

COMMUNITY EMPOWERMENT (SCOTLAND) ACT 2015

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 4: Community rights to buy land

Modifications of Part 2 of Land Reform (Scotland) Act 2003 : the community right to buy

Community bodies

60. [Section 37](#) of the Act modifies section 34 of the 2003 Act which defines a community body eligible to register an interest in land. Section 34 of the 2003 Act provides that a community body is a company limited by guarantee that meets certain criteria.
61. Section 37(2) of the Act inserts subsection (A1) into section 34 of the 2003 Act. This extends the types of body which may be community bodies under Part 2 of the 2003 Act to include Scottish charitable incorporated organisations (“SCIOs”), community benefit societies (“BenComs”) and any other type of body which Ministers specify in regulations. Section 37(2) also confers a power on Ministers to specify in regulations, and subsequently modify, any requirements which must be met by any such type of body.
62. Section 37(3)(e) of the Act provides an additional requirement that must be satisfied for a company limited by guarantee to be a community body. The company’s articles of association must make provision for the minutes of meetings to be given to a person on request within 28 days of the request being made if that request is reasonable. The articles of association must also allow the community body to withhold information, provided that reasons are given for doing so.
63. Section 37(3)(f) of the Act amends section 34(1)(h) of the 2003 Act to include reference to “Part 3A community bodies” which are provided for in the new Part 3A of the 2003 Act (inserted by section 74 of the Act). This means that community bodies eligible to apply to purchase land under the new Part 3A of the 2003 Act are among the alternative bodies to which community bodies under Part 2 of the 2003 Act may pass their assets upon winding up in terms of their articles of association.
64. Section 37(4) of the Act inserts new subsections (1A) and (1B) into section 34 of the 2003 Act, which set out the provisions that a SCIO or BenCom must include in its constitution or registered rules for it to be a community body and so eligible to apply to register an interest in land under Part 2 of the 2003 Act.
65. Section 37(5) of the Act amends section 34(2) of the 2003 Act to allow Ministers to disapply the requirement that the articles of association, constitution or registered rules must state that a community body must have a minimum of 10 members.
66. Section 37(6) of the Act inserts subsection (4A) into section 34 of the 2003 Act. This subsection gives Ministers the power to modify, by way of regulations, the criteria

*These notes relate to the Community Empowerment (Scotland)
Act 2015 (asp 6) which received Royal Assent on 24 July 2015*

which must be met by companies limited by guarantee, SCIOs and BenComs in order to be community bodies under Part 2 of the 2003 Act.

67. Section 37(6) of the Act also inserts subsection (4B) into section 34 of the 2003 Act. This subsection gives Ministers the power to amend, by way of regulations, subsection (1) and the new subsection (A1) of section 35 of the 2003 Act (inserted by section 38 of the Act) where Ministers have exercised the power contained in the new subsection (A1)(b) of section 34 of the 2003 Act to extend, by way of regulation, the types of bodies which may be eligible to be community bodies under Part 2 of the 2003 Act. The power contained in subsection (4B) means that the prohibition on a community body modifying its articles of association, memorandum or constitution without the written consent of the Scottish Ministers can be amended to extend to any other kind of constitutive document which may apply to new types of body which may be community bodies as a result of the regulations made by Ministers under the new subsection (A1)(b) of section 34 of the 2003 Act.
68. Section 37(7) of the Act amends subsection (5) of section 34 of the 2003 Act which provides for the use of postcode units in order to define the community that the community body represents. Section 37(7) of the Act confers a power on Ministers to make regulations which prescribe other types of area by reference to which a community may define itself.
69. Section 37(8) of the Act inserts definitions of “community benefit society”, “registered rules” and “Scottish charitable incorporated organisation” into the 2003 Act.