

LAND REFORM (SCOTLAND) ACT 2016

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 4 – Engaging Communities in Decisions Relating to Land

Section 44 – Guidance on engaging communities in decisions relating to land

177. Subsection (1) imposes a duty on Ministers to produce guidance about engagement with communities in decisions relating to land that may affect communities.
178. Subsection (2) requires the Scottish Ministers, in producing guidance, to have regard to the desirability of—
- promoting respect for, and observance of, relevant human rights,
 - promoting respect for such internationally accepted principles and standards for responsible practices in relation to land as the Scottish Ministers consider to be relevant,
 - encouraging equal opportunities (within the meaning of Section L2 of Part 2 of schedule 5 of the Scotland Act 1998),
 - furthering the reduction of inequalities of outcome which result from socio-economic disadvantage, and
 - furthering the achievement of sustainable development in relation to land.
179. Subsection (3) defines “relevant human rights” in subsection (2) as such human rights as the Scottish Ministers consider to be relevant to the preparation of the guidance. In considering what human rights are relevant, Ministers may consult with the Scottish Commission for Human Rights and such other persons or bodies as they consider appropriate. “Human rights” is defined in subsection (11), see below.
180. Subsection (4) defines “internationally accepted principles and standards for responsible practices in relation to land” in subsection (2) to include the principles and standards contained in the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the context of National Food Security (subsection (2)(d)). Other internationally accepted principles and standards for responsible practices in relation to land, including those which may come into effect in the future, also fall within this definition.
181. Subsection (5) sets out certain information that must be included in the guidance.
182. Subsection (6) requires the Scottish Ministers to consult such persons as they consider appropriate prior to issuing the guidance.
183. Subsection (7) requires the Scottish Ministers to lay the first guidance before the Scottish Parliament.

*These notes relate to the Land Reform (Scotland) Act 2016
(asp 18) which received Royal Assent on 22 April 2016*

184. Subsection (8) requires the Scottish Ministers to prepare and lay before the Scottish Parliament reports assessing the effectiveness of the guidance issued under section 44(1) and setting out Ministers' views on any further steps which should be taken to improve the effectiveness of the guidance.
185. Subsection (9) requires that the first report on the guidance is laid before the Scottish Parliament no later than 3 years after the date on which the first guidance is issued.
186. Subsection (10) requires that subsequent reports on the guidance are to be laid before the Parliament no later than 5 years after the date on which the last such report was laid.
187. Subsection (11) defines "human rights" in section 44 as the Convention rights (within the meaning of section 1 of the Human Rights Act 1998), and other human rights contained in any international convention, treaty or other international instrument ratified by the United Kingdom, including the International Covenant on Economic, Social and Cultural Rights. This definition includes other human rights which could be relevant to the preparation of the guidance such as rights in the UN Convention on the Rights of Persons with Disabilities and the UN Convention on the Rights of the Child.