

# COMMUNITY EMPOWERMENT (SCOTLAND) ACT 2015

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## 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**

##### Introduction

54. [Sections 36 to 61](#) of the Act amend provisions of Part 2 of the Land Reform (Scotland) Act 2003 (“the 2003 Act”).
55. Part 2 of the 2003 Act provides bodies representing rural communities with rights to register an interest in land with which the community has a connection. These bodies have a right to purchase that land if the owner is willing to sell it. Part 2 of the 2003 Act sets out the land in respect of which an interest can be registered, and the procedure for registering an interest. It also sets out the circumstances in which the right to buy the land in respect of which an interest is registered arises and the procedures for exercising it (including procedures for valuation of the land, for appeals and for compensation).

##### Nature of land in which community interest may be registered

56. [Section 36](#) of the Act amends section 33 of the 2003 Act. Section 33 of the 2003 Act sets out the land in which a community body may register an interest. It provides that an interest can be registered in “registrable land”, which is anything other than “excluded land”. “Excluded land” is designated in the Community Right to Buy (Definition of Excluded Land) (Scotland) Order 2009 as land comprising the settlements listed in the order (which are all settlements of over 10,000 people). In this way, the community right to buy under the 2003 Act applies to community bodies representing rural communities.
57. Section 36(1)(a) of the Act removes references to “registrable land” in section 33(1) of the 2003 Act which means that an interest can be registered in any land other than “excluded land”. As a result, community bodies will be able to register an interest in respect of land across Scotland, irrespective of the size of settlement.
58. Section 36(1)(b) of the Act removes the power of the Scottish Ministers to define “excluded land” by order. It amends the definition of “excluded land” in section 33(2) of the 2003 Act to make reference to land consisting of a separate tenement in which an interest cannot be registered if these rights are owned independently of the land.
59. Section 36(1)(d) of the Act repeals subsections (3) to (7) of section 33 of the 2003 Act. Section 36(1)(c) inserts new subsection (2A) into section 33 of the 2003 Act which reflects the terms of the repealed subsection (6) to provide that a community interest may be registered in salmon fishings and mineral rights (other than rights to oil, coal, gas, gold or silver) which are owned separately from the land to which those interests relate.

##### 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 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.

#### Modification of memorandum, articles, constitution or registered rules

70. [Section 38](#) of the Act amends section 35 of the 2003 Act which provides that a community body may not modify its memorandum or articles of association without Ministers' consent whilst they hold a registered interest or own land purchased under Part 2 of the 2003 Act.
71. Section 38(2) of the Act inserts subsection (A1) into section 35 of the 2003 Act which prohibits a community body from modifying its memorandum, articles of association, constitution or registered rules without the consent of Ministers during a specified period prior to registration of an interest. Section 38(2) of the Act also inserts subsection (A2) into section 35 of the 2003 Act which provides that the specified period starts with the day a community body submits an application for a registered interest in land and ends with the registration of interest in land, rejection of the application to register land, Ministers declining to consider the application under section 39(5) of the 2003 Act or withdrawal of the application by the community body. This means that the existing prohibition which applies whilst the interest is registered and throughout the time they own land purchased under Part 2 of the 2003 Act (in terms of subsection (1) of section 35 of the 2003 Act) is extended to the period prior to registration.
72. Section 38(3) of the Act amends subsection (1) of section 35 of the 2003 Act to make reference to the "constitution" or "registered rules" of a community body. This amendment takes account of the inclusion of SCIOs and BenComs as bodies which may be community bodies.
73. Section 35(3) of the 2003 Act allows Ministers to compulsorily acquire land from a community body which has bought land but, had it not so bought that land, it would no longer be entitled to do so. Section 38(4) of the Act inserts subsections 35(4) and 35(5) into the 2003 Act which allow Ministers to make an order relating to, or to matters connected with, the compulsory acquisition of that land from the community body.

#### Register of Community Interests in Land

74. [Section 39](#) of the Act amends section 36 of the 2003 Act. Section 36 of the 2003 Act provides that the Keeper of the Registers of Scotland is required to set up and maintain the Register of Community Interests in Land. Section 36 also provides what information is to be publicly available via the Register, and requires a community body which is a company limited by guarantee to have its name and address in the Register. Subsections (1) and (2) of section 39 of the Act amend this, so that a community body which is a Scottish charitable incorporated organisation or community benefit society is also required to have its name and address in the Register.
75. Section 39(3) of the Act inserts subsections (5A) and (5B) into section 36 of the 2003 Act. Subsections (5A) and (5B) require a community body to notify the Keeper of a change to the community body's name or registered or principal office as soon as is reasonably practicable after the change has been made.

#### Public notice of certain applications

76. [Section 40](#) of the Act amends section 37(4) of the 2003 Act and inserts subsections (4A) and (4B). The new provisions set out that, where the owner of the land is unknown or cannot be found and the type of proposed application is one to register an interest in land consisting of salmon fishings or mineral rights which are owned separately from the land in respect of which they are eligible, Ministers have the power to set out in regulations the manner in which the public notice of the application must be made.

#### Criteria for registration of interest in land

77. [Section 41](#) of the Act amends section 38 of the 2003 Act which sets out the criteria which must be met before an application to register a community interest in land is approved by Ministers. Subsection (1)(d) of section 38 of the 2003 Act provides that there must be sufficient community support to justify the registration.

78. The word “substantial” is repealed in section 38(1)(b) of the 2003 Act and so the requirement concerning community members having a substantial connection with the land that the community body is seeking to register an interest in will be amended to just refer to a connection with that land. The repeal of “substantial” is effected by the repeals schedule (schedule 5 to the Act).
79. Section 38(1)(b) of the 2003 Act provides that Ministers must be satisfied that (i) a significant number of the members of the community must have a substantial connection with the land, and (ii) the land must be sufficiently near to land with which those members of the community have a substantial connection (“substantial” to be repealed as above). Section 41(a)(vi) of the Act adds 2 alternative criteria into section 38(1)(b) of the 2003 Act, in addition to the existing 2 criteria. The alternative criteria are (iii) where the community body is an eligible body for the purposes of Part 2 of the 2003 Act, that the land is in or sufficiently near to the area of the community, and (iv) where the community body is a body as prescribed by Ministers, the land is in or sufficiently near to the area of the community.
80. Section 41(c) of the Act inserts new subsections (2A) and (2B) into section 38 of the 2003 Act. Subsection (2A) precludes Ministers considering any community support that is dated earlier than 6 months before the date an application to register a community interest in land is received by Ministers. Subsection (2B) gives Ministers the power to amend the time limit in which the approval of a member of the community supporting a community body’s application must be dated. That time limit must not be less than 6 months.

#### Procedure for late applications

81. [Section 42](#) of the Act amends section 39 of the 2003 Act relating to the procedure for late applications. An application is deemed to be “late” when it is received by Ministers after the owner of the land to which an application relates has taken action to transfer the land but before missives are concluded, or an option to acquire is granted, in pursuance of that action.
82. Section 42(2) of the Act rewords subsection (1) of section 39 of the 2003 Act which sets out the conditions which must be met in order for section 39 to apply.
83. Section 42(3) of the Act inserts a new paragraph (aa) into section 39(2) of the 2003 Act. The new paragraph allows Ministers to request further information from the owner of the land or a creditor in a standard security with the right to sell the land before the end of the 7-day period following the landowner or the creditor giving their views on the application under section 37(5) of the 2003 Act. The owner of the land or the creditor must provide the information within 14 days of receipt of the request. This information is requested to ensure that Ministers have the necessary evidence on which to decide whether the application is “late”.
84. Section 42(3)(b) of the Act modifies subsection (2)(b)(ii) of section 39 of the 2003 Act to extend the time in which Ministers have to make a decision on whether the interest should be registered in the case of a “late” application where further information is requested. Where Ministers request further information, this period will be 44 days instead of 30 days.
85. Section 42(4) of the Act amends subsection (3) of section 39 of the 2003 Act which sets out matters on which Ministers must be satisfied, in addition to the matters set out in section 38, before approving a “late” application. Section 42(4) of the Act removes the requirement to show “good reasons” why an application was not submitted prior to the land coming on the market and replaces it with a requirement that such relevant work as Ministers consider reasonable was carried out by a person or such relevant steps as Ministers consider reasonable were taken by a person. Section 42(4) of the Act inserts paragraph (ab) into subsection (3) which provides that Ministers shall not consent to an application if the land was offered to the same or a ‘similar’ community body within the last 12 months, unless, in the opinion of Ministers, there are good reasons why the

body did not purchase the land. Section 42(9) of the Act inserts a new subsection (6) into section 39 of the 2003 Act to define “relevant work” and “relevant steps”. Section 42(9) of the Act also inserts subsection (7) into section 39 of the 2003 Act which defines references to “the land”, “an offer” and “similar community body” for the purposes of section 39(3)(ab).

86. Section 42(4) of the Act also inserts paragraph (aa) into section 39(3). This includes provision relating to the time within which the relevant work or steps must have been taken. It is for Ministers to determine whether the relevant work or steps were carried out sufficiently in advance of the landowner taking action with a view to selling the land or giving notice that a transfer was proposed under section 48(1). The new paragraph (aa) also provides that the relevant work or steps undertaken must be in relation to the land to which the application relates or other land being used for the same purposes as the land to which the application relates. The relevant work or steps are to have been carried out by the community body or by another person with a view to the application being made by the community body. Section 42(5) inserts subsection (3A) into section 39 which sets out that, in cases where there are good reasons that relevant work or steps have not been undertaken prior to the land being marketed for sale, and that there are good reasons to allow the late application despite the lack of relevant work or steps prior to the land being marketed for sale, Ministers may accept the application.
87. Section 42(5) of the Act also inserts a new subsection (3B) into section 39 of the 2003 Act. The new subsection (3B) allows Ministers to request further information about an application from any relevant party they deem necessary in connection with the criteria on which Ministers must be satisfied under section 39(3) of the 2003 Act. Ministers can request such information until the end of the 7-day period following receipt of the landowner’s views (or the views of a creditor in a standard security with a right to sell the land) under section 37(5) of the 2003 Act. Such additional information must be provided within 14 days of the request being made by Ministers.
88. Section 42(6) of the Act amends section 39(4)(c) of the 2003 Act which sets out the impact of an application being “late” on the community right to buy process. For the purposes of the provisions listed, the community body is deemed to have confirmed their intention to proceed with the purchase on the date on which the interest is registered. The amendment inserts a reference to the new section 60A(1) of the 2003 Act (inserted by section 57 of the Act).
89. Section 42(7) of the Act inserts a new subsection (4A) into section 39 of the 2003 Act and section 42(8) amends subsection (5) of the same. These provisions provide that where missives have been concluded in respect of the sale of land or an option conferred in respect of that land, Ministers must decline to consider the application. These amendments simplify the wording in the 2003 Act.
90. Section 42(9) of the Act provides for a new subsection (8) of section 39 of the 2003 Act which makes it clear that the land in respect of which the relevant work or steps have been carried out does not need to be the same land as that to which the application relates.

#### Evidence and notification of concluded missives or option agreements

91. [Section 43](#) of the Act inserts a new section 39A into the 2003 Act in relation to evidence and notification of concluded missives or option agreements. The new subsection (4A) and amended subsection (5) of section 39 of the 2003 Act (under section 42(7) and (8) of the Act) provide that where an application is received after missives have been concluded in respect of the land or an option conferred, Ministers must decline to consider the application. If the application did not disclose that missives have been concluded or an option conferred then the owner of the land (or a creditor in a standard security with a right to sell) must provide evidence of concluded missives or an option agreement to Ministers within 21 days of receiving a copy of the application under section 37(5)(a) of the 2003 Act. Additional information on option agreements must also be provided, namely, the date of the option agreement and whether or not and how

it may be extended. If the application does disclose that missives have been concluded or an option conferred and by virtue of section 39(4A) and (5) of the 2003 Act Ministers are not required to send a copy of the application to the land owner or a creditor in a standard security with a right to sell, then section 39A(4) will apply. This requires Ministers to send a copy of the application to the land owner and any such creditor and require them to provide evidence of the concluded missives or option conferred. The land owner and creditor will also be required to provide further information about the option conferred.

#### Notification of transfer

92. [Section 44](#) of the Act amends section 41 of the 2003 Act which is supplementary to and explanatory of section 40 of the 2003 Act. Section 40 of the 2003 Act prohibits owners and certain creditors from transferring land or taking action with a view to transferring land that is subject to a registered interest for so long as the interest is registered, other than in accordance with section 40(4) of the 2003 Act, which provides for “exempt” transfers.
93. [Section 44](#) of the Act inserts subsection (3) into section 41 of the 2003 Act. It requires that where an owner or a creditor in a standard security with a right to sell land makes a transfer in terms of section 40(4) of the 2003 Act, they must inform Ministers within 28 days of this taking place. The new subsection (3) of section 41 of the 2003 Act also sets out the information which the owner or creditor must provide.

#### Notice of expiry of registration

94. [Section 45](#) of the Act inserts subsections (6) and (7) into section 44 of the 2003 Act. Subsection (6) provides that Ministers must send a written notice to a community body of the expiry of their registered community interest in land. Subsection (7) provides that the notice must be sent no earlier than 12 months before the date on which the registered interest is due to expire, and Ministers will have a period of 28 days from that date in which to send the notification to the community body.

#### Changes to information relating to registered interests

95. [Section 46](#) of the Act inserts a new section 44A into the 2003 Act, which applies where a community interest in land is registered.
96. Subsection (2) of the new section 44A of the 2003 Act requires that where any change has been made in the contact information of a community body provided in its application to register an interest, that community body must inform Ministers of that change as soon as is reasonably practicable.
97. Subsection (3) of the new section 44A of the 2003 Act requires that where any change has been made in the contact information of an owner provided in an application by a community body, the owner must inform Ministers of any changes to their contact information as soon as is reasonably practicable.
98. Subsection (4) of the new section 44A of the 2003 Act requires that the owner of the land must in certain circumstances notify Ministers of any changes to the information in an application relating to a creditor in a standard security as soon as is reasonably practicable.
99. Subsections (5) and (6) of the new section 44A of the 2003 Act require that where there is a creditor in a standard security over an interest in land to which an application relates and the application does not disclose the existence of such a creditor (either because the existence of the creditor was omitted or because it did not exist at the time the application was made), the owner must notify Ministers of the existence of the creditor and its contact details as soon as is practicable after the registration of the interest.
100. Subsections (7) and (8) of the new section 44A of the 2003 Act require that a community body or owner of land must, as soon as is reasonably practicable, make Ministers aware of any subsequent changes to any information submitted under subsections (2), (3), (4) or (6) of the new section 44A of the 2003 Act.

#### Notification under section 50 of the 2003 Act

101. [Section 47](#) of the Act amends section 50 of the 2003 Act. Section 50(1) sets out the circumstances in which the Lands Tribunal must notify Ministers that a landowner or creditor in a standard security with a right to sell the land has acted in breach of a prohibition notice under section 37(5)(e) or section 40(1) of the 2003 Act.
102. Section 47(a) of the Act amends subsection (3)(b) of section 50 of the 2003 Act. It inserts reference to any creditor with a right to sell the land. This requires Ministers to send a copy of the notice from the Lands Tribunal under section 50(1) to such a creditor as well as to the owner of the land.
103. Section 47(b) of the Act provides for a new subsection (6) to be inserted in section 50 of the 2003 Act. This sets out that a community interest in land remains in effect for the purposes of section 50(2)(c) where a community body has applied to re-register an interest under section 44(2) of the 2003 Act and the Keeper has re-entered the interest on the Register accordingly. Where a registered interest in land under consideration by the Lands Tribunal is due to expire, the relevant community body should ensure that it re-registers their interest in terms of section 44(2) of the 2003 Act. Section 50(2)(b) of the 2003 Act is repealed.

#### Approval of members of community to buy land

104. [Section 48](#) of the Act amends section 51(2)(a) of the 2003 Act which relates to the community's approval of the exercise of the right to buy. Section 51(2)(a) provides that at least half of the members of the community must have voted or, if half of the members have not voted, the proportion which voted is sufficient in the circumstances to justify the community body buying the land.
105. [Section 48](#) of the Act removes the reference to at least half of the members of the community voting and provides that the requirement in section 51(2)(a) of the 2003 Act is met if the proportion of the members of the community who voted is sufficient to justify the community body proceeding to buy the land. Section 51(3)(a) of the 2003 Act is repealed.

#### Appointment of person to conduct ballot on proposal to buy land

106. Sections 51 and 52 of the 2003 Act provide for a ballot to be carried out by the community body. Section 49 of the Act inserts a new section 51A into the 2003 Act which amends the procedure of the ballot and provides that it is to be carried out by an independent balloter. The responsibility for appointing a balloter and the expense of conducting the ballot lie with Ministers.
107. Subsections (2) to (6) of the new section 51A of the 2003 Act set out the procedure for the conduct of the ballot. So that the balloter has all the necessary information in order to undertake the ballot, Ministers are obliged under subsection (2) to provide the balloter with a copy of the application under section 37 of the 2003 Act and such other information as Ministers may prescribe in regulations. Subsection (3) provides that Ministers must do this within 28 days of the valuer being appointed under section 59 of the 2003 Act. Ministers must also provide the community body with the contact details of the balloter under subsection (4).
108. Subsections (5) and (6) of the new section 51A of the 2003 Act require that the community body must, within 7 days of receiving notification of the value of the land under section 60(2) of the 2003 Act, provide the balloter with wording for the proposition that the community body buy the land, together with other information as set out in regulations. The other information to be set out in regulations may relate to the community body, its proposals, the valuation and other matters. The form of the notification of the other information referred to may also be set out in regulations. Section 52(2) of the 2003 Act is repealed.

#### Consent under section 51 of the 2003 Act: prescribed information

109. **Section 50** of the Act inserts a new section 51B into the 2003 Act. This section sets out the information which Ministers must take account of when deciding whether to approve a community body's exercise of the right to buy.
110. The new section 51B of the 2003 Act confers a power on Ministers to specify the type of information which a community body must provide in regulations, including, in particular, information relating to the matters referred to in subsection (3) of section 51 of the 2003 Act. Subsection (3) of the new section 51B of the 2003 Act requires that the information must be provided in a form set out by Ministers in regulations. Ministers can also take account of any information which they consider to be relevant, regardless of whether it is of the type specified in regulations.
111. Subsection (5) of the new section 51B of the 2003 Act provides that Ministers have 7 days from receipt of information to request further information. Furthermore, in terms of subsection (6) of the new section 51B of the 2003 Act, the community body has 14 days from the receipt of such a request to provide Ministers with the information.

**Representations etc. regarding circumstances affecting ballot results**

112. **Section 51** of the Act inserts a new section 51C into the 2003 Act which sets out a process for where a community body considers that circumstances have affected the ballot result.
113. Subsection (1) of the new section 51C allows the community body, within 14 days of receiving notification of the result of the ballot, to make representations to Ministers on circumstances that the community body considers impacted the ballot result.
114. Subsection (2) requires the community body to provide Ministers with such evidence as is reasonably necessary to establish the existence and effect of the circumstances that affected the ballot result. A copy of the evidence and representations must be sent to the owner of the land by the community body. Subsection (3) allows Ministers to request further information if required and the community body must respond within 7 days under subsection (4).
115. Subsection (5) provides that the owner of the land may provide comments in connection with the representations and evidence provided by the community body within 7 days of receiving copies of such representations and evidence. The owner of the land must send copies of any comments to the community body (subsection (6)). The community body may give their views to Ministers on the owner of the land's comments (subsection (7)).
116. Subsection (8) provides that Ministers may request further information from the community body and, in terms of subsection (9), the community body must respond within 7 days.
117. Subsection (10) provides that Ministers must take account of any of the representations, evidence, information, comments or views which have been provided in this process when considering whether the ballot turnout requirement under section 51(2)(a) of the 2003 Act has been met.
118. Due to the administrative steps which have been provided for, section 51(2) of the Act amends section 51 of the 2003 Act to extend the length of the period in which Ministers must decide whether to consent to the exercise of the right to buy from 21 days to 35 days in cases where representations have been made under section 51C(1).

**Ballot not conducted as prescribed**

119. **Section 52** of the Act amends section 52 of the 2003 Act. Section 52(1) of the 2003 Act provides that a ballot should be conducted as prescribed in regulations. Furthermore, in terms of section 52(2), if a ballot is deemed to be flawed, the community's right to buy is extinguished. As noted, section 52(2) is repealed (see schedule 5 to the Act).
120. **Section 52** of the Act provides that section 52 of the 2003 Act is amended to include a new subsection (7). The new subsection (7) provides Ministers with the powers to make



regulations in connection with reviewing whether a ballot has been properly conducted and other matters relating to ballots not conducted as prescribed.

#### Period in which ballot results and valuations are to be notified

121. [Section 53](#) of the Act amends section 52(4) of the 2003 Act (which provides the timescale for the conduct of the ballot) and section 60 of the 2003 Act (which provides the timescale for notification of the valuation figure).
122. Section 52(4) of the 2003 Act provides that the ballot is to take place within 28 days of the notification of the value of the land under section 60(2) of the 2003 Act and the ballot date is determined by the date of that notification. Section 53(1) of the Act amends section 52(4) of the 2003 Act to provide that the ballot takes place within the 12 week period beginning on the date the valuer is appointed under section 59(1) of the 2003 Act. Alternatively, in cases where the valuation period has been extended on application by the valuer under section 60(3) of the 2003 Act and the date to which the valuation period has been extended to is after the 12-week period following the appointment of the valuer, the 12-week period begins on the day following the notification of the date under section 60(3C) of the 2003 Act. This means that the ballotter will in all cases have a minimum of 12 weeks to conduct the ballot and notify Ministers of the results.
123. Section 53(2) of the Act provides that section 60 of the 2003 Act is amended to insert new subsections (3A) to (3D). These provisions detail the procedure of when and how the valuer is able to seek an extension to the timings for reporting the value of the land to parties set out in section 60(2). The community body, the landowner and the ballotter must be informed of the existence of any extension, the length of any extension and the end period for the extension.

#### Exercise of right to buy: date of entry and payment of price

124. [Section 54](#) of the Act amends section 56 of the 2003 Act which sets out the time limits which apply to a community body in respect of payment of the price for the land.
125. Subsection (3) of section 56 of the 2003 Act provides that where the valuation figure is not being appealed under section 62 of the 2003 Act and where the time limit has not been extended by agreement, the price must be paid within 6 months of the date on which the community body confirmed its intention to proceed with the community right to buy in response to a notice under section 49(2)(a) of the 2003 Act or, in the case of a late application, within 6 months of the date of Ministers decision to register that interest in land. Section 54(a) of the Act extends this time period from 6 months to 8 months.
126. Section 54(b) of the Act provides for a new subsection (7) in section 56 of the 2003 Act. Where an extension to the 8-month period provided for in the amended section 56(3)(a) of the 2003 Act is required (such extension being permitted by section 56(3)(c) of the 2003 Act), the extension must be agreed, by both parties (landowner and community body), before the 8-month period ends. The community body must notify Ministers of any extension within 7 days of that agreement being made, including when that agreement was made and what that later extended date is. Evidence of such an agreement will be required by Ministers.

#### Notification of application under section 57 of the 2003 Act

127. [Section 55](#) of the Act inserts subsections 57(6) and 57(7) into the 2003 Act. Subsection 57(6) requires the landowner or community body who makes an application to the Lands Tribunal in connection with the failure or delay to transfer title to the community body to notify the Scottish Ministers in writing within 7 days of that application being made.

#### Valuation: views on representations and time limit

128. [Section 56](#) of the Act amends section 60 of the 2003 Act, subsection (1) of which requires the valuer to invite the landowner and the community body to comment on issues that may have an impact on the valuation.

129. **Section 56** of the Act inserts a new subsection (1A) into section 60 of the 2003 Act which imposes an obligation on the valuer to pass on any written representations about the value of the land, whether by the landowner or the community body, to the other party and invite counter-representations from that party. The valuer must consider any views made by both or either party while undertaking the valuation under section 59 of the 2003 Act.

#### Circumstances where expenses of valuation to be met by owner of the land

130. **Section 57** of the Act inserts a new section 60A into the 2003 Act. The new section 60A provides that, in certain circumstances, Ministers may require the landowner to pay the expenses of Ministers in connection with the valuation.
131. Subsection (1) of the new section 60A sets out the circumstances in which Ministers may exercise their discretion and require the landowner to pay the expenses incurred by Ministers in connection with the valuation.
132. Subsection (2) sets out that Ministers have a discretion to require the landowner to meet the costs associated with the valuation where the circumstances in subsection (1) are met. Where Ministers exercise their discretion, a demand for payment will be sent to the landowner.
133. Subsection (3) allows Ministers to request information from the landowner before deciding whether to exercise their discretion.
134. Subsection (4) provides that the landowner may appeal Ministers' decision to exercise their discretion to the sheriff within 21 days of the Ministers' decision. In terms of subsection (5), the sheriff's decision is final.
135. Subsection (6) provides that, where the landowner has not appealed the Ministers' decision, the landowner must pay the amount specified within 28 days of receiving the demand. Where the landowner appeals the Ministers' decision and the appeal is not successful, the landowner must pay the amount within 28 days of the determination of the appeal.

#### Creditors in standard security with right to sell land: appeals

136. **Section 58** of the Act amends section 61 of the 2003 Act. Section 61 provides a right of appeal to the sheriff for the landowner, the community body and other interested parties in respect of certain decisions by Ministers. In terms of section 48(4) of the 2003 Act, where there is a creditor with a right to sell the land and that creditor gives notice of a proposal to sell the land under section 48(1), the creditor would also have a right of appeal.
137. Section 58(a) of the Act expands the interested parties to include a "creditor in a standard security with a right to sell land" in all cases (including where the creditor has not given notice of a proposal to sell the land under section 48(1) of the 2003 Act). Section 58(b) and (c) of the Act amend the remaining sections of section 61 of the 2003 Act to take account of the creditor's right of appeal. The words "or" to "person" in section 61(3) of the 2003 Act are repealed by schedule 5 to the Act.

#### Appeals to Lands Tribunal as respects valuations of land

138. **Section 59** of the Act amends section 62 of the 2003 Act, and provides that the Lands Tribunal is required, within 8 weeks of the hearing of the appeal, to issue a written statement of reasons. Where the Land Tribunal considers that it is not reasonable to issue a written statement within 8 weeks, it must notify the parties to the appeal of the date by which it will issue its written statement.
139. Subsection 59(5) of the Act inserts subsections (8A), (8B) and (8C) into section 62 of the 2003 Act. Subsection (8A) requires the landowner or community body who appeals to the Lands Tribunal for Scotland in connection with the valuation of the land on an application to notify Ministers in writing within 7 days of the date on which the appeal is made to the Lands Tribunal. Subsection (8B) requires the Lands Tribunal to send

to Ministers a copy of the written statement of reasons issued following the appeal decision. Subsection (8C) states that failure to comply with these requirements has no effect on the community body's right to buy the land or the validity of the appeal.

#### Calculation of time periods in Part 2 of 2003 Act

140. [Section 60](#) of the Act inserts a new section 67A into the 2003 Act which provides that public or local holidays are not to be taken into account when calculating time periods in Part 2 of the 2003 Act.
141. New section 67A(2) of the 2003 Act provides a number of exceptions to the rule provided in new section 67A(1) – statutory periods for the date of entry, the valuation process and any appeals are not to be extended if a public or local holiday falls during the time when these steps are active.

#### Duty to provide information about community right to buy

142. [Section 61](#) of the Act inserts a new section 67B into the 2003 Act concerning the monitoring of community right to buy.
143. Inserted section 67B(1) and (2) of the 2003 Act provide that a community body, owner or former owner of land in respect of which an application to register an interest was made may be requested by Ministers to provide information, for the purposes of monitoring or evaluating any impacts that the right to buy land conferred by Part 2 of the 2003 Act has had or may have.
144. Inserted section 67B(3) of the 2003 Act sets out the type of information that may be requested by Ministers. It provides that it is any information which Ministers may reasonably require for the purpose of monitoring or evaluating the impact of the right to buy under Part 2 of the 2003 Act. Where a request has been made by Ministers, the recipient must comply to the extent that they are able to do so (inserted section 67B(4)).

### **Modifications of Part 3 of Land Reform (Scotland) Act 2003): the crofting community right to buy**

#### Introduction

145. [Sections 62 to 73](#) of the Act amend provisions of Part 3 of the Land Reform (Scotland) Act 2003, the crofting community right to buy.
146. Part 3 of the 2003 Act provides a properly constituted crofting community body representing an identified crofting community with a right to acquire eligible croft land (including salmon fishings, certain mineral rights, sporting rights and the interest of the tenant in tenanted land, where the tenant's interests in the land relate to the land being acquired). Part 3 sets out the eligible land which may be acquired by the crofting community body, and the process for acquiring that land, including procedures for a ballot to prove community support for the acquisition, for valuation of the land, for appeals and for compensation.

#### Crofting community bodies

147. Section 62(2) of the Act inserts subsection (A1) into section 71 of the 2003 Act. This subsection extends the types of body which may be crofting community bodies under Part 3 of the 2003 Act to include Scottish charitable incorporated organisations (“SCIOs”) and community benefit societies (“BenComs”) and any other type of body which Ministers specify in regulations.
148. Section 62(4) of the Act inserts new subsections (1A) and (1B) into section 71 of the 2003 Act which sets out the provisions that a SCIO or BenCom must include in its constitution or registered rules for it to be a crofting community body and so eligible to make an application under Part 3 of the 2003 Act.
149. Section 62(5) of the Act amends section 71(2) of the 2003 Act which allows Ministers to disapply the requirement that the articles of association, constitution or registered rules of a community body must require that the body have a minimum of 10 members.

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Act 2015 (asp 6) which received Royal Assent on 24 July 2015*

150. Section 62(6) of the Act inserts subsection (4A) into section 71 of the 2003 Act. This subsection gives Ministers the power to modify, by way of regulations, the criteria which must be met by companies limited by guarantee, SCIOs and BenComs in order to be crofting community bodies under Part 3 of the 2003 Act.
151. Section 62(7) of the Act amends section 71(5) of the 2003 Act and amends the definition of a “crofting community”. The definition of a crofting community will include tenants of crofts whose names are entered in the Crofting Register, or the Register of Crofts, as tenants of those crofts; owner-occupier crofters of crofts in the crofting township whose names are entered in the Crofting Register; and such other persons or classes of persons as may be set out by Ministers in regulations.
152. Section 62(8) of the Act inserts definitions of “owner-occupied croft” and “owner-occupier crofter” into section 71(6) of the 2003 Act.
153. Section 62(9) of the Act inserts definitions of “community benefit society”, “registered rules” and “Scottish charitable incorporated organisation” into section 71(8) of the 2003 Act.

**Modification of memorandum, articles, constitution or registered rules**

154. Paragraph (a) of section 63 of the Act amends section 72(1) of the 2003 Act which provides that a crofting community body which bought land under Part 3 of the 2003 Act shall not, for as long as the land remains in its ownership, modify its memorandum or articles of association without the consent of Ministers. The amendment provides for the same restriction in relation to a constitution (in the case of Scottish charitable incorporated organisations) or registered rules (in the case of community benefit societies).
155. Paragraph (b) of section 63 of the Act inserts subsections (3), (4) and (5) into section 72 of the 2003 Act. Subsection (2) provides that Ministers may compulsorily acquire croft land if they are satisfied that the crofting community body which has bought the croft land, if it had not done so, would no longer be entitled to do so. Section 72(3) provides that the provision in section 72(2) will not apply when the land is no longer eligible croft land. Section 72(4) provides Ministers with the power to make an order relating to the compulsory acquisition of the croft land. Section 72(5) provides that the order made under section 72(4) may apply, modify or exclude any matter as to which an order could be made relating to the compulsory acquisition of the land by Ministers.

**Application: information about rights and interests in land**

156. Section 64(2) of the Act removes the provision in section 73(5)(b)(ii) of the 2003 Act which requires a crofting community body to provide information about sewers, pipes, lines, watercourses or other conduits and fences, dykes, ditches or other boundaries in or on the land.
157. Section 64(3) of the Act inserts new subsection (5ZA) after section 73(5) of the 2003 Act. Section 73(5) requires all persons listed in new subsection (5ZA) to be correctly identified in the application. Those persons who must be correctly identified are the owner of the land; any creditor in a standard security over the land with a right to sell the land; any tenant of a tenancy of the land in respect of which the right to buy is to be exercised and any person entitled to any sporting interests on the land in respect of which the right to buy is to be exercised.
158. Section 64(4) of the Act inserts subsection (5AA) into section 73 of the 2003 Act. Subsection (5AA) allows Ministers to amend or repeal the minimum requirements for information which must be included in or accompany a crofting community right to buy application.
159. Section 64(5) of the Act amends section 73(11) of the 2003 Act. Ministers are required to give public notice, by advertisement, of an application by a crofting community body. The form of the advertisement is now to be set out in regulations made by Ministers.

**Criteria for consent by Ministers**

160. [Section 65](#) of the Act amends the criteria which must be satisfied in section 74(1) of the 2003 Act in order for Ministers to consent to a Part 3 application. The additional criteria in section 74(1) are that Ministers may only consent to an application if the persons listed in section 73(5ZA) are correctly identified in the application.

**Ballot: information and expenses**

161. Section 66(2) of the Act inserts additional subsections (4A) and (4B) after section 75(4) of the 2003 Act. Subsection (4A) allows Ministers to request additional information from the crofting community body in connection with the ballot, including any consultation with those eligible to vote in the ballot. Subsection (4B) confirms that the expense of conducting the ballot is to be met by the crofting community body.
162. Section 66(3) of the Act inserts additional subsections (6) and (7) into section 75 of the 2003 Act. Subsection (6) gives Ministers the power to make regulations to enable a crofting community body to seek to recover the expense of conducting the ballot from Ministers. Subsection (7) sets out the matters in relation to which such regulations can make provision, including the circumstances in which a crofting community body may make an application and the criteria to be applied by Ministers in deciding whether to reimburse the applicant.

**Application by more than one crofting community body**

163. [Section 67](#) of the Act amends section 76(4)(b)(i) of the 2003 Act to ensure that, when more than one crofting community body applies to purchase the same land, all parties who were invited to comment on the applications are notified when Ministers decide which application is to proceed and which application(s) are extinguished.

**Reference to Land Court of questions on applications**

164. [Section 68](#) of the Act amends section 81(1) of the 2003 Act to expand the list of persons who have a right to refer a question to the Land Court before Ministers reach a decision on an application. The list of persons now includes the owner of the land which is the subject of the application, the person entitled to any sporting interests which are the subject of the application and any tenant whose interest is the subject of the application.

**Valuation: views on representations and time limit**

165. [Section 69](#) of the Act inserts new subsections (9A) and (9B) after section 88(9) of the 2003 Act. Subsection (9A) provides that, where representations on the value of the land are received from the owner of the land, the tenant or the person entitled to sporting interests, the valuer must invite the crofting community body to make counter-representations, and similarly the owner, tenant or person entitled to sporting interests must be invited to make counter-representations in response to representations made by the crofting community body.
166. Subsection (9B) requires the valuer to take account of any representations made under subsection (9A) when making a valuation of the land.

**Compensation**

167. [Section 70](#) of the Act amends section 89(4) of the 2003 Act which gives Ministers the power to set out the procedure under which claims for compensation payable in relation to an application to purchase land may be made. The amended section 89(4) gives Ministers the power to make an order to specify amounts payable in respect of loss or expense incurred by a landowner, person entitled to sporting interests or tenant as the case may be, amounts payable in respect of loss or expense incurred by other persons, who may be liable to pay those amounts and the procedure under which these claims for compensation are to be made.

**Land Court: reasons for decision under [section 92](#)**

168. Section 71(a) of the Act amends section 92(5) of the 2003 Act to provide that the Land Court is required to issue a written statement of reasons within 8 weeks of the hearing of the appeal. Section 71(b) introduces a new subsection (5A) which provides that where the Land Court considers that it is not reasonable to issue a written statement within

8 weeks, it must notify the parties to the appeal of the date by which it will issue its written statement.

169. Section 71(d) of the Act inserts subsections (6A), (6B) and (6C) into section 92 of the 2003 Act. Section 92(6A) provides that the person who appeals to the Scottish Land Court in connection with the valuation of the land on an application must notify Ministers in writing within 7 days of the date the appeal is made. Section 92(6B) provides that the Land Court is required to send to Ministers a copy of the written statement of reasons issued following the appeal decision. Section 92(6C) states that failure to comply with these requirements will have no effect on the crofting community's right to buy the land, the tenant's interest or the sporting interests, or the validity of the appeal.

#### Register of Crofting Community Rights to Buy

170. Section 94 of the 2003 Act provides what information is to be made publicly available in the Register of Crofting Community Rights to Buy. Section 72 of the Act amends section 94 of the 2003 Act. Section 94(2) of the 2003 Act provides that the name and address of a crofting community body which is a company limited by guarantee must be recorded in the Register. Section 72(2)(b) of the Act extends the provisions and provides that crofting community bodies which are Scottish charitable incorporated organisations or community benefit societies must have their names and addresses recorded in the Register.
171. Section 72(3) of the Act inserts subsections (2A) and (2B) into section 94 of the 2003 Act which require a crofting community body to notify the Crofting Commission of a change to the crofting community body's name or registered or principal office as soon as is reasonably practicable after the change has been made.

#### Meaning of creditor in standard security with right to sell

172. [Section 73](#) of the Act introduces a new section 97ZA to the 2003 Act, which provides a definition, for the purposes of Part 3 of the 2003 Act, of a creditor in a standard security with a right to sell land.

### **Insertion of Part 3A of Land Reform (Scotland) Act 2003: community right to buy abandoned, neglected or detrimental land**

#### Introduction

173. [Section 74](#) of the Act inserts a new Part 3A into the 2003 Act to give communities a right to buy land that is wholly or mainly abandoned or neglected, or where the use or management of the land causes harm to the environmental wellbeing of the community, for the purposes of the sustainable development of that land, where there is no willing seller.

#### Meaning of land

174. The new section 97B of the 2003 Act provides that land for the purposes of Part 3A of the 2003 Act includes bridges and other structures built on or over land, inland waters, canals, and the foreshore (which is the land between the high and low water marks of ordinary spring tides).

#### Right to buy eligible land

175. The new section 97C of the 2003 Act defines land which is to be classed as eligible for the purposes of Part 3A of the 2003 Act. Subsection (2) provides that eligible land is land which, in the opinion of Ministers, is wholly or mainly abandoned or neglected, or land where the use or management of that land is such that it results in or causes harm to the environmental wellbeing of the relevant community.
176. Subsection (3) provides definitions of 'harm' and 'relevant community' as used in subsection (2).
177. Subsection (4) requires Ministers to make regulations setting out what factors they must have regard to when deciding whether land is eligible for the purposes of Part 3A.

178. Subsection (5) provides that eligible land does not include certain land. Land which is not eligible includes land on which there is building or other structure which is an individual's home, other than a building or structure which is occupied by an individual under a tenancy; land pertaining to an individual's home as may be set out in regulations, eligible croft land (as defined in section 68 of the 2003 Act) or croft land which is occupied or worked by its owner or members of their family; land which is owned by the Crown by virtue of it having vested as *bona vacantia* (because no owner exists or can be identified) or it having fallen to the Crown as *ultimus haeres* (because no heir to the previous owner exists or can be identified); and land of such other descriptions that Ministers may set out in regulations.
179. Subsection (6) gives Ministers the power to set out in regulations what is, or is to be treated as, an individual's home; and to set out in regulations descriptions or classes of occupancy or possession which are, or are to be treated as, a tenancy for the purposes of subsection (3).

#### Part 3A community bodies

180. The new section 97D of the 2003 Act outlines the requirements which must be met by a body so that it is eligible to purchase land under Part 3A of the 2003 Act.
181. Subsections (1) to (4) specify that a Part 3A community body must be a company limited by guarantee, Scottish charitable incorporated organisation (SCIO) or community benefit society (BenCom), or any other type of body which Ministers specify in regulations. Subsections (1) to (4) also list the requirements which must be included in the body's articles of association, constitution or registered rules. If a body does not meet the applicable conditions imposed by subsections (1) to (4), it will not be a Part 3A community body and so will not be eligible to purchase land under Part 3A of the 2003 Act.
182. Subsection (5) allows Ministers to disapply the requirement that the articles of association, constitution or registered rules of a Part 3A community body must require that the body must have a minimum of 10 members.
183. Subsection (6) provides that a Part 3A community body is not defined as such until Ministers give their written consent that they are satisfied that the body's main purpose is consistent with furthering the achievement of sustainable development. Subsection (7) gives Ministers a power to amend the criteria which a company limited by guarantee, SCIO or BenCom must meet in order to be a Part 3A community body.
184. Subsection (9)(a) sets out that the articles of association, constitution or registered rules of a Part 3A community body must define the community to which it relates by reference to a postcode unit (or units) or a type of area which Ministers set out in regulations. A community may also be defined with reference to both of these things. Subsection (9)(b) provides that the community includes people who are resident in that postcode unit or in one of the postcode units or other areas set out by Ministers in regulations. In addition to being resident, members of the community must also be entitled to vote at local government elections in a polling district that encompasses that postcode unit or postcode units or the alternative areas set out by Ministers in regulations.
185. Subsection (11) specifies that the articles of association of a Part 3A community body may provide that its property may, in circumstances outlined in subsection (2)(h), pass to another person only if that person is a charity. Subsection (8) defines a charity for the purposes of this section as a body which is entered in the Scottish Charity Register.
186. Subsection (12) provides definitions of a "charity", "community benefit society", "company limited by guarantee", "registered rules", and "Scottish charitable incorporated organisation" for the purposes of this section.

#### Provisions supplementary to section 97D

187. The new section 97E of the 2003 Act sets out the constraints which apply to a Part 3A community body after it has acquired land under Part 3A of the 2003 Act.
188. Subsection (1) provides that a Part 3A community body cannot change its memorandum, articles of association, constitution or registered rules without prior consent from Ministers in writing, while the land bought under Part 3A of the 2003 Act remains in its ownership.
189. Subsection (2) allows Ministers to acquire the land compulsorily if a Part 3A community body, which has bought land under Part 3A of the 2003 Act, would no longer be entitled to buy the land.
190. Subsection (3) provides that Ministers cannot exercise their powers under subsection (2) to acquire the land compulsorily if the land is no longer considered to be eligible. This means that Ministers will not be able to exercise their powers on the basis that a Part 3A community body has purchased the land and the land is no longer considered by Ministers to be eligible for the purposes of Part 3A (as defined in section 97C(2) of the 2003 Act).
191. Subsection (4) provides that where Ministers exercise the power conferred by subsection (2), they may make an order in relation to acquiring the land. Subsection (5) sets out the scope of any such order.

#### Register of Community Interests in Abandoned, Neglected or Detrimental Land

192. The new section 97F of the 2003 Act provides for the creation of a Register of Community Interests in Abandoned, Neglected or Detrimental Land.
193. Subsection (1) requires the Keeper of the Registers of Scotland (“the Keeper”) to set up and maintain a Register of Community Interests in Abandoned or Neglected Land (“the Register”).
194. Subsection (2) specifies information and documents which must be kept in the Register and provides that these must be kept in a form convenient for public inspection.
195. Subsection (3) provides who must provide the information and documents which are to be recorded in the Register to the Keeper.
196. Subsections (4) and (5) allow a Part 3A community body to require that information or documentation which relates to the raising or expenditure of money to allow land to which the application relates to be used should be withheld from public inspection. Such information or documentation will not be entered in the Register. In terms of subsection (6), Ministers cannot require a Part 3A community body to provide such information or documentation. Subsections (7) and (8) provide that if a community body changes its name or the address of its registered or principal office, it must notify the Keeper of the change as soon as reasonably practicable after the change is made.
197. Subsection (9) confers powers on Ministers to make regulations to amend the information that is to be made publicly available in the Register, to amend the provision about the Part 3A community body requesting that certain information can be withheld from the Register and to amend the type of information that may be withheld.
198. Subsection (10) sets out the duties which are imposed on the Keeper. The Keeper must make the Register available at all reasonable times for inspection free of charge, ensure that members of the public are able to request copies of the entries on payment of a charge as may be set out by Ministers in regulations, and that if anyone requests a certified true copy of the original document this will be supplied on payment of such a charge.
199. Subsection (12) provides that the Keeper means the Keeper of the Registers of Scotland or such person as Ministers appoint to carry out the Keeper’s functions under Part 3A of the 2003 Act (and under subsection (13) different persons may be appointed in place of the Keeper for different purposes under Part 3A of the 2003 Act).



#### Right to buy: application for consent

200. The new section 97G of the 2003 Act deals with the process of applying to exercise the right to buy land under Part 3A of the 2003 Act.
201. Subsection (1) provides that the right to buy eligible land (as defined in section 97C(2) of the 2003 Act) can only be exercised by a Part 3A community body. Subsection (2) specifies that the right can only be exercised with Ministers' consent on the written application of the Part 3A community body.
202. Subsection (3) provides that a right to buy land can be exercised on multiple holdings, but separate applications must have been made for each holding of land. A holding of land is defined in subsection (4) as being a plot of land owned by one person or in common or joint ownership. Ministers may consider and make a decision on these applications separately from one another.
203. Subsection (5) specifies that an application must set out who the owner of the land is, any tenant of the land, and any creditor in a standard security with a right to sell the land or any part of it. Ministers have power to set out the required form of the application in regulations. The application must also include or be accompanied by information of the kind specified by Ministers in regulations.
204. Subsection (6) lists the matters which the Part 3A community body must include in the application or which must accompany the application. These include why a Part 3A community body's proposed purchase is in the public interest, how it is compatible with furthering the achievement of sustainable development, and the reasons why it considers the land to be wholly or mainly abandoned or neglected or is being used or managed in such a way as to result in or cause harm to the environmental wellbeing of the relevant community. If the land is being used or managed in such a way as to cause harm to the environmental wellbeing of the relevant community, the community body is required to give to Ministers information about the request the community body has made to all relevant regulators requesting that they take action to remedy or mitigate the harm being caused to that community.
205. Subsection (7) specifies that at the same time as the Part 3A community body applies to Ministers, it must send a copy of its application form (including the associated material) to the owner of the land. It also requires the Part 3A community body to send a copy of the application to any known creditor in a standard security over the land with a right to sell and invite them to give notice, within 60 days, to the Part 3A community body and Ministers if the creditor has taken the steps mentioned in subsection (8) to enforce the security. If such notice is given, creditors must provide any views or comments they may have about the application to Ministers in writing within the 60-day period.
206. Subsection (9) provides that upon receiving the application under section 97G, Ministers must invite the owner of the land, any tenant of the land, any creditor in a standard security and any other person that may have an interest in the application to send back written comments on the application within 60 days of the Ministers' invitation. Ministers must also take reasonable steps to invite comments from owners of land adjacent to the land to which the application relates. The community body must be sent copies of such invitations.
207. Subsection (10) specifies the additional matters which the invitation must invite the landowner to provide comment on.
208. Subsection (11) provides that Ministers must give public notice of receipt of the application as soon as practicably possible and invite views within 60 days of the publication of the notice. Subsection (12) confers a power on Ministers to make regulations to specify the form of the advertisement giving public notice of the application.

209. Subsection (13) provides that Ministers must pass all views received on to the Part 3A community body for further comment. The community body's comments must be received within 60 days of Ministers sending the invitation to comment.
210. Subsection (14) provides that when considering whether or not to give consent to the application, Ministers must have regard to all views received with regard to the application.
211. Subsection (15) provides that Ministers must decline to consider an application that does not comply with the requirements of the new section 97G, is incomplete or where Ministers are otherwise bound to reject it. If such is the case, then Ministers are not bound to follow the steps laid out in subsection (9) to (14).
212. Subsection (16) sets constraints on the timing of the Ministers' decision on an application. It provides that Ministers must not make any decision on the application before the end of the 60-day period within which a community may respond to a landowner's comments, under subsection (13). Alternatively, if by the date of 60 days after the date on which the Part 3A community body may provide Ministers with a response to an invitation sent under subsection (13), the Lands Tribunal has not notified Ministers of any finding under new section 97X of the 2003 Act, Ministers must not make a decision until the date on which the Lands Tribunal provides Ministers with that finding.

#### Criteria for consent

213. The new section 97H of the 2003 Act sets out that Ministers must not consent to a Part 3A community right to buy unless they are satisfied about the matters listed in the section.
214. Subsection (1)(a) requires Ministers to be satisfied that the land a Part 3A community body is proposing to buy is land which is eligible under the new section 97C of the 2003 Act.
215. Subsection (1)(b) requires Ministers to be satisfied that the exercise of the right to buy by a Part 3A community body is in the public interest and its plans for the land are compatible with furthering the achievement of sustainable development.
216. Subsection (1)(c) requires Ministers to be satisfied that the achievement of sustainable development in relation to the land would be unlikely to be furthered by the owner of the land continuing to be its owner. This requirement only applies when the application is being made on the basis that the land is abandoned or neglected, and not where the use or management of the land is resulting in or causing harm to the environmental wellbeing of the community.
217. Subsection (1)(f) requires Ministers to be satisfied that the owner of the land is not prevented from selling the land or is not under an obligation to sell the land to someone other than the Part 3A community body (other than an obligation which is suspended by the regulations which are to be made by Ministers under the new section 97N(3)).
218. Subsection (1)(g) requires Ministers to be satisfied that a Part 3A community body meets the requirements in section 97D.
219. Subsection (1)(h) requires Ministers to be satisfied that a significant number of the members of the community which the Part 3A community body represents have a connection with the land; the land is sufficiently near to land to which those members of the community have a connection; if the community body is a company limited by guarantee, Scottish charitable incorporated organisation or community benefit society that the land is sufficiently near to the area of the community as defined in the right to buy application; or if the community body is another form of body as prescribed by Ministers, that the land is sufficiently near to the area of the community to which that community body relates.

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Act 2015 (asp 6) which received Royal Assent on 24 July 2015*

220. Subsection (1)(i) requires Ministers to be satisfied that the community which the Part 3A community body represents has approved the proposal to exercise the right to buy under Part 3A. The new section 97J of the 2003 Act provides that the community is taken as having approved the proposal if a ballot is conducted as set out in that section.
221. Subsection (1)(j) requires Ministers to be satisfied that the Part 3A community body has tried and failed to buy the land, other than by making an application under Part 3A.
222. Subsection (2) provides that the criteria for consent laid down in subsection (1) are subject to subsections (3) to (7).
223. Subsection (3) provides that subsections (4) to (7) apply only to an application made on the grounds that the use or management of the land results in or causes harm to the environmental wellbeing of the community.
224. Subsection (4) provides that, when considering whether to consent to an application, that Ministers are not required to be satisfied that the achievement of sustainable development in relation to the land would be unlikely to be furthered by the land owner continuing to be the owner of the land.
225. Subsection (5) provides additional criteria of which Ministers must be satisfied in order to consent to an application. Ministers must be satisfied that, in exercising their right to buy, the community body will remove, or substantially remove, the harm to the environmental wellbeing of the community. The community body is also required to have made a request all relevant regulators to take action to remedy or mitigate the harm which is being caused to the environmental wellbeing of the community.
226. Subsections (6) and (7) provide definitions of “regulator”, “relevant regulator” “relevant functions” “regulatory functions”, “relevant regulatory function” and “regulatory requirement”.
227. Subsection (8) provides that, when Ministers are considering the criteria for consenting to an application, that references to a community are references to the community as defined in the community body’s application.
- Ballot to indicate approval for purposes of section 97H**
228. The new section 97J of the 2003 Act sets out the requirements for a ballot to establish that a right to buy application by a Part 3A community body has the support of its community.
229. Subsection (1) provides that a proposal by a Part 3A community body to exercise a community right to buy will be deemed to have been approved by the relevant community, if, firstly, the ballot takes place within the six-month period immediately preceding the date of the right to buy application; secondly, that at least half of the community voted in the ballot or where fewer than half of the members of the community voted, the proportion that voted is sufficient to justify the community body proceeding to purchase the land; and finally, that the majority of the votes cast were in favour of making the application.
230. Subsection (2) provides that the ballot must be conducted as prescribed by Ministers in regulations. Subsection (3) sets out the matters which must be prescribed in those regulations.
231. Subsection (4) specifies that the Part 3A community body must notify Ministers of the result within 21 days of the ballot or, where the application is made before the expiry of that 21-day period, at the same time as the application is submitted. This subsection also sets out what information about the ballot the community body must provide to Ministers.
232. Subsection (5) provides that Ministers may require a Part 3A community body to provide further information about the ballot or any consultation that the community body may have held with the wider community about their application.

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233. Subsection (6) provides that the Part 3A community body is responsible for the expense of conducting the ballot. Subsections (7) and (8) give Ministers regulation-making powers which can be used to allow a Part 3A community body, in particular prescribed circumstances, to apply to Ministers to seek reimbursement of the cost of conducting the ballot.
234. Subsection (9) provides that where a ballot is not conducted in accordance with the regulations made by Ministers, the Part 3A community body's right to buy will be extinguished.

**Right to buy same land exercisable by only one Part 3A community body**

235. The new section 97K of the 2003 Act deals with the situation where there is more than one Part 3A community body interested in buying the same land.
236. Subsection (1) provides that only one Part 3A community body may exercise the right to buy that land.
237. Subsection (2) provides where more than one Part 3A community body submits an application seeking to buy the same land, Ministers will decide which application should be allowed to proceed.
238. Subsection (3) provides that Ministers must not take any decision on any of the applications before they have considered all views and responses related to each application.
239. Subsection (4) provides that once Ministers have decided which Part 3A community body's right to buy application shall be allowed to proceed, the other community body's right to buy shall be extinguished. It also specifies who must be notified of Ministers' decision.

**Consent conditions**

240. The new section 97L of the 2003 Act provides that Ministers may impose conditions to their consent to an application to exercise the Part 3A community right to buy. These conditions may, for example, require that certain actions or steps must be taken by the Part 3A community body.

**Notification of Ministers' decision on application**

241. The new section 97M of the 2003 Act sets out how Ministers must notify the relevant parties of their decision to consent to or refuse an application.
242. Subsection (1) provides that Ministers must give notice in writing of their decision to consent to or refuse an application under section 97G to exercise the Part 3A community right to buy, and identifies the persons to whom such notice must be given. The form of the notice is to be set out in regulations.
243. Subsection (2) provides that regulations made by Ministers must require that the notice includes a full description of the land covered by the Ministers' decision and, where consent is given, any conditions imposed by Ministers.
244. Subsection (3) specifies that the notice must contain information about the consequences of the decision and the rights of appeal against it and state the date on which the consent is given.

**Effect of Ministers' decision on right to buy**

245. The new section 97N(1) of the 2003 Act gives Ministers powers to make regulations prohibiting certain persons from transferring or otherwise dealing with the land in respect of which an application under section 97G has been made.
246. Subsection (2) sets out matters that the regulations under subsection (1) may include.
247. Subsection (3) provides that Ministers may make regulations to suspend rights over land in respect of which a Part 3A application has been made. Subsection (4) sets out

that these regulations may provide for rights which will not be suspended, as well as rights which will not be suspended in certain circumstances.

248. Subsection (5) provides that nothing in Part 3A of the 2003 Act prejudices the position of creditors seeking to prevent the disposal of heritable property by a debtor by means of inhibition, action of adjudication or any other diligence.

#### Confirmation of intention to proceed with purchase and withdrawal

249. The new section 97P of the 2003 Act sets out the procedure which follows Ministers consenting to the exercise of a right to buy by a Part 3A community body, depending on whether or not the community body wishes to proceed with the purchase.
250. Subsection (1) provides that a Part 3A community body may exercise its right to buy only if, within 21 days of the valuer notifying Ministers, the Part 3A community body and the owner of the assessed value of the land under 97S(10), the Part 3A community body sends written notice to Ministers and the owner confirming its intention to proceed to buy the land.
251. Subsection (2) provides that, by notice in writing to Ministers, the Part 3A community body may withdraw its right to buy application or its confirmation of its intention to proceed with the purchase at any time.
252. Subsection (3) specifies the action to be taken by Ministers on receipt of such notices.

#### Completion of purchase

253. The new section 97Q of the 2003 Act deals with conveyancing practicalities relevant to the transfer of land following Ministers giving consent to a Part 3A community right to buy application.
254. Subsection (1) provides that the Part 3A community body will be responsible for preparing the documents necessary to effect the conveyance of the land and for ensuring that the subjects to be conveyed are the same as those specified in the consent given by Ministers. It places an obligation on the Part 3A community body to ensure that in preparing the documents it takes account of all conditions imposed by Ministers.
255. Subsection (2) provides that where the Part 3A community body cannot comply with its duty regarding the property to be conveyed, due to the fact that all or part of the land covered by the consent to the Part 3A community right to buy is not owned by the person named as owner in the application, then it must refer this matter to Ministers.
256. Subsection (3) provides that where such a reference is made to Ministers under subsection (2) then Ministers must direct that the right to buy is extinguished.
257. Subsection (4) requires the owner of the land subject to the Part 3A right to buy to make title deeds and other documents available to and transfer title to the Part 3A community body.
258. Subsection (5) provides that if, within 6 weeks of Ministers consenting to the application to buy the land, the owner refuses or fails to make these deeds available, or if they cannot be found, the Part 3A community body can apply to the Lands Tribunal for an order requiring the production of those documents.
259. Subsection (6) provides that the Part 3A community body may apply to the Lands Tribunal to authorise its clerk to effect the transfer of title where the owner refuses, or for other reasons fails, to do so. Where the clerk to the Tribunal does so the effect will be the same as if it were done by the owner.

#### Completion of transfer

260. The new section 97R of the 2003 Act sets out the process for completing the transfer.

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261. Subsection (1) provides that the consideration payable for the land in respect of which the Part 3A community right to buy is exercised shall be the value of that land as assessed under section 97S by the valuer appointed by Ministers.
262. Subsection (2) provides that, subject to subsections (3) and (4), the consideration should be paid not later than 6 months after the date on which Ministers consented to the right to buy application.
263. Subsection (3) specifies circumstances where either this payment deadline will not apply or where an alternative deadline will apply. In particular, it allows the landowner and the Part 3A community body to agree an alternative payment date and provides for deferral of payment when the valuation has not been completed or has been subject to an appeal.
264. Subsection (4) specifies that where the owner is unable to grant a good and marketable title to the Part 3A community body by the date of payment, then payment shall be made to and held by the Lands Tribunal pending either completion of the conveyance or notification to the Lands Tribunal by the Part 3A community body that it has decided not to complete the transaction.
265. Subsection (5) specifies that if the consideration is not paid by the Part 3A community body by the due date, the right to buy application will be deemed to have been withdrawn by the Part 3A community body (this subsection does not apply where subsection (4) applies).
266. Subsection (6) provides that when the Part 3A community body records or registers its title, the land acquired is disburdened of any heritable security.
267. Subsection (7) provides that a security that related to the land acquired through the Part 3A community right to buy and to other land continues to apply to that other land.
268. Subsection (8) provides that where land is disburdened of a heritable security on purchase, unless the creditors otherwise agree, the Part 3A community body must pay the creditors under that heritable security whatever sums are due to them.
269. Subsection (9) provides that the Part 3A community body must deduct any sums paid to a heritable creditor under the provisions of subsection (8) from the amount that the body is due to pay the owner for the land. In effect, the landowner will receive a sum for the land which will take account of the sum required to clear any securities.

Assessment of value of land etc.

270. The new section 97S of the 2003 Act sets out the procedure for valuation of the land in respect of which a Part 3A community body is exercising its right to buy.
271. Subsection (1) requires that Ministers, where they have consented to a Part 3A community right to buy application, must appoint a valuer to assess the value of that land within 7 days of that consent.
272. Subsection (2) provides that the validity of anything done under the new section 97S will not be affected by Ministers' failure to comply with the time limit specified in subsection (1).
273. Subsection (3) sets out the role of the valuer.
274. Subsection (4) specifies that the value to be ascertained is the market value at the date Ministers consented to the application to exercise the right to buy.
275. Subsection (5) defines market value as the sum of the open market value if the sale were between a willing seller and willing buyer, compensation for any depreciation in the value of other land and interests belonging to the seller as a result of the forced sale, and compensation for any disturbance to the seller resulting from the forced sale.

276. Subsection (6) specifies that in arriving at the open market value for the purposes of subsection (5)(a), account may be taken of the known existence of a potential purchaser with a special interest in the property (other than the Part 3A community body). It also specifies that no account shall be taken of the fact that no time was allowed for marketing the property or of the depreciation of other land or disturbance (since compensation for these latter two items will be added to the open market value by virtue of subsection (5)(b) and (c)).
277. Subsection (7) states that Ministers shall pay for the valuation under this section.
278. Subsections (8), (9) and (10) require the valuer to ask both the owner and the Part 3A community body for their views in writing on the value of the land, and invite written counter-representations from each party on the other's views, and to take these representations and counter-representations into account in arriving at the valuation.
279. Subsection (11) specifies that where the Part 3A community body and the owner have agreed the valuation, they must notify the valuer in writing of that valuation.
280. Subsections (12) and (13) require the appointed valuer to notify Ministers, the landowner and the Part 3A community body of the valuation. This must be done within 8 weeks of being appointed or within a longer period set by Ministers, as requested by the valuer.
281. Subsection (14) sets out that the validity of the transfer is not affected by a failure by the valuer to comply with the time limit.

#### Compensation

282. The new section 97T of the 2003 Act provides for payment of compensation in connection with an application to exercise the Part 3A community right to buy. It provides that the compensation will be payable by the Part 3A community body except where Ministers have refused the application, in which case the compensation due to the owner of the land will be paid by Ministers.
283. Subsection (1) specifies the circumstances in which eligibility for compensation will arise.
284. Subsection (2) provides that the Part 3A community body will not be liable to pay compensation when a Part 3A community right to buy application is made but is not approved by Ministers.
285. Subsection (3) specifies that, in the circumstances covered by subsection (2), compensation for certain losses and expenses can be recovered from Ministers.
286. Subsection (4) provides that Ministers may make an order specifying the amounts payable in respect of loss or expense, who is liable to pay those amounts, and how any compensation is to be claimed under the new section 97T.
287. Subsection (5) provides that if the parties cannot agree whether compensation is payable or the amount of such compensation within the timescale specified in the order, then either party may refer the matter to the Lands Tribunal.
288. Subsections (6) to (9) provide that, when referring a question to the Lands Tribunal, the party referring the question must notify Ministers of the referral within 7 days of making that referral. Subsection (7) requires the Lands Tribunal to send a copy of its findings on the question to Ministers.

#### Grants towards Part 3A community bodies' liabilities to pay compensation

289. The new section 97U provides that Ministers may, in certain limited circumstances, pay a grant to a Part 3A community body to assist it in meeting the compensation it has to pay in connection with its exercise of a right to buy.

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290. Subsection (2) specifies the circumstances in which payment of such a grant would be permitted and subsection (3) makes it clear that Ministers are not bound to pay a grant even when all the circumstances specified arise.
291. Subsection (4) provides that payment of a grant may be subject to conditions including conditions relating to repayment in the event of a breach.
292. Subsection (5) provides that a grant may be paid only if the Part 3A community body applies for it, and subsection (6) provides that the form of the application and the application procedure shall be as Ministers specify in regulations.
293. Subsection (7) provides that Ministers must issue their decision on an application for a grant in writing and, where that decision is to refuse to pay a grant, include the reasons for that refusal. Subsection (8) provides that Ministers' decision on whether to pay a grant or not is final.

#### Appeals

294. The new section 97V of the 2003 Act sets out the rights of appeal which exist in connection with Part 3A of the 2003 Act.
295. Subsections (1), (4) and (5) provide that the landowner, a person who is a member of the community to which a Part 3A community body relates and a creditor in a standard security with a right to sell land to which an application relates may appeal against the Ministers' decision to consent to the application, while subsection (2) allows the Part 3A community body to appeal against a decision to refuse an application. Where there is more than one Part 3A community body wishing to purchase the land, subsection (3) provides that Ministers' decision on which community body's application will proceed is final and cannot be appealed to the sheriff.
296. Subsection (6) specifies the timeframe within which an appeal may be made.
297. Subsection (7) specifies that the sheriff court with the jurisdiction to hear an appeal is the sheriff court where the land subject to an appeal is located.
298. Subsection (8) specifies who each appellant must inform when an appeal is made.
299. Subsection (9) provides that the sheriff's decision is final and may require rectification of the Register of Community Interests in Abandoned, Neglected or Detrimental Land and may impose conditions on the appellant.

#### Appeals to Lands Tribunal: valuation

300. The new section 97W of the 2003 Act sets out the rights of appeal to the Lands Tribunal in connection with the valuation which is carried out under the new section 97S.
301. Subsection (1) provides that the owner of the land and the Part 3A community body exercising its right to buy may appeal the valuation to the Lands Tribunal.
302. Subsection (2) requires such an appeal to state the grounds of the appeal and that it be lodged within 21 days of valuation being notified under section 97S(12).
303. Subsection (3) provides that the Lands Tribunal may reassess the valuation of the land.
304. Subsection (4) provides that the valuer may be a witness in the appeal proceedings.
305. Subsection (5) requires the Lands Tribunal to give reasons in writing for its decision on an appeal within 8 weeks of the hearing of that appeal. Subsection (6) provides that, where the Lands Tribunal considers that it is not reasonable to issue a written statement within 8 weeks, it must notify the parties to the appeal of the date by which it will issue its written statement.
306. Subsection (8) provides that the party making an appeal must notify Ministers within 7 days of the appeal and the date on which it was made. Subsection (9) provides that the Lands Tribunal must send a copy of its written statement of reasons on the appeal



to Ministers. Subsection (10) states that failure to comply with subsection (8) or (9) has no effect on the Part 3A community body's right to buy the land or the validity of the appeal.

307. Subsection (11) provides that Ministers are not competent parties to any appeal by reason only that they appointed the valuer.
308. Subsection (12) provides that Ministers' powers under the Lands Tribunal Act 1949 to make rules are extended so that Ministers can make any rules necessary or expedient in connection with Part 3A.

#### Reference to Lands Tribunal of questions on applications

309. The new section 97X sets out rights of appeal to the Lands Tribunal on a question relating to the Part 3A application.
310. Subsection (1) provides that at any time before Ministers make a decision on an application, any question relating to the application may be referred to the Lands Tribunal by Ministers, the landowner, a person who is a member of the community to which the Part 3A community body relates, any person with an interest in the land giving rise to a legally enforceable right (e.g. a creditor in a standard security with the right to sell land) or any other such person invited to send views on a Part 3A application (under section 97G(9)(a)(iv)).
311. Subsection (2) provides that the Lands Tribunal may consider the views of the Part 3A community body, the owner of the land subject to the Part 3A application and any other person that the Lands Tribunal determines have an interest in the case.
312. Subsection (3) provides that the Lands Tribunal must inform Ministers of its findings on any of the questions referred to it and may, by order, provide for Ministers to consent to an application under the new section 97L only if they impose certain conditions, as directed by the Lands Tribunal.
313. Subsection (4) provides that if the Lands Tribunal finds that the question on the application is not relevant to the Ministers' decision, the Lands Tribunal may decide not to consider the question further and find accordingly.
314. Subsection (5) provides that, when referring a question to the Lands Tribunal, the person referring the question must notify Ministers of the referral within 7 days of making that referral.

#### Agreement as to matters referred or appealed

315. The new section 97Y of the 2003 Act provides that parties to the Part 3A application are not prevented from settling or agreeing on the matter which is subject to an appeal under sections 97V or 97W between them.

#### Interpretation of Part 3A

316. The new section 97Z sets out some matters of interpretation.
317. Subsection (1) provides that any reference to a creditor in a standard security with a right to sell land is a reference to a creditor who has such rights under section 20(2) or 23(2) of the Conveyancing and Feudal Reform (Scotland) Act 1970, or a warrant granted under section 24(1) of that Act.
318. Subsections (2) and (3) provide that public or local holidays should not be taken into account when calculating time periods in Part 3A, except for the 6 month period of completion for the right to buy, the 28-day period for a right of appeal to the sheriff and the 21-day period for a right of appeal to the Lands Tribunal on the valuation.

#### Parts 2, 3 and 3A of the Land Reform (Scotland) Act 2003: mediation

319. [Section 75](#) of the Act inserts subsection 97Z1 into the 2003 Act. Subsection 97Z1 provides powers for Ministers, upon a request by certain persons including owners of land and community bodies, to take such steps as they consider appropriate for

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the purposes of arranging, or facilitating the arrangement of, mediation. Subsection (4) allows Ministers to appoint a mediator, make payments to mediators for services provided, and to reimburse the reasonable expenses of mediators.