



# 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 is situated; and
  - (b) affixing a conspicuous notice in the prescribed form to a part of that land.
- (5) On receipt of an application, Ministers shall—

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- (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;
  - (b) each notice sent under subsection (5)(e) above,
- 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

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- (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 not registrable land; 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
  - (b) be in the prescribed form.
- (19) Any failure to comply with the time limit specified in subsection (17) above 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.

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### **38 Criteria for registration**

- (1) Ministers shall not decide that a community interest is to be entered in the Register unless they are satisfied—
- (a) that the land is registrable land;
  - (b) that—
    - (i) a significant number of the members of the community defined under section 34(1)(a) above have a substantial connection with the land; or
    - (ii) the land is sufficiently near to land with which those members of that community have a substantial connection and that its acquisition by the community body is compatible with furthering the achievement of sustainable development;
  - (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) 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.
- (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) above.

### **39 Procedure for late applications**

- (1) This section applies in relation to an application to register a community interest in land—
- (a) where the application is received by Ministers—
    - (i) 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 taken action which, if a community interest had been registered, would be prohibited under section 40(1) below; and
    - (ii) before the date on which—
      - (A) missives for the sale and purchase of the land are concluded; or
      - (B) an option to acquire the land is conferred,
 in pursuance of that action; or
  - (b) where another community body has registered an interest in the land, where the application is received by Ministers—

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- (i) after the date on which the owner of the land or, as the case may be, such a creditor has, under section 48(1) below, notified that community body that a transfer is proposed; and
  - (ii) before Ministers have consented, under section 51(1) below, 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
  - (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”.
- (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—
  - (a) that there were good reasons why the community body did not secure the receipt of an application before the owner of the land or, as the case may be, the creditor took the action, or gave the notice, such as is mentioned in subsection (1) above;
  - (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.
- (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) 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.
- (5) Where, but for the provision made by subsection (1)(a)(ii) above, this section would apply in relation to an application to register a community interest in land 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.

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#### **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 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 tenanted 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;
  - (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;
    - (iv) implementing missives for the sale and purchase of land concluded, or an option to acquire land which existed, on a date on which the Register did not contain a community interest, or an application to register a community interest, in the land;
    - (v) conveying a house to a person who has purchased it in pursuance of the tenant's right to buy it under Part III of the Housing (Scotland) Act 1987 (c. 26) (“the 1987 Act”);
    - (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;
    - (vii) under section 65 of the Housing (Scotland) Act 2001 (asp 10); or
    - (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

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- (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).

#### **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.

#### **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.

#### **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.

#### **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.