



# Land Reform (Scotland) Act 2003

## 2003 asp 2

### PART 2

#### THE COMMUNITY RIGHT TO BUY

#### CHAPTER 1

##### GENERAL EXTENT OF COMMUNITY RIGHT TO BUY

### 33 Registrable land

- (1) The land in which a community interest may be registered under this Part of this Act (“registrable land”) is any land other than excluded land.
- (2) In subsection (1) above, “excluded land” means land described as such in an order made by Ministers.
- (3) In determining what land is to be so described, Ministers—
  - (a) may have regard to factors relating to population and to such other factors associated with or characteristic of the land as they think fit; and
  - (b) shall secure that registrable land is land appearing to them to be rural.
- (4) The description of excluded land in an order under this section shall consist of or include—
  - (a) a map showing the boundaries of that land; or
  - (b) a reference to such a map.
- (5) Where that description consists of or includes a reference to a map which does not form part of the order, Ministers shall make copies of the map available for public inspection at such times and places as they think fit.
- (6) Registrable land includes land consisting of—
  - (a) salmon fishings; or
  - (b) mineral rights,

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which are owned separately from the land in respect of which they are exigible; but does not include any such fishings or rights which are exigible in respect of excluded land.

- (7) In subsection (6) above, “mineral rights” does not include rights to oil, coal, gas, gold or silver.

### **34 Community bodies**

- (1) A community body is, subject to subsection (4) below, a company limited by guarantee the memorandum and articles of association of which include the following—
- (a) a definition of the community to which the company relates;
  - (b) provision enabling the company to exercise the right to buy land under this Part of this Act;
  - (c) provision that the company must have not fewer than 20 members;
  - (d) provision that the majority of the members of the company is to consist of members of the community;
  - (e) provision whereby the members of the company who consist of members of the community have control of the company;
  - (f) provision ensuring proper arrangements for the financial management of the company and the auditing of its accounts;
  - (g) provision that any surplus funds or assets of the company are to be applied for the benefit of the community; and
  - (h) provision that, on the winding up of the company and after satisfaction of its liabilities, its property (including any land acquired by it under this Part of this Act) passes—
    - (i) to such other community body or crofting community body as may be approved by Ministers; or
    - (ii) if no other community body or crofting community body is so approved, to Ministers or to such charity as Ministers may direct.
- (2) Ministers may, if they think it in the public interest to do so, disapply the requirement specified in subsection (1)(c) above in relation to any body they may specify.
- (3) In subsection (1) above, “company limited by guarantee” has the same meaning as in section 1(2)(b) of the Companies Act 1985 (c. 6).
- (4) A body is not a community body unless Ministers have given it written confirmation that they are satisfied that the main purpose of the body is consistent with furthering the achievement of sustainable development.
- (5) Unless Ministers otherwise direct, a community—
- (a) shall be defined for the purposes of subsection (1)(a) above by reference to a postcode unit or postcode units; and
  - (b) shall comprise the persons from time to time—
    - (i) resident in that postcode unit or in one of those postcode units; and
    - (ii) entitled to vote, at a local government election, in a polling district which includes that postcode unit or those postcode units (or part of it or them).

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- (6) In subsection (5) above, “postcode unit” means an area in relation to which a single postcode is used to facilitate the identification of postal service delivery points within the area.
- (7) The memorandum and articles of a company which is a community body may, notwithstanding the generality of paragraph (h) of subsection (1) above, provide that its property may, in the circumstances mentioned in that paragraph, pass to another person only if that person is a charity.
- (8) In this section, “charity” means a body which is entitled, by virtue of section 1(7) of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40), to describe itself as “a Scottish charity”.

### **35 Provisions supplementary to section 34**

- (1) A community body which has registered a community interest in or bought land under this Part of this Act shall not, for as long as—
  - (a) the interest remains registered; or, as the case may be,
  - (b) the land remains in its ownership,modify its memorandum or articles of association without Ministers' consent in writing.
- (2) If Ministers are satisfied that a body which has registered a community interest is no longer a community body, they may direct the Keeper to delete that interest from the Register.
- (3) If Ministers are satisfied that a body which has, under this Part of this Act, bought land would, had it not so bought that land, no longer be entitled to do so, they may acquire the land compulsorily.

### **36 Register of Community Interests in Land**

- (1) The Keeper shall set up and keep a register, to be known as the Register of Community Interests in Land (the “Register”).
- (2) The Register shall be set up and kept so as to contain, in a manner and form convenient for public inspection, the following information and documents relating to each community interest registered in it—
  - (a) the name and address of the registered office of the company which constitutes the community body which has registered the interest;
  - (b) a copy of the application for registration under section 37 below;
  - (c) a copy of the notice of prohibition under section 37(5)(e) below;
  - (d) a copy of the notice sent under section 37(17) below of Ministers' decision that the interest is to be entered in the Register;
  - (e) the date of registration;
  - (f) a description of the land, including maps, plans or other drawings (prepared to such specifications as are prescribed);
  - (g) the date when the registration will, under section 44 below, cease to have effect;
  - (h) the date of any deletion of the interest under section 45 or 54 below;
  - (i) a copy of any notification under section 48 below;

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- (j) a copy of any notice sent under section 49 below;
  - (k) a copy of any confirmation received in pursuance of that section;
  - (l) a copy of any notice sent under section 50(3) below;
  - (m) a copy of any decision as to consent given under section 51 below;
  - (n) a copy of any notice given under section 54 below;
  - (o) in the case of each copy document referred to in this subsection, the date of the original;
  - (p) such other information as Ministers consider appropriate.
- (3) If, however, the community body registering an interest requires that any such information or document relating to that interest and within subsection (4) below as is specified in the requirement be withheld from public inspection, that information or document shall be kept by or on behalf of Ministers separately from and not entered in the Register.
- (4) Information or a document is within this subsection if it relates to arrangements for the raising or expenditure of money to enable the land in which the interest is registered to be put to a particular use.
- (5) Nothing in subsection (3) or (4) above obliges an applicant community body, or empowers Ministers to require such a body, to submit to Ministers any information or document within subsection (4) above.
- (6) Ministers may by order modify paragraphs (a) to (o) of subsection (2) or subsections (3) or (4) above.
- (7) The Keeper shall ensure—
- (a) that the Register is, at all reasonable times, available for public inspection free of charge;
  - (b) that members of the public are given facilities for getting copies of entries in the Register on payment of such charges as may be prescribed; and
  - (c) that any person requesting it is, on payment of such a charge, supplied with an extract entry certified to be a true copy of the original.
- (8) An extract so certified is sufficient evidence of the original.
- (9) In this Part of this Act “the Keeper” means—
- (a) the Keeper of the Registers of Scotland; or
  - (b) such other person as Ministers may appoint to carry out the Keeper’s functions under this Part of the Act.
- (10) Different persons may be so appointed for different purposes.

## 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

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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—
  - (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;

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- (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
  - (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

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- (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.

### **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.

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### **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—
    - (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—



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- (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.

#### **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;

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- (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
  - (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—
  - (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.

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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.

### **CHAPTER 3**

#### ACTIVATION OF RIGHT TO BUY

#### **47 Activation of right to buy**

- (1) The right to buy land in which a community interest has been registered arises and may be exercised when the owner of the land or, as the case may be, a creditor in a standard security with a right to sell the land gives, or is deemed to have given, notice under section 48(1) below that a transfer is proposed.
- (2) That right, however, is exercisable only in relation to particular holdings of land; accordingly, references in this and the following sections of this Part of this Act to land as respects which the right to buy is being exercised, is sought to be exercised or has been exercised are references to such holdings.
- (3) Subsection (1) above shall not operate so as to provide a community body with a right to buy any land in respect of which it has not registered an interest in accordance with this Part of this Act.
- (4) In subsection (2) above, “holding” has the same meaning as in subsections (14) and (15) of section 37 above.

#### **48 Duties on owner, or creditor, proposing to transfer land**

- (1) Where the owner of land in respect of which a community interest is registered or, as the case may be, a creditor in a standard security with a right to sell such land proposes to transfer that land (or any land of which that land forms part) by way of a transfer under this Part of this Act, the owner or, as the case may be, such a creditor shall notify that fact to—
  - (a) the community body, or bodies, in respect of which the interest is registered; and
  - (b) Ministers.
- (2) Notification under subsection (1) above shall be given in such form and otherwise in accordance with such provisions as are prescribed.
- (3) Subsection (1) above operates so as to require notification of a proposal to transfer land in respect of which no community interest has been registered only where that proposed transfer also relates to land in respect of which a community interest has been registered.
- (4) Where notification under subsection (1) above is given by a creditor in a standard security with a right to sell the land, references in the following sections of this Part of this Act to the owner of the land shall, for the purposes of determining the procedure

which is to apply in respect of the sale of the land by that creditor, be deemed to be references to that creditor.

#### **49 Procedure following receipt of notice under section 48**

- (1) On receipt of notification under section 48 above from an owner of land, Ministers shall direct the Keeper to enter particulars of the notification in the Register.
- (2) Not later than 7 days after such receipt Ministers shall—
  - (a) send to the community body which has registered the interest in the land a notice in the prescribed form seeking its confirmation in writing that it will exercise its right to buy the land; and
  - (b) send to the owner of the land a notice in the prescribed form narrating their compliance with paragraph (a) above.
- (3) A notice under subsection (2)(a) above shall specify the date referred to in and narrate the effect of subsection (4) below.
- (4) If, by the date specified in the notice, being a date not later than 30 days after it was sent, the community body has not caused its confirmation to be received by Ministers, Ministers shall be deemed to have received written notice from the community body under subsection (1) of section 54 below that it will not exercise its right to buy the land and subsections (2) to (4) of that section shall apply accordingly.
- (5) Ministers shall send a copy of—
  - (a) the notice sent under subsection (2)(a) above; and
  - (b) any confirmation received by them in pursuance of this section,to the owner of the land and to the Keeper.
- (6) Any failure to comply with the time limit specified in subsection (2) above does not affect the validity of anything done under this section.

#### **50 Power to activate right to buy land where breach of this Part**

- (1) If, on an application made to it by a community body which has registered an interest in land, the Lands Tribunal determine that—
  - (a) the owner of that land, or a creditor in a standard security with a right to sell that land, has acted in breach of a prohibition under—
    - (i) subsection (5)(e) of section 37 above; or
    - (ii) section 40(1) above; and
  - (b) each of the conditions set out in subsection (2) below is met,the Tribunal shall notify Ministers of that fact.
- (2) Those conditions are—
  - (a) that the action referred to in subsection (1)(a) above occurred during the period of ten years immediately prior to the date on which the application was made;
  - (b) that the land has, during such period, not ceased to be registrable land;
  - (c) that the community interest in the land which had been registered, or applied for, before the action referred to in subsection (1)(a) above remains in effect or another has, since then, been registered; and
  - (d) that Ministers have not, on or after the date on which the action referred to in subsection (1)(a) above occurred, received, or been deemed to have received,

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written notice under subsection (1) of section 54 below from the community body which had, on that date, registered, or applied to register, an interest in the land.

- (3) On receipt of notice under subsection (1) above Ministers shall—
- (a) give notice of the Tribunal's determination to each community body which—
    - (i) had registered, or had applied to register, an interest in the land on the date on which the action referred to in subsection (1)(a) above occurred; and
    - (ii) has such an interest on the date on which the notice is served; and
  - (b) send a copy of the notice to the owner of the land and to the Keeper.
- (4) A notice under subsection (3) above shall narrate the effect of subsection (5) below.
- (5) Where notice is given by Ministers under subsection (3) above the owner of the land is, for the purposes of this Part of this Act, deemed to have, on the date on which notice was given by Ministers, given notice under section 48(1) above that a transfer of the land is proposed.

## 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;
  - (d) that the proposed purchase of the land is in the public interest; and

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- (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,

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.

## **CHAPTER 5**

### **VALUATION OF LAND**

## **59 Assessment of value of land**

- (1) Ministers shall, within 7 days of the receipt of a confirmation, sought by them under section 49(2)(a) above, that a community body will exercise its right to buy the land,

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appoint a valuer, being a person who appears to Ministers to be suitably qualified, independent and to have knowledge and experience of valuing land of a kind which is similar to the land being bought, to assess the value of the land.

- (2) The validity of anything done under this section is not affected by any failure by Ministers to comply with the time limit specified in subsection (1) above.
- (3) In assessing the value of land in pursuance of an appointment under subsection (1) above, a valuer—
  - (a) does not act on behalf of the owner of the land or the community body which is exercising its right to buy the land; and
  - (b) shall act as an expert and not as an arbiter.
- (4) The value to be assessed is the market value of the land—
  - (a) as at the date of notification under section 48(1) above which gave rise to the right to buy the land; or
  - (b) in a case where the community body’s interest was registered in pursuance of an application to which section 39 above applied, as at the date of Ministers’ receipt of that application.
- (5) Where the land the value of which is to be assessed includes salmon fishings or mineral rights, the value of those fishings or rights shall be separately assessed.
- (6) The “market value” of land, for the purposes of subsection (4) above, is the aggregate of—
  - (a) the value it would have on the open market as between a seller and a buyer both of whom are, as respects the transaction, willing; and
  - (b) where a community body is exercising a right to buy which has arisen in relation to part only of the land in respect of which the owner has given notice under section 48(1) above that a transfer is proposed, the amount of any diminution in the value of the other part of that land which is attributable to the fact that part only of the land is being bought by the body.
- (7) In assessing, for those purposes, the value which land would have in the circumstances mentioned in subsection (6)(a) above—
  - (a) account may be taken, insofar as a seller and a buyer of the land such as are mentioned in subsection (6) above would do so, of any factor attributable to the known existence of a person who (not being the community body which is exercising its right to buy the land) would be willing to buy the land at a price higher than other persons because of a characteristic of the land which relates peculiarly to that person’s interest in buying it;
  - (b) no account shall be taken of—
    - (i) the registration of an interest in or the exercise of a right to buy the land by a community body under this Part of this Act;
    - (ii) the absence of the period of time during which the land would, on the open market, be likely to be advertised and exposed for sale;
    - (iii) any depreciation in the value of any other land owned by the seller;
    - (iv) the expenses of the valuation or otherwise related to the sale and purchase of the land.
- (8) Where the proposed transfer which gave rise to a community body’s right to buy land was conditional upon moveable property belonging to the owner of the land and used

in connection with it being sold with the land, the appointment of the valuer shall be extended to include the valuation of that moveable property.

- (9) In any case where that appointment is so extended the moveable property shall be valued separately from the land, individual items of moveable property shall be valued separately from each other and the provisions of this section relating to the assessment of the value of land shall, so far as appropriate, apply for the purposes of the valuation of the moveable property.
- (10) The expense of a valuation under this section shall be met by Ministers.

## **60 Procedure for valuation**

- (1) In carrying out a valuation under section 59 above, the valuer shall invite the owner of the land and the community body which is exercising its right to buy the land to make written representations about the value of the land and any moveable property being bought with the land and shall consider any representations made accordingly.
- (2) The valuer shall, within the period set out in subsection (3) below, notify Ministers, the owner of the land and the community body which is exercising its right to buy the land of the assessed value of the land and of any moveable property which has been valued.
- (3) The period referred to in subsection (2) above is the period of 6 weeks beginning with the date of appointment of the valuer or such other longer period as Ministers may, on an application by the valuer, fix.
- (4) The validity of anything done under this Part of this Act is not affected by any failure by a valuer to comply with the time limit specified in subsection (3) above.

## **CHAPTER 6**

### **APPEALS**

## **61 Appeals**

- (1) An owner of land may, by summary application, appeal to the sheriff against—
- (a) a decision by Ministers that a community interest in the land is to be entered in the Register; or
  - (b) a decision by Ministers to give consent to the exercise by a community body of its right to buy the land.
- (2) A community body may, by summary application, appeal to the sheriff against—
- (a) a decision by Ministers that its community interest is not to be entered in the Register; or
  - (b) a decision by Ministers not to give consent to the exercise by the community body of its right to buy.
- (3) A person who is a member of a community as defined for the purposes of section 34(1) (a) above in relation to a community body or who has any interest in the land giving rise to a right which is legally enforceable by that person may, by summary application, appeal to the sheriff against—
- (a) a decision by Ministers that a community interest in land is to be entered in the Register on the application of the community body; or

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- (b) a decision by Ministers to consent to the exercise of the community body's right to buy land.
- (4) An appeal under subsection (1), (2) or (3) above shall be lodged within 28 days of the date on which Ministers decided whether to enter the community interest or, as the case may be, whether to consent to the exercise of the right to buy land.
- (5) The sheriff in whose sheriffdom the land or any part of it is situated has jurisdiction to hear an appeal under this section.
- (6) Where an appeal is made—
  - (a) under subsection (1) above the owner shall intimate that fact to—
    - (i) the community body; and
    - (ii) Ministers;
  - (b) under subsection (2) above the community body shall intimate that fact to—
    - (i) the owner; and
    - (ii) Ministers; or
  - (c) under subsection (3) above the member of the community shall intimate that fact to—
    - (i) the community body;
    - (ii) the owner; and
    - (iii) Ministers.
- (7) The decision of the sheriff in an appeal under this section—
  - (a) may require rectification of the Register;
  - (b) may impose conditions upon the appellant;
  - (c) is final.

## **62 Appeals to Lands Tribunal: valuation**

- (1) The owner of the land and the community body which is exercising its right to buy the land may appeal to the Lands Tribunal against the valuation carried out under section 59 above.
- (2) An appeal under this section shall state the grounds on which it is being made and shall be lodged within 21 days of the date of notification under section 60 above.
- (3) In an appeal under this section, the Lands Tribunal may reassess the value of—
  - (a) the land;
  - (b) any moveable property used in connection with, and being sold with, the land; or
  - (c) both the land and any such moveable property.
- (4) The valuer whose valuation is appealed against may be a witness in the appeal proceedings.
- (5) The hearing of an appeal under this section shall begin not later than the first sitting day after the expiry of the period of four months beginning with the day on which the appeal was lodged.
- (6) In subsection (5) above, a “sitting day” is a day when the Lands Tribunal normally sits.

- (7) The Lands Tribunal shall give reasons for its decision on an appeal under this section and issue a written statement of those reasons within 4 weeks of the hearing of the appeal.
- (8) The validity of anything done under this Part of this Act is not affected by any failure of the Lands Tribunal to comply with the time limit specified in subsection (7) above.
- (9) Ministers are not competent parties to any appeal under this section by reason only that they appointed the valuer whose valuation is the subject of the appeal.
- (10) Ministers' powers under the Lands Tribunal Act 1949 (c. 42) to make rules as respects that Tribunal extend to such rules as may be necessary or expedient to give full effect to this section.

### **63 Compensation**

- (1) Any person (other than a community body) who has incurred loss or expense—
  - (a) in complying with the procedural requirements of this Part of this Act;
  - (b) as a result of failure by a community body to comply with an order of the Lands Tribunal under section 57 above;
  - (c) attributable to a prohibition imposed under subsection (5)(e) of section 37 above; or
  - (d) as a result of the operation of paragraph (a) or (b) of section 56(3) above,is entitled to compensation from Ministers of such amount as they may determine.
- (2) The reference in subsection (1)(d) above to loss or expense incurred as a result of the operation of paragraph (a) or (b) of section 56(3) above is a reference to loss or expense incurred which would be likely not to have been incurred in a sale of the land to a person who, not being a community body, would not have had the benefit of the provision of those paragraphs.
- (3) Where the community body and the owner of the land agree, under paragraph (c) of section 56(3) above, that the date of entry and payment of price shall be on a date after the last date on which that date could, by the operation of paragraphs (a) or (b) of that section, otherwise have been, no compensation shall be payable for any loss or expense attributable to any period occurring after that last date.
- (4) A person who has incurred loss or expense as a result of the suspension under this Act of a right of pre-emption, redemption or reversion enjoyed by that person is entitled to compensation.
- (5) The procedure for recovering losses and expenses under this section shall be as prescribed.

### **64 Compensation appeals**

- (1) An appeal may be made to the Lands Tribunal against the decision of Ministers on compensation under section 63 above.
- (2) The Lands Tribunal may, on such an appeal, substitute its decision for that of Ministers.
- (3) Such an appeal shall be lodged within 21 days of the decision appealed against.

## CHAPTER 7

### GENERAL AND MISCELLANEOUS PROVISIONS

#### 65      **Effect of right to buy on other rights**

- (1) Any rights of pre-emption, redemption or reversion otherwise exercisable over land in which a community interest has been registered are—
- (a) suspended as from the date when the community body sends the confirmation sought by Ministers under section 49(2)(a) above of its intention to buy the land; and
  - (b) revived—
    - (i) when the transfer under this Part of this Act of the land to the community body is completed; or
    - (ii) if such a transfer is not completed because the community body does not (by virtue of declining, under section 54 above, to buy the land or for any other reason) proceed to buy the land.
- (2) Any rights which a person has in land over which a community interest has been registered, being rights conferred on the person under—
- (a) Part 3 of this Act;
  - (b) section 12 of the Crofters (Scotland) Act 1993 (c. 44);
  - (c) any order under that Act of the Land Court in favour of the crofter;
  - (d) 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.

#### 66      **Amendment of Land Registration (Scotland) Act 1979**

After subsection (3) of section 4 of the Land Registration (Scotland) Act 1979 (c. 33) (applications for registration) there shall be added—

- “(4) Where an application is not accepted by the Keeper on the ground that he has not been provided with sufficient evidence to confirm that it does not relate to a transfer which is prohibited by section 40(1) of the Land Reform (Scotland) Act 2003 (asp 2), or by virtue of section 37(5)(e) of that Act, the Keeper shall, subject to subsection (5) below, provide the Scottish Ministers with a copy of the application and notify them of the reason for which the application has been rejected.
- (5) Subsection (4) above does not apply where the application has been rejected by reason only of the application not being accompanied by a declaration required under section 43(2) of that Act of 2003.”.



**67 Construction of references to land in which community interest registered**

- (1) Any reference in this Part of this Act (other than a reference in subsection (2) below) to land in which a community interest has been registered includes a reference to part of such land.
- (2) Subsection (1) above shall not operate so as to enable a right to buy land to be exercised by a community body in relation to part only of the land in respect of which the right has arisen.
- (3) Any reference in this Part of this Act to a creditor in a standard security with a right to sell land is a reference to a creditor who has such a right under—
  - (a) section 20(2) or 23(2) of the Conveyancing and Feudal Reform (Scotland) Act 1970 (c. 35); or
  - (b) a warrant granted under section 24(1) of that Act.