Land Reform (Scotland) Act 2016

2016 asp 18

PART 5 S

RIGHT TO BUY LAND TO FURTHER SUSTAINABLE DEVELOPMENT

Key terms

45 Meaning of "land" S

(1) In this Part "land"—

(a) includes—

(i) bridges and other structures built on or over land,

(ii) inland waters,

(iii) canals,

(iv) the foreshore, being the land between the high and low water marks of ordinary spring tides, and

(v) salmon fishings in inland waters or mineral rights which are owned separately from the land in respect of which they are exigible,

(b) does not include land consisting of any other separate tenement which is owned separately from the land in respect of which it is exigible.

(2) In paragraph (a)(v) of subsection (1) "mineral rights" does not include rights to oil, coal, gas, gold or silver.

(3) In this Part "inland waters" has the meaning given by section 69(1) of the Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003.

Commencement Information

I1 S. 45 in force at 26.4.2020 by S.S.I. 2020/20, reg. 2, **sch.**

46 Eligible land S

(1) The land which may be bought under this Part ("eligible land") is any land other than excluded land.

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(2) In subsection (1) "excluded land" means—

(a) land on which there is a building or other structure which is an individual's home, unless the building or structure is occupied by an individual under a tenancy,

(b) such land pertaining to land of the type mentioned in paragraph (a) as the Scottish Ministers may by regulations specify,

(c) croft land within the meaning of section 68(2) of the Land Reform (Scotland) Act 2003,

(d) land which is owned or occupied by the Crown by virtue of its having vested as *bona vacantia* in the Crown, or its having fallen to the Crown as *ultimus haeres*,

(e) land of such other descriptions or classes as the Scottish Ministers may by regulations specify.

(3) The Scottish Ministers may by regulations make provision about—

(a) the buildings and structures which are, or are to be treated as, a home for the purposes of subsection (2)(a),

(b) the types of occupation and possession of land that are, or are to be treated as, a tenancy for the purposes of subsection (2)(a).

Commencement Information

I2 S. 46 in force at 26.4.2020 by S.S.I. 2020/20, reg. 2, **sch.**

47 Eligible land: salmon fishings and mineral rights S

(1) A Part 5 community body (as defined in section 49) may apply, under section 54, to buy eligible land which consists of salmon fishings or mineral rights only—

(a) where—

(i) it is simultaneously applying, or

(ii) it has made an application in respect of which the Scottish Ministers have not made a decision,

to buy the land to which such fishings or rights relate, or

(b) during the relevant period.

(2) Such an application may be made during the relevant period only where the Part 5 community body or, as the case may be, the third party purchaser (as defined in section 54(1)(b))—

(a) has provided confirmation under section 62(1) or, as the case may be, (2) of its intention to proceed to buy the land to which the fishings or rights relate, or

(b) has bought and retained that related land in accordance with the provisions of this Part.

(3) In this section "relevant period" means the period beginning with the date on which the Scottish Ministers consented to the application under section 54 to buy the land to which the fishings or rights relate and ending—

(a) where the Part 5 community body or, as the case may be, the third party purchaser does not proceed to exercise its right to buy that related land, on the date—

(i) on which it withdraws, under section 62(3)(b) or, as the case may be, (4)(b), its confirmation so to proceed, or

(ii) of its failure otherwise to complete the purchase, or

(b) where the Part 5 community body or, as the case may be, the third party purchaser has bought and retained that related land—

(i) in relation to salmon fishings, 1 year, or

(ii) in relation to mineral rights, 5 years,

after the date on which the Part 5 community body or the third party purchaser bought that land.

Commencement Information

I3 S. 47 in force at 26.4.2020 by S.S.I. 2020/20, reg. 2, **sch.**

48 Eligible land: tenant's interests S

(1) This section applies where a tenancy which is not—

(a) a croft tenancy,

(b) the tenancy of a dwelling-house, or

(c) such other kind of tenancy as the Scottish Ministers may by regulations specify,

has been created over land at least part of which is eligible land.

(2) In this section—

"principal subjects" means eligible land any part of which is the tenanted land,

"tenanted land" means the land over which the tenancy has been created.

(3) Where this section applies, a Part 5 community body may apply, under section 54, to buy the interest mentioned in subsection (4)—

(a) where—

(i) it is simultaneously applying, or

(ii) it has made an application in respect of which the Scottish Ministers have not made a decision,

to buy the principal subjects, or

(b) if the conditions set out in subsection (5) are met, during the relevant period.

(4) The interest is the interest of the tenant over so much of the tenanted land as is comprised within the principal subjects.

(5) The conditions are that the Part 5 community body or, as the case may be, the third party purchaser—

(a) has provided confirmation under section 62(1) or, as the case may be, (2) of its intention to proceed to buy the principal subjects, or

(b) has bought and retained those subjects in accordance with the provisions of this Part.

(6) In this section "relevant period" means the period beginning with the date on which the Scottish Ministers consented to the application under section 54 to buy the principal subjects and ending—

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(a) where the Part 5 community body or, as the case may be, the third party purchaser does not proceed to exercise its right to buy those subjects, on the date—

(i) on which it withdraws, under section 62(3)(b) or, as the case may be, (4)(b), its confirmation so to proceed, or

(ii) of its failure otherwise to complete the purchase, or

(b) where the Part 5 community body or, as the case may be, the third party purchaser has bought and retained those subjects, 5 years after the date on which the Part 5 community body or the third party purchaser bought those subjects.

(7) In this Part "tenant" includes sub-tenant.

Commencement Information

I4 S. 48 in force at 26.4.2020 by S.S.I. 2020/20, reg. 2, **sch.**

49 Part 5 community bodies S

(1) A Part 5 community body is, subject to subsection (7)—

(a) where a body applies under section 54(1)(a) to exercise the right to buy itself, a body falling within subsection (2), (3) or (4),

(b) where a body nominates a third party purchaser to exercise the right to buy under section 54(1)(b), a body falling within subsection (5),

(c) a body of such other description as the Scottish Ministers may by regulations specify.

(2) A body falls within this subsection if it is a company limited by guarantee the articles of association of which include the following—

(a) a definition of the community to which the company relates,

(b) provision enabling the company to exercise the right to buy land under this Part,

(c) provision that the company must have not fewer than 10 members,

(d) provision that at least three quarters of the members of the company are members of the community,

(e) provision whereby the members of the company who consist of members of the community have control of the company,

(f) provision ensuring proper arrangements for the financial management of the company,

(g) provision that any surplus funds or assets of the company are to be applied for the benefit of the community, and

(h) provision that, on the winding up of the company and after satisfaction of its liabilities, its property (including any land acquired by it under this Part) passes—

(i) to such other community body as may be approved by the Scottish Ministers, or

(ii) if no other community body is so approved, to the Scottish Ministers or to such charity as the Scottish Ministers may direct.

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(3) A body falls within this subsection if it is a Scottish charitable incorporated organisation (a "SCIO") the constitution of which includes the following—

(a) a definition of the community to which the SCIO relates,

(b) provision enabling the SCIO to exercise the right to buy land under this Part,

(c) provision that the SCIO must have not fewer than 10 members,

(d) provision that at least three quarters of the members of the SCIO are members of the community,

(e) provision under which the members of the SCIO who consist of members of the community have control of the SCIO,

(f) provision ensuring proper arrangements for the financial management of the SCIO,

(g) provision that, on the request of any person for a copy of the minutes of a meeting of the SCIO, the SCIO must, if the request is reasonable, give the person within 28 days of the request a copy of those minutes,

(h) provision that, where a request of the type mentioned in paragraph (g) is made, the SCIO—

(i) may withhold information contained in the minutes, and

(ii) if it does so, must inform the person requesting a copy of the minutes of its reasons for doing so, and

(i) provision that any surplus funds or assets of the SCIO are to be applied for the benefit of the community.

(4) A body falls within this subsection if it is a community benefit society the registered rules of which include the following—

(a) a definition of the community to which the society relates,

(b) provision enabling the society to exercise the right to buy land under this Part,

(c) provision that the society must have not fewer than 10 members,

(d) provision that at least three quarters of the members of the society are members of the community,

(e) provision under which the members of the society who consist of members of the community have control of the society,

(f) provision ensuring proper arrangements for the financial management of the society,

(g) provision that, on the request of any person for a copy of the minutes of a meeting of the society, the society must, if the request is reasonable, give the person within 28 days of the request a copy of those minutes,

(h) provision that, where a request of the type mentioned in paragraph (g) is made, the society—

(i) may withhold information contained in the minutes, and

(ii) if it does so, must inform the person requesting a copy of the minutes of its reasons for doing so, and

(i) provision that any surplus funds or assets of the society are to be applied for the benefit of the community.

(5) A body falls within this subsection if it is a body corporate having a written constitution that includes the following—

(a) a definition of the community to which the body relates,

(b) provision that the majority of the members of the body are to be members of that community,

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(c) provision that the members of the body who consist of members of that community have control of the body,

(d) provision that membership of the body is open to any member of that community,

(e) a statement of the body's aims and purposes, including the promotion of a benefit for that community, and

(f) provision that any surplus funds are to be applied for the benefit of that community.

(6) The Scottish Ministers may, if they think it in the public interest to do so, disapply the requirement specified in subsection (2)(c), (3)(c) or (4)(c) in relation to any body they may specify.

(7) A body is not a Part 5 community body unless the Scottish Ministers have given it written confirmation that they are satisfied that the main purpose of the body is consistent with furthering the achievement of sustainable development.

(8) The Scottish Ministers may by regulations modify subsections (2), (3), (4), (5) and (6).

(9) A community—

(a) is defined for the purposes of subsection (2), (3), (4) and (5) by reference to a postcode unit or postcode units or a type of area as the Scottish Ministers may by regulations specify (or both such unit and type of area), and

(b) comprises the persons from time to time—

(i) resident in that postcode unit or in one of those postcode units or in that specified type of area, and

(ii) entitled to vote, at a local government election, in a polling district which includes that postcode unit or those postcode units or that specified type of area (or part of it or them).

(10) The articles of association of a company which is a Part 5 community body may, despite the generality of paragraph (h) of subsection (2), provide that its property may, in the circumstances mentioned in that paragraph, pass to another person only if that person is a charity.

(11) In this section—

"charity" means a body entered in the Scottish Charity Register,

"community benefit society" means a registered society (within the meaning of section 1 of the Co-operative and Community Benefit Societies Act 2014) registered as a community benefit society under section 2 of that Act,

"company limited by guarantee" has the meaning given by section 3(3) of the Companies Act 2006,

"postcode unit" means an area in relation to which a single postcode is used to facilitate the identification of postal service delivery points within the area,

"registered rules" has the meaning given by section 149 of the Co-operative and Community Benefit Societies Act 2014 (as that meaning applies in relation to community benefit societies),

"Scottish charitable incorporated organisation" has the meaning given by section 49 of the Charities and Trustee Investment (Scotland) Act 2005.

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Commencement Information
I5 S. 49 in force at 26.4.2020 by S.S.I. 2020/20, reg. 2, **sch.**

50 Provisions supplementary to section 49 S

(1) A Part 5 community body—
(a) which has bought land under this Part, any part of which remains in its ownership, and
(b) which modifies its memorandum, articles of association, constitution or registered rules (as defined in section 49(11)),
must, as soon as possible after such modification, notify the Scottish Ministers in writing of the modification.

(2) If the Scottish Ministers are satisfied that a Part 5 community body which has, under this Part, bought land would, had it not so bought that land, no longer be entitled to do so, they may acquire the land compulsorily.

(3) Subsection (2) does not apply if the Part 5 community body would no longer be entitled to buy the land because the land is not eligible for the purposes of this Part.

(4) Where the power conferred by subsection (2) is (or is to be) exercised in relation to land, the Scottish Ministers may by regulations make provision relating to, or to matters connected with, the acquisition of the land.

(5) Regulations under subsection (4) may—
(a) apply, modify or exclude any enactment which relates to any matter as to which regulations could be made under that subsection,
(b) make such modifications of enactments as appear to the Scottish Ministers to be necessary or expedient in consequence of any provision of the regulations or otherwise in connection with the regulations.

Commencement Information
I6 S. 50 in force at 26.4.2020 by S.S.I. 2020/20, reg. 2, **sch.**

51 Interpretation of Part S

(1) In this Part "Lands Tribunal" means the Lands Tribunal for Scotland.

(2) Any reference in this Part to a creditor in a standard security with a right to sell land is a reference to a creditor who has such a right under—
(a) section 20(2) or 23(2) of the Conveyancing and Feudal Reform (Scotland) Act 1970, or
(b) a warrant granted under section 24(1) of that Act.

(3) In calculating for the purposes of this Part any period of time within which an act requires to be or may be done, no account is to be taken of any public or local holidays in the place where the act is to be done.

(4) Subsection (3) does not apply to a period of time specified in section 64(2), 69(7) or 70(3).

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Commencement Information

I7 S. 51 in force at 26.4.2020 by S.S.I. 2020/20, reg. 2, **sch.**

Changes to legislation:
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Changes and effects yet to be applied to :

– specified provision(s) amendment to earlier commencing S.S.I. 2017/299, regs. 5-14, by S.S.I. 2017/370 reg. 34