

LAND REFORM (SCOTLAND) ACT 2016

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 5 – Right to Buy Land to Further Sustainable Development

Key terms

Section 45 – Meaning of “land”

- 188. Subsection (1) provides that land for the purposes of Part 5 includes bridges and other structures built on or over land, inland waters, canals, and the foreshore (which is the land between the high and low water marks of ordinary spring tides).
- 189. It also provides land for the purposes of Part 5 includes salmon fishings in inland waters or mineral rights that are owned separately from the land in respect of which they are exigible but that land also does not include any other separate tenements owned separately from the land in respect of which they are exigible.
- 190. Subsection (2) sets out that “mineral rights” does not include rights to oil, coal, gas, gold or silver.
- 191. Subsection (3) sets out the meaning of “inland waters” in Part 5.

Section 46 – Eligible land

- 192. This section defines the land which is to be classed as eligible for the purposes of the right to buy in Part 5.
- 193. Subsection (1) provides that all land is eligible for the purposes of Part 5 except for land which is defined as “excluded land”.
- 194. Subsection (2) sets out the meaning of “excluded land”. Excluded land includes: land on which there is an individual’s home, except where the home is occupied by an individual under a tenancy; land pertaining to an individual’s home as may be set out in regulations; croft land (as defined in section 68 of the Land Reform (Scotland) Act 2003); land which is owned by the Crown by virtue of it having vested as *bona vacantia* (because no owner exists or can be identified) or it having fallen to the Crown as *ultimus haeres* (because no heir to the previous owner exists or can be identified); and land of such other descriptions that Ministers may set out in regulations.
- 195. Subsection (3) provides that Ministers may make regulations setting out the buildings or structures that are or are to be treated as an individual’s home and the types of occupation and possession that are or are to be treated as a tenancy.

Section 47 – Eligible land: salmon fishings and mineral rights

- 196. Subsection (1) sets out circumstances in which a Part 5 community body may apply to buy eligible land consisting of salmon fishings or mineral rights only. This can only be done where the Part 5 community body is also applying, or has applied, to buy the land

to which the fishings or minerals relate, or the application is made during the relevant period.

197. Subsection (2) sets out that an application can only be made during the relevant period if the Part 5 community body has applied to buy the land that in respect of which the salmon fishings and mineral rights are exigible and the Part 5 community body, or third party purchaser nominated by the Part 5 community body, has confirmed its intention to proceed with buying that land or has already bought and retained the land in accordance with Part 5.
198. Subsection (3) sets out the meaning of “relevant period”. This is defined as beginning with the date on which the Scottish Ministers consented to the application for the Part 5 right to buy. It ends either with (a) where the Part 5 community body, or third party purchaser as the case may be, does not proceed to exercise its right to buy that related land, on the date on which it withdraws its intention to proceed, or the date of its failure to complete its purchase; or (b) where the Part 5 community body, or third party purchaser as the case may be, has bought the land in respect of which the salmon fishings or mineral rights are exigible, within one year (in relation to salmon fishings), or within five years (in relation to minerals right) after the date on which the land was so bought.

Section 48 – Eligible land: tenant’s interests

199. This section sets out the circumstances in which the right to buy may be exercised in relation to the interest of a tenant over tenanted land.
200. Subsection (1) states that the provisions about a tenant’s interest apply where a tenancy has been created over land at least part of which is eligible land provided that it is not a croft tenancy, tenancy of a dwelling-house or such other type of tenancy that the Scottish Ministers may set out in regulations.
201. Subsection (2) specifies definitions of “principal subjects” and “tenanted land”.
202. Subsection (3) specifies the situations in which a Part 5 community body may apply to buy a tenant’s interest in land. An application may be made if the Part 5 community body has made a simultaneous application to buy the land, or part of the land, to which the tenancy relates, it has made a prior application to buy the land on which Ministers have not yet made a decision or the application is made during the relevant period (and certain conditions are met).
203. Subsection (4) provides that the interest that the Part 5 community body may apply to buy under section 54 is the interest of the tenant over so much of the tenanted land as is comprised within the principal subjects.
204. Subsection (5) specifies the conditions under which the Part 5 community body can apply to purchase a tenant’s interest during the relevant period. The conditions are that the Part 5 community body, or third party purchaser who was nominated by a Part 5 community body has confirmed to Scottish Ministers its intention to proceed to buy the land, or part of it, to which the tenancy relates or has already bought and retained that land in accordance with Part 5.
205. Subsection (6) defines the “relevant period”. This is defined as beginning with the date on which Scottish Ministers approved the application for the Part 5 right to buy in relation to the land, or part of it, to which the tenancy relates. It ends either with (a) where the Part 5 community body, or third party purchaser as the case may be, does not proceed to exercise its right to buy, the date on which it withdraws its confirmation of intention to proceed, or the date of its failure to complete the purchase; or (b) where the Part 5 community body or third party purchaser has bought and retained the land, five years from the date where the Part 5 community body, or third party purchaser as the case may be, bought the land.
206. Subsection (7) specifies that reference to a tenant includes sub-tenant.

Section 49 – Part 5 community bodies

207. Subsection (1) sets out the meaning of a Part 5 community body. Where a body applies under section 54 to exercise the right to buy itself then a Part 5 community body is a body that falls within subsection (2), (3) or (4). Where a body applies under section 54 but nominates a third party purchaser to exercise the right to buy then a Part 5 community body is a body falling within subsection (5). Ministers may also make regulations setting out additional descriptions of bodies that are to be Part 5 community body.
208. Subsection (2) sets out that a company limited by guarantee whose articles of association meet certain requirements may be a Part 5 community body for the purpose of subsection (1)(a).
209. Subsection (3) sets out that a Scottish charitable incorporated organisation whose constitution meets certain requirements may be a Part 5 community body for the purpose of subsection (1)(a).
210. Subsection (4) sets out that a community benefit society whose registered rules meets certain requirements may be a Part 5 community body for the purpose of subsection (1)(a).
211. Subsection (5) specifies that a body corporate whose written constitution meets certain requirements may be a Part 5 community body for the purpose of subsection (1)(b).
212. Subsection (6) provides that, in terms of subsection (2), (3) and (4), Ministers may dispense the requirement that there must be not fewer than 10 members.
213. Subsection (7) provides that a body is not a Part 5 community body until Scottish Ministers have confirmed in writing that the main purpose of the body is consistent with furthering the achievement of sustainable development.
214. Subsection (8) provides that the Scottish Ministers may by regulations modify subsections (2), (3), (4), (5) and (6).
215. Subsection (9)(a) sets out that the community of a body is defined by reference to a postcode unit (or units) or a type of area which Ministers set out in regulation. A community may also be defined with reference to both of these things.
216. Subsection (9)(b) provides that the community includes people who are resident in that postcode unit or in one of the postcode units or other areas set out by Ministers in regulations. In addition to being resident, members of the community must also be entitled to vote at local government elections in a polling district that encompasses that postcode unit or postcode units or the alternative areas set out by Ministers in regulations. The Scottish Ministers may make regulations specifying unit or type of area included.
217. Subsection (10) provides that a Part 5 community body which is a company limited by guarantee may specify in its articles of association that, if the company is winding up, its property may only pass to another person if that person is a charity.
218. Subsection (11) provides definitions for the purposes of this section.

Section 50 – Provisions supplementary to section 49

219. Section 50 sets out the constraints which apply to a Part 5 community body after it has acquired land under Part 5.
220. Subsection (1) provides that a Part 5 community body, which has bought land under Part 5 and still owns that land, must notify Scottish Ministers as soon as possible after any modification it has made to its memorandum, articles of association, constitution or registered rules. Subsection (2) allows Ministers to acquire the land compulsorily

*These notes relate to the Land Reform (Scotland) Act 2016
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if a Part 5 community body, which has bought land under Part 5, would no longer be entitled to buy the land.

- 221. Subsection (3) provides that Ministers cannot exercise their powers under subsection (2) to acquire the land compulsorily on the basis that the land is no longer eligible land.
- 222. Subsections (4) and (5) provide that Ministers may set out in regulations provisions relating to the compulsory acquisition of land under this section.

Section 51 – Interpretation of Part

- 223. **Section 51** sets out some matters of interpretation for Part 5 of the Act and subsection (1) and (2) clarify terms “Lands Tribunal” and “a creditor in a standard security with a right to sell land”.
- 224. Subsections (3) and (4) provide that public or local holidays should not be taken into account when calculating time periods in Part 5, except for the six-month period of completion for the right to buy referred to in section 64(2), the 28-day period for lodging an appeal to the sheriff (section 69(7)) and the 21-day period for lodging an appeal to the Lands Tribunal on the valuation of land or a section 66 determination (section 70(3)).