



Land Reform (Scotland) Act 2003

2003 asp 2

PART 2

THE COMMUNITY RIGHT TO BUY

CHAPTER 4

PROCEDURE AFTER ACTIVATION OF RIGHT TO BUY

51 Exercise of right to buy: approval of community and consent of Ministers

- (1) A community body shall not proceed to buy land under this Part of this Act without—
 - (a) the approval of the community; and
 - (b) the consent of Ministers.
- (2) The community are to be taken as having given their approval for the purposes of subsections (1) above and (3) below if Ministers are satisfied—
 - (a) that—
 - (i) at least half of the members of the community, as defined for the purposes of section 34(1)(a) above, have voted in a ballot conducted by the community body on the question whether the community body should buy the land; or
 - (ii) where less than half of the members of the community have so voted, the proportion which did vote is, in the circumstances, sufficient to justify the community body's proceeding to buy the land; and
 - (b) that the majority of those voting have voted in favour of the proposition that the community body buy the land.
- (3) Ministers shall not consent for the purposes of subsection (1) above unless the community have given their approval and Ministers are satisfied—
 - (a) that the land is registrable land;
 - (b) that the community body continues to comply with the provisions of section 34 above;
 - (c) that what the community body proposes to do with the land is compatible with furthering the achievement of sustainable development;

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- (d) that the proposed purchase of the land is in the public interest; and
 - (e) that there has not, since the date on which they decided the community body's interest should be registered, been a change in any matters to the extent that, if the application to register the community interest were made afresh, they would decide that the interest is not to be entered in the Register.
- (4) A community body may require Ministers to treat as confidential any information or document relating to arrangements for the raising or expenditure of money to enable the land to be put to a particular use, being information or a document made available to Ministers for the purposes of subsection (3) above.
- (5) Ministers shall, within the time limit specified in subsection (6) below, send notice of their decision as to consent and their reasons for it in writing to the community body and to the owner of the land and shall direct the Keeper to enter a record of that decision in the Register.
- (6) That time limit is—
- (a) where one community body has confirmed that it will exercise its right to buy the land, the 21 days following receipt of notification, under section 52(3) below, of the result of the ballot conducted by the body; or
 - (b) where two or more community bodies have confirmed that they will exercise their right to buy the land, the 21 days following receipt of such notification in respect of the last of the ballots conducted by those bodies.
- (7) Any failure to comply with the time limit specified in subsection (6) above does not affect the validity of anything done under this section.

52 Ballot procedure

- (1) The ballot shall be conducted as prescribed; and the provisions prescribed shall include provision for the ascertainment and publication of the number of persons eligible to vote in the ballot, the number who did so and the numbers of valid votes respectively cast for and against the proposition mentioned in section 51(2)(b) above.
- (2) If the ballot is not so conducted, the right to buy of the community body conducting it is extinguished.
- (3) The community body which conducts a ballot shall, within the period set out in subsection (4) below and in the prescribed form of return, notify—
- (a) the result;
 - (b) the number of persons eligible to vote;
 - (c) the number who voted; and
 - (d) the number who voted in favour of the proposition mentioned in section 51(2)(b) above,
- to Ministers.
- (4) The period referred to in subsection (3) above is the period of 28 days beginning with the date—
- (a) when the valuer notified the community body under section 60(2) below of the assessed value of the land and any moveable property; or
 - (b) where the price assessed by the appointed valuer is the subject of appeal, the date on which the price is determined on appeal as mentioned in subsection (2) of section 56 below or settled as mentioned in subsection (2)(a) of that section.

53 Provisions supplementary to section 51: salmon fishings and minerals

Where the land in which a community interest has been registered is salmon fishings or mineral rights, Ministers shall not consent under section 51(1) above to the exercise of the right to buy unless they are (additionally to the matters as to which they are to be satisfied under section 51(3) above) satisfied that—

- (a) the salmon fishings are in waters which are within or contiguous to;
- (b) where in separate ownership from the land, the mineral rights are exercisable within,

land which the community body is, at the same time, exercising its right to buy or already owns.

54 Declinature or extinction of right to buy

- (1) If, at any time, a community body which has registered a community interest decides that it will not exercise its right to buy the land, it shall give Ministers written notice of its decision.
- (2) On receipt of a notice under subsection (1) above, Ministers shall—
 - (a) send a copy of it to the Keeper and direct the Keeper to delete the community interest from the Register; and
 - (b) notify the owner of the land of that fact.
- (3) Where, when that notice is given, that right to buy has arisen, the right is then extinguished.
- (4) Nothing in or done under subsections (1) to (3) above prevents a community body from registering a community interest in the same land for a second or subsequent time.
- (5) If, at any time after the owner of land has given notice under section 48(1) above but before the owner has concluded missives with a community body for the sale and purchase of the land in respect of which a right to buy has arisen, the owner of the land decides not to proceed further with the proposed transfer the owner shall give written notice of that fact to—
 - (a) Ministers; and
 - (b) each community body which has registered an interest in the land.
- (6) Ministers shall send a copy of the notice given under subsection (5) above to the Keeper.
- (7) Where a notice is given under subsection (5) above, the right to buy the land which arose under section 47 above is extinguished.
- (8) Subsections (5) and (7) above do not apply where the right to buy land has arisen and is being exercised by virtue of the owner of land being deemed, by section 50(5) above, to have provided notice under section 48(1) above.
- (9) Nothing in subsection (7) above prevents a right to buy land from arising for a second or subsequent time.

55 Right to buy same land exercisable by only one community body

- (1) Only one community body may exercise the right to buy land in which two or more community bodies have registered community interests.

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- (2) Where two or more community bodies have confirmed that they will exercise their rights to buy such land it is for Ministers to decide which one is to proceed.
- (3) On Ministers so deciding—
 - (a) the other community body's right to buy the land is extinguished; and
 - (b) they shall—
 - (i) direct the Keeper to delete its interest from the Register; and
 - (ii) notify the owner of the land and the community bodies of that fact.
- (4) Where a community body has confirmed that it will buy the land as respects which a crofting community body has applied to Ministers under section 73 below for consent to exercise the right to buy, it is for Ministers to decide which body is to proceed.
- (5) Where Ministers decide that the crofting community body is to proceed—
 - (a) the community body's right to buy the land is extinguished; and
 - (b) they shall—
 - (i) direct the Keeper to delete its interest from the Register; and
 - (ii) notify the owner of the land, the crofting community body and the community body of that fact.

56 Procedure for buying

- (1) It is for the community body to make the offer to buy in exercise of the right conferred by this Part of this Act.
- (2) The offer shall be at a price—
 - (a) agreed between the community body and the owner of the land; or
 - (b) where no such agreement is reached, equal to—
 - (i) the value assessed by the appointed valuer; or
 - (ii) if that value is the subject of an appeal under section 62 below, the value determined by the appeal,

and shall specify the date of entry and of payment of the price in accordance with subsection (3) below.
- (3) The date of entry and of payment of the price shall be—
 - (a) a date not later than 6 months from the date when the community body sent the confirmation sought by Ministers under section 49(2)(a) above of its intention to buy;
 - (b) where the price assessed by the appointed valuer is the subject of an appeal under section 62 below which has not, within the period of 4 months after the date when the community body sent that confirmation, been—
 - (i) determined; or
 - (ii) abandoned following agreement between the community body and the owner of the land,

a date not later than 2 months after the appeal is so determined or, as the case may be, abandoned; or
 - (c) such later date as may be agreed between the community body and the owner of the land.
- (4) The offer may include such other reasonable conditions as are necessary or expedient to secure the efficient progress and completion of the transfer.

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- (5) If a community body has not, within the period fixed by or agreed under subsection (3) above, done any of the things mentioned in subsection (6) below, the community body's right to buy the land is extinguished and Ministers shall—
- (a) direct the Keeper to delete its interest in the land from the Register; and
 - (b) notify the owner of the land of that fact.
- (6) The things referred to in subsection (5) above are—
- (a) concluding missives with the owner of the land for its sale to the community body;
 - (b) if the community body has not so concluded missives, taking all steps which, in the opinion of the Lands Tribunal, it could reasonably have taken in the time available towards so concluding missives short of applying to the Lands Tribunal for an order under section 57 below; and
 - (c) where—
 - (i) paragraph (b) above applies;
 - (ii) all such steps as are there mentioned have been taken; and
 - (iii) there has been, in the opinion of the Lands Tribunal, reasonably sufficient time also to apply to the Lands Tribunal for an order under section 57 below,applying to the Lands Tribunal accordingly.

57 Powers of Lands Tribunal in event of failure or delay

- (1) If, on application made to it by the owner of the land or the community body, the Lands Tribunal is satisfied that, following the making of an offer in pursuance of section 56 above, the owner of the land or the community body has unreasonably delayed the progress of transferring title to the land to the community body, the Tribunal may order the owner of the land or, as the case may be, the community body to take such remedial action as is specified in the order and to do so within such time as is so specified.
- (2) If a community body—
- (a) fails to comply with an order under subsection (1) above; and
 - (b) has not, within the time in which remedial action specified in such order is required to be taken, given notice under section 54 above to Ministers that it no longer wishes to exercise its right to buy the land,
- the Lands Tribunal may make an order extinguishing its right to buy the land and, where the Tribunal makes such an order, it shall send a copy of the order to Ministers and the owner of the land.
- (3) Ministers shall, if an order is made under subsection (2) above—
- (a) direct the Keeper to delete the community body's interest from the Register; and
 - (b) notify the owner of the land of that fact.
- (4) If an owner of land—
- (a) fails to comply with an order under subsection (1) above; and
 - (b) has not, within the time in which remedial action specified in such order is required to be taken, given notice under section 54 above to Ministers and the community body that the owner of the land no longer wishes to proceed with the transfer of the land,

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the Lands Tribunal may make an order authorising the community body to acquire the land subject to such terms and conditions as may be specified in the order and requiring the owner of the land to transfer the land to the community body in accordance with such terms and conditions.

- (5) If an owner of land refuses or fails to effect a transfer of land in pursuance of an order under subsection (4) above in accordance with such terms and conditions as may be specified in the order, the Lands Tribunal may authorise its principal clerk to adjust, execute and deliver such deeds or other documents as are necessary to complete the transfer to the like force and effect as if the owner had acted in the manner required by the order.

58 Procedure where right to buy activated by virtue of notice under section 50(3)

- (1) Where a right to buy land arises, and may be exercised, by virtue of Ministers sending notice under section 50(3) above, subsections (2) to (6) below apply in place of sections 56 and 57 above in relation to the exercise of that right.
- (2) It is for the community body to secure the expeditious exercise of such a right to buy and, in particular—
- (a) to prepare the documents necessary to effect the transfer; and
 - (b) in so doing, to ensure that the land in respect of which the right to buy has arisen is the same as the land to be transferred.
- (3) The community body shall pay a price—
- (a) equal to the value assessed by the appointed valuer; or
 - (b) determined by an appeal.
- (4) The owner of the land being bought is obliged—
- (a) to make available to the community body such deeds and other documents as are sufficient to enable the body to proceed to complete its title to the land; and
 - (b) to transfer title accordingly.
- (5) If the owner of the land refuses or fails to make those deeds and other documents available or they cannot be found, the Lands Tribunal may, on the application of the community body, order the owner or any other person appearing to the Tribunal to have those deeds and documents to produce them.
- (6) If the owner of the land refuses or fails to effect such transfer as is mentioned in subsection (4) above, the Lands Tribunal may, on the application of the community body, authorise its principal clerk to adjust, execute and deliver such deeds or other documents as will complete such transfer to the like force and effect as if done by the owner.