *“Do you consider the Part 5 community body’s proposal will have any impact, positive or negative, on the sustainability of your wider business operation(s)? Please give as much detail as possible”*.

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

Agree with this premise, but as noted above, if the land owner wishes to write a lengthy response to the community body’s proposal they should not be precluded from doing so by restricting responses to the confines of the small box on the form.

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

Generally, yes. But this should not preclude further discussions on a negotiated sale or an alternative option to be considered.

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

Generally agree, however, we consider provision should be made for a community body to share ballot information on request from any person with the right to appeal.

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

- Yes
- No
- Partially

No issue with this.

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

Yes.

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

We note the restriction period begins on the date a pending application appears on the Register of Applications by Community Bodies to Buy Land rather than when the person is notified. As with concerns we had around the Part 3A regulations, we seek reassurance that the landowner will be notified before an application appears on the register.

While the proposed date makes sense, service will be critical. We believe that the owner or creditor as the case may be cannot be held liable for the vagaries of the postal system. It would be inequitable for prohibition to take place without the owner being informed and on such an important matter service would need to be by recorded delivery. If it can be demonstrated that there is a deliberate attempt to circumvent receipt of the notice (by repeated failure to sign or collect) then personal service could be an option. Another way round any problem of service/address is to include the agents' contact details on the registration forms and for any prohibition letter to be copied to the agent in addition.

16. Do you agree with the prohibitions outlined above?

- Yes
- No
- Partially

Yes – not different from Part 3A. However, we seek assurance that the following wording, “*proceeding with any proposed transfer of land initiated prior to the date on which the pending Part registration appeared on the Register of Applications by Community Bodies to Buy Land*”, would not infringe on an owners right to sell a property/land prior to any formal request for Part 5 Right to Buy is submitted.

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

- Yes

- No
- Partially

Yes – not different from Part 3A.

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

No issue with this – same as Part 3A.

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

- Yes
- No
- Partially

We would prefer to see both options (a) and (b) included. If it is to only be one option, we would like to better understand under what circumstance only one option would be used.

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

Generally, yes. However, we seek clarification for the reason behind a compensation claim following a refusal being 90 working days while other claims for compensation should be made within 90 days.

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

No issue with this. It should be expressly set out there needs to be parity between the level of detail sought to justify a compensation claim and the detail provided in return in determining the relative success or otherwise of a claim

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

- Yes
- No
- Partially

No issue with this.

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

Agree.

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

The inclusion of tenant's interests under a tied property should be included.

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

- Yes
- No
- Partially

Agree.

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

No issue with this.

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

- Yes
- No
- Partially

Agree.

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.

No issues with this.

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