
SCOTTISH STATUTORY INSTRUMENTS

2020 No. 114

LAND REFORM

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

Made - - - - *1st April 2020*
Coming into force - - *26th April 2020*

The Scottish Ministers make the following Regulations in exercise of the powers conferred on them by sections 46(2)(b) and (e), 46(3)(b), 49(9)(a), and 61(1) and (3) of the Land Reform (Scotland) Act 2016⁽¹⁾ and all other powers enabling them to do so.

In accordance with section 126(3) of that Act a draft of this instrument has been laid before and approved by a resolution of the Scottish Parliament.

Citation and commencement

1. These Regulations may be cited as 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 and come into force on 26 April 2020.

Interpretation

2. In these Regulations—

“the Act” means the Land Reform (Scotland) Act 2016,

“Lands Tribunal” means the Lands Tribunal for Scotland,

“Part 5 community body” is to be construed in accordance with section 49(1) (Part 5 community bodies) of the Act,

“Register of Applications by Community Bodies to by Land” means the Register established under section 52 of the Act,

“restriction period” is to be construed in accordance with regulation 7.

Eligible land

Eligible land: types of occupancy or possession that are to be treated as a tenancy

3.—(1) The types of occupation and possession that are to be treated as a tenancy for the purposes of section 46(2)(a) (eligible land) of the Act are—

- (a) occupation or possession of tied accommodation,
- (b) occupation or possession under a licence agreement that is in the nature of a tenancy,
- (c) occupation or possession of residential accommodation other than under a tenancy—
 - (i) in connection with an individual’s employment or education, and
 - (ii) in a building or structure that is owned or occupied by the employer or education provider,
- (d) temporary occupation or possession offered, on a night-by-night basis, other than under a tenancy, to individuals who are homeless persons, and
- (e) occupation or possession by a liferenter.

(2) In this regulation —

“liferenter” means an individual who, by virtue of a liferent, has the right—

- (a) to receive for life the benefits of the property, and
- (b) to live in the building or structure, or on the land, for life,

“tied accommodation” means accommodation provided to an individual by their employer in the form of a service occupancy (that is, in return or part return for the performance by the individual of services under the employment agreement).

Excluded land: land pertaining to land occupied by an individual’s home

4. The following types of land are specified under section 46(2)(a) of the Act—

- (a) land that forms the curtilage of the individual’s home,
- (b) land that is used for one or more of the following purposes—
 - (i) the storage of possessions kept by the occupants of the individual’s home that are used for the maintenance, upkeep or subsistence of the individual’s home or its occupants,
 - (ii) the storage of vehicles that are used by the occupants of the individual’s home,
 - (iii) drainage, water supply or the provision of other services (such as media or electricity) for the individual’s home,
 - (iv) the growing of food which is principally for the subsistence of the occupants of the individual’s home,
 - (v) activities including recreation and leisure activities which are incidental to the use of the individual’s home,
 - (vi) the keeping of pets belonging to the occupants of the individual’s home,
 - (vii) access to the individual’s home, if the land is owned by the same person that owns that home.

Excluded land: land held or used by a Minister of the Crown or government department

5. Land that is held or used by a Minister of the Crown or government department within the meaning of paragraph 3 of Part 1 of schedule 5 of the Scotland Act 1998⁽²⁾ is excluded land for the purposes of section 46 of the Act.

Specified areas for defining a community

Specified types of area for defining a community

6.—(1) For the purposes of section 49(9)(a) of the Act, the types of area by reference to which a community may be defined are—

- (a) an electoral ward,
- (b) the area of a community council,
- (c) a postcode area,
- (d) a postcode district,
- (e) a postcode sector,
- (f) an island,
- (g) a locality delineated on the maps included in the Population Estimates for Settlements and Localities in Scotland, Mid-2016 published on 12 March 2018⁽³⁾, or
- (h) a settlement delineated on the maps included in the Population Estimates for Settlements and Localities in Scotland, Mid-2016 published on 12 March 2018.

(2) In this regulation—

“electoral ward” means a ward within the meaning of section 1 of the Local Governance (Scotland) Act 2004⁽⁴⁾,

“area of a community council” means an area of a community council established in accordance with Part IV of the Local Government (Scotland) Act 1973⁽⁵⁾,

“postcode area” means a sub-area of a postcode unit that—

- (a) is given a unique alphabetic coding to facilitate the delivering of mail, and
- (b) is identified by one or two alphabetic characters at the start of a postcode (a postcode being the reference by which a postcode unit is identified),

“postcode district” means a sub-area of a postcode area and is identified by the characters within the first half of a full postcode, and

“postcode sector” means a sub-area of a postcode district and is identified by the postcode district, the single space and the first character of the second half of the postcode unit,

“postcode unit” has the meaning given in section 49(11) of the Act.

(2) 1998 c.46.

(3) A National Statistics publication, available via the following weblink: <https://www.nrscotland.gov.uk/files//statistics/settlements-localities/set-loc-16/set-loc-2016-publication-updated.pdf>

(4) 2004 asp 9. Section 1 is amended by the Islands (Scotland) Act 2018 (asp 12), section 19.

(5) 1973 c.75. Section 51 is amended by the Local Government etc. (Scotland) Act 1994 (c.39), schedule 14. Section 53 is amended by the Local Government (Miscellaneous Provisions) (Scotland) Act 1981 (c.23), section 25 and schedules 2 and 4.

Restrictions on dealings while application pending

Restriction period

- 7.—(1) Regulations 8 and 9 apply during the restriction period being the period that—
- (a) begins on the date which an application made under section 54 (right to buy: application for consent) of the Act first appears on the Register of Applications by Community Bodies to Buy Land, and
 - (b) ends on the end date as determined in accordance with paragraph (2) or (3) as the case may be.
- (2) If the Part 5 community body is refused consent to exercise the right to buy, the end date is the earliest of—
- (a) the day after the expiry of the time period specified in section 69(7) (appeals to sheriff) of the Act, but only if no appeal is lodged within that period, or
 - (b) the day on which the sheriff issues a decision in an appeal under section 69 of the Act, but only if the outcome of the appeal is that the Part 5 community body is refused consent for the application under section 54.
- (3) If the Part 5 community body is given consent to exercise the right to buy, the end date is the earliest of—
- (a) where no third party purchaser is nominated, the expiry of the period specified in section 62(1) (confirmation of intention to proceed with purchase and withdrawal) of the Act, but only if the Part 5 community body does not, within that period, notify the Scottish Ministers, the owner of the land and, where the application is to buy a tenant's interest, the tenant, of its intention to proceed to buy the land or, as the case may be, the tenant's interest,
 - (b) where a third party purchaser is nominated, the expiry of the period specified in section 62(2) of the Act, but only if the third party purchaser or the Part 5 community body (or both the third party purchaser and the Part 5 community body) do not, within that period, notify the Scottish Ministers, the owner of the land and, where the application is to buy a tenant's interest, the tenant, of the intention to proceed to buy the land or, as the case may be, the tenant's interest,
 - (c) the day on which the owner of the land or, where the application is to buy the tenant's interest, the tenant, receives a copy of the Scottish Ministers' acknowledgement under section 62(5)(b) or (c) of the Act, but only if the matter acknowledged is—
 - (i) the Part 5 community body's withdrawal of its application under section 62(3)(a) or (4)(a) of the Act,
 - (ii) the Part 5 community body's withdrawal of the confirmation under section 62(3)(b) or (4)(b) of the Act that it intends to proceed, or
 - (iii) the nominated third party purchaser's withdrawal of the confirmation under section 62(4)(b) of the Act that it intends to proceed,
 - (d) the day on which the Part 5 community body or nominated third party purchaser's confirmation of intention to proceed made under section 62(1) or (2) in relation to the land or the tenant's interest is to be treated as withdrawn under section 64(7) (completion of transfer) of the Act,
 - (e) the day on which the consideration is paid in accordance with section 64(2) or (3) provided that, on that day, the owner is able to effect the grant of good and marketable title or, as the case may be, the tenant is able to assign the tenant's interest to the Part 5 community body or nominated third party purchaser,

- (f) the day on which, following the consignment of the consideration or estimate of what the consideration might be into the Lands Tribunal under section 64(5) of the Act, one of the following events occur—
- (i) the owner grants a good and marketable title to the Part 5 community body or, as the case may be, the nominated third party purchaser,
 - (ii) the tenant assigns the tenant's interest to the Part 5 community body or, as the case may be, the nominated third party purchaser,
 - (iii) the Part 5 community body or, as the case may be, the third party purchaser gives notice to the Lands Tribunal of its decision not to proceed to complete the transaction.

Certain dealings prohibited during restriction period

8.—(1) For the purposes of section 61(1) (effect of Ministers' decision on right to buy) of the Act, during the restriction period the persons specified in paragraph (2) are prohibited from carrying out the dealings referred to in paragraph (3) or (4).

(2) The specified persons are any person who, but for the prohibition in paragraph (1), would be authorised to carry out a transaction, action or dealing referred to in paragraph (3) or (4).

(3) The following dealings are prohibited during the restriction period where an application under section 54 of the Act is seeking consent to exercise a right to buy land—

- (a) any transfer of the ownership of the land that is subject to an application under section 54 of the Act or land that includes land that is subject to an application under section 54 of the Act,
- (b) any action taken with a view to a transfer of land prohibited by sub-paragraph (a).

(4) The following dealings are prohibited during the restriction period where an application under section 54 of the Act is seeking consent to exercise a right to buy a tenant's interest—

- (a) any assignation of the tenant's interest which is subject to an application under section 54 of the Act,
- (b) any action taken with a view to an assignation of the tenant's interest which is prohibited by sub-paragraph (a).

(5) For the purposes of paragraph (3)(b), action is taken with a view to transfer land when—

- (a) the land is advertised or otherwise exposed for sale by or with the authority of the owner of the land or a creditor in a standard security with the right to sell the land,
- (b) the owner or such a creditor, or a person acting on behalf of the owner or such a creditor, enters into negotiations with another party with a view to the transfer of the land,
- (c) the owner or such a creditor, or a person acting on behalf of the owner or such a creditor, proceeds further with any proposed transfer of the land which was initiated prior to the date on which the pending application appeared on the Register of Applications by Community Bodies to Buy Land.

(6) For the purposes of paragraph (4)(b), action is taken with a view to assign the tenant's interest when—

- (a) the tenant's interest is advertised or otherwise exposed for sale by or with the authority of the of the tenant or a creditor in a standard security with a right to sell the interest,
- (b) the tenant or such a creditor, or a person acting on behalf of the tenant or such a creditor, enters into negotiations with another with a view to assigning the tenant's interest,
- (c) the tenant or such a creditor, or a person acting on behalf of the tenant or such a creditor, proceeds further with any proposed assignation of the tenant's interest which was initiated

prior to the date on which the pending application appeared on the Register of Applications by Community Bodies to Buy Land.

Exceptions to regulation 8

- 9.—(1) Subject to paragraph (4), regulation 8 does not prohibit—
- (a) dealings with land subject to an application under section 54 of the Act of a type specified in paragraph (2), or
 - (b) dealings with the tenant’s interest in land subject to an application under section 54 of the Act of a type specified in paragraph (3).
- (2) The dealings with land referred to in paragraph (1) are—
- (a) a transfer otherwise than for value,
 - (b) a transfer in implement or pursuance of an order of a court (other than an order under section 24 of the Conveyancing and Feudal Reform (Scotland) Act 1970⁽⁶⁾ or a decree in an action for the division and sale of the land),
 - (c) a transfer between spouses or civil partners in pursuance of an arrangement between them entered into at any time—
 - (i) after they have ceased living together as spouses or civil partners, and
 - (ii) before the Scottish Ministers have received the application under section 54 of the Act,
 - (d) a transfer between cohabitants in pursuance of an arrangement entered into at any time—
 - (i) after they have ceased living together as if they were spouses or civil partners, and
 - (ii) before the Scottish Ministers have received the application under section 54 of the Act,
 - (e) a transfer between companies in the same group,
 - (f) a transfer to a statutory undertaker for the purpose of carrying on their undertaking,
 - (g) a transfer—
 - (i) implementing the compulsory acquisition of the land under an enactment,
 - (ii) by agreement, of land which could have been acquired compulsorily under an enactment,
 - (iii) implementing a right conferred by or under Part 2, 3 or 3A of the Land Reform (Scotland) Act 2003⁽⁷⁾,
 - (iv) implementing a right conferred by or under Part 5 of the Act,
 - (v) implementing missives for the sale and purchase of land, but only if, on the date that the missives were concluded, no application under section 54 of the Act was included in the Register of Applications by Community Bodies to Buy Land,
 - (vi) implementing an option to acquire land, but only if, on the date that the option was created, no application under section 54 of the Act was included in the Register of Applications by Community Bodies to Buy Land,

(6) 1970 c.35, amended by section 4(3) of the Mortgage Rights (Scotland) Act 2001 asp 11, paragraph 1(4) of the schedule of the Homelessness etc. (Scotland) Act 2003 asp 10, section 2 of the Home Owner and Debtor Protection (Scotland) Act 2010 asp 6 and section 152(2) of the Housing (Scotland) Act 2010 asp 17.

(7) 2003 asp 2. Part 3A of the Land Reform (Scotland) Act 2003 was inserted by the Community Empowerment (Scotland) Act 2015 asp 6.

- (vii) vesting the land in a person for the purposes of any enactment relating to sequestration, bankruptcy, winding up or incapacity or to the purposes for which judicial factors may be appointed, or
 - (h) a transfer of land in consequence of—
 - (i) the assumption, resignation or death of one or more of the partners in a firm, or
 - (ii) the assumption, resignation or death of one or more of the trustees of a trust.
- (3) The dealings with a tenant's interest referred to in paragraph (1) are—
- (a) an assignation otherwise than for value,
 - (b) an assignation in implement or pursuance of an order of a court (other than an order of court under section 24 of the Conveyancing and Feudal Reform (Scotland) Act 1970 or a decree in an action for the division and sale of the tenant's interest),
 - (c) an assignation from one spouse or civil partner to another in pursuance of an arrangement entered into at any time—
 - (i) after they have ceased living together as spouses or civil partners, and
 - (ii) before the Scottish Ministers have received the application under section 54 of the Act,
 - (d) an assignation from one cohabitant to another in pursuance of an arrangement entered into at any time—
 - (i) after they have ceased living together as if they were spouses or civil partners, and
 - (ii) before the Scottish Ministers have received the application under section 54 of the Act,
 - (e) an assignation between companies in the same group,
 - (f) an assignation to a statutory undertaker for the purpose of carrying out their undertaking,
 - (g) an assignation—
 - (i) implementing the compulsory acquisition of the tenant's interest under an enactment,
 - (ii) by agreement, of the tenant's interest which could have been acquired compulsorily under an enactment,
 - (iii) implementing a right conferred by or under Part 5 of the Act,
 - (iv) vesting the tenant's interest in a person for the purposes of any enactment relating to sequestration, bankruptcy, winding up or incapacity or to the purposes for which judicial factors may be appointed, or
 - (h) an assignation of the tenant's interest in consequence of—
 - (i) the assumption, resignation or death of one or more of the partners in a firm, or
 - (ii) the assumption, resignation or death of one or more of the trustees of a trust.
- (4) The exceptions mentioned in paragraph (2)(a),(e) or (h) and (3)(a), (e) or (h) do not apply if
- (a) the transfer or, as the case may be, assignation—
 - (i) is, or forms part of, a scheme or arrangement, or
 - (ii) is one of a series of transactions, and
 - (b) the main purpose or effect, or one of the main purposes or effects, of the scheme, arrangement or series of transactions is to avoid the requirements or consequences of regulation 8.

(5) In paragraphs (2)(f) and (3)(f), “statutory undertaker” is to be construed in accordance with section 214 (meaning of statutory undertaker) of the Town and Country Planning (Scotland) Act 1997(8).

Declaration required for transfers of land or assignments of tenancies during restriction period

10.—(1) This regulation applies to any transfer of land or assignment of a tenancy that is subject to an application under section 54 during the restriction period, unless the transfer or assignment is implementing a right conferred by or under Part 5 of the Act.

(2) The transferor or, as the case may be, assignor, must incorporate in the deed giving effect to the transfer or assignment a declaration—

- (a) specifying which exception under regulation 9(1) is being relied on as regards the prohibition in regulation 8, and
- (b) where the specified exception is an exception mentioned in regulation 9(2)(a), (d) or (g), or 9(3)(a), (d) or (g), stating that the exception is not disapplied by regulation 9(4).

Suspension of rights in and over land while transfer pending

Effect of right to buy on other rights

11. The following rights are suspended for the duration of the restriction period—

- (a) any right of pre-emption, redemption or reversion otherwise exercisable over land or, as the case may be, in relation to a tenant’s interest, which is subject to an application under section 54 of the Act, and
- (b) any right or interest in land conferred under Part 2 of the Land Reform (Scotland) Act 2003 (community right to buy) otherwise exercisable over land that is subject to an application under section 54 of the Act.

St Andrew’s House,
Edinburgh
1st April 2020

ROSEANNA CUNNINGHAM
A member of the Scottish Government

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision in connection with the right to buy land to further sustainable development under Part 5 of the Land Reform (Scotland) Act 2016 (“the 2016 Act”).

Under section 46(2)(a) of the 2016 Act, land on which there is a building or structure which is an individual’s home is excluded from the right to buy unless it is occupied by an individual under a tenancy. Regulation 3 sets out types of occupation or possession that are to be treated as a tenancy for the purposes of section 46(2)(a) of the 2016 Act. These are tied accommodation, occupation under a licence agreement that is in the nature of a tenancy, residential accommodation that relates to employment or education, temporary accommodation provided to homeless persons or occupation under a liferent.

Regulation 4 specifies types of land pertaining to an individual’s home which are excluded under the right to buy land to further sustainable development. This includes land that forms the curtilage of the home and land that is used for the following purposes: storage of possessions kept by the occupants of the home; drainage, water supply or the provision of other services such as media or electricity for the home; growing food which is principally for the subsistence of the occupants of the home; use for activities including recreation and leisure activities which are incidental to the use of the home; keeping pets belonging to the occupants of the home; and land used for access to the home, if the land is owned by the same person that owns that home.

Regulation 5 specifies, as excluded land, land that is held or used by a Minister of the Crown or a government department.

Regulation 6 specifies the ways in which a community may be defined for the purposes of section 49(9)(a) of the Act. That may be done by reference to various type of area, including an electoral ward or a community council area.

Regulation 7 sets out the period of time during which it is prohibited to transfer or take action with a view to transferring ownership of land or to assign an interest in a tenancy or take action with a view assigning such an interest. This period is referred to as “the restriction period” and applies to any person who would be authorised to carry out a prohibited transaction or action. The restriction period begins on the date on which an application made under section 54 of the Act first appears on the Register of Applications by Community Bodies to Buy Land and ends on the earliest of the dates specified in regulation 7(2) or (3), as the case may be.

Regulation 8 sets out what is prohibited during the restriction period. The prohibition applies to any transfer of land or assignation of a tenant’s interest that, in either case, forms the subject of an application under section 54 of the 2016 Act or action taken with a view to transferring such land or assigning such an interest. Regulation 8 makes further provision concerning what constitutes taking such action.

Regulation 9 sets out exceptions to the prohibitions in regulation 8. Where a transfer or assignation that is otherwise than for value, is between companies or is on the assumption or resignation or death of one more partners in a firm or trustees in a trust is part of a scheme of transfer or is one of a series of transactions, the main purpose or effect of which is to avoid regulation 8, it is not excepted under regulation 9.

Regulation 10 provides that when an owner is transferring their land or, as the case may be, a tenant is assigning their interest, during the restriction period, and is relying on regulation 9, certain declarations must be made.

Status: *This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

Regulation 11 provides that any right of pre-emption, redemption or reversion and any rights or interests in land conferred under Part 2 of the Land Reform (Scotland) Act 2003 are suspended from the date on which a pending application made under section 54 of the 2016 Act appears in the Register of Applications by Community Bodies to Buy Land. The suspension ends on the earliest of the dates specified in regulation 7(2) or (3), as the case may be.

Business and Regulatory Impact Assessment, Data Protection Impact Assessment and Equality Impact Assessments have been prepared and placed in the Land Reform Unit, Directorate for Agriculture and Rural Economy, Victoria Quay, Edinburgh, EH6 6QQ.