Land Reform (Scotland) Act 2003

2003 asp 2

PART 2

THE COMMUNITY RIGHT TO BUY

CHAPTER 2

REGISTRATION OF INTERESTS

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 **[**[F1]or civil partners**]** in pursuance of an arrangement between them entered into at any time after they have ceased living together;

(d) a transfer of croft land to the crofter tenanting it;

(e) a transfer between companies in the same group;

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Changes to legislation: *There are currently no known outstanding effects for the Land Reform (Scotland) Act 2003, Section 40. (See end of Document for details)*

(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;

[F2](iv) . . . . . .

(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;

[[F3](vii) by a registered social landlord (within the meaning of the Housing (Scotland) Act 2010 (asp 17)) in pursuance of the power conferred by section 107 of that Act; **]**

(viii) vesting the land in a person for the purposes of any enactment relating to sequestration, bankruptcy, winding up or incapacity or to the purposes for which judicial factors may be appointed; and

(h) a transfer of land in consequence of—

(i) the assumption or resignation or death of one or more of the partners in a firm; or

(ii) the assumption or resignation or death of one or more of the trustees of a trust.

(5) Action is taken with a view to a transfer of land when—

(a) the land is, by or with the authority of the owner of the land or a creditor in a standard security with a right to sell the land, advertised or otherwise exposed for sale;

(b) the owner or such a creditor, or a person acting on behalf of the owner or such a creditor, enters into negotiations with another with a view to the transfer of the land; or

(c) the owner or such a creditor, or a person acting on behalf of the owner or such a creditor, proceeds further with any proposed transfer of the land which was initiated prior to the date on which the interest was registered.

(6) In section 25 of the Conveyancing and Feudal Reform (Scotland) Act 1970 (c. 35) (exercise of power of a creditor in a standard security to sell the security subjects), after "may" there is inserted . " , subject to sections 37(5)(e) or 40(1) of the Land Reform (Scotland) Act 2003 (asp 2) (prohibition of transfer of land registered under that Act except in accordance with its provisions), "

(7) In subsection (4)(f) above, "statutory undertaker" shall be construed in accordance with section 214 of the Town and Country Planning (Scotland) Act 1997 (c. 8).

Textual Amendments

F1 Words in s. 40(4)(c) inserted (5.12.2005) by The Civil Partnership Act 2004 (Consequential Amendments) (Scotland) Order 2005 (S.S.I. 2003/623), **art. 23**

F2 S. 40(4)(g)(iv) repealed (15.4.2016) by Community Empowerment (Scotland) Act 2015 (asp 6), s. 142(1), **Sch. 5**; S.S.I. 2015/399, art. 2, Sch. (with art. 3)

F3 S. 40(4)(g)(vii) substituted (1.4.2012) by The Housing (Scotland) Act 2010 (Consequential Modifications) Order 2012 (S.S.I. 2012/38), art. 1, **Sch. para. 3**

Status:
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Changes to legislation:
There are currently no known outstanding effects for the Land Reform (Scotland) Act 2003, Section 40.