POLICY NOTE

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

DRAFT SSI 2020/XXX

THE RIGHT TO BUY LAND TO BUY LAND TO FURTHER SUSTAINABLE DEVELOPMENT (APPLICATIONS, WRITTEN REQUESTS, BALLOTS AND COMPENSATION) (SCOTLAND) REGULATIONS 2020

SSI 2020/21

THE LAND REFORM (SCOTLAND) ACT (COMMENCEMENT NO. 10) REGULATIONS 2020

SSI 2020/20 (C. 1)

The above three instruments were made in exercise of powers conferred under the Land Reform (Scotland) Act 2016. Together they implement Part 5 of the Land Reform (Scotland) Act 2016, the Right to Buy Land to Further Sustainable Development.

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 is subject to the affirmative procedure

The Right to Buy Land To Buy Land to Further Sustainable Development (Applications, Written Requests, Ballots and Compensation) (Scotland) Regulations 2020 is subject to the negative procedure.

The Land Reform (Scotland) Act (Commencement No. 10) Regulations 2020 is laid and there is no procedure.

Purpose of the instrument. The purpose of these instruments is to bring into force Part 5 of the Land Reform (Scotland) Act 2016, which creates a new right to buy land and, as the case may be, an associated tenant's interest, for the purpose of furthering sustainable development. It is a compulsory purchase power, meaning that a properly constituted community body may seek Ministerial approval for the transfer of land or, as the case may be, tenant's interest even where the owner of the land or tenant does not wish to sell the land or tenant's interest, as the case may be. Both private and public land may be sought under Part 5.

Once in force the new right to buy may be exercised by a community body or, they may use a third party purchaser to purchase the land or tenant's interest, subject to compliance with the requirements of Part 5 of the 2016 Act and the regulations.

Policy Objectives

The policy objective is to empower communities to aquire land to further Sustainable Development. This will add to the range of right to buy powers already in force to assist communities to own land, which are:

- The community right to buy which may be exercised under Part 2 of the Land Reform (Scotland) Act 2003. This is a pre-emptive right to buy, and may only be exercised by a compliant community body where the owner of land seeks to sell the land.

- The crofting community right to buy, which may be exercised by a crofting community, for croft land, under Part 3 of the Land Reform (Scotland) Act 2003. This is a compulsory right to buy, meaning that, if an application is approved, a crofting community can seek to exercise the right without the consent of the owner, but it is limited to crofting communities and croft land.

- Part 3A of the Land Reform (Scotland) Act 2003, the community right to buy abandoned, neglected or detrimental land. Part 3A was inserted into the 2003 Act by the Community Empowerment (Scotland) Act 2015, and came into force on 27 June 2018. If an application is approved, his also gives a community body a compulsory right to buy , but its application is limited to land that is abandoned, neglected or detrimental.

It should be also noted that, while not purely a right to buy power, Part 5 of the Community Empowerment (Scotland) Act 2015 established asset transfer provisions, giving community bodies a right to request to buy, lease, manage or use land and buildings belonging to local authorities, Scottish public bodies or Scottish Ministers.

Consultation

A full public consultation on the regulations ran from 26 June to 19 September 2019. It was largely a technical consultation and as expected attracted only a small number of responses (20). These were mostly from stakeholders and other organisations, although a few individuals also responded.

Responses were mostly of a constructive nature, with ideas for improvements to the regulations, or questions about how the regulations would work. There were 27 questions and for all questions except one, at least 50% of those who responded to the consultation agreed with the consultation proposals. Nothing came to light in the consultation responses that requires major revision to our plans for the regulations. Our regulatory plans remain those we consulted on in the summer of 2019.

A full list of those consulted and who agreed to the release of this information is attached to the consultation report published on the Scottish Government website. It includes Scottish Land and Estates and Community Land Scotland.

Impact Assessments

The following impact assessments have been carried out and have now been published.

- The Business Regulatory Impact Assessment (BRIA)
- The Data Protection Impact Assessment (DPIA)
- The Equalities Impact Assessment (EQIA)

Financial Effects

A Business and Regulatory Impact Assessment (BRIA) has been completed and is attached.

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.

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.

The impact of this policy on business is that the proposals will have potential to impact land owners 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.) "Land owners" 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.

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.

With Part 5, as opposed to other forms of right to buy, 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.

In terms of 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 with the local community 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.

Scottish Government
Directorate for Agriculture and Rural Economy
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