

Response ID ANON-GWE9-SD7B-C

Submitted to **Consultation on the Right to Buy Land to Further Sustainable Development**
Submitted on **2019-09-18 16:09:42**

About you

1 What is your name?

Name:
Mandy Catterall

2 What is your email address?

Email:
mcatterall@bpf.org.uk

3 Are you responding as an individual or an organisation?

Organisation

4 What is your organisation?

Organisation:
Scottish Property Federation

5 The Scottish Government would like your permission to publish your consultation response. Please indicate your publishing preference:

Publish response with name

6 We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

Yes

1. Excluded land, tenancies and tenant's interests

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?

Partially agree

If you wish, please provide further details.:

We welcome the government's confirmation that homeowner's property rights will be respected where Community Bodies seek a Right to Buy to further sustainable development under Part 5 of the Land Reform Act 2016. However, we feel there is less clarity on how the provisions will impact on residential tenants and how the provisions in Part 5 will dovetail with the Private Housing (Tenancies) (Scotland) Act 2016.

It is our understanding that a sitting tenant's rights remain intact under the Part 5 proposals, and it will therefore be important that an applicant under Part 5 is made aware of the implications of the provisions of Private Housing (Tenancies) (Scotland) Act 2016.

It is also important that the views of the sitting tenant are factored into the consideration of the community body proposals under Part 5. It is quite feasible that an application under Part 5 could impact significantly on the tenant. Our members would welcome clarification of the rights and responsibilities of both community bodies and tenants in these circumstances.

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

Partially agree

If you wish, please provide further details, including details of any further sorts of land that you believe should be excluded from being bought under Part 5. :

A challenge of Part 3A of the Land Reform (Scotland) Act - the community right to buy is that the community body must identify the owner of the land. Often the reason land is abandoned or neglected is because the land is now owned by the Crown by virtue of it having fallen to the Crown as ultimus haeres, or as a result of bona vacantia. If such land could be brought back into sustainable use under Part 5 that could address this problem.

Our members are therefore of the view that land owned by the Crown by virtue of having its vested interest as bona vacantia in the Crown, or its having fallen to the Crown as ultimus haeres should therefore not be excluded under Part 5.

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

Not Answered

If you wish, please provide further details.:

No comment

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?

No

If you wish, please provide further details.:

The SPF is of the view that a Part 5 community body should not have the right to acquire the tenant's right to lease of the land, where there is a non-residential tenant in occupation putting the land to productive economic use. This could potentially interfere with an individual's livelihood. There are also other tenant's rights that must be protected such as utility providers, who have leases for substations, or other energy infrastructure including wind and solar farms and battery storage for energy. Telecommunication providers' leases for their infrastructure such as mobile phone masts, telephone poles, etc also need to be excluded.

2. Definition of community area

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

Not Answered

If you wish, please provide further details.:

No comment

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.

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No comment

3. Requests from a Part 5 community for voluntary transfer of land and tenant's interest

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?

Partially

If you wish, please provide further details, including any suggestions for improvements to the form. :

The form asks the community body to insert the address and description of the land which the Part 5 community body wishes to buy. This should also include a plan of the property if the community body does not intend to buy all of the owner's land.

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?

Not Answered

If you wish, please provide further details, including any suggestions for improvements to the form.:

No comment

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?

Partially

If you wish, please provide further details.:

This helps to make the process clear for both parties. However, it should not prevent the owner responding in other ways if they so wish.

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?

Not Answered

If you wish, please provide further details.:

No comment

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?

Not Answered

If you wish, please provide further details. :

No comment

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.

Not Answered

If you wish, please provide further details.:

No comment

4. Conduct of the ballot and reimbursement of expenses

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.

Not Answered

If you wish, please provide further details.:

No comment

5. Seeking to buy under part 5 - application form and content

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

Partially

If you wish, please provide further details. :

Our members are of the view that the inclusion of Yes/ No boxes in question 4.1 is unnecessary. If the community body does not think that the land is eligible, it is unlikely that they would require to complete the form. We suggest the following text at question 4.1 - "Please provide the basis on which you believe the land is eligible land under Part 5 of the LR(S)A 2016". The also applies to question 11.2, which could be deleted, and the focus moved to question 11.3.

14 Do you agree that the specifications for maps, plans and drawings should be similar to those for Part 3A of the 2003 Act?

Not Answered

If you wish, please provide further details of your view.:

No comment

6. Prohibitions on the transfer of land and other matters relating to land that a community are seeking to buy under part 5

15 Do you agree with the relevant dates and timescales 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?

Not Answered

If you wish, please provide further details. :

No comment

16 Do you agree with the prohibitions outlined above?

Not Answered

If you wish, please provide further details. :

No comment

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

Not Answered

If you wish, please provide further details. :

No comment

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

Not Answered

If you wish, please provide further details. :

No comment

7. Public notice of application

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

Not Answered

If you wish, please provide further details.:

No comment

8. Compensation and grants towards liabilities to pay compensation

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?

Not Answered

If you wish, please provide further details, including any suggestions you may have. :

No comment

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?

Not Answered

If you wish, please provide further details, including any suggestions for improvements to the form that you may have. :

No comment

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

Not Answered

If you wish, please provide further details, including any suggestions for improvements to the form that you may have. :

No comment

9. Regulations we propose not to make at present

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?

Not Answered

If you wish, please provide further details of your view.:

No comment

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 ?

No

If you wish, please provide further details of your view. :

Please see our response to question 4.

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?

Not Answered

Please feel free to comment on this, including, if you have any, suggestions for other types of community bodies that should be able to register as a Part 5 community body and the reason why they should be included. :

No comment

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?

Not Answered

If you wish, please provide further details of your view. :

No comment

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

Not Answered

If you wish, please provide further details of your view. :

No comment

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.

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. :

Our members are of the view that this is a pre-emptive question as there have been no entries made to the Register of Applications by Communities to Buy Land.

10. Other information you believe is relevant to this consultation

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

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Our members have noted that this consultation focuses on process and have raised a number of concerns around the interpretation and application of the policy. For example, it would be helpful to have further guidance on consideration of how benefit and harm will be judged by Scottish Ministers and how the public interest criteria will be applied, given the lack of a fixed definition.

Clarification of why it is necessary to distinguish between the transfer of land being likely to result in the sustainable development in relation to the land, rather than of the land, as part of what conditions must be met, would be helpful.

Our members are concerned about the potential for misuse of the Part 5 right to buy, particularly where a third-party purchaser is involved. Further clarification would be helpful on what type of entity the community body could nominate to acquire the land. Further clarification is also required on what protections will be in place for landowners, whose land is compulsorily acquired, to ensure that they are not deprived of their land to allow a third party to make a profit.

Our members are also concerned about the lack of protection afforded to bank securities/mortgage covenants etc. The Register of Controlling Interest, which will be a quarry of information for applicants, does not disclose securities and will not link to the Register of Sasines.

It is essential that the Part 5 community body put the land to the use for which they were granted the right to buy. Our members would like clarification on what remedies would be available to the former landowner or Scottish Ministers if the community body does not sustainably develop the land. Further clarification would also be helpful on what types of restrictions or conditions Scottish Ministers envisage would be put in place to protect the land and ensure it is only used for the permitted purpose. For example, some of our members have suggested that use could be made of economic development burdens.

The SPF is firmly of the view that an equivalent of the Crichton Down rules should apply to land acquired under Part 5, to allow the landowner to re-acquire the land for the price paid, if the land is not used for the permitted purpose. A forced sale should also allow for payment of future overage to the seller if the community body profits from an increase in the value of the land as a result of the sale. To do otherwise would imply that the seller was being financially punished for their previous decision not to sell (for whatever reason), with potential human rights law repercussions.

Further clarification is also required as to whether the value determined by the District Valuer will include marriage value, if the community body own adjoining land. Consideration also need to be given to land that is a potential ransom strip, which would enable the community body to develop adjoining land. Our members have questioned whether the valuation would take this into account following the principles in *Stokes v Cambridge Corporation* [1961] 180 E.G. 839.

Evaluation

7 Please help us improve our consultations by answering the questions below. (Responses to the evaluation will not be published.)

Matrix 1 - How satisfied were you with this consultation?:

Slightly dissatisfied

Please enter comments here.:

The Scottish Property Federation (SPF) is the voice for the property industry in Scotland. We include among our members: property investors, including major institutional pension and life funds; developers; landlords of commercial and residential property; and professional property consultants and advisers.

The survey format of the consultation makes it difficult to garner our members views and develop an industry response. An editable template or form would be a more efficient and effective means of collecting industry views.

Matrix 1 - How would you rate your satisfaction with using this platform (Citizen Space) to respond to this consultation?:

Slightly dissatisfied

Please enter comments here.:

As stated above the survey format of the consultation makes it difficult to garner our members views and develop an industry response. An editable template or form would be a more efficient and effective means of collecting industry views.