



# Land Reform (Scotland) Act 2003

## 2003 asp 2

### PART 2

#### THE COMMUNITY RIGHT TO BUY

### CHAPTER 2

#### REGISTRATION OF INTERESTS

#### 37 Registration of interest in land

- (1) A community interest in land may be registered only upon an application made by a community body to Ministers in the prescribed form and accompanied by information of the prescribed kind, including information (provided, where appropriate, by or by reference to maps or drawings) about the location and boundaries of the land.
- (2) Where there is a standard security over an interest in any land to which the application relates the community body shall, at the same time as it applies, provide Ministers with notice, in the prescribed form, of that fact.
- (3) Where an applicant community body satisfies Ministers that the owner of the land in which a community interest is sought to be registered or, as the case may be, a creditor in a standard security over any part of that land is unknown or cannot be found, Ministers shall be relieved of their duties under subsections (5) to (10), and paragraphs (b) and (c) of subsection (17), below in so far as those duties relate to the owner or, as the case may be, creditor.
- (4) Ministers shall not be satisfied under subsection (3) above unless the community body has given public notice of the proposed application by—
  - (a) placing an advertisement, in two consecutive weeks, in a local newspaper circulating in the area where the land in which a community interest is sought [F1to be registered] is situated; and
  - (b) [F2(except in the case of a proposed application of the type mentioned in subsection (4B))] affixing a conspicuous notice in the prescribed form to a part of that land.

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[<sup>F3</sup>(4A) Ministers are not to be satisfied under subsection (3) in relation to a proposed application of the type mentioned in subsection (4B) unless the applicant community body has given public notice of the proposed application by advertising it in such manner as may be prescribed.

(4B) The type of proposed application is one to register a community interest in land consisting of salmon fishings, or mineral rights, which are owned separately from the land in respect of which they are exigible.]

(5) On receipt of an application, Ministers shall—

- (a) send a copy of the application and the accompanying information to the owner of the land and to any creditor in a standard security over an interest in the land;
- (b) invite the owner of the land to send them, so as to be received not later than 21 days after the sending of the invitation, views in writing on the application;
- (c) where there is a standard security over an interest in any land to which the application relates, invite the creditor in the security—
  - (i) to notify the community body and Ministers, within 21 days of receipt of the invitation, if any of the circumstances set out in subsection (6) below has arisen (or arises within 21 days of receipt of the invitation); and
  - (ii) if such notice is given, to provide Ministers, within that time, with the creditor’s views in writing on the application;
- (d) send a copy of the invitation under paragraph (b) above and a copy of any invitation under paragraph (c) above to the community body; and
- (e) by notice sent to—
  - (i) the owner of the land; and
  - (ii) any creditor in a standard security over an interest in the land,
 prohibit the owner and any such creditor from taking, during the period beginning with the date on which the owner or, as the case may be, the creditor receives the notice and ending on the date on which Ministers determine whether an interest is to be registered, any action which, if the interest had been registered, would be prohibited under section 40(1) below.

(6) The circumstances referred to in subsection (5)(c) above are that—

- (a) a calling-up notice has been served by the creditor under section 19 of the Conveyancing and Feudal Reform (Scotland) Act 1970 (c. 35) in relation to the land in which the community body is seeking to register an interest or any part of that land and that notice has not been complied with;
- (b) a notice of default served by the creditor under section 21 of that Act in relation to that land or any part of that land has not been complied with and the person on whom the notice was served has not, within the period specified in section 22 of that Act, objected to the notice by way of application to the court;
- (c) where that person has so objected, the court has upheld or varied the notice of default; and
- (d) the court has granted the creditor a warrant under section 24 of that Act in relation to that land or any part of that land.

(7) Ministers shall send a copy of—

- (a) each application received by them, together with a copy of the accompanying information;

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- (b) each notice sent under subsection (5)(e) above, [<sup>F4</sup>and
    - (c) any notice sent under section 44A,]
- to the Keeper.
- (8) A transfer in breach of a prohibition imposed under subsection (5)(e) above is of no effect.
- (9) Ministers shall—
- (a) send a copy of any timeous response to an invitation given under subsection (5)(b) or (c) above to the community body; and
  - (b) invite it to send them, so as to be received not later than 21 days after the invitation under this subsection, its views in writing on that response.
- (10) Ministers shall take any views timeously sent to them under this section into account when considering whether the community interest to which those views relate should be entered in the Register.
- (11) Ministers shall decline to consider an application that—
- (a) does not comply with the requirements of or imposed under this section;
  - (b) is otherwise incomplete;
  - (c) discloses that any land to which it relates is [<sup>F5</sup>excluded land as defined in section 33(2) above]; or
  - (d) otherwise indicates that it is one which Ministers would be bound to reject; and Ministers shall be relieved of their duties under subsections (5) to (10) above, and paragraphs (b) and (c) of subsection (17) below, in relation to such an application.
- (12) Declinature of an application is, for the purposes of subsection (17) below, to be regarded as a decision not to enter the community interest in the Register.
- (13) More than one community interest may be registered in respect of the same land.
- (14) A community body may, subject to subsection (15) below, register an interest in more than one holding of land.
- (15) An application under subsection (1) above may relate to only one holding of land.
- (16) In subsections (14) and (15) above, a “holding” of land is land in the ownership of one person or in common or joint ownership.
- (17) Ministers shall, within 63 days of receiving an application under subsection (1) above, send notice of their decision whether or not the community interest is to be entered in the Register together with a statement of their reasons—
- (a) to the applicant community body;
  - (b) to the owner of the land; and
  - (c) where a creditor in a standard security has notified Ministers timeously in response to an invitation given under subsection (5)(c)(i) above, to the creditor.
- (18) A notice under subsection (17) above shall—
- (a) contain information about the effect of registration of a community interest or, as the case may be, of Ministers' decision that such an interest is not to be entered in the Register and about the rights of appeal under section 61 below; and

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- [<sup>F6</sup>(aa) where the decision is that such an interest is to be entered in the Register, contain information about the duties imposed under section 44A,]  
 (b) be in the prescribed form.
- (19) Any failure to comply with the time limit specified in subsection (17) above [<sup>F7</sup>, including that subsection as modified by section 39(2)(b) below,] does not affect the validity of anything done under this section.
- (20) Where Ministers decide that a community interest is to be entered in the Register they shall direct the Keeper to so enter the interest with effect from the date on which Ministers made the decision.

#### Textual Amendments

- F1** Words in s. 37(4)(a) inserted (15.4.2016) by [Community Empowerment \(Scotland\) Act 2015 \(asp 6\)](#), s. 142(1), **Sch. 4 para. 8(2)(a)**; S.S.I. 2015/399, art. 2, Sch. (with art. 3)
- F2** Words in s. 37(4)(b) inserted (13.11.2015 for specified purposes, 15.4.2016 in so far as not already in force) by [Community Empowerment \(Scotland\) Act 2015 \(asp 6\)](#), **ss. 40(a)**, 142(1); S.S.I. 2015/358, art. 2, Sch.; S.S.I. 2015/399, art. 2, Sch. (with art. 3)
- F3** S. 37(4A)(4B) inserted (13.11.2015 for specified purposes, 15.4.2016 in so far as not already in force) by [Community Empowerment \(Scotland\) Act 2015 \(asp 6\)](#), **ss. 40(b)**, 142(1); S.S.I. 2015/358, art. 2, Sch.; S.S.I. 2015/399, art. 2, Sch. (with art. 3)
- F4** S. 37(7)(c) and word inserted (15.4.2016) by [Community Empowerment \(Scotland\) Act 2015 \(asp 6\)](#), s. 142(1), **Sch. 4 para. 8(2)(b)**; S.S.I. 2015/399, art. 2, Sch. (with art. 3)
- F5** Words in s. 37(11)(c) substituted (15.4.2016) by [Community Empowerment \(Scotland\) Act 2015 \(asp 6\)](#), s. 142(1), **Sch. 4 para. 8(2)(c)**; S.S.I. 2015/399, art. 2, Sch. (with art. 3)
- F6** S. 37(18)(aa) inserted (13.11.2015 for specified purposes, 15.4.2016 in so far as not already in force) by [Community Empowerment \(Scotland\) Act 2015 \(asp 6\)](#), s. 142(1), **Sch. 4 para. 8(2)(d)**; S.S.I. 2015/358, art. 2, Sch.; S.S.I. 2015/399, art. 2, Sch. (with art. 3)
- F7** Words in s. 37(19) inserted (15.4.2016) by [Community Empowerment \(Scotland\) Act 2015 \(asp 6\)](#), s. 142(1), **Sch. 4 para. 8(2)(e)**; S.S.I. 2015/399, art. 2, Sch. (with art. 3)

## 38 Criteria for registration

- (1) Ministers shall not decide that a community interest is to be entered in the Register unless they are satisfied—
- <sup>F8</sup>(a) .....
- (b) that [<sup>F9</sup>the acquisition of the land by the community body to which the application relates is compatible with furthering the achievement of sustainable development, and that]—
- (i) a significant number of the members of the community <sup>F10</sup>... have a <sup>F11</sup>... connection with the land; <sup>F12</sup>...
- (ii) the land is sufficiently near to land with which those members of [<sup>F13</sup>the] community have a <sup>F14</sup>... connection <sup>F15</sup>...;
- <sup>F16</sup>(iii) where the community body is a body mentioned in section 34(A1)  
 (a), the land is in or sufficiently near to the area of the community by reference to which the community is defined as mentioned in section 34(5)(a), or
- (iv) where the community body is a body mentioned in section 34(A1)  
 (b), the land is in or sufficiently near to the area of the community to which the body relates,]

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- (c) where the land is salmon fishings or mineral rights, that the community body—
- (i) has registered or is registering an interest in; or
  - (ii) has acquired or is acquiring,
- other land containing or contiguous to the waters in which those salmon fishings exist or the land in which those mineral rights are exigible;
- (d) that there is within the community a level of support sufficient to justify such registration; and
- (e) that it is in the public interest that the community interest be so registered.
- (2) <sup>F17</sup>Subject to subsection (2A) below,] for the purposes of subsection (1)(d) above, Ministers—
- (a) shall regard an indication of the approval of one tenth or more of the members of the community; and
  - (b) may regard an indication of the approval of less than one tenth of those members,
- as signifying a sufficient level of support.

<sup>F18</sup>(2A) Ministers may not take into account, for the purposes of subsection (2), the approval of a member of the community if the approval was indicated earlier than 6 months before the date on which the application to register the community interest in land to which the approval relates was made.

(2B) Ministers may by regulations amend subsection (2A) so as to substitute for the period of time for the time being specified there a different period of time (not being less than 6 months).]

(3) References in this section to the community are, as respects a community body, references to the community defined in relation to that body under section 34(1)(a)<sup>F19</sup>, (1A)(a) or (1B)(a), or where that body is a body mentioned in section 34(A1)(b), the community to which that body relates].

#### Textual Amendments

- F8** S. 38(1)(a) repealed (15.4.2016) by [Community Empowerment \(Scotland\) Act 2015 \(asp 6\)](#) , s. 142(1) , [Sch. 5](#) ; [S.S.I. 2015/399](#) , art. 2 , [Sch.](#) (with art. 3 )
- F9** Words in s. 38(1)(b) inserted (15.4.2016) by [Community Empowerment \(Scotland\) Act 2015 \(asp 6\)](#) , [ss. 41\(a\)\(i\)](#) , 142(1) ; [S.S.I. 2015/399](#) , art. 2 , [Sch.](#) (with art. 3 )
- F10** Words in s. 38(1)(b)(i) repealed (15.4.2016) by [Community Empowerment \(Scotland\) Act 2015 \(asp 6\)](#) , [ss. 41\(a\)\(ii\)](#) , 142(1) ; [S.S.I. 2015/399](#) , art. 2 , [Sch.](#) (with art. 3 )
- F11** Word in s. 38(1)(b)(i) repealed (15.4.2016) by [Community Empowerment \(Scotland\) Act 2015 \(asp 6\)](#) , s. 142(1) , [Sch. 5](#) ; [S.S.I. 2015/399](#) , art. 2 , [Sch.](#) (with art. 3 )
- F12** Word in s. 38(1)(b) repealed (15.4.2016) by [Community Empowerment \(Scotland\) Act 2015 \(asp 6\)](#) , [ss. 41\(a\)\(iii\)](#) , 142(1) ; [S.S.I. 2015/399](#) , art. 2 , [Sch.](#) (with art. 3 )
- F13** Word in s. 38(1)(b)(ii) substituted (15.4.2016) by [Community Empowerment \(Scotland\) Act 2015 \(asp 6\)](#) , [ss. 41\(a\)\(iv\)](#) , 142(1) ; [S.S.I. 2015/399](#) , art. 2 , [Sch.](#) (with art. 3 )
- F14** Word in s. 38(1)(b)(ii) repealed (15.4.2016) by [Community Empowerment \(Scotland\) Act 2015 \(asp 6\)](#) , s. 142(1) , [Sch. 5](#) ; [S.S.I. 2015/399](#) , art. 2 , [Sch.](#) (with art. 3 )
- F15** Words in s. 38(1)(b)(ii) repealed (15.4.2016) by [Community Empowerment \(Scotland\) Act 2015 \(asp 6\)](#) , [ss. 41\(a\)\(v\)](#) , 142(1) ; [S.S.I. 2015/399](#) , art. 2 , [Sch.](#) (with art. 3 )
- F16** S. 38(1)(b)(iii)(iv) inserted (15.4.2016) by [Community Empowerment \(Scotland\) Act 2015 \(asp 6\)](#) , [ss. 41\(a\)\(vi\)](#) , 142(1) ; [S.S.I. 2015/399](#) , art. 2 , [Sch.](#) (with art. 3 )

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- F17** Words in s. 38(2) inserted (15.4.2016) by [Community Empowerment \(Scotland\) Act 2015 \(asp 6\)](#) , **ss. 41(b)** , 142(1) ; S.S.I. 2015/399 , art. 2 , Sch. (with art. 3 )
- F18** S. 38(2A)(2B) inserted (15.4.2016) by [Community Empowerment \(Scotland\) Act 2015 \(asp 6\)](#) , **ss. 41(c)** , 142(1) ; S.S.I. 2015/399 , art. 2 , Sch. (with art. 3 )
- F19** Words in s. 38(3) substituted (15.4.2016) by [Community Empowerment \(Scotland\) Act 2015 \(asp 6\)](#) , **ss. 41(d)** , 142(1) ; S.S.I. 2015/399 , art. 2 , Sch. (with art. 3 )

### 39 Procedure for late applications

- [<sup>F20</sup>(1) This section (other than subsections (4A) and (5)) applies in relation to an application to register a community interest in land which satisfies—
- (a) the conditions mentioned in subsection (1A), or
  - (b) the condition mentioned in subsection (1B).
- (1A) The conditions are that—
- (a) before the date on which the application is received by Ministers, the owner of the land or, as the case may be, a creditor in a standard security with a right to sell the land has taken action which, if a community interest had been registered, would be prohibited under section 40(1), and
  - (b) on the date on which the application is received by Ministers—
    - (i) missives for the sale and purchase of the land in pursuance of that action have not been concluded, or
    - (ii) an option to acquire the land in pursuance of that action has not been conferred.
- (1B) The condition is that, where another community body has registered an interest in the land, the application is received by Ministers—
- (a) after the date on which the owner of the land or, as the case may be, a creditor in a standard security with a right to sell the land has, under section 48(1), notified that community body that a transfer is proposed, and
  - (b) before Ministers have consented, under section 51(1), to a transfer to that community body.]
- (2) Where this section applies in relation to an application—
- (a) the owner of the land or, as the case may be, such a creditor shall, on receipt of an invitation under section 37 above, inform Ministers that this section applies; and
  - [<sup>F21</sup>(aa) Ministers may, before the end of the period of 7 days following receipt of the views of the owner of the land or, as the case may be, such a creditor under that section, request—
    - (i) the owner, such a creditor or the community body making the application to provide such further information as they consider necessary in connection with their being informed as mentioned in paragraph (a), and
    - (ii) that the further information be supplied within 14 days of the request.]
  - (b) the procedure for registering community interests in land set out in section 37 above is, for the purposes of the application, subject to the following modifications—
    - (i) paragraph (b) of subsection (9) does not apply; and
    - (ii) in subsection (17), for “63” there is substituted “30” [<sup>F22</sup>or (in a case where further information is requested under paragraph (aa)) “44”].

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(3) Where this section applies in relation to an application, Ministers shall not decide that a community interest is to be entered in the Register unless they are (additionally to the matters as to which they are to be satisfied under section 38 above) satisfied—

- [<sup>F23</sup>(a) that—
- (i) such relevant work as Ministers consider reasonable was carried out by a person, or
  - (ii) such relevant steps as Ministers consider reasonable were taken by a person,
- (aa) that the relevant work was carried out or the relevant steps were taken—
- (i) at a time which, in the opinion of Ministers, was sufficiently in advance of the owner of the land or, as the case may be, the creditor taking the action such as is mentioned in subsection (1A), or giving notice such as is mentioned in subsection (1B),
  - (ii) in respect of land with a view to the land being used for purposes that are the same as those proposed for the land in relation to which the application relates, and
  - (iii) by the community body making the application or by another person with a view to the application being made by the community body,
- (ab) that—
- (i) in the period of 12 months before the application is received by Ministers, the owner of the land or, as the case may be, the creditor taking the action such as is mentioned in subsection (1A) did not make an offer to sell the land to the community body or a similar community body, or
  - (ii) in that 12 month period, the owner of the land or, as the case may be, the creditor did make an offer to sell the land to the community body or a similar community body and, in the opinion of Ministers, there are good reasons why the body did not purchase the land,]
- (b) that the level of support within the community for such registration is significantly greater than that which Ministers would, by virtue of subsection (2) of that section, have considered sufficient for the purposes of subsection (1)(d) of that section had the application been received before that action was taken or, as the case may be, the notice was given; and
- (c) that the factors bearing on whether it is or is not in the public interest that the community interest be registered are strongly indicative that it is.

[<sup>F24</sup>(3A) Despite subsection (3), Ministers may decide that a community interest is to be entered in the Register even though the conditions in paragraphs (a) and (aa) of that subsection are not satisfied in relation to the interest, if Ministers are satisfied that there are good reasons—

- (a) why the conditions are not satisfied, and
- (b) for allowing the interest to be entered in the Register.

(3B) Ministers may, before the end of the period of 7 days following receipt under section 37(5) of the views of the owner of the land or, as the case may be, a creditor in a standard security with a right to sell the land, request—

- (a) any person they believe may be able to provide them with such further information as they consider necessary in connection with the matters mentioned in subsection (3) to provide the information, and
- (b) that the information be supplied within 14 days of the request.]

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- (4) Where a community interest in land is registered in pursuance of an application in relation to which this section applies—
- (a) the owner of the land is, for the purposes of this Part of this Act (other than section 59(4)), deemed to have, on the date on which that interest is so registered, given notice under section 48(1) below that a transfer is proposed;
  - (b) section 49 below does not apply in so far as it relates to that interest; and
  - (c) for the purposes of sections 55(2) and (4), 56(3), 59(1)<sup>[F25]</sup>, 60A(1) and 65(1)(a) below, the community body is deemed to have sent the confirmation which Ministers would, had section 49 below applied, have required to seek under subsection (2)(a) of that section on the date on which the interest is registered.
- <sup>[F26]</sup>(4A) Subsection (5) applies in relation to an application to register a community interest in land where the application is received by Ministers after the following have occurred—
- (a) the owner of the land or, as the case may be, a creditor in a standard security with a right to sell the land has taken action which, if a community interest in land had been registered, would be prohibited under section 40(1), and
  - (b) either—
    - (i) missives for the sale and purchase of the land are concluded, or
    - (ii) an option to acquire the land is conferred.]
- (5) <sup>F27</sup>... Ministers—
- (a) shall decline to consider the application; and
  - (b) shall be relieved of their duties under subsections (5) to (10), and paragraphs (b) and (c) of subsection (17), of section 37 above in relation to that application.
- <sup>[F28]</sup>(6) In subsection (3)—
- “ relevant work ” means anything done by way of preparation of an application to register a community interest in land,
- “ relevant steps ” means any steps towards securing ownership of land by a community body.
- (7) In subsection (3)(ab)—
- (a) references to “the land” include land that is, in the opinion of Ministers, mainly the same as the land to which the application mentioned in that subsection relates,
  - (b) references to “ an offer ” are references to an offer in writing (or that is confirmed in writing),
  - (c) a community body is, for the purposes of that subsection, similar to another community body if, in the opinion of Ministers, it is similar to the other body to a significant degree having regard to such matters as may be prescribed.
- (8) In subsection (6), “ land ” means any land whether or not it is land in respect of which an application in relation to which this section applies is made.]

#### Textual Amendments

- F20** S. 39(1)-(1B) substituted for s. 39(1) (13.11.2015 for specified purposes, 15.4.2016 in so far as not already in force) by [Community Empowerment \(Scotland\) Act 2015 \(asp 6\)](#), **ss. 42(2), 142(1)**; [S.S.I. 2015/358](#), art. 2, Sch.; [S.S.I. 2015/399](#), art. 2, Sch. (with art. 3)



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- F21** S. 39(2)(aa) inserted (15.4.2016) by Community Empowerment (Scotland) Act 2015 (asp 6), **ss. 42(3)(a)**, 142(1); S.S.I. 2015/399, art. 2, Sch. (with art. 3)
- F22** Words in s. 39(2)(b)(ii) inserted (15.4.2016) by Community Empowerment (Scotland) Act 2015 (asp 6), **ss. 42(3)(b)**, 142(1); S.S.I. 2015/399, art. 2, Sch. (with art. 3)
- F23** S. 39(3)(a)-(ab) substituted for s. 39(3)(a) (13.11.2015 for specified purposes, 15.4.2016 in so far as not already in force) by Community Empowerment (Scotland) Act 2015 (asp 6), **ss. 42(4)**, 142(1); S.S.I. 2015/358, art. 2, Sch.; S.S.I. 2015/399, art. 2, Sch. (with art. 3)
- F24** S. 39(3A)(3B) inserted (15.4.2016) by Community Empowerment (Scotland) Act 2015 (asp 6), **ss. 42(5)**, 142(1); S.S.I. 2015/399, art. 2, Sch. (with art. 3)
- F25** Word in s. 39(4)(c) inserted (15.4.2016) by Community Empowerment (Scotland) Act 2015 (asp 6), **ss. 42(6)**, 142(1); S.S.I. 2015/399, art. 2, Sch. (with art. 3)
- F26** S. 39(4A) inserted (15.4.2016) by Community Empowerment (Scotland) Act 2015 (asp 6), **ss. 42(7)**, 142(1); S.S.I. 2015/399, art. 2, Sch. (with art. 3)
- F27** Words in s. 39(5) repealed (15.4.2016) by Community Empowerment (Scotland) Act 2015 (asp 6), **ss. 42(8)**, 142(1); S.S.I. 2015/399, art. 2, Sch. (with art. 3)
- F28** S. 39(6)-(8) inserted (13.11.2015 for specified purposes, 15.4.2016 in so far as not already in force) by Community Empowerment (Scotland) Act 2015 (asp 6), **ss. 42(9)**, 142(1); S.S.I. 2015/358, art. 2, Sch.; S.S.I. 2015/399, art. 2, Sch. (with art. 3)

## **[<sup>F29</sup>39A Evidence and notification of concluded missives or option agreements**

- (1) Subsection (2) applies where—
  - (a) an application to register a community interest in land is made,
  - (b) on the date on which the application is received by Ministers—
    - (i) missives for the sale and purchase of the land have been concluded, or
    - (ii) an agreement conferring an option to acquire the land exists, and
  - (c) the application does not disclose that such missives have been concluded or such an agreement exists.
- (2) The owner of the land or, as the case may be, a creditor in a standard security with a right to sell the land must, within 21 days of receiving a copy of the application under section 37(5)(a)—
  - (a) provide Ministers with evidence of the concluded missives or (as the case may be) the agreement,
  - (b) where there is an agreement such as is mentioned in subsection (1)(b)(ii) which contains a date on which it will expire—
    - (i) notify Ministers of that date, and
    - (ii) provide Ministers with information about whether, and if so how, the agreement is capable of being extended.
- (3) Subsection (4) applies where—
  - (a) an application to register a community interest in land is made,
  - (b) on the date on which the application is received by Ministers—
    - (i) missives for the sale and purchase of the land have been concluded, or
    - (ii) an agreement conferring an option to acquire the land exists,
  - (c) the application discloses that such missives have been concluded or such an agreement exists, and
  - (d) accordingly, by virtue of section 39(4A) and (5), no copy of the application is sent to the owner of the land or, as the case may be, a creditor in a standard security with a right to sell the land.

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(4) Ministers must—

- (a) send a copy of the application and the accompanying information to the owner of the land or, as the case may be, the creditor,
- (b) notify the owner of the land or, as the case may be, the creditor that Ministers must decline to consider the application by virtue of section 39(5), and
- (c) require the owner of the land or, as the case may be, the creditor to provide Ministers with the information mentioned in subsection (5) within 21 days of receipt of the copy of the application sent under paragraph (a).

(5) The information is—

- (a) evidence of the concluded missives or, as the case may be, the agreement, and
- (b) where there is an agreement such as is mentioned in subsection (3)(b)(ii) which contains a date on which it will expire—
  - (i) that date, and
  - (ii) information about whether, and if so how, the agreement is capable of being extended.]

**Textual Amendments**

**F29** S. 39A inserted (15.4.2016) by [Community Empowerment \(Scotland\) Act 2015 \(asp 6\), ss. 43, 142\(1\); S.S.I. 2015/399, art. 2, Sch. \(with art. 3\)](#)

**40 Effect of registration**

(1) For so long as a community interest in land is registered the owner of the land, and any creditor in a standard security having a right to sell the land, is prohibited from—

- (a) transferring that land (or any land of which that land forms part); or
- (b) taking any action with a view to the transfer of that land (or any land of which that land forms part),

except in accordance with this Part of this Act.

(2) A transfer in breach of subsection (1)(a) above is of no effect.

(3) Subsection (1) above operates so as to prohibit transfers of, or other actions in relation to, land in respect of which no community interest has been registered only where that transfer, or action, also relates to land in respect of which a community interest has been registered.

(4) Subsection (1) above does not apply in relation to—

- (a) a transfer otherwise than for value;
- (b) a transfer in implement or pursuance of an order of a court (other than an order under section 24 of the Conveyancing and Feudal Reform (Scotland) Act 1970 (c. 35) or a decree in an action for the division and sale of land);
- (c) a transfer between spouses [<sup>F30</sup>or civil partners] in pursuance of an arrangement between them entered into at any time after they have ceased living together;
- (d) a transfer of croft land to the crofter tenancing it;
- (e) a transfer between companies in the same group;
- (f) a transfer to a statutory undertaker for the purpose of carrying on their undertaking;

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*Changes to legislation:* There are currently no known outstanding effects for the Land Reform (Scotland) Act 2003, Chapter 2. (See end of Document for details)

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- (g) a transfer—
    - (i) implementing the compulsory acquisition of the land under an enactment;
    - (ii) by agreement, of land which could have been acquired compulsorily under an enactment;
    - (iii) implementing any right conferred by or under this Part or Part 3 of this Act;
    - <sup>F31</sup>(iv) .....
    - <sup>F32</sup>(v) .....
    - (vi) which requires, or which but for the provisions of section 14 of the 1987 Act would require, the consent of Ministers under subsection (5) or (7) of section 12 of the 1987 Act;
    - [<sup>F33</sup>(vii) by a registered social landlord (within the meaning of the Housing (Scotland) Act 2010 (asp 17) ) in pursuance of the power conferred by section 107 of that Act; ]
    - (viii) vesting the land in a person for the purposes of any enactment relating to sequestration, bankruptcy, winding up or incapacity or to the purposes for which judicial factors may be appointed; and
  - (h) a transfer of land in consequence of—
    - (i) the assumption or resignation or death of one or more of the partners in a firm; or
    - (ii) the assumption or resignation or death of one or more of the trustees of a trust.
- (5) Action is taken with a view to a transfer of land when—
- (a) the land is, by or with the authority of the owner of the land or a creditor in a standard security with a right to sell the land, advertised or otherwise exposed for sale;
  - (b) the owner or such a creditor, or a person acting on behalf of the owner or such a creditor, enters into negotiations with another with a view to the transfer of the land; or
  - (c) the owner or such a creditor, or a person acting on behalf of the owner or such a creditor, proceeds further with any proposed transfer of the land which was initiated prior to the date on which the interest was registered.
- (6) In section 25 of the Conveyancing and Feudal Reform (Scotland) Act 1970 (c. 35) (exercise of power of a creditor in a standard security to sell the security subjects), after “may” there is inserted . “ , subject to sections 37(5)(e) or 40(1) of the Land Reform (Scotland) Act 2003 (asp 2) (prohibition of transfer of land registered under that Act except in accordance with its provisions), ”
- (7) In subsection (4)(f) above, “statutory undertaker” shall be construed in accordance with section 214 of the Town and Country Planning (Scotland) Act 1997 (c. 8).

#### Textual Amendments

**F30** Words in s. 40(4)(c) inserted (5.12.2005) by [The Civil Partnership Act 2004 \(Consequential Amendments\) \(Scotland\) Order 2005 \(S.S.I. 2003/623\)](#), **art. 23**

**F31** S. 40(4)(g)(iv) repealed (15.4.2016) by [Community Empowerment \(Scotland\) Act 2015 \(asp 6\)](#), s. 142(1), **Sch. 5**; S.S.I. 2015/399, **art. 2**, **Sch.** (with **art. 3**)

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- F32** S. 40(4)(g)(v) repealed (1.8.2016) by [Housing \(Scotland\) Act 2014 \(asp 14\)](#), s. 104(3), **sch. 2 para. 14(2)**; S.S.I. 2014/264, art. 2, sch. (with art. 4)
- F33** S. 40(4)(g)(vii) substituted (1.4.2012) by [The Housing \(Scotland\) Act 2010 \(Consequential Modifications\) Order 2012 \(S.S.I. 2012/38\)](#), art. 1, **Sch. para. 3**

#### **41 Provisions supplementary to and explanatory of section 40**

- (1) For the purposes of section 40(4)(e) above, companies are in the same group if they are, or are included in a number of, companies which, by virtue of section 170 of the Taxation of Chargeable Gains Act 1992 (c. 12), together form a group for the purposes of sections 171 to 181 of that Act.
- (2) References in subsection (5) of section 40 above to the owner of land include references to the person in whom it has vested for the purposes of any such enactment as is mentioned in subsection (4)(g)(viii) of that section.
- [<sup>F34</sup>(3) Where an owner of land or a creditor in a standard security having a right to sell land makes a transfer of land as mentioned in any of paragraphs (a) to (h) of subsection (4) of section 40, the owner of the land or, as the case may be, the creditor must within 28 days of the transfer—
- (a) notify Ministers of—
    - (i) the transfer,
    - (ii) the name and address of the person to whom the land was transferred, and
    - (iii) the date of the transfer, and
  - (b) provide Ministers with a description of the land transferred, including maps, plans or other drawings prepared to such specifications as may be prescribed.]

#### **Textual Amendments**

- F34** S. 41(3) inserted (13.11.2015 for specified purposes, 15.4.2016 in so far as not already in force) by [Community Empowerment \(Scotland\) Act 2015 \(asp 6\)](#), **ss. 44, 142(1)**; S.S.I. 2015/358, art. 2, Sch.; S.S.I. 2015/399, art. 2, Sch. (with art. 3)

#### **42 Power to modify sections 40(4) and (5) and 41**

Ministers may by order modify sections 40(4) and (5) and 41 above or any provision thereof.

#### **43 Anti-avoidance provisions**

- (1) A transfer such as is mentioned in paragraph (a), (e) or (h) of subsection (4) of section 40 above is a transfer to which subsection (1) of that section applies if it is or forms part of a scheme or arrangement or is one of a series the main purpose or effect, or one of the main purposes or effects, of which is the avoidance of the requirements or consequences of this Part of this Act.
- (2) Where land in respect of which a community interest is registered is being transferred otherwise than by way of a transfer to the community body which registered that interest, the transferor shall incorporate in the deed giving effect to the transfer a declaration—

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- (a) specifying which provision of subsection (4) of section 40 above operates so as to make the transfer one to which subsection (1) of that section does not apply; and
- (b) where the provision so specified is paragraph (a), (e) or (h) of that subsection, stating that the transfer does not form part of a scheme or arrangement, and is not one of a series, such as is mentioned in subsection (1) above.

#### **44 Duration and renewal of registration**

- (1) A registered community interest has, subject to subsection (4) below, effect for a period of five years from the date when it was registered.
- (2) A community body which has registered a community interest may, at any time within six months before the expiry of that period, apply under section 37 above to re register the interest.
- (3) On such an application, Ministers may, subject to section 38 above, direct the Keeper to re-enter the interest in the Register.
- (4) An interest so re registered continues to have effect as a registered community interest for a period of five years from the date on which the interest would otherwise have ceased to have effect under this section.
- (5) A registered community interest does not cease to have effect on completion of a transfer such as is mentioned in subsection (4) of section 40 above.
- [<sup>F35</sup>(6) The Scottish Ministers must send written notice to a community body which has a registered community interest of the date on which that interest will cease to have effect unless it is re-registered (“the expiry date”).
- (7) A notice under subsection (6) must be sent in the period beginning on the day which falls 12 months before the expiry date and ending 28 days after that day.]

#### **Textual Amendments**

**F35** S. 44(6)(7) inserted (15.4.2016) by [Community Empowerment \(Scotland\) Act 2015 \(asp 6\)](#), ss. 45, 142(1); S.S.I. 2015/399, art. 2, Sch. (with art. 3)

#### **[<sup>F36</sup>44A Duty to notify changes to information relating to registered interest**

- (1) This section applies where a community interest in land is registered in pursuance of an application under section 37.
- (2) Where—
  - (a) the application contains information enabling Ministers to contact the community body which made the application, and
  - (b) there is a change in that information,the community body must, as soon as reasonably practicable after the change, notify Ministers of the change.
- (3) Where—
  - (a) the application contains information enabling Ministers to contact the owner of the land to which the application relates, and

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- (b) there is a change in that information,  
the owner must, as soon as reasonably practicable after the change, notify Ministers of the change.
- (4) Where—
- (a) the application contains information relating to a creditor in a standard security over an interest in the land, and
- (b) there is a change in that information,  
the owner of the land to which the application relates must, as soon as reasonably practicable after the change, notify Ministers of the change.
- (5) Subsection (6) applies where—
- (a) there is a creditor in a standard security over an interest in the land to which the application relates, but
- (b) the application does not disclose the existence of the creditor (whether because the standard security did not exist at the time the application was made or otherwise).
- (6) The owner of the land to which the application relates must, as soon as reasonably practicable after the interest in land is registered—
- (a) notify Ministers of the existence of the creditor, and
- (b) provide Ministers with such information relating to the creditor as would enable Ministers to contact the creditor.
- (7) Subsection (8) applies where there is a change in information provided by a community body or an owner of land in pursuance of the duty under subsection (2), (3), (4) or (6).
- (8) The community body or, as the case may be, the owner of the land must as soon as reasonably practicable after the change notify Ministers of the change.]

#### **Textual Amendments**

**F36** S. 44A inserted (15.4.2016) by [Community Empowerment \(Scotland\) Act 2015 \(asp 6\)](#), ss. 46, 142(1); [S.S.I. 2015/399](#), art. 2, Sch. (with art. 3)

## **45 Deletion of community interest in land**

- (1) If Ministers are satisfied that there has, since the date on which they decided that a community interest should be registered, been a change in any matters to the extent that, if the application to register that community interest were made afresh, they would decide that the interest is not to be entered in the Register, they shall direct the Keeper to delete that interest.
- (2) Ministers shall not, however, do so without first giving the community body which registered the community interest and the owner of the land an opportunity to state views on the proposed deletion.

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#### **46 Re-registration of community interest**

Nothing in section 44 or 45 above prevents a community body from applying to register an interest in land in respect of which, or in respect of part of which, it previously had an interest which has—

- (a) ceased to have effect under section 44(1) or (4) above; or
- (b) been deleted under section 45(1) above.

**Changes to legislation:**

There are currently no known outstanding effects for the Land Reform (Scotland) Act 2003, Chapter 2.