



Land Reform (Scotland) Act 2003

2003 asp 2

PART 3

THE CROFTING COMMUNITY RIGHT TO BUY

CHAPTER 2

EXERCISE OF RIGHT TO BUY

- 73 Application by crofting community body for consent to buy croft land etc.**
- (1) The right to buy under this Part of this Act may be exercised only by a crofting community body.
 - (2) That right may be so exercised only with the consent of Ministers given on the written application of the crofting community body.
 - (3) That right may be exercised in relation to more than one holding of land or sporting interests but in order so to exercise the right an application must be made in respect of each such holding and applications so made may be differently disposed of.
 - (4) In subsection (3) above, a “holding” of land or of a sporting interest is land in the ownership of one person or in common or joint ownership or a sporting interest to which one person is entitled or to which there is a common or joint entitlement.
 - (5) Such an application shall be made in the prescribed form and shall include or be accompanied by information of the prescribed kind including information (provided, where appropriate, by or by reference to maps or drawings) about—
 - (a) the location and boundaries of the land or sporting interests in respect of which the right to buy is sought to be exercised (the “subjects of the application”);
 - (b) all—
 - (i) rights and interests in the subjects of the application;
 - (ii) sewers, pipes, lines, watercourses or other conduits and fences, dykes, ditches or other boundaries in or on the land,known to the applicant body or the existence of which it is, on reasonably diligent inquiry, capable of ascertaining;

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- (c) whether the crofting community body proposes to exclude from the eligible croft land which it proposes to buy—
 - (i) salmon fishings in inland waters within or contiguous to; or
 - (ii) mineral rights in,
 - the land;
 - (d) whether the crofting community body proposes a leaseback of sporting interests under section 83 below;
 - (e) the proposed use, development and management of the subjects of the application;
 - (f) whether and how the matters referred to in paragraph (e) above would affect any of the facilities referred to in paragraph (b)(ii) above insofar as those facilities connect with similar facilities on other land or also serve other land; and
 - (g) the extent to which the matters referred to in paragraph (e) above would consist of or support the sustainable use or development of the subjects of the application, including any land or sporting interests previously acquired by the crofting community body.
- (6) A crofting community body applying under this section shall, at the same time as it applies—
- (a) send a copy of its application to the owner of the subjects of the application; and
 - (b) where there is a standard security over an interest in any subjects to which the application relates, send a copy of its application and the accompanying information to the creditor who holds the standard security and invite the creditor—
 - (i) to notify the crofting community body and Ministers, within 60 days of receipt of the invitation, if any of the circumstances set out in subsection (7) below has arisen (or arises within 60 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.
- (7) Those circumstances 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 subjects in which the crofting community body is seeking to exercise its right to buy or any part of those subjects 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 those subjects or any part of those subjects 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 those subjects or any part of those subjects.
- (8) On receipt of an application, Ministers shall—
- (a) invite—

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- (i) the owner of or, as the case may be, person entitled to the subjects of the application;
 - (ii) the owners of all land contiguous to land which consists of the subjects of the application;
 - (iii) the Crofters Commission; and
 - (iv) any other person whom Ministers consider to have an interest in the application,to send them, so as to be received not later than 60 days after the sending of the invitation, views in writing on the application; and
 - (b) send a copy of the invitation to the crofting community body.
- (9) If the subjects of the application include land other than eligible croft land, the invitation given under subsection (8)(a)(i) above shall seek the consent of the owner of that eligible additional land to its sale under this Part of this Act.
- (10) Ministers shall, as soon as may be after receiving an application, give public notice of it and of the date by which, under subsection (8)(a) above, views are to be received by them and, in that notice, invite persons to send to Ministers, so as to be received by them not later than 60 days after the publication of the notice, views in writing on the application.
- (11) That public notice shall be given by advertisement—
- (a) in such newspaper circulating in the area where the subjects of the application are situated as Ministers think appropriate; and
 - (b) in the Edinburgh Gazette.
- (12) Ministers shall—
- (a) send copies of any views they receive under this section to the crofting community body; and
 - (b) invite it to send them, so as to be received by them not later than 60 days after the sending of that invitation, its responses to these views.
- (13) Ministers shall, when considering whether to consent to an application under this section, have regard to all views on it and responses thereto which they have received in answer to invitations under this section.
- (14) Ministers shall decline to consider an application which—
- (a) does not comply with the requirements of or imposed under this section;
 - (b) is otherwise incomplete;
 - (c) discloses that the subjects of the application, or any part of them, are not within the respective definitions in sections 68 and 70 above; or
 - (d) otherwise indicates that it is one which Ministers would be bound to reject;
- and Ministers shall not be required to comply with subsections (8) to (13) above in relation to such an application.
- (15) Ministers shall not reach a decision on an application before—
- (a) the date which is 60 days after the last date on which the crofting community body may provide Ministers with a response to the invitation given under subsection (12) above; or
 - (b) if by that date the Land Court has not advised Ministers of its finding on any question referred to it under section 79(2) or 81(1) below in relation to the

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application, the date on which the Land Court provide Ministers with that finding.

74 Criteria for consent by Ministers

- (1) Ministers shall not consent to an application under section 73 above unless they are satisfied—
- (a) that the croft land to which the application relates is eligible croft land;
 - (b) that any additional land to which the application relates is eligible additional land;
 - (c) that any eligible additional land is to be bought only at the request or with the consent of its owner;
 - (d) that any salmon fishings to which the application relates are eligible croft land;
 - (e) that any mineral rights to which the application relates are eligible croft land;
 - (f) that any sporting interests to which the application relates are eligible sporting interests;
 - (g) that the subjects of the application have not previously been bought under this Part of this Act and disposed of by the crofting community body;
 - (h) that the owner is not—
 - (i) prevented from selling the subjects of the application; or
 - (ii) subject to any enforceable personal obligation (other than an obligation arising from any right mentioned in section 84(1) below), or order of the Land Court, to sell them otherwise than to the crofting community body;
 - (i) that the crofting community body complies with the provisions of section 71 above;
 - (j) that the exercise by the crofting community body of the right to buy under this Part of this Act is compatible with furthering the achievement of sustainable development;
 - (k) that, where the subjects of the application are salmon fishings, mineral rights or sporting interests, the crofting community body has or is acquiring sufficient croft land to enable those subjects to be exploited so as to support the development of the crofting community defined in relation to that body in pursuance of section 71 above;
 - (l) that the crofting community so defined are, in relation to the subjects of the application, an appropriate crofting community;
 - (m) that the crofting community so defined have approved the proposal to exercise the right to buy; and
 - (n) that it is in the public interest that the right to buy be exercised.
- (2) For the purposes of subsection (1)(n) above, the public interest includes the interest of any sector (however small) of the public which, in the opinion of Ministers, would be affected by the exercise of the right to buy, and such a sector includes a community as defined for the purposes of section 34(1)(a) above and a crofting community as defined for the purposes of section 71(1)(a) above.

75 Ballot to indicate approval for purposes of section 74(1)(m)

- (1) The crofting community, defined in pursuance of section 71 above in relation to the crofting community body which has applied to buy land or sporting interests, are to

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be taken for the purposes of section 74(1)(m) above as having approved a proposal to buy if—

- (a) a ballot of the members of the crofting community so defined has, during the period of six months which immediately preceded the date on which the application was made, been conducted by the crofting community body on the question whether the crofting community body should buy the land or sporting interests; and
 - (b) the majority of—
 - (i) those voting; and
 - (ii) the members of the crofting community so defined who voted and who are tenants of crofts within the land which the crofting community body has applied to buy or, as the case may be, within land over which the sporting interests which the crofting community body has applied to buy may be exercised,have voted in favour of the proposition that the crofting community body exercises its right to buy.
- (2) 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 vote and the numbers of valid votes respectively cast for and against the proposition.
- (3) If the ballot is not so conducted, the crofting community body's right to buy the land or sporting interests which are the subject of the body's application is, so far as proceeding on that application, extinguished.
- (4) The crofting community body which conducts a ballot shall, within 21 days of the ballot (or, if its application under section 73 above is given before the expiry of that period, together with the application) and in the prescribed form of return, notify—
- (a) the result;
 - (b) the number of persons eligible to vote;
 - (c) the number of those persons who are tenants of crofts within the land which the body proposes to buy;
 - (d) the number of persons who voted and the number of those persons who are such tenants; and
 - (e) the number of persons who voted in favour of the proposal to buy and the number of those persons who are such tenants,
- to Ministers.
- (5) Any person who, whether alone or in common with others—
- (a) has a right of pasture or grazing, or holds a common grazing, within the land which the crofting community body has applied to buy or, as the case may be, within land over which the sporting interests which the crofting community body has applied to buy may be exercised; or
 - (b) holds any part of that land runrig,
- is, for the purposes of this section, to be regarded as a tenant of a croft within the land which the body proposes to buy.

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76 Right to buy same croft land exercisable by only one crofting community body

- (1) Only one crofting community body may exercise the right under this Part of this Act to buy the same land or sporting interests.
- (2) Where two or more such bodies have applied to buy the same land or sporting interests, it is for Ministers to decide which is to proceed.
- (3) Ministers may not make such a decision unless they have had regard to all views on each of the applications, and responses thereto, which they have received in answer to invitations under section 73 above.
- (4) On Ministers so deciding—
 - (a) the other body's right to buy the land or sporting interests which are the subject of the body's application is, so far as proceeding on that application, extinguished; and
 - (b) they shall notify—
 - (i) the owner of the land or person entitled to the sporting interests; and
 - (ii) the bodies,
 of that fact.

77 Reference to Land Court of purchase of eligible additional land without owner's consent

- (1) Where the owner of any eligible additional land to which an application under section 73 above relates has not requested, or consented to, the sale of that land Ministers shall refer to the Land Court the question of whether the eligible additional land may be bought by the crofting community body without the consent of its owner.
- (2) In considering any question referred to it under subsection (1) above, the Land Court may have regard to any representations made to it by—
 - (a) the applicant crofting community body;
 - (b) the owner of the land which is the subject of the application; or
 - (c) any other person who, in the opinion of the Land Court, appears to have an interest.
- (3) On a reference under subsection (1) above the Land Court may determine that eligible additional land may be purchased by the crofting community body without the consent of its owner (and such determination shall have the same effect as if Ministers had been satisfied as to the matter referred to in section 74(1)(c) above) but only if the court is satisfied—
 - (a) that the purchase of the eligible additional land by the crofting community body is essential to the development of the crofting community;
 - (b) that such development is compatible with furthering the achievement of sustainable development;
 - (c) that the purpose to which that land would be put cannot reasonably be achieved by means within the powers of the Court other than by its purchase under this Part of this Act by the crofting community body;
 - (d) that where that land forms part of an area of land all of which is in the same ownership, the purchase of the land will not seriously jeopardise the continued use and management of the remaining land; and
 - (e) that that land does not exceed, in area, whichever is the greater of—

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- (i) 10 hectares; or
 - (ii) 5 per cent of the combined area of the land and any croft land being bought or which had previously been bought under this Part of this Act by the crofting community body.
- (4) Where the Land Court determine, under subsection (3) above, that eligible additional land may be purchased by the crofting community body without the consent of its owner it may provide that Ministers shall, under section 80 below, make their consent to the application subject to the imposition, on transfer of the land, of such conditions upon the title to the land as the Court may specify.
- (5) If the Land Court considers that the purpose to which eligible additional land or any part of it is proposed to be put can be substantially achieved by imposing conditions upon the title to that land, it may make an order—
- (a) approving the purchase of the land sought to be bought but not the eligible additional land or that part of it; and
 - (b) providing that Ministers shall, under section 80 below, make their consent to the application subject to the imposition of such title conditions as the Court considers appropriate on the eligible additional land or, as the case may be, that part of it.
- (6) An order under subsection (5) above has the same effect as Ministers being satisfied as to the matter set out in section 74(1)(c) above.
- (7) The references in subsections (4) and (5) above to conditions upon the title to the land include references to real burdens and servitudes.

78 Modification of section 77(3)(a) to (e)

- (1) Ministers may, by order, modify the provisions of paragraphs (a) to (e) of subsection (3) of section 77 above.
- (2) Modifications under subsection (1) above may include the addition of new paragraphs.

79 Additional land included at request of owner

- (1) Where the owner of eligible croft land or eligible additional land has, within the time limit for submitting views in pursuance of section 73 above, requested that eligible additional land or, as the case may be, further eligible additional land be included with the land to be bought under this Part of this Act, Ministers may, if they consider that it is in the public interest to do so, make it a condition of their proceeding to consider the application by the crofting community body that the body modifies its application so as to include in the land to be bought that eligible additional land as further such land.
- (2) Ministers—
 - (a) may; and
 - (b) on being so required by the owner of land who has made such a request or the crofting community body in relation to whose application the condition referred to in subsection (1) above has been imposed, shall,refer to the Land Court for its findings in fact in respect of any matter relating to the question of whether the additional land or further additional land should be included with the land to be bought.

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- (3) In considering any question referred to it under subsection (2) above, the Land Court may have regard to any representations made to it by—
- (a) the applicant crofting community body;
 - (b) the owner of the land which is the subject of the application; or
 - (c) any other person who, in the opinion of the Land Court, appears to have an interest.
- (4) On a reference under subsection (2) above, the Land Court shall report its findings in fact to Ministers.
- (5) Where a referral is made to the Land Court under subsection (2) above, Ministers shall not consent to the application to which the referral relates before they have—
- (a) received the Land Court’s report of its findings in fact; and
 - (b) taken those findings into account when considering or further considering the application.

80 Consent conditions

Ministers may make their consent to an application under section 73 above subject to conditions.

81 Reference to Land Court of questions on applications

- (1) At any time before Ministers reach a decision on an application which has been made under section 73 above—
- (a) Ministers;
 - (b) any person who is a member of the crofting community defined in relation to the applicant crofting community body in pursuance of section 71 above;
 - (c) any person who has any interest in the land or sporting interests which are the subject of the application giving rise to a right which is legally enforceable by that person; or
 - (d) any person who is invited, under section 73(8)(a) above, to send views to Ministers on the application,
- may refer to the Land Court any question (other than a question which Ministers may, or may be required to, refer under section 77(1) or 79(2) above) relating to the application.
- (2) In considering any question referred to it under subsection (1) above, the Land Court may have regard to any representations made to it by—
- (a) the applicant crofting community body;
 - (b) the owner of the land which is, or person entitled to the sporting interests which are, the subject of the application; or
 - (c) any other person who, in the opinion of the Land Court, appears to have an interest.
- (3) The Land Court—
- (a) shall advise Ministers of its finding on any question so referred; and
 - (b) may, by order, provide that Ministers may consent to the application only if they impose, under section 80 above, such conditions as the Court may specify.

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- (4) If the Land Court considers any question referred to it under this section to be irrelevant to Ministers' decision on the application to which it relates, it may decide to give no further consideration to the question and find accordingly.

82 Notification of Ministers' decision on application

- (1) Ministers shall give written notice, in prescribed form, of their decision upon an application, and their reasons for it, to—
- (a) the applicant crofting community body;
 - (b) the owner of the land or person entitled to the sporting interests to which the application relates;
 - (c) every other person who was invited, under section 73(8)(a) above, to send them views on the application; and
 - (d) where their decision is to consent to the application, to the Keeper of the Registers of Scotland.
- (2) The form of notice shall be prescribed so as to secure that the notice includes a full description of—
- (a) the land or sporting interests to which the consent relates (provided, where appropriate, by or by reference to maps and drawings); and
 - (b) where their decision is to consent to the application, any conditions imposed under section 80 above by virtue of subsections (4) or (5) of section 77 above.
- (3) The notice given under subsection (1) above shall—
- (a) contain information about the consequences of the decision notified and of the rights of appeal against it given by this Part of this Act; and
 - (b) state the date as at which the decision is effective.

83 Leaseback to owner of sporting interests

- (1) This section applies where—
- (a) at the date of an application under section 73 above, only the owner of the land to be bought is entitled to the sporting interests on the land;
 - (b) the crofting community body has indicated that it proposes a leaseback of those interests under section 73(5)(d) above;
 - (c) the owner, within the period of 60 days referred to in subsection (8) of that section, notifies Ministers in writing that the owner wishes a lease of those interests;
 - (d) Ministers have consented to the application; and
 - (e) the crofting community body and the owner of the land have not, prior to consent being given, provided Ministers with a copy of an agreement between them on the terms and conditions of the lease of those interests.
- (2) Where this section applies Ministers shall, within 7 days of consenting to the application, refer to the Land Court the question of what terms and conditions are appropriate for a lease of those sporting interests from the crofting community body to the owner.
- (3) The Land Court shall, subject to subsection (4) below, determine those terms and conditions.

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- (4) Those terms and conditions shall include provision that—
- (a) the annual rent shall be nominal;
 - (b) the duration of the lease shall be not less than 20 years; and
 - (c) the owner shall be entitled to assign the tenant's interest under the lease,
- and the terms and conditions shall not prevent the lease from being recorded or registered under the Registration of Leases (Scotland) Act 1857 (c. 26).
- (5) The crofting community body shall, forthwith on completion of the transfer of the land, grant a lease accordingly to the owner of the land.
- (6) If a crofting community body refuses or fails to grant a lease in accordance with such terms and conditions as have been determined, the Land Court may authorise its principal clerk to adjust, execute and deliver the lease to the like force and effect as if done by the crofting community body.

84 Effect on other rights of Ministers' decision on right to buy

- (1) Any rights of pre-emption, redemption or reversion or deriving from any option to purchase otherwise exercisable over land or sporting interests which are the subject of an application by a crofting community body under this Part of this Act are—
- (a) suspended as from the date when Ministers approve the body's application under section 73 above to buy the land or sporting interests; and
 - (b) revived—
 - (i) when the transfer under this Part of this Act of the land or sporting interests to the body is completed; or
 - (ii) if such a transfer is not completed because the body does not (by virtue of withdrawing, under section 85 below, its application under section 73 above or its confirmation of its intention to proceed to buy or for any other reason) proceed to buy the land or sporting interests.
- (2) Any rights which a person has in land which a crofting community body is seeking to buy under this Part of this Act, being rights conferred on the person under—
- (a) Part 2 of this Act;
 - (b) section 12 of the 1993 Act;
 - (c) the provisions of Part III of the Housing (Scotland) Act 1987 (c. 26) relating to a person's right to purchase the house of which the person is a tenant,
- are suspended as provided in paragraph (a) of subsection (1) above but revived in the circumstances set out in paragraph (b) of that subsection.
- (3) Nothing in this Part of this Act—
- (a) affects the operation of an inhibition on the sale of the land;
 - (b) prevents an action of adjudication from proceeding; or
 - (c) affects the commencement, execution or operation of any other diligence.

85 Confirmation of intention to proceed with purchase and withdrawal

- (1) A crofting community body's right to buy land or sporting interests under this Act is exercisable only if, within 21 days of the date of notification under section 88(12) below, it sends notice confirming its intention to proceed to buy the land or interests to Ministers and to the owner of the land or person entitled to the interests.

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- (2) A crofting community body may, at any time after—
 - (a) making an application under section 73 above, withdraw the application; or
 - (b) confirming its intention to proceed under subsection (1) above, withdraw that confirmation,by notice in writing to that effect sent to Ministers.
- (3) Ministers shall, within 7 days of receipt of notice under subsection (1) or (2) above, acknowledge receipt and send a copy of that acknowledgement to the owner of the land or person entitled to the interests.

86 Completion of purchase

- (1) It is for the crofting community body to secure the expeditious exercise of its right to buy and, in particular—
 - (a) to prepare the documents necessary to—
 - (i) effect the transfer; and
 - (ii) impose any conditions (including any real burdens or servitudes) which Ministers, under section 80 above, require to be imposed upon the title to land; and
 - (b) in so doing, to ensure—
 - (i) that the subjects of the application to which Ministers have consented are the same as those to be transferred; and
 - (ii) that the transfer is to be effected in accordance with any other conditions imposed by Ministers under section 80 above.
- (2) Where the crofting community body is unable to fulfil the duty imposed by subsection (1)(b) above because part of the land or sporting interests in respect of which Ministers' consent was given is not owned by the person named as its owner or exercisable by the person named as the person entitled to them in the application under section 73 above, it shall refer that matter to Ministers.
- (3) On a reference under subsection (2) above, Ministers may direct—
 - (a) that the right to buy be exercised as if the part of the land or interests not owned or not exercisable by the owner or person entitled so named had never been included in the description of the land or interests in the application to which they had consented; or
 - (b) that the crofting community body's right to buy the land or interests which are the subject of the body's application is, so far as proceeding on that application, extinguished.
- (4) The owner of the land or person entitled to the interests being bought is obliged—
 - (a) to make available to the crofting community body such deeds and other documents as are sufficient to enable the body to proceed to complete its title to the land or interests; and
 - (b) to transfer title accordingly.
- (5) If, within 6 weeks of the date on which Ministers consent to an application to buy land or sporting interests, the owner of the land or person entitled to the interests refuses or fails to make those deeds and other documents available, or they cannot be found, the Land Court may, on the application of the crofting community body, order the owner

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or person entitled or any other person appearing to the Court to have those deeds and documents to produce them.

- (6) If the owner of the land or person entitled to the interests refuses or fails to effect such sufficient transfer as is mentioned in subsection (4) above, the Land Court may, on the application of the crofting 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 or person entitled.

87 Completion of transfer

- (1) The consideration for the transfer of the land or sporting interests shall be its or their value as assessed under section 88 below.
- (2) That consideration shall, subject to subsections (3) and (4) below, be paid not later than the “final settlement date”, being the date on which expires a 6 month period beginning with the date (the “consent date”) when Ministers consented to the application under section 73 above to buy the land or interests.
- (3) Where—
- (a) the owner or person entitled to the interests and the crofting community body so agree, the consideration may be paid on a date later than the final settlement date;
 - (b) the assessment of the valuation of the land or interests under section 88 below has not been completed by a date 4 months after the consent date, the consideration shall be paid not later than 2 months after the date when that assessment is completed;
 - (c) that valuation is the subject of an appeal which has not been determined within 4 months of the consent date, the consideration shall be paid not later than 2 months after the date of that determination.
- (4) Where, on the date the consideration is to be paid, the owner or person entitled to the interests is not able to effect the grant of a good and marketable title to the crofting community body—
- (a) the consideration; or
 - (b) if, for any reason, the consideration has not been ascertained, such sum as may be fixed by the valuer appointed under section 88(1) below as a fair estimate of what the consideration might be,
- shall be consigned into the Land Court until that title is granted or the crofting community body gives notice to the Court of its decision not to proceed to complete the transaction.
- (5) Where the consideration remains unpaid after the date not later than which it is to be paid, the crofting community body’s application under section 73 above in relation to the land or interests shall be treated as withdrawn.
- (6) Any heritable security which burdened the land immediately before title is granted to the crofting community body in pursuance of this section shall, on the recording of that title in the Register of Sasines or registration in the Land Register of Scotland of the body’s interest in the land, cease to do so.
- (7) Where such a security also burdens land other than the land in respect of which title is granted to the crofting community body, the security shall not, by virtue of subsection (6) above, cease to burden that other land.

Status: Point in time view as at 14/06/2004.

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)

- (8) Unless the creditors in right of any such security otherwise agree, the crofting community body shall pay to them according to their respective rights and preferences any sum which would, but for this subsection, be paid to the owner by the crofting community body as consideration for the land or interests.
- (9) Any sum paid by a crofting community body under subsection (8) above shall be deducted from the sum which the body is to pay to the owner as consideration for the land.

Status:

Point in time view as at 14/06/2004.

Changes to legislation:

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