



The Scottish Parliament  
Pàrlamaid na h-Alba

Cabinet Secretary for Environment,  
Climate Change and Land Reform  
Roseanna Cunningham MSP

c/o Clerk to the Committee  
Room T3.40  
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***By email only***

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05 March 2020

Dear Roseanna,

**Subordinate legislation: affirmative instrument—**

**Right to Buy Land to Further Sustainable Development (Eligible Land, Specified Types of Area and Restrictions on Transfers, Assignations and Dealing) (Scotland) Regulations 2020 [draft]**

As you know, the instrument is one of several that are rooted in Part 5 of the Land Reform (Scotland) Act 2016 (The Act). The draft instrument was laid on 7 February 2020 and the Environment, Climate Change and Land Reform Committee (ECCLRC) must report by 26 March 2020. The Minister for Rural Affairs and the Natural Environment is expected to move the motion recommending the ECCLRC approves the draft instrument at a meeting on 17 March 2020.

However, at its meeting on 3 March 2020, the Committee heard evidence in a roundtable format on the above affirmative instrument. Some stakeholders raised some outstanding questions about the draft and the Committee agreed to write to you seeking clarification. As the draft instrument cannot be amended but only approved or rejected in its entirety, the Committee would be grateful for a **response by close of Thursday 12 March**. This will enable the Committee to take your response into consideration when it hears from the Minister at its meeting on 17 March.

The draft Regulations define, amongst others, the following—

- Eligible land: types of occupancy or possession that are to be treated as a tenancy
- Excluded land: land pertaining to land occupied by an individual's home
- Excluded land: land held or used by a Minister of the Crown or government department
- Specified types of area for defining a community

The Committee notes the proposal to exclude land used or held by a Minister of the Crown or by a UK government department, on the basis that such land is reserved. Stakeholders queried this exclusion and the issue was also raised in written responses to the Scottish Government consultation. The Committee is seeking to understand specifically what is excluded (what falls within this definition, what is reserved and what is devolved) and what the rationale for each exclusion is. The Committee would welcome further information on this.

The Committee also seeks clarification as to the relevance of reserved status as it relates to the community right to buy (CRTB). The Committee is also interested to understand the process for considering how land that is reserved e.g. in the ownership of the DVLA, that forms a small part of an overall site, would be treated. In this case, would a local authority have the power under the proposed provisions to acquire this to further sustainable development? Would this scenario also relate to land owned by the Ministry of Defence?

The Committee is unclear as to why land owned by the Crown by virtue of bona vacantia, or its having fallen to the Crown as ultimus haeres should be excluded. The Committee understands that often the reason land is abandoned or neglected is because the land is now owned by the Crown. It was most probably 'ownerless land' and under Scots law has fallen to the Crown (as a result of bona vacantia or by virtue of ultimus haeres). Including 'ownerless land' within these provisions could facilitate the land being put to more productive use as well as resolving its ownership status. Stakeholders made the Committee aware of issues that some organisations have encountered in attempting to buy 'ownerless' land and the Committee wonders why such land should not be eligible for inclusion within a CRTB application and is seeking to understand why land owned by the Crown, by virtue of bona vacantia or ultimus haeres, should be excluded under Part 5.

The Committee is also concerned about consistency of approach in relation to the treatment of land and exclusions, across the suite of regulations providing community and crofting rights to buy. The Committee asks why different approaches have been taken with respect to this.

The Committee understands that some stakeholders remain concerned about the exclusion of land that is used to home pets and the scope to create mischief here. The Committee would welcome your view on this and the need for tighter regulation or for further guidance.

The Committee would also like clarification on what remedies would be available to a former landowner or to Scottish Ministers if a community body does not sustainably develop the land. Further clarification would also be helpful on what types of restrictions or conditions Scottish Ministers envisage would be put in place to protect

the land and how it would be ensured that compliance with the proposed use etc would be monitored following a transfer.

As a final point, the Committee notes the criteria for 'Specified types of area for defining a community' and the use of the *Population Estimates for Settlements and Localities in Scotland, Mid-2016* in setting the criteria. The Committee would welcome information on how subsequent iterations of these documents would be taken account of to reflect shifts in population.

We would welcome a response from you **by close of Thursday 12 March 2020**.

Yours sincerely,

A handwritten signature in dark blue ink, appearing to read 'Gillian Martin', with a stylized flourish at the end.

Gillian Martin MSP Convener Environment, Climate Change and Land Reform Committee