

# LAND REFORM (SCOTLAND) ACT 2003

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## EXPLANATORY NOTES

### THE ACT – AN OVERVIEW

#### Part 1 Access Rights

##### *Sections 6 and 7: Land over which access rights not exercisable*

23. [Section 6](#) sets out categories of land over which access rights are not exercisable and is supplemented by [section 7](#).
24. Paragraph (a) of [section 6\(1\)](#) excludes from access rights buildings of all kinds and other structures, works, plant and fixed machinery, as well as caravans, tents or other places used to give a person privacy or shelter.
25. Paragraph (b)(i) and (ii) of that section excludes land surrounding and associated with non-domestic buildings, structures, works, plant and fixed machinery.
26. In relation to school buildings, paragraph (b) (iii) of that section excludes land contiguous to and used for the purposes of a school. School playing fields at some distance from a school are not covered by this exclusion but may be governed by the exclusion in [section 6\(1\)\(e\)](#). “School” is defined in [section 7\(4\)](#) by reference to the [Education \(Scotland\) Act 1980 \(c.44\)](#) and means an institution which provides primary or secondary education or education for children below school age.
27. [Section 6\(1\)\(b\)\(iv\)](#) excludes such land which is adjacent to a domestic building, caravan, tent or other similar place as is sufficient to give persons living there reasonable measures of privacy and enjoyment. [Section 7\(5\)](#) provides that the location and other characteristics of the place to which the land relates are, amongst other matters, relevant to determining how much land is sufficient in this context.
28. [Section 6\(1\)\(c\)](#) excludes private gardens to which there is a right of common access, such as Queen Street Gardens in Edinburgh.
29. [Section 6\(1\)\(d\)](#) provides that the regulation of public access by or under any other enactment is not diminished or replaced by access rights. There are, for example, other enactments which prohibit, exclude or restrict public access over military establishments and railways. Access rights will be subject to those regulations. [Section 7\(6\)](#) clarifies that this exclusion does not prevent access rights being exercised in a manner which would not contravene the other enactment. [Section 6\(1\)\(e\)](#) excludes land which has been developed or set out as a sports or playing field or for a particular recreational purpose. Paragraph (a) of [section 7\(7\)](#) qualifies this exclusion in relation to sports and playing fields by providing that it applies only where the fields are being used. It further qualifies the exclusion in relation to other land developed or set out for a recreational purpose by providing that the exclusion does not apply in relation to access rights which would not interfere with the use to which the land is being put. Paragraphs (b) and (c) of that section provide that the [section 6\(1\)\(e\)](#) exclusion applies in relation to certain vulnerable surfaces including golf greens, bowling greens and other similar grass surfaces and certain types of artificial surfaces. [Section 7\(8\)](#) provides that certain

*These notes relate to the Land Reform (Scotland) Act 2003  
(asp 2) which received Royal Assent on 25 February 2003*

developments undertaken for the purposes of fisheries management do not bring the land within section 6(1)(e).

30. [Section 6\(1\)\(f\)](#) provides that land in respect of which a charge was levied for public admission for at least 90 days prior to 31 January 2001 and for which a charge continues to be levied for the same period after that date, will be excluded from access rights. [Section 7\(9\)](#) further qualifies that provision by providing that persons who have had access to land without payment in the past can continue to do so.
31. [Section 6\(1\)\(g\)](#) and (h) excludes land on which building, civil engineering or other works are underway.
32. [Section 6\(1\)\(i\)](#) excludes land on which crops have been sown or are growing. Further clarification on the meaning of “land on which crops are growing” is provided in [section 7\(10\)](#).
33. Subsection (1) of [section 7](#) provides that access rights are exercisable over land which is excluded by [section 6](#) if that land is a core path, including core paths over land otherwise excluded from access rights.
34. Subsections (2) and (3) of that section limit the extent of the exclusion in [section 6](#) in respect of land on which a development is being carried out which requires planning permission. Accordingly, the exclusion only applies while the development is being carried out and only to the extent that the development is in conformity with any planning permission.