

Consultation on the Right to Buy Land to Further Sustainable Development

Consultation Analysis

February 2020

CONSULTATION ON THE RIGHT TO BUY LAND TO FURTHER SUSTAINABLE DEVELOPMENT – CONSULTATION ANALYSIS

This is the analysis for the consultation on the right to buy land to further sustainable development, which ran from 26 June to 19 September 2019. The consultation and published responses can be found at the following web address:

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

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EXECUTIVE SUMMARY

Overall there were 20 responses to this consultation, but not all respondents answered every question. Nineteen of the respondents agreed to their responses being published, though names of individuals were withheld where requested. For all questions except one, at least 50% of those who responded to the consultation agreed with the consultation proposals.

QUESTION	CONSULTATION RESULTS	FEEDBACK SUMMARY
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 pertaining to a home outlined above?	Yes: 65% No: 5% Partially: 30% Not Answered: 0%	Most respondents supported the proposals while calling for greater clarity around some issues such as how the exclusions relate to property and homes in urban areas and the impact on tenants. Others suggested further types of land that should be made ineligible, such as designated landscapes pertaining to a home.
2. Do you agree with the further types of land that are to be excluded from Part 5 right to buy?	Yes: 20% No: 10% Partially: 70% Not Answered: 0%	Several respondents questioned the necessity of excluding land held by a Minister of the Crown or UK Government Department, while as with question 1, others suggested further types of land that should be made ineligible. These included staff accommodation and Sites of Special Scientific Interest.
3. Do you agree with what we suggest constitutes a tenancy for the purposes of Part 5?	Yes: 50% No: 15% Partially: 20% Not Answered: 15%	While half of respondents agreed, a particular concern emerged about tied accommodation being treated as tenancies and therefore being open to Part 5 Right to Buy applications.
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: 55% No: 30% Partially agree: 5% Not Answered: 10%	Over half of respondents agreed with the proposals. Some respondents were keen not to see further types of tenant's interests excluded, while others suggested

		exclusions for agricultural tenancies and tenancies being put to productive economic use.
DEFINITION OF COMMUNITY AREA		
5. Do you agree with the Scottish Government's proposals for defining Part 5 community areas?	Yes: 65% No: 5% Partially agree: 20% Not Answered: 10%	Points were made about how geographic interests of communities of interest could be taken into account, and about the difficulties in choosing a scale at which to evaluate sustainable development. One respondent said more work needs to be done to ensure that certain communities, and especially Gypsy Traveller communities, are not excluded from being able to make use of Part 5 Right to Buy.
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?	Yes: 50% No: 10% Partially: 35% Not Answered: 5%	Several of the responses suggested that further information should be included in the form, including a plan of the area the community body is seeking, proof that the community body is compliant, details of what the community body wants to do with the land or tenant's interests, a description of the benefits of the transfer, and a section on why the community body consider the existing use of the land to be unsustainable.
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: 50% No: 10% Partially: 20% Not Answered: 20%	As with question 6, an emerging theme was the suggestion that the community body should include a plan of the land they are seeking to acquire. In addition it was suggested that the tenant's views should be sought, even though there is no formal requirement for this in the Land Reform (Scotland) Act 2016.
8. Do you agree with the proposal to provide an	Yes: 60% No: 10%	An emerging theme was the need to encourage dialogue,

<p>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?</p>	<p>Partially: 25% Not Answered: 5%</p>	<p>and for example one respondent said there is no option in the form for a land owner to ask for more information before taking a decision on how to respond, while another suggested the form shouldn't prevent land owners responding in other ways if they so wish.</p>
<p>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?</p>	<p>Yes: 70% No: 15% Partially: 5% Not Answered: 10%</p>	<p>An emerging theme was the need to provide more clarity to the land owner about the implications of choosing one or other of the options, or choosing not to respond.</p>
<p>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?</p>	<p>Yes: 50% No: 20% Partially: 15% Not Answered: 15%</p>	<p>An emerging theme was the need to ensure there is some flexibility for the land owner to respond to the community body, and there was a criticism that current proposals do not set out how alternative proposals could be explored.</p>
<p>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?</p>	<p>Yes: 55% No: 15% Partially: 20% Not Answered: 10%</p>	<p>Flexibility was an emerging theme, with a need to ensure opportunities for alternative proposals to be discussed and options for Government supported mediation were also suggested.</p>

CONDUCT OF THE BALLOT AND REIMBURSEMENT OF EXPENSES		
12. Do you 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: 60% No: 5% Partially: 25% Not Answered: 10%	The need to ensure that the initial costs of a ballot were not prohibitively expensive for some communities was an emerging theme here, though one organisation suggested that community bodies should bear the full ballot expenses without reimbursement.
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?	Yes: 60% No: 5% Partially: 25% Not Answered: 10%	Several responses focussed on the need to clarify definitions, including the definitions of sustainable development, public interest and harm. One respondent said the application requirement should be detailed and cover viability and business plans, while another said that specifications for maps could be onerous for some community groups.
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: 75% No: 5% Partially: 5% Not Answered: 15%	There was general support for the mapping specifications, with suggestions to extend the maps to show the likely impact on other communities and some concerns expressed about the likely costs to communities of producing maps.
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?	Yes: 55% No: 10% Partially: 20% Not Answered: 15%	Key themes here were the need to ensure the landowner is informed when the application is registered, the need to keep the focus on dialogue rather than tactics, concerns that transfers within the same company group would be exempt from the prohibitions, and risks to the landowner's ability to undertake particular actions in relation to land.
16. Do you agree with the prohibitions outlined above?	Yes: 60% No: 5% Partially: 15% Not Answered: 20%	There was general support for the proposals with one organisation saying they agreed there is merit in ensuring consistency in approach with

		land subject to a Part 3A application under the 2003 Act.
17. Do you agree with the exemptions to the prohibitions outlined above?	Yes: 55% No: 5% Partially: 20% Not Answered: 20%	An emerging theme here was the need to recognise and hold to account deliberate avoidance activity.
18. Do you agree with the Scottish Government's proposals with regard to suspension of certain rights over land, as outlined above?	Yes: 65% No: 15% Partially: 5% Not Answered: 15%	There was general support for the approach outlined in the consultation, and again the theme emerged of aligning Part regulations with those for Part 3A of the Land Reform (Scotland) Act 2003. One concern expressed was the potential to cut across existing arrangements.
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?	Yes: 75% No: 5% Partially: 5% Not Answered: 15%	Responses mostly focussed on the need to ensure any Part 5 applications were well advertised and consistency with Part 3A of the 2003 Act.
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?	Yes: 70% No: 5% Partially: 5% Not Answered: 20%	There was general support for these proposals and again the theme emerged of the need for consistency with Part 3A.
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: 65% No: 5% Partially: 0% Not Answered: 30%	Of the 14 responses to this question, only one disagreed with the proposals. There was little in the way of comment.
22. Are you content that the draft grant application form is fit and suitable for purpose?	Yes: 60% No: 5% Partially: 5% Not Answered: 30%	Of the 14 responses to this question, 12 were in agreement, and there was little in the way of comment. However one individual suggested there should be further clarity on how much effort should be made by

		communities to find money to pay compensation prior to making a claim under Part 5.
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?	Yes: 55% No: 10% Partially: 10% Not Answered: 25%	A developing theme here was agreement with not restricting the sort of structures that may be used as a home, while ensuring this could not be used as a way of avoiding right to buy applications.
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: 50% No: 35% Partially: 0% Not Answered: 15%	Within the responses there were calls for further types of tenancies to be excluded including tied accommodation and land which is connected to a land owner exercising statutory functions.
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?	Yes: 60% No: 5% Partially: 15% Not Answered: 20%	A developing theme was the need to ensure that the categorisation was not excluding others who could benefit from Part 5 right to buy.
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: 50% No: 20% Partially: 10% Not Answered: 20%	There were few comments on this question, which was agreed with by 10 respondents and partially agreed with by 2. One organisation suggested the requirement for 10 members could be a bar to smaller communities. However, primary legislation already allows Scottish Ministers to disapply the 10 member rule if they believe it is in the public interest to do so.
27. Do you agree there is no need, at present, to use the power under subsection 52(7)?	Yes: 70% No: 5% Partially: 0% Not Answered: 25%	Of the 15 responses to this question, there was only one disagreement. The only substantive comment was that the Scottish Government should keep this provision. under review.

INTRODUCTION

The Scottish Government published its Consultation on the Right to Buy Land to Further Sustainable Development on 26 June 2019 and it closed on 19 September 2019.

This was a technical consultation, consulting on the necessary regulations to bring into force Part 5 of the Land Reform (Scotland) Act 2016, the right to buy land to further sustainable development.

There were 29 questions in the consultation (the number of questions go up to 28, but question 5 has a 5A and 5B).

20 consultees submitted responses, 16 of these were from organisations and 4 from individuals. Not every respondent responded to every question, and the numbers and percentages who responded to each question, along with the numbers and percentage of those who agreed, disagreed or partially agreed with each question, are shown for each question.

One respondent chose not to have their response published, and names of individuals have been withheld where requested.

Most respondents commented on the technical aspect of the regulations, though one respondent used their response to object to community right to buy on principle.

Given the number of questions and the length of this analysis, the Scottish Government has chosen not to explain the issue behind each of the questions. Instead the reader is referred to the consultation itself, where a full explanation of the issues behind each question has been given.

EXCLUDED LAND, TENANCIES AND TENANT'S INTERESTS

Question 1

Do you agree with our proposals for excluding from the Part 5 right to buy the sorts of land pertaining to a home outlined above?

Option	Total	Percent of All
Yes	13	65.00%
No	1	5.00%
Partially agree	6	30.0%
Not Answered	0	0%

- This question was answered by all consultation respondents and the majority of respondents either agreed (65%) or partially agreed (30%) with the proposals, with one individual disagreeing.
- The James Hutton Institute said the regulations would benefit from the provision of more detail regarding how these exclusions relate to property and 'homes' in urban areas; and further definition and detail with regard to: (i) access roads to rural properties; and (ii) the phrase 'incidental leisure'.
- Some respondents expressed concern that the exclusions could be used purposely as a tactic to make land ineligible for a Part 5 application. For example, a land owner might claim that a deer forest or grouse moor were part of their home used for incidental leisure activities.
- In particular several respondents were concerned that the exclusion of land used to keep pets belonging to the occupants of the individual's home could be misused, for example by claiming that livestock were pets.
- The Development Trusts Association Scotland, while agreeing with the principle of excluding land which forms the curtilage of an individual's home, would like to see more clarity on how this is defined.
- Some respondents suggested that further types of land should be excluded. These included land which is a designated designed landscape pertaining to a home, either under National or Local Authority designation, listed buildings and land contained in the same conservation listing as the home.

Scottish Government Response

The Scottish Government's view is that no further types of land should be excluded from Part 5, as this could start to limit the amount and types of land available for communities to use to promote sustainable development. Scottish Ministers can only approve a transfer where it is in the public interest, and this will ensure that land which is designated or listed will be properly considered prior to any decision on transfer.

With regard to concerns about how the legislation might be used or misused, in developing our proposals we were mindful of the need to balance the legitimate

rights of individuals and families to make use of land they own for domestic related purposes, alongside the needs of communities to acquire land for sustainable development. We believe the balance we have achieved is proportionate, and that where grey areas of interpretation arise in any Part 5 application, these will be best considered on a case-by-case basis.

Question 2

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

Option	Total	Percent of All
Yes	4	20.0%
No	2	10.0%
Partially agree	14	70.0%
Not Answered	0	0%

- This question was answered by all consultation respondents. Four agreed with the proposals, 2 disagreed and 14 partially agreed.
- Several respondents questioned why it was necessary to exclude land held by a Minister of the Crown or UK government department.
- Some respondents also suggested 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 not be excluded under Part 5. One respondent said that 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*, and that Part 5 could be used to bring such land back into sustainable use.
- The NHS suggested that the following types of land should also be excluded:
 - (i) care in the community accommodation;
 - (ii) staff accommodation which is intrinsically linked to employment and ordinarily in close proximity to the employer's premises;
 - (iii) land which is connected to the landowner exercising its statutory functions; and
 - (iv) operational NHS facilities as required to exercise its statutory functions.
- Scottish Land and Estates (SLE) suggested that 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.
- SLE also suggested Ministers consider whether land that has been deemed to meet good agricultural and environmental condition, or if it is deemed to be eligible for the purposes of the Basic Payment Scheme, should also be excluded.
- Similarly, the NFUS was of the view that land relating to the Basic Payment Scheme and other schemes, such as agri-environment, should also be considered for exclusion from Part 5 Right to Buy.
- SLE also made the following suggestions for exemptions:

- (i) Sites of Special Scientific Interest;
 - (ii) Special Protection Areas;
 - (iii) Special Areas of Conservation; and
 - (iv) land that is part of an Agri-Environment Climate Scheme (or successor schemes).
- The Church of Scotland suggested that ecclesiastical buildings be excluded from Part 5 eligibility. They made the point that churches in Scotland are responsible for a large number of buildings, the great majority of which are active community hubs, and that ecclesiastical buildings are designed for ecclesiastical use and are often not readily adaptable to other uses. Were a congregation to be deprived of a building in which it may have worshipped for many decades, it would be very difficult to make suitable alternative provision.
 - The National Trust for Scotland said that consideration needs to be given to land that is already held for public benefit. This will include common good land and land owned by charities, where this is in pursuance of their public benefit purpose. Their preference was that where land is already held for public benefit (common good land, charitable ownership) it should be excluded from being bought under Part 5.

Scottish Government Response

In excluding land belonging to the Government of the United Kingdom our proposals follow the approach to excluded land in parts 2 and 3A of the Land Reform (Scotland) Act 2003. We see no need to take a different approach in this case.

With regard to suggestions for excluding further sorts of land, please see our comments for Question 1.

Question 3

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

Option	Total	Percent of All
Yes	10	50.0%
No	3	15.00%
Partially agree	4	20.0%
Not Answered	3	15.00%

- 17 consultation respondents answered this question, with 10 respondents agreeing with the consultation proposals; 3 respondents disagreed with the consultation proposals and 4 partially agreed.
- The NFUS, the NHS, SLE and the Scottish Churches Committee all disagreed with tied accommodation being treated as a tenancy. SLE also suggested that residential accommodation in connection with employment and education and in a building owned by the employer or education provider should not be treated as a tenancy.

- The Scottish Churches Committee were also concerned by the suggestion that the right to buy will apply to property serving as temporary accommodation for homeless people.
- The Law Society of Scotland said there was merit in there being consistency across the statute books in terms of the approach to tenancies. In respect of liferents, they note 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. They also noted the potential for difficulties in the event that an employer no longer owns the accommodation which is tied to the tenant's employment.

Scottish Government Response

Our proposals follow the approach to excluded land in parts 2 and 3A of the Land Reform (Scotland) Act 2003, and any transfer of land which includes a residential tenancy as part of a Part 5 transfer, could only be approved where Scottish Ministers decided it was in the public interest to do so. In doing so they would naturally consider the rights and needs of any parties involved, including the tenants, land owner, and any organisation or body with an interest in the tenancies, such as a church or the NHS.

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?

Option	Total	Percent of All
Yes	11	55.00%
No	6	30.0%
Partially agree	1	5.00%
Not Answered	2	10.0%

- 18 consultation respondents answered this question, 11 supporting the consultation proposal, 6 disagreeing with it and 1 partially agreeing with it.
- The James Hutton Institute, who agreed with the consultation proposals, said that it was important not to exclude any further types of tenant's interests. It is important to retain flexibility for promoting sustainable development.
- The James Hutton Institute also said it is important that tenant's rights are maintained through the enforcement of this part of the regulations. They said the accompanying guidance from the Scottish Government should highlight good practice in community engagement and encourage communities to consider the best interests of tenants who have existing rights to the land asset.
- The Law Society of Scotland suggested further consideration about whether it is desirable for an agricultural tenant's interest to be capable of being

purchased 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.

- The Scottish Property Federation (SPF) were 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. They said this could potentially interfere with an individual's livelihood.
- SPF also said there are 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, and that telecommunication providers' leases for their infrastructure such as mobile phone masts, telephone poles, etc. also need to be excluded. Pinsent Masons LLP made a similar point.
- Pinsent Masons LLP said that where there is a non-residential tenant in occupation putting the land to productive economic use they do not think that a Part 5 community body should have the right to acquire the tenant's right to lease of the land and potentially interfere with the individual's livelihood.

Scottish Government Response

For most cases, our approach follows that already outlined above, that no further types of tenant's interest should be excluded.

DEFINITION OF COMMUNITY AREA

Question 5A

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

Option	Total	Percent of All
Yes	13	65.00%
No	1	5.00%
Partially agree	4	20.0%
Not Answered	2	10.0%

- There were 18 responses to this question, with 13 respondents agreeing with the proposals for defining the area, 1 person disagreeing and 4 partially agreeing.
- While the James Hutton Institute noted that retaining a definition based on geographical area is in keeping with earlier legislation regarding community right-to-buy, e.g. the Land Reform (Scotland) Act 2003 and the Community Empowerment (Scotland) Act 2015, they also said there is a need to consider the influence and perspective of relevant communities of interest, how they may manifest in a geographical area, and how they can be part of place-based integration.
- They also made the point that the scale at which to assess or evaluate ‘sustainable development’, and whether a community’s sustainable development is inhibited or could be harmed, is complex, and that further guidance should address how a local community can represent, or undertake to deliver, the public interest, and how their interests can be conveyed to decision-makers within the Scottish Government.
- Several respondents suggested making it clear that the regulations clarify that a combination of areas may be used, e.g. a combination of one or more of these areas and one or more postcode units.
- The Development Trusts Association Scotland (DTAS) said that more generally, work needs to be done to ensure that certain communities aren’t excluded, in particular gypsy traveller communities, and communities comprised of large numbers of migrant workers.

Scottish Government Response

The Scottish Government’s view is that Part 5 community areas should be in keeping with those for parts 2 and 3A of the Land Reform (Scotland) Act 2016. This will provide a consistent approach for communities seeking to use right to buy, organisations that represent or advise them, and land owners and tenants with non-residential interests. The Scottish Government will continue to monitor all right to buy processes to see whether they are working well and whether any changes should be made to how right to buy communities are defined.

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.

- The James Hutton Institute suggested that, in addition to their response to Q. 5A, as far as possible the definition of a community is based on community views, and best fits with where people live and work. This definition should be created from the 'bottom up' rather than imposed from the 'top down'. The definition should be inclusive and illustrate connectivity, as communities are rarely discrete or homogeneous units.
- Community Land Scotland and DTAS both suggested considering school catchment areas as an option for defining a community area.
- One individual suggested the following definition as an option for defining a Part 5 area: "An area reasonably considered to represent the full locality of a distinct human community, for example by way of isolation with geographical boundaries other than water." The reasoning behind this was that the current proposals for an island community to be one optional definition, alongside a postcode sector, means there's a lack of level playing field. This is because some islands may actually be smaller parts of a human community than a postcode sector, and some non-island areas may be more isolated from their surroundings, in terms of terrain, access, shared services, etc. than some islands.
- Community Woodlands Association said that while they agree with the list of areas proposed, they suggest the regulations clarify that a combination of these areas may be used, as may for example a combination of one or more of these areas and one or more postcode units.
- The Centre for Scots Law at the University of Aberdeen said that now that communities of place can be delineated in ways that go beyond postcode units in relation to Part 2 and Part 3A, there is no logic in adopting a narrow approach here.

Scottish Government Response

See comments for 5A.

REQUESTS FROM A PART 5 COMMUNITY FOR VOLUNTARY TRANSFER OF LAND AND TENANT'S INTEREST

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?

Option	Total	Percent of All
Yes	10	50.0%
No	2	10.0%
Partially	7	35.00%
Not Answered	1	5.00%

- There were 19 responses to this question, with 10 responses agreeing to the proposals, 2 disagreeing and 7 people partially agreeing.
- The Law Society of Scotland said that 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.
- The Scottish Property Federation suggested the form should include a plan of the property if the community body does not intend to buy all of the owner's land.
- The NHS suggested that reference in the form to the community body providing proof that it is compliant should be more akin to the asset transfer request form, which specifically refers to the community body's constitution, articles of association or registered rules to be enclosed.
- The NHS also suggested including a description of what the community wants to do with the land/tenant's interest where applicable, a description of the benefits of the transfer and more information in respect of a third party purchaser and their connection with the community body.
- SLE consider the form could include a section on why the Community Body consider the current use unsustainable, and this might lead to conversations, dialogue and decisions which help resolve the issue.
- Both Community Land Scotland and Highlands and Islands Enterprise suggested adding in the guidance notes that the form should be signed by an office bearer or authorised signatory of the community body and to add a field to capture the designation of the signatory in relation to the community body making the application.

Scottish Government Response

Having considered the points raised in response to this question, we agree the description of the land must be clear, and believe that the form we have drafted as part of the regulations is fit for that purpose. It includes a requirement for the

community body to send a map to the land owner, on par with the requirement for the community body to provide such a map should they later make a formal Part 5 application to Scottish Ministers for transfer of the land.

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?

Option	Total	Percent of All
Yes	10	50.0%
No	2	10.0%
Partially	4	20.0%
Not Answered	4	20.0%

- There were 16 responses to this question. 10 responses agreed with the proposal for the draft form, 2 disagreed and 4 partially agreed.
- The Law Society of Scotland said that if 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.
- The Law Society of Scotland also suggested that a plan of the land they seek to acquire should be provided by the community body when they write to the tenant.
- SLE suggested that the tenant should be advised on how they wish to respond if they so wished, and the Scottish Churches Committee said that it is unrealistic to say that a tenant will be unaffected by a change of landlord, and that while there is no requirement in Part 5 of the 2016 Act for the tenant to respond to the community body's request, there is no good reason why the views of a tenant should not at least be sought.
- Community Land Scotland suggested that it would be useful to add a field to capture the designation of the signatory in relation to the community body making the application, and Highlands and Islands Enterprise suggested it might be helpful to add that the form should be signed by an office bearer or authorised signatory of the community body and to add a field to capture the 'position' of the signatory.

Scottish Government Response

We will insert a requirement for a map to be provided, in this case to the tenant. We will publish guidance to accompany the Part 5 regulations, and this will include guidance for any tenant who receives a request to transfer their interest to the community body.

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?

Option	Total	Percent of All
Yes	12	60.0%
No	2	10.0%
Partially	5	25.00%
Not Answered	1	5.00%

- There were 19 responses to this question, 12 of whom agreed with the proposal, 2 disagreed and 5 partially agreed.
- One respondent said that it is imperative the land owner is fully apprised of the process throughout and signposted to suitable and, where relevant, independent resources about the process.
- One respondent said that if the land owner does not consider that sufficient information has been provided there is no option in the form as drafted to request further information before making a decision as to how to respond.
- The James Hutton Institute said that the provision of an official form at Annex A would add value to the process if an invitation to initiate a dialogue was more clearly required and/or supported through the process of this form, rather than mentioned only in the notes at the end of the form.
- The Institute also said that more guidance is necessary regarding whether this form could or should be completed and returned by a landowner's representative (e.g. land agent or solicitor), and noted it might be more difficult to complete this form where trustee landowning-bodies have mixed views or differing timescales. Additionally they proposed that following community approach a meeting is facilitated between the land owner and the community group to discuss the proposed land acquisition.
- The Scottish Property Federation and another responding organisation said that the proposed form helps to make the process clear for both parties, but that it should not prevent the owner responding in other ways if they so wish.
- The NFUS agreed that the only valid form of response should be the form in Annex A, but that if a landowner does respond outwith this, there should be some mechanism for ensuring that they are fully understanding of the required process.

Scottish Government Response

The Scottish Government fully supports dialogue between communities and land owners regarding the potential transfer of land to a community, and this can be taken forward completely outwith any formal right to buy legislation. Where communities and land owners can work together on this voluntary basis, for mutually agreeable outcomes, this may often be the best approach.

However, it is important that when it comes to formal right to buy processes, there is a due process that is clear to all parties involved and avoids misunderstandings based on subjective interpretations. While we believe that most people will work with Part 5 in good faith, a clear and due process also helps guard against deliberate exploitation of ambiguities.

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?

Option	Total	Percent of All
Yes	14	70.0%
No	3	15.00%
Partially	1	5.00%
Not Answered	2	10.0%

- There were 18 responses to this question, 14 of which agreed with the options presented. 3 responses disagreed and 1 partially agreed.
- One organisation which agreed said they appreciated the attempt to make clear within option 1 that a written tick-box response regarding the transfer of land (in principle) should not be treated as an agreement to transfer land in and of itself. But they wondered if this could be made even clearer, perhaps by adding the words “*subject to the finalisation of relevant details as part of any transfer process*”.
- The NHS suggested there should be an option for the land owner to request further information before providing a response.
- The James Hutton Institute said that the responses to Options 1 and 3 are positive in tone, and that they would prefer that Option 2 made clear that this response is also a stepping stone in a process of dialogue.
- Scottish Land and Estates (SLE) suggested making it clear that while responding is a choice, it is in the land owner’s interest to do so, and the consequences for not responding should be set out. They also suggested that 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.
- Further, SLE suggested that it would be appropriate for a question to 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. This would allow the land owner to properly consider any impacts in the context of sustainability.
- The National Trust for Scotland said the form does not capture the real-world processes of property acquisition and disposal, or how negotiations are likely to be conducted.

Scottish Government Response

We would like to clarify that ticking Option 1 does not create a legal agreement to transfer land. It is an indication that the land owner agrees in principle to the idea, but any agreement would be subject to further discussion and agreement of terms and conditions, including agreement on a price for the land. The regulations have been drafted to ensure that where a land owner ticks box 1, but fails to take measures to transfer the land within the 6 month period, this would be counted as not agreeing to the request, and the community could proceed with a Part 5 application should it so wish.

In terms of the suggestions for the land owner to be able to seek further information or invite dialogue, we think these are good ideas. Our preference though is to reserve such matters for the Part 5 guidance, while keeping the right to buy process as a well delineated legal process.

Whether or not to respond to a Part 5 request is entirely a matter for the land owner, and while we always encourage genuine dialogue, we do not believe it is the Scottish Government's role to advise land owners on whether to respond and how to respond. Failing to respond is not an offence of any sort, and there are no penalties for failing to respond. Where a land owner is in doubt about how to respond, we recommend they seek trusted advice, for example from a lawyer.

It is for land owners to consider the likely impact of a Part 5 transfer request on them, their land and any businesses they have, including as the case may be, the wider sustainability of their businesses. We will consider if these should be mentioned in the Part 5 guidance.

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?

Option	Total	Percent of All
Yes	10	50.0%
No	4	20.0%
Partially	3	15.00%
Not Answered	3	15.00%

- There were 17 responses to this question, 10 of which agreed with the question. 4 responses disagreed and 3 partially agreed.

- One organisation said that they consider it 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.
- One organisation said that the way the form was worded, which was to ensure that any other form of land owner response to a request for land transfer from a part 5 community body would be invalid, could be problematic. For example, where a well-intentioned land owner or adviser copies the form and slightly amends it, thus making it invalid.
- The NHS said there should be flexibility in how the land owner is allowed to respond, while Scottish Land and Estates said they agreed with the premise, but that 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.
- The National Trust for Scotland said that the current proposals do not set out how alternative approaches are to be explored, nor how a community body can demonstrate these have been unsuccessful or exhausted; the pre-prepared responses therefore do not capture the full scope of community engagement.

Scottish Government Response

As already stated there is nothing to prevent a land owner writing to the community in any way they so wish, but our aim is to ensure a well delineated and due process that provides clarity as to the land owner's intentions.

We recognise that where a land owner and a community have a good working relationship, significant discussions outwith the formal Part 5 process may well take place. However such good relationships cannot always be assumed, and the Part 5 process must be clear enough to cover the many sorts of land owner-community relationships that exist, including those where a land owner chooses, for whatever reason, to have little or no involvement with the local community.

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.

Option	Total	Percent of All
Yes	11	55.00%
No	3	15.00%
Partially	4	20.0%
Not Answered	2	10.0%

- There were 18 responses to this question. 11 of these supported the proposal, 3 disagreed with it and 4 partially agreed with it.

- One organisation who agreed noted that the proposal was in accordance with the position of Scots contract law, whereby a qualified acceptance of an offer is simultaneously a rejection of the first offer and also a new offer.
- The NHS said that there should be an opportunity for alternative proposals to be discussed before the land owner is deemed not to have agreed to the proposals.
- The James Hutton Institute suggested that it is necessary to include a stage for Government-supported and facilitated dialogue between the landowner and community. They said that if a landowner does not agree to the community's proposals in full, there may be risks for both parties. For the community these risks are in terms of the momentum and timescale of their project, and for the landowner they are with regard to the consequences of the Part 5 regulations (i.e. potential for compulsory sale).
- Scottish Land and Estates said they generally supported the proposal, but that this should not preclude further discussions on a negotiated sale or an alternative option to be considered.
- On a similar theme, the National Trust for Scotland said that while the compulsory purchase power is intended to be used as a last resort, the current process does not cover how alternative approaches are to be explored, or shown to be unsuccessful. They said that the landowner may make an alternative proposal which they believe can meet the same sustainable development objectives, and asked if this would count as a refusal, or would Scottish Ministers be obliged to consider this as a counter-proposal? If so, how should this counter-proposal be recorded in the regulatory process?
- Another organisation said that compelling reasons would be needed to deviate from the (albeit young) existing right to buy frameworks and that those compelling reasons are not immediately apparent.

Scottish Government Response

As stated above, while the options define a due process which is necessary for clarity for all involved, the Scottish Government appreciates and encourages voluntary dialogue to resolve local issues, which may involve the options of land transfer.

CONDUCT OF THE BALLOT AND REIMBURSEMENT OF EXPENSES

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.

Option	Total	Percent of All
Yes	12	60.0%
No	1	5.00%
Partially	5	25.00%
Not Answered	2	10.0%

- There were 18 responses to this question. 12 responses agreed with the proposal, 1 disagreed and 5 partially agreed.
- One individual said that taxpayers' money should not be used to support a community's administration to take property that belonged to someone else.
- The NHS said that conducting the ballot is a requirement under the 2016 Act and community bodies should bear the cost of this without reimbursement.
- The James Hutton Institute said that the challenges facing urban communities in meeting the ballot procedures should be recognised and mitigated as far as possible.
- Development Trusts Association Scotland (DTAS) said that they were concerned about the implications that this has for lower income communities who may struggle to fund this up front. To address this, DTAS suggested that the Regulations make provision for expenses to be provided ahead of the ballot.
- DTAS also said that they were concerned that the current ballot provisions mean that it is for the community body to ascertain who is eligible to vote, which is a seriously onerous task, and requires them to access the electoral register in person (a particular issue for communities in remote areas).
- Community Land Scotland (CLS) also suggested the regulations make provision for ballot expenses to be provided to low income communities ahead of the ballot. So doing would avoid placing such communities at a potentially significant financial disadvantage as a consequence of having to fund relevant costs in advance of the ballot. They also shared the concern of DTAS that it will be a seriously onerous task for the relevant community body to ascertain who is eligible to vote.
- One organisation said that consistency across the various right to buy procedures had merit, and that 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. They said it is important that the ballot records are retained securely and in a manner compliant with the Data Protection Act 2018.

- One organisation said there is little reason to diverge from existing right to buy frameworks and that given the end point of this process could be compulsory purchase of the land, there needs to be complete clarity for the land owner.

Scottish Government Response

The Scottish Government view is that the Part 5 ballot process should match the Part 3A ballot process. Both are built on years of experience of community ballots under the 2003 Act, and we believe there is merit in consistency across the various right to buy procedures.

SEEKING TO BUY UNDER PART 5 - APPLICATION FORM AND CONTENT

Question 13

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

Option	Total	Percent of All
Yes	12	60.0%
No	1	5.00%
Partially	5	25.00%
Not Answered	2	10.0%

- There were 18 responses to this question, with 12 responses in agreement with the proposal for the application form. One response disagreed, and 5 partially agreed.
- One individual said that the definition of sustainable development seems very hazy - and hard for communities to present a clear picture when there is so little clarity amongst academics, Scottish Government policy makers and environmentalists as to what it means. They said the economic return of a wind farm may be easily modelled but asked to what extent is it "sustainable" if it is built on deep peat, destroys carbon, leaves cement foundations in place for eternity and impacts on the landscape of a "Wild Land" area or a National Park?
- They also expressed concern that a land owner leaving land in its natural state - which may have biodiversity benefits, also absorbing carbon through the soils or vegetation and trees and preventing flooding, may find their land being bought by communities under the guise of "sustainable development".
- Another individual said that the section on harm, asking for information on 'harm that is already occurring or that is very likely to occur if the proposed land transfer does not take place' could seem a little unclear. However, they said that hopefully in completing the form a satisfactory response to the question could be developed.
- The NHS said that the detail needs to be specific rather than general and include business plans, information as to the viability of the project and funding. They should set out what risks the community body has identified in respect of the transfer and how such risks would be dealt with.
- The James Hutton Institute had concerns about the specifications for maps being onerous for community groups, and also concerns about the difficulties for communities in identifying the owner of the land they wish to acquire. They also said there is a need for a clear and comprehensible definition of the 'public interest' within the application form and the accompanying guidance. They said that more information is necessary to inform community groups regarding the scale of the 'public interest' (i.e. broader than community scale) and the criteria for the assessment of whether a proposal is in the 'public interest'.
- Community Land Scotland (CLS) suggested adding a box for foreshore in the types of land in section 3.1. They noted with regard to section 5.6 of the form

that not all tenancies are registered, so it is perhaps better to ask this question with respect to the community body's awareness of a tenancy arrangement.

- HIE noted that if the community body wishes a third party to be the purchaser it's not clear whether one or two boxes should be marked with a 'x'. They said it would be easier to read if the reference to the third party purchaser followed on from, rather than preceded, the references to applicant body type. Like CLS they also suggested a box for the foreshore and suggested that section 5.6 refer to the community body's awareness of a tenancy arrangement.

Scottish Government Response

The Scottish Government will ensure the application form is drafted to capture the right amount and type of information, to allow assessment against the conditions for approval of transfer in Part 5. In terms of definitions, it is for communities to put forward their case as to why they believe the various conditions will be met, such as how the transfer will be in the public interest and promote sustainable development. Scottish Ministers will consider each application on its merits.

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?

Yes	15	75.00%
No	1	5.00%
Partially	1	5.00%
Not Answered	3	15.00%

- There were 17 responses to this question, with 15 responses agreeing with the proposal, 1 disagreeing and 1 partially agreeing.
- An individual suggested that the maps should extend to show what other communities lie outwith the development area and what the likely impact, e.g. in landscape terms, will be on these other communities.
- The James Hutton Institute suggested that the specifications should consider the likely costs to communities, their capacities and capability, and how advice or support services can be made available to help community bodies to meet the specifications, and the process as a whole. They suggested community bodies be given sufficient time to produce outputs that meet the specifications set for the mapping, including time required by communities to seek support and advice, and to produce the final maps. They also suggested consideration be given to aligning specifications with existing infrastructure, for which local experience and capability has already been developed, such as the process of land registration, or maps created for IACS reporting (IACS is the Integrated Administration and Control System, the process for ensuring a mapped register of fields against which agricultural subsidies are claimed).

**PROHIBITIONS ON THE TRANSFER OF LAND AND OTHER MATTERS
RELATING TO LAND THAT A COMMUNITY ARE SEEKING TO BUY UNDER
PART 5**

Question 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?

Option	Total	Percent of All
Yes	11	55.00%
No	2	10.0%
Partially	4	20.0%
Not Answered	3	15.00%

- There were 17 responses to this question. Eleven were in agreement with the dates and timescales, 2 disagreed and 4 partially agreed.
- The NFUS agreed with the relevant dates and timescales on the proviso that the landowner is made clearly aware in writing of when the application appears on the relevant register.
- Scottish Land and Estates (SLE) noted that 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 they have around the Part 3A regulations, SLE seek reassurance that the landowner will be notified before an application appears on the register.
- SLE said that while the proposed date makes sense, the owner or creditor as the case may be should not be held liable for the vagaries of the postal system. They said 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.
- The James Hutton Institute said that it is critical to the success of the Part 5 regulations that sufficient time is allowed for facilitated dialogue to take place between the community body and the landowner, and added that tactics used by either party to delay the process should be identified and overcome.
- Community Land Scotland (CLS) said they support modelling the Part 5 prohibitions on those for Part 3A.
- CLS also have concerns regarding the provision that restrictions would not affect transfers between companies in the same group. In addition they would like to see further guidance on how anti-avoidance provisions would operate, given the potential scope for a landowner to grant an option to a shell company.
- One organisation thought the prohibitions on transfer may be largely hypothetical, as it appears unlikely that any community body would seek to use the Part 5 provisions without first having a Part 2 registration in place (with the immediate prohibition on transfer that this provides).

- Another organisation noted 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 on 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. They said consideration should be given to safeguards to protect against communities seeking to use the provisions for purposes other than those intended.

Scottish Government Response

The Scottish Government believes it has the right dates and timescales, and that by the time an application has been submitted, there will already have been 6 months within which dialogue could have started. Scottish Ministers will take a dim view of any attempt to use the regulations for purposes other than those for which they are designed, and of any attempt to use tactics rather than genuinely engage with the process for its proper purpose.

Question 16

Do you agree with the prohibitions outlined above?

Option	Total	Percent of All
Yes	12	60.0%
No	1	5.00%
Partially	3	15.00%
Not Answered	4	20.0%

- There were 16 responses to this question, with 12 responses agreeing with the proposals for the prohibitions. One respondent disagreed and 3 partially agreed.
- The James Hutton Institute were concerned that a number of the exemptions to the prohibitions had the potential to stall the right to buy process and cause communities to have to restart the process. They cited the exemption for transfer other than for value, and a transfer in consequence of the assumption, resignation or death of one or more partners in a firm, or the assumption, resignation or death of one or more of the trustees of a trust.’ They ask how can a community body anticipate any of these likelihoods, and how can they overcome these barriers to the transfer of land for sustainable development.
- Scottish Land and Estates sought assurance that the prohibitions would not infringe on an owner’s right to sell a property or land prior to any formal request for a Part 5 is submitted.
- One organisation said that clarification on the interaction of the various rights to buy would be welcome, and another said they agree there is merit in

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

Scottish Government Response

The Scottish Government takes the view that, in general, there should be consistency with the prohibitions for Part 3A, and that the prohibitions are reasonable ones.

Question 17

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

Option	Total	Percent of All
Yes	11	55.00%
No	1	5.00%
Partially	4	20.0%
Not Answered	4	20.0%

- There were 16 responses to this question, and 11 of these agreed with the exemptions. One person disagreed and 4 partially agreed.
- The NHS suggested adding as an exemption a transfer required under statute due to the reorganisation of a public body.
- The James Hutton Institute said they would like to draw attention to the likely challenge of recognising, or holding to account, any evidence of avoidance. They suggested the Scottish Government bring forward further details setting out whose responsibility it would be to detect and document such avoidance of the requirements for, or consequences of, a Part 5 transfer.
- The Development Trusts Association Scotland (DTAS) expressed some concerns about the provision stating that the restriction would not affect transfers between companies in the same group or share purchase arrangements, saying this effectively gives corporate landowners ways to circumvent the legislation that are not available to individuals.
- DTAS were also concerned about the provisions stipulating that the existence of an option agreement would prevent an application being registered at all, given that a landowner could potentially grant an option to a shell company and circumvent the legislation that way. They said they appreciate there are anti-avoidance provisions in the legislation, but would like further guidance on how these would operate in practice.

Scottish Government Response

As with the prohibitions themselves, the Scottish Government takes the view that, in general, there should be consistency with the exemptions to the prohibitions for Part 3A. The exemptions to the prohibitions are reasonable ones and the Scottish Government does not believe they create grounds for significant avoidance activity.

The Scottish Government will of course monitor the use of the regulations and will be concerned if any evidence comes forward of any sharp practice.

Question 18

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

Option	Total	Percent of All
Yes	13	65.00%
No	3	15.00%
Partially	1	5.00%
Not Answered	3	15.00%

- There were 17 responses to this question, 13 of them being in agreement with the proposals, 3 disagreeing and 1 partially agreeing.
- The Scottish Churches Committee agreed with the proposals but only if this suspension applies to pre-emptions, redemptions or reversions created some time after the effective date of Part 5, when it comes into force. They said that to do otherwise would be counter to ECHR Protocol 1, Article 1 as it would be likely to deprive individuals of a “possession”. They said that an individual or organisation who sold a piece of land or building subject to a pre-emption, redemption or reversion has in the usual case forfeited the immediate receipt of the market value of the land on the basis that either the land will be returned to them for no consideration in due course or that they will have the opportunity to re-acquire it on the occurrence of certain specified events. They have, in effect, “lent” their property to another party for a specified duration and should be entitled to recover possession of it.
- The National Trust for Scotland said that the proposals here have the potential to cut across existing arrangements, and it is not clear how or if these may be resumed, or that the likely impact of such disruptions have been fully considered. They said by way of example there may be a right of pre-emption if a property is sold – would this be triggered if the property was part of a community compulsory purchase? They asked whether the right of pre-emption would continue in effect after the purchase? They said consideration also needs to be given to where land is being used as a security.
- Another organisation noted that the kind of rights to be suspended may themselves be subject to time limits. It should therefore be specifically provided that the running of any such time limits is also suspended during the standstill period occasioned by the Part 5 right to buy. The operation of negative prescription should also be suspended in any standstill period.

Scottish Government Response

In drafting the regulations, the Scottish Government will take account of the issues raised above, including the issue of pre-emption where this is relevant.

PUBLIC NOTICE OF APPLICATION

Question 19

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

Option	Total	Percent of All
Yes	15	75.00%
No	1	5.00%
Partially	1	5.00%
Not Answered	3	15.00%

- There were 17 responses to this question. Fifteen were in agreement with the proposals, and 1 respondent disagreed while 1 partially agreed.
- The James Hutton Institute suggest that displaying notices in relevant public venues, both at national and local scales be added to the mechanisms in the proposals. They said greater use can also be made of social media in the communication of Part 5 right-to-buy applications as this would increase the prospects of a wider local and national-level audience. They also said the proposals should take account of the scale of public interest in the Part 5 regulations, and recommend means by which the applications from a community body should identify and promote the public interest in conjunction with local community sustainable development.
- Scottish Land and Estates said that they would like to see both options, (a): a digital or paper edition of a newspaper circulating in an area where the community is located, and (b): a publicly accessible website included. They also said they would like to better understand the circumstances under which only one option would be used.
- The Scottish Churches Committee said that the advertisement should require to be in the newspaper with the largest circulation in the local area rather than just a newspaper circulating in the area.
- Another organisation noted that as in other areas consistency with the Part 3A 2003 Act regime seems sensible.

Scottish Government Response

Having considered the responses, the Scottish Government intends to allow for advertising in one or both of the following:

- (a) a digital or paper edition of a newspaper circulating in the area where the community is located,
- (b) a publicly accessible webpage or website maintained by Scottish Ministers for purposes which include making available for inspection any public notice of an application for consent under this regulation.

COMPENSATION AND GRANTS TOWARDS LIABILITIES TO PAY **COMPENSATION**

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?

Option	Total	Percent of All
Yes	14	70.0%
No	1	5.00%
Partially	1	5.00%
Not Answered	4	20.0%

- There were 16 responses to this question, with 14 responses agreeing to the proposals. One person disagreed and one person partially agreed to the proposals.
- One individual respondent objected to taxpayers’ money being used to fund the community to acquire somebody else’s property.
- An organisation said there was merit in ensuring consistency in approach with the claims process relevant for claiming compensation under Part 3A of the 2003 Act.
- The Scottish Churches Committee said that, to deal with the event that a community body may not have a registered address, provision should be made for a compensation request to be submitted to the community body’s registered office or other known correspondence address.
- In addition they said they were not clear about the circumstances which might entitle a community body to refuse a compensation request, as section 67 (of the 2016 Act) says that the applicant is entitled to recover the loss or expense which they have incurred.

Scottish Government Response

The Scottish Government has considered the responses and will draft regulations to govern compensation payments which are in line with those for existing community right to buy regulations.

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?

Option	Total	Percent of All
Yes	13	65.00%
No	1	5.00%
Partially	0	0%
Not Answered	6	30.0%

- There were 14 responses to this question, with 13 respondents agreeing with the proposals and 1 person disagreeing.
- Scottish Land and Estates said that it should be expressly set out that 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.

Scottish Government Response

The Scottish Government has considered the responses and will draft regulations to govern compensation grants to be in line with those for existing community right to buy regulations.

Question 22

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

Option	Total	Percent of All
Yes	12	60.0%
No	1	5.00%
Partially	1	5.00%
Not Answered	6	30.0%

- There were 14 responses to this question. Twelve responses agreed with the proposals, 1 disagreed and 1 partially agreed.
- One individual commented that the question asking the community body to provide details of all reasonable steps they have taken to obtain money in order to pay the compensation, seems ambiguous as to how much effort should be made to raise alternative funds and from what sources.

- They suggested the grant fund administrators provide further guidance on this, and asked if the community body is expected to seek, possibly fairly exhaustively, other grant funding options before approaching the grant fund.

Scottish Government Response

The Scottish Government has considered these responses and is content to draft a grant form in line with that for Part 3A.

REGULATIONS WE PROPOSE NOT TO MAKE AT PRESENT

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?

Option	Total	Percent of All
Yes	11	55.00%
No	2	10.0%
Partially	2	10.0%
Not Answered	5	25.00%

- There were 15 responses to this question. Eleven responses were in agreement, 2 disagreed and 2 partially agreed.
- The James Hutton Institute suggested that a focus on inclusivity is maintained, while recognising possible avoidance strategies.
- Community land Scotland said they were sympathetic to arguments against restricting the definition of what constitutes a 'home' in the interests of promoting social diversity. However, they advocate that the Regulations be framed so as to ensure that structures on such land are genuinely being used as homes rather than as structures to circumvent the Part 5 provisions.
- In the interests of social diversity, Highlands and Islands Enterprise agreed with the rationale of not restricting the definition of what a home could be. However, they noted that on page 20 of the consultation document there is reference to caravans as a home. They said that while it is true that a caravan can provide a home, this is a moveable structure rather than a heritable asset. They asked whether a caravan could be placed on land to circumvent the Part 5 provisions, and by way of example asked if this could apply to other non-permanent structures such as a timber framed chalet or a serviced 'glamping pod'.
- They also said that a further complication is that the caravan and the land on which it is located need not be owned by the same person. Thus, the landowner could have a homeowner (caravan owner) as a tenant; the tenancy relating to the land rather than the caravan/home. They suggested consideration could be given to whether it is advisable to state that only heritable assets could constitute a home with respect to Part 5.

Scottish Government Response

The Scottish Government's view remains that set out in the consultation, which is that there is no need at present to use the regulations to further define structures that are or may be treated as a home.

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 ?

Option	Total	Percent of All
Yes	10	50.0%
No	7	35.00%
Partially	0	0%
Not Answered	3	15.00%

- There were 17 responses to this question. Ten responses supported the proposals, and 7 disagreed with it.
- The NHS proposed the following types of tenancy to be ineligible: (i) care in the community accommodation; (ii) staff accommodation which is intrinsically linked to employment and ordinarily in close proximity to the employer's premises; (iii) land which is connected to the landowner exercising its statutory functions; and (iv) operational NHS facilities as required to exercise its statutory functions.
- The Scottish Land and Estates said that the inclusion of tenant's interests under a tied property should be included.

Scottish Government Response

The Scottish Government recognises concerns around various other types of tenancy being eligible for Part 5 right to buy. However it believes these, if they ever arise, are best addressed on a case by case basis at the time of a Part 5 application, where they would be considered against the sustainable development conditions in section 56 of the 2016 Act.

Question 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?

Option	Total	Percent of All
Yes	12	60.0%
No	1	5.00%
Partially	3	15.00%
Not Answered	4	20.0%

- There were 16 responses to this question. Twelve responses were in agreement with the types of community body proposed, 1 response disagreed and 3 partially agreed.
- The James Hutton Institute agreed but suggested an in-depth review to ensure this categorisation is not excluding others who could benefit from the Part 5 regulations.
- Development Trusts Association Scotland said that, as they had already noted, they would like to see provisions that ensure certain communities aren't excluded from legislation, in particular gypsy traveller communities and communities with a large number of migrant workers.
- Community Land Scotland agreed with the types of community body listed in the consultation document. However, they said there is merit in widening the provisions applying to a third party purchaser. They said that currently such a body must represent a geographic community of place, be community-led and community controlled. In their view, these stipulations are excessively restrictive and prevent the possibility of non-community controlled organisations from acting as third party purchasers on behalf of communities. As such, they advocated re-consideration of provisions relating to third party purchasers so as to remove that anomaly.
- Highlands and Islands Enterprise agreed with the types of body listed. However, they also considered the provisions for a third party purchaser to be very restrictive as this body also has to represent a geographic community and be community-led and community controlled. They said it may be beneficial to enable non-community controlled organisations such as a housing association or other social or community enterprises, for example The Highlands Small Community Housing Trust, to be a third party purchaser.
- The Community Woodlands Association agreed with the proposed types of body that may register for Part 5, but said it was not clear if community bodies must explicitly mention Part 5 in their constitution.
- The Centre for Scots Law at the University of Aberdeen saw no compelling need to diverge from the existing right to buy frameworks, subject to the inevitable divergence that comes from the ability to nominate a third party body.

Scottish Government Response

Having considered the consultation responses to this question, the Scottish Government believes the best approach is to limit the types of community body to those mentioned in the consultation. These diverge from the Part 3A community bodies mainly by the ability of a community body to nominate a third party body to seek to acquire the land and tenant's interests as the case may be.

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?

Option	Total	Percent of All
Yes	10	50.0%
No	4	20.0%
Partially	2	10.0%
Not Answered	4	20.0%

- There were 16 responses to this question. 10 agreed there was no need to use the powers in section 49(8), 4 disagreed and 2 partially agreed.
- The James Hutton Institute said that they believe a modification is required, otherwise allowance is not made for community bodies with fewer than 10 members. They said this was a likely scenario across many small rural communities.
- Development Trusts Association Scotland questioned the need for a community body's constitution to state that they can use Part 5, as it should be sufficient for a community body to have a general power to acquire property. They said this was particularly so given that this is not required if the body is nominating a third party, and it is not clear why organisations not nominating a third party should be subject to more stringent criteria than those who are.

Scottish Government Response

The Scottish Government has considered the responses to this question and has no plans to use the regulation making powers in section 49(8). Subsection 49(6) of the 2016 Act makes clear that Scottish Ministers may, if they think it in the public interest to do so, disapply the requirement for there to be at least 10 members in the community body.

Question 27

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

Option	Total	Percent of All
Yes	14	70.0%
No	1	5.00%
Partially	0	0%
Not Answered	5	25.00%

- There were 15 responses to this question, with 14 responses in agreement and 1 in disagreement.
- The only substantive comment was by the James Hutton Institute, which suggested the Scottish Government keep this provision under review.

Scottish Government Response

The Scottish Government will proceed as planned and not make use of subsection 52(7) of the 2016 Act.

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.

- The James Hutton Institute said that access to the register should be made free for all users, especially community groups where the cost-burden may be unsustainable or exclusionary (e.g. where the community group must register an interest in a fragmented landholding with multiple parcels).
- The Scottish Property Federation said that their members are of the view that this question is premature as there have been no entries made to the Register of Applications by Communities to Buy Land.
- Pinsent Masons LLP said that there have been no entries made in RoACBL yet so they have not experienced issues on access to the register.

Question 29

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

9 respondees, made up of 6 organisations and 3 individuals, took this opportunity to make further comment. These are best read in their own words by looking at the responses on the Scottish Government's website. Organisations which responded to this question are:

- The NHS
- James Hutton Institute
- Scottish Property Federation
- Pinsent Masons LLP
- Community Land Scotland
- Community Woodlands Association

In addition some individuals made responses to this question, and they were:

- Philip Graves
- Adam Pellant
- Response 766214085 – name withheld



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